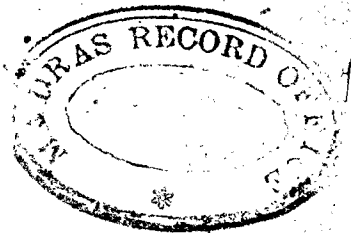


THE
LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

VOL. III.



(15th January, 1923 to 31st January, 1923.)

THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1923.



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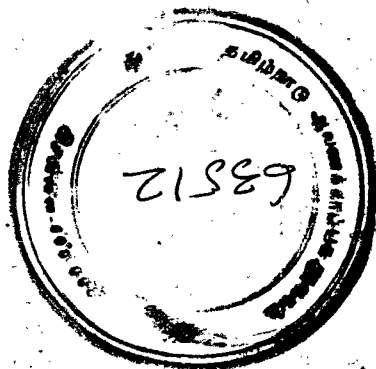
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THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

VOL. III.

(15th March, 1923 to 27th March, 1923.)

THIRD SESSION
OF THE
LEGISLATIVE ASSEMBLY, 1923.



SIMLA
GOVERNMENT CENTRAL PRESS
1923.

Legislative Assembly.

The President:

THE HONOURABLE SIR FREDERICK WHYTE, KT.

Deputy President :

SIR JAMSETJEE JEEJEEBHoy, BART., K.C.S.I., M.L.A.

Panel of Chairmen :

RAO BAHADUR TIRUVENKATA RANGACHARIAR, M.L.A.

MAULVI ABUL KASEM, M.L.A.

SIR CAMPBELL RHODES, KT., C.B.E., M.L.A.

SARDAR BAHADUR GAJJAN SINGH, M.L.A.

Secretary :

SIR HENRY MONCRIEFF SMITH, KT., C.I.E., M.L.A., I.C.S.

Assistants of the Secretary :

MR. W. T. M. WRIGHT, I.C.S.

MR. L. GRAHAM, I.C.S.

MR. S. C. GUPTA, BAR.-AT-LAW.

MR. G. H. SPENCE, I.C.S.

Marshal:

CAPTAIN SURAJ SINGH, BAHADUR, I.O.M.

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LEGISLATIVE ASSEMBLY

Monday, 15th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to acquaint this House of the unavoidable absence of Mr. President on this day's sitting.

Mr. Deputy President (Sir JAMSETJEE JEJEEHOY, Bart., K.C.S.I.) then took the Chair.

MEMBERS SWORN:

The Honourable Sir Basil Phillott Blackett, K.C.B. (Finance Member); Sir Henry Moncrieff Smith, Kt., C.I.E., M.L.A. (Secretary, Legislative Department); Mr. Arthur Herbert Ley, C.I.E., M.L.A. (Industries Secretary); Mr. Clement Daniel Maggs Hindley, M.L.A. (Chief Commissioner, Railways); Mr. Harry Tonkinson, C.I.E., M.L.A. (Home Department: Nominated Official); Mr. Ayandur Vedachala Venkataramana Aiyar, C.I.E., M.L.A. (Finance Department: Nominated Official); Mr. Walter Stuart James Willson, M.L.A. (Bengal: Europeans); Colonel Sir Henry John Ludlam Stanyon, Kt., V.D., C.I.E., M.L.A. (United Provinces: Europeans); Mr. J. N. Basu, M.L.A. (Burma: Non-European); Mr. Rustomji Faridoonji, M.L.A. (Central Provinces: Nominated Official); Mr. William Henry Lawson Cabell, M.L.A. (Burma: Nominated Official); Mr. Percy Barnes Haigh, M.L.A. (Bombay: Nominated Official); Mr. Henry Edward Holme, M.L.A. (United Provinces: Nominated Official).

The Honourable Sir Malcolm Hailey: Before the House proceeds to business, Sir, I hope you will allow me, with the permission of the House, to express on behalf of the House—as I am sure I may do—our deep sympathy with the Honourable the President in his illness and to express also the hope of the House that he may speedily return to those labours in the performance of which he has earned, if I may say so, with all respect, both the admiration and the affection of this House.

Mr. Deputy President: Honourable Members of the Assembly, in the regrettable absence of the Honourable the President, through ill-health, it has fallen to me to preside over the Assembly and to welcome the Honourable Members of this House. The Honourable Sir Frederick Whyte, you will be glad to learn, is making steady progress towards recovery, and I am sure every one of us will wish him completely to recover before long and to be able to take the Chair in the course of the next few days. I trust I am voicing the feelings of this House in welcoming amongst us the Honourable Sir Basil Blackett as our colleague. He comes to us as Finance Member of the Government of India, the portfolio of which high office was until quite recently in the capable hands of the Honourable Sir Malcolm Hailey, whose indefatigable energy and high talents are now transferred to the Home Department. Sir Basil comes to us with a great reputation in finance, both on its theoretical and on its practical side. I am confident that this House will extend to him the assistance and co-operation which

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his wide experience and knowledge entitle him to claim for himself in the discharge of his new duties.

In conclusion I may be permitted to refer to a personal matter. Honourable Members are well aware that we have long and arduous work before us in this Session. I feel assured, however, that, in view of the traditions which the Assembly has to its credit established in the past two years, we shall be able to go through it in a spirit of harmony and useful good-will. I am certain that I can with confidence rely on Honourable Members for help and support in the discharge of the duties of the Chair in the same measure in which they have vouchsafed them to me ungrudgingly and unstintedly in the past.

Sir Deva Prasad Sarvadhikary: On behalf of my friends I desire to associate myself, and I am sure every non-official Member of the Assembly does so, with the expression of regret which has fallen from the Leader of the House and you (Mr. Deputy President) in connection with the illness of the President. His has been very strenuous work, not confined to Delhi and Simla by any means, but all over the country, and I am afraid he is paying the penalty. We all hope that he may soon recover and come back to us. In welcoming you to the Chair in the President's absence, we promise you all the support and assistance that you require in the difficult work before you. And, Sir, I desire to convey to you the congratulations of my friends and I am sure of the whole House, on the high honour that was conferred upon you while you were away from us. You have been away for some time and I am sure you have brought back knowledge and traditions that will be helpful in carrying on the work of this House. There has been a re-arrangement in the Front Bench and we hope it will be all for the good and for advancement of work. In Sir Malcolm Hailey we have a leader, not new by any means. He led the House when it was first started and has come back to the leadership. Sir Muhammad Shafi is now Vice-President of the Executive Council and has taken over the Law portfolio. I am sure that from Sir Malcolm Hailey and from Sir Muhammad Shafi we shall have all the consideration we had before and a little more.

Sir Basil Blackett we all welcome. I hope he will put our finances right and that there will be no reason for us to quarrel with him in the same way as we have sometimes quarrelled with his predecessors.

I am sure, Sir, that the House would like also to express its appreciation of the honour which has been conferred upon its Secretary, upon Sir D. Waghorn, Sir Campbell Rhodes and others. They have all well earned them, and not the least by their work in this Assembly.

Mr. Deputy President: I thank the Honourable Member—Sir Deva Prasad Sarvadhikary especially—for his kind reference to me.

STATEMENT LAID ON THE TABLE.

The Honourable Sir Malcolm Hailey: Sir, I have to lay on the table a statement showing the number of Muslims, Hindus, etc., employed in the Government of India Secretariat, promised in reply* to questions by Sardar Bahadur Gajjan Singh, Mr. K. Ahmed and Maulvi Miyan Asjad-ul-lah, asked on the 11th and 15th September, 1922.

*Vide Legislative Assembly Debates, Volume III, pages 347, 356 and 577.

STATEMENT LAID ON THE TABLE.

Statement showing the number of Europeans, Anglo-Indians, etc., employed in the Government of India Secretariat on the 1st September, 1922.

(a) (i) Officers holding posts above the grade of Superintendent.

Department.	EUROPEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.		INDIAN CHRISTIANS.		OTHERS.		TOTAL.		REMARKS.
	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	
Home	6	3													6	4	
Foreign and Political Department.	7														8	2	
Finance	4	2													6	4	
Legislative	4	3	1		2										7	3	
Army	4	2	1												4	1	
Public Works	3		1												6	1	
Revenue and Agriculture	4	1	1								1				5	1	
Education and Health	1				1										3		
Commerce	5	1													7		
Industries	4														11		
Railway Board	11														11		
Office of Financial Adviser (Military Finance).	10	3			1										11	3	

*Excluding officiating officers.

(2) Superintendents.

Department.	EUROPEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.		INDIAN-CHRISTIANS.		OTHER.		TOTAL.		REMARKS.
	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	Permanent.	*Temporary.	
Home	...	...	3	1	3	...	...	...	...	...	...	...	...	...	6	1	
Foreign and Political	6	...	3	...	...	...	...	...	...	...	...	...	...	...	9	...	
Finance	1	...	...	...	3	...	...	...	1	...	...	...	...	...	6	...	
Legislative	2	...	...	1	1	1	...	...	...	...	...	...	...	...	3	2	
Army	1	...	2	1	2	1	...	...	...	...	...	...	...	...	5	2	
Public Works	1	...	3	...	1	...	...	...	...	...	...	...	...	...	5	...	
Revenue and Agriculture	4	...	...	...	...	...	...	...	...	...	...	...	...	...	4	...	
Education and Health	...	...	1	...	2	...	...	...	...	...	...	...	...	...	3	...	
Commerce	1	...	...	...	1	...	...	...	...	...	...	...	...	...	4	...	
Industries	2	...	1	...	3	1	...	...	...	...	...	...	...	...	6	1	
Railway Board	...	...	4	...	1	...	...	...	...	...	1	...	...	...	7	...	
Office of Financial Adviser (Military Finance).	1	...	...	...	4	...	...	...	...	...	...	...	...	...	5	...	

*Excluding officiating officers.

STATEMENT LAID ON THE TABLE.

(3) Assistants.

Department.	EUROPEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.		INDIAN CHRISTIANS.		OTHERS.		TOTAL.		PER-CENTAGE OF MUHAMMADANS TO NON-MUHAMMADANS.		REMARKS.
	Permanent.	Temporary.*	Permanent.	Temporary.*	Permanent.	Temporary.*	Permanent.	Temporary.*	Permanent.	Temporary.*	Permanent.	Temporary.*	Permanent.	Temporary.*	Permanent.	Temporary.*	Permanent.	Temporary.*	
Home	4	...	5	1	7	1	1	...	...	...	...	...	...	...	20	2	Nil	8	+ Parsee.
Foreign and Political	16	5	13	1	4	4	1	1	1	...	1	2	...	...	37	13	3	Nil	
Finance	3	1	4	...	6	...	...	...	...	...	...	...	...	...	23	8	9.5	Nil	
Legislative	3	...	8	2	9	6	2	...	...	...	...	...	...	...	23	25	9	Nil	
Army	2	3	6	4	10	15	...	...	...	...	...	1	...	...	18	4	100	Nil	
Public Works	...	...	8	1	10	1	...	...	...	...	...	...	...	...	21	...	10.5	Nil	
Revenue and Agriculture.	8	...	2	...	3	...	...	...	1	...	...	...	...	...	14	...	27	Nil	
Education and Health	...	...	5	...	6	...	3	...	...	...	...	...	...	...	13	...	28.5	Nil	
Commerce	1	...	5	1	9	6	...	...	...	...	...	...	...	...	18	2	12.5	Nil	
Industries	2	...	3	...	11	2	2	...	...	...	...	...	...	...	(b) 30	2	3	100	
Railway Board	1	...	12	...	13	1	1	1	1	...	...	...	(c) 1	...	...	...	...	...	
Office of Financial Adviser (Military Finance).	4	...	2	...	18	6	...	...	...	...	...	...	...	...	24	6	Nil	Nil	

* Excluding officiating officers.

(4) Clerks.

Department.	EURO-PEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.	INDIAN CHRISTIANS.	OTHERS.	TOTAL.	REMARKS.
	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	
Home	1	1	...	5	19	47	8	...	2	1	...	34	14 + Excludes Hindu photographer in the office of the Director, Central Bureau of Information.
Foreign and Political	3	...	5	2	28	9	6	5	2	1	...	46	17
Finance	...	...	...	...	28	3	4	...	...	2	...	34	4
Legislative	1	...	...	1	18	6	9	2	1	...	...	30	9
Army	...	...	3	11	22	52	2	7	2	...	...	29	71
Public Works	1	...	2	...	18	4	6	...	1	...	...	27	5
Revenue and Agriculture	...	...	2	...	15	2	10	...	4	...	...	31	2
Education and Health	...	...	1	...	11	11	6	...	1	...	...	19	1 + In office.
Commerce	...	...	2	...	24	7	3	...	...	2	...	29	11
Industries	...	...	1	...	19	2	8	...	...	...	...	31	4
Railway Board	...	...	5	2	36	8	10	3	5	...	...	(a) 57	(a) 13 Including 13 draftsmen, i.e., 3 Hindus, 7 Muhammadans and 3 Sikhs.
Office of Financial Adviser (Military Finance).	1	1	...	...	30	4	5	1	1	...	...	37	6

* Excluding officiating officers.

(5) Stenographers.

Department.	EURO-PEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.	INDIAN CHRISTIANS.	OTHERS.	TOTAL.	REMARKS.
	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	
Home	...	...	3	...	2	2	...	...	...	...	...	5	2 (a) Council Re-porters. (b) Jews.
Foreign and Political	...	...	1	...	3	...	...	1	...	...	...	4	...
Finance	...	...	1	...	5	...	...	...	...	...	...	6	...
Legislative	(a) 4	...	2	...	(a) 6	1	...	...	...	(b) 3	...	15	...
Army.	...	...	...	...	1	1	...	...	...	...	...	2	...
Public Works	1	...	1	...	2	...	...	...	...	(c) 2	...	3	...
Revenue and Agriculture	...	...	...	...	3	...	...	...	...	...	...	3	...
Education and Health	...	...	...	...	...	...	...	...	...	...	...	4	...
Commerce	...	...	...	...	4	...	...	...	...	...	...	5	...
Industries	...	...	...	...	6	...	...	...	...	...	...	6	...
Railway Board.	...	...	...	...	5	...	...	...	...	...	...	...	...
Office of Financial Adviser, Military Finance.	...	...	...	...	5	...	...	...	...	...	...	...	...

* Excluding officiating officers.

(ii) Proportion of Muslims to non-Muslims in each Department (including temporary appointments).

Home	13 per cent.	21 per cent.
Foreign and Political	12	36
Finance	11	13
Legislative	15	15
Army	7	15
Public Works	14	7

(iii) Total proportion of Muslims to non-Muslims in all the Departments of the Government of India.

About 13 per cent.

(b) Total number of permanent assistants in the Railway Department (Railway Board) is 30 and not "above 40."

QUESTIONS AND ANSWERS.

ALLEGED ABUSE OF LALLA GULZARI LALL BY COLONEL CROFTON, NEEMUCH.

1. ***Mr. Pyari Lal:** (a) Has the attention of the Government been drawn to an article published in the *Cantonment Advocate* of 30th June, 1922, under the heading "Alleged abusing of a member of Cantonment Committee at Neemuch"?

(b) Is it a fact that Lieut.-Colonel Crofton, the President, Neemuch Cantonment Committee, insulted and abused Lalla Gulzari Lall, a member of the Cantonment Committee, Neemuch, in a meeting of that Committee for his having signed a public Memorial for the postponement of the transfer of a local Doctor?

(c) Is the Government aware that as a protest against his "abusing" Lalla Gulzari Lall tendered his resignation of the membership of the Cantonment Committee and this resignation was accepted by the Secretary, Cantonment Committee?

(d) If the reply to the above be in the affirmative, will the Government be pleased to quote the "law" under which a Secretary of the Cantonment Committee is authorised to accept the resignation of a member?

(e) Is the Government aware that the Central Provinces District Headquarters, Mhow, in their letter No. 978-3-Q.-3, dated 3rd May, 1922, wrote to Lalla Gulzari Lall that Colonel Crofton will see him and come to an understanding?

(f) Will the Government be pleased to state if Colonel Crofton has since come to an understanding with Mr. Gulzari Lall?

(g) If not, will the Government state what action it has taken or it proposes to take in the matter?

Mr. E. Burdon: (a) Yes.

(b) The Government of India have received conflicting versions of the affair, but it is clear that on a certain occasion Lieutenant-Colonel Crofton made use of forcible language to Lalla Gulzari Lal, and that the latter resented it.

(c) Yes.

(d) The action of the Cantonment Committee in accepting the resignation tendered by Lalla Gulzari Lal was *ultra vires*, and orders have been issued directing that the acceptance of the resignation should be regularised.

(e) Yes.

(f) and (g). While not admitting that he insulted Lalla Gulzari Lal, Lieutenant-Colonel Crofton has expressed his willingness to apologise, and he has been directed by Government to do so.

SALE OF LAND IN AMBALA TO PANDIT S. RAMLALL.

2. ***Mr. Pyari Lal:** (a) Is the Government aware that a large open piece of land used by the milk-sellers (Ghosis) of Ambala, ever since the establishment of the Cantonment, was recently given to one Bipat Ram on lease, for construction of quarters for the cantonment syces?

(b) Is it a fact that on the day the lease was registered, the transfer of this land, for a consideration of Rs. 7,000 was effected under a separate Deed, registered by the then Cantonment Magistrate, to one Pandit Somdatt Ramlall, a relative of the Head Clerk of the Cantonment?

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QUESTIONS AND ANSWERS.

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(c) Is the Government aware that Mr. Ramlall Somdatt has made a formal agreement with Bipat Ram in case of Government making any claim for recovery of Rs. 7,000?

(d) Is it a fact that on the land thus secured by Ram Lall, a large number of residential houses are being constructed and that the land and buildings really represent the interests of the Head Clerk of the Cantonment Committee, Ambala?

(e) Is the Government aware that by leasing this plot of land the Cantonment fund has lost a substantial amount in rent?

(f) Is the Government aware that there is considerable discontent among the milk-sellers on account of their being deprived of this piece of land? If so, how does the Government propose to satisfy the grievance of the milk-sellers?

(g) Is the Government aware that Mr. Bipat Ram in his written statement, a copy of which has been sent to the Cantonment Magistrate, denies having received the sum of Rs. 7,000?

(h) Will the Government enquire into the truth or otherwise of this statement?

(i) Will the Government be pleased to state if the quarters now built are used as a syce line?

Mr. E. Burdon: (a) Government have ascertained that a piece of land in the Ambala Cantonment was recently granted on lease to Mr. Bipat Ram. The land in question had been used for many years by the milk-sellers of the place. Mr. Bipat Ram is said to have intended to use the site for the construction of houses for syces but this was not actually stated in his application for the lease.

(b) The answer is in the affirmative except that Government do not know whether Pandit Somdat Ram Lall is related or not to the Head Clerk of the Cantonment Office.

(c) Government have received a document which purports to be a copy of the agreement mentioned. They cannot say whether such an agreement was actually made or not.

(d) It is reported that houses are being constructed on the site in question. The allegation that the land and buildings represent the interest of the Head Clerk has been made but so far as Government are aware has not been substantiated.

(e) The loss in rent is said to be Rs. 30 per annum.

(f) The milk-sellers have submitted petitions on the subject to the local authorities and they have been offered an adjoining piece of land for their use. Government do not propose to take any further action in the matter. The terms on which the milk-sellers previously occupied the site transferred to Mr. Bipat Ram required them to vacate it immediately on receipt of notice.

(g) Government have been informed that Mr. Bipat Ram has made such a statement.

(h) Enquiries have already been made by the Cantonment Magistrate who reports that the money was paid to Mr. Bipat Ram in the presence of the Sub-Registrar.

(i) No.

STANDING ARMY IN INDIA—AUTHORITY FOR.

3. ***Mr. P. P. Ginwala:** Will the Government be pleased to state under what statutory or other authority the Governor General in Council maintains a Standing Army in India, especially in peace times?

Mr. E. Burdon: The right of the East India Company to maintain permanent forces was recognised in the Charter of 1698 and again in the East India Mutiny Act, 1754, and the Government of India Act, 1833. By section 56 of the Government of India Act, 1858, the forces of the Company and the right to maintain them were transferred to the Crown.

Mr. K. Ahmed: Are the Government of India aware that His Highness the Agha Khan said the other day, before he had started from England to India and landed at Bombay, that the major portions of the revenue of India are spent for the upkeep of the Army in India, and for the utilization of the Army outside India, just as it was a few years ago in France and other places, and also in South Africa some time ago, and its object is to keep India under the control of Britain rightly or wrongly?

Mr. E. Burdon: I should like notice of that question.

Mr. K. Ahmed: Is not that a matter in issue, to elicit further facts?

Mr. Deputy President: The Member in charge wants notice from the Honourable Member.

Mr. K. Ahmed: According to the rules, is that not a matter in issue to elicit further facts on the subject?

Mr. Deputy President: No.

STANDING ARMY IN INDIA—PURPOSE OF.

4. ***Mr. P. P. Ginwala:** (i) Will the Government be pleased to state whether the Standing Army in India is maintained (a) for the purpose of preserving internal peace and order, (b) for the defence of India against external aggression?

(ii) If the answer to part (i) is in the affirmative, will the Government be pleased to state the strength, and cost of the field and covering troops, maintained under heads (a) and (b)?

Mr. E. Burdon: (i) The Standing Army in India is maintained both for the purpose of preserving internal peace and order and also for the defence of India against external aggression.

(ii) The proportion of the army detailed as field and covering troops and for the maintenance of internal peace and security is constantly changing. Any part of the Standing Army in India may be employed either for one purpose or the other.

As regards the cost of the Army in India, I would refer the Honourable Member to the Budget estimates for 1922-23.

Mr. K. Ahmed: 60 per cent. of the revenue is spent on the upkeep of the Army and you neglect sanitation, health and education?

EAST INDIAN RAILWAY—APPOINTMENT OF ANGLO-INDIANS AND DOMICILED EUROPEANS TO.

5. ***Sir D. P. Sarvadhikary:** (a) Would the Government please state whether its attention has been called to statements in the correspondence

column of some of the newspapers to the effect that the authorities of the East Indian Railway have received instructions that the Anglo-Indians and Domiciled Europeans who came to the rescue during the strike on the East Indian Railway while His Royal Highness the Prince of Wales was in India, but who were sent adrift as soon as the strike was over, are to have special consideration as vacancies occur and that a list of them is in the office of the Headquarters of the East Indian Railway?

(b) Would the Government please state whether there is any and, if so, what truth in the above statements?

(c) Would the Government please state whether the Government has sanctioned or countenanced such instructions?

Mr. C. D. M. Hindley: (a) The reply is in the affirmative.

(b) The facts of the case are that the Agent, East Indian Railway, has decided that, other considerations being equal, when vacancies occur in posts occupied by Europeans, Anglo-Indians or Indians preference should be given to those who worked during the strike whatever their nationality.

(c) The matter is not one with which Government has any concern. The employés are the Company's servants.

REDUCTIONS IN GARRISON IN INDIA AND HEADQUARTERS COMMAND.

6. ***Sir D. P. Sarvadhikary:** (a) Would the Government please state whether its attention has been called to statements appearing in a London telegram published in some of the newspapers to the effect that the Sub-Committee of the Imperial Defence Committee does not favour substantial reduction of the garrison in India beyond those now being carried out, while the Military Requirements Committee recommends the elimination of certain British units, and that the Whitehall Committee points out methods of reducing expenditure by substantial reductions in the Headquarters Command and staffs which are now reducible to the normal level?

(b) Would the Government please state whether it has received any information to the above effect?

(c) Would the Government please state the amount of the total expenditure of the staffs mentioned in the above statement and what the total expenditure would be when reduced to the normal level?

Mr. E. Burdon: (a) Yes.

(b) The Government are at present unable to make any announcement as regards the findings of the Military Requirements Committee or the decisions to be taken thereon.

(c) The cost of the staff employed at Army Headquarters, as fixed for the current financial year, will be found in the Budget estimates under head IV—“Army Headquarters staff of Commands, etc.” The strength of the Headquarters staff, as so provided for, is that which was originally accepted as necessary in the scheme for the post-war reorganization of the army in India. Recently, however, owing to the need for retrenchment, the possibility of reducing the Headquarters establishments has been carefully investigated by a Committee presided over by the Honourable Commerce Member, and the same subject has engaged the attention of the Retrenchment Committee. In the result, certain curtailments have already been decided upon and others are contemplated. The amount of savings to be affected by reductions cannot yet be exactly stated.

Mr. K. C. Neogy: Is it a fact that the reduction of British units, stated to have been already carried out, has been made up by a recent accession of strength of troops from England and Ireland?

Mr. E. Burdon: I am afraid I do not understand the Honourable Member's question. What reduction of British units is referred to?

Mr. K. C. Neogy: The Honourable Member will see that it is stated in this question that the Defence Committee did not favour a substantial reduction of the garrison in India beyond that which was then being carried out. My question relates to this portion of the question, and it is this. Has the portion of the British garrison, stated to have been reduced while the Committee was considering the matter, been made up by a recent accession of strength from England and Ireland?

The Honourable Sir Malcolm Hailey: The Honourable Member will see that he is first of all asking us to disclose the recommendations of the Military Requirements Committee. He is then asking us to state how far those recommendations have been carried out or other measures taken in place of them. My Honourable friend behind me informed him that he was not prepared at present to state what were the recommendations of the Military Requirements Committee nor the attitude of the Home Government in respect of them and we must maintain that reply. But I can inform my Honourable friend, in regard to the suggestion in the latter part of his question, that such replacements as have taken place have been purely in the ordinary course of sending out drafts to fill shortage in existing units.

PURCHASE OF SLEEPERS BY NORTH-WESTERN RAILWAY.

7. ***Dr. Nand Lal:** Is Government aware:

- (a) that the North Western Railway has advertised, inviting tenders for the supply of a large number of sleepers, to be supplied in five years, and purporting to say that the tender should be for the whole supply;
- (b) that there are many Indian timber and sleeper contractors, who individually cannot afford to undertake to make the entire supply;
- (c) that this advertisement and the conditions laid down therein have given rise to feelings of a great grievance amongst the Indian timber merchants against the character and terms of the advertisement and the contract;
- (d) is Government prepared to see that the terms and condition in regard to the character of tenders and contract be altered?

Mr. C. D. M. Hindley: (a) In their original call, the North Western Railway invited tenders for 10 lakhs of sleepers in whole and not in part, but subsequently modified this so as to permit of the submission of part tenders.

- (b) The answer is in the affirmative.
- (c) The modification in the call for tenders was made to meet the circumstances of the smaller timber merchants.
- (d) Under the circumstances, Government have no grounds for taking the action suggested.

STAFF SELECTION BOARD CANDIDATES—APPOINTMENT TO VACANCIES.

8. ***Mr. B. N. Misra:** (a) Is it a fact that the passed candidates of the Staff Selection Board are appointed in various departments of the Government of India in leave and other vacancies for long or short periods and are spared on the expiry of their term, if there is no other vacancy available in that department?

(b) Is it also a fact that even when they get a vacancy in some other department of the Government of India without any break of service, their previous service is not taken into account in determining their position among similar temporary men already working in that department?

(c) Is it also a fact that temporary men have got no service book of any kind in which to keep a record of their services as long as they are temporary?

(d) Do the Government propose to prescribe a brief service book or open sheet which should remain in the possession of every passed candidate of the Staff Selection Board, moving as a temporary hand from one department to another?

The Honourable Sir Malcolm Hailey: (a) The answer is in the affirmative.

(b) This is the ordinary practice but there is no actual bar to the placing of a particular person above the temporary hands already working in a department if such person has superior qualifications.

(c) The answer is in the affirmative.

(d) The Government of India will adopt the suggestion made by the Honourable Member.

Sir Deva Prasad Sarvadhikary: Having regard to the large retrenchments that are going on and must go on, is it advisable to make these temporary appointments now; and if they have to be made, should they not be made from amongst those whose services are being dispensed with?

The Honourable Sir Malcolm Hailey: We are endeavouring to make as few temporary appointments as possible, and I think that the consideration which has been put forward by the Honourable Member is the only means of effecting any temporary replacements of those hands.

Sir Deva Prasad Sarvadhikary: Having regard to the answer of the Honourable the Leader of the House, is it necessary or desirable to keep up the Staff Selection Board and hold examinations which bring so much disappointment to those who sit for these examinations and do not have any chance of obtaining employment.

The Honourable Sir Malcolm Hailey: We have under consideration the question of holding further examinations. I shall subsequently be able to make an explanation to the Honourable Member in that respect.

INDIAN SUPERVISORS OF MILITARY DAIRY FARMS.

9. ***Mr. B. N. Misra:** (a) Will the Government be pleased to state what is the total number of candidates approved by the Controller of Farms for probation as Indian Supervisors of Military Dairy Farms and how many of them have passed the Matriculation Examination?

(b) Will the Government also say how many of the Matriculation passed candidates have been tried and with what results?

(c) What is the pay and future prospects of the posts?

(d) What minimum educational qualification was fixed for selection of candidates for the posts?

(e) Do the Government propose to instruct the officer in charge of the Department that as far as possible only those should be appointed who have passed at least the Matriculation Examination?

Mr. E. Burdon: (a) 310. Of these, 225 have passed the Matriculation examination.

(b) 53 of the candidates who had passed the Matriculation examination were tried, and out of this number 11 candidates either resigned, or did not join, or left the department without giving notice; 5 were considered unsuitable and were discharged. The remainder have only been employed for a few months and up to date their service has been satisfactory.

(c) A statement giving details of the scheme is laid on the table.

(d) and (e) The minimum standard of education generally insisted upon has been that the candidate should have passed the matriculation examination. For special reasons, exceptions have, in the public interest, been made. It has now been definitely laid down for the future that, so far as possible only those should be appointed who have passed at least the matriculation examination or its equivalent.

Details of Scheme.

(a) Candidates within the age limits prescribed in the Civil Service Regulations will be entertained as probationers on a salary of Rs. 60 a month and will be placed under instructions for a period not exceeding one year. They will then undergo a departmental examination, and those who pass it and are otherwise satisfactory will be appointed overseers on probation on a salary of Rs. 100 a month, rising by biennial increments of Rs. 10 to Rs. 160 a month, the first increment being given after 3 years' total service, inclusive of the period of training.

(b) After two years' service on the maximum pay of this grade, that is Rs. 160 a month, they will be granted a further increment of Rs. 15 a month, and this increment will be continued biennially until a maximum of Rs. 250 is reached. There will be an efficiency bar at Rs. 150 and another at Rs. 190. Men employed as stock-yard overseers will receive an allowance of Rs. 20 a month. These men will have the charge of extremely valuable cattle and will have to attend not only to the general work of the cattle-yard but also to the breeding management and rearing of stock. The duties of a stock-overseer require special aptitude, which only a small proportion of the men are likely to possess.

(c) On completion of four years' service from the date of their first engagement, men who have proved satisfactory will be confirmed in their appointments and those found not to be satisfactory will be discharged without delay.

(d) Men who after completing four years' service, have been confirmed in their appointment and, in addition, have been specially selected, will undergo a further course of higher training for one year, and at the close of that year will be examined to see whether they are fit for admission to the higher appointments of managers. Appointments to this grade will be made as vacancies occur.

(e) The pay of the managers will be fixed according to their length of service. They will start on Rs. 200 (not sooner than their 6th year of service) and will receive biennial increments of Rs. 30, rising to a maximum of Rs. 500. There will be efficiency-bars at Rs. 290 and Rs. 410.

(f) For the purposes of pension, leave and allowances, the whole establishment will be subject to the Civil Service Regulations and will be allowed to subscribe to the General Provident Fund.

DOUBLE JOURNEYS BY REGISTRARS AND CASHIERS.

10. ***Mr. B. N. Misra:** (a) Is it a fact that the Registrars and Cashiers of the Secretariat accompanied by a clerk or menial go from Simla to Delhi or *vice versa* a few days before the move of their Department and come back after a couple of days' stay to go again with the Department?

(b) Are the Government aware that it costs a large amount twice every year on account of the travelling, daily and other allowances of these officers in addition to the loss suffered by the Departments owing to their absence from duty?

(c) Do the Government propose to consider this question with a view to economy and see whether only one junior man going in advance of the Department would be quite sufficient for the purpose?

The Honourable Sir Malcolm Hailey: (a) The practice referred to by the Honourable Member is followed in only a few of the Departments of the Government of India.

(b) The cost in travelling and other allowances is not very appreciable.

(c) This is already the practice in most departments, and those Departments which follow the practice referred to in part (a) of the question will now consider whether it is possible to adopt this suggestion in lieu of their existing practice.

STAFF SELECTION BOARD—EXTENSION OF SCOPE.

11. ***Mr. B. N. Misra:** (a) Do the Government propose to consider the advisability of extending the scope of the Staff Selection Board to the Accounts and other offices under the Government of India?

(b) Will the Government be pleased to lay on the table a list of offices subordinate to the various Departments of the Government of India?

The Honourable Sir Malcolm Hailey: (a) No.

(b) A statement is being sent to the Honourable Member.

STAFF SELECTION BOARD—STATISTICS OF EXAMINATIONS.

12. ***Mr. B. N. Misra:** (a) Will the Government please lay on the table information on the following points regarding the last examination of the Staff Selection Board for outside candidates?

- (1) Total number of candidates who applied with necessary fees.
- (2) Total number of candidates who were allowed to appear.
- (3) Number of candidates for the upper division of the attached offices.
- (4) How many out of (3) are to be called for interview.
- (5) How many out of (3) are to be declared successful.

(b) Will the Government please state if Army Headquarters is regarded by the Staff Selection Board as an attached or Secretariat office?

(c) Is it a fact that Army Headquarters is not in receipt of Secretariat pay and allowances?

The Honourable Sir Malcolm Hailey: (a) 1. The total number of candidates who submitted applications accompanied by the necessary fees was 1,012.

2. The total number of candidates who were allowed to appear for the examination was 883.

3. The number of candidates for the Upper Division of Attached Offices was 440.

A very large number of these candidates applied also to be registered for other posts, *e.g.*, in the Lower Division of the Secretariat and as clerks in Attached offices, etc.

4. Of the 440 who applied for posts as Assistants in Attached offices 55 qualified at the written examination and were called up for interview in order to qualify in that capacity. Many others were called up for interview in connection with other appointments for which they had qualified at the written examination.

5. Of the 55 interviewed for Assistantships 48 were declared successful.

(b) The Army Headquarters are treated as a Secretariat office for this purpose.

(c) Yes.

STAFF SELECTION BOARD—METHOD OF MARKING.

13. ***Mr. B. N. Misra:** (a) Will the Government please state how the marks were allotted under each head by the Staff Selection Board for each of the following at their last examination held in July, 1922, for outside candidates?

(1) Written examination, (2) War services, (3) Special qualifications and experience, (4) Interview.

(b) Will the Government please state if any limit has been fixed by the Board for the number to be passed? If so, is the examination intended to be more a competitive than a qualifying test?

The Honourable Sir Malcolm Hailey: (a) A maximum of 300 marks were allotted for the written examination and 50 marks at the interview. The marks allotted at the interview were divided under three heads, *viz.*, up to 10 for "Appearance," up to 10 for "Service" and up to 30 for "Intelligence." For active war service the maximum number of marks under "Service" was granted, *viz.*, 10 marks. For other classes of war service marks were granted according to the length of such service. No marks were allotted for special qualifications as such, since no special qualifications were called for, but those who had special qualifications or experience secured marks either under Intelligence or Service.

(b) The examination is a qualifying one, and no limit as to the number of candidates to be passed was fixed.

STAFF SELECTION BOARD—EMPLOYMENT OF PASSED AND UNPASSED MEN.

14. ***Mr. B. N. Misra:** (a) Will the Government please refer to the reply given to unstarred question No. 350 on the 28th March, 1922, regarding the unpassed men in the Secretariat and attached offices being replaced by passed candidates of the Staff Selection Board and state how far the promise made therein has been carried out?

(b) Will the Government please lay on the table a statement showing the number of unpassed candidates (including those who have appeared at the recent examination) employed in the Upper and Lower divisions of all the Departments of the Secretariat and the attached offices?

(c) What was the total number of outside candidates passed by the Staff Selection Board in 1921, and how many of them were employed on 1st September, 1922?

(d) How many of the passed candidates were not in service on 1st September, 1922, and how many unpassed candidates were in service on the same date?

(e) What steps do the Government propose to take with a view to replace unpassed men by passed men?

(f) Will the Government please call for a list of all unpassed men in service in the various Departments of the Secretariat and the attached offices and state the definite dates by which they will be replaced by passed candidates?

The Honourable Sir Malcolm Hailey: The information is being collected and will be laid on the table when ready.

PROBATIONARY SERVICE IN SECRETARIAT.

15. ***Mr. P. L. Misra:** Will Government be pleased to state the ordinary probationary period for clerks and assistants in the Government of India Secretariats?

The Honourable Sir Malcolm Hailey: The ordinary probationary period is one year.

CLERKS IN SECRETARIAT.

16. ***Mr. P. L. Misra:** Will Government be pleased to lay on the table a statement showing the number of clerks and assistants—officiating and temporary—serving in the Government of India Secretariats together with their length of service?

The Honourable Sir Malcolm Hailey: A statement giving the information required has been prepared and I will send it to the Honourable Member.

PROBATIONARY CLERKS IN SECRETARIAT.

17. ***Mr. P. L. Misra:** (a) Is it a fact that some clerks have been serving for the last several years, but have only been drawing probationary pay?

(b) Why have the Government not given them annual increments?

(c) Do Government propose to confirm the clerks and assistants mentioned in (a) and give them annual increments according to time-scale?

(b) Will the Government please state if Army Headquarters is regarded by the Staff Selection Board as an attached or Secretariat office?

(c) Is it a fact that Army Headquarters is not in receipt of Secretariat pay and allowances?

The Honourable Sir Malcolm Hailey: (a) 1. The total number of candidates who submitted applications accompanied by the necessary fees was 1,012.

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4. Of the 440 who applied for posts as Assistants in Attached offices 55 qualified at the written examination and were called up for interview in order to qualify in that capacity. Many others were called up for interview in connection with other appointments for which they had qualified at the written examination.

5. Of the 55 interviewed for Assistantships 48 were declared successful.

(b) The Army Headquarters are treated as a Secretariat office for this purpose.

(c) Yes.

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(b) Will the Government please lay on the table a statement showing the number of unpassed candidates (including those who have appeared at the recent examination) employed in the Upper and Lower divisions of all the Departments of the Secretariat and the attached offices?

(c) What was the total number of outside candidates passed by the Staff Selection Board in 1921, and how many of them were employed on 1st September, 1922?

(d) How many of the passed candidates were not in service on 1st September, 1922, and how many unpassed candidates were in service on the same date?

(e) What steps do the Government propose to take with a view to replace unpassed men by passed men?

(f) Will the Government please call for a list of all unpassed men in service in the various Departments of the Secretariat and the attached offices and state the definite dates by which they will be replaced by passed candidates?

The Honourable Sir Malcolm Hailey: The information is being collected and will be laid on the table when ready.

PROBATIONARY SERVICE IN SECRETARIAT.

15. ***Mr. P. L. Misra:** Will Government be pleased to state the ordinary probationary period for clerks and assistants in the Government of India Secretariats?

The Honourable Sir Malcolm Hailey: The ordinary probationary period is one year.

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The Honourable Sir Malcolm Hailey: A statement giving the information required has been prepared and I will send it to the Honourable Member.

PROBATIONARY CLERKS IN SECRETARIAT.

17. ***Mr. P. L. Misra:** (a) Is it a fact that some clerks have been serving for the last several years, but have only been drawing probationary pay?

(b) Why have the Government not given them annual increments?

(c) Do Government propose to confirm the clerks and assistants mentioned in (a) and give them annual increments according to time-scale?

The Honourable Sir Malcolm Hailey: (a) The answer is in the affirmative.

(b) Under paragraph 2 (i) of the Home Department Resolution No. 1062, dated the 27th May 1920, a copy of which will be supplied to the Honourable Member, the regular minima and increments are given only on confirmation.

(c) The temporary clerks and assistants cannot be made permanent unless and until there is an increase in the permanent sanctioned strength.

COMPENSATION TO VILLAGERS IN BANNU.

18. ***Mr. P. L. Misra:** (a) Is it a fact that the Government had promised to compensate the villagers in the Bannu District, who were raided during the past 2 years, out of the allowances paid to the Wazirs?

(b) If so, have the villagers been paid?

(c) If not, why not?

Mr. Denys Bray: (a) No.

(b) and (c) therefore do not arise.

RAIDS IN NORTH-WEST FRONTIER PROVINCE.

19. ***Mr. P. L. Misra:** Has the attention of Government been drawn to a letter dated 26th July, 1922, printed at page 8 of the *Tribune* news paper headed "Raids in the North-West Frontier Province"? If so, will Government be pleased to state:—

(a) The composition of the gang that committed the dacoity;

(b) The particular section it belonged to;

(c) If the Political Agent or the Resident took any active steps to obtain release of Mussamat Maksudi, wife of Baksha Koja, who has been kidnapped by the gang; or

(d) The restoration of about 80 cattle, including agricultural stock;

(e) If the redress or reparation has not been made, have any reprisals been resorted to, to punish the offenders;

(f) Does this gang also trade in British India;

(g) If so, why has a blockade not been enforced against it?

Mr. Denys Bray: Yes.

(a) and (b) The gang responsible for the Kot Walidad raid on the 30th June last was 24 strong and composed partly of outlaws from British territory under the leadership of Baksha of Kulachi, and partly of Abdur Rahman Khel Mahsuds under the leadership of Tarmacha, a Jalal Khel living with the Abdur Rahman Khels.

(c) The Political Agent and the Resident made all possible enquiries regarding the whereabouts of Mussamat Maksudi, and her relations effected her release by payment of Rs. 100 to the outlaw Baksha.

(d) The cattle were not restored.

(e) Reprisals against the Abdur Rahman Khels were resorted to in the following August, and consisted of continuous and intensive bombing until that section came to terms and effected a settlement with Government.

(f) As the Abdur Rahman Khels were in open hostility at the time, they did not trade with British India.

(g) The Abdur Rahman Khels were under blockade from 1919 up to the date of their making a settlement with Government.

KOT-WALIDAD KHAN.

20. ***Mr. P. L. Misra:** (a) Is it a fact that the village Kot-Walidad Khan is an exposed one on the border?

(b) Is it also a fact that the villagers submitted petitions to the Deputy Commissioner for grant of Government rifles on their furnishing proper security for safe custody, and that these petitions were supported by Police and Constabulary officials?

(c) If so, will Government be pleased to state reasons for not granting their prayers?

Mr. Denys Bray: (a) Yes.

(b) No such petitions were received till after the raid of the 30th June last, when the villagers were allotted fifteen Government rifles.

(c) Does not arise.

ARTICLE IN "TRIBUNE" ON N.-W. F. PROVINCE.

21. ***Mr. P. L. Misra:** (a) Has the attention of Government been drawn to a letter printed in the *Tribune* of the 28th July, 1922, headed "Raids in the North-West Frontier Province"?

(b) If so, what action have the Government taken to remove the grievances stated therein?

Mr. Denys Bray: (a) Yes. The letter in question deals with four cases of kidnapping of Hindus and is inaccurate in many details. All kidnapped persons concerned, except one who was shot dead while attempting to escape, were returned by their captors to British territory without payment of ransom.

(b) It is for the protection of British subjects in the settled districts against such dastardly outrages that the Mahsud Operations were undertaken. The trans-frontier tribesmen responsible for these particular raids were Jalalkhel Mahsuds working in collusion with bad characters from within the Dera Ismail Khan border. This section have been under blockade since 1919. Owing to the inaccessibility of their country effective action against them is difficult, but they have been severely punished from the air. In addition to operations within Waziristan the Police and Constabulary in the Dera Ismail Khan District were increased in last July by 410 rifles and 300 Government rifles have been issued for village defence. By these measures a series of successful encounters with trans-frontier raids has been brought off in which captives have been rescued, stolen property recovered, and several raiders killed and wounded.

RANSOMS PAID IN N.-W. F. PROVINCE.

22. ***Mr. P. L. Misra:** (a) Is it a fact that the following "Force Routine Order", dated Dera Ismail Khan, the 19th April, 1922, was issued

ty Major-General T. G. Matheson, C.B., C.M.G., Commanding Waziristan Force:

"The Field Cashier, Dera Ismail Khan, is authorised to pay to the Resident in Waziristan the sum of Rs. 10,000, being the amount of ransom paid to tribesmen for rescuing two aviators who had a forced landing at Wana on 7th April, 1922?"

(b) Will Government be pleased to state the names of the two aviators and the tribesmen who rescued them?

(c) Will Government be also pleased to state the total amount of ransom paid to tribesmen during the last 2 years, in case of Indians who were kidnapped during these 2 years?

Mr. Denys Bray: (a) Yes.

(b) The names of the two aviators are:

Flying Officer Brown.

Flying Officer Jackson.

The names of the principal rescuers are:

Asmat

Sher Ghanni

Bat

Watakai

(c) Nothing has been paid by Government. Amounts paid by private persons are not known.

DEPARTMENTAL EXAMINATIONS IN POLITICAL DEPARTMENT.

23. ***Mr. P. L. Misra:** (a) Will Government be pleased to state if the following officers of the Political Department have passed any Departmental Examination:

(1) Captain P. Gaisford,

(2) Major R. G. Hind,

(3) Captain C. G. N. Edwards,

(4) Captain G. L. Mallam,

(5) Captain C. S. I. Berkeley,

(6) Captain G. Kirkbride, and

(7) Captain I. Brookman?

(b) If so, when and what examinations have they passed?

(c) Is it a fact that all these officers have been exercising first class and summary powers?

(d) If the answer to (b) be in the negative and to (c) in the affirmative, will Government be pleased to state why these officers have been invested with such high powers?

Mr. Denys Bray: (a) No.

(b) Does not arise.

(c) Two of the officers have exercised first class and summary powers. Three have exercised first class powers, but not summary powers. The other two have exercised neither.

(d) Owing to the shortage of officers due to the War, arrangements are now being made to withdraw junior officers for the usual training in a major province.

RAILWAY SALOON CARRIAGES.

24. ***Mr. P. L. Misra:** Will Government be pleased to give a statement showing:

(a) The number of Saloon Carriages especially built during the last 3 years for the use of Railway Officials;

(b) The total cost of Saloons so built;

(c) The rank and position of Railway Officials who use these Saloons; and

(d) To what head has this expenditure been charged?

Mr. C. D. M. Hindley: (a) The number of saloon carriages built during the last three years for the use, or part use, of railway officials is 40.

(b) The total cost of these saloons is Rs. 7,42,529.

(c) Six are for officers of the rank of Agent, Head of a department or Government Inspector, 21 are for the use of District officers or Assistant officers, 8 are for Inspecting subordinate officers and 5 are of the type used by District officers but are not exclusively reserved for railway officials.

(d) Rs. 4,03,587 have been charged to Capital, and Rs. 3,38,942 to Revenue. Seventeen of these saloon carriages have been built on renewal account, i.e., in replacement of a similar number removed from service.

Mr. B. S. Kamat: Were there any special saloon carriages built during this period for officials other than railway officials?

Mr. C. D. M. Hindley: I should like to have notice of that question.

RAILWAY QUARTERS.

25. ***Mr. P. L. Misra:** Will Government be pleased to lay on the table a statement showing:

(a) The number and cost of quarters under construction for the use of Railway Officials, both European and Anglo-Indian?

(b) The designation of Railway Officials for whom these quarters are being built or have already been built?

(c) How were these officials housed before the construction of these new buildings?

(d) How will the old buildings be utilised?

(e) Are any new quarters under construction for the use of Indian officials? If so, will Government be pleased to state their cost and number?

Mr. C. D. M. Hindley: Government are not prepared to ask railway administrations for the information required for the statement as they consider that the labour involved in the preparation of the statement will be out of all proportion to its value.

SWIMMING BATH IN AJMER.

26. ***Mr. P. L. Misra:** (a) Is it a fact that the Loco Department at Ajmer has provided or is about to provide a swimming bath for the use of European employees?

(b) If so, will Government be pleased to state the cost of the swimming bath?

(c) To what head has this expenditure been charged?

Mr. C. D. M. Hindley: (a) The reply is in the negative.

(b) and (c) Do not arise.

B. N. RAILWAY—CONSTRUCTION OF TALCHER RAILWAY.

27. ***Mr. P. L. Misra:** (a) Has the attention of Government been drawn to the telegram in the *Pioneer*, dated 15th September, 1922, from its Calcutta Correspondent, stating that the Bengal Nagpur Railway Company have already commenced the construction of the Talcher Railway?

(b) If so, what sum is the Bengal Nagpur Railway Company going to devote to the work during the current year, and from what source is it to be derived?

(c) Was the Central Advisory Council invited to express their opinion on the construction of the Talcher Railway by the Bengal Nagpur Railway? If so, when and what opinion did they express?

(d) Have the Central Railway Advisory Council approved of any proposal to devote any portion of the Thirty Crore Railway allotment of the present year, to purposes other than rehabilitation and betterment of the existing railways? If so, in what cases and for what reasons?

Mr. C. D. M. Hindley: (a) Yes.

(b) Rs. 6 lakhs from Railway Programme funds.

(c) and (d) The reply is in the negative, but the Honourable Member's attention is invited to paragraph 13 of the report of the Railway Finance Committee.

Sir Deva Prasad Sarvadhikary: May I ask a Supplementary question, Sir? When an allocation has been made to a particular Company, is it necessary or obligatory for it to come up for sanction regarding detailed expenditure either to the Advisory Board or the Assembly or is it free to appropriate or re-appropriate as it chooses?

Mr. C. D. M. Hindley: Do I understand this is in connection with this particular question or is it a general question?

Sir Deva Prasad Sarvadhikary: Generally.

Mr. C. D. M. Hindley: I should like to have notice.

REPORT OF PRESS ACT COMMITTEE.

28. ***Mr. K. C. Neogy:** (a) Was the report of the Press Act Committee of 1921 forwarded to the Secretary of State with a covering despatch from the Government of India? If so, when?

(b) Was any reply received from the Secretary of State to the said despatch? If so, when?

(c) Will Government be pleased to lay on the table the despatches, if any, that passed between the Secretary of State and the Government of India in this connexion?

The Honourable Sir Malcolm Hailey: (a) The report was forwarded to the Secretary of State under cover of a letter dated the 30th June 1922.

(b) and (c) It would be contrary to Standing Orders of the Secretary of State to publish the correspondence referred to.

PRESS LAW REPEAL AND AMENDMENT ACT.

29. ***Mr. K. C. Neogy:** (a) Will Government be pleased to state whether the Press Law Repeal and Amendment Act of 1922 was forwarded to the Secretary of State under section 69 of the Government of India Act? If so, when?

(b) Is it a fact that the Secretary of State viewed with disfavour certain aspects of the Press Law Repeal and Amendment Act of 1922? If so, on what grounds?

(c) Is it a fact that the Secretary of State made a definite suggestion for the enactment of a legislative measure giving protection to the Indian Princes and Chiefs against seditious attacks in the Press in British India?

(d) Is it also a fact that the Secretary of State intimated the possibility of His Majesty in Council signifying his disallowance of the Press Law Repeal and Amendment Act of 1922, under section 69 of the Government of India Act, if a legislative measure giving protection to the Indian Princes and Chiefs against seditious attacks in the Press were not enacted?

Mr. Denys Bray: (a) Yes, on the 22nd September, 1921. As regards (b), (c) and (d), the Honourable Member is referred to the correspondence published in the Gazette of India Extraordinary of the 25th November, 1922, which gives an account of the genesis of the Bill. The Government of India do not propose to ask permission to publish any further correspondence between the Secretary of State and themselves on the subject.

INDIAN STATES (PROTECTION AGAINST DISAFFECTION) ACT.

30. ***Mr. K. C. Neogy:** Will Government be pleased to lay on the table the correspondence that may have passed between the Secretary of State and the Government of India, regarding the legislative enactment giving protection to the Indian Princes and Chiefs against seditious attacks in the Press in British India?

Mr. Denys Bray: The Honourable Member is referred to the answer to his question No. 29.

RESPONSIBILITY TO PASSENGERS BY THE BRITISH INDIA STEAM NAVIGATION COMPANY.

31. ***Mr. Jamnadas Dwarkadas:** (a) Will Government be pleased to state whether attention of the Government has been drawn to the fact that in the Notice to Passengers issued by the British India Steam Navigation Company there is a clause as follows:

"The Company will not be responsible for and shall be exempt from all liability in respect of any detention, loss, damage or injury, whether fatal or otherwise, if or to the holders of tickets issued by this Company or their Agents, his property or effects

belonging to or carried by or with him, whether the same shall arise from, or be occasioned by the act of God, the King's enemies, dangers of the seas, rivers or navigation, collision, fire, thefts or robberies, whether by a person in the employment of the Company or by others, accidents to or by machinery, boilers or steam, accidents by sea or by land, unskilful, improper or careless navigation, or any other acts, defaults or negligences of the Company's Agents, servants or employers of any kind whatsoever, etc."?

(b) If so, is the Government aware that great harm is done to Indian commercial interests from the operation of such clause and what action do the Government intend to take about this?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) It is understood that the clause referred to, or an adaptation thereof, appears in all notices to passengers issued by Steam Navigation Companies in India and as there is nothing to show that harm is caused to commercial interests thereby the Government of India do not intend to take any action in the matter.

Mr. K. Ahmed: May I ask a Supplementary question, Sir? Is it not derogatory to the principle of legislation in this country?

The Honourable Mr. C. A. Innes: That is a matter of opinion.

EMPLOYEES IN THE OFFICE OF THE HIGH COMMISSIONER FOR INDIA.

32. ***Mr. Manmohandas Ramji:** Will the Government be pleased to inform:

(1) how many persons are employed under the High Commissioner for India in London; and

(2) their pay, allowance, nationality and educational qualifications?

The Honourable Mr. C. A. Innes: (1) The staff under the High Commissioner in London, including therein all messengers, labourers, etc., and all departments numbered 567 on September 21st, 1922.

(2) The Government has no detailed information about the educational qualifications of the each individual, but the clerical staff is required to be of the same educational standard in each grade as that fixed for employment in the corresponding grade in the Home Civil Service. The Government would be pleased to show to the Honourable Member the High Commissioner's establishment list, in which the other particulars asked for are given, but do not consider the expense of printing it to be necessary.

RESOLUTIONS IN THE ASSEMBLY.

33. ***Mr. B. N. Misra:** Will the Government be pleased to state the number of:

(a) Resolutions sent by (i) Official, (ii) Non-official Members of the Assembly during 1921 and 1922, respectively?

(b) The number of the Resolutions admitted by the Hon'ble the President?

(c) The number of (i) Official, (ii) Non-official Resolutions that came up for discussion before the Assembly during each year?

Sir Henry Moncrieff Smith: A statement is laid on the table which gives the information asked for by the Honourable Member.

Statement showing the number of resolutions (official and non-official) received, admitted and actually moved in the Legislative Assembly since its inauguration in 1921.

Session.	TOTAL NUMBER OF RESOLUTIONS OF WHICH NOTICE RECEIVED.		Total number of resolutions admitted. (Official and non-official).	TOTAL NUMBER OF RESOLUTIONS ACTUALLY MOVED.	
	Official.	Non-official.		Official.	Non-official.
Delhi session, 1921	9	138	129	8	25
Simla session, 1921	9	229	204	8	20
Delhi session, 1922	3	264	224	3	35
Simla session, 1922	7	255	236	6	9

N.B.—In cases where several Members gave notice of the same Resolution the notice by each Member has been counted as a separate Resolution.

RESOLUTIONS NOT DISCUSSED IN THE ASSEMBLY.

34. ***Mr. B. N. Misra:** (a) Will the Government be pleased to state how many of the admitted Resolutions could not come up for discussion before the House and the reason why they could not be reached?

(b) If for want of time the Resolutions could not come up before the House for discussion, will the Government be pleased to allow sufficient time this Session so that all the Resolutions may come up and be discussed before the House?

Sir Henry Moncrieff Smith: (a) The number of admitted Resolutions which did not come up for discussion can be ascertained from the Statement which I have just laid on the table in answer to the preceding question. The figures are as follows:—

	93 Resolutions.
1921 { Delhi term	176
{ Simla term	186
1922 { Delhi term	221
{ Simla term	221

It is obvious that the reason why these Resolutions did not come up for discussion is that there was not possible to allot sufficient time for the discussion of so many Resolutions.

(b) Under rule 6 of the Indian Legislative Rules the power to allot time for the discussion of non-official Resolutions is vested in His Excellency the Governor General and not in the Government of India, and I would invite the Honourable Member's attention to the instructions contained in rule 6 for the exercise of that power. I may also state for the Honourable Member's information that there are now more than 250 admitted Resolutions undisposed of.

Mr. W. M. Hussanally: May I ask a supplementary question, Sir? Is it contemplated by the Government to extend the time for non-official business?

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Sir Henry Moncrieff Smith: The Governor General—the power is not in the Government, but in the Governor General—has to have regard to the public interests in allotting time. I have just told the House that there are 250 Resolutions waiting to be disposed of. If three days a week were allotted for the disposal of Resolutions, those 250 Resolutions would take the House 30 weeks of continuous sittings to dispose of. I think the Honourable Member will therefore see that it is impossible to provide that all Resolutions of which notice is received should come up for discussion.

Mr. K. Ahmed: Is not this House specially meant for the benefit of this country and its representatives to bring forward Resolutions, and is it not the duty of the Government to allot more days for non-official Resolutions in preference to Government business for the benefit of the Government?

Sir Henry Moncrieff Smith: I was not aware that this House was created as solely a Debating Society.

Mr. K. Ahmed: Did I say, Sir, that it was a Debating Society? My question is whether in a week's time or taking all the working days of the Assembly together, the major portion of it is meant for official business only or for non-official business affecting the country and its representatives?

Rao Bahadur T. Rangachariar: Is the President of this Assembly consulted in allotting days for non-official business?

Sir Henry Moncrieff Smith: The President is invariably consulted in regard to the allotment of days for non-official business before the Governor General's orders are taken.

INDIANS IN THE INDIAN MEDICAL SERVICE.

35. ***Rai Bahadur Bakshi Sohan Lal:** (a) Is the Government aware that a large number of qualified Indian Medical men are still in temporary Indian Medical Service waiting for appointment by nomination to the permanent cadre of Indian Medical Service?

(b) Will the Government be pleased to state if there are any more Indians to be taken into the permanent cadre of Indian Medical Service and, if so, the dates about which the selection is to be made?

Mr. E. Burdon: (a) There are still many Indian officers temporarily employed in the Indian Medical Service but the Government are unable to say how many of these desire to obtain permanent commissions.

(b) More Indians will be taken into the Indian Medical Service but no precise date can be given. During the last four years 91 Indians have received permanent appointments.

Sir Deva Prasad Sarvadhikary: May I ask a Supplementary Question, Sir? In making these thirty appointments recently by the Secretary of State, were the claims of those who had already served as Temporary Officers taken into consideration in the way that the Honourable Sir Malcolm Hailey has been good enough to tell us to-day that temporary services are taken into consideration in making permanent appointments in the departments of which he spoke?

Mr. E. Burdon: The number of permanent officers at present in the Service, when the thirty officers to whom the Honourable Member just referred have been appointed, would be less than the authorised cadre in the Indian Medical Service.

Sir Deva Prasad Sarvadhikary: I am afraid, Sir, that is not my question. I shall repeat it. In making these 30 appointments, did the Secretary of State take into consideration the claims of those who had served as temporary officers and whose services had the first claim on the Secretary of State according to the proposition to which the Honourable Sir Malcolm Hailey has agreed in answering another Supplementary Question this morning?

Mr. E. Burdon: The claims of the temporary officers were taken into consideration.

Mr. T. V. Seshagiri Ayyar: Of these 30 people who will soon be coming in, would any of them replace the existing temporary officers who have been promoted from the Provincial Service; would any of these 30 men replace the men already in the Provincial Service?

Mr. E. Burdon: I cannot say definitely off hand. I should like to have notice of the question.

Mr. K. Ahmed: It would be a burden on the revenue, would it not, Sir?

MEMORIALS FROM MEMBERS OF THE INDIAN CIVIL SERVICE.

36. ***Rai Bahadur Bakshi Sohan Lal:** (a) Has the attention of Government been drawn to the references that have been made in the Indian newspapers as to the memorials submitted by the members of Indian Civil Service from different Provinces to the Secretary of State for India in Council?

(b) If so, will Government be pleased to place copies of the memorials on the table together with the remarks, if any, of His Excellency the Governor General thereon?

The Honourable Sir Malcolm Hailey: (a) The Government are not sure what references in the newspapers the Honourable Member has in view. Memorials have been submitted by members of the Indian Civil Service in the various provinces to the Secretary of State in Council and there have been numerous references in the Press to questions relating to the all-India services including the Indian Civil Service.

(b) The answer is in the negative.

Sir Deva Prasad Sarvadhikary: A Supplementary Question, Sir? Has there been any reference to the Secretary of State without any reference to the Government of India from any province? If so, what action has the Secretary of State or the Government of India taken on that?

The Honourable Sir Malcolm Hailey: I shall be able to answer that question if the Honourable Member will inform me as to what he means by a representation to the Secretary of State and on what matter?

Sir Deva Prasad Sarvadhikary: Representation regarding grievances of the services from any particular province or jointly?

The Honourable Sir Malcolm Hailey: The Honourable Member asks me whether there has been any representation from the services to the

Secretary of State. As far as I am aware, memorials sent direct to the Secretary of State are invariably returned by him for submission through the proper channel. If any such memorials had reached the Secretary of State and had not been so returned to the memorialists for submission through the proper channel, I should naturally have been unaware of the fact.

PASSED CANDIDATES OF THE STAFF SELECTION BOARD.

37. *Rai Bahadur Bakshi Sohan Lal: (a) Is it a fact that the passed candidates of the Staff Selection Board are appointed in leave and other temporary vacancies in some Department of the Secretariat and are spared when there is no vacancy available in that Department?

(b) Is it also a fact that even when they get a vacancy in some other Department of the Secretariat without any break of service, their previous service is not taken into account in determining their position among similar temporary men? -

(c) Is it a fact that temporary men have got no service book in which to keep a record of their services as long as they are temporary?

(d) Do the Government propose to prescribe a brief service book (or open sheet) which should remain in the possession of every passed candidate moving as a temporary clerk from one Department to another?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the reply given to-day to Mr. B. N. Misra's question on subject No. 8.

UNPASSED CANDIDATES OF THE STAFF SELECTION BOARD.

38. *Rai Bahadur Bakshi Sohan Lal: (a) Will the Government please lay on the table a statement showing the number of unpassed candidates employed in the Lower and Upper divisions of the Foreign and Political, Legislative and Commerce Departments of the Secretariat?

(b) What was the total number of outside candidates passed by the Staff Selection Board in 1921 and how many of them were in Secretariat service on 1st September, 1922?

(c) How many of the passed candidates were not in service on 1st September, 1922, and how many unpassed men were in service on the same day?

(d) What steps do the Government propose to take with a view to replace unpassed men by passed men?

(e) Will the Government be pleased to call for a list of all unpassed men in the various Departments showing also definite dates by which they will be replaced by passed candidates?

The Honourable Sir Malcolm Hailey: The information is being collected and will be laid on the table when ready.

STAFF SELECTION BOARD EXAMINATION.

39. *Rai Bahadur Bakshi Sohan Lal: (a) Will the Government please state the following facts about the last examination of the Staff Selection Board for outside candidates:

- (1) Total number of candidates who applied for all the examinations,
- (2) number of those who applied for the upper division of the attached offices (Assistants), (3) number of those allowed to appear and of those who actually appeared for it, (4) how many of them are likely to be called for interview at Simla?

(b) Are the Government aware that some of the Departments of the Secretariat and Army Headquarters are dismissing more men, on account of reduction or otherwise, than can be taken in by other Departments and that it is causing great hardship on those who have to remain unprovided at Simla?

(c) How do the Government propose to provide the additional number of 110 outside candidates who are to be declared successful by the Board on the result of the examination which was held in July last and when is the result likely to be published in the *Gazette of India*?

(d) Is the Army Headquarters establishment in receipt of pay and allowances of the Secretariat and is it considered to be a Secretariat or attached office for the purposes of recruitment by the Staff Selection Board?

(e) Is it a fact that the Board has re-examined the Departmental men in view of the rumour that the questions had leaked out?

(f) Does the Board intend to hold a second or short additional test in drafting and office routine for such of the outside candidates as pass the first examination?

The Honourable Sir Malcolm Hailey: (a) (1) The total number of outside candidates who applied for permission to sit for the examination was 1,012.

(2) The number who applied for the Upper Division of Attached Offices was 440.

(3) The number of those allowed to appear was 420 and of those who actually appeared was 338.

Most of these men also appeared for other categories of appointments.

(4) The number of those shown in answer (3) above who were called for the interview in Simla was 30.

(b) and (c) The position does not appear to be as stated, and it is assumed that the men whose services are being dispensed with are men without permanent appointments.

(Altogether 105 outside candidates passed the Board's examination but there are still a few left who, owing to absence, have not completed the test). The Board have already been able to offer employment to several of the candidates who had passed the recent examination, e.g., of the 10 candidates who qualified as Typist in the Secretariat, every one has either secured or been offered employment. The results have been published in the *Gazette of India*, dated the 30th December, 1922.

(d) The Army Headquarters establishment is not in receipt of the pay and allowances of the Secretariat proper but for purposes of recruitment by the Staff Selection Board, it is treated in the same way as the establishment of the Secretariat.

(e) Yes.

(f) No.

DISTURBANCES IN THE WAZIR FORCE.

40. *Rai Bahadur Bakshi Sohan Lal: (a) Will the Government be pleased to state briefly the present condition of disturbances in the Wazir Force as compared with that 6 months back?

(b) Do the Government propose to keep all the additional troops and establishments in the Wazir Force? If so, how long?

(c) Will the Government be pleased to lay on the table a statement showing expenditure on Military establishments and troops in the Wazir Force for 1914-15 and 1919-20?

(d) Do the Government propose to reduce this increase of expenditure? If so, in what way and when?

Mr. E. Burdon: (a) There was a decided improvement in the situation in Waziristan during the six months June to November, 1922, as compared with the period December, 1921 to May 1922, as the following statistics will show:—

During December 1921 to May 1922, the number of military casualties was 183, whereas during the period June to November 1922, our casualties only numbered 70, while the number of hostile actions decreased by 26. As regards outrages against the civil population in the Administered Territory (Derajat and Bannu Districts) these number 110 during the period December 1921 to May 1922, as compared with 57 during June to November 1922. During the month of November 1922, however, a more definitely hostile attitude was adopted in South Waziristan by some sections of Mahsuds and Wazirs in consequence of which punitive measures, in the shape of bombing by aeroplanes, were undertaken commencing from the 17th December 1922.

(b) and (d) The Government cannot, at the present time, make any statement in regard to this. It would be contrary to the public interest to do so.

(c) The attention of the Honourable Member is invited to the reply given in the Council of State on the 7th September last to question No. 64.

SERGEANTS IN ARMY HEADQUARTERS.

41. ***Rai Bahadur Bakshi Sohan Lal:** (a) Will the Government lay on the table a statement showing the number of Sergeants and Staff-Sergeants employed in the various Branches and Directorates of the Army Headquarters on clerical and assistant's work?

(b) What is the minimum pay of an Indian Lower Division clerk and what is that of the women clerks employed in the Army Headquarters?

(c) What are the total pay and allowances (including regimental) of a Staff-Sergeant employed in the Army Headquarters on clerical work?

(d) Do the Government propose to consider the necessity of replacing the Military and women clerks by Indian clerks and assistants as early as possible?

(e) If so, when?

Mr. E. Burdon: (a) A statement is laid on the table.

(b) The minimum pay of second (or lower) division clerks whether European (civilian) or Indian, is Rs. 75 for new entrants and Rs. 90 on confirmation, and that of women clerks Rs. 100 during probation and Rs. 120 on confirmation.

(c) A British soldier who enters the Upper Division starts on the same rate of pay, namely, Rs. 175 as civilian members of that division. A British soldier entering the Lower Division starts on Rs. 140 since it is

necessary to give an initial rate which shall be higher than the pay and allowances admissible to the soldier if employed regimentally. On confirmation such soldiers formerly became staff-sergeants; now they become civilians. After confirmation they are promoted on the prescribed incremental scales, namely, Rs. 90—8—250 (special grade Rs. 250—25—300) for second division clerks, and Rs. 200—12—440 (lower time scale) and Rs. 200—12—344—350—20—450 (Upper time scale) for first division assistants. Soldier and ex-soldier clerks do not draw regimental rates of pay.

(d) and (e) The question of restricting the number of soldier and ex-soldier clerks employed at Army Headquarters is under consideration and has not yet been finally decided. It is necessary to retain a certain proportion of clerks of this class on account of the knowledge and experience of military matters gained by service in the ranks of British units.

The employment of women clerks on the present scale is in the main a result of the war. Their numbers will diminish with time but there are certain kinds of clerical work which it has been held can most suitably be entrusted to women clerks.

Total number* of Sergeants and Staff Sergeants employed at Army Headquarters.

Branch.	On clerical work.	On technical work.
General Staff Branch	8	9
Adjutant General's Branch	14	...
Quartermaster General's Branch	2	21
Ordnance Branch	1	...
Military Secretary's Branch*	...	...
Medical Directorate	1	...
Military Works Directorate	1	...
Assistant Military Secretary (Personnel)	1	...
Total	28	24

INTER CLASS ACCOMMODATION IN MAIL TRAINS.

42. ***Rai Bahadur Bakshi Sohan Lal:** (a) Do the Government propose to connect Delhi, the capital of India with Calcutta, Bombay and Peshawar by through Mail trains providing Inter Class accommodation for the benefit of Secretariat and other people and their families?

(b) Is it a fact that both the Bombay Mail trains carry Inter Class up to Lahore only?

* Including temporary and officiating.

(c) Will the Government consider the desirability of having Inter Class accommodation provided in Bombay Mails up to Peshawar for the convenience of middle class people on long journeys?

(d) Is it a fact that both the Bombay Mail trains *via* Bhatinda and *via* Saharanpur leave Delhi for Lahore at practically the same time in the evening thus diminishing their utility?

(e) Will the Government consider the desirability of instructing the authorities concerned to so arrange that there should be a difference of at least 3 hours in their timings?

Mr. C. D. M. Hindley: (a) (b) and (c). Inter class accommodation is provided on the Punjab Mail between Delhi and Howrah (Calcutta).

Government does not propose to press the Great Indian Peninsula Railway to make such provision on their mail trains between Bombay and Delhi as the brakes and postal mail vans with other classes of accommodation make up the full load of these trains.

A fast express with inter accommodation runs between Delhi and Bombay leaving Victoria Terminus at 22 hours and arriving at Delhi at 8 hours on the third day. The train is practically run at mail speed and does the journey in 34 hours from Bombay to Delhi and in 30 hours and 40 minutes from Delhi to Bombay.

In view of the number of passengers using Nos. 3 Up and 4 Down which are the only mail trains running between Lahore and Peshawar it does not appear to be feasible to make such provision on these trains also. It is true that at present intermediate class accommodation is provided on the Bombay, Baroda and Central India and Great Indian Peninsula Bombay Mails over the North-Western Railway to the extent of one and two intermediate class bogie carriages respectively as far as Lahore, but beyond Lahore owing to the graded section the loads of the mail trains with single engines are now at their maxima. The provision of inter class accommodation between Lahore and Peshawar would entail the use of an extra engine on each of these trains.

(d) It is true that the two Up Bombay Mail trains leave Delhi for Lahore within an hour and a half of each other but as, apart from Lahore Station, these two trains serve two distinct sections of the North-Western Railway, this fact does not in any way diminish their utility for the passengers for whom they are intended.

(e) It is not possible to allow a larger margin between the arrival of both the Punjab Mails at Delhi because these two trains are amalgamated at Lahore and they must arrive at Delhi at about the same time.

Sir Deva Prasad Sarvadhikary: Having regard to the difficulties just mentioned, would the Railway Administration consider the desirability of providing greater and better facilities for reserved accommodation in the Intermediate and Third class on the Express trains for the members of the public and of the Secretariat? I ask this question, particularly in view of the recent decision that clerks getting Rs. 100 will get third class allowance and therefore will have to travel with menials.

Mr. C. D. M. Hindley: I think all I can say in reply to that is that the suggestion, I believe, is under consideration by some of the Railway Administrations.

Mr. N. M. Joshi: May I ask, Sir, what will pay the Government more, whether to carry First and Second class carriages or third class carriages with the mail?

Mr. C. D. M. Hindley: I am quite unable to give an answer to that, Sir. It is a matter of statistics which I have not got with me.

Mr. Jamnadas Dwarkadas: Sir, before the House proceeds with the business on the agenda, I should like to ask your permission 12 Noon. to ask a question, an important question, of which I have given private notice to the Honourable Member for Revenue and Agriculture. I may inform you, Sir, that the Government have kindly consented to answer this question at short notice. Have I your permission to ask it. (Here the Deputy President nodded assent). The question runs thus:—Has the attention of the Government of India been drawn to a report in the Press that the elections to the Legislative Council in Kenya will be held in February? In view of the fact that no decision has yet been announced on the general question of franchise in that Colony, and the grave concern which is felt by the Indian community both in Kenya and in this country over the matter, will the Government be pleased to press for an early decision so as to enable the Indian community to participate in the elections?

Mr. J. Hullah: Yes. The Government of India have telegraphed to the Secretary of State asking him, if necessary, to obtain the postponement of the next general election until Indians are able to participate.

Mr. Jamnadas Dwarkadas: Can the Government throw any further light on this question? Is it likely that the elections will be postponed?

Mr. J. Hullah: I have no official intimation to that effect, but I see in this morning's Reuter's telegram a statement that "it is thought that it will be in the interests of all parties to delay the elections for the Kenya Council in order to give ample time for the consideration of the proposals and for holding the next election on any new electoral basis which may be adopted."

UNSTARRED QUESTIONS AND ANSWERS.

VACANCIES ON ASSAM BENGAL RAILWAY.

1. **Rai Bahadur G. C. Nag:** Will Government kindly state how many vacancies or new appointments in the superior service occurred on the Assam-Bengal Railway during the last 10 years and how many of them were filled by public advertisement and how many pure Indians were appointed in the different departments?

Mr. C. D. M. Hindley: Forty seven new appointments to the superior service of the Assam Bengal Railway were made during the last ten years. Of these nine were Indians who were appointed as follows:

5 to the Engineering Department.

1 each to the Traffic and Audit Departments and 2 to the Medical Department.

Most of the appointments were made by the Home Board in London, and the Agent of the railway is unable to say whether the appointments were filled by public advertisement or not.

PROBATIONERS ON ASSAM BENGAL RAILWAY.

2. **Rai Bahadur G. C. Nag:** Will Government kindly state the number of pure Indian probationers in the Loco. and Traffic departments of the Assam-Bengal Railway and how many of them are under probation for the Senior Subordinate Grades and when the first probationer was admitted?

Mr. C. D. M. Hindley: One Indian Traffic Probationer for the superior service was appointed on 1st August 1918 and he is now acting as an Assistant Traffic Superintendent. No Indian Locomotive probationer of the same class has been appointed. During the last ten years there have been 500 Indian probationers in the subordinate grades of various departments.

A probationer of this class, with abilities, if confirmed, is able to rise to the top grade of the subordinate cadre.

ASSAM BENGAL RAILWAY: ENGINEERING DEPARTMENT.

3. **Rai Bahadur G. C. Nag:** Will Government kindly state how many European officers were recruited for the Engineering department of the Assam-Bengal Railway during the last three years and how many of them have left the service and how many were sent back to England at railway expense?

Mr. C. D. M. Hindley: Five European officers were appointed in the last three years. One resigned and received a return passage back in terms of his agreement.

ADMINISTRATIVE POSTS IN RAILWAY BOARD.

4. **Rai Bahadur G. C. Nag:** Will Government kindly state (a) whether any of the administrative posts at the headquarters of the Railway Board requiring engineering qualifications have ever been filled by officers of the Company-worked State railways and whether any were held by Indians; (b) if the reply is in the negative, why not?

Mr. C. D. M. Hindley: (a) It is not clear what precise information the Honourable Member wants but if, as is assumed, he refers to the selection for appointment as Chief Engineer with the Railway Board the reply to both parts of this question is in the negative.

(b) The reason is that the appointment is borne on the State Railway Engineer cadre and that senior and fully qualified European State Railway Engineers were available and selected for the appointment.

VACANCIES ON RAILWAYS.

5. **Rai Bahadur G. C. Nag:** Is it the normal practice on railways to reserve vacancies in substantive appointments as they occur to be filled by probationers on the satisfactory completion of their stipulated probationary period?

Mr. C. D. M. Hindley: Probationers are taken on in accordance with an estimate of the vacancies which will admit of their permanent appointment on the termination of their probationary period.

WATERWAYS ON BENGAL RAILWAYS.

6. **Mr. J. N. Mukherjee:** (a) Has the Government any information as to the insufficiency of the waterways in the line of the Eastern Bengal Railway and the Railways connected with it, in northern and north-eastern Bengal, to afford a rapid and free outflow of water in times of extraordinary floods, such for example, as came about towards the end of September, 1922? Has the attention of the Government been drawn to the opinion

of Dr. Bentley published in the daily papers of Calcutta in October last, in this connection?

(b) Do the Government propose to take any steps with a view to collect accurate information as to the impediments caused by the said Railways to a free and rapid outflow of flood-water at times of excessive flood, and to remove them by providing larger escapes in the said railway alignments?

Mr. C. D. M. Hindley: Immediately after the floods of September last an investigation into the adequacy, or otherwise, of the waterways in the railway embankments chiefly concerned was undertaken by the Senior Government Inspector of Railways in consultation with the Bengal Government and the Eastern Bengal Railway Administration. Subsequently the Railway Board decided to obtain the services of a fully qualified and independent authority to report on the question, and with the permission of His Highness the Maharaja of Patiala, the Chief Engineer of that State, Rai Rala Ram Bahadur, C.I.E., I.S.O., was deputed for this purpose. His report was received in December, and arrangements were made immediately to give effect to his recommendations. A copy of the report will be placed in the Library as soon as possible.

The attention of Government has not been specifically drawn to the opinion expressed by Dr. Bentley, but they are aware of it from the Press reports.

ADDITIONAL DISTRICT MAGISTRATE, DELHI.

7. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state if it is true (a) that the present post of an additional District Magistrate of Delhi is being held by an Englishman or an Anglo-Indian?

(b) That he is not a member of the Indian Civil Service but belongs to the Provincial Civil Service?

(c) That he is also drawing Rs. 100 a month as a local allowance?

(d) That two of his subordinate officers—the City Magistrate of Delhi and the Revenue Officer of Delhi—also belong to the same Provincial Civil Service and both these officers are also senior to him in their services?

(e) That no local allowances are being given to both these officers?

(f) That last year a City Magistrate of Delhi was posted as his subordinate, but he soon got himself retransferred from Delhi on account of the same?

(g) If the above statements are true, will the Government be pleased to state the reasons which led the Government to overlook the seniorities and services of other officers before the appointment of the Additional District Magistrate of Delhi, and what special qualification does the present Additional District Magistrate hold?

The Honourable Sir Malcolm Hailey: (a), (b) and (c) The answer is in the affirmative.

(d) The two officers named are not subordinate to the Additional District Magistrate. The Additional District Magistrate is merely one of the staff of 1st class Magistrates who is gazetted under section 10 (2), Criminal Procedure Code, to exercise the powers of the District Magistrate to relieve the latter of a certain amount of work. All three officers are equally subordinate to the District Magistrate and Collector.

(e) No allowance is attached to the post of Revenue Assistant, but the City Magistrate draws a duty allowance of Rs. 50 per mensem for discharging the additional duties of Secretary to the Notified Area Committee.

(f) The facts are not as stated. The officer named held the post of City Magistrate during the absence on leave of the permanent incumbent and was transferred on the latter's return to duty.

(g) In view of the facts as stated above this part of the question does not arise.

RESOLUTIONS PASSED BY LEGISLATURES.

8. **Lala Girdhari Lal Agarwala:** Will the Government be pleased to lay on the table a statement showing the Resolutions hitherto passed by the Legislative Assembly and the Council of State and the effect given to them by the Government in each case?

Sir Henry Moncrieff Smith: The Honourable Member has already received most of the information asked for by him in the reply given to a question asked by him in this Assembly on the 6th September, 1922. I would refer him to pages 107-109 of the Legislative Assembly Debates, Volume III. Statements in regard to the Resolutions adopted by the two Houses during the September Session, 1922, are laid on the table.

Statement showing the Resolutions adopted by the Legislative Assembly during the September Session, 1922, and action taken by Government thereon.

Serial No.	Date on which moved.	By whom.	Subject of resolution.	Department concerned.	Action taken by Government.
1	7th September, 1922.	Baba Ujagar Singh Bedi	Amendment of clause (4) of rule 12 of the rules for the election and nomination of Members of the Provincial Legislative Councils as well as of the Legislative Assembly.	Home	The Secretary of State has been addressed in the matter.
2	Ditto	Mr. N. M. Joshi	Improvement in travelling facilities for third class passengers.	Railway	Agents of railways have been asked to make a careful examination of the main grievances on their lines and to submit a report as to what is being done to remedy them.
3	Ditto	Sardar Bahadur Gajjan Singh.	Removal of restrictions imposed on the export of wheat, pulses and oil-seeds from India.	Revenue and Agriculture.	All restrictions on the export of food-grains were removed with effect from the 28th September, 1922. There is no embargo on the export of oil-seeds from India.
4	Ditto	Mr. K. B. L. Agnihotri	Premier's speech of the 4th August, 1922, on the Reforms.	Home	The resolution adopted by the Assembly was communicated to the Secretary of State.
5	11th September, 1922.	Mr. J. Hullah	Recruitment for the Indian Forest Service.	Revenue and Agriculture.	The resolution has been communicated to His Majesty's Secretary of State for India for information. No final decision has yet been arrived at on the recommendations made therein.
6	Ditto	Honourable Mr. C. A. Innes.	Weekly rest day in commercial establishments as recommended by the General Conference of the International Labour Organisation of the League of Nations convened at Geneva on the 25th October, 1921.	Commerce	The recommendation of the Assembly has been accepted by the Government of India and action taken accordingly. A copy of the resolution has also been communicated to the Secretary General of the League of Nations.

[15TH JAN. 1923.]

Statement showing the Resolutions adopted by the Legislative Assembly during the September Session, 1922, and action taken by Government thereon.

Serial No.	Date on which moved.	By whom	Subject of resolution.	Department concerned.	Action taken by Government.
7	11th September, 1922.	Honourable Mr. C. A. Innes.	Recommendations of the Genoa Seamen's Conference concerning the limitation of hours of work in inland navigation.	Commerce	The recommendation of the Assembly that no action should be taken in the matter has been accepted by the Government of India. A copy of the resolution has also been communicated to the Secretary General of the League of Nations.
8	Ditto	Honourable Mr. C. A. Innes.	Draft Conventions adopted by the Geneva Labour Conference of 1921.	Commerce	The recommendation made by the Assembly to ratify these draft Conventions has been accepted by the Government of India; and the question of amending the Merchant Shipping Acts in order to give effect to this decision is under consideration. The India Office has been asked to communicate this decision to the League of Nations.
9	13th September, 1922.	Honourable Sir W. Vincent.	Revision of the Electoral Rules	Home	A Committee was appointed in pursuance of the resolution. The Committee have submitted their report and the report has been forwarded to the Secretary of State.
10	23rd September, 1922.	Mr. M. S. D. Butler	Indian Research Fund Association.	Education and Health.	The Government of India have approved the proposals of the Governing Body referred to in Parts I and II of the resolution. As regards Part III necessary action is being taken in consultation with the Government Solicitor with a view definitely to accept the offer made by the donors towards the Imperial Medical Research Institute.

Statement showing the Resolutions adopted by the Council of State during the Simla term, 1922, and the action taken by Government thereon.

Serial No.	Date on which moved.	By whom.	Subject of Resolution.	Action taken by Government.
1	15th September, 1922.	The Honourable Mr. S. P. O'Donnell.	Appointment of a Committee to examine and report on the desirability of amending the Electoral Rules of the Indian Legislature and the Provincial Legislative Councils.	A Committee was appointed in pursuance of the Resolution. The Committee have submitted their report and the report has been forwarded to the Secretary of State.
2	19th September, 1922.	The Honourable Mr. Phiroze C. Sethna.	Recruitment and training of probationers for the Indian Forest Service.	The resolution has been forwarded to the India Office for the information of His Majesty's Secretary of State for India. No final decision has been arrived at on the recommendations contained therein.
3	Ditto	The Honourable Mr. H. A. F. Lindsay.	Limitation of hours of work on inland navigation.	The recommendation of the Council of State that no action should be taken in the matter has been accepted by the Government of India. A copy of the Resolution has also been communicated to the Secretary General of the League of Nations.
4	Ditto	The Honourable Mr. H. A. F. Lindsay.	Trimmers, stokers and children employed at sea.	The recommendation made by the Council of State to ratify the Draft Conventions of the Geneva Labour Conference on this subject has been accepted by the Government of India, and the question of amending the Merchant Shipping Acts to give effect to this decision is under consideration. The India Office has been asked to communicate this decision to the League of Nations.
5	Ditto	The Honourable Mr. H. A. F. Lindsay.	Weekly rest day in commercial establishments.	The recommendation of the Council has been accepted by the Government of India and action taken accordingly. A copy of the Resolution has also been communicated to the Secretary General of the League of Nations.
6	25th September, 1922.	The Honourable Sardar Jogendra Singh.	Recommendations of the Railway Committee and the reconstitution of the Railway Board so as to provide for a strong Indian representation.	The question of the reorganisation of the Railway Board is at present under consideration. As the scope of the changes which are to be made may be affected by the Report of the Retrenchment Committee no decision can be arrived at until that Report is received.
7	Ditto	The Honourable Mr. Vaman Govind Kale.	Collection, compilation and publication of statistics relating to the economic, social and constitutional progress of India.	The Director-General of Commercial Intelligence has been asked to examine all the publications of the Department of Statistics with a view to see that so far as possible the statistics in their new and simpler form will meet all practical requirements.

COMMITTEES.

9. **Lala Girdhari Lal Agarwala:** (a) Will the Government be pleased to lay on the table a statement showing the Committees appointed (1) by a Resolution of the Council of State, or (2) the Legislative Assembly, or (3) appointed by order of the Government, with their dates of appointment, their personnel in each case, the money spent on each of these Committees and its result in each case?

(b) Are the findings of the Committees in any case kept confidential and not laid on the table of the House or otherwise made known to the members of the Indian Legislatures? Are the Government prepared to publish such reports?

(c) In how many and what cases were the reports of any such Committees laid before the Government and orders passed finally without the consultation of the Indian Legislature?

The Honourable Sir Malcolm Hailey: The attention of the Honourable Member is invited to the statement laid on the table on the 6th September, 1922, by my predecessor in reply to a question asked by Lieutenant-Colonel Gidney regarding the cost of Committees appointed by the Government of India. The Government of India do not consider that any sufficiently useful purpose would be served by undertaking the labour involved in amplifying that statement to give the further information asked by the Honourable Member. If he will refer to the list of Committees included in those statements he will probably be able himself to decide in the cases of such Committees as he was interested in whether the Report has been published and as to whether action has been taken upon it.

HIGH COMMISSIONER FOR INDIA.

10. **Lala Girdhari Lal Agarwala:** (a) For what period was the present High Commissioner for India in London appointed? (b) Is an Indian debarred from being appointed to that post? (c) In whose hands does the appointment rest? (d) Have the Government of India decided to appoint a suitable Indian for the post in future?

The Honourable Mr. C. A. Innes: Under the terms of His Majesty's Order in Council dated the 13th August, 1920, which was published in the notification of the Government, No. 6634, dated the 2nd October, 1920, the person appointed as High Commissioner for India in the United Kingdom is to hold office for a period not exceeding five years, but is at the same time eligible for re-appointment. The Order in Council also prescribes that the appointment of High Commissioner shall be made by the Governor General in Council with the approval of His Majesty's Secretary of State for India in Council. An Indian is not debarred from holding the appointment. No decision has yet been arrived at on the question of a permanent successor to the late Sir William Meyer.

RETRENCHMENT PROPOSALS.

11. **Lala Girdhari Lal Agarwala:** Will the Government be pleased to lay on the table a summary of the proposals for retrenchment as prepared

by the Government to be laid before the Retrenchment Committee and also the proposals of the said Committee so far as possible?

The Honourable Sir Basil Blackett: The House will be fully informed on this subject at the earliest opportunity.

SECTS, CREEDS AND APPOINTMENTS IN MADRAS.

12. **M. K. Reddi Garu:** Will the Government be pleased to collect the following information regarding the Presidency of Madras and place it on the table:

(a) How many Brahmins, Non-Brahmins, Hindus, Muhammadans, Christians and Anglo-Indians are employed in the grades of the Gazetted officers in the Madras Postal Circle, including the Telegraph Department?

(b) How many Postal Inspectors, Post Masters are Brahmins, non-Brahmins, Muhammadans and Christians?

(c) In the offices of the Post Master General, Presidency Post Master and the Superintendents of Post Offices, how many clerks of the higher grade are Brahmins, non-Brahmins, Muhammadans and Christians?

Colonel Sir Sydney Crookshank: It is regretted that the information cannot be obtained without undue labour and expense.

INDIANS AND NON-INDIANS AS GOVERNORS, CHIEF JUSTICES, ETC.

13. **Lala Girdhari Lal Agarwala:** (a) Will the Government be pleased to lay on the table a statement showing on 1st January, 1923 or about that time the number of Indians and non-Indians in the following posts, viz., Governors of Provinces, Chief Justices, Chief Judges and other heads of highest Judicial Courts in India as well as Judges of High Courts or of other highest Judicial Courts in India?

(b) What new posts, if any, are going to be created on the High Court Benches or in other highest Judicial Courts in India in the year 1923?

(c) Which of the posts referred to in part (a) of this question are likely to fall vacant either permanently or temporarily in the year 1923?

(d) Of the posts referred to in parts (b) and (c) of this question, how many are proposed to be given to Indians?

(e) Has the Indian element in any of the above posts been reduced within the last one year, if so, what?

The Honourable Sir Malcolm Hailey: (a) A statement is laid on the table. (b) (c) and (d) The Government has no precise information as to the post likely to be created or the vacancies likely to occur and is not in a position to say how many, if any, Indians will be appointed. With the

exception of posts of Additional Judges of High Courts, to none of these posts are appointments made by or on the recommendation of the Government of India.

(e) One post, namely, the Governorship of Bihar, which was held by an Indian until 29th November 1921, and is now held by a European.

Statement showing the number of Indians and non-Indians employed in certain high posts in India on the 1st January, 1923.

	Number of Indians.	Number of non-Indians.
Governors of Provinces	...	9
Chief Justices	1	6
Heads of highest Judicial Courts	1	4
Judges of High Courts or of other highest Judicial Courts in India.	27	50

INDIANS AND NON-INDIANS IN IMPERIAL SECRETARIAT.

14. **Lala Girdhari Lal Agarwala:** (1) Will the Government be pleased to lay on the table a statement showing on 1st January, 1923 or about that time:

(a) The total number of Secretaries, Deputy Secretaries and Assistant Secretaries in the Imperial Government Secretariat?

(b) Registrars and other heads of Departments in Imperial offices?

(c) The number of Indians and non-Indians in each case?

(2) What temporary or permanent appointments are going to be made in any of the posts referred to above in the year 1923 on account of vacancies or creation of new posts and which of those posts are proposed to be given to Indians?

(3) Are any of the posts referred to above going to be retrenched? If so, is any Indian to be reduced thereby? Has the Indian element in any of the above posts been reduced within the last one year? If so, what?

The Honourable Sir Malcolm Hailey: (1) A statement giving the information required is laid on the table.

(2) It is not possible to say how vacancies which may occur during 1923 will be filled, or whether any new posts will be created.

(3) Government are not in a position to answer the first part of the question. The answer to the second part of the question is in the negative.

Statement showing the number of Secretaries, Deputy Secretaries, etc., employed in the Government of India Secretariat, on the 1st January 1923.

DEPARTMENTS.	NUMBER OF SECRETARIES.		NUMBER OF JOINT SECRETARIES.		NUMBER OF DEPUTY SECRETARIES.		NUMBER OF UNDER SECRETARIES.		NUMBER OF ASSISTANT SECRETARIES.		NUMBER OF REGISTRARS.		NUMBER OF OTHER OFFICERS NOT BELOW THE RANK OF REGISTRAR.		TOTAL NUMBER OF OFFICERS.		REMARKS.
	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	
Home	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	8
Foreign and Political	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	7
Finance	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	4
Army	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	4
Public Works	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	7
Legislative	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	5
Revenue and Agriculture	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	8
Commerce	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	5
Railway Board	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	6
Education and Health	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	5
Industries	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	6
Office of Financial Adviser, Military Finance.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	5
TOTAL	2	11	1	3	3	15	2	8	6	14	1	7	6	18	21	76	

(a) Inspector of Office Procedure and Director of Central Bureau of Information.

(b) Assistant Director of Central Bureau of Information.

(c) Attaché.

(d) The appointment will be abolished from 1st April 1923.

(e) Officer on special duty in connection with the Retrenchment Committee.

(f) Establishment Officer.

(g) 2nd Assistant Solicitor.

(h) Solicitor, Assistant Solicitor and Officer on Special duty.

(i) Inspector General of Forests and Assistant Inspector General of Forests.

(j) Actuary to the Government of India.

(k) Attached—

1 Accountant General.

1 Deputy Accountant General.

1 Assistant Accountant General.

(l) 1 Chief Commissioner of Railways, 2 Members, Railway Board, 1 Chief Engineer, 1 Chief Mechanical Engineer.

(m) Educational Commissioner and Curator, Bureau of Education (the latter post will be abolished on the expiry of leave of the present incumbent).

(n) Controller (Labour Bureau).

(o) Financial Adviser.

(p) Deputy Financial Adviser.

(q) Assistant Financial Adviser.

GOVERNMENT OF INDIA SUPERIOR POSTS.

15. **Lala Girdhari Lal Agarwala:** How many persons belonging to the United Provinces have been employed under the Government of India, in any superior post within the last one year and how many have been taken from Bengal and the Punjab during that period?

The Honourable Sir Malcolm Hailey: The information asked for is given in a statement which is being sent to the Honourable Member.

TOLLS ON MUTHRA RAILWAY BRIDGE.

16. **Lala Girdhari Lal Agarwala:** What steps have the Government taken or propose to take to free the Muthra Railway Bridge from tolls on wheel and passenger traffic? Will the Government be pleased to lay on the table all correspondence on the subject?

Mr. C. D. M. Hindley: The Government of the United Provinces have announced that as soon as their financial position improves they propose to make the bridge free of tolls. There the matter rests for the present. Until the Government of the United Provinces agree to the payment of compensation to the Bombay, Baroda and Central India Railway for the loss occasioned by the abolition of tolls, no further action can be taken. The Government regret that the correspondence cannot be placed on the table.

TELEPHONE CONNECTIONS WITH DELHI AND SIMLA.

17. **Lala Girdhari Lal Agarwala:** (a) Will the Government be pleased to state which of the official permanent capitals of the Provinces are connected by telephone directly with Delhi and Simla?

(b) Is Allahabad the official permanent capital of the United Provinces and is it directly connected by telephone with Delhi and Simla. If not, is it proposed to be so connected?

Colonel Sir Sydney Crookshank: (a) Lahore is the only official capital of a Province in direct telephonic communication with Delhi and Simla.

(b) Allahabad is the official capital of the United Provinces and when the Automatic Exchange now being set up there is completed, telephonic communication between Allahabad and Delhi will be open to the public. Owing to the distance, commercial speech will not be possible between Allahabad and Simla until repeaters are fitted in Delhi, and it cannot be stated at present when this will be done.

POLITICAL PRISONERS.

18. **Lala Girdhari Lal Agarwala:** Have the Government taken or do they propose to take any steps (a) to set at liberty persons imprisoned for political offences; and

(b) to withdraw the Criminal Law Amendment Act from the localities to which it had been made applicable about the time of the Royal visit and thereafter?

The Honourable Sir Malcolm Hailey: The Government of India do not propose to interfere with the discretion of local Governments in either matter.

STATE-OWNED RAILWAYS WORKED BY COMPANIES.

19. **Lala Girdhari Lal Agarwala:** Will the Government be pleased to lay on the table a list of the State-owned Railways worked by Companies, with the respective dates of the expiry of their contracts and to state which of these Companies have mostly Indian capital?

Mr. C. D. M. Hindley: The information asked for by the Honourable Member in the first part of his question will be found in the "History of Indian Railways" a copy of which is in the library of the House.

The capital of the railway companies under consideration is in sterling and the Government of India are not in a position to state whether and to what extent Indian capital has contributed to it

PAY OF HIGH COURT STAFF, UNITED PROVINCES.

20. **Lala Girdhari Lal Agarwala:** 1. Have the Government seen a paragraph in the *Pioneer* of Allahabad, dated 29th November, 1922, at page 9, column 4, headed "High Court staff's pay"?

2. Will the Government be pleased to state what action, if any, have they taken within the last 5 years in the exercise of their powers of control over the High Court at Allahabad under section 6 of the Letters Patent as amended with regard to the remuneration of the clerks and ministerial officers of the aforesaid High Court?

The Honourable Sir Malcolm Hailey: 1. The Government of India have seen the paragraph in question.

2. Under clause 6 of the Letters Patent establishing the High Court of Judicature at Allahabad the salaries of officers and clerks of the Court are such as the Honourable the Chief Justice may appoint and the Government of the United Provinces, subject to the control of the Government of India may approve of. The control referred to is exercisable in accordance with the provisions of the general orders governing expenditure from provincial revenues. In fact under the present orders the control is control by the Secretary of State in Council, and, so far as individual salaries are concerned it only comes into operation when it is proposed to increase the salary of an appointment which is fixed or is proposed to be fixed at above the rate of Rs. 1,200 a month. The Governor General in Council is therefore not primarily concerned with the remuneration of these persons, and under the orders referred to no reference in the matter has recently come before him. The local Government has full power to decide questions connected with the remuneration of these persons subject to such limitations as I have indicated and presumably no question which could not be decided by the local Government has arisen.

PAY AND PROSPECTS OF CLERKS AND MINISTERIAL OFFICERS.

21. **Lala Girdhari Lal Agarwala:** Will the Government be pleased to lay on the table a comparative statement showing the scales of pay, rates of promotion and prospects of the Clerks and Ministerial Officers attached to Allahabad High Court and the Calcutta High Court and Imperial Secretariats?

CLERKS AND MINISTERIAL OFFICERS, UNITED PROVINCES.

22. **Lala Girdhari Lal Agarwala:** Has the following principle laid down by the Right Hon'ble the Secretary of State for India for regulating the

salary of the establishment been applied to the Clerks and Ministerial Officers of the Allahabad High Court:

"It is highly desirable that the remuneration of all ministerial establishment employed at any particular station whether their salaries fall on the Military, the Imperial, Civil or Provincial budget, should be pitched, either directly or indirectly by means of allowance, as to give such equality of remuneration for similar labour as will prevent just cause of discontent."

REPRESENTATION FROM CLERKS, ETC., UNITED PROVINCES HIGH COURT.

23. **Lala Girdhari Lal Agarwala:** Did the Hon'ble the Chief Justice of the Allahabad High Court receive any representation from the Clerks and Ministerial Officers of the said High Court regarding the increase in their pay and forward it to the United Provinces Government with a letter of recommendation to His Excellency the Governor of the United Provinces in or about July, 1922? If so, will the Government be pleased to lay on the table a copy of all the correspondence on the subject?

Have the Government of India been approached in the matter referred to above, if so, when and with what result?

DISCONTENT AMONG CLERKS, ETC., UNITED PROVINCES HIGH COURT.

24. **Lala Girdhari Lal Agarwala:** What action have the Government taken or do they propose to take to "prevent just cause of discontent," among the Clerks and Ministerial Officers of the High Court at Allahabad in the exercise of their powers of control under Section 6 of the Letters Patent as amended?

INCREASE TO PAY OF UNITED PROVINCES HIGH COURT CLERKS, ETC.

25. **Lala Girdhari Lal Agarwala:** Is it a fact that the Allahabad High Court yields a profit of nearly 2½ lacs a year and that the increase claimed by the Clerks and Ministerial Officers of that Court or proposed by the Hon'ble the Chief Justice of that Court would create no additional burden on the general Provincial Revenues?

The Honourable Sir Malcolm Hailey: The Government of India have no information as to the scales of pay, rates of promotion and prospects of the clerks and ministerial officers of the Allahabad High Court. They are not primarily concerned with these matters. They have therefore not called for the information from the local Government and they are accordingly unable to supply the statement or information asked for in this and the following questions 95 to 98.

FOREIGN ENLISTMENT ACT, 1870.

26. **Mr. Mohammad Faiyaz Khan:** (a) Will the Government be pleased to state if the Foreign Enlistment Act of 1870 is operative or enforced in British India?

(b) If the answer is in the affirmative, will the Government be pleased to state what statute in India or England makes this Act operative in the whole or a part of India, many parts of which were not then even under the British Crown?

(c) Is there any distinction in the 1870 Act in respect of Asiatic Nations and European Nations?

(d) Is this Act operative in the British Colonies?

(e) At what moment does this Act begin to operate?

(f) At what stage does the "consent or licence" as given in this Act from His Majesty become necessary?

The Honourable Sir Malcolm Hailey: (a), (b) and (d). The Honourable Member is referred to Section 2 of the Act.

(c) No.

(e) The Honourable Member is referred to Section 1 of the Act.

(f) The Honourable Member is referred to the relevant provisions of the Act.

POLITICAL PRISONERS AND SERVICE IN LEGISLATURE.

27. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to remove the restriction which debars persons, who have undergone imprisonment, from election to serve in a Legislative Council or in the Indian Legislature and permit all such persons to stand in the Reformed Council Election who have undergone simple or rigorous imprisonment on account of their political views or deeds? If the Government is not prepared to remove such restrictions will it be pleased to state the reason why?

The Honourable Sir Malcolm Hailey: Under sub-rule (2) of rule 5 of the Electoral Rules a person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting is not eligible for election for five years from the date of the expiration of the sentence unless the offence of which he was convicted has been pardoned. I would remind the Honourable Member that a pardon, which would have the effect of removing the bar where it exists, is granted by the Governor General and not by the Governor General in Council. I am not aware whether the Honourable Member has the authority of the persons affected in suggesting that the Governor General should exercise his powers on their behalf.

POLITICAL PRISONERS IN DELHI JAIL.

28. **Mr. Mohammad Faiyaz Khan:** (a) How many political prisoners are in Delhi jail at present?

(b) How many of them are treated as special class prisoners?

The Honourable Sir Malcolm Hailey: The information has been called for and will be supplied when available.

MOULANA QUTBUDDIN, EDITOR OF THE "CONGRESS."

29. **Mr. Mohammad Faiyaz Khan:** Are the Government aware that Moulana Qutbuddin, Editor of the "Congress" and a prominent Muslim of Delhi who is undergoing 3 years' rigorous imprisonment in Delhi jail, is not given the preferential treatment to which he is entitled by reason of his good social status, education, etc.? If he is not treated as a special class prisoner will the Government be pleased to state the reason and do the Government propose to issue immediate instructions to the effect mentioned above?

The Honourable Sir Malcolm Hailey: The information has been called for, and will be supplied to the Honourable Member when available.

DUTY ON MOTOR SPIRITS.

30. **Mr. Mohammad Faiyaz Khan:** (1) Will the Government be pleased to state if it is true:

- (a) that an Act in 1917 was passed to impose a duty of six annas per gallon on all motor spirits produced in India and Burma,
- (b) that this Act still applies to petrol consumed in India and Burma,
- (c) that there is no tax at all on petrol exported to foreign countries—the Governor General in Council having exempted exported petrol from such tax.

(2) What is the amount of petrol exported to foreign countries from Burma since this Act was passed?

(3) What is the reason for not taxing the petrol exported from Burma to foreign countries?

(4) Is it true that the Oil Companies at Burma themselves value petrol at one anna and six pies per gallon while the petrol charges at Bombay are charged two rupees per gallon for exactly the same petrol?

The Honourable Mr. C. A. Innes: 1. (a) and (b) Yes.

(c) The position is as stated by the Honourable Member. Excise duties being duties on consumption, a refund of excise duty is granted in the case of all commodities subject to such duties in order to enable these goods, when exported, to compete on equal terms with similar goods of foreign origin in foreign markets. In exempting exported petrol from this excise duty, the Government of India followed this general principle.

2. The export of benzine and petrol from Burma since 1917 was as follows:

	Gallons.
1917-18	18,934,711
1918-19	22,600,932
1919-20	36,222,584
1920-21	18,856,639
1921-22	20,156,323
1922-23 (up to October 1922)	12,872,217
Total	129,643,435

3. Attention is invited to the answer to (c) above.

4. No. The Honourable Member has probably been misled by the figures of total value published in the returns of Sea Borne Trade of last and previous years, calculations from which do give his figure. Those were not, however, the figures reported by the Oil Companies. It is not known how this old conventional rate became established but it was of long standing. The Collector of Customs, Rangoon, noticed the discrepancy and brought it to the notice of the Government in March 1922 and if the Honourable Member will refer to

the volumes of Sea-borne trade published every month from April last, he will see correct figures of value have been given. The same applies to the last published volume of Annual Returns.

AGRICULTURAL RESEARCH INSTITUTE, PUSA.

31. **Rai Bahadur Lachmi Prasad Sinha:** Adverting to the *ad interim* reply and subsequent informations given to Question No. 70 asked on the 6th September, 1922, regarding the Agricultural Research Institute and College at Pusa, will the Government be pleased to give the following additional informations:

- (a) What quantity of different kinds of seeds and manures were supplied each year from 1908 to 1922 to the different local Agricultural Departments and Agriculturists?
- (b) What general or particular steps, if any, have been taken to improve the milching of Indian cattle?
- (c) What is the meaning of short course training, which is said to have been imparted to 223 students? Are these regular students of the College?
- (d) Are the students, who were imparted special study in Laboratories included in the Post-Graduate training class or are they separate students?
- (e) Is it a fact that a sum of Rs. 76,46,000 has been spent from the year 1903-04 up to 1921-22 over the education of students, numbering 123, in Post-Graduate training class, 223 in short course training class and 23 in the class of special study in Laboratories?

Mr. J. Hullah: The information asked for is being collected and will be supplied to the Honourable Member as soon as possible.

WAITING ROOM AT MOHESHKHUNT.

32. **Rai Bahadur Lachmi Prasad Sinha:** (a) Will the Government be pleased to state what steps have been taken in regard to the providing of a Waiting Room at Moheshkhunt Station on the Bengal and North-Western Railway?

(b) Will the Government be further pleased to state if any new Waiting Room has been constructed on the Bengal and North-Western Railway line ever since September, 1922, and if so, where and what is the number of first and second class passengers booked to and from those stations?

Mr. C. D. M. Hindley: (a) A reference in this matter has been made to the Bengal and North-Western Railway who now state that a first and second class waiting room at Moheshkhunt Station will be provided as soon as possible.

(b) No waiting room on the Bengal and North-Western Railway has been constructed since September 1922.

DR. GOUR'S CIVIL MARRIAGE BILL.

33. **†Lala Girdhari Lal Agarwala:** Will Dr. Gour, M.L.A., be pleased to state whether he has received a copy of the resolution adopted at a meeting of the Parsces held on the 26th November, 1922 protesting

†The reply to this question will be printed in a later issue of these Debates.

against the Honourable Member's Civil Marriage Bill and if so, will he be pleased to place a copy of the same on the table?

REPRESENTATION AGAINST CIVIL MARRIAGE BILL.

34. **Lala Girdhari Lal Agarwala:** Have the Government received any representation from the Council of Parsee Central Association praying that the Bill to amend Act III of 1872 (Civil Marriage Bill) be not enacted into law, at least so as to affect the Parsee community in any way?

Sir Henry Moncrieff Smith: The answer is in the affirmative.

SIR MONTAGU WEBB AND A BARONETCY.

35. **Mr. Mohammad Faiyaz Khan:** (a) Has the attention of the Government been drawn to the rumour published in many papers that Sir Montagu Webb, Kt., of Karachi had written a letter to an English paper in England to the effect that some time ago the Home Department had suggested to him to contribute some 20 thousand pounds towards a particular fund and on payment of this sum the Home Department would get him the title of "Baronet"?

(b) If the above statement is true, what action do Government propose to take in the matter?

Mr. Denys Bray: (a) The Honourable Member is no doubt referring to a letter written by Sir Montagu Webb to the London "Morning Post" and reproduced in various Indian papers. This letter contains a reference to the Home Government, i.e., His Majesty's Government, but none, of course, to the Home Department of the Government of India.

(b) Does not arise.

LECTURES BY MR. RUSTOMJI IN UNITED STATES OF AMERICA.

36. **Mr. Mohammad Faiyaz Khan:** (a) Will the Government be pleased to state if the Government of Bombay or the Government of India is paying any remuneration to Mr. Rustomji in the United States of America for his lectures, etc., about India in the United States of America?

(b) Was the said Mr. Rustomji connected with any paper at Bombay some time ago?

(c) What was the reason for his leaving the paper?

The Honourable Sir Malcolm Hailey: (a) Mr. Rustomji is in receipt of certain allowances towards which the Government of India contribute.

(b) and (c) Government are not prepared to give any information.

MEDICAL RESEARCH CHAIRS IN CENTRAL RESEARCH INSTITUTE, DELHI.

37. **Rai Sahib Lakshmi Narayan Lal:** (a) Have the Government taken any step for the inauguration of Chairs in the Central Research Institute, Delhi for research in the medicines of the indigenous systems by experts of those systems?

(b) If not, do the Government propose to take any such step in near future?

(c) Will the Government be pleased to lay on the table a detailed account of what has been done and of what is going to be done in the said Institute?

Mr. A. C. Chatterjee: (a), (b) and (c) The scheme for the establishment of an Imperial Medical Research Institute has not yet been finally settled. For information on the subject the Honourable Member is referred to my speech in the Assembly on the 23rd September 1922.

SPECIAL RECRUITMENT FOR INDIAN MEDICAL SERVICE.

38. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

(a) Whether it is a fact that the Government propose to recruit 30 Europeans to the Indian Medical Service every year and on special terms?

(b) What would be the cost of each recruit for serving in India for 5 years?

(c) Why was this unusual step taken and the necessity thereof?

Mr. E. Burdon: (a) No. The present proposal is to obtain 30 European officers during this year only.

(b) The officers will serve under the ordinary Indian Medical Service regulations as regards pay and allowances, etc., except that a special gratuity will be granted in lieu of pension.

(c) I invite the Honourable Member's attention to the reply given to the question asked by Rai Bahadur Bakshi Sohan Lal, No. 81.

EXODUS TO SIMLA.

39. **Mr. B. Venkatapatiraju:** (a) Has the attention of the Government been drawn to the statement of Sir Edwin Lutyens that "the Government could if it liked stay down in Delhi most if not the whole of the hot weather and that he was sure the personnel would keep better health than they did at Simla"?

(b) Will the Government be pleased to reconsider the possibility of materially reducing the expenditure of Simla Exodus?

(c) What would be the savings to the Indian Exchequer if Exodus to Simla is wholly stopped?

The Honourable Sir Malcolm Hailey: (a) Yes. It is assumed that the statement refers to the period after the new capital has been completed.

(b) The matter is now receiving the attention of the Retrenchment Committee and their recommendations will be duly considered.

(c) The attention of the Honourable Member is invited to the reply given by Sir William Vincent to the question asked by Mr. W. M. Hussanally on the 10th January 1922.

VIZAGAPATAM HARBOUR SCHEME.

40. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

(a) At what stage is the financial progress of the Vizagapatam Harbour scheme?

(b) Whether the Bengal Nagpur Railway company made any proposal towards the solution of the financial difficulty?

- (c) And if so, whether they were accepted by or acceptable to the Government of India?
- (d) Whether the Government of India has any alternative proposal to effectuate the said purpose?
- (e) What was the amount already spent towards acquisition of land for Harbour purposes?
- (f) Whether any steps are being taken to proceed with the Railway construction for the completion of Vizagapatam Raipur line and Kottavalsa Baster Durg line along with Harbour construction?

Mr. C. D. M. Hindley: (a), (b), (c) and (d) The question of the method of financing the Vizagapatam Harbour Scheme is under consideration and no decision has yet been reached. The Bengal Nagpur Railway Company has not made any definite proposal on the subject.

(e) The amount spent towards acquisition of land for Harbour purposes to the end of 1921-22 is Rs. 11,80,175.

(f) The harbour project is still under investigation and no special steps are therefore being taken for the completion of the railway projects referred to.

SETTLEMENT OF INDIAN ARMY OFFICERS IN VICTORIA.

41. Mr. B. Venkatapatiraju: (a) Will the Government be pleased to state whether any guarantees have been given by the Government to the "Australian farms Limited" Melbourne in connection with the Settlement of Indian Army Officers on land in Victoria?

(b) And if so, will the Government be pleased to place on the table papers relating to it and to state the eventual cost that will be involved thereby?

Mr. E. Burdon: (a) and (b) The facts which have apparently given rise to the Honourable Member's question are as follows:

Last year, a Director of the Australian Farms Company, Limited, visited India with a view to making known to surplus officers of the Indian Army who were at that time about to be released from service a scheme of land settlement in Victoria. An important feature of this scheme was that any officer who wished to take advantage of it should, before entering into possession of the land, deposit a certain sum of money for the purchase of stock, implements and so on. As those surplus officers who had accepted the option of deferring for 3 years the receipt of their gratuities were not likely to be in a position to pay at once the sum required, the company expressed their willingness to accept in lieu of immediate payment, where necessary, an assignment, up to the amount required, of the gratuity of any officer who wished to enter the scheme. At the same time, the company requested that, in order to safeguard the ultimate payment to the company of the amount assigned to it by the officer, the Government of India should undertake to hold the assigned portion of the gratuity and arrange for its being paid to the Company when the payment fell due. As the arrangement described cost Government nothing and ensured important facilities to officers who had unfortunately for themselves been deprived of a career in Government service, it was agreed to by the Government of India with the approval of the Secretary of State.

The facts being as stated the Government do not consider it necessary to lay the papers on the table.

HIGH AND TRADE COMMISSIONERS.

42. Mr. B. Venkatapatiraju: Will the Government be pleased to state:

- (a) Whether the power of appointing the High Commissioner for India in England vests in the Government of India?
- (b) Whether any Commissioner of Trade for India is appointed in Australia and if so, what are his duties?
- (c) Whether there is any near chance of enlarging his duties to include the safeguarding of Indian interests in Australia, Newzealand, Fiji and other Islands in the Pacific Ocean?

The Honourable Mr. C. A. Innes: (a) Under the terms of His Majesty's Order in Council dated the 13th August 1920, which was published in the Notification of the Government of India, No. 6634, dated the 2nd October 1920, the appointment of High Commissioner for India is made by the Governor General in Council with the approval of His Majesty's Secretary of State for India in Council.

(b) No. Question (c) consequently does not arise.

EMIGRANTS FOR FIJI.

43. Mr. B. Venkatapatiraju: Will the Government be pleased to state the circumstances under which emigrants are recently permitted to leave Bengal to Fiji?

Mr. J. Hullah: No emigrants, as defined in the Indian Emigration Act, 1922, have been permitted to leave Bengal recently. I may, however, add, for the Honourable Member's information, that 781 Indians, travelling as ordinary passengers outside the Indian Emigration Act, left Calcutta for Fiji during 1922. This number included 152 return emigrants, who proceeded to Fiji defraying the cost of passages themselves.

INCHCAPE COMMITTEE'S REPORT.

44. Mr. B. Venkatapatiraju: Will the Government be pleased to state whether the report of the Inchcape Committee is to be placed for discussion in the Legislative Assembly before any final orders are passed by the Government?

The Honourable Sir Basil Blackett: The Government regret that this course is not practicable.

INDIANS IN HIGHER ARMY POSTS.

45. Mr. B. Venkatapatiraju: Will the Government be pleased to state:

- (a) Whether any and if so, how many Indians are being trained in the Supply and Transport and the Artillery branches of the Army and Air Service?
- (b) What was the total number of Indians trained for the higher posts in the Army, and what proportion does it bear to the total Army Officers paid for by the Indian exchequer?

Mr. E. Burdon: (a) There are at present 19,279 Indian officers and other ranks employed with the Supply and Transport Corps, 12,300 with the Royal Artillery, and 104 Indian other ranks with the Air Force in India.

(b) All officers holding the King's commission, whether British or Indian, are trained with a view to their being rendered fit to hold the highest posts in the Army. Of the total number of King's commissioned officers in the Indian Army, 3,925 are British officers and 108 are Indian officers. This latter figure includes 44 Indians who hold temporary or honorary commissions.

REVENUE AND EXPENDITURE.

46. Mr. B. Venkatapatiraju: (a) Has the attention of the Government been drawn to the fact that 70 Million £. were reduced in Civil Departments in England?

(b) What was the reduction contemplated in Civil Departments in India?

(c) What was the total Military expenditure in India both ordinary and extra-ordinary from 1914 up to day, or as far as figures are available and what was the total Imperial Revenue raised during that period?

The Honourable Sir Basil Blackett: (a) I cannot identify the figure of £70,000,000 mentioned in the question. According to the statement of Sir Robert Horne when introducing his Budget for 1922-23 on the 1st May 1922, the total estimate for supply services for 1922-23 showed a reduction of £218,500,000 below the adjusted Budget estimate for 1921-22. It must however be remembered that a considerable part of this reduction was the almost automatic outcome of reduced prices and the winding up of certain special War Accounts.

(b) The amount cannot be stated until the report of the Inchcape Committee has been received and considered.

(c) The required statement is laid on the table.

Statement showing the total net Military Expenditure in India from 1914-15 to 1921-22 and the Revenue of the Central Government in the same years.

Year.	Net Military Expenditure.	Central Revenue (excluding Military Receipts).
	Rs.	Rs.
1914-15	23,54,00,755	73,58,91,455
1915-16	26,19,31,979	77,59,90,514
1916-17	29,15,39,169	95,34,71,880
1917-18	34,32,01,959	1,13,47,21,989
1918-19	58,79,50,252	1,22,43,80,023
1919-20	76,08,87,678	1,27,90,42,422
1920-21	70,49,84,716	1,26,75,51,423
1921-22	59,91,59,803	1,01,33,75,000
		(Revised Estimate, 1921-22)

EXPENDITURE ON DEFENCE.

47. Mr. B. Venkatapatiraju: Will the Government be pleased to state what proportion of the total revenues of India has been spent on defence during the last two years?

Mr. E. Burdon: The information is being collected and will be supplied to the Honourable Member as soon as possible.

DEBT AND TAXATION.

48. Mr. B. Venkatapatiraju: (a) What was the total national debt of India before 1914, and what was it by the end of 1922?

(b) What was the amount of additional taxation levied during the said period?

(c) Whether any and what amount is spent on productive purposes by the Imperial Government during the same period?

The Honourable Sir Basil Blackett: (a) The national debt of India amounted to 447 crores on the 31st March 1914 and to 781 crores on the 31st March 1922.

(b) During the above period additional taxation estimated to yield 29½ crores a year was imposed. This is exclusive of the excess profits duty which actually yielded 11½ crores during the short time it was in force.

(c) The total amount spent on productive purposes during the same period was 105 crores.

FOREST RESEARCH INSTITUTE, DEHRA DUN.

49. Mr. B. Venkatapatiraju: Will the Government be pleased to state whether they have organised in the Forest Research Institute, at Dehra Dun, a course of instruction to qualify the students for Imperial Posts?

Mr. J. Hullah: No such course has yet been organised. The question as to the future place of training of the Imperial Forest Service probationers is under consideration at present and no final decision thereon has been arrived at.

FORESTRY SCHOLARSHIPS.

50. Mr. B. Venkatapatiraju: Will the Government be pleased to state the number of Scholarships given by the India Office for the study of Forestry during the last three years and to whom they were awarded and how many Indians were the recipients thereof.

Mr. J. Hullah: There is only one scholarship for Indian Forest probationers, namely, the Currie scholarship, which is awarded annually by the India Office on the results of the final examination held after the period of training. During the last three years it has once been awarded to an Indian.

RESEARCH AT DEHRA DUN AND PUSA INSTITUTES.

51. Mr. B. Venkatapatiraju: Will the Government be pleased to state whether any and what facilities are given to students to undertake research at the institutes at Dehra Dun and Pusa, and whether they are merely confined to teachers and lecturers?

Mr. J. Hullah: *Forest Research Institute, Dehra Dun.*—It is not possible for students to spare any time for independent research during the period of two years covered by the course at the Forest Research

Institute. Even now the syllabus is with great difficulty carried out. The research officers take part in the instruction and students are made familiar with the main problems under or awaiting investigation.

The time for research work is in reality after students have obtained their certificates. It then rests with local Governments to depute selected men for special courses or research work. As yet this has not been done but as soon as the new buildings are fully equipped facilities will be available for post-certificate courses or research.

Agricultural Research Institute, Pusa.—The conduct of research at the Pusa Institute is not merely confined to teachers and lecturers but qualified students are accepted for training in specialised branches of agricultural science and are encouraged to undertake research. They are given free all available facilities, *e.g.*, the use of the Library, the laboratories (apparatus, chemicals, etc.), the benefit of expert advice, accommodation, etc.

BACTERIOLOGICAL DEPARTMENT.

52. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state whether any and if so, how many qualified Indians were appointed in the Bacteriological department during the last three years and the total number of persons appointed during the said period?

Mr. A. C. Chatterjee: During the last three years five officers have been appointed permanently to the Bacteriological Department. Two of these officers are Indians.

VETERINARY SCHOLARSHIPS.

53. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state whether any veterinary Scholarships were given by the Government during the last three years and how many out of the total were allotted to Indians?

Mr. J. Hullah: Five scholarships were granted all to Indians.

DISABILITY ON INDIAN OFFICERS ENTERING TRAINING CORPS, ETC.

54. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state whether the War Office objected to the admission of Indians to the 'Officers training corps,' and whether the admiralty objected to the entry of Indians in naval Schools in England while admitting foreigners (other than British subjects) and whether the Government of India propose to take any steps for the removal of the disability?

Mr. E. Burdon: (i) The Army Council have held that the Officers Training Corps exists for the training of potential officers for the British Army and Territorial Force, and that consequently it is not open to Indian students, who cannot, under present regulations, become officers in either of these two forces.

(ii) The Government have no knowledge that the Admiralty have objected to the entry of Indians to Naval Schools in England, nor do they know that the Admiralty have admitted foreigners, other than British subjects, to such schools.

(iii) The Government of India have at present under their consideration certain proposals which aim at securing the admission in future of

Indian students to the Officers Training Corps and they are also considering proposals which relate to the training of Indian boys at certain nautical institutions in the United Kingdom.

MILITARY COLLEGE FOR INDIANS.

55. **Mr. B. Venkatapatiraju:** Is it a fact that at present 10 Indians were being nominated each year for Sandhurst out of a total of about 60 appointments to the Indian Army? Whether there is any prospect of starting at an early date a well equipped military college in India?

Mr. E. Burdon: The answer to the first part of the question is in the affirmative, and to the second part that there is no prospect of the establishment in the near future of a Military College in India on the lines of the Royal Military College, Sandhurst.

INDIANS IN COMMISSIONED RANKS.

56. **Mr. B. Venkatapatiraju:** What is the number of the Commissioned Officers in the army in India—would it be between four or five thousand? How many Indians were appointed out of them; whether it would be more than fifty?

Mr. E. Burdon: The total number of commissioned officers in the Indian Army is as follows:

British officers with the King's commission	3,925
Indian officers with the King's commission	108*
Indian officers with the Viceroy's commission	3,529
Total	7,562

* Includes 44 who hold temporary or honorary commissions.

INDIANS FOR WOOLWICH.

57. **Mr. B. Venkatapatiraju:** Is it a fact that no Indian cadet had been nominated for admission to the Royal Military Academy, Woolwich, which trained cadets for the Artillery and Engineers? Whether the Indian exchequer is contributing any amount to that institution either directly or indirectly?

Mr. E. Burdon: The answer to the first part of the question is in the affirmative. As to the second part, India pays, through the capitation payment for British troops, a share of the cost of the Royal Academy, Woolwich, based on the number of recruits she takes from the institution annually to maintain the sanctioned establishment of Royal Engineers.

COST OF MILITARY COLLEGES.

58. **Mr. B. Venkatapatiraju:** (a) What was the capitation rate paid to the War Office in respect of each soldier sent to India?

(b) Whether it is a fact that before 1890 the share of the cost of the Military Colleges which was allotted to India was £1,122 for Sandhurst, £7,582 for Woolwich and £15,000 for the upkeep of the Army Medical School, School of Gunnery and School of Military Engineering?

(c) In lieu of contribution of lump sums was the capitation rate fixed at £7½ per man?

- (d) Whether it was increased to £11½ in 1908?
 (e) Whether since 1920 it was increased nearly 2½ times the latter sum?
 (f) What was the total cost on that head in 1920 and 1921?

Mr. E. Burdon: (a) The capitation rate paid at present to the War Office in respect of each British soldier on the Indian establishment is £25-13-0.

(b) The figures quoted in this part of the question are not quite correct. The contribution paid by India towards the cost of the Military Colleges was as follows:

	£
(i) Royal Military College, Sandhurst	11,223
(ii) Royal Military Academy, Woolwich	7,682
(iii) Army Medical School, School of Gunnery and School of Military Engineering.	12,256
(iv) Artillery College	3,178

(c) The answer is in the affirmative. The rate of £7-10-0 had effect from 1890-91.

(d) The rate was increased from 1st May 1908 to £11-8-0 (not £11½).

(e) During 1920-21 and 1921-22 the payments made to the War Office in respect of British Troops were made on the basis of 2½ times the rate of £11-8-0, so as to allow for the general rise of pay and prices. From the year 1922-23, however, the capitation rate has been reduced tentatively to 225 per cent. of £11-8-0 or £25-13-0.

(f) The total expenditure in each of the years 1920-21 and 1921-22 amounted to £1,896,000, which allowed for a reduction in the pre-war establishment of British Forces in India by one-eighth. Provisional payments of £100,000 in 1920-21 and of £92,000 in 1921-22 were also made to the Air Ministry in respect of the charges in connection with the raising, training, etc., of the Royal Air Force serving in India.

NAVY AND AIR FORCE.

59. **Mr. B. Venkatapatiraju:** Is it a fact that admission to the Navy and Air force is confined to those of European descent?

Mr. E. Burdon: The answer is in the affirmative.

INDIANS IN SUPERIOR RAILWAY POSTS.

60. **Mr. B. Venkatapatiraju:** How many Engineers are appointed in the State Railways, and how many of them are Indians and whether there was any obligation to employ Indians by company managed Railways? Whether Indians were appointed to any superior posts of the Wagon and Locomotive Departments and if so, in which proportion?

Mr. C. D. M. Hindley: There are at present 197 officers in the Indian Service of Engineers and the Provincial Engineering Service, State Railways. Of these 50 are Indians and the proportion of Indians is yearly increasing. The Company-worked Railways are under no contractual obligations to employ any fixed proportion of Indians in their establishments but they have been informed of the policy of the Government of India and are increasing the recruitment of Indians as vacancies occur. In the latest

agreement—one between the Secretary of State and the East Indian Railway Company—the following clause finds a place:—

* * * * *

5. The Company so long as this contract remains in force will continue its present policy of extending the employment of Indians in the Superior Establishment as suitable candidates offer themselves and can be trained.

* * * * *

There are at present 84 superior officers employed in the Locomotive and Carriage and Wagon Departments of State Railways. Of these, two are Indians. Both were appointed by the Secretary of State after qualifying in England. Two more Indians, now in training in England, are likely to be appointed this year.

INDIAN RECRUITMENT TO HIGHER RAILWAY SERVICE.

61. **Mr. B. Venkatapatiraju:** Have the Railway Board made any recommendation for any definite proportion of Indian recruitment in the higher posts of Railway Service?

Mr. C. D. M. Hindley: It has been decided by the Government to recruit Indians, as qualified men become available up to 50 per cent. of the total Superior appointments in all departments of State Railways, as recommended by the Public Services Commission.

The Company-worked railways have been informed of the policy adopted by the Government in the matter and have been asked to increase their Indian recruitment.

INDIANS IN PUBLIC WORKS DEPARTMENT.

62. **Mr. B. Venkatapatiraju:** How many Europeans were recruited since 1919 for the Public Works Department and whether any and what proportion of the total number recruited were Indians—whether the Industrial commission report recommended 50 per cent. of the recruits to be Indians?

Colonel Sir Sydney Crookshank: 84 Europeans and 51 Indians (including statutory natives of India) have been recruited since 1919 for the Indian Service of Engineers in the Public Works Department. The excess in the number of Europeans is due to the greater recruitment in Europe beyond the normal figure during these years in order to make up for short recruitment during the period of the war. The total number of officers recruited to the service since 1914 inclusive comprises 105 Europeans and 118 Indians.

The Public Services Commission, and not the Industrial Commission, recommended that 50 per cent. of recruitment for the service should be effected in India.

SHIPBUILDING, AERONAUTICS, ETC.

63. **Mr. B. Venkatapatiraju:** Do the Government of India contemplate providing facilities for training in Ship-building, aeronautics and marine Engineering?

The Honourable Mr. C. A. Innes: A committee will shortly be appointed to consider, among other things, the question of providing facilities for the training of Indian apprentices as officers and engineers of ships, the

encouragement of ship-building and the construction of dockyards and engineering workshops in this country. The question of training of Indian youths in the United Kingdom for admission into the engineering branch of the Royal Indian Marine is also under consideration. The Government of India have had under consideration a proposal for training Indians in aeronautical engineering but it has been found impossible to pursue the matter further owing to the present financial stringency.

INDIANS IN SUPERIOR RAILWAY POSTS.

64. **Mr. B. Venkatapatiraju:** How far is the Railway Board trying to help Indians qualified to enter the superior posts in the Railway service? Is it a fact that 3 Indians and 15 Europeans are entertained every year on the average since 1915?

Mr. C. D. M. Hindley: The answer to the Honourable Member's question will be found in the comparative statistics given in a reply to Mr. N. M. Joshi on 6th September last in this House.

So far as State Railways are concerned, the average number appointed annually since 1915 to superior posts of all departments except Audit is 9 Indians and 17 non-Indians respectively.

INSTITUTES OF CHARTERED ACCOUNTANTS.

65. **Mr. B. Venkatapatiraju:** Is it a fact that there are Institutes of chartered accountants in Canada and Australia? Is there any similar institute of chartered accountants in India and if not why do not the Government start one in Delhi?

The Honourable Mr. C. A. Innes: Government have no definite information as to whether Institutes of Chartered Accountants exist in Canada or Australia. There is no such Institute in India but the services of the Sydenham College of Commerce and Economics, Bombay, are utilized by the Government of India as a central examining body for conducting examinations at various centres and for awarding a Diploma in Accountancy.

ALLOCATIONS TO RAILWAYS.

66. **Mr. K. O. Neogy:** (a) Will Government be pleased to make a statement showing the allocations made to the different Railways out of the provision for capital expenditure in the current year under the recommendation of the Railway Finance Committee?

(b) What is the probable total allotment to be made to each of these Railways during the period of five years for which the capital expenditure programme is to be prepared?

(c) With reference to the said allotment for capital expenditure in the current year, what amount is to be spent in the case of each Railway—

(i) in rehabilitating existing lines, and

(ii) in completion of lines under construction prior to the report of the Railway Finance Committee;

and how much of (ii) approximately represents expenditure on the improvement of the conditions of travel of third class passengers?

(d) Has any amount out of the said allotment for the current year, in the case of any Railway, been, or is proposed to be, spent in undertaking extensions of existing lines or in constructing new lines, contrary



to the recommendation of the Railway Finance Committee? If so, what is the amount in each case, and what is estimated to be the ultimate total cost of each such project?

Mr. C. D. M. Hindley: (a) and (c) The Honourable Member is referred to the Statement of Demands for capital expenditure on railways for 1922-23 being Appendix C to 'Detailed Estimates and Demands for grants' which were presented to the Assembly in March last.

It is not possible to separate expenditure intended to benefit 3rd class passengers alone. The Honourable Member will, however, find in Chapter VII of the Administration Report for 1921-22 just published a great deal of information in respect to the measures which are contemplated with this object on all lines.

(b) The probable annual allotment to be made to each of the railways for open line purposes during the remaining four years of the quinquennium will be approximately the same as in 1922-23 with possibly slight modifications in certain cases. The Demand Statement for each year will be duly presented to the Assembly in the usual course.

(d) The reply is in the negative.

BRITISH INDIA POLICE ASSOCIATION.

67. **Beohar Raghubir Sinha:** (a) Is it a fact that the Government of India have refused to accord recognition to the British India Police Association?

(b) If the reply is in the affirmative, will Government be pleased to state the reason of such refusal?

(c) Are the Government aware that a feeling of uneasiness has now been caused in the country and that it is apprehended that the Police Amendment Bill recently passed by this House was really directed against the legal activities of the Associations inasmuch as the Bill protected only the Associations recognised by Government?

(d) Are there any rules and regulations for recognising such Associations framed by the Government of India? If so, what are these?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) The constitution of the Association was not in accordance with the rules, but the real reason for declining to accord recognition was that it was impossible for the Government of India to recognize an All-India association of purely provincial services.

(c) The Government of India are aware that feelings of uneasiness exist in certain quarters, but they are without foundation. The bill to which the Honourable Member refers is in no sense designed against associations lawfully constituted and recognized. It is open to provincial services to form provincial associations and to apply to the local Government for recognition.

(d) I will show the Honourable Member the rules on the subject.

DEPOSITS IN POST OFFICE SAVINGS BANKS.

68. **Mr. B. Venkatapatiraju:** (1) Will the Government be pleased to state:

(a) Whether it is a fact that deposits in Post Office Savings Banks in England are not liable to attachment for judgment debts of the depositor?

(b) Whether there is no such immunity in India as the deposits in the Savings Banks are attachable under section 60 of the Civil Procedure Code?

(2) Will the Government be pleased to consider the desirability of introducing this protection in India for the encouragement of thrift?

Colonel Sir Sydney Crockshank: (1) (a) Yes.

(b) No.

(2) The question will be considered.

AMNESTY TO POLITICAL PRISONERS.

69. **Mr. B. Venkatapatiraju:** Do the Government propose to consider the desirability of granting amnesty to all political offenders, convicted within three years who have not caused injury to the person or property of anybody?

The Honourable Sir Malcolm Hailey: Government are not prepared to consider the desirability of granting a general amnesty.

PETROL.

70. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

(a) the quantity of petrol annually produced in Burmah consumed in India and exported to other countries?

(b) the quantity imported into India from other countries?

(c) the average producing cost per gallon in Burmah, United States, and cost price per gallon for the consumer in India, United States and England?

The Honourable Mr. C. A. Innes: (a) The export of petrol from Burma to India in 1920-21 amounted to 15,998,291 gallons. Figures for subsequent years are not available. The quantities exported from Burma to other countries were 36,222,584 gallons in 1919-20; 18,856,640 gallons in 1920-21; and 20,156,323 gallons in 1921-22. The production of petrol in Burma is about 32 million gallons.

(b) The imports of petrol from other countries into India were 16,448 gallons in 1919-20; 2,052 gallons in 1920-21; and 1,348 gallons in 1921-22.

(c) The Government of India have no information as to the average producing cost per gallon of petrol in Burma and the United States, or as to the cost price per gallon for the consumer in the United States. The retail price of petrol in London is 2 shillings per gallon and in Calcutta Rs. 1-14 per gallon, i.e., the same as the rate obtaining in London plus six annas on account of excise duty. The price at Rangoon of the two brands sold there is Rs. 1-10 and Rs. 1-12 per gallon.

"SERVICE" POSTAGE STAMPS FOR LEGISLATURES.

71. **Mr. Mohammad Faiyaz Khan:** Do the Government propose to issue instructions to issue "Service" postage stamps to the members of the Legislative Assembly and Council of State on payment?

Colonel Sir Sydney Crockshank: Government do not consider it necessary to issue the instructions suggested.

REPORT OF ARMS RULES REVISING COMMITTEE.

72. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state when the Report of the Arms Rules Revising Committee (held at Simla in August last) will be published and when will the new Rules be enforced?

The Honourable Sir Malcolm Hailey: The Report of the Arms Rules Committee will be published on the 20th January next. The various recommendations contained therein are under the consideration of Government but it is not yet possible to say when effect will be given to such of them as are accepted.

DEMOLITION OF HINDU TEMPLES IN DELHI.

73. **Mr. Mohammad Faiyaz Khan:** (a) Will the Government be pleased to state if it is true that in connection with the proposal of building a Railway Station at Delhi, it is being proposed that three Hindu temples will be pulled down?

(b) If it is true, are the Government aware that no consideration of the Hindu sentiments and their religious susceptibilities has been given over this matter?

(c) That Sanatan Dharma Sabha of Muzaffarnagar has also protested, and a copy of the resolution has also been sent to His Excellency the Viceroy?

Mr. C. D. M. Hindley: (a) (b) For the comfort and convenience of the general public who will use the new station now under construction at Delhi it is desirable to move from their present site three Hindu temples which seriously interfere with the approaches to the station. Friendly negotiations are in progress and it is hoped that the desired object may be attained in such a way as to avoid all possibility of hurting the religious feelings of Hindus.

(c) The answer is in the affirmative.

PROFESSOR SKINNER.

74. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

(a) whether it is a fact that Professor Clarence Skinner of Tufts College, United States, wanted to go to India for a year and study Indian conditions;

(b) whether the British authorities refused to visé his passport;

(c) whether Dr. Sudhindra Bose, lecturer in Political Science, at the University of Iowa, wanted to go to India after 16 years' absence to see his aged mother;

(d) whether his passport also was not viséd;

(e) whether there are any other cases of Americans being refused to visit India, whether Indian authorities are consulted in the matter and the reasons for refusal of admission into India?

The Honourable Sir Malcolm Hailey: (a) and (b) The Government of India have no information.

(c) and (d). The Government of India understand that Dr. Sudhindra Bose's application for a visa for India was refused by the Secretary of State. Attention is invited to the reply given by Sir William Vincent on the 10th January, 1922, to a similar question No. 112 put by Mr. Beohar Raghubir Sinha, in the Legislative Assembly.

(e) The Government of India are not aware of any cases at present in which Americans are being refused permission to visit India. Applications from foreigners other than *ex-enemy* foreigners and Russians are disposed of by the British Consuls abroad, and a previous reference is only made to the Government of India in cases in which domicile in India is alleged by the applicant and the Consul has reason to doubt the allegation.

MUNSHI IMAM ALI, CHITTAGONG P. O.

75. **Munshi Abdul Rahman:** (1) Are the Government aware that Munshi Imam Ali who was appointed as an unpaid probationer, Chittagong Head Post Office on 1st December 1915 after an examinational test as required by Departmental rules and regulations and with the approval and sanction of the Post Master General, Bengal and Assam Circle and who after having served in that capacity for about 5 years to the entire satisfaction of his superiors was appointed a reserve clerk, Chittagong Head Post office with effect from the 1st February, 1920, has been summarily dismissed by the Deputy Post Master General on 4th January, 1921, without any sufficient ground and without any opportunity being given to him to show cause why he should not be dismissed?

(2) Will the Government be pleased to state if his summary dismissal was on the ground of his failure in examination in dictation in English taken in the midst of his official duty?

(3) Will the Government be pleased to state if the order of dismissal of a postal Department servant holding a permanent post without first requiring him to show cause why he should not be dismissed is according to Departmental Rules?

(4) Are the Government aware that all his petitions and memorials seeking for redress of his grievance in the matter sent to the Director General, Posts and Telegraphs, through proper official channel have been systematically withheld by the Post Master General, Bengal and Assam?

(5) Do the Government propose to issue instructions upon the Director General, Posts and Telegraphs to call for the record of the case and reconsider and revise the order of dismissal in question?

Colonel Sir Sidney Crookshank: The necessary information is being collected and will be supplied as soon as it is available.

EXPORT OF PETROL.

76. **Lala Girdhari Lal Agarwala:** (a) Have the Government noticed a leaflet issued by the Motor Trade Association (Western India) recently entitled "Petrol—four crores of rupees thrown away by the Government of India—an intolerable situation"?

(b) Is it a fact that the motor spirit exported to foreign countries is exempt from payment of the duty of six annas per gallon which is levied on such spirits produced and consumed in India?

(c) How much petrol has been exported from India and Burma free from such duty from the time of the passing of Act II of 1917 up to date?

The Honourable Mr. C. A. Innes: (a) and (b). Yes.

(c) The export of benzine and petrol from Burma and India since 1917 was as follows:

	From Burma.	From India.
1917-18	18,934,711	Nil.
1918-19	22,600,932	90
1919-20	36,222,684	Nil.
1920-21	18,856,633	2
1921-22	20,156,823	Nil.
1922-23 (up to October 1922)	12,872,247	Nil.
Total	129,643,435	92

ASSISTANT COLLECTOR, CUSTOMS, KARACHI.

77. **Mr. S. C. Shahani:** Will the Government be pleased to state if it is contemplated to appoint a third Assistant Collector, Customs, Karachi?

The Honourable Mr. C. A. Innes: The appointment of a third Assistant Collector of Customs at Karachi was sanctioned by the Secretary of State in 1921, but owing to the financial stringency effect has not yet been given to the sanction.

CLAIM OF INDIAN MEDICAL DEPARTMENT TO MARRIAGE ALLOWANCE.

78. **Lieut.-Colonel H. A. J. Gidney:** (1) (a) Will the Government be pleased to state if the marriage allowance sanctioned for British troops and other Departments in India is given to Assistant Surgeons of the Indian Medical Department in Military employ?

(b) If not, why not?

(2) If the answer is in the negative, will the Government be pleased to state why such distinction is made between the Indian Medical Department and other Departments of the Army in India who are also largely recruited in India?

(3) Is Government aware that great discontent and dissatisfaction exists in the Indian Medical Departments on this account and what steps does it propose to remedy this grievance?

Mr. E. Burdon: (1) (a) No.

(1) (b) and (2) The matter is under consideration.

(3) The answer to the first part of this question is in the negative. As regards the second part, matter is as I have said under consideration by Government.

INDIAN COAL ON RAILWAYS.

79. **Rai Bahadur G. C. Nag:** Will Government kindly lay on the table a statement shewing, for each of the Budget Lines, the quantity of Indian coal consumed by Locomotives during 1921-22, the quantity purchased and the amount of foreign line freight on the latter?

Mr. C. D. M. Hindley: A statement showing the quantity of Indian coal consumed by locomotives on each of the budgetted lines during 1921-22, including in certain cases the figures relating to non-budget lines

THE INDIAN BOILERS BILL.

The Honourable Mr. C. A. Innes: I present the Report of the Joint Committee on the Bill to consolidate and amend the law relating to steam-boilers.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: The motion for the consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State, is now before the House.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Before this Assembly takes up the Bill for its consideration and before Sir Henry Moncrieff Smith successfully moves the Bill to amend the Code of Criminal Procedure, 1898, I have got some objections to make. First of all, as this House is aware, the report of the Racial Distinctions Committee is not just before the Assembly, and that involves Chapter XXXIII of the Bill further to amend the Code of Criminal Procedure, 1898, and it is, Sir, a part and parcel of the Bill which my Honourable friend, Sir Henry Moncrieff Smith, proposes to place before the Assembly for its consideration. Therefore, what he purports to place before us is not full, is not altogether a complete Bill. Therefore, Sir, there seems to be something lacking, something wanting and it is not accurate to say that it is a complete Bill. Under the circumstances, therefore, unless and until he gets the *whole* Bill further to amend the Code of Criminal Procedure, 1898, I do not think he will be in order to move for the amendment of the Bill.

Secondly, we are all aware that there are certain controversies going on in this country that, unless and until that Chapter of the Code of Criminal Procedure is given effect to and unless and until the racial distinctions questions are thrashed out in this Assembly, I do not think my Honourable friend will be in order in placing before the House the amendments further to amend the Code of Criminal Procedure of 1898. Then again, Sir, we understand that in the Provincial Councils Resolutions have been passed that there should be a separation of executive and judicial functions of the executive officers, and every one in the Committee formed for giving effect to it is thinking of how that can be done, that is to say, whether the powers of the Magistrates and the District Magistrates will be just the same as they are along with the Sessions Judges, or whether these Magistrates will be directly under the control of the Sessions Judges. If that is so, the whole amendment, that is, the amendment which my Honourable friend has taken so much trouble over, to bring before us in the Assembly will be of no use and his 'love's labour' I am afraid will be wasted. What is the use of putting up the same thing over again in another few days? Recently we were given to understand from the Government of India, with regard to this Racial Distinctions Committee's Report, that it is coming on before us sooner or later in the next few days. Therefore, unless and until we have got that before us complete, and, in view of the fact that there are so many difficulties which cannot be got over, you cannot begin from the other side when you have not got Chapter XXXIII completed. There are so many words to be changed, the whole thing will have to be recast again a few days hence, after a waste of paper, waste of energy and waste of thought; and again we shall have to begin it again. Everyone in this country was surprised the other day with regard to that case of Reid, Assistant Manager of the Khoreal Tea Plantation concern. It was an extraordinary judgment. There were nine jurors, one was Indian and the remaining eight were Europeans and the verdict was given by them in the High Court of Calcutta in its

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THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

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Quarter Sessions—the eight European jurors held that the Assistant Manager, Reid, was not guilty and only one, that is, an Indian, found that he was guilty. There was great commotion in this country with regard to this question. We have had only the other day the decision of an European Magistrate in the Madras Presidency with regard to the trial of Sergeant Andrews and five others. What is this judgment? It says that it might be the case that before the transmission of the Moplah prisoners took place, these 70 poor Moplahs might have been poisoned before the train was in motion and that is how the benefit of the doubt was given to all the accused. Sergeant Andrews and five others were discharged under section 253 of the Code of Criminal Procedure.

The Honourable Sir Malcolm Hailey (Home Member): I hope I may be excused for interrupting the Honourable Member as I could not possibly allow that gross travesty of the judgment unchallenged. Whether he is in order or not in referring to these matters I leave it to your decision. In the meanwhile, my duty is to describe the Honourable Member's statement as a travesty of the judgment of the Magistrate.

Mr. Deputy President: When the Honourable Member rose to raise his objections, I thought they were of a technical character and I did not think at the time that he would go into such details. I shall have to stop him from going into details at this juncture.

Mr. K. Ahmed: I am not going into details. Nor am I of the same opinion as my Honourable friend, Sir Malcolm Hailey. Anyhow I want to make this quite clear that I am not criticising the judgment but that is the feeling in the country. There is a great commotion. Unless and until that Chapter is amended, I do not think there is much in the amendments to the Criminal Procedure Code. It will be better, quite worth while, and most desirable that the Honourable Sir Henry Moncrieff Smith should make his time more useful; and unless and until he has got that Chapter amended at once, I do not think he can be in order to move successfully in this Assembly that the whole Procedure Code should be amended. I raise these objections and now move that there should be postponement of this motion and I should like the Honourable Member to point out why he has not got Chapter XXXIII in the Bill which the Assembly is going to consider.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): I rise, Sir, on a point of order. This Bill is a Bill which amends only certain sections of the Code of Criminal Procedure and we are now going to consider amendments only to some of the sections, the other sections remaining untouched. Now the question has been raised about the recommendations of the Racial Distinctions Committee. That is a question which is absolutely irrelevant to the discussion of the present Bill. I suppose the Honourable Member will not accuse me of not having predilections in favour of the view which he has put forward, because, as he knows, I was responsible for the Resolution which led to the appointment of the Racial Distinctions Committee. I am, therefore, as keen on that point as perhaps any Member here, but I do feel that no amendment outside the amendments proposed now in the Code can be rightly moved during the discussion of the present Bill.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I wish to join issue with the statement made by Mr. Samarth. This is a Bill to amend the Criminal Procedure Code. . . .

Mr. N. M. Samarth: Only some sections.

[Mr. T. V. Seshagiri Ayyar.]

separation of judicial from executive functions has been considered. For all these reasons, it seems to me, Sir, that we shall be right in delaying the business before the House; we all know that it will be a waste of time if the Member in charge presses for the consideration of this Bill. As I said, if there is a ruling, unless you rule that that ruling does not shut out this discussion, I would agree to the proposition which has been put forward to the House by my friend, Mr. Kabir-ud-Din Ahmed.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I think that the amendments which are before the House can be dealt with independently and without making a reference to those sections which are not within the scope of being amended, and I, therefore, oppose the motion for postponement, which has been put forward before this House. The Honourable Mr. Seshagiri Ayyar has raised his objection to our now proceeding with the amendments, and the salient point, which has been referred to is that the separation of executive and judicial functions is being contemplated and that it would be better that this amendment may be taken in hand after that. I am afraid, Sir, there is no force in this argument. I myself am anxious to see those functions separated, but it will be seen when that question finally comes before the House. There is no guarantee that that question will, even within a year hence, be brought before this Assembly, in its final shape. Therefore there will be no good in delaying the present amendments for which the whole country has been waiting for the last three years. (A Voice: 'More.') Three years so far as I know, it may be more. (A Voice: 'Six years.') Then my argument becomes more forcible. Therefore, I very strongly oppose this motion for postponement. It would be better that we should take this important work in hand at once and do our level best to finish it, nothing will preclude us from suggesting fresh amendments, if necessary, hereafter.

Bhai Man Singh (East Punjab: Sikh): Sir, one of the questions before the House now is whether amendments referring to sections other than those referred to in the Bill can or cannot be taken into consideration. There is absolutely nothing on this point in our Rules of Business or Standing Orders. This question arose before this very House in the very first Session. That was with regard to some amending Act about the Land Acquisition Act. I would like to draw your attention, Sir, to that ruling, and it is with reference to that ruling that I would request you to decide the question. Therein, Sir, it was Rao Bahadur Rangachariar.

The Honourable Sir Malcolm Hailey: May I interrupt the Honourable Member, purely in the interest of the House? The point of order now discussed refers to the admissibility or otherwise of amendments relating to sections of the Code which are not placed in the Bill. Do we understand, Sir, that that is open to discussion now, or has it been ruled out of order by you until the major question that the Bill be taken into consideration has been disposed of?

Mr. Deputy President: That question has been ruled out of order by the ruling which the Honourable the President gave on that case.

Mr. Jamnadas Dwarkadas: Sir, may I point out that the situation seems to have a little changed after the speech made by my Honourable friend, Mr. Seshagiri Ayyar. Mr. Seshagiri Ayyar has pointed out that a ruling has already been given by the Honourable the President at the last Simla Session that this amendment would be out of order.

The Honourable Sir Malcolm Hailey: Where?

Mr. Jamnadas Dwarkadas: If the Honourable the Leader of the House could enlighten us, I think it would be much better.

The Honourable Sir Malcolm Hailey: I am very unwilling at this stage to enter into discussion regarding a point of order of this nature. I thought myself that the point of order had been ruled out of discussion by the Chair, until such time as the consideration of the major question had been disposed of. Since, however, Mr. Jamnadas Dwarkadas, considers that the situation has been altered by the considerations put forward by Mr. Seshagiri Ayyar, I will, with your permission, inform Mr. Seshagiri Ayyar that he is incorrect in the statement of that consideration. I have here the September debates, and there is no reference to this matter in regard to the discussion on the Criminal Procedure Code. As Mr. Bhai Man Singh was pointing out, the point came—I won't say under discussion, but under mention in regard to the proceedings regarding the Land Acquisition Bill; but there was no formal decision on the matter at all; and I would again appeal to you, Sir, let us know whether we are to continue discussing this point of procedure now, or are to wait until we have disposed of our major question, namely, whether the Bill as drafted should be taken into consideration or not, or, as the motion now stands before the House, whether that consideration should be postponed. Its consideration was already once postponed in the September Session. I have my own views on the subject of further postponement. I do not intend to put them before the House until we are clear whether we are discussing the point of procedure or the point of postponement.

(Sir Deva Prasad Sarvadhikary rose to speak.)

Bhai Man Singh: I was in possession of the House, Sir, and I had to stop because the Honourable Sir Malcolm Hailey rose to a point of order.

Sir Deva Prasad Sarvadhikary: Before that matter comes up, I have a matter and we wish that it should be perfectly cleared.

(Bhai Man Singh rose.)

Mr. Deputy President: Order, order. Sir Deva Prasad Sarvadhikary.

Sir Deva Prasad Sarvadhikary: If, Sir, as the Honourable Sir Malcolm Hailey told us, it be quite clear that it has not been previously ruled out of order that other amendments may be moved, that do not arise out of or appertain to the ground covered by the Government amendments, then many that are anxious to move these amendments would not support the motion for postponement. If, on the other hand, it be absolutely clear on the ruling then given or that you may now give that this cannot be done, the case for postponement will be strong. If it is given to Bhai Man Singh to differ from Mr. K. Ahmed, it may be given to me to differ from Mr. Samarth, and we do not all take the same view of the situation regarding the admissibility of other amendments. If it be absolutely clear that other amendments can be moved, then there is very little case for postponement. But that brings up another difficulty. Many, under the belief that under the previous ruling no amendments of the kind we are discussing are admissible, have refrained from sending in such amendments. What is their position? From all points of view it seems that the issues must be clearly defined before we proceed, even to vote on the motion for postponement.

Mr. J. Chaudhuri: I submit that my Honourable friend is not in order. The proposition now before the House is whether.

Mr. Deputy President: Order, order. I wish to give my ruling on each amendment as it comes up before the House. It is impossible to lay down in a general manner what amendment is in order and what is not. I think before an amendment is before the House, it is impossible for the Chair to decide whether it is in order or not. We will therefore now proceed with the question regarding the postponement of this motion.

Bhai Man Singh: Of course in deference to the Honourable Chair's ruling that we are not to discuss the point whether such amendment would be in order, I defer my arguments on that point for a future moment.

Now, I have only to submit one point before you, Sir, and that is whether the consideration of the Bill should or should not be postponed. So far as this question by itself is concerned, the Bill has been before the Legislature for the last six years; it had to be postponed during the last summer Session and therefore one naturally feels inclined to say that it should not be postponed any further. But I think the point raised by my friend on the left is really a very strong one; when we are revising practically the whole Code, why should most important matters be left out? These matters, I might say, have been the burning questions before the public for many years; they are questions, not of rules and procedure, but touching on the substantial injustice that is being done in many cases; they are vital questions and they should not be omitted from discussion when we are practically revising the whole code. And because these important questions are being shelved and kept out of the discussion, I should say that the consideration of this Bill should be postponed.

Rai Bahadur Bakshi Sohan Lal (Jullundur Division: Non-Muhammadan): Sir, from the copy of the Bill as passed by the Council of State and sent to us by post it appeared that the whole Code of Criminal Procedure was before the Council of State; and they noted in the very Preamble that the sections which were omitted were held by the Council of State to stand as they were and only those referred to in the clauses were amended. From this it appears that the object of the Bill before the Council of State was to revise the whole Code and not only particular sections, though they came to the conclusion that certain sections were to remain intact and others were to be altered. That was the position before the Council of State, and there is no reason why in the Assembly we should not consider whether the sections which were omitted from amendment or held by the Council of State to remain intact, should not be amended.

Another objection is that we have submitted certain amendments which have been ruled out, I do not know whether by the Secretary or by the President. I object to those amendments being ruled out before they were put before the House. I sent certain amendments and I received an answer that they related to other sections. I do not know under what rule those amendments have been omitted from this printed list; they had to be considered by the House; before they were ruled out of order, they could not be prejudged without being brought before this House. This is another reason why consideration of this Bill should be postponed until those amendments have been printed and are before the House for a ruling as to whether they are in order or not. I therefore respectfully support the proposition that the consideration of this Bill be postponed and all amendments brought before the House before this Bill is taken into consideration.

The Honourable Sir Malcolm Hailey: I should like to set the Honourable Member's mind at rest regarding his amendments. What happened was

that the Honourable Member sent in, a considerable time ago, a number of sections forming part of his own draft Bill in regard to racial distinctions, which he desired to enter as amendments to the Bill now before us; the Legislative Department returned them, asking the Honourable Member to draft them in a form more appropriate to this Bill. That, Sir, is all that happened to the Honourable Member's amendments; they were not excluded; and, as far as I know, no amendments which Members have put forward in regard to the Code of Criminal Procedure (Amendment) Bill have been excluded, either by the Legislative Department or anybody else.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I am, Sir, in great difficulty as to whether I should vote for the postponement of consideration of this Bill or for taking the Bill into consideration by reason of the view that you have been pleased to express a little while ago. You have declined, Sir, to give any ruling upon the point whether the whole Code of Criminal Procedure is before us or whether we are confined to the Bill as it is presented to us after emergence from the Select Committee. That is the point which makes it difficult for me to make up my mind as to which way I should vote. If the whole Code of Criminal Procedure is before us, I should certainly vote against the motion for postponement; and I believe that it will suit my friend, Mr. Kabir-ud-Din Ahmed, if you give a ruling that the whole Code is before us, because I believe that in that case he and his friends would be free to move any amendments in regard to the Chapters which he has mentioned, about racial distinctions and the separation of the executive and the judicial. If, on the other hand, you confine us to the Bill as it has emerged from the Select Committee, then, as my friend, Sir Deva Prasad Sarvadhikary, has said, the case for postponement becomes very strong and probably many non-official Members will vote for postponement. I therefore submit, Sir, that a ruling from you will facilitate matters and give us an opportunity of making up our minds as to which way we should vote, and I appeal to you, Sir, to make up your mind which way your decision is to go before calling upon us to vote one way or the other.

Rao Bahadur T. Rangachariar: There are two points, Sir, on which I should like to have information from the Honourable the Home Member before I decide how to vote on this motion for postponement. In the first place, are they going to take objection to amendments which are outside the scope of their Bill? In the second place, are they going to give us an assurance that they are bringing in the Racial Distinctions Bill before this Council comes to an end? If they are going to take objection and take a ruling from the Chair, then it is a vital matter to us to obtain a postponement. But if the Government are going to allow amendments to the Code generally, then I do not see why we should not proceed with the Bill, because Honourable Members who have amendments to bring forward will have plenty of time to give notice of those amendments because this Bill is sure to take some days. Then there is, not only this racial distinctions matter which is of vital importance, but another matter which I will mention and of which I have given notice of amendment, namely, the use of fire-arms on crowds, on unlawful assemblies or rioters. That is a matter in regard to which Honourable Members will remember the Council of State passed a Bill on the motion made by the Right Honourable Mr. Srinivasa Sastri. An amending Bill was brought forward in the Council of State and passed with certain amendments. That Bill was produced here for our consideration and notice of amendments was given; but the Government thereupon withdrew the Bill, and I say they withdrew it

[Rao Bahadur T. Rangachariar.]
deliberately, from the consideration of this House. They have not brought it forward. This Bill came up in Simla in September—not the last September but in September before the last—and the Government have not done anything with reference to that Bill. Six months have elapsed and under the rules that Bill ceases to exist, because the Council of State having passed it and this Assembly not having passed it within six months of that date, that Bill has lost its force. Therefore Government has deliberately abandoned a measure which was of vital importance to the country. These are two vital matters on which the country insists on amendments of the existing Code, and if the Government are going to take technical objection to the amendments which I have given notice of on this question of the use of fire-arms, then I say it is a ground on which I will decide for postponement, because the other amendments are not of any use if my amendments are to be ruled out of order. Therefore, Sir, I want an assurance from the Honourable the Home Member on these two points.

The Honourable Sir Malcolm Hailey: I seem to be supplying information this morning, on a large number of points, and I must apologise for occupying so much of the Assembly's time; but on this occasion I rise in reply to a definite request from my friend, Mr. Rangachariar. He asks what attitude Government is going to take in regard to the question whether amendments referring to sections of the Act that are not in the Bill as it appears before the Assembly will be taken up or not. He suggested further in the latter part of his speech that he desired to bring into the discussion certain further additions to our Act, in other words, to introduce, not only amendments to sections of the Act, as at present in force, or amendments to clauses of the Bill standing before the House, but further extensions to our Code as it at present exists. And he asks what attitude is Government going to take on this. I must remind him, that the decisive factor in this matter is not the attitude of Government at all. It is not the question whether I shall take objection to his doing so. It is the question whether you, Sir, as the custodian of the procedure of this House will rule that amendments are in order or out of order. I suggest that the Honourable Member must wait until he places his amendments before the House for a ruling of the Chair on the admissibility of those amendments. He further asks whether we are prepared to place before the House during the present Session the Bill relating to the removal of racial distinctions. I can only say at this stage that we have every hope of doing so. I can fix no date but the House can take it from me that we have every intention and every hope of doing this. Now, Sir, those are the two points on which I rose in order to give information, but I wish to deal for one moment with the implications which he would draw from the information, or from the lack of information I have afforded. He says he will vote for postponement unless my answers on these points are satisfactory; probably from his point they are entirely unsatisfactory, and I gather, therefore, that he is going to vote for postponement. The postponement would suit my convenience and that of my friend, Sir Henry Moncrieff Smith. We have, I think, to face 360—or it may be 390—amendments to this Bill. We received the great majority of them on Saturday last, the day before yesterday. We and our devoted draftsmen have been at enormous pressure to consider the effect of these amendments. I should like here and at once, to thank those Members of the House who fell in with the suggestion which we made to them that the amendments should be sent to us a month before the Session. For the rest, the fact is,

that we have something like 390 amendments to deal with at very short notice, and it would suit us admirably to gain time to do so. But, Sir, that is not the object of Mr. Rangachariar, and I desire to ask him, for his part, how he is going to gain his particular object by postponing the discussion of the Bill before the House? He says 'I will vote for postponing unless you first of all admit a variety of amendments to which I fancy that you are going to object, or unless you give me a definite pledge that you will place the Racial Distinctions Bill before the House this Session.' If we cannot do that, he will vote for postponing; he may even carry postponement. How is that going to effect his purpose? The Bill as drafted is before the House. He postpones the discussion. If he postpones the discussion until Doomsday, he does not alter its character or put more clauses into it or force us to revise it by bringing new Chapters of the Code under the scope of amendment. All he does is to secure that the Bill lapses, that the great efforts which have been made for a series of years to get our Code into somewhat better shape, the efforts which have been made not only by Member after Member in charge of the Home and Legislative Departments, but by high expert Committees, all these will be thrown away. If it is not clear to him, may I at least make it clear to the House, that by postponing this Bill he will not get more clauses into the Bill, because he cannot; he will not alter its character, because he cannot; and all he will do is to make it certain that the labour which has been bestowed upon this Bill and the trouble which Members of this House themselves have taken in putting forward their numerous amendments will be wasted.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I beg to support the proposal—the simple proposal—that the consideration of the Bill now before the House should be postponed. I do so not upon any controversial or emotional ground. I beg entirely to dissociate myself from the criticisms that have been offered with regard to the findings of Judges, Magistrates and Juries, behind their backs. I say without hesitation that this is not the place where we should hold up judicial decisions and judicial officers and juries to a sort of pillory. It is essential for the good administration of the country that the public should respect our judicial tribunals, but if we are to secure that respect, we, as representatives of the public, must set the example. We were not in Court, we did not hear the evidence, we did not hear the arguments and we are not in a position, therefore, to judge definitely that a particular finding is right or a particular finding is wrong. Further, I do not wish to put forward as a reason for supporting this proposal that various controversial sections, now under consideration, have not been included. I do not think that the judgment of this House on this motion ought to be warped by any excitement or emotion over points of that kind. I sustain the proposal to adjourn amendment on the ground of pure common-sense. It is wrong to say, as one Honourable Member remarked, that the whole Code is before the House. It is not.

This is stated to be a Bill further to amend the Criminal Procedure Code of 1898. Therefore we are not now considering a new Code, and the question really involved by this proposal to postpone is whether this House will make these extensive amendments in the existing Code, or whether the time has arrived when, by waiting a little longer, we shall be able to put forward an entirely new Code in substitution for this Code. The present Code has been before the country for a quarter of a century. It has now been strengthened in many cases, and perhaps weakened in others, by judicial interpretation; and it seems to me, with all respect to those who hold a different opinion, that the country can get along very well for a little time

[Colonel Sir Henry Stanyon.]

longer until the important questions which are now agitating the public mind, but which must be settled as soon as conveniently may be, can be brought in. After all, the Courts have to interpret the laws which we pass, and one very important rule of interpretation for the purpose of arriving at legislative intention is to consider an enactment as a whole. This House, as at present constituted, is in its last Session. Suppose that these amendments are passed, or done away with, or whatever may be the result of considering this Bill, we shall have a certain amount of work done and a certain amount of time spent; and in a very short time a completely new Code, with Chapter 33 and everything else thrown in, will have to come up for the consideration of the next Legislative Assembly. Is it not more correct to say that the time we now spend on this Bill will be wholly wasted? As to the material which has been collected, I do not think, if this Bill lapses, the labour expended in collecting it will be lost; the material will be available when a new Code as a whole comes up for consideration. My simple argument is this, that the present Code is old enough now to carry on for a little bit longer, and that we should not take up the gigantic work of wholesale amendment until we are ready to replace Act V of 1898 by an entirely new Code. On that ground, and on that ground only, I support the proposal that consideration of the Bill to amend should be adjourned.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, my own feeling in the matter is that the House would do well in proceeding with the consideration of this Bill, but there are certain difficulties to which I shall draw the attention of the House if I may. If the Honourable Members will be pleased to refer to a copy of the Bill which is before us, they will see that it says 'an Act to consolidate and amend the law relating to criminal procedure,' and then, 'Whereas it is expedient to consolidate and amend the law relating to criminal procedure, it is hereby enacted as follows':

• (An Honourable Member: That is not the Bill.)

Munshi Iswar Saran: It was passed by the Council of State. Now if you refer to Act V of 1898, it says: 'Whereas it is expedient to consolidate and amend the law relating to criminal procedure it is hereby enacted as follows:—...'. Now the first question which has been troubling some Honourable Members has also been troubling me. If we are not entitled, as it is quite open to you to rule, to propose any alteration of any of the sections which have not been touched by the measure before us, then I submit Honourable Members will find themselves in a serious difficulty. Then, there is the report of the Racial Distinctions Committee, which is receiving the long and protracted consideration either of the authorities here or of the authorities in England, of course, we do not know which. The matter apparently is so difficult and complicated that even the Honourable the Home Member is not able to give us any definite information; as to when that measure will emerge out of the consideration of these exalted personages we do not know. That being so, the difficulty is this, that you really take up an important Code like the Criminal Procedure Code and begin to alter it and modify it bit by bit. I submit, Sir, the best course would be, to wait and put the whole thing before the House in a complete form. Though as I have already said my own feeling is that we should not postpone the consideration of the measure. Now take another matter to which I should like to draw your attention. Section 491 of the Code of Criminal Procedure confers power on certain High Courts to issue directions of the nature of *habeas corpus*. There you find that only the High Courts of Madras, Calcutta and Bombay have got the right to issue these directions. The

High Courts of Allahabad, Patna and the Punjab have not got the right of issuing these directions. Now there are such important matters as have not been touched upon by the measure which we have got before the House now, and I am inclined to think that perhaps it will do no very serious harm if the consideration is postponed till Government is able to make up its mind about these various important and really vital questions. The Honourable the Home Member and indeed some other official Members say 'Oh, there are about 250 or 300 amendments.' It is not at all surprising that there are so many when you take into account the number of sections that there are in the Code and when you further remember the vast area of this country and the very large number of people affected thereby. I submit, Sir, that, taking the totality of circumstances at the present moment into consideration, it may perhaps be wise to postpone its consideration till such time as Government is able to make up its mind about all these various matters so that the alteration or the modification may not proceed bit by bit, but the whole Code may be taken into consideration and may be amended, altered or modified as the case may be. As the last speaker has said, the country has gone on for so many years with this Code and it can well be expected to go on a little longer with it without any very serious harm befalling it.

Mr. J. Chaudhuri: Sir, I would suggest that we should proceed with the Bill; I do not approve of the motion that it should be postponed. We have done a lot of work in the Select Committee and we may now proceed with the Bill and it will take some time to consider the amendments and embody each of them as may be carried in the Bill that is before the House. Now if the report of the Racial Distinctions Committee is published by the end of this month, and if the Bill is brought before us in February, in the course of this Session, the assent to this Bill by the Governor General may be put off till the end of the Session, and when the other Bill comes before us, we may also consider it in the course of the Session and then in that case we may consolidate it with the amendments we make now. The further Bill may be tacked on to this in this way. By putting off the assent of the Governor General, which is not usually given during the Session, we can consolidate both the Bills into one and we need not lose time and put away this Bill and have nothing to do for a considerable part of the Session.

So, I beg to oppose the motion for postponement and I support the 1 p.m. motion that the Bill be proceeded with.

Mr. Deputy President: The question is:

'That the consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, be postponed.'

The Assembly then divided as follows:

AYES—29.

Abdul Majid, Sheikh.
Abdul Rahman, Munshi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Asjad-ul-lah, Maulvi Miyar.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Ghulam Sarwar Khan, Chaudhuri.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Ibrahim Ali Khan, Col. Nawab Mohd.

Ikramullah Khan, Raja Mohd.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Reddi, Mr. M. K.
Sarvadhikary Sir Deva Prasad.
Sohan Lal, Mr. Bakshi.
Stanyon, Col. Sir Henry.
Venkatapatiraju, Mr. B.

NOES—46.

Agnihotri, Mr. K. B. L.
 Allen, Mr. B. C.
 Asad Ali, Mir.
 Ayyar, Mr. T. V. Seshagiri.
 Barua, Mr. D. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Chaudhuri, Mr. J.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Das, Babu B. S.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.

Jamnadas Dwarkadas, Mr.
 Joshi, Mr. N. M.
 Kamat, Mr. B. S.
 Ley, Mr. A. H.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Nabi Hadi, Mr. S. M.
 Nand Lal, Dr.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Rangachariar, Mr. T.
 Samarth, Mr. N. M.
 Sen, Mr. N. K.
 Singh, Babu B. P.
 Singh, Mr. S. N.
 Sioha, Babu Adit Prasad.
 Spence, Mr. R. A.
 Subrahmanayam, Mr. C. S.
 Tonkinson, Mr. H.
 Vishindas, Mr. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock.
 Mr. Deputy President was in the Chair.

GOVERNOR GENERAL'S ASSENT TO BILLS.

Mr. Deputy President: I have received a communication from the Private Secretary to His Excellency to the effect that the following Bills have received the assent of His Excellency the Governor General:

The Indian Extradition (Amendment) Act, 1922,
 The Indian Museum (Amendment) Act, 1922,
 The Negotiable Instruments (Amendment) Act, 1922,
 The Court-fees (Amendment) Act, 1922,
 The Parsee Marriage and Divorce (Amendment) Act, 1922,
 The Official Trustees and Administrator Generals (Amendment) Act, 1922,
 The Police Incitement to Disaffection Act, 1922, and
 The Transfer of Ships Restriction (Repealing) Act, 1922.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: The question before the House is:

'That the motion for the consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State, be taken into consideration.'

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I wish to raise a point of order before we proceed with the consideration of the Bill, and it is this. Certain clauses in the Bill as originally introduced have been omitted by the Council of State, and I would request you to give us a ruling whether the clauses that have been omitted by the Council of State are open to amendment by us in this House.

Rao Bahadur T. Rangachariar: Before you give a ruling, Sir, perhaps I may draw your attention to one point. I have just been looking up May's Parliamentary Procedure on this matter. I do not know if you propose to give a ruling on that now. If you do, I wish to address you.

Mr. Deputy President: I should like to hear you, Mr. Rangachariar.

Rao Bahadur T. Rangachariar: The stage at which we are is this. In May's Parliamentary Practice on page 380 it is stated thus:

'When the Bill, as amended by the Committee, is considered, the entire Bill is open to consideration and new clauses may be added, and amendments made. According to former usage, the amendments might be wholly irrelevant to the subject-matter of the Bill. This vicious practice was, in 1888, rendered impossible by Standing Order No. 41 which prescribes that no amendment may be proposed to a Bill on consideration which could not have been proposed in Committee without an instruction from the House. The practice of the House as to the admissibility of amendments described in connection with the Committee stage of Bills applies generally to amendments on consideration of a Bill as amended by the Committee.'

Turning back, Sir, to that stage, that is the Committee stage, what can be done in the Committee is stated at page 370. This is what we find:

'An amendment must be coherent, and consistent with the context of the Bill, and when a proposed amendment has been so amended to form an incoherent question, the Chairman stated that if no further amendment was proposed he should proceed with the question which next arose upon the clause. Amendments cannot be moved which are based on Schedules or other provisions, the terms of which have not been placed before the Committee. Amendments are out of order if they are irrelevant to the Bill or beyond its scope; governed by or dependent upon amendments already negatived—(we are not concerned with that)—amendments are out of order if they are irrelevant to the Bill or beyond its scope.'

Now the question is whether in the first place, so far as the point raised by my friend, Mr. Agnihotri, is concerned, namely, the clauses omitted in the Committee can be restored according to this because it relates to the Bill itself, therefore there is no difficulty about the question which has been raised by Mr. Agnihotri. On that point the provision is clear, because it is the Bill itself. The Committee may have omitted certain clauses, and it is open to this House to restore them, because it is the Bill itself. You amend the Bill; the Bill has been amended by the Select Committee and the House can certainly restore a clause which has been omitted from the Bill by the Select Committee. That question does not in any way present any difficulty. But when we come to the second question as to the new clauses, I shall have to address you.

Mr. K. B. L. Agnihotri: I am afraid my point has not been properly understood by Mr. Rangachariar. My point was whether where a clause has been omitted by the Council of State, can we take up that original clause here.

Rao Bahadur T. Rangachariar: Because it was part of the Bill.

The Honourable Sir Malcolm Hailey: Sir, I shall deal only with the restricted question which has been put by Mr. Agnihotri, namely, whether we can here deal with clauses which have been omitted by the Council of

[Sir Malcolm Hailey.]

State, and not with the larger question to which Mr. Rangachariar referred. He read first an extract from page 382 of May's Parliamentary Procedure. He claimed that in accordance with Parliamentary Procedure this House could take cognisance of clauses which were in the Bill which was referred to the Select Committee and have been omitted by the Council of State from the original Bill. He bases his contention on this passage:

'When the Bill as amended by the Committee is considered, the entire Bill is open to consideration and new clauses may be added and amendments made.'

He has, I think, forgotten that between the stage at which the Bill was considered by the Committee and the present stage, a further stage has supervened, namely, the Bill has been considered by the Council of State and certain clauses omitted. Now, the Bill before this House is the Bill not as considered by the Committee but the Bill as it has come from the Council of State and I maintain, Sir, that it is impossible for this House in consequence to deal with any of those clauses which having been omitted by the Council of State are not now part of the Bill. I quite admit that, if the Bill had come forward in this Assembly and had been considered by a Committee of this Assembly and certain clauses had been omitted by that Committee, then of course this Assembly might deal with the Bill as it originally came before it, i.e., with the whole Bill; but that is not the case. As I pointed out before, the House has before it the Bill as amended by the Council of State. I put it that this House can deal only with the Bill as it stands before it and it cannot consequently deal with any sections which have been omitted from the original Bill.

Mr. T. V. Seshagiri Ayyar: Sir, I think the Honourable the Home Member has taken a very narrow view of the powers of this Assembly. The two co-ordinate parts of the Legislature have power to deal with every Bill that is put forward by the Government. According to the Honourable the Home Member, if an amendment is made in the Council of State and that amendment is vetoed, this Assembly can do nothing in the matter. Apparently, he would say that once an amendment has been made there, you have no right to consider it. That would be the result of saying that if you omit a clause there, then you cannot consider that clause here. Then it must necessarily follow that if an amendment has been dealt with by the Council of State, we cannot deal with that amendment. Then the elaborate provisions by which differences between the two Chambers are to be settled by a Joint Committee would be useless. Surely, the idea is that, if a matter is before the one House, it is also before the other House, and whatever is before that House can be considered by the other House. There may be certain matters on which there is difference of opinion and when that happens the two Houses will have to consider it together. That implies that everything that is placed before one House must be regarded as being placed before the other House as well.

We will have to deal with the amendment of the Criminal Procedure Code as it is and it is our privilege and our duty to deal with the whole matter, and not to confine ourselves to what is said in the copy before us; and the fact that the Council of State has dealt with it in a particular manner can not affect the rights of this House.

The Honourable Sir Malcolm Hailey: Would the Honourable Member kindly inform us how we could have printed the Bill except in the form in which it was amended by the other House?

Mr. T. V. Seshagiri Ayyar: It is perfectly easy. You could have printed the omitted clauses in italics.

The Honourable Sir Malcolm Hailey: They would not be before the House nevertheless.

Sir Deva Prasad Sarvadhikary: It is an entirely new claim, Sir, that has been put forward on behalf of the Council of State. If any action by one Chamber was the final word on the subject, the Princes Protection Bill would never have come up before the Council of State and passed in the way in which it was done.

Mr. N. M. Samarth: But the rules provide that.

Sir Deva Prasad Sarvadhikary: I know. But the rules nowhere provide or suggest that, because the Council of State has chosen to throw out certain amendments or certain clauses, this Assembly, which, for this purpose, is its revising Chamber, is precluded from looking at them or saying their say. What happens to the Bi-chameral Scheme?

Sir, I do not quite follow Sir Malcolm when he says that the Bill is not before the Assembly in a form which would warrant its going into the matter. The Bill is in its entire form as introduced before both the Chambers. I do not want to labour that point for the position cannot be gainsaid. We can never forget that no Bill can have any legislative sanction till both the Chambers have either singly or jointly, as the exigencies of the case might require, dealt with it before it goes up to the Governor General. Therefore, I do not think that the proposition that has been put forward by Sir Malcolm will at all be tenable. You will not find corresponding precedents in Parliamentary practice, because the procedure here is entirely all our own. You have no corresponding two Chambers there which to the same extent act as a drag on one another as here and the position ought not to be worsened.

Bhai Man Singh: Sir, the question now before the House is, really speaking, a very important one from the point of view of the rights of this House and I would beg you, Sir, to give your most careful consideration before ruling out Mr. Agnihotri's point. In the first place, I will take up what is the principle underlying the question of amendments. Why should new amendments be not allowed? The only thing that can be said in defence of this point is that perhaps the Government Members or the Non-Official Members may not be quite prepared to meet certain amendments if they are taken by surprise. And therefore since certain Members may not be prepared on those points, it would be quite unfair to put in quite new points that do not concern the matter that is before the House. This can be the only principle of limiting our right of putting amendments to a certain Bill. Now, I submit, Sir, in the case of a clause that has been considered by the Council of State and that has been omitted by that House, are not the Government Members expected to be fully prepared on those points and to have studied them carefully and to be ready to meet amendments about them? There is no reason on earth why they should shrink from it if we want to introduce those points. Therefore, the clauses that have been omitted by the Council of State are before us and there is no reason why we should not be allowed to bring in those clauses again or to move amendments in regard to those sections the clauses about which have been omitted by the Council of State, or I may go one step further, which were originally discussed by the Joint

[Bhai Man Singh.]

Committee. Really speaking, the way in which this question has been taken up on the Government side by the Honourable Sir Malcolm Hailey is wrong. The larger question of allowing amendments about sections that have not been considered in the Joint Committee Report or in the Bill as passed by the Council of State, the Chair this very morning has been pleased to give a ruling that this question would be decided when specific amendments come before the House and not before then. If as yet we have not decided whether we can or cannot take up amendments about sections that have not been touched either by the Select Committee or by the Council of State, if we do not know the fate of those amendments, how can we decide the narrower question as to whether we can take up clauses that were in the Code originally but have been omitted by the Council of State?

The other point, Sir, is that this Bill was originally moved in this House as well. My Honourable friend corrects me that originally it was moved in the Council of State and subsequently it was moved in this House also. Therefore it would be a very strange thing that a certain Bill is moved before us and still the House is debarred from discussing those questions simply because the other House has been pleased to omit certain clauses from that Bill. To quote instances, Sir, I remember that in the Income-tax Bill last year, a certain point, i.e., the clause about the insurance of the minors in a joint Hindu family was omitted by us. It was then renewed by the Council of State and again brought before us, and then again we omitted that clause. (*The Honourable Sir Malcolm Hailey*: "One word in that clause.") The question was not of one word, but of a certain point, whether that point was brought out in half a clause or one clause. The question is that there was a certain point, that was put in a certain form and had been omitted by us. The Council of State discussed that point and put it in. Similarly, certain amendments were made by us in the Finance Bill about post office rates in our first Session. That question was also discussed in the Council of State and amended and then brought forward to this House. I cannot understand why this stringent attitude should be taken up by the Government to debar us from discussing the sections the amendments to which have been omitted by the Council of State.

Mr. N. M. Samarth: Sir, I do not think with due respect to the Leader of the House that he has given us a correct view of the real point at issue and of the way in which it should be decided. The point at issue is this. There was the original Bill before the Council of State, the originating Chamber, and in the Bill as originally brought forward by the Government there were amendments to one clause of the Bill or to several clauses of the Bill. The originating Chamber deleted certain amendments and passed the Bill in a certain form and that Bill is now before the House. The question is: Is it open or it not open to this House to propose those amendments which were originally there in the Bill but which were deleted by the Council of State and to insert them in such form as we may like—in the same form or in a modified form? To my mind, the question is hardly open to any serious discussion having regard to the wording of clause (4) of Rule 95, which you will find in the Manual of Business and Procedure at page 32. That clause reads thus:

'The other Chamber may either agree to the Bill as originally passed in the originating Chamber (that is to say, this House which is the 'other Chamber' in

this matter may either agree to the Bill as originally passed in the originating Chamber, that is, the Council of State), or as further amended by that Chamber, as the case may be, or may return the Bill with a Message that it insists on an amendment or amendments to which the originating Chamber has disagreed.'

Now, there was an amendment in the original Bill, as introduced in the originating Chamber, which has been deleted by that body. We say that we insist that that amendment shall be inserted in the Bill, and it is quite open to us to do so. I, therefore, submit that the point of order must be decided in favour of the view which has been put forward by my Honourable friends over there.

Mr. P. P. Ginwala (Burma: Non-European): I would invite your attention to Rule 85 at page 30 of the Manual and would point out to you that the motion, as it is put on the agenda paper, is not in accordance with that rule. The motion on the agenda paper is, 'Further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.' I submit that under that Rule they should not have inserted the words 'as passed by the Council of State' at all. Rule 85 says that 'At any time after copies have been laid on the table, any Member acting on behalf of Government in the case of a Government Bill, or in any other case, any Member may give notice of his intention to move that the Bill be taken into consideration, —the Bill itself—and not the Bill as passed by the Council of State.' In any case, there are two points that the Home Member has got to remember. First of all, it is this. This House is entitled also to make amendments to this Bill. Supposing it deletes 15 clauses from this Bill and it goes back to the Council of State, will this House be entitled to ask the Council of State to confine its attention merely to the Bill as it is sent up to that Chamber by this House? The Council of State will insist upon, if it thinks fit, the re-insertion of those clauses which have been deleted by this House. Secondly, and this is what I am more concerned with that if the Honourable the Home Member insists upon putting this narrow interpretation upon the Rules, one thing this House will do, and that is, it will guard itself against any encroachment by the Council of State on any questions of legislation. It will insist, and it will be justified, I submit, in insisting, hereafter that any Bill of such importance as the Code of Criminal Procedure (Amendment) Bill shall not be originated in that Chamber, and I beg the Honourable the Home Member to remember that it is hardly worth his while on an occasion like this to create this sort of jealousy between the two Houses. On that ground alone I would ask the Honourable the Home Member to reconsider his position and not create a precedent which may hereafter lead to continuous disagreement between the two Houses.

Mr. Deputy President: With regard to the ruling which Mr. Agnihotri desires me to give, I have to say that I rule that it would be in order for Honourable Members to discuss the Bill as originally introduced in the Council of State and to move the necessary amendments.

The usual practice is to leave the Preamble and the long title of the Bill to the end. I will, therefore, put the following question:

"That Clause 1 do stand part of the Bill."

The motion was adopted.

Lala Girdhari Lal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I move my amendment which runs as follows:

"After clause 1, insert the following clause:

'1-A. For the words and figures 'Act V of 1898' wherever they occur in the Code of Criminal Procedure, 1898, the words and figures 'Act I of 1923' and for the figures '1898', wherever they occur in the said Code, the figures '1923' shall be substituted and all the necessary consequential amendments shall be made'."

The object of my amendment is this. The present Bill is a Bill for overhauling the Code of Criminal Procedure. There was a Code of Criminal Procedure of 1861 which was amended 11 years later in 1872. Then again, the whole Code was overhauled and was enacted in 1882, that is, 10 years later. Thereafter another Act came into force, namely, Act V of 1898, that is, 16 years later, which is the present law. That is going to be amended, and I should say it is being thoroughly overhauled. There is no reason why after a lapse of 25 years the same old name should continue. The labours of many Honourable Members of this House and other gentlemen who are not in this House have resulted in the present discussion and this matter has been going on for nearly 6 years. There is no reason why the old name should be continued. Then, Sir, there is another matter. Section 1 of the Code says 'It shall come into force on the 1st day of July 1898.' If the proposed amendments are made, and I see they are amendments of a very important and vital nature, some time should elapse before the new Act comes into force. If this clause is not amended, then the result would be that the amendments would come into force at once. Sir, for this reason I submit that my formal amendment, if it can be called a formal amendment, should be accepted and I would ask the Government and other Honourable Members of the House to accept my amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I would deal with Mr. Agarwala's last point first. He says that one of the objects of his amendment is to secure that the amending Bill shall come into operation after some notice. He proposes that the amendments which we are making shall not come into force till the 1st July 1923. If that is his object, he should have proposed an amendment to clause 1 of the Bill which now stands part of the Bill. In the commencement clause he should have proposed to insert the words 'This Act shall come into force on the 1st July 1923'. In any case the amendment which he suggests will not effect what he desires in any way. I am somewhat at a loss to understand what the effect of the amendment might be. He proposes first of all that the words and figures 'Act V of 1898', wherever they occur in the Code of Criminal Procedure, should be replaced by the words 'Act I of 1923.' Well, Sir, though I share his optimism that this may be the first Act to be passed in 1923, we do not know what number this Act will have. But the words 'Act V of 1898' do not occur anywhere in the Code of Criminal Procedure, 1898. I do not know what the Honourable Member is referring to. Perhaps he has been looking at an edition of this sort (showing a Volume) having the words printed at the top of every page 'Act V of 1898'. They are not part of the law. Therefore his first point disappears. His second amendment is that for the figures '1898' the figures '1923' be substituted. The object is to alter the title of the Act and, as he says, also to postpone its operation till the 1st July 1923. I do not know what the effect of that will be. Apparently his idea is to leave us without a Code of Criminal Procedure at all from the date this Bill

is passed until the Act comes into force in July. The Honourable Member said that in 1898 we started with a new law. We gave the law a new name under a new year. That was quite another matter. In 1898 we consolidated and amended the law. Here we are not consolidating, though we are going to consolidate, I hope, very soon. At the present moment we are merely amending and therefore we cannot alter the title of the law.

Mr. Deputy President: The question is:

'That the following amendment be made:

'After clause 1, insert the following clause:

'1-A. For the words and figures 'Act V of 1898' wherever they occur in the Code of Criminal Procedure, 1898, the words and figures 'Act I of 1923' and for the figures '1898' wherever they occur in the said Code, the figures '1923' shall be substituted and all the necessary consequential amendments shall be made'."

The motion was negatived.

Mr. Deputy President: The question is that clause 2 do stand part of the Bill.

Mr. J. Ramayya Pantalu (Godavari bum Kistna: Non-Muhammadan Rural): Sir, I propose:

'That in clause 2, sub-clause (ii), for the figures '192' and '528', substitute the figures and words '192 sub-section (1)' and '528 sub-sections (1) and (2)', respectively, and insert the figures '437' after the figures '436'.

The first part of this amendment is a drafting amendment, because the question of subordination in regard to sections 192 and 528 only occurs in regard to sub-section (1) of section 192 and sub-sections (1) and (2) of section 528 and I want these sub-sections to be specified for the sake of accuracy. Then I come to sections 437 and 436. Section 436 relates to the power to order commitments.

Sir Henry Moncrieff Smith: May I suggest that the amendments in regard to sections 436 and 437 be moved separately?

Mr. J. Ramayya Pantalu: I agree to that suggestion. At present I move:

'That in clause 2, sub-clause (ii), for the figures '192' and '528' the figures and words '192 sub-section (1)' and '528 sub-sections (1) and (2)', respectively, be substituted.'

Sir Henry Moncrieff Smith: Sir, we have no objection to these amendments at all. The intention was to leave little things like this for the consolidation which, as I said just now, we hope will come very soon. But I think Mr. Pantalu has made one error. I think he has overlooked clause 143 of the Bill. Under that clause sub-sections (1), (2) and (3) are re-numbered (2), (3) and (5) and therefore the clauses which deal with subordination would now become (2) and (3) and not (1) and (2). Therefore if Mr. Pantalu will agree to sub-sections (2) and (3) for (1) and (2), I have no hesitation in accepting the amendment on behalf of Government.

Mr. J. Ramayya Pantalu: I accept that.

Mr. Deputy President: The question is:

'That in clause 2, sub-clause (ii), for the figures '192' and '528' the figures and words '192 sub-section (1)' and '528 sub-sections (2) and (3)', respectively, be substituted.'

The motion was adopted.

Mr. J. Ramayya Pantulu: My next amendment is:

'That after the figures '436' the figures '437' should be inserted.'

436 relates to the power to order commitment: It says that:

'When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may, thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged.'

The proposed clause, as drafted by Government, empowers the District Magistrate to order the commitment to a Sessions Court of a person who has been tried by an Additional District Magistrate. Section 437 refers to the power to order inquiry in a case in which the accused's complaint is dismissed under section 203 or section 204. If an Additional District Magistrate has dismissed a complaint under either of the sections, the question is whether the District Magistrate should not be empowered to order a further inquiry into the case; and if for the purpose of an order of commitment where a person has been discharged, the District Magistrate should have the power, I think he might also have the power to order a fresh inquiry into a case which has been dismissed. I think that my Honourable friend, Mr. Rangachariar, has got an amendment to omit section 436. If that is passed by the Assembly, I won't press my amendment in respect to section 437. But if the House retains 436, then I will press for this; so I request the Chair to allow me to move this amendment after Mr. Rangachariar's amendment has been disposed of. (Cries of "Withdraw.") I have explained my views. If Mr. Rangachariar's amendment is approved by the House, then I shall withdraw my amendment. But if that amendment is not passed, then I shall press mine; and I request the permission of the Chair to put it off till after Mr. Rangachariar's amendment is disposed of.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, perhaps it will simplify matters if I point out that there is a mistake here. Sections 436 and 437 have been changed by the Bill. As Sir Henry Moncrieff Smith knows, the section was 437 in the previous Act; but in the Bill now it is 436. The numbers have been changed.

Sir Henry Moncrieff Smith: That is clause 116 of the Bill.

Bhai Man Singh: My amendment is:

'In clause (2), sub-clause (ii), substitute '437' for '436'.'

Of course the other portion has now been dealt with by the amendment of 435. The first portion is, 'in clause (2), substitute '437' for '436,' and after the word 'subordinate' insert the words 'and for the purposes of sections 435 and 436 inferior.' I would submit that the latter portion should be taken separately in two parts, so they would form two separate questions by themselves; for the present, I will only refer to my amendment for substituting 437, and my plainest reason for that is that in section 436 the word 'subordinate' nowhere occurs.

Sir Henry Moncrieff Smith: May I interrupt the Honourable Member. My friend, Bhai Man Singh, does not seem to have understood Mr. Percival. When we talk about what was 436 or rather what is at the present moment 436 in the Code, I would again invite attention to the fact that it has become 437, and 437 has become 436. If Honourable Members will look at

clause 116 of the Bill, they will find that the order of those sections has been changed. That is all. Therefore, the question of 'subordinate' arises in this Bill under section 436. It does not arise at all under section 437.

Bhai Man Singh: I withdraw it.

Rao Bahadur T. Rangachariar: Do I understand that the Honourable Sir Henry Moncrieff Smith means that 436, as it is now, becomes 437 and 437 becomes 436?

Sir Henry Moncrieff Smith: That is clause 116 of the Bill.

Rao Bahadur T. Rangachariar: Then the only question which remains would be whether even for the purposes of section 436, the Additional District Magistrate's proceedings discharging an accused person should be open to revision by the District Magistrate. I think, Sir, on principle. . .

An Honourable Member: May I ask whether the Honourable Member brings it under section 435 (revision)?

Rao Bahadur T. Rangachariar: 437 now, as it is in the present Code and 436 as it would be in the new Code, that is, the power of setting aside an order of discharge. Assuming, that 436 in the Bill means 437 as it is at present, that is, the power of revision of an order of discharge or the dismissal of a complaint, my point is that the District Magistrate should not have the power to set aside an order of discharge made by the Additional District Magistrate. That is the substance. The substance of the amendment now proposed in the Bill is that Additional District Magistrates should be assumed to be subordinate to the District Magistrate for the purpose of his exercising the power of revision which he has under section 437 as it is now and 436 as it is going to be. I do not think it is sound in principle that the Additional District Magistrate's proceedings, judicial proceedings, should be open to revision by the District Magistrate. They are men of equal authority,—and Additional District Magistrates are in this advantageous position that they do not combine in them generally executive functions. They are purely judicial Magistrates, and therefore they are welcome to the country, whereas the District Magistrate is the head of the police and is also mixed up with a number of police and executive matters and consequently have naturally an official bias in reference to judicial matters. Additional District Magistrates are in the fortunate position that they bring to bear upon the discharge of their duties a purely judicial mind; and therefore a proceeding which has been framed by a judicial officer should be subject to revision at the hands of judicial officers, and therefore it would be quite enough if the Sessions Judge has the power to revise the proceedings. If Honourable Members will look at the section, they will find that either the Sessions Judge or the District Magistrate may revise the proceedings of Magistrates referred to therein. Therefore, it is not the case that it would be without any revision. The Sessions Judge will revise the proceedings of the District Magistrate. If my proposal is accepted, the District Magistrate will not have the power. Therefore, no harm is done. On the other hand, the Additional District Magistrate is placed on a footing of equality with the District Magistrate, and therefore while it is sound that the District Magistrate should have powers of transfer, which is the proper operation of this clause, it is not equally sound to say that he should have revisionary powers over judicial proceedings made by Additional District Magistrates. The Additional District Magistrate's proceedings should be

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subject to revision either by the Sessions Judge or by the High Court and not by the District Magistrate.

Therefore, the object of my amendment is not to give this power to the District Magistrate. I hope the Honourable House will agree to my suggestion.

I move, Sir:

'That in clause 2 (ii) the figures '436' be omitted.'

Sir Henry Moncrieff Smith: Sir, on the merits of this amendment I think I may say that the Government has no objection. There seems to be really no serious necessity to make the Additional District Magistrate, for the purposes of section 436 as it now is, subordinate to the District Magistrate. As my friend has pointed out, the Sessions Judge himself has the power of revision and I think that is sufficient.

Mr. Deputy President: The amendment moved is:

'That in clause 2 (ii) omit the figures 436.'

The motion was adopted.

Mr. J. Ramayya Pantulu: I wish to withdraw my amendment by the permission of the House in regard to inserting the figures '437' after the figures '436' in clause 2 (ii).

The amendment was, by leave of the Assembly, withdrawn.

Bhai Man Singh: I do not wish to move my amendment:

"In clause (2) (ii), substitute '437' for '436' and '528 sub-section (1)' for '528' and after the word 'subordinate' insert the words 'and for the purposes of sections 435 and 436 inferior'."

The amendment was, by leave of the Assembly, withdrawn.

Mr. Deputy President: The question is that clause 2, as amended, stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clause 3 stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clause 4 stand part of the Bill.

Mr. J. Ramayya Pantulu: I move, Sir:

"That for clause 4 the following be substituted:

"In sub-section (2) of section 21 of the said Code, the words from 'declare what...' to the words 'and may' shall be omitted, the word 'the' shall be substituted for the word 'their' and at the end the following words shall be inserted:

'Of the Presidency Magistrates including Additional Chief Presidency Magistrates to the Chief Presidency Magistrate'."

It seems to me quite unnecessary to say that Presidency Magistrates are subordinate to the Chief Presidency Magistrate. It ought to be taken for granted that all Presidency Magistrates are subordinate to the Chief Presidency Magistrate, as all Magistrates in a District are subordinate to the

District Magistrate. It is only necessary to define the amount of subordination in which they stand to the Chief Presidency Magistrate. That simply is the object of my amendment.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, in substance sub-section (2) of section 21 of the Code of Criminal Procedure deals with the relations which are to subsist between Presidency Magistrates and the Chief Presidency Magistrate. Now, in clause 3 of the Bill, we have provided for the appointment of an Additional Chief Presidency Magistrate, and therefore it is necessary to provide for the relations which should subsist between the Additional Chief Presidency Magistrate and the Chief Presidency Magistrate. The Bill proposes to do it in this manner. Sub-section (2) of section 21, as amended by the Bill, would read:

'The Local Government may for the purposes of this Code declare what Presidency Magistrates, including Additional Chief Presidency Magistrates, are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.'

The Honourable Member proposes to substitute for these words the following words:

'The Local Government may for the purposes of this Code define the extent of the subordination of the Presidency Magistrates, including Additional Chief Presidency Magistrates, to the Chief Presidency Magistrate.'

I, Sir, have been pondering very considerably as to what was the object of the Honourable Member's motion. I gather now that the suggestion is that all Presidency Magistrates must be subordinate to the Chief Presidency Magistrate. Well, Sir, we have just been dealing with the relations between the Additional District Magistrate and the District Magistrate. There is a question there in the clause which we have just discussed of the extent of the subordination. But will the amendment moved by the Honourable Member secure that all Presidency Magistrates shall be subordinate to the Chief Presidency Magistrate. If you refer again to the amendment, you will find that it will give the Local Government power to define the extent of their subordination. They may say that that extent is *nil* and then the Additional Chief Presidency Magistrate and other Presidency Magistrates would not be subordinate to the Chief Presidency Magistrate at all. I would merely add, Sir, that this clause was exactly in its present form in the Bill introduced in the old Legislative Council in 1913. It was not touched at all by Sir George Lowndes' Committee; no one has suggested that any amendment to it was required in all the lengthy opinions that were received when that Bill was circulated for opinion, and it was not touched by the Joint Committee. I venture to suggest, Sir, that it is very undesirable at this stage to make a drafting amendment of this kind, and I hope that my Honourable friend will withdraw his amendment.

Mr. J. Ramayya Pantulu: In response to the suggestion made by my Honourable friend I beg to withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

Mr. Deputy President: The question is that clause 4 stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clauses 5, 6 and 7 do stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clause 8 stand part of the Bill.

Mr. J. Ramayya Pantulu: Sir, I confess I do not quite understand the amendment proposed to the original section 40 of the Code. The section as it stands seems to be quite clear and intelligible. It says:

'Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.'

That is quite clear to me. But the amendment says that instead of the word 'transferred' in both places where it occurs, the word 'appointed' shall be substituted and the words 'continue to' shall be omitted and for the words 'to which' the words 'in which' shall be substituted. I will take a very ordinary instance. A Deputy Collector in charge of a division is transferred from one district to another district as Deputy Collector. He was a Magistrate in the old station and when he is transferred out of the district, he continues to exercise those magisterial powers. Where is the advantage of altering the clause by taking away the word 'transferred' and putting in the word 'appointed'? He is simply transferred to a place of a similar nature in the same local area. There is no break in service between his former appointment and his latter appointment. When there is a break and when he is re-appointed, he has to be re-invested with magisterial powers. It is only when a man is transferred from one place to another without a break that his magisterial powers continue and he can exercise them. If that is the idea, where is the necessity for substituting the word 'appointed' for the word 'transferred'? And again take another case. A general duty Deputy Collector is appointed as a Treasury Deputy Collector. The question is whether he continues to be a Magistrate or not. Then take another case in which a Deputy Collector is appointed to exercise the powers of an Assistant Registrar of Co-operative Societies or when he is put on special duty for the acquisition of lands. The question that arises in these cases is whether the Deputy Collector continues to be a Magistrate in the new appointment. The section as it is seems to suggest that when an officer who is appointed a Magistrate by virtue of holding a particular office is transferred to another appointment of the same nature, he continues to exercise magisterial powers. That supposes that there is no break in service. It is only a case of transfer from one appointment to another and I do not really see the necessity or even the desirability of substituting the word 'appointed' for the word 'transferred', and then taking away the words 'continue to exercise'. He will only exercise the powers which he already exercised. So, he continues to exercise them. He does not exercise any powers which he has not already exercised. If there is a break in his position as a Magistrate, he cannot exercise any powers unless he is re-invested with those powers by the Government. Therefore it seems to me that the section, as it is, is all right and the amendment is not intelligible to me. I therefore move that clause 8 be omitted.

Mr. Deputy President: Amendment moved:

"That clause 8 be omitted."

Sir Henry Moncrieff Smith: Sir, I think I can explain in a few words the necessity and desirability of this small amendment. It was pointed out about ten years ago by one Local Government and one High Court that they were in some difficulty about gazetting their officers' powers when they came back from leave. An officer went on leave and during the period of his leave he exercised no criminal powers. He came back automatically to the same district; he was not transferred. Therefore the word 'transferred' in section 40 did not quite cover his case. Well, it is a very small point. I do not know whether the difficulty has arisen in other Provinces, but some Provinces apparently are so extraordinarily conscientious in applying the provisions of the Act, that they proceed again to gazette the whole of the powers of that officer when he comes back from leave. The amendment therefore will relieve their difficulties and also will save a great deal of routine work in the Secretariat and in the Government printing press. Of course if the word 'transferred' is altered to 'appointed', the alteration will cover the transfer when the officer is transferred to another district. If the word 'appointed' is substituted for the word 'transferred', then the other small amendments in the section become necessary. As regards the omission of the words 'continue to', an officer who goes on leave and comes back does not continuously exercise the same powers, because there is an interval during which he exercises no criminal powers at all. In the same way, when an officer is transferred he takes joining time. Therefore the words 'continue to' are not exactly appropriate in these connections. I hope that my Honourable friend has understood this explanation and that he will see his way to withdraw the amendment.

Mr. J. Ramayya Pantulu: If it is found necessary to re-appoint an officer on return from leave—that is I believe what you mean—then he is not transferred; but as a matter of fact an officer who goes on leave is not appointed again on return from leave. He simply returns to his appointment.

Mr. Deputy President: I would draw the Honourable Member's attention to the fact that there is no reply for the mover of an amendment. The amendment moved is that clause 8 be omitted.

The motion was negatived.

Mr. Deputy President: The question is that clause 8 stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, my amendment is:

"After clause 8, insert the following as clause 9:

'9. Section 44 of the said Code shall be omitted.'

Clause 9 of the original Bill, as introduced in the Council of State, was about adding certain other sections to the sections already specified in section 44 of the Criminal Procedure Code. That clause was dropped by the Council of State. I now suggest an amendment, that section 44 should be omitted, and this omission should be put in, in clause 9. My object in putting this amendment is that section 44 put on the public the responsibility to report about the commission or the intended commission of certain offences that are specified in that section. My suggestion is that the members of the public should not be made liable to report excepting those that are particularised under section 45. Certain people

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who are appointed to do certain duties or are remunerated for doing work or are connected with the Government may be burdened with the responsibility, but other persons who have no connection with the administration under any of the Statutes should not be made liable to make reports about any offences that may happen. It is an intrusion on the rights of the private citizen, and therefore I propose that section 44 of the Criminal Procedure Code should be omitted. Moreover, Sir, it is not only the commission of the offence that one is made liable to report, but even the intention of any other person to commit such an offence.

The intention is very difficult to be known. Even in criminal cases which come before the Courts of law the intention has to be judged from the circumstances appearing in the case, and after the offence has been completed and, here, one is expected to know whether or not any person is really going to commit an offence; this will be very difficult for any man to find. Moreover, if a man were to report about the intention of any other person to commit an offence, he also puts himself under the liability and risk of being prosecuted if the report turns out to be false or, in other words, if the intention of the offender is not proved. He puts himself within the clutches of sections 211 and 182 of the Indian Penal Code. As it is, at any rate, difficult to find out the intention of a person to commit any offence, it is better that this section should be omitted.

The Honourable Sir Malcolm Hailey: Mr. Agnihotri, Sir, has already availed himself of your recent ruling. He is referring here to a section which was included in the original Bill, but has since been excluded. As I say, he comes within the terms of your ruling. And what use does he make of it? He proposes to omit the whole of section 44, a section which has always been part of our law. It lays on the public certain obligations in regard to the reporting of serious crime. I am not aware that in any of the discussions that have taken place regarding the Bill or its amendments, any public association or any public body, or indeed any individual, has protested against this obligation, and it has been left to Mr. Agnihotri to find it unduly burdensome. Remember that he does not attempt to discriminate between the various offences in regard to which there is an obligation on the public to report. With a fine gesture he would sweep them all away. That is to say, that if Mr. Agnihotri sees himself an act of the kind referred to in section 121, namely, the waging of war, then he would not consider it his duty to report it to the authorities. Much more terrible than this, if Mr. Agnihotri sees anybody committing the nefarious offence, an offence almost beyond the benefit of clergy, of assaulting the Governor General, he would not think that it was his duty to tell the nearest policeman. But I will not pursue the list of these offences. The ordinary man, I think, is willing to co-operate with the State in the protection of the public peace. Mr. Agnihotri said that this statutory obligation is an invasion of the rights of the public. Has he forgotten that rights also connote responsibility, and that every member of the public has also a duty towards other members of the public in the State at large? (Mr. K. B. L. Agnihotri: "Certainly.") I am glad that he admits so much. Then he goes on to argue that the provision is an additionally difficult one because it refers also to the obligation to report to authority if one knows of the intention to commit an offence. That may add to the difficulty of the provision, but he does not propose

to do away with this particular prescription of the section; he proposes to do away with the section as a whole, and that proposal will, I think, appear entirely objectionable to the House.

Mr. W. M. Hussanally: Sir, I have listened with some interest to the reply given by the Honourable Sir Malcolm Hailey to the proposal made by my friend Mr. Agnihotri regarding the doing away with section 44. In my opinion, Sir, section 44 and section 45 to a great extent overlap each other. I do not think that section 44 would be necessary if a little modification were made in section 45 to cover the difficulty pointed out by the Honourable the Home Member. For instance, if the words "village headman, village accountant, etc.," appearing in section 45 were removed and the words "every person" introduced in that section, and sections 121, 121A, 122, 123, 124, 124A, 125, 126, and 130 were introduced in clause (c) of section 45, I think to all intents and purposes section 45 would do by itself and then section 44 would not be needed. I commend the modification I suggest to the Honourable the Home Member.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I now move that section 124A be deleted from section 44. The Honourable Sir Malcolm Hailey has pointed out that it is the duty of every member of the public to assist and make a report to the police about the occurrence of any offence. I quite see the point, but it is only a moral duty and not a legal duty and my object in moving the amendment was that there should be no such legal duty. As that amendment has failed I now move that 124A be deleted from this section. If we refer to section 124A we find that that is a section meant for the offence of sedition. It is not possible for a man, at least an ordinary man, a lay man in the public, to know whether a speech delivered by any person is seditious or not. It is a very difficult point even for Courts of law to decide whether or not a speech comes within the purview of section 124A. Under this section it is also made compulsory and obligatory on the ordinary public to report whenever there is known any intention of any man to commit any specified offence. I would say that it is very difficult, nay even impossible, for a man to judge whether or not a speech delivered, or that is about to be delivered, will come within the purview of the definition of sedition in section 124A, and therefore section 124A should be omitted. Moreover, it is not such an emergent and important offence that it should be immediately reported or be included in this section.

Mr. Deputy President: May I point out to the Honourable Member that he has omitted to move his amendment?

Mr. K. B. L. Agnihotri: With these words, therefore, Sir, I move my amendment, viz.,

'Insert the following as clause 9:

'9. (a) In sub-section (1) of section 44 of the said Code omit the figures and letter '124-A'.'

The Honourable Sir Malcolm Hailey: Mr. Agnihotri has come down from his original requirements. He started by refusing wholly to admit the legal obligation of the ordinary citizen to assist authority by reporting offences. Defeated on that issue, he now argues that the ordinary citizen should not be bound to report a case falling under section 124A, namely sedition; but he bases his arguments on somewhat curious grounds. He

[The Honourable Sir Malcolm Hailey.]

claims that 124A is a difficult section; the ordinary man cannot know when the matter is seditious and is likely to cause disaffection; that even the Courts have very great difficulty in deciding that point. But he has clearly forgotten the terms of the section itself. It refers to every person, *who is aware* of the commission or the intention, etc. A person therefore would not fall within the scope of the section now under discussion unless he was first aware that this offence of which he had cognizance was one under 124A. Again if Mr. Agnihotri will turn to section 176 of the Indian Penal Code, he will see the exact prescription of law under which a man can be punished for omission to comply with his duties under this section of the Criminal Procedure Code. I read it to the House:

'Whoever being legally bound to give any notice or furnish information on any subject to any public servant as such *intentionally* omits to give such notice.'

It is perfectly clear then that he would not come within the scope of this section unless he was aware first of all of the nature of the offence and intentionally omitted to give information on the subject. Now I claim that it is just as important that the ordinary member of the public should recognise his responsibilities in the matter of sedition as in regard to other matters. There are people who may object to the way in which section 124A has on occasions been applied, but even they I think would admit with me that the section, having as wide a scope as it has, does embrace also very serious and highly criminal offences against the State. If that is so, then the ordinary member of the public ought to be under an obligation to report such offences to authority.

Mr. Deputy President: The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: The question is that clause 9 stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clause 10, stand part of the Bill.

Mr. K. B. L. Agnihotri: I beg to withdraw my second amendment, Sir, namely:

'In clause 10 (i) (a) insert the following at the beginning:

'After the word 'occupier' where it occurs for the second time the words 'in charge of management of that land' shall be inserted and in clause 10, sub-clause (ii), omit all words after the word 'inserted', i.e., omit the words commencing from 'and' to the words 'other law'.'

The amendment was, by leave of the Assembly, withdrawn.

Rao Bahadur T. Rangachariar: Sir, we have now dealt with section 44 on Mr. Agnihotri's amendment. Section 44 lays down upon every person, that is casting a duty upon every citizen, to inform the authority of the commission, or of the attempt to commit, an offence. Section 45 deals with a different class of cases, namely, persons who occupy the position of servants of the State. That is the main object of section 45. That is, every village headman, village accountant, village watchman, village police officer, those are the class of persons who are first dealt with and you will also notice one other person is included in that class who

ought not to be included, namely, the landowner or occupier of land and the agent of the owner of any land. He is classed on the same footing as the village headman, village accountant, village watchman and village police officer. Why on earth the owner of land in this country should be classed in a different category from any other citizen I am unable to see. There was a time perhaps when the British hold on the country was not so strong as it is to-day. The villages are now in the grip of the State. You have got an army of officials moving about, you have got your officers in every village, you have got the excise department, you have got the postal department, you have got the various other departments which are now ramifying the whole country. Why the landowner and the occupier of land? Mind you, not even the occupier and owner of houses. It has been held that the house owners do not come under the definition of landowners. House owners are free. They need not give any information. They are not classed on the same footing as the village headman, village accountant, village watchman and village policeman, but somehow or other it seems to be a venerable superstition attaching to the British Government that the landowner should come more under the grip of the Government than any other citizen. I know the landowner has to suffer a lot in this country. If any cess comes, 'Oh go on the land'. Education cess—'Go on the land'. Sanitation cess, district board cess—'Go on the land'. That is no doubt the burden he has to bear. But why should he be saddled with this? I could understand it if he had any special privileges, at least exemption from the Arms Act. If the landowner and the occupier of land is told 'Well, I exempt you from the Arms rules; you may bear arms and be a good citizen in the interests of the Government', I can understand this obligation on the owner of land. Now, there are persons who make crores and crores of rupees in trade and commerce. The landowners are only as much citizens of the country as these commercial and mercantile people and traders, and school masters—and what about other people? Why should they all be exempt and why should this poor landowner—he may be a zemindar, he may be a Maharaja, he may be a poor ryot—all of them are placed on the same footing, and you say "very well, you do the village watchman's work". I know the history of this. We had village communities. In those days, when village communities had control of villages and of the surrounding forests, when they could dispose of the communal lands for communal purposes, when we had the disposal of the village affairs in our hands, I can understand placing the burden on the landowners. But now you have got quite beyond that state of affairs. If you allow your cattle to graze, your cattle are taken and you are prosecuted. What is the privilege that landowners enjoy that they should be made to do this police duty for the Government? I resent it. Now, Sir, the ryotwari settlement has undone most of the ancient privileges attaching to the ancient village communities. You did wrong thereby. The village communities used to do a lot of work and enjoyed privileges; they saw to village medical relief, village sanitation and other things. Now, what have you done? You have parcelled the land out by survey—"here are your limits, you shall not go beyond those limits and you have no voice over communal matters. You have no voice over communal benefits at all". He may be the owner of half an acre of land. There are hundreds and hundreds of these villagers. If he is merely the owner of a house in a village, he is not made liable but it is only the owner of land that is made liable in this section. I say, Sir, this is an anachronism. I say it is a reflection cast on the landowner that this invidious distinction should be conferred upon the landowner to-day whereas other people are not subject to this burden.

[Rao Bahadur T. Rangachariar.]

By all means let the village headman, village accountant, village watchman, village police officer or any other person who receives salary—let him be made liable. Why should the landowner be made liable? I therefore move that these words which occur in this section 45 should be omitted. He is quite prepared to share the responsibility, as every other citizen, which section 44 impose upon every citizen. I move the amendment* as it stands in my name.

Mr. Deputy President: Amendment moved:

"In clause 10 (i) (a) before the word 'for' insert the following: 'the words 'owner or occupier of land and the agent of any such owner or occupier' shall be omitted and'."

Mr. P. E. Percival: My Honourable friend, Mr. Rangachariar, has put forward a humble motion, as it appears; but, as a matter of fact, it strikes at the root of whole rural administration in India. For years, landowners have been responsible equally with village officers and village servants. It seems to me that the Honourable Member is himself weakening the power of the landowner and of the village authorities, because where they have certain rights they have also certain duties, and this is one of the chief duties that the landowners always perform. It is nothing new. It was in the Code of 1872, in the Code of 1882, and in the Code of 1898. It has been there all through. There have been several Committees; Sir George Lowndes's Committee, the Select Committee, etc., and this question was not then raised. My Honourable friend brings it up as a new proposal at the last moment,—a matter of very great importance which will affect the whole administration of the country. I desire to point out that the Honourable Member refers to the ryotwari parts of the country. We have however to remember that the country is not all ryotwari. For instance, take the case of Sindh, of which I have some experience. They are all zemindars there and big landowners, and such landowners have very important duties in connection with the administration of justice and police administration; and I suppose it is very much the same in other parts of northern India. So you cannot entirely judge from southern India what is best in parts like Sindh or the northern portion of India, where the zemindars are very important personages and have not by any means lost either their rights or duties in connection with the administration of the country. I would also just like to point out, in regard to village officers, that, although the duty is cast on them, very often the village officer is about 6 miles away from where an offence is committed. Some of the villages in the southern part of the Bombay Presidency are very large, and offences are committed 6 or 7 miles away from where a village officer lives. In cases like that you cannot possibly have the matter brought to notice by the village headman or the village policeman or anyone else. Again the village policemen work very much under the orders of the zemindar, and it is strange that a village servant getting Rs. 10 a month should be taxed with an offence, while a big zemindar paying Rs. 10,000, or a smaller zemindar paying Rs. 1,000, should go scot-free. I submit that this is a subject of very great importance. It has never been proposed by any of these Committees up to this moment, and is brought forward at the last moment by my Honourable friend. The Honourable the Home Member has dealt with section 44, and section 45 is of a similar nature; and I suggest that the amendment should not be accepted by the House.

*"In clause 10 (i) (a) before word 'for' insert the following: 'the words 'owner or occupier of land and the agent of any such owner or occupier' shall be omitted and'."

Dr. Nand Lal: Sir, I dissociate myself from some of the remarks, which the Honourable Mover of this amendment had the courage to make, meaning thereby, that the landowners and their agents should be on premium when compared with tradesmen or commercial people. While dissociating myself from these remarks, I am yet in favour of the motion, that is, the main amendment. I think there is great force in it. According to section 44, which has already been passed, every person is responsible. Then, why is this additional responsibility thrust upon the shoulders of landowners? There is no justification for it. There is great force in the fact that a landowner, who is quite an ignorant man—perhaps he does not know at all whether any undesirable person lives in that village or stays on the land, which is owned by him—is being held responsible for not giving this sort of information. To my mind, this duty, which is considered by some of my Honourable friends to be a kind of power, is a very onerous duty, and this imposition of duty, to my mind, seems to be misplaced. Therefore I am in favour of this amendment and I appeal to this House that this amendment may be carried.

The Honourable Sir Malcolm Hailey: I am sorry that Dr. Nand Lal, with whom I thought myself in the fortunate position of being in agreement, has announced that though he disagrees entirely with Mr. Rangachariar's reasons, he nevertheless accepts his conclusions. I am more logical, for I differ both from his reasons and from his conclusions. I do not look at this section merely as an instance in which the landowner is singled out from his fellow-men and placed in the same category as a village officer. Let us look at it as a purely practical question. The reporting of offences is easy enough in towns. The police are near at hand; the person affected by a crime can as a rule speedily convey information to them; failing him somebody else is almost certain to do so. But in the villages where the police are not close at hand, where for the most part we have no responsible representative of law and order, where often such representative, if he exists at all, is only an ignorant village menial, it is, as I think everybody will admit, essential that some means should be provided of giving early information of crime? Obviously we can only effect this by placing responsibility on responsible persons resident in the village. That responsibility as Mr. Percival has pointed out has always lain, has never been resented and has never been objected to.

Rao Bahadur T. Rangachariar: By the dumb millions.

The Honourable Sir Malcolm Hailey: It is objected to for the first time by Mr. Rangachariar. There are many landowners in the Council of State; it is curious that this provision of the law was not objected to when the Bill came before it. We have many landowners here. No other landlord has entered any amendment objecting to this obligation. As a whole, landowners in this country, I think, value their position, value their responsibility, and are prepared to discharge this obligation. I shall give another reason why this obligation should be laid on them. Taking the country at large, it is the landowners in the villages who have most to suffer from a breakdown of law and order. It is the landowner as a rule who is first hit by dacoity or disorder involving crime. It is on these double grounds that the obligation has always lain on the landowner. It is not an unduly onerous one; it is long-standing; it is perfectly justifiable to maintain it.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): I wish to say a few words to clear up what seems to me to be the underlying

[Mr. J. N. Mukherjee.] principle of my friend, Mr. Rangachariar's amendment. This section 45, Criminal Procedure Code, Sir, it seems was framed at a time when, as has been pointed out to some extent by my Honourable friend, Mr. Rangachariar, the owners of land used to remain on their estates or on their lands. Circumstances, however, have changed considerably since then. The big cities are drawing away the landowners from their estates and under existing circumstances they are not likely to know all that happens on their lands, which they might know at a time when they used to reside on their estates. Now, instances are not unknown where landowners see things that may have taken place in their villages. Such cases have been ventilated in the newspapers, of which they have had no information. Therefore the section as it stands now is unduly extensive in its operation, as the landowner even if he is not in his village or on his land or estate, may be brought within the purview of section 45, quite unwarrantably. Under this sweeping section, any landowner,—not occupier—may be brought within its purview and operation for no fault of his own. It seems to me a very important point for consideration whether, in view of the fact that circumstances in India have changed considerably since these sections were enacted, and, inasmuch as ordinarily speaking, the owner of a large tract of land is not supposed to know what is going on in the locality in question, he should not be excluded from the operation of section 45. An obligation having been laid upon him, by section 45, to obtain information, he breaks the law if he does not obtain the information contemplated by the section. Nobody ought to say that the landlord should obtain the information contemplated by the section for the Government. He is however put within the four corners of section 45 of the Criminal Procedure Code for failing to obtain information, which a Magistrate might think he might obtain and under section 176 of the Indian Penal Code, he becomes punishable. Therefore, Sir, it seems that there is a great deal in the amendment proposed by my Honourable friend, Mr. Rangachariar. The present is a time of absentee landlords. That is true not only in India, but, it will be admitted, in other civilized countries, as well. We cannot tie up the landowners with their lands in the way in which section 45 proposes to tie them up. I therefore, Sir, beg to support my friend's amendment.

Bhai Man Singh: Sir, I also rise to support the amendment proposed by my Honourable friend, Mr. Rangachariar. The law as it stands is undoubtedly very defective; and the highest Courts also have thought it very stringent, and they have tried to loosen it by, what may be called, legal fiction. May I just read out an extract from one of the rulings:

"No doubt the words 'at or near such village' are not added but they must be evidently intended because the duty imposed of giving the information, etc., is intended to apply only when such occurrences take place at or near the villages".

A person is bound to give information if he owns land but residence in a house a village does not come within the meaning of this section. Now, Sir, really speaking, it is a very stringent duty placed upon every occupier of land; the Honourable Judges have tried to confine that duty to the rear vicinity of the village where his land is situated. Really speaking the opinion of the Judges of the High Court too is against the spirit of this section. If, Sir, we read the section itself, we see how vast this duty is. Under the section it is imposed upon the occupiers of land, etc., to give information as to the permanent or temporary residence of any notorious receiver of stolen goods, etc., also of the commission, or intention to commit, a non-bailable offence. Now, Sir, if you look into the list of

non-bailable offences under the Criminal Procedure Code, one would be simply surprised to see how anybody can take this onerous duty of giving information of the commission or the intention to commit any such offences. Similarly, Sir, you will see that, as my Honourable friend remarks, there is no reason why such onerous duty should be placed on independent landowners; why this differentiation and this imposition of duty on the zamindars. With all due deference to my learned friend, Dr. Nand Lal, why should there be any distinction between an occupier of land and any other citizen following any other profession in life.

Colonel Sir Henry Stanyon: Sir, I rise to oppose this amendment. I submit, with great respect for the opinions of those who have supported it, that these provisions of the Code have been mis-called a burden and a restriction. They involve a most important principle. They are in a way an aid to the growth and development of a public opinion against crime because it is crime, which, in the circumstances of India, is a most valuable asset. Speaking from a forensic and judicial experience, now extending over 42 years, I can go back to a time when unfortunately it could be said of this country that the public opinion against crime, as crime, was a weakling,—was not what it should be. If an offence was committed in a village, the general attitude of the village people towards it was that it was a matter between the accused, the police and the Government. It had nothing to do with them. When a respectable witness saw an offence being committed, his general procedure was to get out of the way as soon as possible so as to avoid having to give evidence in a Court of justice and elude trouble by the investigating police. That state of affairs is passing away. A strong public opinion against crime, as crime, is growing up, and my submission is that, far from these provisions being regarded as restrictions and a burden, they should be looked upon as a recognition of the honourable duty of all good citizens. It will be seen from section 45 that the burden which the onus of proof laid down in section 44 placed upon the people covered by it, is not included. All that the section wants is that, if any owner or occupier of land and the other people mentioned, have information, they shall give that information. Where is the burden? Where does the restriction come in? Surely, Sir, any Member of this House, who saw one of these serious offences being committed would feel it to be his duty, regardless of any provision of law, to go to the nearest police station, or whatever was the proper authority, to complain about it. Surely every Member is interested in the maintenance of order and obedience to law. If any of us saw one of these serious offences being committed before our eyes, or if we got anything like reliable knowledge of them, surely, if we had a proper feeling of citizenship and public opinion, we should be impelled, regardless of these provisions, to go and see that justice was done. That is all that this section provides. I think, the House should look at it in that way, remembering that in all the decades that this law has been in force there has not been a single case of the poor unfortunate owner of half an acre being dragged up for not reporting an offence. If the practice of this section is borne in mind, it will be seen that it would be a retrograde course to remove it now. We should invite people to help justice, to come forward with any information that they may receive of the commission of an offence. They should regard it as a privilege and the duty of citizenship to come forward and give information, and not look upon such assistance as either a restriction or a burden. With these few remarks, I venture to oppose the amendment.

Sir Henry Moncrieff Smith: Sir, I wish to refer briefly to one or two remarks that fell from my Honourable friend, Mr. Mukherjee. If I understood him rightly, he seemed to suggest that this obligation which is laid on the landlord was very suitable when this provision was enacted, but times have changed. This is the day of the big absentee landlord. How can you make him responsible? Well, in the first place I join issue with him in his statement that times have changed. In Northern India at all events there are innumerable petty holders of land who live on their land. This section does lay an obligation on them, an obligation which they can very easily fulfil. But apart from that, if there is a big absentee landlord, I do not find any obligation laid on him at all. In the first place he has got to be aware of the commission of an offence. If he is not there, he is obviously not aware of it. Secondly I would remind the House of what the Honourable the Home Member said when discussing section 44, viz., that a penalty only arises in cases where there is an intentional omission to report. Here it is exactly the same as in the case of section 44. It was suggested too by my Honourable friend that this provision puts a weapon of oppression and vindictiveness into the hands of the police. Well, that may be so, but if we are going to cut out from the Code of Criminal Procedure every provision that enables the dishonest policeman to attempt to make a little money, I am afraid there will be very little of the Code left on the Statute Book.

Sir Deva Prasad Sarvadhikary: Sir, may I be permitted to draw attention to the difference in language between sections 44 and 45 and also in the classes of offences covered by each section. Section 44 applies to a person 'if he is aware' of an offence. Section 45 applies to certain classes of persons 'who may obtain information' respecting certain other classes of offences. What is now attempted by the proposed amendment is to extend the scope of section 45 by introducing the word 'possess' in addition to the existing word 'obtain'. I do not know whether sufficient attention has been drawn to this matter. There is another matter to think about. Is this one of the matters with regard to which your ruling was necessary when we started the discussion? The Government amendment is for the purpose of changing the situation by adding to the word 'obtain' the word 'possess' because of certain Madras 'decision.' The amendment now before us touches the whole of the scope of the section, by deleting certain persons and classes of persons now within the purview of the section. I do not know how your ruling will go with regard to that. If the amendment is admissible, as it undoubtedly is, the word 'obtain' should stand out and the better and more comprehensive word 'possess' should be introduced. There is no amendment in that way.

The Honourable Sir Malcolm Hailey: We understood, Sir, that we were subsequently to discuss Mr. Seshagiri Ayyar's amendment regarding the words 'possess or obtain'; and that we were at present to discuss Mr. Rangachariar's amendment.

Sir Deva Prasad Sarvadhikary: Both these amendments cover what I am referring to. The existence of the word 'obtain' in section 44 does appear to be strongly objectionable from the point of view of Mr. Rangachariar, because a person has obligations cast upon him even if he is not aware of certain things and the objection would largely disappear if he is not obliged to have to 'obtain' information because he happens to have land. As Mr. Seshagiri Ayyar has pointed out, this section has a long history behind it. When the zemindary system became a part of the original organisation for British Indian administration in certain parts

of the country, certain duties were cast on zamindars in connection with policing, postal and road making arrangements and the section came in its present shape. The village chaukidar was entirely under the zemindar and the zemindar, as owner of the land as well as head of village organisation, was a powerful individual without whose assistance detection and prevention of crime would be, if not impossible, certainly difficult. Mr. J. N. Mukherjee has referred to the latterday absentee landlord and his woes. He had much sympathy wasted on him. He has no business to absent himself. When police duties have been otherwise dealt with, is it right that the landowner as such should be continued to be charged with obligations otherwise than an ordinary citizen. We have heard about police abuse. There is zemindar abuse also. This provision has been sometimes a powerful weapon in the hands of landowners who want to abuse it, by lodging information against unoffending but disagreeable neighbours, with regard to whom even the police would be normally powerless. There are therefore two sides to the question, and one cannot say that the landlord has not sometimes availed himself of this, to the detriment of his enemies. There is a well known story in Bengal about a powerful zemindar who had a weak neighbour in whose zemindary there was a murder. The neighbour in question disowned the zemindary to get rid of the immediate police trouble and the powerful man knowingly came in and said 'This is my zemindary and I will take the responsibility about the crime and will find out.' He thus laid the foundation of a title which secured him that zemindary ultimately. But these are abuses that need trouble us for the present, for things have changed considerably. We are interested in bringing sections 44 and 45 in a line and whatever citizen obligations there are should be of the same stamp and kind. If we later on agree that the word 'obtain' shall stand out, the objection that has been sought to be pressed home against section 44 by Mr. Rangachariar will stand.

Mr. B. C. Allen (Assam: Nominated Official): Sir, I think the Honourable Mr. Rangachariar and possibly the last speaker have supported this amendment under the impression that landowners and occupiers of land have been asked to discharge duties, for which there is fully competent machinery. The section as it stands is rather formidable. If the village headman, the village police officer, the village accountant and the village watchman are all bound to report offences, why should we trouble the landlords and raiyat to report? But as a matter of fact this high-sounding staff in real life comes down to very little. I have to mention that in the province of Bengal there are no village accountants, there are no village headman and the village watchman and the village police officer are the one humble individual, the village chaukidar. Everyone knows the village chaukidar occupies a humble position. Everyone knows he is not a wealthy man. Everyone knows he is a simple man. It is not obvious that supposing that an offence has been committed by an influential person in the village, the village chaukidar will have very strong inducements to say nothing in regard to that offence? Apart from this, the village chaukidar is not an ubiquitous person. Supposing a raiyat finds a corpse lying on his land. The chaukidar may know nothing about it. If this duty of reporting were not imposed upon the raiyat, the body would be left lying in the jungle. There may be presumptive evidence of murder, and yet, if this duty were removed, there will be no means by which the information can be brought to the notice of the authorities. Apart from this, Sir, as has been already pointed out, the law has been in force for very many years. The Bill has been under

[Mr. B. C. Allen.]

consideration for at least six years, and, as far as I am aware, amongst the immense mass of authority consulted, not a single person, not a single body has complained of these duties or responsibilities, which have been laid upon them. Now, Sir, I submit that the one thing that a legislative body should not do is to legislate *a priori*. In certain circumstances we have to act to some extent on a *priori* knowledge. We have no experience here. We are dealing with an Act of very long standing, an Act that is not occasionally brought into use but is being used every day, almost every hour, and we are proposing to alter it, without a request from any outside authority.

For this reason I venture to ask the House to turn down this proposal.

Mr. Jamnadas Dwarkadas: I rise, Sir, naturally with the diffidence of one who is a lay man and not a lawyer and therefore perhaps not quite competent to deal with a subject that seems to be rightly the monopoly of lawyers. However, I rise at the same time with the confidence, if I may say so, of a citizen who claims his rights and at the same time recognises his responsibilities. Now, what is the issue before us?—Mr. Rangachariar has moved an amendment to the effect that the responsibility that has hitherto devolved on the landowner or the occupier of land should now be removed from his shoulders and that the task of finding out a criminal or an would-be offender should be left entirely to those who are in authority. Mr. Rangachariar has made it a grievance, on behalf of the landowners themselves that they should be saddled with this responsibility. I have been at pains, Sir, to find out whether there is any grievance on the part of the landowners. If at all there is a grievance, it may be on the part of those who might fall victims to the devices of dishonest landowners who might make use of these powers vested in them to put others to trouble. (Rao Bahadur T. Rangachariar: 'There is no power.') Well, there is no doubt that this responsibility carries with it a certain amount of privilege. You can go to the villager and say to him 'Look here, if you don't do this, I am going to inform the authorities. I am called upon by my position here to go and inform the authorities and I shall give information against you.' If at all, it seems to be a privilege in favour of the landowner as against a villager. However, I have been at pains to think very carefully over this matter, and I feel from the point of view of the future to which we aspire at any rate, that it would be the proper thing to do to keep the clause as it is. For this reason, Mr. Rangachariar has, of course, tried to paint the picture of the ideal village community that we had in the past. I entirely agree with him on that point, that we had a wonderful system of village communities, the system of village *panchayats*, which, unfortunately, is now practically ruined. As one who wishes that this system should be restored at an early date, as one who is desirous of seeing this transitional stage go through very rapidly, and as one who wishes that self-government should be established in this country, I hesitate to deny the responsibilities that must come as a result of the achievement of freedom. Suppose you have self-government. You cannot then afford to have in every village a large number of chaukidars and a large number of officers who will, if they are left without assistance from certain sections of responsible people in the villages, find out criminals and offenders. You may have self-government, but you will not be able to remove crime altogether from this country; you will not be able to remove offences altogether from this country, and you cannot afford to engage officers,—all of us who are anxious about retrenchment—we cannot afford to engage

the services of officers and chaukidars even to the extent to which we now have to engage. Well, in that case on whose shoulders will the responsibility fall? If we want freedom, the responsible section among us should be prepared to face the responsibility that freedom necessarily brings with it, and therefore I feel that landowners being a section which has got a stake in the villages, which has got a certain amount of responsibility in the villages and which is considered to be a sensible and educated section in the villages ought to be prepared to take this responsibility of assisting the authorities in finding out criminals and offenders. They will thus secure the safety of the village and assist in keeping crime and offence far away from the village without throwing the burden of maintaining an efficient police and officers on the villagers themselves. I suppose, therefore, if we are aiming at self-government—at the restoration of village communities—it should be also our desire to see to it that those who hold a responsible position in the village, for instance, the landowners, should be prepared to bear responsibilities as citizens of the village.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is that Mr. Rangachariar's amendment* be made.

The Assembly then divided as follows:

AYES—29.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Chaudhuri, Mr. J.
Das, Babu B. S.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.

Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—43.

Abdul Majid, Sheikh.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

* Vide page 1052 of these Debates.

[15TH JAN. 1923.]

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 16th January, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 16th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

BIHAR AND ORISSA PROVINCE.

43. ***Mr. B. N. Misra:** (a) Has the attention of the Government been drawn to the Despatch of Lord Hardinge about the formation of the Bihar and Orissa Province in 1911? -

(b) Is the Government aware that Orissa had no affinity to Bihar and was attached to Bihar to offer an opening to the Province because Orissa had considerable facilities for sea ports?

The Honourable Sir Malcolm Hailey: The Government of India are acquainted with the despatch of Lord Hardinge's Government, dated the 25th August 1911. They are aware that in that despatch it was stated that it was believed that the junction of Orissa with Bihar would be welcome to Bihar as presenting a sea board to that province.

RAILWAYS AND PORTS IN BIHAR AND ORISSA.

44. ***Mr. B. N. Misra:** Has the attention of the Government been drawn to the Report of the Director of Industries, Bihar and Orissa, regarding his observations:

- (a) to extend the Amda-Jamda Railway line to further South;
- (b) to open a port at False Point in the Cuttack District;
- (c) and to join the said port to Cuttack by a railway line to facilitate trade in coal, iron and other products of Central India, Orissa and her Feudatory States?

The Honourable Mr. C. A. Innes: Yes.

PORTS ON ORISSA COAST.

45. ***Mr. B. N. Misra:** (a) Has the Government made any enquiries regarding the suitability or otherwise of opening a port at False Point or at any other place on the Orissa Coast?

(b) If so, will the Government be pleased to lay on the table of this House the result of such enquiries?

(c) If not, does the Government propose to make enquiries and take steps to open a port at False Point or at any other place on the Orissa Coast?

The Honourable Mr. C. A. Innes: The Devolution Rules distinguish between Major Ports which are the concern of the Government of India and Minor Ports which are controlled by Provincial Governments. There is at present no port in Bihar and Orissa of sufficient importance to be notified as a Major Port and any steps therefore which are to be taken to develop the ports in that Province must be taken by the Local Government and not by the Government of India.

Mr. Braja Sundar Das: Has the Government received the report of Mr. Arkwright who was deputed by the Local Government as a port expert to express his views on the opening of a port at False Point or any other place on the Orissa coasts?

The Honourable Mr. C. A. Innes: I cannot say offhand whether any copy of the report has been furnished to the Government of India, but as I have said, if such report has been made, it is for the Local Government to consider it in the first instance.

ASSISTANT INCOME-TAX OFFICERS, UNITED PROVINCES.

46. ***Haji Wajihuddin:** Will the Government be pleased to state how many Assistant Income-tax Officers were selected by the Selection Board, United Provinces and how many were nominated directly by the Local Government in the United Provinces during the year 1921-22 and how many of them belong to each community—Hindus, Muslims, Sikhs and Christians?

The Honourable Sir Basil Blackett: Nine Assistant income-tax officers were selected by the selection committee and appointed by the Government. Nine direct appointments were also made by the Government. They comprised

Hindus	9
Muhammadans	7
Indian Christian	1
Anglo-Indian	1

ASSISTANT INCOME-TAX COMMISSIONERS, UNITED PROVINCES.

47. ***Haji Wajihuddin:** How many Assistant Income-tax Commissioners, according to the scheme published in 1921 were to be appointed in the United Provinces and have all of them duly been appointed, and to which community do they belong? If all the appointments have not been made why are some of them lying vacant and when are they likely to be filled up?

The Honourable Sir Basil Blackett: Four posts of Assistant Commissioner were sanctioned by the Secretary of State. There are at present two vacancies. It is hoped to make a third appointment shortly. The fourth post will remain vacant as it is not required at present. The two Assistant Commissioners appointed are Hindus.

EXAMINATION OF ASSISTANT INCOME-TAX OFFICERS, UNITED PROVINCES.

48. ***Haji Wajihuddin:** When and under whose control was the first examination of Assistant Income-tax Officers in the United Provinces held and with what result?

The Honourable Sir Basil Blackett: The first departmental examination was held in October 1921 under the control of the United Provinces Central Examination Committee. I lay a copy of the result on the table.

EXAMINATION DEPARTMENT.

MISCELLANEOUS.

The 4th November 1921.

No. 224-Exam—8-21.—The undermentioned assistant income-tax officers are declared by the Central Examination Committee to have passed the departmental examination of junior officers held on the 24th October 1921, and following days in the subjects specified below:—

URDU.

Passed by the higher standard.

Babu Binoy Krishna Mukerji.	Babu Avatar Krishna.
Pandit Ram Narain Sharma.	Babu Banke Bihari Lal Kapur.

Passed by the lower standard.

Pandit Dina Nath Sapru.

HINDI.

Passed by the higher standard.

Babu Binoy Krishna Mukerji.	Babu Avatar Krishna.
Maulvi Niaz Ahmad.	Babu Sukhdarshan Dayal.
Saiyid Muhammad Murtaza.	Babu Dwarka Nath Drown.
Pandit Dina Nath Sapru.	Saiyid Abdul Hasan Rizvi.
Pandit Ram Narain Sharma.	Saiyid Mustafa Husain.
Mr. J. E. Edwards.	Babu Reoti Raman Bhargava.
Munshi Hafiz-ud-din Khan.	Babu Banke Bihari Lal Kapur.

Saiyid Bashir Husain.

Passed by the lower standard.

Mr. W. A. Hardie.	Babu Babu Lal Vaish.
	Saiyid Shafaat Husain.

MAHAJANI.

Passed by the higher standard.

Mr. J. E. Edwards.	Babu Dwarka Nath Drown.
Munshi Hafiz-ud-din Khan.	Saiyid Mustafa Husain.
Babu Sukhdarshan Dayal.	Babu Banke Bihari Lal Kapur.

Saiyid Bashir Husain.

Passed by the lower standard.

Babu Binoy Krishna Mukerji.	Babu Avatar Krishna.
Maulvi Niaz Ahmad.	Babu Babu Lal Vaish.
Pandit Ram Narain Sharma.	Saiyid Abul Hasan Rizvi.

INCOME-TAX LAW AND RULES.

Passed by the lower standard.

Mr. W. A. Hardie.	Babu Babu Lal Vaish.
	Babu Banke Bihari Lal Kapur.

BOOK-KEEPING.

Passed by the lower standard.

Mr. W. A. Hardie.	Babu Avatar Krishna.
	Babu Banke Bihari Lal Kapur.

PRACTICAL TEST.

Passed by the higher standard.

Mr. W. A. Hardie.	Babu Babu Lal Vaish.
	Babu Sukhdarshan Dayal.

Passed by the lower standard.

Maulvi Niaz Ahmad.	Saiyid Abul Hasan Rizvi.
Pandit Ram Narain Sharma.	Babu Dwarka Nath Dhown.
Mr. J. E. Edwards.	Saiyid Mustafa Husain.
Babu Banke Bihari Lal Kapur.	

RIDING.

Mr. W. A. Hardie.	Babu Binoy Krishna Mukerji.
Babu Sukhdarshan Dayal.	Pandit Dina Nath Sapru.
Maulvi Niaz Ahmad.	Mr. J. E. Edwards.
Babu Dwarka Nath Dhown.	Pandit Ram Narain Sharma.
Sd. Md. Murtaza.	Babu Avatar Krishna.
Saiyid Mustafa Husain.	Babu Banke Bihari Lal Kapur.
Babu Babu Lal Vaish.	Saiyid Shafaat Husain.
Saiyid Abul Hasan Rizvi.	

By order, etc.,

T. SLOAN,

Secretary, Central Examination Committee,
United Provinces.

EXAMINATION OF ASSISTANT INCOME-TAX OFFICERS.

49. ***Haji Wajihuddin:** (a) When and under whose control did the second examination of Assistant Income-tax Officers in the United Provinces take place and how were the successful candidates of each community disposed off?

(b) Is it true that one of the successful candidates was declared (by a responsible officer) to be appointed to Dehra Dun before the result of the examination was out?

(c) To what extent is it true that after the second examination was over, one of the high officers of the Income-tax Department, United Provinces, in contemplation of his being appointed the head of the Department under the Income-tax Act of April, 1922, collected all the young officers before him and said, "Mind that I shall be all in all from April next and that you people having no other opening like Deputy Collectors must be very careful" and that he lectured to certain Mohamedan officers individually that they would make good executive officers instead of entering into the Income-tax Department which was meant for the Hindus, especially "Vaishes"?

The Honourable Sir Basil Blackett: (a) The second departmental examination was held in March 1922 under the control of the United Provinces Central Examination Committee. A copy of the result is laid on the table.

(b) The officer in question was transferred to Dehra Dun as assistant income-tax officer, a position which he held at Cawnpore prior to the examination and, when the result of the examination has been declared, was appointed by the Local Government to be income-tax officer.

(c) No such language as that described in the question was used.

EXAMINATION DEPARTMENT.

MISCELLANEOUS.

The 16th March 1922.

No. 57-Exam.—The undermentioned Assistant Income-tax Officers are declared by the Central Examination Committee to have passed the departmental examination of

junior officers held on the 6th March, 1922, and following days in the subjects specified below:—

URDU.

Passed by the higher standard.

Pandit Dina Nath Sapru.

HINDI.

Passed by the higher standard.

Mr. W. A. Hardie.

Babu Babu Lal Vaish.
Saiyid Shafaat Hussain.

MAHAJANI.

Passed by the higher standard.

Babu Binoy Krishna Mukerji.
Maulvi Niaz Ahmad.
Saiyid Muhammad Murtaza.
Pandit Dina Nath Sapru.
Mr. W. A. Hardie.

Pandit Ram Narain Sharma.
Babu Babu Lal Vaish.
Babu Avatar Krishna.
Saiyid Abul Hasan Rizvi.
Babu Reoti Raman Bhargava.

INCOME-TAX LAW AND RULES.

Passed by the higher standard.

Mr. W. A. Hardie.
Babu Babu Lal Vaish.
Babu Avatar Krishna.

Babu Sukhdarshan Dayal.
Saiyid Abul Hasan Rizvi.
Babu Banke Bihari Lal Kapur.

Passed by the lower standard.

Pandit Dina Nath Sapru.
Pandit Ram Narain Sharma.

Mr. J. E. Edwards.
Saiyid Mustafa Husain.
Babu Reoti Raman Bhargava.

BOOK-KEEPING.

Passed by the higher standard.

Mr. W. A. Hardie.
Babu Babu Lal Vaish.

Babu Sukhdarshan Dayal.
Babu Reoti Raman Bhargava.
Babu Banke Bihari Lal Kapur.

Passed by the lower standard.

Babu Binoy Krishna Mukerji.
Saiyid Muhammad Murtaza.
Pandit Dina Nath Sapru.
Pandit Ram Narain Sharma.

Mr. J. E. Edwards.
Babu Avatar Krishna.
Babu Dwarka Nath Dhown.
Saiyid Abul Hasan Rizvi.

PRACTICAL TEST.

Passed by the higher standard.

Babu Binoy Krishna Mukerji.
Pandit Ram Narain Sharma.
Mr. J. E. Edwards.

Babu Avatar Krishna.
Saiyid Abul Hasan Rizvi.
Saiyid Mustafa Husain.
Babu Banke Bihari Lal Kapur.

Passed by the lower standard.

Maulvi Niaz Ahmad.
Pandit Dina Nath Sapru.
Munshi Hafiz-ud-din Khan.

Babu Dwarka Nath Dhown.
Babu Reoti Raman Bhargava.
Saiyid Bashir Husain.

RIDING.

Munshi Hafiz-ud-din Khan.

Saiyid Bashir Husain.

ASSISTANT COMMISSIONER, INCOME-TAX, MEERUT.

50. *Haji Wajihuddin: Is it a fact that a civilian was appointed to the post of an Assistant Commissioner in December, 1921 who was called back after a short time, that no one has been appointed in his place as yet and that the staff is still lying idle at Meerut? If so, why was one of the seniormost Income-tax Officers not promoted to fill up the vacancy?

The Honourable Sir Basil Blackett: The answer to the first part of the question is in the affirmative. No staff is lying idle at Meerut. The posts of Assistant Commissioners have only been gradually filled up as competent men became available. These posts carry great responsibility and are not automatically filled up on the basis of seniority.

POPULATION OF MEERUT.

51. *Haji Wajihuddin: Will the Government be pleased to lay on the table a statement showing the civil population of each community in each Bazar of Meerut Cantonment respectively?

Mr. E. Burdon: In order to obtain the information desired by the Honourable Member, it would be necessary to carry out a special census at considerable expense, and this could not be justified.

Only the total population of each bazar is known. The figures according to the census of 1921 are:—

Sadar bazar	11,840
British Infantry bazar	8,499
British Cavalry bazar	8,926
Royal Artillery bazar	1,476

WHARFAGE CHARGES ON FIRE ARMS.

52. *Haji Wajihuddin: (a) Will the Government be pleased to lay on the table a statement showing rates of wharfrage charges recovered by the Port Trusts at Bombay, Calcutta, Karachi and Madras, respectively on Fire Arms, Percussion Caps and shot, also the reason of difference in rates?

(b) Do the Government propose to consider the advisability of fixing universal rates in all the Indian Ports?

The Honourable Mr. C. A. Innes: The information is being collected and will be supplied to the Honourable Member on receipt. It may be mentioned that under the various Port Trusts Acts the legal responsibility for fixing wharfrage charges rests with the Port Trusts and the different Local Governments and not with the Government of India.

PURCHASE OF QUININE AND CINCHONA BARK.

53. *M. K. Reddi Garu: Will the Government be pleased to state—
(a) If it is a fact that the Government of India have been purchasing or negotiating for the purchase of large stocks of quinine and cinchona bark?
(b) If so, in what market and by what agency are these arrangements made?

Mr. J. Hullah: (a) Yes.

(b) Purchase of cinchona bark and quinine are made in Java and arrangements for these purchases were made by the Secretary of State

for India who executed agreements with Messrs. Howards of London and with a combine of Dutch Manufacturers for the purchase of cinchona bark and quinine sulphate respectively.

QUININE AND CINCHONA BARK.

54. *M. K. Reddi Garu: (a) Will the Government be pleased to put on the table a statement showing for each year since the inception of the scheme:

- the quantity of quinine actually received and the amount paid or payable for the same in rupees per lb.;
- the quantity of cinchona bark received and the amount paid or payable?

(b) Will the Government of India be pleased to furnish a statement showing what further quantities, if any, of quinine and cinchona bark are deliverable under existing contracts and the price?

(c) Do the prices above referred to include the cost of delivery in India?

(d) What is the present stock of Government of India quinine (including quinine in bark form)?

(e) Is it the intention of the Government of India to increase this stock by further purchases and, if so, up to what limit and at what estimated cost?

Mr. J. Hullah: (a) The information required is as follows:

(i) Quinine Sulphate.

Year.	Quantity received.	Amount paid.
	Lbs.	Rs.
1921-22	52,910.4	20,78,763
1922-23	26,435.2*	8,75,601
Total	79,345.6	29,55,364

*Up to end of December 1922.

(ii) Cinchona Bark.

Year.	Net weight of bark in lbs.	Amount paid.
		Rs. A. P.
1920-21	85,213	... †
1921-22	1,482,890	1,88,959 10 8
1922-23	653,186	1,11,833 8 8
Total	2,221,379	3,00,793 3 4

†Payment for bark received in 1920-21 was made in 1921-22.

(b) and (c). Quinine and Cinchona bark are being purchased under the following two contracts:

(i) *Contract with Howards*.—This agreement came into force in July 1920 and will expire in 1928. It provides for an annual supply of cinchona bark sufficient to produce a maximum of 37,500 kilos (82,500 lbs.) and a minimum of 6,666 kilos (14,665 lbs.) of quinine sulphate. The actual quantity to be supplied during a year varies according to the amount of bark supplied to Messrs. Howards by the producers in Java. The price also varies with the price to be paid by Messrs. Howards to the producers. It is payable in London in sterling and does not include the cost of delivery in India.

(ii) *Contract with the Java Combine*.—This agreement provides for the supply of 60,000 kilos of sulphate during the years 1921 to 1923, after which it will come to an end. The quantity to be supplied each year is 20,000 kilos (44,000 lbs.). 30,000 kilos had been received up to the end of September 1922, leaving 30,000 kilos still to be delivered.

The price payable is the official London quotation of the Kina Bureau, Amsterdam, minus 10 per cent. The price is *c.i.f.* Calcutta payable in rupees at the current rate of exchange. According to our latest information this works out to about Rs. 24-6-0 per lb., after deducting the 10 per cent., and with the rupee at 1s. 4d.

(d) The stock of Government of India quinine, including quinine in bark form was 293,172,794 lbs. on 22nd December 1923.

(e) It is not the present intention of Government to make any further purchases of quinine or bark over and above the quantities provided for in the agreements already referred to.

PRICE OF QUININE.

55. ***M. K. Reddi Garu**: Will the Government of India be pleased to state whether any loss will accrue on the purchase of quinine in respect of the quinine purchased, and if so, how much, if the Government of India sell at to-day's wholesale price in India?

Mr. J. Hullah: The price charged for quinine issued from Imperial stocks is the same as that fixed by the Governments of Madras and Bengal from time to time for supplies from their Provincial stocks. These prices are based on the current rates quoted for Howards quinine in the open market. The present price is Rs. 27 per lb. Sales of quinine from Imperial stocks during the two years 1919-20 (there were no sales prior to that year) and 1920-21 resulted in a net profit of Rs. 4,12,300 to the Central Government. There were no issues from Imperial stocks during 1921-22. During the two years 1922-23 and 1923-24 allowing for an anticipated demand of 10,000 lbs., per annum and a fall in price during the latter year from Rs 27 to Rs. 20 per lb., it is estimated that a net profit of about Rs. one lakh will accrue. It should be understood that the object of Government in making these purchases of foreign quinine and bark was to build up a reserve of quinine sufficient for India's needs in all emergencies and not for the purpose of making as big a turn over and as big a profit as possible in as short a time as possible. It is quite impossible to say at present whether these transactions will ultimately result in a profit or loss to Government as this will depend entirely upon the course of prices.

QUININE AND CINCHONA.

56. ***M. K. Reddi Garu**: Will the Government be pleased to state—

- If the Government of India before deciding to accumulate stocks, consulted the Governments of Bengal and Madras regarding provincial resources in the matter of quinine supplies?
- If it is a fact that the Government of India have undertaken from the funds of the Central Government a large scheme for growing cinchona bark in Tavoy in Burma?
- If so, will the Government of India be pleased to state the object of this scheme?

Mr. J. Hullah: (a) No. The plantations in Bengal and Madras are unable to supply the normal demand for quinine in India, still less to build up a reserve, and the Government of India have therefore taken steps to build up the reserve of quinine stocks which had been depleted by the war.

(b) Yes.

(c) The scheme for the establishment of large cinchona plantations in Burma was undertaken in consequence of a suggestion of the Home Government made during the war that the Government of India should examine the possibilities of extending the cultivation of cinchona and increasing the production of quinine within the Indian Empire on a scale sufficiently large to meet the future needs of the British Empire and the Allied countries. About 5th of the quinine consumed in the Empire is obtained from foreign sources. The Department of Public Health has advocated that malaria should be fought throughout India by active propaganda advocating the use of quinine and by the supply of quinine at reasonable cheap rates and has pointed out that if the population of India were to use quinine on the scale reached in Italy their consumption would exhaust the whole existing world production. In most of the provinces cinchona cannot be grown, and even if it could, it is more economical to grow it on a large scale. The Government of India therefore regard the provision of adequate supplies of quinine as a matter of first-rate importance, and for this reason they have started the new plantations in Burma.

REPRESENTATION OF COMMUNITIES IN THE PUBLIC SERVICES.

57. ***M. K. Reddi Garu**: Has the attention of the Government been drawn to the General Orders Nos. 613 and 658-Public of the Government of Madras, regarding the appointment of various communities not already adequately represented in the Public Services; and do this Government propose to consider the advisability of giving effect to the said General Orders as far as the Presidency of Madras is concerned, with reference to Services directly under the Government of India?

The Honourable Sir Malcolm Hailey: Yes.

The conditions contemplated by the orders quoted are radically different from those of the services under the direct control of the Government of India and the Government of India do not consider it practicable to adopt the course suggested in the question.

EXPENDITURE ON SALT FOR FISH CURING.

58. ***Mr. Manmohandas Ramji**: Will the Government be pleased to state:

- why the expenditure of Rs. 1,31,000, as stated in demand for grant No. 3, under the heading "Charges in connection with

export, import, etc., of salt for fish curing purposes", in page 17 of the detailed estimates and demands for grants for 1922-23, is incurred;

(b) what the income against this expenditure is;

(c) how the income is derived; and

(d) if the cured fishes are sold, whether they are sold in India or abroad?

Mr. A. H. Ley: (a) The item of Rs. 1,31,000 is the budget estimate of the Central Government's share of the expenditure incurred in transporting salt from the factories to the fish-curing yards, where it is utilized in the fish-curing industry.

(b) and (c). The salt is sold to the fish-curers at a uniform rate of 10 annas per maund, the whole of the sale proceeds being credited to imperial revenues. The income on this account varies from year to year in accordance with the quantity of salt taken by the fish-curers; the estimated receipts for the current year are Rs. 1,63,000.

(d) The cured fish are the property of the curers and are sold both in India and abroad. Government has no information as to the local consumption, but understands that in the year 1921-1922 some 15,800 cwts. were exported coastwise and 172,400 cwts. to foreign countries.

APPOINTMENTS TO MEDICAL SERVICE IN INDIA.

59. ***Mr. T. V. Seshagiri Ayyar:** (a) Will the Government be pleased to state how many new appointments were made recently to the Medical service in India without the candidates undergoing any examination in that behalf?

(b) Will the Government be pleased to state the terms on which such appointments were made? Will the Government be pleased to lay on the table of the House a copy of a contract or letter of appointment, if any, in connection with these appointments?

Mr. E. Burdon: It is presumed that the Honourable Member's question refers to the Medical Service. If so, the answer is as follows:

(a) The number of new appointments made in the Indian Medical Service by nomination in the last 2 years is:—
1921 . . . 27; 1922 . . . 19.

(b) I will furnish the Honourable Member with a copy of the 'Regulations for the appointment of candidates to His Majesty's Indian Medical Service.' A copy of the 'letter of appointment' which is issued to those granted permanent commissions in the Indian Medical Service, is placed on the table.

From—The Director-General, Indian Medical Service.

I have the honour to inform you that the Right Hon'ble the Secretary of State for India has approved your appointment to a permanent commission in the Indian Medical Service, which will bear the date of this letter.

You are requested to complete and forward to this office, three copies of India Army Form Z-2041, forwarded herewith.

It should be distinctly understood that not having undergone the usual probationary course, you will not be permitted to remain in the service, if as the result of any course of instruction on probation which may be arranged for you, your retention is considered undesirable (*vide* page 6, paragraph 6, of Memorandum attached to the regulations applying to the Indian Medical Service.)

Mr. T. V. Seshagiri Ayyar: A supplementary question, Sir. The Honourable Member would remember that yesterday I asked him whether any of these men would supersede the men from the Provincial Service who had been put to act in the Imperial Service. Is he in a position to give the information to the House now?

Mr. E. Burdon: Not at the moment. I will furnish the Honourable Member with the information in the course of the day.

CONSTITUTIONAL REFORMS IN INDIA.

60. ***Mr. T. V. Seshagiri Ayyar:** (a) Will the Government be pleased to state what action was taken on the resolution of Rai Bahadur Muzoomdar, C.I.E., about further constitutional reforms in India?

(b) Were the resolution and copies of the speeches made on the occasion forwarded to the Secretary of State for India as promised at the time of the discussion?

(c) Did the Government forward any recommendations of their own with reference to the resolution?

(d) Has any reply been received from the Secretary of State for India on the subject?

(e) Would Government be pleased to lay on the table of the House all the papers connected with the subject?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the reply given by me on behalf of Sir William Vincent to Mr. Chaudhuri's question No. 231, dated the 7th September 1922, on the same subject and to the reply given by Sir William Vincent to Mr. Kamat's question No. 127 on the 16th January, 1922. The Secretary of State's despatch which has now been received by the Government of India will be laid on the table of this House on the 24th instant.

Mr. T. V. Seshagiri Ayyar: May I ask a supplementary question, Sir? Will the Honourable the Home Member be good enough to lay on the table of the House the despatch from the Government of India to the Secretary of State in respect of this Resolution? That is also one of the questions.

The Honourable Sir Malcolm Hailey: There was no despatch. The Resolution was merely forwarded to the Secretary of State.

OPIUM CHARGES.

61. ***Mr. Manmohandas Ramji:** Will the Government be pleased to lay on the table the details for the following items of expenditure, contained in demand No. 4, "Opium", in the detailed estimates of demands for grants for 1922-23:

- (1) Travelling allowance of Rs. 1,27,000, under District staff,
- (2) Tour charges of Rs. 15,000, under the same heading,
- (3) Travelling allowance of Rs. 10,000, under the heading "Opium Research Laboratory"?

The Honourable Sir Basil Blackett: A statement is laid on the table giving the details asked for:

	Rs.
(1) (a) Travelling allowance of officers	56,000
(b) Travelling allowance of establishment	71,000
Total	1,27,000

Note.—The amount represents the ordinary charges incurred when travelling on duty in districts as well as the cost of transfers.

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to my reply to his question No. 63 on the same subject.

SUPREME COURT IN INDIA.

65. ***Dr. H. S. Gour:** (a) Has the Government now considered the opinions of the Local Governments and the High Courts on the necessity of a Supreme Court in India?

(b) If so, have the Government formulated their views on the subject?

(c) And what action do they propose to take thereon?

The Honourable Sir Malcolm Hailey: The opinions are still under consideration but if the Honourable Member repeats his question later in the Session I may be able to supply him with more information.

ASSISTANT SECRETARIES AND REGISTRARS.

66. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state what the duties of the Assistant Secretaries and the Registrars, in the different departments of General Administration in the Government of India, are?

The Honourable Sir Malcolm Hailey: A detailed statement giving the information asked for by the Honourable Member has been prepared and will be supplied to him separately.

ADVISER TO LABOUR BUREAU.

67. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state what the duties of the Adviser to the Labour Bureau, in the Department of Industries, are?

Mr. A. H. Ley: The appointment of the Adviser (Labour Bureau) in the Department of Industries will be, as a measure of retrenchment, abolished on the termination of a short period of leave that has been granted to the present incumbent.

ECONOMIES IN STATIONERY AND PRINTING.

68. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

(a) what the result is of the enquiry made by the officer who investigated into the economies that could be effected under Stationery and printing?

(b) what the total amount of annual saving effected is, if any?

(c) whether the officer has made any report or recommendation, and

(d) if he has, will the Government be pleased to lay on the table a copy of the same?

Mr. A. H. Ley: (a) Mr. F. D. Ascoli, I.C.S., who was placed on special duty for six months to examine all possible avenues of economy in the expenditure of the Central Government on stationery and printing has made various suggestions for the control of the issue of stationery and forms, the curtailment of the printing work of Government Departments and the re-organisation of the Government of India presses.

Effect has already been given to some of his proposals and others are still under consideration.

(b) The total amount of annual saving that he expects to result from his proposals has been estimated at approximately Rs. 23½ lakhs but until some experience has been gained of the working of his schemes it cannot be said how far this estimate is correct.

(c) and (d). Mr. Ascoli has furnished Government with a number of detailed reports dealing with the different subjects which he had under examination. As they are very voluminous, Government do not propose to lay a copy of them on the table of the House, but I shall be very glad to show them to the Honourable Member.

OPINIONS ON O'DONNELL CIRCULAR.

69. ***Mr. Jamnadas Dwarkadas:** Will the Government be pleased to state whether the opinions of all the local Governments have been received on the O'Donnell Circular issued by the Government of India as a result of the resolution moved by myself in February last and what further action it is proposed to be taken to give effect to the recommendation contained therein?

The Honourable Sir Malcolm Hailey: The replies of all the Local Governments have not yet been received but it is expected that all replies will soon be complete and Government intend taking up the case without delay.

Mr. Jamnadas Dwarkadas: Are the replies of the Local Governments likely to be received while this Assembly is in session? If so, will the Government lay the replies on the table?

The Honourable Sir Malcolm Hailey: As regards the first part of the Honourable Member's question, the Honourable Member might perhaps get more certain information from the local Governments who will send the replies, than from us who receive them. I cannot say at this stage whether they will be laid on the table or not. I must remind the Honourable Member that it was a confidential circular addressed to local Governments; he may draw some indications from that reply of how far it is possible that the replies should be laid on the table.

Mr. Jamnadas Dwarkadas: One more question. The Circular was sent as a result of a Resolution moved in the Assembly, and the amendment suggested by the Honourable Home Member was accepted on the ground that the opinions of the local Governments should be invited; and I thought that they should be made known to the Members of the Assembly.

The Honourable Sir Malcolm Hailey: It does not necessarily follow. However, as I have told the Honourable Member, I can give no definite reply; and I hope that he will not at this stage of the proceedings try to bind me down to any definite course of action. Such action can of course only be settled after due consideration by the Government of India when the replies have been received.

SHIPPING COMMITTEE—NON-APPOINTMENT OF.

70. ***Mr. Jamnadas Dwarkadas:** (a) Are the Government aware that considerable dissatisfaction has been produced as a result of the non-appointment of a Shipping Committee this cold weather in spite of the fact that

a resolution on the subject was moved so early as January by Sir Sivawamy Aiyer and accepted by the Government?

(b) Will they be pleased to state whether it is still their intention to carry out this recommendation at an early date?

The Honourable Mr. C. A. Innes: (a) As the Honourable Member knows a supplementary grant was necessary and it was obtained last September. Since then considerable difficulty has been experienced in getting gentlemen to serve on this Committee.

(b) I hope to be able to make an announcement in the course of the next few days.

Mr. K. Ahmed: (Inaudible.)

The Honourable Mr. C. A. Innes: Will the Honourable Member repeat his question. I did not catch him.

Mr. K. Ahmed: (Inaudible.)

The Honourable Mr. C. A. Innes: I am afraid I must ask the Honourable Member to put his question in writing.

MR. KEATINGE'S DISSENT TO REPORT OF BRITISH GUIANA DEPUTATION.

71. ***Mr. Jamnadas Dwarkadas:** (a) Will the Government be pleased to state whether it is a fact that Mr. Keatinge's minute of dissent to the report of the British Guiana Deputation was sent direct to the Government of India and not, as in the usual manner, through the Chairman of the Deputation?

(b) If the answer to (a) be in the affirmative, will they be pleased to explain whether there were any special circumstances to justify this departure from normal procedure?

Mr. J. Hullah: (a) Mr. Keatinge has neither signed the Report drafted by his Indian colleagues nor written a minute of dissent. He has submitted a separate minority report to the Government of India through the India Office.

(b) His reasons for adopting this procedure were as follows. In spite of the instructions of the Government of India that in order to prevent delay and facilitate agreement the Indian members of the delegation should remain in England till the report had been drafted and signed. Diwan Bahadur Kesava Pillai and Mr. Tewari left the country without even agreeing to draw up and sign a Memorandum of conclusions as a basis on which the report could be drafted. A draft report was prepared by the Indian members in this country and forwarded by them in September to Mr. Keatinge for signature with a request that he would make any corrections or suggestions of a verbal nature and append any notes of dissent that he wished to write. Mr. Keatinge found that there were many statements and opinions with which he could not agree. Owing to the impossibility of conferring personally on the points at issue, he declined to sign the report. During the period of six months which elapsed between the departure of the deputation from British Guiana and his receipt of the draft report, Mr. Keatinge, who was due to leave England for Rhodesia in October, prepared, with the approval of the India Office an independent report, while the results of the enquiry were fresh in his memory, for use in case he should find himself unable to sign the main report. It is this report that he has now submitted to the Government of India.

Mr. Jamnadas Dwarkadas: Can the Honourable Member cite a precedent where a member of a Commission has submitted a minute of dissent without letting it go through the Chairman of the Commission?

Mr. J. Hullah: I cannot recall any instance.

DOOR-KEEPER IN BOMBAY PORT ESTABLISHMENT.

72. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state why is it found necessary to maintain one European Door-keeper in the Bombay Port Establishment?

The Honourable Mr. C. A. Innes: The Government of Bombay consider that a European Door-keeper is absolutely essential. Hundreds of seamen, European, African and Indian attend the office daily and are not easy to control. In fact when the late incumbent of the post died and before the vacancy was filled, the police had constantly to be called in to keep order.

DRAWING OFFICE, GOVERNMENT OF INDIA SURVEY.

73. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

(a) why six European Draftsmen are maintained in the Drawing Office at Simla, under the Government of India Survey?

(b) whether there is any difficulty in obtaining Indians to do those duties?

Mr. J. Hullah: (a) Six British non-commissioned officers have been maintained in the Drawing Office at Simla since 1911, when this section was transferred to the Survey of India from the General Staff Branch, because they were found to be in regard to quality of outturn, the cheapest agency available. The technical skill of Indian ex-soldier surveyors is not sufficiently high to enable them to turn out work of the standard demanded with the rapidity of execution which is essential to military requirements.

(b) The question of employing either Indian ex-soldier surveyors or Indian members of the Survey of India in this Office is again under consideration, and one post of European draftsman, which has fallen vacant has been kept unfilled pending a decision.

COUNCIL CHAMBER, LUCKNOW.

74. ***Lala Girdharilal Agarwala:** (a) Have the Government noticed a paragraph in the *Pioneer* of Allahabad, dated 30th November, 1922, at page 1, column 3, regarding the Council Chamber at Lucknow, the foundation of which is proposed to be laid by His Excellency the Governor of the United Provinces on the eve of his departure?

(b) Have the Government any power of control over Provincial Governments in such a case?

(c) If the reply be in the affirmative, will the Government be pleased to state what action if any, have they taken or propose to take in the matter?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) and (c) The expenditure of funds on the erection of a Legislative Council Chamber is expenditure on the transferred subject of Public Works

and the question is therefore one for the local Government and its Legislative Council to determine. I would invite a reference by the Honourable Member to the powers of control vested in the Governor General in Council in relation to transferred subjects which are retained by Devolution Rule 49.

ALLOCATION OF EXPENDITURE ON INDIA OFFICE.

75. ***Mr. K. C. Neogy:** (a) Will Government be pleased to state the details of the allocation of expenditure on the India Office, between India and the British Treasury, under the Government of India Act, 1919?

(b) Is it a fact that it was arranged that for a period of five years from the 1st April, 1920, the British Treasury should make to the India Office an annual lump sum contribution of £136,000 in addition to the salaries of the Secretary of State and the Parliamentary Under-Secretary, making a total of £142,500 per annum?

(c) Is it a fact that, as stated at page 96 of the Second Interim Report of the Committee on National Expenditure (Geddes Committee), in spite of the said arrangement, India has voluntarily offered to accept a reduced grant of £120,000 for 1922-23, and this offer has been accepted?

(d) If answer to clause (c) be in the affirmative, will Government be pleased to state when and on what grounds was this offer made on behalf of India, and to lay on the table a copy of the communication addressed to them in conveying the said offer?

The Honourable Sir Basil Blackett: Before I answer this question, I should like, with your leave and with the leave of the House, to express my sincere thanks for the very kind and flattering welcome which was extended to me yesterday. I should not have myself let 24 hours elapse had I realized that none of my questions would be reached yesterday. It is a great encouragement to be received in your midst as I was received yesterday, but my natural optimism, great as it is, will not rise to the idyllic picture of every Member of the House agreeing with every other Member and with the Finance Member on revenue and expenditure, or of a Finance Member who is loved by all. Nonetheless I look forward with great pleasure to sharing the labours of this House with them and facing with them the many financial problems which confront India at the present time: and I take the words that were spoken as an augury that, while we may sometimes perhaps differ after all on some points of detail, we shall all work together with one object, that is, to serve India.

(a) and (b) The arrangements under section 30 of the Government of India Act are as follows:

- (1) The salaries of the Secretary of State and the Parliamentary Under Secretary, amounting to £6,500 a year are borne by His Majesty's Treasury and included in the Home Civil Service vote.
- (2) The Treasury makes to the India Office an annual contribution equivalent to that part of the total estimated cost of the India Office (exclusive of the salaries of the Secretary of State and the Parliamentary Under Secretary) which is attributable to the administrative, as distinct from the agency, work of the Office.
- (3) Of this annual contribution, a sum of £40,000, which the Treasury was contributing towards the cost of the India Office

previous to the Government of India Act of 1919, in accordance with the recommendations of the Welby Commission, does not take the form of a direct payment, but has been indirectly allowed for in adjustments between the two departments in respect of certain divisible charges.

The direct contribution by the Treasury, i.e., exclusive of the salaries of the Secretary of State and the Parliamentary Under Secretary and of the indirect contribution of £40,000 was fixed in 1920 at £90,000 a year for the period of five years from 1st April, 1920. It was subsequently raised with the concurrence of the Treasury to £136,000 a year. Contributions were made at the latter rate for the years 1920-21 and 1921-22.

(c) and (d) In pursuance of their policy of retrenchment in public expenditure the Treasury asked in 1921 that the above agreement should be modified in view of the reduction then anticipated in the cost of the India Office, as compared with the cost on which the contribution was previously fixed. The Secretary of State agreed to accept a contribution of £113,500 per annum (exclusive again of the salaries of the Secretary of State and the Parliamentary Under Secretary and of the indirect payment of £40,000) for 1922-23, 1923-24 and 1924-25 on the Treasury undertaking that no further reduction would be pressed for. The latest estimates for 1922-23 show that the direct contribution should have been about £122,000 for that year, the economy and reduction of staff anticipated by the India Office not having been fully realised. The provisional estimate of India Office expenditure for 1923-24 shows, however, a reduction of £20,000 in the above figure and this, together with the anticipated further reduction in 1924-25, should enable the deficiency in the contribution for 1922-23 to be fully recouped.

GRANTS REJECTED BY LOCAL LEGISLATIVE COUNCILS.

76. ***Mr. K. C. Neogy:** With reference to the answer to my starred question No. 40 of the 6th September, 1922, will Government be pleased to state the result of their examination of the extent of the authority of the Governor General in Council to instruct a Governor in regard to the exercise of his statutory powers for the restoration of grants rejected by the local Legislative Council?

The Honourable Sir Malcolm Hailey: The matter is still under consideration.

BILL RELATING TO EMPLOYMENT OF FIREARMS FOR DISPERSING ASSEMBLIES.

77. ***Mr. K. C. Neogy:** Will Government be pleased to state their intention with regard to the "Bill to provide that, when firearms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances be given", which was passed by the Council of State on the 19th September, 1921, withdrawn from the Legislative Assembly on the 26th September, 1921, and stated by Sir William Vincent on the 6th February, 1922, to be still under consideration of Government?

The Honourable Sir Malcolm Hailey: The Bill has been withdrawn because further examination has shown that it is not possible to provide satisfactorily by legislation for a principle which has hitherto been regulated by executive orders not only in India but also in England.

Mr. K. Ahmed: Is it a fact that in England 24 hours before firing takes place a proclamation is read that the mob must disperse?

The Honourable Sir Malcolm Hailey: No, Sir, it is most emphatically not the case.

Mr. N. M. Joshi: May I ask whether the executive order has been issued in regard to this question?

The Honourable Sir Malcolm Hailey: If I am correct, the discussion in the Council of State will show what executive orders have issued in this respect.

Mr. K. Ahmed: Isn't it stated in the text-books of constitutional law in England that firing will only take place after a lapse of certain time which is generally notified in a public place warning people to disperse within a certain time?

The Honourable Sir Malcolm Hailey: No, Sir, that again is quite inaccurate.

Mr. K. C. Neogy: How is it that this particular point as to the undesirability of having legislation of this character was not examined before the Bill was actually introduced and passed in the Council of State?

The Honourable Sir Malcolm Hailey: I think, Sir, that if Sir William Vincent was still here he would be better able to reply to that question than I.

WITHHOLDING OF PRESS TELEGRAMS.

78. ***Mr. K. C. Neogy:** (a) Will Government be pleased to refer to the answer to Unstarred Question No. 211 asked in the Bengal Legislative Council on the 31st August, 1922, and state the number of Press Telegrams offered for booking at the Barisal Telegraph Office by the accredited correspondent of the Associated Press of India and certain daily newspapers, that were refused to be sent or withheld by the Telegraph Master during the last two years?

(b) What is the total number of Press telegrams similarly refused or withheld in all the other places in the province of Bengal during the same period?

(c) Is it a fact that at Barisal no action was taken under section 5 (b) of the Indian Telegraph Act empowering censorship of telegrams under orders of the local Government, but that the Telegraph Master purported to act under clause 374 of the Post and Telegraph Guide which requires telegraph offices to refuse to accept any telegram which may be of a decidedly objectionable or alarming character?

(d) Is it a fact that the Telegraph Master of Barisal used to submit all Press telegrams to Mr. P. H. Waddel, I.C.S., the then District Magistrate, for censorship, and acted entirely under his instructions in this matter?

Colonel Sir Sydney Crookshank: (a) and (b) Telegraph Offices are required to report by telegram to the Postmaster-General concerned the fact of any telegram being refused or withheld and to forward a copy of the objectionable message to the Postmaster-General by post. But no separate record of such telegrams is maintained and the information required is consequently not available. The departmental rules require that the sender should be informed when transmission of a telegram has been withheld. If the withholding office has acted irregularly or indiscreetly, the Postmaster-General is empowered to take necessary action. If the Honourable Member

will give details of any instance in which a telegram is considered to have been improperly refused or withheld, the necessary enquiries will be made.

(c) Clause 374 of the Post and Telegraph Guide is for the information of the public. Telegraph Offices act under rule 15 of the Statutory Rules made by the Governor General in Council under section 7 of the Indian Telegraph Act and published in the *Gazette of India* dated September 16th, 1909.

(d) Under the Statutory Rule quoted above, the head of the Telegraph Office at Barisal was required, if the character of a telegram was open to doubt, to refer the telegram to the District Magistrate at Barisal and to act under his instructions.

Mr. K. Ahmed: In this particular question, Sir, I do not understand how they say they are 'decidedly objectionable and alarming in character,' in (c) and (d)?

Colonel Sir Sydney Crookshank: Sir, I do not quite follow what information the Honourable Member requires me to give him.

Mr. K. Ahmed: See the last line, Sir, of the paragraph 3, 'decidedly objectionable or alarming in character.' Will you kindly discuss the justification for withholding them?

Colonel Sir Sydney Crookshank: Sir, that would be a matter of opinion.

GOVERNMENT STORES IMPORTED FROM ENGLAND.

79. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state,

(a) what arrangements as regards freight are in existence at present to bring Government stores from England to India?

(b) whether there is any contract?

(c) if so, with which line of steamer?

(d) at what rate?

(e) if there is no existing contract, whether they have considered or propose to consider the question of inviting tenders?

(f) if there is no existing contract, what is the average rate of freight paid last year?

(g) whether Government has considered the advisability of entrusting this work to an Indian Steamship Company? and

(h) if not, whether they propose to consider the question now?

Mr. A. H. Ley: (a), (b), (c), (d) and (e) The attention of the Honourable Member is invited to the discussions which took place in the Council of State on the 15th March, 1922, in connection with a Resolution moved by the Honourable Mr. Lalubhai Samaldas on this subject. The system on which arrangements are made for the carriage of Government stores from England was fully described by the Honourable Mr. Lindsay in reply to that Resolution. There is no standing contract with any particular line of steamers and tenders are, as a matter of fact, invited on each occasion. Further particulars of the procedure followed are described in paragraph 9 of Appendix E to the Stores Purchase Committee's Report.

(f) The attention of the Honourable Member is invited to the reply given to the question asked by the Honourable Mr. Lalubhai Samaldas in the

Council of State on the 23rd March, 1922. Government have not the figures of the average freight rates paid during the last year. These rates are variable not only week by week, but also according to the nature of the material to be carried: they are, however, nearly always considerably below the open market rates.

(g) and (h) In a letter dated the 13th April 1922 Government communicated to the High Commissioner for India the Resolution which was carried in the Council of State on the 15th March, 1922, and instructed him specially to give Indian Shipping Companies opportunities of tendering for the carriage of Government Stores, where possible.

RAILWAY RISK NOTES.

80. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state whether their attention has been drawn to the remarks made by Mr. Justice Stuart about railway risk notes in a recent appeal case before the Allahabad High Court, in which 184 bags of wheat flour sent by Lala Banarsi Das, proprietor of B. D. Flour Mills, from Ambala to Ballia, were concerned?

Mr. C. D. M. Hindley: The reply is in the affirmative.

The Honourable Member is aware that the Committee, appointed to consider the revision of Railway Risk Note Forms of which he was a Member, has submitted its report, copies of which have been placed in the Library. The recommendations of the Committee are under the consideration of the Government of India.

Mr. K. Ahmed: In view of the remarks which have fallen from the mouth of that distinguished judge Mr. Justice Stuart of Allahabad High Court, do Government propose to give effect to it in all other cases?

Mr. C. D. M. Hindley: I have already explained that the matter has been dealt with by the Committee and the recommendations of the Committee are under the consideration of Government.

APPOINTMENTS TO INDIAN MEDICAL SERVICE ON SPECIAL TERMS.

81. ***Rai Bahadur Bakshi Sohan Lal:** (1) Will Government be pleased to state how far is it correct that it is proposed to appoint 30 Europeans in the Indian Medical Service on special terms which include the right to retire on a gratuity of £1,000 with free return passages on the completion of five years service if they no longer desire to remain in the service?

(2) If so, will the Government be pleased to lay on the table for the information of this Assembly the proposal on the subject together with the legal authority for the same and all the correspondence between the Government of India and the Secretary of State which has led to the proposal?

(3) Will the Government be pleased to state:

- for whose special benefit and at whose application or suggestion this special form of Indian Medical Service reserved for Europeans exclusively is to be introduced in this country,
- whether any Indian or Anglo-Indian holding equal or higher qualifications is eligible for this service,
- from what date men belonging to this service are to be engaged and whether they are to be engaged under the Covenanted

Indian Medical Service Regulations or under special contracts to be entered into with each individual?

(4) Whether it is proposed to obtain the sanction of any of the Indian or Provincial Legislatures in the matter before it is enforced in India.

(5) Whether the cost of this special Indian Medical Service is to be borne by the Indian Exchequer or by any European Exchequer.

Mr. E. Burdon: (1) The facts are as stated by the Honourable Member in this part of his question. The gratuity of £1,000 which is to be paid if the officer ceases to remain in the service after 5 years, will be in lieu of pension.

(2) The Government of India do not propose to lay the correspondence on the table. No special legal authority for the measure is required.

(3) (a) and (b) No special Indian Medical Service is being introduced. The measure which forms the subject of the Honourable Member's question is designed purely and simply to remedy the very serious deficiency in current recruitment of European officers for the Indian Medical Service.

(c) Officers will be selected and engaged under the special terms mentioned in the first part of the Honourable Member's question, as candidates present themselves. Apart from these special terms, the officers appointed will serve under the Indian Medical Service regulations as regards pay, allowances, etc.

(4) The answer is in the negative.

(5) The cost of these 30 officers for the Indian Medical Service, if obtained, will be borne by Indian revenues and will be met from the normal provision for expenditure on the service. They will be within the authorised cadre.

Mr. T. V. Seshagiri Ayyar: Why was it considered necessary to dispense with the ordinary examination in recruiting for this year?

Mr. E. Burdon: Because candidates were not forthcoming.

Rao Bahadur T. Rangachariar: Were the Ministers in charge of this Department consulted in this matter?

Mr. E. Burdon: Questions of recruitment do not come before the Ministers.

Rao Bahadur T. Rangachariar: Were they consulted?

Mr. E. Burdon: No.

Mr. T. V. Seshagiri Ayyar: If it was considered that by examination the Government would not be able to get a large number of men from England, why did they not have recourse to filling these posts by qualified men in this country and why should they have gone to England to recruit men without examination?

Mr. E. Burdon: As I have already explained, the sole reason for the measure was the necessity to remedy the very serious deficiency in current recruitment of European officers for the Indian Medical Service.

Mr. K. C. Neogy: Is there any fixed maximum proportion for Indians in the permanent cadre of the service?

Mr. E. Burdon: No; not at the moment, but I may mention that during the past 4 years 91 Indian officers have been appointed to the Indian Medical Service and 59 European officers.

Mr. K. C. Neogy: Will the Honourable Member refer to question No. 170 of the 15th of September 1921 and Question No. 485 of the 21st of September 1921 in reply to which it was stated that the question of fixing the maximum proportion for Indians in the permanent cadre was under the consideration of the Government of India and the Secretary of State. I want to know what has happened with regard to that matter.

Mr. E. Burdon: The matter is still under consideration.

Mr. K. C. Neogy: Is the Honourable Member aware that in reply to Question No. 485 of the 21st September 1921 it was stated that the policy of the Government of India is towards the liberal employment of Indians in the Indian Medical Service? How far has the present recruitment of Englishmen by nomination been in conformity with that principle?

Mr. E. Burdon: As I stated a few moments ago, in the last four years, 91 Indian officers and 59 European officers have been appointed to the Indian Medical Service.

Mr. K. C. Neogy: That adds nothing to my knowledge, I am afraid.

Mr. Harchandrai Vishindas: Is it not a fact that these 91 Indian officers were appointed as a special measure during the war and some of these officers have now been done away with?

Mr. E. Burdon: No. The 91 officers whom I mentioned have been given permanent Commissions in the Indian Medical Service. They are quite distinct from those temporarily employed in the Indian Medical Service, the number of whom is much greater.

Sir Deva Prasad Sarvadhikary: Will the Government state what their reasons were for giving these special terms, apart from the question of candidates not presenting themselves in sufficient number? Were there any special reasons why these markedly special terms had to be offered?

Mr. E. Burdon: It was merely a question of the market rate which it is necessary to give in order to obtain the officers.

Mr. B. S. Kamat: Were these appointments made with the full concurrence of the Government of India?

Mr. E. Burdon: The facts have already been fully stated.

Mr. K. B. L. Agnihotri: How long will this matter about the proportion of Indians in Indian Medical Service appointments be under the consideration of the Government.

The Honourable Sir Malcolm Hailey: Until we arrive at a decision.

Mr. N. M. Samarth: Is the beginning of the end of the consideration in view?

The Honourable Sir Malcolm Hailey: Of course the beginning is in view.

FOREST COLLEGE AT DEHRA DUN.

82. ***Mr. Jamnadas Dwarkadas:** Will the Government be pleased to state what action, if any, has been taken to give effect to the recommendation of the Legislative Assembly for the development of the Forest College at Dehra Dun into a Research Institute for higher education in Forestry?

Mr. J. Hullah: The recommendation of the Legislative Assembly has been communicated to the Secretary of State and is under the consideration of the Government of India.

AMENDMENT OF CODE OF CRIMINAL PROCEDURE.

83. ***Lala Girdharilal Agarwala:** (a) Has the attention of the Government been drawn to the decision of the Hon'ble Mr. Justice Stuart of the Allahabad High Court reported in the Allahabad Law Journal, Volume 20, page 909, *Narain Prasad Nigam versus Emperor*?

(b) Do the Government propose to amend the Code of Criminal Procedure so that the powers of the High Court may be extended in cases of revision and the High Court may interfere when totally wrong or illegal sentence or order is passed by a subordinate Court, although the High Court is moved by a person not party to the proceedings, as is the case of 55 Congress people referred to in the ruling of the High Court mentioned above?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) The Honourable Judge who decided the case in question did not find, as appears to be suggested by the question of the Honourable Member, that it was not possible for a High Court in the exercise of its powers of revision to interfere unless moved by a party to the proceedings with a totally wrong or illegal sentence or order. He found in fact that—I quote his words here—'there is nothing to show me that there has been any miscarriage of justice' and that it was—I quote again from the order in the case—'perfectly clear that under the very extensive powers contained in section 435 I can call for and examine the record of proceedings if the necessity for doing so has been brought to my notice in any manner.' In these circumstances the Government of India think that the decision affords no ground whatsoever for the amendment of the law in the direction suggested by the Honourable Member.

REPORT OF ARMS ACT COMMITTEE.

84. ***Dr. H. S. Gour:** (1) Will the Government be pleased to state when the Report of the Arms Act Committee will be published?

(2) And whether before taking any action an opportunity will be afforded to this House to express its opinion thereon?

The Honourable Sir Malcolm Hailey: 1. The Report will be published on the 20th January 1923.

2. Government do not propose to give any official time to the discussion of this report, but it is open to Honourable Members to call attention to any of its features by question or resolution.

IMPERIAL LIBRARY, CALCUTTA.

85. ***Dr. H. S. Gour:** (1) Will the Government be pleased to state whether it is a fact that the contents of the Imperial Library, Calcutta, are reported to be irretrievably perishing owing to the influence of climate there-upon?

(2) If so, what action does the Government propose to take to save them?

(3) Is the Government aware that a proposal has been made to transfer the Library to Delhi or some other more salubrious centre?

(4) Is the Government aware that the Library is maintained out of funds voted by the Legislative Assembly?

(5) Will it state what facilities do Members of this House enjoy in obtaining books from the Library for consultation?

(6) How many books were sent out from the Library to persons residing out of Calcutta?

(7) Is it a fact that the Library is scarcely patronized by any readers and that it does not serve the purpose of justifying its continuance as a charge upon the Imperial Revenues?

The Honourable Mr. A. C. Chatterjee: (1) and (2) The climatic conditions of Calcutta, as of most places in the tropics and sub-tropics, are bad for paper, and several of the older books in the Imperial Library have perished through decay. The same fate has befallen an old library at Meerut. The Government of India have the matter under scientific enquiry. Meanwhile every effort is made by careful supervision to curtail the damage.

(3) No such proposal is under consideration.

(4) The expenditure on the Imperial Library is voted expenditure.

(5) There are no special rules for Members of the Legislative Assembly. They enjoy the same rights and privileges in the matter of obtaining books as the general public.

(6) In the year 1918-19, 3,653 books were lent to the general public. Further or later information is not readily available.

(7) The answer is in the negative. The number of readers in the Imperial Library during the quarter ending 31st March 1922, was 11,445.

Mr. K. C. Neogy: Will the Honourable Member inquire from the Vice-Chancellor of the Delhi University as to what his experience is regarding the climatic effects of Delhi upon the books in the Delhi University Library which does not yet exist?

Mr. J. Chaudhuri: Is the Honourable Member aware that there is a department of the Bengal Government called the Bengal Historical Records, and also a department of the Government of India called the Imperial Record Department where records from the year 1773 are being preserved, and they are in good condition, and they are now being exhibited by the Asiatic Society?

The Honourable Mr. A. C. Chatterjee: I am aware of the existence of the two Departments, but I cannot say anything about the exact condition of the records.

Mr. J. Chaudhuri: May I ask a question? Is it not a fact that the Imperial Library was originally called the Calcutta Public Library, and the building in which it was accommodated was called Metcalfe Hall, and the Library was founded and the building erected by citizens of Calcutta as a memorial to Sir Charles Metcalfe who was Governor General of India in 1835 and Governor of Bengal also, and Lord Curzon took it over for the purpose of maintenance, and that the Government of India is only in the position of trustee with regard to the Library? Is he also aware that it is sadly wanting in accommodation?

The Honourable Mr. A. C. Chatterjee: May I ask whether I am expected to remember such a long question in order to answer it?

Mr. J. Chaudhuri: It is a fact which ought to be in the knowledge of the Education Member that it was the Calcutta Public Library and was taken over by Lord Curzon. That is in the Government of India records, and the Education Member ought not to be ignorant of it.

Mr. K. C. Neogy: May I ask whether the Department of Education will ascertain from the citizens of Calcutta whether they would be willing to take back the Library?

Mr. J. Chaudhuri: Did I not show him (the Education Member) a letter from the Education Minister of Bengal saying that he was willing to take over the Library if the Government of India would transfer it?

(No reply was given.)

Mr. J. Chaudhuri: Am I not entitled to an answer?

Mr. K. C. Neogy: Will the Honourable Member inquire from the Vice-Chancellor of the Delhi University as to whether the Delhi University is expected to provide in Delhi a reading public much wider than exists in Calcutta?

Mr. J. Chaudhuri: Sir, I am entitled to an answer as to whether the Government of India are willing to transfer the Library to the Government of Bengal if the Government of India are not going to maintain it and provide additional accommodation for the Library. It is for want of accommodation that the books are suffering.

The Honourable Mr. A. C. Chatterjee: Sir, I have already said that no proposal for the transfer of the Library is under consideration. I do not know what led the Honourable Member to make the long speech which he has delivered. If the Government of Bengal offer to take the Library over, the matter will certainly be considered.

Mr. K. Ahmed: Sir, in view of the fact that there is no attraction for the Imperial Library, will the Government take proper steps to keep a Librarian at a moderate salary, say 250 rupees per month?

Mr. J. Chaudhuri: May I ask whether it is not a fact that books were lying in the godowns of Messrs. Thacker Spink for a number of years because there was not enough accommodation in the Imperial Library at Metcalfe Hall. If it is within the knowledge of the Honourable Member will he provide additional accommodation?

The Honourable Mr. A. C. Chatterjee: The answer is in the negative.

Mr. B. S. Kamat: When this Imperial Capital of Delhi is fully built up, will the Government consider the advisability of transferring this Imperial Library from Calcutta to Delhi?

The Honourable Mr. A. C. Chatterjee: The matter will be considered in due course.

Mr. J. Chaudhuri: The Government of India are only the trustees of the Library.

FACILITIES FOR STUDY OF MUSIC.

86. ***Dr. H. S. Gour:** (1) Is the Government aware that there is no facility for the study of music in this country?

(2) Is it aware that the faculty of music finds a place in almost all important universities of the United Kingdom such as Cambridge, Oxford and London?

(3) Is it aware that it was intended to open a faculty of music in connection with the University of Delhi?

(4) If so, will the Government be pleased to give effect to its intention?

The Honourable Mr. A. C. Chatterjee: (1) If, as appears to be the case, the question refers to the study of music in Indian Universities the answer is in the affirmative.

(2) Yes.

(3) and (4) It is for the authorities of the University, after considering its financial position, to take the initiative in this matter by submitting the necessary amendment to the statutes. Any such proposal will receive consideration.

DELAY IN PUBLICATION OF INDEX OF DEBATES.

87. ***Dr. H. S. Gour:** (a) Is the Government aware that inconvenience is caused to Members of this House by the fact that the Index to the Debates is not published for months after conclusion of the session?

(b) Is it aware that the Index to the September Debates was not published till December 5th when this question was sent in?

(c) Do the Government propose to take steps that the Title page and Index are got ready to be issued with the last number of the Debates or as soon thereafter as possible?

The Honourable Sir Henry Moncrieff Smith: (a) Government is not aware of any real inconvenience caused to Members of this House. There has hitherto been no complaint on the subject.

(b) Yes.

(c) Every endeavour is being, and will be, made to publish the Index as early as possible. Government recognise that there is room for some improvement.

DEVELOPMENT OF RAILWAYS.

88. ***Dr. H. S. Gour:** (1) Has the attention of Government been drawn to a statement reported to have been made in the course of his speech on unemployment in the House of Commons by Sir L. Worthington-Evans to the effect that 'it was possible to spend usefully anything between 30 and

50 millions pounds in developing and improving Railways in India, which would bring Britain enormous direct employment'?

(2) (a) Will the Government state to what development and improvement of the Railways does this statement allude?

(b) And whether it does not refer to the expenditure in England of the 30 crores of rupees voted by this House for the betterment of the Indian Railways?

(3) Will the Government state how much of this 30 crores has been spent and upon what objects, and how much of it has been spent in making purchases in England?

The Honourable Mr. C. A. Innes: (1) Yes.

(2) (a) and (b) The Government have no exact information. They were not consulted before the statement referred to was made. Sir L. Worthington-Evans is probably aware that Rs. 30 crores a year have been earmarked for the rehabilitation of Indian Railways and the Government of India presume that in the course of the debate he threw out a suggestion that it might help to relieve the problem of unemployment if arrangements could be made whereby the development of railways in India could be further facilitated.

(3) The Honourable Member is referred to the Demand Statement of Capital Expenditure for 1922-23 (Appendix C to the Demands for Grants) presented to the Assembly in March last. The actual expenditure follows the Demand Statement as far as circumstances permit. The total expenditure against capital and revenue works incurred up to the end of September last is Rs. 946 lakhs. Of this amount, roughly £4 million is in respect of purchases made in England and of this £4 million it is estimated that about £2 million is expenditure against the capital grant.

EMPIRE CONFERENCE.

89. ***Dr. H. S. Gour:** (a) Will the Government be pleased to state what is the object of the proposed Empire Conference?

(b) When will it be held?

(c) And will India be represented thereon?

(d) If so, will any of its cost be chargeable to the revenues of India?

The Honourable Mr. C. A. Innes: (a) The intention is that the proposed Imperial Economic Conference should study the possibility of co-operation in the development of the resources of the British Empire and the strengthening of economic relations between its constituent parts.

(b) As far as the Government of India are aware, nothing definite has yet been decided.

(c) The Government of India have informed the Secretary of State that if other Dominions agree to the proposed Conference India will also agree to take part.

(d) The question of cost has not yet been considered.

Mr. T. V. Seshagiri Ayyar: If a representative from India is appointed, will he be appointed after consultation with the Legislative Assembly?

The Honourable Mr. C. A. Innes: That question will require consideration.

COUNCIL OF STATE AND RESERVING OF COMPARTMENTS.

90. ***Dr. H. S. Gour:** Will the Government be pleased to lay on the table a statement showing the names of the Members of the Council of State and the amounts drawn by them on account of reserved compartments allowed to them, session by session, since the inauguration of the Council of State?

CHARGES OF MEMBERS OF INDIAN LEGISLATURES.

91. ***Dr. H. S. Gour:** Will the Government be pleased to lay on the table a statement showing the amounts drawn by Members of the Council of State and of the Legislative Assembly on account of travelling and halting allowances paid to them, session by session, since the inauguration of the reformed Councils, and for their attendance on the various committees?

The Honourable Sir Henry Moncrieff Smith: The information required is being collected and will be laid on the table in due course.

MR. ANDREWS' SPEECH AT ALL-INDIA RAILWAYMEN'S CONFERENCE REGARDING COMFORTS OF 3RD CLASS PASSENGERS.

92. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Has the attention of Government been drawn to the presidential speech of Mr. Andrews (as published in *The Tribune*, dated the 26th November 1922), at the second All-India Railwaymen's conference?

(b) If so, will the Government be pleased to state what steps have been or are being taken to increase the comforts of third class passengers?

(c) Will the Government be pleased to state when was the present pay of the menial staff of Railways fixed and whether Government propose to take any action to ameliorate their hardships.

Mr. C. D. M. Hindley: (a) Yes.

(b) Information on this point will be found in the Administration Report for 1921-22, copies of which have been placed in the Library.

(c) The pay of most of these servants was revised in 1920 and the wages bill in respect of this class has gone up 75 per cent since 1913-14. Apart from pay proper railway menials get free quarters, free passes, free medical attendance, etc., and in some cases free clothing.

EMPLOYEES ON NORTHERN INDIA RAILWAY.

93. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Is it a fact that Government employs on principle a larger proportion of Anglo-Indians and Europeans on Northern Railways for strategical purposes of defence?

(b) If the answer be in the affirmative, do Government propose to appoint more Indians on those Railways in vacancies created by retirement or otherwise of Europeans and Anglo-Indians.

(c) Is it a fact that in both the Traffic and Loco Branches of the Railway staff there are two different grades of pay for Indians and Anglo-Indians? If so, will the Government give reasons for such differences on racial basis?

Mr. C. D. M. Hindley: (a) The reply is in the negative.

(b) The policy of Government is stated in the preamble to the Government of India Act of 1919.

(c) I would refer the Honourable Member to the reply given on the 6th September 1922 to question No. 92 asked by Lala Girdharilal Agarwala.

PROBATIONARY PAY IN SECRETARIAT.

94. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Is it a fact that Rs. 80 is the minimum probationary pay and Rs. 100 on confirmation for a Lower Division clerk in the Government of India Secretariat?

(b) If so, will the Government be pleased to state the number of Anglo-Indians actually drawing this pay in each of the Departments of the Government of India Secretariat?

The Honourable Sir Malcolm Hailey: (a) Yes, except in the case of girl-clerks who draw Rs. 100 per mensem during probation and Rs. 120 per mensem on confirmation.

(b) The information asked for is given in the statement laid on the table.

Department.	NO. OF ANGLO-INDIANS.		NO. OF EUROPEANS.		TOTAL.	
	On Rs. 80 per mensem.	On Rs. 100 per mensem.	On Rs. 80 per mensem.	On Rs. 100 per mensem.	On Rs. 80 per mensem.	On Rs. 100 per mensem.
Home	...	1*	...	1*	...	2
Revenue and Agriculture	1	...	...	...	1	...
Industries	1	...	...	...	1	...
Finance	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Legislative						
Education and Health						
Foreign and Political						
Public Works						
Commerce	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Army						
Railway						
Military Finance						
Total	2	1	...	1	2	2

* Girl-clerks.

QUESTIONS REFERRED TO STANDING COMMITTEES.

95. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state whether all establishment questions either of selection or of promotions in the Ministerial Staff of the Government of India Secretariats are going to be placed before the respective Standing Committees which have been attached to each of the Departments of the Government of India Secretariat?

The Honourable Sir Malcolm Hailey: The answer is in the negative.

PAY OF POSTAL SUPERINTENDENTS.

96. ***Rai Bahadur Lachmi Prasad Sinha:** (1) Is it a fact that the duties of the Superintendents of the Post Offices have considerably increased since

the amalgamation of the Post and Telegraph Offices and that they have been invested with greater power and responsibilities in the matter of postal administration?

(2) Is it a fact that recruitment of such officers is conducted almost in the same way as in the other Provincial Services, i.e., Provincial Educational Service, Excise Service, Income Tax, etc., and that the selection is made from the same class of candidate with similar qualifications?

(3) Is it a fact that the scale of pay of the Postal Superintendents is much below the scale of officers of the Provincial Services; if so, will the Government be pleased to state the reason of such difference?

(4) Is it a fact that a memorial had been submitted by the Superintendents of the Post Offices to His Excellency the Viceroy praying for a revision of the time scale pay of their posts; will the Government be pleased to state what action has been taken thereon?

Colonel Sir Sydney Crookshank: 1. The reply is in the negative. Prior to the amalgamation of the Post and Telegraph Departments, Superintendents of post offices were required to inspect combined post and telegraph offices, and in order to enable them to perform this work efficiently, a short training in telegraphy was made compulsory. With the amalgamation there was no material change in this respect; but they have since been relieved of half of their purely postal inspection. Their duties and powers in respect of postal matters have been revised, but such revision has not added appreciably either to their powers or responsibilities, and will, it is anticipated, decrease their work.

2. For the appointment of Superintendent of post offices the procedure is to fill up half the vacancies in the cadre by the promotion of qualified officials from the subordinate ranks, leaving the remaining half for persons who are recruited direct as Probationary Superintendents. The educational standard required of a candidate for the post of Probationary Superintendent is a university degree or its equivalent. The conditions of service of Superintendents of post offices are not the same as those of other Provincial Services.

3. Superintendents of post offices were formerly on graded rates of pay with Rs. 200 minimum and Rs. 600 maximum. In June 1920, a time-scale of Rs. 250—700 was introduced with retrospective effect from the 1st December 1919 with due regard to the recommendations of the last Public Services Commission and in view also of the increase of pay sanctioned for other services. In April 1921, the matter was very carefully reviewed by Government but it was decided not to make any further improvement in pay. An exact parallel cannot be drawn between Superintendents of post offices and officers of similar position in other Provincial Services.

4. Yes; the Government of India have given careful consideration to the representations and have decided that the scale of pay which was introduced with effect from December 1st, 1919, is adequate.

Rai G. C. Nag Bahadur: Is the Honourable Home Member aware that in my Province of Assam two months ago, while the people were crying for abolition of the Divisional Commissioner, there were in one Division actually two officers working as Commissioners simply because there was no room for one, and the other was expected to come to this Assembly as a Member.

The Honourable Sir Malcolm Hailey: I was not aware of the fact and I am afraid I cannot take it from the Honourable Member without examination; but it is in any case a question for the Assam Government and not for us.

DATES OF GOING ON AND RETURNING FROM LEAVE OF HIGHER GRADE OFFICERS.

97. ***Rai G. C. Nag Bahadur:** Has the attention of Government been drawn to the fact:

- (a) That in those departments of the public service which in the higher grades are officered wholly or mainly by Europeans, the practice is that these officers while going on long leave are allowed to consult their own convenience rather than that of the State as to the date of going on, and returning from, leave;
- (b) That none of these high officials will, if they can help it, ever go on long leave except from the close of the cold weather, nor will any such, if they can possibly help it, return from such leave except at the beginning of the cold weather;
- (c) That as the result of the above practice there is a surplus of officials in every cold weather?

The Honourable Sir Malcolm Hailey: (a) and (b) The fact is not as stated by the Honourable Member. Officers are not allowed to consult their own convenience, and leave cannot be claimed as a right. As far as the Government of India are concerned, leave is only granted with due regard to the public interests and at a time and for periods convenient to the State. The grant of leave is mainly the concern of Local Governments, who may be trusted to exercise a similar discretion.

(c) This fact is not as stated. Recruitment to the public services is so ordered as to provide for the periodical absence of officers on leave. If the Honourable Member will supply me with any facts which would substantiate the imputation contained in this part of his question, in regard to the services under the Government of India, I shall be glad to investigate them; in the meanwhile I can only repudiate it.

REGULATION OF LEAVE RULES OF OFFICERS.

98. ***Rai G. C. Nag Bahadur:** Do Government propose in the interest of economy:

- (a) to insist, as practically all private employers do, on their servants going on, and returning from leave on dates which suit their employers, and which may be so arranged as to prevent overlapping; and
- (b) to guard against such arrangements being upset by the existing practice of the Secretary of State granting extensions of leave, on medical certificate or otherwise, to officers on leave in Europe, to rule that officers who so obtain extensions shall not be allowed to return to duty until such date as the Government, under which they are serving, shall direct, or in the event of their being permitted to return to duty, that they shall continue to draw leave-pay until a vacancy for their re-employment occurs?

The Honourable Sir Malcolm Hailey: (a) The Honourable Member's attention is invited to the reply just given to question No. 97.

(b) Extensions of leave are in practice only granted after the Local Governments concerned have been consulted, except extensions on medical certificate which entail appearance before the Medical Board at the India Office. The further safeguards mentioned by the Honourable Member are not therefore required. The Honourable Member appears to overlook the fact that ordinarily an officer on leave must hold a lien on a post, and that frequently officers are compulsorily recalled from leave.

COBRA ANTI-VENOM.

99. ***Rai G. C. Nag Bahadur:** (a) Are the Government aware that the Cobra anti-venom made at the Pasteur Institute at Saigon, Indo-China, has been developed to a high degree of certainty, and has been saving many lives in that country?

(b) Is it true that the Pasteur Institutes in India are in possession of the Cobra anti-venom? If so, how is it that the knowledge of its use, or even of its existence is not widespread enough to do any substantial good?

(c) Regard being had to the fact that the yearly toll of lives taken by venomous snakes is so very great in India (a hundred people dying in India from snake-bite to one from hydrophobia), do Government propose to see that the Pasteur Institutes in India at Kasauli, Coonoor, and Shillong are enlarged and made to give more attention than they seem to do at present to the manufacture and distribution of the Cobra anti-venom?

The Honourable Mr. A. C. Chatterjee: (a) The Government of India are aware that cobra anti-venine is made at the Pasteur Institute at Saigon, Indo-China, but have no information as to how many lives are saved by the use of this anti-venine.

(b) Pasteur Institutes in India are in possession of cobra anti-venine. This anti-venine in which are combined both cobra and viper anti-venine has been in use in India for nearly 20 years and has been supplied during that period to all large civil and military hospitals which require it.

(c) Anti-venine is prepared for the whole of India at the Central Research Institute, Kasauli, which is at present capable of dealing with all demands. The Government of India have at present a special research officer inquiring into the possibility of reducing the bulk of the anti-venine that has to be administered and of improving the serum so as to make it available throughout India and suitable for use by inexperienced persons.

BIRKMYRE'S CONTRACT—INDIAN STORES DEPARTMENT.

100. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

(a) the reason why a commission of Rs. 60,000 is allowed on purchases under Birkmyre's Contract, in Demand 36, for 1922-23, under the head "Indian Stores Department",

(b) the rate of commission,

(c) what the nature of the Contract is, and what is the article for which the contract was made, and

(d) what the total value of the Contract is?

Mr. A. H. Ley: Messrs. Birkmyre have acted since 1919 as the agents and advisers of the Central Government in respect of the purchase of certain classes of textile goods.

(a) The provision represents the amount expected at the time of the preparation of the estimates to be payable to the firm during the current year. Owing to a revision of the contract with the firm and to purchases falling short of anticipation the actual sum payable will be substantially less than the amount provided.

(b) The rate fixed by the original contract was $1\frac{1}{2}$ per cent. on the actual invoiced price of goods supplied through the firm, other than goods manufactured in their own mill, after the deduction of all discounts, rebates and brokerage received by them. Goods manufactured by Messrs. Birkmyre Brothers themselves were, under the original contract, to be supplied to Government free of commission at the rate at which the firm were supplying the outside market at the date of the purchase by Government.

During the course of the current year Government revised the contract with the firm. Under the new terms commission is now payable to the firm at 1 per cent. on articles manufactured from jute by the Calcutta jute mills other than goods manufactured in the firm's own mill on which no commission is paid.

(c) The contract represents a temporary arrangement which was devised to obviate the necessity of employing a Government purchasing staff. It is proposed to review it again when the Indian Stores Department has developed further. Under the original contract the firm arranged for the supply to Government of their requirements in respect of:

I.—Articles manufactured from jute by the Calcutta jute mills,

II.—Articles manufactured from flax, hemp and cotton canvas.

Under the revised agreement now in force the firm act as advisers and purchasers for Government only in respect of articles manufactured from jute by the Calcutta jute mills. The other classes of goods covered by the original contract are now obtained in the open market by the Indian Stores Department.

(d) The value of the contract is indefinite and depends on the demands of the consuming Departments of Government. The value of goods purchased through the firm from April to November 1922, inclusive, was Rs. 15,03,184.

URDU FOR INDIAN CIVIL SERVICE EXAMINATIONS.

101. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the following reply to my question re: "Urdu for Indian Civil Service Examination syllabus" No. 57, page 1563 asked in the Assembly on the 16th January, 1922, given by the Hon'ble Sir William Vincent: "The Government of India agree that Urdu is a better term and will convey to the Secretary of State, who frames the rules under Section 97 (1) of the Government of India Act, the suggestion that the term 'Urdu' should be substituted for 'Hindustani'":

(a) Will the Government be pleased to state if the suggestion referred to has been conveyed to the Secretary of State?

(b) If so, has any reply been received?

The Honourable Sir Malcolm Hailey: (a) and (b) The term 'Urdu' has been substituted for 'Hindustani' in the regulations.

PILGRIMS DURING THE HAJ SEASON.

102. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state:

- (a) the number of Indian pilgrims during the last Haj Season?
- (b) the number of such pilgrims as have not returned to India as yet?

The Honourable Mr. A. C. Chatterjee: (a) According to information furnished by the Government of Bombay, 8,575 pilgrims left Bombay and 3,975 Karachi for the Hedjaz during the last Haj season, making 12,550 in all. Of those leaving Bombay 6,953 were from India (including Burma) and Indian States. No information is available from Karachi.

(b) According to figures furnished by the Government of Bombay 11,410 pilgrims returned from the Hedjaz to Bombay and Karachi during the last season. No information is available as to how many of these were Indians. The mere comparison of outgoing and returning figures does not however give a correct indication of the number of pilgrims yet to return since a certain number of pilgrims who do not touch India on the outward journey return this way.

FUND FOR HAJ PILGRIMS.

103. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state:

- (a) If a fund from the Mohammedan Community for the benefit of pilgrims has actually been started as proposed?
- (b) If so, what amount has been collected and where has it been deposited?

The Honourable Mr. A. C. Chatterjee: (a) Yes.

(b) According to information furnished by the Honorary Secretary of the Central Haj Committee of India, the amount collected up to the 31st December, 1922, is Rs. 32,067-12-6. Out of this Rs. 10,270-11 have already been paid to the British Agency in Jeddah for the repatriation of 359 destitute Indian pilgrims and a draft for a further sum of Rs. 19,394 has also been received for payment from the same Agency on account of the repatriation of 695 additional pilgrims. When this sum has been paid the balance available will be Rs. 2,403-1-6. The funds of the Central Haj Committee have been deposited with the Imperial Bank of India, Delhi.

COMPLAINT OF MR. SAHNEY AGAINST A GUARD.

104. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the reply given to the question of Mr. Jamnadas Dwarkadas, No. 3, Volume III, page 23, by the Hon'ble Mr. C. A. Innes that "Departmental action has been taken against the guard of the train and the Stationmaster," will the Government be pleased to state as to what was the Departmental action that was taken against the guard of the train and the Stationmaster?

Mr. C. D. M. Hindley: The guard and stationmaster were reduced.

ADMISSION OF INDIANS INTO THE ROYAL AIR FORCE.

105. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the answer given by Sir Godfrey Fell, to question No. 58 asked by me on the 16th January, 1922, in this Assembly that "no reply has yet been received from the Secretary of State for India":

- (a) Will the Government be pleased to state if the reply has been received?
- (b) If so, will it be pleased to communicate the reply to the Assembly?

Mr. E. Burdon: (a) and (b) No reply has yet been received from the Secretary of State.

"PRINCIPAL PLACE OF BUSINESS" AS USED IN INCOME TAX ACT.

106. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state whether the question of the interpretation to be placed on the words "Principal place of business" used in the Income-Tax Act is under the consideration of the Government of India?

- (a) If so, will the Government be pleased to state whether they have come to any decision in the matter?
- (b) If so, will it be pleased to state what that decision is?

The Honourable Sir Basil Blackett: The question was considered by the various Committees which dealt with the amendment of the Income-tax Act, 1922, and their recommendations are embodied in section 64 of that Act. Under the provisions of that section where any question arises as to the principal place of business, the question is determined by the Income-tax Commissioner of the province, or where the question is between places in more than one province, by the Commissioners concerned, or if they are not in agreement, by the Board of Inland Revenue. But before any such question can be determined, the assessee must be given an opportunity of representing his views.

LISTED POSTS.

107. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the reply given to the starred question 141 asked by Rai G. C. Nag Bahadur, in the meeting of the Assembly held on the 6th February, 1922, by the Hon'ble Sir William Vincent that "the Local Government had submitted certain proposals regarding listed posts which were under consideration"—

- (a) Will the Government be pleased to state whether they have come to any decision in the matter?
- (b) If so, will it be pleased to state what that decision is?

The Honourable Sir Malcolm Hailey: (a) The answer is in the affirmative.

(b) Two superior posts on the executive side have been notified as open to members of the Assam Civil Service.

GULZARIBAGH STATION PLATFORM.

108. ***Khan Bahadur Sarfaraz Husain Khan:** (a) Are the Government aware that at Gulzaribagh station of the East Indian Railway the platform

is much lower than the foot-board and many people, specially females, and children feel great inconvenience in alighting from the train?

(b) Do the Government propose to consider the advisability of making raised platform on this station for the benefit specially of women and children?

Mr. C. D. M. Hindley: (a) and (b) The general question of providing high level platforms at all stations on Broad Gauge Lines has recently had the careful consideration of Government. They are of opinion that the expenditure involved is so great that at present, with money so difficult to obtain and with so many other works more essentially required to increase traffic facilities, it would not be advisable to embark on the scheme. Railway Administrations provide high level platforms wherever passenger traffic is sufficiently heavy to justify their provision. The convenience of this form of platform for passengers who are old and feeble and for females and children is fully recognised, but Government propose for the present to leave it to the discretion of Railway Administrations to provide high level platforms at stations where the requirements of the passenger traffic justify them.

STEAMER SERVICES BETWEEN JEDDAH AND YAMBOO.

109. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the reply given to the starred question No. 247, (b), asked by Haji Wajihuddin in the meeting of the Assembly held on the 6th March, 1922, by Mr. Denys Bray that enquiry will be made whether any Company is prepared to undertake a fortnightly Steamer Service between Jeddah and Yamboo as a commercial value, will the Government be pleased to state whether enquiry had been made; and if so, what is the result?

Mr. Denys Bray: The Government of Bombay were asked to make enquiries, but could find no Steamship Company willing to undertake a service between Jeddah and Yamboo as a commercial venture.

PUSA AGRICULTURAL INSTITUTE.

110. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the reply given to the starred question No. 70, regarding the Pusa Agricultural Institute put by Rao Bahadur Lachhmi Prasad Sinha, in the meeting of the Assembly held on 6th September, 1922, by Mr. Hullah that "The information asked for is being collected, and will be furnished to the Honourable Member as soon as possible:

(a) Will the Government be pleased to state whether the information has been collected, and furnished to the Honourable Member?

(b) If so, will Government be pleased to lay the information furnished on the table?

Mr. J. Hullah: (a) Yes.

(b) Our papers containing the information are at present with the Agricultural Adviser at Pusa; on return from him the papers containing the information will be laid on the table.

BARRISTERS AND VAKILS IN HIGH COURTS.

111. ***Mr. K. C. Neogy:** (a) Have Government ascertained the opinions of the Local Governments, the High Courts, the legal profession and other authorities, in regard to the question of removing all distinctions enforced by statute or by practice between Barristers and Vakils in pursuance of the resolution of this House on the creation of an Indian Bar, or otherwise?

(b) If so, will Government be pleased to publish the said opinions, or circulate them to the Members of the legislature, at an early date?

The Honourable Sir Malcolm Hailey: The Government have received the opinions of the local Governments and others consulted and these opinions are now under consideration. It is hoped the examination of the matter will be concluded without much delay, and the question of placing copies of the opinions received in the Assembly library will then be considered.

CITY CIVIL COURT IN CALCUTTA.

112. ***Mr. K. C. Neogy:** (a) Will Government be pleased to refer to a resolution adopted by the Bengal Legislative Council on the 7th April, 1915, recommending the establishment of a City Civil Court in Calcutta for the trial of suits valued at Rupees ten thousand, or under, which may be instituted within the original civil jurisdiction of the Calcutta High Court; and state whether the said resolution formed the subject of any correspondence between the Government of Bengal and the Government of India?

(b) Is it a fact that in 1902, the Secretary of State suggested the establishment in Calcutta of a Court on the lines of the Madras City Civil Court, and that the Government of India were favourably inclined at that time towards the said proposal?

(c) Will Government be pleased to indicate their present attitude towards this question, particularly in view of the resolution of the Bengal Legislative Council referred to above?

The Honourable Sir Malcolm Hailey: The Resolution referred to was forwarded by the Government of Bengal to the Government of India. The opinions of the Calcutta High Court were obtained by the Government of India and submitted to the Government of Bengal in April 1917. Since then there has been no correspondence on the subject. The matter is one on which the initiative should come from the local Government and Government therefore do not propose to make any statement with regard to (b) and (c) of the question.

REDUCTION IN DELHI PROVINCIAL GRANT.

113. ***Dr. H. S. Gour:** (1) Will the Government be pleased to state how the Assembly's cut of one lakh of rupees in the Delhi Provincial Grant was effected?

(2) Is it a fact that 14 District Board Schools have been closed down during the current year and if so, why?

(3) Will the Government be pleased to state what reductions were made in the Grants-in-Aid to educational institutions in the Delhi Province in consequence of the Assembly's retrenchment?

The Honourable Sir Malcolm Hailey: (1) A statement is laid on the table.

(2) 15 newly opened schools were closed by the Delhi District Board through want of funds to maintain them. District Board schools are, of course, maintained from the funds of the District Board itself.

(3) The information is contained in the statement to which I have just referred.

DEMAND No. 48.

DELHI.

Modifications in grant.

Net modification in the grant as finally passed in Budget.

	Non-voted.	Voted.	TOTAL.
5. Land Revenue— Land Records—Pay of Establishment	...	—2,000	—2,000
22. General Administration— Heads of Provinces, Executive Councils, etc.— Allowances, etc.	...	—£00	—900
Supplies and services	...	—200	—200
Contingencies	...	—1,000	—1,000
	...	—2,100	—2,100
District Administration— Pay of Officers	—13,500	—3,000	—16,500
Pay of establishment	...	—7,500	—7,500
	—13,500	—10,500	—24,000
Total	—13,500	—12,600	—26,100
24. Administration of Justice— Civil and Sessions Courts— Pay of establishment	...	—2,000	—2,000
Criminal Courts— Pay of Officers	...	+5,720	+5,720
Total	...	+3,720	+3,720

	Non-voted.	Voted.	TOTAL.
25. Jails and Convict Settlements— Jails—Supplies and Services	...	—4,120	—4,120
26. Police— District Executive Force— Pay of establishment	...	+58,000	+58,000
30. Scientific Departments— Museums— Pay of establishment	...	—4,440	—4,440
Allowances, etc.	...	—2,100	—2,100
Contingencies	...	—3,130	—3,130
Hydro-Electric Surveys	...	—6,000	—6,000
Total	...	—15,670	—15,670
31. Education— University. Grants-in-aid, etc.	...	—35,000	—35,000
Secondary. Grants-in-aid, etc.— Building and furniture grants	...	—10,000	—10,000
General—Pay of Officers	...	—9,000	—9,000
Allowances, etc.	...	—1,000	—1,000
Total	...	—55,000	—55,000
33. Public Health— Expenses in connection with bubonic plague— Pay of Officers	...	—3,000	—3,000
Pay of establishment	...	—1,000	—1,000
Total	...	—4,000	—4,000
34. Agriculture— Establishment charges payable to the Punjab Government	...	—100	—100
Veterinary charges— Establishment charges payable to the Punjab Government	...	—1,200	—1,200
Total	...	—1,300	—1,300

	Non-voted.	Voted.	TOTAL.
35. Industries— Establishment charges payable to the other Government	...	-1,171	-1,171
41. Civil Works— In charge of Civil Officers— Grants-in-aid, etc.— Additional contributions to local bodies	...	-20,000	-20,000
47. Miscellaneous— Contributions	...	-20,000	-20,000
Total For rounding	-13,500 -500	-74,141 +141	-87,641 -359
GRAND TOTAL	-14,000	-74,000	-88,000
Omit— Lump reduction shown in the original demand	...	+1,00,000	+1,00,000
Total net modification in the previously sanctioned allotments	-14,000	+26,000	+12,000

Mr. Jamnadas Dwarkadas: Will the Honourable Member inform the House whether it did or did not affect the grant of Rs. 75,000 made to the newly started Delhi University?

The Honourable Sir Malcolm Hailey: It was reduced to the best of my recollection by Rs. 35,000.

DIVISIONAL COMMISSIONERSHIPS, C. P.

114. ***Rai G. C. Nag Bahadur:** (a) Is it true that the Secretary of State for India has rejected the proposals of the Central Provinces Government regarding abolition of the Divisional Commissioners of that Province?

(b) If so, will the Government kindly lay the correspondence between Government of India and the Secretary of State for India on the subject on the table?

The Honourable Sir Malcolm Hailey: The Secretary of State has not yet been addressed on the subject.

AMALGAMATION OF ASSAM WITH BENGAL.

115. ***Rai G. C. Nag Bahadur:** (a) Has the attention of the Government of India been drawn to the Memorandum regarding amalgamation of Assam with Bengal presented to the Inchcape Committee by certain leading men of Assam?

(b) Do Government propose to consult the local Governments concerned as to the feasibility of carrying out the proposals?

The Honourable Sir Malcolm Hailey: (a) The Government of India have seen the memorandum.

(b) They do not propose to take the action suggested. The matter is one in which the initiative should come from the local Governments concerned.

EUROPEAN VAGRANTS.

116. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state under what circumstances is it necessary to incur the following charges in the Demand for Grants for 1922-23:

1. Demand 47.—Baluchistan: Under 47 Miscellaneous, charges on account of European Vagrants, Rs. 220.

2. Demand 48.—Delhi: Under 47 Miscellaneous, charges on account of European Vagrants, Rs. 400.

3. Demand 50.—Ajmer-Merwara: Under 47 Miscellaneous, charges on account of European Vagrants, Rs. 50.

The Honourable Sir Malcolm Hailey: The information asked for by the Honourable Member is being collected and will be communicated to him when available.

POSTAGE INCOME.

117. ***Munshi Mahadeo Prasad:** Will the Government be pleased to state what was the income from Postage in the current financial year up to December, 1922, and for the same period up to December, 1921, in the last financial year?

Colonel Sir Sydney Crookshank: The necessary information is being collected and will be supplied as soon as it is available.

STATISTICS OF RAILWAY EMPLOYEES.

118. ***Mr. B. N. Misra:** (1) Will the Government be pleased to state:

(A) the number of employees in the (a) Officer's grade, (b) Upper Subordinate grade, (c) Lower Subordinate grade, in the years 1910 and 1920, respectively, in the (i) East Indian Railway, (ii) Bengal-Nagpur Railway, (iii) Great Indian Peninsula and (iv) North-Western Railways;

(B) the total amount spent on each grade referred to above in the years 1910 and 1920 respectively by each of the Railways?

(2) Will the Government be pleased to state the number of (a) Europeans, (b) Anglo-Indians, (c) Indians, in grades referred to in (a) and (b) to question (1) in each Railway?

Mr. C. D. M. Hindley: It is not known what the Honourable Member means by Upper and Lower Subordinate grades and the question, therefore, cannot be answered.

Mr. B. N. Misra: I wish to put a supplementary question. Generally, there is the officers' grade and then the drivers, conductors and guards are regarded as being in the subordinate grade, as upper subordinates and

lower subordinates. They begin in the lower subordinate grade and rise to the upper subordinate grade in the railways.

Mr. C. D. M. Hindley: May I ask what the question is? If the Honourable Member will specify the different grades in which he wants the employees classified, we will be able to supply him with the information, but there is no definite difference between the upper and lower subordinate grades.

Mr. B. N. Misra: What will be the total number of employees in the lower and upper subordinate grades?

Mr. C. D. M. Hindley: I can have that information collected and given to the Honourable Member.

RAISED PLATFORMS AND WAITING ROOMS ON RAILWAYS.

119. ***Mr. B. N. Misra:** (1) Does (a) a raised platform or (b) provision for waiting room depend on the income of a Railway Station?

(2) If so, will the Government be pleased to state if the different companies have a uniform standard of income for the purposes of (a) and (b) in question (1)?

(3) If not, will the Government be pleased to state what amount of income induces each of the said companies to provide (a) a raised platform, (b) a waiting room in a station?

Mr. C. D. M. Hindley: (1) (a) and (b) The provision of a raised platform or waiting room accommodation at a station does not directly depend upon its income. These facilities are provided as the number of passengers using the particular station justifies them and it is generally left to the Railway Administrations concerned to decide whether such facilities are or are not required at individual stations on their systems.

(2) and (3) In view of the answers given to (1) (a) and (b) these questions do not arise.

RAISED PLATFORMS AND WAITING ROOMS BETWEEN HOWRAH AND PURI.

120. ***Mr. B. N. Misra:** Will the Government be pleased to state:

(A) the total number of stations between Howrah and Puri, and

(B) the number of stations which have not got (a) a raised platform, (b) a waiting room and the reason in the latter cases?

Mr. C. D. M. Hindley: (A) There are 61 stations between Howrah and Puri.

(B) (a) 15 stations are without raised platforms.

(b) All the stations have third class waiting halls, while 9 of them have also first and second class waiting rooms.

High level platforms or waiting room accommodation at a station are provided when the number of passengers using the particular station justifies their use.

WIRE FENCING ON RAILWAYS.

121. ***Mr. B. N. Misra:** Will the Government be pleased to state how many railways have got a wire fencing throughout the line for the protection of cattle?

Mr. C. D. M. Hindley: There are no railways which are provided with wire fencing for the protection of cattle throughout their entire length.

GRIEVANCES OF TELEGRAPH CHECK OFFICE STAFF.

122. ***Mr. K. Ahmed:** (a) Are the Government aware of the article in the editorial column of the "Amrita Bazar Patrika" dated the 18th October, 1922, and a number of other correspondences that appeared in the issues of that paper dated the 6th and 23rd October, 1921, the 2nd November, 23rd September, 14th April and 12th March, 1922; of the "Bengalee" dated 15th October, 20th September, 2nd September, and 31st March, 1922; of the "Indian Daily News" dated 7th December, 22nd November, 29th August and 27th July, 1922 and of the "Servant" dated the 30th August, 1922, regarding the grievances of the Telegraph Check Office staff?

(b) If so, do Government propose to enquire into the matter and take immediate steps for the removal of the grievances, if there be any?

The Honourable Sir Basil Blackett: The information is being collected and will be supplied to the Honourable Member as early as possible. This answer applies not only to question No. 122, but to all the questions down to No. 133 inclusive.

TYPISTS IN TELEGRAPH CHECK OFFICE.

123. ***Mr. K. Ahmed:** (a) Is it a fact that in accordance with the Auditor General's Circular letter, typists in all offices, excepting the Telegraph Check Office, under the Accountant General, Posts and Telegraphs, were placed on the Upper Division Time Scale of pay and allowed the benefit of their entire length of service on that scale with effect from the 4th November, 1919, the date of the introduction of the New Time Scale of pay, and that in the Telegraph Check Office alone, typists have been placed in the Upper Division Scale of pay not earlier than 16th July, 1921, and without the benefit for their past length of service on that scale?

(b) If the answer be in the affirmative, will the Government be pleased to state the reason for such deviation from the General Rule in the case of typists in the Check Office only?

(c) Do Government propose to recognise that the nature of typists work in the Check Office is similar to that of all other offices under the Accountant General, Posts and Telegraphs?

RECRUITMENT OF CLERKS IN UPPER AND LOWER DIVISIONS.

124. ***Mr. K. Ahmed:** (a) Is it a fact that some outsiders as well as clerks though failed in the competitive examination for recruitment of clerks for the Upper Division, have directly been given appointment in, or promoted to, that Division in preference to some successful candidates and that the latter are being retained in the Lower Division?

(b) If so, will the Government be pleased to state:

- (i) the circumstances under which the same has been done, and
- (ii) the numerical position of the successful and the unsuccessful candidates in the several examinations held since the introduction of the "Recruitment Examination," showing which and how many of them were selected for the Upper and how many for the Lower Divisions; and in the cases of those promoted to the Upper Division without any further departmental test the references as to the antecedents regarding their past services, educational qualifications, the conditions of appointments when they were first taken in and the reason for their promotion to the Upper Division?

(c) Is it a fact that amongst the successful candidates some were recruited for the Upper Division and some for the Lower Division?

CLERKS APPOINTED AFTER RECRUITMENT EXAMINATION.

125. ***Mr. K. Ahmed:** (a) Are the Government aware that in the cases of the clerks, selected for the Upper Division on the result of the competitive Recruitment Examination, who could not be provided in that Division, it was ruled by the Auditor General that they should have their initial pay fixed on the Upper scale when promoted to the Upper Division, as if their entire services had been rendered in that (Upper) Division?

(b) If the answer be in the affirmative, are the Government aware that clerks selected for the Upper Division, but sent to the Telegraph Check Office and subsequently transferred to Upper Division, have been deprived of the benefit?

GRIEVANCES OF UPPER DIVISION CLERKS.

126. ***Mr. K. Ahmed:** Is it a fact that a memorial was submitted to the Viceroy and Governor-General on the 16th August 1922, stating that the clerks employed on the Upper Division work, got the Lower Division rates of pay; and that the Auditor General remarked in his letter to the Government of India that the grievances of the clerks were "legitimate and long standing"?

TIME SCALE IN CHECK OFFICE.

127. ***Mr. K. Ahmed:** (a) Is it a fact that in July 1921, Government sanctioned an Upper Division Time Scale of pay for 140 of the clerical appointments in the Check Office and that it was intended by the Auditor General that this change should come into operation at once?

(b) If so, what steps, if any, were taken till January, 1922 to give effect to that change and whether it was with the concurrence of the Accountant General, Posts and Telegraphs?

(c) Is it a fact that about half the number of the Upper Division appointments were not filled up till November, 1922 and that some clerks submitted a representation dated 16th August, 1922 stating their grievances that the Auditor General had already recommended for promoting clerks to the Upper Division according to the efficiency and length of service actually rendered, as will appear from the said representation in paragraph 2, viz. "I should like to add that this is not a revision of establishment in the

ordinary sense my proposals are designed to secure that pay should bear some relation to the nature of work done and thus remove a long-standing and legitimate grievance of the clerks"?

RECRUITMENT OF TELEGRAPH CHECK OFFICE.

128. ***Mr. K. Ahmed:** Will the Government be pleased to state under what circumstances the new method of departmental examination has been brought in for filling up the vacancies in the Telegraph Check Office when a memorial was pending regarding the grievances of the clerks and when the orders are that the present incumbents may be brought on to the new scales"?

CANDIDATES FOR DEPARTMENTAL EXAMINATIONS.

129. ***Mr. K. Ahmed:** In the matter of the departmental examination held on the 26th and 27th October 1922, will the Government be pleased to state:

- (a) The number of clerks who abstained from the examination, and
- (b) The number of clerks appearing in the examination specifying whether "Permanent" or "Temporary" with the dates of their original appointments and how many of them were recruited for the Lower Division?

CANDIDATURE OF TEMPORARY CLERKS.

130. ***Mr. K. Ahmed:** (a) Is it a fact that under the rules only such clerks as have rendered not less than 4 years' service and can reasonably be expected to pass, are eligible for appearing at the departmental examination?

(b) If so, will the Government be pleased to explain how and under what circumstances the candidature of temporary hands, if any, for the examination was approved?

POSTAL AUDIT OFFICES MANUAL.

131. ***Mr. K. Ahmed:** (a) Is it a fact that the rules in the Manual for guidance of Postal Audit Offices framed by the Accountant General, Posts and Telegraphs, regarding the filling up of substantive appointments in the Audit Offices under his control as embodied in paragraph 1457 of Chapter XVIII of the Postal Account Code, Volume II, provide that promotions in the clerical establishment should be given to men who will, in the judgment of the Deputy Accountant General be found qualified by

- (1) Efficiency
- (2) Suitability by temper,
- (3) Ability to draft clearly,
- (4) Command over subordinate clerks, and
- (5) Seniority,

and that one of the conditions *inter alia*, is that unless one possesses these qualifications, he cannot be promoted though he may have passed the departmental examination?

(b) If so, will the Government be pleased to state whether these rules have since been abolished?

(c) If not, was it followed in the Telegraph Check Office in making the selection of suitable candidates for filling the 140 posts for the Upper Division sanctioned for that office in July, 1921?

GRIEVANCES OF CLERKS IN TELEGRAPH CHECK OFFICE.

132. ***Mr. K. Ahmed:** (a) Will the Government be pleased to enquire whether there were representations regarding their grievances submitted by the clerks of the Telegraph Check Office in the months of September and October 1921, and March, July, August and October, 1922, and state what replies were given thereto, if there be any?

(b) Do Government propose to lay on the table a copy of each of those representations if there had been any?

RECRUITMENT IN CHECK OFFICE.

133. ***Mr. K. Ahmed:** If the Check Office clerks have been styled as "specifically recruited lower grade clerks", will the Government be pleased to state at whose instance the remark has come to be applied?

LIGHTING OF RAILWAY STATIONS.

134. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Has the attention of Government been drawn to the judgment of the Madras High Court against the Madras and Southern Mahratta Railway published in the *Tribune*, dated the 7th December, 1922?

(b) Is the Government aware that in most of the Railway Stations on all the Railways, the station premises are kept unlighted?

(c) If not, will the Government be pleased to state what steps do they propose to take in the matter so that station premises may be kept well lighted?

Mr. C. D. M. Hindley: (a) The reply is in the affirmative.

(b) and (c) The Honourable Member is referred to the answer given on 15th September 1921 to item (ii) of question No. 220 asked by Mr. K. Ahmed in a similar connection.

ANGLO-INDIANS IN GOVERNMENT DEPARTMENTS.

135. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state the number of Anglo-Indians employed in each of the Departments of the Government of India and the number of them employed solely in the lower division without even getting a chance of officiating in the Upper Division?

The Honourable Sir Malcolm Hailey: The information asked for is given in a statement which is being sent to the Honourable Member.

PROVISION OF GOVERNMENT QUARTERS.

136. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state the percentage of Anglo-Indians provided with Government quarters either for self or for family and the percentage of Indians provided with quarters either for self or for family?

Colonel Sir Sydney Crookshank: The number of Anglo-Indians and Indians employed as Assistants and Clerks in the Government of India is 546 and 1,450 respectively.

The building scheme for New Delhi now makes no distinction between unorthodox Indians and Europeans and Anglo-Indians. The number of quarters for migratory clerks built and under construction is 641, of this number 385 are for those who live in the orthodox style and 256 are those who are unorthodox.

RAISINA CHUMMERIES.

137. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Is it a fact that four nice Chummeries well fitted and well furnished have been built at Raisina for European clerks and Assistants of the Secretariat living single?

(b) If so, will the Government be pleased to state whether any such chummeries have been built for Indian clerks and Assistants living single? If not, why not?

(c) Will the Government be pleased to state the reasons why two of these cannot be reserved for Indian clerks living single?

(d) Is the Government aware that if such a step is taken then scarcity of quarters for Indians will to a great extent be obviated?

Colonel Sir Sydney Crookshank: (a) Four chummeries accommodating 72 bachelors have been built. These are available for occupation by unorthodox Indians and Europeans.

(b), (c) and (d) Four chummeries accommodating 104 bachelors are under construction. These are meant for occupation by orthodox Indians but one or more blocks will, if necessary, be used for unorthodox Indians.

RENTS IN DELHI.

138. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Is it a fact that the rent of the quarters at Delhi either of officers or of clerks of the Imperial Secretariat have been raised abnormally?

(b) If so, will the Government be pleased to state the percentage of increase in rent in each type of quarters at Raisina for the officers and for the clerks (Indian and European)?

(c) Is it a fact that such increase in rent was announced to the tenants after they occupied the quarters (either of officers or of clerks and Assistants)?

Colonel Sir Sydney Crookshank: (a) and (b) The statement laid on the table shows the assessed rents and recoveries in 1921-22 and 1922-23.

The increase in recoveries is due to the introduction of the Fundamental Rules which have superseded the concession rates of rent which prevailed last year. These concessions gave a rate of rental recovery of 4 to 6 per cent. of the salary of the occupants, whereas the rental recoveries are now based upon 10 per cent. of the minimum pay of each class.

(c) Yes.

Statement showing the assessed rents and the rents sanctioned for recovery in respect of officers' bungalows and clerks' quarters in New Delhi during the winter of 1922-23 as compared with the last year's rents :

	1921-1922.				1922-23.			
	Class.	Average salary.	Assessed rent.	Rent fixed for recovery.	Class.	Average salary.	Assessed rent.	Rent fixed for recovery.
Officers' bungalows at Raisina		Rs.	Rs.	Rs.		Rs.	Rs.	Rs.
	I	3,500 and upwards.	260	240	A	4,000 to 5,000	301	315
	II	2,500 to 3,499	222	160	B	2,750 to 2,999	238	250
	III	1,750 to 2,499	185	115	C	2,000 to 2,749	194	206
	IV	1,250 to 1,749	133	70	D	1,350 to 1,999	143	154
	VI	Below 1,250	96/8	40	E	900 to 1,349	121	103
Clerks' quarters, New Delhi					F	700 to 899	116	83
					G	600 to 699	98	72
Unorthodox	I	350 to 500	54	21/8	A	425 to 500	55	52
	II	251 to 319	41	16/8	B	300 to 424	43	37
	III	250 and below	No quarters	..	C	200 to 299	No quarters	..
Orthodox	Type—							
	B	350 to 500	45	18	A	425 to 500	41	41
	C	251 to 349	29/8	11/12	B	300 to 424	27	27
	D	151 to 250	21/8	8/8	C	200 to 299	21	21
	E	150 and below	13/14	5/8	D	100 to 199	14	13

N.B.—There has been no increase whatever in the assessed rents of the quarters at Timarpur. The rate of recovery in each year is based on the floor area basis with reference to the rents of the quarters in the New Capital.

INDIANS ON I. C. S. CADRE.

139. *Rai Bahadur Lachmi Prasad Sinha: Will the Government be pleased to state what steps do they propose to take to bring the Indians belonging to the Indian Civil Service Cadre as Secretary, or Deputy Secretary of the different departments of the Government of India?

The Honourable Sir Malcolm Hailey: The Government of India follow the principle in the appointment of Secretaries and Deputy Secretaries that the man best fitted for the post should be selected regardless of racial considerations. Indians have been and are appointed to these posts.

APPOINTMENT OF INDIANS TO REVENUE AND INDUSTRIES DEPARTMENTS.

140. *Rai Bahadur Lachmi Prasad Sinha: Will the Government be pleased to state whether they propose to bring Indians belonging to Indian Civil Service Cadre as Secretary of the Department of the Revenue and Agriculture, vice Mr. Hullah about to retire and of the Industries Department vice Mr. Chatterjee appointed Member of His Excellency's Executive Council. If not, why not?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the answer given to his other question on the same subject.

INDIANS IN RAILWAY COMPARTMENTS RESERVED FOR EUROPEANS.

141. *Rai Bahadur Lachmi Prasad Sinha: (a) Will the Government be pleased to state whether Indians with European dress are allowed to travel in the compartments reserved for Europeans on Railways?

(b) If the answer is in the affirmative, will the Government be pleased to lay on the table a copy of the orders issued to different Railway authorities on the subject?

(c) If the answer is in the negative, will the Government be pleased to state the reasons?

(d) Is it a fact that Indians even with European dress when travelling by European compartments can be evicted out of the compartment by a Railway Guard according to his sweet will or when a so-called European objects to travel with an Indian in European costumes?

(e) If so, is the Government aware that such cases of evictions of literate and high class Indians are one of the main causes for the movement for the abolition of such reserved compartments for Europeans?

Mr. C. D. M. Hindley: Government have no information what the practice in this matter on the different railways is.

APPOINTMENTS TO RAILWAYS.

142. *Rai Bahadur Lachmi Prasad Sinha: Is it a fact that Anglo-Indians and Europeans will henceforward be taken to be Indians for the purposes of appointments on Railways as a result of the resolution about Indianisation of appointments?

Mr. C. D. M. Hindley: I would refer the Honourable Member to the reply given in this Assembly to Question 201 put by Mr. K. Ahmed on the 7th September 1922 on the subject.

IMMOVABLE PROPERTIES IN INDIA.

143. ***Mr. K. Ahmed:** (1) Is it a fact that there is no compulsory registration of judgment and decree recognized by any Act of Legislation regarding the immovable properties in India?

(2) Are the Government aware that in England, the Land Charges Act, 1900, lays down that unless the judgment or decree concerning immovable properties be registered under the Act of 1888, the judgment or the decree will not operate as a charge on the immovable properties?

(3) Do Government propose to introduce such Legislation in the country immediately for the benefit of the public?

The Honourable Sir Malcolm Hailey: The Honourable Member will excuse me if I do not enter into an exposition of the law of registration in answer to a question. It will be sufficient to say that Government do not propose at present to introduce legislation amending the existing law relating to the registration of decrees or orders of a Court.

Mr. K. Ahmed: Is not that system in existence in the civilised western countries, for instance, England?

The Honourable Sir Malcolm Hailey: I hope that the Honourable Member will not deny to India the title of a civilised country.

Mr. K. Ahmed: Is it not a fact that that system is in existence in England?

The Honourable Sir Malcolm Hailey: It is. The Honourable Member is well aware that it is, without asking me this question.

Mr. K. Ahmed: Will the Government be pleased to take any steps to introduce that system without any more denial to India?

The Honourable Sir Malcolm Hailey: I have already replied that the Government does not propose to do so.

INCONVENIENCES ON EASTERN BENGAL RAILWAY.

144. ***Mr. K. Ahmed:** (a) Are the Government aware that in the Southern Section of the Eastern Bengal Railway most of the carriages are in damaged and dilapidated condition, that rain-water falls inside through the roof of the carriages, the trains are seldom lighted, especially the Inter class and Third class carriages, the Railway platforms are not properly lighted, no latrines are provided in most of the Inter class and Third class carriages, and the trains seldom run punctually and that in general, the Southern Section is uncared for and not properly looked after and that the passengers are greatly inconvenienced thereby?

(b) Do Government propose to take proper steps for removing the above defects and thus redressing the grievances of the travelling public?

Mr. C. D. M. Hindley: (a) and (b) Government is informed that while some of the carriages on the Southern Section of the Eastern Bengal Railway are in need of repairs and re-painting, the statement that most of the carriages are in a damaged and dilapidated condition conveys an unduly pessimistic impression.

The provision of new rakes for this section is contemplated, and when these are completed the new stock should bear favourable comparison with the stock of any Railway in India.

Complaints were received at the beginning of the rains of leaky carriage roofs, and the carriages were immediately attended to, and the complaints ceased.

The statement that carriages and platforms are not properly lighted is incorrect, and owing to the short length of the train runs on this section, the Diamond Harbour run being only 37 miles, the Canning Branch 28 miles and the Budge Budge Branch 16½ miles, the provision of bathrooms and latrines in the carriages of the trains over these suburban lines is not considered necessary.

During the first half of 1922, the punctual running of the trains over this section was affected unfavourably by the failure of water supply and prevalence of high winds. Consequently it was found advisable to revise the time table from the 15th July 1922 to a lower rate of speed.

Mr. K. Ahmed: May I ask what sort of light gas, kerosene oil or electric lights are supplied to these places, and if there be electric light, will the Honourable Member be good enough to state from the statistics of units the exact amount of the consumption of current?

Mr. C. D. M. Hindley: I shall require notice of that question.

UNSTARRED QUESTION AND ANSWER.

WORKING OF RAILWAYS WITH REGARD TO FINANCIAL RESULTS.

86. **Rai G. C. Nag Bahadur:** With reference to the answer given on 6th September 1922 to my unstarred question No. 14, do Government propose to modify the conditions so as to reserve power in the case of future railways to assume working, if the railway entails payment of guaranteed interest for three consecutive years?

Mr. C. D. M. Hindley: Government are afraid that the suggestion contained in the Honourable Member's question is impracticable.

THE INDIAN MINES BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I beg to present the report of the Joint Committee on the Bill to amend and consolidate the law relating to the regulation and inspection of Mines.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

That Rao Bahadur T. Rangachariar be nominated to serve on the Select Committee to consider and report on the Bill to amend sections 362 and 366 of the Indian Penal Code.

The necessity for my making this application to the House, and for further calling on Mr. Rangachariar for an increase of the heavy labours

[Sir Malcolm Hailey.]

which he already undertakes on our Select Committees, is this—that under the rules we need a Chairman for our Committee. He must be either the Law Member, if he is a Member of the Assembly, or the Deputy President if he is a Member of the Committee. Neither of these requirements being complied with, the rules next provide that we should have as Chairman a gentleman who is a Chairman of the House. But unfortunately there is no such gentleman on the Select Committee, and it is for that reason that I have had to make an application to the House to add to the Committee the name of Rao Bahadur Rangachariar.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: We will now proceed with the further consideration of the amendments to the Bill further to amend the Code of Criminal Procedure.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

“That in clause 10 (i) (a), insert the following at the beginning:

‘After the word ‘occupier’ where it occurs for the second time, the words ‘in charge of management of that land’ shall be inserted and.’”

Sir, my amendment refers to the agents of the owners or occupiers of land. So far as the owners and occupiers are concerned, it has been found necessary that they should have connection with the land and that has been provided for in the section; but as far as the word ‘agent’ is concerned, there is no qualification put down in that section; ‘Agent’ as it stands in the clause and as is well known is a very wide and comprehensive term. Sometimes it extends even to vagueness. It may apply, for example, even to servants. I therefore suggest to the House that the word ‘agent’ should be qualified and made definite in such a way, that only such agents be made liable to give information under section 45 as may be connected with the land, or be in charge of the management of that land the occurrence on which is to be reported. The word ‘agent’ is very comprehensive and vague, for instance there may be agents for various purposes, they may be for the collection of land revenue, they may be for looking after the cultivation of that land, they may be for the construction of buildings on that land or for conducting and defending suits for title of such lands and so on. And to make any such agents liable would be to make the term very wide and troublesome, so it is necessary to restrict it only to such persons as are in charge of the management of the land, and who may be in a better position to know about the occurrences on that land. I therefore put my amendment for the consideration of this House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, the Honourable Member has explained that the object of his amendment is to restrict the application of the word ‘Agent’ in section 45 of the Code. I venture, Sir, to suggest that it is quite unnecessary to take this course. We have had this word in the Code in its present position exactly since 1872. There have been numerous rulings of the Courts to indicate what persons are covered by that term, and I would submit, Sir, that all the Courts now have the case-made law on the subject, and that it is most

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

undesirable to introduce such words as those proposed by the Honourable Member in this case. He has suggested that the word standing by itself may have too wide an application. I will merely remark that in one of the rulings it has been held that the liability of a resident Agent arises only when the owner is absent. In these circumstances, Sir, I would venture to suggest that it is quite unnecessary to accept the amendment moved by the Honourable Member.

Mr. Deputy President: The question is that the amendment* moved by Mr. Agnihotri be made.

The Assembly then divided as follows:

AYES—40.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Asad Ali, Mr.
Asjad-ullah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Das, Babu B. S.
Ghulam Sarwar Khan, Chaudhuri.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.

Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Yamin Khan, Mr. M.

NOES—33.

Aiyar, Mr. A. V. V.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.

Joshi, Mr. N. M.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Pyari Lal, Mr.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. K. B. L. Agnihotri: I beg to withdraw my second amendment†

The amendment was, by leave of the Assembly, withdrawn.

Mr. J. Ramayya Pantulu (Godavari cum Kistna: Non-Muhammadan Rural): Sir, in clause 10 (i) (a) I propose to omit the words ‘or obtain. . .

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Mine has not been moved yet—No. 11 on the list.

* Vide p. 1114 of these Debates.

†In clause 10, sub-clause (ii), omit all the words after the word ‘inserted’, i.e. omit the words commencing from ‘and’ to the words ‘other law’.

Mr. Deputy President: I think it will be more convenient to take Mr. Pantulu's amendment first.

Mr. J. Ramayya Pantulu: The clause provides that for the word 'obtain' the words 'possess or obtain' shall be substituted in section 45; under the Code as it is, a person is bound to give any information that he may obtain; clause 10 amends it by substituting 'obtain or possess' for the word 'obtain.' I propose that the words 'or obtain' should be omitted; so this clause will read, as I amend it, 'bound to give information which he may possess.' We had a good deal of discussion upon this clause yesterday on the amendment proposed by my friend, Mr. Rangachariar. He objected to landholders being called upon to give information to the police, and the offending portion of the section so far as that is concerned is that the landholder would be called upon to give information which he may possibly obtain but which he may not have in his possession. Now, if we take away the words 'or obtain' and simply leave the word 'possess' it comes to this, that the landlord is bound to give information which he possesses and not information which he may possibly obtain by making inquiries. If my amendment is carried, it will be incumbent upon the prosecution to show that the accused had that information in his possession and not merely that he might have obtained it. Therefore, I think that, if this amendment is carried, the sting will be taken out of that section. So, I submit my amendment very strongly to this House for its acceptance.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I will explain to the House in the first instance how we came to suggest an alteration in the existing law. The word in the existing law, as the Mover has explained, is simply 'obtain.' In 1904 the Madras Government found that this did not cover information obtained by personal observation. There was therefore some difficulty in making certain that information obtained by personal observation such as for instance, the discovery of a corpse on the ground, came within the scope of the law. At the same time I am quite willing to agree with Mr. Pantulu that on the whole the word 'possess' has a sufficiently extensive meaning for the purposes of the Act; and though I am not aware exactly what view my friend, Mr. Seshagiri Ayyar, who has also tabled an amendment on this clause, will take of the suggestion, for my part I am willing that the word 'possess' should stand by itself without 'obtain.'

Mr. T. V. Seshagiri Ayyar: Sir, in view of the assurance given by the Honourable the Home Member, I do not mean to press mine. Of course, it would have been much better to use the word 'have' having regard to what the Madras Government said, because if a man sees a corpse in the way and he gets that information, he will be having that information. It may be doubtful as to whether this is simply *possessing* the information. That is apparently the view taken by the Madras Government. The word 'have' would cover both the cases of obtaining or possessing information. That is why I have suggested the word 'have' which would cover both the cases. However, I have no doubt that the deletion of the word 'obtain' is absolutely necessary, because it implies an obligation to seek the information. After all, we are not making law for the highest judiciary; we are making law which would be administered by the magistrates and they are likely to be misled by the use of the word 'obtain,' they may come to the conclusion that it is obligatory on them to obtain information. I do not very much care what you substitute, but I certainly think that the

word 'obtain' should be deleted, but it would conduce to the better understanding of the section if you have the word 'have,' that would certainly meet the objection which the Madras Government seem to have had for the original word. I leave it to the Government to say whether they would like to have the word 'possess' or 'have'; anyhow, the word 'obtain' must go.

Mr. Deputy President: The amendment moved.

In clause 10, sub-clause (i) (a), omit the words 'or obtain'.

The question is that that amendment be made.

The motion was adopted.

Bhai Man Singh (East Punjab: Sikh): I do not propose to move this amendment,* Sir.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, my motion runs as follows:

In clause 10 (ii) after the word 'inserted,' insert the following: 'After the word "persons" the words "with his or their consent" shall be inserted.'

This relates to the appointment by Government for the purposes of this section village headmen. The section reads:

'The District Magistrate may from time to time appoint one or more persons to be village headmen for the purposes of this section in any village for which there is no headman appointed under any other law.'

The amendment now proposed by Government is to appoint one or more persons to perform the duties of the village headman under this section where a village headman has or has not been appointed for that village under any other law. My amendment would only remove any misconception there may be as to the power of the District Magistrate to appoint persons against their will, and it is for that reason that I have inserted this clause that when they are so appointed, it should be with his or their consent; it should not be that a person is appointed as village headman for the purposes of this section even without his consent. As it is, it is open to the District Magistrate to do that. I know that in the case of enlisting special police, people without their consent are enlisted. This ought not to degenerate into such a provision. It must be a voluntary duty to be performed by people who are given a certain status. People may not like to be appointed as village headmen, and the District Magistrate may appoint them as such even without their consent. I therefore propose, Sir, that in clause 10 (ii), after the word 'inserted' insert the following: 'after the word "persons" the words "with his or their consent" shall be inserted.'

The Honourable Sir Malcolm Hailey: I have in this case also to explain to the House how these words came to be placed in the Bill. In the Central Provinces it appears there is a class of persons known as *mukaddams* or *Kotwars*. These are not regular village headmen, although they discharge on occasions the work of the village headman, and the Central Provinces wrote some years ago that in their province there are not a few sets of villages and villages comprising several scattered hamlets for which only one *mukaddam* is appointed. It would be useful to have power to appoint for a particular village or hamlet in such cases a headman for the purposes of section 45 only. That is the reason why the drafting Committee thought it was advisable to give a Local Government power to

* "Omit clause 10, sub-clause (ii)."

[Sir Malcolm Hailey.]

appoint a village headman where none existed. Secondly as to the necessity of inserting the words 'with his or their consent,' I think it will be the experience of every one in this House who has had knowledge of revenue work that so far from a man refusing to become a headman, there is on the other hand very keen competition for the post. I think that Mr. Rangachariar might in the circumstances well be free of any apprehension on that subject. I personally can hardly conceive the circumstances in which a man would be appointed to a post so highly valued in the countryside without his consent. It would, therefore, make very little difference to the Act one way or the other. But from our point of view the words are for practical purposes unnecessary.

Mr. K. B. L. Agnihotri: Sir, it will appear from the speech of the Honourable the Home Member that the proposal for the inclusion of this clause originated from the Central Province's Government. I come from a district in which there are many villages for which one *mukaddam* is appointed to look after and perform the statutory duties. Thus it is necessary certainly that some persons be appointed in these hamlets or individual villages who should be made responsible to report. But unfortunately, the fear or the apprehension that has been put forward by our leader, Mr. Rangachariar, is absolutely well-founded. There may arise cases in which it may enter the head of the District Magistrate or the Deputy Commissioner to appoint as a punitive measure any person to give such report and that will create a hardship. I do realise and admit that in the revenue Courts we find that there is often a regular competition for the appointment as *mukaddams*, *lambardars* or headmen of villages, but there is no reason why we should not make the law clear so as to do away with the apprehensions that exist in our minds that this power is likely to be utilised sometimes as a weapon against people in the bad books of the officers. The *mukaddams* are appointed and remunerated for their duties. In this case the fear of the appointment of these men as a punitive measure should be done away with and I support the amendment moved by my friend, Mr. Rangachariar.

The Honourable Sir Malcolm Hailey: Has the Honourable Member any experience of such a case? It will interest us to know.

Mr. K. B. L. Agnihotri: Yes, just as always happens under the Police Act, sections 15 and 16, where special constables are appointed.

The Honourable Sir Malcolm Hailey: That is quite a different case.

Mr. K. B. L. Agnihotri: Not in the least. The object under that Act is a salutary one, but sometimes respectable persons are harassed and troubled, and we do not want to put in anything of an ambiguous or indefinite nature which may in future give rise to hardships to the public.

Mr. Deputy President: Amendment moved.

'In clause 10 (ii) after the word 'inserted' insert the following: 'after the word persons' the words 'with his or their consent' shall be inserted.'

The question is that that amendment be made.

The motion was adopted.

Clause 10, as amended, was added to the Bill.

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Santhal Parganas: Non-Muhammadan): Sir, may I have your permission to take up both the amendments* Nos. 16 and 17 together because they practically refer to the same section and the same clause?

The Honourable Sir Malcolm Hailey: We should be obliged, Sir, if you would kindly let us discuss both parts of the amendment separately.

Rai N. K. Sen Bahadur: Rather the second one first: 17 ought to come first and 16 ought to come next; because 16 is practically a corollary of 17.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I would point out that, if No. 16 is carried, then No. 17 does not arise. The Honourable Member will have achieved his object.

Rai N. K. Sen Bahadur: All right: as you please.

Mr. Deputy President: I think it would be much more convenient for the House if the amendments were taken in two parts as we have hitherto done with every amendment.

Rai N. K. Sen Bahadur: Sir, section 54 (1) runs as follows:

'Any police-officer may, without an order from a Magistrate and without a warrant, arrest:

First—any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.'

Now, I propose an amendment to this section that this should be changed and the section should stand as:—

'Any police-officer may, without an order from a Magistrate and without a warrant, arrest any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned.'

Now, the change that I want is to drop the second portion of this clause. In fact, in clause 1, you will find there are four items and it is divisible into four heads. That is, any police-officer may, without an order from a Magistrate and without a warrant, (a) arrest any person who has been concerned in a cognizable offence; (b) may arrest any person against whom there is a reasonable complaint of his having committed a cognizable offence; (c) may arrest any person against whom a credible information has been received; and (d) may arrest any person against whom suspicion exists as to his having been so concerned. These are the four parts into which I divide the section. You will find from the amendment I have proposed that I do not want to touch item (c), namely, 'against whom a credible information has been received.' Because as a matter of course, a police-officer ought to have the right to go and arrest any person without the order of the Magistrate and without a warrant any

* "16. In clause 11 (i) before the words 'To sub-sections' insert the following:
'For clause 'first' in sub-section (i) of section 54 the following clause shall be substituted:

'First—any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned.'

17. In clause 11 (i) before the words 'To sub-section' insert the following:
'In sub-section (i) first of section 54 the words 'or against whom a reasonable complaint has been made' shall be omitted.'

[16TH JAN. 1923.]

[Rai N. K. Sen Bahadur.]

person against whom he has received a credible information of his having committed a cognizable offence. My amendment does not touch that portion of the clause. I am concerned mainly with No. 2, namely, against whom a reasonable complaint has been made."

Now, I would remind this House that the word 'police-officer' in section 54 means and includes any person from the Superintendent of Police down to a constable and from the new amendment that is now proposed—the term 'police-officer' in this section shall be deemed to include such village officers as may be either generally or specially authorised by the Local Government in this behalf. The question before this House is, and the question I want to put first is whether any police-officer, say a writer constable, or a head constable should be authorised to go without an order from the Magistrate and without any warrant from him—to go and arrest a man against whom there is a reasonable complaint of having committed a cognizable offence. That is the first question that I want to put before the House. Now, in section 4, clause 8, of the Criminal Procedure Code, we find the word 'complaint' means 'allegations made orally or in writing to a Magistrate with a view to his taking action under this Code. It does not include any information given to the Police. Complaint means practically that a man goes straight to the Magistrate and makes some allegations to him either orally or in writing for the purpose of his taking certain action under the Code. And what action is the Magistrate intended to take or has to take when the complaint is made? That is to be found in section 190. He takes cognizance of the case. As soon as an allegation or a complaint is made before the Magistrate, he takes cognizance of the case under section 190 and under section 200 he examines the man, records his evidence and then he passes an order either under section 202 or under section 204. Either he says, under section 202, 'I don't believe your statement—you must prove your case' (that is an order under section 202), or he may send it to the Police or to any other individual to make a local investigation of the case. But, if he believes the man—the complainant—he may pass an order under section 204 and issue either a summons or a warrant against him.

Now, Sir, if you will kindly refer to section 202, you will find there that the Magistrate has power to say, 'well, I don't believe you; you must prove your case.' When there is a complaint lodged before a Magistrate, can't the police say a writer constable go and arrest the man? When the complaint, I will not issue a warrant against the accused or I will not issue any process against him, cannot a constable, a writer constable or a head constable go and arrest the man by virtue of the power that we are vesting in him? I say 'yes,' because a police man can reasonably say 'well, the Magistrate may not have thought the complaint to be reasonable, but I think it to be reasonable. I will arrest the man.' My intention is that when the matter is in the hands of a Magistrate after a complaint has been lodged (what we call in technical terms complaint cases) the police should have no hand at all and their interference does not seem necessary. Here I may give some concrete examples, of what actually happened where I personally felt this difficulty regarding this matter. There was a case only in 1922 before the Sub-Divisional Magistrate of Araria in district of Purnea where a man went straight to the Magistrate and lodged a complaint. This is the case of Emperor *versus* Muhammad Irfan. The complainant went straight to the Magistrate and lodged a complaint cognizable offence. The Magistrate very peculiarly, no doubt, said

police, 'you better investigate.' The matter went up to the Patna High Court and the learned Judge there held that the order of the Magistrate was practically an order under section 202. As the Magistrate did not issue a warrant or summons under section 204, his order to the police was only an order under section 202. Now, what does the Police do in this case? I would appeal to the House to consider this. The writer constable goes straight and arrests the man. Here is an order of the Magistrate under section 202. The Magistrate has taken cognizance of the case and he is in seisin of it, and it is for him to decide whether he should issue a warrant and whether he should get the man arrested or not. It is not for the Police to decide whether the man should be arrested. The case subsequently took a different turn. The man who was arrested somehow escaped. The matter came up before the Court again and the issue was whether that arrest was a lawful arrest and amounted to lawful custody. When the matter came up, the plea of the police officer was: 'Well, here is section 54, I arrested the man (under that section) and so it was a lawful custody. The Magistrate no doubt passed an order under section 202, and did not believe the complaint and therefore he did not issue any process, but I considered that order to be very unreasonable and the complaint to be very reasonable and so I arrested the man. My custody was therefore a lawful custody.' That was the plea that the writer constable took up.

There was another case I will refer to, and that was a more recent one in the very year. The case is known as Emperor *versus* Jehani.

Rao Bahadur T. Rangachariar: What was the decision of the High Court in the first case?

Rai N. K. Sen Bahadur: Unfortunately, it is not yet decided, but it went up on appeal and the appellate Court held that it was not a lawful custody. The appeal has been decided and the appellate Court has held that it was not a lawful custody.

There is another case, similar case, Emperor *versus* Jehani. I will give you that instance. There the complainant went straight to the Magistrate and lodged a complaint. On that complaint the Magistrate's order was as follows: 'I cannot believe this story. Let it be sent to the police for local investigation under section 202.' That was the order given by the Magistrate on the order sheet. A copy of the petition goes to the police. What does the police do? He copies out the whole of the complaint in his first information book although the complainant or informant is not before him. He copies out *verbatim* from the copy of the complaint and goes and arrests the man. What is the effect of this? Is it not a case where a writer constable or a head constable practically sits upon the judgment of the Magistrate? The Magistrate says, 'well, I will not issue any warrant or any process against the man', but the writer constable or a head constable says, 'well, I consider the complaint to be very reasonable. I will arrest the man.' Whose order is to prevail in such a case? That of the writer constable or the head constable or that of the Magistrate who has judicially held by an order passed under section 202 that no process should be issued?

The Honourable Sir Malcolm Hailey: Has the case been decided?

Rai N. K. Sen Bahadur: That case has not yet been decided.

The Honourable Sir Malcolm Hailey: It is still *sub judice*?

Rai N. K. Sen Bahadur: That case is still *sub judice*, but the facts are these and I think it matters very little whether it is decided or not. I think that now the Code of Criminal Procedure is being amended, it is for this House to decide whether we should let the police, a writer constable or even a sub-inspector, over-ride the order of a Magistrate. That is the chief point that I put before this House. Is it desirable? Does it not look very ridiculous that a sub-inspector of police or a writer constable or a head constable should go and sit upon the judgment of a Magistrate? A question would here arise whether the administration of criminal justice will in any way be affected or hampered if you drop the words 'where a reasonable complaint has been made.' I am fully alive to the fact that some powers have to be given to the police as intended by section 54. But let it be the power which can be exercised with bridle and some decency. But when we find that a police sub-inspector or a writer constable goes and over-rides a Magistrate's order, then our interference becomes absolutely necessary. We at least now cannot stand and tolerate such a procedure as this, by which a mere constable could go and over-ride an order of the Magistrate. Now, Sir, I want to drop the words 'where a reasonable complaint has been made.' My reason is this, that when the Magistrate is in seisin of the case, when he is dealing with the case judicially under section 202 or 204 or any other section of the Criminal Procedure Code, why should the police be vested with the power to go and arrest the man without an order from the Magistrate? And, I object especially when the word 'police-officer' includes and means any one from the Superintendent of Police down to a constable. So that, if you drop out the words 'where a reasonable complaint has been made' the administration of the criminal justice will not be hampered in any way, because, when the Magistrate is in charge of the case, he will deal with it in the best way he can, and the interference of the police does not at all seem to be necessary. That is the first portion of my amendment. The rest of my amendment falls into two parts. The first portion refers to the words 'any person who has been concerned in any cognizable offence, etc.,' and the second portion refers to the words 'a reasonable suspicion exists of his having been so concerned.' Now, in the first portion, *viz.*, 'any person who has been concerned in a cognizable offence'—the words 'concerned in' are a very comprehensive term, and very wide. He can go and arrest any man on this ground and he can at the same time, if he chooses, release the man saying 'I found him not to be so concerned.' The word 'concerned' I think ought to be changed, and I want to put it in the following language: 'anybody who to his knowledge or in his view, that is to say, in his presence, has committed a cognizable offence'—you will find in section 64 of the Code, that a Magistrate has the power to go and arrest a man if anybody commits a cognizable offence in his presence. So I would rather like to give a police officer power similar to that, that is, if a person commits an offence in his presence, *i.e.*, in his view, he may arrest the man without an order from the Magistrate and without a warrant. If he says that he has got knowledge that a person has committed a cognizable offence, I do not object to give him the power,—because there the police officer takes the responsibility of having some knowledge about the man. If he simply says,—well, I have thought the man was concerned in a cognizable offence—will that be enough to enable the police officer to go and arrest a man? I therefore submit that the word 'concerned' should be changed, and I would suggest that the words 'when any person who has in his view or to his knowledge committed a cognizable offence' be substituted. The last change that I want to make is in the fourth item,

viz., regarding the words 'a reasonable suspicion exists of his having been so concerned.' Will the Magistrate decide the question whether the suspicion is reasonable or unreasonable or a constable should decide, at the time when he makes the arrest whether the suspicion against the man is reasonable or unreasonable? I would certainly not have asked for this amendment on this point provided we could assume that every police officer from a constable upwards was an honest officer, was a man who had no likes and dislikes. If that had been so, I would have allowed the section to remain as it was. We who live in the mufassil know what a constable or a head constable or a writer constable is, and we have to guard ourselves and guard our countrymen against any abuse of this section if there is any chance of it. I would suggest therefore that the words 'a reasonable suspicion exists of his having been concerned' may be changed to, as I have suggested, *viz.*, 'or a suspicion based on material facts exists of his having been so concerned.' He must have at least some materials to show. A police officer—I believe the House knows it—is not bound to give you all the informations as to where he got the informations from or his reasons for his suspicion, although a Magistrate is bound to give you some information, if a Magistrate acts on suspicion under section 190. He has to record something, and the accused is entitled to know it, but in the case of a police officer, he may say 'I am not bound to tell you.' A head constable who generally remains in charge of a Thana can well say, 'my suspicion was reasonable'—and that stops the mouth of the accused and he cannot further question him over this. So if this section is changed to what I have suggested, *viz.*,—'a suspicion based on material facts'—he is bound to give us at least some of the materials on which he suspected the man to have been concerned in a cognizable offence. So with these remarks, I place before this House the amendment which I propose to make in this section, and I hope the House will consider the question which is an important question so far as my countrymen living in the mufassil are concerned—whether a police officer in the first instance should be authorised to arrest a man without the order of the Magistrate regarding whom a reasonable complaint has been made to the Magistrate. That is the first point. The second is whether you should allow him to go and arrest a person simply because he thinks a man is concerned in a cognizable offence or he thinks that there is a reasonable suspicion of his having been so concerned. So this is my amendment; and I beg to propose that in clause 11 (1) before the words, 'To sub-section' insert the following:

'For clause 'first' in sub-section (1) of section 54, the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned'.

Mr. Deputy President: The amendment moved is:

'That in clause 11 (1) before the words, 'to sub-section' insert the following:

'For clause 'first' in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned'.

Mr. H. Tonkinson: Sir, the Honourable Member who has moved the amendment has explained the reasons for his motion at great length. But I

[Mr. H. Tonkinson.]

think it will be possible for me to show quite shortly that it would be impossible for this House to accept that amendment. In the first place, I am obliged to the Honourable Member for having informed us that this section gives power to any police officer, that is to say, any officer from the rank of a police constable up to the rank of a superintendent of police. He proposes, Sir, to amend the first clause of section 54. He proposes nevertheless to leave the 7th clause unaffected. If Honourable Members will refer to the section of the Code, they will find that the 7th clause began with exactly corresponding words to those in the first clause. The 7th clause runs as follows: 'Any person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in the act committed' and so on. (A Voice: 'Outside British India'.) Now, Sir, the first clause of section 54 gives power to a police constable to arrest without a warrant in these circumstances if an offence has been committed or he has reasonable grounds for belief that a cognizable offence has been committed in British India. The 7th clause gives power to the police constable to take exactly the same course if any act has been committed outside British India which within British India would be an offence. Now, Sir, we are dealing with the powers of a police constable. Under the first clause, if he has to consider whether he may arrest a person, he will have, under the proposal of the Honourable Member, a certain series of considerations to apply to the case.

If, however, the man has done an act just outside British India in an Indian State, then he will have to apply an entirely different set of considerations. I think, Sir, that that by itself means that the amendment which has been moved by the Honourable Member cannot be accepted.

He has referred at great length to the portion of the clause which deals with a person against whom a reasonable complaint has been made. He has assumed that the word 'complaint' in that clause is governed by the definition in clause (h) of section 4 of the Code. I venture to suggest, Sir, that it is quite clear that the definition of the word 'complaint' in section 4 of the Code does not in any way govern the word 'complaint' in this section. (Rai N. K. Sen Bahadur: 'Is there an authority on that point?') If the Honourable Member will read the beginning of section 4 of the Code he will find that the words and expressions as defined in that section have the meanings there given 'unless a different intention appears from the subject or context.' It is quite clear, Sir, that where the word 'complaint' is used in the first clause in section 54, it has the ordinary dictionary meaning of the word 'complaint'. It does not relate to an allegation made orally or in writing to a Magistrate. (Mr. W. M. Hussanally: 'Why not substitute the word 'information' for the word 'complaint'?') That amendment, Sir, has never been suggested to us for consideration.

Then I would like to refer further to the amendment proposed by the Honourable Member. He ends his clause with the words 'so concerned'. He has taken those words from the existing clause. In the existing clause it is quite possible to use them, because the clause begins 'no person who has been concerned'. Under the Honourable Member's amendment, on the other hand, the words 'so concerned' can have no meaning whatsoever. In these circumstances, Sir, I trust the amendment will not be accepted.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I only wish to add one or two words to the remarks which have been made by Mr. Tonkinson. The difficulty that arises if Honourable Members bring in amendments which are quite new, that is to say, if they have not been considered by the Select Committee is that various drafting mistakes come in. Mr. Tonkinson has already referred to the point in regard to the words 'so concerned'; but I suggest that there are two or three other drafting amendments which will have to be made if this proposal is approved. Another point is that the Honourable Member's draft would take the place of the present law, which has been in force for about 50 years and on which High Court rulings in Calcutta and other High Courts have been recorded. In the draft we find the words 'to his knowledge or in his view'. Well, I suggest that if it is 'to his knowledge', the words 'in his view' are quite unnecessary. Then comes 'a credible information' and 'suspicion based on material facts'. Well, Sir, 'reasonable suspicion' is the language of the English Law as well as of the Indian Law; and I suggest that the specific proposal which has been made, namely, that the Honourable Member's draft should supersede the existing law, which has been in force for many years and is approved by all the High Courts, should not be accepted by this Honourable Assembly.

Mr. T. V. Seshagiri Ayyar: Sir, the answer from the Government Benches to the motion made by my friend is very unsatisfactory. Two reasons were given by Mr. Tonkinson. One is that if you leave the 7th clause intact and deal only with the first clause, there will be some difficulty in construing the section properly. The answer to that is, if you accept the amendment to the first clause you must make consequential amendments to the 7th clause. The Government will have to do it if they accept the amendment, and there will be no difficulty in so drafting the 7th clause as to bring it into conformity with the amended first clause. Moreover, there is this to be considered, so far as the 7th clause is concerned. When an offence is committed outside British India, the offence may not be committed in the presence of or within the knowledge of the constable, and therefore the use of the word 'concerned' there, is not so inappropriate as in the first clause; because, if it is used in the first clause you empower a police constable to arrest a person who, according to his idea, is concerned in an offence. But if you substitute the words which my Honourable friend wants to be substituted, you will make the position clear that the constable can deal only with cases in which there has been an offence committed in his presence or within his knowledge... (Mr. N. M. Samarth: 'and in his view. As a lawyer I would interpret that as 'in his opinion'.')

Now, Sir, the real point which my Honourable friend has been trying to make is that, if there is a matter within the cognizance of the Magistrate, the police should have no hand in moving in the matter and making arrests. To that Mr. Tonkinson's answer is that the word 'complaint' in this clause does not refer to the definition in section 1, clause (4). The expression simply means something which has been brought to the notice of a police constable. Now, if that is what is really intended, we must make it clear. The word 'complaint' has been defined, and if, in a technical treatise, in a Code you find the word 'complaint' used again, naturally the Magistrate and other officers would interpret the word in the sense in which it has been defined previously. If what you intend to convey is simply the knowledge which the constable has gained, then you can substitute the words which Mr. Sen wants to be substituted for the word

[Mr. T. V. Seshagiri Ayyar.]
complaint'. That was Mr. Tonkinson's second answer and so far as it goes it does not dispose of the amendment. The really important point is that the police should not move in a matter of which they have no direct cognizance. They should be able to arrest only when they see that an offence has been committed. They must not take information given to a Magistrate and act upon it except under the directions of the Magistrate. That is the really important matter, and I hope the Government will accept the amendment which has been moved.

Mr. J. Ramayya Pantulu: Sir, the point raised by my friend is that if there has been a complaint made to the Magistrate and the complaint is referred by the Magistrate to the Police for investigation under section 202, the police should not have power to arrest the accused without a warrant, and to effect this he proposes to omit in clause (1) of sub-section (1) of section 54, all words referring to a complaint. It appears to me that his object will not be achieved by the amendment that he proposes, because, although he may remove those words, the words that will remain in the clause are sufficiently elastic to enable the police to arrest. The police man may say 'I have information that the accused has committed a cognizable offence' and arrest the man! The proper way to give effect to the Honourable Mover's intentions is to add a proviso to his section saying that no arrest without warrant shall be made in the course of investigations under section 202. That would be the proper way of giving effect to the wishes of my friend. The question then arises whether that will be in the interests of the administration of justice. Suppose there is a complaint of murder. Sometimes complaints are made direct to the Magistrates. Suppose the Magistrate foolishly sends it on to the Police without making an investigation himself—as most Magistrates pass on complaints to the police to get rid of the trouble of investigating—and suppose, in the course of the police investigation, the police officer has reasonable grounds to believe that the offence of murder has been committed. Should he be prevented from arresting the man? He would have had the power to arrest him if there had been no complaint. Now that he is investigating into a complaint referred to him by a Magistrate, should he be deprived of the power of arresting him? (Mr. T. V. Seshagiri Ayyar: 'He must take the orders of the Magistrate.') The alternative will be to get a warrant from the Magistrate. (Mr. N. M. Samarth: 'And allow him to escape in the meanwhile.') Or, as my friend says, the alternative is to allow him to escape in the meanwhile. What is the position of the Magistrate? When the Magistrate sends a complaint to the police for investigation, it means that he is not in a position to issue a process in the case, and until he receives the police report he will not be in a position to know whether he should proceed further with the case or dismiss the case under section 202? On an interim application from the police during the investigation, will he be in a position to issue a warrant? I am afraid a Magistrate will not be justified in issuing a warrant under those circumstances. Therefore, it seems to me that it will not be in the interests of public justice to deprive the police of the power of making the arrest in a cognizable case simply because a complaint happens to have been made to a Magistrate previously. So, I would rather not support these two amendments.

Sir Henry Moncrieff Smith: Sir, I should like just to emphasise one or two things which Mr. Percival mentioned. He just hinted that this had been the law in this country for a long time and in these identical words. As a matter of fact, these words 'reasonable suspicion' and 'reasonable

complaint' have been in the criminal law since the Code of 1861. Have they caused any difficulty at all? If you look at any commentary on the Code of Criminal Procedure and the notes on section 54, you will find the rulings on this subject. The Courts have never had any difficulty; and now you propose to substitute entirely different words. The result will be confusion in the minds of the Courts, when they are dealing with offences against police constables for making unlawful arrests and so on. I think Members have all along looked at this question from one point of view. They seem to forget that there are many safeguards against misuse of powers under section 54. There is in the first place a suit for damages for wrongful arrest. There is a prosecution which is a much more simple matter than a suit for damages against a police constable for wrongful restraint and confinement and other more serious offences. The police constable is quite easily kept in his place over this matter. Then, Mr. Percival briefly mentioned the English law. I should like just to tell the House very briefly what the English law is on the subject. A constable may arrest a person whom he finds committing felony, or upon reasonable suspicion that a felony has been committed by the person arrested, although no felony has in fact been committed, and whether the reasonable grounds of suspicion are matters within the constable's knowledge, or are derived from facts stated to him by others. I think the House will admit that it goes at all events as far as our law goes on the subject. Mr. Seshagiri Ayyar suggested that if the matter was in the hands of the Magistrate, then the Police should have no right to interfere at all unless a warrant was handed to them, upon which they carried out the orders of the Magistrate. That is not the law followed by the Courts of this country. If a police officer knows that a Magistrate somewhere else has issued a warrant, even though he has not seen the warrant, but he believes that a warrant has been issued, the Courts have held that he can go himself and arrest that person without the warrant in his hands at all. That is rather a different thing from the proposition which Mr. Seshagiri Ayyar placed before the House. Mr. Seshagiri Ayyar also suggested that it is a very easy matter to amend clause 7 of the section. I do not think he said anything about those words 'so concerned' which are left hanging in the air at the end of my friend, Mr. Sen's amendment. They refer to nothing. Mr. Seshagiri Ayyar would place a heavy burden on the drafting department of the Government of India: it is no concern of theirs. We have examined all the amendments that are here, and we notice here and there the necessity for consequential amendments; but we cannot proceed further and draft for non-official Members all the consequential amendments which they themselves overlook. I would, on those brief grounds, viz., that we are not going beyond the English law, that we intend to maintain the law which has been in existence in this country for over half a century, that there are effective safeguards against the misuse of the powers, that the law as it has existed has caused no difficulty in interpretation, and that consequential amendments have been entirely overlooked in this amendment proposed by Mr. Sen, ask this House to reject the amendment. Apart from that, I do not think Mr. Sen's amendment will carry out what he is aiming at. I am not going to argue again the point that a complaint of this class is not covered by the definition; that suggestion has been received with some scorn by this House, but as a matter of fact, if they will look at the rulings, they will see that all along they deal with a complaint to the police or information to the police. The word 'complaint' in this section is saved from the definition by those words which come at the beginning

[Mian Sir Muhammad Shafi.]

or a reasonable suspicion exists of his having been so concerned.' These are the classes of persons with whom this particular clause deals and in whose case it authorises a police officer to arrest without a warrant from a Magistrate. Now, a careful analysis of this clause will make it perfectly clear to Honourable Members that it really deals with the various stages of a police investigation in a cognizable case and I shall show that presently by the analysis of its phraseology.

Now, the first part of this clause says: 'Any person who has been concerned in any cognizable offence.' This obviously refers to that stage in a police investigation when, by reason of the evidence which has been actually procured or produced during the course of that investigation, a police officer is convinced or believes that a particular individual has been concerned with the commission of the offence into which he is investigating. Surely no Honourable Member in this House will say that when, during the course of an investigation, a police officer has reason to believe on the facts that he has already collected that a person is concerned with the commission of an offence that he should not then arrest that person. I am perfectly certain that no Honourable Member will support a proposition like that. Then, the next portion of the clause contemplates a different stage. This is what it says: 'or against whom a reasonable complaint has been made,' that is to say, even before the starting of the investigation, when a complaint has been made against an individual to a police officer. Here we have nothing to do with complaints to Magistrates. But when a complaint has been made to a police officer and it appears to that officer that the complaint is reasonable, then he will be authorised under this clause to arrest. Remember, he cannot arrest an individual against whom a complaint has been made simply because of the complaint itself. No. He is entitled to arrest only if there is sufficient material before him to show that the complaint is reasonable. I shall presently give the authority of a very learned and a very well known Judge for the proposition that I am placing before the House. The word 'reasonable' is a condition precedent to arrest on complaint. The complaint must on the data before the police officer be a reasonable one before the police officer is entitled to arrest the individual complained against in connection with any case. Then the next portion of this clause deals with cases where credible information has been received, not merely where information has been received, but credible information has been received, that is to say, the information is such that, *prima facie*, the police officer has reason to believe, has reason to credit, its veracity, the truth of that information. Well, surely no person interested in the maintenance of law and order, no sincere well-wisher of society in general, will come forward in this House and contend that even when a police officer has received information which is credible, that is to say, information which is *prima facie* correct, of the commission by an individual of a cognizable offence, that is to say, one of the more serious kinds of offences which the Legislature has made cognizable by the police without a warrant, that in such a case as this the police officer should not arrest that person.

Surely such a position has merely to be stated in order to be rejected by this House.

Then, lastly, the last portion of this clause contemplates a case where a reasonable suspicion exists of his having been so concerned—that is to say, not a mere suspicion but a reasonable suspicion, and the argument which I have just addressed to the House with reference to a complaint

mutatis mutandis applies to this part of the clause also. I submit, therefore, that on a *priori* grounds, on their own merits, the various clauses of this Bill are perfectly reasonable. Not a single authority has been cited on the other side, by any of the Honourable and learned gentlemen who have supported the amendment, of any case, reported or unreported, in which any Judge in any High Court has ever thrown a doubt upon the reasonableness of the provision embodied in this clause. The clause has been in force for several decades and Courts have had to deal with this branch of the law of our criminal procedure constantly. Surely had this clause been as a matter of fact found to be oppressive or harsh for the subject we should have had at least one case or two cases in which the Judges presiding in any of the High Courts would have adversely commented upon this by pointing out that the phraseology of this clause is too loose or is too wide and therefore needs amendment.

Now let me in this connection refer to an important judgment. The name of Mr. Justice Markby of the Calcutta High Court is well known. Dealing with the corresponding section in the old Code—as I said just now, this law has been our Statute Book for several decades—dealing with the corresponding provision in the old Code in VII Weekly Reporter, page 3, at page 5 in the body of the judgment this is what Mr. Justice Markby said:

'It seems to be generally supposed, and the supposition seems to be generally acted on, that police officers in making inquiries into criminal cases are limited only by their own discretion as to what persons they may arrest and detain in custody.'

That supposition found expression to-day in some of the speeches that were addressed to this House. Well, this is what Mr. Justice Markby goes on to say with reference to such a supposition:

'But so far from this being the case the powers of a police officer to arrest without warrant are strictly defined by the Code of Criminal Procedure. The widest power is that conferred by paragraph 2 of section 100,'

(the provision in the old Code corresponding to the very clause with which we have now to deal upon this amendment):

'which provides that the police officer may arrest without orders from His Majesty and without warrant any person against whom a *reasonable* complaint has been made or a *reasonable* suspicion exists of his having been concerned in any offence specified in the Schedule to the Act as offences for which police officers may arrest without warrant.'

And here I would like to point out that the word 'reasonable' in the two places is italicised by the learned Judge in his judgment. Then he proceeds:

'What is a reasonable complaint or suspicion must depend upon the circumstances of each particular case, but it must be at least founded on some definite fact tending to show suspicion on the person or estate and not on mere vague surmise or information. Still less have the police any power to arrest persons, as they appear sometimes to do, merely on the chance of something hereinafter being proved against them.'

And now the next words are very important: I invite the attention of this House to the next words in this very learned judgment of Mr. Justice Markby:

'Any wrongful exercise by the police officer of his legal powers of arrest is by section 220 of the Penal Code an offence punishable by imprisonment for 7 years.'

[Dr. Mian Sir Muhammad Shafi.]

And yet when the Honourable Sir Henry Moncrieff Smith made a somewhat similar observation during the course of his speech I heard some murmurs against the proposition enunciated by him.

Now let us for a moment turn to this section 220 of the Indian Penal Code to which Mr. Justice Markby has referred:

'Whoever, being in any office which gives him legal authority—

—I am leaving out the words which are irrelevant—

'to commit persons to confinement or to keep persons in confinement, corruptly or maliciously commits any person to confinement or keeps any person in confinement in the exercise of that authority knowing that in so doing,'

—note the words—

'knowing that in so doing he is acting contrary to law, shall be punishable with imprisonment of either description for a term which may extend to 7 years or with fine or with both.'

It is obvious from the terms of section 220, therefore, that any police officer arresting a person, unjustifiably arresting a person otherwise than on reasonable grounds mentioned in this clause of sub-section (1) of section 54, is guilty of an offence under section 220 of the Indian Penal Code. There is the deterrent, there is the check on the wrongful exercise by the police of the powers with which they are invested under this clause. Therefore I ask Honourable Members by their vote to declare that the clause in question, which has been on our Statute Book for several decades as I said before, is perfectly reasonable, is perfectly just, is indeed absolutely necessary, is essential in the interests of society and for the maintenance of law and order, and that no modification, no amendment of it is called-for.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the amendment only aims at this, that the present great power of the police may be curtailed to a reasonable extent, and that reasonable extent is this—that if any cognizable offence is committed to the knowledge of a police officer or in the presence of a police officer, then he is fully competent to arrest without warrant and without an order of the Magistrate. A number of grounds have been set forth in opposition to this innocent amendment.

It has been urged that the present law has stood the test of many years, that 7th clause stands as it was before and there is no amendment as far as that clause is concerned, that there are the words 'material facts', that it is impossible for an ordinary police officer to determine then and there on the spur of the moment what are material facts and what are not material facts. One other ground, which has been urged, is this, that the judiciary of this country has been dealing with the present provisions of this Code and therefore it will give rise to a number of troubles and complications if the amendment is accepted. Lastly, reliance has been placed on the interpretation of clause 1, sub-clause *firstly*. These are the grounds which have been relied on, and I am glad to say, Sir, that every one of these grounds can be answered with great satisfaction. Firstly, it has been said that it has stood the test of many decades. All right. Is there any force in the argument that because a certain irregularity has, before this, been countenanced it should be tolerated even now? If it is an irregularity, if there is some sort of defect, that defect ought to be removed. The time that has elapsed cannot mitigate the force of the argument in

favour of the amendment. The second ground is that sub-clause (7) stands and therefore it will be of no avail to allow this amendment. In reply to that my submission is that we are dealing now with sub-clause *firstly*; we are not concerned with the 7th sub-clause. That will be seen when we come to deal with it. Therefore there is no force in the argument that this sub-clause (1) cannot be amended. Then great stress has been laid upon the argument that the very interpretation and the construction of sub-clause (1) shows that the amendment is useless and that it will not serve any purpose. My humble submission in reply to that construction is this: that the way in which I read this sub-clause is in support of the present amendment. 'Any person who has been concerned . . .'. The Honourable the Law Member has construed this clause in the following manner, that there must have been some sort of evidence before the police officer comes to think that the person has been concerned. That is not the interpretation. If it were within the contemplation of the Legislature that the police officer ought to have some sort of data or some sort of evidence before he arrests, then the words would have been 'any person who has been found to be concerned' but it is given here 'any person who has been concerned.' It then comes to this that the question of arrest simply depends on the discretion of that police officer; though that discretion may not be based on any data whatsoever, he will thus have an ample opportunity of abusing his powers. Therefore, it is the sincere desire of the Honourable Mover of this amendment that any room there may exist for abusing that power may be removed at once. That is the desire which has prompted him to set forth this amendment before this House. Then the Honourable the Law Member construes 'or against whom a reasonable complaint has been made.'

The reasonableness of that complaint is to be judged by that police officer on his whim only, not on any data, not on any evidence whatsoever; it is quite probable that on account of some bias or prejudice he may be misled or even on account of a bad intention he may subsequently, when he is hauled up, say there was a reasonable complaint. So far as the technical discussion, in regard to the word 'complaint' is concerned, I am not going to detain this Honourable House. 'Complaint' here is used in a popular sense and not in the technical sense of a complaint which is made before the Magistrate. 'Complaint' here means information, a kind of report. Then the Honourable the Law Member construes saying 'or credible information has been received', that is, the police officer will discuss and determine whether the information, which has been imparted to him, is credible or not, and that here the provision has allowed a safeguard. In reply to that my humble submission is this, that the police officer has been given greater power; the credibility or incredibility of the information simply depends on the whim of the officer; therefore this House should not be in favour of it, *viz.*, that the police officer should be allowed so great a power that he may subsequently, when he is going to be prosecuted under section 220, Indian Penal Code, say that he took it to be very credible information and therefore he arrested an innocent man. The present law may wrongly come to his help. He might say that he determined and judged and examined *pros and cons* and arrived at this conclusion that the information then imparted to him was credible; therefore, no wonder he may be acquitted though he ought not to be acquitted because he had abused his powers. Therefore, the proposed amendment on this ground also seems to be a justifiable one. Now as to the words, 'reasonable suspicion exists of his having been so concerned.' Here again the police officer has been given an opportunity to abuse his powers, when he has

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arrested an innocent man without warrant and without authority or without orders taken from a Magistrate, and if he is hauled up, he would say simply, 'Well, the suspicion which arose in my mind was reasonable.' Therefore here too he will have room to save his skin and get an escape, in spite of his having abused his powers. The intention of this Assembly is that the police officer may not arrest an innocent man, that he may be made to perform his duty honestly and properly, that these provisions may not be misconstrued and that his powers may not be abused by him. Therefore, Sir, with that intention this amendment has been moved which, to my mind, seems to be a commendable one. The safeguard, contained within the terms of this amendment, is this: that if the powers of a police officer to arrest without a warrant and without an order of a Magistrate are limited to the scope of this amendment, then he may realize a little more responsibility; not forgetting that he has to establish that the offence was committed to his knowledge—or in his view, that is, in his presence. Therefore he will, probably, not abuse his powers so freely as he may do under the present law.

In the present provision we find the words 'reasonable suspicion'. 3 P.M. The amendment means to provide that the suspicion should be based on material facts. A person comes forward and tells a police officer that a certain cognizable offence has been committed by a certain man. Well, here he has got material facts, a person bears testimony to that allegation. In these circumstances, he may exercise his power and arrest without warrant or without an order of a Magistrate, otherwise not. So the fear of the Government that this Assembly wishes to see the police deprived of its powers is wrong. All that this Assembly wants is that those powers may be exercised within reasonable scope, and there should be an idea of greater responsibility in the minds of the police officers. With this object this amendment has been placed before this House, and I submit that this House may wholeheartedly support it.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban). Sir, my first words must be of sincere congratulations to the Honourable the Law Member on the clear exposition that he has placed before the House which would remove many doubts. Like a past master of drawing red herrings, however, he has obscured realisation of the circumstances that provoked this amendment. The Government had powers; the police had powers. Those powers are now sought to be extended. (*Cries of 'No, No.'*) I beg your pardon. Those powers are now sought to be extended.

The Honourable Dr. Mian Sir Muhammad Shafi: In this clause 1?

Sir Deva Prasad Sarvadhikary: No, by the amendment that the Government has invited the House to adopt. Let us read the Government amendment: 'ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by that officer'. The next amendment is in sub-clause (3) of clause 11. It reads thus: 'The term 'police officer' in this section shall be deemed to include such village officers as may be either generally or specially authorised by the Local Government in this behalf. It is therefore not merely a head constable, a writer constable or a constable who can effect arrest, but the filtration downwards is to be to the village

officer, whatever that may mean, whether he is to be the village police officer or the village headman about whom under a previous clause we were discussing this morning, whether that officer would also have this vicarious right of issuing a warrant and assuming magisterial functions as it were will probably be a matter of interpretation. Therefore, I say, and deliberately say that here is an attempt to extend the powers of the police. The police had 8 clauses of powers under section 54, in the corresponding old section, under which Mr. Justice Markby's decision just read out by the Law Member was given. For whatever reasons that have not been disclosed yet, although three Government Members have already spoken, Government wants this further power, that the police officer who exercises powers under the first clause of section 54 shall also have the power of calling upon a neighbouring police officer to execute a warrant which a magistrate perhaps under proper circumstances might have issued or might have declined to issue. Then under the category of police officers comes the village officer, whatever that may mean. That, I believe, is the handle, the cause, the provocation of Mr. Sen's amendment. I agree that it is not a very happily worded amendment and that can be improved. If the House be with Mr. Sen on the substance of it, the little burden of putting it into shape consequential and otherwise that Sir Henry Moncrieff Smith so much deprecates will not, I am sure, be found too heavy for the department. Unfortunately, there is the clause 7 of section 54 which Mr. Sen has not thought of. Reading that clause 7, Sir, and the proposed ninth clause, one would almost think that the Government wanted really an amendment like this to existing clause 7: 'Any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of British India' (*Voices: 'Any act which if committed in British India.'*) Let me please put my case in my own way, and the House will then be able to deal with it.

This further power in the proposed section 9 would really be extending the scope of the power already possessed under clause 7. That is my submission with regard to it. There is and can be absolutely no difference of opinion between those who are defending the present clause (1) and those who are wanting to amend it in the way that Mr. Sen wants to amend it, that the police must have some powers, as provided in that clause already. The only question is whether under the circumstances some revision and modification is not necessary. Mr. Sen's amendment according to some, errs on the side of not asking for too much. (*Cries of 'Quite so, he does err.'*) Now let us see why so much considerable stress has been laid by the Honourable the Law Member, and rightly laid, upon the safeguards that are already there. Mr. Sen does not do away with any of those safeguards. We have quite a good residuum left of the safeguards that the Honourable the Law Member so rightly values. For example, if credible information exists against a person, he is not exempted; there is no quarrel there. Then with regard to suspicion, what is attempted to be done here is to have the matter cleared up. Although there have been judicial interpretations with regard to the expression 'reasonable suspicion,' there has been abuse also which is attempted to be guarded against. Therefore what Mr. Sen desires is that that suspicion should not be left to belief, imagination or information, but should be capable of being justified by material facts brought home to the police officer. Therefore here also the police power is not seriously attempted to be weakened but is sought to be broad-based upon facts. All that he attempts to do away

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with (and he has given reasons in the light of the two cases that he has quoted) is that with regard to what the clause terms 'reasonable complaint' this power should be taken away and in its place he wants to substitute this that the offences should have been committed to his knowledge or in his presence,—I suppose he will be prepared to accept that verbal amendment if the House is with him on the substance of it. The police officer will still have the right of arrest when the offence has been committed to his 'knowledge' of the character and basis of which he will still be the sole judge. That is large power by itself. If the police officer is prepared to say, it was within his knowledge, he is not liable for that action for damages about which Sir Henry Moncrieff Smith told us this morning. Then we have the concession in Mr. Sen's clauses about commission of offences in his presence: that goes without question. Therefore, all that this amendment seeks to attack is where the question of arrest on what is called reasonable complaint comes. There seems to be some difference of opinion as to how that expression ought to be construed. I myself am not inclined to the view that that 'complaint' in this clause is the same complaint within the definition of complaint in section 4. If that was not so, the word 'reasonable' would not have found place in this clause; the word 'complaint' would have been enough. But we have seen from what Mr. Sen has told us that because there has been a 'complaint' as defined in section 4 before a Magistrate upon which he sent it to the police for inquiry or for disposal or otherwise, the police proceeds to copy the words of that complaint in the information book and use that as evidence of the existence of a reasonable complaint though the Magistrate himself was not clear whether it was reasonable or not. That could not have been contemplated by clause 1 of section 54, even by the framers of it. Sir Malcolm Hailey twice asked Mr. Sen as to whether those cases that he had referred to had been decided by the High Courts or not. They appear to be still *sub-judice* and Mr. Sen would have no right to refer to them if what we are here discussing was the point in issue. That however is not so; the issues in the appeal are quite different. We have those facts from these cases and upon those facts are we entitled to say or not that where difference of opinion is likely to exist on a matter like this, it is best that the chances of such difference should be done away with. We want to substitute a clause under which a police officer would have the right of arrest where an offence has been committed to his knowledge or in his presence or about which he has credible information. About the terms 'reasonable complaint' and 'information' there is some confusion and that may be set at rest by Mr. Sen's clause, of course, with proper verbal amendments, so far as the police is concerned. They are interchangeable terms under certain circumstances and that is not desirable. You can have no quarrel with this for you have that residue left that, where credible information has been received, a police officer can act. As regards action under suspicion the suspicion has to be supported according to Mr. Sen's amendment by material facts. How can it then be contended that this is an attempt to take away necessary and healthy powers of the police. It is only to clear up matters, particularly in view of the larger powers that the Government is now wanting to take, namely, of making it possible for the police officer under clause one to transmit his knowledge, his information, his suspicion, to the neighbouring police officer and ask him to take up the case in the neighbouring district and effect an arrest. And that becomes particularly irksome where the village officer or village police officer is also to be entrusted with those powers. We have

been asked not to be governed by sentimental prejudice against the police. It is unfortunately there and you cannot help it. And when you want to extend the scope of the power of these police officers, there is a natural desire to have them restricted if possible. If without hurting the cause of strict public administration and of law, order and justice, it can be done, I see no reason why it should not be allowed by this Assembly. Therefore, in substance, so far as one can see, the Government can have no quarrel with Mr. Sen's amendment and if it is properly drafted and put on the Statute Book, I think that the Government will have all the power that it wants and all the power that it has so long enjoyed and more.

Mr. R. A. Spence (Bombay: European): Sir, I do not agree with the last speaker that the clause as drafted by Government gives any greater powers to them than before. But some of the Members of this Assembly who belong to the legal profession appear to be under the impression that the existing clause as drafted in the Bill will permit of a number of innocent people being arrested. Now, as far as I have listened to this debate, no one has produced any evidence that the existing powers of the police have been abused. Have the Honourable Members who support this amendment any evidence which can convince this House that the existing clause has resulted in miscarriage of judgment which has not been remedied? Do not the existing powers give a safeguard against arrest where reasonable suspicion or credible information do not exist? Now, Sir, we, as Members of this Indian Legislative Assembly, are legislating for the benefit of the people of India. We must see, I think, that guilty people do not escape easily, whilst we provide security—as I consider is provided in this Bill—that innocent people falsely arrested should be able to obtain restitution and satisfaction. For these reasons, Sir, and because I believe that the clause as drafted by those who have been engaged in the drafting of this Bill does provide all safeguards necessary for innocent people whilst protecting the majority of the citizens of this country by seeing that guilty people should be arrested without being able to easily escape arrest, I oppose this amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I think it is clear that the idea underlying this amendment is that it should not be possible for a policeman to arrest an alleged or supposed offender on mere suspicion, surmise, or whim or to serve a private end. But, Sir, it is equally clear that the amendment as drafted does not secure this purpose, especially as the expression 'in his view' may mean anything of the kind. Sir, there is also another side of the picture. If a policeman is not empowered to arrest an offender on suspicion, many a miscreant will be able to make good his escape while the police are busy gathering materials to justify their conduct on arresting him. In these circumstances, Sir, I hope the Honourable Mover of this amendment will see his way to withdraw the proposal.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the question before the House—that is, the amendment which my friend, Mr. Sen, has put before the House tends to make the powers of a police officer to arrest without a warrant subject to certain restrictions. He has now under the present law practically an unrestrained power to arrest a man. That is the difference between the two views. The view of the Government is that that power which he has now should continue. The view of those who support the amendment is that we should put some restraint, we should curb the

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powers of a policeman to arrest without a warrant. That is the issue. I heard some remarks from the Honourable the Law Member about the irrelevant points that have been raised in this debate. It so happens that those who give these precepts violate them in the first instance. One of these irrelevant points was that this law has existed for several decades. Now, what is the view, what is the position in regard to criminal law in any country? As times advance, as Government becomes more popular, the tendency is to lighten the rigours of the criminal law. Do you know how many offences were punishable by death by hanging in England 150 years ago? What is the number of offences that is now punishable with death? Could we use the argument that because the sentence of death had existed for five centuries for certain offence, therefore it should continue for all those offences for ever? Forgery was one of the offences, theft of certain articles was one of the offences punishable with death. Therefore the argument which has been put forward by the Honourable the Law Member so very seriously at the end of the debate that this law has existed for decades and therefore must be continued cannot hold good. Is the criminal law the law of the Medes and the Persians? Should it continue for ever? Should not an Assembly like this, which is in touch with the pulse of the country, which knows how the police act, which knows what lack of supervision there exists over the actions of the police and over the actions of the Magistracy, should not this Assembly take upon itself and face the responsibility of curbing the unrestrained powers of the police? The argument of my Honourable friend, Mr. Spence, is that the guilty man should be punished. Whoever says that the guilty man ought not to be punished? Whoever says that the guilty man ought not to be restrained? Only we say be sure of the guilt of the man, have more sound materials for saying that the man is guilty, not on mere suspicion entertained.

Mr. R. A. Spence: Reasonable suspicion.

The Honourable Dr. Mian Sir Muhammad Shafi: Is it mere suspicion?

Rao Bahadur C. S. Subrahmanayam: Yes.

The Honourable Dr. Mian Sir Muhammad Shafi: No, reasonable suspicion.

Rao Bahadur C. S. Subrahmanayam: What is it?

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Reasonable suspicion.

Rao Bahadur C. S. Subrahmanayam: What is the meaning of 'reasonable'? What are the safeguards for enforcing the reasonable character of that suspicion? I have to go to another point well known for students of elementary law. A law is good enough so far as there is a sanction to enforce the law. There is no good having a law on the Statute Book if you cannot enforce the law. Who is to decide that the suspicion which the policeman had in arresting a man was reasonable?

Mr. R. A. Spence: The Court.

Rao Bahadur C. S. Subrahmanayam: Which Court? How to enter the Court? Do you know that you must get the permission of that very policeman's superior to enter the portals of the Court? That is a point which the Honourable the Law Member omitted to consider. When he read the section of the Penal Code, I was wondering whether we were in a debating

society of which we were reminded very seriously yesterday—whether we were in a debating society without knowledge of law, without knowledge of juristic principles, without the knowledge that the criminal law has been evolved in the manner it has been from decade to decade, from period to period. Now, you have got a section in the Penal Code under which a policeman could be punished for doing a wrong. But how could you reach the Court? You must get the permission of that policeman's superior. Have you ever heard of the superior of a policeman or of any Government servant giving permission to a private individual to prosecute his subordinate in a Court?

The Honourable Sir Malcolm Hailey: It does occur.

Rao Bahadur C. S. Subrahmanayam: That is the point. Therefore, there is a law which we cannot enforce, which by the restrictions is practically an unapproachable remedy. Therefore, that argument of the decade, that argument of the section of the Penal Code having been there for several years has no force.

Now, there was another argument which is usually put forward in debating societies, and that has come from the Government side. I am sorry to see that the Government should be so lacking as to support their position by arguments which would be useful in a debating society. The terms in which my Honourable friend, Mr. Sen, has worded his amendment have been criticised. There has been verbal criticism, quibbling criticism of the words used. What is the Secretariat for? A popular Assembly indicates the view it takes of a particular portion of the criminal law. That is all we are bound to do. We are not draftsmen trained to draft laws. No popular Assembly, no Legislative Assembly undertakes to be meticulous in the words it could use in the law. It is the duty of the draftsman. They are paid to do it and they are there to do it. I wonder why that argument was put forward that the words of the amendment were not very accurate and not very precise. You indicate what you want. You want to make the law more legal. You want to restrain the powers of the policeman. Well, I have consulted some friends and if the House accepts the principle underlying this amendment, I would suggest a slight verbal modification. Whether it is acceptable or not, I will read it and I would leave the House to say whether it accepts it. 'Any person who has to his knowledge or in his view committed any cognizable offence or against whom credible information has been received or there is reasonable cause for suspicion of his having been concerned in any such offence'—well, that is the point, that is, the present law is this; 'reasonable suspicion' is replaced by 'reasonable cause for suspicion.' Now 'reasonable cause for suspicion' will narrow down the discretion of the policeman, as I understand it,—that is reasonable suspicion. Now, after all, there is only a slight difference between the law as it exists and the amendment proposed by Mr. Sen. I do not see why so much trouble should be raised, so much opposition should be raised in regard to this slight alteration. It, after all, controls a set of men who are not known to use their powers for the safety of the public or for the preservation of respect for the people of this country. Everybody here knows that policemen, especially in out of the way places, do misuse their powers. The attempt is now made to restrain those powers. The amendment proposed does not materially diminish the power of the policeman to arrest a guilty man. Now in regard to this arrest of a guilty man, I would ask the European Members of this House, is it not a fact that in England arrest is the last thing that is done when

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an offence is committed? That is, all the materials are collected, and the man who investigates becomes quite sure that he has the materials to put the case before the Magistrate, that is, he is quite sure that the man is guilty; he prepares the ground properly, and then at the last moment, arrests. Is not that the case? What do we find in India? The first thing that a policeman does is, he goes and arrests. Whether he has got the materials or not, whether he has sufficient grounds for establishing a case against the man, the first thing he does is, he arrests, and then takes his time leisurely. The law allows him a certain time, 15 days or so, later on he begins to collect his materials. What is the Magistrate to do? The policeman tells the Magistrate, 'I am investigating the case, Sir, I am collecting materials; I am preparing the ground; I believe; and so on, and so on.' Well, I put it to the European Members of this House that the methods which the policeman in England adopts are quite different from the methods which are adopted here. It is no use running away with the idea that this Assembly, or at any rate those Members who are in support of the amendment, want to let off the guilty man. We are as much interested in the protection of our property and the protection of the lives and the safety of our fellowmen as anybody else in this House, and it is simply ridiculous to be told that we do not interest ourselves in the protection of property and of life.

Therefore this is not a question of sentiment or prejudice. This is a question which the natural evolution of criminal law should take, that is, to restrain the powers of a policeman in regard to this matter. This, Sir, is a verbal alteration which I offer to the House in place of what Mr. Sen has put in. This is the amendment which I formally present. . . . 'No person who has to his knowledge. . . .'

The Honourable Sir Malcolm Hailey: It is for your ruling, Sir, whether amendments are permissible at this stage.

Rao Bahadur C. S. Subrahmanayam: It is not very much of an amendment. It is only a verbal alteration. If it is opposed or seriously objected to. . . .

Mr. Deputy President: If it is only a verbal alteration it might be allowed, but no new amendment can be allowed at this stage. The Bill has been before the Legislature for the last two years and in September it was before this House. In December a notice was sent out to all the Members to send in their amendments.

Rao Bahadur C. S. Subrahmanayam: I may say at once, Sir, that that is not an amendment in the sense of an ordinary amendment. I say, if the House accepts the principle underlying the amendment which Mr. Sen has put before it, then this draft which I have given in is merely an attempt to rectify certain alleged verbal defects.

Mr. Deputy President: Does Mr. Sen withdraw his amendment?

Rai N. K. Sen Bahadur: No.

Mr. Deputy President: This is an amendment to your amendment.

Rai N. K. Sen Bahadur: I do not think so.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I rise to a point of order. The view of several Members here appears to me to be

that though the amendment proposed by my friend, Mr. Sen, is in substance a good one, it needs verbal alteration, which might be done, I suggest, in the drafting Department. But as the amendment which has been put in by my friend, Mr. Subrahmanayam, has drawn forth some protest, may I inquire if the substance of the amendment of Mr. Sen is carried, will the amendment go to the drafting Department for redrafting, or will it stand as it is proposed? It seems to me that the form of the language used by Mr. Sen does need a little alteration.

Mr. Deputy President: That can hardly be called a point of order. It is a question which the Government can answer.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): The alteration proposed by my friend, Mr. Subrahmanayam, includes the words 'or in his view,' to which I think the whole House does not agree. There is at least a difference of opinion that 'in his view' does not mean 'in his presence'. The words 'to his knowledge' may include the sense 'in his presence'; whereas 'in his view' might be construed as 'in his opinion,' and that I think would do a great deal more harm than the present section does.

Rai N. K. Sen Bahadur: I used the words 'in view' in the sense in which they are used in section 59 of the Criminal Procedure Code.

Mr. Deputy President: The original amendment moved was:

'That in clause 11 (1) before the words 'To sub-section' insert the following:

'For clause 'first' in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned'.

to which a further amendment has been moved by Mr. Subrahmanayam and that is:

'That in clause 11 (1) before the words 'To sub-section' insert the following:

'For clause 'first' in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom credible information has been received or there is reasonable cause for suspicion of his having been concerned in any such offence'.

The question is that that (Mr. Subrahmanayam's) amendment be made.

Mr. W. M. Hussanally: With your permission, Sir, I shall further propose a slight amendment, viz., that the word 'presence' be substituted for the word 'view'.

Rai N. K. Sen Bahadur: I accept that the word 'view' be changed to 'presence'. The word 'view' may be dropped and the word 'presence' inserted.

Mr. Deputy President: Mr. Subrahmanayam's amendment is before the House now.

Mr. Muhammad Yamin Khan: Is Mr. Hussanally's amendment before the House?

Mr. W. M. Hussanally: That has been accepted by the Mover.

Mr. Deputy President: That point will be taken later on after this question has been decided.

Colonel Sir Henry Stanyon (United Provinces: European): Have I leave to speak on the original amendment, Sir?

Mr. Deputy President: Yes.

Colonel Sir Henry Stanyon: Speaking for myself, Sir, I have no hesitation whatever in expressing my entire sympathy with the object which the Honourable Mover of the amendment has in view in putting it forward; and I think I may safely say that his object will have the sympathy of this House generally, *viz.*, a protection of the general public from what I may put in a general term well known here as 'police *zoolum*.'

But there are things beyond the reach even of this Honourable Assembly and the Legislature; and protection from the dishonest or the extortionate policeman is one of them. Law is not a panacea for all the ills that flesh is heir to. No doubt it is our business as a House to legislate from time to time so as to promote the public interest and check abuses that may grow up among us; but I would ask this Honourable House to remember that we are here as a corporate body, saddled with a responsibility to the whole country for what we shape into law. We are not here to give indulgence to prejudices which all of us, or the majority of us, or some of us, or a few of us, may entertain. Those who know this country are bound to confess that police *zoolum*, with all that that term means, does exist. We are also constrained to admit that in this country there is a great deal of popular prejudice against the police which is not always deserved. Now my submission for the consideration of the House is this that, so far as a legislative enactment of this kind is concerned—a Procedure Code—we are wise if we leave well alone. That is a very old saying: 'leave well alone'. I would go a little further and say that in legislation of this kind we would also be wise to leave unwell alone, unless we can be quite sure that we can make it better. We have had an extremely clear and able exposition of section 54 of the Code as it now stands by the Honourable the Law Member; but there is no doubt, those of us who know the country are bound to say so,—that, notwithstanding the safeguards which exist, and have been pointed out by the Honourable the Law Member, powers of arrest are abused. We have got to recognise that fact. We are not to-day considering in any general sense whether we can improve on that position by legislation. We have to see whether the introduction of the particular amendment which is now proposed will effect any improvement; and on that point I would ask attention while I humbly examine that amendment. We will take it that the words 'or in his view' are now cut out. The amendment is first—'any person, who has to his knowledge committed any cognizable offence

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): 'In his presence.'

Colonel Sir Henry Stanyon: I understood the elimination of the word 'view' had been accepted.

Mr. Pyari Lal: In favour of 'in his presence.'

Colonel Sir Henry Stanyon: Very well: 'in his presence.' That, on the face of it, is of course, a limitation on the powers of the investigating officer.

For, as a general rule a criminal does not commit a cognizable offence in such a way as to give knowledge (using that word as distinguished from mere belief) to, or in the sight of or in the presence of, a police officer. It will be a restriction; but that does not help us. What we have got to look at is the end of this amendment. The amendment would still leave it open to the police officer to arrest any person whenever he has 'a suspicion based on material facts.' Those words are to be substituted for the words 'reasonable suspicion.' Now, Sir, I take it that this Legislature in its responsible position will not content itself with a mere bandying with words which do not carry us any further in the matter of law. What is a material fact? All the High Courts in the country will be called upon to decide, if this amendment becomes law, what are 'material facts.' After all, what is a 'reasonable suspicion?' A reasonable suspicion, as we 'gentlemen of the legal fraternity' (as we are so often called) know, means the existence of facts which would rouse suspicion in the mind of a reasonable man. Now, are not such facts material facts? Suppose a constable at 4 o'clock in the morning, when all Judges and superior officers are usually sound asleep, sees a man coming out of a lane with a bundle under his arm and the man attempts to hurry by. The constable suspects, by reason of the hour, by reason of the attitude of the man, and by reason of the direction from which the man is coming, that that bundle may contain stolen property. Thereupon, he exercises his power to interfere with the man's liberty. Now, is that a reasonable suspicion or is it a suspicion based upon material facts? You cannot differentiate the one from the other. A reasonable suspicion is a suspicion based on material facts. Material facts are those facts which would make any reasonable man suspicious. I will put myself in the position of the dishonest policeman, and I promise to find you material facts for suspicion at once. You cannot stop it. If the police officer is dishonest, he will find his material facts every time. He is the only one there; there is nobody else. He says 'This man was going off, he had his face concealed.' The man says 'a cold wind was blowing, that is why I concealed my head.' But, says the policeman, 'I thought he was concealing it to hide his identity. That was a material fact; on that I acted and I therefore arrested him.' You cannot by a mere alteration of words as proposed get out of such difficulties. A policeman must be given a certain amount of liberty and discretion if we are to have the midnight criminal stopped. You cannot get out of it. This House must legislate on the basis of one principle or of another; either upon the assumption that every policeman is a scoundrel until the contrary is proved, or upon the assumption that all our police are just and honest people trying to do their duty. We have got to take something like that as a basis for legislation; and obviously there is no choice between the two. If we are to be a progressive country we must proceed upon the latter as a basis of legislation, *i.e.*, with a trust in our agents, which, albeit constantly abused, must nevertheless still be given, as it is the only means, added to public opinion, which will raise them to the level at which we would have them. A very uncomplimentary comparison to the Indian policeman was drawn in connection with the English Police. It is too wide a subject to go into, but even in England policemen sometimes are accused of doing *zoolum*. I daresay all my hearers will remember a very recent case where the activities of a septuagenarian in Hyde Park led to a certain case which was afterwards regarded by some as a case of police *zoolum*. Opinions are divided. Some think perhaps the old gentleman was weak, others that it was purely police oppression. These things will happen. Individual cases cannot be allowed to sway us in laying down

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a general rule of law. If we do that we shall get into endless trouble. This amendment, I submit with confidence, will not achieve the very desirable object which the Honourable Mover wants to achieve; and for that reason I do not think that it ought to commend itself to the House. Do not let us tinker with words and alter words which have been the subject of much judicial deliberation. If superior officers will not allow section 220, Indian Penal Code, to be given full scope, let public opinion come down on the superior officers, let public opinion and public courage insist that they shall do so. We can make them do these things out here, as we make them do them in England. The times are moving rapidly. A strong public opinion is growing up, and section 220 really offers the only sort of legislative protection which we can obtain. Therefore I would suggest to the Honourable Mover, even at this late stage, to consider whether he should press this amendment.

The Honourable Sir Malcolm Hailey: I should be unwilling to add to the length of this discussion, were it not that in its later stages it has taken a turn which I think requires comment from Government; indeed an attitude has been adopted which may affect the whole course of our subsequent debates on the cognate sections of this Bill. You will remember, Sir, how the discussion began. I think I may safely put it to the Honourable Mover, that the major part of his attack on the existing section of the Code was based on his fear that in some cases a police constable might override a Magistrate—that is to say, that where a Magistrate has issued orders under section 202 for the investigation of a case, being in doubt as to the necessity of proceeding further with a complaint, the constable might take the matter into his own hands and arrest the person against whom the complaint had been made. I see that I have the assent of the Honourable Mover to my claim that I have stated his position perfectly clearly and correctly. He founded his apprehension on two cases which he quoted to us. Now in both of those cases it appears to me that the constable had been guilty of much more than an irregularity. He had been guilty of an act of sheer stupidity, and I found on inquiry from the Honourable Mover that in both these cases the Courts did not support the action of the offending constable. In other words, they found the wording of the existing Act sufficient and that the action taken by the constable was not covered by the Act.

Rai N. K. Sen Bahadur: But he did take it.

The Honourable Sir Malcolm Hailey: True; he took it. But does the Honourable Mover think that by his own wording, or by any other wording which we can introduce, we can prevent the committing of acts of sheer stupidity? See what the constable did in one of these cases. He took the complaint as it came from the Magistrate for investigation, transferred it to his diary and took action to arrest the person referred to. I defy the wisest legislators to frame a law that will entirely prevent manifest absurdities of this nature being committed. My present point is however that these were the two cases which the Honourable Member put before us, and it was on considerations arising out of these two cases that the discussion started in the first instance. But we found when the discussion proceeded, that after all, the word 'complaint' in this section of the Code does not bear the restricted sense given in the definition section, viz., 4 (h) of the Code, viz., a complaint to a Magistrate, but really refers to a complaint or information to the police. That fact has been generally

admitted by those who have subsequently commented upon this section. Consequently, therefore, the omission of these words of which the Honourable Mover complained—'against whom a reasonable complaint has been made'—would not attain the purpose that he himself had in putting his case before us. Indeed, it is perfectly clear that if we wished to attain the object which he had in view we should have to insert some substantive provision to prevent anybody taking action in the sense deprecated by the Honourable Member. That position indeed was put before us with great clearness by Mr. Pantulu. Unfortunately the matter did not stop there. We could perfectly well have discussed this restricted point and come to conclusions either for or against the Honourable Mover. The discussion went entirely away from this point, it embraced attacks of a general nature on the police, and we have been told that in the objections which we put forward to any change in the section, we were deprecating a modification of the law because we feared that what Mr. Subrahmanayam describes as the unrestrained power of the police in effecting arrests might be curtailed. We were told that this section must be materially modified in other respects for the purpose of curtailing the powers of the police where and if necessary. We were told that Government itself showed an entirely unreasonable apprehension lest the powers of the police, powers widely abused by them, should be invaded. Now I say that we are all equally concerned in preventing what has been called police tyranny. If such existed, it would do Government no good; in the long run it does not administer to the cause of law and order; it creates an irritation in the mind of the public which in itself is detrimental to the development of a spirit of law and order, and you cannot hope to obtain law and order unless you secure a spirit making for its observance.

If we can do anything as a Legislature, if we can do anything as a Government to prevent oppression not only by police, but by any of our officials, we should do so; even if we did not wish to do so in the interests of the public, common sense would indicate to us that we ought to do so in our own interests as an administration. Believe me, Sir, any opposition that we have had to this amendment has not been motivated, as Mr. Subrahmanayam has suggested, by an untimely desire on our part to retain in the hands of the police powers which they can and do abuse. What is the real reason why we objected? It was simply this: that we believed that the powers of the police under the Mover's suggestion would not be materially affected either for good or ill; on the other hand, we believed that the drafting of the section as put forward by him would be materially defective. We believed that where a section had stood the test of the Courts for a number of years, it was better to leave it standing, than to effect modifications in it, unless some very grave and substantial reason was shown for doing so. I quite agree, as Mr. Subrahmanayam said, that law must be progressive and that where we find that it requires modification, that modification must be carried out. But we could not see that the amendment in itself carried out any improvement of the law which had been demanded by the public, or that in itself it effected any such clearing up of doubts arising under the section, and pointed out to us by our many legal advisers as required its modification or elucidation. As Sir Henry Stanyon has justly said, we have as a House a very heavy burden laid upon us in regard to this Bill. I am sorry that there have been references to the Government point of view, and to the point of view of other people. I should like to regard ourselves in enacting this piece of legislation not as two parties, but as one,

[Sir Malcolm Hailey.]
possessing only a common object. If you take the history of the Criminal Procedure Code (Amendment) Bill, it will be clear that what we set out to do here was really not to increase the powers of Government or the administration or the police, not to take larger powers in regard to action under the criminal law, but simply to clear up doubts, remove inconsistencies, and to bring the law generally up to date. That has one object in putting the Bill forward, and the country at large and the Courts will criticise the action of the House, as a whole, if we make modifications in the law which are themselves difficult of interpretation, which introduce without substantial reason new phrases or turns to the law as for many generations administered by the Courts, or which, by creating fresh field for legal discussion, involve further delays in the Courts. To that extent we should actually impair the cause of justice and therefore harass the subject. I am sorry to find that Sir Deva Prasad Sarvadhikary actually was swayed by the thought that in adding one sub-clause to this section we were proposing to take larger powers. We ourselves have regarded the small addition of sub-clause (9) and the small addition of sub-clause (3) as quite unimportant matters, and I think the House at large, which among the many other amendments put forward in regard to other sections, has practically neglected these two clauses, shows thereby that it takes the same view. The mere fact that we have proposed to take the powers in clause 9 and sub-clause (3) should not therefore be allowed to count against us in considering this particular section.

Now let me take for a minute, not what our existing clause in the Code is, for that has been very clearly elucidated by the Honourable the Law Member, but merely the proposals as they now stand in Mr. Subrahmanayam's version of the Honourable Mover's amendment. It will be seen that he now proposes in effect really to retain the latter part of the existing section, but to alter the first part, that is to say, he would omit 'any person who has been concerned in any cognizable offence.' Now I merely put to this House, without enlarging again on aspects of the case to which the Honourable the Law Member has already called attention,—I merely put to the House that if a person has not actually been concerned in any cognizable offence, the arrest is in itself unlawful, and the utmost that we can do in our law is to lay down the general circumstances in which arrests can be made, with of course the corollary that if they are made in spite of the prescriptions of the law, they are unlawful. I must ask Mr. Subrahmanayam in that particular connection where and how it is that the sanction of a superior police authority is necessary for the prosecution of a police officer who makes an unlawful arrest? There are many lawyers here. They can perhaps, if Mr. Subrahmanayam is not prepared to supply me with the information.

Rao Bahadur T. Rangachariar: If he is a superior officer coming under section 197, perhaps sanction may be needed.

The Honourable Sir Malcolm Hailey: Perhaps; but we were certainly not talking of superior police officers, and the House knows it. Mr. Subrahmanayam told us that all these safeguards that have been talked about were entirely insufficient. He told us that the Law Member was indulging in mere debating society talk because, after all, if an unlawful arrest was made by a constable, the sanction of some superior authority was needed for a prosecution to be undertaken against such officer; and he asked us when such sanction for prosecution was likely to be

given or has actually been given. Now, that point was made dogmatically and emphatically; but I still have to pause for a reply as to the section under which such sanction is required. I have not yet received it. I must therefore take it then that that statement, designed as it was to prejudice the debate against Government, was made without due thought by the gentleman who made it. But let me go back to my original point. 'Any person who has been concerned in any cognizable offence.' Therefore, he must actually have been concerned in such cognizable offence for arrest to be lawful; and I ask if this is an unreasonable provision of law. The second point the Mover proposes to omit is 'against whom a reasonable complaint has been made.' I have dealt at some length with the exact reason why he wished to omit that sentence and I pointed out that it is perfectly clear, from the subsequent course of the discussion, that the word 'complaint' does not bear the technical meaning which the Mover attached to it; it merely refers to the complaint to a police officer; I have proved that the exclusion of the sentence would not attain the purpose which he himself seeks to effect. The rest of the clause, as now proposed, stands very much as it is in the Act; and I ask, is it worth while in the circumstances to make a serious change of this nature? I would again emphasize the point that the attitude which we take up is not one of dogmatic assertion that we must keep up the full powers of the police. The attitude we take up is this, that where you have a law of procedure, administered for years in one clear sense by the higher Courts, thoroughly understood by the Courts below, it is not advisable for this Assembly lightly to introduce changes; for the Courts, looking narrowly at every word of the law, will suppose that there is some deliberate and perhaps novel meaning behind every change that you make. They will put their own interpretation on the omission of a word here and the insertion of a word there. And the consequence will be that a fresh series of doubts will arise in the minds of the Courts, a fresh series of judicial interpretations and, in consequence, a fresh cause of delay and difficulty in the administration of justice.

An Honourable Member: I move that the question be now put.

Mr. Deputy President: The question is that the question be now put.

Rai N. K. Sen Bahadur: Just a word of explanation, Sir.

Mr. Deputy President: You have no right of reply.

Rai N. K. Sen Bahadur: Regarding the question of sanction.

Mr. Deputy President: I am afraid I cannot allow that. I can only allow you to speak on a matter of explanation.

The Honourable Sir Malcolm Hailey: May I have your permission for one more word? The point is very important to us for, I think, prejudice has been created against us. Section 197 does not apply to the cases to which reference was made.

Mr. Deputy President: The question is that the question be now put.

The motion was adopted.

Mr. Deputy President: The original question was:

'That in clause 11 (1) before the words 'To sub-section' insert the following:

'For clause 'First' in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned'

[Mr. Deputy President.]

Since which an amendment has been moved:

'That for the words *'first, any person'* down to *'so concerned'* the following be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom credible information has been received or reasonable cause for suspicion exists of his having been concerned in any such offence'

The question is that that amendment be made

The Assembly then divided as follows:

AYES—35.

Abdul Majid, Sheikh.
Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ibrahimullah Khan, Raja Mohd.
Jatkar, Mr. B. H. R.

Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Singh, Babu B. P.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—42.

Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Imes, the Honourable Mr. C. A.
Jannadas Dwarkadas, Mr.
Joshi, Mr. N. M.

Kamat, Mr. B. S.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Mowcrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Vishindas, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Yamin Khan, Mr. M.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Deputy President: The question is:

'That in clause 11 (1) before the words *'To sub-section'* insert the following:

'For clause *'first'* in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view.'

An Honourable Member: 'Presence' not 'view'.

Rao Bahadur T. Rangachariar: I should like it to be put to the House, Sir. If that substitution is to be made, I have a word to say about it.

Mr. Deputy President: I cannot allow any substitution at this stage.

Mr. W. M. Hussanally: I proposed the substitution of the word 'presence' for the word 'view' and you said you will give me an opportunity later on to move this amendment.

Mr. Deputy President: In the meantime the closure was applied.

Mr. W. M. Hussanally: That is with regard to Mr. Subrahmanayam's amendment.

Mr. Deputy President: The closure was applied with regard to the whole amendment.

Mr. W. M. Hussanally: I proposed this amendment and Mr. Sen accepted it at the time.

Rai N. K. Sen Bahadur: At that time I accepted that the word 'presence' should be substituted for the word 'view'.

Rao Bahadur T. Rangachariar: May I point out that the word 'presence' has not been assented to by the House. It may be that the Mover has accepted it, but that does not mean that the House accepts it. I have a word to say about it. It has not been accepted by the House.

Mr. Deputy President: If the House has not accepted it, the amendment must be put in its original form.

Mr. Deputy President: Amendment moved:

"In clause 11 (1) before the words *'To sub-section'* insert the following:

"For clause *'first'* in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned'

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—18.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Asjad-ul-lah, Maulvi Miyan.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Hussanally, Mr. W. M.
Ibrahim Ali Khan, Col. Nawab Mohd.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.

Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Sen, Mr. N. K.
Singh, Babu B. P.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Sohan Lal, Mr. Bakshi.

Abdul Rahman, Munshi.
 Aiyar, Mr. A. V. V.
 Akram Hussain Prince A. M. M.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Chaudhuri, Mr. J.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Ginwala, Mr. P. P.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Jamnadas Dwarkadas, Mr.
 Joshi, Mr. N. M.

Kamat, Mr. B. S.
 Ley, Mr. A. H.
 Lindsay, Mr. Darcy.
 Misra, Mr. B. N.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Muhammad Ismail, Mr. S.
 Nabi Hadi, Mr. S. M.
 Percival, Mr. P. E.
 Pyari Lal, Mr.
 Ramayya Pantulu, Mr. J.
 Rangachariar, Mr. T.
 Reddi, Mr. M. K.
 Samarth, Mr. N. M.
 Saivadhikary, Sir Deva Prasad.
 Singh, Mr. S. N.
 Spence, Mr. R. A.
 Stanyon, Col. Sir Henry.
 Tonkinson, Mr. H.
 Vishindas, Mr. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Yamin Khan, Mr. M.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Deputy President then called on Rai N. K. Sen Bahadur to move Amendment No. 17.

The Honourable Sir Malcolm Hailey: I rise to a point of order, Sir. Has not the House in substance already disposed of this amendment?

Rai N. K. Sen Bahadur: That is what I want myself to submit to the House. I want to submit that in view of the fact that Amendment No. 16 has been lost, I seek permission of this House to withdraw Amendment No. 17 standing in my name.

The amendment was, by leave of the Assembly, withdrawn.

Bhai Man Singh: The amendment that stands in my name is:

"In clause 11 insert the following new sub-clause and re-number the present sub-clauses (1) and (2) as (2) and (3) respectively:

'(2) In section 54, sub-section (1), the clause *secondly* shall be omitted; and in clause *fourthly* the word 'and' shall be substituted for the word 'or'."

Mr. Deputy President: It will be for the convenience of the House if you move your amendments separately.

Bhai Man Singh: Yes, I shall move them separately. The first part of the amendment is that the clause *secondly* of section 54 shall be omitted. The clause reads:— "Any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking."

Why I want this clause to be omitted is that, in the first place, we should see what are the implements for house-breaking. So far as I know, in my own Province I have come across only one implement of house-breaking, that is a 'Sandhewa' or 'Sabhal,' an iron piece perhaps a bit thinner than my arm and a little shorter at the end. I do not know if there are any other implements, but if there are, they are also probably iron rods something like a *Sandhewa* though a little

different from it. The *sandhewa* is an article which is used in every home for ordinary household purposes, for digging earth and doing other little jobs. I doubt if in the Punjab every zemindar has not got that thing in his house, and it is really terrible if a police officer is to be allowed to arrest a man without a warrant for possessing that *sandhewa*. I am really sorry that the Honourable the Law Member, Sir Muhammad Shafi, is not now present in the House. I do not know whether he possesses a *sandhewa* or not but I am sure that he would have borne me out that every zemindar in the Punjab, perhaps every zemindar in his own village, must possess that *sandhewa* and must be using it for digging the earth. If a man is caught with that *sandhewa* and he is required to prove—and the burden of proof shall be on him—that he possesses it for quite innocent purposes, it would be a terrible thing. It is a provision under which the police can harass anybody, perhaps a most innocent and a most respectable man.

The other point about it is this. Supposing a man is arrested by a police officer without a warrant for possessing a *sandhewa*, I should like to know what is he to do with that person. If a man is arrested under any of the other clauses there are some steps that have to be taken in connection with that person under the Code. If he is believed or if he is suspected to have committed a cognizable offence, the police officer will make enquiries about it. If the suspicions are found to be correct or well-founded, he will *chalan* him. Similarly, if he is a person who has been proclaimed an offender, steps could be taken against him, and so on. If those suspicions are found to be wrong, the person arrested will be let off, but in the case of a person in possession of a *sandhewa* if he is really found to be in possession of it, what will the police officer do? Can he proceed against him? Is there any provision of the law under which the possession of an implement like that is an offence? I know of a good many instruments, the possession of which is supposed to be an offence. If a man has got some instruments for making false coins, well, you can proceed against him; but, if you have arrested a person for possessing an implement under the clause, I would like to know how you would proceed against him. If you let him off, well, the arrest means nothing. If you arrest a man for possessing a *sandhewa*, I would like to know if you would *chalan* him for some offence? There is no offence like that. What would you do with him? Keep him in jail for eternity? So, from the legal point of view itself, I see absolutely no way out of the difficulty, unless we frame a new offence for the possession of that implement.

Then, I can find absolutely no ruling under this clause, at least I have not come across any reported case under it; so that provision has, really speaking, been a dead letter up till now. Where is the necessity of having a provision which creates a difficulty in law and out of which we can find no way? If a man were produced before me within 24 hours of his arrest as a Magistrate, I must confess that I do not know what orders I would pass in the case. It is a provision which has remained a dead letter up till now, I do not see why such a provision should remain on the Statute Book.

With these remarks, Sir, I commend this amendment to the House.

Sir Henry Moncrieff Smith: Sir, my friend, the Mover, has explained to us that he has three difficulties with regard to this amendment. His first difficulty was, he said, that he did not know what an implement of house-breaking was, and then I think he proceeded for about five minutes

[Sir Henry Moncrieff Smith.]

to exhibit a considerable amount of knowledge as to what implements are used for house-breaking. I do not profess to have such a full knowledge of them.

The section however refers to an 'implement of house-breaking,' which is possessed without lawful excuse. If the instrument is merely one that can be used for house-breaking—there is no kind of tool probably known to anyone which could not be used for house-breaking,—then there is no question of an arrest at all, unless it is a well-recognised house-breaking implement; this is all that comes within the meaning of this clause of section 54.

Bhai Man Singh's second difficulty was that he did not know what happened after the arrest. What is the police officer going to do? He seemed to contemplate that the police officer after arresting this man might confine him for an unlimited period. Well, Sir, if the Mover will look a few sections ahead in the Code he will find that no police officer shall retain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable. Then it lays down that that period shall not in any case exceed 24 hours, unless he brings the accused before a Magistrate and gets a remand under section 167 of the Code. I think what happens is quite clear. The arrest is a preliminary step to an investigation. It may result in a prosecution under section 109 of this very Code. It may lead to a prosecution for some offence. The possession of a house-breaking implement might be corroborative of circumstances within the knowledge of the police officer. I do not think the Honourable Member or the House need be in any apprehension at all that this power of arrest will enable the police to keep a man in custody without sufficient cause—certainly not for more than 24 hours—without the order of a Magistrate.

Bhai Man Singh: What will the Magistrate do?

Sir Henry Moncrieff Smith: The Magistrate acts under section 167, if the Honourable Member will read it. We shall come to that section in due course,—I hope so at least—we are not getting very near it at present.

The Honourable Member's third difficulty was that he found no rulings on this point. Well, I think I can take that as an argument in my favour—in favour of retaining this clause in the law. If there are no rulings on the point, it is perfectly obvious that this clause, which has been included in the law for a long time, has never caused any difficulty. I do not think the amendment is at all desirable. I think the clause should stand as it is. Is this House prepared to have it go out to the world that they are not prepared to give to a police officer the power to arrest a person in whose hand the police officer sees a house-breaking implement?

Colonel Sir Henry Stanyon: I rise to support this amendment. I have often read this clause and tried to find out what practical use can be made of it. My friend has told us—which I also think is correct—that the matter has never been before the courts; there is no published ruling, at all events, on the point of what is an implement of house-breaking. A nail or a piece of wire may be used to pick a lock. A screw-driver may be used to unscrew a hasp; and ordinary iron rod used for digging—a well-known class of iron rod called *sabhal* in some places—may be used to break open a door. But are these implements of house-breaking? If this section has any sense it must refer to an instrument that is specially used and

kept for house-breaking. I think myself that this is a provision derived, possibly, from English law, where burglars' tools, known by certain slang names, do exist. 'Implements of house-breaking' is a phrase that has some meaning to a British policeman, but has really no meaning in India.

Rao Bahadur T. Rangachariar: It has a meaning in South India—we call it Kannakol.

Colonel Sir Henry Stanyon: I am perhaps not sufficiently acquainted with all parts of India; but what we have to interpret is not the word 'Kannakol' but the words 'implement of house-breaking', and I would point out that a nail or a piece of wire may be an implement of house-breaking. Are we going to allow a police constable to arrest without warrant every person found with a nail in his hands?

Mr. N. M. Samarth: Without a lawful excuse.

Colonel Sir Henry Stanyon: Very well. Then the section also puts the onus of proof on the man who is in possession of the nail. He may not even know that it is in his possession; he cannot give any cause. 'Why have you got this nail?' 'I do not know.' 'Very well, then I arrest you.' How many of us can explain why we have got nails in the house? I say that a useless section like this merely cumbers the Code, and, as we are out to amend it, I support the amendment on the ground that the clause is useless in the interests of public justice and it may be harmful to the interests of public safety.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I move that the question be now put.

The motion was put and agreed to.

The amendment* was put and negatived.

Bhai Man Singh: The second part of my amendment reads:

"In clause fourthly the word 'and' shall be substituted for the word 'or'."

Clause (4) runs like this:

"Any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing."

Now, there are two different positions taken under this clause. One is that any man who is in possession of property that is suspected of being stolen property can be arrested irrespective of the fact whether that man has come in possession of that property by fair or foul means, quite innocently or with any criminal act attached to it. The most respectable man who buys anything in the open market and who has got a receipt for having bought it can be arrested without a warrant by a police officer under this portion of the clause. The other portion deals with the question of all those who may reasonably be suspected of having committed an offence with reference to such a thing. I quite agree that if a person can reasonably be suspected of having committed an offence with respect to any thing, which is stolen property, he should by all means be arrested. But the clause as it at present stands means that any person

*In clause 11 insert the following new sub-clause and re-number the present sub-clauses (1) and (2) as (2) and (3) respectively:

(1) In section 54, sub-section (1), the clause *secondly* shall be omitted.

[Bhai Man Singh.]

who possesses a stolen property, however innocently he may have come in possession of it, can be arrested by a police officer without any warrant. My amendment is that if he is in possession of stolen property and he can be reasonably suspected of having committed an offence with reference to such thing, only in that circumstance he should be liable to be so arrested. Now, Sir, the object of the section is only to facilitate arrest of a person who can reasonably be suspected of being an offender. There is no reason in making a provision in law for arresting a person in respect of whom you cannot reasonably suspect that he has committed an offence. Under the clause as it at present stands, if the police officer sees that the gentleman who has a stolen property has got a duly signed receipt for it from the person who sold the property to him, and he has come in possession of that property innocently, even then the police officer has a right to arrest him. If such an innocent person is thus arrested, what is the result? Does it not mean sheer injustice to him? If you do not suspect a person to have committed an offence, there is no meaning in your arresting him. I may further state, Sir, that some of the Local Governments too seem to have understood this clause to mean that the person who is arrested is suspected of having committed some offence in respect of such thing, otherwise he should not be arrested. The Central Provinces Police Manual and the Madras Police Manual have provided that 'with regard to the seizure of property suspected to be stolen, it is to be observed that no such seizure must ever be made, except when there are strong and definite grounds for believing that the property must have been dishonestly come by, e.g., when jewels of large value are found with a person of mean condition and having no ostensible means of livelihood. It is not justifiable to seize valuables which are not identified as stolen property merely because the police officer who comes upon them in the course of a search has an unfavourable opinion of the character of the possessor. To raise a presumption of guilt, the possession of property believed to be stolen should be exclusive as well as recent'.

This itself shows, Sir, that some of the Local Governments while issuing these instructions also thought that arrests should be made under this clause only if the possession has been acquired by some criminal means. Therefore, I think that the clause, as it stands at present, gives the chance of an innocent man being arrested, but if amended, it does not give room for any guilty person to be left off because if there is a proper suspicion about a man being guilty and his having come in possession of the stolen property through some foul means, he is liable to be arrested. I request, Sir, that this amendment be made.

Sir Henry Moncrieff Smith: Sir, the Mover of this amendment is trying to make both the conditions laid down in the clause necessary before an arrest can be made under this particular clause of section 54. At present, the police have the power to arrest a person in possession of an article which may reasonably be suspected to be stolen property, and they have the power to arrest a person who may reasonably be suspected of having committed an offence with reference to a thing in his possession—not stolen property. That is where the danger of this amendment comes in, because 'stolen property' of course has a technical meaning. We have to refer to section 410 of the Penal Code to find the definition of it:

'Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed.'

That is designated stolen property. Well, there may be many other articles which are not stolen property—articles the possession of which has been transferred by cheating or there are things like forged currency notes, forged bank notes, counterfeit coins and so on. Why should the police not be allowed to arrest a person in possession of these articles if he can reasonably be suspected of having committed an offence with reference to them? It would make the position difficult if you tack on to this the fact that they must be also found to be in possession of the same. I think therefore there is some danger in making such an amendment, though it seems such a simple one, and I would ask the House to leave the law as it stands.

The amendment which my friend desires really is—though perhaps he is not aware of it—to restore the law to the form in which it stood up to 1897. It was deliberately altered in 1897. The word 'and' did occur in the Code of 1882 and because the provisions of that Code were found to be unduly restricted, in 1897, when the whole Code was consolidated and amended, the word 'or' was put in and I think the House will agree that the change was an improvement.

Rao Bahadur T. Rangachariar: Sir, I fail to see how any person can be prosecuted or rather arrested under that clause unless the thing is found with him. The first requisite is that the thing must be found because the latter portion of that clause, to which the Honourable Sir Henry Moncrieff Smith referred, refers to 'such thing', namely, a thing found. Therefore, it must be a thing found with reference to which the policeman is enabled to arrest him. Therefore, it cannot be contemplated by that clause that you find the thing with a person (A) and you arrest another person (B) suspecting him of having committed an offence with reference to it. I think, as it is, if the matter came before a court under the usual canon of construction which is often adopted to illustrate the true meaning of the clause, I have no doubt the court will hold that 'or' there means 'and'. It has often been so held. Therefore, I think the clause itself contemplates only the arresting of a person with whom the thing is found and not only that. That is not enough, because I may be innocently in possession of stolen property. I must also be reasonably suspected of having committed an offence with reference to it, that is within the definition of stolen property or receiving stolen property or abetting the committing of an offence. Therefore, the very intention of the clause seems to suggest that the two factors must go together in order to enable the police to effect an arrest. And the object of this amendment is to make it clear. It cannot have any other meaning. Having the words 'such thing' there, the word 'or' loses all its force. Such a thing must be a thing—stolen property—found. "Found" therefore must be with the person with whom it was found and that person must be suspected of having committed an offence with reference to it. And I therefore think, Sir, that it would be better to substitute the word 'and' for the word 'or'.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I

find that Sir Moncrieff Smith has failed to answer the argument laid before us by Bhai Man Singh, the Mover of this amendment, that if the wording of this section was allowed to stand, the police would have the power of arresting any person who is found in possession of stolen property although he is quite prepared on the spot to establish his innocence. I do not think there will be any violence to public justice or the rights of

[Mr. Harchandrai Vishindas.] the subjects will be in any way defeated if the amendment suggested by Bhai Man Singh is carried. As Mr. Rangachariar has just now put before the House, it is very likely that for the purpose of carrying into effect the object of this clause it will be considered that 'and' is more appropriate than 'or' and as often-times we have found, in the interpretation by Judges of the various provisions of the law they might say that this word 'or' itself implies that it cannot be interpreted in any other way except when it is identified with the word 'and.' If up to 1897 the word 'and' remained as Sir Moncrieff Smith has pointed out to us; no explanation is forthcoming as to why this change was made and no answer is given to the argument that the word 'and' should remain. Therefore, all common sense suggests to me, and it will suggest to the House, that the amendment is not only desirable but is necessary.

Mr. J. Chaudhuri: I propose, Sir, that the question be now put.

Mr. J. Ramayya Pantulu: Sir, I beg to support the amendment. I think that clause (4) deals with the case of a person who is found in possession of property which there is reason to believe to be stolen property. If there is reason to believe that the property is stolen property, that is a very good ground for seizing that property, but it cannot be a good ground for arresting the man. A man can be arrested only when there is reason to believe that he has committed a cognizable offence, and that case is provided for in clause (1) of the same section. I do not accept the interpretation that is put upon clause (4) that the latter part of it is intended to cover the case of a man other than one who is found in possession of property, apart from the case of a man who is found in possession of stolen property. It is not meant to cover the case of a man who is not found in possession of property. That clause is specially intended to cover the case of a person who is found in possession of stolen property. If a man is found to be in possession of property which could reasonably be suspected to be stolen property, then the clause gives power to the police to arrest that man, but that is improper as pointed out by the Honourable Mover. The reason given, i.e., that there is reason to believe that the property is stolen would be good reason for seizing the property, but you cannot arrest a man unless you have got reasons to believe that he has committed some cognizable offence with reference to the thing which is found in his possession. Since that case is covered by clause (1) I do not think that clause (4) really serves any useful purpose. So, the substitution of the word 'and' for the word 'or' will take away the objection from the clause as it stands. I therefore support the amendment.

Dr. Nand Lal: Sir, reading the clause, as it stands, we come to this conclusion that two things are contemplated by the present provision; the discovery of the thing or article, as the case may be and, its being reasonably suspected to be stolen property. Admitting the existence of all these conditions, yet the possessor of that article may be innocent. He has got no knowledge at all as to whether this article is really stolen or not. Why has he been hauled up? Because a certain article has been recovered from his possession; secondly, because there is a reasonable suspicion that this article is a stolen property. On account of these two conditions, an innocent man has been arrested, though eventually he may be acquitted by the Magistrate on the ground that his guilty knowledge is not established. Now, Sir, who is responsible for his unlawful arrest? Who is responsible for his unlawful confinement in the lock-up for a number of days till he

secures his release or acquittal, as the case may be, at the hands of the Magistrate? The proposed amendment does away with that fear. It (the amendment) contemplates that instead of the word 'or' you may put in the word 'and'; and the insertion, as I have already submitted, will meet a pressing need. If in addition to the aforesaid existence of two conditions the police officer arrives at the conclusion that the possessor can reasonably be suspected of a connection with the commission of the offence, then he can be arrested. There is a great sense in it. Therefore, Government should thank the Mover of this very reasonable amendment which commends itself, and I consequently strongly support it.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): I move, Sir, that the question be now put.

Mr. Deputy President: The question is that the question be put.

The motion was adopted.

Mr. Deputy President: The amendment moved is:

"In sub-section (1) of section 54 of the said Code, in clause *fourthly* for the word 'or' the word 'and' shall be substituted."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, in sub-clause (1) of clause 11 (a) I beg to move an amendment:

"That between the word 'and' and the word 'the', insert the words 'full particulars of'."

As the sub-clause stands at present, it means that any police officer may requisition for the arrest of any person through another police officer and may ask the other police officer to arrest that man who may have committed an offence or other acts for which the arrest is to be made. Under the clause as it stands, the police officer simply may mention to another police officer that such and such a person has committed, say, an offence of cheating or any other offence and should be arrested; that police officer will have no discretion to refuse it, but under this clause shall be bound to arrest him. If the amendment which I beg to move be adopted, in that case that police officer shall be able to utilise and exercise his own discretion and find out whether the particulars that have been given by the requisitioning officer are enough to make that person liable to be arrested, and on that suspicion and after finding out the liability for that man's arrest, he may arrest him. Therefore, I suggest that the police officer who requisitions an arrest through another police officer should also be required to give the particulars of the offence for which he is to be arrested. With these words, Sir, I move the amendment:

"That in clause 11:

(a) In sub-clause (1) insert the words 'full particulars of' between the word 'and' and the word 'the'."

Mr. H. Tonkinson: Sir, perhaps it would facilitate a discussion of this amendment if I referred in the first place to the history of the present clause. Sir George Lowndes' Committee were of opinion that an amendment is required in section 54 to meet the case of a requisition from a police officer to arrest a man at a distance:

"We think it is clear that there should be power for an investigating officer to require by telegram the arrest of a person who may perhaps have absconded from the place where the investigation was taking place."

As the Honourable Members of this House know quite well, the Bill drafted by Sir George Lowndes' Committee was circulated for opinion and

[Mr. H. Tonkinson.]

those opinions were considered by the Joint Committee. One of the opinions was signed by my Honourable friend, Mr. Chaudhuri, and it suggested that in the clause drafted by Sir George Lowndes' Committee some safeguard was required. The Joint Committee therefore said in their report that:

'We agree with those critics who desire that some safeguard should be provided, and we have therefore proposed to lay down that the requisition shall reveal the offence or other cause for which the arrest is to be made, so that the arresting officer can satisfy himself that the arrest could lawfully have been made without warrant by the officer issuing the requisition.'

Now, Sir, on the clause as it stands in the Bill sufficient particulars will clearly have been included in the requisition received from the person at a distance to enable the officer who has to make the arrest to decide whether that officer had power to make the arrest. The Honourable Member proposes, however, to insert the words 'full particulars of'; that is to say, in the requisition full particulars of the offence are to be included. Now what, Sir, does the Honourable Member mean by 'full particulars'? Whenever we refer elsewhere in the Code to 'full particulars' we indicate clearly what we mean by them. The amendment moved by the Honourable Member would therefore require another section to explain it. Perhaps my Honourable friend, Mr. Seshagiri Ayyar, would say that after we have considered this amendment we should go on and propose a new section to meet this point. Still we have not had any indication as to what full particulars would be required by the Honourable Member. I think, Sir, it is clear that the safeguard inserted by the Joint Committee is quite adequate for the purposes of this clause, and I hope that the amendment will not meet with the approval of this House.

Mr. Deputy President: Amendment moved:

"In clause 11:

(a) In sub-clause (1) insert the words 'full particulars of' between the word 'and' and the word 'the'."

The question is that that amendment be made.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, the amendment I propose in clause 11 (1) under the head 'ninthly' is a mere formal amendment. In order to make clear what is meant by 'that' officer in that clause, that is to say, the officer who makes the requisition, I introduce the word 'other.' I have been supplied with a draft from the department which makes it even plainer; that is, instead of the words 'that other officer' they suggest the substitution of the words 'the officer who issued the requisition.' I am quite willing to substitute that for my original amendment. For the words 'that officer' the words 'the officer who issued the requisition' are to be substituted.

Mr. H. Tonkinson: I accept the amendment now proposed by my Honourable friend, Mr. Rangachariar, viz., the substitution of the words 'the officer who issued the requisition' for the words 'that officer.'

Mr. Deputy President: Amendment proposed:

"That in sub-clause (1) of clause 11 for the words 'that officer' the words 'the officer who issued the requisition' be substituted."

The question is that that amendment be made.

The motion was adopted.

Bhai Man Singh: Sir, the amendment which stands in my name is to omit sub-clause (2) of clause 11. Sub-clause (2) reads as follows:

"After sub-section (2) of the same section, the following sub-section shall be added, namely:

"(3) The term 'police-officer' in this section shall be deemed to include such village officers as may be either generally or specially authorised by the Local Government in this behalf."

This means that power of arresting persons mentioned in this clause without a warrant is to be extended beyond the ordinary police officers to village headmen and to any village officer. I think it would be giving them too much latitude. If this is done any village chaukidar or a lam-bardar or jaildar will be able to arrest anybody without a warrant under this clause. We have been going on for such a long time without that power and very strong and cogent reasons should be brought forward to make this new provision, if it is to stand at all. I do not understand, Sir, why such drastic powers should be given to persons who are not connected with the detection of or enquiring into crimes. They are untrained persons in this matter. It is really a very dangerous doctrine that any village officer should be given the power to arrest any person without a warrant under section 54.

Mr. Deputy President: Amendment moved:

'Omit sub-clause (2) of clause 11'.

The Honourable Sir Malcolm Hailey: The Honourable Member will probably accept our proposal if I told him how it came to be framed. I notice that Sir Deva Prasad Sarvadhikary was also somewhat apprehensive of its results. Indeed he went so far as to say that this was a distinct attempt on the part of Government to take new powers under this section. The exact facts are very simply as follows: Some years ago the Central Provinces pointed out that in Berar the police patel had since 1863 been given power to arrest, but the power rested on somewhat doubtful authority. It was indeed an executive order, but the Local Government asserted that these police patels, although not technically coming within the category of police officers, had acted admirably in that respect and had not exceeded their authority. They merely asked therefore that they might have power to give to them the formal authority which they had actually utilised in the past. That is the very simple reason why we placed this sub-clause in the Bill. It has been before the public ever since the Bill was first published, and I think I am right in saying that it has received no objections. Stay, there was one objection, from the Bar Association in Madras, though not of a very serious nature, for it chiefly referred, I think, to other provisions of the clause.

Mr. T. V. Seshagiri Ayyar: Madras objections are always weighty.

The Honourable Sir Malcolm Hailey: No doubt, but this in itself tells against the amendment of Mr. Man Singh, since the Association did not itself lay great stress on their objection. Now it is not correct to say, as the Mover of this amendment said, that we are hereby placing in the hands of a very large number of village officers, be they village chowkidars or any other such officers, an unlimited power of acting as police. The Bill does not do that at all. It is purely permissive; it declares that the Local Government may in certain circumstances grant these powers. Who are responsible for the administration of law and order but the Local Governments? We have no reason to suppose that this permissive clause, if it

[Sir Malcolm Hailey.]

is put in the Bill, will be abused by them. Why should they raise up trouble for their own Provinces by handing over to a large number of undesirable persons the power of arrest as police officers? Surely we must give Local Governments sufficient credit for at least a passing interest in the welfare of the people of their Province. We must give their local Councils sufficient credit, I think, for protesting against any such course of action as would lead to widespread mischief arising from the abuse of a simple provision of that nature.

Mr. T. V. Seshagiri Ayyar: For once, Sir, I shall use the argument which has been so often used by the Government benches in this House, and that is, as for a long time we have gone on without an amendment of this kind, it is not necessary now to tinker with the law and bring in an amendment, because one Local Government considers a particular class of officers in a particular place should be empowered in a particular manner. We have gone on without such a power as that for a long time and I do not think other Governments have felt the same difficulty as the Central Provinces Government. Moreover to empower with a general power a large class of officers of this calibre to arrest a person is simply to place power in their hands which would be sure to be misused, and I do not think that the authorities of the Local Government will be able to distinguish between a particular class of patels and other classes of patels, and the result would be that they would give general power to patels and that would lead to the general abuse of power. The Honourable the Home Member has not shown any reason for a change in the law which has stood for a long time, and the fact that the Central Provinces has asked for it is not a reason for including such a dangerous provision like this, namely giving power to arrest to persons of this low class.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved. My own Government has been quoted in support of this introduction. It was the Central Provinces Government which needed such a clause and to satisfy the desire of the Central Provinces Government this clause has been added, because in Berar there is a class of people known as police patel who have been exercising such power before Berar was attached to this Government and so that that power should also continue after Berar has been amalgamated to the Central Provinces. My humble reply in that case would be, Sir, that Berar was included in the Central Provinces in the year 1905 or thereabouts and from 1905 to this year, 1923, those police patels have been working without those powers, that is to say, whatever powers they had of arresting have been suspended and they are not authorised now under this present Code of Criminal Procedure to arrest persons. Therefore, if these people could do without these powers for so long, there is no reason why that additional power should be given. Moreover, if it had only been a case of police patels, I might have opposed the amendment and supported the Government; but there is no knowing, as the clause stands, to whom that power may be extended. The Honourable the Home Member says that we should leave this discretion in the hands of the provincial Governments who are supposed to exercise their discretion in a proper way and that, if there is any impropriety in the exercise of their discretion, that might be questioned by the local Councils. I am afraid, Sir, it is not always possible. It may happen sometimes that provincial Governments may even do the improper thing and the local Councils cannot take sufficient

action in time. I would just give one instance of my own provincial Government to show in what way they have behaved in regard to certain legislation which was passed by this House in the September Session in Simla. The House will remember that the Police Incitements to Disaffection Act was passed in that session and a clause was added at my request, after acceptance by the Government, that that Act was to be brought into force in such provinces and such parts of the provinces where it might be thought necessary. The Act received the assent of the Governor General promptly in the first week in October and it was hardly a fortnight after the assent was given that the Central Provinces Government was the first to introduce and to extend the provisions of that Act in the whole of the Central Provinces and Berar. If the Central Provinces Government thought that such an Act was necessary for a particular part of the province they could have extended it to that part only instead of extending it to the whole of the province and Berar. So, this is the way in which the powers that are delegated to the Local Governments are sometimes utilised. Therefore, I beg to submit that we should not delegate this power to the Local Governments to authorise any person whomsoever they please to arrest persons under this section. We have spent the whole day discussing the way in which police officers have been behaving and acting under section 54 and the whole day we have been thinking of the ways in which we should curtail these powers without causing any inefficiency in their work, but we have not been able to come to a proper conclusion so far, and now in this clause we are extending this power to whomsoever the Local Governments may desire to extend it. Therefore, Sir, I suggest that the power would be a very dangerous one and it should not be extended beyond the powers under the old section 54; and this amendment which has been moved by my Honourable friend should be supported and accepted.

Mr. Darcy Lindsay (Bengal : European): I move that the question be now put.

Mr. Deputy President: The question is that the question be now put. The motion was adopted.

Mr. Deputy President: The amendment moved is to omit sub-clause (2) of clause 11.

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—34.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.

Lindsay, Mr. Darcy.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sen, Mr. N. K.
Singh, Babu B. P.
Sinha, Babu Adit Prasad.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Vishindas, Mr. H.

NOES—29.

Abdulla, Mr. S. M.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, the next amendment is likely to take time; we have already sat very late and I beg to propose that the House do stand adjourned till to-morrow.

The Honourable Sir Malcolm Hailey: We shall have no objection to that course, though I cannot agree with the Honourable Member, that, taking our own ordinary hours of work, we have sat very late.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 17th January, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 17th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

RAILWAY CONCESSIONS TO TRAVELLERS.

145. ***Mr. K. Ahmed:** (a) Are the Government aware that in the East Indian Railway and the Bengal Nagpur Railway, concession return tickets for the 1st and 2nd class passengers are being issued at a fare and a third during the Christmas and other holidays?

(b) Do Government propose to introduce similar concession return tickets in all State Railways for the 1st, 2nd and Inter class passengers during the Pujah, Christmas and Easter holidays?

The Honourable Mr. C. A. Innes: The introduction of concessions of this kind is within the competence of Railway Administrations and the Government have no doubt that they are fully alive to the desirability of restoring them as soon as circumstances permit, but the Government will bring the matter to the notice of Agents.

Mr. K. Ahmed: A supplementary question, Sir. In view of the fact that the company-managed Railway can grant such a concession, could not the Government of India in the State-managed Railway grant that concession?

The Honourable Mr. C. A. Innes: I have already said that the Government of India propose to bring this matter to the notice of Agents.

Mr. K. Ahmed: When will that be, Sir?

The Honourable Mr. C. A. Innes: Now, Sir.

Sir Deva Prasad Sarvadhikary: Is it at all proposed to restore the old return tickets independent of the Pooja, Easter and X'mas concessions? If so, when?

The Honourable Mr. C. A. Innes: I think that was a question which was asked by Mr. K. Ahmed. All I am prepared to say is that we propose to bring the question of restoring concessions of this kind to the notice of Agents in order that they may consider whether now or at some later date they are in a position to restore these concessions. That, I am afraid, is the only answer I can give at present.

Mr. J. Chaudhuri: Is the Honourable Member aware that the Bengal Nagpur Railway gave some Pooja concessions while the East Indian and Eastern Bengal Railways did not give any concessions? Does he not think it desirable that there should be uniformity in this respect?

The Honourable Mr. C. A. Innes: I was not aware of that fact.

Mr. N. M. Joshi: May I ask, Sir, why these concessions are extended only to 1st and 2nd class passengers and not to 3rd class passengers?

The Honourable Mr. C. A. Innes: I am afraid I cannot answer that question without examination.

Mr. N. M. Joshi: May I know if the Government is prepared to consider this question?

The Honourable Mr. C. A. Innes: No question will be considered without Agents.

INCONVENIENCES TO LOWER CLASS PASSENGERS ON E. B. RAILWAY.

146. ***Mr. K. Ahmed:** (a) Are the Government aware that in the Eastern Bengal Railway there are certain restrictions, (a) for Inter class passengers who are not allowed to travel by the Darjeeling and Dacca Mails when travelling less than 100 miles, and (b) for third class passengers who are not allowed to travel by the Darjeeling Mail trains when travelling for less than 200 miles?

(b) Are the Government aware that these restrictions are causing great inconveniences to the travelling public as there are not sufficient number of available trains for them which are always over-crowded?

(c) Do Government propose in the interest of the travelling public to remove those restrictions as early as possible?

The Honourable Mr. C. A. Innes: (a) Yes. These restrictions were imposed as intermediate and 3rd class accommodation on the trains referred to is limited and the object is to prevent passengers travelling long distances being inconvenienced by other passengers for whom another and a suitable train service is provided.

(b) and (c) Government are not aware that the restrictions referred to cause inconvenience, and do not propose to take any action in the matter.

Mr. K. Ahmed: Are not the Government of India aware that there were a number of trains before the Darjeeling Mail started in the afternoon? For instance, there was the Shillong Mail, passenger and other local trains running within the limited area some time ago?

The Honourable Mr. C. A. Innes: I did not catch the Honourable Member's question.

Mr. K. Ahmed: Is my Honourable friend aware that from Sealdah which is a suburban town East of Calcutta on the other side of Howrah, trains are not for the last two or three years running regularly? For instance, the Shillong Mail is not running at all. It used to start by 2-30 P.M. There were other trains also which used to run within the limited area, and they have also been stopped?

The Honourable Mr. C. A. Innes: The train service is arranged by the Agent, and I have no reason to suppose that the Agent has not arranged a suitable service.

Mr. K. Ahmed: Do I take it, Sir, that the Agent's statement is to be taken as gospel truth and that the Honourable the President of the Railway Board and the Honourable Member in charge are not to answer questions notices of which have been given?

The Honourable Mr. C. A. Innes: The principle of Government is to trust their Agents in all cases unless anything is brought to notice in which the Agent is clearly wrong.

Mr. K. Ahmed: Is it not desirable that the department should be abolished? Is it not a burden on the public revenues?

DAMAGE BY FLOODS IN RAJSHAHI DIVISION.

147. ***Mr. K. Ahmed:** Will the Government be pleased to state: (a) the number of men, women and household animals that died and the amount and extent of the damage including the losses of crops, huts, goods and chattels, etc., sustained by the people during the flood in the districts of Rajshahi Division in September last; and

(b) what was the extent of damages and the amount of loss sustained by the Eastern Bengal Railway?

The Honourable Mr. C. A. Innes: (a) The Honourable Member is referred to the Press Communiqués on points of this kind which have already been issued by the Government of Bengal.

(b) The information is not yet available. It will be supplied to the Honourable Member on receipt.

Mr. K. Ahmed: A supplementary question, Sir. Is it not a fact that Rai Bahadur Ralla Ram, ex-Engineer, was deputed by the Government of India to inquire and report on the subject?

The Honourable Mr. C. A. Innes: Yes.

Mr. K. Ahmed: Has he not submitted a Report on the subject at all?

The Honourable Mr. C. A. Innes: I believe he has submitted a Report.

Mr. K. Ahmed: Are we not entitled to get the information that appears in that Report submitted to the Government. If so, may I ask that all these particulars should be supplied to us?

The Honourable Mr. C. A. Innes: That Report deals with technical questions as to whether sufficient waterways are provided in these railway lines. It does not deal with Part (a) of the Honourable Member's question. I would also add that a series of questions have been put in regarding Mr. Ralla Ram's deputation, and I would suggest to the Honourable Member that he should wait till the replies are given to those questions.

Mr. K. Ahmed: May I ask if the Government of India will be good enough to lay that Report on the table so that Honourable Members of this Assembly may look at it?

The Honourable Mr. C. A. Innes: I have already said that the Honourable Member must wait till the replies are given to the questions which have been put in on this subject. I am not prepared to answer questions of this kind without having papers before me.

Mr. K. Ahmed: Will my Honourable friend be good enough to place the Report submitted by Rai Bahadur Ralla Ram on the table of this House?

Mr. Deputy President: I think the Honourable Member has already answered that question.

EMPLOYMENT OF INDIAN AUDIT DEPARTMENT OFFICERS.

148. ***Mr. Pyari Lal Misra:** Have Government ever considered the advisability of employing officers of the Indian Audit Department in charge of establishment work in the administrative offices of or under the Central Government?

INDIAN AUDIT DEPARTMENT.

149. ***Mr. Pyari Lal Misra:** Have Government ever considered the advisability of giving increased opportunities to officers of the Indian Audit Department to acquire experience of the work at the headquarters of the several departments of the Central Government?

The Honourable Sir Basil Blackett: With the Honourable Member's permission, I will answer these two questions together as they deal with the same subject. There is no doubt that it is frequently useful to have an officer of financial experience in charge of the establishment work in an administrative department, especially where the department's expenditure on establishment is large, and for work of this description officers of the Audit department, possessing special qualifications, have from time to time been usefully employed. Government are of opinion that the deciding factor must be the benefit to the administrative department concerned, rather than the personal benefit likely to be derived by an officer from experience gained in such work.

DECREASES IN PASSENGERS AND PASSENGER EARNINGS.

150. ***Mr. Pyari Lal Misra:** (a) Is it a fact that there is a decrease in the number of passengers since the increased railway rates came into force?

(b) Is it a fact the difference between the passenger earnings to date and the amount budgetted for is too big to be covered during the remaining period of the current year?

(c) If so, what steps do Government propose to take to make up the difference?

The Honourable Mr. C. A. Innes: (a) The matter is being carefully watched and comparative figures of passenger traffic on the 10 principal railways are examined every week. These figures include figures for non-budgetted lines but they indicate the effect of the new fares. They show that in the current year up to the week ending 23rd December last there was a decrease of passenger traffic of 2.4 per cent. compared with last year. On the other hand, there was an increase of coaching revenue amounting to 162 lakhs.

(b) The reply to part (b) is in the affirmative.

(c) Government do not propose to take any special action at present as they know that Agents have the matter in mind. Government prescribe only maximum fares. If Agents find that the fares imposed are so high as to affect revenue by driving away traffic they will, no doubt, reduce them. But it always takes some time for the travelling public to adjust themselves to new fares.

PAYMENT OF LAND REVENUE BY RAILWAYS.

151. ***Mr. Pyari Lal Misra:** Is it a fact that certain railways are required to pay land revenue on the lands made over to them, while others are not; and if so, on what basis is the distinction made?

The Honourable Mr. C. A. Innes: Under the terms of their contracts certain railways are entitled to the grant of land by Government free of charge. Such railways pay no land revenue.

In other cases (except those of the Assam Bengal and Tirhoot Railways which have special clauses in their contracts in regard to land) capitalised value of land revenue is paid by the Railways at the time of acquisition.

R. & K. RAILWAY: CLAIM FOR WOOD FUEL.

152. ***Mr. Pyari Lal Misra:** With reference to the item "Rohilkund and Kumaon Railway Extensions—compensation for waiving claim for wood fuel" in the Railway Revenue Budget, will Government kindly state the total amount of compensation, the amount already paid, the amount yet remaining to be paid and why the payments are not charged to the head "Fuel."

The Honourable Mr. C. A. Innes: The compensation payable to the Rohilkund and Kumaon Railway Company for waiving their claim for the supply of wood fuel from Government forests was settled for a lump payment of Rs. 30,000 for all claims up to 31st December 1911 and a recurring annual payment of Rs. 10,000 for 1912 and subsequent years. The payments to the Company on this account to end of 1921-1922 amount to Rs. 1,32,500.

In the accounts of the Company these payments appear as an item of receipt. So far, however, as Government is concerned, the precise method of showing the expenditure is a matter of accounting which is dealt with in accordance with the rules on the subject.

RULES APPLICABLE TO COMPANY-WORKED STATE RAILWAYS.

153. ***Mr. Pyari Lal Misra:** With reference to the answer given to starred question No. 15, will Government kindly state how the rules not applying to company-worked State Railways can be distinguished in the published codes from those that do apply?

The Honourable Mr. C. A. Innes: It is not possible within the limits of a reply to a question or in a general formula to indicate the precise distinction between the rules in the published State Railway Codes that apply to Company-worked Railways and those that do not so apply.

The Honourable Member, however, will be safe in assuming that the rules in the State Railway Codes so far as they relate to classification and allocation of receipts and charges, general procedure of accounts and audit, control of expenditure against grants and estimates and submission of periodical accounts and returns, are more or less as much applicable to Company-worked Railways as to Railways worked by State.

MINOR AND MAJOR WORKS ON RAILWAYS.

154. ***Mr. Pyari Lal Misra:** What is the test applied in deciding whether a given railway work is a new minor work chargeable to working expenses, or a new major work to be paid for out of capital funds? Does

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the test relate to the nature of the new work or to the expense it involves? And if latter, when was the test fixed and when was it last revised?

The Honourable Mr. C. A. Innes: In the case of State-worked railways the limit up to which the cost of new minor works should be debited to revenue was fixed at Rs. 1,000 till 1919 and has since been raised to Rs. 2,000. These limits apply to other railways also subject to the provisions of the contracts for their working.

LAND SUPPLIED TO ASSAM-BENGAL RAILWAY.

155. ***Mr. Pyari Lal Misra:** With reference to the answer given on 6th September, 1922, to starred question No. 13, will Government kindly state why the cost of land supplied free of cost to the Assam-Bengal Railway Company is shown in the statement of demands for railway capital expenditure and in what respect this free gift differs from those referred to in the answer to starred question No. 19?

The Honourable Mr. C. A. Innes: Question No. 13, which was answered on the 6th September, 1922, related to State-owned Railways, whereas Question No. 19 answered on the same date had reference to private-owned railways. This accounts for the difference in the treatment of the cost of land. The Assam Bengal Railway is a State-owned Railway and the land required for it is consequently shown in the Statement of Demands for Railway Capital Expenditure, such expenditure being booked separately as Government capital expenditure outside the accounts of the undertaking.

RAILWAY STATISTICS OF PROFIT AND LOSS.

156. ***Mr. Pyari Lal Misra:** With reference to the answer given on 15th September, 1922, to starred question No. 321, will Government kindly state the procedure usually adopted by them (a) firstly, in ascertaining which particular commodity pays and which does not, and (b) secondly in adjusting the rates, so as to make the traffic pay?

The Honourable Mr. C. A. Innes: (a) and (b) Government action in the matter of rates is confined to the fixing of maxima and minima rates. Between the limits fixed Railways are at liberty to fix such rates as they think that the Traffic can bear.

RAILWAY CAPITAL EXPENDITURE.

157. ***Mr. Pyari Lal Misra:** Will Government kindly lay on the table a statement shewing the amounts spent from each of the different sources mentioned in the answer given on 15th September, 1922, to starred question No. 319, and the pages of the Finance and Revenue Accounts of the Government of India for 1919-20, where those amounts have been recorded?

The Honourable Mr. C. A. Innes: The information asked for is being collected and will be laid on the table when ready.

ARREARS OF RENEWALS ON RAILWAYS.

158. ***Mr. Pyari Lal Misra:** Will Government kindly lay on the table a statement shewing the arrears of renewals as they stood on 31st March.

1922, on the Company-worked State Railways in respect only of the following principal items:

- (1) Permanent way,
- (2) Engines,
- (3) Coaches, and
- (4) Wagons?

The Honourable Mr. C. A. Innes: The information asked for is not at present available but the subject is one which the Railway Board have under investigation in connection with the question of depreciation.

REMUNERATIVE RAILWAY PROJECTS.

159. ***Mr. Pyari Lal Misra:** Will Government kindly state what percentage of the estimated cost of a projected railway is added on account of depreciation of property, to the estimate of working expenses in assessing the remunerativeness of the project?

The Honourable Mr. C. A. Innes: The estimate of working expenses of a projected railway is usually based on the actual working expenses of an adjoining line, and this includes the cost of renewals and replacements. No other specific provision is made for depreciation.

POWERS OF GOVERNMENT AND OF RAILWAYS.

160. ***Mr. Pyari Lal Misra:** With reference to page 4 of Volume II, of the Report of the Indian Railway Committee, will Government kindly place in the library a copy of the "Schedule of Powers of the Government of India and of the Railway Department (Railway Board) in railway matters"?

The Honourable Mr. C. A. Innes: A copy of the Schedule referred to by the Honourable Member has been sent to the Library.

CENTRAL PROVINCES PRODUCTIVE RAILWAYS.

161. ***Mr. Pyari Lal Misra:** With reference to the answer given on 6th September, 1922, to my starred question No. 17, will Government kindly lay on the table a statement comparing the estimated traffic as given by the local authorities before undertaking the surveys or reconnaissances and the traffic estimated as a result of the surveys or reconnaissances.

The Honourable Mr. C. A. Innes: Definite estimates of the traffic earnings were not given by the local authorities prior to the carrying out of the surveys.

CARRIAGE OF COAL ON RAILWAYS.

162. ***Mr. Pyari Lal Misra:** (a) Is it a fact that the largest portion of the earnings on account of the carriage of revenue stores is from coal carried over the home line.

(b) Is it a fact that the lowest rate for foreign railway coal is less than the lowest rate charged for the carriage of coal on the home line and if so, on what basis is the distinction made?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) The lowest rate for Foreign Railway Loco. coal is on some Railways lower than the lowest rate for coal carried for the Home Line for certain distances.

Coal for Home Railways is carried at a low flat mileage rate, irrespective of distance, while coal for Foreign Railways is carried at mileage rates calculated on a telescopic scale, the mileage rates being high for short distances, and diminishing for longer distances.

I. M. S. OFFICERS ON SPECIAL TERMS.

163. ***Dr. H. S. Gour:** (1) Will the Government be pleased to state whether it is a fact that the Secretary of State has appointed or proposes to appoint 30 additional I. M. S. officers on special terms?

(2) If so, are the appointments offered or reserved exclusively to Europeans?

(3) Were any of these appointments offered to any European or Anglo-Indian or Indian Medical Practitioners? If not, why not?

(4) Were these appointments made in previous consultation with the Government of India?

(5) If so, will the Government be pleased to publish the despatches on the subject?

(6) Is the Government aware that these appointments have aroused considerable comment in the country and caused great resentment amongst Indian medical men?

(7) Will the Government state what will be the total cost of these appointments?

Mr. E. Burdon: (1) to (5) The attention of the Honourable Member is invited to the reply given on the 15th January, 1923, to the question asked by Rai Bahadur Bakshi Sohan Lal, No. 81.

(6) The Government have seen reports to this effect in the press.

(7) Apart from the special gratuity in lieu of pension, the cost of each of these specially recruited officers will be the same as that of an officer recruited in the normal way for the Indian Medical Service as the former will serve on exactly the same terms as the latter.

EXPENDITURE ON EAST INDIAN AND GREAT INDIAN PENINSULA RAILWAYS.

164. ***Rai Bahadur G. C. Nag:** With reference to the answer to starred question No. 333, printed at page 660 of the Legislative Assembly Debates, Volume III, will Government kindly state, with respect to the East Indian and the Great Indian Peninsula Railways, the amounts sanctioned for programme revenue expenditure for 1922-23 and the approximate expenditure incurred up to 30th September 1922?

The Honourable Mr. C. A. Innes: The information asked in regard to Programme Revenue expenditure for 1922-23, is given below:

	Amount sanctioned.	Expenditure incurred up to 30th September 1922.
	Rs.	Rs.
East Indian Railway	1,73,06,000	53,45,000
Great Indian Peninsula Railway	1,97,75,000	23,25,000

CONCESSIONS ON ASSAM-BENGAL RAILWAY.

165. ***Rai Bahadur G. C. Nag:** With reference to the answer given on 7th September 1922 to starred question No. 175, will Government kindly lay on the table a copy of the report which the railway authority concerned may have made showing that the advantages secured to the Assam-Bengal Railway by the development of Assam more than make up for any immediate loss through the concession granted to Assam tea gardens for conveyance of their coolies?

The Honourable Mr. C. A. Innes: The procedure suggested by the Honourable Member involves printing the report in the Council proceedings, and with a view to avoid extra printing charges I am arranging to furnish him with a copy of the relevant extract from the Agent's letter on the subject.

QUERY REGARDING ASSAULT OF COOLIE AT MOGHAL SERAI.

166. ***Rai Bahadur G. C. Nag:** Has there been any case this year at Moghul Serai of a railway coolie being assaulted by a European railway officer of the East Indian Railway?

The Honourable Mr. C. A. Innes: The Government do not know.

CONCESSIONS ON ASSAM-BENGAL RAILWAY.

167. ***Rai Bahadur G. C. Nag:** With reference to the answer given on 6th September 1922 to starred question No. 13, will Government kindly state whether out of the amount of Rs. 56,42,654 the portion relating to the period ended 31st March 1921, is included in the figure of Rs. 2,33,32,601 mentioned in the answer given on 17th January 1922 to question No. 41 in the Council of State; and if not, why not?

The Honourable Mr. C. A. Innes: The answer to the first part of the question is in the negative. In regard to the second part the Honourable Member is referred to the reply given to starred question No. 155 by Mr. P. L. Misra.

PRODUCTIVE DEBT ON RAILWAYS.

168. ***Rai Bahadur G. C. Nag:** Will Government kindly state the principle in accordance with which of all productive debt incurred in connection with railway capital expenditure, that issued in connection with the purchase of railways is alone held to be dischargeable from revenue?

The Honourable Mr. C. A. Innes: The debt incurred in connection with the purchase of main lines only is being discharged from revenue in accordance with the orders of the Secretary of State and the Honourable Member is referred to the correspondence on the subject laid on the table on 6th September, 1922, in connection with question No. 10 put by Mr. N. M. Joshi.

"SERVANT OF INDIA" ON "RAILWAYS AND THE BUDGET."

169. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article "Railways and the Budget," which appeared in "The Servant of India" of 20th July 1922, and if so, do they propose to re-group and re-classify the demands either on the lines therein indicated or on any other suitable lines and increase the number of days allotted?

The Honourable Sir Basil Blackett: Government have now seen the article referred to. The number of days for the voting of demands for grants is fixed by the Governor General with reference to the state of business before the Assembly. Government are not aware that the inclusion of railway expenditure in two demands has had the effect of unduly restricting the discussion of the railway estimates within the time allotted, especially as one of the demands for railways comes up for discussion at an early stage of the voting. Any useful suggestions for improving the form of the estimates will always receive due consideration.

STRATEGIC RAILWAYS.

170. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article on "Railways and the Budget," which appeared in "The Servant of India" of 10th August 1922, and if so, will they kindly state whether they have considered the advisability of adopting any one of the following alternatives in connection with strategic railways:

- (i) Such railways should be owned by the Army Department and paid for out of non-railway funds. They should be worked by the Railway Department for actual cost for the Army Department, who will take all losses or gains, as is done in the case of some of the railways which are worked by main line companies for actual cost for Provincial Governments, private companies, Indian States and local bodies.
- (ii) Such railways should be taken over by the Railway Department at the cost of railway funds as a going concern for an amount equal to the capitalized value of the estimated net earnings and the difference between this amount and the amount actually spent in construction should be borne by the Army Budget.
- (iii) The Army Budget should make up any shortage in gross earnings necessary to cover interest charges and working expenses.
- (iv) The troops and stores should be carried at such enhanced rates as to produce earnings therefrom sufficient to cover interest charges and working expenses.

The Honourable Mr. C. A. Innes: Government have seen the article in question.

Various alternative proposals have been considered by the Government and the Central Advisory Council and the recommendations made by the latter body are now under the consideration of Government.

THIRD CLASS RAILWAY FARES.

171. ***Rai Bahadur G. C. Nag:** (a) Has the attention of Government been drawn to the article on "Third class railway fares" appearing in "The Servant of India" of 31st August 1922?

(b) Is it a fact that the Indian railways taken as a whole not only do not earn any net profits from the first class passenger traffic, but incur a loss in working that traffic, whereas they earn substantial net profits from the third class traffic?

(c) Is it a fact that the percentage of increases recently introduced in third class fares for distances of over 300 miles is higher than that obtaining in the case of first and second class fares?

(d) If the reply to either (b) or (c) is in the affirmative, do Government propose to remove the inequality (i) either by prescribing the extent to which railway administrations should, within the authorized maxima and minima, vary the fares? or (ii) by revising the maxima and minima?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) It is not possible to apportion the net profits earned by railways in respect of the different classes of passenger traffic.

(c) This is correct in the case of certain railways.

(d) As advised at present Government do not propose to take action on the lines suggested. If the new rates press so hardly on long distance travel as to affect traffic and the railway revenue, Agents will no doubt reduce the rates for such travel.

CHARGE OF ANNUITY PAYMENTS TO CAPITAL.

172. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article "Robbing Revenue to pay Capital" which appeared in the "Servant of India" of 21st September 1921 and to paragraph 3579 of the minutes of evidence tendered before the Acworth Committee; and if so, do they propose to treat the annuity payments as a charge to capital?

The Honourable Mr. C. A. Innes: Government have seen the article in the "Servant of India" and also paragraph 3579 of the evidence tendered before the Acworth Committee.

The annuity payments are charged to revenue in accordance with the orders of the Secretary of State. The attention of the Honourable Member is invited to the correspondence on this subject laid on the table on 6th September, 1922, in reply to question No. 10, by Mr. N. M. Joshi.

THIRD CLASS PASSENGERS.

173. ***Rai Bahadur G. C. Nag:** (a) Has the attention of Government been drawn to the article on "Third Class Passengers" in the "Servant of India", dated 28th September 1922;

(b) Do Government propose to publish in their future Railway Administrative Reports information as to the amounts spent in the year on:

- additional goods engines.
- " passenger and mail engines,
- " first class carriages,
- " second class carriages;
- " inter class carriages,
- " third class carriages,
- " wagons?

The Honourable Mr. C. A. Innes: (a) Government have seen the article in the "Servant of India."

(b) They do not consider it necessary to add to information already being published in Appendices 16 and 17, in Volume II, of the Administration Report of Railways in India.

Mr. K. Ahmed: Would not the Government of India like under the circumstances to repudiate the statements and allegations made in those articles of the "Servant?"

The Honourable Mr. C. A. Innes: I do not think that that supplementary question arises on part (b) of question No. 173.

STENOGRAPHERS ON GREAT INDIAN PENINSULA RAILWAY.

174. ***Rai Bahadur G. C. Nag:** Is it a fact that recently one or two stenographers have been brought out from England in the Agent's office of the Great Indian Peninsula Railway Company? If so, what is their pay and whether suitable candidates could not be found in India?

The Honourable Mr. C. A. Innes: The Government have no information.

The question refers to a matter affecting an employé of a railway company whose employés are not under Government control.

Mr. N. M. Joshi: May I ask a supplementary question, Sir? If the servants of the Indian Railways are not under the control of the Government of India I do not know why the Government of India should find capital for the Railways.

The Honourable Mr. C. A. Innes: The point is that we have delegated to Company Railways certain powers in regard to recruitment of staff below a certain level of pay. We give them full discretion in regard to employés below that level of pay.

Rao Bahadur T. Rangachariar: Are we to understand that Government have no voice at all in this matter?

The Honourable Mr. C. A. Innes: We do not as a matter of practice interfere.

Rao Bahadur T. Rangachariar: But where gross cases occur will the Government interfere?

The Honourable Mr. C. A. Innes: I think gross cases should first be reported for our information.

WAGON INSPECTORS.

175. ***Rai Bahadur G. C. Nag:** What is the pay attached to the post of wagon inspectors under the Director of Wagon Exchange?

Is it a fact that all the inspectors are either Europeans or Anglo-Indians, and that there are no Indian inspectors?

Were the appointments filled by public advertisement? If not, why not?

The Honourable Mr. C. A. Innes: The maximum pay attached to the post of Wagon Inspectors under the Director of Wagon Interchange is Rs. 500 a month. So far only two Anglo-Indian Inspectors one on Rs. 400 and one on Rs. 300, have been appointed.

The appointments were not filled by public advertisement because the services of qualified men were obtained from railways.

Dr. Sir Deva Prasad Sarvadhikary: May I ask a supplementary question, Sir? What are the qualifications for the appointment of these Inspectors?

The Honourable Mr. C. A. Innes: I am afraid I do not know. If Mr. Hindley were here, he would be able to answer that question, but I am afraid I must ask for notice.

Dr. Sir Deva Prasad Sarvadhikary: Have there been any Indian applicants? The Honourable Member said there was no advertisement.

The Honourable Mr. C. A. Innes: I have already said that there was no advertisement.

Dr. Sir Deva Prasad Sarvadhikary: Have there been any applicants?

The Honourable Mr. C. A. Innes: I cannot answer that question without notice.

The Deputy President then called on Rai Bahadur Pandit J. L. Bhargava to put his question No. 176 and the question was put.

Mr. K. Ahmed: With regard to question No. 175, Sir.

Mr. Deputy President: I am afraid I cannot allow the Honourable Member at this stage to put any supplementary question.

DEMOLITION OF HINDU TEMPLES.

176. ***Rai Bahadur Pandit J. L. Bhargava:** (a) Is it a fact that the construction of the new railway line by the Great Indian Peninsula Railway Company outside the Ajmeri Gate at Delhi is likely to involve the demolition of some Hindu temples?

(b) Are the Government aware that the Hindu mind is very much exercised over the question and strong resentment is being felt in regard to the contemplated action?

(c) Do the Government propose to consider the advisability of preventing the demolition of the said temples by the Great Indian Peninsula Railway Company?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) Several representations have been received.

(c) Friendly negotiations are in progress and it is hoped the desired object may be attained in such a way as to avoid all possibility of hurting the religious feelings of Hindus.

INTERMEDIATE CLASS ACCOMMODATION.

177. ***Rai Bahadur Pandit J. L. Bhargava:** (a) With reference to my question No. 189 published on page 1600 of the Official report of the Legislative Assembly Debates, Volume II, regarding intermediate class accommodation, will the Government be pleased to state if the railway administrations concerned have succeeded in providing intermediate accommodation on their lines?

(b) If not, by what time they may be expected to remove the strongly felt want of such accommodation?

The Honourable Mr. C. A. Innes: The Government can only supplement the information given to Honourable Member in the reply to the question mentioned by referring him to the answer given to question No. 156 on 8th September, 1922.

WHEAT EXPORTED FROM INDIA.

178. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to state in maunds the quantity of wheat exported from India since the removal of the embargo in September last?

Mr. A. H. Ley: Approximately 35,02,000 maunds up to the 6th January.

COMMITTEE ON ARMS RULES OF 1920.

179. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to state whether the Committee appointed to examine the new Arms Rules of 1920 have submitted their report?

(b) If so, what action has been taken on the same?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) The Report will be published for general information on the 20th January. The various recommendations contained therein are under the consideration of Government.

REALISATIONS ON POST CARDS, ETC.

180. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to lay on the table a statement showing:

(a) the actual amount realised by the sale of postcards, envelopes and postage stamps of the value of one anna or less since the introduction of enhanced rates up to 1st January 1923;

(b) amounts realised from the same sources during the corresponding periods in the years 1920 and 1921;

(c) the estimated amount of income from the same sources for the year ending on 31st March 1923?

Mr. A. H. Ley: The necessary information is being collected and will be supplied as soon as it is available.

BILL RELATING TO USE OF FIRE ARMS FOR DISPERSING ASSEMBLIES.

181. ***Rao Bahadur T. Rangachariar:** With reference to the Statement made by the Honourable Sir William Vincent in the Legislative Assembly on the 26th September 1921 *re* the Bill to provide that when fire-arms are used for the purpose of dispersing an assembly, a preliminary warning shall in all circumstances be given,

Will the Government be pleased to state when they propose to bring up the Bill for consideration?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the answer given by me to a similar question asked by Mr. K. C. Neogy yesterday.

Rao Bahadur T. Rangachariar: A supplementary question, Sir. Have the Government in view any legislation at all in respect of this matter or are they going to content themselves with rules on the matter?

The Honourable Sir Malcolm Hailey: We shall content ourselves with the issue of executive rules on the subject.

Rao Bahadur T. Rangachariar: Will this Assembly have an opportunity of examining those rules before they are issued?

The Honourable Sir Malcolm Hailey: No, Sir.

INDIANS IN FOREST RESEARCH INSTITUTE.

182. ***Rao Bahadur T. Rangachariar:** With reference to the Statement of Mr. J. Hullah *re* the employment of Indians in the Forest Research Institute, made in the Legislative Assembly on the 15th March 1922 (Debates, Volume II, page 3102), will the Government be pleased to state—

(1) the names of experts appointed and the time when their period of appointment expires;

(2) the number of Indians appointed to work under these experts; and

(3) whether the two Indians referred to in the Statement have qualified themselves and taken the place of experts; and if the answer is in the negative, the reasons for the same?

Mr. A. H. Ley: (1)—

Name.	Date of termination of appointment.
Dr. H. P. Brown (Officer in charge Wood Technological Section).	7th December 1923.
Mr. C. V. Sweet (Officer in charge Seasoning Section).	21st August 1923.
Mr. L. N. Seaman (Officer in charge Timber Testing Section).	11th September 1923.

(2) Only one Indian has been appointed on probation as Upper Grade Assistant to the Expert for Timber Testing. The appointments of Assistants to the other Experts have been held up owing to financial stringency.

The previous statement that two Indians had been appointed was made under a misapprehension as to the nature of the work of an Indian who has, in fact, been appointed to the Chemical and not the Economic Section, and is not working under one of the temporary Experts mentioned in the previous statement.

(3) The answer is in the negative, the reason being that it takes a long period of special study for any one to qualify as an Expert in these subjects.

EMPLOYMENT OF INDIANS IN PAPER SUPPLYING FIRMS.

183. ***Rao Bahadur T. Rangachariar:** Will the Government be pleased to state:

(1) the names of the firms in India who have contracted with the Government of India for the supply of paper;

(2) whether the above firms have given facilities to Indians to work as apprentices and if so, the nature and extent thereof;

(3) whether there are any Indian apprentices working in the firms referred to above, and if so, the number of Indian apprentices working in each firm and their names;

(4) if there are no apprentices, do the Government intend to take steps to see that these firms entertain Indian apprentices and give facilities for that purpose?

Mr. A. H. Ley: The firms in question are the Bengal Paper Mills, Calcutta; the Titaghur Paper Mills, Calcutta; and the Upper India Couper Mills, Lucknow.

Government have no information regarding parts 2 and 3 of the question.

As regards part 4, the Honourable Member will understand that the agreements made with the Paper Mills are ordinary business contracts, and cannot be regarded as concessions, in return for which Government should insist on the mills entertaining Indian apprentices.

Rao Bahadur T. Rangachariar: May I ask a supplementary question, Sir? I understood from previous statements made in this House that when entering into contracts one of the conditions will be the entertainment of Indian apprentices.

The Honourable Mr. C. A. Innes: May I answer this question, Sir? I think the Honourable Member is mistaken. The statements mentioned referred to special concessions given by Government. I may say, however, that the High Commissioner has been asked to consider whether in placing contracts in England preference should not be given, other things being equal, to firms which do take Indian apprentices, and I have no objection to considering whether we should not adopt the same practice in India provided of course other things are equal.

Rao Bahadur T. Rangachariar: Will the Government be pleased to call for information under clauses (2) and (3) of my question?

The Honourable Mr. C. A. Innes: We will, Sir.

Mr. Jamnadas Dwarkadas: Is the Honourable Member aware that the Fiscal Commission has unanimously recommended that where contracts are given by Government to any firm, this condition should be insisted on?

The Honourable Mr. C. A. Innes: That recommendation will be considered in due course.

OFFICERING OF INDIAN ARMY WITH INDIAN OFFICERS.

184. ***Mr. B. S. Kamat:** (1) Have the Government of India noticed a Reuter's Cable from London published in the Indian papers in early January, in which it is reported that an article in the *Fortnightly Review* gives currency to an allegation that the "Government of India have conditionally accepted a progressive scheme for the complete officering of the Indian Army with Indian Officers within 30 years?"

(2) If so, will Government be pleased to say if there is any foundation for the statement?

(3) In this connection, will Government of India be pleased to publish their scheme for the Indianization of the Army, if they are prepared to do so?

Mr. E. Burdon: (1) Yes.

(2) and (3) The statement is unauthorised and inaccurate. The question of the measures to be adopted for the Indianisation of the Indian Army is still under correspondence between the Government of India and the Secretary of State and the Government of India are not in a position to make any announcement on the subject.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. W. M. Hussanally (Sind : Muhammadan Rural): Sir, before we begin the business of the day I want a ruling on a point. I gave notice of certain amendments to the Criminal Procedure Code Bill on the 15th instant and I understand certain other gentlemen also have given notices of further amendments to the same Bill. I do not know what the fate of these amendments has been as I have not learnt anything about them. No doubt some of the amendments were out of time because they related to clauses which have already been decided. But other amendments, so far as I can see, are in time. For instance, I have given notice of amendments to sections 250 and 562 and these sections will be taken some time later on. The rumour is that all these amendments that have been sent in after the Session began are not going to be allowed. I should like to have a ruling upon the point from you, Sir, whether they are to be admitted. The only rule that seems to apply to amendments of this kind is rule 76 at page 28 of the Manual of Business and Procedure, which runs as follows:

"If notice of a proposed amendment has not been given two clear days before the day on which the Bill is to be considered, any Member may object to the moving of the amendment and such objection shall prevail, unless the President, in the exercise of his power to suspend this Standing Order, allows the amendment to be moved."

I do not know what is the interpretation that is put upon the words 'before the day on which the Bill is to be considered.' If the interpretation is strictly to be followed, it means 'two days before the day on which the consideration of the Bill commences.' But if the interpretation is to be a little more liberal and to include the day on which particular sections of the Bill are taken into consideration, then these amendments—at least mine—will be in order and within time. Anyway, you have got the power of allowing these amendments to come in under that part of the rule which I have been just quoting, and I would ask you, Sir, to exercise your discretion in favour of those amendments being taken in, for the simple reason that the Bill to amend the Code of Criminal Procedure is a very important one and such amendments should not be stifled and ruled out of order in this way, more particularly when they are strictly in time according to the interpretation I have given.

Mr. Deputy President: The Honourable Member has referred to one or two things which I consider objectionable. First of all, he is basing his objection on rumours which he has heard outside this hall. I think it is open to the Chair to take very strong objection to reference being made to what is happening outside this hall and nobody has any right to refer to rumours which he hears outside its precincts. Secondly, he mentioned that it was the intention of the Chair to stifle discussion on certain amendments. That is another statement to which I take very strong exception. I will give my ruling on these amendments as they come up.

Mr. W. M. Hussanally: I have heard your objections. I beg your most humble pardon. I never meant to say that the Chair was going to stifle discussion upon the subject. What I said was that it was rumoured that it was the intention of Government to stifle discussion. But whatever that be, the reason why I brought this matter up before you this morning is that I have not heard what has become of these amendments. I think I should have heard about them by now whether these amendments are going to be allowed or not, and I think I am in order in asking you for a ruling.

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member has already incurred a rebuke—if I may say so with all respect—a very just rebuke from you. He is going to get a similar one from me. He says it is the intention of Government to stifle amendments on the Bill further to amend the Code of Criminal Procedure. What basis he has for saying this and on what information he acts, I do not know; he has not vouchsafed an explanation to the House. We have tabled before us 395 amendments on the Bill, yet he suggests that it is our intention to stifle amendments. I must remind him that under the Standing Orders Government has no power whatever in this matter and whatever the malignant intention of Government might be, he is not in order in referring to it. The decision of course is entirely in your hands, and not in the hands of Government, and I am quite sure that any imputation that you are going to yield to the unreasonable demands of the Government in this respect would be resented by the House.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): I might with due respect state that, of course, it is not proper in any way to impute motives to Government or the Chair. But so far as this question has been raised, I might say that the interpretation to be put upon the words 'Bill to be considered' does not in any way justify the interpretation 'Bill to be commenced or begun.' I think a liberal interpretation should be put upon them, namely, 'amendments to any provision of the Bill when that provision is being considered' even if those words do not appear there. The object of two days notice for amendments is that the House should not be taken unawares but they should have those amendments printed for them and sent them home so that they may reflect and consider how to deal with them.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): With reference to what has fallen from you that the ruling will be given as the amendments come up, may I inquire what procedure is to be followed for obtaining a ruling if the amendments do not appear on the agenda at all? That is the grievance that the Honourable Member (Mr. W. M. Hussanally) has been making. Unfortunately, extraneous matters have come into this discussion which is to be regretted. But we ought clearly to understand what procedure is to be followed when there are amendments notice of which has been given two or three days before the day that they are likely to be taken up and they do not appear at all on the agenda.

Mr. Deputy President: Does the Honourable Member know of any amendments which do not appear on the paper?

Sir Deva Prasad Sarvadhikary: Some have been mentioned.

Mr. W. M. Hussanally: I have given notice of some amendments.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): May I explain? A very considerable number of amendments has been received,—the earliest I think was received at 11-30 on Monday morning, the 15th. I have not attempted to print these and circulate them. As far as possible, I will do so, but if amendments were to come in every day, it would make the task of the Department rather difficult. Sir Deva Prasad Sarvadhikary asked how Members were to obtain a ruling from the Chair if they did not know whether their amendments were on the paper or not. As a matter of fact, the Standing Order which has been cited contemplates amendments without notice and there need not be written

notice at all. There is nothing to prevent any Member of this House getting up at any moment and proposing an amendment to a clause of the Bill under consideration. That motion of his,—the amendment—is then proceeded with unless some Member of the House objects to his moving it on the ground that he has not given notice. It will then be the time for a ruling from the Chair suspending the Standing Order or enforcing the Standing Order. But there is no need for any amendment to be on the agenda paper. Any Member can move at any time with notice or without notice. That is why I think, Sir, you explained that you will have to deal with the admissibility of every amendment when an attempt has been made to move it and not before.

Mr. W. M. Hussanally: Then it will follow that the proposed amendments notice of which has been given ought to be printed and placed on the table?

Sir Henry Moncrieff Smith: I will do that as far as possible. If I receive an amendment at 10-30 this morning I cannot very well have it printed and placed on the table by the time the discussion of the Bill commences.

Mr. W. M. Hussanally: My amendments were sent in on the 15th.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): In the Manual of Procedure of the House of Commons it is laid down that though notice of an amendment is not obligatory it is usual and convenient to give notice of important amendments. I do not think it can be said that it is necessary that notice of the amendment shall be given. It is a matter of convenience for the Members that it should be given. But when the discussion of the Bill starts, it is quite open to any Member at anytime to propose an amendment without previous notice which will be considered to be right and proper, reasonable and just.

Sir Henry Moncrieff Smith: Quite so, subject to the provisions of the Standing Orders.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I must say in defence of Government that they have not stifled any discussion. On the other hand, they have given every opportunity to enlarge the discussion. That being so, I think it is very unfair to attack Government. On the matter of amendments, I must say that it is a large, technical and complicated Code and for Members to complain that the amendments which they put forward at a very late hour have not been printed and put under appropriate heads is not fair. This is not a new enactment, not an unfamiliar enactment. It is 70 years or 65 years old and this particular Bill has been before the country and before lawyers for the last 8 or 9 years.

Then to complain against Government that they have not been able to print these is, I think, hardly fair. Well, after all where an amendment has been given, the Member who has given the amendment may move his amendment and the discretion is in the hands of the Chair and I suppose the discussion will take place.

Mr. Deputy President: I must repeat what I said that every amendment will be taken up and considered on its merits. It is for the House to decide whether they object to it or not. We will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadān): Sir, I beg to move an amendment to clause 11 of the Bill. The amendment which I proposed to move was to the effect that every person arrested under this section 54 shall forthwith be released on bail. On further consideration I find that the amendment which I wanted to move and of which I gave notice is very wide and that in many cases it will be very undesirable. Therefore, Sir, with your permission I may be allowed to amend my proposed amendment and to move it in this form:

'Every person arrested under this section except under clauses *thirdly* and *sixthly* shall forthwith be released on bail.'

Sir, under section 54, a police officer is authorised to arrest any person at any stage of his investigation or even before that investigation. Yesterday while explaining this section, the Honourable the Law Member was pleased to say that it was during the course of the investigation and after some material had been found by the police officer that the clause *first* of this section comes into operation, but I respectfully beg to differ from him and I beg to submit that this section generally comes into operation at a very early stage of the investigation, just at the moment when the complaint or the report is made to police or the information has been lodged with them. Before investigation or during the course of the investigation if there is any material or any sufficient evidence to warrant the trial of such a man, the police would arrest him under section 167, i.e., under the chapter allotted for investigation of offences. If we refer to section 54, clause by clause, we will find that it is desirable that in certain cases where arrest is to be made the person should be released on bail because at the time of arrest there is not sufficient material for the police to put that man under trial or for an inquiry before a magistrate; and on principle that every person has a right that his liberty should not be restricted unless any offence has been brought home to him, a person arrested under this section should be entitled to be released on bail. Therefore, Sir, unless the police in their investigation find sufficient material and evidence to put him for trial such a man should be entitled to be set at liberty on bail. The only safeguard necessary should be that he may not escape from the trial that may be awaiting him or that may take place after the investigation is completed. Therefore only a security should be asked from him to appear at any time when the police or the magistrate may desire. With this object in view I will take section 54 clause by clause. The first clause of section 54 says:

'Any person who has been concerned in any cognisable offence or against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists of his having been so concerned.'

Now this applies to a very early stage of the investigation and as I have said before under this clause if the arrest is to be made the man should be entitled to be released on bail. Coming to the second clause, it is said that "if the man is found in possession of stolen property, property which is suspected to be stolen or in respect of which some offence has been committed he may be arrested." In this case also, he should be released on bail, because if there is sufficient evidence against him he could be brought up for trial subsequently. In the third clause we find that if any person has been proclaimed by the Government to be an offender, that person may be arrested by the police. In this clause I submit that the police or the Government may have the right to take that man under arrest to the magistrate and have the needful done. In this clause, where the offender

has been proclaimed it is unnecessary to get any further evidence and so he might very well be kept in the lock up. In clause 4, if the man is in possession of any implement of house breaking. . . . I am sorry I made a mistake. This is clause *secondly* and the clause I referred to in connection with stolen property is clause *fourthly*. If a man is found in possession of house breaking implements, some evidence is necessary before that man could be found guilty and the man should be released on bail. Clause 4 relates to stolen property and property that is suspected to be stolen. Here also he should be released on bail. Under clause *fifthly* any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody may be arrested. I submit that in this case the man should be released on bail. There have been cases in practice in which inquiries made subsequently have shown that the arrests were generally unjustified. Sometimes if a man happens to ask the policeman simple questions criticising his action, he is likely to be regarded as having obstructed that police officer in the discharge of his duty and often he is arrested. In this case it will be a very great hardship if the man is allowed to be kept in the lock up. It may be said from the Government Benches that a person who is arrested under this clause for obstructing a police officer is generally released on bail, but I am prepared to cite to them cases in which respectable persons have not been released on bail, when they have been arrested for the offence of having obstructed a police officer and in one case even the Local Government had the inquiry made and on the basis of the report of that inquiry they held that the arrest was perfectly justified though ordinarily that man was entitled to have been released on bail. When even in cases where the provisions relating to bail are liberal, the persons entitled to be so released are kept up in the lock up, then what is to be said of cases of a non-bailable nature where the person be arrested even though it be under section 54. There is no reason to doubt that the police officer will in any way be hampered in the discharge of his duty if the person arrested under this section be released on bail. The person arrested may not be so released if there be a fear that such a man would escape justice or trial. I now come to clause *sixthly*. It says that any person who is a deserter from the Army or Navy may not be released on bail. In such cases it is but proper that the person be not released on bail. Clause *seventhly* relates to persons suspected of having committed offences outside British India. In this case also unless there is proper proof available in British India the persons arrested should be released on bail and be bound to appear before the Courts in a Native State or other territories in alliance with the British Government that made the requisition for the arrest.

Clause 8, Sir, refers to the arrest of

'Any released convict committing a breach of any rule made under section 565, sub-section (3).'

I submit, Sir, that persons coming under clause 8 should also be released on bail. My reasons for that are that under section 565 a person is released on certain conditions and if it is found that he broke certain conditions, then he be again put in the lock up, but after some proof that he did break the condition imposed. In this case also it is necessary to prove that he has broken certain conditions, and unless and until that proof be forthcoming, the man so arrested should be entitled to be released on bail. For these reasons, I submit that the arrest under section 54 should be made subject to release of the arrested person on bail and I commend my amendment, viz., that every person arrested under

[Mr. K. B. L. Agnihotri.]
this section except clause *thirdly* and *sixthly* shall forthwith be released on bail.

Mr. Deputy President: Amendment moved:

"In clause 11, for the proposed sub-section (3) in sub-clause (2), substitute the following:

(3) Every person arrested under this section except under clauses *thirdly* and *sixthly* shall forthwith be released on bail."

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I rise to make a suggestion as to the procedure to be adopted before the discussion proceeds any further. We have got a chapter dealing with bails and I think it will be inconvenient to take up the matter like this at this stage. If my learned friend's amendment is discussed in the chapter relating to bail, it would be easy to find a solution for all these difficulties. Some of us have given notice of amendments as regards the nature of the bail and as regards the circumstances under which bail should be granted. If this matter is brought up under that Chapter, there will be no difficulty, because, then, I think, the Government and ourselves will be able to come to some agreement as regards the classes of persons who should be granted bail and as regards the stages at which bail should be granted. If we take it up now, I think it will to a great extent hamper the discussion of the chapter relating to bail. Therefore, Sir, I make the suggestion. If Government is agreeable to that and if my learned friend is agreeable to that, we may consider this matter later on when dealing with the chapter relating to bail.

Mr. K. B. L. Agnihotri: Sir, may I explain the difficulty?

The Honourable Sir Malcolm Hailey: We should have no objection to that course being adopted. It was one of the objections—one of the many objections—that I desired to bring against Mr. Agnihotri's amendment.

Mr. K. B. L. Agnihotri: The difficulty before me is that I wanted an amendment with the object, that a person be released on bail even though he may not be entitled to be so released under the chapter for bail; for instance, in the case of offences punishable with death or transportation for life. Supposing the House decides that persons concerned with offences punishable with transportation for life or with death may not be released on bail, then such a man if arrested under this section will not be released on bail, while under this amendment even such a person if arrested for an offence involving punishment of death or transportation, will be entitled to be released on bail until the investigation against him is completed and until the offence against him has been brought home to him. Here under section 54 a man is liable to be arrested on a mere complaint, on mere information, if it is a reasonable information. This I think is not proper and even such a man should be released on bail pending inquiry.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhamadan Rural): Sir, I support my friend, Mr. Seshagiri Ayyar, and point out that if we accept Mr. Agnihotri's amendment, it will make a mess of the Code. In this Code Chapter XXXIX deals with bail. I want to draw the attention of my Honourable friend, Mr. Agnihotri, to section 63 which says:

"No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate."

The necessary safeguards are provided under this Chapter. A man is arrested for murder. He is caught red-handed and he is a desperate character. Does Mr. Agnihotri maintain that he should at once be released on bail? Is not a householder or a citizen entitled to much more protection than a confirmed criminal? I shall point out to him the safeguards that this Chapter provides. Section 60 says that a man may be arrested but

Mr. Deputy President: Order, order. As Mr. Agnihotri objects to the postponement of this amendment to a later stage, I think the discussion must proceed.

Mr. K. B. L. Agnihotri: With your permission, Sir, I beg to accept the suggestion made by my Honourable friend, Mr. Seshagiri Ayyar, that my amendment may be considered under the Chapter for bails. I have no objection to that.

Mr. Harchandrai Vishindas: The proper procedure for Mr. Agnihotri is to withdraw this amendment.

Mr. N. M. Samarth: I oppose the course proposed. Let us discuss this particular amendment on its own merits. I think Mr. Agnihotri in assigning reasons has sufficiently demolished the case for the amendment and let us dispose of it once for all. It has nothing to do with the amendments of the sections in regard to bail, which are proposed by my friends over there. I therefore submit that the consideration of the amendment be proceeded with in spite of the fact that he has withdrawn it. He has no permission to withdraw. Unless we allow him he cannot withdraw his amendment.

Mr. Deputy President: The question is that Mr. Agnihotri be given leave to withdraw his amendment.

Mr. K. B. L. Agnihotri: I do not want to withdraw my amendment, but I only want to have the consideration of the amendment postponed to a later stage.

Rao Bahadur T. Rangachariar: May I formally move that the consideration of this amendment be postponed till we come to Chapter XXXIX, and make a correction of what Mr. Samarth said. We will be placed in a very awkward position when we come to deal with the amendments which we have given notice of as regards bail. If we refer to Rule 33 on page 85, we find that an amendment on a question must not be inconsistent with a previous decision on the same question come at the same stage of any Bill, so that if we come to any decision on this question, we will be tying our hands down when we come to deal with the Chapter concerning bail. (Mr. N. M. Samarth: 'No.') That may be my friend, Mr. Samarth's view, but we will be tying our hands if we come to any decision now. Merely because we are angry with Mr. Agnihotri because he has brought it at a particular stage or that he has given reasons that have demolished his amendment, let us not tie our hands now in dealing with the substantial question of bail, which is a very important question. Let us deal with this amendment when we come to that Chapter,

12 Noon. when we can exhaustively deal with it and postpone the decision till we come to Chapter XXXIX. I therefore formally move that it be so deferred.

[17TH JAN. 1923.]

Mr. Deputy President: The question is:

That the consideration of Mr. Agnihotri's amendment be deferred until the clauses of the Bill relating to Chapter No. XXXIX are reached.

The Assembly then divided as follows:

AYES—46.

Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Asjad-ul-lah Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Barna, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Gajjan Singh, Sardar Bahadur.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jafri, Mr. S. H. K.
Jannadas Dwarakadas, Mr.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Singh, Babu B. P.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Yamin Khan, Mr. M.

NOES—27.

Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Singh, Mr. S. N.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was adopted.

Rao Bahadur T. Rangachariar: My amendment relates to section 56 (1) of the Code of Criminal Procedure which, as it is sought to be amended, will run as follows:

When any officer in charge of a police station or any police officer making an investigation under Chapter XIV requires any officers subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may be lawfully arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

The object of my amendment is that as in the case of warrants, as provided in section 80 of the Code, the contents of this order in writing should be communicated to the person to be arrested. That is the object of my amendment, when I say that the provisions of section 80 of the Code shall apply to the execution of the order in writing referred to in

this section. A slight alteration has been made in my draft by the Legislative Department, which I accept, and, therefore, I will move it in the form in which they have put it, namely:

"That in clause 12 after the word 'inserted' the following shall be added, namely:

'The officer so required shall before making an arrest notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.'

I, therefore, Sir, move that amendment in the form suggested by the Legislative Department.

Sir Henry Moncrieff Smith: Sir, the Honourable Mr. Rangachariar, by accepting the redraft of his amendment, which has been suggested to him by the draftsman, has removed one of my objections to the amendment of which he gave notice. The amendment in the form in which he drafted it was obviously unsuitable. It was necessary, if anything were to go into the Code at all, that there should be a self-contained provision in section 56 requiring that the officer who received the order in writing should on the lines of section 80 inform the person he was arresting of the substance of the order. But the redraft does not remove all my objections to this amendment. In the first place section 56 and section 80 deal with two entirely separate matters. Section 80 deals with the case of a man who is being arrested on a warrant, a warrant being laid down by the Code as a condition precedent to his arrest. It is the case of a less serious offence and it is reasonable that the man should be told what he is being arrested for. In section 56 we have the case of a person being arrested without a warrant. Now what happens in the ordinary case. The officer in charge of the police station or the officer making the investigation can arrest a man without a warrant. Does he tell the man anything? Does the law require him to tell the man anything? It does not, he just effects the arrest. No doubt it may be desirable for his own protection that the officer making the arrest should give the person some information, but the law requires nothing at all to be said to the man who is being arrested without a warrant. That being so, when the officer in charge of the police station or of the investigation deposes to somebody else his power to make the arrest by an order in writing, what additional reason has arisen that the person to be arrested should be informed of the substance of the order in writing? I think that we must draw a distinct analogy between the two cases of arrest without warrant and arrest with warrant. The Code itself says that where there is arrest without warrant it is quite unnecessary to tell the man you are arresting the offence with which he is charged.

Here again I would remind the House that there are safeguards against unlawful arrest and abuse of this power and I would like to take this opportunity of clearing up what appeared to me to be a misunderstanding in the minds of certain Members yesterday in this matter. It was suggested by more than one Member that there were all sorts of difficulties in the way of prosecuting a police officer for abusing his powers of arrest without warrant and we were referred to section 197 of the Code of Criminal Procedure. Now, if Honourable Members will look at that section and read it carefully, they will find that it applies to a very limited class of cases. An officer, a public servant—and I do not deny that a constable is a public servant—cannot be prosecuted without previous sanction in cases where he is only removable by the Local Government or some superior authority. That is the only restriction. Now, you do not want the sanction of Local Government or of some superior authority to remove a constable. I believe, as a matter of fact, that the lowest officer to whom

[Sir Henry Moncrieff Smith.]
that section applies, would be an Assistant-Superintendent of Police. If I am wrong, my friend, Mr. Tonkinson, will correct me.

Rao Bahadur T. Rangachariar: Inspector of Police in Madras.

Mr. H. Tonkinson (Home Department: Nominated Official): Deputy Superintendents of Police.

Sir Henry Moncrieff Smith: My friend, Mr. Tonkinson, tells me Deputy Superintendents of Police. After all, the whole of the arguments used on this point were based on the dishonesty of the constable. We were not talking about Deputy Superintendents or Assistant Superintendents or of any superior officers. Therefore, there are the safeguards, as I said yesterday, and I think the House will now be prepared to admit that these safeguards exist. As I said just now, it may be desirable for a police officer for his own protection to inform the man of the cause of his arrest; that is entirely from the police officer's own point of view, but nothing is required by the law. I suggest that this amendment is quite superfluous.

Mr. T. V. Seshagiri Ayyar: Sir, the Honourable Member has been giving exceedingly good reasons for accepting the amendment proposed by Mr. Rangachariar. He said that a police officer, when he arrests, need not give any information to the person arrested. In the case of a warrant there is this guarantee, that the case goes before a superior officer, it goes before a Magistrate and, therefore, there is the guarantee that the matter has been considered fully by the authorities. Therefore, when a warrant is issued, there is some guarantee that there has been an offence committed. In the case of a policeman arresting without warrant, if he has not to give information to the person arrested on what charges he is being arrested, on what grounds the arrest has been made, it would be leaving the arrested person in a very unenviable position.

For example, his relations might like to know why this man was arrested, and they might be in a position to give evidence for the purpose of proving that the arrest is illegal and improper. Under these circumstances it is absolutely necessary where a police officer acts without a warrant of arrest that he must notify to the person who has been arrested the reasons for arresting him. If he has not got to give reasons, that will put the arrested person in a very grievous position. If it has not been the law hitherto, it is absolutely necessary that the law should be made to be more kind to the accused than it has been hitherto; and I think the reasons given by Sir Henry Moncrieff Smith are the very reasons which should induce this House to accept the amendment proposed by Rao Bahadur Rangachariar.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I wish to confirm what has fallen from Sir Henry Moncrieff Smith, and draw attention to the particular point that we must always consider the extreme cases in regard to proposals of this sort. Suppose we get the case referred to by Mr. Chaudhuri of a policeman who sees a murder being committed by a man. According to this proposal he has to produce an order in writing to show it to the man. There are cases in which there is absolutely no need for showing the order in writing to the man. It depends upon the particular circumstances of the case, and the policeman can exercise his discretion in the matter. He is allowed to do so. He can show it if he wishes to do so, but he is not obliged to.

Again, this is a provision which has been in force for many years. No objection has ever been raised to it; and now at the last moment it has been brought up.

I would also just like to draw attention to the fact that section 56 comes under the heading of 'Arrest without Warrant.' The whole procedure there is entirely different from the procedure followed where an arrest is made *with* warrant; not merely are the two parts of the Code different, but the whole procedure right through is different. It is a matter for the discretion of the police officer, and no definite provision is necessary in order to compel him to communicate the order in writing to the man whom he may be arresting.

Mr. W. M. Hussanally: I am afraid, Sir, I cannot agree with Sir Henry Moncrieff Smith or my friend, Mr. Percival. I think the reasons given by both of them would support the amendment moved by Rao Bahadur Rangachariar being carried.

In the case of a police officer arresting a person without a warrant, he does it on his own responsibility; but when he deposes a subordinate officer to go and make an arrest on his behalf, the responsibility does not lie with the man who actually arrests the offender. Therefore an order has to be given to him in writing to go and arrest the man. And if he is in possession of the order, then I do not see why that order should not be shown to the person. It is in the nature of a warrant; though not a warrant by a Court of law, at the same time it is in the nature of a warrant which he possesses at the time he makes the arrest; and therefore there is nothing lost by the policeman showing that order to the man whom he is about to arrest. For the sake of his own safety, I think that order ought to be shown to the man he is going to arrest. All the same he arrests without a warrant no doubt, because a warrant means an order by the Magistrate, whereas this is an order not by a Magistrate but by a superior police officer, and therefore the section rightly lies within the chapter on "Arrests without Warrant." Therefore I say it is in the interest of the person making the arrest as well as in the interest of the accused that the order be shown to him, and I hope the amendment will be carried.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I desire to oppose this amendment. Mr. Seshagiri Ayyar spoke with much force on the desirability of introducing a provision in the Code to make it necessary for a police officer when arresting without a warrant to explain to the person arrested why he is taken into custody, and he based his support of this amendment—which refers to the case of a policeman who is instructed by another police officer to arrest without a warrant, he based his support of this amendment on the desirability of introducing a similar amendment into section 54. Now, Sir, if the matter is of such importance as Mr. Seshagiri Ayyar would have the House believe, why did he not introduce an amendment to section 54?

Mr. T. V. Seshagiri Ayyar: An oversight.

Mr. P. B. Haigh: Quite so; an oversight. The matter is of such small importance that when the principal section was before the House Mr. Seshagiri Ayyar did not find it necessary to amend that section.

Rao Bahadur T. Rangachariar: Section 54 has not yet left the House.

Mr. P. B. Haigh: The Bill has been before Honourable Members for months and months. They have had plenty of opportunity to examine its provisions, and if this is a matter of so much importance, certainly Honourable Members should have introduced an amendment to section 54, and put the amendment in this section as a mere corollary to that.

Now, as regards Mr. Hussanally's argument, he says it is very desirable that the policeman who is furnished with a written order should show it to the person arrested. Well, in 99 cases out of 100, it will be desirable, and the police officer in his own interests will show it. But there is no need to make it compulsory. But I think it may be fairly contended as against the amendment that an amendment of this sort ought not to be put in now at this stage when it will render the whole position of section 54 illogical. I will again repeat that the proper course to adopt would have been to amend section 54 and let the amendment under this section follow as a corollary to that; and I trust, Sir, in order to prevent confusion creeping into the Code by amendments being introduced 'through an oversight' that the House will reject this amendment.

Mr. Harchandrai Vishindas: Sir, I find that every speaker who rises on his hind legs to oppose the amendment, as a matter of fact supports it. The best illustration is of the Honourable the last speaker, who said that in almost all cases probably a police officer will communicate these contents. Well then, why not make it actual law? That shows that it would be in the interests of justice and that it would be desirable that a police officer should communicate the order, or the particulars which are subject matter of the amendment, to the person arrested. I draw the conclusion from that that he thinks it would be desirable in that case. If it is desirable, then surely it is safer to have that on the Statute Book.

Then Mr. Percival referred to the case which was cited by Mr. Chaudhuri. Supposing there was a case in which a police man catches red-handed a murderer, where is the necessity of explaining the offence to that man? But he forgets that section 56 does not relate to these cases. Section 56 relates to the case of one police officer deputing his duty to another police officer. So that a case won't arise under those circumstances, of a police officer catching red-handed a murderer. That argument therefore cannot hold water. Another argument put forward by Mr. Percival and which was a mere repetition of arguments that were put forward day before yesterday and yesterday, was that for so many years, 60 or 65 years, this provision has remained on the Statute Book and therefore it should be allowed to continue even now. I think that is a very feeble argument, because if that argument were to stand, it would follow that once a particular law is passed it should never be amended. I contend that anything that suggests itself by way of commonsense to mankind by their experience and by their powers of reasoning may be introduced even if it was not made the subject matter of the original law. At this very moment you have the instance of Mr. Seshagiri Ayyar telling you that it was through oversight that he did not suggest the amendment in section 54, when he was taxed by the previous speaker, because there are many things that do escape our reasoning, or our memory or our observation.

But that is no reason why this provision should not come into 56. I think that kind of argument was entirely beside the point; because Mr. Seshagiri Ayyar did not propose an amendment to section 54, therefore he is out of court when he supports an amendment to section 56. The only valid argument for an opposition to take up would be to show that such

an amendment under section 56 is not relevant, that it does not fit into the section, is not appropriate. I say it is appropriate. The words that Mr. Rangachariar has embodied in his amendment which has been laid before you, Sir, do fit in with section 56 as it stands. Therefore there is nothing in that objection. So, I say, Sir, as I said in the beginning that the case for the amendment is being strengthened from time to time from the mouth of every speaker who gets up to oppose it and therefore it should be supported.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): I propose, Sir, that the question be now put.

The motion was adopted.

The amendment* under discussion was adopted.

Clause 12, as amended, was added to the Bill.

Clause 13 was added to the Bill.

Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muhammadan Rural): Sir, the amendment that stands in my name is that proviso (a) to sub-section (6-A) in clause 14 be omitted. That proviso runs thus:

'Provided that no such inquiry shall be made if, in the opinion of the Court in which the claim or objection is preferred or made, the claim or objection has been designedly or unnecessarily delayed.'

Honourable Members will be able to see the importance of this amendment if they will consider the provisions embodied in these new sub-sections. It will be seen that under section 88, the Court, issuing a proclamation under section 87, may at any time order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person. Now these new provisions relate to claims preferred as regards property attached by an order of the Court under section 88. Under sub-section (6-A) if any claim is preferred within six months from the date of the order of attachment, such claim should be inquired into and the Court may allow or disallow it. These provisions are perfectly reasonable and I have no complaint against them. You have next to see the provision embodied in sub-clause (6-C):

'Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6-A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute.'

Thus it will be noticed that under sub-section (6-A) the magistrate is bound to inquire into a claim put forward within six months from the date of the order of attachment; and that claim may be allowed or disallowed. If the claim is inquired into and disallowed the party is given a remedy by suit under sub-section (6-C). Now what is the effect of this proviso which I wish to be deleted? If inquiry is refused by a magistrate on the ground that the party has unnecessarily or designedly delayed, though he is within six months prescribed, the result is that no order of disallowance could be made under (6-A), and therefore he has no right of remedy under sub-section (6-C). A right to sue is given only when an order of disallowance is made and an order of disallowance can be made only after an inquiry under (6-A). Therefore if a magistrate holds that, though a claim is within the time fixed there has been unnecessary delay or that delay has been designedly made, then there can be no inquiry and no disallowance and

* Vide p. 1187 *supra*.

[Rao Bahadur P. V. Srinivasa Rao.]

the party is left without any remedy by a suit. I think this is really unreasonable and inequitable. If in sub-section (6-C) the words are added—"Any person whose claim or objection has not been inquired into"—I shall not have much to say. As sub-section (6-C) stands, the party is left without any remedy whatsoever; there is no provision by way of appeal in the Criminal Procedure Code and he has no right to bring a suit to establish his right to the property, simply because a magistrate thinks that the claim has been unnecessarily or designedly delayed. Honourable Members know that criminal courts are not presided over, as in the case of civil Courts, by officers who have had judicial training and who are well versed in law. We know there are magistrates of the first class, of the second class and of the third class, and that many of these are taken from the clerical department and have absolutely no legal training or knowledge whatever. It is difficult therefore to expect that they can bring a really judicial frame of mind to bear on the disposal of these claims. It is easy for a magistrate to say "You have unnecessarily delayed in this case." The words are elastic enough. For these reasons, Sir, I move that this proviso be deleted, and I hope that the amendment will commend itself to this Honourable House.

Mr. H. Tonkinson: Sir, we are dealing now with those provisions of the Code which relate to processes to compel the appearance of persons and particularly of those in sections 87 and 88 of the Code. Now under section 87 when a warrant has been issued a Court may publish a written proclamation if it has reason to believe that the person against whom the warrant has been issued has absconded or is concealing himself. If a proclamation has been issued the Court may issue an attachment order under section 88. Under that attachment order the movable or immovable property of the proclaimed person may be sold. The amendments proposed by the Bill will be clear if Honourable Members will refer to the edition of the section in which amendments are shown *in loco*. In the section provisions have been introduced relating to claims by third parties. We have not had such provisions in the Code before, and the Honourable Mover of this amendment has definitely stated that he has no complaint against them. I understand that he considers that it is a most desirable amendment of the Code. He objects, however, Sir, to the proviso (a). Now, Sir, these provisions are due partly to Sir George Lowndes' Committee and partly to the Joint Committee. When they drafted these provisions they had before them very similar provisions in the Code of Civil Procedure relating to cases in which claims are preferred to or objections made to the attachment of property in execution of a decree. Honourable Members in this House are no doubt very fully acquainted with the Code of Civil Procedure. I would refer to rule 58 of Order XXI and if Honourable Members will compare the wording of that rule with the wording of the proposed sub-section (6-A) of section 88, they will see that this rule has been adopted by the draftsmen. The proviso to sub-rule (1) of Rule 58 of Order XXI of the Code of Civil Procedure reads as follows: "Provided that no such investigation shall be made where the Court considers that the claims or objections are designedly or unnecessarily delayed." Now, Sir, we have had no provisions of this kind before. If the third party in question designedly and unnecessarily delays his application, surely we ought not to add to the labours of our magisterial courts in the work of investigating such claims. It is true, Sir, that the Honourable Member bases his

objection upon another point altogether. He refers to the provisions of the proposed sub-section (6-C). Now, Sir, I will repeat once again what I said before that we have had no provisions regarding inquiries into claims by third parties who object to attachment of their properties hitherto. Does, however, the Honourable Member consider that if a proclamation has issued and if attachment of the property of third parties has been made by mistake in the past, that then that third party could not bring a civil suit to recover his properties? And in what respect, Sir, will the present law in this matter be affected? The proposed sub-section applies only to cases where a claim or objection has been made and inquired into by the court. If the claim or objection has not been made and inquired into by the Court, there is absolutely no doubt, Sir, that notwithstanding the provisions of the proposed sub-section (6-C) the third party will be able in a civil court to recover his property. As, Sir, the Honourable Member does not object in principle to the proviso (a) but merely to this one point, and in view of what I have said as regards that, I hope he will be able to withdraw his amendment.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved by my friend, Mr. Srinivasa Rao. The reply from the Government Member has not shown us the necessity of retaining this proviso (A). He has compared the new provision in this clause with that provided in Rule 58 of Order 21 of the Civil Procedure Code. If we compare these two provisions, we find that the provision made in Rule 58 does not prescribe any period of limitation for such objections while in the sub-clause which we have added to the clause now under consideration, we find that the period of limitation for preferring objections has been prescribed to be six months. When once we prescribe the period of limitation for preferring objections, where is then the necessity of limiting the right of a man as is done by this proviso (A)? Either we should do away with the period of limitation prescribed or we should do away with the proviso (A). I would rather prefer to do away with the proviso A, because when we provide the period of limitation of six months, every person who wants to bring in an objection is at perfect liberty to put in his objection even after the expiry of five months and 29 days after the attachment. Why should we limit further that he should put in his objection say 10 days after the attachment of his property? Therefore, I submit, Sir, that proviso A should be deleted as proposed by my Honourable friend. Moreover, as to the plea that a person is entitled to go to the Civil Court even if such an objection has not been admitted or is rejected by the Criminal Court, my humble submission is, that a man should be allowed to have a summary remedy also, which will be obtained in a shorter period, instead of a remedy which will be obtained in a far longer period as is the case in the Civil Courts? Therefore, this proviso A is absolutely unnecessary, and every man should be given the right to put in his objection within the period of limitation provided in this clause, and proviso A should be deleted.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, my reading of sub-section 6 (A) with the proviso (A) leads me to think that the latter renders the former nugatory. In section 6 (A) the words are as follows: "If any claim is preferred to, or objection made to the attachment of, any property attached under this section, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such

[Dr. Nand Lal.]

property and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part." Now the proviso (A) says 'No such inquiry shall be made if, in the opinion of the Court, in which the claim or objection is preferred or made, the claim or objection has been designedly or unnecessarily delayed'. Now, Sir, I point out to the House that in sub-section (A) a certain specific period is fixed, which, for all intents and purposes, may be considered as limitation for instituting that claim, by the third party. It is a statutory time allowed by the Code, but when we come to proviso (A), it eloquently tells us "no, the question of limitation will not be taken into consideration at all". A door is open to a Magistrate or to a Court which may decline to make the inquiry if according to his or its way of thinking the claim is delayed unnecessarily or designedly. Sir, when a claim is lodged within six months from the date of attachment of a property, it cannot be considered to have been designedly delayed. Therefore, the argument which has been advanced from the Government Benches, I may very respectfully submit, has got no force. Now, reliance has been placed on the provision of the Civil Procedure Code. That provision is embodied in Order 21, Rule 58, of that Code. I need not read that provision, because it has already been referred to by Mr. Agnihotri. The crucial point, which is to be seen, is whether in Order 21, Rule 58 of the Civil Procedure Code, any limitation is provided. But a simple perusal of that provision will prove that no time limit is given there. Therefore, the Legislature very rightly, and very wisely, provided that, if the claimant is too late, intentionally, or unnecessarily, then his claim will not be attended to. Why? Because the Civil Court is fully competent to give determination on the question of delay; but here, the Criminal Court has not been given that competency. Here the law has, as I have already submitted, clearly specified six months. Any claim which comes before the expiry of that period of six months cannot be considered too late. Therefore, the analogy which has been drawn, with due deference to the Government Benches, is altogether misplaced. Therefore, the motion for amendment seems to be a very forcible one. It commends itself and I can entertain every hope that the official Benches will feel inclined to agree to it, unless they want the provisions of the Criminal Procedure Code to last until the Court and subsequently the lawyers argue this point.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, my submission in support of the amendment and against this clause is based on two grounds,—(1) the inconsistency which this clause involves, and (2) its impracticability and clumsiness. The doctrine that rights are lost by acquiescence or delay, short of the specific period provided by limitation, is now exploded. Here, we have in clause 6-A a specific limitation of six months provided for the making of an application under it. Six months is not a very long time, as things move in the courts of law in this country, for a person to find out, if he was absent, that his property has been attached and for him to formulate his claim. Having given that six months definitely by law, and having provided in clause (b) that, if a claim is made within the time prescribed, the death of the claimant shall not cause it to abate but his representative may carry it on, nevertheless in the middle we have this clause (a) introduced, which leaves it to the ideas and idiosyncrasies of each particular Magistrate as to whether or not a claim should be inquired into, albeit it may be within the time

prescribed. That, upon the face of it, is inconsistent; and I think that above all things it is essential that a Legislature should be consistent with itself. But the impracticability of clause (a) is still greater. It provides that inquiry is to be refused where the claim or objection has been 'designedly or unnecessarily delayed'. A claimant comes up five months after the attachment and makes his application. The court may, under 6-A, inquire into it. Or the court may, under this sub-clause (a), do what? Refuse off-hand to inquire into it? No,—hold a preliminary inquiry to question whether application has been 'designedly or unnecessarily delayed.' Now, how is the court to do this? Surely no one will support a Magistrate who says: 'You might, I think, have made this claim within one month, you have made it in two months; I think you must have designedly or unnecessarily delayed', and so saying summarily throws out the claim. No High Court would allow a Magistrate to dispose of the matter in that way. Therefore, every court called upon to inquire will have to hold a sort of preliminary inquiry, take evidence and so on, as to whether the claim or objection has been designedly or unnecessarily delayed. Obviously, all the time that is taken in holding that preliminary inquiry might be very much more profitably spent in holding an inquiry on the merits of the claim.

Therefore, it is submitted, that clause (a) seems to be, more or less, a draftsman's error. Nothing better than that. And I support the amendment that it should be removed.

Sir Deva Prasad Sarvadhikary: Sir, I think the Government would be well advised in accepting this amendment, and saving time unless under sub-clause (6-C.) it wants to see the work of the civil courts very much added to. Mr. Tonkinson is commendably anxious that the work of the criminal courts should not be added to. The inevitable result of summarily dealing with these investigations under 6-A (a), as has been very aptly pointed out, will however be to add considerably to the work of the civil courts.

There is a further reason—a small reason from certain points of view but fairly big from others. Six months is never too long in these matters, even with regard to civil proceedings. Where an attachment of property has taken place in a village in a criminal case, we can well imagine and picture to ourselves the commotion and almost the panic that takes place in the family or among the share-holders. It takes a longer time for them to gather themselves up as it were and obtain advice and to take their claims to the court than a civil attachment would involve. That is another phase of it that makes it very necessary that the limitation of six months should not be interfered with in the way that is proposed. Supposed parity of reason between the Civil and Criminal Codes, as has been pointed out, cannot for a moment hold water, for the circumstances are utterly different. I do not think what is given with one hand under clause 6-A should be taken away by the other under clause 6-A (a).

Mr. N. M. Samarth: I have, Sir, an amendment to propose to this amendment. My amendment is:

"That the following words be added at the end after the words 'unnecessarily delayed,' namely:—

'Beyond the six months from the date of such attachment'."

Now, my reason is this. It may be that you provide here six months. There are many cases in which the High Court or the Court before which

[Mr. N. M. Samarth.]

the case goes has power to excuse delay and an application may be made to show that, although six months have really expired—well, it may be by two days or three days, there was sufficient cause for delay and in such a case the proviso will say that no such inquiry shall be made if, in the opinion of the court in which the claim or objection is made, the claim or objection has been designedly or unnecessarily delayed beyond six months but not if it has been so delayed with lawful excuse or with excuse which may be permitted.

Therefore, I submit that the following words be added at the end: “beyond the six months from the date of such attachment”.

The Honourable Sir Malcolm Hailey: With regard to the amendment which has been put forward by Mr. Samarth I wish to call your attention to the fact that it is one of substance. We have provided in the Bill for a period of six months. Our only dispute at present is whether the investigating Magistrate should be allowed to refuse an inquiry in cases which have been unnecessarily delayed within that six months. Mr. Samarth's amendment is really a proposal to increase the period of six months.

Mr. N. M. Samarth: It will be made clear by my amendment.

The Honourable Sir Malcolm Hailey: Mr. Samarth's proposal is an entirely new point of substance which it is, I suggest, inadvisable to admit at this stage.

With regard to Mr. Srinivasa Rao's amendment, our feelings are that it would be better if the Bill were allowed to stand as drafted. It was very fully considered by the Joint Committee and accepted by them. But it is not a point on which we are inclined to attach great importance, and, I would add in the interests of the time of the House, that it is not a point on which we should ourselves press for a division. I think it would be better, therefore, if we simply accept the excision of proviso (a) and pass on.

Mr. J. Ramayya Pantulu: I do not think, Sir, that the amendment proposed by my friend, Mr. Samarth, can be accepted.

The Honourable Sir Malcolm Hailey: It has not even been admitted.

Mr. J. Ramayya Pantulu: Is it not before the House?

Mr. Deputy President: No. The original question is before the House.

Mr. J. Ramayya Pantulu: Then I support my friend, Mr. Srinivasa Rao's amendment. The law has fixed the period of six months within which any objection can be made, and having given those six months, it proceeds by means of proviso (a) to take away that right by giving power to the Magistrate to reject a claim or not to entertain the claim on the ground that the matter has been delayed. Having fixed a period within which claims can be made I think the law ought not attempt to take away that right. I therefore support the amendment of my friend, Mr. Srinivasa Rao.

Mr. R. A. Spence (Bombay: European): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The amendment moved is:

‘That in clause 14 in the proviso to proposed sub-section (6-A.) omit clause (a).’

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move that:

“In sub-section (6 BB) omit the words ‘or second’”

By adopting my amendment, sub-section 6 BB would read as follows:

‘Provided that, if it is preferred or made in the Court of a District Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first class or to any Presidency Magistrate, as the case may be, subordinate to him.’

In Civil Courts, it is the Court in which the objections are filed that decides the objection. The Joint Committee say in their report about clause 14:

‘The sub-sections which the Bill adds to section 88 imply that the Court which issues an order of attachment or endorses the same under sub-section (2) is to investigate and determine a claim or objection. We think that a limited power to transfer claims and objections for disposal to subordinate Magistrates would be useful, and we have, therefore, provided that District Magistrates may transfer such cases to Magistrates not below the rank of second class Magistrates, and that Chief Presidency Magistrates may likewise transfer cases to Presidency Magistrates subordinate to them.’

Sir, from this it is clear that the court in which the objection is preferred is the proper court to decide the objection, but some power has been given to the Chief Presidency Magistrates and the District Magistrates to transfer such objection cases to the file of any other subordinate Magistrate. The Joint Committee provide in the Bill that such objections may even be transferred to the second class Magistrates who could dispose of such cases. But I do not know why they did not extend that power to third class Magistrates. So far as I can understand, I think that their reason in limiting this power was that probably the third class Magistrate was not regarded as very efficient in deciding such objection cases. They have therefore limited it to second class Magistrates only. My submission is that on that very ground on which that limitation has been made even the second class Magistrates should be debarred from inquiring into such objection cases that are filed before the court of the District Magistrates and the discretion that has been given to the District Magistrate should not be extended far enough. He should only have power to transfer such cases to first class Magistrates who are more experienced than Magistrates of the second and third class, and they only should be empowered to inquire into such cases that might be transferred from the Court of the District Magistrate. Therefore, Sir, I submit that the power for transfer given to second class Magistrates to inquire into such cases be taken away and be restricted to first class Magistrates. The cases before the District Magistrate are very serious and sometimes it may happen that even the objection cases may also be important. With these words, Sir, I commend my amendment for the consideration of the House.

Mr. H. Tonkinson: Sir, the Honourable Member has explained that he wishes that the right of transferring inquiries into these claims which is given to the District Magistrate and to the Chief Presidency Magistrate by the proviso to proposed sub-section (6 BB) should be restricted so as to enable the District Magistrate and the Chief Presidency Magistrate to transfer such inquiries to Magistrates of the first class only. He takes his

[Mr. H. Tonkinson.]

objection, Sir, upon the ground that Magistrates of the second class are not competent to make such inquiries. If that, Sir, is his objection, I would venture to suggest that he ought to have proposed amendments to other provisions of this section. He himself, Sir, drew attention to the provisions of proposed sub-section (6B). Under that sub-section claims or objections under sub-section 6A may be preferred or made in the Court by which the order of attachment is issued. Now, Sir, what courts issue orders of attachment?

Mr. K. B. L. Agnihotri: I may explain, Sir, that it is not my object that Magistrates of the second class should not be empowered to inquire into objections regarding property attached and filed in their courts, but my only point is that the District Magistrate should not have power to transfer inquiries into objections filed in his Court to Magistrates of the second class.

The Honourable Sir Malcolm Hailey: Is the Honourable Member raising a point of order?

Mr. K. B. L. Agnihotri: I was simply explaining the object of my amendment which I thought was not properly understood.

Mr. H. Tonkinson: I will proceed, Sir, with the remarks which I was making when the Honourable Member interrupted me. I was indicating that the only ground which he had given in favour of his amendment was the ground that second class Magistrates were not sufficiently efficient to hold these inquiries. I was pointing out, Sir, that second class Magistrates will make these inquiries, and now when he interrupted me he says he does not object to that. That being so, I will proceed somewhat further to indicate what cases will usually be covered by the proposed proviso to sub-section (6BB). If Honourable Members will refer to sub-section (2) of section 88 of the Code of Criminal Procedure which we do not propose to amend at present, they will find that orders for the attachment of property may be issued for the attachment of property in other districts than that in which the Magistrate issuing the order exercises jurisdiction. Those warrants of attachment may be executed in such other districts if they have been endorsed by the District Magistrate or the Chief Presidency Magistrate. Well, Sir, the proviso will generally take effect in these cases. We do not want to require the Chief Presidency Magistrate or the District Magistrate to hold the inquiries in such cases, and I submit that second class Magistrates according to the Honourable Member who has moved this amendment, are fully competent to inquire into such claims or objections if there are claims or objections in regard to attachments issued by the Court. Thus, Sir, there is no reason whatsoever why such inquiries should not be transferred to them in these cases to which I have referred.

Mr. K. B. L. Agnihotri: Then, why not extend it to third class Magistrates?

Mr. Deputy President: The question is that the amendment be made. The motion was negatived.

Rao Bahadur T. Rangachariar: My amendment is No. 25 which runs as follows:

"At the end of clause 14 insert the following:

(6D). If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment."

I must briefly explain to Honourable Members what is the procedure with reference to proclamation and attachment of property. Sections 87 and 88 of the Code are the sections dealing with that subject. Under section 87 "If any Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation." Section 88 authorises the Court in the following terms:

"The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immovable, belonging to the proclaimed person."

So that, even before the 30 days are over the Court is entitled to order the attachment of the property, both moveable and immovable. The object of this proclamation and attachment is a compulsory process to compel the party to appear in obedience to the summons or warrant of the Court, and there is no provision here ordering the release of property from attachment in case he complies with the condition contained in the proclamation. This is a slip, I take it. Whereas section 89 provides that if within two years from the date of attachment any person whose property is or has been at disposal of Government—or has fallen at the disposal of Government after the time specified, appears and shows that he has sufficient cause for not appearing, then the property shall be restored to him or, if the property had been sold in the meanwhile, the proceeds shall be restored to him. But if he appears within the time limited, there is no provision ordering the release of attachment. An attachment has got some legal effect as Honourable Members are aware. It prohibits the party from alienating the property. It prohibits the Civil Court from attaching the same property over again and various other complications do arise. Therefore it is necessary that once the condition on which the attachment has been made is fulfilled, the attachment should cease *ipso facto*. Therefore, in order to make it clear, I propose this that if the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment. I therefore move the amendment as it stands in my name.

Mr. H. Tonkinson: Sir, my Honourable friend, Mr. Rangachariar, has suggested that the omission of this clause is due to a slip. I would suggest that the amendment that he has moved is quite unnecessary, in view of the provisions of sub-section (7) of section 88. I am aware that Mr. Rangachariar referred to this sub-section himself. That sub-section says:

"If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government."

That is the only provision, Sir, which we have had hitherto. If the person appears in response to the proclamation, then clearly the property never becomes at the disposal of Government, and as for the Magistrates—what have they done hitherto all these years? They always at once release the property from attachment as my Honourable friend is quite aware. If it goes on beyond this period to such periods as are dealt with in section 89, which has been referred to, then we have provisions for the restoration of the property or the net proceeds to the proclaimed person. I think it is quite unnecessary to make an addition of this proposed sub-section to section 88 of the Code.

Mr. T. V. Seshagiri Ayyar: What Mr. Tonkinson fails to note is this. If there is an attachment, it debars the alienation of the property; and it puts a difficulty in the way of the property being dealt with. It may be that under sub-section (7) the Government may take certain action under certain contingencies. Suppose the Government does not take such action. Still the attachment is there, if once an attachment is made, unless there is an order of Court releasing the property from attachment, the attachment will subsist. What we want is that there should be power to make an order releasing the property from attachment. If you make a provision for releasing the property from attachment under that same sub-section, it may not be necessary for Mr. Rangachariar to press his amendment. But there must be a provision somewhere that if the person does appear within six months the property shall be released from attachment. The attachment should not be allowed to subsist, for that will make it impossible for the man to deal with the property. That was the point made by Mr. Rangachariar and Mr. Tonkinson has failed to meet it.

Sir Henry Moncrieff Smith: Mr. Seshagiri Ayyar says that there must be an order releasing attachment, and that unless this amendment is made in the Code, there will be no order withdrawing the attachment. That is entirely wrong. If the man appears within six months, then the attachment is automatically withdrawn. (*Voices: 'No, no.'*) What I mean is that the Magistrate automatically makes an order withdrawing the attachment.

Mr. T. V. Seshagiri Ayyar: Give him that power.

Sir Henry Moncrieff Smith: It is quite unnecessary and quite superfluous. The original framers of the Code cannot have omitted this provision by an oversight. The Code has been overhauled again and again and every time this particular amendment has been regarded as unnecessary. It has been left for Mr. Rangachariar after all these years to discover what he thinks has escaped the attention of the Legislature.

Rao Bahadur T. Rangachariar: I never had a hand in it before.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Deputy President was in the Chair.

Mr. Deputy President: Mr. Rangachariar's amendment No. 25 is before the House.

Amendment moved:

"At the end of clause 14 insert the following:

"(6D). If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment."

The question is that that amendment be made.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move Amendment No. 27 which runs as follows:

"After clause 14 insert the following clause:

"14A. In sub-section (7) of section 88 of the said Code, the words 'or until the final disposal of any claim preferred or objection made under the provisions of this section' shall be inserted between the word 'attachment' and the word 'unless'."

Amendment No. 26 will be moved later. When a claim petition is made in reference to an attachment made to property by a third party, it has to be made within six months from the date of the attachment and there will be an inquiry and decision under the procedure prescribed in clauses 6A and 6B. Now, under clause 7 of that section, Honourable Members will notice that if the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of Government, but it shall not be sold until the expiration of six months from the date of the attachment. That is all that it provides. It does not provide for a case where a claim is made and not disposed of within six months. Then the property may be sold as the section stands now. I therefore propose that the property should not be sold until after six months (retaining it as it is) and we must also ensure that the property should not be sold until the claim is disposed of. That is the object of the amendment. The wording as it stands in print I wish to alter somewhat simply to bring out the meaning clearly. The wording as I propose now will be: "or until any claim preferred or objection made under sub-section 6A has been disposed of under that sub-section, whichever period is later." That is to say, six months is allowed for objections being made. There may be one claim, there may be more than one claim. Suppose one claim is made and that is disposed of within the six months and then too the property should not be sold for six months, because you may get other claimants within the six months. Therefore I provide "whichever period is later." If there is any claim at all, that is disposed of. If there is no claim, six months should elapse, so that the property should not be sold till the matter is clear that there is a claim or there is a claim which is disallowed. For that purpose I propose the amendment.

The Honourable Sir Malcolm Halley: Did the Honourable Member say "date" or "period"? Is it "whichever date is later"?

Rao Bahadur T. Rangachariar: Which do you think is better? I will bow to you. The thing is until the claim is disposed of. It contemplates a period. "Whichever date" I do not mind. I bow to whatever suggestion you may put forward.

Mr. Deputy President: Amendment moved:

"That clause 14 be re-numbered 14 (1) and that to that clause as re-numbered the following sub-clause be added, namely:

"2. In sub-section (7) of the same section after the words 'date of attachment' the words 'or until any claim preferred or objection made under sub-section 6 (A) has been disposed of under that sub-section, whichever date is later'."

The Honourable Sir Malcolm Halley: I think it will be perfectly suitable as now framed by Mr. Rangachariar if the word 'and' is substituted for the word 'or.'

Rao Bahadur T. Rangachariar: That is what I originally thought. I quite accept that. It brings out the meaning. We may omit the words "whichever date is later." It will run thus:

"And until any claim preferred or objection made under sub-section 6 (A) has been disposed of under that sub-section."

Mr. Deputy President: Amendment moved:

"That clause 14 be re-numbered 14 (1), and that to that clause as re-numbered, the following sub-clause be added, namely:

"(2) In sub-section (7) of the same section, after the words 'date of attachment' the words 'and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section'."

The question is that that amendment be made.

The motion was adopted.

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): Although my motion* comes under amendments, what I have really proposed is not an amendment or alteration of a sentence or word in clause 14, but what I have proposed, is an explanation of certain words. So, it will be necessary for me to read the clause itself, and then point out why this explanation is necessary in this case. Sub-section (1) of section 88 runs as follows:

"The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person."

In sub-clause (3) of the same section we find:

"If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made:

(a) by seizure; or

(b) by the appointment of a receiver; or"

and so on. Then we find also in sub-section (4):

"If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government be made through the Collector of the district in which the land is situate, and in all other cases:

(c) by taking possession; or

(f) by the appointment of a receiver; "

and so on.

Now the explanation that I want to be added, is this: The words 'belonging to the proclaimed person' are capable of interpretation in such a way that they will entail hardship unless they are explained and probably the whole object will be spoiled. That is why I wish to add an explanation that when the offender is a member of a joint family, 'property belonging to the proclaimed person' means the specific interest of such a person. Sir, perhaps, in a country like England or France, or other countries where people generally live separately, this explanation will be absolutely unnecessary. In a country like England or France probably as soon as an infant grows up, and becomes a man or a major and wants to marry, he will seek a home of his own, and unless he has a home of his own; probably he will not marry, so that practically all grown up men live separate. But in the case of India, whether they be Hindus, Muhammadans, Indian Christians or Parsees, or hold other religious beliefs, generally they live in joint families. You find in a family a grand-father, grand-mother, father, son, uncle, nephew, niece, perhaps a great-grand-father and a great-grandson all living together, and if a son wants to live in a separate home, he is looked down upon as having broken the home and having separated from his parents. It is looked upon with disapproval

*To clause 14 add the following at the end:

"To sub-section (7) of the said section 88, the following shall be added:

Explanation:—When the offender is a member of a joint family, property belonging to the proclaimed person means the specific interest of such person."

if a son or brother should live separate, but in other countries it will probably not be looked at in the same sense. The result is, in India, people almost invariably live in joint families. As regards the rights of different persons, it may be different. In the case of a Hindu who is governed by the Mitakshara law the right of survivorship and co-partnership come in. Hindus living under the Daybhaga law, the Indian Christians and the Muhammadans, Sikhs and others also live in joint families. They may not have ancestral property, but still they hold property jointly. If a person, who has committed an offence does not appear, somehow or other, the Court is justified in issuing a warrant and then a Proclamation and attachment side by side. Under section 87:

"If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."

And section 88 provides:

"The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person."

The Court is not to wait even 30 days after issuing the proclamation, but may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person. Now if such a proclamation is issued, what will be the result? Really a person may have gone to any interior part of the country on business or trade. Then what happens? We know that every place is not accessible to the railway; nor have we got postal or telegraphic communication. A man may go into the interior somewhere where you cannot get a letter even in a fortnight, and if he seeks to come home from there to a railway station or a distant place, it may take a fortnight to travel from such interior place to the headquarters station. And in the meantime a proclamation will have been issued against him without his knowledge. Of course it will be to the interest of the complainant to represent that he is concealed, or if the police do not find him in the house, and do not take further steps and say, the man is concealing himself, what has the Magistrate to do? A warrant has to be issued, a proclamation has to be issued and the man's property is to be attached. I must say here, before any guilt is established, not only is the man punished but all the members of his family are punished by the attachment order because the attachment order provides that the property can be taken possession of and so on. To be more clear I shall say, for example, several persons are living jointly; they have no ancestral property, but have acquired a house. No sooner this attachment order is issued, what will be the result? The Receiver will come and take possession of the house. Suppose I am living with my brothers and their wives and children in a house. Suppose the house belongs to A, B, C, and D jointly and attachment orders are issued against the property as belonging to D, there is no wrong in taking possession of it, because it belongs to D as well and you cannot find fault with a Magistrate because he has issued an order of attachment against the same property for it belongs to him. Suppose I have a cow and my brothers and other members of the family have a share in the cow and my children and their children are living upon the milk of the cow. Now, if I have committed some offence, or if for some offence alleged against me, the police comes and takes possession of the cow, under an attachment order by a Magistrate, you cannot blame the

[Mr. B. N. Misra.]

Magistrate for his action saying it belongs to me. There is no safety in such procedure. If the cow is taken possession of, my brothers' children, or my own babies would be deprived of her milk. Say I have a house and am living under the Hindu Mitakshara family law. There is my wife who has got a right of residence in the house. Now are you going to punish my wife and turn her out although she has committed no offence, simply because a case has been filed against me rightly or wrongly and I have not appeared before a court not having any knowledge of such a fact? And will that law be sound and for the benefit of society and even in the interests of criminal law? I submit, Sir, this will be really a very hard and a very unwise law, if it will be a law where an innocent person can be turned out of a house because it jointly belongs to another. If for instance there is a joint partnership, business or firm and a case is filed against one of the members of the firm for some supposed crime. Suppose he has gone away somewhere on business and other members are carrying on the business. If this is really the law, you cannot blame the Magistrate for attaching the partnership property or the joint property belonging to the firm. It also belongs to the offender undoubtedly. He may have a hundredth share or a tenth share, but it belongs to him, and the property may be attached and taken possession of.

I need not multiply instances to show how this law will entail hardship on innocent members of a family because by the custom of the country they are living together. No provision has been made in this case. I submit, Sir, the House will consider the reasonableness of the explanation I have given, not only in the interests of members of joint Mitakshara families but of all members of the Hindu or Muhammadan community, or Parsees or Indian Christians, or any community that is living jointly. Other members should not be punished for the alleged offence committed by an accused person.

Now, Sir, I have explained the other difficulties. Probably the prosecution may say, if a man is concealing himself, 'Attach the property and the other members of the family will be compelled to produce him.' The object of our criminal law is never to punish innocent people. It is a very laudable object to punish the guilty and I have never said a thing whereby a guilty person should escape or not be brought to trial. What I say is that the other members should not suffer. Supposing a man in a village has committed an offence. There is the complainant to produce him, there is the police also to find him out, there are so many agencies really to find out the man. It may be the case that a complaint has been lodged against a person who has perhaps gone away on business or without his knowledge some false complaint has been filed against him and it has been made to appear to the Magistrate that the man is absconding or concealing himself. The section says:

"If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself, etc."

So that as soon as a representation is made the Court can issue an attachment. It generally happens that the police comes and says 'so and so is concealing himself' or the complainant comes and tells the Magistrate 'so and so is concealing himself, we cannot find him, issue a warrant against him and also this proclamation and attachment order.' Then, the result is that we have to punish the other members of the family

who are quite innocent, who would themselves be interested to point out the accused if he could be found.

Now, Sir, probably it may be said 'Well, there are already provisions for a claim; if any person's property is attached, the other members having any right or claim to the property can lay a claim.' My submission to this House is, that is really the most undesirable part of it. Now, Sir, the average family is not rich nor can they file a claim. You cannot simply go to the court and file it; you must come with money to file a claim. You must substantiate your claim, and by that time what has happened? Your wife, who never came out, is in the street and your children are somewhere not knowing where to get their food. If you had any granary or paddy or gram or wheat in your house, all that is attached. You have no food, no house to live in and no cloth to wear. Can you imagine any one in such circumstances coming and laying a claim very easily? He must pay his pleader, his mukhtear or his petition writer, whoever he may be, and must pay his court fees and adduce evidence. After all this paraphernalia has been gone through, he does not know what the decision of the Magistrate will be in such a case. If the whole provision was not on the Statute Book, it would be really wholesome, but, since there is a provision, and since some offenders may evade a trial, I think, when the Crown is prosecuting or when the Crown is the complainant, as the burden of proof always lies on the prosecution, this burden must also lie on the prosecution to specify the interest of the accused person. The prosecution can very easily find it out; I do not think there will be any difficulty. If a particular person lives in a family, his relations or interests are known to the complainant or to the police, whoever lodges the complaint. Under the Hindu law the complainant knows this man has got a certain share in the property. Even under any other system of law you must know that he has so much share or that other persons like his wife and mother have got a right of residence or his old grand-mother or old grand-father has got a right of residence. These things can be known very easily and it ought to lie on the prosecution to show the interest that an accused has in a property. Of course, so long as you do not proceed against property, there is no trouble, but once you attach property you do not touch the accused alone, you touch all the relations, all the surroundings, all the members. For instance, a poor tenant has some fields and you come and take away the paddy heaps he has harvested. The poor tenant has toiled the whole year to get some paddy from the field and you come and take away his paddy, simply because it belongs to the landlord. This morning we had so much discussion about this attachment. I submit this House will remember these difficulties of attachment and the trouble and expenses one has to undergo over these attachments. Why put a man to all this trouble, why drag him to Court and then so charitably release his property after putting him to so much trouble.

This House will also remember that, even in the Civil Procedure Code, when you attach property, at least some things are exempted from attachment, for instance, the implements of a workman or some paddy grains or paddy seeds for the poor peasant or some other things which are absolutely necessary. I think that is not at all illiberal. Will our Criminal Procedure Code be so illiberal as not to leave anything? You will attach everything without exception. No exemption of property is made under this, you lose everything. Supposing there are two brothers who have got a pair of bullocks for ploughing the land. One brother has committed or is supposed to have committed some crime. You come and take away the pair of

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bullocks and do not spare for the other brother even one bullock with which he could otherwise have cultivated his land. It is very hard to attach the property of a proclaimed person who is responsible for all this business, because it may belong to ten persons as well as to the proclaimed person.

Then, Sir, for wrongful attachment under the Civil Procedure Code there is some remedy. But, supposing a man wrongfully applied to the Court and said 'So and so is concealing himself' and the court issues an order of attachment for all the property, there is no provision for protection against the wrongful attachment of his property under this Code. If it is done under the orders of the Magistrate, the civil court will say 'You cannot proceed, you have no remedy practically, it was an act of a Court.' It would mean an action and then you would have to make the Secretary of

3 P.M. State for India a party. But in practice this is never done. The interest is never specified. So in the case of joint families it is absolutely a hard and difficult procedure that has been laid down here. Under these circumstances I propose that this explanation should be added, so that the Magistrates, whether they be third class or second class, whether they be new men or experienced men, may not commit an error and innocent people may not be harassed. With these words I propose that this amendment should be carried.

Mr. J. Ramayya Pantulu: I think, Sir, that the amendment proposed by my friend, Mr. Misra, is quite unnecessary, because under the section what the Court attaches is the property belonging to the defaulting man. What the property of the defaulting man is, is a question to be decided in each case as it comes up. The rights of members of a joint family are not the same all over India. They are different under different laws. Mitakshara in that respect is different from Dayabhaga. Whatever it is, what the property belonging to a defaulting member is, is a question of fact to be decided in each case as it comes up. I do not see what will be gained by adding an explanation to that section, and I therefore think that this amendment is quite unnecessary.

Mr. W. M. Hussanally: Sir, I endorse every word of what my friend, Mr. Pantulu, has said and I think the amendment proposed by my friend, Mr. Misra, is unworkable. It is impossible for the attaching officer to know what the specific interest of a particular person would be in a joint family estate. That is a matter of fact which must be ascertained on a regular inquiry and that inquiry will come in when a claim is put in by the other members of the joint family, to claim that property or specific share of the property as their own. In the commencement when a property belonging to a person is attached, the officer attaching has absolutely no grounds of inquiry as to what specific interest that man has in the property. Therefore I say the amendment proposed will be entirely unworkable and I think quite unnecessary.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I rise to support the amendment, but I may preface my point by stating at once that the amendment proposed suggests wholly a question of onus—that is to say, it suggests that the person attaching the property of an absconder should start with the idea that the property he is going to attach is the property of the absconding person. There is a great deal in a clear formation of this preliminary idea, and the difficulties arising from indiscriminate procedure have been pointed out by my friend, the

proposer of the amendment. In the Civil Procedure Code when an attachment is intended, an application has to be filed in which a declaration has to be made as to the property intended to be attached. The petition has to be verified and it has to be stated that to the best of the declarant's knowledge, information or belief as the case may be, the contents are true. But there is no such obligation laid upon the Magistrate who proceeds to attach the property of an absconder and therefore a certain amount of carelessness is likely to come in and does come in, at times. That is a thing which ought to be avoided, if possible. No doubt a judicial inquiry cannot be held at that stage, but if Magistrates come to know that they have got to pay some attention to the matter and make out a *prima facie* case connecting the property to be attached with the absconder before they proceed against the property of the man, it will certainly be a step forward towards the realisation of the object of the amendment. I submit, Sir, if the point be looked at in that way, there is something in the amendment. If it be accepted, Magistrates, before attaching the property of the absconder, will try and ascertain, as far as possible, whether it really belongs to the person who has committed the offence. That being so, a safeguard which is not to be found now in the Criminal Procedure Code will be introduced into it by indirect means, by the proposed amendment. Therefore, Sir, I submit that instead of putting indiscriminately all persons who may have some interest in the property wrongly attached, to the necessity of coming into court and proving his case, in order to save it from wrongful disposal, the Magistrate should be required to pay more attention to this matter of attachment, and find out in the beginning whether the property that is going to be attached is really the property of the absconder or not. Therefore, Sir, I submit that the amendment ought to meet with acceptance in the House. There is nothing harmful in the proposed amendment. It merely attempts to clear up the question of the duty of a Magistrate in this connection to a greater extent, than now. The difficulties which are likely to arise and are likely to be faced in the beginning of the proceedings are calculated to be removed, to a great extent by the House adopting the underlying principle of the amendment.

Rao Bahadur T. Rangachariar: I wish to offer some words of explanation for the consideration of the Mover of this amendment to say whether his amendment is really necessary. The explanation deals with the joint family. Now a joint family may be under the Dayabhaga law or under the Mitakshara. Take the case of the Mitakshara family. The law differs from Province to Province as regards the right of an undivided member of an undivided family. In Madras every member has got the right to alienate his interest in the property or rather his share, at the date of the alienation, in the property. In other Provinces where the Mitakshara law prevails, he has not got that right. No doubt in all Provinces the Court can seize and sell the interest of an undivided member in the family property. Therefore to speak of specific interest of an undivided member in a joint family jars on my ears, because there is no such interest in the joint family property. There is no specific property. It is not consonant with law to speak of an undivided member having a specific interest. You can talk of undivided interest—that is, his share on partition, if a partition should take place.

This section has stood so long and I do not think any difficulty has been felt in the application of it. It is not a new wording. The wording has been there all the time and the section has not given any trouble at all. The matter came up once before the Madras High Court, and there

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It was decided by my Honourable friend sitting on my left when he was on the Bench and another learned Judge. But of course you cannot seize the whole property, you can only seize the undivided interest of the absconding member. Even if a Receiver is appointed—and in that case I believe a Receiver was appointed—the Receiver can only take the interest of the undivided member, restoring the rest of the profits to the family members.

My Honourable friend, Mr. Misra, no doubt has pointed out the difficulties in the way; but of course his explanation is not likely to remove those difficulties. How does he remove those pictures that he has drawn to us of a wife and other members of the family being thrown on the streets and all that? It is still open under his explanation to attach the undivided interest of the absconder, and when you have attached you can appoint a Receiver and of course there must be some remedy and some means of getting at the offender. Therefore I do not think really it would improve matters if we add this explanation. On the other hand you are introducing a new thing; probably in provinces where the man has not got alienating power, it may be possible for them to contend that it is not property belonging to the offender at all, whereas now you make a definite statement by adding the explanation here saying that in the case of a particular joint family he may have an interest in that property. Therefore it is better to leave it as it is because the law differs from province to province and it has not created any difficulty so far and the specific interest is unknown to law, and therefore you will be introducing a thing which is unknown to law. I do not think, therefore, we will improve matters by adding this explanation.

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Santhal Parganas: Non-Muhammadan): Sir, the Honourable Mover seeks to add an explanation to the words used in section 88—'belonging to the proclaimed offender.' He wants to have an explanation added that the words 'belonging to a proclaimed offender' in the case of a joint family should mean the specific interest of such person. This explanation if adopted will complicate matters more than the difficulties already pointed out. In a joint family governed by the Mitakshara law where the law of survivorship prevails, there is no member who can say what his specific interest is in his family property; he has got an undivided share, but not a specific share; unless there is an amicable partition made between the members of the family or unless there is a partition suit instituted in a civil court and the matter is decided and the interest defined, no one can say what his specific interest is. In a case where there is an attachment under section 88 the Magistrate has to attach the property 'belonging to the offender.' In a joint undivided family that would mean the undivided interest of that offender and as has been pointed out by the Honourable Mr. Rangachariar it has been held by the Madras High Court that even an undivided share in a joint Hindu family can be attached. But if an explanation is now added, and if it is said that you must attach the specific interest of the offender, what would be the result? The result would be that the Magistrate must specify the interest of the offender before he can put up the property to sale. Will the House expect the Magistrate to go to the civil courts and have a partition suit instituted and have the interest of the offender defined before he can put up the property to sale? Certainly, Sir, this House cannot expect Magistrates to go to civil courts to have the interest of an offender defined before they can put a property to sale. Furthermore if you put in the words 'specific interest' there will

be no purchaser forthcoming, unless the specific interest has been defined; so that if you add these words as an explanation, the complications would become more complicated. Then, Sir, you will find that the result of this amendment if accepted would be that an offender will be at large with immunity and the other members of his family will have every facility to screen him and keep him from the law. I consider, therefore, that this amendment, although the object in bringing it may be good, is not one which this House can accept or ought to accept. The illustrations given by the Honourable Mover regarding the cow and a house, I am sorry, do not appeal to me in any way. The offender, if there is a cow in the family, has got some interest—an undivided share—in it. The cow has to be attached, but a portion of it cannot be attached. You cannot say to the court "well, this portion of the cow is the specific interest of the offender." You have to attach the cow and take it to court, sell it and sell the undivided share, whatever it is, in the cow and the other members of the family may have the sale proceeds. That is all that can be done. In the case of a house the undivided share of an offender can be sold, and I do not think any case has cropped up till now where the ladies of the house have been turned out of the house because the offender's share has been sold. So, Sir, I have tried my level best to find if this amendment can be accepted, but I am sorry that I have not been able to follow the argument of the Honourable Mover that this amendment will improve the situation. On the contrary, my own impression is that it will complicate matters more than what he has described. With these remarks I beg to oppose the amendment proposed by the Honourable Mover.

Mr. J. Chaudhuri: I beg to move that the question be now put. The motion was adopted.

Mr. Deputy President: The question is that the amendment be made. The motion was negatived.

Clause 14, as amended, was added to the Bill.

Mr. B. N. Misra: Sir, I beg to move the following amendment:

"In clause 15 insert the following at the beginning:

'In sub-section (1) of section 103, for the word 'two' the word 'five' shall be substituted'."

Sir, as regards searches it is provided that there should be two or more respectable inhabitants of the locality to attend a search; the officers generally take only a small number, say two persons and they are really the village headmen or some others who are really interested in the prosecution. Now under clause (5) of this section we have "Any person who without reasonable cause refuses or neglects to attend and witness a search under this section when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code." So strictly speaking there will be no difficulty in getting more witnesses.

In excise and other cases where smuggling of opium and other drugs are in question, generally the department comes forward with one or two informers who attest the search list when it is made. In these cases other villagers or respectable men are not called to attest the list. Strictly speaking, in any village two or more people can be found, and there will be no difficulty to get more persons to avoid suspicion. There is another difficulty, Sir. Sometimes you have got only two witnesses in the search list; sometimes they fall ill or they don't come, and when the case comes

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up it has to be adjourned from time to time till those witnesses turn up. (A Voice: "There is the word 'more'".) Well, if you take the word "more", accept them as five, there is no objection to that; but the difficulty is, if there are only a small number of witnesses, it is not good, because some of them may happen to be interested only in the prosecution, or sometimes they may not be present when they are called, on account of illness or any other cause, and the case will have to be adjourned many times. It is of course a simple matter, my amendment does not really deal with the substance, but it is simply a safeguard. If there are more persons it is better. That is why I have put the word 'five' in place of the word 'two'. Instead of giving the option to two, you can have more than five and there will not be any hardship. With these observations, Sir, I commend my amendment to the House.

The Honourable Sir Malcolm Hailey: I do not know, Sir, whether the House desires that I should argue this section? (Cries of "No, No".) I am probably right in assuming that they think this amendment is unnecessary.

(A Voice: "Unworkable".)

(Voices: "The question may now be put".)

Mr. Deputy President: The question is that the amendment be made. The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment that stands in my name reads thus:

"Omit clause 15 or in the alternative if the amendment to omit the whole clause fails, add the words 'if necessary' after the word 'may' in sub-clause (1)".

I would speak only on the first part of my amendment for the omission of clause 15. Clause 15 gives power to a police officer making an inquiry to compel any person to sign as a search witness. He may issue an order in writing to them or any of them so to do. After that clause you have "After sub-section (4) of the same section the following sub-section shall be added, namely: 'Any person who without reasonable cause refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code'." I may submit, Sir, that really speaking this sub-clause creates a new offence or rather brings a certain act within an offence which does not already exist. In 26, Madras, 449, it is held that refusal to sign a search is an offence under section 187 or 188, and it is now held that a police officer should be given authority to ask anybody whom he likes to sign as a witness. If that order is in writing and if the person to whom it is issued refuses to sign, then he is liable to be prosecuted under section 187.

This practically means giving an additional power to the inquiring police officer there and then to ask anybody to be a witness and then, if he refuses, to prosecute him under section 187. I submit, Sir, that in creating any new offence or say in bringing any acts within the sphere of any offence by a new Act of Legislation, a very good case should be made out in favour of this innovation. Personally, I have not known many cases where the police officers have found very great difficulty in finding such witnesses. The effect of this amendment would be that the inquiring officer will have an additional means of harassing respectable people in the villages whomsoever he would like to do. There might be certain persons who would be

expected to be defence witnesses or there might be certain persons who for certain reasons may not be able to sign the search list or they would not like to be put to the trouble of signing that search list, and when we find that there has not been any special difficulty up till now and we have done without this power for so many decades, I see no reason why this innovation should now be made.

The Honourable Sir Malcolm Hailey: As Mr. Man Singh says, this is of course a case in which we add a new penalty to the Code. I recognize that it is our duty to explain clearly to the House the circumstances in which we propose to add this provision. I can best do so by reading an extract from the recommendation of Sir George Lowndes' Committee—which dealt with this matter, and which added this clause:

"We accept the proposal of the Bill to penalise an unreasonable refusal or neglect to attend as a search witness, but would make it a condition precedent that the person in question should have been required to attend by an order in writing from the police-officer. In order to make this clear, we have, in addition to the new sub-section (5), made a small amendment at the end of sub-section (1).

We think that the power thus given to the police, practically to compel the attendance of respectable witnesses from as near as possible to the place where the search is to be effected, should go far to put an end to the objectionable practice of bringing semi-professional search witnesses from a greater distance, and will also prevent the frustration of searches by the unreasonable refusal of witnesses to attend, which, we understand, is by no means uncommon. If executive instructions are issued to the police that, with this new sub-section to back them, they are, whenever possible, to require the attendance of respectable witnesses from the immediate vicinity, we think that a considerable improvement will be effected."

The new provision therefore has two aspects. Firstly, it is designed to prevent the frustration of searches by witnesses refusing to attend. That, of course, is a provision made to assist the administration of justice. But secondly, as the recommendation I have just read out to the House clearly shows, it is also intended to prevent an actual malpractice—a malpractice of which I dare say some here have seen instances—namely, the practice of bringing in as search witnesses men who are practically professional witnesses. It was, therefore, made for the protection of the public. Now, it is true, as Bhai Man Singh says, that we have done without this provision for a number of years. He implies, however, that, because we have done without it for a number of years, we ought still to be able to dispense with it. Surely not, Sir, if malpractices actually occur, and if we can prevent them by the insertion of this provision. He is, I think, afraid mainly of the penalty section. I may point out that this section only becomes operative if any person, without reasonable cause, refuses or neglects to attend. I do not argue the case regarding the requirement that notice should issue in writing since this is really only a condition precedent to the penalty provision. For my own part I do not feel that it is in any way unreasonable that when searches have to be made, the ordinary citizen should be required to assist in such searches and to witness and sign the search list; it is not a very heavy or very onerous requirement, and it is far better that power should be given to compel the attendance of respectable witnesses than that it should be left entirely to the discretion of the police to bring in their own semi-professional witnesses.

Bhai Man Singh: May I know if any special difficulty has been felt up till now?

Mr. W. M. Hussanally: I may tell my Honourable friend that in large cities, especially Karachi, as a Magistrate I know that the police have had difficulties in finding people to go with them to witness searches very often.

Rai G. C. Nag Bahadur: (Surma Valley *cum* Shillong: Non-Muhammadian): I bear the same testimony from my experience also.

The Honourable Sir Malcolm Hailey: I see on looking through our files that the Local Governments have frequently pointed out the necessity for some such requirement as this, owing to the difficulty frequently experienced in obtaining search witnesses. I would further point out to the Honourable Member, in justification of the provision which we propose to insert, that it was published at an early date as part of the Bill and I think that we have received only one criticism of it, and that criticism was of a very mild nature. It merely suggested that, in issuing executive instructions, we should make it clear that witnesses should come from the immediate vicinity.

Mr. Deputy President: Amendment proposed:

"Omit clause 15."

The motion was negatived.

Bhai Man Singh: I do not propose to move the other part* of my amendment.

Mr. K. B. L. Agnihotri: Sir, I propose an amendment to clause 15. My amendment runs as follows:

"In clause 15, sub-clause (1) after the words 'to do', add the following proviso:

"Provided that no pleaders, barristers, solicitors, attorneys, or mukhtars shall be required to attend and witness the search."

My object in moving this amendment is that these are the persons who have to deal with courts of law and who have to deal also with the accused and the offenders in such cases and also with the property involved. These are the persons that may have to conduct the prosecution or the defence of such offenders and may have to file suits regarding the property damaged or destroyed in the search. Therefore so far as possible, these persons should be left alone. I therefore propose, Sir, that these persons should not be required to attend and witness the search as is intended under section 103. They are exempted from being jurors or assessors. I therefore submit, Sir, that my amendment be accepted by the House and clause 15 be amended accordingly.

Mr. W. M. Hussanally: May I request my Honourable friend, the Mover, to add the words 'medical men'?

The Honourable Sir Malcolm Hailey: Here again, Sir, is a matter which I am doubtful if the House desires that we should argue at length. There are many members of this honourable profession in the House and I am not at all sure that Mr. Agnihotri really voices their wishes in this matter. May I point out one consideration? I do not suppose that members of the legal profession have any stronger desire than other classes of society to avoid their obligations to the public, and to their fellow-men. They are probably as ready as any men to recognise their duties. Again, busy men as they are, they are not the only busy men in ordinary life. My friend, Mr. Hussanally, pointed out that there are doctors, and he might have added that there are engineers, there are merchants who have equal difficulty in giving up their time. It is difficult, therefore, to see why we should make an exception in favour of this one class. But I can

*"Add the words 'if necessary' after the word 'may' in sub-clause (1)."

give a substantive reason why, on the other hand, it is advisable to include them, for I can imagine no class of men are more likely to keep a critical eye on the proceedings of the police than the class to which Mr. Agnihotri refers.

Rao Bahadur T. Rangachariar: There is some misapprehension on the part of the Honourable the Home Member. The object is not to save ourselves the trouble of taking part in this sort of function, but really to enable an accused person to have the services of pleaders and barristers in case he has to defend himself. That is why they are exempt from jury, and that is why they should be exempted from this sort of work which renders them liable to be called as witnesses. If perhaps at a remote place there are only one pleader or two and they are called on to witness a search, they would disable them from defending the accused person because they will be witnesses and the accused will be prejudiced. It is a well-known rule in the Bar and in the profession that no person who is a witness in a cause can undertake the conduct of such a case. It is a well-known rule amongst us and I do not think that any respectable member of the profession will depart from it. If he is likely to be called as a witness, he should refuse the brief. It is therefore throwing a disability on the profession and that is why this amendment is sought to be made.

Colonel Sir Henry Stanyon: With all deference to those members of my profession who take a different view, I venture to oppose this amendment. I agree with the Honourable the Home Member in saying that the members of our profession ought to take their fair share in furthering the administration of justice. I do not think that if I were a witness to a search, that mere fact would, upon any ground of forensic etiquette with which I am acquainted, prevent me from acting as counsel either on behalf of the prosecution or on behalf of the defence in the case which might arise as a result of that search. Moreover I think that the proposed amendment is largely unnecessary. We should look at the practical effect of the proposed exemption. We have a great deal of protection in the natural aversion of a police or other searching officer to ask any barrister or pleader or other member of the legal fraternity to take part in his investigation or search proceedings. It is true, as has been remarked, that members of the legal profession are exempt from service on juries. It seems curious and inconsistent that they are not exempt from service as judges; and perhaps there may be arguments against their exemption from juries. But analogies are not safe, and on this simple matter of exemption of the profession from witnessing searches, I say that the danger to the profession is so remote and so small that we need not encumber the Code with this amendment.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): I support the amendment on monetary grounds. I think every member of the Bar who practises on the criminal side has to fear this a great deal and he must support this amendment. Supposing a police officer thinks that such and such a man is my client and reposes great confidence in me, he may be tempted just to take me as a search witness. And if I happen to be a search witness my position will be very critical because I will not be able to accept a brief on behalf of my client and at the same time be a witness against him. On this point I think it is advisable that this amendment should be accepted and a proper latitude and a free hand should be given to the legal practitioners who should not be hampered in the discharge of their proper duties.

Mr. J. Chaudhuri: I would oppose this amendment. In the interests of the general public it is important to select reliable witnesses and it is very difficult to get the proper sort of persons to attend a search party. Apart from the narrow view that my professional friends take, I think it will be in the interests of the public that they should get some respectable people to accompany them in the search and if they are lawyers, it is all the better and therefore I oppose this amendment.

Dr. Nand Lal: I support this motion for amendment which speaks for itself. I do not only look to the monetary interests of the lawyer class but also to the practical phase of the question. Supposing a Barrister or a Pleader or a Vakil or a Mukhtar is brought on the list of those persons who may be called upon as witnesses to see the search and the time fixed for searching the house is, say, 10 o'clock and he has got two cases in which he defends the accused in Court, he cannot perform two public duties. The latter is not less responsible than the former. The police ask him to come as a witness. He ought to perform that duty but on the other hand he has got his professional duty to defend an accused. For the defence of the case of his client he, as you know, is responsible. He cannot perform two duties at one and same time. He must ignore one to do the other. Therefore, it will not serve any useful purpose to bring members of the Bar on the list of witnesses who may be called upon to examine or witness the search, and, consequently, an exemption may be extended to them. And we have got a very faithful analogy in support of it, which is this, that lawyers are not enlisted as assessors or jurymen and the underlying principle is,—that in the first place they are very busy, and in the second place, their profession is of great usefulness to the public at large. Therefore, it is quite proper that exemption may be given to them and I am in favour of this amendment which has so ably been moved.

Mr. T. V. Seshagiri Ayyar: Sir, I do not wish to give a silent vote upon this matter. It is not a question of pure selfishness on the part of the legal profession, which has prompted Mr. Agnihotri to move this amendment. The position is this. If a lawyer is asked to be present at a search and thereby to become a witness to the search, in the subsequent stages when the case itself is being heard, (if he is a witness), he would not be allowed, as decided by the Allahabad High Court, to appear as a pleader. It is not only handicapping him at the outset, but it will make it impossible for him later on to do any work for the client who knows him and wants him. After all, the search would not suffer by excluding this class of persons. It has been considered as a good principle of law, that persons who are connected with its practice should be exempted from serving on the jury. And what is the necessity for making a change now and asking lawyer to witness the search? Any number of people could be got to witness the search. To make a lawyer witness the search and subsequently debar him from being of service is putting a double penalty upon him, which I do not think this House should countenance. I therefore think that Government and this House should accept the amendment which has been moved.

Mr. W. M. Hussanally: I rise, Sir, to oppose this amendment, chiefly on the grounds mentioned a few minutes ago that if lawyers are to be exempted, there is much more reason why medical men should be exempted, also because they are very frequently concerned with cases in which the life and death of their patients are concerned. Suppose, Sir, a medical man is on his way to visit his patient, and that it is a very urgent

call, and on the way he is waylaid by a police officer and compelled to attend a search, what is the poor man to do? Is he to visit his patient or is he to obey the commandments of the law and accompany the police officer? If lawyers are to be exempted, I see no reason to compel medical men to attend these searches, and if medical men are to be exempted, why not Engineers? Then, practically it comes to this that all professional men are to be exempted from attending such searches. The difficulty pointed out is not very great. As regards the contention that lawyers will not be able to defend their clients, if they are witnesses to the search, as a rule there are a number of lawyers in almost every station, so that if one gentleman has been by chance waylaid by a policeman to attend a search, there are a number of other gentlemen available to be engaged in defending the client.

Mr. J. Chaudhuri: I move that the question be now put

The motion was adopted.

Mr. Deputy President: Amendment moved:

"In clause 15, sub-clause (1) after the words 'to do', add the following words:—"

'Provided that no pleaders, barristers, solicitors, attorneys, or mukhtars shall be required to attend and witness the search'."

The question is that that amendment be made.

The motion was negatived.

Clause 15 was added to the Bill.

Rao Bahadur T. Rangachariar: We now come to the chapter dealing with the power of Magistrates to demand security for keeping the peace. The first of those sections is 106. Section 106 enables a Magistrate to impose a double penalty. He convicts the person and sentences him to the punishment he deserves, and in certain cases he is also authorised to demand security from that person by ordering him to execute a bond for a sum proportionate to his means, with or without surety, for keeping the peace for such period, not exceeding three years, as he thinks fit to fix. So that is an additional punishment imposed on an accused person who is convicted. Naturally therefore the law restricted it to certain cases where the public peace was likely to be involved by the crime committed by the accused person, so the language of section 106, as it stood was:

"Whenever any person accused of rioting, assault or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted of such offence—"

then the Magistrate may impose this additional punishment. Now the object of the amendment proposed by Government to this clause is to enlarge the scope of the offence for which such an order can be made. In the first place, I do not think any case has been made out for making any amendment of this section 106. I have been looking at the literature furnished by the Government in respect to this matter. All I find is that in the report of the Lowndes Committee there is a small paragraph, on page 4, on the notes on clauses—I do not know if Honourable

[Rao Bahadur T. Rangachariar.]

Members have got their copies with them—clause 13 (1) was the proposed clause apparently; I have not seen what that clause was. They say:

“We do not like this amendment. We would, however, redraft section 106 (1) as shown in the amended Bill. We think that it is better to enlarge the scope of this section by including all offences under Chapter VIII of the Penal Code, than to involve the Court in an inquiry whether the offence of which the accused has been convicted, though not involving a breach of the peace, was nevertheless likely to have occasioned a breach.”

That is the reason which they give for including the whole of Chapter VIII. The amendment now made by the Joint Committee to this Bill as it was originally put in is to exclude only, as Honourable Members will find, section 153A from out of that Chapter, because the amendment, as it now runs, reads:

“Whenever any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 153A thereof, or of other offence involving a breach of the peace, or of abetting the same.”

So that they retain the words ‘or other offences involving a breach of the peace’. Now I do not see how by the proposed section they are in any way making it easier for Magistrates to come to a conclusion. Section 106, as it stands, specifies certain offences, namely, rioting and assault, assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation or other offences involving a breach of the peace. So that specified offences are named there as instances of offences involving a breach of the peace. Now the whole of Chapter VIII of the Indian Penal Code is supposed to include offences involving a breach of the peace. If you will look at Chapter VIII it includes all sorts of offences and I do not see why the whole of the Chapter is included except section 153-A, which is a well-known section dealing with the creation of differences between different communities. I will briefly run through the various sections coming under Chapter VIII of the Penal Code. First of all we have being a member of an unlawful assembly. Unless, therefore, the events connected with the transaction were such that the particular unlawful assembly were guilty of acts, although they did not actually commit acts of rioting which would indicate that it was likely to involve a question of a breach of the peace, then it was left to the discretion of the Magistrate to impose this penalty. Now, ‘whenever a person accused of an offence under section 143 is convicted.’ It leaves it open to the Magistrate to impose this additional penalty, whether really the public peace is threatened or not. After all, this is a preventive section and not a punitive section. That has to be remembered. It is preventive, that is to say, the Court has to be satisfied that the person convicted is also a person likely to commit hereafter a breach of the peace. In order to prevent that breach of the peace, security is demanded, it is not an additional punishment which is in contemplation. The whole object is to prevent a breach of the peace, it must be necessary for the Court to be satisfied that a breach of the peace is probable. Therefore, it would have to depend upon the facts of each case, upon the circumstances of each case whether really such preventive action should be taken. In the case of rioting, of course, it is obvious; that is why the Code has taken care to specify it. In the case of assault it is obvious. There has been a breach of the peace, and, therefore, if he is a man likely

to continue such acts, then, of course, it will be necessary to impose this penalty.

Again if a man is convicted of assembling armed men, then obviously

his object is to commit a breach of the peace; or if he is convicted of criminal intimidation, where, of course, by force he extorts property and other things—in such cases the Code has left it at that. In Madras I have not found that there have been any cases of difficulty felt by Courts in applying section 106. There have been hardly any cases where the Courts found any difficulty in construing this section and I do not find there in the commentaries (which are voluminous) any very serious cases which involved the Courts in any considerable difficulties. Let us remember also that by no amount of legislation can we avoid difficulties in Courts. You may have the most ably drawn Code. I do not think there can be any better Code than the Indian Penal Code, and even there you find frequently difficulties arising in the Courts. Courts exist for such difficulties. Courts exist to construe the real intention of the Acts; and therefore I do not think it is necessary to consider that as a valid ground. I will use the argument adopted by the Government benches yesterday, that where a Code has worked well without much difficulty you should not tamper with the Code. A case has still to be made out. No reason is given in Lowndes Committee's Report. They think it is advisable. Why should they think so? Have they condescended to give reasons why all the sections under Chapter VII should be included?

I propose just to draw the attention of Honourable Members to Chapter VIII. ‘Joining an unlawful assembly’; ‘Joining and continuing in an unlawful assembly.’ As we all know, even women and children get caught in an unlawful assembly and it is very difficult for them to extricate themselves. Without warning an assembly is ordered to disperse, and they still continue to be members of an unlawful assembly. Is it contemplated that in such cases the Court should be empowered to impose this additional burden? Of course where they may be armed with deadly weapons and all those things, and again, knowingly join or continue in an unlawful assembly of that sort the case will be different. I do not know why, on the reasoning adopted by them here, this Joint Committee excluded 153-A from the scope of the Bill. When you promote enmity between classes, that is the surest method of bringing about a breach of the peace and yet that is excluded, I do not know why. (Mr. N. M. Samarth: “As a sop to Cerberus.”) They give no reason.

Section 154 deals with an owner or occupier of land not giving information of a riot on his land. Such a person may be convicted. I don't see why he should be called upon to give security and be punished also for not giving information. Why should he be called upon to give security as if a riot is going to take place periodically unless it is shown that it is a place where frequent risings occur? It may be a temple dispute or a land dispute between rival parties. Why should you assume that he is not going to give information? After all the punishment is for not giving information of a riot. Once he is convicted, why should he be called upon to give security for keeping the peace? He is not a rioter. He is owner of the land on which the riot took place. Once he is convicted he is sure to take the lesson to heart and next time a riot takes place on his land he is sure to give information. But how has he committed an offence for which you can demand security? I think, Sir, the whole thing is merely due to the fact that the Lowndes Committee said so and it must be so.

[Rao Bahadur T. Rangachariar.]

This measure has come before us without proper examination of the various sections. I do not think it is necessary to tinker with the Code as it is. It has not led to any practical difficulty. The Courts have administered it without causing any irritation to the public, nor has the public peace suffered by not enlarging the scope of this section.

Therefore, Sir, I would leave well alone, even if it is unwell, to adopt the language of my Honourable friend from the United Provinces whom I welcome to this Assembly as one who contributes weighty and valuable additions to our debates—even if it is unwell, as we cannot improve it, let us leave it at that. I therefore propose to omit clause 16 (1) which proposes to amend the present section.

The Honourable Sir Malcolm Hailey: Mr. Rangachariar began by arguing that this was an attempt to take greater powers on the part of Government. But from his subsequent remarks it is clear that he laid no great stress on that statement. He realised (what is indeed a fact) that this provision of the Bill was intended merely to clear up doubts. I have read through all the papers on the subject; there never was a suggestion that we required to take greater powers in this respect. The contrary is really the case; for it is clear that under the existing Code the Court might pass an order against a man who had been convicted under 153A, whereas the new clause omits this section. Mr. Rangachariar himself thinks that it should be able to pass such an order. By this Bill we exclude

Rao Bahadur T. Rangachariar: It is anomalous that it should be omitted and other comparatively innocent offences should be included.

The Honourable Sir Malcolm Hailey: Well, as to that, I will give the House the precise reason why the Lowndes Committee excluded 153A. They received a forcible representation on the subject from the Madras Vakils' Association. Whether Mr. Rangachariar is still a member of that association or not I am not aware; whether he joined in that representation or not I am equally unaware.

Rao Bahadur T. Rangachariar: It must have been done in my absence.

The Honourable Sir Malcolm Hailey: I must have the fact as it stands. But to return; the reason why this clause was introduced in its present form was simply to clear up doubts. The first authority which complained that the Act was not sufficiently precise was one entitled to consideration even from the Madras Vakils' Association; it was the Calcutta High Court. In 1911 the High Court suggested that the wording of the section was too narrow. When the matter was subsequently commented on by the various judicial authorities consulted, many pointed out that the wording left the Courts doubtful; a man might be convicted of an offence—but I will give the exact words of one critic:

“Whereas the section provides that an order cannot be passed against a convicted person unless he is convicted of an offence of which breach of the peace is a necessary ingredient it often happens that the scope of the offence discloses a likelihood of breach of the peace even though accused is guilty of an offence of which breach of the peace is not a necessary ingredient.”

The first proposal placed before the Lowndes Committee was therefore to redraft simply in order to do away with that doubt, a doubt which forces the Courts continually to inquire whether the particular offence did or did not involve a breach of the peace or

was likely to cause a breach of the peace. They objected however to the form of words proposed and thought it simpler to draft in the sense of the present clause, under which any offence punishable under Chapter VIII of the Indian Penal Code other than an offence under section 153A could be made the subject of an order by the Magistrate. That is the simple explanation why we have got this particular form of draft. That there was actually a difficulty arising from the drafting of the existing Code is, I think, clear. Mr. Rangachariar said that he was unaware of any ruling which showed that the matter had been in doubt by the Courts. Well, I have here a reference to what seems to me a very large number of rulings on that particular point. It seems to me that the commentaries show that there has been very great doubt on the subject, and that it has involved a good deal of trouble to the Courts. I quite agree with Mr. Rangachariar, and it is a proposition which I welcome from him, that where a section of procedure has stood for many years and has involved the Courts in no difficulty, it is better to let it stand; but that is not the case here; it is clear from the commentaries that this section has actually involved the Courts in a good deal of difficulty.

Now I come to the substance. I am prepared to admit with Mr. Rangachariar that in taking the whole of Chapter VIII—and its scope is somewhat extended—we may have gone somewhat beyond the strict requirements of the case, though the difference is more nominal than real. It is perhaps unnecessary that we should include such a section as 154: I agree with Mr. Rangachariar as to the absence of necessity for including such a section. A remark of the same nature might equally be made perhaps against 151. We are quite willing, as far as we are concerned, and provided that we can get the clause into a form in which there will be no difficulty involved on the part of the Courts in the matter of interpretation, to exclude such sections as seem to be entirely unnecessary. I think that if that were done, Mr. Rangachariar's point of substance would be met, while at the same time the work of the Courts would be facilitated, and facilitating the work of the Courts of course makes things easier to the public. I should be quite prepared to indicate when we come to discuss the subsequent amendments exactly what are the sections which we think it unnecessary to include, but I would put it to the House that it is advisable that we should have something definite on the lines of the drafting now proposed instead of leaving the Courts to determine on each occasion whether an offence on which a conviction had been secured did or did not involve a breach of the peace.

Rao Bahadur C. S. Subrahmanayam: Sir, in regard to this clause. I must say that I cannot agree with my Honourable friend, Mr. Rangachariar. These words in Chapter VIII have been put in order to prevent the Courts from embarking upon an enquiry as to the character of the offence. That is one object. Another object is that power is vested in Courts of first class Magistrates and higher magisterial Courts, and that power would be exercised only after considering the evidence that is placed before the Courts. If a Court comes to the conclusion that there is in the character of the people whom it had convicted a tendency to repeat the offence, this power will be utilised; it is not in every case where men are convicted that these powers would be utilised. Therefore it is the Courts trying the case which will decide the matter. Now in regard to conviction also, there is the safeguard of scrutiny by a higher Court. Well, that is so far as the merits of this case is concerned. Now we cannot admit that offences coming under this Chapter are offences which ought not to be put down in

[Rao Bahadur C. S. Subrahmanayam.] the interests of society—I shall not use the words 'law and order' which are frequently used. When there are powerful landholders or powerful people behind, such offences are committed; they are not offences committed by peaceful inhabitants, and therefore a provision like this is necessary. You cannot say that the provision is unnecessary nor can we sneer at a provision like this. But with regard to the recommendation which is contained in the Lowndes Committee Report, I, as a member of the Joint Committee, will always look with great deference to a recommendation made by that Committee. That Committee consisted of the most eminent lawyers, men of great ability, and I should deprecate, with all respect to Mr. Rangachariar, speaking lightly of that Committee, because at that time and probably even now you cannot find a set of men who have obtained such great eminence in law as that Committee.

Rao Bahadur T. Rangachariar: I do not deny that.

Rao Bahadur C. S. Subrahmanayam: Therefore, it is hardly fair to say because the Lowndes' Committee said so and they have not condescended to give reasons their decision should not be respected. Well, I think the amendment has tended to simplify the task of the Courts which do require a certain amount of definite guidance and the power is not used by irresponsible persons, it is used by the superior Courts. Therefore, I think this clause ought to be retained and I am sorry I must oppose my friend, Mr. Rangachariar's amendment. 153A was omitted for the strong expression of opinion coming from the colleagues of my Presidency: "Section 106 as now revised may in times of political excitement be used so as to bring into disgrace prominent leaders on the one side or the other whom the Magistrate may not like. The section as it stands at present is sufficient for the purpose of preventing the commission in future of similar offences by convicted persons." It is with regard to that emphatic expression of opinion that 153A was excluded. This is the opinion of the Madras Vakils' Association, of which my friend, Mr. Rangachariar, is an ornament. Therefore, I think we would do well to leave the clause as it is.

Mr. N. M. Samarth: Sir, I also oppose Mr. Rangachariar's amendment. I do not think by leaving the section in the fluid state in which it is at present we improve matters. There has been, so far as the nature of offences for conviction of which security may be required is concerned, a good deal of discussion and division of opinion and the amended provision in the Bill, such as it is, at any rate, makes it definite that offences must fall under Chapter VIII of the Indian Penal Code, but the other clauses of that section remain and those clauses will limit again the application of certain of the sections of Chapter VIII of the Indian Penal Code to which I would draw attention.

The section proceeds to say:

"And such Court is of opinion that it is necessary to require such person to execute a bond", for what?, "for keeping the peace."

Further, 'such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties'—again for what?—'for keeping the peace during such period'. The application in practice or judicial decisions in reference to this clause of this section will, therefore, be that it must be an offence which will involve the necessity for the offender to keep the peace and not

other offences falling under Chapter VIII of the Penal Code, which do not relate to keeping the peace. If the clause remained, the natural interpretation in a court of law would be, or at any rate it is quite open to an accomplished lawyer like Mr. Rangachariar to argue before a Court and argue successfully, that the restriction therein laid down must govern the application of the section to a restricted class of offences under Chapter VIII of the Indian Penal Code.

Rao Bahadur T. Rangachariar: There are two independent conditions—one is conviction for special class of offence, and the other is proof of necessity for making the order.

Mr. N. M. Samarth: But what does the law require? Keeping the peace. That is the essence of the matter, and none of the offences which do not involve the necessity of keeping the peace would come under the purview of that section. Therefore, it is important to my mind that the section should stand as it is in the Bill and I am opposed to Mr. Rangachariar's amendment and am in favour of the proposed amendment of the section as contained in the Bill before us.

Mr. J. Chaudhuri: Sir, I also cannot support Mr. Rangachariar's amendment. It will, I think, be to the prejudice of the general public if section 153A is left out of this section. We considered that in the Select Committee and we deliberately arrived at the conclusion that section 153A should be excluded from the scope of section 106. What does my friend gain by leaving the section as it is? He does not gain anything at all. I invite his attention to the words of the present section, "other offences involving a breach of the peace". That expression is comprehensive enough to include all the offences mentioned in Chapter VIII of the Indian Penal Code and much more. As regards section 143, i.e., being members of an unlawful assembly, an assembly does not become unlawful unless they have a common object of committing an unlawful act. This implies that the object of the assembly is more or less to break the peace. But the mischief of including section 153A—will be much greater. That will be the result of Mr. Rangachariar's amendment.

Rao Bahadur T. Rangachariar: No, no. I did not say that at all. My friend is entirely under a mistake. I did not say section 153A should be included. I say leave out all the sections and leave it to the court as it was.

Mr. J. Chaudhuri: I would rather specifically leave out 153A because 153A falls within a different category. What is known as the law of sedition in English law is embodied in the Penal Code under the two sections 124A and 153A. Promoting enmity between classes, in English law, is well-known to form part of the law of sedition. So I would not leave any ambiguity with regard to these sections. We have always advocated the liberty of the press and of public meetings. A man may deliver a speech or write an article and it may be interpreted as rousing racial feeling and such racial feeling as likely to cause breach of the peace. We ought not to empower the Magistrate to act under section 106, Criminal Procedure Code, in such cases. That is why we have advisedly exempted offences under sections 153A and 124A of the Indian Penal Code from the scope of section 106, and I do not think that if we accept Mr. Rangachariar's amendment it will be any improvement or that we shall be safeguarding public interests in any way. That is why as a Member of the Joint Committee and as a Member of this House I oppose the amendment.

(Several Honourable Members: 'Let the question be now put'.)

Mr. Deputy President: The question is that the question be now put.

The motion was adopted.

Mr. Deputy President: Amendment proposed is:

"Omit clause 16 (i)."

The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: I think it will be convenient if the House considers the next two amendments and the first portion of the third amendment together.

Mr. J. Ramayya Pantulu: I do not want to press my amendment No. 32.

Mr. Deputy President: It will be convenient if the House takes Bhai Man Singh's amendment No. 33 and the first remaining portion of Mr. Agnihotri's amendment No. 34. I therefore propose to call upon the proposer of amendment No. 33 and Mr. Agnihotri and then to consider one by one sections of the Indian Penal Code which are dealt with in the two amendments.

Bhai Man Singh: The second portion of my amendment is as follows:

"For the words and figures 'other than an offence punishable under section 153 A' substitute the words and figures 'other than the offences punishable under sections 143, 144, 145, 150, 151, 153, 153A, 154, 155, 157, 158, 159 and 160'."

Of course, I would request you, Sir, to take those sections separately, because as a matter of fact...

Mr. Deputy President: I have already informed the House that I propose to do so.

Bhai Man Singh: I would simply speak about section 143. This is a section that is included in my amendment as well as my Honourable friend Mr. Agnihotri's amendment. The offence under this section consists simply in being a member of an unlawful assembly. I should submit that it is quite a different thing to be a member of an unlawful assembly at a certain time and to be guilty of rioting. Really speaking, section 106, Criminal Procedure Code, is meant to bind down persons who are of a temperament that is very dangerous to the public peace. A person may be merely a member of an unlawful assembly and simply for being such a member, section 106 provides that extra punishment for him. There is no reason why that extra punishment should be inflicted on such a person simply because he is a member of an unlawful assembly. I may also submit that the Madras High Court and the Punjab High Court have under the existing law held that being a member of an unlawful assembly does not come within the purview of section 106 of the Criminal Procedure Code. Section 106, as it at present stands, as my Honourable friend, Mr. Chaudhuri has just pointed out, contains the general words 'offences involving a breach of the peace'. Both these High Courts have held that being merely a member of an unlawful assembly is an offence involving a criminal breach of the peace. There is no reason why we should expand the sphere of section 106 and include this section therein.

Mr. K. B. L. Agnihotri: I take it that we ought to proceed section by section. I would therefore speak later on the other sections in my amendment and will for the present confine my remarks to section 143. My reasons for moving for the substitution of these sections are exactly those as were suggested by the Madras High Court Vakils Association on whose weighty authority even the Home Member and the other Members of the House declined to delete clause 16 (1) as proposed by my friend, Mr. Rangachariar. Sir, as was pointed out by Mr. Rangachariar there may be assemblies which may at some time or other be declared to be unlawful assemblies and there may be people who may happen to be in those assemblies quite innocently but because of the assemblies having been declared unlawful assemblies they are likely to be convicted under the law, in which case they are liable also to be bound over under section 106. The House, I hope, has it in its experience and knowledge that during the year 1921 there were many cases when assemblies were declared unlawful that would otherwise have been lawful so much so that even at the capital place of a province the Congress Committee meeting was declared an unlawful meeting and some persons attending that meeting were convicted. If section 106 is made applicable to the case of such people, even respectable and educated people would be liable to be bound over and therefore I submit that a section which does not involve the use of force or collection of armed people for using violence should be omitted from the purview of section 106. With these words I support the amendment that section 143 should be deleted from the operation of section 106 and be included in the exceptions.

Mr. Deputy President: The question is that section 143 of the Indian Penal Code be included among the exceptions.

Mr. T. V. Seshagiri Ayyar: I wish to make a general observation in regard to the procedure that should be adopted in eliminating certain sections. The principle which ought to be kept in mind is one which would enable Courts to construe this section on the theory of *ejusdem generis*. You have for example in this section the words 'or other offence involving a breach of the peace.' The rule that ought to be observed by the Legislature is that the offences which go before must also belong to the same category. That is the principle of what is known as construction by *ejusdem generis*. You must have the same class of cases to proceed as is mentioned in the general clause coming after. The question therefore which this House will have to decide in excluding or including certain sections, is whether those sections involve an offence relating to the breach of the peace. If that is not the intention of the Legislature, then I think the wording of the section should be completely altered. Now, as regards section 143, I do not see why it should be included. It simply is a punishment section. In section 143, you will find nothing relating to any offence. You will find two or three sections of that nature. I do not think there will be any difficulty so far as section 143 being tacked on to section 153A. But, as I said, the principle which I want the Government benches to keep in mind—and I want the Honourable the Law Member to advise the Government in the matter—is the principle of *ejusdem generis*. You cannot have any offence which does not involve a breach of the peace included in this category of sections; and so far as section 143 is concerned, I do not think the House will feel any difficulty.

The Honourable Sir Malcolm Hailey: Punishment for what? Do you wish to include the definition section or the offence section?

Mr. T. V. Seshagiri Ayyar: Certainly not. Punishment does not create an offence. You do not create an offence under that section.

Mr. Deputy President: The question is that section 143 of the Indian Penal Code be included among the exceptions.

The motion was adopted.

Mr. Deputy President: The question now for discussion is that section 144 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I do not want to press for that.

Mr. Deputy President: The question for discussion now is that section 145 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: So far as section 145 is concerned, the case is just the same as of section 143, except that the assembly is ordered to disperse and it does not break up but continues. It is also practically the same thing as section 151, which provides against continuing to be a member of such assembly when it is commanded to disperse. I think, Sir, that exactly the same arguments apply in favour of section 145 as in favour of section 143, except that in the one case they have been commanded to disperse and in the other case they have not been so commanded. I submit that the mere fact that a command of dispersal has been given does not make a man guilty of having committed riot or breach of the peace. I see no reason why he should be bound over under section 106. If a member of a certain committee which is declared to be an unlawful assembly for certain political or other reasons is not to be bound over under section 143, there is no reason why he should be bound over for continuing to be a member of that assembly.

The Honourable Sir Malcolm Hailey: Sir, I think we have to look to the whole intention of this part of the Code. The intention here is to place an instrument in the hands of Magistrates which will be, in its truest sense, preventive. Now there is a great difference between a person who merely joins an unlawful assembly, (for he may frequently be in doubt up to the last minute whether that assembly is unlawful or not) and a person to whom the following description applies:

"Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, . . ."

He can be under no kind of doubt as to his action. Mr. Rangachariar said that it was ridiculous to make women and children who continued in such assemblies liable to an order under section 106. But, it is first of all necessary that they should be charged and convicted under this section 151, and it is exceedingly unlikely that they will be so charged. And you will never arrive at satisfactory legislation if, in considering your law, you emphasize only extreme cases that might be brought under a section, oblivious to the fact that you must provide for ordinary cases, and good cases, for which provision is required. There are undoubtedly cases for which we must provide under a section of this nature; I can conceive, and I am sure the Members of this House would be able to conceive, of highly dangerous assemblies, highly criminal and violent in their nature, which have been commanded to disperse, and members of which are rightly convicted because they have refused to disperse. There are such cases, and

it is only reasonable that in the cause of law and order and the public generally, persons so convicted should subsequently be held to security.

Rao Bahadur T. Rangachariar: I can recognise that such a man mentioned by the Honourable Member ought to be punished. The question is whether the offence is one which is likely to be repeated by the individual. Unlawful assemblies, as is well known, take place in the excitement of the moment. There is some temporary exciting cause and unknowingly some people join, and several other people join the assembly because they have got a temporary grievance. Unlawful assemblies are not recurring diseases; they always have got a provocation behind them. That provocation may be great or small, but often you will not get unlawful assemblies in this country without some provocation behind them. You are postulating here that such men should be bound over to keep the peace. They may be persons who have got some temporary grievance, perhaps a revenue grievance or something which excites them at the moment and therefore they join the assembly. You do not expect them to go on joining unlawful assemblies. Have you ever come across such cases? It is really confusing the issue by saying it is a dangerous offence. It is a dangerous offence, and therefore you punish the man, but the question is, is it an offence likely to be repeated by the individual, and is it necessary to impose this further penalty? That is why the Legislature would generally drop this. Now you want to include it. What is the reason given? That it is a dangerous offence. But is it a reason why you should go on demanding security for three years as in the case of a habitual offender? I therefore think, Sir, no reason is made out why 145 should be included.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, I am afraid my Honourable friend, Mr. Rangachariar, in the observations which he has offered upon this particular matter, has ignored a very material portion of the original section 106 of the Criminal Procedure Code. In order to bring any case of a conviction under any one of those sections mentioned in the Act, two things are necessary, not one thing only to which he has over and over again referred in the course of his observations. It is not merely conviction under the sections named that will justify an order under section 106. The Code goes on to say something further and it is to this second requisite that I wish to invite the attention of the House in particular. The first paragraph of this sub-section (1) merely describes the particular sections of the Penal Code, a conviction under which may make a man liable to the order specified in this section. But the second paragraph goes on to say 'and such Court (i.e., the Court convicting that man) is of opinion that it is necessary to require such person to execute a bond for keeping the peace' that the order under section 106 will be passed. That is to say, the mere fact that a man has been convicted under any one of these sections will not necessarily make him liable to furnish security under section 106. It is only when the Court is further satisfied, by reason of the peculiar circumstances of the given case before it, that it is essential in the interests of the maintenance of public tranquillity that such order should be passed that the Court will pass the order. In other words, the Court will not pass an order under section 106 in every case in which it chooses to convict a person. It is really the second essential mentioned in this section 106 that lies at the root, at the basis of the order requiring a man to furnish security.

Mr. T. V. Seshagiri Ayyar: Then why differentiate? Put in the whole Penal Code.

The Honourable Dr. Mian Sir Muhammad Shafi: Let me illustrate my meaning. My Honourable friend has laid emphasis on the case of an ordinary conviction for being a member of unlawful assembly, or offences of a similar kind. Now, supposing a man has been convicted for being a member of an unlawful assembly. Six months after that he is again convicted for being a member of an unlawful assembly. Six months or a year after that he is again convicted of a similar offence. Now, the mere fact that he has been convicted of what my Honourable and learned friend supposes to be a very ordinary offence may or may not justify the passing of an order under this section. But, when a man has repeatedly been twice or thrice convicted of this simple offence, will not the Court then be satisfied that, in the interests of public tranquillity such a man is obviously a habitual offender, a man who is given to committing this so-called simple offence, and will then call upon him to furnish security. The section requires in express terms that the Court should be of opinion that it is *necessary* to require such person to execute a bond for keeping the peace. I, for one, have not the slightest hesitation in saying that, ordinarily, the courts of law will not consider it necessary to pass an order under this section unless by reason of the particular circumstances of the case before them they are satisfied of that necessity. Therefore, I submit that it is really beside the point to say that an offence described under a certain section is a simple one and ought not therefore to be included.

Rao Bahadur T. Rangachariar: May I draw the attention of the Honourable the Law Member to section 110 (e) which deals with a person who habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace. That section provides for that class of cases.

The Honourable Dr. Mian Sir Muhammad Shafi: I merely gave an instance; that is all.

Rao Bahadur C. S. Subrahmanayam: With regard to this amendment of section 145, I think my Honourable friend, Mr. Rangachariar, has got in his mind the use of the section in regard to political assemblies—that is, assemblies which are called by that name. But if he excludes those political assemblies, if he looks to the use of the section in cases not involving any political matters, probably he will think that the section is all right.

Now take the case of religious processions. There is a dispute in regard to certain religious processions, and a certain set of people are convicted of being members of an unlawful assembly on one occasion. It is well known that on a subsequent occasion the leaders or some of the men concerned in the first offence will repeat the same kind of offence. Now in such cases is it not well that such a section should be put into the Code.

Again take the case of the rights over immoveable property. On one occasion the obstructors may be charged for being members of an unlawful assembly. The trying Courts know full well that the offence will be repeated. It may be that these people who have violated the law sincerely feel that they have a right which has been disturbed. Whatever their feelings or convictions may be, the fact remains that if the Court is

convinced that these people will repeat the offence, is it not better in the interests of those people themselves that they should be told that action under this section will be taken in order to prevent them from doing it. The ordinary class of cases which this section will cover are not political matters but matters in which there is party feeling in regard to private or communal rights; and therefore the use of the section, which can only be made by superior Courts—that is, first class Magistrates and other superior Courts—is not I think likely to lead to any cases of misuse. Therefore I say that if my Honourable friends will just for a moment forget such cases of the use of this section with regard to political assemblies and look to the application of it with regard to the ordinary affairs of the country, then I think there can be no doubt in their minds as to the need for this provision.

One word I would like to say here with regard to the use of this section against political assemblies. Every power, every authority which has got the upper hand uses its power to suppress contrary opinions of a political character—not only in this country but in other countries. You may attenuate this section as much as you like; they will find other sections for their purpose. You cannot prevent that by mutilating the general law of the country. You can prevent it by the exercise of such powers as you have in this Council and elsewhere; and therefore on that ground I should be sorry to see this section attenuated. After all, an unlawful assembly is a more serious thing than an offence committed by an individual. It involves a number of innocent men. Offences which comes under this section oftentimes involve innocent men. When innocent men are involved by the action of these obstinate lawbreakers, you cannot, in order to protect these innocent men, let the really guilty men, the prime movers in a disturbance, go scot-free. One of the consequences of this is that less guilty men, by joining or helping in the formation of such disturbance, also get into trouble. You cannot prevent this and I do not think they deserve to be protected from getting into the clutches of the criminal law. Therefore I strongly appeal to the House to consider the matter dispassionately, taking into consideration the general state of affairs of the country and not merely political matters.

(An Honourable Member: "I move that the question be now put".)

The motion was adopted.

The question that section 145 of the Indian Penal Code be included among the exceptions was negatived.

Mr. Deputy President: The question is that section 149 of the Indian Penal Code be included among the exceptions.

Mr. K. B. L. Agnihotri: Sir, section 149 of the Indian Penal Code refers to persons in an unlawful assembly of which one member or some members are guilty of violence. It reads:

"If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence is a member of the same assembly is guilty of that offence."

Sir, there is much force in what my friend, Mr. Subrahmanayam, has put before the House that if we keep aside the political side or political

[Mr. K. B. L. Agnihotri.]

assemblies from our consideration then the provisions for binding over persons convicted of being members of an unlawful assembly is often necessary and should be allowed to remain. But we have omitted section 153A on the same basis. It is in times of panic and excitement that such sections are found to be very harsh in their operation. It thus becomes necessary that we should exclude such sections from 106 and there is no possibility of any hampering of justice or cheating justice in any way or doing away with the principles of law and order if we delete these sections that I have enumerated in my amendment. Because if a man is found to be dangerous he is convicted; if he is found guilty of any of these offences he is convicted and he is convicted for a period which the Magistrate may think will be quite enough to give a cold douche to his rashness or indiscretion. Further, after his return from jail, if the Magistrate finds that this man has not improved he can certainly bind him over under section 107, and there is no necessity why section 106 be made to apply to the case of such persons. If after binding him over under section 107 it appears that the man is incorrigible he can certainly be proceeded against under section 110. So there are ample provisions to meet the justice of the case and law and order will not be disturbed in any way if we were to include such sections as 149 and 150 in the exceptions under this Act. With these words, Sir, I commend to the House my proposal that section 149 be deleted and included among the exceptions to the section.

The Honourable Sir Malcolm Hailey: Sir, I do not think it is necessary to argue this section.

Mr. Deputy President: The question is that section 149 of the Indian Penal Code be included among the exceptions.

The motion was adopted.

Bhai Man Singh: Sir, I want section 150 to be included in the exception, but I do not press it.

The Honourable Sir Malcolm Hailey: If the Honourable Member presses this, we shall have a long discussion.

Bhai Man Singh: I do not press it myself.

Mr. K. B. L. Agnihotri: I do not press it myself.

Bhai Man Singh: Sir, 151 practically goes with 145.

Mr. K. B. L. Agnihotri: I do press for it, Sir, because section 151 says:

"Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace after such assembly has been lawfully commanded to disperse shall be punished, etc."

and there is no reason why section 151 should not be excluded, because it is exactly the same as the section that deals with the membership of an unlawful assembly. If an assembly has been declared to be unlawful by certain legal technologies some people who happen to be members of that assembly may continue in that assembly and will be punished. It will thus happen that innocent persons may be involved. How is it possible that such a man will repeat that offence if once convicted. Therefore I submit that 151 may be included in the exceptions.

The Honourable Sir Malcolm Hailey: When you put the motion to the House, Sir, Bhai Man Singh gracefully withdrew his amendment, while my friend Mr. Agnihotri in spite of cries of 'withdraw' from various parts of the House still maintains his claim.

Rao Bahadur T. Rangachariar: You are also willing to concede.

The Honourable Sir Malcolm Hailey: We argued the case of 145 at some length, and the House agreed that 145 ought to be maintained.

Rao Bahadur T. Rangachariar: We did wrong then.

The Honourable Sir Malcolm Hailey: If I consider that the House does wrong I do not permit myself to say so. But with regard to section 151 (which is very strongly analogous to section 145,) the House will see that it is necessary, in order to fall within the scope of the section, that a person should knowingly join or continue to join in an assembly likely to cause a disturbance and should stay on after such assembly has been commanded to disperse. There is therefore a double requirement which must be complied with before he becomes amenable. It is only reasonable, therefore, to conclude that a person who does take such action is a person who is likely to repeat it. We are indebted to Mr. Subrahmanayam for the recognition that we must not in connection with this section think purely of political offenders. We have seen many cases of assemblies which had no connection with politics, and which led to very violent results, rioting, arson and murder. They are common enough in districts addicted to violence; they are well known to Magistrates in charge of such districts, and the case of those concerned in them has to be considered by those who legislate for the maintenance of order and justice. I do not believe that anybody who really had at heart the general peace of our districts at large would care to deprive magistrates of preventive powers in such cases as these, and I shall appeal to the House to deal with this on exactly the same lines as 151; it would be entirely consistent to do so.

Bhai Man Singh: Sir, by way of personal explanation I might say that I am strongly in favour of bringing in 151 in the exceptions. Why I did not press my point was that, since my amendment regarding 145 was defeated, I thought that there was no use in pressing this now.

The Honourable Sir Malcolm Hailey: You are quite right. There is none.

Mr. Deputy President: The amendment moved is that section 151 be included among the exceptions.

The question is that that amendment be made.

The motion was negatived.

Bhai Man Singh: Section 153 refers to giving provocation with intent to cause a riot. A man might say or do something in a heated moment and a riot may be caused. He may be quite careless at a certain time—it is not so great an offence that anybody should be liable to be bound down. I do not wish to say anything more at this late hour.

The Honourable Sir Malcolm Hailey: Neither do I, Sir, as the Honourable Member has deplored.

Mr. Deputy President: The amendment moved is that section 153 be included among the exceptions.

The motion was negatived.

Bhai Man Singh: I move that section 154 should be included among the exceptions. I think the case for the inclusion of section 154 among the exceptions is perhaps the strongest. The offence consists of an owner or occupier of land not giving information of riots. One really fails to understand why a man who fails to give information, if he is convicted, as he can be under section 154, should be considered such an offender that he should be liable to be bound down for so many years to keep the peace or to be of good behaviour. I think it would be terrible for any body who does not come out to give information of a certain riot that has taken place. I own land at Ambala, supposing a riot takes place and I don't go out to give information, one really fails to see where the dangerous character in me is if I do not go out to give information, that I the poor fellow should not only be convicted under section 154 but should also be bound down for three years.

The Honourable Sir Malcolm Hailey: Sir, I have not interrupted the Honourable Member while arguing his case because I saw the argument gave him considerable pleasure. But he knew already from what I said before that we did not intend to dispute the inclusion of section 154 among the exceptions.

The motion was adopted.

Bhai Man Singh: Sir, I move that section 155 should be included among the exceptions. My arguments for 155, if not more weighty, are no less weighty than for section 154—which refers to the case of “a person for whose benefit or on whose behalf a riot takes place and who does not use all lawful means to prevent it.” It is quite a different thing to judge a man's character while doing a certain act, or while abetting it, but it would simply be a very dangerous doctrine to extend these things and to call a man dangerous who does not use all lawful means to prevent it. All lawful means would mean a good deal. Supposing there is a very good man: there is a certain dispute about his land or something of the sort and certain people begin to fight. He says “don't fight for God's sake.” He is not such a strong man that he should be able to go and actually stop them from fighting or to be able to go and take some other steps to stop the affray or the riot. I do not understand why he should be taken to be such a dangerous man that he should also be bound over for three years over and above being convicted under section 155.

The Honourable Sir Malcolm Hailey: The kind of case that is contemplated by this section is something as follows. There is a dispute about a land, and the landowner knows that a certain section of his retainers or it may be his tenants are likely to attack and cause a riot—a well known case of this kind caused a serious disturbance some time ago—and he does not take lawful means to prevent their doing so. Taking lawful means for preventing their doing so may frequently be merely the issue of an order that none of his servants should use violence. But he stands to gain by the result of the riot. He benefits by the act of his servants and he does not take lawful means to prevent it. Therefore, he does not discharge his obligations to the State or to the Society. (*An Honourable Member:* “If he is convicted?”) If convicted, it is proved that he has so failed, and should be held to security. That is the class

of offences contemplated by this section; the House will see its effect more fully by reading the section itself than by merely referring to the schedule.

Mr. Deputy President: Amendment moved is:

“That section 155 of the Indian Penal Code be included among the exceptions.”

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—27.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sircar, Mr. N. C.
Venkatapattiraju, Mr. B.
Vishindas, Mr. H.

NOES—32.

Abdulla, Mr. S. M.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Bagde, Mr. K. G.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Sen, Mr. N. K.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Deputy President: The question is that section 157 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I do not press this, nor those relating to sections 158 and 159 of the same Code.

Mr. Deputy President: The question is that section 160 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I would like to read out the definition of affray to my Honourable friends here.

Section 160 says:

“Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.”

[Bhai Man Singh.]

Again section 159 says:

"When two or more persons by fighting in a public place disturb the public peace they are said to commit an affray."

This is such an ordinary thing, that every man at some time or other commits this offence and I do not see why such a serious aspect should be given to it and why should we take it as such a serious thing. It means that everybody in the world should be impotent and should have absolutely no spirit in him. My friend Dr. Nand Lal has pointed out that whereas the sentence is for one month the man can be bound over for three years. I think, Sir, you will see the strange position of law if you include this section within the purview of section 106.

The Honourable Sir Malcolm Hailey: If the remark regarding the universal tendency to indulge in assault had been made in Ireland, instead of in a peaceful Assembly like this, I could have understood it better. I should be sorry to think with Bhai Man Singh that everybody is liable to commit an affray at times. To turn to the law. Let me point out to him that section 106, as it now stands, contains these words "assault or other offence involving a breach of the peace." Now, it seems to me that if we retain in the preventive sections the words "assault or other offence involving a breach of the peace" we are equally entitled to retain in those sections the offence of affray. It is exactly the kind of person who, as Bhai Man Singh says, is liable to repeat assaults or affrays that we desire should be bound over to keep the peace.

Mr. Deputy President: The question is:

"That section 160 of the Indian Penal Code be included among the exceptions."

The motion was negatived.

Mr. Deputy President: The question is:

"That in clause 16 (1) for the words and figures 'section 153 A' the following be substituted:

'Sections 143, 149, 153 A or 154'."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 18th January, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 18th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

REPORT BY RAI RALLA RAM BAHADUR ON RAILWAY EMBANKMENTS AND FLOODS IN BENGAL.

185. ***Mr. J. Chaudhuri:** (a) Have the Government of India made any enquiries as to what extent the railway embankments were responsible for the disaster, caused by the Northern Bengal Flood, in the Naogaon Sub-Division and the eastern portion of Bogra district on the 26th of September last? If so, have the Government of India received any report with regard to such enquiries? When will the Government be in a position to place the report on the table and publish it for general information?

(b) Was Rai Ralla Ram Bahadur deputed to make the enquiry? If so, when and on what terms? Was he not the officer responsible for the construction of the broad gauge line between Sara and Santahar and above?

(c) In deputing him to enquire, did the Railway Board take into consideration the fact that he was to pronounce judgment on his own work? Why did not the Board associate with him an independent expert railway engineer and an expert irrigation engineer to hold the enquiry and submit a joint report?

Mr. C. D. M. Hindley: (a) Enquiries have been made and a report received. It is hoped to publish it shortly.

(b) Rai Bahadur Ralla Ram was deputed to make the enquiry early in November 1922. The terms have not yet been finally settled.

Rai Bahadur Ralla Ram was Engineer-in-Chief of the Eastern Bengal Railway from 1913 to 1919 during which period work was in progress on the broad gauge line Sara to Santahar and above. This line was built alongside the meter gauge line which was built more than 40 years ago.

(c) All relevant facts were taken into consideration in deputing Rai Bahadur Ralla Ram to make the enquiry.

An independent expert Railway Engineer in the person of the Senior Government Inspector of Railways (Circle No. 2) and the Irrigation Officers of the Bengal Government were associated with him in holding the enquiry, but a joint report was not considered desirable.

BREACHES CAUSED BY FLOODS.

186. ***Mr. J. Chaudhuri:** Will the Government be pleased to state the length of the breaches in the permanent way on either side of the Adamdighi Station of the Santahar-Bogra line and at what cost the temporary diversions were made for restoring traffic along the line?

Mr. C. D. M. Hindley: The length of the breaches was 600 feet on the east and 1,320 feet on the west of Adamdighi Station.

Information regarding the cost of restoring traffic on the line referred to is not yet available.

Mr. J. Chaudhuri: Will the Honourable Member furnish the information when it is received,—will he ask for information as to the cost of making a temporary diversion on either side of the breaches?

Mr. C. D. M. Hindley: Do I understand that the Honourable Member wishes to know the cost of making temporary diversions to carry the traffic?

Mr. J. Chaudhuri: Yes, owing to the breaches. My point is that it is better to provide waterways than to incur expenditure for repairing breaches. Will the Honourable Member obtain the information?

Mr. C. D. M. Hindley: I can obtain the information later.

FLOOD WATER CHANNELS ON SARA-SIRAJGUNGE RAILWAY.

187. ***Mr. J. Chaudhuri:** (a) Are the Government aware that two very important monsoon flood-water-channels have been dammed since the construction of the Sara-Sirajgunge Railway between Dilpashar and Lahiri Mohanpur Stations and that the railway agents have been repeatedly petitioned by the agricultural population of the neighbourhood for the opening out of sufficient waterways and thus save their crops from being annually submerged?

(b) Will the Government enquire if the late President of the Railway Board remember that this fact was mentioned by me to him in 1921 as also that an adequate opening for free passage of flood water was urgently required at the 153rd mile of the Sara-Sirajgunge Railway and he promised to enquire of the agents of that Railway and take steps for providing such water passage and will the Government be pleased to state what steps had been taken by the Railway Board and the Agents, in that connection?

Mr. C. D. M. Hindley: (a) Complaints and petitions regarding the insufficiency of waterways in the locality referred to have been brought to the notice of Government.

(b) Government have ascertained that the matter is as stated by the Honourable Member. The matter was brought to the notice of the Railway Administration and estimates called for. The original proposals are now being revised having regard to the floods of September 1922.

Mr. K. Ahmed: Who is responsible for these disastrous floods?

Mr. C. D. M. Hindley: In reply to that question, I can only ask the Honourable Member to await the report of Rai Bahadur Ralla Ram which will be published shortly.

WATERWAYS AND EMBANKMENTS ON SARA-SERAJGUNJ RAILWAY.

188. ***Mr. J. Chaudhuri:** Has Rai Ralla Ram Bahadur now recommended that opening should be provided where the Bamanjan river had been completely blocked by the high and massive railway embankment at the 153rd mile of the Sara-Serajgunj Railway and another important water passage blocked at the 154th mile?

Mr. C. D. M. Hindley: Rai Bahadur Ralla Ram has recommended one opening between mile 153 and mile 154.

BRIDGE OVER DILPASHAR RIVER, BENGAL.

189. ***Mr. J. Chaudhuri:** (a) Are the Government aware that the bridge over the Dilpashar river not being of sufficient height and width, the river develops such a strong current at the bridge during the monsoon that boats can not pass along it without grave danger and that it will appear from the local police report that many boats have been known to capsize there resulting in losses of life and cargo?

(b) Do the Government propose to make an enquiry with regard to this from the District Magistrate of Pabna and the Sub-Divisional Magistrate of Sirajgunge and take steps for remedying the defective construction of the bridge?

Mr. C. D. M. Hindley: (a) The attention of Government has been drawn to the alleged loss of boats and lives at the Dilpashar bridge which is mentioned in a pamphlet by the Honourable Member on the Bengal floods.

(b) The necessity for the inquiry suggested does not arise as a scheme for substituting larger spans at this bridge has already been approved.

APPOINTMENTS TO I. M. S.

190. ***Mr. J. Chaudhuri:** (a) Will the Government be pleased to state whether the Secretary of State for India has consulted the Government of India with regard to the 30 appointments that he proposes to make in the Indian Medical Service? Have these appointments been made in England and, if so, on what principle have the selections been made?

(b) How many Indians were temporarily appointed by the Government of India to the Indian Medical Service, during the War and how many of them have been provided with permanent appointments and how many of them are still serving in the temporary capacity and how many have been demobilized?

(c) Have the claims of those who are still serving in the temporary ranks of the Indian Medical Service for being appointed permanently to at least half of the 30 appointments, been represented to the Secretary of State by the Government of India and if so, with what result?

(d) What is the total strength of the permanent staff of the Indian Medical Service at present and how many of these are Europeans and how many Indians?

Mr. E. Burdon: (a) and (c) The attention of the Honourable Member is invited to the reply given to question No. 81, recently asked by Rai Bahadur Bakshi Sohan Lal.

(b) The total number of Indians granted temporary commissions in the Indian Medical Service during the war was 1,004; of this number, 97 have been granted permanent commissions. The number still serving in a temporary capacity is 154, while the number of officers demobilised plus casualties is 753.

(d) The present strength of the Indian Medical Service is 709; of this number, 554 are Europeans and 155 Indians.

REVERSE COUNCIL BILLS.

191. ***Mr. J. Chaudhuri:** Have the Government of India made up the account of the losses that were incurred over the sale of the Reverse Council Bills? If so, will they be pleased to state the amount?

The Honourable Sir Basil Blackett: It has been calculated that the loss on the sale of Reverse Councils in 1920, *i.e.*, the difference between the number of rupees received in India and the cost at which the funds for meeting the Reverse Councils were remitted to England, amounts to between 28 and 29 crores of rupees. A Memorandum on Exchange gains and losses during the five years 1917-18 to 1921-22, inclusive is about to be published in response to a request which was made in the other House last year.

Mr. T. V. Seshagiri Ayyar: As regards the sales of Council Bills now being advertised, do the Government expect to profit out of these, or are they likely to have the same result as in 1920?

The Honourable Sir Basil Blackett: The question of profit and loss in exchange is rather a difficult one to answer questions about, when you have a rate for accounting purposes which is 2 shillings and a rate of something like 1s. 4d. obtaining in the market. There is obviously a theoretical loss as compared with the 2s. rate; on the other hand, at the present moment exchange is being sold at something over 1s. 4d. and there is obviously a gain as compared with 1s. 4d.

Mr. T. V. Seshagiri Ayyar: Why are Government advertising for the sale of Reverse Councils?

The Honourable Sir Basil Blackett: These are not Reverse Councils. They are Council Bills, and, as was publicly stated at the time, the sole purpose of the sale of Council Bills at the present moment is to put the Secretary of State in funds for the purpose of meeting Indian expenditure at Home, and it does not imply a decision for or against any particular policy.

Mr. Jamnadas Dwarkadas: What will be the effect of the sale of Council Bills on imports and exports?

The Honourable Sir Basil Blackett: That is certainly a question of opinion, but obviously what the sale of Councils at the present moment is doing is to pay for a certain number of exports.

Mr. J. Chaudhuri: Is it not the proper thing when exchange shows an upward tendency? It does not prejudice Indian finances?

The Honourable Sir Basil Blackett: I do not think that question really arises, but perhaps I may be allowed to express the opinion that it is

better, if you have to remit, to take advantage of the moment when exchange is there than to be forced to remit at a moment when exchange is not there.

INDIA'S WAR DUES.

192. ***Mr. J. Chaudhuri:** (a) What was India's total war dues from England at the close of the financial year 1919-1920 in rupees at the then current rate of exchange and how and where have the same been paid and how much has been credited to Indian revenue in all in equivalent of rupees? (b) What losses, if any, has India suffered owing to fall of exchange in respect of such war transactions?

The Honourable Sir Basil Blackett: (a) and (b) The amount due by the War Office to the Government of India (including expenditure incurred in England by the India Office on behalf of the War Office) at the end of 1919-20 was £715,316. This amount was repaid by the War Office in April, 1920. The outstanding amount was for March, 1920, when the rate of exchange was 2s. 9d. the rupee and at the time of payment the rate was 2s. 8d.

The claims against the War Office were converted at the rate of exchange current for the month or period in which the expenditure was incurred by the Government of India and there was therefore no loss on exchange on the transactions.

EXPENDITURE ON N.-W. FRONTIER EXPEDITIONS.

193. ***Mr. J. Chaudhuri:** Will the Government be pleased to state the total expenditure incurred in connection with Waziristan and other North-West Frontier expeditions from 1920 to the end of 1922?

Mr. E. Burdon: The total military expenditure incurred in connexion with the North-West Frontier and the occupation of Waziristan, including the Wana Column, during the years in question, was as follows:

	North-West Frontier expeditions.	Occupation of Waziristan and Wana column.
	Rs.	Rs.
1920-21	6,81,80,54	14,40,10,490
1921-22	8,76,544	6,92,79,139

The figures under North-West Frontier expeditions for 1920-21 represent arrear charges on account of the Afghan War and those for 1921-22 readjustments on account of the Afghan War.

Mr. K. Ahmed: Is it worth while spending such a huge amount of money considering that there is not much prospect of getting back the amount spent?

Mr. Deputy President: That is a matter of opinion.

Mr. J. Chaudhuri: Are these figures with which my Honourable friend has furnished me inclusive of the expenditure up to the end of December, 1922?

Mr. E. Burdon: No, those figures are not available yet.

OPERATIONS ON N. W. FRONTIER.

194. ***Mr. J. Chaudhuri:** (a) How many officers and men are now employed in active service in the North-West Frontier? (b) What is the strength of the aircraft and airmen in active service there? (c) Have the air operations resulted in any saving in military expenditure there? If so, to what extent?

Mr. E. Burdon: (a) and (b) It would not be in the public interest to furnish the information desired by the Honourable Member.

(c) In so far as the matter can be judged by present experience, it cannot be said that the air operations have yet effected a saving in military expenditure.

UNSTARRED QUESTION AND ANSWER.

NON-CO-OPERATION MOVEMENTS.

87. **Lala Girdharilal Agarwala:** (a) Are the Government aware that non-co-operation against the present system of government is being preached and practised extensively in India by a certain section of the people?

(b) If so, are the Government aware of the causes of the non-co-operation movement?

(c) Have any steps been taken or are they proposed to be taken to remove the causes which lead to the non-co-operation movement?

The Honourable Sir Malcolm Hailey: (a) I am aware that it is preached; I am not aware that it is extensively practised.

(b) and (c) The Honourable Member is referred to the White paper published in England and reproduced in the columns of the Press in India on 13th May, 1922. I cannot, within the limits of an answer to a question, enter upon an exposition of causes and policy.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, may I ask if anything can be done to improve the temperature of this room?

Mr. N. M. Samarth (Bombay: Nominated Non-Official): May I ask in what direction?

The Honourable Sir Malcolm Hailey (Home Member): Does the Honourable Member refer to the moral or physical temperature?

Mr. Deputy President: I take it that it is the Honourable Member's intention to draw the attention of the Department concerned to the temperature that prevails at present and to warm it up. (*Rao Bahadur T. Rangachariar:* Yes.) Well, I have received complaints from several Members with regard to this matter and I am sure the Department concerned will do the needful to meet the wishes of the Members.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: We will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move that:

"At the end of sub-clause (i) of clause 16 the following be added:

'for the words 'three years' the words 'one year' shall be substituted'."

Section 106 comes under the Chapter for the prevention of offences. Under that section, if a Magistrate is of opinion that it is necessary to require some person to execute a bond for keeping the peace, the Court may call upon such person to execute a bond to be of good behaviour for a period not exceeding three years. So far as I have been able to find out, Sir, before the amending Act of 1898 the period specified under this section was only one year and it was changed to three years in the amended Code. In section 107, which is also a preventive provision the period fixed for a bond to prevent a breach of the peace is only one year. Similarly in section 108, also a preventive section, the period is fixed at one year. It is only under section 106 that somehow or other the period has been fixed at three years. Under sections 107 and 108 when a breach of the peace is apprehended a man can be bound over for one year. But under this section after a man is convicted of a breach of the peace, he is, in addition to that, asked to execute a bond. Under this section he has therefore to suffer two penalties instead of one, as is provided in sections 107 and 108. Moreover the punishment for the offences specified under section 106, may even extend up to seven years. Under these circumstances I submit that a period of three years in section 106 is rather excessive. It should ordinarily be fixed at one year, and if at the expiry of that period the man has not improved, then action may be taken against him under section 107 or 108. It is not necessary that at the very moment of conviction for an offence a man should be made to suffer the additional penalty of being bound over for three years. I therefore commend to the House that the period of three years provided under section 106 is excessive and unnecessary, and in its place a period of one year be prescribed.

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member is I think inaccurate in his history of the case. If I understood him correctly, he said that, until the revision of 1898, the period had only been one year. I find, however, that in 1861 the period was one year if the order was passed by a Magistrate and three years if the order had been passed by a Court of Session. Subsequent Codes, for instance the Code of 1882, give three years when passed by a Magistrate. The provision, therefore, has stood for a considerable period of time.

Now, I do not wish to lay too much stress on the mere length of time during which this provision has stood in our Code. I think it can be defended on its merits. The Honourable Member says that, since under section 107 one year is sufficient, the period of three years under this section is, to use his own words, "rather excessive." I note that on this occasion he is milder in his condemnation of the preventive sections of our laws than he has sometimes shown himself, and he is obviously not fully convinced of the injustice of providing this period of security. But what

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are the facts? Under section 106 a man must already have been convicted of an offence and it must be an offence, as we saw yesterday, of a nature which argues in itself that he is likely to repeat an action which will lead to a breach of the peace or other disorder. Now, there may be parts of the country where people generally are of so peaceable a disposition that violent breaches of the peace, at all events on a concerted scale, are not common. But those who know Northern India will bear me out when I say that there are areas where vendettas live long with its baleful history of crime, there are places where a village quarrel once begun involves not only long litigation but a long history of violence. Is it unreasonable, therefore, that, when people have been convicted of rioting or one of the graver offences which we left yesterday in the section, that the Magistrate should say "There is every reason to believe that these people will continue in their career of violence. It is no use my binding them to keep the peace for twelve months. There will be no really preventive or deterrent effect unless I am able to bind them over to keep the peace for three years." That is not an unreasonable requirement in itself. But there is another side to the question. When the Magistrate has a case of this kind before him he is himself able to temper punitive justice. He can give a shorter period of imprisonment if he knows that by a due use of this salutary section he will secure a longer period of keeping the peace; and this constitutes the substantive reason why it is necessary and advisable to provide for so long a period as three years. I do not remember that we have received suggestions elsewhere for curtailing this period. As I have said, it has stood long. I would put this consideration to the House that, if the public generally, if legal associations generally, if the High Courts, in commenting on the provisions of our amending Code, have found nothing seriously at fault with a provision of this nature, it is inadvisable here and now to upset it on what seems to me at all events *a priori* considerations and on—and I do not wish to use too harsh a word—the somewhat vague considerations put forward by the Honourable Member.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I am afraid I must join issue with the Honourable the Home Member with reference to the last portion of his remarks. We are here, Sir, as representatives of the people and we cannot delegate our functions to other persons however highly placed they may be. We are here to see that legislation is properly enacted. The mere fact that other persons have not noticed the hardship of a particular legislative provision is no ground for us to refuse to consider that question on its merits. Sir, let us consider this question on its merits. I am really surprised that the Government should take this attitude on a matter like this. Here we have yesterday included offences which ought not to have been included under this section. The Honourable the Home Member told us to-day that we have taken care only to include offences which involve a likelihood of a repetition of a breach of the peace. I doubt whether we have done so at all. If two women quarrel in a bazar, that is a common affray. If we, for instance, go to a railway station and have hot words with the railway or the ticket clerk, that is an affray. It is a public place. And, for instance, if some of us lose our temper here and exchange hot words, as may not be unlikely, that is also an affray. For all these things you can give one month's simple imprisonment or even let off with a fine of Rs. 5. But the section says you may be called upon to give security for a period not exceeding three years.

The Honourable Sir Malcolm Hailey: Will the Honourable Member kindly read the definition of "affray."

Rao Bahadur T. Rangachariar: I will gladly be corrected if I am wrong, but I do not think I have overdrawn or underdrawn the picture.

The Honourable Sir Malcolm Hailey: But read it.

Rao Bahadur T. Rangachariar: Anyway, in simple offences for which a man may merely get a fine you still give the power to a Magistrate to bind him over for keeping the peace for three years. Look at the hardship of it; look at the difficulties of getting sureties. After all you have to get sureties to stand for you and they have to be watching your movements for three years. It will be a considerable hardship on people to produce those sureties. What is the necessity for giving such long periods, as if the man will not improve within the year. It is merely keeping a sort of machinery *in terrorem* over his head. Look at the moral effect it has upon the man. You do not give him a *locus poenitentiae* and you keep him as a suspected citizen and make him more and more troublesome to the country. I do not think it is at all right that this sword should be kept hanging over a man's head for such a long period. One year is a reasonably long period and I do not see that there should be any objection to reducing it. I do not understand what is the logic of it. As we all know this period commences after he comes out of prison. First of all he is sentenced to imprisonment for the offence and there he is safe away, it may be for one year, for two years or for three years, as the case may be. Having been in jail, he comes out and then security is to commence from that date for two years or three years after the date of his release from jail. You do not give him a chance to improve; on the other hand, you make a worse citizen of him than he would ordinarily be.

Therefore, considering it from all points of view, I submit that the amendment moved is a modest one and I commend it to the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, the Honourable Member declined the invitation of the Honourable the Leader of the House to read the definition of an affray.

Rao Bahadur T. Rangachariar: I have not got it with me, otherwise I would have done so.

Mr. H. Tonkinson: So I propose to do so now. Section 159 of the Indian Penal Code reads as follows:

"When two or more persons by fighting in a public place, disturb the public peace, they are said to 'commit an affray'."

I would only invite the attention of the House to the fact that section 106 has always included assault. It has also always included offences involving a breach of the peace. Sir, if two or more persons disturb the public peace by fighting in a public place, surely that is an offence involving a breach of the peace. The section in question has always been included within the purview of section 106 and could not have been excluded having regard to the words which follow in section 106 as it will be when amended by the Bill.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): What do you mean by "disturbing the public peace" when two people quarrel in the street.

Mr. H. Tonkinson: Those are the words, Sir, in the Code.

Mr. T. V. Seshagiri Ayyar: True, but you can disturb the public peace by words.

The Honourable Sir Malcolm Hailey: You certainly cannot commit an affray.

Mr. H. Tonkinson: "By fighting in a public place" are the words in the section.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I think there is some misapprehension with regard to the scope of this clause to which exception is taken by the Honourable Mover of the amendment and those who sustain it. The arguments that they have advanced in support of the amendment appear to me to proceed upon this basis, that in every case a man is to be bound down for three years. It is nothing of the kind. That period is merely a maximum giving power to a Magistrate in an extreme case to pass the maximum sentence. The actual term which is to be fixed for each particular case must necessarily be left to the discretion of the tribunal called upon to make the order. A celebrated lawyer of England once said that the wisest rule that the brain of man can devise can be reduced to an absurdity by putting up an extreme case. I readily admit that if upon a first conviction for a simple affray in the street or at a railway station a Magistrate were to convict the parties, fine them Rs. 10 each and then bind them down for three years, the order would be an absurdity. But I will take the very illustration which my extremely able friend, Mr. Rangachariar (if I may so speak of him) took, that of an affray caused by the action of a railway official at a railway station. Now I take it that my friend has come from time to time to Delhi. Let us suppose that on the platform there is a ticket-collector, an Irishman, with an uncontrollable temper. We will take it that his rudeness leads to an affray which comes before a Court and for which he is punished during one session of this Assembly. At the next session he repeats his rudeness to my friend again, and again brings about an affray. On this occasion the Magistrate says "It is not enough to fine you. You are evidently a man who has not got much control over himself and therefore I will bind you down to keep the peace for a year." Notwithstanding that, at the next session the whole thing is repeated once more. Surely, in a case like that, though it is only an affray, the whole of the public will call upon the Magistrate to tie down that man for three years so that the public may have peace for that time at least. That is a case of a simple affray where the wise discretion of the magisterial power would be able to meet the case to the satisfaction of all people. This is only an enabling term to meet all possible cases. It is in one case of affray probably out of a hundred in which any Magistrate would resort to these powers at all; and it is certainly not more than one case out of five hundred in which he would be impelled by his sense of justice to fix anything like the maximum period. Therefore I say that we are not condemning all offenders to a three-year bondage. We are merely giving a Magistrate a maximum power which would be rightly exercised by him in a case which was extreme. Therefore unless it can be shown that granting this power to the Magistrate has been the cause of abuse or undue persecution or injustice in the past, we ought not in this work of amendment to interfere with an old standing rule.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the amendment has been based on a number of grounds—as for instance, that the preventive section 107 of the Criminal Procedure Code only fixes one year, that in the case of a man who has already been convicted, section 106 will be applied simply to prevent him from committing the same offence again, and that in the present Criminal Procedure Code we have only this session introduced also Chapter VIII of the Indian Penal Code, therefore the period of three years seems to be very excessive. To my mind, none of these grounds has categorically been refuted. Now the grounds which have been advanced in opposition to this amendment are that the law relating to three years has stood the test of many years, that it is simply a period which will hardly be used in practice in respect of petty cases, and that it is a maximum period which in all cases probably will not be resorted to. These are the grounds which have, as already submitted, been advanced in opposition to this amendment. Now we have got to examine these grounds. After having compared them I feel constrained to arrive at this conclusion, that the contentions, raised on behalf of the Government, have no force.

Now, great emphasis has been laid on the interpretation of sections 159 and 160, Indian Penal Code. When I read the provisions of section 159 the words which I think have got greater applicability are the words "disturb the public peace." But when we come to the provisions of section 107, Criminal Procedure Code, the words are "likely to commit a breach of the public peace." Now the Honourable the Home Member will readily accede to my contention that there is a great difference between these two forms of wordings "To commit a breach of the public peace" and "to disturb the public peace." These two different expressions have got quite different meanings. I think he will agree with me when I raise this point that to disturb the public peace is of a very mild character, and if he concedes that, then he will, I believe, concede so far as the mitigation of the period also goes. Now, Sir, at the time of framing any rule or making any rule of law, three things ought to be taken into consideration very seriously; one the propriety of that rule of law; and the propriety of that rule of law is to be judged with reference to the circumstances or with reference to the data which formulates the grounds and reasons for framing that law. Now, in the present Code, as I have already submitted, section 160 of Indian Penal Code has also been incorporated; and what is the punishment? The punishment, you will be glad to see, is one month or fine. Now a man is punished to undergo one month's imprisonment or sentenced to pay a fine of Rs. 5; but when he gets released from jail then he may be bound over for three years. Is there any propriety in this? The fine is five or ten rupees, or the imprisonment is for one month; but after his release from jail he may be bound over for three years. (*Cries of "Why?"*) It is quite true the words are "may be"; of course I cannot ignore the words "may be." But the first class Magistrate can pass that order; there is no law that prevents him from passing that order. He has got the competency to do that. If he is competent to pass that order, there will be no clog in his way to do so. I do not mean to say that the Magistrate shall; he may; therefore, there is yet no propriety, and I think the Government Benches will be well advised if they will accept this amendment. The second point which I wish to urge is, that in most cases severity of sentence produces a great amount of sympathy for the man who has been punished. So if this provision, relating to the period of three years, is incorporated in the present Criminal Procedure Code it is sure to invite criticism in

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some quarters and there will be great sympathy with the man who has been bound over for three years and that sympathy will go against the proposed provision of this section, under discussion, namely, 106, Criminal Procedure Code. Therefore on that score also I appeal to the Government Benches that they will very kindly accede to this contention which has been raised by the Honourable Mover of the amendment, that the period may be reduced to one year.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I am afraid I cannot agree with the proposal that the period of three years be reduced to one year. As a Magistrate of some experience, more especially in the outlying parts of Sind and the Upper Sind frontier district, where there are almost perpetual feuds between some sections of the community which begin with very small beginnings but go on for a number of years, sometimes even up to 20 years, I have found that revenge has been taken not only by the sons of the people originally involved, but even by their grandsons; and disputes lead to very serious results in the course of time, even to murders and bloodshed. In such cases it is necessary that such breaches of the peace should be nipped in the bud by binding down people for a much longer period than one year if the peace of the country is to be maintained. At the same time I admit that the period of three years looks rather a long period, more especially as I believe this order is not appealable—I am speaking subject to correction—but at this present moment I do not remember that this order is appealable. . . .

The Honourable Sir Malcolm Hailey: Yes.

Mr. W. M. Hussanally: I think it can only be revised but not appealed against. . . .

Mr. H. Tonkinson: Subject to the provisions of sections 411 to 418 of the Code any person convicted has a right of appeal.

Mr. W. M. Hussanally: Not against the order of being bound down. On that point I am not sure at the present moment, but my impression still is that the conviction can be appealed against but not the order binding him over for a particular period. But whatever that may be, I think it will be a fair compromise if the period of two years is put down. If that is approved by the Government as well as by my friends on the other side, and if I am allowed to move that amendment I shall do so with pleasure.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I trust the House will not allow themselves to be led away by the arguments that have been used by Mr. Rangachariar and Dr. Nand Lal. Both these speakers have argued their whole case by choosing an extreme proposition and it is the more remarkable that they should have done so—at all events that Dr. Nand Lal should have done so—after the very careful exposition of the matter which the Honourable the Home Member has given. Now, do any Members of this House really seriously believe that any magistrate is likely to bind over for a period of three years a person who is convicted for the first time of a petty assault or an affray at a railway station? Honourable Members know perfectly well that such a thing is most unlikely to happen, and that if it did happen, there are superior Courts which could certainly deal with the case. It can be dealt with on appeal or, quite apart from

the question of appeal, there are such authorities as District Magistrates and Sessions Judges who would call for the papers in such cases and upset an absurd order of that character; and in the last resort there is the High Court. Those Honourable Members who ask us to amend the clause in order to provide against an absurdity of this sort really ask us to alter the Code so that the magistrate should not have the power to bind over for three years, even though in serious cases they do require it. We have heard from the last speaker from his own experience that small beginnings may develop into very serious matters that may call for a long period of restraint by means of a bond; and if the House is going to yield to these arguments it means that the magistracy will be deprived of a power which they now possess of maintaining the public peace. There is one further point which was referred to by the Honourable the Home Member which I should like further to emphasise. And that is, the fact that the provisions of this section empower a Magistrate to give a small substantive sentence because he knows that he can keep the peace for a further period merely by the imposition of a bond. I have no doubt that many Honourable Members have studied the recent Report of the Committee which was appointed to investigate Prison Administration, and one of the points which they have dealt with at great length is the necessity for some provision in the law which will make it possible to keep offenders under supervision without condemning them to undergo actual detention. This is one of the sections in our existing law which makes that possible and I have no doubt that every Member of this House, who is also a Magistrate, must on several occasions have had an opportunity of making use of this section to enable him to inflict a smaller substantive sentence.

Finally, there is just one point which I should like to refer to in Mr. Rangachariar's speech. He inquired, where was the logic for giving a First Class Magistrate power to bind over a man to keep the peace for three years when he can only impose a substantive sentence of two. Well, I confess this is a mathematical argument which I find it rather hard to follow. If it is going to be carried to its logical conclusion, we ought to give a Sessions Judge power to bind over a man for 7 or 10 years or 20 years or even for life. I do not really think that it is an argument on which any stress can be laid. I would again appeal to Members of this House to realise that if simply on account of the bad cases, the imaginary bad cases, that have been put up before them, they are going to alter the law, they will be causing a serious defect in the Code and I would add that if it had been the intention of Honourable Members who support this amendment really to do away with the possibility of Magistrates requiring a bond for a long period in petty cases such as an affray, the proper means to adopt would have been to move a separate amendment bringing cases of that kind under a separate regulation, and not to impair the power which the law gives to Magistrates to deal properly with really grave cases.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move, Sir, that the question be now put.

Sir Montagu Webb (Bombay: European): I move, Sir, that the question be now put.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I have also given notice of the same. I think if the fate of this amendment is decided I shall not have a chance of speaking. . . .

Mr. Deputy President: I shall give the Honourable Member an opportunity to move his amendment at the proper time if he likes.

Mr. B. N. Misra: Sir, the amendment is the same.

Mr. Deputy President: Order, order. The question is that the question be now put.

The motion was adopted.

Mr. Deputy President: The amendment moved is:

"That at the end of sub-clause (i) of clause 16, add the following:
'for the words 'three years' the words 'one year' shall be substituted'."

The motion was negatived.

Mr. Deputy President (to Mr. B. N. Misra): Does the Honourable Member wish to move his amendment?

Mr. B. N. Misra: That is why I was appealing to you to give me an opportunity to speak on my amendment.

Mr. Deputy President: I am told it drops out. It cannot be moved.

Mr. K. B. L. Agnihotri: Sir, I do not wish to press my second amendment* contained in item No. 36.

Mr. Deputy President: The question is that clause 16, as amended, stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: I beg to move:

"Renumber clause 17 as 17 (iii) and before sub-clause (iii) insert the following sub-clause:

'(i) in sub-section (1) of section 107 of the said Code for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' shall be substituted and the words 'by wrongful act' shall be inserted after the word 'person'."

Mr. Deputy President: May I draw the Honourable Member's attention that he might deal with the first part only?

Mr. K. B. L. Agnihotri: Yes, Sir. I wish to take the first part only. Here I think I am on surer grounds according to the Honourable the Home Member because the word 'informed' has been found to be very contentious and there have been many rulings by High Courts as to what the word 'informed' should mean. It is desirable therefore that the meaning of this word be made more clear when we are now amending section 107. I therefore propose, Sir, that for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' be substituted. Under the law as it stands, the Magistrate has no other alternative but to proceed against any person under section 107 the moment he receives an information as to the likelihood of his committing a breach of the peace. Of course, the High Courts have been vested with large powers to give proper interpretation to the words used, but the law as laid down in that section is not clear. It is therefore with a view to avoid the difficulties that have been felt by Magistrates that

* "In clause 16 omit sub-clause (ii)."

the meaning of this word be made clear. In certain provinces circulars have been issued asking the police officers not to put up such cases until the District Superintendent of Police permits them to do so. All these difficulties could be overcome if we were to put in, in clear language the exact meaning of this word in the way I have suggested. It is also necessary that the Magistrates should not proceed on the mere information of a police officer but they should require some evidence to support the allegations on the report of the police officer. It is just possible that in emergent cases it may not be convenient to produce witnesses before the Magistrate to support the police report, but in practice we find that the police officers generally put up cases where they have received a number of complaints to that effect. At the same time, during the period necessary for referring the matter to higher officers and for obtaining permission the necessary evidence could be secured for production before the Magistrates. I therefore submit, Sir, that it is necessary in the interest of justice and to safeguard the interests of the people that the courts should be satisfied on any information and on taking such evidence as is adduced, before they issue any such process as provided in section 107. With these words, Sir, I commend my amendment for the acceptance of this House.

Mr. Deputy President: The amendment proposed is:

"Renumber clause 17 as 17 (iii) and before sub-clause (iii) insert the following sub-clause:

'(i) in sub-section (1) of section 107 of the said Code for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' shall be substituted and the words 'by his wrong act' shall be inserted after the word 'person'."

Mr. K. B. L. Agnihotri: I have dealt only with the first portion of the amendment, Sir.

Rao Bahadur T. Rangachariar: Sir, may I be permitted to move a small amendment to this amendment of Mr. Agnihotri's? I am sure my Honourable friend will also accept it. I would move:

"That the words 'or evidence' be substituted for the words 'and on taking such evidence, if any, as is adduced.'"

I may explain, Sir, what I mean by it. Having regard to the nature of the case the Magistrate has to take action in order to prevent a breach of the peace. He either acts on information or on evidence. The information will be in the shape of police reports, I take it. It is clear, as the section now runs, he is merely informed. I want him to take some responsibility before he takes action. I am quite prepared to trust the magistracy of this country, as the Honourable Mr. Haigh would ask us to do, but there are Magistrates and Magistrates. I know a Magistrate who, if Rangachariar travelled from Howrah to Madras and the Magistrate on the way at Waltair receives information that Rangachariar is going to deliver a speech at Madras, he takes action at Waltair station under section 107. When I am in the train I am arrested, taking action on some information from the Howrah police or some telegram or other, and I am detained at Waltair to prevent me from giving a speech at Madras. Will the Honourable Mr. Haigh believe that such things happen? They do happen. They have happened. There are Magistrates and Magistrates. Would the Honourable Member believe that 107 is used for all sorts of purposes? If I go and stop outside a toddy shop and preach to

[Rao Bahadur T. Rangachariar.]
 my friends "don't drink," the contractor says "Rangachariar is going to commit a breach of the peace by preaching 'don't drink.'" The contractor, of course, gives information, the Magistrate is satisfied. His revenue suffers, Ministers suffer for want of money to carry on their development programme and the Government suffer for want of revenue. Now, here comes the Magistrate and says "use 107." Would any Magistrate in England dream of taking such a step? Here we have had Magistrates who have done it. It is on the mere colour of information of this sort that action has been taken under section 107 in various matters when, if public opinion were really strong, if the Honourable Sir Montagu Webb and others would join hands with us in such matters, Magistrates would be taught a better sense of their duty. And what action has been taken when this matter was brought to the notice time and again of the Government authorities? This matter of the arrest at Waltair by abuse of this section was brought to the notice of the Home Member in this House by me twice or thrice. Well, what action has been taken against the Magistrate? Did the Legislature ever contemplate the use of this section in such a way that a man travelling between Howrah and Madras, not being a resident of Waltair, should be detained at Waltair and bound over? Was this section ever contemplated to be used in that manner? What do the Government authorities do to deal with the Magistrate? If at least those who control the action of the magistracy take steps to punish such cases, then we can have full confidence in them. But on the other hand, they get M. B. E.'s and O. B. E.'s and promotion. Sir, it is because of this—not that we want to distrust Magistrates, not that we want the public peace broken, but, Sir, we have had bitter, sad experience of the way in which this section has been used, abused, misused. That is why we want to put in some safeguards so that the magistracy cannot take action like this. A Magistrate is informed by telegram. What is the responsibility he takes? Is he satisfied? Should he not be satisfied on the information? Therefore, I ask that the Legislature should throw some responsibility on the Magistrate by the language of the section itself. Therefore, he should be satisfied "on information or evidence." That would make him pause and hesitate and that action would be open to revision by the higher authorities; but mere information—he will simply take shelter under this section and say "I was informed. I did not care to investigate whether it was credible information or not." He is not even told that it must be credible information, as we have in the case of the police when they have to arrest. If he is informed merely, he can take action under section 107. I think, Sir, that it ought not be left like that. At the same time, I cannot agree with my Honourable friend, Mr. Agnihotri, that you should make it compulsory on the Magistrate to take evidence in all cases. That is why I make it "or." I should very much like to make it "and" but I think it would be putting fetters on the Magistrate, because he may take action on police reports. Then you have some inquiry afterwards. As my Honourable friend knows, the first thing is that a notice is issued under section 112, then evidence is taken, in the presence of both parties. It is far better too that evidence is not taken before because you will be tying down witnesses beforehand. If you compel a Magistrate to take evidence beforehand, namely, in the absence of the parties, you run the risk of getting the witnesses committed beforehand, even before the accused has had an opportunity of cross-examining those witnesses. Therefore, there is that risk if you compel evidence to be taken beforehand. So

that you will be reduplicating work by insisting on evidence being taken beforehand and you will be throwing additional risk in the way of the accused. But at the same time I ask that the Magistrate should be held responsible for action taken under 107, and I therefore hope that my friend, Mr. Agnihotri, will accept it and I hope the House will also accept my amendment. If Honourable Members will turn to section 96 of the Code. Section 96 or 87, where action somewhat similar has to be taken by Magistrates, section 87, which deals with a "proclamation for the appearance of a person against whom a warrant has been issued," also says "if the Court has reason to believe (whether after taking evidence or not)" So also in section 96 "Where any Court has reason to believe, etc."

It will be more satisfactory than the present state of things, and therefore I commend my amendment to the House.

Mr. Deputy President: Further amendment moved:

"That the words 'or evidence' be substituted for the words 'and on taking such evidence, if any, as is adduced.'"

Sir Henry Moncrieff Smith (Secretary: Legislative Department): Sir, my Honourable and learned friend, Mr. Rangachariar, has in his concluding remarks very ably disposed of the substance of that portion of Mr. Agnihotri's amendment by which he would require evidence to be taken in every case. Mr. Agnihotri indeed based his argument for the amendment on the ground that High Courts had found great difficulties with regard to section 107 which necessitated an immediate amendment of this word "informed." I have looked at the rulings. I know there are numerous rulings on the subject of section 107. But as far as I can see, the difficulties have not arisen from the use of the word "informed" merely. At all events numerous difficulties have not arisen with regard to that word. Mr. Rangachariar has moved an amendment to Mr. Agnihotri's amendment which would have the effect of substituting for the word "informed" the words "satisfied on information or evidence". He has given us his own experience in Madras. (*An Honourable Member:* "Not his own.") Mr. Rangachariar deceived me, because I understood him to say that the Magistrate fearing that Mr. Rangachariar was going to deliver a speech at Madras had him arrested at Waltair. (*An Honourable Member:* "Not he, but his friend.") Mr. Rangachariar's friend had an unfortunate experience, and I am sure every Member of this House sympathises with him. But the amendment which Mr. Rangachariar proposes would make no difference whatever in the case of his friend. Mr. Rangachariar has overlooked the fact that the Magistrate who took his friend out of the train at Waltair and arrested him was not acting under section 107, sub-section (1) which we are now considering, but was acting under section 107, sub-section (3). Now, under sub-section (3), on this particular point at all events, we have no amendment before us. The wording of section 107 (3) is different. It is "When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace, etc." Here we have "has reason to believe". It is not merely information, but "has reason to believe." It is perhaps a little less strong than "satisfied", but nevertheless it was not merely information that the Magistrate in Madras could have acted on. He must have had reason to believe. Otherwise his order was not justified. Therefore, this pitiable picture which Mr. Rangachariar has drawn should, I think, be dismissed by Members of this House from their minds at once,

[Sir Henry Moncrieff Smith.]
 because it is entirely irrelevant to the matter which is now before us. Let us confine ourselves to section 107 (1), that is, a Magistrate on the spot who is taking action against the man on the spot, not a Magistrate sending a telegram to some one in another District to take action. All the arguments that have been used in favour of this amendment have for some unknown reason—I do not know what it is—assumed that action under section 107 is always taken by a Magistrate at the request of the police—on a police report. Well, my experience is—I have been a Magistrate for a considerable number of years myself and there are many others in this House who have been Magistrates too for long periods—that action under section 107 generally follows an application made to the Magistrate, and in that case, there is nothing whatever to prevent the Magistrate calling for additional evidence. Therefore, from that point of view, the addition of the words “or evidence” does not carry us any further. Mr. Rangachariar leaves it still to the discretion of the Magistrate as to whether he will call for additional evidence or not. The Magistrate always has that discretion. We do not want to provide for the taking of evidence in this case because there is always the power to call for evidence if the Magistrate wishes to get further information.

Now, we are left with the difference between “is informed” as we have it in the Bill and “is satisfied on information” as the movers of these two amendments would have it. I think perhaps that Mr. Rangachariar has been a little inclined to overlook what section 107, sub-section (1), is and to what it is leading. The Magistrate is informed that a person is likely to commit a breach of the peace. He just issues a summons for the man to appear and show cause why an order should not be made against him to keep the peace. Under 107 (1) the Magistrate does not issue an order to the man at once to give security. It is merely a summons to come before him and show cause why an order should not be made. That is a very different thing indeed. They are two very different propositions. If the Magistrate was going to issue an order under the first sub-section to any person at once to find security to keep the peace, well then I quite agree that the words “is informed” are nothing like strong enough. But what happens? Let us take the case of an ordinary complaint to a Magistrate that an offence is actually being committed. In 95 cases out of 100 what does the Magistrate do when such a complaint is made before him? He examines the complainant. He has got to do that. But he does no more. He makes no further inquiry. Out goes the summons and the accused has got to appear before him. That being the case, is there any reason why, in this which is the preliminary corresponding step to the presentation of a complaint of an offence before a Magistrate, the Magistrate should require anything more than information where he has indeed the power to call for evidence if he wants to? I do not think, Sir, there is really very much more to be said on this matter. The case has been misrepresented by Mr. Rangachariar. The difficult case which he placed before us arose, not under sub-section (1) which we are now dealing with, but under sub-section (3). The Magistrate has power to issue a summons on a mere complaint in writing. Why should he not have equal power when information is given to him to issue a summons requiring a man to appear and show cause? That is what happens in every criminal case based on complaint or information.

Rai Debi Charan Barua Bahadur (Assam Valley: Non-Muhammadan):
 In my humble opinion, the Honourable Mover of this amendment has:

rightly hit upon the flaw in the law as it stands at present. We are chiefly concerned with the source from which the information has emanated. Now, as the law stands at present, the Magistrate is simply concerned with the information and is not concerned with the source from which it has emanated. The source may be a man of immature understanding, or even a lunatic. The present law does not make any difference whatsoever whether the information comes from a person who is a deliberate liar or a person who is of immature understanding or a lunatic. So, it is quite necessary that, before action is taken, before the machinery of criminal law is moved, the Magistrate should be satisfied. Without his satisfaction no steps should be taken in the matter. A man should not be disturbed, he may have many callings to attend to, and in the midst of those callings he should not be disturbed. The man moved against may have many enemies. Those enemies very often find it convenient to move the Courts from time to time against him. So, to make a safeguard against all these things it is very proper that the Magistrate should not only be informed but he should be satisfied by some sort of inquiry, whether private or public, or by taking any evidence whether *in camera* or in the open Court. It makes no difference, but he ought to be satisfied. There ought to be some person who should be responsible for the issuing of the summons or warrant, and he should also be responsible for the inconvenience suffered by the man to be brought before the Court. So, considering these circumstances, it is quite proper that the amendment should be made. With these words I beg to support the amendment.

Mr. B. Venkatapatiraju (Gunjam *cum* Vizagapatam: Non-Muhammadan Rural): I expected that Government would accept the reasonable amendment proposed by the Honourable Mr. Rangachariar, and I am sorry to say that Mr. Rangachariar had to condemn a Magistrate of Vizagapatam, from which district I come. But I can assure Mr. Rangachariar that the Magistrate, though he was obliged to utilise this section, was not at all responsible for it, when we know the true circumstances which necessitated the arrest of Mr. Muhammad Ali at Vizagapatam. The warrant issued against him in order to prosecute him at Karachi by the Bombay Government had not been received in time, but the Magistrate was ordered to detain him. He did not know under what section he could detain him, and therefore he thought that section 107 was the only possible section that he could apply before he received the warrant. Therefore he detained him there and showed him every respect and every consideration. He treated him very well awaiting the receipt of warrant. As soon as the warrant was received from the Bombay Government he was released and was arrested on the warrant. Therefore I say that the Magistrate was compelled to do that under the system under which he was working and was not at all responsible for the thing he did. Now, in these days we must protect ourselves against a very possible abuse of power, whether intentional or unintentional. In this case what my Honourable friend, Mr. Rangachariar, has suggested was actually in the old Code. It was somehow or other removed and the word “informed” was put later on. Under the old Code of 1872, in the corresponding section of 491 the words used here in place of the word “informed”, the words “any report or other information which appears credible and which the Magistrate believes” Why on earth this clear phraseology was removed and that ambiguous word “informed” was substituted I cannot say, but we find a certain difficulty in interpreting that word because in order to

[Mr. B. Venkatapathiraju.] take a Magistrate to task we must say that he is acting on his own discretion, when he is satisfied on information or evidence. It may be the Magistrate may say even on the information of the police, "I am satisfied". But the point is that he must be satisfied and not merely be informed. But as the section stands at present, if you say "informed", you cannot blame him because he has acted on the information received, because he is not doing anything illegal, though he is not satisfied, if he proceeds under it. Therefore the old language and the present suggestion of Mr. Rangachariar are quite in consonance with each other and will achieve the object which the Government has at heart. I therefore appeal to Government that they will agree to a clear and unambiguous language being used in the Act in order to avoid misconception and abuse of power.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, in order to form a correct opinion upon the merits of the amendment now before the House, it is, I venture to submit, necessary to refer to certain other sections of the Criminal Procedure Code. As it has been pointed out by the Honourable Sir Henry Moncrieff Smith, all that section 107 warrants a Magistrate to do is to issue a notice to the person informed against to show cause why security should not be taken from him to keep the peace. After the notice has been issued, or rather when the Magistrate has made up his mind to issue such notice what is he by law required to do? If Honourable Members will turn to section 112 of the Criminal Procedure Code, they will find that according to that section:

"When a Magistrate acting under section 107 (that is, the section with which we are at present concerned) deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required."

Now, even a cursory perusal of this section will make it quite clear to Honourable Members that the Magistrate is required by the provisions of this section, in addition to certain matters, to inform the person against whom the order to show cause is issued, of the substance of the information which the Magistrate has received. (Mr. T. V. Seshagiri Ayyar: "Why?") Then, section 113 proceeds to say:

"If the person in respect of whom such order is made is present in Court, it shall be read over to him, or if he so desires, the substance thereof shall be explained to him."

Then, according to section 115:

"every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same."

So it will be seen by Honourable Members that before the date of his appearance before the Magistrate to show cause the person against whom the proceedings are being taken is furnished fully with all the information that is necessary, even with a copy of the order which the Magistrate has recorded before the issue of the process, in order to enable him to meet the case on his appearance in Court. But this is not enough. You will see what certain other sections require in addition. Section 116 says:

"The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered" and so on.

Mr. T. V. Seshagiri Ayyar: The question now is about the first stage. There are subsequent stages. We are now concerned with the earlier stage.

The Honourable Dr. Mian Sir Muhammad Shafi: But is there any ground whatever either in equity or in law for requiring anything further than what is mentioned in section 107? I am trying to substantiate the position that there is none. I am trying to show that the Code of Criminal Procedure provides for every possible safeguard in so far as the interests of the person against whom the order to show cause is issued are concerned. And now if you will turn to section 117 it enacts:

"When an order under section 112 has been read or explained under section 113 to a person present in Court or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary."

It will be clear therefore from a perusal of these sections that under section 107 a Magistrate acts upon the information which has been received by him that a certain person is likely to commit a breach of the peace, he sends the substance of that information to the person concerned and on the appearance of the person concerned before him, he proceeds to inquire into the truth of the information which has been given to him and upon which information process has been issued against the accused. The word 'accused' is really a misnomer in cases of this kind. The person proceeded against has the fullest opportunity of showing cause and testing the veracity of the information received. He, as a matter of fact, can, under the law, require the police or whoever is really acting in the matter to produce evidence to prove and it will be on the prosecution to prove that there is any intention on the part of such person to commit a breach of the peace. In the absence of such evidence of course no Court will be warranted to require him to furnish security.

The Honourable Sir Henry Moncrieff Smith pointed out to the House that even in more serious cases of commission of offence all that is needed is either complaint or information and in that connection I would invite the attention of the House to section 190 of the Criminal Procedure Code. This is what the section says:

"Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate and any other Magistrate specially empowered in this behalf may take cognizance of any offence (and here I refer to (c) as we are not concerned with (a) and (b) in connection with the point which is now before the House) upon information received from any person other than certain persons named that such offence has been committed."

So you will see that the Legislature in section 107 has practically adopted the same phraseology with reference to action upon information as they have adopted in section 190 in ordinary prosecutions for an offence. Where is there any reason therefore to justify any change of phraseology in section 107 when even as regards the commission of offences exactly the same phraseology has been adopted by the Legislature in section 190 of the Criminal Procedure Code. I submit that the nervousness which is displayed in certain quarters in connection with the language used in section 107 is really not justified. There is another section in the Code of Criminal Procedure to which in this connection I ask leave to refer and that is section 204. It says:

"If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which according to the fourth column of the Second Schedule a summons should issue in the first instance he shall issue his summons for the attendance of the accused."

[Dr. Mian Sir Muhammad Shafi.]

Now Honourable Members will see that the procedure laid down in this section 204 is practically identical with the procedure laid down in section 107. So far as Government is concerned they would not mind changing the phraseology so that the words in section 107 should be the same as the words in section 204. That really does not touch the substance, but the substance so far as the question is concerned is this: These three sections really stand on identical footing and there is no reason whatever to introduce in section 107 anything further in substance than what is contained either in section 204 or section 109.

Rao Bahadur T. Rangachariar: If the Honourable the Law Member will accept the words "If in the opinion of the Magistrate there is sufficient ground for proceeding", etc., we have no objection to that.

The Honourable Sir Malcolm Hailey: The exact words will be "The Magistrate may, if in his opinion there is sufficient ground for proceeding," etc. The procedure is exactly the same as in 204.

Rao Bahadur T. Rangachariar: Will you kindly move it in that way?

Mr. Deputy President: The question is:

"Renumber clause 17 as 17 (ii) and before sub-clause (ii) as renumbered insert the following sub-clause:

(i) That in sub-section (i) of section 107 of the said Code after the words 'The Magistrate may' the words 'if in his opinion there are sufficient grounds for proceeding' shall be inserted."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the second amendment to this clause which I have notified to move is that the words 'by his wrongful act' shall be inserted after the word 'person.' The relevant portion of the present section as it stands is that any person is likely to commit a breach of the peace, or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity. As the words 'to do any wrongful act' does not govern the former portion of the clause, I fear that any person is likely to be summoned under section 107 and be bound over for keeping the peace even though the likelihood of a disturbance of the public tranquillity be by his rightful act. The clause is ambiguous, it is not clear and may make a man liable to be bound over, even for his rightful act. I, therefore, wish to substitute that only such person be bound over to keep the peace for a disturbance of the public tranquillity whose action be wrongful, and should not be liable if his action be rightful. Sir, sometimes it may happen that a person may be engaged in doing an act or saying something which he may have a right to do and say and it is likely that his speeches and actions might indirectly result in or provoke a disturbance of the public tranquillity and the Magistrate will under the clause as it stands be justified in binding over such persons. I submit that this should not be the case. The person who is not justified and has not got the right to say what he says or to do what he does, should then certainly be bound over but not otherwise. Therefore, Sir, I put my amendment before the House for its consideration.

Mr. Deputy President: The amendment moved is:

"That the words 'by his wrongful act' shall be inserted after the word 'person' in sub-section (1) of section 107."

Sir Henry Moncrieff Smith: Sir, I am afraid I have not entirely followed the argument of the Honourable Mover of this amendment. He seems to have a fear that a person, by a rightful act, an act which he is entitled to commit, is likely to cause a breach of the peace or a public disturbance. I cannot follow that at all, because a breach of the peace or a disturbance of the public peace is a wrongful act in itself, and therefore all that Mr. Agnihotri's amendment would lead to would be, information to a Magistrate that a person by his wrongful act is likely to commit a wrongful act. It does not carry us any further at all. The wrongful act is provided for in the next few words of the section—a wrongful act which will probably occasion a breach of the peace. Therefore I would suggest that Mr. Agnihotri's amendment is not an improvement on the Code.

Mr. Deputy President: The question is:

"That the words 'by his wrongful act' shall be inserted after the word 'person' in sub-section (1) of section 107."

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment that stands against my name runs as follows:

"In clause 17 insert the following sub-clause (1) and renumber the existing sub-clause accordingly:

(1) In section 107, sub-section (3), after the words 'that may occasion a breach of the peace or disturbs the public tranquillity' the words 'and there is an immediate danger of such breach of the public peace or disturbance of the public tranquillity' be inserted."

Sub-section (3) of section 107 relates to a Magistrate who is not empowered to take action under sub-section (1) and runs thus:

"When a Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons."

Mr. K. B. L. Agnihotri: On a point of order, Sir, I think my amendment No. 2 will precede Bhai Man Singh's amendment. This amendment concerns sub-section (3), while my amendment precedes sub-section (3).

Mr. Deputy President: I think, as has just been pointed out to me, it would be to the convenience of the House if Mr. Agnihotri were allowed to move his amendment first.

Mr. K. B. L. Agnihotri: Sir, my amendment is to the effect that after sub-section (2) of the same section, that is section 107, the following sub-section shall be inserted, namely:

"(2-A) Proceedings under this section shall not be taken against a person for delivering political speeches or doing political propaganda work which he be lawfully entitled to do."

Sir, when I moved my first amendment for the insertion of the words 'by his wrongful act' the Honourable the Secretary of the Legislative Department was pleased to say that he could not follow me or my argument for the insertion of those words. He said how would it be possible that a man by committing a rightful act could be bound over under section 107

[Mr. K. B. L. Agnihotri.]

for disturbing the public tranquillity. I may submit, Sir, that it often happens that persons engaged in political propaganda work or in delivering political speeches create excitement among the people; there is thus a likelihood of disturbance of the public tranquillity in the place; it may be said that it is doubtful also as to who will be liable for such a disturbance. Sometimes a Magistrate has held that the person guilty of delivering speeches or creating such an agitation is liable for it; sometimes, Courts held, that the persons who made such speeches or delivered such lectures simply provoked the disturbance but is not an actual wrong-doer as could be bound over under this section. In such cases the person delivering the speeches may have a right to deliver such speeches and still he may sometimes be bound over. In order to clear away that wrong impression I proposed my previous amendment. That point would be still clearer by the insertion of the sub-clause which I now propose. It must be in the experience of Honourable Members that during the latter part of the year 1921 and the early part of 1922, when there was much political excitement in the country, many speakers were hauled up under this section and bound over to keep the peace. The authorities may probably have thought it likely that further speeches and unwarranted agitation might excite people in the districts and thereby cause disturbance of public tranquillity. I wish by this amendment to put a stop to such actions on the part of District Magistrates and others. It has been pointed out only a short time ago by the Honourable Mr. Rangachariar that a case of the same type occurred when the arrest of Mr. Muhammad Ali took place at Waltair. Apart from that, Sir, there have been many cases in almost all the provinces in which persons engaged in enlisting volunteers, or in realising subscriptions for the Congress funds, or in delivering speeches, or exhorting or calling upon the people to observe the principles of temperance and to boycott liquor shops, or doing other temperance or political propaganda work were bound over. This amendment will put a stop to such practices on the part of the authorities. I submit, therefore, Sir, that my amendment deserves the consideration of the House, and I move that the amendment be made.

Bhai Man Singh: Sir, I rise to support the amendment put forward by my friend, Mr. Agnihotri. Coming from the Punjab I am all the more in a position to say that this section 107 has been much more rather the most abused in the Punjab in connection with the Akalis than perhaps in any other province. Hundreds of them were put into jail for refusing to give bail when action under section 107 was taken against them. But in point of fact, not a single breach of the peace was caused by them in the sense in which the section means. All of them were arrested with a view to crush or stop a certain movement and for quite ulterior motives. I fail to see why a section which was meant to punish offenders who really broke the public peace should be used for the ulterior object of putting down a political or religious movement simply because a certain Local Government has taken it into its head to put it down. With these remarks, Sir, I support the amendment.

Mr. Deputy President: The question is:

"That the following sub-section shall be inserted after sub-section (2) of section 107 of the said Code, namely:

"(2-A) Proceedings under this section shall not be taken against a person for delivering political speeches or doing political propaganda which he be lawfully entitled to do."

The Assembly then divided as follows:

AYES—19.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Serhagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.

Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Singh, Babu B. P.
Srinivasa Rao, Mr. P. V.
Venkatapatiraju, Mr. B.

NOES—42.

Abdul Majid, Sheikh.
Ahmed Baksh, Mr.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.

Innes, the Honourable Mr. C. A.
Jafri, Mr. S. H. K.
Jamnadas Dwarkadas, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Yamin Khan, Mr. M.

The motion was negatived.

Bhai Man Singh: Sir, the amendment that stands in my name runs as follows:

"In clause 17 insert the following sub-clause (1) and renumber the existing sub-clause accordingly:

"(1) In section 107, sub-section (3), after the words 'that may occasion a breach of the peace or disturbs the public tranquillity' the words 'and there is an immediate danger of such breach of the public peace or disturbance of the public tranquillity' shall be inserted."

Sub-section (3) of section 107 runs thus:

"When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons."

This sub-section, as Honourable Members may have seen, refers to the case of a Magistrate who is not empowered to take action under sub-section (1). He is not empowered to call upon a man to furnish security; he is not empowered to proceed against him. But this sub-section is, in a sense, more stiff than the first sub-section. Under sub-section (1) only a notice has to be issued to the person concerned and he is called upon to show cause, but under sub-section (3) a Magistrate who has not got the

[Bhai Man Singh.]

power to proceed with the case has got the power only to arrest the person and send him on to the other Magistrate having power to proceed under sub-section (1). Of course, the framers of the law, as it stands, saw that they had to provide some safeguards in this sub-section. Therefore, they have used the words "*has reason to believe* that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that *such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, etc.*" These two safeguards are there. A junior Magistrate may see that he cannot stop a breach of the peace without arresting the person, but the breach of the peace is to come say ten days afterwards. What I want is that a special provision should be made in such a case that such Magistrate should not have the authority to arrest that person if the breach of the peace is to come later on and he has got time simply to refer the matter to the District Magistrate or to some other Magistrate empowered to deal with the case. I want that the junior Magistrate should not have the authority to arrest a man at once and send him on to the other Magistrate concerned if there is time to do so. Really speaking, no action can be taken under sub-section (1) also if the breach of the peace is not imminent. That being the case, Sir, my position becomes stronger that such a provision should be definitely laid down in this sub-section (3).

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, with your permission I shall move the amendment which stands in my name which is No. 39 on the Agenda. It runs as follows:

"In clause 17 after the word 'substituted' where it first occurs insert the following:
'after the word 'may' the words 'after recording his reasons' shall be inserted'."

This amendment relates to sub-section 4 of section 107.

In the first place, Sir, there is a mistake in that sub-clause which I have overlooked and also the Government have overlooked and which we may be permitted now to correct:

"A Magistrate before whom a person is sent under this section may in his discretion etc. etc."

That relates only to sub-clause (3). He is not sent under this section but under sub-clause (3).

Some Honourable Members: That has been corrected by the Government.

Rao Bahadur T. Rangachariar: I beg your pardon then, it was a slip of mine.

Now take the case of a person—one Magistrate thinks he is likely to disturb the public tranquillity, and that his detention is necessary. He sends him on to the Magistrate having jurisdiction. The latter will initiate the proceedings. He will do so, as has been pointed out by the Honourable the Law Member this morning by issuing the summons containing the substance of the information, etc. Here this Magistrate before whom a person is sent under this section may at his discretion detain such person in custody. I only wish to make it obligatory on him to record his reasons for detaining the person in custody, so that he (the

Magistrate) may pause and think and come to the conclusion that really the detention of this person is necessary in the interests of public peace. As the clause runs now he may detain him "at his discretion." That discretion really contemplates that he should bring his mind to bear upon the question whether the man's detention is necessary or not. If he is to bring his judicial mind to bear upon the question, why should he not record the reasons which impel him to take the extraordinary course of detaining a man when only an inquiry is contemplated. He has to initiate the inquiry by issuing a summons; then to record evidence and then bind him over if he finds that security is needed. Therefore this being an extraordinary step, that of restraining a person and detaining him in custody, it ought to be taken with care and caution, and that is why I want to provide that he should record his reasons therefor. I move the amendment which stands in my name, namely:

"In clause 17 after the word 'substituted' where it first occurs, insert the following: 'after the word 'may' the words 'after recording his reasons' shall be inserted'."

Mr. H. Tonkinson: Sir, I venture to suggest to my Honourable friend that the amendment which he has moved is quite unnecessary. Let us take the cases which are governed by sub-section (4) of section 107. There are the cases in which a Magistrate not empowered to take action under sub-section (1) has proceeded under sub-section (3). Before that Magistrate can take the action that he is allowed to take under sub-section (3) of detaining the person in custody, he must record his reasons in writing—that is to say, it has already been decided by a Magistrate that it is necessary and that no other action will probably prevent a breach of the peace; and this Magistrate has already recorded his reasons in writing.

Rao Bahadur T. Rangachariar: If that is so, why the discretion?

Mr. H. Tonkinson: Why should the Magistrate before whom this man has to appear record his reasons again? Let us go a little further into the provisions of the Code. Under section 112 when a Magistrate acting under section 107 deems it necessary to require any person to show cause he must make an order in writing setting forth the substance of the information received. Then Sir, the action under section 117 immediately follows, and if Honourable Members will refer to sub-section (3) of section 117 as it will stand after the Code has been amended as is proposed in this Bill, it will be seen that this Magistrate himself must also record his reasons in writing. It means, Sir, that one Magistrate after another must continually be recording reasons; and I suggest, Sir, that it is quite unnecessary to record reasons in this intermediate stage.

The motion was negatived.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, Mr. Agarwala has authorised me in writing to move his amendment if you kindly permit me to do so. Sir, the amendment that I am going to move runs as follows:

"In clause 17, before the words 'pending further action' insert the words 'or enlarge him on bail'."

Sir, clause (4) of section 107 supports this amendment to a great extent. It says that a Magistrate before whom a person is sent under sub-section (3) may at his discretion detain such person in custody pending further action. The wording of this clause clearly gives discretion to the Magistrate to detain the person in custody, and therefore it is discretionary with

[Rai Sahib Lakshmi Narayan Lal.]

the Magistrate to enlarge him on bail. No doubt as I read the wordings of clause (3) of section 107 I find some difficulty inasmuch as clause (3) says that a Magistrate not empowered to act under sub-section (1) shall issue a warrant for the arrest and detain the person arrested in custody where he has reason to believe that a breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody. But as the wording of clause (4) makes it clear, that the matter is at the discretion of the Magistrate to whom the man has been sent, I think it is better to have this amendment, so that it may be made perfectly clear that the Magistrate may either enlarge him on bail or detain him in custody as he thinks proper. With these remarks I move the amendment.

The motion was negatived.

Rai Sahib Lakshmi Narayan Lal: Sir, the amendment that I am going to move runs as follows:

"To clause 17, add the following 'and after the said sub-section (4) the following proviso shall be inserted, namely:

'Provided that a proceeding under this section shall not be taken when there is a *bona fide* dispute which can be properly dealt with under Chapter XII of the Code.'"

Sir, it is a settled principle of law established by judicial authorities that there shall be no proceeding under section 107 of the Criminal Procedure Code when there is a *bona fide* dispute which could be properly dealt with under Chapter XII of the Code. But the addition of sub-section (9) to section 145, makes the matter a little ambiguous and the object of my amendment is to remove that ambiguity. Sub-section (9) to section 145 says: "Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107." Now, if it is necessary to have this provision in section 145, it is also necessary to have the proviso suggested by my amendment, because law and medical books should be always entirely free from any possible ambiguity. With these remarks I move this amendment.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, the amendment which I am moving is No. 42, and runs as follows:

"After clause 17 insert the following clause:

'17A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

'(5) In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall forthwith be made to the Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same and pass such orders as he thinks fit.'"

Sir, I did not speak on amendment No. 38 (ii), where my Honourable friend, Mr. Agnihotri, tried to prevent the application of section 107 for delivering political speeches. I did not do so because there may be occasions when action under section 107 may be necessary to be taken in the interests of public peace; because the wording of the section is "do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquillity"; that wrongful act may include an inflammatory speech—it may be a political speech—where people are asked actually 'o

rise in arms. It is a political speech all the same and therefore to prevent the application of section 107 altogether to such cases was not considered by me right. But at the same time, Sir, you would have noticed strong feeling in the country against the abuse of section 107 during the last two years with reference to the holding of meetings and the addressing of meetings by individuals. There are cases where even committee meetings have been prohibited; there are cases where persons who preached against drink have been proceeded against under section 107 merely because some man, some toddy shop contractor complained that by a speech against drink a breach of the peace was likely to be committed; most likely the contractor and his men are those who break the peace. A man comes and preaches to the people "Do not drink." There are of course some who go beyond mere preaching and resort to acts of violence and restrain people from going to the toddy shop—I can understand that. Still even in cases of mere preaching many meetings have been prohibited under this section. How? It is always difficult to apply section 107. We have to trust to the good sense of the Magistrates in applying this section when they prohibit meetings or prohibit people from addressing meetings. How are you to know beforehand that a speech which is going to be delivered is such that action should be taken under this section? The speech is still unuttered and is not a written or printed speech which is available to the Magistrate which he can read beforehand; these are words unuttered which he tries to prevent by taking action under that section. That action contemplates cases of persons perhaps who by their previous speeches or by their previous conduct have indicated what they are going to say, and if so, there may be cases where they would have been convicted for such speeches if they had really made inflammatory speeches, and other sections are also available for preventing such people from speaking like that. Those are hardly cases where section 107 can be safely used—I would only put it at that—can be safely or soundly used. But it has been largely used, it has been used like this in all the provinces, not in one province, but in every province; after the abolition of the repressive laws they have found repressive laws in these two sections, 107 and 144. An ingenious legal element in the Government of India and in the Local Governments has found a remedy for the repeal of the repressive laws; repressive laws went with one hand and up came these two sections ready in their other hand, sections 107 and 144, handy, very efficient. I wonder why they took all the trouble of passing the Rowlatt Act and the Criminal Law Amendment Act and incurred all this unrest and odium and created this non-co-operation movement and the Satyagraha movement and the passive resistance movement by enacting these laws when 107 and 144 were so handy all these years. They forgot all about it until some ingenious lawyer advised them saying "Here are two handy sections, two hand-maidens; take hold of them and resort to repression in this way," and curiously enough circumstances lent themselves to their very free use of these sections. If really the matter had gone to Court, I am sure in many cases the High Courts would have set right the use of these sections. But these non-co-operators do not believe in anything; they do not believe in Courts; they do not believe even in the High Court, in which I have strong faith, and they would not go to the High Courts and therefore Magistrates were encouraged to use these sections in all sorts of ways. Therefore, Sir, I provide an automatic corrective. There are Magistrates and Magistrates. I know of a case where a Magistrate who was going on horse-back saw a boy spitting on the floor and thought that he spat at him when he was on horse back. The Magistrate then and there on the spot tried him for insult and

[Rao Bahadur T. Rangachariar.]
 whipped him. Well, Sir, he was the person aggrieved; he was the complainant; he was the Magistrate, and he tried him on the spot, and most effectively he did it. There are Magistrates of course who conceive that it is within their power to do all these things in certain tracts where still these legal or judicial ideas have not permeated and lawyers have not invaded. Of course, these things no doubt do occur, and therefore, Sir, there must be a corrective, there must be an automatic corrective, to the misapplication of this section. After all, the remedy that I have provided is one which already exists in the law in certain cases. I have chosen a revising authority, an authority which is recognised by the Code. Honourable Members will see in the same Chapter that when security is demanded for more than a year and if the person does not comply with the demand, such proceedings have to go to the Sessions Judge for confirmation. The order is liable to be revised and set aside by the Sessions Judge. Will some lawyer here remind me of that section? (A Voice: "Section 123.") Thank you. Well, as Honourable Members will see, this section reads thus: "If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given, commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it. When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court." "Such Court," that is the Sessions Court, "after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit": So that the Sessions Judge whom I have chosen as the revising authority is the authority recognised already as a proper authority to revise such proceedings. I only say that where action is taken under this section to prevent the holding of meetings or of addressing meetings, then it should be forthwith reported to the Sessions Judge. He on examining the records will have to satisfy himself as to the legality, propriety or correctness of such report and he can pass such order as he thinks fit. Therefore the remedy I have chosen is purely a corrective one. Sessions Judges are trusted both by the Government and the people in most cases, and therefore they can be safely relied upon to do the corrective in cases where they are grossly abused. Therefore, Sir, I have suggested my amendment which, I hope, will commend itself to the Government for their good name, because they must also see that their Magistrates do not misbehave. After all, who suffers? No doubt, the individual suffers for the time being, but by such action really the reputation of the Government suffers. I mean the people think, when Magistrates take such hasty action, that the Government do not set them right with the result that the Government becomes unpopular and it adds to the irritation among the people. After all, where is the harm in entrusting this remedy in the hands of the Sessions Judge? Is the Sessions Judge going to the rescue of the sedition monger? Certainly not. Therefore, there will be really no danger whatever in providing this remedy. On the other

hand, abuse and misuse and misapplication will be stopped. The very fact that there is a corrective in the Sessions Judge will make the Magistrates pause and hesitate and they will only take action which they should legitimately take. That fact itself will act as a deterrent against hasty action on the part of Magistrates. Therefore, looked at from any point of view, it is a necessary amendment; it is a wholesome amendment and I hope the Government will see their way to accept it.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Deputy President was in the Chair.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muham-madan Rural): Sir, it will be convenient if I draw the Honourable Members' attention to the Greaves' Committee's Report in this connection. My idea is that, instead of amending the sections piecemeal, we should adopt the recommendations of that Committee. They took evidence, they consulted all the magistrates, the sessions judges, the divisional commissioners, public bodies and lawyers. Of course, the magistrates were reluctant to part with their power but the sessions judges approved of it and the divisional commissioners also were in favour of it. I am not going to read the summary of evidence but I am only going to read the recommendations of the Greaves' Committee in this behalf. They say:

"After considering the evidence, we recommend that the powers of the district officer and those under him under the preventive sections shall be modified in the following manner:

Firstly, in ordinary cases under sections 107, 108, 109, and 110, when the district officer requires a person to show cause, the proceedings shall be sent for trial before a judicial officer, but in cases of emergency which arise under these sections and when immediate action is necessary, it shall be open to the district officer and those empowered to act under these sections, but, where they make such orders, they shall state their reasons in writing and an appeal against the order shall lie to the District and Sessions Judge. The Committee agree that all cases under section 110 should be tried locally as at present and opportunity for obtaining legal assistance should be freely given."

I would leave the drafting to the Legislative Department, and I think we might accept the Greaves' Committee's recommendations as a preliminary to the separation of judicial and executive functions. It need not wait till the scheme is given effect to. As a preliminary, it may be convenient if we introduce a clause, after section 110, in which provision is made that ordinarily in all such cases where a person has been called upon to show cause under either section 107, 108, or 109, 110, he may apply to the District and Sessions Judge that the matter should be heard by him. In such cases, the District Magistrate is to send the records to him and the matter may be judicially inquired into by the District and Sessions Judge. There is no reason why we should not entrust the District and Sessions Judges with powers to inquire in these matters. That would not increase his work very much because these cases are not very common. They come once in a way. Now, that would not create any mischief either because the Committee recommends that in emergency cases, the district Magistrate may pass orders. But when he has passed an order, we may give the party the right of appeal or the record and the proceedings may be sent, as Mr. Rangachariar recommends, to the District and Sessions

[Mr. J. Chaudhuri.]

Judge, and he may look into the records and pass such orders as he thinks fit. Now, that is with regard to mofussil towns. We know that in the presidency towns the presidency magistrates may act in the same manner. There also, when he has called upon any person to show cause, the person may apply to the High Court that the matter may be heard by that court and the court may pass such orders as it may think fit. So, my suggestion is that, instead of amending these sections piecemeal, as suggested by Mr. Rangachariar, we should insert a clause after 110 or in some appropriate place in this chapter to provide that, where a person has been called upon to show cause, he may apply to the District and Sessions Judge that the matter may be judicially inquired into by him and then it will be for the Magistrate to send up the records and the Judge may look into the matter. Of course, I am not putting this forward as a final amendment but I suggest that Mr. Rangachariar's amendment may then be altered as follows:

"(5) In all cases where a person has been required to show cause under section 107, 108, 109 or 110, he may, outside any Presidency town, apply to the District and Sessions Judge, and, in a Presidency town, to the High Court that the matter may be heard by the Sessions Judge or the High Court, as the case may be, and such Court may then send for the records and, after giving him a hearing, pass such orders as the Court thinks fit."

Mr. Deputy President: Are you moving this as an amendment to clause 17?

Mr. J. Chaudhuri: I suggest it as a general provision to go after 110. Of course, I leave it to the Honourable the Home Member and the Honourable Sir Henry Moncrieff Smith to make any verbal alterations they like and to prepare a proper draft. This is not my own suggestion but it has been recommended by the Greaves' Committee and I think that the whole House will accept it.

The Honourable Sir Malcolm Hailey: I recognise that the proposal put forward by Mr. Rangachariar is in much less extreme a form than that tabled by Mr. Agnihotri, and which the House decided not to discuss. There are unfortunately certain topics which seem to give Mr. Agnihotri a crisis of nerves; when he realizes that the law gives a certain amount of power to a police officer he has a shock; when he is told that it is necessary to give preventive powers to a Magistrate the shock is renewed and his continual efforts in this Assembly have been to reduce entirely, if not to remove, the powers given to police officers and to Magistrates. He would nullify, if he could, the power to protect society which is vested in these authorities, yet such a power is an essential adjunct to good and peaceable administration. But to confine myself to Mr. Rangachariar's amendment; we have here a proposal to reduce in a somewhat milder form the operation of section 107, and I would ask the House to consider the grounds on which it has been put forward by the Mover. He commenced with a general attack (repeating to some extent what he had already said in speaking on an earlier amendment), on the way in which we have during the last two years utilised the preventive sections. 107 and 144 alike have been, he says, widely used and widely misapplied. Nay, he permitted himself to suggest that we, being at one stage unwilling to use strictly repressive laws, and at a later stage being obliged to cancel them, we, at the suggestion of some ingenious legal mind, decided to substitute the use of these preventive sections. This is the first occasion on which I have had to complain that Mr. Rangachariar has betrayed a lack of that due

modesty which is one of the requirements of a great mind. For what do I find on looking up the debates on the Repressive Laws discussion? Who was it that urged us to use the ordinary law? Who told us that the ordinary law, if it were applied consistently, was sufficient for all our purposes? Who told us specifically that 144 had always been on the Statute Book and that we ought to use it? Why, Mr. Rangachariar and no one else. If we have used those laws, we need now no excuse; for we have consistently been advised since the year 1911 onwards (when the amendment of the Seditious Meetings Act came under discussion) and the process terminated with the renewed advice given us by Mr. Rangachariar when we discussed the case of our Repressive Laws generally last year. But have we misapplied them? Well, those against whom they were applied had their own ordinary remedy in the courts and in how many cases did they seek that remedy? Mr. Rangachariar says the class of men against whom we have applied these laws would not seek their remedy in the courts; they have no belief in a High Court. Equally, if we apply these laws again, that class of men would again refuse to utilise the agency of our appellate courts, and would fail to receive the benefits of the amendment which Mr. Rangachariar has put forward. But that is by the way; and is not really the substance of my argument against Mr. Rangachariar.

Rao Bahadur T. Rangachariar: Mine is automatic.

The Honourable Sir Malcolm Hailey: He proposes under this section that in all cases where action is taken to prevent persons from holding or addressing meetings (whatever that means; I do not deal now with drafting), a report shall go forthwith to the Sessions Judge who shall thereupon, after examining the records, pass orders as he thinks fit in regard to the correctness, the legality or propriety of the decision. He tells us that the Sessions Judge is already recognised in the law as a proper revisionary authority in regard to these sections, and quotes the provisions of section 123, sub-section (2). Well, that does not certainly apply to section 107, for under section 107, the period of an order is limited to twelve months; while under section 123 only orders referring to a period in excess of one year go to the Sessions Judge. Therefore, the Sessions Judge is not recognised as a revisionary authority under section 107. What Mr. Rangachariar seeks to do in effect is to make a revisionary authority of a new type. Hitherto revisional orders have been passed by a High Court. He would have now revisional orders proper passed by a Sessions Judge. What is the necessity for this?

Rao Bahadur T. Rangachariar: Under sections 436 and 437 the Sessions Judge passes revisional orders.

The Honourable Sir Malcolm Hailey: He recommends to the High Court. He does not pass final orders himself; he reports to the High Court for this purpose.

Dr. Nand Lal: Section 435 (which says) "The Sessions Judge may, etc."

Rao Bahadur T. Rangachariar: Section 435 is comprehensive.

Sir Deva Prasad Sarvadhikary: That is an alternative.

The Honourable Sir Malcolm Hailey: If the Honourable Member will read sections 435 and 438 he will see that they do not bear out what he says.

Rao Bahadur T. Rangachariar: I said he has revisional authority in certain cases. He can order retrial, he can order further inquiry, and he can call for the records under section 435. Therefore he exercises powers of revision.

The Honourable Sir Malcolm Hailey: But what Mr. Rangachariar proposes now is that the Sessions Judge should have power to pass such orders as he thinks fit regarding the propriety of the sentence. That is a different matter. As I say, he proposes in effect, at all events with regard to the preventive sections, and in them only in regard to a certain restricted class of case, to create a new revisionary authority. I maintain that no such orders are required. The persons affected by these orders, if they have cause of complaint, have the ordinary procedure of the law open to them. He gives no special reasons why the special interference of the Sessions Judge is required in this behalf in this particular class of case. He says, "I do not wish the Sessions Judge called in everywhere to pass revisional orders in regard to the preventive sections. I only wish him to be called in in regard to meetings." Where do meetings differ from other classes of action to such an extent that it is necessary to create this special form of revision? What again does he mean by 'meetings'? Mr. Agnihotri tried to get the Assembly to agree to exclude altogether from the preventive sections, action taken against persons "delivering political speeches or doing political propaganda work." If we had argued the case (which we found it unnecessary to do) he would have found an insuperable difficulty in defining political speeches or political propaganda work. Mr. Rangachariar, doubtless recognizing this difficulty has contented himself with the expression "holding or addressing meetings." But, as I say, what are meetings? We know the term assembly, and we have a definition of lawful assembly. But meetings are not as he would seem to suggest confined to political meetings; they may be of any other kind. They may be for the purpose of organising riot or for the purpose of promoting violence of any class. If they fall into this category, would it be necessary on that account to adopt a special revisionary procedure? The scope of his amendment goes infinitely further than he himself, I think, recognises. I maintain, that in regard to these preventive sections, and particularly in regard to section 107 it is quite unnecessary to invent or adopt a new form of procedure, especially when, in doing so, you are obliged, owing to the difficulty of definition or drafting, whatever it may be, to give to your new modification of the law an infinitely wider scope than any prudent or reasonable man would care to contemplate.

Dr. Nand Lal: I may point out to this Honourable House that the character of amendment No. 42 is not universal. It is of a very limited nature. It simply says, "In all cases where action is taken under this section (that is, section 107), to prevent a person or persons from holding or addressing meetings." The recommendation embodied in this amendment is that only in all cases of this nature a report forthwith shall be submitted to the Sessions Judge, and then when we come to the latter part of this amendment it says he may call for and examine. It rests on the discretion of the Sessions Judge that on the receipt of that report he may go into it and if he finds that some sort of illegality has crept in or some irregularity has been committed, then he may take action. Not in all cases, but only when he finds that the order is wrong, the proceedings are illegal, irregular and improper and then he may take action and set that order aside or may refuse to set that order aside. This is the recommendation which has been made through the medium of this amendment.

The grounds, on which this amendment has been moved, to my mind, seem to be acceptable:—that there is in some parts of this country a great complaint that law is twisted, that some Magistrates are pliable, that they are not independent, and that they use this section 107 in place of repressive laws and rules which are not obtaining in that part of the country. That is the complaint. In order to meet that complaint it will be very wise to allow this amendment. Now, the grounds which have been set forth in answer to this recommendation are, that if we allow this amendment to be passed, then it amounts to this that the law of revision which is already embodied in the Criminal Procedure Code under sections 435, 436, 437, 438, and 439 will, to all intents and purposes, be nugatory, that it will be a new departure and, therefore, it is not proper that this amendment should be accepted. This is one of the grounds which has been set forth by the Honourable the Home Member. The other is, in how many cases this has been done. The third ground which has been advanced is this, that this law will practically deprive the magistracy of that very wise preventive power with which they have been equipped.

These grounds can be met. So far as the first ground goes, I may submit that the law of revision will not be interfered with at all, because this amendment deals with a special sort of cases. We have got special acts, special laws. Therefore, this amendment refers to a peculiar kind of orders which will be passed. It will not cover all the orders passed by the District Magistrate or any first class Magistrate, but special cases relating to meetings and relating to the speeches made in those meetings, and not in ordinary cases. So, the fear of the Honourable the Home Member seems to be very exaggerated; I may submit, with due deference to his way of thinking. I may point out to the Honourable the Home Member that any order passed under section 107, Criminal Procedure Code, is not appealable, I think he will accede to that contention. It is revisable, and who revises? The District Magistrate. An application for revision is lodged in the Court of the District Magistrate and he revises. If a District Magistrate himself passed the order, then the application for revision will be instituted in the High Court. There is no other provision which may confront me with the view that I am wrong. If the Sessions Judge finds that the order, under debate now, is altogether illegal—suppose section 107 is not applicable. Suppose a speech is made and that speech is innocent, and a constitutional one. Every man may be of this opinion that there is nothing wrong in it, but, by an oversight or by a mistake, the speaker has been hauled up and he has been called upon to show cause.—a very respectable man, one of the orators of this country. That order is illegal. Does the Honourable the Home Member seriously mean that there should be no remedy for it, that he should undergo the whole ordeal, he should try to engage a counsel, or he may not engage a counsel, he may see what will be done or what orders will be passed under section 112 or under section 114 or under section 118 of the Criminal Procedure Code. Should he wait? Should he wait for three months, for two months, or even for one month? Why should he? If the order is illegal *prima facie*, on the face of it, why should an innocent man be asked to appear before a Magistrate? The Honourable Mr. Rangachariar's amendment meets all these emergent and urgent cases and I compliment him on putting forward this amendment.

I quite see that there is a little flaw in the motion, but, the Honourable the Home Member could not see it on account of the pressure of work. Perhaps another Member of the Government may

[Dr. Nand Lal.]

think of it. If this amendment would have been placed under that class of amendments which relates to section 108, then there would have been greater propriety in it. This criticism could be launched. However, that criticism could be answered in a simple way. That is this. Since 1922, either in the former or the latter part of that year, this section 107 was wrongly applied, therefore, the Honourable Mr. Rangachariar, the author of this amendment, has thought it proper to put this amendment under that very section. That is the answer which will be given to that criticism. With these submissions, I appeal to the Government Benches that they will be advised if they will accept this amendment. There is a great grievance in the country. That grievance will be set at naught. They shall have to admit, saying "Look at the fairness of the Government. They have incorporated a special provision for cases where there is any non-co-operator who is not willing to come to the Court to make an application under section 435 or under section 439. Look at the kindness of the Government. They have incorporated a special provision to see that no injustice may be done to anybody because the object of the law is that justice should be done." If any injured man or if any man against whom a written order is made does not volunteer himself to come to the Court, whether rightly or wrongly, according to his way of thinking, here is the Government quite prepared to see that justice may be meted out to him, and with that view alone this special provision has been incorporated to help those men who do not come to the Court to defend themselves. The Government *suo motu*, and on its own accord, is always very anxious to see that none of the subjects of His Majesty may be subjected to an order which is illegal. With that view this special provision may be incorporated and the Government will be thanked for it and therefore I repeat my submission that this amendment, which commends itself, may be accepted unanimously.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I do not propose to discuss the Honourable Mr. Rangachariar's observations about non-co-operators; except one remark which he made, and which, I am rather surprised to find, was repeated by my Honourable friend, Dr. Nand Lal. The statement was that, if the non-co-operators had applied to the High Court, the High Court would have set the matter right. That is to say, the law is all right, but, simply because the non-co-operators will not apply to the High Court, it is necessary for us to make a special provision, in order that they may be saved from acting under the ordinary provisions of the law. That is a rather peculiar proposition to adopt, that we should change our law because certain people are not willing to abide by that law.

Dr. Nand Lal: Because our object is to see that justice is done.

Mr. P. E. Percival: That is a very strange proposition that the law should be altered for the benefit of people who are not willing to apply to the High Court. Then there is the other question, and that is whether the appeal or revision should be to the Sessions Judge or to the District Magistrate. It has always been the case up to now that the revision lies to the District Magistrate, not to the Sessions Judge. By referring these particular cases to the Sessions Judge we shall have two co-ordinate authorities dealing with the same subject. Section 125 runs:

"The Chief Presidency Magistrate or District Magistrate may at any time for sufficient reasons to be recorded in writing cancel any bond for keeping the peace or

and so on;

and it has been ruled by the High Courts, and especially the Madras High Court, that the District Magistrate can cancel any order for keeping the peace. So that it is the District Magistrate who deals with the matter, not the Sessions Judge. As under section 125, so also . . .

Dr. Nand Lal: Supposing the District Magistrate has passed an order under section 107, then what is the remedy?

Mr. P. E. Percival: Then the man can go to the High Court. I think the Honourable Member himself said that. An application for revision can be made to the High Court. If anybody is dissatisfied with the order of the District Magistrate, why not apply to the High Court. So that the position is that there is a regular procedure laid down in the Criminal Procedure Code, by which the case goes to the District Magistrate first, and from the District Magistrate to the High Court. The Sessions Judge is not brought in in these matters of taking security for breach of the peace. The suggestion is that one particular set of cases, namely, preventing persons from holding or addressing meetings, the case should go to the Sessions Judge, and that in other cases it should go to the District Magistrate. I submit that this is not a satisfactory way of legislating in connection with this subject. There is one other remark that I wish to make, namely, that I suggest with due deference that the drafting is not very satisfactory. It says "in all cases where action is taken under this section to prevent a person from holding a meeting". Now the action is taken to prevent a breach of the peace; it is not taken to prevent a person from attending the meeting. So I suggest in any case that the drafting is not entirely satisfactory. I thank the Honourable Mr. Rangachariar for making friendly remarks about Sessions Judges. I hope he will also adopt the same attitude when he is considering the question of the powers of Sessions Judges in other parts of the Code. In this particular case, the matter is one which goes to the District Magistrate and not to the Sessions Judge; and I suggest that there is no reason why the general law on the subject should be changed, and why any one who is not satisfied should not go to the District Magistrate under section 125, or, if the order is passed by the District Magistrate, why he should not go to the High Court for revision. The Honourable Member said that the Sessions Judge is already a revisional authority. Under section 435 he is a revisional authority to the extent that he can call for the papers and refer the matter to the High Court. But the Honourable Member wishes to make him a revisional authority to deal with the matter himself. So that, from this point of view also, I suggest that no change should be made, but that the ordinary procedure should be followed, namely, application to the District Magistrate and revision to the High Court.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Not being very familiar with the Criminal Procedure Code, either as a criminal or as a criminal lawyer, it is with some diffidence that I venture to speak on this subject, and if I venture at all to do so I speak purely as "a man in the street", a man who has to respect the law and who is likely on certain occasions to suffer from the vagaries of the law or of some Magistrates. The whole point whether the amendment moved by my friend, Mr. Rangachariar, is a healthy amendment or not depends on this: whether if it is carried it will solve a problem of constant friction both for Government and for society at large. Yesterday the Honourable Sir Malcolm

[Mr. B. S. Kamat.]

Hailey enunciated a very sound doctrine when he told the House that even from the point of view of Government the smaller the occasions for causing irritation by the action of the police, the better for Government. If that healthy doctrine were to be adopted to-day, I believe Government should offer no opposition to the amendment which has been moved by Mr. Rangachariar. To my mind, it is a very modest and a very salutary amendment. It is modest for one or two reasons. In the first place it shows confidence in Sessions Judges. In the second place, all that it wants to do is to give them the option and a discretionary power not to call for each and every proceeding of the magistrate but only in certain cases to call for records and proceedings of Magistrates, if they choose to do so. So that it means a certain amount of latitude to the Sessions Judges without throwing an extra amount of burden upon their work. Now what are the objections of Government to the acceptance of such a modest amendment as that? Sir Malcolm Hailey started by saying that if the non-co-operators are not prepared to go to the High Court, how is it possible that they will go to the Sessions Judges? Now that assumes as if Mr. Rangachariar had brought forward this amendment purely in the interests of the non-co-operators and nobody else. (*An Honourable Member:* "Primarily in their interests.") My reply to that argument of Sir Malcolm Hailey is this; as I said in the beginning, I take up my attitude purely as 'a man in the street'. I look to my own safety. I am not so much concerned about the safety or the protection of the non-co-operators, but Sir, I have no doubt to any citizen, howsoever humble he might be, I believe Mr. Rangachariar's amendment would be a safeguard and a protection in respect of his elementary rights. Sir Malcolm Hailey said that this is likely to reduce the power of the Magistracy. Certainly it is intended to do that on the healthy principle that while, on the one hand, the Magistracy is intended to prevent any breach of the peace, it is also, on the other hand, intended to safeguard the interests of honest citizens, and if there is a pitfall into which Magistrates are likely to fall by an excessive zeal or by their political bias or by the atmosphere of the country for the time being, well, there should be a safeguard provided by the law. I believe the amendment of my friend, Mr. Rangachariar, provides a very convenient and a very workable safeguard, both in the interests of Government and in the interests of the Magistracy and in the interests of citizens like myself, the man in the street. I expected, Sir, that Sir Malcolm Hailey would accept this amendment instead of shielding himself behind certain technicalities. If this is a healthy and a salutary amendment both in the interests of the citizen and of Government, as I contend it is, there should have been an alacrity on the part of Government to accept it, but the tendency on the part of Sir Malcolm Hailey was to shield himself behind definitions and behind technicalities. The first technicality which he trotted out was the revisionary powers of the Sessions Judges. Now if this is an acceptable amendment, purely on its merits, in the interests of community and in the interests of Government, a way could be found out so far as the revisionary powers of the Sessions Judges are concerned. Under sections 435 and 436 it is pointed out they have such powers; now the question of giving these additional powers or throwing this burden on them is purely a matter of administrative convenience and public interests. If it is necessary in the interests of society to throw additional burdens on the Sessions Judges, by all means let Government come forward and say

that such a burden should be thrown on them, instead of simply saying technically that such and such a power already vests in them and it is not desirable to throw additional burdens on them. It is purely a matter of technicality to raise this objection. I believe the attitude taken up by the Government as displayed by Sir Malcolm Hailey was purely what one would call an offspring of political expediency. Sir Malcolm Hailey further went on to say, or to pretend to think that it was not possible to define even the word "meeting". It caused a great deal of astonishment to me that those who are able to frame so complicated and so comprehensive a Code as the Criminal Procedure Code are unable to find out a definition of the word "meeting", and, then, that their Magistrates who can understand what an unlawful assembly is and who can differentiate between a lawful and an unlawful assembly would not understand what a meeting was, an ordinary meeting held for any ordinary purpose in the country. Sir, I do think that this is a tendency to shirk responsibility, to accept the principle of the amendment. I for one think, both in the interests of Government and in the interests of community, it is desirable to provide in the Code a safeguard for honest citizens who want to take part in meetings either political or otherwise, and I think Government would do well to accept this amendment either in this form or, if the drafting is considered defective, to accept it in some other form, and not give a go-by to this amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, while fully sympathising with the underlying principle of my friend, Mr. Rangachariar's amendment, I have certain difficulties which I propose to place before this Honourable Assembly.

I quite see that in cases where a person is prohibited from holding a meeting or taking part in a meeting some corrective may be necessary in respect of the action of the Magistrate prohibiting the meeting, especially in these days of political conflict. But at the same time I also see that it is extremely difficult to put this amendment forward as an amendment of section 107 of the Criminal Procedure Code. My reasons are these. My friend, Mr. Rangachariar, says: "In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall, etc., etc." Now, in such cases the action taken must be by an order, and the order contemplated is not an order binding down any particular person against any contemplated breach of the peace, but an order prohibiting him from holding a meeting. That is an order, it seems to me, which comes under section 144 of the Code and can be appropriately considered only within the four corners of that section, viz., section 144. At the same time we have this further difficulty that section 435 which is the section about revision, lays down in so many words that "orders made under sections 143, 144, etc., are not proceedings within the meaning of this section." Therefore if the amendment is put to the House in the shape in which it has been put forward, to my mind considerable legal difficulties arise, and being in sympathy with my Honourable friend, my present desire is to seek some means whereby the difficulty may be solved. But if the matter be put to the Assembly as an amendment to section 107, I feel, Sir, that I shall have great difficulty in voting in favour of the amendment, as I do not wish to introduce confusion into the Criminal Procedure Code.

Rao Bahadur T. Rangachariar: It really means, 'when action is taken under this section for the purpose of preventing a person, etc.'

Mr. J. N. Mukherjee: Of course, all orders under section 144 are orders directing a person to abstain from doing a certain thing or to take certain orders in connection with property in his possession or management; they are not orders directed against the land itself, an inanimate thing, but against a person and they cannot mean police action. And therefore I submit that the scope of section 107 is something totally different from what is contemplated by the proposed amendment. That is my view. My Honourable friend, Mr. Kamat, seems also to think that if there are drafting difficulties those difficulties could be smoothed over and the underlying principle considered in its appropriate place. That is also my difficulty, and if the House accepts the principle of the amendment, I hope it will also consider that point, and I put it to my Honourable friend, the Mover of the amendment, that he will also consider it before putting it to the vote of the Assembly.

Rao Bahadur T. Rangachariar: I shall gladly do so if I can understand what my Honourable friend's difficulty is. I am sorry I have not been able to trace it.

Mr. J. N. Mukherjee: I say that the amendment cannot come under section 107 because section 107 contemplates the binding down of a person; that is, a Magistrate may, under that section, only call upon a person to show cause why he should not be bound down for a certain time. That is quite distinct from an order directing that a certain thing should be done: that is to say, by such an order, personal liberty is not interfered with but a person is merely ordered not to do a certain thing. There is my difficulty. Of course, if such an order really comes under section 107, it is open to revision but unfortunately it does not. I may, however, point out that the proposal itself is a very harmless one indeed, and is not likely to interfere with executive action. I would like the Honourable the Home Member and the Members on the Government Benches to consider this point.

The House will see that the order in question is passed forbidding a meeting. The meeting does not take place. The event cannot be re-enacted afterwards. The danger, whatever it is, is tided over, and thereafter, according to the amendment proposed a report is sent to the Sessions Judge. The Sessions Judge cannot pass a contrary order, but will only consider the propriety of that order; that is all, and the thing will end there. My submission is that my Honourable friend, Mr. Rangachariar, is quite right when he says that, it will be well if there is some superior legal authority to check any error in the proceedings of the Magistrate; that will ensure, to my mind, a salutary provision of the law. Therefore, I put it to Honourable Members that the substance of the amendment itself is very harmless in its way, and therefore its principle, taken by itself, ought not to present any difficulties to the Government Benches. But, if it be put to the vote of the House, as it is, I regret, I shall not be able to vote for it.

Mr. J. Chaudhuri: May I inquire, Sir, what would be the attitude of the Government with regard to my suggestion? If they are disposed to consider it, it may not be necessary to go into these piece-meal amendments.

The Honourable Sir Malcolm Hailey: The Honourable Member asks me what is our attitude towards his suggestion. We treated it, not as an amendment, but as a suggestion only; and, obviously, we could not discuss

it in any way in this place, for it is not cognate to this particular section, any more than, I was going to say, is Mr. Rangachariar's motion truly cognate to it, since all that a Magistrate does under section 107 itself is to order somebody to show cause. We have treated Mr. Chaudhuri's suggestion as a suggestion and nothing else, which we shall have to consider. While we are discussing changes in the existing law, it is really impossible for us to enter into a discussion of the wide change involved in carrying out a separation between executive and judicial functions.

Mr. R. Faridoonji (Central Provinces : Nominated Official) : The proposals made by Honourable Members have already been anticipated in the Central Provinces. All cases disposed of by First Class Magistrates are reported to the Sessions Judge in the form of daily calendars and he calls for the records of cases when he thinks inspection or revision of cases is necessary. It seems to me that a tremendous amount of solicitude and tenderness is shown for the criminal or the person from whom a breach of the peace is apprehended, while I have not heard one word of consideration for the public who apprehend a breach of the peace, or who apprehend broken bones or broken heads.

Colonel Sir Henry Stanyon: Sir, after hearing some of the speeches on the question now before us, I am more than ever anxious to endeavour to approach the consideration of it with the complacency of a cold-blooded legislator. I will examine the proposed amendment. If I feel it to be a reform, I shall unhesitatingly support it whatever may be the view of Government. The lunch interval has given me an opportunity of considering it. As it stands, it seems to me, in a special class of cases, to alter the existing law in two respects only. Firstly, it requires that a report of the proceedings should be made apparently—though there is nothing in the amendment to show who or what is the person or authority responsible to make the report,—by the Magistrate who takes action under section 107. That is the first point. As the law now stands, a report to the Sessions Judge of proceedings under section 107 would be made ordinarily by the person against whom those proceedings were taken.

The other point upon which this amendment would alter the law is that the Sessions Judge, instead of reporting to the High Court a case in which he thought some interference by higher authority was desirable, will himself be empowered to pass the final order. Now how far will that be any advantage to the general public? My own humble opinion is that, while it will delay and retard preventive action by the Magistrate on the spot, it will invite the Sessions Judge to take upon himself a responsibility which, from what I know of Sessions Judges, he will very seldom be inclined to accept. However, that is only a matter of procedure. But it seems to me that the amendment as it stands—we must take it as it stands—is open to the objection urged against it by the last speaker, namely, that of producing a certain amount of confusion. It reads:

"In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings."

That is hardly language in which one can properly describe action under section 107. It suggests that the section is likely to be used in an indirect way, not to prevent breaches of the peace but to prevent meetings which some person or some body of people consider undesirable. If the section is used to prevent a person from taking action which is likely to cause a breach of the peace, then why should one particular form of that action be made the subject of special legislative treatment? (Rao

[Colonel Sir Henry Stanyon.]

Bahadur T. Rangachariar: "The elementary right of citizenship.") Then we are not told that these meetings are to be political meetings or even public meetings. For all that appears in the amendment to the contrary this special treatment would have to be applied to meetings held by intending dacoits, to meetings held by intending rioters, to meetings held by religious fanatics, to meetings held by factions concerned in a dispute over land. The Honourable the Home Member has rightly said that it is an extremely difficult thing to say what is a meeting having regard to the ordinary significance of that word. Two persons can have a meeting. But I think there are two other rather serious objections to this proposed amendment. A general legislation of provisions for revision by the higher Courts cannot be taken objection to by anybody; but the moment you introduce a special clause of this kind for special cases, you make your motive clear. It has been made clear in this case. Underlying the proposal is the distrust of our Magistrates. Sir, we have heard that there are Magistrates of all kinds. Certainly there are. I have met them of all kinds, from A to Z. But, because a tool is fragile or bad, you do not cut off the hand that works it; you improve the tool. If our Magistrates are given to weaknesses, to illegalities, to too much police and too little judge, public opinion is the remedy for improving that state of things. We cannot possibly expect our Magistracy, as a body, to be encouraged to act with impartiality and in a trustworthy way if by our laws we point out to them that the public whom we represent have no trust in them. We must give them that trust and let them feel it a burden upon them to act up to it and to deserve it. That is the only way; that is how trustworthiness has been secured in England for centuries, and that is the only way in which it will be secured in India. Then I submit that it is indeed a strong objection to this amendment that it would create an exception in procedure, an invidious distinction, in respect of one particular class of action which a Magistrate believes is likely to create a disturbance or cause a breach of the peace. We have to-day caused to be accepted or carried an extremely sound principle insisted upon by my Honourable friend, Mr. Rangachariar, that action under section 107 shall depend upon an exercise of Magisterial discretion—a proper exercise of Magisterial discretion. That is undoubtedly a correct principle and a wise safeguard; but having got that and put it on the Statute Book, are we nevertheless to suggest to the Magistrate as we should do by this amendment: "We do not believe in your exercise of judicial discretion in this particular class of case, and therefore, in this particular class of case only, we command that every time you exercise that discretion, you shall at once make a report to your superior authority in order that there may be a check upon you." I think the proposition made upon the basis of the Greaves' Commission Report for a general amendment of the law of revision is a proposition that will require very careful consideration by this House when it comes up; but it is impossible to introduce a general clause of that kind as a tail to section 107. Therefore, I think, and I think so, after careful consideration of everything said upon both sides of the question—it is my honest opinion, though possibly a wrong one—that by introducing this amendment into the Code we shall not do any practical good to the public at large, and we may do a good deal of harm.

Sir Henry Moncrieff Smith: Sir, I have very little to add to the very clear exposition of the difficulties of this amendment which the House has just heard from Sir Henry Stanyon. But I do want to be clear in my own mind, and I think the Members of the House should be clear in their minds, as to what the effect will be of making this amendment in

our criminal law. Mr. Rangachariar proposes that when an order has been made under this section for a certain purpose—I am not concerned with the purpose, the question of the principle of the amendment has been otherwise dealt with—but when an order has been made under section 107, the Magistrate—he does not say the Magistrate but we presume it is the Magistrate—shall make a report forthwith to the Sessions Judge. Now, we have to remember what it is he is going to report. As a matter of fact, there is no order under 107. It is a requisition. You require a person to appear.

Rao Bahadur T. Rangachariar: I did not say "order"—the wording is "when action is taken."

Sir Henry Moncrieff Smith: When action is taken. My point is just the same: action is taken. What has the Magistrate done? He has required a person to appear and show cause. The moment he has done that, he reports to the Sessions Judge. Well, what is the Magistrate then going to do? Does he go on until perhaps the Sessions Judge sends for the record or does he stay his proceedings and wait for the Sessions Judge to take action in the matter? I do not know what the poor Magistrate will do.

Rao Bahadur T. Rangachariar: I do not think there will be any difficulty. Till he gets a stay order he goes on.

Sir Henry Moncrieff Smith: Unless he gets a stay order he goes on. Very well. I should have thought it might have been better to make it clear. But let us come to the Sessions Judge. He has got the report from the Magistrate. Now, what is the report going to be? The Magistrate has reported to the Sessions Judge, "I have information that Mr. Rangachariar is likely to commit a breach of the peace."

Rao Bahadur T. Rangachariar: By attending a meeting.

Sir Henry Moncrieff Smith: "I think there is sufficient ground for proceeding against him. I have therefore issued a notice upon him to appear and show cause." That is what the Sessions Judge gets. Now, what is he going to do. He sends for the record. When he has seen the record, he has got no further information to go upon.

Rao Bahadur T. Rangachariar: Then if that is all the material he will cancel it.

Sir Henry Moncrieff Smith: Mr. Rangachariar is reluctant to admit that there is anything wrong with his amendment. But I think in his heart of hearts he will himself realise that it is in the wrong place. That is not an amendment to section 107. He wants it to be much further on in the proceedings. At all events, I shall be very glad indeed if any Honourable supporter of this amendment will get up and remove my doubts in the matter. I cannot see how any Sessions Judge is going to pass any effective order of any sort. I think a sensible Sessions Judge, receiving the report of the Magistrate, will say "what is the good of this to me?" and drop it into the waste-paper basket. This will be the effect of the new procedure which Mr. Rangachariar's ingenuity is devising for us.

Mr. Deputy President: Amendment moved:

"After clause 17 the following clause be added, namely:
17-A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

(5) In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall forthwith be made to the

[Mr. Deputy President.]

Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same and pass such orders as he thinks fit."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—28.

Abdul Majid, Sheikh.
Agnihotri, Mr. K. B. L.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.

Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Singh, Babu B. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—43.

Abdulla, Mr. S. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.

Innes, the Honourable Mr. C. A.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Sinha, Babu Ambica Prasad.
Sircar, Mr. N. C.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Rao Bahadur T. Rangachariar: The next amendment which I move, Sir, is this:

"After clause 17 insert the following clause:

"17A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

"If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the enquiry hereinafter prescribed, he shall be released."

The whole object of the initiation of these proceedings is to require a person to execute a bond to keep the peace for a certain period, but pending the enquiry the Magistrate considers that his detention is necessary and therefore orders him to be brought up—detention in order to compel him to give the security after the proceedings are fully completed. But

if he is prepared to give that security during the pendency of the inquiry there is no reason why he should be kept in custody when he is prepared to do it in order to go on with the inquiry, it being always remembered that this is a purely preventive chapter and not a punishing chapter. If the man is prepared to do that which he is called upon finally to do, when he is prepared to do it in the first instance pending the inquiry, there is no object in keeping him in custody. Therefore, I provide that instead of his being enlarged on bail which may not be enough—bail is merely for appearance—if he executes the bond which he is required in the preliminary order under section 112 which was read to us this morning by the Honourable the Law Member, namely, giving the period and the amount which he would eventually be required to give—if he is prepared to do that pending the inquiry, then he should no longer be detained in custody. That is the object of this amendment and I hope it will be acceptable to the House.

Mr. Deputy President: Amendment moved:

"In clause 17 add the following sub-section, namely:

"After sub-section (4) of the same section the following sub-section shall be inserted, namely:

"(5) If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the inquiry hereinafter prescribed, he shall be released."

Mr. H. Tonkinson: Sir, I have two objections to the amendment which has been moved by the Honourable Mr. Rangachariar. In the first place the proposed sub-section to section 107 is in an entirely wrong place. In the second place it is quite unnecessary. As regards the suggestion that it is in the wrong place, I would merely remark that section 107 deals with persons who have been required to show cause why they should not execute a bond to keep the peace. Now in this sub-section the Honourable Mr. Rangachariar refers to persons brought under arrest under section 114. This section applies to all people who come under the provisions of section 112. That is, it covers the cases of persons who are called upon to show cause why they should not give a bond for good behaviour as well as of persons who are called upon to show cause why they should not give a bond to keep the peace. That objection, Sir, might be met by placing the amendment in another place, but in view of the fact that we are providing in clause 20 for the addition of a sub-section (3) to existing section 117, I suggest that this amendment is quite unnecessary. Under the proposal of the Honourable Member the bond which would be executed would be a bond required of him by the order passed under section 112. Under section 117, on the other hand, it has been definitely provided that the bond shall not be either in degree or in nature more stringent than the bond which the man is required to execute by the order passed under section 112. What then, Sir, is the use of this additional provision. It might be suggested, perhaps, that this will apply to an earlier stage of the proceedings than the stage of section 117. But, Sir, that is entirely incorrect because a man under the proposed sub-section (6) must have been brought before the Court. The order under section 112 must have been read and then, Sir, immediately the provisions of section 117 apply and I submit that the amendment is therefore quite unnecessary. In the interests of the subject, much more has been provided for in the Bill already than in the amendment proposed by my Honourable friend.

Mr. Deputy President: The question is:

"That in clause 17, add the following sub-section, namely:

'After sub-section (4) of the same section the following sub-section shall be inserted, namely:

'5. If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the inquiry hereinafter prescribed, he shall be released.'

The motion was negatived.

Mr. Deputy President: The question is, that clause 17, as amended,
4 r.m. stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the amendment of which I gave notice has already been discussed in connection with clause No. 17. I may be permitted to move an amendment adopting the same wordings as have been adopted in clause 17, that is 'in his opinion if there is sufficient ground for proceeding, or believing, or whatever word may be suitable,—I would leave that to the Legislative Department.

Sir Henry Moncrieff Smith: Sir, we are quite prepared on our part to accept the same amendment that we had in section 107. It will simplify matters if I move it myself, having it now in proper form. I move, Sir,

"That in clause 18 after the word 'substituted' the following be inserted:

'After the words 'such Magistrate' the words 'if in his opinion there is sufficient ground for proceeding' shall be inserted.'

Mr. Deputy President: The question is that the amendment be made.
The motion was adopted.

Mr. T. V. Seshagiri Ayyar: I move, Sir, on behalf of Dr. Gour, his amendment.* I must say at once that, speaking for myself, I should like not to move it, but unfortunately I have power and am authorised to move and not to withdraw. But I can conceive cases, in moving the amendment, cases, probably Government knows, of an effigy being carried which would have the effect of disseminating sedition; or, a caricature, a photograph: there are other ways of disseminating sedition, that is other than orally or in writing. However, Sir, I have got to move it, and I move it.

Mr. Deputy President: The amendment moved is:

"In clause 18 omit the following:

'After the words 'in writing' the words 'or in any other manner' shall be inserted.'

The Honourable Sir Malcolm Hailey: Mr. Seshagiri Ayyar has already anticipated the objection we should have brought forward against his amendment. The added words would, of course, apply to effigies, photographs, cinema shows, dumb shows and the like.

Mr. Deputy President: The question is that that amendment be made.
The motion was negatived.

* In clause 18 omit the following:

'After the words 'in writing' the words 'or in any other manner' shall be inserted.'

Rao Bahadur T. Rangachariar: Sir, I move the following amendment:

"In clause 18 after the word 'manner' insert the word 'knowingly'."

My amendment relates to the same clause but is not to the same effect. The language of the clause is:

"has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or in any manner disseminates or attempts to disseminate . . ."

I introduce the word "knowingly" before the word "disseminates," so that innocent agents may not be proceeded against; for instance, boys who handle newspapers without knowing the contents and such other persons who are merely ignorant tools in the hands of other persons, should not be proceeded against. "Knowingly disseminates"—that is the object of this amendment. I hope it will commend itself to the House, and I do not think many words are needed, unless Government opposes, in which case, of course, there are other Honourable Members who will take care of it.

Sir Henry Moncrieff Smith: Sir, I would suggest that this amendment is really not necessary. Mr. Rangachariar cited the case of the newspaper boy. Well, a newspaper boy does certainly hand on newspapers which contain possibly objectionable matter to purchasers. But I do not think it can be said that the newspaper boy is disseminating the matter.

The word used here is 'disseminating,' 'spreading broadcast,' and Mr. Rangachariar no doubt knows the Latin derivation of the word: it means the same thing as 'scattering seed.' Now, the person who scatters seed orally or in writing is not the newspaper boy. I do not think there is any doubt about that. Nor do I think there is any risk whatever of a newspaper boy being prosecuted under this section. The word "knowingly" is not a word we are accustomed to in our law; we have the words 'voluntarily' 'intentionally,' and so forth. "Knowingly" is somewhat new to us and I do not think we shall be improving the Code by introducing it.

Mr. K. B. L. Agnihotri: Sir Henry Moncrieff Smith has said that no person who sells newspapers can be bound over under this section. I should like to give him some instances which have been brought to my notice. Honourable Members may be aware that in Partabgarh during 1921, about a dozen young men were prosecuted under this section and bound over for distributing certain leaflets about the Kisan movement and put in prison for their refusal to give security. In another place also, very recently, a boy was punished with imprisonment for seven years under sedition for distributing *Fatwa* leaflets. It is just possible that the Magistrates may bind over even boys who sell newspapers in the streets. There will therefore be no harm if the word "knowingly," or any similar word such as "intentionally," is inserted in this sub-clause. It is on the other hand extremely desirable to insert such a word and provide a necessary safeguard.

The Honourable Sir Malcolm Hailey: Sir, the Honourable Member has by implication at all events brought so grave a charge against our Magistracy, namely, of sending to prison for seven years boys who unknowingly disseminated information, that I am impelled to ask him whether he can assure the House that persons so convicted did not know the nature of the leaflets they were distributing. Perhaps he cannot give that assurance?

Mr. K. Ahmed: Sir, there is an amendment to omit clause 19 standing in my name.

Mr. Deputy President: We have just disposed of that.

Mr. K. Ahmed: I wish to move amendment No. 48*

Mr. Deputy President: That has been disposed of.

Mr. K. Ahmed: No, Sir. There has probably been a clerical mistake and I am the sufferer for it. Sir, before I had sent the manuscript written by myself possibly there has been some mistake. The word 'forgery' Sir, you will see in section 110.

Mr. Deputy President: Before the Honourable Member proceeds further I would like to know what amendment on the agenda paper it is that he is moving.

Mr. K. Ahmed: The word 'forgery,' Sir,—I have got the word here.

Mr. Deputy President: That has been disposed of.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 19, sub-clause (ii), the words "or abets the commission of" be omitted.

This amendment relates to clause (d) of section 110. The present clause runs thus:

"Whoever habitually commits mischief, extortion or cheating or counterfeiting coin, currency notes or stamps, or attempts so to do."

The amendment proposed by Government is this:

"Habitually commits, or attempts to commit, or abets the commission of, etc."

Abetment is now added newly to the section. According to the section as it stands now it is only the commission of an offence or an attempt to commit the offence that renders a man liable to be bound over. But now for the first time it is proposed also to bind over a man for habitually abetting the commission of an offence. My objection is this, that abetment may be by doing an overt act or simply by an illegal omission; and it seems to me that a man might be bound over for abetting by means of an overt act but not for abetting by an illegal omission. I am prepared to amend my amendment like this: "habitually commits or attempts to commit or abets by an overt act the commission of an offence." So I will put it like that and I hope that it will commend itself to Government. My point is this, when you bind over a man

Mr. Deputy President: May I ask the Honourable Member to repeat what he has said? The House would like to know what the alteration is.

Mr. J. Ramayya Pantulu: I would add after the word "abets" the words "by an overt act." My point is that we should not bind over a man simply because he has been omitting to do a certain thing which he ought to have done. We can do it with regard to a man who has done an overt act. That is my point, Sir.

Dr. Nand Lal: With your permission, Sir, may I inform the author of the present amendment

* In clause 19, omit sub-clause (i).

Mr. Deputy President: Order, order. The amendment is "In clause 19, sub-clause (ii) after the word 'abets' insert the words 'by an overt act'."

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Sonthal Pargannas: Non-Muhammadan): May I inquire if this new amendment has been accepted by this House?

Sir Henry Moncrieff Smith: No, Sir, by no means.

Mr. Deputy President: If an objection is taken, I would rule it out of order.

Sir Henry Moncrieff Smith: I merely said that the amendment has not been accepted by the House.

Mr. Deputy President: But the question is before the House.

Sir Henry Moncrieff Smith: The amendment has not yet been accepted by the House.

Mr. Deputy President: The amendment is before the House.

Sir Henry Moncrieff Smith: Sir, Mr. Pantulu desires to put in the words 'by an overt act,' because he is afraid that somebody might be prosecuted under section 110 for habitually abetting serious offences by illegal omissions. It is a little difficult to conceive how this might arise. But in any case there is no abetment without intention. If my friend will look at the Penal Code for the definition of abetment, he will find that there is no abetment in regard to an omission unless the omission is an illegal omission and unless also the person intentionally aids, by that illegal omission, the doing of a thing. I think, Sir, the House will agree that if a person habitually and intentionally aids by illegal omissions the commission of all these offences to which reference has been made, he should come within the purview of the law.

The motion was negatived.

Mr. K. Ahmed: Sir, I move that in clause 19, in sub-clause (ii), omit the word 'kidnapping'.

As a general principle, Sir, when there is an offence and it is sufficiently provided for as punishable in the Indian Penal Code, I do not think it is at all necessary that this word should be included in section 110 for bad livelihood. The scope of this section is after all a preventive one and not a punitive one. Kidnapping as a profession, Sir, is very rare in many parts of India; while on the other hand, we have got some experience in our criminal court practice that young minor wives and minor members of families who are without help are kidnapped. Sometimes the relations of the minors go to the police and try by giving illegal gratification to kidnap, with the result that the engine of oppression is being put in against the interest of these persons who are infants after all. That being so, Sir, and since we see the word 'kidnapping' has been put in for the first time after so many years and is probably a good attempt, but certainly, Sir, when we come across so many difficulties, so much oppression being exercised, I submit that this word "kidnapping" should be omitted.

I therefore move, Sir:

"In clause 19, in sub-clause (ii), omit the word 'kidnapping'."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 19 (ii), insert the word 'abduction' between the words 'kidnapping' and 'extortion'."

I think, Sir, while moving this amendment I am on safer ground. Here I do not wish to curtail the powers and the authority that have been vested in the Magistrates or the police and I have no fear of getting any rebuke from the Leader of the House on this amendment. I take it as my ill-luck to have received these rebukes from the Leader of the House, for the fault of having the misfortune to differ from him on certain points. My reason for moving this amendment is that, of late there has been a regular profession with certain people to take women and girls from different provinces of India to the Punjab—so much so that hundreds of females are taken from some of the provinces to the Punjab every year and sold there. So far as the Central Provinces is concerned, the Central Provinces Government deputed special officers to find out and make inquiries in that connection and certain persons are on trial and the cases are pending in the Courts of law. It generally happens that the agents or the female-catchers as they may be called, have their agencies at various places where they employ women of that district or of places in the neighbourhood in their service and after a course of time by deceitful inducements and persuasion take them to the Punjab and sell them. If any of my Honourable friends have any doubt on that matter I would refer them to the various law reports and the law journals: wherein they will find many cases of kidnapping and abduction of this nature reported. Therefore, I submit that there is no reason why when we include kidnapping we should not include abduction also in this section. Therefore, I commend my amendment for the consideration of the House.

The Honourable Sir Malcolm Hailey: Sir, I am very sorry Mr. Agnihotri should think that I have directed rebukes against him. It was far from my mind; I have indeed attempted to convince him by argument every now and then and I am glad to say have frequently received the aid of the House in doing so. On this occasion he may be quite free from any such apprehension. So far from contesting his proposal, for my part I think it is an excellent one. It was originally in the Bill as put forward in 1913, and it was perhaps in an excess of caution that it was omitted by the Lowndes Committee. I quite agree, from my knowledge of the infamous trade that is carried on in certain parts of India, that this addition should be made to Bill; it is an added pleasure to me on this occasion to find a new Saul among the prophets.

Mr. J. Chaudhuri: But the Law Member ought to repudiate the charge against the Punjab.

Bhal Man Singh: Sir, while supporting the amendment, I must strongly repudiate the charge that is brought against my province. I am sure the Honourable the Law Member will bear me out on this point.

Mr. Deputy President: Amendment moved:

"In clause 19 (ii), insert the word 'abduction' between the words 'kidnapping' and 'extortion'."

The question is that that amendment be made.

The motion was adopted.

Munshi Iswar Saran: Sir, I beg to move the amendment which stands in my name, and which runs as follows:

"To clause 19 add the following clause:

"(iii) clause (f) shall be omitted."

I am afraid I shall be considered to be a very nervous person like so many other Honourable colleagues of mine in the House who object to the enlargement of the power of the Magistracy and the police. I know that in moving this amendment I am courting very severe attacks from various quarters. Some friends of mine, mostly Executive Officers of Government, have come to me and, though not in so many words, but by their gestures and by the way in which they have spoken have implied "Either you are a dangerous lunatic or you are a dangerous character yourself. How dare you move this amendment?" When I am opposed by so many distinguished gentlemen, I feel that I must be wrong and they must be right. But, unfortunately, Sir, I have not been convinced that I am wrong and I need hardly assure either the Honourable Sir Malcolm Hailey or the other Members of this House that I am in no sympathy with the dangerous people who are mentioned in section 110, and I am not at all keen on gaining the distinction which a prosecution under this section confers upon you.

But, Sir, the whole point is this. Is it really necessary to have this clause (f) in section 110? The House will notice that its scope has been very much extended by the amendments that have been carried to-day. Almost every kind of imaginable offence to which the provisions of this section could be made applicable has been included in sub-clauses (a), (b), (c), (d) and (e). I have been trying to think—I must confess without success—of a case to which clause (f) would apply but which would not be covered by the previous clauses. (An Honourable Member: "Goondas.") Yes. My Honourable friend says "Goondas." I was going to refer to Goondas. Perhaps my words will not carry the same weight with the House as the words of a very distinguished Judge of the Allahabad High Court, whom every lawyer not only in the United Provinces but all over India considers an authority on criminal law. I mean the late Sir Douglas Straight: Listen to what he says. There was a case exactly of a Goonda before him and this is what he said. I will give the facts from the report itself.

Sir Henry Moncrieff Smith: May we have the reference, please.

Munshi Iswar Saran: Indian Law Reports, Allahabad Series, Volume VI, page 132. I must at once inform Sir Henry Moncrieff Smith that I tried to find out whether this case was over-ruled but I could not get hold of the index of cases in this library. If it is over-ruled, I shall be very glad if he will tell me so. This is what the report says:

"On reading over the record and hearing Babua's pleader, Babu Lal Moha, I consider there is sufficient evidence on the record to establish that Babua is a notorious badmash, an extortioner, a concoctor of false cases as a means of extorting money, and altogether a terror to the town of Mirzapur. I have heard of the badmashes of Mirzapur (who, indeed, are notorious), and I have taken the opportunity of consulting a few of the residents of Mirzapur about this Babua, and the account they give of him is very black indeed."

That was the sort of man who went up in revision before his Lordship, Mr. Justice Straight. This is what his Lordship says:

"I am well aware that in Mirzapur, particularly, the task of the Magistrate in preserving order is an extremely difficult and anxious one; but neither he nor the

[Munshi Iswar Saran.]

Judge nor this Court is empowered by law to put a man in prison simply because he has an evil reputation. If respectable persons, who can prove facts which would constitute the credible information legally necessary to justify issue of process and requirement of security, have not the courage to come forward and assist the Magistrate in the prevention of breaches of peace or of crimes by giving evidence in Court, it is unfortunate to say the least of it, but the Magistrate is not therefore entitled to act upon inadequate proof obtained *aliunde*, which he himself describes 'as not so strong as it ought to be'. If in the interest of public order or security to property the attendance in Court of such persons was necessary, the Magistrate had the power, if he chose to exercise it, of compelling their appearance."

I have invited the attention of the House to this particular passage in the judgment of Mr. Justice Straight to show that it was a very bad case where the District Magistrate and the Sessions Judge were clearly of opinion that the man was a regular *badmash*, goonda or hooligan, call him what you will. The District Magistrate and the Sessions Judge thought that he should be bound over under section 110. But his Lordship Mr. Justice Straight sitting in revision held that the provisions of this section did not apply, and he refers,—I may tell Sir Henry Moncrieff Smith—to an earlier case reported in I. L. R., 2, All., 835, where he has laid down the principle which should guide Courts in applying section 110. Now, I submit that if the House is satisfied that there are cases which are not covered by the previous clauses together with the amendments made—apart from the question of any authority in my favour—then surely, this clause should be retained and I shall be happy to withdraw my amendment. But I fail to see why you should introduce a clause so general, and I might say, so vague that it is difficult to define it. Moreover I submit that in times of panic or of excitement it is possible that this clause may be misapplied, as indeed some clauses are being misapplied. Take the case of a goonda who either goes about beating people, trying, say, to extort money. If he is a man who goes about beating people, you can certainly have him under clause (c) which lays down that a person who "habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace", should be bound over under this section. Or to take another instance, if you have a man who goes about threatening people, then you can again have him under this very clause. I submit that these clauses are wide enough to cover all these cases and it is not wise to have a clause which can on account of its vagueness and indefiniteness be misapplied. I therefore move the following amendment:

"To clause 19 add the following sub-clause:

"(iii) clause (f) shall be omitted."

The Assembly then adjourned till Eleven of the Clock on Saturday, the 20th January, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 20th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

APPOINTMENTS TO COUNCIL OF INDIA.

195. ***Mr. K. C. Neogy:** (a) With reference to the observation of the Joint Select Committee on the Government of India Bill, 1919, while recommending the reduction of the period of service for Members of the Council of India to five years that it would "ensure a continuous flow of fresh experience" from India, will Government be pleased to obtain from the Secretary of State a statement as to whether this consideration has been kept in mind in making appointments to the Council of India?

(b) What are the respective dates of retirement from service in India of the Members of the said Council who are retired officials from India?

(c) In the case of members re-appointed to the Council of India after their first term, will Government be pleased to obtain from the Secretary of State, and publish a copy of the minute setting forth the reasons for the re-appointment, which the Secretary of State is required to lay before the Parliament in such cases under clause (5) of section 3 of the Government of India Act, 1919?

The Honourable Sir Malcolm Hailey: Appointments to the Council of India are made entirely at the discretion of the Secretary of State. The Government of India will however forward the question to the Secretary of State.

Mr. T. V. Seshagiri Aiyar: May I ask a question of the Honourable Member? Are the Government of India ever consulted upon these appointments and as to the qualifications of the person to be appointed?

The Honourable Sir Malcolm Hailey: The Government of India are not consulted on these points.

Mr. K. Ahmed: Will the Government of India be pleased to recommend the appointment of more members?

UNION OF ORIYA-SPEAKING TRACTS.

196. ***Mr. B. N. Misra:** (1) With reference to the assurance given by the Honourable the Home Member on the Resolution dated 20th February

1920 brought by the Honourable S. Sinha and with reference to the reply given to my question last year will the Government be pleased to state if the reports of the several Local Governments have been received by them regarding the union of all the Oriya-speaking areas now under the Provincial Governments of Madras, Central Provinces, Bengal and Bihar and Orissa?

(2) If so will the Government be pleased to state the steps taken by them to effect the union of the said areas under one administration?

(3) If no steps have already been taken do the Government propose to take early steps for the said purpose?

(4) Is the Government aware of the Resolution of the Council of Bihar and Orissa recommending the union of the Oriya-speaking areas under one Administration?

The Honourable Sir Malcolm Hailey: (1), (2) and (3). Government have received the replies from local Governments referred to by the Honourable Member and the question is under consideration.

(4) Government have seen the resolution passed by the Bihar and Orissa Legislative Council referred to by the Honourable Member.

RESOLUTIONS PASSED BY THE NATIONAL LIBERAL FEDERATION.

197. ***Dr. H. S. Gour:** (a) Has the attention of Government been drawn to the Resolution of the National Liberal Federation passed at its last annual Conference at Nagpur?

(b) If so, is it aware that the Conference of that body have advised Government to accelerate the pace for the attainment of complete Self-Government by the immediate introduction of full responsible Government in the Provinces, and responsibility in the Central Government in all departments except the Military, Political and Foreign?

The Honourable Sir Malcolm Hailey: (a) and (b). Yes.

RECOMMENDATIONS OF THE MILITARY REQUIREMENTS COMMITTEE.

198. ***Dr. H. S. Gour:** Is the Government aware that the National Liberal Federation demand the Indianization of the Army and the introduction of other improvements and economics recommended by the Military Requirements Committee?

Mr. E. Burdon: The Honourable Member is presumably referring to the resolution reported as having been moved by Mr. B. S. Kamat, M.L.A., at a meeting of the National Liberal Federation held on the 28th December. This, the Government of India have seen.

OPPOSITION OF NATIONAL LIBERAL FEDERATION TO ROYAL COMMISSION ON THE PUBLIC SERVICES.

199. ***Dr. H. S. Gour:** (a) Is the Government aware that the National Liberal Federation have passed a Resolution strongly opposing the proposal to appoint a Commission to inquire into the alleged financial and other grievances of the Imperial services and to make further enhancements of their pay and allowances?

(b) If so, what action does Government propose to take thereon?

(c) Is it a fact as announced by Reuter in his wire from London on the 3rd instant that Lord Peel had already decided to appoint a Royal

Commission; and was consulting the Government of India respecting its details?

(d) Was this Commission appointed after previous consultation with and with the previous concurrence of the Government of India?

(e) Will the Government be pleased to lay on the table for information of the Honourable Members all the correspondence between the Secretary of State and the Government of India on the subject?

(f) What are the terms of Reference to this Commission. What is its personnel?

The Honourable Sir Malcolm Hailey: The Honourable Member has no doubt seen the official communiqué which appeared in regard to the press announcements on the subject. For the present, Government is not prepared to make any further statement.

O'DONNELL CIRCULAR.

200. ***Dr. H. S. Gour:** (a) Has the Government received the replies of the Local Governments on the O'Donnell Circular?

(b) If so, will it lay them on the table for the information of members?

(c) Is it a fact that His Excellency the Viceroy is reported to have assured the European Association in Calcutta, that there was no truth in the rumour that his Government was opposed to restricted recruitment of Europeans in England for public services in India?

The Honourable Sir Malcolm Hailey: (a) All replies have not yet been received.

(b) Government do not at present intend to lay the correspondence on the table.

(c) None of the reports of His Excellency the Viceroy's speech which have come to the notice of the Government of India are to this effect. His Excellency's remarks merely contradicted, in general terms, the alleged opposition of the Government of India to recruitment in England for the Civil Service in India.

LOCOMOTIVES FOR INDIAN RAILWAYS.

201. ***Dr. H. S. Gour:** (a) Is it a fact that orders for 131 locomotives for use of the Railways in India have been placed in Great Britain?

(b) What is their aggregate value? Is it £750,000 at £7,000 apiece as stated in the *Financial News*?

(c) Were the requirements advertised, and tenders called for from all countries including Germany, Belgium, France and America?

(d) If so, will the Government please quote the lowest rate and the rate finally accepted?

Mr. C. D. M. Hindley: In the absence of particulars as to the period covered in paragraph (a) of the question it is regretted that the information asked for cannot be furnished.

APPOINTMENT OF 30 NEW I. M. S. OFFICERS.

202. ***Mr. J. N. Basu:** (a) Will the Government be pleased to state the total cost of the travelling expenses and their pay of the 30 new Indian Medical Service Officers appointed by the Secretary of State?

(b) Whether the amounts will be borne by the Indian or British Exchequer?

(c) Whether the Secretary of State consulted the Government of India beforehand and did the Government of India consent to such appointment?

(d) Whether equally qualified medical men were not obtainable in India?

(e) If not, what were their exceptional qualifications?

(f) In what provinces and how many of such officers will be stationed?

Mr. E. Burdon: (a) to (e) The attention of the Honourable Member is invited to the reply recently given to starred question No. 81 asked in this Assembly by Rai Bahadur Bakshi Sohan Lal.

(f) All the officers in question will in the first instance be employed on the military side.

MILITARY AND AMBULANCE CARS ON THE GREAT INDIAN PENINSULA RAILWAY.

203. ***Mr. N. M. Joshi:** (a) What is the number of military or ambulance cars on the Great Indian Peninsula Railway built or converted from other coaching stock?

(b) Is it a fact that these are reserved entirely for military traffic and are not used for ordinary traffic even when they are lying idle?

(c) If so, what charge is made to the Military Department when the stock is not in actual use?

Mr. E. Burdon: (a) During the cold weather 40 military cars are held at the disposal of the military authorities by the Great Indian Peninsula Railway. This number is reduced to 19 during the hot weather.

The number of ambulance cars provided by the Great Indian Peninsula Railway is 9.

Government are unable to say whether these cars have been built specially or have been converted from other coaching stock.

(b) According to the agreement, the cars are reserved entirely for military traffic when they are held at the disposal of the military authorities.

(c) In the case of military cars, Rs. 12 per day is paid for each car whether it is in use or not. The charge for the hire of the ambulance cars is still under consideration.

SALE OF UNCLAIMED COAL.

204. ***Mr. N. M. Joshi:** Is it a fact that about 20 wagon loads of unclaimed coal was recently sold by auction at Kalyan and if so:

(a) What was the freight charge leviable but unrecovered on the consignment?

(b) What was the amount actually realised by auction?

(c) Was the coal not fit to be retained for railway purposes?

Mr. C. D. M. Hindley: Government have no knowledge of the facts referred to. They think that the Agent can be trusted to have adopted the most suitable course in a matter of this kind.

FIRST, SECOND AND THIRD CLASS CARRIAGES ON RAILWAYS.

205. ***Mr. N. M. Joshi:** With reference to columns 66 and 67 of Appendix 13 to the Railway Administration Report for 1919-20, is it a fact that the stock of 1st and 2nd class carriages is unduly in excess of the requirements of the traffic carried or offering, whether relatively to the 3rd class carriages or absolutely, and if so, do Government propose to transfer the provision in the quinquennial programme for 1st and 2nd class carriages to that for 3rd class carriages.

Mr. C. D. M. Hindley: The items in the Administration Report for 1919-20 referred to have been omitted from subsequent reports because it was found that they were valueless as a practical guide to the facts of the position. As an illustration the Honourable Member will notice that the average load of 3rd class stock is considerably below the full capacity from which it might be argued that no overcrowding exists. Such figures cannot, therefore, be taken as a reliable guide in respect to provision necessary. Requirements in respect to stock on each railway are in fact governed by the actual necessities of the train services which are arranged to suit public convenience as far as possible. The requirements cannot be gauged from a study of general averages. Reports received from railway administrations do not support the idea that the supply of 1st and 2nd class carriages is in excess of requirements. The relative necessity for provision of stock of the various classes in the programme is being given very careful consideration and Government do not consider that the provision made for the first two classes is in excess of what the circumstances of traffic require.

Mr. N. M. Joshi: Will Government be pleased to put in somewhere in the report what are the actual requirements of the first and second class carriages and what are the third. If the figures given in the Report do not show the actual requirements I think it is due to the public that they should show what the actual requirements are.

Mr. C. D. M. Hindley: The figures referred to in this question are averages and not, as the Honourable Member seems to indicate, requirements at all. They are average figures and they are statistics. In regard to the request made that the requirements should be shown I think it is extremely difficult to make any promise with regard to that because the matter is a very complicated one depending on the time tables of all the different railways all over India and it is very difficult to lump the whole thing together and say that so many carriages are required. However the suggestion will be considered.

CAPITAL GRANT SPENT IN ENGLAND.

206. ***Mr. N. M. Joshi:** With reference to the answer given on 6th September 1922 to starred question No. 20, will Government kindly state why loss by exchange cannot properly be taken as expenditure in England?

The Honourable Sir Basil Blackett: The so-called losses by exchange represent the additional rupees required to meet the sterling expenditure of the Government of India as compared with the number of rupees which would be required at the standard rate of 2 shillings adopted in the accounts. They involve not an additional amount of sterling expenditure but the finding of a larger number of rupees to meet a given outgoing in sterling.

and are therefore correctly classed as rupee expenditure. Indeed they could not be brought to account in sterling at all.

PRINTING PRESSES ON RAILWAYS.

207. ***Mr. N. M. Joshi:** Will Government kindly state whether the Eastern Bengal, the East Indian, the Bengal Nagpur, the Great Indian Peninsula and the Bombay, Baroda and Central India Railways have each a separate printing press where they get their printing done, or there are two combined presses, one at Calcutta for the Calcutta railways, and one at Bombay for the Bombay railways?

Mr. C. D. M. Hindley: The Eastern Bengal Railway, the East Indian Railway and the Great Indian Peninsula Railway each have their own Press. The Bengal Nagpur Railway and the Bombay, Baroda and Central India Railway get their printing done by private firms.

DEPRECIATION FUND ON THE GREAT INDIAN PENINSULA RAILWAY.

208. ***Mr. N. M. Joshi:** Will Government kindly state whether the Great Indian Peninsula Railway Company, during the period of its existence as a guaranteed railway Company was under its contract or otherwise, required to, and did, maintain out of revenue a depreciation fund and if so, how were the monies in that fund utilised when the line was purchased by the State?

Mr. C. D. M. Hindley: The Great Indian Peninsula Railway Company was not under the terms of its contract required to maintain out of revenue a depreciation fund but did as a matter of fact establish a reserve fund from 1868 to 1875 when that fund was closed.

The fund had disappeared long before the line was purchased by Government.

Mr. K. Ahmed: How were those monies in the depreciation fund utilized?

Mr. C. D. M. Hindley: I am not in a position to give a detailed answer to a question like that relating to a period between 1868 and 1875.

INTEREST ON UNPRODUCTIVE CAPITAL COST OF RAILWAYS.

209. ***Mr. N. M. Joshi:** Will Government kindly state whether any credit is received on account of interest on that portion of the capital cost of the railways which was left unproductive by dismantlement?

Mr. C. D. M. Hindley: Interest on that portion of the capital cost of a railway which is left unproductive by dismantlement and which is allowed to remain in the capital account is treated in the same manner as interest on the rest of the capital outlay, i.e., in the case of company-worked railways, for instance, the interest on such capital also is generally treated as a first charge on the net earnings of the railway prior to the calculation of surplus profits.

Mr. N. M. Joshi: May I ask whether this burden was not borne by the Indian revenues whereas it ought to have fallen on the English revenues?

Mr. C. D. M. Hindley: If the Honourable Member will specify any particular case we will have the matter looked into, but I am not able to reply to a general proposition.

Mr. N. M. Joshi: There is no particular case. I am asking whether the interest on the capital lying idle on account of railways materials sent to Mesopotamia and other war areas was borne by the Indian or English revenues. The particulars of railways from which materials were taken are best known to Government.

Mr. C. D. M. Hindley: I should like to have notice of that question.

RAILWAY COMPANIES' RESPONSIBILITIES AND OBLIGATIONS.

210. ***Mr. N. M. Joshi:** (a) Has the attention of Government been drawn to the following observation which, according to a telegram appearing in the *Pioneer* of the 7th December 1922, occurs in the judgment delivered on the 5th idem by Mr. Justice Coutts Trotter in the suit brought by Mr. E. Mack against the Madras and Southern Mahratta Railway Company claiming damages for personal injury sustained by him on the Nellore Railway platform on the night of the 29th August 1921 owing to his falling into an unprotected and unlighted pit:

"I think the history of the whole case discloses lamentable failure on the part of the Company to realise their responsibilities and obligations."

(b) If so, will any portion of expenditure in connection with the suit fall on Government either directly or indirectly, and if so, why?

Mr. C. D. M. Hindley: (a) Yes.

(b) The expenditure incurred in connection with the case referred to will in accordance with the terms of the contract with the Madras and Southern Mahratta Railway Company, be charged against the working expenses of the railway in which Government are directly interested.

Sir Deva Prasad Sarvadhikary: Has Government taken any steps with regard to what has been pronounced in the judgment mentioned in the question with a view to bringing the obligations and responsibilities of the Company and their officers home to them?

Mr. C. D. M. Hindley: The Government of India have asked for a report from the Madras and Southern Mahratta Railway, in regard to this matter.

Sir Deva Prasad Sarvadhikary: And when the report is received will the Government lay it on the table here?

Mr. C. D. M. Hindley: I am not prepared to make any promise with regard to that.

UNSTARRED QUESTIONS AND ANSWERS.

FURLOUGH AND LEAVE REGULATIONS ON RAILWAYS.

88. **Mr. S. C. Shahani:** (1) Are the Government aware of the differences in the furlough and leave regulations between the European and Indian officers, still in force on some of the Company Railways in India?

(2) Is it not a fact that Government owns the largest share (nearly nine-tenths) of the capital invested in the Indian Railways?

(3) Will Government be pleased to state whether these Railways in question have been addressed in the matter.

(4) If not, do the Government propose to address these Companies re the elimination of all the differences between Europeans and Indians?

(5) Will the Government be pleased to lay on the table a copy of the leave regulations in force on the different Company Railways in India?

Mr. C. D. M. Hindley: 1 and 2. The answer is in the affirmative

3 and 4. Certain fundamental leave rules were drawn up many years ago, within the provisions of which companies may prescribe their own leave rules. A modification of the fundamental leave rules for company-worked railways is now under consideration in connection with the Government Fundamental rules recently sanctioned. As the Honourable Member is no doubt aware these Government rules do not provide for absolute equality in leave rules for European-appointed and Indian-appointed staff.

5. Each railway has its own leave rules and copies are not available.

POSTAL AND TELEGRAPH DEPARTMENTS.

89. **Rai Bahadur G. C. Nag:** (a) What was the object of amalgamation of the postal and telegraph departments? Was there any surplus over expenditure in these departments at the time of this amalgamation? If so, what was the surplus of receipts over expenditure in each case?

(b) Will Government kindly furnish a statement showing the strength of the Directorate with salaries in each department, (1) in the pre-amalgamation days, (2) its strength three years after the amalgamation, (3) its strength six years after it, and its strength now?

(c) Is it not a fact that the postal department used to leave a large surplus year after year, and that its surpluses have vanished since the amalgamation?

(d) Will Government kindly furnish a comparative statement showing the travelling allowance paid to the telegraphic offices of the Directorate two years before the amalgamation, and the travelling allowance paid to the same offices during the past two years?

Colonel Sir Sydney Crookshank: The necessary information is being collected and will be supplied as soon as it is available.

PAY OF POSTAL DEPARTMENT.

90. **Rai Bahadur G. C. Nag:** When was increase of pay, if any, granted in recent years to the officers and subordinates of the postal department on account of economic distress? Was any increase granted then to the Deputy and Assistant Post Master Generals? If not, why not?

Colonel Sir Sydney Crookshank: With very few exceptions, the revisions of the scales of pay of officers and subordinates of the Postal Branch of the Post and Telegraph Department which have recently been sanctioned in recognition of the increase in the cost of living have been given effect to from the 1st December, 1919. No actual increase of pay has been sanctioned in the case of Deputy Postmasters-General, but they have now been placed on a time-scale. There is no such class of officials as Assistant Postmasters-General. If the Honourable Member is referring to Assistant Directors General of the Post Office the preceding remarks with regard to Deputy Postmasters-General apply also in their case.

JUVENILE COURTS.

91. **Mr. J. N. Basu:** Has the Government of India asked the local Governments in India and Burma to expedite the establishment of Juvenile Courts and if so, what steps have been taken by such Governments in the matter?

The Honourable Sir Malcolm Hailey: The Government of India are about to communicate their views on Chapter XV of the report of the Jails Committee which deals *inter alia* with the subject-matter of the Honourable Member's question. I will show the Honourable Member a copy of the letter when it has issued and if he or any other Honourable Member so desires, will place a copy on the table of the House.

RATES AND FARES ON E. I. RAILWAY.

92. **Mr. N. M. Joshi:** Will Government kindly state whether it was ever suggested during the pre-war period either by Government or by the Company, that in view of the very low ratio of working expenses to gross earnings which obtained on the East Indian Railway during that period, the rates and fares on that Railway should be reduced, and if so, what were the reasons for the suggestion not being adopted?

Mr. C. D. M. Hindley: Yes. The question was raised in 1912, by the Bengal Chamber of Commerce, but the Government of India decided that they would not depart from the policy which had obtained in the past, *viz.*, that uniform minimum mileage rates should be applicable to all important Indian Railways.

WORK AND COST OF COMMITTEES.

93. **Mr. N. M. Joshi:** With reference to page 39 of the Legislative Assembly Debates, Volume III, will Government lay on the table a copy of the final report of the Staff Selection Board Committee?

The Honourable Sir Malcolm Hailey: The report in question has not yet been submitted to Government.

AHMADPUR-KATWA RAILWAY.

94. **Mr. N. M. Joshi:** Will Government kindly state the circumstances which led to a reduction in the working expenses of the Ahmadpur-Katwa Railway from Rs. 1,17,799 in 1918-1919 to Rs. 75,726 in 1919-1920?

Mr. C. D. M. Hindley: The reduction was due chiefly to the transfer of interest charges on temporary loans from "working expenses" to "Net Revenue Account," and to a small extent to less expenditure on maintenance and on working expenses.

PRICES OF COAL.

95. **Mr. N. M. Joshi:** With reference to appendix 15 of the Railway Administration Report for 1920-21, will Government kindly state on what principle a differentiation is made in pricing coal as between the East Indian Railway on the one hand and the Great Indian Peninsula and the North Western Railways on the other and in what part of the railway budget the transactions of State Collieries are shown?

Mr. C. D. M. Hindley: The output of collieries on the North-Western Railway is priced at rate based on the calorific value of Bengal coal delivered in Quetta District, and the net results of working the collieries, whether profit or loss, are adjusted annually against the working expenses of the railway. Similarly the Great Indian Peninsula Railway charge actual working expenses and credit the output at estimated rate based on the value of the coal. The differences are charged against the working expenses of the railway. There is therefore no difference in principle as between the method employed on these lines and the East Indian Railway.

The transactions of State collieries are included in the figures for stores transactions given in the budget of individual railways.

DEPARTURES FROM RAILWAY RATES AND FARES.

96. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing sanctioned departures from the railway rates and fares shown in public tariffs?

Mr. C. D. M. Hindley: A statement showing the information so far as Government are aware, is being sent to the Honourable Member.

RETIREMENTS ON RAILWAYS.

97. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing by railways the number of officers in the superior grades of the different departments due to retire under the age rule or otherwise on or before 31st December 1923?

Mr. C. D. M. Hindley: A statement is placed on the table giving the information desired by the Honourable Member so far as State Railways are concerned.

Railway Companies do not adopt uniform age rules for the retirement of their officers and Government have no information regarding impending retirements of Companies' staff.

Statement showing the number of officers in the superior grades of the different departments on State Railways due to retire under the age rule or otherwise on or before 31st December 1923.

Railway.	Engineering.	Stores.	Other Departments.
North Western Railway	1	Nil.	Nil.
Eastern Bengal Railway	1	2	Nil.
Oudh and Rohilkhand Railway	1	Nil.	Nil.
Unattached officers	5	Nil.	Nil.

CARRIAGE OF COAL.

98. **Mr. N. M. Joshi:** With reference to the answer given on 6th September 1922 to starred question No. 25, will Government kindly lay on:

the table a comparative statement showing the rates charged for the carriage of public coal and railway coal; and state:

- Whether any actual calculations have been made to show that the net effect of adopting tariff rates for railway coal will not bring in an increased share of surplus profit to the State?
- Whether the favourable rate applies only to State-owned railways, or also to railways owned by Indian States, Private Companies, District Boards, etc.?

Mr. C. D. M. Hindley: The Honourable Member is referred to the East Indian Railway Coal Tariff in which the schedule of rates for public and railway coal on that railway will be found and also full information about the rates charged on other principal railways.

- Such calculations would be extremely complicated owing to the varying proportions in which the surplus profits are divided between Government and the Companies under their contracts and Government do not consider that the results of such calculations would be a conclusive guide to policy in this matter in view of the reasons given in the answer to the Honourable Member's question on 6th September.

- The Honourable Member is referred to the first portion of the reply.

MEANS OF COMMUNICATION ON RAILWAYS.

99. **Mr. N. M. Joshi:** (a) With reference to appendix 19 of the Railway Administration Report for 1920-21, will Government kindly state whether they have relaxed the limit of two years fixed in paragraph 5 of appendix 42 to the Railway Administration Report, 1906, for the provision of all carriages with means of communication between passengers and railway servants, and if so, lay a copy of the orders on the table?

(b) Is the cost of this provision paid out of revenue or out of capital funds and in the former case what steps, if any, are proposed to be taken with reference to the adjustment of arrears on the East Indian and the Great Indian Peninsula Railways whose contracts expire during the next few years?

Mr. C. D. M. Hindley: (a) Yes. The procedure suggested by the Honourable Member involves printing the orders in the Council proceedings and with a view to avoid extra printing charges I am arranging to furnish him with a copy of the orders.

(b) The provision of intercommunication apparatus is a charge to Capital funds.

ANNUITIES IN PURCHASE.

100. **Mr. N. M. Joshi:** With reference to page 146 of the Government of India Finance and Revenue Accounts for 1919-20, will Government kindly state what the item "contribution towards management, etc.", under Annuities in Purchase exactly represents?

Mr. C. D. M. Hindley: Government having purchased a portion of the annuities of some railways, is liable to contribute rateably with other annuitants towards the management, etc., of the annuity fund. The item referred to by the Honourable Member represents the expenditure relating to this liability.

HAULAGE OF POSTAL VANS.

101. **Mr. N. M. Joshi:** With reference to page 29 of the Railway Administration Report for 1913-14, will Government kindly state what increase, if any, has since been made in the haulage charge of postal vans?

Mr. C. D. M. Hindley: No increase has since been made but a proposal for an increase is under consideration.

COMPENSATION FOR INCOME-TAX ON E. I. RAILWAY.

102. **Mr. N. M. Joshi:** Will Government state the circumstances which led to compensation for income-tax being paid to deferred annuitants in the East Indian Railway and the basis of the division of surplus profits being altered with effect from 1st January 1920?

Mr. C. D. M. Hindley: Provision was made for payment of compensation to the Deferred Annuitants on account of income-tax in certain eventualities with a view to protecting them from loss which they might sustain during the currency of the revised contract owing to non-receipt of the abatement of income-tax which is allowed to Ordinary Annuitants on portion of their annuity representing instalment in repayment of capital.

The alteration in the basis of the division of surplus profits was made in order to secure more favourable terms to the Secretary of State than under the old contract, in view of the renewal of the contract for a further period of 5 years with effect from 1st January 1920.

SUPERIOR POSTS ON RAILWAYS.

103. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing the names of the non-Indians appointed on railways to vacancies or to new posts in the superior service since 1st April 1922, and which of the appointments were made by public advertisement?

Mr. C. D. M. Hindley: A statement is laid on the table. The information regarding Companies' Lines is not available.

Names.	Appointment.	REMARKS.
R. J. Earle	Assistant Executive Engineer.	Appointed by Secretary of State.
J. D. Michael	Ditto	Ditto.
T. G. Creighton	Assistant Locomotive Superintendent.	Ditto.
G. W. Browne	Ditto	Ditto.
O. R. Tucker	Ditto	Ditto.
T. H. B. Jones	Ditto	Ditto.
W. Leach	Works Manager, Carriage and Wagon Shops.	Ditto.
C. E. Dickens	Assistant Signal Engineer	Ditto.
C. H. Griffiths	Ditto	Ditto.
H. B. Adams	Assistant Electrical Engineer.	Appointed by Railway Board in India
A. E. Hewlett	Assistant Locomotive Superintendent.	Promoted from the Subordinate to Establishment.
H. A. Tuck	Assistant Signal Engineer	Ditto.

Note.—Appointments by the Secretary of State are made on the advice of a Selection Committee or of the Consulting Engineers to the Secretary of State, who consider applications called for by advertisement ordinarily.

SURPLUS PROFITS ON RAILWAYS.

104. **Mr. N. M. Joshi:** With reference to column 2 of the statement of surplus profits paid to railway companies accompanying the Budget for 1922-23, will Government kindly state why the "actuals for 1920-21" do not appear against that year in the "History of Indian Railways"?

Mr. C. D. M. Hindley: The matter can best be explained by an illustration. In 1919-20 the Bengal Nagpur Railway Company's share of the surplus profits of that year was Rs. 14,63,387 and the Company showed that amount in its accounts. This amount therefore was quite correctly shown as the Company's share of surplus profits in the year 1919-20. But the Company's share was actually paid in 1920-21 and the payment therefore was shown in the budget against that year.

PURCHASE OF G. I. P. RAILWAY BY STATE.

105. **Mr. N. M. Joshi:** With reference to the answer given on 8th September 1922 to unstarred question No. 159:

- Is it a fact that the purchase of the Great Indian Peninsula Railway was fixed exclusively on the basis of the market value of the Great Indian Peninsula Railway Company's capital stock and that the cost of land was not a factor which had any influence in determining the price;
- What were the names of the old guaranteed Companies who were provided with lands free of cost;
- Was not a separate account of the cost of lands maintained such as is now done in connection with lands provided for Branch line Companies?

Mr. C. D. M. Hindley: (a) The answer is in the affirmative. The cost of land was not therefore a factor affecting the price.

(b) The old Guaranteed Railway Companies provided with land free of cost were as follows:

- (1) East Indian Railway.
- (2) Eastern Bengal Railway.
- (3) Scindhe Punjab and Delhi Railway.
- (4) Oudh and Rohilkhand Railway.
- (5) South Indian Railway.
- (6) Great Indian Peninsula Railway.
- (7) Bombay, Baroda and Central India Railway.
- (8) Madras Railway.

(c) Separate subsidiary accounts of the cost of lands made over to each Guaranteed Railway Company free of cost were maintained during the existence of these railways as such. With the purchase of each Guaranteed Railway, however, the maintenance of the subsidiary accounts was discontinued.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: The House will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act of 1870, as passed by the Council of State.

The amendment moved is:

"To clause 19, add the following clause:

(iii) Clause (f) shall be omitted."

The Honourable Sir Malcolm Hailey (Home Member): Munshi Iswar Saran proposes to exclude from our Code the provision which lays down that if a man is so desperate and dangerous as to render his being at large without security a hazard to the community, then he may be placed upon security. The House will remember that in arguing his case he placed considerable reliance upon the judgment of Mr. Justice Straight. Now, I may tell the House at once that that judgment was not applicable at all to the Code as it now stands. This particular provision of law, namely, section 110 (f) was originally in our Code in 1872. It did not appear in our Code of 1882, but its absence was felt to be so disastrous that it was re-included in 1898. Mr. Justice Straight's judgment refers to the Code of 1882, in which this particular section did not then find a place. The only provision of the Code at that time was as follows:

"Whenever a Presidency Magistrate, a District Magistrate or Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to be stolen, or habitually commits extortion or, in order to commit extortion, puts or attempts to put anybody in fear of injury,"

then security could be taken from him.

The Honourable Member quoted the remarks of the District Magistrate and the facts do not seem to have been seriously in dispute, that Babua was a notorious *badmash*, an extortionist, a concocter of false cases as a means of extorting money and altogether a terror to the town of Mirzapur. Well, if those remarks prove anything at all, they prove, as I have said, that it was very unfortunate that a provision corresponding to 110 (f) did not find a place in the Code of 1882. If it had stood in the Code at the time then Babua could have been held to security: and everyone will admit that the whole tenour of the judgment which Mr. Iswar Saran read out to us proves that it was highly desirable that Babua should have been held to security. If therefore the judgment that Mr. Iswar Saran read out to us proves anything, it proves that the case he put before the Assembly for the exclusion of this section is an exceedingly bad one. I do not go into the further technical grounds argued in that judgment, because, as I have said before, it is quite inapplicable to our present Code.

Now, as to the question of substance Mr. Iswar Saran says that we have extended the scope of section 110. How far have we done so? We have included the forger; we have included the abettor, though there were certain Members of the Assembly who thought that the abettor should be protected; we have included the abductor, whose presence in the Code now we owe to the kindly offices of Mr. Agnihotri; and we have included the kidnapper, in spite of the tender solicitude of Mr. Kabir-ud-Din Ahmed. That is the extent to which we have extended the section, and I defy Mr. Iswar Saran to argue with any show of truth that by this restricted

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extension of the section we have made it possible for a Magistrate to place on security a man who is dangerous and hazardous to the community, without some specific provision and law to this effect. In any case I claim that the limited extension that we have now given to the section is not a matter so important that it should be used to our prejudice and quoted as an argument for the exclusion of this particular kind of character from the provisions of section 110. For what is the kind of man of which the Code is thinking? He is known to consort with robbers and dacoits. And yet you cannot prove under sub-section (a) that he is himself by habit a house-breaker. He is well known to have desperate associates, men engaged in crimes against life and property, and yet you cannot prove under sub-section (b) that he is himself a habitual receiver of stolen property or that he habitually harbours thieves. But every respectable person in the village is in perpetual terror lest he should bring his associates down upon them. He is a man who seduces women or corrupts the morality of children, yet that does not make him either a kidnapper or abettor within the terms of our law, and you cannot bring him within the provisions of clause (d). A violent character of this type, well known as such in the neighbourhood, and a standing terror to his neighbours, he can trespass on their lands, he can raise forced loans, damage their crops, and yet nobody can complain against him, for they are afraid to do so, and you cannot therefore prove under clause (e) that he habitually commits or abets the commission of offences involving a breach of the peace. That is not a fancy picture. Everybody knows the man who is the terror of the village or his quarter, the man whom you would prosecute if you could under a particular charge, whom the whole community would be glad to see away from the place, and yet whom you cannot hold under any particular provision of the law because people are afraid to bring cases against him. They will not do so themselves, but are only too glad when we step in to aid them with the preventive sections; but if we are to do so, it is difficult to put the information against him under any clause other than clause (f) of section 110. When Mr. Iswar Saran was arguing his case, I heard somebody behind him whisper the word "Goonda". A happy thought for the legislation that has recently been put forward in Bengal and accepted gladly by public opinion in Calcutta proves conclusively that you have to provide by special means for people of this class. He animadverted on the fact that the definition of 110 (f) was a wide one; I maintain that it gets as near as any definition can to the real and essential facts. What has Bengal had to do in the way of definition? Bengal had to deal with cases of this kind, and provide for men who are a terror to the community. The class of persons they were thinking of was the type of character that is referred to in numerous examples that were quoted to us by the Bengal Government. Here are some. I will give the House only bare details, and will suppress the illustrious names of those who are mentioned in this catalogue of notabilities:

"He is a terror to the locality and has great influence over low class people. His men have committed assaults on police officers but the cases failed for want of evidence. He associates with persons who commit serious crimes such as robbery, dacoity and murder, and it is believed that he bears the cost of defence in cases in which they are concerned."

Take another:

"He has a cocaine den. Three prosecutions have, however, failed against him. He adopted the same ingenious device of electrifying his staircase, thereby preventing access to it on the part of the police."

[Sir Malcolm Hailey.]

Here is another:

"He formerly belonged to a wellknown gang of thieves. He has five mistresses with whom he lives in . . . street. He is a notorious gambler and has numbers of bad characters under his control."

Now, those are the classes of persons for whom Bengal had to make provision. They put forward a special Act, and I ask the House to note how they propose to define these persons. I commend the definition particularly to Mr. Iswar Saran. They call it Goondas Bill, and the definition they use is: "Goonda includes hooligan or other ruffian." Is that more restricted or more precise than our 110 (f)? Could all their legal ingenuity devise any more suitable terms than we have hitherto used for providing against the class of men whom Mr. Iswar Saran would now exclude from the purview of section 110? But enough; I am sure that the House really realizes the necessity of providing against this class of persons, that it will have every sympathy for the villagers who are terrified and with townspeople who are continually held in apprehension of their lives and property by hired bravos and miscellaneous ruffians; and that it will not agree with Mr. Iswar Saran.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I quite understand, though I do not fully appreciate Munshi Iswar Saran's desire to exclude this sturdy and amiable body of citizens from the purview of section 110. If we had not 158 clauses of the Bill still to dispose of, and if great economy of time was not imperative, mild excitements like what my friend from time to time provides might have been acceptable. As it is, it is hardly possible to take him seriously with regard to his contention that a desperate and dangerous character should not be even called upon to show cause as to why he should not execute security and promise to be of good behaviour. As has been pointed out by Sir Malcolm Hailey, the judgment that Munshi Iswar Saran referred to has reference to a state of things with which we have nothing to do at the present moment. Furthermore, Sir, that judgment laid considerable and very correct stress upon the fact that the Magistrate in dealing with the case had imported into it considerations within his own knowledge and what he had found out by private inquiry—an extremely improper thing for any Magistrate to have done—and the judgment was rightly set aside. However, that state of things does not exist. As has been pointed out, the omission from an earlier Code was found to be intolerable and had to be re-introduced. Mr. Mukherjee, I believe a fellow-sufferer in Calcutta, reminded the House about the Calcutta Goonda, and Sir Malcolm Hailey has given us some illustrations of the sort of things that Calcutta is suffering from, and Calcutta suffers although section 110 is there. Calcutta Magistrates and the Calcutta Police found that all the supposed arbitrary power provided in section 110 (f) is powerless against the Goonda. I am glad to see from the papers, the Select Committee's report, that those who are opposing the Goonda Bill have been able to evolve a *modus operandi* by which all objections will be met and Calcutta will have a Goonda Act of its own. The result will be that some of the Mirzapore amiabes will have to come back home and give occupation to Munshi Iswar Saran in his province. Whether he will want this to be relaxed or more tightened will be a matter for him and the United Provinces Government to decide. (A Voice: "They will suffer".) It does not appear that the United Provinces with its sturdy optimism and muscle powers is in the same trouble as the Bengalee who

wants a special Goonda Act. Even section 110 (f) and the Goonda Act will by themselves not solve the problem and public co-operation is needed there. The ingenuity, the resources, and the masterful activity of this class of people is beyond imagination, and great care is needed to stamp out Hooliganism. I do not think the position of the Government and the Police and of society should be weakened by taking away what has been found imperatively necessary to be brought back.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I think this amendment should not be accepted. It serves a distinct purpose and applies to cases of persons who have lost all regard for the safety, well-being and decency of their fellow creatures living in their neighbourhood. A person of desperate and dangerous character means a person who has a reckless disregard of the safety of the person or property of his neighbours. It cannot be maintained that such persons do not exist in our society. There are men in some localities whose business it is to create trouble for some of their neighbours by habitually provoking false or frivolous investigations, or who are desperate in their efforts to poison cattle by various devices such as by mixing something poisonous with their food, or who habitually or out of sheer mischief try to render injurious the water of wells here and there, or who habitually try to render unconscious for a little while persons with a view to take some mean advantage of them such as robbing them, or who habitually try to intimidate or terrorise people by threats or indecent speeches or songs, or by invoking the aid of religious, superstitious or social customs, or by simply preying on the ignorance of the people in various ways, or who even try to spoil the morals of some young men and women in some places. Well, Sir, it goes without saying that there should be some legal provision for bringing such persons to book. It is to meet such cases, Sir, that clause (f) exists and should exist. There seems to be nothing in the preceding clauses to meet such cases.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move, Sir, that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is:

"That to clause 19 add the following sub-clause:

(iii) The word 'or' at the end of clause (e) and the whole of clause (f) shall be omitted."

The motion was negatived.

Mr. Deputy President: Mr. K. Ahmed.

The Honourable Sir Malcolm Hailey: Might I rise to a point of order before this amendment* is moved? I merely wish to bring to your notice that it refers to section 112. Section 112 does not form part of the Bill.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Rural): May I be permitted to address you on that point because I have also got a similar amendment? The objection taken, Sir, is that this clause does

* "After clause 19 insert the following clause:

'19-A. In section 112 of the said Code for the words 'setting forth the substance of the information received' the words 'expressly specifying the particulars of the information received under section 107, section 108, section 109 or section 110' shall be substituted'."

[Rao Bahadur T. Rangachariar.]

not relate to any of the clauses in the Bill. That is quite true, but, Sir, the rule by which we are to be guided is a rule relating to amendments which says, they must be relevant to the scope of the Bill. I will find out the exact rule I have in mind; in the meantime I will refer to May's "Parliamentary Practice."

On page 364 it says:

"To explain the principles that govern the proposal of instructions to committees of the whole house, it must be borne in mind that, under the parliamentary usage in force in former times, an amendment might be wholly irrelevant to the motion or bill to which it was proposed, and that consequently clauses might be added to a bill during its progress through the house relating to any matters however various and unconnected, whether with one another or with the bill originally drawn. A reaction from such laxity of procedure led to the establishment of rules and practice which imposed on the House of Commons an inconvenient rigidity in dealing with a bill. No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, which is prefixed to every bill and describes its object and scope. To obviate the difficulty thus created, the house, in 1854, by standing order No. 34, gave a general instruction to all committees of the whole house to which bills were committed, which empowered them to make such amendments therein as they should think fit, provided that the amendments were relevant to the subject matter of the bill; and, if such amendments were not within the title of the bill, the title was to be amended and reported specially to the house."

The Honourable Sir Malcolm Hailey: Will you kindly read the Standing Order No. 34, on page 815, of the book?

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Will the Honourable Member read further on the few lines at the bottom of the next paragraph?

Rao Bahadur T. Rangachariar: I will come to that; it says:

"An instruction is necessary to enable a committee to divide a bill into two or more bills, to consolidate two bills into one bill, or to give priority to the consideration of a portion of a bill, with power to report the same separately to the house."

"Instructions have been given to committees of the whole house, on the presentation of a petition, empowering the committee to hear counsel and examine witnesses."

The Honourable Sir Malcolm Hailey: The Standing Order is on page 815; it will make the matter quite clear. Standing Order No. 34.

Mr. N. M. Samarth: And the last paragraph on page 365.

Rao Bahadur T. Rangachariar (Reading Standing Order):

"It shall be an instruction to all committees of the whole house to which bills may be committed, that they have power to make such amendments therein as they shall think fit, provided they be relevant to the subject-matter of the bill."

And what is meant by the subject-matter of the Bill? We have to come back to page 364, where it is stated:

"No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, which is prefixed to every bill and describes its object and scope."

That is what I rely upon. Now the object and scope of this Bill has to be gathered from its history. This is a Bill further to amend the Code of Criminal Procedure, not certain sections thereof. This is a Bill further to amend the Code of Criminal Procedure, and it will be seen, Sir, that almost every Chapter in the Code, including the Schedules, have come under revision in this Bill. If you will also look into the history of it, you

will see that a very influential Committee was appointed to go through the whole Code, and I may refer to the Statement of Objects and Reasons to which is annexed the report of this Committee, which is known as the Lowndes Committee. The Government of India, by a Resolution dated 18th September 1916, had under consideration for some time past the question of the general revision of the Code. The amending Bill was introduced in the Imperial Legislative Council on the 21st March, 1914, and was thereafter referred to Local Governments and Administrations. Meanwhile, the Governor General in Council decided to remit the Bill and the various opinions received in connection with it to a small Committee on which the legal profession was strongly represented.

I say they appointed that Committee to go through the whole Code and to go through all the suggestions received from the various Local Governments as regards the amendments noted in that Chapter. They took up Chapter after Chapter and suggestion after suggestion. They considered what would be necessary to be introduced and what would not be necessary to be introduced. Therefore, they paid attention to all the sections of the Code and came to the conclusion that these amendments were needed. Therefore, this Bill comes before us as a result of the labours of that Committee, and its object and scope is certainly to revise the Code, to see what portions may remain as they are and what portions should be amended. The Committee left certain sections as they are because they thought that no amendments were needed, but this House is certainly competent, when the object is to revise the Code, to consider whether their decision, namely, that certain sections should remain as they are, is correct or not. Therefore, Sir, I think that, having regard to the title of the Bill and having regard to the scope of this revision which we have now undertaken, it should be competent for this House to deal with other sections of the Code, because they are part of the Code. It may be mentioned, perhaps, that, on a former occasion, when an attempt was made to introduce a new clause in connection with the Land Acquisition Bill, the Honourable the President suggested—he did not exactly rule—that it was outside the scope of the Bill and advised me not to press my motion. That is quite true.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): May I correct the Honourable Member, Sir. The President distinctly ruled the amendment out of order on the ground of practice.

Rao Bahadur T. Rangachariar: The Honourable Member will remember that I raised the point against myself, because I knew that the scope of that Bill was not as its preamble indicated. I was quite convinced that the preamble was incorrectly worded in connection with that Bill and I raised the point myself. Now, this is quite a different case from the Land Acquisition Bill. That Bill was merely to amend a particular provision in the Land Acquisition Act and there was no such revision undertaken as in this case. The Bill was not the result of the deliberations of a Committee which sat to revise the whole Code. Sir Henry Moncrieff Smith will remember also that the President gave a warning to the Government that in cases where they wanted to restrict the scope of a Bill they should take care to see that the title was properly worded. He gave that warning, Sir, because he said the title is the guiding principle. He added "if you put your title so generally, I will be obliged to admit amendments." That is what the President said, at least that is my recollection of it. Therefore, the Government have not taken that warning in this case. The Bill, here, is to

[Rao Bahadur T. Rangachariar.]

amend the Code. The Code consists of all its sections and Schedules, and, therefore, I ask you, Sir, to rule the amendment in order.

The Honourable Sir Malcolm Hailey: I should have been content to avoid a discussion on this point and to leave it with the brief remark which I addressed to the Chair, in the full confidence that you, Sir, would have been in a position from your own study of the Home procedure to give a decision without further argument. But, further argument has been indulged in, and I must meet one aspect of it in particular, for I think that, unwittingly no doubt, Mr. Rangachariar has misled the House. At my request he read Standing Order 34 of the House of Commons. I will repeat it:

"It shall be an instruction to all Committees of the whole House to which Bills may be committed that they have power to make such amendments there as they shall think fit, provided they be relevant to the subject matter of the Bill."

Mr. Rangachariar proceeded to interpret for us the words "subject matter of the Bill." He said that the subject matter of a Bill was—and I will use his actual words—"decided by the title," and he quoted to us these words from May:

"No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, prefixed to every Bill, to describe its object and scope."

But I ask the House to realize that the words which he quoted from May refer specifically to the previous state of things which existed before Standing Order 34 was passed? It was precisely that state of things which Standing Order 34 was passed to rectify. I say that, unwittingly, he has misled the House in that respect. In other words the House of Commons decided itself that the title was not decisive and that no amendments should be introduced which did not come strictly within the prescription that they were relevant to the subject matter of the Bill. Mr. Rangachariar has argued from the title of our Bill, and has quoted to us, the manner in which the whole of this legislation came to be initiated. He points to the fact that various Committees sat in order to amend the Code of Criminal Procedure at large. That might be, Sir, but the legislation that has been placed before the House refers to particular chapters and sections of the Code. We have not set out here actually to amend the whole of the Code. He himself referred, at the beginning of our discussion, to the fact that there are many points, such as the Racial Distinctions sections and the like, which have still to be amended. Mr. Chaudhuri again referred to the fact that, when the separation of executive and judicial functions takes place, other amendments of the Code will be necessary. Obviously, and clearly the case as placed before the Legislature refers to the particular sections of the Code which find a place in the Bill, and we have not placed before the House the whole Code for the purposes of amendment or modification.

I must once more refer to the discussions in regard to the Land Acquisition Bill. Mr. Rangachariar, doing himself full justice, as I admit, says that he himself pointed out to the President the difficulty arising from the title of the Bill, and expressed doubts whether an amendment then proposed was actually in order, in spite of the wide title of the Land Acquisition Amendment Bill. It is as well that I should read to the House the ruling

of the President in order that it may be under no misapprehension. The President said:

"The amendment moved by the Honourable Member on my left is undoubtedly within the title of the Bill as drawn, and yet it is equally undoubtedly outside the scope of the substance of the Bill, which provides for an appeal to the Privy Council. Therefore, on the ground of practice, I think I am bound to rule it out of order. At the same time I suggest to the Government that it will be wise to protect themselves by seeing that the title of a Bill is not wider than its substance."

That is the suggestion made to us, and it was obviously made only in order so to regulate our titles as to prevent amendments such as those now put forward by Mr. Ahmed and supported by Mr. Rangachariar from being put before the House. It is a suggestion and no more.

Rao Bahadur T. Rangachariar: Suggestion for what purpose?

The Honourable Sir Malcolm Hailey: A suggestion, in order that Honourable Members should not be misled by the title into thinking that this necessarily was conclusion as to the subject matter of the Bill. I would remind the Honourable Member that that suggestion was put before us by the President in March 1921, and at that time the title of our Criminal Procedure Amendment Bill had already been settled and published. If that suggestion had been before us at the time, we should then no doubt have been warned and amended the title of the Bill. But the title, Sir, is not the decisive factor, as the Standing Order of the House of Commons shows.

Mr. Deputy President: With regard to this question as to whether the whole Code of Criminal Amendment is open to amendment during the consideration of this Bill, my ruling is that it is not. No amendment is permissible in the course of the consideration of the present Bill which is irrelevant or foreign to or outside the scope of the subject-matter of this Bill. In the case of the present amendment, although it proposes to amend a section of the Code which is not touched by the Bill, I think it might be held not to be inadmissible under the ruling which I have just given, as it is intimately connected with other sections which are being amended. In this particular case, therefore, I allow the amendment to be moved.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I beg to move:

"That after clause 19, insert the following clause:

"19-A. In section 112 of the said Code for the words 'setting forth the substance of the information received' the words 'expressly specifying the particulars of the information received under section 107, section 108, section 109 or section 110' shall be substituted."

Sir, Magistrates very frequently violate the provisions of these sections by merely stating the words of the section instead of specifying the substance of it. The information received is one thing, and specifying something is different. But if it is specifically set out what is the substance of the information, then the Magistrate is not entitled or not in a position to receive any additional information with regard to any number of particulars which the Sub-Inspector of Police, specially in the mofussil, often seeks to do.

As to the majority of big cases, if statistics are being taken over the whole of India, I am positive that in prosecutions under section 110, from 500 to 700 witnesses are examined and still the poor man against whom the prosecution is launched suffers. The police ask anybody and everybody to

[Mr. K. Ahmed.]

say that this man is bad or that man is bad, and the Government very often repents because the Sub-Inspector of Police, who is supposed to be second to God, is not able to make out a good case. So he says 'In the first charge sheet that I submitted, I left out these particulars, and I want to try this man in any way I like. I will call him desperate, I will call him a liar, and at the same time I will call him a black-guard.' Witness after witness is brought in, no end of them,—you get any number of witnesses—with the result that the poor man cannot get out of the trap that has been placed for him.

We therefore want this part of the law should be specifically dealt with; once you file a plaint in the Civil Court, before a Munsiff, Sub-Judge, or the Original Side of the High Court, you cannot go back upon it; you cannot change the substance of the written statement you have made, or put in any additional points. I am sorry to say that at present the Police is Almighty and many Honorary Magistrates present in this Assembly are very fond of giving indulgence to the Sub-Inspector of Police to the extent of allowing any number of witnesses and any amount of searches to be made. That being so, I think it necessary to move this amendment in order to remedy this defect so that the Sub-Inspector must expressly specify the charge, expressly particularise the charge he wishes to submit.

In this respect, I cannot do better than quote the authority of my friend who is sitting in front of me—a learned Judge of the Madras High Court. My Honourable friend is here and I will take his learned ruling from F. L. R. 43, at page 450. My learned friend when he was on the Bench in 1919, only 3½ years ago, said,—the Honourable Mr. Justice Seshagiri Ayyar said:

"I am not sure that I understand this judgment. Section 110, clauses (a) to (e), speak of a man being a habitual robber, a habitual receiver of stolen property and a habitual harbourer of thieves, a habitual extortioner, or a habitual committer of breach of the peace. In my opinion, the evidence on which the Magistrate has to base his conclusion must relate to particular instances which have come to the knowledge of the deponent and so must be specific. Evidence relating to mere beliefs and opinions, without reference to acts or instances which have induced the witnesses to form the opinion, can hardly be regarded as established by the repetition of beliefs and opinions. At any rate, Courts ought to discard such evidence as much as possible."

That, Sir, comes from the mouth of a learned Judge of the Madras High Court Bench who had the opportunity of criticising the judgment of the Magistrate and criticising the manner in which the prosecution was conducted and in that the Almighty Sub-Inspector or the Court Inspector introduced evidence against this particular accused by bringing in additional points.

Now my Honourable friend, the Home Member, has been putting me out of order, at least he tried to do so—though he did not succeed—by a reference to the practice of the House of Commons. But fortunately the Deputy President has allowed me to move this amendment. As I have shown, learned Judges found out long ago that this sort of scope or latitude ought not to be given to the Sub-Inspector or the Court Inspector. Here, Sir, I want to quote the authority of a member of the Indian Civil Service who sat along with my Honourable friend, Mr. Seshagiri Ayyar, in the case to which I have already referred. I mean Mr. Justice Moore. This is what his Lordship said:

"I am unable to agree with the District Magistrate that there is a large body of evidence regarding the petitioner's bad life, his habit of engineering crimes and his

general desperate character.' The evidence on record does not warrant any such conclusion. The District Magistrate also says that there is evidence of witnesses who speak to 'definite acts of criminality on the part of the petitioner'. But I cannot find any definite evidence of any specific acts of violence committed by the petitioner. In my opinion the order requiring the petitioner to furnish security to be of good behaviour cannot be supported and should be set aside."

In the light of what I have said, and the opinions I have quoted from Mr. Justice Seshagiri Ayyar and Mr. Justice Moore, I hope that this Honourable House, consisting as it does of Members who represent the people of this country, will accept my amendment; and my Honourable friend who is piloting the Bill on behalf of Government will also accept it without any hesitation. I move the amendment which stands in my name.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I am very grateful to the Honourable Member for reading to us 12 Noon. the instructive judgment of my Honourable and learned friend, Mr. Seshagiri Ayyar, in the case in question, but I venture, Sir, to suggest that there is no reason whatsoever in the judgment which he read out to justify the change which he proposes in section 112 of the Code. The judgment, in fact, does not indicate that it is necessary that section 112 should be amended so as to require that in the preliminary order which is made under section 112 full particulars of the information which is received should be specified. It is clear, Sir, that the judgment in the case must be based upon evidence which is on the lines of the order framed under section 112. But how can we expect the Magistrate in framing this order to specify full particulars of the information in it? Sir, that is quite impossible. The object of section 112 is to give the accused notice of the accusation which has been made against him. It may be compared perhaps with other provisions in the Code such as sections 221, 222 dealing with warrant cases, and section 242 dealing with summons cases. Section 242 reads thus: "When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted." Section 222 says that "the charge shall state the offence with which the accused is charged and it must contain such particulars as to the time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged". Now, Sir, how does section 112 read at present? It reads thus: "When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required". I suggest, Sir, that this is amply sufficient to give the person proceeded against notice of the information which has been received and which he has to produce evidence against.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I rise to support the amendment moved by the Honourable Mr. Kabir-ud-Din Ahmed. The object of section 112 is to call upon a person against whom the information has been received to show cause as to why he should not be bound over, and to give him the information of the materials of the report on which he is required to show cause. That is the object of section 112. Now as provided in section 112, it is

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that the substance of the information should be given to the person concerned, i.e., the person who is required to show cause. The "substance" of the information is by itself not quite sufficient and gives a wide scope to the Magistrates. He may give only a précis of the information that has been received by him or he may give the full details of the information that he has received or he may give only a summary of the information,—which he has received. Sometimes it happens in the mufassil courts that the Magistrates generally put down that 'you are required to show cause as to why you should not be bound over for keeping the peace or for good behaviour'. This by itself is not sufficient to enlighten the person concerned as to the particulars of the complaints in which he is required to show cause and the matters on which he is required to adduce evidence to rebut the prosecution or the police allegations. Therefore, in the interests of justice it is material and extremely important that the full particulars of the information before the Magistrate be given to the accused or the person who is required to show cause, so that on the date when he appears for showing cause he may be in a position to defend himself against the allegations made by the other side. Therefore, Sir, I submit that the amendment moved by my Honourable friend, Mr. Kabir-ud-Din Ahmed, is of a wholesome nature and should be allowed.

The motion was negatived.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhamadan Rural): Sir, while we are on section 112 I wish to mention that I gave notice of an amendment for carrying out the suggestions of the Greaves' Committee, but I had a talk with Sir Malcolm Hailey with regard to the matter and he has promised to give me hearing in private and to discuss the matter with me and I quite appreciate the difficulty that the Home Member is in now. He has got 393 amendments to consider, so I do not wish to rush him and I accept his suggestion that I should have a talk with him in private and that, if he can accommodate me, I shall be at liberty to bring up this amendment later on. So you will kindly leave that open for the present.

Clause 19, as amended, was added to the Bill.

Mr. K. Ahmed: Sir, I beg leave to move the following amendment:

"Omit sub-clause (ii) of clause 20."

If the man has been brought up under arrest under section 110, it is very difficult for him especially in this cold winter, to be detained in the lock-up without having any surety of getting out of the jail and living comfortably outside. Sir, this question of furnishing sureties is a very difficult one, because if a person wants to get enlarged on surety, he will find, there will be a charge sheet against him submitted by the police. At the same time, he will have the opportunity, he will have time enough, Sir, to find sufficient funds to engage vakils, pleaders, mukhtars and barristers. That being so, Sir, it is in the interest of justice that these persons should be given a free hand in the matter of granting bail. Section 110 is a section which is called a preventive section. It is not a section that deals with the commission of an offence: it is preventive. It is aimed at ensuring that the man who has committed an offence under 110 may not in future commit any offence. A man must be very careful and if he is in the habit of committing certain offences, he must be careful at the same time

to the amount of money for which he will be bound over or bound down to give surety to keep the peace and to be reasonable with regard to his behaviour and habits. Sir, if this man is taken straight to the jail or to the lock-up without having an opportunity or hope that he will be enlarged on bail, if this man is not in a position to give surety—the man has not committed any offence in the eye of the law—the object of section 110 is that he should be a reasonable neighbour, living in the locality so that he might not commit any offence to others living in the same village. If that question is before the Magistrate, to test the character of this man without getting evidence, he may be discharged later on, but why should his defence be hampered? Why should not sufficient opportunity be given to that poor unlucky man that he should be properly defended and that certain lawyers should be instructed on his behalf? Is not this an engine of oppression against this man before he takes his trial that he should be asked to give surety? This man has not committed any offence and if he did, he should have been punished a long time ago and that being the test, I do not see any reason why this man should be hampered in his defence by being asked to give surety for a certain amount, interfering with his liberty of engaging lawyers, interfering with his freedom and liberty to ask his villagers to stand by him and give testimony in his defence, that he is a good man and not as black as he is painted by the police. The police can do anything and everything. I do not like to show any wording of the judges showing that the police have acted not successfully in many cases particularly of this kind. Speaking from experience, I can say that there has been failure on the part of the police, very often. That being so, Sir, and for considerations of a common sense point of view, I do not think you should bind down a man without giving him proper latitude in substantiating his defence; it is interfering with the liberty of the subject. You want to take him straight to the lock-up. Thereby you interfere with his defence. Supposing he has got landed property and his money is not kept in cash and he wants to sell his property and realise money out of which he wishes to engage a lawyer and that lawyer should be properly instructed. The lawyer should be given an opportunity to equip himself with all the facts considering that the police are doing so much against him (the accused). The Sub-Inspector, Head Constable and the Superintendent of Police probably do not want the lawyer to defend the accused. They want him to take his trial and go to jail straight. There are hundreds of elephants upon which the prosecution witnesses generally come. I have seen two or three miles of area being covered by the police and this poor man is completely helpless. The men in the street can shout, but this man cannot utter a single word. For the ends of justice I think that the retention of this custody will hamper his trial and I hope that this sub-clause (ii) of clause 20 will be omitted.

Mr. H. Tonkinson: Sir, so far as I understand the argument of the Honourable Member it is as follows. These provisions in the Code are preventive provisions. They are not punitive provisions. It is improper that a man should be sent straight to jail. It is improper that he should not be let out on bail. He ought to be able to consult his legal advisers and he should not be hampered in drawing up his defence. Well, Sir, that being the argument of the Honourable Member, I am exceedingly surprised that he has suggested the omission of this sub-clause. The object of this sub-clause is to do exactly what the Honourable Member wishes should be done. At the present time, Sir, under the proviso to section 114 of the Code, if there is any reason to fear the commission of a breach of the

[Mr. H. Tonkinson.]

peace, and if such a breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest. Now, Sir, the Bill proposes, in this sub-clause to enable the Magistrate to let the accused out on bail. That being the object of this sub-clause and it being absolutely in conformity with the intentions of the Honourable Member who has moved this amendment, I do not think it is necessary to argue further against the suggestion to omit this sub-clause.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Where is the provision for bail? Is this the bail provision?

Mr. H. Tonkinson: It is this sub-clause.

Mr. Deputy President: The question is:

"Omit sub-clause (ii) of clause 20."

The motion was negatived.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): I think, Sir, that this is the stage at which I should move my supplementary amendment* provided the Government do not object to it under your ruling and under Standing Order 46. It is supplementary amendment No. 5. This is the stage that it should come in. I pause for an announcement from the Government Benches whether they object to this amendment or not.

The Honourable Sir Malcolm Hailey: If I am obliged to object to it, it is really in the interests of the House that I do so and not from any motives peculiar or particular to Government. I put it to the House that it has not had time to consider these supplementary amendments and it is inadvisable if only on that account that we should ask the President to utilise his special powers to admit them.

Mr. Deputy President: Under the ruling given by me I must rule it out of order.

Mr. T. V. Seshagiri Ayyar: I move the amendment† standing in Dr. Gour's name.

The Honourable Sir Malcolm Hailey: As the Honourable Member has moved it without argument, I oppose it without argument.

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment that stands in my name runs as follows:

"In clause 20, sub-clause (ii), for the proviso (a) to the proposed sub-section (3) substitute the following:

"(a) No person under this sub-section shall be required to execute a bond for maintaining good behaviour if the notice issued to him under section 112 was to keep the peace nor can he be so required to keep the peace if the said notice was to maintain good behaviour."

* "In clause 20, add the following paragraph at the end of section 117, sub-section (2):

"Provided that all inquiries under section 108 shall be held with the aid of a jury, as nearly as may be practicable, in the manner hereinafter provided for trials in a Court of Sessions with the aid of Jury."

† "In clause 20 (ii), in proposed sub-section (3), insert the word 'forthwith' before the words 'execute a bond'."

The clause I want to amend, as proposed in the Bill, runs as follows:

"No person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour."

The clause as it stands, really speaking, recognises the principle which I want to lay down more clearly and definitely. Leaving out clauses 108, 109 and 110, the only clause that remains is 107 under which a person is required to keep the public peace. The clause as it stands means that if a person has been issued a notice to show cause why he should not be bound over to keep the peace, he shall not under this sub-section be required to execute a bond for maintaining good behaviour. I see no reason, Sir, why we should take only one side of the question and not both the sides. If a notice has been issued to a man to show cause why he should not be bound over to maintain good behaviour, why should the Magistrate go beyond the scope of the notice and ask him under this sub-section to keep the peace? As a matter of fact, Sir, these proceedings are intermediate proceedings during the pendency of a case. There is no reason why any more power should be given to the Magistrate than there exists under the terms of the notice. I may also submit, Sir, that under section 118, while finally ordering a person to give a security, it is laid down:

"If, upon such inquiry, it is proved that it is necessary, for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided:

First, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112"

Now, if under section 118 the Magistrate cannot order the accused, while deciding the case finally, to furnish a security of a different nature than he was required to do under the notice issued to him under section 112, there is no reason why in these intermediate proceedings the Magistrate should have the right to ask him to furnish security of a different nature than mentioned in the notice under section 112. I think this oversight in the drafting is due to the words of I. L. R. 25, Cal. 798, wherein the case was that the person was required to be of good behaviour and it was held that he could not be bound over to give security for keeping the peace. The case before the High Court at that time was simply one-sided, it referred to only one side of the question. So High Court had to give their ruling only on that part of the question, the other part was not before them. But the principle laid down therein was that since that man was asked to keep the peace in the notice issued under section 112, therefore he ought not to have been required to be of good behaviour in the final order. The notice under section 112 and the final order under section 118 should not clash with each other,—that is the principle of the ruling in the Calcutta case, and there is no reason why that principle should not be applied in this clause also.

Mr. R. A. Spence (Bombay: European): May I ask for information from the Honourable the Mover of this amendment? Does he object to any one who is bound over to be of good behaviour, keeping the peace while he is bound over for good behaviour, or if he is bound over to keep the peace, does he not think that he ought also to be of good behaviour?

Bhai Man Singh: In reply I have only to say, do the framers of the Code object to a man who is asked to keep the peace to be of good behaviour? There is the plain thing, we should have some guiding principle and should be guided by that principle.

Mr. H. Tonkinson: Sir, the Honourable Member proposes to substitute another proviso for proviso (a) in the Bill. His suggestion is that if the person proceeded against has been called upon to give security for keeping the peace, then the interim order to which this proviso refers should be an order for keeping the peace, and similarly, if the man is ultimately assuming that the Magistrate finds the facts to be true, to give security to be of good behaviour, then the interim bond should be one for good behaviour. That, Sir, appears to be an eminently reasonable proposition, but I would suggest that the proposition in the Bill itself is even more reasonable and more in the interests of the person proceeded against. I think that the Honourable Member has neglected to notice the provisions of section 121 of the Code of Criminal Procedure. It says:

"The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and, in the latter case, (that is to say, in the case of a bond to be of good behaviour) the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond."

That is to say, Sir, the commission of any offence whatsoever would mean a breach of a bond to be of good behaviour. As regards a bond to keep the peace, the only offences which will involve a breach of the bond are offences which involve a breach of the peace. It is true, Honourable Members may refer to the form (Form X in Schedule V), in which the bond to keep the peace is drawn up, that a bond to keep the peace may be broken where a bond to be of good behaviour would not be—I refer to the case of doing an act that may probably occasion a breach of the peace. On the whole, there is no doubt, however, that the bond to be of good behaviour is a wider bond, and embraces a considerably wider field than the bond to keep the peace, and therefore the Bill proposes that the Magistrate should be able to take an interim bond, the less stringent bond in all cases. In these circumstances, I trust that this House will not accept the amendment.

Colonel Sir Henry Stanyon (United Provinces: European): My submission is that some misconception underlies the amendment which has been proposed. The clause, as it is at present worded, makes special provision for persons against whom proceedings are taken under section 107 of the Code for keeping the peace. The persons proceeded against under that section may be persons of the highest respectability, in no sense criminals, but driven by circumstances into a position which has made it necessary to take action against them under section 107. But proceedings under the more serious sections 108, 109, and 110 involve a stigma. They are proceedings against character, not against an act of impulse or a particular set of temporary circumstances which lead to a danger of a breach of the peace, but which involve a question of character; and the clause as now put up in the Bill very rightly makes a difference in favour of the non-criminal peace-breaker. If the House were to accept the proposed amendment, what would be the result? The result would be an inconsistency, because if a man is proceeded against under section 110 and is required to execute a bond to be of good behaviour, it would be a contradiction to say that he is not thereby required to execute a bond

to keep the peace. Section 110 includes under clause (e) a person who habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace. The moment you bind a man to be of good behaviour, you necessarily bind him, *inter alia*, to keep the peace, and therefore to legislate that a man who is bound to be of good behaviour shall not be bound to keep the peace is a contradiction and an inconsistency. I am quite sure that when this is perceived by the House, this amendment will be given the short shrift that it deserves.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, the amendment which stands in my name asks that in clause 20. . . .

(Voices: "What about Dr. Gour's amendment* No. 57?")

Mr. T. V. Seshagiri Ayyar: I do not move it.

Mr. K. B. L. Agnihotri: I beg to move:

"That in clause 20, sub-clause (iii) the word 'omitted' be substituted for all words after the words 'shall be' where they first occur."

The present sub-clause (iii) is to this effect:

"Sub-section (3) shall be renumbered (4) and after the words 'habitual offender' in the said sub-section the words 'or is so desperate and dangerous as to render his being at large without security hazardous to the community' shall be inserted."

My amendment asks that the sub-section (3) shall be omitted.

The present sub-section (3) says:

"For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise."

I beg to put before the House that this clause which entitles the prosecution to prove the character of the habitual offender by the evidence of general repute or otherwise be deleted. Sir, under this section the Magistrate stamps a person with a bad character and of being a habitual offender for his whole life and this sub-clause provides that the man could be bound over on the evidence of general repute. The words "general repute" are of very wide interpretation and of confused application. The courts that have attempted to clear their meaning have introduced further confusion rather than succeeded in clearing in any way the meaning thereof. In the case of an habitual offender, the fact could be proved even by circumstances or personal knowledge. It is not necessary that the fact of the person being an habitual offender should be proved by the general reputation which a man bears in the community or among people in general in the town. It will be in the knowledge of the House that there are people in the mofussil who are not so well educated, who cannot think clearly for themselves and who are more or less guided by the opinions of others and it may happen as it generally happens that either they are carried away by their own prejudices or by the influence of the opinions of others with whom they come into contact. Therefore the fact that an habitual offender is a person who habitually offends against the laws could very well be proved by the evidence itself regarding offences which he may have committed. There may be a reply from the Government Benches that it often happens that though the courts are morally convinced that

* "And renumber clauses (a) and (b) of the proviso as clauses (b) and (a), respectively."

[Mr. K. B. L. Agnihotri.]

the man has committed an offence, still on some technical ground, the man may get off and may not get the punishment which he richly deserved for the offence which he committed. My reply would be that those very witnesses who came forward to prove that the man had committed the offence, would also come forward in this case to prove the offence and to prove that it is within their knowledge that the man has committed such and such offences; and probably that evidence will be a better evidence to prove about the habitual nature of that offender. Moreover, Sir, if we were to rely on the reputation which a man bears, it is pretty certain as has happened in the past that many cases may come before the courts in which a man may unnecessarily be bound over simply on account of the prejudices or the opinions wrongly based, of the persons who come to give evidence against him. Therefore, I submit that it is not necessary to change the law of evidence so far as the nature of proof necessary for binding over an habitual offender is concerned under this section, or to allow this clause to stand. I therefore submit that this clause should be deleted. The Government do not only want the retention of the clause in this Bill but on the other hand they also want to make it applicable to certain other classes of people within the purview of this clause, that is, to include desperate and dangerous characters. The question as to how far it was desirable to include such persons under section 110 was very well discussed in the amendment which was moved by my Honourable friend, Munshi Iswar Saran, and I need not go into details. I may simply submit that all these particulars are very difficult to be proved by general repute which is of a very wide application and therefore it is better that the whole clause should be deleted.

The Honourable Sir Malcolm Hailey: It is perhaps difficult to appreciate the full meaning of the amendment in the form in which it appears on the paper, owing to the exigencies of drafting. The Honourable Member however has explained his intention very definitely to us; he wants to do away with the whole of section 117, sub-section (3). That is to say, he would make it impossible for the courts to accept evidence of general repute in dealing with habitual offenders.

Mr. T. V. Seshagiri Ayyar: No.

The Honourable Sir Malcolm Hailey: Yes. You cannot place any other construction than that I have placed upon the proposal of the Honourable Member; and I see that I have the assent of the Honourable Member himself in my statement that I have correctly and clearly described his intention. Let me repeat; he would delete the whole of clause 117, sub-clause (3) and make it impossible for the courts to accept evidence of general repute in dealing with habitual offenders. Now it is an argument which we have had to use before, an argument which we have indeed heard used also on the other side, that if a particular provision has stood in the law for many years, we should not alter it unless very substantial reason exists for doing so. Has there been any general expression of opinion against the provision? None whatever. I would ask the House to refer to the opinions which we have placed in their hands and to tell me whether they can quote any substantial body of opinion against this provision, or indeed any expression of opinion at all. Now have the courts themselves deprecated its use. I am on strong ground when I say that they have not done so. It is true that the question as to what constitutes general repute has been discussed at length in the courts, and has formed the subject of

judicial decisions, but the courts have now laid down definite standards for applying this particular provision. I draw the conclusion then that neither the public at large nor the judicial authorities have felt that this is an unreasonable provision of law. You will find a similar provision in the Italian law, where a man's character for the purposes of preventive sections is judged *per voce publica*. You will find a similar provision in the Egyptian law. (A Voice: "What about English law?") It does not, I admit, exist in the English law, but I have quoted two instances perhaps somewhat more analogous to Indian conditions. And I believe, and honestly believe, that people in India generally consider that this provision constitutes a real safeguard. We have been told to-day, that we should not rely on evidence of general repute, and should prove by concrete instances the character of a person who is to be made the subject of a preventive order. Of course the Honourable Member will not claim that we should prove this by concrete instances of conviction. The concrete instances are only concrete instances of alleged offences. But there is no very great difference, if you think of it, between the two sets of circumstances. In one a witness comes before a Court and says, 'I and every one who knows this man knows him to be a thief;' in the other a witness says, 'this man has stolen from A or stolen from B or from C,' but the Court is not able to call upon him for proof that the man has stolen from A, or from B or C. And every one is well aware of the class of cases in which this sub-section is really needed. It is no dialectical matter; I appeal to the practical experience of every one here. There are a large number of men who so terrify their neighbours that cases are not brought against them, though it is perfectly well known by the community what class of men they are; and if the verdict of the neighbourhood is unanimous, if there is no contradictory evidence against it, one may be pretty sure in the conditions of India that that verdict is correct. I may be pardoned perhaps for referring to a case within my own knowledge, but it is an interesting one and I will give it to the Assembly for what it is worth. We were colonising a new district in the Punjab; that is to say, there was a large and unpopulated waste into which we were bringing canal irrigation. Our colonists came from the congested districts of the Punjab—many of them military pensioners, many of them from the Sikh districts, all carefully selected and respectable men. They had, of course, to bring their cattle with them to plough their new holdings and any delay would have meant a heavy loss not only to the State, but to them. Now there happened to be living on the edges of this tract men whose sole profession in life was that of cattle stealing. They had practically little other means of subsistence. So far was this acknowledged in the neighbourhood that by the law of the tribe no man could even put a turban on his head until he could prove to his family that he had stolen five cows. Was it possible to get convictions against these people? Of course not. If they stole cattle from a village and the villagers complained, the rest of their cattle disappeared next night. Yet everybody knew what was their means of livelihood; they knew by long experience that they were habitual cattle thieves. And directly the colonists appeared, some from 200 and from 300 miles away, prepared to take up new land, after incurring all the burden of raising funds for building their houses and buying their oxen and implements, their cattle were swept off by these amiable gentlemen. What remedy had the colonists and ourselves? One only. We took action against the most notorious of these men, some ten or fifteen, and we applied section 110. We proved by general repute that they were cattle thieves, they were put on security and the matter ended at once. That is exactly the kind of case to which

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this sub-section of section 110 would apply, no other provision would be adequate, and I have ventured for that reason to quote the case.

We have been told by Mr. Agnihotri that if the section is allowed to stand, there is a risk that people will unnecessarily be bound over on account of prejudice. Now, the Courts have made it perfectly clear that reputation must be general reputation in the vicinity; not vague belief but reputation among people who know the person affected and reputation that is not capable of contradiction. Would it be possible, therefore, if the courts did their duty—and we have no reason to suppose that they do not do their duty in this respect—for a man to be bound over on account of unreasonable prejudice? Mr. Agnihotri has also supported his objection to the section by the statement that we have proposed to extend it. I am prepared to argue the supposed extension when we come to the amendment that Mr. Seshagiri Ayyar will shortly put before us. I would merely ask the House not to be swayed in its consideration of this very wholesome, salutary and long-standing section by the fact that we have been obliged, purely in order to clear up legal difficulties and for no other purpose, to add a few extra words to it. The sole question now is, would India at large approve of this Assembly withdrawing this necessary provision by which in the case of an habitual offender we can rely on evidence of general repute?

Mr. T. V. Seshagiri Ayyar: Sir, I cannot help characterising this clause as a very dangerous instrument which has been misused in the past and is sure to be misused in the future. The Honourable the Home Member has referred to his own experience; I may be pardoned by the House if I refer to my experiences and say that in ninety cases out of one hundred this section has been misused; and there have been no more improper convictions than the running in of a man on the ground that he is an habitual offender, and one therefore whose movements should be checked. The Honourable the Home Member was obliged to refer to the Italian and Egyptian Codes for a parallel. Certainly he could find nothing like it in the English Code, in the French law and nothing in America. He could only refer to the example of Egypt for the purpose of supporting this drastic provision in the Criminal Procedure Code. Sir, those who have judicial experience will bear me out when I say that repute evidence is nothing but evidence which the Police Inspector or Sub-Inspector of the place considers good. He goes to a number of people and asks them to say that a certain man is a dangerous man and is an habitual offender, and immediately the cry is taken up by a large number of people, and evidence comes before the Court with the result that the man's liberty is sworn away by people who do not know anything specific about him, but think that his liberty ought to be curbed in some way or the other. Take the case of men who make themselves obnoxious to people in their locality by holding peculiar religious opinions and social views. They are generally hated in the locality with the result that if the Police Inspector sets his mind to procuring a conviction against him and getting such a man out of the place, all he has to do is to go to the other people in the locality and ask them to swear that the man is dangerous and an habitual offender. There is no difficulty about this at all; you can always get people to swear that a man is an habitual offender, and if they were cross-examined they would say they were not in a position to give specific instances; they would say, all they know is that he

is a man who habitually commits offences. Sir, as the Honourable the Home

1 P.M. Member has said he would reserve his comments as regards the amendment which I propose to make. I would not say anything about that matter. I will confine myself solely to the question of a person who is described to be a habitual offender being restrained. I submit, Sir, that Mr. Agnihotri has given very good reasons for convincing the House that if such a provision as that is allowed to stand, no man's liberty would be safe.

The Honourable Sir Malcolm Hailey: Sir, I would ask your special permission to make not a second speech to the House but for one remark only to the last speaker. I will hand to Mr. Seshagiri Ayyar the opinions which he recorded about our Bill when he was a Judge of the Madras High Court, and I would ask him to point to a single remark which he then made in opposition to this section of the Bill. Obviously his opinion as a Judge was not then as strong as he expresses to us now. There is not a single word of his on the subject.

Mr. N. M. Samarth: It is a later development, Sir.

Mr. Harchandrai Vishindas: Sir, to the experiences which have been just now detailed by Mr. Seshagiri Ayyar, I might add my own. Now, I will begin by saying that in many cases the provisions of this chapter are salutary and are worked salutarily, but at the same time there are many instances in which they are misused; I will not go so far as to say that they are misused in 90 per cent. of the cases in my own province. Still I have personal experience of many cases in which they were misused. Not only is it the case that the Police go about and ask people that this is a dangerous man and therefore he should be restrained or some action of this kind should be taken, but, as a matter of fact, there are standing professional witnesses for these cases under section 110, and they are very glib witnesses too. I remember a case in which a baniya who was a mere shop keeper whom nobody could possibly conceive of being a habitual offender rendered himself obnoxious, for circumstances which need not be mentioned, to the police and the police brought up two or three witnesses who were in the habit of giving evidence against habitual offenders, and when the witnesses were asked as to instances of the accused person having harboured thieves, they glibly gave 10 or 15 cases, of which there was no possibility of verifying. On the one hand, I say that the provisions of this section do require to be administered, and on the other hand there are many cases in which they are misused and they are taken advantage of by the police as instruments to run in persons whom they consider obnoxious.

The Honourable Sir Malcolm Hailey: Was security taken from the baniya you mention?

Mr. Harchandrai Vishindas: It was. Sir Malcolm Hailey might say one bad case does not mean that the law is improper or improperly worked, and, as they say, hard cases make bad law. At the same time, I think, the absolute abolition of this chapter in this country would be undesirable, because, whilst there are cases in which these sections are being misused, in some cases the presence of this section is absolutely necessary in the interests of the people. In a place where dacoities are very rife, as it very often happens in my own province, when it is impossible to adduce evidence to identify dacoits when they commit dacoities, there is no other means of this pinning down those dacoits than by having resort to the provisions of this section. Therefore in reply to Mr. Agnihotri and Mr. Seshagiri Ayyar, I have to say, as Sir Malcolm Hailey has pointed out, it would be impossible

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to work this chapter if you were to remove these provisions altogether. It is impossible to bring evidence of persons who would speak to the fact that they saw this man commit a theft or some such thing. They can give evidence of a general character that they had heard that this man had harboured such and such offenders in his house and was usually a man in the habit of receiving stolen property. Still, I am of opinion that if this amendment of Mr. Agnihotri is allowed, the result would be that it would be impossible to work this chapter. The better course would have been to have moved for the abolition of the whole chapter and Mr. Agnihotri would have been better advised if he had moved for the abolition of the whole chapter, but not merely for inserting a provision which will make the provisions of the rest of the chapter entirely nugatory. As we should look to the greater good of the greater number, I think people who require some order to be preserved in their provinces will, in the interests of the peaceful man, agree that the provisions of this chapter are very necessary. It very often happens in my province that there are waves of lawlessness and waves of dacoity and then it becomes very essential to have the provisions of this chapter.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the discussion on this clause has given opportunities to indulge in moods of reminiscences. But the point taken by my friend, Mr. Agnihotri, is, as I understood him, that this clause is liable to be harshly worked. That is the evidence in support of it would be vague, and, therefore very difficult for an accused person to meet it. That, I think, is the main objection to this clause. Another point which has been taken up by my friend, Mr. Seshagiri Ayyar, is that out of 90 out of 100 cases which came up before the High Court the provisions had been misused. The two are distinct. There is the law. It may be sometimes that those who work the law go wrong, and therefore when the matter goes before the higher Court, naturally the errors are corrected. But, taking Mr. Agnihotri's objections, what is it he offers us in the place of this clause? Is it easy, is it workable, to offer an alternative to the clause that exists? Well, that alternative has not been placed before the House. Well, the question naturally turns to the point whether we should have a clause like this and whether it is necessary to control the men who are brought under this clause. The question is apart from the reference of the percentage which my Honourable friend, Mr. Seshagiri Ayyar, gave, which, no doubt, requires to be verified, whether really such a large percentage of cases had been found to have been so egregiously dealt with. The interpretation of the phrase 'general repute' as the Honourable the Home Member very clearly pointed out has not led to any difficulties. No doubt, subordinate Magistrates sometimes have admitted what is called hearsay evidence, and they have sometimes admitted vague general aspersions against the man, but in every one of those cases, the High Court has corrected. Now, the phrase has got a regular well understood meaning. The words 'general repute' have practically been defined by judicial decisions and no practitioner of any standing or no judge of any legal knowledge can have any difficulty in interpreting the words 'general repute.' That has practically become a phrase of accredited interpretation. Now witnesses of general repute must speak from personal knowledge. That excludes mere vague hearsay. It must be the reputation in the locality and among the people where the person resides. I do not want to define the law at length because, as I have said, it has been done

exceedingly well by the Honourable the Home Member, but as the discussion has taken a form which is not entirely germane to the interpretation of the term, I refer to it. Courts have not any difficulty in laying down the conditions and the elements of evidence necessary to come under this clause, and therefore there is no difficulty in understanding the phrase "general repute" in this clause. Now we are faced with this alternative. If you omit that, then there are absolutely no means of bringing in offenders who come under this clause. I will give an instance which recently occurred. There was the case of a man who was a real bully. That man used to terrorise the neighbourhood. The neighbourhood was in a slum locality. And it happened one night that a number of people joined together and beat him to death, and when I inquired, I heard he was a bully who had been bullying the neighbourhood for a great many years, and then the people could not stand it any longer, and they combined and beat him to death. Now if proceedings had been taken against that man and he had been bound over, that man would not have been killed. That is one case where it has gone to extreme lengths. As the section as to good behaviour stands, I may say that I am not convinced that it has been really abused. No doubt the evidence judged from the standpoint of evidence required to convict a man is less exact. All the same that section when used in regard to good behaviour, which I am discussing now, has produced salutary results, and therefore it cannot be said that it has been misused. It is no doubt liable to be misused by people, or Magistrates who have got the requisite training or balance of mind. That no amount of training or legislation can give. Therefore I say that the clause which my learned friend, Mr. Agnihotri, wants to be dropped ought to be retained.

Rao Bahadur T. Rangachariar: I move that the question be now put.

The motion was adopted.

Mr. Deputy President: It would be perhaps more convenient if I put the question in the following terms:

The question is:

"That sub-section (3) of section 123 of the Code be omitted."

The motion was negatived.

Mr. Deputy President: Mr. Seshagiri Ayyar.

Mr. K. Ahmed: Sir, I rise to a point of order. You see, Sir, the next amendment covers amendment No. 60. A portion of No. 61 is amendment No. 60, and therefore 61 swallows up No. 60, or at least 60 is a part of 61. I think, Sir, if 61 is moved, that will be sufficient to cover 60.

Mr. Deputy President: Mr. Seshagiri Ayyar.

Mr. T. V. Seshagiri Ayyar: Sir, I said a few words on the last occasion which to a considerable extent bear upon the amendment which I now move, namely:

"That in clause 20 (iii) omit the words from 'and after' to 'instead'."

There is this additional factor, so far as this amendment is concerned; it is not an old-standing provision, it is something which the Government wants to introduce for the first time. Under the original section the fact that a person is a habitual offender may be proved by general repute or otherwise. It is now sought to add to the clause relating to "habitual offender" the clause "or is so desperate and dangerous as to render his being at large without security hazardous to the community." It is bad enough to have reputable evidence as regards old offenders; we are going to add a new

[Mr. T. V. Seshagiri Ayyar.]

terror to the lives of peaceable citizens by introducing a new clause and by permitting evidence to be given by the police for the purpose of showing that a man is of so dangerous and desperate a character that his liberty should be curtailed. Sir, as far as possible in all civilized Governments, there should be as little evidence of this vague character as possible; evidence which can be easily manufactured, evidence which would give a handle to persons who do not like a particular person to go before a Magistrate and swear that this is a very dangerous and desperate man and it is desirable that his liberties should be curtailed. My friend, Mr. Subrahmanayam, seemed to a certain extent to doubt whether I was justified in saying that in 90 per cent. of cases the evidence is not good. I will not refer to anything which I know personally, but I say, Sir, that the appearance of this clause in the form in which it has been introduced is likely to be greatly abused, and is likely to put honest men into the clutches of the police, and I think it is desirable that no innovation should be made in regard to the letting in of evidence of this character in the Criminal Procedure Code. The Honourable the Home Member has already advocated the retention of the existing clause, but I do not think he would be justified in asking that there should be an addition to that clause; namely, you must allow the police to let in evidence for the purpose of showing that a man is a very dangerous and desperate character. And after all, what is the evidence which would be allowed? A few people would come in and say: "We know this man is very dangerous and should not be allowed to live in the village; he is a very desperate man, if he is allowed to live in the village, our lives would be in danger," and if they are asked to give instances, there would be great difficulty in getting anything specific in regard to the matter. It has been said by my friends that Courts have always required in such matters that specific evidence should be given. But that is only when the matter goes before the High Court, after the man is called upon to show cause why he should not execute a bond for good behaviour. Evidence of this nature would be let in and the man would be bound over for a long time and subjected to all manner of difficulties before the matter is taken up to the High Court. The High Court may later on point out that there was no evidence of a specific nature but the mischief would have been done. That has been the experience of a number of police, and I do not think it is desirable that this means should be left in the hands of the police to harass honest men; and I therefore move, Sir, that this new clause which it is intended to insert should be dropped.

Mr. Deputy President: The amendment moved is:

"That in clause 20, sub-clause (iii), omit the words from 'and after' to 'inserted'."

The Honourable Sir Malcolm Hailey: I find that we are again under the imputation of attempting to gain extensive and undesirable powers under the cover of a little addition of this nature. But if I give the House an explanation of the reason for the addition of these words in the drafting, they will see that, after all, our intentions were not so dreadful, nor on so vast a scale as suggested. The history of the case is as follows: It is sufficient to say that in 1872 you could get security against a man on the ground that he was of notoriously bad livelihood or a dangerous character, and you could prove this by evidence of general repute. When the Act came to be amended subsequently, in 1882, the Legislature omitted the condition that you might proceed against a man merely because he was a dangerous character. In other words, it was necessary then to prove that he was

a habitual thief, receiver of stolen property and the like. Now, we have already had by the vote of the House this morning, a very general admission that it was unfortunate that the revision of 1882 left out the provision that you could proceed against a man on the ground that he was a desperate and dangerous character. That, I say with confidence, was a result which every one must admit was arrived at on the discussion of Munshi Iswar Saran's amendment. We actually discussed a particular case in which, acting under the law of 1882, a Judge, who found that a man was what in other and perhaps lighter terms we should describe as a holy terror, could not be proceeded against because of the omission of 1882. Our Legislature, wisely as I claim, re-introduced this provision in 1898, but, when it did so, it was unfortunately not noticed that it had not provided, as was provided in 1872, that you could prove that a man was a dangerous character by evidence of general repute. If Honourable Members will glance at section 110, they will see that from (a) to (e) the clauses are proceeded by the words "habitually" or "by habit". When you come to clause (f), namely, the case of a man who is so desperate and dangerous as to render his being at large without security hazardous to the community, these preliminary words are omitted, and the Courts found, when they came to interpret section 117, sub-clause (3), that the omission of these words made it impossible to prove by evidence of general repute that a man was of so dangerous and desperate a character. All we seek to do, therefore, is to correct the inadvertent omission of 1898 and to bring back the law as it stood in 1872, so as to make it possible to prove by evidence of general repute that a man is a dangerous and desperate character. We seek to do that and nothing else; and I leave it to the House to judge whether what we propose is anything in substance so dangerous as to merit the terms which Mr. Seshagiri Ayyar has used. I think I need confine my further argument to one point only. I need only put it to the House that, if a man is really so dangerous and desperate as to render his being at large without security hazardous to the community, that is exactly the kind of case which you would ordinarily prove by evidence of general repute and for which it would be difficult to find proof of any other kind than general repute.

Mr. N. M. Samarth: Sir, I beg to support this amendment. The judicial decisions on this subject are to the effect that it is wrong in principle to apply evidence of general repute to a person who is to be condemned as a desperate man.

The Honourable Sir Malcolm Hailey: Might we have those?

Mr. N. M. Samarth: The Honourable Member will find them in Sohoni's edition of the Criminal Procedure Code under section 123, note 52, clause (ii), namely, 34 M., page 255, 5 C. W. N., page 249, 13 Cr. L. J. (9 All.). Then, again, there are several cases given under note 45. The principle is this. In the case of habitual offenders one can understand evidence of general repute being given, but in the case of a man who is for the first time being pounced upon as a desperate man, that is to say, in regard to whom there is no habitual offence brought home, it is not right that you should resort to general repute. You must give specific instances in his case to show that he is a desperate man, and that is the *raison d'être* of the decision in 34 M., page 255, and other cases. I submit, therefore, that it is not right that we should now extend in the case of these men the principle that they should be condemned by general repute; the ordinary rules of evidence must apply. It is quite easy, if a man is really a

[Mr. N. M. Samarth.]

desperate and dangerous man, to prove by actual evidence, by specific, concrete, acts on his part, that he is so, and it is not right that that man should now be brought under this clause of general repute.

I, therefore, support this amendment.

Sir Henry Moncrieff Smith: Sir, I think it is not right that the House should be misled by any remarks that have just fallen from my Honourable and learned friend.

Mr. N. M. Samarth: I should be delighted to know how I have misled the House.

Sir Henry Moncrieff Smith: I shall endeavour to explain. I understood Mr. Samarth to be attempting to persuade the House to believe that the High Courts had suggested that the principle of section 117 (3) was wrong.

Mr. N. M. Samarth: No, I never said that.

Sir Henry Moncrieff Smith: That evidence should not be given of general repute and that we should not make any exception to our general law of evidence in these cases.

Mr. N. M. Samarth: May I rise to a point of explanation before the discussion proceeds further. What in effect I said was that the High Courts have laid down that a provision of law which is an exception to the general rule of evidence must be applied only to the cases to which it is confined by the Legislature, and that the Legislature should not now proceed beyond the limits that have been already laid down.

Sir Henry Moncrieff Smith: Sir, I must again remark that I understood Mr. Samarth to refer to the principle and he suggested that the High Courts had also referred to the principle of this section 117 (3). However, admitting the Honourable Member's explanation, we come to this. What did the Madras High Court say? Merely this, that section 117 (3), which enables evidence of general repute to be given, can only be used in cases where you are attempting to prove that a man is a habitual offender. They said: "You cannot prove that a man is of so desperate and dangerous a character by evidence of general repute." It was no more than this. The cases that followed took exactly the same point. Munshi Iswar Saran has quoted another case which took almost the same point. The Courts kept on holding that evidence of general repute was not admissible in cases of persons whom you wish to prove to be so desperate and dangerous that their being at large was hazardous to the community. They have not said anything further—I have been unable to find any ruling and I do not think Mr. Samarth has found a ruling, in which the Courts have condemned the principle of this section.

Mr. K. Ahmed: May I support the argument of Mr. Samarth by saying that the Calcutta High Court has also held that this sort of evidence of general repute is inadmissible. Their decision is reported in I. L. R. 29 Cal., page 779, in the judgment of Mr. Justice Ameer Ali and Mr. Justice Pratt:

"A charge under clause (f) of section 110 of the Criminal Procedure Code cannot be proved by general reputation, but by definite evidence.

To prove a charge under section 110 that a person is by habit a thief and a dacoit or that he is so desperate and dangerous as to render his being at large without

security hazardous to the community, there should be proof of specific acts showing that he, to the knowledge of some particular individual, is a dangerous or desperate character.

It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him. Such evidence is not only such as could not be safely acted upon, but is also likely to work serious prejudice."

Now, Sir, the closing lines of the judgment that was delivered by the Honourable Judge of the High Court are these:

"They say that they have heard that these men are thieves and dangerous characters, but when they are asked, if they know them personally, they answer in the negative, nor can they mention the people from whom they derived their information. In our opinion the evidence is not only such as cannot be safely acted upon, but it is also likely to work serious prejudice. If the men from whom these witnesses purported to derive their information were examined, it would be possible for the accused to test their means of knowledge that they were men of bad character. General suspicion of this nature, however, is not safe to act upon.

Having regard to the nature of the evidence in this case, we are of opinion that the order against the two petitioners cannot be sustained. We accordingly set it aside, and direct that the petitioners be discharged."

This is the sort of thing that is sometimes brought up against a man—that he is by general repute a thief or the son of a thief and *ipso facto* the finding of the Magistrate is that he must be a thief. That is generally the conclusion of the Magistrate against these poor unfortunates, who are the victims of police oppression; and this sort of thing is happening every day. It will continue so long as the District Magistrate, who is under the present law supposed to be also the head of the police, acts, I am sorry to say, in collusion with the police. When the matter goes up to the High Court, the learned Judges find that there is not a single item from (a) to (f) which has been proved; that he is neither a thief nor the son of a thief, nor a desperate and dangerous character, nor in the habit of committing robberies. One of the witnesses, the best man of the locality, comes forward and says "He is a thief—*chor ka larka*." But what do Mr. Justice Ameer Ali and Mr. Justice Pratt say about it? That not an iota of reliance should be placed on evidence like this. The police, Sir, is like a magic lantern in the village that tantalises the minds of honest people who have asked again and again when this sort of thing is going to stop. I am very much obliged to my Honourable friend the Home Member for saying that in about 1872 the words were there.

The Honourable Sir Malcolm Hailey: No, Sir, I said 1882.

Mr. K. Ahmed: I beg your pardon, it is 1882. And now, Sir, we have this recent case from Calcutta to which I have made reference, i.e., I. L. R. XXIX Calcutta at page 779. What we want is not to strengthen the hands of the police or to help the police any longer, but to protect the victims of this oppression. We have had no other argument from the other side which will hold water, as my friend from Karachi said the other day; and therefore, Sir, it is advisable that those words that my Honourable friend Mr. Seshagiri Ayyar moved—"or is so desperate and dangerous as to render his being at large without security hazardous to the community"—should be deleted.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, it seems to me that it has become necessary to clear the position with

[Dr. Mian Sir Muhammad Shafi.]

reference to the remarks which fell from the lips of my Honourable friend Mr. Samarth in order that the House may be in a position to know what the law at present is, and whether it is desirable to incorporate into this sub-section the words which we seek to introduce. The principle laid down by the Madras High Court in the ruling to which my Honourable friend referred was not that the Legislature ought not to restore the position which, as was pointed out by the Honourable Sir Malcolm Hailey, existed in 1872. All that the High Court did say was this, that the evidence relating to the general repute which a man may bear in his neighbourhood not being ordinarily evidence admissible under the Indian Evidence Act must be confined to the particular cases which fall within the purview of section 117. That is all that the High Court laid down. The Courts of law when judging whether certain evidence relating to general repute is admissible against the person who is on his trial before the Court should see that such evidence is strictly confined to the cases expressly laid down in section 117, and the Courts should not go outside the purview of those cases, for as a general principle the evidence relating to general repute is inadmissible under the Evidence Act.

Mr. N. M. Samarth: I quite agree.

The Honourable Dr. Mian Sir Muhammad Shafi: That being the position, the rulings referred to by my Honourable friend or that may be referred to by other Honourable gentlemen are really entirely beside the point. They do not help the issue which is now before the House. The question for decision by this House is whether the rule which obtains at present under the provisions of the Act of 1898 with regard to the eligibility of evidence of general repute against habitual offenders should or should not be extended to the class of persons who are described in the phrase which we want to introduce in clause 3; that is to say, "men who are so desperate and dangerous as to render their being at large without security hazardous to the community". If this House is of opinion that persons falling under this section should be called upon to furnish security—and I assume that the House has already arrived at that opinion—

Mr. N. M. Samarth: And I quite agree with that opinion.

The Honourable Dr. Mian Sir Muhammad Shafi: Then it is clear, I submit, that the evidence of general repute ought to be considered admissible in the case of this class of persons also, because it seems to me that this is the one class of persons to whom on *a priori* grounds such evidence ought to be held applicable. No doubt it would strengthen the evidence of general repute if the prosecution or the police is able to prove specific cases against them. Surely it is men of this character, who are dangerous to society within the meaning of the words which we want to incorporate in this section; against whom evidence of general repute ought in the interests of society to be held as admissible. After all, remember Petheram "a man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen". Moreover it has been held by the High Courts that when security is demanded from a person on the evidence of general repute, that repute must be universal and there should be no doubt about it. Now that being so, surely in cases where it is proved by general repute, that is to say, general repute amongst the neighbours in the midst of whom such a person resides, where it is proved by evidence of an overwhelming majority of those neighbours that

the man is dangerous, so dangerous and so desperate as to render his being at large without security hazardous to the community, is there any reasonable person who would still maintain that although this proof, this evidence, is forthcoming against the particular individual, yet he should not be called upon to furnish security simply because the evidence that has been adduced against him is evidence of the character of general repute? Surely, such a position as that is hardly maintainable. I therefore submit that this is exactly the class of persons against whom this House should hold that evidence of general repute ought to be made admissible in order to bring them within the purview of section 117, clause 3.

Sir Deva Prasad Sarvadhikary: Sir, I am afraid I must plead guilty to being an unreasonable person in the sense in which the Honourable the Law Member has just used the words. Having contributed to a certain extent to the retention of sub-clause (f) in section 110, about dangerous and desperate characters being required to give security in certain circumstances, I owe it to myself to disclaim the further liability of making abnormal evidence applicable to such a person. I am not quite sure, Sir, that the draftsmen of olden times were so very careless as has been indicated to-day. When clause (f) came to be re-introduced in section 110, I am not sure that the further extension in section 117 was accidental. Let us examine what (a), (b), (c), (d) and (e) in 110 are. Every one of these relates to a case where certain specific offences, concrete misdeeds, are indicated. Furthermore, we have the element of their having to be what is termed habitual offenders. With regard to clause (f), before this section could be applied to them or before evidence about repute could be admitted a man may be a veritable tyro, a young blood just taking to bad ways and means, there cannot be any confidence in him, and therefore he has to be checked. In his case what would determine the quality of evidence, and also the quantum would not then be the same as in (a), (b), (c), (d) and (e) and ordinarily the rules of evidence would apply. Furthermore, habitual offenders are sneaks who work in the dark; while the dangerous and desperate characters are the contrary. (*A Voice*: "No".) I hear a voice "No" behind me. I think people find that that is so. Apart from it being possible to pin him down to his overt misdeeds, there is this further danger and difficulty. In regard to (a), (b), (c), (d) and (e) we know exactly what the witness is speaking of and what the accused is guilty of. With regard to (f), it is more or less nebulous, may to some extent be imaginary. Any witness saying "I believe the man to be desperate or dangerous" or that he is dangerous or desperate without being able to quote definite facts will be throwing the gate far too wide, and therefore I think it was a wise discretion that the Legislature exercised in not introducing with regard to clause (f) what finds place in clause 3 of section 117. It has been suggested that my Honourable friend Mr. Samarth is on this side of the House was suggesting that the Courts have held that it is wrong in principle for the Legislature to extend the scope of this section if they thought fit to do so. The Honourable the Law Member, if I may say so with great respect, is quite right in saying that the law courts found themselves powerless in these cases, because clause 3 of section 117 did not apply to the case of dangerous and desperate characters. But, Sir, the point that I should like to make with regard to those cases is that, if the Courts felt that such an enactment was necessary with regard to dangerous and desperate characters, and that its absence was really felt one should have found some indication of that in the judicial decisions. Their trend is on the other hand that the courts were unwilling that this principle should be

[Sir Deva Prasad Sarvadhikary.]
extended to the cases in question in the absence of express provision and that they did not want to countenance such unauthorised extension.

The Honourable Sir Malcolm Hailey: Is that so?

Sir Deva Prasad Sarvadhikary: I say that is the trend. I am entitled to draw my own conclusions. . . .

The Honourable Sir Malcolm Hailey: Have you a single case in which language of that kind is used?

Sir Deva Prasad Sarvadhikary: My suggestion is that there is not a single word in any one of these cases where the courts found it necessary to suggest the need for the extension of this principle to dangerous characters.

The Honourable Sir Malcolm Hailey: Could you quote any case?

Sir Deva Prasad Sarvadhikary: No. That proves my point all the more, because it was not the Judge's business to make remarks against the principle of extension if the Legislature later intended it. But as custodians of peace and order, as some law Courts here have imagined themselves to be, we should have found some indication if that was necessary. And because of real dangers that there are in extending the principle in the case of those not yet guilty of anything habitual, we should be well advised in not pressing for enactment of the provision of clause (iii) of section 117 with regard to (f) of 110.

Colonel Sir Henry Stanyon: Sir, the fears entertained by the Honourable Mover and those who sustain him can easily be understood. There is no doubt that the conferring upon Courts of a general power of this kind is attended with a certain amount of risk. As has been pointed out by the Honourable the Law Member, this is a case where you create an exception to a rule of the law of evidence. Nevertheless, a Legislature has to take risks of this kind. The amendment which the framers of the Bill propose to introduce seems to me almost consequential to a retention on the Statute Book of clause (f), section 110. To my mind, it seems to be inconsistent that we should have one rule of evidence for cases coming under clauses (a) to (e) of that section and that we should shut out that exceptional rule of evidence, if I may so speak of it, in the case of clause (f), where perhaps its presence is more necessary than in any one of the other cases. The High Court rulings which have been cited will be accepted as sound law by every lawyer. As the Honourable the Home Member has pointed out in his very clear enunciation of the subject, they restrict the exception to the cases expressly provided for. But for that very reason they indicate the necessity of the amendment which the framers of the Bill have now put up. The Honourable Mover said, if I heard him correctly, that this would be a dangerous power to put into the hands of the police. We have heard also other speakers condemning the police. That condemnation, I take it, is based upon "general reputation"; but it seems to me that it is not a power placed in the hands of the police: it is a rule of procedure laid down for the guidance of the Courts. No doubt, it is a procedure which the Courts of supervision have to watch with extreme care. If the estimate made by the Honourable Mover is correct, that in Madras 90 per cent. go wrong, then either the quality of the magistracy or the supervision of the supervising authorities there calls for improvement. But I think that, if Honourable Members will halt a moment and give their full significance to

the words "general reputation," perhaps they will be disposed to see that many of their fears are not so well founded as the casual consideration of that phrase might lead one to believe. "General reputation" means something than mere statements by one or two persons as to the reputation of a man. It means that there is a general body of people, in a position to know and to hear and to sense the character of a man who lives among them, who are agreed in condemning him as desperate and dangerous. A headman of a village may receive daily complaints from ryots concerning the unscrupulous conduct or dangerous conduct or intimidation or bullying of a particular man but only upon the understanding that he is not to give them away as informants lest they should find themselves going from the frying pan into the fire. In all communities, every day, it happens that you have a marked man. Plenty of people are ready to tell one another in confidence about him but very few have the necessary moral courage, or the necessary standing, to take active steps to put a stop to the acts which have made him a marked man. I think it is very essential that, since desperate and dangerous characters do exist against whom specific offences cannot be proved, that our Courts should be armed with authority to help the general body of the public in obtaining relief against the acts and misconduct of such characters. I admit,—as I have already said—it is a power which requires very careful control and watching; but that of itself is no reason why the power should not be given. We are dealing now with what we have been reminded over and over again to be preventive and not punitive sections. We do not want here provisions to *punish* crime. We want provisions to *prevent* crime. We do not want evidence so much that a particular crime has been committed, as evidence that a particular individual is likely to commit a particular crime; and I find it difficult to understand how you can have anything except evidence of this class to say what a man is likely to do—what there is danger that he may do—if he is not checked by an order for security or the like. And so, I think that while we retain clause (f) as a part of section 110, we should in all consistency include the additional words added by the Bill, but proposed to be omitted by the motion now before the House.

(Several Honourable Members: I move that the question be now put.)

Mr. Deputy President: The question is:

"That in clause 20, sub-clause (iii), omit the words from 'and after' to 'inserted'."

The Assembly then divided as follows:

AYES—35.

Abdul Quadir, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Ghulam Sarwar Khan, Chaudhuri.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.

Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—41.

Abdul Rahim Khan, Mr.
 Abdul Rahman, Munshi.
 Abdulla, Mr. S. M.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Barua, Mr. D. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Chaudhuri, Mr. J.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Faridoonji, Mr. R.
 Ginwala, Mr. P. P.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.

Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Kamat, Mr. B. S.
 Ley, Mr. A. H.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Sen, Mr. N. K.
 Singh, Mr. S. N.
 Sinha, Babu Ambica Prasad.
 Spence, Mr. R. A.
 Stanyon, Col. Sir Henry.
 Subrahmanayam, Mr. C. S.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 23rd January, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 23rd January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

STATEMENTS LAID ON THE TABLE.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I lay on the table the information promised in reply to a question by Khan Bahadur Sarfaraz Husain Khan, on the 16th January, 1923, regarding the Pusa Institute.

The reply to

(a) is—17 years since the foundation stone was laid in 1905, but the Institute came into full working order from 1908.

(b) The chief objects of the Institute are (i) research with a view to evolution of principles and methods likely to be of general application in agricultural improvements; (ii) Post-graduate instruction.

Care has been taken to avoid dealing directly with cultivators where the Provincial Departments can do the work, but the Institute assists local Agricultural Departments, when called upon, mainly with regard to measures for the suppression of diseases and insect pests, in supplying seed of improved varieties of crops, in the testing of improved methods, in the supply of pedigree cattle, etc.

The work of the Institute is described in its Annual Reports from which it will be seen that the research aims mainly at establishing general principles which can be put into practice with the necessary modifications to suit local conditions. Amongst results which have been adopted directly in the provinces, however, the following may be cited:

1. The evolution of superior strains of wheat which are fast replacing the country varieties in the United Provinces, parts of the Punjab and Bihar;
2. The successful production of a superior type of tobacco suitable for Indian made cigarettes;
3. The use of phosphate manures combined with green manuring as a method of maintaining the fertility of soils which are being depleted through overcropping;
4. Improvement of Indian cattle from the point of view of the production of milk;
5. Successful campaign bud-rot disease of palms in the Godavari delta;
6. Methods of storage of grain and potatoes against insect attack;
7. Improvement of agricultural implements.

As regards (c), the total expenditure up to 1921-22 is as follows:

	Rs.
Recurring since 1903-04	76,46,000
Non-recurring—	
(being the cost of buildings, etc., constructed by the Public Works Department)	15,38,000

(1331)

As regards (d) and (e) the Institute offers facilities for post-graduate work in the laboratories. A statement is enclosed showing the number of students trained (total 369) including short course students. Most of the students, especially of the long course (123) are those who are deputed by the Provinces and Indian States for special training and are absorbed in the respective Departments after the training. Out of the students trained at Pusa, 4 are now in the Imperial Agricultural Service, 12 in the Provincial Agricultural Service and 4 are employed in Pusa as Research Assistants. Definite information regarding others is not available but the majority of them are employed in the subordinate service of the Provincial and Indian States Agricultural Departments.

Statement showing the number of students who received a training at Pusa from 1908-1921 and how they are employed.

Subjects in which trained.	No.	HOW EMPLOYED.					REMARKS.
		In I. A. S.	In Provincial Agricultural Service.	In Native States and Foreign Governments.	In Pusa.	By private bodies.	
<i>Post-graduate training</i>							
Agricultural Chemistry	16	...	1	3	2	...	Majority of other students are employed in the subordinate service of the Provincial Departments of Agriculture.
Mycology	14	1	3	2	1	2	
Entomology	23	...	4	4	...	...	
Bacteriology	14	...	1	3	1	...	
Botany	8	...	1	...	...	1	
Agriculture	15	3	2	1	...	...	
General training in laboratory methods and farming.	33	...	...	...	...	...	
Total	123	4	12	13	4	3	
<i>Short course training.</i>							
Sericulture	116	...	...	...	...	...	
Lac culture	54	...	...	...	...	...	
Fruit culture	53	...	...	...	...	...	
Total	223	...	...	...	...	...	
<i>Special study in laboratories</i>							
Worked in laboratories on special subjects.	23	...	...	...	...	...	
Total	23	...	...	...	...	...	
GRAND TOTAL	369	...	...	...	...	...	

Mr. J. Hullah: Sir, I lay on the table in pursuance of the provisions of sub-section (2) of section 10 of the Indian Emigration Act, 1922, a draft notification specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to the Straits Settlements, the Federated Malay States and the Unfederated Malay States.

Delhi, the January 1923.

NOTIFICATION.

In exercise of the powers conferred by section 10 of the Indian Emigration Act, 1922 (VII of 1922), hereinafter referred to as "the Act", the Governor General in Council is pleased to issue the following Notification in the form in which it has been approved by both Chambers of the Indian Legislature:—

Emigration to the Straits Settlements, the Federated Malay States of Perak, Selangor, Negri-Sembilan and Pahang and to the Unfederated Malay States of Kedah, Perlis, Johore, Kalantan, Trengganu and Brunei for the purpose of unskilled work shall be lawful on the following terms and conditions, namely:—

(1) The emigrant shall

(a) have been recruited by a person licensed for that purpose by and responsible to an officer (hereinafter called the Emigration Commissioner) appointed by the Government of the Straits Settlements and by the Governments of the Federated and Unfederated Malay States, or

(b) have applied direct to the Emigration Commissioner for an assisted passage and have been accepted by him.

(2) The emigrant shall not before leaving British India, have entered into any engagement to labour for a period exceeding one month.

(3) Engagements to labour entered into by an emigrant in Malaya for a period exceeding one month shall be void.

(4) The Government of the Straits Settlements, Federated and Unfederated Malay States shall at any time when so desired by the Governor General in Council admit and give all facilities to an Agent appointed under section 7 of the Act.

(5) Within one year of his arrival in the Colony any emigrant who has been assisted to emigrate at the cost of the Indian Immigration Fund shall, on satisfying the Agent appointed under section 7 of the Act that his return to his home is desirable either on the ground of the state of his health or on the ground that the work which he is required to do is unsuitable to his capacity, or that he has been unjustly treated by his employer or for any other sufficient reason, be repatriated free of cost to the place of recruitment and the costs of such repatriation shall be defrayed by the Government of the Straits Settlements, Federated Malay States and Unfederated Malay States.

(6) If at any time there is no Agent appointed under section 7 of the Act, the Government of the Straits Settlements, Federated and Unfederated Malay States shall appoint a person to perform the duties of the Agent as set forth in Clause 5.

(7) There shall be no evasion of the provisions of the Act by the conveyance through foreign ports in the Peninsula of India of persons who would be emigrants for the purpose of unskilled work if they departed from British ports.

(8) The Government of the Straits Settlements, Federated and Unfederated Malay States shall furnish such periodical reports and returns as may be required from time to time by the Government of India in respect of the welfare of the persons emigrating to the colony in accordance with this Notification.

Mr. J. Hullah: I lay on the table in pursuance of the provisions of sub-section (2) of section 10 of the Indian Emigration Act, 1922, a draft notification specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon.

No.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE AND AGRICULTURE.

(EMIGRATION.)

Delhi, the January 1923.

NOTIFICATION.

In exercise of the powers conferred by section 10 of the Indian Emigration Act, 1922 (VII of 1922), hereinafter referred to as "the Act", the Governor General in Council is pleased to issue the following Notification in the form in which it has been approved by both Chambers of the Indian Legislature :—

"Emigration to Ceylon for the purpose of unskilled work shall be lawful on the following terms and conditions, namely :—

(1) The emigrant shall—

(a) have been recruited by a person licensed for that purpose by and responsible to an officer (hereinafter called the Emigration Commissioner) appointed by the Government of Ceylon, or

(b) have applied direct to the Emigration Commissioner for an assisted passage and have been accepted by him.

(2) The emigrant shall not, before leaving British India, have entered into a contract of service for a period exceeding one month.

(3) Within six months from the issue of this Notification, or within such further period as the Governor General in Council may by notification appoint, the Legislature of Ceylon shall have enacted that any contract of service for a period exceeding one month entered into by an emigrant shall be void.

(4) No part of the cost of his recruitment, subsistence during transport, or transport shall be recoverable from any emigrant and all expenses in this connection shall be defrayed from a common fund to be raised in such manner and managed by such agency as may appear suitable to the Colonial Government.

(5) The Government of Ceylon shall at any time when so desired by the Governor General in Council admit and give all facilities to an Agent appointed under section 7 of the Act.

(6) Within one year of his arrival in Ceylon any emigrant who has been assisted to emigrate at the cost of the common fund referred to in clause (4) shall, on satisfying the Agent appointed under section 7 of the Act that his return to his home is desirable either on the ground of the state of his health or on the ground that the work which he is required to do is unsuitable to his capacity, or that he has been unjustly treated by his employer, or for any other sufficient reason, be repatriated free of cost to the place of recruitment, and the costs of such repatriation shall be defrayed by the Government of Ceylon or the Ceylon Planters' Association.

(7) If at any time there is no Agent appointed under section 7 of the Act, the Government of Ceylon shall appoint a person to perform the duties of the Agent as set forth in clause (6).

(8) Within six months from the issue of this Notification, or within such further period as the Governor General in Council may by notification appoint, the Legislature of Ceylon shall have enacted that no payment made in India by a recruiter to an emigrant to enable him to pay off debts before emigrating shall be recoverable.

(9) The Government of Ceylon shall furnish such periodical reports and returns as may be required from time to time by the Government of India in respect of the welfare of persons emigrating to Ceylon in accordance with this Notification.

QUESTIONS AND ANSWERS.

RUINED MOSQUES, MONUMENTS ETC: IN MALDAH.

211. *Mr. K. Ahmed: (i) Are the Government aware that in the District of Maldah in Bengal there have been many 'mosques', 'monuments', 'tombs', 'dargas' and sacred buildings of the Mogul Emperors of Gour and Pandua (ancient capital) under rack and ruin and their bricks, stones and other materials are being stolen and carried away as *res-nullius* by the people without any interference by the Government and that many brick-built houses are being constructed by the people of the district with the materials thereof?

(ii) Will the Government be pleased to enquire how much of the properties has been taken away and usurped by the people for their personal uses, explaining in full and giving their particulars as regards the actual price of the same at the market rate if possible?

(iii) Will the Government be pleased to state how much money has been spent by Government for the preservation of the ruins of Gour and Pandua under the Ancient Monument Act?

(iv) Will the Government be pleased to inquire how much land appertaining to them has been settled with tenants by the Khas-Mahal and other local Zamindars having landed properties at and near the ancient capital of Gour and Pandua?

(v) Do Government propose to take proper step for the recovery of those properties, movable and immovable immediately, or in the alternative consider advisable to make over the present tombs, monuments, mosques, dargas and sacred buildings including all the lands appertaining to them left by the Mogul Emperor to the Mohammedan Community of the District with the necessary costs for the recovery of those lost properties in question as stated above?

The Honourable Mr. A. C. Chatterjee: The Government of India are not responsible for all mosques, monuments, etc., as suggested in the Honourable Member's question, but only for such as have been placed in the charge of the Archaeological Department as being of archaeological, historical, or artistic interest. In the circumstances it is not possible to give any reply to the Honourable Member's extensive enquiries. If the Honourable Member will specify clearly the buildings, etc., about which he needs information an endeavour will be made to get it.

Mr. K. Ahmed: What is the meaning of the Ancient Monuments Preservation Act? What are the provisions, what is the object of that Act, Sir?

The Honourable Mr. A. C. Chatterjee: They are as well known to the Honourable Member as to myself.

Mr. K. Ahmed: Is it not a fact that in the opening era of the present century His Excellency Lord Curzon went to inspect those Gour and Pandua tombstones, dargas and other sacred and holy places, and that for the preservation of these he brought out a certain scheme and made a large grant of money and that there has not been any substantial benefit from it?

(There being no answer to this question, Mr. Deputy President called upon Mr. K. Ahmed).

Mr. K. Ahmed: Is it not a fact, Sir, that there are . . .

Mr. Deputy President: I have called upon the Honourable Member to put his question No. 212.

Mr. K. Ahmed: I am ready to put question No. 212 and I put it if I am not entitled to put the above supplementary question to question No. 211.

ACCESS TO HOWRAH RAILWAY STATION.

212. ***Mr. K. Ahmed:** (i) Are the Government aware that the gates leading to the platforms in the Howrah Railway Station are opened for the third and inter-class passengers only five minutes or so before the train starts and several barriers have been constructed near the platform gates preventing easy access of the passengers to the platforms?

(ii) Are the Government aware that in consequence of these restrictions great inconvenience is caused to the third and inter-class passengers especially women and children, who owing to rush often fail to catch the trains?

(iii) Do Government propose to consider the desirability of opening the platform gates at least half an hour before the starting of the trains and to remove the barriers near the platform gates for the convenience of the passenger public?

Mr. C. D. M. Hindley: (i) and (ii) Inquiry has been made from the East Indian Railway Administration and it is understood that the gates leading to the platforms at Howrah station are opened for intermediate and third class passengers an hour before the departure time in the case of main lines trains, and half an hour before the departure time in the case of local trains. Barriers are erected so as to prevent a rush of passengers against the entrance gates to the platforms. These measures have been taken in order to prevent passengers from boarding trains without tickets a practice from which the railway revenues have suffered considerably in the past.

(iii) In the circumstances, Government do not propose to take any action.

PURCHASE OF TICKETS ON E. B. RAILWAY.

213. ***Mr. K. Ahmed:** (i) Are the Government aware that on the Eastern Bengal Railway line in most stations passengers are not allowed to purchase tickets until the train leaves the previous Railway station, in consequence of which many passengers are unable to buy tickets owing to the great rush of passengers attempting to buy the tickets and many passengers thus fail to catch the trains?

(ii) Do Government propose to consider the advisability of arranging to sell the tickets in those Railway stations at least one hour before the arrival of trains and thereby removing the inconvenience of the travelling public?

Mr. C. D. M. Hindley: (i) This question was referred to the Agent, Eastern Bengal Railway, who reports that the booking offices at important stations are kept open day and night for the issue of tickets. At all other stations the booking offices are opened half an hour before the advertised time of departure of trains and closed five minutes before starting time. No complaints have been received from passengers that

they have not been allowed sufficient time to purchase their tickets, but if specific cases are reported to the Railway authorities they will be looked into.

(ii) In the circumstances, Government do not propose taking any action in the matter.

RAILWAY AND STEAMER RATES.

214. ***Mr. K. Ahmed:** Do the Government intend to take immediate steps to reduce the passenger and goods rates on the Indian Railways and Steamers plying in Indian Waters?

Mr. C. D. M. Hindley: Government have no control over steamer freights, and see no reason at present to make any change in the Schedules of maxima fares and rates laid down for Railways in India.

Mr. K. Ahmed: Is it not a fact that in England there has been a great deal of reduction in the fares of steamers plying both inside and outside the Thames in England as well as in the fares of goods trains carrying goods there in England managed by private companies?

Mr. C. D. M. Hindley: Government are not in possession of complete facts relating to the question which the Honourable Member has put.

Mr. K. Ahmed: If there are such reductions in England why should there not be reductions here in this country?

EASTERN BENGAL RAILWAY CONTRACT.

215. ***Mr. K. Ahmed:** (1) Will the Government be pleased to state:—

(i) How many times the contract with the Eastern Bengal Railway Company has been renewed and extended and the respective periods for which such extension was granted, and

(ii) Whether it was not declared that at the expiration of each period the management of the State-owned Line would be taken over by the State?

(2) Are the Government aware that at the expiration of each period, reasons were brought forward to which the Government agreed, why Company Management should be allowed to continue?

(3) Is it the intention of the Government to give a further extension of Company Management at the expiration of the present period?

(4) If any such reasons are likely to be brought forward either by the Railway Board or by the Company Directors, do the Government propose in the interest of the public, to place such reasons before the Assembly at least nine months before the expiry of the Contract with the East Indian Railway Company?

Mr. C. D. M. Hindley: (1) (i) It is assumed that the question relates to the East Indian Railway Company referred to in the latter part of Honourable Member's question and not to the Eastern Bengal Railway which is a State-worked line.

The East Indian Railway was purchased by Government in 1879 and the contract then entered into was to run for 50 years unless terminated by either party with two years' notice at the end of the 20th year, 1899, or any subsequent fifth year.

This contract was terminated in 1899 and a fresh contract entered into for 20 years on slightly different terms. At the end of this contract a fresh contract was entered into for five years which will expire on 31st December 1924.

(ii) So far as Government are aware no such declaration was made at the time of the earlier renewals of the contract.

The Honourable Member is, however, referred to the proceedings of the Imperial Legislative Council on 7th March 1919 when in reply to a question by the Honourable Rao Bahadur B. N. Sarma Government stated that the Secretary of State had agreed that on the termination of the contract on 31st December 1924 the direction would be transferred to India either under State or efficient Company management.

(2) Before deciding to renew the contract on each occasion Government took all relevant facts into consideration.

(3) and (4) Government are not prepared to make a statement on the matter at the present juncture but the Assembly will shortly have an opportunity of expressing its opinion on this subject.

Sir Deva Prasad Sarvadhikary: Has the five-year limit of agreement been found to be attended with any difficulties either by the Company or by the Government, or has it been considered necessary by either side that the period of renewal must be larger?

Mr. C. D. M. Hindley: I think that is a question of opinion.

Sir Deva Prasad Sarvadhikary: Has any opinion been expressed by either side?

Mr. C. D. M. Hindley: I am not prepared to enter into a discussion on this subject at present as the House will have a full opportunity of discussing it later on.

Mr. K. Ahmed: Is the answer to the question asked by my Honourable friend in the negative or in the positive?

Mr. T. V. Seshagiri Ayyar: That is the decision given with reference to the Honourable Mr. Sarma's question that the Board of management should be transferred. Does it hold good even now with regard to all railways whose contracts may come to an end?

Mr. C. D. M. Hindley: I understand that the declaration of the Secretary of State is still in force.

CLERKSHIP APPOINTMENTS, ETC., ON E. B. RAILWAY.

216. ***Mr. K. Ahmed:** (1) With reference to my question dated the 15th September, 1921, will the Government be pleased to explain in full how the register of qualified candidates is kept in the Eastern Bengal Railway and how the names of the candidates for clerkship and other appointments are registered and by what officers-in-charge of the Railway Administration?

(2) Will the Government be pleased to state the names and designation of Members of the Selection Committee and explain in full their different grades of the officers and clerks of the department appointed since 1921 to

December, 1922, giving their names, explaining in full the reasons of their selection in comparison to others who were not selected?

Mr. C. D. M. Hindley: (1) The Government do not think it necessary to call for a report from the Agent on these points.

(2) As explained to the Honourable Member in the reply to his previous question No. 222 put on 15th September 1921—the Selection Committee is intended to deal with appointments of officers only. It has not yet been constituted as the existing arrangements will apply in the case of students passing out of the Engineering College up to the end of the year 1923.

OFFICIALS AND CLERKS ON E. I. AND B. N. RAILWAYS.

217. ***Mr. K. Ahmed:** (i) In continuation of my question put on the 15th September, 1921, being the question No. 207, will the Government be pleased to state the number of officials and clerks of different grades respectively appointed since then up to December, 1922, and how many among them are Hindus, Muhammadans, Europeans and Anglo-Indians in the East Indian and Bengal Nagpur Railway office?

(ii) Will the Government be pleased to state how many applications were made by writing or otherwise for such appointment to the Railway office and disposed of giving full particulars regarding the test for their selection in comparison to others who were not selected?

(iii) Will the Government be pleased to state whether all the applications for appointment are received by any responsible officer or officers or the chief clerk (Bara Babu).

(iv) Do Government propose, in the interest of the public to find out method or methods by which all the applicants' names without any prejudice may be written in some office book ensuring easy access without any interference to applicants whether any post is vacant or not and whenever vacancies occur, claims of all the applicants may be considered duly and equitably so that proper men may get the appointment?

Mr. C. D. M. Hindley: Government has no information in respect to individual appointments on Company managed railways which are made at the discretion, and in accordance with the rules of the Company concerned.

Mr. K. Ahmed: Will the Government of India be pleased to take proper steps to introduce methods which will allow the people of India to get justice done to them for the purpose of getting service or for the purpose of being taken into the service of the company?

(There was no reply from the Government Benches).

EXPENSES OF INCHEAPE COMMITTEE.

218. ***Mr. K. Ahmed:** Will the Government be pleased to state in full giving all the details of the expenses incurred up to 31st December, 1922, from the very beginning on account of the Inchcape Committee item by item and the purpose for which the money was spent including the allowance given to each member of the Committee and to each of the witnesses examined with their respective names?

The Honourable Sir Basil Blackett: A statement is laid on the table giving the information asked for.

Statement showing details of the expenses incurred up to 31st December 1922, in connection with the appointment of the Inchcape Committee.

SUMMARY OF THE EXPENSES.

	Rs.
(1) Retrenchment Office	30,108
(2) Special Officer, Finance Department (O. B.)	23,409
(3) Finance Department (Military Branch)	15,000
(4) Military Estimates	12,000
(5) Retrenchment Committee proper	39,556
Total	1,20,073

Expenditure incurred in connection with the preliminary work of the Committee (i.e., Retrenchment Office).

Pay of Secretary to the Government of India, Retrenchment Office, from 6th July to 31st December 1922 at Rs. 4,000 per mensem	Rs. 23,355
---	---------------

Establishment—	Rs.
1 Stenographer from 3rd July to 31st December at Rs. 306 a month	1,816
1 Assistant and Cashier from 7th July to 31st December at Rs. 125 a month	726
1 Typist from 31st October to 31st December at Rs. 80 a month	163
5 Peons	279
Total	2,984

Allowances—	
Travelling allowance from Delhi to Bombay and back	1,224
Travelling allowance from Simla to Delhi	790
Other allowance	399
Total	2,413

Contingencies—	
Service Stamps	309
Other charges	1,047
Total	1,356
Total	30,108

Special Officer in the Finance Department (Ordinary Branch).

Rs.

Pay of the Special Officer in the Finance Department at Rs. 2,250 from 22nd May to 19th October and at Rs. 2,350 from 20th October to 31st December 1922

17,586

Rs.

Establishment—

1 Assistant from July to October 1922	1,122	
2 Stenographers (1 from 15th June to 31st December and 1 from 5th September to 24th October) at Rs. 175 per mensem each	1,430	
1 Clerk for October	156	
2 Typists	449	
2 Peons	261	3,418

Allowances—

Travelling allowance from Simla to Delhi—		
(i) Officer on Special Duty	265	
(ii) Office establishment	836	
Simla House Rent	540	
Separation allowance	300	
Grain Compensation allowance	12	1,953

Contingencies—

Stationery and Printing	250	
Carriage of records	132	
Postage and telegrams	20	
Other charges	50	452
Total		23,409

Finance Department (Military Branch).

Rs.

Expenditure due to appointment of additional Financial Adviser, while Mr. Mitra was engaged on preparation of case for Committee	15,000
Total	15,000

Military Estimates.

Rs.

Additional cost incurred in connection with special duty of Colonel Charles and Colonel Wigram	12,000
Total	12,000

Retrenchment Committee proper.

	Rs.	A.	P.	
I. Subsistence allowance at Rs. 1,500 a month—				
1. Sir Thomas Catto (does not require any allowance)				
2. Sir Alexander Murray from 8th November to 31st December	2,401	9	0*	
3. Sir R. N. Mookerjee from 9th November to 31st December	2,356	4	0*	
4. Hon'ble Mr. Purshotamdas Thakurdas from 5th November to 31st December	2,537	8	0*	
5. Mr. D. M. Dalal from 5th November to 31st December	2,800	0	0	
6. Mr. J. Milne from 5th November to 31st December	2,800	0	0	
7. Mr. H. F. Howard from 5th November to 31st December	2,800	0	0	
8. Salary of Colonel J. C. Harding-Newman from 12th to 31st December 1922. (Pay at Rs. 2,200 plus special pay at Rs. 10 per diem)	3,837	7	0*	
				19,533
Subsistence allowance to Messrs. Dalal, Milne and Howard during the period of voyage to India (15 days) at £100 a month	2,250	0	0	
Salary of Mr. J. Milne to be re-imbursed by the India Office to Great Western Railway from 15th October to 31st December at £1,750 per annum	5,470	0	0	
				7,720
II. Travelling allowances—				
(a) Three first class passages from England to India for Messrs. Dalal, Howard and Milne at £78-10-0 each	3,533	0	0	
(b) One single first class fare each from Bombay to Delhi to Messrs. Dalal, Purshotamdas Thakurdas, Milne and Howard, who travelled by Special Train	430	0	0	
(c) Double 1st class fare to Sir Alexander Murray and Sir R. N. Mookerjee from Calcutta to Delhi	420	0	0	
(d) Haulage of motor cars of the President and Members of the Committee from Bombay and Calcutta to Delhi.	1,303	0	0	
				5,683
III. Office establishment from 27th October to 31st December 1922—				
(a) Ministerial establishment—				
1 Superintendent at Rs. 400				
1 Assistant and Cashier at Rs. 200				
1 General Clerk at Rs. 125				
4 Typists at Rs. 120 each				
2 Typists at Rs. 100 each				
(b) Menial establishment—				
1 Duffry at Rs. 24				
1 Jamadar for President at Rs. 25				
1 Dafadar for Secretary at Rs. 20				
15 Peons at Rs. 16 per mensem each				
(c) Travelling allowance of Superintendent to and from Bombay				
				189
IV.—Contingencies—				
Service Stamps				
Telephone charges				
Liveries, etc.				
Stationery and Printing				
Furniture				
Other charges				
				3,483
				3,134
Total				39,556

*Amounts actually drawn after deduction of Income-tax.

Note.—No expenses have been incurred in connection with witnesses except travelling allowance to officers of Government under the Ordinary Rules.

SCOPE OF INCHEAPE COMMITTEE'S REPORT.

219. *Mr. K. Ahmed: (i) Is it a fact that the Inchcape Committee has not been empowered to report on all the subjects fit for retrenchment and that the Secretary of State has not given the Members of the Committee entire discretion to submit their independent report in the matter of retrenchment in all the departments under the Government of India?

The Honourable Sir Basil Blackett: The terms of reference to the Committee were published in the press and were as follows:

"To make recommendations to the Government of India for effecting forthwith all possible reductions in the expenditure of the Central Government, having regard especially to the present financial position and outlook. In so far as questions of policy are involved in the expenditure under discussion, these will be left for the exclusive consideration of the Government, but it will be open to the Committee to review the expenditure and to indicate the economies which might be effected if particular policies were either adopted, abandoned, or modified."

It will be seen that these terms of reference are substantially identical with those adopted for the Geddes Committee which recently sat in the United Kingdom.

There is no limitation whatever on the Committee's powers of investigation.

Mr. W. M. Hussanally: May I ask when this Report will be out or likely to be out.

The Honourable Sir Basil Blackett: I am afraid I cannot answer that absolutely categorically but there is every expectation that it will be in the hands of the Government before the Budget.

Mr. W. M. Hussanally: Will the Report be placed before the Assembly for discussion?

The Honourable Sir Basil Blackett: That question was answered, I think, in an unstarred question that was asked on the 15th instant. The question was whether the Report of the Inchcape Committee will be placed for discussion in the Assembly before any final orders are passed by the Government. The answer was that the Government regret that this course is not practicable.

Mr. N. M. Joshi: May I ask whether the Inchcape Committee will consider the railway expenditure of both State managed railways as well as Company managed railways.

The Honourable Sir Basil Blackett: There is no limitation whatever on the terms of reference of the Committee's powers of investigation.

Mr. N. M. Joshi: May I ask whether the Committee propose to consider railway expenditure?

The Honourable Sir Basil Blackett: They are, I believe, considering railway expenditure.

Mr. K. Ahmed: Have the Committee examined any witnesses or representatives from the Assembly?

The Honourable Sir Basil Blackett: My answer must be in the interrogative.

SECRETARY OF STATE'S INSTRUCTIONS RE INCHEAPE COMMITTEE.

220. ***Mr. K. Ahmed:** Will the Government be pleased to lay on the table a copy of each of the instructions given to the Government of India or to the Inchcape Committee and the Members of it regarding the scope of the work and the departments of the Government on which the report for retrenchment is asked for by the Secretary of State?

The Honourable Sir Basil Blackett: There are no instructions other than those given in the terms of reference.

Mr. K. Ahmed: Will the Government of India be pleased to lay on the table the subject matter of the discussion?

The Honourable Sir Basil Blackett: The Honourable Member has anticipated question No. 221, the answer to which is that the Government regret that they cannot comply with this request.

Mr. K. Ahmed: Why is good money thrown out? Are the representatives of the people of India in this Assembly entitled to know?

The Honourable Sir Basil Blackett: I am afraid I did not succeed in quite catching the question.

Mr. K. Ahmed: Will the Government of India be pleased to lay on the table the subject matter of the discussion so that the Honourable Members of this House who are elected and nominated may know the exact situation with regard to recommendations of the Inchcape Committee who are holding meetings in camera and the public are not to see what is happening there?

The Honourable Sir Basil Blackett: I trust that every opportunity will arise in this House during the Budget to discuss in this camera the whole question.

Mr. K. Ahmed: That is like the reply which Mr. Hindley gave to the question on the North Bengal flood. We want a precise answer to the question.

The Honourable Sir Basil Blackett: I have done my best to give a precise answer, and if I have followed the admirable example of Mr. Hindley, I do not think I can do better.

RETRENCHMENT PROPOSALS.

221. ***Mr. K. Ahmed:** Will the Government be pleased to lay on the table all the communication by wireless, cable, and post passed on the subject of retrenchment between the Secretary of State and the Government of India?

The Honourable Sir Basil Blackett: Government regret that they cannot comply with this request.

LEAGUE OF NATIONS.

222. ***Mr. K. Ahmed:** (1) Will the Government be pleased to state the names of all the people who as members of the League of Nations, representing India, are now engaged in the Conference held abroad and why not a single Mohamedan representing the Muslim population of India.

is being hitherto selected to take part in the discussions concerning their community both religious and political and otherwise?

(2) Is it a fact that the Government of India have selected non-Mohamedan Members from India to take part in the discussions of the Conference of the League of Nations abroad and thereby have categorically left off the Mohamedan interest to be protected thereto?

(3) Are the Government aware that a Conference of the representatives of Islam to settle questions regarding the khilafat is under contemplation by the Kemalists and that the Mohamedans of India will be invited to send in their representatives immediately to take part in the discussions which would be held at Angora?

(4) Do Government propose immediately to select suitable Mohamedan Member or Members having the confidence of the community and send them to take part in the League of Nations?

The Honourable Sir Malcolm Hailey: (1) India's representatives on the 3rd Assembly of the League of Nations at Geneva were—

(1) Lord Chelmsford,

(2) His Highness the Maharaja of Nawanagar, and

(3) Sir Sivaswamy Aiyar.

I must emphasise that the Indian representatives are chosen to represent India as a whole and not any particular community.

(2) No.

(3) Government are aware that there have been reports to this effect in the press but the suggested Conference has of course no connection with the League of Nations.

(4) The 3rd Assembly of the League has now closed. The Honourable Member will understand that when representatives are again nominated the same criterion must be employed as before, namely, fitness to represent India as a whole, but I need not add that should any topic of particular interests to Muhammadans be likely to come up for discussion the advisability of including a representative from among Indian Muslims will not be overlooked.

Mr. K. Ahmed: Are the Government of India aware that in London the Moslem League claimed that at least there should be two representatives elected by the Council of State and the Assembly and it wanted that the Government of India will accede to that and send the representatives?

The Honourable Sir Malcolm Hailey: I am aware of the facts mentioned by Mr. Kabir-ud-din Ahmed. But I am also aware that when the matter was discussed in this Assembly, it was not of the same opinion as the Moslem League regarding representative by election.

Mr. K. Ahmed: Was there an article ten days ago published on the 13th by the Allahabad paper 'Independent' in which it was said that General Wali Khan who is not an Indian was alleged to have represented India?

The Honourable Sir Malcolm Hailey: If there was such an article, it is entirely inaccurate. No General Wali Khan was sent to represent India.

Mr. K. Ahmed: That is what the article said and I wanted to ascertain and verify the facts

RESIGNATION OF MR. BHURGRI.

223. ***Mr. K. Ahmed:** Will the Government be pleased to state the reason or reasons why the Honourable Mr. Bhurgri has tendered his resignation refusing to act as a member of the Council of State any longer and lay on the table the whole correspondence that has passed between him and the Government of India or the Governor General or the Viceroy and the references which are available from the office of the Home Department?

Sir Henry Moncrieff Smith: Mr. Bhurgri addressed no communication to the Government of India on the subject of his resignation. There is, therefore, no correspondence between the Government of India and Mr. Bhurgri which can be laid on the table. Mr. Bhurgri tendered his resignation by means of a telegram addressed to His Excellency the Viceroy. The Government of India are not in a position to lay a copy of this telegram on the table.

Mr. K. Ahmed: On the 14th of November last a paper called "The Servant," a Calcutta paper, Sir, published this: "Mr. Bhurgri, while in England, resigned his Membership of the Council of State as a protest against Mr. Lloyd George's pro-Greek policy and his resignation was held by the anti-war Press as a timely warning reflecting the Indian position."

Mr. Deputy President: That is not a question.

Mr. K. Ahmed: Is not that the reason, Sir?

Sir Henry Moncrieff Smith: I would suggest to the Honourable Member that he should ask Mr. Bhurgri.

Mr. K. Ahmed: I am sorry, but I am entitled to an answer, according to the rules of this Assembly, from the Honourable Member representing the Government.

ACCOMMODATION FOR LASCARS.

224. ***Mr. K. Ahmed:** (i) Are the Government aware that in the House of Commons on the 11th December, 1922 Mr. Gilbert, National Liberal Member of Southwark asked the President of the Board of Trade whether Steamship Companies who bring Lascar Crews to British Home ports are under liability to provide house accommodation and food to either discharged or waiting crews of Eastern Origin, and the reply was given by the Under Secretary of State, Earl Winterton, stating that there is room for considerable improvement in the accommodation available for Lascar Seamen at the London Docks?

(ii) Do Government propose amending their answer in answer to my question No. 378 dated the 8th March, 1921 at page 591 put in the Assembly, in view of the reply given by Earl Winterton, the Under Secretary of State in the House of Commons as above?

(iii) Will the Government be pleased to state or otherwise consider whether they will follow the same course in the case of Indian Seamen regarding house accommodation for them in all the ports of India including Home or foreign as was promised by the Under Secretary of State for white seamen in various ports?

The Honourable Mr. C. A. Innes: (i) Yes.

(ii) and (iii) The Government have nothing to add to the answer referred to by the Honourable Member.

Mr. K. Ahmed: Will the Honourable Member make a statement to this House showing that he is ready and willing to place on the table of this Assembly for the benefit of the public any account or description they might come to have, after enquiry is made with regard to the subject in question involved in No. 224, (i), (ii) and (iii)?

The Honourable Mr. C. A. Innes (Commerce and Industries Member): The Government of India do not propose to make any enquiry.

WAGES, ALLOWANCES, ETC., OF INDIAN AND EUROPEAN SEAMEN.

225. ***Mr. K. Ahmed:** Will the Government be pleased to state giving full particulars, the difference between Indian Seamen and European Seamen regarding their monthly wages, allowances, outfits, accommodations and quality, quantity and prices of food supplied to them per day and the number of hours they work on board the vessels both Mercantile and those chartered by the Government?

The Honourable Mr. C. A. Innes: The Honourable Member will find the information he wants regarding Indian seamen in section 70 of the Indian Merchant Shipping Act, 1859, and in the Lascar Agreements. I am afraid that I cannot undertake to supply him with the required information regarding European seamen but if he desires to study the subject, I shall be happy to place at his disposal such books of reference as the Commerce Department Library contains.

Mr. K. Ahmed: I am very much obliged to my Honourable friend, but will he be good enough to take the trouble to ameliorate the condition of the poor Indian seamen through the Department of which my Honourable friend is the Member?

The Honourable Mr. C. A. Innes: We are always prepared to consider specific grievances brought to our notice.

Mr. K. Ahmed: Will my Honourable friend explicitly say how and when he is going to do that?

DEMANDS OF INDIAN SEAMEN.

226. ***Mr. K. Ahmed:** (i) Is it a fact that Indian Seamen engaged in Indian ports while going to foreign ports in vessels frequently visiting ports which are much colder than Indian ports, ask for warm clothing, rich food, cabin and saloon accommodations similar to those provided for European Crews along with their higher salaries and that in spite of promises made by the Captains and other persons in authority, their requirements have not been complied with?

(ii) Will the Government be pleased to state on enquiry from the Calcutta Shipping Office how many cases or instances have occurred mentioning the names of vessels and their agents during the last five years up to 1922 in which the demands mentioned as above have been made by the Indian Seamen and in spite of promises of Captains and other persons in authority specially regarding the increment of pay, the said demands have not been complied with?

The Honourable Mr. C. A. Innes: The Honourable Member is probably referring to the fact that Indian seamen may not be taken during the winter months to ports on the East Coast of America North of 38°

North latitude except under special agreements voluntarily undertaken. These special agreements provide for special clothing and special heating of the Seamen's quarters. In the circumstances the Government are not prepared to make the enquiry suggested in part (ii) of the question.

Mr. K. Ahmed: May I state one or two names of steamers in which Indian seamen have been engaged through men registered under the Shipping Act both in Calcutta and Bombay and elsewhere also and when they arrived at the foreign ports and ask for higher wages. . . .

Mr. Deputy President: I am afraid I cannot allow the Honourable Member to make a speech.

Mr. K. Ahmed: I am not making a speech, Sir—and the Captain of the steamer, it was the Steam Ship s. s. *Hatipura* or *Hatinara*; there is another steamer, Sir, under the agency of Messrs. Shaw Wallace and Co., a big office in Calcutta,—they entered into a fresh contract only last year that they will pay 50 per cent. more than the salary. . . .

Mr. Deputy President: I think, I asked the Honourable Member to abstain from making a speech. If, after hearing the reply to his question, he thinks that the statement is of great importance, I think it might well form the subject matter of another question.

(Mr. K. Ahmed again rose.)

Mr. Deputy President: Order, order.

SEAMEN RECRUITMENT COMMITTEE'S REPORT.

227. ***Mr. K. Ahmed:** (i) Are the Government aware of the Report of a meeting of the Indian Seamen's Union, Calcutta, published in the issues of the *Statesman* and the *Amrita Bazar Patrika* dated the 5th December last in which the Union urged the Government to take immediate steps to give effect to the Recommendations contained in the Reports of the Seamen's Recruitment Committee in non-compliance of which it has been declared that there will be a Seamen's Strike?

(ii) (a) Do Government propose in the interest of the country to expedite the enforcement of the Recommendations of the Seamen's Recruitment Committee immediately during this Session without waiting any longer?

(b) If the answer be in the affirmative, will the Government be pleased to state whether they are going to introduce Legislation embodying the Recommendations of the Committee in this Session?

The Honourable Mr. C. A. Innes: (i) Yes.

(ii) The attention of the Honourable Member is invited to the answer given on the 7th September last to a similar question asked by Mr. Joshi. The Government of India are still awaiting the views of the Governments of Bengal and Bombay on the recommendations of the Committee and until these have been received they are unable to make any statement on the subject.

Mr. K. Ahmed: Is it not a fact, Sir, that in the report submitted last May and published in the *Gazette of India* dated May 27th 1922, the majority of the Committee Members state this: "The proposals of the Committee will be examined at once, in consultation with the Maritime Local Governments?"

The Honourable Mr. C. A. Innes: They were examined at once, and they were referred after a very short period of time to the two maritime Local Governments whose names I have given.

Mr. S. K. GHOSE, SHIPPING BROKER.

228. ***Mr. K. Ahmed:** (a) Is it a fact that the Government of Bengal after the termination of the sittings of the Seamen's Recruitment Committee in March 1922 appointed a new Shipping Broker in the person of Mr. S. K. Ghose in contravention of the recommendations of the said Committee and that the said new Shipping Broker of Calcutta is a relation of one of the nominated Labour Members of the Bengal Council who had recommended him?

(b) Will the Government be pleased to state whether they received any resolution of protest from the Indian Seamen's Union, Calcutta against the appointment of Mr. S. K. Ghose as the new Shipping Broker in the port of Calcutta by the Government of Bengal?

(c) If so, what steps the Government have taken for his removal?

The Honourable Mr. C. A. Innes: The attention of the Honourable Member is invited to the answer given on the 26th September 1922 to a somewhat similar question (No. 230) asked by Mr. Hussanally, Mr. S. K. Ghose was recommended by a Member of the Bengal Council, but the Government of India do not know whether they are in any way related. As already explained, the new broker was appointed purely as a temporary measure by the Government of Bengal, pending a decision on the recommendations of the Seamen's Recruitment Committee. The appointment was made by the Government of Bengal in the interests of the seamen themselves in order to break an existing monopoly, and the Government of India do not propose to take any action.

Mr. K. Ahmed: Will the Honourable Member explain the reasons why the Government of Bengal made this temporary appointment?

The Honourable Mr. C. A. Innes: I have nothing to add to what I have already said.

Mr. K. Ahmed: Will the Government of India take steps, Sir, for the removal of that broker according to the terms of the Committee's report?

The Honourable Mr. C. A. Innes: No, Sir.

EMPLOYMENT OF LASCARS AND CASUALTIES IN THE GREAT WAR.

229. ***Mr. K. Ahmed:** Will the Government be pleased to answer my question No. 198 re Indian Seamen and lascars put in the Assembly on the 7th September 1922 as early as possible giving all the particulars in full?

The Honourable Mr. C. A. Innes: The answer to question No. 198, dated the 7th September 1922, was sent to the Honourable Member on the 11th January 1923, and will now be laid on the table.†

† The statement will be printed in the next issue of these Debates.

Mr. K. Ahmed: I want a ruling from the Chair. Suppose, certain questions are put by an Honourable Member. The Honourable Member gets a demi-official letter written by a certain Department of the Government of India saying "would you be good enough to withdraw the question,—I shall be very much thankful in case you approve of the terms set forth in the letter" instead of his answering the question publicly in the open Assembly for the benefit of the country?

Mr. Deputy President: I am afraid the Chair can take no notice of private correspondence between the two Honourable Members.

Mr. K. Ahmed: No, Sir. I think you have caught hold of the wrong end of the stick. What I am asking is whether a starred question put by an Honourable Member of this Assembly should not be answered openly in the Assembly for the benefit of the Members and the country and not in a demi-official letter, in which the Department writes to the individual and asks him to be good enough to withdraw the question instead of troubling the Honourable Member in charge of the Department to answer it.

Mr. Deputy President: I can add nothing to what I have said before.

Mr. N. M. Joshi: I want to inquire from Government whether they approve of the practice which is growing in this House of not answering questions in the House but sending the information to the Member?

The Honourable Mr. C. A. Innes: May I say, Sir, that that practice has been adopted solely in the interests of economy and to avoid printing charges. In regard to this particular question, I am certainly prepared to lay the answer on the table in order that Honourable Members may see it in the printed proceedings; but I may point out to the Honourable Member that if I had taken that course it would not have enabled him to ask the supplementary questions on which he was so keen.

Mr. K. Ahmed: I think this point has already been decided. Mr. K. C. Neogy met the argument of my Honourable friend, Sir William Vincent, and it was decided by this Assembly that all the questions would be answered in the House. The excuse brought forward by my Honourable friend, Mr. Innes, therefore, will not hold water. It is not a question of space but the irregularity and error which my Honourable friend's Department committed, and they were accused of the same thing by Mr. Neogy. So far as printing charges are concerned, they have printed this long syllabus instead of taking the trouble of answering the question. I think we come within the four corners of the principle then decided and are entitled to have everything published in the proceedings; there is no getting out of it. May I ask, Sir, that the answer read out by my Honourable friend from his papers and the demi-official letter written to me by one Mr. E. Rogers of his Department. . . .

Mr. Deputy President: I think the Honourable Member has already intimated his intention of having the answer published and laid on the table.

Mr. K. Ahmed: When Sir? Will that question be put down again for answer?

Mr. W. M. Hussanally: May I ask if it is a fact, as stated by my Honourable friend, Mr. Ahmed, that he was asked by demi-official letter to withdraw his question?

The Honourable Mr. C. A. Innes: I understand that one of the officers of my Department got this question after the information required by Mr. Ahmed had been sent to him, and he wrote to Mr. Ahmed and asked whether in those circumstances he still wished the question answered. Those are the facts of the case.

Mr. K. Ahmed: Sir, I place the letter in the Assembly.

Mr. Deputy President: I am afraid I cannot allow the Honourable Member to go into that question.

Mr. K. Ahmed: Could not that question be threshed out in this Assembly, so that we may have a ruling from the Chair?

The Honourable Sir Malcolm Hailey: Might I suggest that a general question of this nature could better be brought up on a motion, or by special leave at a convenient time and need not delay the House during question time.

Mr. Deputy President: I hope the Honourable Member will take the advice of the Leader of the House and bring this matter up on a formal motion or through a separate question.

LICENSED SHIPPING BROKERS.

230. ***Mr. K. Ahmed:** Will the Government be pleased to state how many Licensed Shipping Brokers are there in the ports of Calcutta, Bombay, Rangoon, Madras and Karachi and the time when the licenses of these brokers commenced and terminated during the years of 1918, 1919, 1920, 1921 and 1922 giving full particulars of any period when their licenses were in abeyance and they had acted as broker or brokers; and how many licenses were renewed each year and who renewed them giving full particulars of the same?

The Honourable Mr. C. A. Innes: Since the licensed brokers system has recently been the subject of enquiry by a special committee and since the question of discontinuing that system is now under correspondence with Maritime Local Governments, the Government of India do not think it necessary to put those Local Governments to the trouble of collecting and supplying the information required by the Honourable Member.

Mr. K. Ahmed: Was it not illegal for a broker without a licence to supply seamen?

The Honourable Mr. C. A. Innes: If a shipping broker committed any illegal act the person aggrieved had a remedy in the Courts of law.

Mr. K. Ahmed: Is it not for the Government of India to prosecute them, Sir, without leaving it to other people?

The Honourable Mr. C. A. Innes: No, Sir. The Mercantile Shipping Acts are administered by Local Governments.

DEPUTY SHIPPING MASTER, CALCUTTA—DISSATISFACTION AGAINST.

231. ***Mr. K. Ahmed:** (a) Are the Government aware that the Indian Seamen's Union, Calcutta, dated 3rd December 1922 passed a resolution declaring that the present Deputy Shipping Master, Calcutta be immediately recalled Home, removed or transferred as his office was not for

the purpose of facilitating appointments of Seamen and also for their interest and benefit?

(b) If the answer be in the affirmative, will the Government be pleased to state the reasons for such dissatisfaction of the Seamen?

(c) Will the Government be pleased to state what action the Government have taken in the matter, if there be any?

COMPLAINT AGAINST DEPUTY SHIPPING MASTER.

232. ***Mr. K. Ahmed:** (a) Will the Government be pleased to state whether they received a petition signed by some 400 Seamen of Calcutta complaining against the Deputy Shipping Master for his treatment towards the seamen in general?

(b) If so, what action the Government have taken or propose to take in the matter.

The Honourable Mr. C. A. Innes: (a) Yes. I will answer the preceding question at the same time as this.

(b) and (c) The Government of India recently received an English translation of a petition signed by certain seamen in Calcutta in which it was alleged that the Shipping Master and the Deputy Shipping Master were unsympathetic and took the side of the shipping brokers. The petition has been returned for submission through the prescribed channel, i.e., the local Government.

INDIAN SEAMEN IN THE GREAT WAR.

233. ***Mr. K. Ahmed:** In continuation of my question No. 198, dated the 7th September, 1922, regarding the number of Indian Seamen engaged from all the Indian ports in foreign ships registered from the United Kingdom, as well as in ships registered under the Indian Registration of Ships Act, 1841 and the Indian Steam Vessels Act, 1917, will the Government be pleased to state how many seamen were engaged in 1921-1922 from each of the ports in India including the number of Indian Seamen who were killed during the last European War in the Merchant Ships as well as the ships chartered by the Government?

The Honourable Mr. C. A. Innes: Particulars of the numbers of Indian seamen killed during the European War and also of the number of such seamen shipped from Bombay and Calcutta during 1921-22 were supplied to the Honourable Member on the 11th instant in response to question No. 198, dated the 7th September 1922. They will now be laid on the table.† Information relating to recruitment from Karachi and from the other ports (except Bombay) in the Bombay Presidency is not available, while there was no recruitment either from Rangoon or from Madras.

Mr. K. Ahmed: Sir, with reference to the demi-official letter in connection with this question No. 233, it states that there were 1,200 seamen captured and imprisoned in the enemy countries. I want to ask a test question. You see, Sir, there are two double zeros after the figure 12. Whether it would not be a few less or a few more than 1,200 if the Honourable Member is prepared to answer?

The Honourable Mr. C. A. Innes: I understand, Sir, that the information supplied to the Honourable Member was correct to the best of the Commerce Department's knowledge.

† The statement will be printed in the next issue of these Debates.

COMPENSATION TO INDIAN SEAMEN.

234. ***Mr. K. Ahmed:** (a) Are the Government aware that the dependants of seamen in England killed in the War received pensions and compensations and that in addition they are getting a share of German Reparation Award?

(b) Do Government propose to follow the same principle in dividing the same Reparation Award among the dependants of the Indian Seamen instead of transferring the same to the different funds?

GERMAN REPARATION AWARD FOR SEAMEN.

235. ***Mr. K. Ahmed:** Will the Government be pleased to lay on the table all the correspondence that may have passed between the Government of India and the Secretary of State regarding the German Reparation Award for Seamen and the matters ancillary thereto?

The Honourable Mr. C. A. Innes: I will answer the preceding question at the same time as this.

The suggestion in part (a) of the Honourable Member's question is not correct; and as a report appears to be current among Indian Seamen that in addition to receiving pensions dependants of British Merchant Seamen killed in the war are receiving compensation from German reparations, the Government of India take this opportunity of clearing up the matter. The facts are as follows:—In 1921 His Majesty's Government decided that a sum of five millions sterling should be devoted to the payment of compensation for "Suffering and Damage by enemy action." It was originally intended that the expenditure should be met from reparation claims. But in January 1922 His Majesty's Government decided not to wait to see whether any payments would be received on reparation account from Germany, and they provided the promised sum of five millions sterling in the Civil Service estimates partly for 1921-22 and partly for the current year. A Royal Commission was then appointed to consider claims. As I have said, the sum was provided for compensation for suffering and damage by enemy action, but the Commission decided that in the first instance they would recommend grants in specially necessitous cases, whether among seamen and their dependants or among other classes of the population. It will be seen that it has not been decided to earmark any portion of reparation payments for distribution specially to British seamen, and in the circumstances neither part (b) of the Honourable Member's question or his succeeding question arise.

FRANCHISE FOR INDIANS IN KENYA.

236. ***Mr. T. V. Seshagiri Ayyar:** (a) Will the Government be pleased to state whether they have received any communication from Indians living in Kenya relating to the exercise of franchise by them at the ensuing election for the Legislative Council?

(b) Whether the Government has addressed the Secretary of State on the subject and if so, would the Government be prepared to lay on the table of the House a copy of the communication, if any, addressed by them?

Mr. J. Hullah: (a) Yes.

(b) The Honourable Member is referred to the answer given by me on the 15th instant to a similar question asked by Mr. Jamnadas Dwarkadas in which I stated the substance of the telegram addressed by the Government of India to the Secretary of State. Government are not prepared to lay the correspondence on the table at the present stage.

Mr. T. V. Seshagiri Ayyar: Has any reply been received from the Secretary of State in regard to any representation made by the Government of India on the subject?

Mr. J. Hullah: Yes.

Rao Bahadur T. Rangachariar: Are the Government aware that the conditions are getting very acute in that colony?

Mr. J. Hullah: Yes, certainly judging from newspaper reports.

Rao Bahadur T. Rangachariar: Are the Government taking proper steps to protect the interests of Indians there?

Mr. J. Hullah: Yes.

Mr. Harchandrai Vishindas: Are the Government prepared to state the substance of the reply of the Secretary of State?

Mr. J. Hullah: No; but I can say that the Secretary of State is working in complete accord with the Government of India.

Mr. Jamnadas Dwarkadas: Is there any likelihood of Government yielding to the threat held out by the European community that if the claim of the Indian community to the franchise is accepted they will resort to violence?

Mr. J. Hullah: No such threat has been communicated to the Government of India.

Mr. Jamnadas Dwarkadas: It has not been communicated to the Government of India, but has the Honourable Member read the telegram purporting to the effect that that threat has been held out by the European community?

Mr. J. Hullah: Yes, I have seen a telegram of that kind in the press.

Mr. Jamnadas Dwarkadas: Has the Government impressed on the Secretary of State for India and the Secretary of State for the Colonies that any attempt at whittling down the rights of the Indian Community would be subversive of the Resolution of the Imperial Conference of 1921?

Mr. J. Hullah: Certainly, we have done that.

Mr. Harchandrai Vishindas: In view of the fact that Government are aware of this information, although they have not received it officially, are the Government prepared to take any action in the matter or send any communication to the Secretary of State as to the threat held out by the European community?

Mr. J. Hullah: Yes, Government will certainly consider, and consider immediately, the advisability of making such a communication.

Mr. T. V. Seshagiri Ayyar: Will the Government of India communicate to the Governor of the colony its opinion that care should be

taken to protect the lives of the Indians in the colony against violence. Will the Government take proper steps to protect the domiciled Indians there against the contemplated violent action of the European settlers there?

Mr. J. Hullah: We should certainly take steps if we had any reason to believe that there was serious danger of violence, but we have received no information of the kind.

Rao Bahadur T. Rangachariar: Has the Government of India received a telegram addressed to His Excellency the Viceroy by the Indian Congress where they appeal for protection to His Excellency Lord Reading?

The Honourable Mr. B. N. Sarma: We propose to communicate to the Secretary of State the feeling of the House and the feeling of the Indian community to see that all that can be done is done.

FOUR-WHEELER COACHES.

237. ***Mr. N. M. Joshi:** What is the number of coaches, in terms of four-wheelers, which do not normally form part of the daily passenger carrying trains and their cost?

Mr. C. D. M. Hindley: I am sorry that I cannot answer this question for I do not know precisely what information the Honourable Member requires. If he will let me know later what information he wants I will endeavour to supply it.

Mr. N. M. Joshi: What I want to know is this. There is a lot of rolling stock of passenger trains which is not used daily. I want to know what the number of such stock is.

Mr. C. D. M. Hindley: I beg to suggest that if the Honourable Member will perhaps discuss this matter with me, I shall be able to explain the difficulties and then if he will make a specific request, I will give him any information in my power.

MANAGEMENT OF E. I. AND G. I. P. RAILWAYS.

238. ***Mr. N. M. Joshi:** Do Government propose to place their proposals regarding the future management of the East Indian and the Great Indian Peninsula Railways before the Legislative Assembly during the current session?

Mr. C. D. M. Hindley: In accordance with the undertaking given by the Government in the Legislative Assembly on the 7th September 1922 in the course of the discussion on the Resolution relating to the revision of the Indian Railways Act, 1890, moved by Moulvi Miyan Asjad-ullah, a Government day will be given during the current session of the Legislative Assembly for the discussion of that Resolution. Notice has been given of amendments to that Resolution which will give the Assembly an opportunity of discussing the future management of the two Railways mentioned.

Rao Bahadur T. Rangachariar: Will that date be before the other Resolution by Government about the separation of Railway and ordinary Budget is taken up? Will an opportunity be given to the Assembly before that?

The Honourable Sir Malcolm Hailey: We have not yet settled our dates, but we shall do so as soon as possible. I may remind the House that at present we have great difficulty in settling them owing to the delay in disposing of the Criminal Procedure Code Bill.

Rao Bahadur T. Rangachariar: My question was whether the discussion will be before the other question is taken up.

The Honourable Sir Malcolm Hailey: I cannot give any indication at present of the date. We will consider the point and let the Honourable Member and the House know as soon as possible.

Mr. Harchandrai Vishindas: Do I understand that the Government is not in a position to chalk out the whole programme of this session, because I intended to put a question before the commencement of business to-day whether we will be in a position to know, so that we may regulate our movements accordingly.

The Honourable Sir Malcolm Hailey: We should be very glad, if we could give such information to the Honourable Member which would enable him to regulate his movements; but at present we are unable to say even whether the session will terminate in March or not. At our present rate of progress it appears not impossible that we may have to sit through April and possibly through part of May.

Mr. Harchandrai Vishindas: I want to know whether the Governor General in Council has fixed the date under the Standing Orders for the introduction of the Budget.

The Honourable Sir Malcolm Hailey: Yes, Sir. It is the usual date, 1st of March.

Mr. Jamnadas Dwarkadas: Coming back to the original question, will the Government kindly make a note of this point that many of the Members of this House desire that the discussion of the question of State *versus* Company management of Railways should precede the discussion on the question of the separation of the Railway Budget.

The Honourable Mr. C. A. Innes: I will certainly take note of that and will discuss it with the Honourable the Leader of the House.

Mr. K. Ahmed: Is it not a fact distinctly understood by the Member of the Assembly and my Honourable friend, Mr. Innes, that the earliest date will be fixed for the discussion of this Resolution which was moved by my Honourable friend Miyan Asjad-ullah and I, Sir, objected when the Home Member said that there will be an adjournment of this at the next November Session, which has not been held at all, the reason for which is obvious to the Honourable Member. Under these circumstances are we not entitled to have the earliest date fixed for the discussion of this Resolution, *viz.*, Company *versus* State management.

The Honourable Sir Malcolm Hailey: Without entering into further discussion, I might say that we shall do our best in the circumstances to give the House as early a date as possible.

TEMPLES AT PAHARGUNJ, DELHI.

239. ***Rai Sahib Lakshmi Narayan Lal:** (a) Has the attention of the Government been drawn to the proceedings of the All-India Hindu Maha-

Sabha held at Gaya on 31st December last regarding the demolition of the temples situate within the area proposed to be included in the New Railway station at Pahar Gunj, Delhi?

(b) How many temples and Dharmshalas appertaining to the temples were there within the said area?

(c) Has any of the said temples or Dharmshalas or any portion thereof been demolished; if so, to what extent and by whose order?

(d) Has any body been consulted in the matter?

(e) What do the Government propose to do in the matter now?

Mr. C. D. M. Hindley: (a) No.

(b) Six temples and one dharamsala.

(c) No.

(d) Yes. All those who claimed to be interested in the matter and who approached the Chief Commissioner, Deputy Commissioner, or the Engineer-in-Chief have been consulted.

(e) Nothing at present.

PILFERING AND COMPLAINTS ON N. W. RAILWAY.

240. ***Dr. Nand Lal:** 1. Is Government of India aware that

(a) there is a great deal of pilfering on the North Western Railway;

(b) there is a general complaint in respect of overcrowding in the third class carriages;

(c) there is a great inconvenience to women and children travelling in the third class.

2. If answer to question No. 1 be in affirmative, then will they be pleased to state as to what steps they have taken to put an end to them (pilfering, complaints, and inconvenience)?

Mr. C. D. M. Hindley: (a) Government are not aware that there is a great deal of pilfering on the North-Western Railway. Cases of pilferage occur on the North-Western Railway but they are not peculiar to that Railway. The subject of prevalence of theft and pilferage on railways and the measures for remedying the evil were examined in detail by the Railway Police Committee in 1921 and steps have been taken by the Railway Police Committee on the basis of the recommendations made by the Police Committee. Copies of the Committee's Report are available in the Library.

(b) and (c) The Honourable Member is referred to the answer given on 16th January 1923 to item (b) of starred question No. 92 asked by Rai Bahadur Lachmi Prasad Sinha in a similar connection.

Mr. T. V. Seshagiri Ayyar: Does that answer imply that the recommendations made by the Railway Police Committee have been acted on by the Railways?

Mr. C. D. M. Hindley: I am not prepared to say they have all been acted on. They have all been considered, and will be acted on if necessary.

Mr. J. Chaudhuri: Is there any improvement in regard to pilfering since the report of the Committee?

Mr. C. D. M. Hindley: I am afraid I have no figures to substantiate that point one way or the other.

Mr. J. Chaudhuri: I personally know there has not been. A motor car fittings were pilfered the other day.

PRESENTS TAKEN BY TRAFFIC INSPECTORS.

241. ***Dr. Nand Lal:** 1. Is Government of India aware that some of the Traffic Inspectors on the North Western Railway take a periodical allowance, in the form of presents or pecuniary gratifications, from some of the Station Masters, excepting those who are posted at principal and very important stations?

2. If answer to question No. 1 be in affirmative, will they be pleased to state as to what step they have taken to put an end to it?

Mr. C. D. M. Hindley: The Government regret that a sweeping allegation of this kind should have been made against a whole class of Railway servants. If the Honourable Member has charges of corruption to make against individual Traffic Inspectors, the Government trust that he will make them to the Agent. The charges will then be investigated and suitable action taken if necessary.

INCREASE IN RAILWAY FARES.

242. ***Dr. Nand Lal:** (i) Will Government be pleased to state as to whether the last increase in the Railway fare of the third class has effected any appreciable increase in the revenue? If so, what is the amount of that increase up to the end of December 1922?

(ii) Will Government be pleased to state as to whether the last increase in the Second Class Railway fare has effected any appreciable increase in the revenue? If so, what is the amount of that increase up to the end of December 1922?

Mr. C. D. M. Hindley: The Honourable Member is referred to the answer to a somewhat similar question, *viz.*, No. 150 asked by Mr. P. L. Misra on the 17th instant. The Government hope to collect shortly more detailed figures and on receipt of them, they will be able to give to the Honourable Member the information he requires.

DISCONTINUANCE OF RAILWAY RETURN TICKETS.

243. ***Dr. Nand Lal:** Will the Government be pleased to state as to whether the last discontinuance of Second and First Class Return tickets has occasioned any appreciable increase in the revenue? If so, what is the total amount thereof?

Mr. C. D. M. Hindley: The revenue derived from 1st and 2nd class passenger traffic increased year by year from 1915-16 to 1921-22. The extent to which the abolition of 1st and 2nd class return tickets at less than two single fares contributed to this increase cannot be estimated, owing to factors being involved, the effect of which cannot be calculated.

FEMALE TICKET COLLECTORS.

244. ***Dr. Nand Lal:** Will the Government be pleased to state as to whether there are female ticket collectors at every principal and important Junction Stations?

Mr. C. D. M. Hindley: Women ticket collectors are employed at the larger railway stations situated in Upper India where tickets are checked. Their employment on railways in other parts of India and in Burma is generally speaking not considered necessary.

SUPPLY OF WAGONS TO TRADERS.

245. ***Dr. Nand Lal:** Is the Government aware that, at many Railway Stations of the North Western Railway, Traders and Merchants cannot get wagons till they pay in the form of bribe to the Station Masters or Goods Clerks?

Mr. C. D. M. Hindley: The Government of India are of course aware of the remarks of the Acworth Committee on the subject of irregularities on the distribution of wagons. The matter is one which has been receiving the careful attention of the Railway Board. The systems of registration in force on the various railways have been under examination and are now under trial. The matter has also been taken up by the Indian Railway Conference Association. Further steps will be taken as is found possible in consultation with the Railway Administrations.

CORRUPTION IN THE SERVICES.

246. ***Dr. Nand Lal:** 1. Is Government aware that there is corruption in

- (a) Railway Department—both Traffic and Engineering?
- (b) Commissariat Department?

(2) If the answer to question No. 1 be in affirmative, will Government be pleased to state as to what effective measures they have taken to put an end to it?

Mr. C. D. M. Hindley: As regards the Railway Department the Honourable Member is referred to the reply given in the previous question.

To enable Government to answer satisfactorily that part of the question which relates to the "Commissariat Department", it has been necessary to make certain enquiries, the result of which will be communicated to the Honourable Member as soon as possible.

CREW SYSTEM OF CHECKING TICKETS.

247. ***Dr. Nand Lal:** (a) Is Government of India aware that the Railway Department, though it is according to section 69 of the Indian Railways Act, required to collect Tickets from passengers at the end of journey or near that, have, in the Lahore District of the North Western Railway, recently introduced a new system, called the Crew System, according to which seven or eight Ticket Collectors and an Inspector are put in charge of a train at the starting station in order to collect tickets, and check the train at each station giving little chits, as substitutes or tokens, for the collected tickets?

(b) Is the Government of India aware that no female ticket collectors are provided under the new Crew System?

(c) Is the Government of India aware that some passengers and a Municipal Commissioner of Wazirabad complained against this new system some months back?

Mr. C. D. M. Hindley: Government have no information. Enquiry will be made from the Agent, North-Western Railway, and the result communicated in due course.

WATERING STAFF ON N. W. RAILWAY.

248. ***Dr. Nand Lal:** (a) Is Government of India aware that only 58 extra watermen were employed for supplying water to trains on the Lahore District of the North Western Railway, last summer, whereas 80 watermen used to be employed in the previous years?

(b) Is Government of India aware that the Traffic Department of the North Western Railway dismissed, in the Lahore District, water staff at many roadside stations, barring a few principal ones?

(c) Is Government of India aware that this dismissal of watering staff caused great trouble to the third class passengers?

Mr. C. D. M. Hindley: The Government of India presume that if the facts are as stated the Agent was satisfied that the reduction in the staff would cause no inconvenience to the public. They are however forwarding the Honourable Member's question to him in order that he may reconsider the matter if he thinks it necessary so to do.

REVENUE FOLLOWING ON CHANGE IN POSTAL RATES.

249. ***Dr. Nand Lal:** (1) Will Government of India be pleased to state as to whether the last abolition of pice post cards has occasioned some increase or decrease in the Revenue, giving in either case an approximate amount of such increase or decrease.

(2) Will Government of India be pleased to state as to whether the last increase in postage stamps on letters, namely, from half an anna to one anna, has brought about some increase in Revenue and if so, what is the approximate increase, and if there is a decrease in consequence thereof, then, what is the amount thereof up to the end of December 1922.

Colonel Sir Sydney Crookshank: (1) and (2) Separate information regarding the revenue from the sale of postcards is not available, but it may be stated that the gross amount realised from the sale of ordinary postage stamps and postal stationery of all kinds for the period from April to December 1922 was Rs. 5,03,38,000 as compared with Rs. 4,77,04,481 for the corresponding period of 1921.

Mr. W. M. Hussanally: May I inquire if the anticipated income has been realised?

Colonel Sir Sydney Crookshank: Sir, it is difficult to state at this particular period of the year whether the anticipated revenue on the Posts and Telegraphs combined will be fully realised, but I can inform the House this much, that it is likely that the profits on the two branches taken together will amount to over 30 lakhs of rupees as compared with the deficit which would have occurred had this Honourable House not had the foresight to increase the postal rates from a quarter anna to half an anna for post cards and from a half anna to one anna for letters.

Mr. W. M. Hussanally: What has been the total cost of reprinting and labelling to be deducted from this Rs. 30 lakhs?

Colonel Sir Sydney Crookshank: I shall be much obliged if notice can be given of that question.

DR. JIWAN LAL, BUSHIRE.

250. ***Dr. Nand Lal:** 1. Is Government of India aware—

(a) that one Doctor Jiwan Lal, Sub-Assistant Surgeon, Military Indian Station Hospital, Bushire (Persian Gulf) was convicted and sentenced to five years' rigorous imprisonment in May 1922, under the charge of tampering with the loyalty of the troops, by the Court Martial;

(b) that the convict was transferred to some Jail in India;

(c) that the relations (brothers) of the convict addressed the Government of India begging to be informed as to where the convict was;

(d) that his brothers are anxious to know whether he is living;

(e) that the convict was an inexperienced youth.

(2) If the answer to question No. 1 be in affirmative, will Government be pleased to state as to whether the convict is living and if so, in what Jail he is.

Mr. E. Burdon: (1) and (2) Government are aware that Dr. Jiwan Lal was convicted of the offence mentioned by the Honourable Member. As far as their present information goes, he is in Thana Jail, Bombay Presidency, to which he was transferred from Bushire. I will ascertain definitely whether he is still in Thana Jail, and I will inform the Honourable Member of the result.

IMPRISONMENT OF PAIRA BHAN, CHAUDHURI NIRMAL DAS AND DEVI DAS OF DERA ISMAIL KHAN.

251. ***Dr. Nand Lal:** 1. Is Government aware—

(a) that on 31st October, 1921, Paira Bhan, Chaudhri Nirmal Das and Devi Das and others, residents of Dera Ismail Khan, were charged under section 40 of the Frontier Crimes Regulations, for repeating the Karachi resolution and were convicted by the District Magistrate and sentenced to two years' simple imprisonment;

(b) that they were transferred to Peshawar Jail on 9th November, 1921;

(c) that on 12th November, 1921, the District Magistrate without notice to the accused enhanced the imprisonment of all the accused by changing the simple imprisonment into a rigorous one;

(d) that there was a constant complaint of bad food;

- (e) that the treatment accorded to them was worse than that of ordinary criminals;
- (f) that a memorial was submitted to the Honourable the Chief Commissioner, North-West Frontier Province, in which these circumstances, *inter alia*, were referred to.

2. If answer to question No. 1 be in affirmative, will the Government be pleased to state as to what enquiry has been made by them and what result they have arrived at? Have they done anything to redress these grievances of the convicts and considered the prayer of the memorialists?

The Honourable Sir Malcolm Hailey: The information has been called for and will be supplied when available.

GRATUITIES IN INDIAN MEDICAL SERVICE.

252. ***Dr. Nand Lal:** (1) (a) Is Government aware that temporary European candidates, to be recruited on five years' contract, are to get a gratuity at the rate of Rs. 250 per mensem, while temporary Indian Officers of the Indian Medical Service are not getting any gratuity?

(b) Is there any special reason for this inequality?

(c) If there were no special reason for this inequality, will the Government be pleased to state as to why this inequality should exist?

(2) Is Government aware that Temporary Indian Officers of the Indian Medical Service are not allowed any proportionate yearly gratuity in lieu of the pension of the permanent members of that service. If not, why not?

(3) Is Government aware that unlike the permanent members of the Indian Medical Service, temporary Indian Members of the Indian Medical Service, do not get any increment of pay according to the time scale, after three or more years' service as a captain?

If not, why not?

(4) Is Government aware that unlike the permanent members of the Indian Medical Service temporary Indian Officers of the Indian Medical Service, do not get the advantage of their accelerated promotion for captaincy towards their pay?

If not, why not?

Mr. E. Burdon: (1) (a) The position is substantially as stated by the Honourable Member.

(b) and (c) There is an essential difference between the respective obligations of the two classes of officers mentioned. The 30 European officers are being recruited conditionally for permanent commissions in the Indian Medical Service and for a minimum period of 5 years. If they fail to serve the minimum period, they receive no gratuity. The Indian officers mentioned serve on a purely temporary engagement which is for a maximum period of one year.

(2) and (3) Yes. The terms offered are sufficient to secure the candidates required for the purely temporary posts.

(4) Promotion to Captain is granted, both to temporary and permanent officers, after three years' service. This promotion is not accelerated in the case of either class of officers.

POLICY REGARDING WAZIRISTAN.

253. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to lay on the table the correspondence that may have passed between the Government of India and the Secretary of State for India relating to its future policy with respect to Waziristan.

Mr. Denys Bray: Government do not consider it in the public interest to make public the correspondence.

RAILWAY WORKSHOPS.

254. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state—

(a) What stations of the East Indian Railway, Bengal and North-Western Railway and Oudh and Rohilkhand Railway have workshops?

(b) Alongside which of the workshops referred to in question (a) have technical schools been established?

Mr. C. D. M. Hindley: There are workshops at Jamalpur and Lilloah on the East Indian Railway, at Gorakhpur on the Bengal and North-Western Railway, and at Lucknow on the Oudh and Rohilkhand Railway. At all four stations apprentices in the shops receive technical training. At Jamalpur and Lucknow schemes for the erection of new and larger technical schools at which a higher class of training will be possible are now being introduced, the local Government in each case co-operating with the railway administration.

INTERMEDIATE CLASS ACCOMMODATION.

255. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state:

(a) Whether all the trains of the East Indian Railway, Bengal and North-Western Railway and Oudh and Rohilkhand Railway are provided with intermediate classes?

(b) If not, will it be pleased to issue necessary instructions to the Railway authorities to make the provisions?

Mr. C. D. M. Hindley: (a) All trains carrying passengers on the East Indian and Oudh and Rohilkhand Railways are provided with intermediate class accommodation but certain trains on the Bengal and North-Western Railway carry third class passengers only.

(b) Government do not consider that any instructions are necessary in the matter.

PUSA AGRICULTURAL RESEARCH INSTITUTION.

256. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to lay on the table the last Annual Report of the Pusa Agricultural Research Institution?

Mr. J. Hullah: The Honourable Member will find copies of the report in the Library adjoining this Chamber.

URINAL ARRANGEMENTS ON RAILWAYS.

257. ***Khan Bahadur Sarfaraz Husain Khan:** Is the Government aware of the great inconvenience caused by the absence of privy and urinal arrangements in all servants compartments attached to 1st and 2nd class compartments of Railway trains?

If so, do the Government propose to issue necessary instructions for the removal of the inconvenience referred to?

Mr. C. D. M. Hindley: Government has not received any complaints in regard to the alleged inconvenience, but the matter will be brought to the notice of the railway administrations.

WAZIRISTAN OPERATIONS.

258. ***Mr. B. S. Kamat:** Will Government be pleased to state:

- (i) the total expenditure incurred since April 1922 up to date for the Waziristan operations;
- (ii) the cost of the punitive air operations recently undertaken and the quantity of bombs used to date;
- (iii) the total number of persons killed since April last by enemy raids and also persons killed on the enemy side by the Waziristan force?

Mr. E. Burdon: (i) Figures up to the end of October, 1922, only are at present available. The total military expenditure booked up to that date is approximately Rs. 109 lakhs. This amount includes certain charges including arrear charges on account of the North-West Frontier as a whole which it is impracticable to distinguish from the charges incurred on account of Waziristan proper.

(ii) The cost of the recent air operations cannot be precisely stated. The total weight of bombs dropped between the 17th December, 1922, and the 16th January, 1923 (both dates inclusive) is 78 tons.

(iii) The total number of persons on our side killed by enemy action since the 30th April, 1922, is as follows:

Military 63, including followers.

Civil 14, including levies.

So far as is known, 57 of the enemy have been killed.

Mr. J. Chaudhuri: Is it not a fact that the air operations have not proved effective in Waziristan?

Mr. E. Burdon: I think I gave an answer to that question to the 12 Noon. Honourable Member at the last meeting of this Assembly.

RECOMMENDATIONS BY THE RETRENCHMENT COMMITTEE.

Rao Bahadur T. Rangachariar: Sir, may I be permitted to ask a question of which I have given notice to the Honourable the Finance Member. It is as follows:

Will the Government be pleased to give an opportunity to the Assembly to discuss the recommendations of the Inchcape Committee, more especially those recommending the abolition of civil departments of the Government of India, before action is taken thereon by Government?

The Honourable Sir Basil Blackett: This question has been to some extent anticipated in the supplementary questions that were asked in the course of the last hour, as also by an unstarred question put on the 15th instant, when it was asked:

"Will the Government be pleased to state whether the report of the Inchcape Committee is to be placed for discussion in the Legislative Assembly before any final orders are passed by the Government?"

The answer to that was:

"The Government regret that this course is not practicable."

It is hoped that a full opportunity will arise in connection with the Budget discussions for considering the recommendations made by the Inchcape Committee in connection with the Budget for the next year.

Rao Bahadur T. Rangachariar: No doubt the Honourable Member is aware that, in connection with matters excluded from the Budget, it is not open to this House to get them included. The Honourable Member is no doubt aware of that difficulty.

The Honourable Sir Basil Blackett: I am aware of that fact, but I think there will be every opportunity for discussing the recommendations of the Inchcape Committee in connection with the Budget.

Rao Bahadur T. Rangachariar: May I ask if the Inchcape Committee cannot be asked to adopt the procedure of sending their report in batches, as the Geddes Committee did, so that more time may be saved, instead of waiting for the final report?

The Honourable Sir Basil Blackett: I will inquire as to what procedure the Inchcape Committee think they may be able to adopt in this matter.

Sir Deva Prasad Sarvadhikary: Does the Government propose to prepare and place before this Assembly its Budget on the basis of the recommendations of the Inchcape Committee as far as they may reach the Government in time for the preparation of the Budget?

The Honourable Sir Basil Blackett: The Government have every hope that they will be able to take full advantage of the work of the Inchcape Committee in the preparation of the Budget.

UNSTARRED QUESTIONS AND ANSWERS.

INDIAN ENGINEERS ON RAILWAYS.

106. **Mr. N. M. Joshi:** Will Government kindly lay on the table the information *re* Indian Engineers on Railways, referred to in the answer given in the Council of State on the 6th September 1922 to question No. 18 (i) and (ii)?

Mr. C. D. M. Hindley: The statement containing the information asked for by the Honourable Member is placed on the table.

Statement showing numbers of Indian Engineers recruited annually on the Great Indian Peninsula, East Indian, Bombay, Baroda and Central India and South Indian Railways, the percentage to recruitment of Europeans and particulars in cases of termination of service.

Railway.	INDIANS RECRUITED IN					Total number of Indians recruited as Engineers in the 5 years 1917-21.	Percentage of recruitment of Indian European Engineers in the 5 years 1917-21.	REMARKS.
	1917.	1918.	1919.	1920.	1921.			
Great Indian Peninsula	5*	1	1†	1	2	10	35.7	All Indians recruited in 1919-21 are still in service.
East Indian	...	...	1	4	1	6	37.5	
Bombay, Baroda and Central India.	2	1	3	1	2	9‡	41.00	
South Indian	...	1	...	...	...	1§	12.5	

* One resigned in 1920 to better his prospects.

One was discharged as his services were no longer required.

† Reverted to his original grade of Supervisor in November 1919 owing to return of Engineers from military duty but reappointed in April 1919.

‡ Of the nine Indians recruited in the years 1917-21, five are still in service, three resigned of their own accord and the services of one were terminated at his own request with three months' pay in lieu of notice owing to ill health.

§ Still in service.

WAGON SERVICE ON RAILWAYS.

107. **Mr. N. M. Joshi:** With reference to the suggestions made by the late Mr. Thomas Robertson in 1903 in paragraphs 181-189 of his report for obtaining greater amount of service with a smaller amount of wagons, will Government kindly lay on the table a statement showing the steps taken and progress achieved during the decade immediately preceding the outbreak of the Great War?

Mr. C. D. M. Hindley: The more efficient working of rolling stock was the constant care of the Railway Board and Railway Administrations during the period referred to, and every effort was made to effect an improvement.

(1366)

Records show, however, that they were hampered by lack of adequate facilities.

Information as to the work done by rolling stock year by year can be ascertained by reference to the Administration Reports of Indian Railways.

QUARTERS ON E. I. AND G. I. P. RAILWAYS.

108. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing the designation of the officers for whom quarters have been built during the five years ending 31st March 1922, the pay of each officer, the cost of each quarter, the interest payable on the capital cost of each quarter, and the rent per annum realized on each of the quarters on the East Indian and the Great Indian Peninsula Railways?

Mr. C. D. M. Hindley: The information asked for is not readily available, and Government do not consider that the time and labour involved in collecting the particulars are commensurate with the results to be obtained.

O. AND R. RAILWAY DISCOUNT SINKING FUND.

109. **Mr. N. M. Joshi:** With reference to the item "Oudh and Rohilkhand Railway Discount Sinking Fund in redemption of debt incurred in excess of money raised" appearing in the Railway Budget for 1922-23, will Government kindly state:

- the amount of debt incurred in excess of money raised;
- the date of the loan and the date fixed for redemption;
- the amount accumulated in the Fund up to 31st March 1922;
- the amount payable into the Fund every year;
- the amount yet remaining to be paid into the Fund; and
- the circumstances differentiating this debt from the issue of £10,089,146 India 3 per cent. stock to the stockholders of the Bombay, Baroda and Central India Railway Company in satisfaction of £9,685,581 in part payment of the purchase price of the Undertaking.

Mr. C. D. M. Hindley: In order to reply fully to the Honourable Member's question, it will be necessary to refer to the India Office. This is being done and the reply will be communicated to him in due course.

TEMPLES AT PAHAR GUNJ, DELHI.

110. **Rai Sahib Lakshmi Narayan Lal:** Will the Government be pleased to lay on the table:

- A full statement of what has been done or is proposed to be done with respect to the temples and Dharmshalas appertaining to the temples situate within the area proposed to be included in the New Railway Station at Pahar Gunj, Delhi?
- The copies of all the correspondence on the matter?

Mr. C. D. M. Hindley: (a) Apart from consultations with those immediately interested in the temples and Dharamsala nothing has been done nor is it proposed to do anything at present. Government therefore does not propose to lay a statement on the table.

(b) As the matter is still under consideration Government do not propose to lay on the table copies of the correspondence.

DR. GOUR'S CIVIL MARRIAGE BILL.

33. †**Lala Girdharilal Agarwala:** Will Dr. Gour, M.L.A., be pleased to state whether he has received a copy of the Resolution adopted at a meeting of the Parsees held on the 26th November, 1922, protesting against the Honourable Member's Civil Marriage Bill, and if so, will he be pleased to place a copy of the same on the table?

Dr. H. S. Gour: The answer to the question is in the affirmative. I have also received a number of Resolutions adopted by the Parsees strongly approving of my Civil Marriage Bill. It seems that the Parsees like the other communities are divided into two sections, orthodox and reformers. The former oppose all changes, the latter consider each change upon its merits. As a distinct body of all communities are in favour of my Bill, both its utility and necessity are obvious.

TENURE NATURE OF POSTS OF SECRETARY, ETC., IN SECRETARIAT.

82. †**Rai Bahadur G. C. Nag:** Is it a fact that the posts of Secretary, Joint Secretary, Deputy Secretary, Under Secretary and Assistant Secretary in the Government of India Secretariats are all tenure appointments and if so, what is the maximum period fixed for such tenure appointments?

The Honourable Sir Malcolm Hailey: The posts of Secretary, Joint Secretary, Deputy Secretary and Under Secretary are tenure appointments and the period of tenure is normally three years. No maximum period is fixed and the period can be and is sometimes extended. The posts of Secretary, Joint Secretary and Deputy Secretary in the Legislative Department and of Secretary and Joint Secretary in the Railway Department are not tenure appointments.

The post of Assistant Secretary in the Education and Health Department is a tenure appointment and the tenure is limited ordinarily to three years. The post of Assistant Secretary in the Political Department has not been a tenure appointment but is limited to a salary of Rs. 1,600. Military officers appointed to Assistant Secretaryships in the Army Department have a fixed tenure of three years extensible to five years. Extensions beyond this period are only granted in exceptional cases. The other posts of Assistant Secretary in the Government of India are not tenure appointments.

† Vide p. 1003 of these Debates.

‡ Vide p. 1021 of these Debates.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I move for leave:

"To introduce a Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India."

The purpose of this Bill, Sir, is, briefly, to improve the quality and quantity of the Indian cotton crop and to enable the industry to levy from itself a small tax for its own development. The Indian mill industry already consumes about half of the commercial crop in India, and half of the mill consumption consists of what are known as the long staple varieties, that is, those suitable for working up to 20 counts and over. This consumption of the longer staple varieties practically absorbs the whole of those varieties that are grown in India and, consequently, there is no surplus left over for export and practically none for what is still more important, the development of the mill industry itself. On the other hand, we have a very large exportable surplus of the inferior cottons, namely, those of the shorter staples, and the export of these amounts on an average to 12 lakhs of bales annually and has been as high as 20 lakhs. But the market for these is limited and uncertain, and we do not know that the world will always be ready to take cotton of this inferior kind. The recent shortage in the American crop has now created a favourable opportunity for us to export cotton of superior varieties, if we can work up an exportable surplus of these varieties, and it is, therefore, obvious that we should aid the cotton cultivator to produce varieties which will enable him to profit by the demand of the world's markets and at the same to produce the larger stocks which the development of the Indian mills must inevitably require.

Considerations of this kind led the Government of India some five years ago to appoint a small technical committee, known as the Indian Cotton Committee. That Committee recommended a very large expansion of agricultural work on cotton, the establishment of a Central Cotton Committee at Bombay with a technologist and a laboratory, and they estimated that the cost of bringing into effect the proposals that they made would be about Rs. 16 lakhs. They suggested that this sum might be obtained by the levy of a cess of eight annas a bale on the whole of the commercial cotton crop. We have already established the Central Cotton Committee and they have shown very great energy and activity. Their advice has been most useful to us in connection with the Cotton Transport Bill, of which the Report of the Select Committee was recently laid before this House. We have also received most valuable advice from them on the very vexed question of the licensing of gins and presses. They are framing constructive proposals for the improvement of the marketing of cotton, by which I mean that the cultivator should obtain premia for cotton of superior staple, and, lastly, or, in point of time, firstly, it was they who made the definite proposals for the imposition of a cess which now find expression in the Bill which I seek to introduce.

The cost of the Central Cotton Committee is at present borne by general revenues and provision on this account exists in the present year's budget to the extent of Rs. 79,000. It is proposed in the Bill that the cost of the Committee shall be met from the proceeds of the cess. If so, it disappears from our Budget and to that extent this Bill will effect a measure of retrenchment.

[Mr. J. Hullah.]

We placed the proposals of the Cotton Committee for a cess before the Local Governments and they in their turn consulted all the more important commercial bodies such as the Bombay Chamber of Commerce, the Indian Merchants Chamber and Bureau, the Mill-owners' Association of Bombay, the Mill-owners' Association of Ahmedabad, the Cotton Contracts Board, the Punjab Chamber of Commerce, the Upper India Chamber of Commerce, the Karachi Chamber of Commerce and so forth. On the general proposal that a cess should be imposed there is absolute unanimity of opinion. Everybody, official or non-official, agrees that there should be a cess. There are differences of opinion on points of detail and on two points especially there is some divergence. The first is whether the cess should be levied on all commercial cotton—by which I mean all cotton exported and all cotton consumed in the spinning mills; or whether it should be levied only on the cotton brought to the mills and consumed there; or again only on exports. The great majority of opinion is that it should be levied on all commercial cotton, and we have framed the Bill accordingly. The other point on which there is a divergence of opinion is that the cess should not be 4 annas a bale, as we propose, but 2 annas. But here again, in retaining the rate of 4 annas we have followed the very great majority of opinions, but we have made provision in the Bill that the Governor General in Council may reduce the amount of the cess.

We anticipate that the proceeds of the cess—and the estimate can be made with fair confidence—will amount to between 8 and 9 lakhs of rupees a year. So far I have mentioned only the expenditure on the Central Cotton Committee itself as a direction in which this money will be spent; but, of course, this will absorb a very small amount of the total proceeds. The bulk of the proceeds we propose to spend on agricultural development and research. The Indian Cotton Committee itself placed this in the forefront of their proposals and we are doing the same. Neither we nor the Central Cotton Committee have any intention of relegating to the background, or even to a secondary place, the important matter of doing all that we can for the agriculturist and from the agricultural point of view. The Indian Cotton Committee, as I have said, made proposals which they thought would cost 16 lakhs. Out of this 16 lakhs, 14 lakhs would be spent on the agricultural side. Those were days when the War had just come to an end; when peace—and, we thought, plenty—was at hand; and in those Arcadian days we were thinking of turning our sword into a ploughshare and not into an axe. But now it is clear that the Local Governments are quite unable to incur the extra expenditure which the proposals of the Indian Cotton Committee will involve, and it is proposed that from the proceeds of the cess expenditure of the kind contemplated should be met. There is plenty to be done. Mr. Burt, the Secretary of the Cotton Committee, has supplied me with some notes of the main schemes which are under the consideration of the Central Cotton Committee and some of which they have already decided to support. In the Punjab a very grave position has already arisen owing to the unsatisfactory yield of the Punjab American crop. The Punjab American crop covers an area of approximately half a million acres and has added about 140,000 bales to the supply of Indian long staple cotton. It is the most striking instance in India of the replacement of a very short staple by cotton of a superior staple and has until recently been very rightly regarded as a triumph of the Agricultural Department. But recently there has set in very serious deterioration and we urgently need research to remove the causes of this deterioration which are at present imperfectly known. The Central Cotton Committee

have recommended that a special Research Staff should be provided from the cotton cess funds, and the investigations that will be made in the Punjab will have an important bearing on problems in Sind, Northern India generally and the western part of the United Provinces. In Bombay there are several schemes which require to be taken up and which the Local Government is unable to finance. The Agricultural Department has drawn attention to the necessity of investigating two very important problems. One is the loss caused by wilt in the southern Mahratta country, and the other the loss caused by boll-shedding in Gujerat. Again, there is need for special plant breeding work for the production of a better strain of the upland type of the southern Mahratta country. These problems, as the Central Cotton Committee realise, are of more than provincial importance. The first of them affects all the black cotton-growing soil in India—that is, about three-fourths of the entire cotton producing country. The second affects a well-defined tract of country lying between two provinces and one Indian State. It is a problem of very considerable importance. Another important problem to which the Bombay Government draw special attention is the loss caused by the spotted boll-weevil, and the problem of attacking this menace is at present under the immediate consideration of the Central Cotton Committee. Madras has put forward its own problems—two important schemes of research which they are unable to undertake, plant breeding work on the herbaceous cottons. Others have been received from the Central Provinces and the United Provinces. So it is pretty evident there is a very great deal of work to be done if the necessary funds can be found. Another proposal which the Central Cotton Committee have made is the institution of research studentships for graduates of Indian Universities for research on cotton, to be trained under competent experts; and finally we have in view as well, if we have sufficient money, the establishment of a Central Research Institute for cotton. That scheme has already been worked out in full detail and we hope some day, when the necessary funds are available, that such an Institute will be established.

Honourable Members may have noticed, in the papers that have been sent to them, a proposal by the Central Cotton Committee; following the advice of the Indian Cotton Committee, for the appointment of a technologist and the establishment of a laboratory for him. The purpose of this is to have a small spinning plant to test the suitability of the different Indian cottons for spinning up to various counts and especially to test new varieties of cotton. The great problem in India has always been to get the cultivator a fair price for cotton of superior varieties, and our agricultural officers know by bitter experience how trade valuations of new cottons are practically useless. The fact is that a commercial mill cannot undertake this work. It cannot go through all the very thorough and detailed tests which are required, and it cannot work on the very small quantities which a plant breeder will produce in the early stages of attempting to evolve a new variety. . . .

Mr. Deputy President: I wish to draw the attention of the Honourable Member to Standing Order 37 and to ask him to bring his remarks to a close; he has taken already over quarter of an hour. Under that Standing Order only a brief explanatory speech is allowed at this stage.

Mr. J. Hullah: I am sorry, Sir. I only wish to add that there remain two points emphasised in the opinions we have received. One is that there should be central control so that no province shall be able, by over-representation on the Committee, to obtain an undue share of the proceeds

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of the cess; we have provided for this in the Bill; central control is reserved to the Government of India. The second point is that the proceeds of the cess shall be spent on cotton and on cotton only; that we have effected by keeping the proceeds out of the general revenues and making them into a separate fund.

I now, Sir, ask for leave to introduce the Bill.

Mr. Deputy President: The question is:

"That leave be given to introduce a Bill to provide for the creation of a Fund for the improvement and development of the growing, marketing and manufacture of cotton in India."

The motion was adopted.

Mr. J. Hullah: I now introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: The House will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, it now falls to my lot—an unpleasant task—to criticise the action of the police under this section. My learned friend, Mr. Seshagiri Ayyar, moved the first portion of my amendment on the last occasion. Therefore, Sir, I propose to move the latter portion, giving up that portion which has been already moved by my Honourable friend

Mr. Deputy President: I am afraid I must ask the Honourable Mover to move the first portion of his amendment No. 61.

Mr. K. Ahmed: Yes, Sir, the first portion has been moved by my Honourable friend, Mr. Seshagiri Ayyar. You leave the matter entirely in my hands, Sir, and I shall do the needful

Mr. Deputy President: It will read like this:

"At the end of sub-clause (iii) insert the following:
'and the words 'or otherwise' shall be omitted'."

I call upon the Honourable Member to move that amendment.

Mr. K. Ahmed: I beg to move, Sir, that:

"At the end of sub-clause (iii) insert the following:
'and the words 'or otherwise' shall be omitted'."

and at the end.

Mr. Deputy President: No, it would be to the convenience of this House if the latter portion of the amendment is taken up at a later stage.

Mr. K. Ahmed: So I am moving just the middle clause, Sir. Honourable Members of this Assembly are aware that when a man is brought forward before a Magistrate under section 110 he is alleged to have committed the offence of bad livelihood; that is to say, whenever it is within the knowledge of a Magistrate—Sub-divisional Magistrate or Presidency Magistrate—that a man is by habit a robber and that he is by habit a receiver of stolen property knowing the same to have been stolen or habitually protects or harbours thieves or aids in the concealment or disposal of stolen property or habitually commits or attempts to commit or abets

the commission of offences under Chapter XII of the Indian Penal Code or habitually commits mischief, extortion or cheating or counterfeiting coin or offences under any such sections as 489-A, 489-B, 489-C, 489-D of the Code or is so desperate and dangerous as to render his being at large without security hazardous to the community, then, Sir, under section 117 and sections 112 and 113 the accused is tried according to the evidence which is adduced by the police. The police as a matter of fact bring all sorts of evidence—such as was discussed on the last occasion. The word 'otherwise' is a very extraordinary word. Learned Judges of many High Courts have observed that this sort of word is very objectionable. As a matter of fact the meaning of the words 'or otherwise' has been held to be ambiguous by Judges, and reported in 15 Criminal Law Journal at page 705 and also in 21 Criminal Law Journal at page 810. Their Lordships found that a man's guilt under the above sections could not be proved by witnesses in all those ways and otherwise. What is the meaning of the words 'or otherwise?' If I follow the definition of law as it is defined by Bentham, Holland, Austin and by Professor Kenny of Cambridge University, Lecturer to the law students as well as to the successful candidates of the Indian Civil Service, who teaches them criminal law, i.e., Indian criminal law,—he defines it in this way, that unless and until you have got authentic evidence to prove that a man is bad, the science of jurisprudence tells you that in the eye of the law *ipso facto* he is an innocent person, and therefore you cannot prove anything against him by 'otherwise.' The science of jurisprudence tells you that every one is supposed to be innocent in the eye of the law, an honest trustworthy person, not a habitual criminal of the description given in the section I have read. A police sub-inspector arrests a man and tries to prove that he is an offender of the description given in any of those items; and in the matter of proving the guilt of the particular person the fact that he is a habitual offender or is a person so desperate and dangerous as to render his being at large without security hazardous to the community is to be proved by evidence of general repute or otherwise.

This man is a bad man. Give the dog a bad name. But why should you not go in a straightforward manner and prove that he is a bad dog or a bad man? Instead of doing that, you are making provision in the administration of justice to prove bad character by getting evidence not in a proper channel, not in a straightforward manner and something besides which is called "or otherwise." Suppose, Sir, in returning a compliment, any Member of this Assembly, out of courtesy, goes to pay a visit to my Honourable friend, Sir Henry Moncrieff Smith, at his residence, and at the time of coming back, after leaving his card in the box, anything is found or alleged to have been found stolen from his premises. Then you say "Oh, this thing has happened when such-and-such M. L. A. was walking along the street" and you prove by calling witnesses that he was found in such-and-such a place. Is that the way, Sir? No, certainly not. That is not the principle of law in any country, and I hope sincerely that this part of the clause—"or otherwise"—will be omitted. Here, Sir, I will quote from the judgment of two of the most important judges—for whom I have the greatest respect and reverence—two distinguished judges, the people of India have ever seen—I mean Sir W. Comer Petheram, Kt., Chief Justice and Mr. Justice Beverley of the Honourable High Court of Calcutta. It is reported in I. L. R. 23 Calcutta, page 621. They say:

"Evidence that there are rumours in a particular place that a man has committed acts of extortion on various occasions, that he has *badmashes* in his employ to assist

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him, and generally that he is a man of bad character is not evidence of general repute under section 117 of the Criminal Procedure Code.

Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of good character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character.

It cannot be said that, because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, these rumours are in themselves evidence under section 117 of the Code."

Now, Sir, you have the words "or otherwise," that is, by means fair or foul, either this way or the other, you can bring evidence. You know the police. They are all-mighty, as I have said, and it is not difficult for the police to get any number of witnesses to depose that a man is of bad character. This is a matter which is specially confined to the police and he can prove anything he likes. There is the Evidence Act. It applies anywhere and everywhere. But, as I have said already, the police is a magic lantern which gives you all shades of light, the mystery of which we cannot understand. The Evidence Act fails; knowledge and experience fail when you bring a man under arrest and prove his character to be bad by calling in anybody and everybody in any way you like. Certainly, Sir, for the ends of justice, these words "or otherwise" should be omitted, and I therefore move that the words "or otherwise" should be deleted from sub-clause (iii) of clause 20.

Mr. Deputy President: Amendment moved is:

"At the end of sub-clause (iii) insert the following:

'and the words 'or otherwise' shall be omitted'."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I have listened to my friend, Mr. Kabeer-ud-Din Ahmed, with great attention because I wondered what arguments he was going to advance for the deletion of these words "or otherwise." He began by regretting—I am glad that it is a matter of regret for him—that he had to attack the police. Well, Sir, that, I would suggest, was not relevant to the amendment before the House. There is no question here in this clause of the conduct of the police at all. The sub-section which the Bill amends is merely framed for the guidance of the Magistrates, and the police have no concern in it whatever. The case is, by the time this sub-section operates, entirely in the hands of the Magistrate.

Sir, Mr. Kabeer-ud-Din Ahmed recited numerous rulings which, he says, go to show that the words "or otherwise" cause great difficulty. He went so far as to read us a long extract—a very interesting extract indeed, but entirely irrelevant to his notice of amendment. All that the Court said in that case was that certain evidence which had been produced was not evidence of general repute. We are not talking about evidence of general repute at the moment. We are talking about the words "or otherwise." Sir, the point is a very simple one and I hope I can explain it to the House clearly. The words "or otherwise" have occurred in the Code of Criminal Procedure since 1882. When the Lowndes Committee was appointed to consider the Code and to suggest a revision, they cut these

words out. They gave no reasons for it. They just merely mentioned in their report: "We have, however, deleted the words 'or otherwise'." I venture to suggest to the House that they did so without full consideration of the effect of the amendment which they were suggesting. The Courts in this country, as in any other country in the world, look upon the Legislature as a reasonable and responsible body. That is to say, when the Legislature does something, the Court assumes that the Legislature had some reason for its action. Here we have got a law which has been in force for 40 years. The Legislature suddenly cuts out the words "or otherwise" and apparently makes a change in this section. Well, Sir, the Courts then say to themselves, "The Legislature must have had some reason for cutting these words out," and they find it rather difficult to find that reason. It is not that the words 'or otherwise' are doubtful. There has never been any doubt about them at all. (Mr. T. V. Seshagiri Ayyar: "What is the meaning?") I will explain what the meaning is if the Honourable Member will wait for a moment. It is merely this. The sub-section runs thus:

"For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise."

The meaning of that simply and solely is this, that evidence of general repute is not the only means of proving that the person is an habitual offender. The words "or otherwise" are added to make it quite clear that you are not overriding the provisions of the law of evidence; that is, any evidence which would be relevant or admissible under the Evidence Act can also be utilised for the purpose of proving that a man is an habitual offender. I think that is the only explanation. If we cut out the words, and the Courts seek for the reason of our action, what conclusion do they come to? They arrive at this conclusion,—the Legislative Assembly and the Legislature, if the Bill is passed in this form, intended to lay down that the word "may" in this section, as so often happens in our Statute Book, is equivalent to "shall"; that if you want to prove that a person is an habitual offender, the only way you can do it is by evidence of general repute. That point was very carefully considered by the Joint Committee. The Joint Committee decided that it was unsafe to remove the words and that it was much better to put them back again, and I submit that this is a case in which, at all events, this House should endorse the action of the Joint Committee. (Rao Bahadur T. Rangachariar: "Will you please read the chit I sent you?") (An Honourable Member: "May be proved also by evidence of general repute.") (A Voice: "'Also' by itself has no meaning there.") Mr. Rangachariar has sent a note across from which I gather he quite understands that it means that it may be proved by evidence of general repute in addition to any evidence that is admissible under the Evidence Act. The section may be worded in numerous ways, but I would suggest to the House that the drafting that has stood for forty years is clear. Mr. Ahmed has cited rulings to support his contention that the words have caused difficulty, but the words "or otherwise" have not been referred to in those rulings. There is not a single case in which they have caused difficulty. Commentaries refer to the words in one High Court Judgment, but in that case they caused no difficulty. Therefore I would suggest that we do not alter the phraseology of the section which has stood so long.

Colonel Sir Henry Stanyon (United Provinces: European): I have very little to say in supplement to what has been said in explanation of these words by Sir Henry Moncrieff Smith. The argument of the Honourable

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and learned Mover suggests that he interprets the words "or otherwise" to mean "or in any other informal or illegal or hearsay manner that the police and the Magistrate may please." They do not mean that at all. This is a portion only of the adjective law and this section is governed by the Law of Evidence. It provides an exception to the law of evidence where it provides for proof by evidence of general repute; and then it makes it clear that the general law of evidence also applies by using the words "or otherwise." "Or otherwise" means "or in any other way allowed by law." There is no published judgment which has interpreted the words in any other way; and that being so, although there is much to be said for the improved form which has been suggested by the Honourable Mr. Rangachariar (if I may refer to him by name), still it is always advisable to keep to a phrase that has been on the Statute Book so long as this phrase "or otherwise." Therefore I would suggest that the clause be allowed to stand as it is.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I do not like to prolong the discussion, but I would just point out to the Government that there is a difficulty which it is better to avoid by adopting the suggestion which Mr. Rangachariar has brought forward. If you use the word "otherwise" following the words "of general repute," according to the ordinary canon of construction, the word "otherwise" would govern the kind of evidence which is referred to in the previous clause. That is the reason, I take it, the Calcutta High Court had felt some difficulty. Unfortunately I have not been able to get at the judgment. When I read the clause it struck me that the word "otherwise" is liable to be misunderstood, and that is the reason why the Lowndes Committee wanted its omission. If your idea is that the general rule of evidence should apply plus "repute" evidence, the proper way of carrying out that idea is to use the language which has been suggested to you by my Honourable friend, Mr. Rangachariar. If you allow the words "or otherwise" to stand, I fear it is capable of being interpreted, as evidence of the same character that has been enumerated before, namely, "repute" evidence. That is the proper rule of construction and it is liable to be understood in that light. Therefore, in order to make the position clear, I think the Government will be well advised to accept it—we do not care very much about the matter—but I think in the interests of proper drafting, it is desirable that the ambiguity should be removed, as the words "or otherwise" are liable to the construction which I have just mentioned.

Mr. Deputy President: The question is:

"At the end of sub-clause (iii) insert the following:
'and the words 'or otherwise' shall be omitted'."

The motion was negatived.

(Mr. Deputy President then called upon Mr. Agnihotri to move his amendment.* Mr. Agnihotri was absent.)

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muhammadan Rural): I am appearing for Mr. Agnihotri. I do not move it* as Mr. Ahmed is moving his amendment.

* After sub-section (5) as re-numbered the following sub-section shall be inserted:
(6) General repute in this section means an opinion based on either personal knowledge of the deponent or concrete instance."

Mr. K. Ahmed: I move:

"That the following clause may be inserted after clause 20, sub-clause (iii).

'Explanation: General repute is the reputation of a person in the place where he resides or carries on business, among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation, and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour'."

It is not necessary for me to dilate upon the subject any further. I will add to them by reading the closing lines of the judgment of Sir Comer Petheram C. J., and Beverley J., reported in I. L. R., 23 Cal. page 621. The closing lines are these:

"We cannot help thinking that if that state of things, which is said to exist and to have existed, had in truth existed there, some very different measures would have been taken by the authorities on their own motion than those which have been taken; and that being the state of things, we cannot think it safe to act upon this evidence, and the result is that the rule will be made absolute and the bonds were cancelled."

That is the opinion of the Learned Chief Justice of the Calcutta High Court and his words are before the country and the Honourable Members of this Assembly who represent the people of this country. We get so many Statutes and Acts passed by this Assembly and they are interpreted by the Honourable Judges of the High Court and their rulings are accepted in the interpretation of Acts. That was the ruling of the Chief Justice and Mr. Justice Beverley. We use that ruling and use it successfully in any Court of law to defend persons accused on evidence of general repute adduced by the police. What I want is that the law should be brought into conformity with the ruling given by the Judges of the High Court and that the following words should be added as an explanation:

"General repute is the reputation of a person in the place where he resides or carries on business among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Do you mean to say clauses (a) to (e) or only clauses (a) and (e).

Mr. K. Ahmed: I have no hesitation in moving that the concluding portion should read "clauses (a) to (e) and rumour". In order to prove a case like this, it is absolutely necessary that it should be "clauses (a) to (e)." That evidence is necessary to prove reputation. It is absolutely necessary for the ends of justice that it is only the people who live in the neighbourhood or vicinity of the village who can come forward and they are the only persons who come forward and give evidence as regards the reputation of a man and not persons who are not in any way concerned to come forward and give evidence in support of the defence or the accused and therefore it is necessary that this Explanation after clause 20, sub-clause (iii) should be added. Otherwise there is no royal road for the poor accused to get out of the trap. That being so, my proposition has been supported by the rulings and the observations which I have read out. I think, Sir, representing the people of India, we are not here to accept a law which does not give protection to our people whom we are supposed to represent and therefore it is the duty cast upon each and every Member of this Assembly to see that the welfare and the amelioration of the condition of these Indian peoples is not endangered and that they are not made victims in the hands of the police. I suppose, Sir, I have made out a strong case. The ruling which I have cited is already in existence and we generally use it. You cannot go back on the ruling of the

[Mr. K. Ahmed.]

Honourable High Court Judges. My Honourable friend, Mr. Innes, is not here. He would have wanted a little bit of economy towards this expenditure of paper and I ask the Honourable Member for the Government to accept this Explanation after clause 20, sub-clause (iii) and will not object to any further, depriving the justice suggested by the Judges in those rulings which I have already read out. I hope the Government Member will accept this amendment.

Sir Henry Moncrieff Smith: I want to put forward two reasons why the Government cannot accept this definition of "general repute" put forward by my Honourable friend. Experts have recognised for a long time that it would be a most excellent thing if we could introduce a definition of "general repute" into our Code of Criminal Procedure in this section 117, but the experts have always failed to arrive at a satisfactory definition. The House will remember that only on Saturday my Honourable and learned friend, Mr. Subrahmanayam, who is not here, to-day, pointed out that no difficulty had arisen from the absence of a definition and that the courts had had to consider it so often and had laid down so clearly the principles that the magistrates should follow that no magistrate now found the slightest difficulty in finding out and deciding for himself what evidence was admissible and what was not. Those were practically Mr. Subrahmanayam's words. Here again, I would ask the House to realise what section 117-(3) really means. It says that the fact that a person is a habitual offender can be proved by evidence of general repute. That is to say, notwithstanding what we have in the Evidence Act, general repute is a relevant fact when you try to prove that a person is an habitual offender. Now Mr. Ahmed has, I think, followed the line of examining all the High Court rulings he could get hold of and of trying to bring them together under one definition. One High Court has had before it a case in which the witnesses have come from distances, and their evidence has been mere hearsay: the High Court said, 'this was not evidence of general repute, because the evidence was hearsay evidence, it was not evidence within the knowledge of the witnesses and therefore could not be brought within the four corners of the law of evidence.' That is what happened in every ruling. The Judges have merely laid down that if you attempt to give evidence of general repute, general repute as a relevant fact must be proved according to the law of evidence. I wish to indicate to the House the dangers of attempting the definition of a term like this. As I say, the Courts have in various cases indicated what evidence should not have been admitted; and when they go on to say that evidence of general repute must be of people living in the neighbourhood, that remark naturally applies to the particular case. If we are to attempt a definition at all, the definition should be on such lines as the rulings of the Courts, that evidence of general repute is not so and so, and it should be in a negative form; it is practically impossible to get an exhaustive definition in the positive form which will not rule out very much valuable evidence. Let us take the ordinary case of an habitual offender or of a desperate or dangerous person who now comes within the purview of the section. A very ordinary case is that of a man who is never at home at night. He is a suspected person. The police go round to his house at night, and they never find him at home. On the contrary, they always find him asleep all day. Well, that, by itself, may be no evidence, because he may have an occupation which keeps him employed. But suppose the evidence is that the man has no occupation at all, none whatever,—that he is seen

in the company of ex-convicts, and he has no income; nobody knows what his income is, and yet this man lives in very good style, spends a lot on his clothes, on luxuries, and on vices. Well, all that is corroborative evidence, surely, of the man's reputation, and it might come within some of the four corners of Mr. Ahmed's definition, but it is very dangerous indeed to attempt an exhaustive definition in case you rule out evidence, the only evidence in the case which may be available, to bring this habitual offender to book. I began by saying that experts realised that it would be an excellent thing if we could have a definition and it is not the first time it has been considered. It has been attempted over and over again. It has been attempted so often that the House will find, if it looks at the Report of the Lowndes' Committee, that that Committee referred to it and said, "it has been suggested that a definition should be introduced into the Code", and they went on to say, "we have not attempted to frame a definition". They realised the impossibility. The fact is, you would have to work right through the Evidence Act and consider every clause of the Evidence Act and to have regard to that in making your definition if it is to be at all exhaustive. Therefore, I would suggest to the House that where experts have failed and where the Lowndes' Committee, which included many eminent Judges and many eminent lawyers, has failed, has realized the impossibility of even making an attempt, the House itself should not attempt to make any change in the law which has stood in this case also for 40 years.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I cannot support this amendment and must object to it strongly. In the first place, the man who would require most protection, if this is a protection, is the one covered by clause (f) of section 117 which is now added to the category of people against whom evidence of general repute may be given. I need not labour the point because I set out my objection in opposing that amendment about the desperate character who however dangerous might be a tyro against whom anything in the shape of general repute such as could be predicted about an habitual offender might be urged; but I do think, Sir, and I should suggest to Mr. Ahmed to consider that what he is seeking is not a help to the people, not a help to the accused but is really taking away existing safeguards broadcasted over a series of well understood judicial interpretations and decisions about which neither the police nor the magistracy can have the slightest doubt. If you were to attempt to circumscribe and define it in that way, however much a good definition or explanation be needed a variety of safeguards, such as the decisions, however contending, already contain would not be provided for. Mr. Chief Justice Petheram's judgment itself for example is a strong argument against the acceptance of this amendment. It is by a series of negations that the different High Courts have from time to time provided the safeguard as to what is or is not general repute and what shall not reckon as general repute. They are there and they have the force of law; therefore, why interfere with them? Let the accused have the fullest possible benefit of these judicial decisions upon which nobody can go back unless the Legislature chooses to go back upon them, as is now suggested. However necessary they may be, it cannot be effectively done on the way proposed. If my view is correct, Sir, I would like to suggest to Mr. Ahmed and some of my friends that we might agree upon the different amendments that might well be given the go-bye and let us concentrate our attention on things that really matter. We have a tremendous number of clauses yet to go through, and, as was indicated to-day by the Leader of

[Sir Deva Prasad Sarvadhikary.]
the House, other necessary work of the House must suffer unless we are very careful about time. I do not for a moment suggest that the things that matter should be hustled or rushed, but we ought to concentrate our attention upon those, and might well agree upon letting things alone that may very well be let alone. I believe this, as put, is one of them.

Rao Bahadur T. Rangachariar: Sir, I am sorry, my Honourable friend, Sir Deva Prasad Sarvadhikary, has chosen the wrong moment for his homily to the movers of amendments to the Criminal Procedure Code. Sir, those of us who have to work the machinery of this Code alone know the defects which exist in the Code, and, Sir, the lay public, the impatient lay public, no doubt are getting impatient over the amendments moved in this House, and they offer all sorts of advice; and I am surprised that my Honourable friend, Sir Deva Prasad Sarvadhikary, has chosen to join those ranks.

Sir Deva Prasad Sarvadhikary: Not of the lay public, though.

Rao Bahadur T. Rangachariar: But this subject of general repute has given the greatest difficulty to the Courts in administering this section, and I can quote from the Honourable Bar to which my Honourable friend belongs. This is what the Calcutta Bar Association say, it is important:

"There is no phrase in the Code round which a larger body of legal literature has grown up than general repute. It is hopeless to reconcile the bewildering array of rulings on this subject or to draw any clear ruling from them taken as a whole. As evidence of habit, general repute is of the least value; it is mere opinion, it is hearsay. We therefore think that the elucidation of the meaning and scope of the expression 'general repute' is absolutely necessary.

We suggest here a few salient points based on certain rulings, though we do not pretend to deal exhaustively with such a difficult matter."

Sir, I am glad to admit that there is no greater Bar than the Bar of the Calcutta High Court; and when they recognize such great difficulty in this matter, for my Honourable friend to spring up and warn the movers of amendments not to waste the time of the House, etc., he is really quite out of place. I may also say, Sir, that the Madras Bar have felt the same difficulty. They say:

"The character of the so-called repute evidence is well-known to be a very dangerous departure from the salutary principle of the exclusion of hearsay evidence. The manner in which the evidence of repute, so-called, has been admitted, even where admissible under the present law, has not been satisfactory."

I think I may say from my own experience that this is a very very difficult question. And we are now dealing with the cases of Magistrates of the second and first class, probably raw men who are put on to perform the duty of admitting evidence of general repute. Admittedly, that evidence ought not to be admitted; we are making an exception in the general law of evidence and we are departing from the English law and from our ordinary law in this respect in allowing this evidence to be admitted at all. Therefore, it is but right that we should give some guidance to the magistracy by way of an explanation. That explanation is based upon several rulings of the Calcutta and other High Courts. My Honourable friend, Sir Henry Moncrieff Smith, has no objection to the wording of the explanation so far as that goes; at any rate he has not said that it is incorrect; but what he fears apparently is that there may be other cases of evidence relating to general repute which may be excluded by this explanation. But what is the explanation? "General repute is the reputation of a person in the place where he resides or carries on business," what is there wrong in that?

Do you want the reputation which a person residing in Madras has in Calcutta or anywhere else equally far? Then it goes on—"among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation, and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour." That is what the explanation is and it is embodied, so far as I have been able to see on the rulings of the Calcutta High Court. I am not able myself to see what other evidence can be admissible as evidence of general repute. It must be remembered too that repute evidence is admissible only as an exception, and I think we should limit it as far as possible. It is dangerous to allow this exception, and it is much more dangerous to allow it without an explanation for the guidance of the magistracy who are not trained lawyers. Even English Judges in trying matrimonial cases, in which repute evidence is admissible, have felt the greatest difficulty in deciding what evidence is admissible and what not. Unless, therefore, the Government Members are able to suggest some other kinds of evidence which come under general repute, I do not see why we should not use the explanation, which is comprehensive enough to allow all such evidence as can safely be admitted.

The Assembly then divided as follows:

AYES—32.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.

Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Shahani, Mr. S. C.
Srinivasa Rao, Mr. P. V.
Venkatapattiraju, Mr. B.
Vishindas, Mr. H.

NOES—39.

Abdul Rahim Khan, Mr.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu Ambica Prasad.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Tonkinson, Mr. H.
Webb, Sir Montagu.

The motion was negatived.

Mr. Deputy President: The question is that clause 20 stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move the amendment which stands in my name, viz.:

"Omit the whole of clause 21."

I wish to briefly explain the object of this amendment. We are now dealing with the Chapter relating to taking security for keeping peace and good behaviour. We have passed the stage in which the order has been passed by the Magistrate calling upon the accused person to give security. The stage now is where the security is offered under section 122. As it now exists a Magistrate may refuse to accept any surety offered under this chapter on the ground that for reasons to be recorded by the Magistrate such surety is an unfit person. The new clause proposed by the Government is an attempt to improve that section. Honourable Members will notice that the section as it stands leaves it to the discretion of the Magistrate to refuse to accept a security for reasons to be recorded by him on the ground that he is an unfit person. The first attempt made in this amendment by the Government is to define what is meant by an unfit person, and in making that attempt, if Honourable Members will now look at the amended clause before them, they will see that they want to tell the Magistrate in such and such a case you may call him an unfit person, that is, he is not a man of good moral character. What is meant by a man not of good moral character. Not only is the reputation of the poor fellow who is called upon to give security for keeping the peace or good behaviour at stake, but the reputation of the unfortunate person, whom it may be very difficult to secure in order to find as a surety, is in the hands of this Magistrate, who can say that he is not a man of good moral character. Are persons belonging to the C. I. D. men of good character, of good moral character, when they pry into other peoples' affairs? Do people belonging to the Income-tax Department come under the category of men of good moral character when they pry into my accounts and encourage my neighbours to spy on me and give evidence? What is meant by a man of good moral character? Is a big zemindar who openly lives with his concubine a man of good moral character? Is he a man of substance? Is he not a man quite worthy? Is he not a man whose bond is good enough? What is meant by the alteration now proposed by Government? It is merely adding to the terrors of this chapter. Not only do you bind the man to give you security for keeping the peace but you make it impossible for him to give that security. Would I, even if he were my best friend, go and stand surety and take the risk of being called a man of bad character at the hands of the Magistrate? Am I to place my reputation in the hands of the ill-paid police and the other agencies which are at work in binding over people to keep the peace? Now, take the other thing: "unable to control the movements or action of the person by whom the bond is to be executed." You cannot judge beforehand. If I am unable to control the movements, if the man commits a breach of the bond, I forfeit a substantial sum, and the man who breaks the bond will be convicted for the offence and sent to jail; and I forfeit a heavy bail which I have given. The Magistrate is to decide whether I, the surety, will be a man who will be able to control the movements or action of the person by whom the bond has been executed. It is a very difficult task which you are imposing upon the Magistrate. The next condition is "of insufficient means to enable him to fulfil his

pecuniary liability under the bond." That goes without saying. Why do you want an explanation? Have any Magistrates found any difficulty in rejecting a security when they found that the man was not of sufficient means? That shows that you do not want to have any faith in the Magistracy and that you do not think that they have the common-sense to find whether a surety is a fit surety or not. If he is not possessed of means to fulfil his pecuniary liability under the bond, that is the commonest ground on which the Magistrate would refuse to accept a security, so that the guidance given to the Magistrate in this case is in one respect unnecessary and in other respects it is a dangerous pitfall and shows the anxiety of the authorities to make it difficult for the man to find a surety, which even ordinarily is difficult to find. That is one of the objects in view. I now come to the second object in view. Under the law as it now stands, the Magistrate, once he has taken security, once he has accepted the surety, cannot cancel it afterwards if the circumstances change. Now it is proposed not only that he may originally refuse to accept the securities, but after having accepted security, say after six months of the period is over, that the Magistrate should have power to cancel it and call upon the man in question to give security all over again. Of course the position now is that the surety himself may come forward, after having given security and ask to be relieved of the security if he finds the man on whose behalf he has given it is a troublesome man. Then the Magistrate will call upon the man to furnish additional security. Now we are to give this power to the Magistrate again, although a man finds difficulty enough in finding the original security. To give this power to a Magistrate to revoke a security once it has been accepted is not necessary and it may lead to abuse of the power. It is not a case of punishment; it is of a purely preventive nature. A man has given security which is thought good enough; there is no reason why power should be given to revoke it afterwards.

The third provision is that if the surety is to be rejected the Magistrate is to do this and that. It is a judicial discretion which has been invested in the Magistrate; is he to be taught the elements of his duties, informing him that if he wishes to reject a surety, he must, in making an order refusing to accept, take evidence. Any Magistrate with any sense in him will do it. What is the use of telling him to record the substance of the evidence? It is not necessary for this duty to be taught to him; otherwise he is not fit to be a Magistrate. Therefore the three objects aimed at by this amendment are either unnecessary or likely to be mischievous, and this amendment is unnecessary. The section may be left as it is; it is wide enough. The discretion may be left to the Magistrate. What is the difference? The Magistrate may refuse to accept a surety on the ground, for reasons to be recorded by him, that such surety is an unfit person. His hands are not tied, and that judicial discretion is to be controlled by the High Court. I do not think therefore that any case has been made out for making this change. The 17 and odd amendments which follow will show what difficulty lawyers feel in laying down rules for the guidance of the discretion of Magistrates. I think it was Jenkins C. J. who said:

"In these matters of discretion, it is always very difficult to lay down rules for guidance. You must leave it to the good sense of the Magistrate, and that good sense is liable to be controlled by higher authority."

Therefore I ask that the section be left as it is, and this amendment be not made, and I move the amendment which stands in my name.

Mr. Deputy President: The amendment is to omit the whole of clause 21.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, my Honourable friend proposes to delete the whole of clause 21 from the Bill. This clause, Sir, proposes to substitute a new section for the existing section 122. Let us see, in the first instance, what the provisions consist of. In the first place the Magistrate is given power to refuse to accept any surety offered, or to reject any surety previously accepted by him or by his predecessor. Secondly, provisions are made as to what is to take place before a Magistrate refuses to accept or reject any such surety. He must satisfy himself by inquiry on oath into the fitness of the surety, or cause such an inquiry to be held by a subordinate Magistrate. Then for the guidance of the courts an attempt has been made to indicate the grounds upon which a Magistrate may find a person to be unfit. Fourthly, it is provided that he shall record the substance of the evidence [sub-section (2)]; and finally in the case of an order rejecting a surety, it is provided that the person for whom the surety is bound to appear must be present. Now, Sir, my Honourable friend objects, in the first place, to the provisions as to the reasons for finding a surety to be unfit. We have amendments later in the list on which this question can be more fully and perhaps more properly considered. I would merely remark now that, as regards the first clause in it, as to good moral character, the Government lay no particular stress upon the word 'moral.' That a person is not of good character is, however, certainly a ground which has been generally considered by all the High Courts as one which should be applied. Then he objects, Sir, to clause (c) to the effect that the surety is unable to control the movements or actions of the person by whom the bond has been executed. That, Sir, is, in very general terms, the criterion which has been consistently considered by the Allahabad High Court to be the principal ground for finding whether a surety is fit or is not fit. Surely, Sir, what we should consider on the present motion is not these particular provisions. We shall have a chance of considering those at length later. Is it not now advisable to consider whether it is desirable to place in the Code definite provisions which will guide our Magistrates as to the action which they should take in these cases? Before proceeding further, I should like to draw the attention of the Assembly to the fact that in clause 107 of the Bill we are providing for an appeal against the orders passed under this section. Now, Sir, that clause has not been unnoticed by my Honourable and learned friend because he has given notice of an amendment to that clause. I submit, Sir, the amendment which he has proposed to that clause is entirely inconsistent with the amendment which he has proposed to this one. The position is that we propose to provide in the Code for an appeal against the orders of a Magistrate. At present we have a provision for revision. Well, there is a great difference between provisions for revision and provisions for appeal. Powers of revision are powers given to the courts. They are discretionary powers which may be exercised or not as the courts think fit: but when we give a right of appeal, we grant a right to the subject, and if we are to call upon our appellate courts to deal with these questions on appeal, it is essential that they should have proper material upon which to base their decision.

Rao Bahadur T. Rangachariar: Even now the section runs: "For reasons to be recorded."

Mr. H. Tonkinson: The Honourable Member asks the question as to what is the necessity of providing in the Code for an inquiry. He sug-

gests that it is practically teaching the Magistrate what he should do. Well, Sir, I suppose he will admit now that our High Courts are practically unanimous to the effect that there should be a judicial inquiry under this section. They are not, Sir, unanimous as regards the other point as to whether the inquiry should be on oath. The only rulings on that point are to the effect that in such an inquiry the Magistrate has the power, if he thinks fit, to take evidence on oath. I do not know whether it is necessary now to refer to the rulings on the question, but I should like to refer to the history of the clause. The proposals of the Government of India were contained in the Bill of 1914. In that Bill Government proposed to include a provision that

"before making an order refusing to accept a surety under sub-section (1), the Magistrate shall either himself inquire into the fitness of the surety or direct such inquiry to be made by any Magistrate subordinate to him, and the report of such subordinate Magistrate shall be admitted as evidence of the facts stated therein."

That clause, Sir, with opinions received upon it was considered by Sir George Lowndes' Committee and they noted in their remarks on clause 17:

"We think that the inquiry should be held upon oath and that the Magistrate should be bound to record the substance of the evidence adduced before him."

Then the Joint Committee included fresh provisions and so we have the clause as it stands in the Bill, a clause which I suggest is a distinctly reasonable proposal. We are providing for an appeal; we must, Sir, therefore definitely enact in the Code what are the materials which the Magistrate must include in the record of his inquiry under this section. Incidentally, I may say that the section does give power to enable a Magistrate to delegate the inquiry to a Magistrate subordinate to him, which the Allahabad High Court has held cannot now be done. In view of the fact that my Honourable and learned friend must, as I think he will admit, see that the amendment which he has proposed to clause 107 of the Bill is entirely inconsistent with his present amendment, I hope that he will withdraw his amendment.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Deputy President was in the Chair.

Mr. Deputy President: The amendment moved is:

"Omit the whole of clause 21."

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I rise to support the amendment so ably moved by my learned and Honourable friend, Mr. Rangachariar. I say that the proposed new clause is quite vague and unworkable and would cause delay in the disposal of surety cases. One result would be that every person from whom a security is demanded will have to remain in custody for some time till the question whether a surety is proper or improper is decided. Now the limitation placed upon the competence and the qualifications of a surety are to be limited by these words, namely, not of good moral character. Now what is the meaning of these words—not of good moral character? It would depend upon the sweet whim of a Magistrate. One Magistrate may say that a person who is an ex-convict for murder is a man of bad character. Another Magistrate may say that every ex-convict is a man of bad character,

[Lala Girdharilal Agarwala.] including a man who has been fined one rupee in a case where he drove his motor without a lamp at 6-15 p.m. Then again one Magistrate may say that a Non-co-operator is a man of bad character, or not of good character; while another may say that a man who does not vote according to the Joint Magistrate's view at a municipal meeting where the Joint Magistrate happens to preside is not a good character. Where is the line of difference? How do you draw the line? Now, Sir, an orthodox Hindu might say that a man who drinks soda and lemonade is not a man of good character. Again, the "drys" will say that a man who drinks is a man of bad character. The "wets" on the contrary will say that a man who abstains from drink is a bad character. Now where is the line to be drawn? Now, Sir, some people might say that a man who marries in a community which is not his own is a man of bad character. There are many who say that. Others may say that a man who keeps a concubine secretly is a man of good character, but that he who keeps a concubine openly is a man of bad character. I do not want to be long; I have just explained my object that this is too vague. Now, sub-clause (b) runs:

"of insufficient means to enable him to fulfil his pecuniary liability under the bond."

This is simply saying that a man who has got no property should not be a surety. That is the ordinary law now; the present law provides also for that, and nobody would take a surety from a man who has got no means. This does not require to be changed. The last sub-clause is "unable to control the movements or actions of the person by whom the bond has been executed."

How is the Magistrate to know that beforehand? I submit that this too is most improper and one result that would be inevitable in every case would be that the person against whom an order for finding surety has been passed would have to live in jail for some time before he is, if at all, released on furnishing security. With these words I support the amendment.

Sir Deva Prasad Sarvadhikary: Sir, I wish even at the risk of earning a Rangachariar like rebuke from the Government Benches I could have preached what Mr. Rangachariar calls a homily and ask them to economise time; because if they consented to dropping this proposed clause and accepted Mr. Rangachariar's amendment they would have got rid of 17 amendments at a stroke and economised much time. I am afraid, however, that that homily at all events would be inopportune. There are occasions when however it can be successfully and effectively preached and Government might also respond to my appeal by accepting what can be accepted without detriment to the public weal, as I said previously.

It is always a pleasure to be able to agree with Mr. Rangachariar. Sometimes it is possibly expedient because the severity, assumed or otherwise, of his wrath and the mode of its expression is apt to be uncomfortable now and again. But here, Sir, we have a vivid illustration of the utter baselessness of his contention. Section 122 is far too broad and general. Government attempts to define, Government attempts to afford some safeguards, some differentiating elements, that would be the much needed guide, but Mr. Rangachariar thinks that generalities, indefiniteness and vagueness are about the best and had better continue and attempted definition is to be deprecated. I do not know whether he has behind him on this

occasion the support of his own Bar Association. Now, it is quite clear that section 122 as it stands is capable of improvement, certainly in two directions; one has been pointed out already by Mr. Tonkinson. We are going to have an appeal now, and the materials for a proper appeal must be there. Therefore evidence is to be recorded, at least its substance. Well, so far as insistence on moral character in sureties goes, I am afraid it is a dead horse as far as the Government is concerned. It is no good Mr. Agarwala's multiplying his notion about various elements of good or bad character; Government is prepared, I believe, to drop its insistence upon moral character in sureties, if I understood Mr. Tonkinson aright

Mr. H. Tonkinson: On the word 'Moral.'

Sir Deva Prasad Sarvadhikary: Government does not want to insist on the word 'moral.' Any way we can discuss all that detail only in the course of the amendments that follow and we shall judge which to accept and which not to. But if you drop as Mr. Rangachariar suggests the whole of the proposed clause 122, why the, the very necessary safeguard I have referred to will be denied to us. If we can get rid of the objectionable features of section 122, as pointed out in the amendments against sub-clause (a) of clause 122 (1) and also in Mr. Iswar Saran's amendment with regard to the incoming man interfering with what his predecessor had done, where is the good in retaining the clause as Mr. Rangachariar suggests? I think we ought to concentrate our attention upon the details that suggest improvements, and without attempting to preach a homily once more I suggest the omnibus desire to drop section 122 should be dropped.

The Honourable Sir Malcolm Hailey (Home Member): Just before the interval, we on the Government side took certain risks; we did not desire to prolong the discussion on the proposal to introduce a definition of "repute" which we thought to be thoroughly bad, and therefore did not discuss it at length, although we had material by which we could have riddled it not in one, but in fifty different directions. Fortunately the House showed that we were justified in taking that risk, for it refused to support Mr. Kabeer-ud-Din Ahmed in stepping in where one of the greatest legal luminaries had feared to tread. But the present case is one which we must argue out, because we feel that in justice to ourselves we must make it clear that it is not primarily in the interests of Government that our revised clause 122 has been put forward. It has been put forward entirely in the interests of persons affected by an order to provide security. It is always a pleasure to have to deal with an amendment by Mr. Rangachariar; he always supports it on definite grounds, capable of no misapprehension. What is his ground here? It is, that we already in the present section 122 have all that we want. Why seek to lay down for Magistrates rules designed merely to help them to decide who they shall and who they shall not accept as surety? Trust your Magistrates; they are men of discretion. Why tie their hands in any way? I am only too glad that the genial influences of yesterday's holiday have so weighed with Mr. Rangachariar (*Rao Bahadur T. Rangachariar*): "It was not a holiday to me"; that he is now prepared to place so high a measure of confidence in our Magistrates. There have been other respects in which he has not shown an equally liberal spirit. When we were dealing with section 107 he showed no such spirit of confidence. In dealing with the question of taking security for breach of peace (section 107), what did he demand the Magistrate

[Sir Malcolm Hailey.]

should do? Why, that he should immediately report each and every order to the Sessions Judge, who was to pass orders as to the propriety or otherwise of his conduct. But now that we have this handsome admission from Mr. Rangachariar, we shall not forget it, and when we come to the numerous amendments tabled by him, which propose to place restrictions on the discretion of our Magistrates, he will not, I know, resent it if I remind him of what he has said this morning, and hold him to it. But, as a matter of fact, have we been unwise in attempting to lay down for our Magistrates definite rules of conduct here? Like the sons of Levi, have we taken too much upon ourselves? Let me give the reasons why it has been done. Let me quote the demand of an authority which Mr. Rangachariar will, I think, be the last to depreciate. This is what the Bar Library of Calcutta said to us:

"We think it absolutely necessary that the question of the grounds of fitness of sureties should be determined by the Code having regard to the great diversity of judicial opinions on the matter. The Allahabad rulings have generally adopted ability to control as the test. The Calcutta decisions while dissenting from this view are in conflict *inter se*. Some accept the test of property qualifications and others regard the question as one to be determined on the facts of each case."

Then again, let me quote the opinion of the Calcutta High Court. They say:

"Some difference of opinion exists as indicated in recent decisions of this Court whether the obligation of the surety is simply pecuniary or whether he may be expected and required to exercise some measure of control over the person whose good behaviour he guarantees. The clear intention of the Legislature might, in the opinion of the Judges, find expression in the section."

And all that the Lowndes' Committee proposed to do was to allow the Legislature to express its opinion on this particular point. It is not really Government that has initiated the insertion of the new section; it was legal opinion itself that has prompted us to this action. That, I think, is a sufficient answer to one part of Mr. Rangachariar's attack on us; but to complete my case I will quote to the House yet one further legal authority on the point. The Chief Court in Rangoon found that its Magistrates needed guidance in the matter; they felt the matter so important that they laid down the following rules for Magistrates in accepting sureties. They say:

"Before any person is accepted as surety for good behaviour the Magistrate should satisfy himself that the person . . ."

I ask the House to note the words which follow; they bear a curious similarity to what we have got in our Bill.

"is of good character, is able to pay the penalty in the bond and lives in a place where he is likely to be able to exercise some supervision over the conduct of the suspect."

If then our legal advisers and the administrators of our Courts are correct, it is clear that Magistrates do actually need some guidance in the matter. It is particularly the case, as Mr. Tonkinson pointed out this morning, that some such provision as this is required now that we are prepared to give an appeal against the refusal of sureties. If you take section 122 as it now stands in the Code, all that the appellate Court could say is since there are no criteria laid down by the Legislature, it had no material upon which they can over-rule them, and the same differences of opinion as to what criteria should be applied would continue to trouble both the Magistrates and the appellate Courts. That the differences are material

the rulings in the commentaries show. I have given reasons—perfectly adequate reasons—for making some provision of the nature of the new section 122 to take the place of the very wide discretion left under the existing section 122. I am not at this point proposing to argue the details of our new clause. It has been attacked by Mr. Rangachariar on principle, and not primarily on questions of detail. As Mr. Tonkinson said this morning and as Dr. Sir Deva Prasad Sarvadhikary has just repeated, the House will have full opportunity to judge whether the criteria we have laid down are adequate or need amendment. We are, for instance, quite prepared to give way on the question of the insertion of the word, "moral" before "character." After all, a person's private peccadilloes lie between him and his creator or his wife. There is no real reason why they should be allowed to count in deciding his sufficiency as a surety. With regard to the remaining two requirements, (b) and (c), we are quite prepared to argue them on the merits and if necessary to amend them on the merits. I am arguing here solely on the question whether some provision such as the new 122 is required or not, and that is the point on which the decision of the House is in the first place necessary.

Colonel Sir Henry Stanyon: Sir, I took advantage of the holiday yesterday to give a good deal of consideration to this amendment and I came to the conclusion that the proposal of the Honourable Mover ought to have support. I have listened to the arguments which were advanced in support of the clause in the Bill which the Honourable Mover wishes to have omitted and my opinion in favour of the motion remains unshaken. The present section 122 is a simple and straightforward section, introducing no complications, involving no undue delay in procedure, which, if it is to be worth anything, ought to be prompt, and it contains in its one simple provision, namely, that the Magistrate shall record his reasons in writing, all the safeguards which can possibly be got if the Magistrate is to be anything more than a mere machine. I at all events can claim freedom from any inconsistency in asking for confidence in the discretion of Magistrates. The clause which the Bill now before us proposes to substitute for this simple section shows many disadvantages. The first thing is that it involves an error of a well known judicial principle. It is an attempt to crystallise judicial discretion. It purports to substitute for the simple procedure laid down by the present section 122 a cumbrous and complicated procedure. I join issue with those who say that this proposed clause will introduce safeguards. My own impression is that while affording will introduce safeguards. My own impression is that while affording excuse to the weak Magistrate, to the arbitrary Magistrate, to the police Magistrate—and there are such Magistrates—to refuse security, it will merely harass and confuse the conscientious Magistrate. What does it involve? When a man offers security, instantly on behalf of the prosecution in a great many cases will come the objection to the security; and then the Magistrate will be required to enter upon a preliminary inquiry into the moral character, or into the solvency of the surety or into his power of control over the accused, (if I may so speak of him) before anything is done in the original case itself. A regular case will be tried, substantive evidence recorded and a finding delivered; and then will follow an appeal which may take days, or weeks or months; and all this time the man who is required to give security will be "hung up," possibly under arrest. Well, that I think is a procedure which will not commend itself to the House. Why is this particular distinction made in this case? If a Magistrate can be trusted to take surety for bail in serious cases, why not in a

[Sir Henry Stanyon.]

case where there is no offence whatever alleged except the general badness of character or an intent to commit an offence. The reason for that distinction does not appear to be quite clear. Then, without going into the little details that have already been sufficiently urged, as to the difficulty of deciding exactly what is a bad moral character, I would submit for the consideration of the House, that in a great many of these cases under the rule "set a thief to catch a thief," a man of bad character may be the best security that the public can have, to look after the man that wants supervision. No doubt the solvency of the surety is a very proper subject of inquiry; and I do not imagine that any Magistrate or any court would accept a surety unless he or it was satisfied in a reasonable way that he was a man whose bond could be depended upon. With regard to the point of control over the person bound, it is difficult to understand exactly what is meant by the surety's control. A surety must not indulge in wrongful restraint or wrongful confinement, he can only use moral influence or whatever influence he may have, to control the person bound over. Well, no surety will ever bind himself unless he feels he can control the man. The mere fact that he binds himself indicates that he feels confident of being able to keep his man in the right way so as to save his own money. When a man stands surety for a particular person for not breaking the peace or for being of good behaviour, he naturally stands surety to see that he does so. In that view the provision is unnecessary. But the main ground upon which I venture to oppose the clause in the Bill and to support this amendment is this that this crystallising, or an attempt to crystallise, the discretion of the Magistrate, is not a move in the right direction. It is a retrograde step; and while it will not control the Magistrates in any particular way, it will, on the other hand, furnish excuses to refuse sureties upon unjustifiable grounds. For all these reasons, I recommend to the House to sustain the amendment.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I move that the question be put.

The motion was adopted.

Mr. Deputy President: The question is that the whole of clause 21 be omitted.

The Assembly then divided as follows:

AYES—36.

Abdul Quadir, Maulvi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—37.

Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, practically my amendment is the same as that of my predecessor, the Honourable Mr. Rangachariar. My amendment is to the effect that the Magistrate may refuse to accept any surety offered under this Chapter on the ground that, for reasons to be recorded by the Magistrate, the surety is not fit to stand as such.

Mr. Deputy President: I am afraid, it cannot be moved. Munshi Iswar Saran.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, after the speeches that have been made on the subject, I do not think it is at all necessary for me to make a long speech. The House will notice that under section 122 in the Bill it is provided that a Magistrate may after having accepted a surety reject it. I submit that it is not at all necessary to give him this power, and I do not see that any necessity has arisen for introducing this change in the law as it stands. The provisions in the present Criminal Procedure Code have stood the test of time and they have worked very well. I submit that a change like this in certain cases is apt to be misused. If you have a weak Magistrate or a pro-police Magistrate, as Sir Henry Stanyon puts it, he may, after having accepted a surety, very well say, "well, on further facts that have been brought to my notice, I am inclined to reject this surety." I therefore submit to the House that this power should not be given to the Magistrate. I move, Sir:

"That in clause 21 in section 122:

Omit the words from 'or may reject' to the word 'predecessor' in sub-section (1)."

Sir Henry Moncrieff Smith: Sir, all that the Bill proposes in this matter is to enable a Magistrate to reject a surety previously accepted, not arbitrarily, but on the same grounds which would have justified him in refusing to accept the surety in the first case. There is a clause in the Bill, much later on, which provides for two possible contingencies which may arise. One is when a surety becomes insolvent, and the other when a surety dies. The Bill provides for both those cases and enables a Magistrate to demand fresh security. He obviously must do so. But there are other cases in which a surety may subsequently become an unfit person

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[Sir Henry Moncrieff Smith.]

though at the time he was accepted he may have been fit. It seems to me that it is only logical to provide that if a surety subsequently becomes unfit for reasons which would have justified the Magistrate in rejecting him in the first case, then the Magistrate should be able to call for fresh security. What is to happen if a person who has been bound over under these sections finds a surety who at the time is perfectly fit, able to control the person for whom he stands, is of good character and sufficient financial means, but who later emigrates to Fiji? In the first place there can be no question of his controlling the person for whom he stands surety. In the second place there will be no means of enforcing the bond as the man will be gone. Or take the case of a surety who is sent to jail for a long period. Is there any reason why in such cases the Magistrate should not have power to call for a fresh surety?

Mr. Deputy President: The question is:

"That in clause 21 in section 122:

Omit the words from 'or may reject' to the word 'predecessor' in sub-section (1)."

The Assembly then divided as follows:

AYES—32.

Abdul Quadir, Maulvi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamnadas Dwardkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Lakshmi Narayan Lal, Mr.

Man Singh, Bhaji.
Misra, Mr. B. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—41.

Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Ahsan Khan, Mr. M.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

The motion was negatived

Hullah, Mr. J.
Iframullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Sircar, Mr. N. C.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

Rao Bahadur P. V. Srinivasa Rao (Guntur cum Nellore: Non-Muham-madan Rural): The amendment which I have the honour to move is as follows:

"In clause 21 in sub-section (1) of proposed section 122:

Omit clause (a), viz., 'not of good moral character'."

The Honourable House is aware that the Lowndes Committee, which consisted of members upon whom much encomium has been lavished by this House, have deliberately held that it is a mistake to define the grounds of fitness. Anyhow the House has decided by a majority of one vote that it is necessary to define the same. Now the question for the consideration of the Honourable House is whether this condition should be retained, namely, "not of good moral character." Government either in their desire to meet the wishes of the Honourable Members, or for other reasons, have generously offered to drop the word "moral." It seems to me, Sir, that this makes no difference whatever. I cannot understand character divorced from moral principles. Then taking the illustration of my learned friend, Mr. Rangachariar

Sir Deva Prasad Sarvadhikary: Not his own illustration.

Rao Bahadur P. V. Srinivasa Rao: The illustration quoted by him,— of a zamindar keeping a concubine but having great influence over his tenants. Suppose he offers to be a surety for one of his tenants against whom proceedings are instituted. I believe there are some zamindars who think they would not deserve the name of zamindar unless they kept one or two women. Would they come under the category of persons of good character according to the view propounded from Government Benches? It seems to me that though the word "moral" is dropped, the substance is there. It would not make any change whatever. And it seems to me that this clause cannot commend itself to the Honourable House. What is the effect of having a proviso like this? Any person who wants to be a surety would have to allow his character to be inquired into by a Magistrate. I do not think any man of self-respect would allow his character to be impeached or challenged by the police or any Magistrate who presides over the court. If the Magistrate has a dislike against the man, he will say, he is not of good character and he cannot accept his security. The words are so comprehensive and elastic that they will include everything, and any person may be rejected as not being a fit person on one ground or another, and it would be absolutely impossible for any person against whom proceedings are instituted to get a surety. It will strike any one that the object is practically to deprive these persons from getting sureties. Judging from the practical point of view, I suppose it will be conceded that every opportunity should be given to persons bound over to be of good behaviour, and even under the existing law it is difficult to procure sureties for good behaviour. I think we must encourage people to come forward to give surety, because there is always the prospect of a good, healthy, influence being wielded over the persons bound over. Now, this new section will frustrate the very object of bad characters or habitual offenders being reformed into really good men, by preventing respectable persons from coming forward and standing as sureties for their good behaviour. Therefore, it seems to me that by retaining this clause you will practically deprive every person against whom proceedings are instituted from being able to get respectable sureties.

[Rao Bahadur P. V. Srinivasa Rao.]

For these reasons, Sir, I have no doubt that the Honourable House will accept my amendment to omit clause (a) in sub-section (1) of proposed clause 122.

Mr. H. Tonkinson: Sir, the Honourable Member proposes to omit clause (a), the first of the conditions which it is proposed to specify to guide magistrates in their action as regards the rejection or the acceptance of a surety. Now, Sir, I would submit that, although, as regards clauses (b) and (c), there have been very considerable differences of opinion in the different High Courts, as regards clause (a) there is practically no difference of opinion, that is, the question as to whether a man is of a good character or not is generally accepted as one of the points which should be considered by the Magistrate. The Honourable the Leader of the House read out the instructions given by the Lower Burma Chief Court to the Courts in Burma. Good character was included amongst them. The Judicial Commissioner in Sind has held that the character and status of the sureties required may suitably be specified. The Bombay Courts have done the same. The Allahabad decisions are generally on the lines of clause (c), but they have definitely held that it is a material point in the inquiry as to whether a man has had a previous conviction, and so on. There is, Sir, I think not the least doubt whatsoever that this is a criterion which should be included. We are quite prepared, as we have said already, to omit the word "moral" and, if that would meet the wishes of the House, we would accept that amendment. (*Cries of "No, no."*) If, however, this clause is cut out from section 122, I would submit, Sir, that then we should have a contradiction between section 122 and section 112 of the Code. Under section 112 it is definitely stated that when the Magistrate makes an order in writing setting forth the substance of the information received, he shall also state the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of securities, if any, required. The omission, Sir, of this clause will mean that we shall have a definite contradiction between section 122 and section 112, because, Sir, if that clause is omitted, then the Magistrate in refusing to accept security may follow only clauses (f) and (c).

Rao Bahadur T. Rangachariar: Character there has a different meaning altogether.

Mr. Harchandrai Vishindas: That word existed in the old Code.

Mr. T. V. Seshagiri Ayyar: May I say a word? I am sorry the Government should think of opposing this amendment also. If you omit the word 'moral' and still retain the word 'good', I do not think you are improving the position of the accused. On the other hand, as has been pointed out by Sir Henry Stanyon, a good Magistrate will find it very difficult to come to a conclusion whether a man is of good character or of good moral character, and a bad Magistrate would take it into his head to make it impossible for the accused to give security. Already the House has empowered the Magistrate to reject a security which has once been accepted. Supposing a man has been speaking at a political meeting, and the Magistrate comes to the conclusion that this man is on that ground a bad character and that therefore the security offered by him should be cancelled. What would be the position of the accused? I do not think the Government is facilitating the work of the Assembly by speaking against the amendment

which has just been moved. Sir, it becomes very difficult for us, if we find no spirit of "give and take" in a matter like this, to make any advances to Government. I thought this was one of the occasions when the Government may go out of its way to accept an amendment. By omitting the word 'moral' and retaining the word 'good' you are not improving matters at all. On the other hand, you are making the position of the accused more difficult.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, I have merely to point out that the Government are doing something very bad in omitting the word 'moral' in the clause providing for a surety to be of good moral character. The ideas of some of the people with regard to 'good' and 'moral' may be not a little confounded, if the Government come forward to advisedly drop the word 'moral.' The position of the Government here is anomalous, and I think based on ignorance as to the meaning of the two terms, good and moral. No one in human society can be good without being moral. ("Hear, hear" from Government Bench.) You may cry "Hear, hear" but in doing so you really show that at least you do not understand the terms. If you analyse the word 'moral,' you see that in its reference is clearly made to the relations subsisting between one man and another which to be true must needs be good. Separating social relations from the dictates of God regarding goodness should be deemed incorrect and unwise. I would request the Government, in spite of their having assumed in this matter airs of superiority, to apply their minds to the ideas involved in the two terms and to make the position they assume in their regard more logical and consistent. Apart from the objections that have been raised by Mr. Seshagiri Ayyar, which are indeed valid, it would, as I say, on ethico-political grounds be advisable on the part of Government not to go in for a course of conduct of such a dubious nature.

Sir Montagu Webb (Bombay: European): Sir, I do not understand quite clearly whether the Honourable the Mover has accepted the suggestion of Government that the word 'moral' should be omitted; but if he has not, I would beg your permission to move definitely a further amendment that the word "moral" be omitted from clause (a).

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I had no intention of speaking upon this motion, but

Mr. Deputy President: The amendment moved is:

"That in clause 21 in sub-section (1) of proposed section 122, clause (a) be omitted to which a further amendment has been moved that the word 'moral' be omitted."

Mr. N. M. Samarth (Bombay: Nominated Non-Official): The amendment is that the clause be omitted; the amendment to the amendment is that the clause be not omitted except with the word 'moral,' which may be omitted. Such an amendment, I submit, is not in order.

Mr. Deputy President: Amendment moved is:

"In clause 21, in sub-clause (1) of proposed section 122, clause (a) be omitted."

Mr. W. M. Hussanally: As I said, I had no intention of speaking upon this motion. But with regard to the remark that fell from Mr. Tonkinson as to the inconsistency in section 122 (as it is proposed to be amended) and section 112, I must say I cannot see that inconsistency at all. Mr. Tonkinson was of opinion that if the clause were omitted from section 122 it would become inconsistent with the words "number" and "character" in section

[Mr. W. M. Hussanally.]

112. I do not think that the word 'character' in section 112 bears the same meaning as in the new clause in section 112. "Character" in section 112 means only 'kind' and nothing further; whereas in section 122 it refers to moral character, and I think, Sir, that so far as the inquiry into the moral character of a person is concerned, it will be very difficult for Magistrates to hold an inquiry and to come to any satisfactory decision in the matter; because moral character is such a vague term that any inquiry into that matter will result in nothing; and as has been pointed out by my friend, Mr. Srinivasa Rao, even if a person has spoken a lie he becomes a man of bad moral character. Therefore if the character of a person is to be inquired into, the section ought to be recast and made more definite. As the section stands I think there is no go but to delete it.

Mr. P. E. Percival (Bombay: Nominated Official): I only wish to point out, Sir, that, if we omit this clause, the Magistrate would not be able to refuse any surety however notorious he might be. It seems to me that that would be the effect, because you are tying down the Magistrate strictly to the remaining clauses, namely, clauses (b) and (c). Consequently the Magistrate could not refuse a man who had been convicted of a serious offence involving moral turpitude. Even Mr. Agnihotri agrees that a man who has been convicted of an offence involving moral turpitude should not be allowed to stand as surety. But, if you cut out this clause altogether, a man who has been convicted of any offence whatsoever could not be refused by a Magistrate.

Mr. H. E. Holme (United Provinces: Nominated Official): Sir, it seems to me to be assumed that in every case an inquiry would be made as a matter of course into the character of the surety and unless that inquiry issues in a satisfactory result the surety will be rejected; whereas it would seem that as a matter of course the surety would be accepted unless there is some reason for objection to him, in which case an inquiry will have to be made, and the Magistrate would, I think, not take upon himself an additional burden especially when he is heavily over-worked by making such an inquiry unless there is some reason for it. At present it appears that the usual course is to make some inquiry or have some inquiry made into the qualifications of the surety before the surety is accepted, and to give power to reject him later will rather tend to result in the surety being accepted as a matter of course at once, unless some reason is shown to the contrary.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, in addition to what Mr. Hussanally has said in reply to Mr. Tonkinson, there is also this consideration, that this word "character" in section 112 existed in the old Code also side by side with section 122 as it then existed, whereas in section 122 the word "character" did not appear. So, the absence of the word "character" would not create the difficulty or inconvenience which Mr. Tonkinson has pointed out. I quite agree with Mr. Hussanally there. Mr. Percival said that it would be absurd that a Magistrate should not be in a position to refuse security from a man who has been previously convicted. To begin with, it is quite one thing to say that a man should be refused as security because he has been previously convicted and quite another thing to say that a man who is of a bad moral character should be refused. To overcome that difficulty the more logical and more consistent course is to make a provision that "if any person has been previously

convicted, he should be refused" without saying anything about his being a man of bad moral character. But I do not see any force of reasoning in refusing security of a person who has been previously convicted. As Sir Henry Stanyon pertinently pointed out what is the object of taking a security? The object of taking a security is that in the event of the accused person violating his bond and not observing the terms upon which he has been let off, the security should pay up the amount. That is the only object. What have you got to do with his moral character or his having been previously convicted? What have you got to do with his having control over the man or not? The only criterion, the only principle upon which you are taking security is that the accused will be of good behaviour during that period. If he is not of good behaviour, then his security forfeits the money. As Sir Henry Stanyon pointed out, in very many cases there would be men of bad character who would be qualified to stand as security for their friends, because there will be a kind of obligation upon the security to see that the accused person does not go astray so that he may save his money. Further, I think—this is a point that has been laid stress upon by previous speakers, but I think nothing will be lost by my repeating it—you would be making it very hard for Magistrates to find out whether a man's character is really such as can come within the category of the provisions of the Bill or not. There are various and various kinds of bad characters. There may be some who might think that a man who has done a particular wrong or who has been very bad to his neighbour is an immoral man. Another man may think that in his relations with other men the proposed security does not possess the requisite qualifications. When such considerations can arise, I think, Government are committing a mistake by trying to maintain the position they have taken of retaining this clause of the Bill. I think it is not in the interests of legislation, it is not in the interests of the subjects or the people that this clause should be retained.

Mr. T. V. Seshagiri Ayyar and Mr. J. Chaudhuri (at the same time): I move that the question be now put.

Sir Henry Moncrieff Smith: Sir, I want to refer to one point in regard to the remarks which fell from my Honourable friend, Mr. Hussanally. He said that even omitting the word "moral," if we have the word "good character" in this clause, the Courts will be in doubt as to what "good character" means. Now, I think that argument might tend to mislead the House. I doubt whether my Honourable friend had in his mind the Evidence Act, because the words "of good character" are used in the Evidence Act, and they have never caused any difficulty there. I have never heard of any suggestion that they should be amended. Section 53 of the Evidence Act says:

"In criminal proceedings, the fact that the person accused is of a good character is relevant."

There is the Evidence Act laying down definitely that a certain class of evidence is relevant. What is the good of telling the Courts that it is relevant if the Courts do not know what it means? The course of the debate has, I think, shown that a certain section of the House is of opinion that the character of the surety ought not to be taken into consideration at all. Certain Members think that if he is a wealthy man and lives on the spot, it does not matter what sort of character he may have, and the Magistrate is not to be justified in rejecting him. That is a view which will not

[Sir Henry Moncrieff Smith.]

commend itself to any of the High Courts. I think the House is overlooking the fact that the High Courts have practically unanimously laid down that character is one of the grounds which may be considered when the Magistrate is making an inquiry into the surety's fitness. It has been done over and over again. If you take up any commentary you will find the rulings. Sohoni's commentary is to the following effect:

"The generally accepted view seems to be that the Magistrate is at liberty to take into consideration the 'moral unfitness' of the person as well (that is, as well as the financial position)."

The Calcutta High Court in a case in which the surety had been rejected on several grounds brushed aside some of the grounds. As regards the ground that the surety had three brothers in jail, they said, "No, that does not affect his character. We take the man as he is." The other ground that he did not live close by—they brushed that aside also, but the fact that the sureties were reported to be of bad character—the Court found that to be sufficient ground for a Magistrate to reject a surety. I would ask the House to consider most seriously whether by rejecting this clause altogether, throwing out clause (a) of the Bill altogether, they are going to prevent Magistrates from rejecting a surety though he may be a bad character. We are, as far as I understand, discussing whether clause (a) should stand. If it stands, then Government are quite prepared to accede to the amendment moved by my Honourable friend opposite that the word "moral" should be omitted.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan): We started this morning with the precept that we ought to cut short the discussion and that we should proceed with the amendments as quickly as we can. I am afraid the blame for prolonging the discussion does not rest on one side of the House or on one section of the House, but it rests on all sides, on all sections of the House. Character, as has been several times pointed out, is an element in testing sureties that are submitted to the Court. Whether in civil matters or in criminal matters character has always been considered, and no Magistrate or Judge worth his position ever ignores the character of person who is offered as surety. Of course, the primary consideration is that he is solvent. Therefore, having been unable to carry the amendment which my Honourable friend, Mr. Rangachariar, suggested, we are now dealing with the details of the clause of the Bill. Government has made a fair offer that they would omit the word "moral" which lends itself to all sorts of misapprehensions. I think it is advisable to accept that small concession to omit the word "moral" and have "good character" only in the clause. That will save us a lot of trouble and will also be in conformity with the decisions of the Courts. We need not stand up for persons who are considered not to possess character, but with regard to "moral" there is the difficulty of interpretation of the term, and therefore on that ground the word "moral" is offered to be omitted, and I think we will do well to accept that offer and close with it as quickly as we can.

Mr. W. M. Hussanally: May I ask if I would be in order if I suggest that the words "a convicted person" be substituted for clause (a), and ask if that is acceptable to the Government Benches?

Mr. Deputy President: The question is:

"That in clause 21 in sub-section (1) of proposed section 122, clause (a) be omitted."

4 P.M.

The Assembly then divided as follows:

AYES—38.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Niyar.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.
Mani Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—37.

Abdul Rahim Khan, Mr.
Abdul Rahman, Munshi.
Ahsan Khan, Mr. M.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.

The motion was adopted.

Mr. W. M. Hussanally: On a point of order, Sir, may I at this stage propose an amendment in place of clause (a), with reference to a convicted person being accepted as surety . . .

Rao Bahadur T. Rangachariar: I object to his coming forward with a new amendment.

Mr. Deputy President: I rule it out of order. I want to know if Mr. Srinivasa Rao will move his amendment to (b) of clause 65.

Rao Bahadur T. Rangachariar: He does not move it.

The Honourable Sir Malcolm Hailey: Then I would ask your permission, Sir, to move the omission of clauses (b) and (c), that being the amendment put forward by Mr. Srinivasa Rao.

(Voices: "We did not catch properly what the Honourable Member said.")

The Honourable Sir Malcolm Hailey: I am asking the permission of the Chair to move the omission of clauses (b) and (c). I now formally move the following amendment:

"In clause 21 in section 122:

Omit the words 'as being' and clauses (b) and (c)."

Mr. Deputy President: The question is that the amendment be made. The motion was adopted.

Mr. K. Ahmed: I move, Sir:

"That in clause 21 in proposed section 122, sub-section(1), in the proviso for the words 'cause such inquiry to be held and a report to be made thereon by the Magistrate subordinate to him' substitute the words 'accept a certificate of fitness from a pleader practising in the court of the Magistrate or of some superior court, or from any respectable inhabitant of the locality'."

The reason why I have been impressed to move this amendment is that Magistrates from time to time, according to the case of the prosecution, have held that in certain villages there is no respectable person because all of them are low-class Hindus, low-class Muhammadan cultivators or probably they are a class of people whom the Sub-Inspector will not be kind enough to acknowledge to be respectable, and who are very often being prosecuted under section 110 and sent to jail. That is the reason why I have suggested the words noted above in substitution for the words "cause such inquiry to be held and a report made thereon by the Magistrate subordinate to him" as desirable.

And this, I submit, is a sound principle, which should be accepted by this House, because the poor man who rightly or wrongly by the decision of Court has been convicted and bound over for a certain amount to be of good behaviour for a year or two or three years, certainly, Sir, has got to furnish surety. The principle is that some substantial security which is forthcoming should be furnished within the time fixed. After the poor man has arranged everything to get the surety in compliance with the law, the police will tell the Magistrate some thing and the Magistrate will say 'Look here, Sir, this man is no good, because there was a case against him,' because some person went there and lodged information at the police station. There is entry of the information in the diary—I do not know how many kinds of diaries are kept, but I may say according to the Procedure Code and for the satisfaction of this House and under the provision of law there are only two kinds of diaries kept in every police station. But they bring a certain entry which is not a proved entry; it is only a matter of complaint which is not inquired into and reported or a charge sheet of it submitted, it is only an *ex parte* entry which is found in the police diary and the Magistrate takes the word of the police as gospel truth and rejects the surety, which is an insult to the educated people of this country when they stand surety for their servants, etc. It is an insult to the morality, nay of civilization, that they should insist on keeping the man in the lock up without accepting the surety offered. All this has been put under section 110 and the wrong end of the stick has been caught hold of, leaving aside the principle of law, forgetting that a man in compliance with the order of the Magistrate under section 110 has furnished the security. This has been abused in the past and there is no way of getting out of it, because the

police will throw some blue light from his magic lantern and the Magistrate will take that blue light as the beacon light and that is the only light that reflects on the so-called justice according to him against 99 persons out of 100 and that is how, Sir, there is miscarriage of justice in this country. People having come to the Court and being ready and willing to give security cannot get out of the clutches of the police, and it is very obvious from the decisions of Judges that this engine of oppression should be removed. Sir, in this connection I ought to read the opinions of some of the distinguished bodies in India. I should have handed over this to my Honourable friend Sir Henry Moncrieff Smith. But he has got a copy, I know. It is not quite relevant to the point, but the substance of it will cover exactly what he wants probably for the time being to fit in this amendment.

Sir, I will read from page 123 of the opinions of various distinguished bodies recorded in 1918 on the Criminal Procedure Code Amendment Bill, the comments of the Bar of the Calcutta High Court on this subject:

"We think it is absolutely necessary that the question of the grounds of fitness of sureties should be determined by the Code, having regard to the great diversity of judicial opinion on the matter. The Allahabad rulings have generally adopted ability of control as the test. The Calcutta decisions, while dissenting from this view, are in conflict *inter se*, some accepting the test of property qualification and others regarding the question as one to be determined on the facts of each case. We would refer to Abdul Karim *versus* Emp. 44 Cal. 731, as exemplifying the conflict between Calcutta cases, and indicating the necessity of settling the question once for all."

Sir, this is relevant to the amendment I wish to make, namely the substitution for the words—"cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him," of the words:

"accept a certificate of fitness from a pleader practising in the Court of the Magistrate or of some superior court, or from any respectable inhabitant of the locality."

Sir, this amendment will bring the solution for all the difficulties and it is good for the Government and for the country and the people at large, and is necessary to serve the ends of justice; and that is why I have brought it before you for your kind acceptance. Such difficulties are against good policies and it is against the public interest; and that the Legislature should undertake to legislate where the conditions cannot be fulfilled. Therefore I think I have satisfied you for the substitution of these words. You will find, it is not difficult at all, because if a man is defended by a pleader or lawyer of a Magistrate's court or a higher court, he is supposed to know his client well; he has got correspondence from the village where he lives. The man has been writing letters to his pleader and his pleader's clerk. The pleader knows the position of the man and his certificate is enough. If you think the certificate of a Bachelor of Law who is practising at a court is not enough, I ask you to exercise your common sense and see how and where the poor ryot would stand when he comes for justice. There must be some way of providing for his case; you do not want to keep him in the lock-up. It is against public policy. With due respect, I ask the Government to be good enough to accept this amendment and bring a solution of these difficulties.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move that the question be now put.

The motion was adopted.

[23RD JAN. 1923.]

Mr. Deputy President: Amendment moved:

That in clause 21 in the proviso to sub-section (1) of the proposed new section 122 for the words from "cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him" substitute the words "accept a certificate of fitness from a pleader practising in the Court of the Magistrate or of some superior Court, or from any respectable inhabitant of the locality."

The question is that that amendment be made.

Mr. Harchandrai Vishindas: Sir, I have to move an amendment to this.

(Several Honourable Members moved that the question be now put.)
The amendment moved was negatived.

Rai Bahadur Pandit J. L. Bhargava (Ambala Division: Non-Muhammadan): Sir, with your permission, I beg to suggest an amendment which is of a non-controversial nature, namely, that in the proviso to sub-section (1) of section 122 the words "or solemn affirmation" be added after the word "oath."

(An Honourable Member: "Oath includes solemn affirmation?")

Sir Henry Moncrieff Smith: I object to the moving of the amendment.
(Mr. Deputy President then called upon Mr. Pantulu to move his amendment.)

Mr. J. Ramayya Pantulu (Godavari cum Kistna: Non-Muhammadan Rural): Sir, I propose:

"That in clause 21, in sub-section (2) of proposed new section 122, between the word 'inquiry' and the words 'the Magistrate', the following words, namely: 'the person on whose behalf the surety is offered or has been previously accepted shall be given an opportunity of proving the fitness of the surety and' be inserted."

The clause to which I am referring reads thus:

"In every such inquiry the Magistrate holding the same shall record the substance of the evidence adduced before him."

The inquiry which is referred to here is the inquiry which a Magistrate makes for the purpose of finding out whether he should reject a surety already accepted, and this inquiry will evidently be based upon the evidence adduced by the police. That would be a one-sided inquiry and there is nothing in the section, as worded here, to prevent a decision being arrived at without the person on whose behalf the surety has been offered or accepted having an opportunity of saying what he has to say. It would be very unfair that a surety who has been once accepted, should be rejected behind the back of the person who offered that surety and simply on the one-sided inquiry that is made and the evidence adduced by the police. It is only fair that, when you reject a surety who has been already accepted, that you should give the party on whose behalf the surety was once accepted an opportunity of saying that he is still fit to be accepted and that the reasons given by the police are not sound.

I think this is a very reasonable proposition and I hope the Government will see their way to accept this amendment.

Sir Henry Moncrieff Smith: Sir, I may say at once that the Government has no objection whatever to the principle of this amendment. I do not

myself quite like the drafting. I would rather not weld it on to the section as it is at present. There is no reason whatever why notice should not be given to the person most affected that is, the person offering surety and why he should not be given an opportunity of showing cause but I think it would be better if instead of introducing the words into the clause as it stands we substitute a new sub-section (2) in the proposed section 122 as it stands in the Bill, and I would move, Sir, and I do move accordingly, that for sub-section (2) of the proposed section 122, the following be substituted:

"Such Magistrate shall before holding the inquiry give reasonable notice to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him."

The amendment I propose lays it down that the Magistrate shall give reasonable notice to the person affected. It is quite unnecessary, as in any other cases, to lay down that the man should be given an opportunity for giving evidence. He is bound to have that. If any Magistrate holds an *ex parte* inquiry in this case, the House has to remember that we are providing an appeal in every case, and the Appellate Court would immediately upset any order rejecting a surety if the Magistrate had made an *ex parte* inquiry without giving notice to the person affected. I would therefore commend this redraft to the House.

Mr. T. V. Seshagiri Ayyar: What is the amendment, will you please read it out?

Sir Henry Moncrieff Smith: It is to substitute for sub-section (2) in the Bill these words, which embody what Mr. Pantulu desires:

"(2) Such Magistrate shall before holding the inquiry give reasonable notice to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him."

Mr. T. V. Seshagiri Ayyar: What about the surety?

Mr. W. M. Hussanally: Notice should be given to both the surety and the person affected.

Mr. T. V. Seshagiri Ayyar: If you use the words 'persons affected,' that includes the accused as well as the surety.

Sir Henry Moncrieff Smith: The original amendment by Mr. Pantulu used the words "person on whose behalf surety is offered." I used the words "the person affected" as a short way of describing the person on whose behalf surety was offered.

Mr. T. V. Seshagiri Ayyar: Why not the surety also?

Sir Henry Moncrieff Smith: If the person affected is given notice, surely the surety himself will come forward if he is really anxious to give security.

Mr. J. Ramayya Pantulu: Sir, the amendment proposed by Government provides for notice being given to the person on whose behalf surety has been accepted, but it does not say that he can show cause why the surety should not be rejected, and, therefore, to attain that object I think the wording of my amendment is preferable; but in order to minimise discussion I would accept the amendment proposed by Government provided they add the words "on either side" at the end of their amendment—that is, "record the substance of the evidence adduced before them on either side." That would mean that the party on whose behalf a surety has once been accepted will have the right to adduce evidence.

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Sir Henry Moncrieff Smith: Sir, I have no objection at all to meeting my friend, Mr. Seshagiri Ayyar. The amendment will then read:

"Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person on whose behalf such surety is offered, and shall in making the inquiry, etc."

Mr. T. V. Seshagiri Ayyar: Yes, yes.

Mr. J. Ramayya Pantulu: Then I accept the amendment, Sir, that has just been read out.

Mr. Deputy President: Has Mr. Pantulu the leave of the House to withdraw his amendment.

(Leave was given.)

Mr. Deputy President: The question is:

"That in Clause 21 for sub-section (2) of the proposed section 122, the following be substituted, namely:

"(2) Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person by whom the surety was offered, and shall in making the inquiry record the substance of the evidence adduced before him."

The motion was adopted.

Mr. Deputy President: The question is that clause 21 stand part of the Bill.

The motion was adopted.

Bhai Man Singh (East Punjab: Sikh): The amendment that stands in my name is:

"That in clause 22 for sub-clause (2) substitute the following:
"(2) In sub-section (5) for the words 'for keeping the peace' the words 'under this section' shall be substituted and sub-section (6) shall be omitted."

The substance of my amendment, Sir, is that whosoever is required to furnish security under this chapter, whether he is required to furnish security for keeping peace or for being of good behaviour or anything of the sort, if he fails to furnish security and is ordered to be imprisoned he should be given simple imprisonment in all cases. The Bill as it stands makes an exception in the case of habitual offenders, those who are required to be bound over under section 110. Under the present Bill those people can be given rigorous imprisonment, while all others are to get simple imprisonment, I do see that as regards persons who are bound over under section 110 their moral character is surely more to be deprecated than that of those who are bound over under section 107, section 108 or section 109. But all the same we have been talking over these sections for so many days; and we have been saying always that these provisions are not punitive but preventive. I need not take the time of the House by quoting any authorities in support of this fact. It has been held very often that these sections are preventive and not punitive. There seems to be absolutely no reason why if we want to award imprisonment and send a man to jail we should give him rigorous imprisonment under any circumstances if the action you are taking against him is simply preventive, simply meant to keep him away from committing any offence. The man could have just come and offered security and then he would

have remained out altogether. Why, if he is sent to jail, should he be required to be put to hard labour and given rigorous imprisonment? I think the proposition that I am putting before the House is so very clear that I would request the Government to accept it and I hope that the Honourable Members will see the reasonableness of my request.

The Honourable Sir Malcolm Hailey: I am sorry that I do not see the sweet reasonableness of this proposal. How does the law stand at present? For failing to give security for keeping the peace—107—the alternative is simple imprisonment. Under sections 108 and 109 and 110, the Magistrate may give rigorous or simple imprisonment at his discretion. What do we now propose? We propose to keep 107 as before, namely, the imprisonment will be simple. As regards 108 and 109 we now propose that instead of the Magistrate having any discretion in the matter, the imprisonment must be simple. For my own part, I fear that it will create a good deal of astonishment in the country when it learns that a man who can find no security under section 109 receives simple imprisonment. It seems to me myself strange that he should not be put to any form of labour. However, that is not the immediate point; it is the proposal of the Bill and I forbear to argue against it. The immediate point is that of Bhai Man Singh, who demands, as a universal rule, that imprisonment shall be simple imprisonment under all the punitive clauses. The difference between us is, then, that he would have only simple imprisonment under section 110. The list of offences which qualify a man for an order under section 110 is known to the House; they have been read to it more than once. I need not enlarge on the category, the habitual robber, the habitual forger, the habitual kidnapper and the like. If such a man cannot find security then he must thoroughly fill the picture as a bad character; he has got no friends; nobody will stand up for him. Yet it is proposed by Mr. Man Singh that a man of this type, who may have been convicted several times over for these serious offences, shall when he is in jail not be put to any form of labour. It seems to me an unkindness to the taxpayer that we should keep a man of this type in jail without demanding that he should contribute by labour of any kind to pay for his subsistence. I quite admit that the object of these sections is preventive, and not punitive; but if a man is adjudged a bad or dangerous character and can find no surety, it seems to me not unreasonable that when in default of security he is committed to prison under section 110, the Magistrate should have discretion to give him either simple or rigorous imprisonment.

Mr. B. Venkatapatiraju: Sir, I do not see any point in the arguments advanced by the Honourable Leader of the House when he says that we are only following the old law. I can understand that in countries where Indians are employed as coolies, for want of labour they would give rigorous imprisonment so that they can take work. But there is no such dearth of labour in India for the Government to utilise this section of people for labour. Here, a person has not committed any offence. If he is convicted of an offence, he has already suffered punishment for it. We are here only providing for preventing him from doing further mischief. With that object in view why should you give him rigorous imprisonment? It is only a preventive provision for the purpose of keeping him out of danger for the benefit of society. That is the only thing the Government should do. The only excuse for the Government is, "Why should we maintain him in jail without asking him

[Mr. B. Venkatapatiraju.]
to do some work"? I do not know why Government should think of securing some work out of him on that ground. The only ground for which he should suffer rigorous imprisonment is for any particular offence that he has committed. Otherwise I do not think any discretion need be given to the Magistrate. I therefore strongly support the amendment moved by Mr. Man Singh.

Mr. W. M. Hussanally: Sir, I should like to say a few words in support of this amendment. Ordinarily I know that under section 123 the imprisonment to be awarded in lieu of failure to find surety may be either simple or rigorous, but in the province from which I come, Sind, I think I shall not be far wrong if I say that imprisonment for failure to give security for keeping good behaviour is almost invariably rigorous and I think that in the interests of society it is not right that such persons should be condemned to rigorous imprisonment, because I think that people going to jail specially to suffer rigorous imprisonment come out more hardened criminals than when they enter the jail. I think the object being to keep them away from mischief, as my friend, Mr. Raju, has said, the ends of justice would be met if they are given only simple imprisonment, and they should be kept apart from ordinary criminals, so that when they come out of the jail they come out reformed men and not made into hardened criminals. On that ground and on that ground alone I will support this amendment.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I think there seems to be some misapprehension in the minds of the last two speakers as regards the effect of an order of rigorous imprisonment. To deal first with Mr. Hussanally. He suggests that if a man who has been ordered to find security to be of good behaviour is unable to do so and is sent to jail and caused to undergo rigorous imprisonment, his morals will be contaminated and he will come out of jail a worse man than when he went in, whereas if he only has to undergo simple imprisonment this is not the case (Mr. W. M. Hussanally: "If he is kept apart") if he is kept apart from those who are undergoing simple imprisonment. In the first place, you must remember the class of people who normally go to jail under section 110. I need not read again the list. It ranges from a forger to a desperate and dangerous character, and I would suggest to the House that it will not take the argument seriously that people of this class who are unable to find anybody to stand security for them will have their morals contaminated by going to jail and doing hard labour, whereas they will be saved that, if they undergo simple imprisonment. Secondly, let us consider what simple imprisonment means. It means that the person is absolutely unable to do any work whatever and there he sits from day to day in complete idleness. There must be many Members of this Honourable House who have had opportunities of inspecting jails in one capacity or another, and surely they will agree that the lot of the man undergoing simple imprisonment is in many ways far worse than that of the man who undergoes rigorous imprisonment. I submit that for men of this class rigorous imprisonment is less of a hardship than simple imprisonment.

Then with regard to Mr. Raju's argument, he says that in this country there is no scarcity of labour, and therefore simple imprisonment should be applied. Well, I submit that even if there is no scarcity of labour, the finances of this country are not at present in such an affluent state that we can afford to keep in jail forgers,

habitual offenders and desperate and dangerous characters entirely at the public expense and not allowed to do even a hand's turn to contribute towards the cost of their upkeep. For these practical reasons I trust the House will throw out this amendment.

Mr. Deputy President: The question is:

"That in clause 22 for sub-clause (2) substitute the following:
'In sub-section (5) for the words 'for keeping the peace' the words 'under this section' shall be substituted and sub-section (6) shall be omitted'."
(Cries of 'Noes' and 'Ayes'.)

Mr. Deputy President: Those who are in favour of the motion will please stand up.

Rao Bahadur T. Rangachariar: I object to that procedure, Sir. It is only to enable you to decide whether the claim for a division is frivolous. That this procedure is adopted. If a vote is to be taken by standing, then all Members will have to be sent for. The object of a division is to give notice to others who are absent. I think, Sir, the procedure you are adopting will be setting up a bad precedent.

Mr. Jamnadas Dwarkadas: May I point out, that instead of asking those who are in favour of the amendment to stand up, if you just ask those who want a division to stand up, probably it would make a good deal of difference. That I think was your intention, Sir.

Mr. Deputy President: Those who are for a division will please stand up.

(Two or three members stood up.)

Mr. Deputy President: Division is refused.
The amendment was negatived.

Mr. Deputy President: The question is that clause 22 do stand part of the Bill.
The motion was adopted.

Rao Bahadur T. Rangachariar: I beg to move:

"That in clause 23 (iii) substitute the following for proposed sub-section (5):
'5. If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate by whom the order of discharge has been made or his successor, may, after notice and inquiry, cancel the same.'"

The object of this amendment is very simple. Honourable Members will find that the District Magistrate or the Chief Presidency Magistrate has got power under section 124 to release a man who has given security, and clause 5 provides:

"If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate not fulfilled, he may cancel the same."

Of course I take it that the Government intend it should be after inquiry and notice, although it is not clear. If a man has been let off on condition, to know whether that condition has been broken or not it should be only after inquiry and notice. I want to make that point clear in my amendment, so that the action may not be taken against him behind his back on mere *ex parte* or police report. That is the object of this amendment and I hope the House will accept it. I move it, Sir.

Sir Henry Moncrieff Smith: Here again the Government is prepared to accept the principle of my Honourable friend's amendment, but we have to go a little further into the matter than he has gone. Mr. Rangachariar merely provides for notice and inquiry. I want the House to understand clearly what stage we have arrived at in the proceedings. The present law does not provide for a conditional discharge to be made when a man has failed to find security and is accordingly in jail. Now, we are proposing in the Bill to enable the Magistrate to discharge a man on conditions which will be prescribed by the Local Government. The reason why this was provided is very clearly explained in the Statement of Objects and Reasons. As the House knows, there are many numerous Reformatory settlements, many of which are run by that estimable body, the Salvation Army. They have been very freely used for the purpose of reforming our criminals. At present they are mainly used for the gipsies, the criminal tribes who wander about, and it seemed to us that they were a very suitable place in which also to enable habitual offenders to have a chance of reformation. They can learn a trade and when the period for which they are bound over expires they can go out and earn their own living in an honest manner. Now these people have been treated leniently already, the Magistrate has sent them to a reformatory settlement. While there, they commit a breach of the conditions on which they have been discharged. A notice therefore to a person of that class is not enough, and I am suggesting an amendment to the House which lays down that if the man is not already before the Magistrate, the Magistrate shall have power then to issue a warrant to have him brought before him. I quite agree, I think we are all prepared to agree, that the Magistrate should give him an opportunity of showing cause why the order of discharge should not be cancelled, but there can be no question of dilatory proceedings,—of issuing a summons to the man. You have got to remember that this man probably may have run away, may have absconded; at all events, a notice to him that he is going to be put back into jail, will simply be an invitation to him to abscond. Therefore, unless the Magistrate has power to issue a warrant, you are leaving a dangerous criminal, an habitual criminal, at large in the country. The House should remember that if the Magistrate finds that a condition has been broken, after this inquiry that Mr. Rangachariar and I both provide for, if he finds that a condition has been broken, the man has to go back to jail. He is going back to jail, and therefore if the Magistrate is of opinion that the condition has been broken, the first step should certainly be that he should issue a warrant. Therefore, Sir, I am accepting the principle of Mr. Rangachariar's amendment but would take out the word 'notice,' which is vague and which might be argued to indicate a summons only, and I am proposing an amendment which would provide a definite procedure for the Magistrate and also provide for several cases which Mr. Rangachariar's amendment does not provide for. For the proposed new sub-section (5), Sir, I would move that the following be substituted, namely:

"If any condition upon which any person has been discharged is in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or his successor not fulfilled, he may issue a warrant for the arrest of such person, and when such person is brought before him, he may, after such inquiry as he thinks fit, cancel the order discharging such person:

Provided that if at any time after the expiration of fifteen days from the date of the issue of the warrant the Magistrate has reason to believe that such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith."

The proviso is more or less on the lines of section 88 of the Code which deals with proclaimed offenders. This is the case of an habitual offender; he has been found to be an habitual offender. He has had an opportunity of coming up in revision, he may have an opportunity of appeal. The order stands,—the Magistrate's order that this man is an habitual offender; therefore if after fifteen days the police are not able to find him and the Magistrate has reason to believe that he is concealing himself or absconding, the Magistrate is enabled to cancel the order forthwith; and then the following sub-clauses of this clause come into operation—'any police officer may arrest without warrant.' I may warn the House that if they accept my amendment in this form, I shall have to propose merely consequential amendments to the next sub-section, sub-section (6), and its various paragraphs, which are partly occasioned, as I say, by this amendment and partly by a subsequent amendment of Mr. Rangachariar.

Mr. Deputy President: The further amendment moved is:

"That in sub-clause (3) of clause 23 (1), for the proposed new sub-section (5), the following be substituted, namely: 'If any condition upon which any such person has been discharged is in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or his successor not fulfilled, he may issue a warrant for the arrest of such person, and when such person is brought before him, he may after such inquiry as he thinks fit cancel the order discharging such person:

Provided that if at any time after the expiry of fifteen days from the date of the issue of the warrant the Magistrate has reason to believe that any such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith."

Rao Bahadur T. Rangachariar: Sir, I have no technical objection to the amendment to my amendment moved by Sir Henry Moncrieff Smith; that is, I do not object to his moving this amendment without notice. But I am sorry that I am unable to accept it on its merits. It is certainly not a reasonable course to adopt in a case like this. The position is, that a man accepts a condition offered to him quite voluntarily and the District Magistrate lets him out. Now, by the amendment proposed by my Honourable friend, first of all the District Magistrate has to form an opinion that the man has broken the conditions; that is, he has to prejudge the question which he is to inquire into and decide. That is the first objection I have to the wording of my Honourable friend. In my amendment, the Magistrate has to come to a conclusion after notice and inquiry that the condition has been broken, and then only he can say—"you have not fulfilled the condition and therefore the conditional discharge must be cancelled."

Then the next thing is that the Magistrate may issue a warrant for the arrest of such person at once. Of course, if the condition is broken, he must go back to jail. But then come the words "after such inquiry as he thinks fit," which leave it open to the Magistrate to do it in any manner he likes. First of all you commit him to an "opinion" and then the inquiry may be "such as he thinks fit," which may be in a very summary manner.

This amendment therefore is open to these objections. A man may be condemned without being heard and sent back to jail. But it is very unlikely that a man will break a condition which he has voluntarily accepted, and I think the Government is rather over-nervous in dealing with cases of this nature. That is the remark which I wish to emphasise in this connection. What I mean is that they want to tighten their hold on a

[23RD JAN. 1923.]

[Rao Bahadur T. Rangachariar.]
man who has not yet been convicted of an offence and who is merely bound over because they suspect he will give trouble; they want to bind him round and round; and although he accepts a condition they do not want to allow him to go. That appears to me to be the object of this amendment and I therefore oppose it and stick to my own amendment.

Mr. Deputy President: The question is:

"That in clause 23 (iii) substitute the following for proposed sub-section (5):
(5) If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate, by whom the order of discharge has been made or his successor, may, after notice and inquiry, cancel the same."

To which a further amendment has been moved, that in clause 23 (iii) the following be substituted for proposed sub-section (5):

"(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate, or Chief Presidency Magistrate, by whom the order of discharge was made, or his successor, not fulfilled, he may issue a warrant for the arrest of such person, and when such person is brought before him he may, after such inquiry as he thinks fit, cancel the order discharging such person:

Provided that if at any time after the expiry of fifteen days from the date of the issue of the warrant, the Magistrate has reason to believe that any such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith."

The question is that that amendment be made.

5 p.m. The Assembly then divided as follows:

AYES—30.

Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Singh, Mr. S. N.
Sircar, Mr. N. C.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

NOES—33.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ajjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

The motion was negatived.

Mr. Deputy President: I may remind the House that the original amendment of Mr. Rangachariar is still before the House.

Several Honourable Members: The question may now be put.

The Honourable Sir Malcolm Hailey: Before the question is put, I ask an opportunity to state our strong objections to the amendment moved by Mr. Rangachariar. We offered him what looked like a very good alternative, drafted with great skill, with all the proper safeguards inserted, and not unreasonable in itself. It made full provision for the particular class of case he has in view. But he and his friends would not have it. Now where do we stand? Everybody knows the class of person to whom a conditional release is given: possibly a member of a criminal tribe, often a member of a wandering tribe. He is sent to a settlement for the purpose of reclamation. Now how does Mr. Rangachariar propose to treat this evasive sort of gentleman? The Magistrate has to send first of all a notice to him. If Mr. Rangachariar can tell us where to find a wandering criminal or a habitual absconder, he is cleverer than our Magistrates or police are often able to show themselves. To proceed. He says nothing as to what is to happen if the notice is not served, or the man does not obey it. He insists on notice; according to him no warrant is ever to issue. Again; a few minutes ago he objected strongly to Sir Henry Moncrieff Smith's wording "such inquiry as he thinks fit." And what is his own wording? Here see this new upholder of the Magistrate's full discretion comes out again. When Sir Henry Moncrieff Smith proposed to put in the words "such inquiry as he thinks fit," Mr. Rangachariar thought them hopelessly inadequate. What are his own words. "Notice and inquiry." Nothing else. So much for his consistency.

I put it that this is a ragged amendment. It does not provide for the circumstances; it inserts insufficient safeguards; it allows you to go on issuing notice after notice to an absconder, and in the end it allows the Magistrate to dispose of the case after an inquiry of a nature which Mr. Rangachariar himself has more than once pronounced to be insufficient.

Rao Bahadur T. Rangachariar: May I be permitted to offer an explanation as a special case?

Sir Henry Moncrieff Smith: Mr. Rangachariar has spoken twice already.

Mr. Deputy President: If it is a personal explanation, I will allow it.

Rao Bahadur T. Rangachariar: At any rate the personal explanation is as regards why I distrusted the Magistrate in this case was . . .

Mr. Deputy President: That is not a personal explanation.

Amendment moved:

"That in clause 23 (iii) substitute the following for proposed sub-section (5):

(5) If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate, by whom the order of discharge has been made or his successor, may, after notice and inquiry, cancel the same."

The question is that that amendment be made.

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The Assembly then divided as follows:

AYES—30.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.

Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—31.

Abdul Rahim Khan, Mr.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Samarth, Mr. N. M.
Singh, Mr. S. N.
Sircar, Mr. N. C.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 24th January, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 24th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to acquaint the House of the unavoidable absence of Mr. President from to-day's meeting.

Mr. Deputy President then took the Chair.

POLICY OF HIS MAJESTY'S GOVERNMENT WITH REFERENCE
TO THE GOVERNMENT OF INDIA ACT.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I have to lay on the table a copy of a despatch from His Majesty's Secretary of State for India, Public No. 62, dated the 2nd November, 1922, regarding the policy of His Majesty's Government with reference to the Government of India Act.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Are copies available to the Members?

The Honourable Sir Malcolm Hailey: Certainly.

INDIA OFFICE, LONDON,

2nd November 1922.

Public,

No. 62.

TO HIS EXCELLENCY THE RIGHT HONOURABLE THE GOVERNOR GENERAL OF INDIA
IN COUNCIL.

MY LORD,

More than a year has elapsed since Your Excellency's Government forwarded to my predecessor the report of a debate which took place in the Legislative Assembly in September of last year, as a result of which a motion was carried recommending that the Secretary of State should be informed that the Assembly was of opinion that the progress made by India on the path to responsible government warrants a re-examination or revision of the constitution at an earlier date than 1929. On the 28th February last my predecessor stated, in reply to a question put to him in the House of Commons, that he intended to address a Despatch to Your Excellency's Government in reply to this motion, which would follow generally the lines of his speech in the course of the debate on the address a fortnight earlier. Circumstances, however, prevented the fulfilment of this intention, and since it has fallen to myself to make the reply which it is desirable that the Assembly should

[Sir Malcolm Hailey.]

receive, I do not imagine that Your Excellency's Government will have expected that I should address myself to so large and important a question without mature consideration, even though some further delay was involved.

2. The result of my consideration is that I have little to add to, and nothing to qualify in, the statement of the case made by my predecessor in the concluding portions of his speech in the House of Commons on the 14th February last. The policy deliberately adopted by Parliament in enacting the Act of 1919, and recently re-affirmed by the present head of His Majesty's Government, was to provide an installation of self-government, but at the same time to make further progress in that direction dependent upon experience of the practical results achieved in the working of the new constitution as a whole. It would have been a matter for surprise had any speaker in the Indian debate of September of last year attempted to prove as the result of six months' experience of a new constitution that its possibilities were exhausted and that nothing remained to be learned from further experience of its operation. No such attempt was made, and the arguments used in support of the motion consequently lose some of their cogency in my view, for three reasons. In the first place, they assumed that progress is impossible under the existing constitution, and can be achieved only by further amendment of the Government of India Act. This assumption I believe to be fundamentally erroneous.

3. The outstanding feature of the change made by the Act of 1919 was that it provided British India with a progressive constitution in place of an inelastic system of government, and that consequently there is room within the structure of that constitution for the Legislatures to develop and establish for themselves a position in conformity with the spirit of the Act.

4. In the second place, however great the merits shown by the Legislatures as a whole and by individual members (and I am far from wishing to underrate them), the fact remains that the merits and capabilities of the electorate have not yet been tested by time and experience. The foundation of all constitutional development must be the presence of a vigorous and instructed body of public opinion operating not only in the Legislatures, but—what is even more important—in the constituencies. Until this foundation has been firmly laid, progress would not be assisted, and might indeed be retarded, if fresh responsibilities were added to those with which the electors have so recently been entrusted.

5. Thirdly, the new constitutional machinery has to be tested in its working as a whole. Changes have been made as the result of the Act of 1919 in the composition, powers, and responsibilities not only of the Legislatures, but also of the executive Governments. No estimate of the success of the new system could pretend to completeness which was not based upon proof of the capacity of these bodies, as now constituted, to administer the duties entrusted to them—duties which, from the point of view of the public welfare, are at least as important as those of the Legislatures; and trustworthy proof of such capacity can only be established by experience of the extent to which the increased association of Indians in the sphere of executive responsibility has justified itself in practice.

6. I would add that, even were these reasons for patience less cogent, an opinion based upon six months' experience of its working that a new constitution, in the elaboration of which over two years were occupied, stands in need of revision, is hardly likely to commend itself to Parliament, since it is clear that sufficient time has not elapsed to enable the new machinery to be adequately tested. It would, in fact, be without precedent if a constitution, deliberately framed to provide a basis for development in whatever directions experience may indicate, were to be brought under review within a few months of its inauguration; and indeed any such process could hardly fail to deprive the constitution of a large element of its value, by determining prematurely the precise directions in which further progress is to be made.

7. I shall be glad if Your Excellency's Government will cause copies of this Despatch to be laid on the Table of both Chambers of the Indian Legislature.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble Servant,

(Signed) PEEL.

THE WORKMEN'S COMPENSATION BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I present the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

NICKEL FOUR-ANNA AND EIGHT-ANNA PIECES.

Mr. Khagendra Nath Mitra (Bengal: Nominated Official): Sir, I wish to ask a question of which I had given private notice to the Honourable Member concerned.

Is the Government aware that there has been for the past few days a rumour in the city of Delhi that the nickel four-anna pieces are going to be withdrawn from circulation? If so, will the Government be pleased to say if it is a fact? Is the Government aware that much inconvenience has been caused to the business men as well as to the private citizens by the refusal on the part of people in many cases to accept these coins?

The Honourable Sir Basil Blackett (Finance Member): I am much obliged to the Honourable Member for giving me an opportunity of stifling this idle rumour. The Government of India understand there has been such a rumour in the local bazar for a few days; it is entirely unfounded; the local authorities took whatever action was possible and the rumour has since been dying out. I am informed that the nickel four-anna pieces are now being freely accepted. It is not true that these coins are about to be withdrawn from circulation. Similar rumours have been current for a few days in various parts of the country at different times and they have been repeatedly contradicted. I may add that the local Commissioner is going to be asked to put up a notice in prominent places in the city of Delhi with a view to stopping this inconvenience.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): There is also a similar rumour in regard to the eight-anna nickel pieces?

The Honourable Sir Basil Blackett: The same remarks apply.

LASCARS IN THE GREAT WAR.

*Letter from the Assistant Secretary to the Government of India, Department of Commerce, to Mr. K. Ahmed, No. 323, dated the 11th January 1923.

As you will remember you asked in the Legislative Assembly on the 7th September last for information on the following points:

- (i) The number of Indian Seamen and Lascars working as Serangs, deck crews, firemen and butlers in steamship companies and in merchant vessels, etc., in Indian Waters and abroad;
- (ii) The number of Indian Seamen and Lascars killed by enemy action during the Great War; and
- (iii) The number of Indian Seamen and Lascars captured and imprisoned in foreign countries.

* Vide pp. 1349 and 1352 ante.

[Mr. C. A. Innes.]

I am afraid that we are not in a position to give you exact figures in all cases; for instance the Government of Bombay, who were consulted, have informed us that information as to the number of Indian Seamen and Lascars shipped from Karachi and other Ports (excepting Bombay) in that Presidency is not available. However I give below what information we have been able to collect and hope that it will serve your purpose:

(i) Numbers shipped from					
Bombay	...	...	...	...	29,000
Calcutta	...	...	...	...	39,207

(These figures are for 1921-22.)

(ii) 3,427 (this includes 33 who died from exposure while on war service, but excludes 47 who died while interned in Germany).

(iii) 1,200 (I have assumed that you refer to Enemy countries and not all foreign countries).

RESOLUTION RE EXAMINATION FOR THE I. C. S.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, the Resolution that stands against my name and which I propose to move reads as follows:

"This Assembly recommends to the Governor General in Council that the present system of conducting Simultaneous Examinations for the recruitment to the Indian Civil Service be changed and that a different method of conducting the Simultaneous Examinations so as to give a fair chance to candidates belonging to different communities and different provinces be devised, if necessary, by having a limited form of competition."

Sir, in moving this Resolution, I wish to attack it or deal with it on very broad lines. It is not my desire to interfere at all with the efficiency or the traditions that are attached to the honourable service well known to us all as the Indian Civil Service; but I move this Resolution standing as I do as a representative of one of the minority communities in India and as such I believe I have every right to place before this Honourable House the views of one of the minority communities, leaving representatives of other minority communities to voice their views. In attacking this subject I do so with great diffidence because I represent a community unfortunately, which, for educational purposes, runs a very bad second so far as other minority communities in India are concerned. Why that is so I am not prepared to argue out just now, but let that pass. India as we know—I would call it the continent of India—is a mass of heterogeneous classes and races, talking different languages, with different ideas, and different creeds. There is no doubt that the cementing influence here is the British element. Take that away and I think very few will deny or disagree with me that we are likely to crumble like a pack of cards. The idea is no doubt to Indianise the Services, and being an Indian and a citizen of this country I join with them that the idea is to Indianise the Services. Minorities of course claim a place in that. The Indianisation of the Services really means the replacement of the Englishmen by the various communities of India. There is no doubt that the Indian Civil Service which is manned largely by Europeans will in time be replaced by Indians. The cry now is that this Service together with other superior Services is manned by Englishmen to a disproportionate extent compared with the rest of India. How true that is, how necessary it is, it is not my purpose to argue now. But the fact remains that Indians look forward to Indianising the Services entirely in time. Their ideal is to replace Englishmen with recruitment from among their own

men, that is, Indians. But when dealing with the recruitment of the Services, the Public Services Commission which sat in 1913, and submitted its Report, apprehended such an eventuality, namely the replacement of Europeans by Indians. Now it is very extraordinary how prophetic or ultra-prophetic has been the safeguard, because if I understand rightly, since the simultaneous examinations have been in practice one province in India has been able to monopolise,—be it said to their credit no doubt,—at least 50 per cent. of the appointments in the I. C. S., and taking that as your criterion, and accepting that as a criterion for the future, it seems as if it is quite legitimate to apprehend that within a few years' time Englishmen will be replaced mainly by one community, or by the community mainly occupying one province. I understand I am right in saying that the struggle just now is between East and South versus North-West of India. I do not say that in disparagement of the communities that have succeeded, but there is no doubt that it is going to be the ultimate position unless some safeguards are put into operation in time. I ask this Honourable House to see or to visualise the Punjab being administered by no one else but by people from the south and *vice versa*. I take the same position from East to West, Bengal and Bombay. As I say, India is a continent with a number of communities, each wanting to attain the maximum of speed in regard to communal benefits from the Reform Scheme. The major communities in India are protected and are able to look after themselves, while the minor communities, I regret to say, are being neglected, and it is to protect these minor communities that I, as a representative of the Domiciled Community in India, move this Resolution. In doing so, I think I am in good company when I quote, with your permission, Sir, an extract from the Report of the Public Services Commission from page 172.

"Safeguards and Reservations.—These safeguards and reservations are two in number. First two candidates should be nominated each year by the Secretary of State, on the advice of the Government of India, from amongst graduates of the various Universities, and of an age similar to that of the competitors at the examination. Such nominees who should be termed 'King-Emperor's cadets', should rank as probationers below the other successful candidates of their year, pending the result of the final examination. Otherwise, they should be on an equal footing in all respects. This would make it possible to give representation to young men of good family, who had shown literary attainments of a higher order, but who were not intellectually quite in the front rank. Members of the domiciled community and Burmans might also benefit under this provision."

The Report further goes on to say:

"The Committee itself should be made up so far as may be of persons in touch with educational interests, and should consist of the vice-chancellor of the university concerned, the director of public instruction of the province chiefly interested, and three other members to be nominated by the syndicate of the university whose area is in question. Should it be found that the candidates successful at the examination are coming too markedly from one particular area, we think that the best remedy would be to hold the examination by groups of areas in rotation. But we deprecate any such arrangement unless experience shows that it is absolutely necessary. Subject to these qualifications the examination should be conducted by the civil service commissioners, who, after consultation with the educational authorities in India, should devise a scheme having the same relation to the Indian educational courses as the examination in England will, under our scheme, bear to the education given in the British secondary schools. To give effect to these recommendations, we recognise that it will be necessary to amend the Statute of 1858, and we advise that legislation be undertaken accordingly."

Well, Sir, these were the safeguards recommended by the Public Services Commission and to avoid a swamping of these coveted posts by any one particular community, I have brought forward this Resolution

[Lieut.-Colonel H. A. J. Gidney.]

feeling as I do that those who represent the minor communities will support it. It is up to the Government to suggest which will be the most feasible and the most easy method by which the minor communities could be safeguarded and represented. Personally, I think the easiest solution will be to leave the examinations as they are, and to make certain safeguards and reservations by nominating from among those candidates who have passed the examination, representatives from the various communities. This would give all communities a fair chance; there is no doubt that it will create a feeling of harmony, and this House will be putting into execution one of its primary and most important duties, namely the protection of the minor communities in India. If this House refuses to accept this Resolution, I make bold to say that it will be failing in its duty to discharge one of its most important duties. (Voices: "Hear, hear.") I see some Members from Bombay say 'Hear, hear'. I trust it is meant.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Ironically.

Lieut.-Colonel H. A. J. Gidney: Sir, I wish to put forward this Resolution and I will ask the House to give it its support and so protect the minor communities in the Motherland of India.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I beg to move the amendment which stands in my name to the Resolution which has just been moved, and after the amendment has been made the Resolution will read thus:

"This Assembly recommends to the Governor General in Council that the present system of conducting simultaneous examinations for the recruitment to the Indian Civil Service be modified so as to provide for a fair representation of suitable candidates of different castes and communities residing in British India."

Sir, I am one of those who stand and very strongly too, for the Indianisation of the services. Government might say that 'look here, you Indians want Indianisation of the services and then want communal representation.' Sir, I am the last person to have claimed communal representation, but since communal representation has been granted by Government partially, I submit that it is very unfair to other communities if it is not extended to them. One happy expression has been used that the Hindus belong not to a minority community but to a majority community. I submit with the greatest respect that it is quite wrong. The meaning of minority and majority can be ascertained from their methods of living, their methods of inter-dining and inter-marriages. So far as these are concerned, I would say that Hindus are divided into a very large number of castes and creeds, and they can neither inter-dine nor inter-marry.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): They will.

Lala Girdharilal Agarwala: Dr. Gour says they will, but when his Civil Marriage Bill is passed, and not before that. (A Voice: "Not even then.") Now take for example the broad divisions among Hindus, Brahmins, Kshatriyas, Vaisyas and Sudras. Then, again, all these are divided into a very large number of sub-castes who would neither intermarry nor inter-dine. I might say, for example, my own caste—the Vaisya community—is divided into several sub-castes—Agarwalas, Khandelwals, Oswals, Rajshahis and so forth. If the principle of communal representation is worked out in such a way that so many posts are given to, say Muhammadans—I hope I shall be excused for using that expression—and so many for Hindus, then they

might say that Hindus mean 70 per cent. and Muhammadans mean 30 per cent. I would say that that calculation is quite wrong and quite misleading. The word "Hindus" may be applied to a large number of persons who are really Hindus, but when we come to the deeper question of inter-marriage and inter-dining, we find they are a combination of several castes and communities, and that is the reason why I have put down the word "different castes and communities residing in British India," so that, if the principle of communal representation is once accepted, I would say that it should be worked out fairly and squarely and, on the other hand, I am quite prepared to drop this question of communal representation altogether if that principle is eliminated from India. I am sure the time will come when the principle will be abandoned but, as matters now stand, I think that one community should not be allowed to have an undue share of Government posts or the like at the expense of other communities. Surely, I don't say that the minorities should not be protected. At the same time, the question is "what do you mean by minorities?"

With these few remarks I move my amendment.

Dr. H. S. Gour: Sir, the Honourable Mover of this Resolution has appealed to the representatives of the minor communities of India to support him. I am a representative of one of those communities whose support the Honourable Mover of this Resolution has asked for. But I am sorry to say that, far from supporting his Resolution, I strongly oppose it. Does the Honourable Mover of the Resolution realise the full effect of the Resolution if accepted by the House? Does he know that his community in this country represents only 100,000 souls? What is the proportion of that community to the rest of the population of India? Well, Sir, if you examine the question, you will find that my Honourable friend, the Mover's community will stand in the proportion of 1 to 3,150. The result would be that my friend's community will get the third of a post in the Civil Service out of a cadre of 1,250. Is that the proportion that my friend wants? Is that the proportion which my friend desires his community should have in the public services of this country? He has spoken at very great length upon the value and utility of communal representation. My friend, Mr. Girdhari Lal Agarwala, with a sub-conscious humour, gets up and says the communities in India are so numerous that it will require not one but many Royal Commissions to categorise them, and then will begin a struggle between one community and another, between sub-communities among themselves and I think the time of the public services will be devoted mainly to deciding the disputes between these contending communities. Is this what my friend, Mr. Agarwala, wants the public services in this country to do? He has, Sir, referred to the present policy of the Government of India. I am glad he has done so. No one on this side of the House deprecates that policy more than I do. The High Courts of India—the High Court which is the palladium of public justice—is recruited as if it were a representative institution, and what is the result? Let any practitioner in the High Court tell you what the result is. The public services throughout India have been more or less recruited upon a communal basis. I hope, Sir, that, if this debate leads to any good result, it may lead to this—that this policy will be reversed in the future. We do not want people because they belong to a particular community—we want a public servant because he is efficient and capable for the discharge of the duties entrusted to him, and that should be, and I hope will be, the sole criterion for recruitment to the public services in this country.

[Dr. H. S. Gour.]

We have been told by the last speaker that communal representation is recognised by the Government in the constitution of this House. There again, I deprecate communal representation. I am sorry, Sir, that communal representation was ever introduced in the first constitution given to this country and the sooner it is eliminated the better for the ultimate good of this great land. I think, Sir, I have shown that communal representation will not only serve no good purpose but would be positively mischievous and I therefore strongly oppose this Resolution.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I have great pleasure in supporting the Resolution moved by my Honourable friend, Colonel Gidney. I was surprised to hear the eloquent speech of my Honourable friend, Dr. Gour. It is surprising that on the one hand we criticise the prevailing system and with one voice ask that communal representation should be given to us and claim that the present system is leaving us discontented and dissatisfied, and on the other hand we come forward and oppose this Resolution for extending the principle of communal representation still further. When we have communal representation in this Honourable Assembly, why should we object to its application to the Services. If the present system is accepted, let us compete with the British Civilian as they are. But if we are not satisfied with it, then I think it is the right of everybody to come forward and claim representation. I think it shows great courage on the part of my Honourable friend, Colonel Gidney, that he should come forward on behalf of a very small community and show that it would be in the interests of India at large that the principle of communal representation should be accepted. Now, Sir, I will draw your kind attention to the fact, which everybody knows, that the present system of recruitment to the Civil Service stands condemned. What are the general defects which are to be found in the Civilian recruited according to the present system? I do not want to be personal, but it goes without saying that the present system is bad on the following grounds. The first thing is that when the young Civilian comes to this country, he is rather closed to the people, because he is not in touch with them. Those days are gone when the Civilians were advanced and this country was backward. Now the country has got a sort of general awakening and everybody understands his interests. When we come to judge our own interests I think it is only fair that communal representation should be respected in spirit and word and that it should be safeguarded. The case of England is quite different. There you have one nation, one religion and one language. But here, in India, you have got so many different States; I might call them so many small countries. Every province has got its own sentiments and its own interests. That being the case, I think it will be in the interests of the country and in the interests of the British Empire that competition should be held separate in each province. My Honourable friend, Colonel Gidney, did not enlarge on the defects of the present system of competition. At present, the young Civilians who come from England and who compete have different standards of education. For instance, some may take up Mathematics and some may take up Science. But they are not experienced in the difficult problems of humanity. It takes a long time before they study the book of humanity. They are so biased when they come here that they administer the laws in this country but do not temper them to the needs of the governed. That is the difficulty which is felt by everybody and I think Government must be realising it. If the

leaders on both sides really want to have Swaraj I do not want that it should be either the Punjab Raj, or Bengal Raj or Madras Raj; it should be an all-India Raj, and if you want an all-India Raj, it cannot be had unless you respect the interests of the different communities. My Honourable friend, Dr. Gour, insisted that "the survival of the fittest" must be held to be the guiding principle. I think that is wrong. When we claim the same things from the English people, we are perfectly justified on the same grounds in claiming the same privileges from each other. With these remarks, Sir, I have much pleasure in supporting Colonel Gidney's Resolution in spirit and in word.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I rise to oppose the Resolution moved by my friend, Colonel Gidney. I assure the House that when I oppose this Resolution, I should not be understood to be in favour of monopoly, if there is a monopoly, of certain castes. Monopoly of any one community or any race or any caste is to be deprecated and must be put down. But, Sir, in the first place, nobody has yet shown that any one community in India or any one caste in India has got a monopoly of the public offices in this country. (An Honourable Member: "They have.") It must be proved first before we are asked to do something to do away with that monopoly. Then, Sir, it has been said by Colonel Gidney that the Resolution which he has moved is in the interests of the minority. I should like to know from Colonel Gidney and the people of that way of thinking what is the connection between a community being a minority in the country and the method of selecting candidates for public offices. Are the candidates selected by votes? Sir, if the candidates were selected by votes of the members in the country, certainly the minorities do require protection. But the candidates are selected by merit, which is decided by examination. Even if 10 candidates from the community to which my Honourable friend has the honour to belong compete, at least a few of them will pass if they have got the merit. Their passing or failure does not depend upon his community being a minority. I therefore feel that the point which my Honourable friend, Colonel Gidney, has made has no relevancy to the question which he has raised. My friend, I think, remarked that his community has the misfortune of being somewhat backward in education. I do not know whether I heard him correctly. (Lieut.-Colonel H. A. J. Gidney: "Yes.") He says "Yes." Sir, it is a misfortune that any community in this country should be backward in education, and all those communities which are backward in education should have not only the sympathy but the active support of all the Members of this Assembly. But, Sir, is the measure which my Honourable friend proposes useful in removing that defect from the community? If my Honourable friend had felt the want of education in his community or in other communities, he should have proposed another Resolution asking the Government to give special facilities for education for those communities which are wanting in education, and I am sure the whole House would have sympathised with him. But unfortunately he does not take that course—I do not know why. I have got my own surmise, but I do not wish to speak out that here. Then, Sir, before Colonel Gidney asks this House to decide this question in his favour it would have been better if he had told the House what the object is with which these officers are appointed by the Government. What is the duty which these officers have to perform? The officers appointed by Government are not appointed to represent certain communities in their offices. These officers are appointed to render certain services for the country and every officer

[Mr. N. M. Joshi.]

is expected to forget his caste, is expected to forget his religion, is expected to forget his race while doing his duty. Therefore, the caste, the race and the religion of an officer has nothing to do with the duties with which he is entrusted. On the contrary, Sir, if I am asked what sort of officer Government should appoint, I say the highest qualification for an officer to be appointed is that he has the capacity to forget his religion, he has the capacity to forget his race, he has the capacity to forget his caste and such other considerations. Somebody asks me whether they do actually. Sir, it is a great pity if they do not. My point is this. The man to be appointed must have qualifications for the work, and one of the qualifications is that the man must not have a strong bias for his caste and must be able to forget all these considerations while doing his duty. If you once bring in this consideration in making appointments, then I am sure the conflict of caste, religion and race will never pass away from this country. Unfortunately, if we accept the principle which Colonel Gidney has enunciated, we shall be perpetuating these distinctions instead of trying to remove them. I feel therefore that this House will be well advised in not accepting this motion. Sir, if Colonel Gidney had thought sufficiently over this question, he would have found that the whole proposal is impossible to work out. How are the numerous and innumerable communities in India to be represented in the Government service? Moreover has he mentioned all the circumstances by which people are divided in this country? He only mentioned a few. Did he mention that the whole world, not only India, is divided into poor, middle class and rich people? (Mr. N. M. Samarth: "Depressed class.") If the officers of Government are swayed by any consideration more than any other, I feel they are swayed by the considerations of the economic class to which they belong. A man belonging to the higher class finds it difficult to understand the difficulties of a man belonging to the working class whatever be the caste of the working class.

Suppose now you have got a gentleman belonging to the community to which my Honourable friend, Colonel Gidney, belongs and he is a great employer; there is another gentleman belonging to the community of my Honourable friend who is one of the working classes. If the former becomes a Government officer, will he sympathise with the latter if he comes into conflict with his capitalistic master simply because the servant belongs to his community? Therefore, if Colonel Gidney will go deep into the matter he will find that the system which he proposes will fail if that system is worked out with thoroughness. In order to show the absurdity of his Resolution I think the Government should appoint a Committee to make thorough-going proposals to give effect to the principle which he has enunciated. If the minority communities, if the backward communities were to take their proper place in the public services of this country, the best remedy for them is to ask the Government to give them special facilities for education and for training. That is the only way in which their present grievances will be removed, and I am quite sure that the whole House will support them in their demand if they make a demand for special facilities. I hope therefore that this House will not accept the Resolution moved by my Honourable friend, Colonel Gidney.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): If I had been a member of the Anglo-Indian community I would have at once proposed a vote of censure on the President of

that body. The President in his zeal and in his anxiety for his community, perhaps encouraged by those who do not like to come out into the open, has initiated a discussion which is unfortunate, which is extremely to be regretted. Colonel Gidney has given us a peep into his own mentality. He has told us that the various communities are using the Reform Scheme for the advancement of their communal interests. That may be Colonel Gidney's point of view, but the point of view of the rest of us is that we are trying to use the Reform Scheme as far as possible for the advancement of the interests of the country as a whole. But that is not all. Colonel Gidney, finding the difficulty of his position, has clearly said, "Oh! If you cannot devise means by which all these various minor and backward communities cannot be fully represented, resort to nomination." He has really "let the cat out of the bag." There are some people who are in constant horror of competition. They prefer the back door to the open door. I say, Sir, once again with the kindest of feelings for my Honourable and gallant friend that when he goes home this evening and in his mind tries to reflect on his heroic performance to-day he will feel that he has really done a positive disservice to the community to which he belongs. Let me pause for a second and let me tell Colonel Gidney that this is a game at which two can play. This is not a game which Colonel Gidney can play alone. Accept the principle of representation for the moment. How much representation are you going to give,—I will take the Anglo-Indian community to it? In proportion to what? To numbers, to education, to the taxes that they pay, to the stake that they have in the country? I should be sorry in spite of the provocation offered by Colonel Gidney to the whole House, I should be sorry to say a word which should be at all unpleasant or unkind either to his community or to any other community. But I shall request him and others of his way of thinking to calmly consider that if they once bring about a discussion of the claims of the various communities, they will be driven to a position from which they will willingly like to extricate themselves. There may be some justification—for which a great deal of responsibility must rest on Government—I say there may be some justification for this principle being adopted as regards certain minor appointments, but when you come to the Civil Service are we going to accept this principle? Do we want a man in place of Sir Henry Moncrieff Smith because he is an Anglo-Indian, or because he is, according to my friend, Mr. Agarwala, a Vaisya, or according to me, a Kayastha, or according to my friend, Mr. Chatterjee, a Brahmo. (Lala Girdharilal Agarwala: "I never meant that.") You withdraw your amendment then. In the deep there is a lower deep. My friend Mr. Agarwala's amendment is infinitely worse than the Resolution of Colonel Gidney. If you go into the question of caste, I do not know where we are going to end. Take the Kayastha. There are 11 sub-sections, and then there is my friend, Mr. Samarth. How are you going to decide the claim of each? Mr. Agarwala I never knew was developing into a social reformer. What on earth has interdining and intermarriage got to do with this problem? Simply because you do not dine with the member of another caste, does it follow that you will not be able to discharge your duties thoroughly and honestly? But, Sir, I shall invite the attention of the House to the words of the Resolution itself:

"A different method of conducting the simultaneous examinations so as to give a fair chance to candidates . . ."

That implies that the present method does not give a fair chance to the various communities. Has Colonel Gidney proved it? Here is this

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[Munshi Iswar Saran.] competitive examination. Anybody who has got the brains, anybody who has got the capacity, anybody who is willing to undergo that test, is welcome. How do you say, how do you make out that the present system of conducting simultaneous examinations does not give a fair chance to the members of all the communities? The only logical conclusion is, that having regard to the fact that the members of certain communities wish to depend on favours rather than on merit they would like to make short work of all competitive examinations and would like to get into the Service through the back door. Then it does not stop there. A fair chance is to be given to different communities and to different provinces. Take the Hindu community to which I belong. Suppose Mr. Samarth passes the Civil Service examination.

Mr. N. M. Samarth: I am too old now.

Munshi Iswar Saran: Suppose my friend, Mr. Chaudhuri, passes the examination, then I, as a United Provinces man, with less brains than both of them, will say "My community has not been represented and my province has not been represented."

Lieut.-Colonel H. A. J. Gidney: What about appointments to the High Court?

Munshi Iswar Saran: In the High Court, if appointments have been made on communal considerations, the blame is not ours. The blame must attach to those who have made those appointments. Then we are asked to accept a limited form of competition. There are varieties of competition it appears. One is limited and the other is unlimited. The limited form of competition, it is rather difficult to understand. What is this limited competition? Perhaps, it means that you take a few by competition and the rest have to be taken by nomination.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Shoved in.

Munshi Iswar Saran: My friend, Mr. Jamnadas, who is an authority on excellent phraseology, says "Shove them in somehow." The whole fact of the matter is that we cannot accept it. As my friend Mr. Joshi has said, it is the duty and the bounden duty of every Member of this House and of every Indian to see that the communities which are at a disadvantage on account of lack of education and so on should receive every encouragement, but it is the duty of those communities to see that by introducing these novel, may I say mischievous and wicked changes into the system of recruitment for the Civil Service they should do nothing to impair the efficiency of this Service. What will be the result? Not only the Anglo-Indian community or the Agarwala community but the whole of India will suffer. These appointments are made not with a view to give jobs to this or that community. These appointments are made, these examinations are held so that you may get the very best men for the discharge of the work that will be entrusted to them. That is and, I submit, that ought to be the only and the sole criterion for recruitment to this service. I do hope that after a little reflection Colonel Gidney will show his good sense and will earn our thanks if he will withdraw his Resolution. (Voices: "No.") Then, Sir, if he does not withdraw this Resolution, it will meet the fate it so richly deserves.

Mr. Deputy President: The amendment moved is:

"This Assembly recommends to the Governor General in Council that the present system of conducting simultaneous examinations for the recruitment to the Indian Civil Service be modified so as to provide for a fair representation of suitable candidates of different castes and communities residing in British India."

The question is that that amendment be made.

The motion was negatived.

Mr. Jamnadas Dwarkadas: I need hardly say that I rise to oppose the Resolution moved by my Honourable friend, Colonel Gidney. I must however, at the outset, remove the misapprehension that it seems to me prevails in the minds of some of the Members with regard to the meaning of the word 'Indianisation.' As I had the honour of moving this Assembly in the matter of Indianisation I may at once point out that by Indianisation I do not mean that Englishmen who are the present incumbents of the Services should be removed bodily and be replaced by Indians. No. Not only that. I do not even mean that in future, although the policy of recruitment in India may be accepted, as it ought to be accepted, the services should go exclusively to Indians and not at all to Europeans. All that we mean by the term Indianisation is that the bar which at present obtains against our countrymen because most of the services go exclusively to Europeans should be removed and that the recruitment in future should take place in India and in India alone. Now that does not exclude the possibility of Europeans competing for these services. If there are men from England coming out in sufficient numbers to appear at these examinations, there should be nothing to prevent them from doing so. If in the examination it is found that the European proves to be a better candidate for the services in open competition, then by all means the post should go to him as well as to the Indians of course on new conditions with regard to salary, etc. To bring down the word Indianisation to a very narrow interpretation is in itself a mistake and if my friend Colonel Gidney's Resolution is based on that mistake, having realised this mistake, I hope he will see his way to withdraw his Resolution. Now, Sir, what is it that he asks to do. I personally look forward to a time when examinations will be conducted in India alone open of course to all candidates that come either from India or from Europe. If simultaneous examinations go on, then some of the posts, he says, must go exclusively to representatives of various communities which are said to be, to use Colonel Gidney's phrase, the minority communities. Now I ask one question. I put one question to those who think with Colonel Gidney. Have we ever approved of the distinction that is made on the ground of race? I do not think any representative of any community, any one who takes the name of Indian has ever approved of this distinction being made on the ground of race. If that is so and if we argue that the racial distinction which is wrong should go and go immediately, is it right that in our own country we should create communal distinctions and then be justified in claiming that racial distinctions should go. Is that the way to contribute to the elimination of racial distinctions that have been perpetuated in this country by those who are in authority? We shall be strengthening their hands, we shall be giving them a handle, we shall be giving them an argument, for the perpetuation of racial distinction which each of us, I think, in the country has always abhorred. If by claiming communal representation we are going to create feuds and quarrels in this country, so that, they would lead to those in authority continuing the *status quo* and continuing the racial distinction

[Mr. S. C. Shahani.]

have yet to understand that a man who has not been a good husband or a good son can prove to be a good citizen. I have yet to know it.

Do you think that a man who is not a good member of his family will ever really be a good citizen of his country? It is unthinkable. The mistaken concept of goodness without morality has to be corrected, and corrected on ethico-political grounds. It is easy to smile when a suggestion of this kind is made to you: but great or high-placed as you may be, it will, I assure you, do you a lot of good if you will bend your mind to the suggestion, and consider it in the light of the real import of your concept. Your Indian Civil Servants must be altruistic, and must respect the pieties and relationships of life. If they do not respect the obligations which are involved in the position that is assigned to them, I feel sure that they will not be able to administer rightly the affairs of the country. The more we are truly mindful of our castes and races and religions, the more fitted we are to occupy positions of trust and responsibility. Lieutenant-Colonel Gidney's Resolution is calculated to destroy the efficiency of the Indian Civil Service; it is calculated to destroy considerations of a higher nature which should guide us in our selections for the highest of our places of trust and responsibility. I do hope that his Resolution will not be accepted, and that it will receive the treatment which it deserves.

Mr. Deputy President. The amendment moved is:

"That this Assembly recommends to the Governor General in Council that, even if necessary, the present system of conducting simultaneous examinations for the recruitment to the Indian Civil Service be so changed as to give a fair chance to duly qualified candidates belonging to different communities and different provinces."

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): Sir, the Honourable Mr. Jamnadas Dwarkadas has made a speech in this House as if a Plato was teaching his disciples. He is a wise man; but sometimes in his wisdom he overlooks facts. Another Member, Dr. Gour, in his usual way has been led by his irrelevancy into talking about matters which were not before the House. In his zeal in opposing the Resolution he has attacked the present system of representation in this reformed Council. I do not think, Sir, that Dr. Gour's remarks can be allowed to pass unchallenged in this House. I would like to know—and I should like to be convinced on this matter—how many of my own community, or how many of the Sikh community, would have been sitting in this House to-day if there had not been communal representation? I would like to know how many non-official Europeans would have been Members of this House if there had not been communal representation. Different communities have different interests in this country. The population of this country is not made up of one particular community and a single interest. It is made up of different interests, different peoples and different ideals and different languages. Can my friend, or anyone in this House, convince the House that by eliminating communal representation, all the different classes of the people can be adequately represented in this House? It would be a sheer impossibility. This fact has been established; it is realized by all sane people whose opinion is worth having that this fact cannot be ignored; the different communities cannot be represented in the reformed Legislatures without communal representation. But whatever merit Dr. Gour's case might have, he has destroyed it by his exaggeration. My other wise friend, Mr. Jamnadas Dwarkadas, has also

proceeded on the same lines; but surely he must know the fate which exaggeration always meets, even when the suggestion contained therein is more or less wise. I will not dwell on that point at length, but will confine myself to the question which is before the House, and that is about the representation in the Civil Services of India. Do my friends here who advocate the cause of examination speak from experience, and can they say that merely by cramming and passing an examination a man becomes fit to govern the country? Can a man, simply by reading a few books and passing an examination, become a good executive officer? Certainly not. That requires something else. I have seen many men, very well educated people, who, placed in the position of responsibility of an executive officer, have proved greater failures than others who did not know more than the rudiments of reading and writing. Many qualities are required of a man before he can govern a country and occupy a position of responsibility with efficiency. A person who may have passed examinations in law need not necessarily make a good Judge or Chief Justice; in such a position he may be an absolute failure although he may know the law well enough; it is in the application of the law that he fails; he fails because he does not possess the essential qualities which go to the making of a good Judge. The same thing applies with greater force when it comes to the executive line. A man may be a very good mathematician; but would that ensure his success in the position of Home Member? I think not. But what Colonel Gidney has said is a totally different thing. I hope that he did not mean that inefficient people from one community should be appointed in preference to efficient persons from other communities. What is the idea behind this question of the Indianisation of the Services? What is the basis of this cry? The fact is—and it cannot be disguised—that the people believe that the English people have not been properly safeguarding the interests of indigenous communities, and they desire that the Indians should come in in larger numbers and be given a fair chance to develop their country properly. If that is the basis for their asking for Indianisation of the Services then I do not see why different communities should not have safeguards for their communities as well. If there is any examination, I would much prefer that it might be held in England, because England is a totally different country from India. In England where everybody is supposed to be equal and free the only test is that he should pass certain examinations, that he has received a proper education and that he is well trained. But in India the fittest man is not the person who has passed a certain examination. A man with lesser education but a stronger character would be a much better man than he with a higher education but with no character. Mr. Joshi may talk of his ideal world and ideal India; but I suppose his dream will be like Plato's dream. The world has never been perfect and India can never be perfect, Sir. He may say that India expects that public servants should forget everything, their caste, their creed, etc., but of course expectation is a different thing from what actually happens. Is it actually happening to-day? Does he mean to say that India, a conservative country, will forget like that in the near future? Will his dream be realised within a decade or so? I do not think so. It will take years and years. Of course when India is so perfect that every individual Indian forgets that he belongs to a particular caste or creed there will be, I suppose, not a single soul and there will be no Colonel Gidney at that time to ask for communal representation. But we are talking of the present; we are talking of present conditions; and when we talk of present conditions we should see how India is at present, and according to the present India we cannot see any other way but to ask for

[Bhai Man Singh.]

people. Naturally, Sir, if another class in India gets the same preponderance in the same Services, it would surely be under the same disadvantage. If a gentleman from a distant corner of India goes to govern another distant part of the country, he will be in exactly the same position as an Englishman. I don't mean to suggest this about any particular gentleman, but if there are hordes of gentlemen like that, they will be exactly in the same position as Englishmen, because they will not know the language and customs and manners of the people of those parts. The other thing is the want of sympathy which we so often feel. I submit, Sir, it will be well nigh the same thing if one class predominates in a certain Service. It does not lie in our mouths to say 'Indianise the services, let anybody come at any place, we should not mind it.' I do say that I am very much in favour of the Indianisation of the Services. I am very much in favour of merit being given its due weight. But let me ask, is efficiency the monopoly of any certain class? There are mainly three objections which up till now I have been able to gather against the Resolution of my friend, Colonel Gidney. One is that efficiency should prevail; the other is that it will break down our nationality and that we should consider ourselves as one nation; and lastly the third thing is the impracticability, and that is the principal thing. There are so many castes and creeds. These are the main objections which I have so far been able to gather. There might be some others which might have escaped my notice.

Now let us take the first objection, that is, efficiency. Efficiency is not the monopoly of any one particular class or community, and efficiency does not necessarily consist in literary education alone. I am surprised to hear long sermons on efficiency now forced upon us about literary examinations. With all humility and with all deference, I bring forward this argument—I do not mean to attack the motives of any friends of mine here, far be it from me—but I say that it is a certain mentality that certain people think in a certain way, and this might be due to that. When I was arguing this very point two years ago while we were discussing the Esher Committee's Report, I was pressing that the communities who had proved their efficiency till now in the military service should get commissions. I know that a good many of my nationalist friends—by "nationalist" I mean those who are now saying that this proposition would now demolish our nationality—I mean those friends who hold such views, opposed me then. Sir, in the military line is it the efficiency of letters only that should prevail? I remember how very strongly and severely I was opposed when I was fighting for the rights of those communities who have proved their efficiency in the military line. Efficiency, I submit, does not consist in book knowledge and in writing articles and papers. How are you to know that a gentleman who is able to answer so many questions in mathematics would prove a good Commander of the Army? How do you know that a gentleman who knows a good deal of the History of India or who can answer well a good paper on Logic would prove a very good administrator? I submit there are instances in actual practice where students who were always at the top in Arts and Law Colleges have proved themselves utter failures as practical lawyers. We cannot always say that the present competitive examination is the only test to judge merits and that it is the only successful test. I do say that it is one of the tests. And what is it that we want according to my friend Mr. Shahiani? We want duly qualified candidates. Well, we say let there be a competition

between us first, and let us show that we too have got our capable men, and let them be tried. If you find that some of them cannot write answer papers like others, let them be tried whether they can administer better justice or prove better administrators. I don't mean to say that there should be no efficiency, but let the minorities too have a chance. I am sorry my friend Mr. Jamnadas is not here. He was very virulent over my friend Mr. Bagde, and said 'For God's sake do not bring in irrelevant matters,' but I say let the trade of Europe openly compete with the trade of India. Because the interests of industry in India are at stake and they want protection; let them grow and let them give a fair chance of showing their capacities for development and then you can show that we compete with anybody. So, I say now let the minorities have a chance of competing among themselves. Let them prove their merit and then we shall say after some time that we can compete with anybody when we are fully grown. Minorities—the principle of defending minorities is not a bad one. I think, if you give a chance to the minorities to develop their resources, and to come abreast with you, you will be strengthening the weaker communities and creating a stronger India thereby. Sir, if there is a competition between communities themselves, if we should decide that we should have 5 Sikhs and 2 Muhammadans and 2 Hindus—I beg your pardon, I do not mean that these are the actual figures—but suppose there are so many Bengalis, so many Muhammadans and so many Mahrattas, for God's sake nobody can say that the candidates that we select from the Muhammadans or the Sikhs or the Christians or the Madrasis are bad to the extent of 20 per cent. or would have an efficiency of 10 per cent. in one case and 20 per cent. in another. Well, all we are saying is let every community have a proportion, we are not at all wanting to decrease the efficiency of the Services. We are rather giving minorities a chance of developing themselves further, so that they may give us better men in future. So much for the action proposed. We simply want that the best men from every community be taken and if there is competition between these men all over India, nobody can say that we are favouring any particular community. It has been deprecated strongly by Dr. Gour that the principle of communal representation has been adopted in the High Courts. May I ask, Sir, if the Hindu and Muhammadan Judges have not both proved highly efficient. Who can deny that the Right Honourable Mr. Justice Amir Ali was one of the best Judges as were a good many of our Hindu friends. I think the Punjab is proud of the name of our present Chief Justice, Sir Shadi Lal, and the late lamented Mr. Justice Shah Din.

Sir, the next point is about nationality. This is perhaps a most touchy point, about which it is sometimes said "We shall spoil our national unity." I would simply deplore, Sir, that our nationality should be spoiled. I would rather like that we should not come into existence as a nation if we are not to exist as a strong nation. But how can national sentiment be developed? There is absolutely no use in denying facts and dwelling on ideals. Facts are facts and cannot be changed. Communities do exist. Communal feelings do exist. There is no use saying "My dear Sir, do be quiet. People will call us bad fellows if we fight among ourselves. Sit silent. We will develop." What does it mean? As I said the other day, the cat does not run away if the pigeon shuts its eyes. Your communal differences will not run away by simply saying we should ignore them. Recognise the fact and find out a solution. I submit, Sir, that the present practice does recognise this.

[Bhai Man Singh.]

May I remind the House of a little fact—I think I am right—of course my information is not very definite—but I am told that on the retirement of Dr. Sapru a certain province, perhaps from the South, said that Bombay should now be represented in place of Dr. Sapru. Does it mean merit or efficiency, does it mean nationality? Is not the Government of India, even in the selection of its Executive Councils trying to find out, of course, efficient and very efficient men but trying to represent different communities and different provinces? Why deny facts? Does the feeling actually exist? Then, Sir, it is very easy to say “We deprecate the existence of the principle of communal representation in these Councils.” But do you really think, Sir, that if certain communities had no elected men at all in this House they would be satisfied? Would the heart-burning created in the minds of these minorities be conducive to national unity? It is all very well from the point of view of one people but it is not so pleasant from the point of view of others. National unity? I mean to say the fact exists and that fact has been recognised on all hands. For so many years the Indian National Congress tried to ignore these hard facts of the existence of Hindu and Muhammadan communal feelings. They said “No, we will have a united India.” But they had subsequently to recognise the fact. I go a step further. You will say perhaps the Congress men of that time were weak men.

Mr. Deputy President: I must draw the attention of the Honourable Member to the fact that he has exceeded his time limit.

Bhai Man Singh: Very well, Sir. Then I will bring my speech to a close. Even Mahatma Gandhi and Mr. C. R. Dass had to admit that we should decide about the rights of the different communities. If everybody in a family is getting his own share the family will live in peace. If some individuals of the family do not get their proper share and others pre-dominate over them, there is bound to be a rupture. It is the same with a community. We shall become a nation when we shall learn to respect the rights of others, to give our minorities their dues, to recognise that they exist. Sir, I am sorry that I cannot further discuss the practicability of the question, and with these remarks I support the Resolution.

(An Honourable Member: I move, Sir, that the question be now put.)

Mr. Deputy President: The question is that the question be now put.

The Assembly then divided as follows:

AYES—28.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Ashan Khan, Mr. M.
Asjad-ul-lah, Maulvi Miyan.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Cabell, Mr. W. H. L.
Ghulam Sarwar Khan, Chandhuri
Gidney, Lieut. Col. H. A. J.
Gour, Dr. H. S.
Holme, Mr. H. E.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.

Man Singh, Bhai.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Srinivasa Rao, Mr. P. V.
Subzposh, Mr. S. M. Z. A.
Webb, Sir Montagu.
Yamin Khan, Mr. M.

NOES—27.

Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Dalal, Sardar B. A.
Das, Babu B. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Misra, Mr. B. N.

Mitter, Mr. K. N.
Mukherjee, Mr. J. N.
Nand Lal, Dr.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Mr. S. N.
Sinha, Babu L. P.
Ujagar Singh, Baba Bedi.
Vishindas, Mr. H.
Zahiruddin Ahmed, Mr.

The motion was adopted.

The Honourable Sir Malcolm Hailey (Home Member): In view of the course which this debate has taken, I had at one time some doubt whether I ought or ought not to intervene. Indeed, I hope, Sir, you will not accuse me of flippancy if I say, that I have at times felt a little like the Irishman who seeing an affray going on in the road asked, “Is this a private fight or may I join in?” But I cannot of course neglect my obligations in this respect. My friends here have asked me to define the attitude of Government in the past and present on this question. I have incidentally to clear up certain misapprehensions which have been voiced by Members here. The discussion has been so prolonged that I shall confine myself very strictly to the terms of the Resolution. I shall not be led astray, as some of my friends here have undoubtedly wished, into a discussion regarding isolated appointments such as those of Judges in the High Courts. Believe me there are certain experienced animals before whom it is quite useless to wave a red flag. I am one of them. We are talking purely about the Indian Civil Service. Then again, I shall not be led astray into attempting to justify the retention in our Electrical Rules of the principle of communal representation, since that is alien to the subject. Nor shall I be inveigled into reviving a discussion, in regard to a matter we debated yesterday, and which Mr. Shahani wishes me to resume to-day, whether a gentleman who is unfaithful to his wife can or cannot be a sufficient surety for a bad character. We are talking, as I said, solely of the Indian Civil Service, and Colonel Gidney's Resolution refers specifically to a change in the manner in which we obtain recruits for our Indian Civil Service in India, as distinguished from the Home Examination. The question has a long history. If time served, I could go with the House back to the year 1833, the year in which the famous declaration was made that:

“There should be no governing caste in British India and whatever other tests of qualification may be adopted, distinction of race or religion shall not be of the number.”

But I will not on this occasion take the House through the stages of that history, because, after all, the main point then debated, indeed the main point debated right up to the eighties or nineties of last century, was the question of what was then described as the monopoly of the European, and that, at present, is not the question under discussion. We first of all considered the question of communal representation in our Indian recruitment, if I may use that convenient term, in about the year 1886 when the Aitchison Committee, the first of our great Committees on public Services, made its recommendations. It was in

[Sir Malcolm Hailey.]

favour of open competition among Indian recruits for the provincial Services, holding that there must be one test of eligibility only, the test of intelligence and character, and that other considerations should have no weight in the choice of Government servants. But it recognised that this system was not universally applicable; that there was a strong feeling in India that the claims of different communities and different religions should be balanced; and it accompanied its recommendation by a stipulation that where necessary the local Governments should still choose by nomination in order to attain the object to which I have referred. The Government of India in the main affirmed this view, though it expressed a preference for competition among nominated candidates when pure competition was not adopted. I omit subsequent stages, until I arrive at 1904, when the Government of India issued the well known Resolution of that year on Education. Its attitude was then determined partly by considerations of educational requirements; in dealing with the question of competition it pointed out the disadvantages of that system, showed that it did not in itself afford a test of character, and emphasized that a competitive examination was in itself a disadvantage to the progress of education, since it ceased to be liberal, and confined itself entirely to the attainment of success in examination. It was under the influence of those considerations that they then decided that local Governments need not follow the competitive system in making appointments to their provincial Services. Three local Governments had initiated the system,—Madras, Bengal, and Bombay,—and they at once discarded the competitive system and returned to nomination pure and simple. The Punjab adopted it, though only in respect of a very limited number of appointments.

I pass—again with some omissions—to the Public Services Commission of 1911. I have no doubt that the recommendations of that Commission in this respect are well known to the Assembly. I apologise for taking the Assembly through this retrospect but it is important to the explanation of our present position, for the present state of our ideas on the subject is the development of what has happened in the past. The Public Services Commission decided that it was undesirable to lay down any hard and fast rules as to the proportions of communal representation; its necessity should be met by the judicious use of the nomination system. That opinion was not unanimous. Mr. Chaubal deprecated attaching too much importance to this factor and would prefer the negative form, namely, that posts in services should not substantially be the monopoly of any one caste in India. Mr. Ramsay Macdonald thought that communal representation was a bad system, and that it should be abandoned, but he added that it could only be abandoned with an improvement in education and growth of a common civic spirit. Sir Abdur Rahim thought it inadvisable to emphasise the principle of communal representation as against that of impartial selection of the best men, and though on occasion it was advisable to secure communal representation, subject to the insistence of adequate qualifications, he added the recommendation that substantial recognition should be given wherever possible to the general conditions of a competitive system. The point was discussed at length in dealing with the report of the Commission; I pass over the somewhat divergent opinions recorded by local Governments, and merely give the decision of the Government of India. It was given in this form: "The Public Services should be recruited on the principle that they should be filled by the most competent men available. This principle is, however, subject to modification in the interests of the

training of Indians in the administration of their own affairs. Full opportunities should be afforded to Indians to qualify themselves for the more important posts in the public services and to demonstrate their fitness for responsible duties. It must, however, be recognised that intellectual qualifications combined with physical capacity should not be the sole test for admission to important posts in the public services. Due regard must also be given to such considerations as character and hereditary connections of candidates both with Government and with the people with whom their work will mostly lie; while in the present conditions of India it is essential that there should not be an undue predominance of any one class or caste. The circumstances of each Service will have to be considered in view of the above principles." When Government sets out to lay down a formula on a question of this importance, it not infrequently happens that in the nice balancing of considerations on both sides its conclusions lack some of the virtue of definiteness. In this case we have a very nicely balanced judgment (*A Voice*: "Too nice"), which certainly combines all considerations inherent to a decision on such an important question; if the sense of balance is more obvious than the definiteness of the conclusion, nevertheless I think it will be agreed by all who have heard it that it contains a moderate and reasonable statement of principle, namely, that you should get the best men available, but that you should not allow the preponderance of any one class or any one caste in your public services. I lay stress indeed on that negative form; it is one to which I shall have to refer again. I must pass over again in my rapid retrospect the many important discussions which took place in the Imperial Legislative Council when it dealt with the recommendations of the Public Services Commission. My friend, Mr. Sarma, was one protagonist, Sir Muhammad Shafi took an important part in the discussions; there were other famous figures engaged. While the main discussion centred again on the question of the maintenance of a fixed European proportion as against progressive Indianisation, there were many, such as Nawab Ali Chaudhury, who claimed that the particular aspect of the question which we are discussing to-day should receive primary consideration. It is interesting to remember that when some Members of the Council objected that open competition pure and simple would mean that Brahmins from Southern India would largely dominate the lists, both Mr. Sastri and Pandit Madan Mohan Malaviya promised on behalf of the Brahmins of Southern India they would stand aside until it was generally decided that it was no longer necessary for them to do so. But indeed, whenever we discuss the question of the Services at large, and the problem of their Indianisation, this particular aspect of the question has always come athwart the discussion. It did so when Mr. Jamnadas raised the question of Indianisation a year ago in our debates. It will be remembered that Mr. Bagde then moved an amendment much in the form of some of the amendments that have come before us to-day. I have troubled, I hope not unduly troubled, the Assembly with a retrospect showing how we have arrived at our present position; and I propose now to show exactly what our rules are in regard to the recruitment of Indian Civil Service in India itself. There has been some misapprehension on the subject. Indeed, I myself, as representing Government, have found it difficult to-day to understand fully whether our present position was being attacked or was being supported, and if so, by whom it was being attacked and by whom it was being supported. Here are the facts. We still look to London to supply us with the bulk of our candidates, and there of course the Indian competes without previous nomination or selection. Next, I take our Indian recruit, that is, our candidates recruited in India itself

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to whom this discussion particularly applies. Our practice here is to announce 67 per cent. of the appointments for Indian recruitment as available for open competition. I do not enter into the reason why that particular figure was taken; it is due to the fact that there are certain direct appointments from the Bar and to the existence of listed posts. 67 per cent. then are announced as available for open competition. Nomination is provided for in section 97 (6) of the Government of India Act in order to secure to some extent representation of the various provinces and communities in India. It will not of necessity take place every year, but only when the results of the open competitive examination in India fail to give the representation required. If the distribution of successes in the open examination turns out to be such as will meet the requirements of the various provinces and communities, resort to nomination will be unnecessary, and the vacancies held in reserve will be filled as far as possible by selection from among candidates who sat for the competitive examination and attained a certain qualifying standard. Failing this, they will be filled by nomination. Now that shows at once the very limited scope reserved for nomination, and the reasons for which we have adopted it. The scope is limited because nomination only comes into play when it is found that the 67 per cent. open competition does not give something like adequate representation of different provinces and communities, and nomination again will only be used for one definite purpose, namely, to insure that the main provinces and communities shall not be unrepresented. It will at once appear therefore that we do not and indeed never have intended that this limited reserve of nomination should be for the purpose of representing minority communities or backward classes. Our sole object may, as I have said, be described rather in a negative form, namely, to prevent the over-weighting of our Services with any one particular class or representatives of a particular province. It will interest the House if I analyse the result of our first open competition in India. There were 11 posts open for competition. They were filled up as follows; three from Madras, one from Bombay, the United Provinces, the Central Provinces and Bihar and Orissa and two from Bengal. All were Hindus. We reserved in addition four posts for nomination, and on this occasion utilized the provision to the full. One reason was that we required a Burman recruit; it has been considered desirable that Burma should be placed on a separate basis, that is to say, if no Burmans succeed in entering by the open competition, that we should nominate a Burman candidate. One of the four was a Burman, one was a Muhammadan from Bengal and the remaining two were representatives from the Punjab and Assam. This was strictly in accord with the general principles which I have described as guiding us in this matter. I now proceed to my conclusion, which is to give the attitude of Government on this Resolution. I have explained the very limited scope to which we now resort to nomination and the object with which we do so. Let me be clear again that it is not the intention of Government to resort to nomination in the Indian Civil Service merely to secure that advancement of minority or backward communities. Indeed, taking the matter only on its practical side, I do not myself know how we should proceed to promote the cause of minority communities. They are already many; and directly we attempted to help one, others would declare themselves. Greater communities would disclose unexpected cleavages; claims to representation based on novel and hitherto unaccepted standards would be set up. For my own part, I should shrink from so Herculean a task as an attempt to arbitrate between the conflicting claims of the different minority communities in India, and

to establish standards for ascertaining their comparative value to the State. We are already engaged in a difficult enough task,—and we only make the effort because this much seems clearly justifiable—in seeing that the claims of any one Province or of any of the great communities are not entirely outweighed. I can with truth add that Government itself would be only too happy to avoid any system by which we had to discriminate in recruitment for the Public Services. We should be glad to avoid a system under which we run the risk of imputations of partiality to one community or another. We want nothing but the best of partiality to one community or another. We want men who are judged by one test only, the test of character, men. We want men who are judged by one test only, the test of character, intelligence and efficiency, and the greatest of these is character. But facts are what they are. We have been led into our present system by the history of the past; and we have to ask ourselves whether India at large has yet arrived at that stage of social development in which there need be no consideration at all of provincial claims or the claims of the major communities. India has not, I take it, yet arrived at that stage in politics. However much some of us may desire to see the end of communal representation on the franchise, the history of the last three years has shown us that India at large is not yet ready to abandon it. There may come a time when educational and social advancement will secure that result, when there will no longer be recognition either in politics or in the Services of the claims of particular religions or particular communities, when all such differences will be lost in the larger sentiment of nationality or social service. But that time is not yet. In the meanwhile the position of Government is clear; we are proceeding on grounds which obviously lay themselves open to very little criticism; and we ourselves see nothing in the trend of current opinion which indicates the necessity for a change. The Resolution asks for a change in our present system; I have declared what our present system is; and for ourselves we see no necessity for any modification. For this reason, I could not support the Resolution even if indeed I perfectly comprehended its terms. When affairs are moving so rapidly as they are now, to again attempt to change the system of recruitment for one of our major services,—to again open the whole of this question to discussion, to again invite an interchange of opinions which, amicable as it may be in form, as it has been to-day, yet nevertheless discloses strong differences of standpoint among various communities—is in my view not desirable. I can only support the system as we have it at present, and claim that it should continue.

Lieut.-Colonel H. A. J. Gidney: Sir, with your permission I wish to state that I am prepared to accept Mr. Shahani's amendment to my original Resolution; and in doing so, Sir, I thank you for the opportunity afforded me by the Government Member of making a few remarks on the way this Resolution has been received. At the outset, Sir, when I consented to move this Resolution, I knew that I was running the gauntlet—I was perfectly aware, judging from the threats that I received from the Bombay Member that he would rap my knuckles, from the Madras Member that he would "go" for me, and, as my community is a small one, I was perfectly prepared to run that gauntlet. It was a sort of an intensive attitude of threats to me. The result has been as I expected. My Honourable friend, Munshi Iswar Saran, has addressed an admonition, and desired that I should suffer a censure for having the audacity to present this Resolution. I would have thought, and I still think, that when he goes home this evening and thinks seriously he would change his mind and pass the very opposite of a censure on me for having had the courage to expose my community to his attack, knowing

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[Lieut.-Colonel H. A. J. Gidney.]

fully that, by putting forward this motion before this Honourable House, I was risking a reference to certain subordinate preferential treatment for specific services rendered. I realize that that day is gone, and to-day my community is not enjoying preferential treatment. Therefore, as the representative of a minority community, I make bold to put forward this motion, feeling that my community has rights like those of the rest of India and having that feeling, with great pleasure, I accept this censure passed on me by my friend Munshi Iswar Saran. But I do feel that he should think of it, and reflect on it, seriously. Now my Honourable friend Dr. Gour, in his thunderous voice, said to me, "what do you want, you belong to the Anglo-Indian community, you are only about 100,000 in number and your proportionate claim for appointments when compared with the rest of India is 1 in 3,150 according to which seems to have worked this out with mathematical precision. Possibly Dr. Gour belongs to the Rajput community, and feels he is entitled to come here and to try and have a sword thrust at me, but, what I say is, we are a minority community, and therefore, in common with the rest of the minority communities in India, we ask for the protection of this House." I am only fighting the case of a minority community which I think should receive the solicitude of Dr. Gour. He remarks in a very scathing way that, because we are such a small proportion, we are not entitled to get one-third. Have we got a third? I want to know. He refers to all the Services. I am talking of the Indian Civil Service alone, which is the subject of this Resolution. If you scan the list of nominations, you will find that my community has not received it. Dr. Gour seems to have the right to mistake differential for preferential treatment.

Then as to my friend, Mr. Rangachariar, who belongs to that famous learned class, the Madras Brahmin—all credit to them, I believe he said his population is one million, but he did not tell you what percentage of successes that one community has obtained in the Indian Civil Service examination. There is all the more credit to them for any successes gained, but it is just to avoid a repetition of monopoly that I have brought forward this Resolution. I purposely deal with this matter on very broad lines, because I realize I am walking on tender ground and I do not wish to offend any community. When my friend, Mr. Rangachariar, turns round and says, "what about the Railways, the Posts and Telegraphs"—I may for his edification refer him to the latest report of the Madras Presidency which was a half-yearly report, G. O. No. 613, dated the 31st December 1921. I am not talking of Railways, although it was my community that elected to work like slaves on the Railways; it was my community that elected to work on the Posts and Telegraphs when they were not attractive. The members of my community are equally with others named citizens of India, and we are prepared to run a level race with the rest of India, I do not ask for preferential treatment for them. Mr. Joshi says that when appointments are made, they are not voted. I quite agree with him. In fact Mr. Joshi said to me before I moved this Resolution, "I do not think you had better move this Resolution, I think some one else had better do so." I think, Sir, in the circumstances I deserve more praise than censure from my friend, Munshi Iswar Saran. Mr. Joshi did not stray off the right path of my Resolution, but he asked if such examinations were made on votes or for the benefit

of any particular community. No one suggested or requested this. He seemed to lay great stress on the type of men who should sit on Selection Committees and I agree with him that such Committee men should forget their communal distinctiveness. But I have yet to learn of a man who sat on a Selection Committee and who could dissociate self from self. There are certain things that go to form the subject called 'human nature,' and you cannot alienate yourself from them. Then we come to the question of Education, and Mr. Joshi makes a suggestion, that is "educate yourself." In theory, it sounds very well,—'educate yourself.' Well, supposing that one educated himself, what is the prospect? I think Honourable Members will have had an idea of what retrenchments are going to be effected in Bengal,—in Education a cut of Rs. 35 lakhs; and it is conceivable that the various provincial Legislative Councils may begin to curtail the education grant for European schools—I bring this out merely to show to Mr. Joshi that it is not a question of time; it is a question of minor communities having been caught napping, Englishmen included, under the Reforms Scheme. The Englishman has been caught napping and he is still sleeping. It is my minority community I want to protect by this Resolution. He calls my Resolution a "ridiculous Resolution." It may be,—yet you have to consider those ridiculous things called "minority communities." Then my friend, Mr. Joshi, said, that I wanted to enter by the back door. I wish to do no such thing at all. The Honourable Member in charge of the Department, Sir Malcolm Hailey, has stated the procedure adopted by the Government of India. He has also explained the provisions he has made so as to get an equilibrium and satisfy all classes. They sound very nice. I have not asked anyone to transgress the law of efficiency. I wish you to accept a bar of efficiency. I do not ask you to take an uneducated man and put him into a position such as the Indian Civil Service or to put him in through any backdoor influence. I do not wish to send in a monster petition to a certain big Government official and say, "such and such a man should get an appointment as a High Court Judge, or so and so should get an appointment as the next Member of Council from Bombay or Madras." I do not wish to do that. There is no doubt that at the next Indian Civil Service Examination you will find Madras again coming up and getting the first four places. You will probably find the community to which my friend Munshi Iswar Saran belongs, securing the next two, leaving nothing for the rest of India. It is for the rest of India that I am putting forward the proposals I have submitted to the House. Unless you act somewhat on these lines, the Englishmen now administering this country will be replaced by those inhabiting the south and the east of India. The Indianization of the services was admirably enunciated by my Honourable friend, Mr. Jamnadas Dwarkadas, and the interpretation has been slightly altered now. The fact is that the Indianization of the services in the way Mr. Jamnadas Dwarkadas has enunciated it, has really been to replace Englishmen in order to get a cheaper market and a cheaper return for work. It is down here as one of the reasons. But I want to attack the idea of the monopoly of 2 or 3 provinces in India, for the sake of a minority community. The Government of India have also apprehended this swamping and Sir Malcolm Hailey has shown how wise was the Public Services Commission in asking for safeguards. He has almost supported the Resolution which I have put forward here for the protection of minority communities. I put forward this Resolution for the acceptance of the House and I accept Mr. Shahani's amendment to it.

[24TH JAN. 1923.]

Mr. Deputy President: The original Resolution moved was:

"This Assembly recommends to the Governor General in Council that the present system of conducting Simultaneous Examinations for the recruitment to the Indian Civil Service be changed and that a different method of conducting the Simultaneous Examinations so as to give a fair chance to candidates belonging to different communities and different Provinces, be devised, if necessary, by having a limited form of competition."

To this an amendment has been moved

Mr. S. C. Shahani: Sir, in view of the very worthy remarks which have fallen from the Leader of the House I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Deputy President: The question is that the original Resolution be adopted.

The Assembly then divided as follows:

AYES—27.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Asjad-ul-lah, Maulvi Miyan.
Bagde, Mr. K. G.
Earua, Mr. D. C.
Das, Babu B. S.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.
Hussanally, Mr. W. M.

Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.
Man Singh, Bhai.
Misra, Mr. B. N.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Subzposh, Mr. S. M. Z. A.
Venkatapatiraju, Mr. B.
Yamin Khan, Mr. M.
Zahiruddin Ahmed, Mr.

NOES—48.

Aiyar, Mr. A. V. V.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Lakshmi Narayan Lal, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sarvadikary Sir Deva Prasad.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Vishindas, Mr. H.
Webb, Sir Montagu.

The motion was negatived.

The Assembly then adjourned for Lunch till Quarter to Three of the Clock.

The Assembly re-assembled after Lunch at Quarter to Three of the Clock. Mr. Deputy President was in the Chair.

RESOLUTION RE SCHOLARSHIPS TO INDIANS FOR RESEARCH WORKS.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muham-madan Rural): Sir, the Resolution which I propose to place before the House for its consideration runs as follows:

"This Assembly recommends to the Governor General in Council that twenty-five scholarships, each tenable for five years at about Rs. 4,000 per head per annum eventually costing not more than five lakhs annually, be given year after year (and with your permission I will add here 'as funds are available') from the Imperial Revenues to Indians of great promise specially for research work in any part of the world and in any branch of knowledge approved by the Central Legislature."

Sir, my task has been lightened very much by the Resolution which was moved by the Honourable Mr. Samarth on the 23rd of February last, when the Honourable Mr. Chatterjee who was then Secretary in the Industries Department, indicated the Government policy with reference to the training of Indian youths. I may perhaps here say in parenthesis that we congratulate the Government on the fact that, for the first time, an Indian official has been raised to Cabinet rank, and, because of his ability, character and integrity we find that he has been raised to the position of a Member. I hope during the period of his Membership there will be no change in the Government policy which he has once announced. Sir, the Honourable Mr. Chatterjee stated that "it is the duty of the State in India to provide adequate facilities in India itself for the training of our youth in all the different industries" and that "this is the policy that every civilised and progressive country has adopted." He further added: "No established industry in any country can prosper, if it has to depend either for its supervisory or higher labour, or for the masses of the artisans which it employs, on men imported from abroad or on men trained abroad." I quite appreciate that, because every country which wants to be self-reliant must see that their men are sufficiently trained, either in their own country or abroad in order to replace foreign experts or specialists. But the Honourable Mr. Chatterjee has stated that there must be a time when we need not send anybody abroad for training. Perhaps that is an ideal time, I do not know when it will come to India, but I can assure the House and I also mention it to the Honourable Member for Education that it takes a very long time before even a Government with all its resources can say "We have established institutions in the country so that persons need not be sent abroad." May I mention, Sir, that the expenditure incurred on all the Universities and research institutes in India by the State and otherwise is much smaller in amount than the expenditure of one University in America. Columbia University in New York spends nearly two crores every year, whereas the utmost we are able to get for the Bangalore Institute is only Rs. 4,00,000, of which the Government of India contributes Rs. 1,50,000 and there are a number of Universities in America which are spending 50 lakhs or even a crore. Besides, there are Institutes which are to be found in other countries, in England and Germany, and some in France where our people can go with advantage. I do not think it is possible for a very long time to come for us to educate our youths entirely in the country without finding it necessary to send them abroad.

But, Sir, I find certain difficulties in the matter. We know from the various speeches made by Government Members that they are very sympathetic with reference to making India self-sufficient in the matter of education, but we often notice the adoption of a timid policy by them, or

[Mr. B. Venkatapatiraju.]
 what might be called "the drag and brake" policy. In a generous moment they will announce "Oh! We shall do this," but next moment they say "Perhaps we are going too far," and they put on the brake. Now, we do not want such a policy of "drag and brake."

We want the Government with reference to this matter to adopt a clear and definite policy because we know their general views as they have been stated by Mr. Chatterjee: what we want is a definite policy as to the manner in which the training of Indians for research should be directed and developed. If we leave it to the future, it will never be done. The Government should come forward and lay down a definite programme. The Member in charge of Education, the Member in charge of Revenue (who has certain subjects under him) and the Member in charge of Industries should all three work together and obtain the approval of the Viceroy to any scheme they have worked out. They can then say "This is the manner and the method we propose to adopt in order to provide for research scholarships." I appeal to them to do this at once, because they have to do it some time, if not to-day, then to-morrow. They cannot avoid it. Next I would ask them to make sufficient provision to find out to what extent the existing institutions should be re-modelled and expanded so as to further such research. That they have to do because I may mention in this connection that there are only three institutes. One is the Sir Jamsetjee Tata Institute at Bangalore; the second the Imperial Institute at Dehra, and the third the Imperial Agricultural Institute at Pusa. I know the Indian Government have contributed something for a sugar expert at Coimbatore; but I find when I read the report submitted to the Government of India by Sir Henry Pope, Sir Asutosh Mukerjee, Sir H. H. Hayden and Dr. C. V. Raman with reference to work in the Indian Institute at Bangalore, I find they say it requires 20 or 25 lakhs of capital expenditure to make it thoroughly efficient, and an additional expenditure of Rs. 60,000 for its upkeep, while providing only a few subjects which they have mentioned—I need not enumerate them here—which they wanted to have there. Further they suggest that even with reference to persons who have to be sent abroad they should be trained in India in order to find out their special aptitude with reference to particular subjects. If the present facilities at Bangalore are inadequate, you may say there are two other Institutes. I have not got with me any public report except what was stated by the Secretary in the Revenue Department of the India Office when he was giving evidence before the Lytton Committee. Mr. Turner (that was his name) then said—page 292 of the Lytton Committee's report—that with regard to the complaint that no facilities were given to students to undertake research at the Institutes at Dehra Dun and Pusa and that they were confined only to professors and teachers he believed that the contention was broadly speaking true, but that he thought there had been exceptional cases of students undertaking research work at Dehra Dun though full information could be obtained only in India. I have therefore given notice in order to get information on this point. But the broad fact is, as I have stated, that proper facilities are not given either at Pusa or Dehra Dun for Indian students in the matter. I think that the Member in charge of Education or the Member in charge of Revenue should see to it that Imperial Institutes like those on which we are spending a lot of money should give facilities for research to Indian students. Thirdly, I suggest, Sir, at what stage and through what agency Indians whose scientific and technical equipment has been completed so

far as the institutional resources of this country are concerned should be selected and deputed for further scientific training abroad. My object in making this suggestion is in order to avoid some misconceptions on the subject. When I gave notice of this Resolution that students should be trained for research, several members naturally thought that five years were unnecessary as those persons would be sent abroad at public expense. But I have taken this course with a view to meeting the objection of the Committee appointed to find out the working of the Research Institute at Bangalore. They say the students should have training in India and for that training about two years will be necessary in most cases, because we must know whether the students whom we select have the aptitude for a particular branch of work or not; and also that whatever facilities India possesses should be availed of to the full. When these boys have been trained in that manner we can send them for three years abroad for research. After all, we are not sending these people in order to get employment for them afterwards. It is not a purely service question. We want these persons as specialists or as experts. They must be persons who can develop their master-minds in order to add to the world's knowledge. Therefore we do not want mediocrities. We want great men in order to replace the great men we are getting at present from foreign countries. We find three American specialists were brought in for the Pusa Research Institute. Our object should be in course of time to train our own boys in order to fill up these important posts. Fourthly, I would suggest that the Government should also make up their minds to ensure that Indians should be trained at as early a date as possible and in ever-increasing numbers to fill scientific and technical posts for which abilities of the highest order are requisite. We were told on the last occasion that about 118 students were sent by the Government of India and that they are employed, suitably employed. I do not know how many were employed in Government Institutes but they must be very few. We know as a matter of fact when we refer to the members of the services that very few Indians are occupying important posts. Therefore it is absolutely necessary that proper men should be trained so that when they are well qualified we can employ them in their own country and avoid the unnecessary employment of foreign experts. The Honourable Mr. Chatterjee was kind enough on the last occasion to quote with approval what the Japanese Government were doing at that time. They were sending large number of students for training abroad in order to replace the foreign experts in the country. That is exactly my purpose. One objection I may mention here, that has been raised to my Resolution is whether Rs. 4,000 per annum is necessary. Some people think a lower figure would be sufficient; but I may say that the Lytton Committee themselves stated that they were obliged to increase the scholarships for Oxford and Cambridge from £250 to £350; and they thought that owing to the high cost of living which obtains at the present moment from £300 to £400 were absolutely necessary if persons are to have proper education at Oxford or Cambridge. That comes to Rs. 6,000; and I know that if it will not cost Rs. 6,000 it will certainly cost Rs. 5,000 to send a man to New York to Columbia University. If you send him to California University or to Harvard University at Boston, perhaps it would cost less. To send students at this time either to Germany or Japan would be still less. But this matter will have to be settled by the Government, as to what is required, and therefore I use the expression "as funds are available". I am only pressing the matter in order that when funds are available the scholarships may be instituted and increased from year to year. But, I may also state, Sir, that I do not think the Government

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would feel that there is want of talent in the country. I hope they do not entertain any such idea. The brilliant examples which we have in India do not at all discourage the Government in thinking that there is talent in the country. There are persons who, if appreciated and facilities afforded, will turn out to be experts, quite as good as any country could produce. India has in its own time produced experts, but for some reason or other we have not got the same facilities and therefore we are unable to count so many. We, however, have them in this country. If you want mathematicians, if you go to Madras, you will find any number. You have got the best professors and physicists in Bengal; we have also got Mr. Sircar, the greatest historian. We have the greatest persons in science. There are also other persons and I do not think I need name them. Therefore I think Government would not at all be discouraged that India has not got such talent for the purpose. I am asking for a modest sum of Rs. five lakhs eventually and only ask for Rs. one lakh now. If the Government are spending Rs. 12,000 lakhs every year, may I not ask them to spare out of the Rs. 12,000 lakhs, Rs. one lakh for this year for this purpose? I hope the Government would help us in securing the regeneration of the country by not opposing this Resolution and giving early effect to the Resolution and by putting into practice what they preach and what they promise.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, I am intervening in this debate at this early stage in the hope that I might be able to specify the position of the Government with reference to this question and that might assist the House to come to a fairly early conclusion on the subject raised by the motion of my Honourable friend. I wish, Sir, at the outset to express my own gratitude for the personal reference that my friend has made to me and I can only ask for the same indulgence, the same generous indulgence, from the Members of the House to me in my present capacity as they have always accorded to me throughout my membership of this House. The Honourable Mr. Raju prefaced his remarks by quoting certain statements which I had made on the occasion of the debate raised by the Honourable Mr. Samarth with regard to the training of Indians in industries outside India. Sir, I must state that neither the Government nor I have wavered in the policy that was then stated by me in this House. I can only repeat that the Government of India fully agree with the Honourable Mr. Raju that research is a very important—indeed one of the most important elements—in securing industrial development in this country and also for the purpose of the advancement of general culture in order to build up the nation. Sir, I would go even further and I think probably every Member of the House would agree with me that just as in the case of industrial training, so in the case of research, it is very desirable so far as possible that research both for the purpose of industrial development and for the purpose of culture should be conducted by indigenous agency. Therefore, Sir, it will be admitted that the question is an important one and I hope that I am voicing the feelings of all Members of this House when I say that the Honourable Mr. Raju has done a good service by bringing this question before the Assembly. Perhaps, Sir, Mr. Raju would agree with me if I make a further statement and that is that research should be conducted so far as possible in India and not abroad. I do not quite know whether Mr. Raju contemplated that students should pursue research both in industrial subjects and in cultural subjects abroad and then give it up when they come

back to India. I think, Sir, it is most essential that facilities should be provided for the students to carry on their research after they come back to India. It is not much use sending students to be trained in the methods of research in European countries or in America or Japan if they find when they come back that they have neither laboratories nor libraries nor other equipment to enable them to pursue their studies. The two things, therefore, Sir, must go hand in hand. We should make every possible endeavour to send our students, men of promise, to foreign countries in order that they might obtain the very best possible training, but at the same time we must not forget to provide them with facilities in this country. Progress in the first direction must be conditioned by progress in the second direction. I was rather distressed to find a current of pessimism through the speech of the Honourable gentleman. He seemed to think that Government might make promises, but then they would follow a policy of what he called 'drag and brake' and that Government would not carry into effect what they had promised. I do not think, Sir, that there is any justification for any pessimism or despair of this kind. The Government of India have not been oblivious of their obligations with regard to the promotion of research. The Honourable gentleman himself has mentioned three institutions, namely, the Institute of Science at Bangalore, the Agricultural Institute at Pusa and the Forest Institute at Dehra. He has admitted that the Government of India give a very handsome grant every year to the Institute of Science at Bangalore. He has also admitted that large sums are spent on the institutions at Dehra and Pusa. He has given voice to a complaint that at Pusa and Dehra sufficient opportunities are not given to Indian students for training in methods of research. I am not personally acquainted with the most recent developments in these two institutions and I would leave it on some future occasion to my friend the Honourable Member for Revenue and Agriculture to defend himself with regard to those two institutions. But I have had something to do with the relations between the Government of India and the Institute of Science at Bangalore and I can assure the Honourable gentleman that the Government of India are most anxious that that institution should be utilised to the very best advantage by Indian students and every possible help that the Government of India can give in the matter has been given and will be given in the future. The Honourable gentleman has instanced the case of the Columbia University where, he said, several crores of rupees are spent, whereas all over India we spend only a very small sum. It is quite true, Sir, that the benefactions devoted to Education and Research in the United States are really magnificent, but, Sir, it is well to bear in mind that most of those foundations depend on private benefactions. I have been over the Columbia University and I have also been over the University belonging to the City of New York. I have very great admiration for both those institutions, but so far as I could learn, they were dependent practically indeed almost entirely on private benefactions and on grants from local bodies like the Corporation of the City of New York. I do hope, Sir, that Mr. Raju's Resolution and this debate will bring forward more private benefactions in these causes than we have had hitherto. I do not depreciate the endowments that have already been made by wealthy Indians in the cause of education and research. We have the Bangalore Institute in mind, and we have many more institutions like the Bose Institute in Calcutta and the Science College in Calcutta, and many other institutions all over India, but we want a great many more. I wish that my countrymen would realise

[Mr. A. C. Chatterjee.]

that these things cannot all be provided merely by the State; that they must also come and aid the country in proper development in all directions. Apart from the institutions which Mr. Raju mentioned, there are others also devoted to research, which Government have helped from time to time. There is, as I mentioned just now, the Bose Research Institute in Calcutta to which the Central Government make an annual grant. Then, Sir, I think the House is aware from the speeches that were made on previous occasions that there is the Indian Medical Research Association, which is doing most valuable work in the field of medical research, to which the Government of India make a very handsome annual grant. Then in the pre-Reform days, when the Government of India could help the universities, in the days of peace and plenty, as some one remarked the other day, very large sums were given in aid of university education and post-graduate studies in different universities, and we hope that a very large proportion of those grants were devoted to purposes of research. The Honourable Members of the House are also aware that Government are making efforts to establish a School of Mines and Geology. There also it is hoped that a certain amount of the work of the staff, as well as of the students, will be devoted to research purposes in order to assist in the development of the mineral resources of the country.

Rao Bahadur T. Rāngachariar (Madras City: Non-Muhammadan Urban): When will it come into existence?

The Honourable Mr. A. C. Chatterjee: I think you will know at Budget time. Honourable Members are also aware that as one of the results of the recommendations of the Industrial Commission, a committee was appointed under the presidency of a distinguished scientist from England to go into the question of chemical research in India. That Committee made certain recommendations. I do not say the recommendations have been carried out, but I am mentioning this just to indicate that the Government of India have not lost sight of the importance of this subject in relation to industrial development. Then again, Sir, with regard to the training of scholars abroad, perhaps the House is not aware that there are already a number of scholarships given by the Central Government or by Provincial Governments for research in languages such as Sanskrit and Arabic. Then, even among the ordinary scholarships given at present by Provincial Governments to students for training in England, a number are given in order to train these students in methods of research in foreign countries. I may instance the case of Dr. Dhar, who is now a distinguished professor in Allahabad, a pupil of Sir Prafulla Chandra Ray, who was trained abroad in chemical research as a Government scholar. Then, Sir, the Committee presided over by the Earl of Lytton, of which my distinguished friend opposite was a Member, went into this subject, and if you will look at Appendix IV of their report, you will find that there are already quite a number of Indian students doing research work in foreign countries.

I find that the number of scholars who are given there as doing only research work comes to about 28. They are conducting research in such various subjects as Economics, the English language, History, Mathematics, Moral Sciences, Natural Sciences and Oriental languages. I may

mention that there are at least 12 Indians who are now undertaking research in Natural Sciences in Great Britain and 9 Indians doing research work in Oriental languages. It is clear, therefore, Sir, that a good deal is already being done. I do not say that more could not be done but we are confronted with the present financial position of the Government of India. I am glad, Sir, that the Honourable Member has recognised that fact by the addition that he has suggested to-day in the Resolution proposed by him. The financial position of the country is well known to all Members of this House and it is not for me to emphasise that point. I can only mention, Sir, that it is on account of these financial difficulties that the Government of India have not been able to proceed with the recommendations made by the Chemical Services Committee; it is on account of these financial difficulties that we cannot develop the School of Mines and Geology as fast as we should like to do; it is on account of these financial difficulties that we have had to postpone a project for the establishment of an institution in Calcutta which would have absorbed the present institution for research in Tanning maintained by the Government of Bengal. Honourable Members of this House are aware that we are now undertaking an inquiry for rigorous retrenchment in every direction, not merely for economy but for rigorous retrenchment. In these circumstances, Sir, although we have every sympathy with the Honourable gentleman's aspirations and wishes, and as I hope I have indicated that all my sympathies are with him, we can only hope for better times to come when effect can be given to these ideas and to the principle of this Resolution. I have dealt with the principle of the Resolution only. The Honourable Member himself has said that so far as the details are concerned they must be left to later judgment, to fuller consideration both by the Government and by this Assembly when the time and the occasion arise. I hope, Sir, I have explained that the Government have every sympathy with the Resolution which the Honourable Member has placed before the House, but we cannot give effect to the proposal immediately; we can do so and we shall do so as soon as funds permit.

Mr. Deputy President: I think it will be better if we take the first amendment at this stage.

Sardar Gulab Singh (West Punjab: Sikh): Sir, I rise to support the Resolution so ably moved by my Honourable friend Mr. Raju. The cause which he has advocated is the noblest one possible, and the country stands in great need of encouragement to improve its industrial condition as the natural resources of India which are many could not be utilised to their utmost without having experts or specialists. I beg to withdraw the amendment that stands in my name in the list of business as the Honourable Mover of the Resolution himself has removed the defect in the original Resolution by the necessary additions of the words 'as funds are available'. I hope that this Honourable House will accept the Resolution as it stands amended.

Mr. Deputy President: I would request the Honourable Member in future if he wants to withdraw his amendment under the Standing Orders merely to say 'I withdraw the amendment that stands in my name.'

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, we rejoice that the spirit of the Government reply is sympathetic. That certainly will conduce to early disposal of this motion so far as the

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[Sir Deva Prasad Sarvadhikary.]
 academic side of it, if I may so call it, is concerned. The Honourable Mr. Chatterjee has deprecated the current of pessimism underlying the speech of the Mover of the proposal. But in his heart of hearts, does not Mr. Chatterjee feel that there is more than room for pessimism in this concern that has been given expression to to-day and much more than that? I happen to know, Sir, that he feels as keenly as any one of us in this Assembly or outside, with regard to the utter lack of facilities in these directions. As Secretary in another Department not primarily connected with education, he did all he could to further research work connected with Commerce and Industries. I join again in the tribute that Mr. Raju has paid to his single-hearted devotion to educational advance in connection with commerce and industries and we welcome his advancement. I welcome his reply from another point of view, namely, that the recommendations of the Lytton Committee's Report are not likely to be adversely received by the Government, although he has taken good care to keep the expression of that sentiment from the Assembly; read between the lines, I believe that the recommendations have commended themselves to the Government here and in England. Mr. Chatterjee referred to the schedule of Research students in the Report. In Government parlance, which no Secretary or Honourable Member can avoid when he has been in Government environments for a fairly long time, he asked the Assembly to believe that quite a large number of research students are doing good work in England and that a good deal of work is being done there. I do not propose to talk shop at length, because I have had a good deal to do with this Report. But I may give the Assembly some figures which will enable them to see what quite a large number and a good deal in Government parlance means. This is undoubtedly a nation-building Resolution to which no one can demur and from which no one can differ, at all events so far as what is called showing sympathy is concerned. The whole point of the Lytton Committee's recommendations is that if India is to advance, if the Reforms are to be at all successful, India must be educationally self-contained and Mr. Raju's Resolution and Mr. Samarth's Resolution now on the shelf for more than 12 months will be one of the first steps towards the attainment of that ideal. I shall take some subjects—important subjects, that I suppose the Legislature would first consider in connection with Mr. Raju's recommendation, if accepted, when the question of choice of subjects for the proposed scholarships comes before them. In Dyeing, what is this large number spoken of by Mr. Chatterjee studying in England?—2. In Mining—8. Mr. Chatterjee will bear me out that in connection with some recent appointments relating to mining with which he and I had to do, our greatest difficulty was that we had not properly trained men out here and therefore the go-by had to be given to most of the men on the spot because they had not had enough training abroad.

In Leather Manufacture the figure is 6. If this Research Institute in Calcutta that Mr. Chatterjee spoke of is ever to come, how many of these 6 will be available for work there and would even all the six be enough? In Metallurgy, upon which one of the most important key industries of the country must always depend, we had the tremendous number—1. In Naval Architecture—1. His Excellency the Commander-in-Chief is here and he will appreciate how much towards the naval defence of the country we are going to contribute with that one solitary single student studying Naval Architecture, whatever that may mean, in England.

And, Sir, in Oceanography we have 1. A largely growing subject in India with its tremendous ocean frontage which we shall not know how to defend when the time comes—one is studying. I hear a voice crying out "Nature will defend us." God be praised and Nature be thanked!

In Pottery, in which India can do any amount of good and useful work we have 2. And in Town-planning, which we hear of everywhere all over India the figure is 1. I do not say these are all suitable subjects and that there are not more. On the other hand, we have scholarships in Phonetics, in scientific study of the Languages, in what is called Natural Philosophy, that is mostly ordinary Physics and Chemistry, suitable for college work. We have all that, but we want a great deal more and something better. The question must be as to whether the work of co-ordination should not be undertaken and undertaken in a way that Mr. Raju's and Mr. Samarth's Resolutions suggest. Sir, I do not wish to labour the matter, but I welcome the Resolution and the spirit in which the Government is giving it its support as an earnest of recognition of what the Lytton Committee has insistently demanded—that India shall be educationally self-contained and the men who can contribute towards that must be trained abroad. Mr. Raju has been just out of the country. I am glad he has seen for himself what education abroad, particularly in research, can do. I quite appreciate that men, coming back with the newest ideas on research work and the newest methods, coming and seeking appointments in the Education or some other Department either as glorified clerks or as Assistant Secretaries are not properly placed. But whose fault is it? It is as much the fault of the Government as of the people that capital resources and co-ordination of arrangement are not forthcoming. Government has made itself responsible in various matters with regard to that, which need not be detailed here, and facilities are wanted for people who come back. This fact must not be lost sight of. I am glad, Sir, the amendment for reduction of the number of scholarships is not going to be pressed because 25 after all, even when they come, will not be at all too large a number for all India. Mr. Samarth's Resolution has been referred to. We do not know what is going to happen to it. We have been referred to the provinces with regard to the provincial subjects. Probably that is technically right. But what is happening in the provinces now? With their attenuated university resources, with their tremendous 50 lakh cuts in educational grants, the provinces will not be able for a long while to do much. I do not say the government resources here are plentiful, but when asked for a paltry five lakhs of rupees as the first step towards nation-building processes, the Government of India's obligations cannot be ignored either by the Auditor General or by the Member for Finance or Education. We have got to make a beginning and an earnest beginning and a beginning at once, and if this Resolution is now accepted, I hope it will not meet the same fate as Mr. Samarth's Resolution action on which has been pending for the past 12 months and over. I think these matters ought to be taken up in the spirit in which Mr. Chatterjee has spoken to-day and not treated in the way in which Mr. Samarth's Resolution has been so long.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): I move, Sir, that the question be now put.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the former part of the speech of the Honourable Mr. Chatterjee was very encouraging. The Government should be thanked for their very sincere sympathy with this motion no doubt. But I am very sorry to see that the Honourable

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[Dr. Nand Lal.]

Mr. Chatterjee told us that there is a lack of funds and consequently he is unable to say when practical effect will be given to this motion. With reference to those remarks I feel bound to address the House. Sir, this is a question of education. I think the whole country and this House especially will be very glad to provide any sum for this most desirable enterprise. We want research in India and a number of scholars are quite ready to undertake that work. I think it will not be right to give this answer that we had better wait, because the money is not available. Money is being spent for a good many other matters and affairs. The question of culture, I mean to say, the question of education, industrial and scientific development, is not a whit less important than those matters, and those affairs, in which money is being spent. If this proposition may be accepted, then I believe the Honourable Mr. Chatterjee will be pleased to concede that immediate effect should be given to the spirit of this Resolution.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Not the letter?

Dr. Nand Lal: With these remarks, I support the motion which has been so very ably moved.

Mr. Deputy President: What about your amendments?

Dr. Nand Lal: I withdraw all the amendments in the light of the discussion which we have had on the motion.

Mr. Muhammad Yamin Khan: I move, Sir, that the question be now put.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Let the question be now put.

Mr. Deputy President: Lala Girdhari Lal Agarwala.

(Cries of "Withdraw.")

Lala Girdhari Lal Agarwala (Agra Division: Non-Muhammadan Rural): I simply want to say a few words in support of the Resolution. (Cries of "Withdraw.") Will the Honourable Members allow me to speak?

Mr. Deputy President: Does the Honourable Member wish to move his amendment?

Lala Girdhari Lal Agarwala: I want to support the motion which is before the House and not the amendment. Sir, I had no intention really of moving my amendment, nor do I move it. But I simply wanted to support the Resolution. I am thankful to the Government for giving us the assurances, but I wish to say a few words in regard to them. The Honourable Mr. Chatterjee has told us that scholarships have been granted for research work—in what?—in Arabic in England and other places, in Sanskrit—where?—in Germany, and in philosophy and so forth. But I wish to know what good these scholarship holders can do to the country when they come back. I want research work on the technical and mechanical lines. I want our Indian young men to be able to manufacture in India, as I have said before, aeroplanes, steamships, motor cars,

spinning and weaving mills, machinery, electrical goods and also those articles which we have now to bring from other countries, and thus to make India a self-contained India. We do not want too many poets in Arabic and in Sanskrit. We do not want to count how many words appear in a particular book and so forth. I submit that the work which has been done so far by the Government on these lines is not conducive to the good of India. Further, I suggest that the Government will, at the time of making the selection, see that first class boys are sent up and not second class boys. At the same time, I hope that Government will see with clear glasses and not with coloured glasses that an opportunity is given not to only one section of the community. Of course, I do not want to bind the Government in any way, but when other things are equal, I hope that considerations of communities and castes will not be totally ignored. I have already said that I do not want to move my amendment and I simply support the Resolution as it stands, in the light of the remarks which have been made in the House.

Mr. Jamnadas Dwarkadas: I move that the question be now put. The motion was adopted.

Mr. Deputy President: The question is that the following Resolution be adopted:

"This Assembly recommends to the Governor General in Council that 25 scholarships, each tenable for five years at about Rs. 4,000 per head per annum eventually costing not more than five lakhs annually, be given year after year from the Imperial revenues, as funds are available, to Indians of great promise specially for research work in any part of the world and in any branch of knowledge approved by the Central Legislature."

The motion was adopted.

RESOLUTION RE SUPPLY OF FACILITIES TO ENABLE MEMBERS OF LEGISLATURES TO DISCHARGE THEIR PUBLIC DUTIES.

Rai Bahadur Lachmi Prasad Sinha (Gaya cum Monghyr: Non-Muhammadan): Sir, I beg to move the Resolution which stands in my name:

"This Assembly recommends to the Governor General in Council that all the Government officials should furnish every Member of the Assembly with all the necessary informations with full particulars and give all the facilities towards the discharge of their public duties."

The Resolution demands that Government officials should be required to furnish information with necessary details to the Honourable Members of this House relating to any matter of public welfare and utility and give them facilities towards the discharge of their public duties. The demand, Sir, I think is a very reasonable one and if accepted by the House is calculated to do immense good to both the Government and the public and further lessen and lighten the task of the Council. The mass outside have sent us as representatives to this body and expect that we would conscientiously discharge our responsibilities. They also expect that we would not be failing to take up their right cause whenever occasion arose and that we should keep strict watch over their rights and interests wherever they are in danger of being jeopardized. In addition to the responsibilities which we owe to our constituencies, we are further bound by oath to be faithful to His Majesty the King-Emperor and to faithfully discharge our trust in the welfare of both the rulers and the ruled.

[Rai Bahadur Lachmi Prasad Sinha.]

Our position therefore is a very delicate one and if we are to be honest and faithful Legislators we ought to be true and loyal both to the Government and to our constituents. But, Sir, this is not possible until and unless we enjoy the confidence of both the parties. There can, however, be no doubt in the constituents' reposing their unconditional and entire confidence in us as this has amply been proved by the fact that they have chosen to represent their cause in the Assembly here. Now remains the question of the Government's confiding in us and this requires to be settled. I am afraid I am not able to enunciate the policy of the Government in this respect. If there is some doubt in it, it would be anomalous for the Government to expect our confidence in them without their confiding in us. Mutual trust is a source of great pleasure and satisfaction and it is mutual trust we demand and demand not unreasonably. As representatives and trustees of the people and confidantes of the Government we claim to be supplied with all information relating to a public matter, and if it is absolutely necessary in the benefit of mutual interest that the officers and servants of Government should, whenever required, allow us, the representatives of the country, to know what is being done for the public and facilitate our inquiries by enlightening us on necessary details.

It has always been seen that strict secrecy is maintained on behalf of the officials over matters of grave importance and nobody is allowed to know the real details. As a result of this, matters drift from bad to worse and ultimately the whole blame is thrown on the Government, rightly or wrongly it is for those to judge who are in the know. Blame to Government or discredit to the officials, the result is all the same and it is that the mass outside have to suffer. It becomes calumnious and goes a great way towards shaking the faith of the people in the Government. I am not a believer in the fact that the Government do wrong always, but the best of their motives are even dyed black by this attitude of studied secrecy maintained towards the people and their representatives.

During the strike over the East Indian Railway last year which was said to have sprung out as a result of an alleged assault of a European on an Indian fireman, I am informed by one of our Honourable friends that he devoted full 24 hours in running from Moghalsrai to Tundla in order to find out the real clue of the strike, but his attempt failed totally. No one gave him any information about it. None of the railway officers or employees at the intervening stations dared to give him any information relating to the strike, as they were probably afraid of furnishing such information lest their higher authorities would get offended. Now, I represent the people of Monghyr and the big workshop of the East Indian Railway Company located at Jamalpore is only a distance of about 6 miles from the place. There were troubles at Jamalpore owing to the strike, and a great exhibition of Military force was made at the railway station, but I, a representative of the people, living only next door, was never consulted. There is no denying the fact that situations could have been saved by intervention of popular leaders, but no recourse has ever been taken to this device. We are kept in the dark and the officials do not care to give us any information in the absence of any orders of the Government.

There are numerous examples and it would be needless to make mention of them here, but I must say that if the Government only trusted us

and allowed us to know what we wanted to know, a vast amount of their responsibility would have been transferred to our shoulders and we would have helped to bring about a speedy and happy settlement in troublous matters. The fact of our being in the know would do much to dispel the doubts of many who, possibly, getting influenced by the harrowing and grossly exaggerated stories published in the Press, are losing faith in the present form of administration.

I know, Sir, that we have a great responsibility before the public we represent and the public has also got a right to inquire of us as to what we are doing for them and the country. If we are ourselves to remain in total darkness, how can we be expected to throw light on others. It is therefore a matter of absolute necessity that the Honourable Members of this House should be acquainted with all the facts and figures available only in the offices of the Government here and elsewhere, in the districts and in the provinces.

Sir, in order to enable us to discharge our onerous duties and the honest functions that have been imposed on us and entrusted to our care by our countrymen and the public as also by the Government, the Government must assist us and facilitate our cause.

With these few words I conclude and I hope the Resolution will meet with an unanimous support of the House.

Maulvi Miyan Asjad-ul-lah (Bhagalpore Division: Muhammadan):
(The Honourable Member spoke in the Vernacular.*)

The Honourable Sir Malcolm Hailey (Home Member): The Mover of this Resolution put his case forward mainly on the ground that we do not sufficiently trust the Members of this Assembly; he said that his own position and that of his friends was difficult; that they had a duty to discharge towards their constituents and towards the public, and that we give them no assistance in the discharge of it. How does he propose to supply that deficiency? We having apparently failed in our duty, having failed, answered questions directed to us, and having never put Members of this Assembly on the way to receive the information that they require, how does he propose to gain it? He would have us order all Government officials to furnish him and other Members of the Assembly with all necessary information. That is how the proposition starts. Its effects have been well illustrated in the speech of Miyan Asjad-ul-lah. He told us that village officers make great mistakes,—frequently act against the law; he considers that it would be well if Members of this Assembly had authority from Government to interfere with such village officers, and see that they do not break the law. He desires again that when he requires information from any Government office it should be immediately given. He tells me that if I desired to do my duty conscientiously I should immediately accept this Resolution; nay, more, I ought really to have initiated the measure myself. If I have to decline that invitation I have to do so mainly on the ground of practicability; for it is no use considering a principle unless you can translate it into practice: and it is no use issuing rules if they are a dead letter the minute they are printed. Now, it is impossible for us to issue any such instructions to the servants of Local Governments. Let us assume for a minute that such instructions were issued and they were disobeyed; or assume again—and it is no very wide assumption—that in reply to a demand for

* The original speech and a translation of it will be printed in a later issue of these Debates.

[Sir Malcolm Hailey.]

information the servants of a Local Government were to supply information so inaccurate and misleading that a Member of this Assembly would, if he took action on it here, stand in a very false position before the public. What power should we have to bring such officers to book? None at all. It is perfectly true that we are entitled to call upon Local Government for information; but we must obtain that information ourselves from Local Governments. We are not entitled to enter into direct relations with their employees. That is one difficulty. There is an even greater difficulty. Some of the Local Government's servants belong to Transferred Departments. We have no authority under the Devolution Rules for interfering even with the Local Government in a Transferred subject. The House will remember that on a well-known occasion, Parliament itself decided that it would not be right for it to interfere directly with Transferred Subjects. So much so then for the possibility of our issuing a Regulation of this nature in regard to the servants of Local Governments. There are however a large number of servants employed by us direct. We have Government servants in areas which we directly administer, Delhi and the North-West Frontier Province, and we have Postal servants, Telegraph servants and State Railway servants and the like. I take their case also on the ground of practicability. Now, it is clear that you cannot ask a Government servant to discuss orders that have been given to him by a superior, not even for the sake of earning the greater confidence of the Legislative Assembly, could we as a Government, or could indeed any other Government, allow a procedure so destructive of discipline? Then again, it is not reasonable to depend on inquiries made from any such subordinate servants in regard to facts. They do not see the whole of them; their individual information may frequently be misleading. Thirdly, and this is even more important—it is not fair to ask a subordinate Government servant to judge whether that information is confidential or not. It would place on him an unfair responsibility, since his use of it might subsequently bring him into discredit with his superiors. There are obviously therefore very substantial grounds why no such instructions should be issued to the servants whom we directly employ in the Central Government. Of course it is true the Honourable Member might demand that he should be allowed to call upon the head of a Department for the information he requires. If he were allowed to do so, he would practically be using the same agency as we use ourselves, but with this difference; if on an inquiry that we make from the head of a Department we consider that his answer is misleading or insufficient, then we see that he completes it, and in the result it is we who stand responsible for that answer to the Legislative Assembly. The House will now, I hope, agree that I have brought my argument to reconciliation of practice and principle. If, as I claim, our present practice is the only procedure practicable, I claim also that it undoubtedly coincides with the true constitutional position. Members of this Legislature are in direct relation with Government and not with Government employees; and the measure of the success with which they discharge their duties to the public, is the extent to which they influence us directly or indirectly in this Assembly. I know of no country with Parliamentary institutions which has regulations such as the Honourable Member would desire to see enforced. I believe that nowhere is it laid down that Members of the Legislatures are entitled to enter into direct relations with the employees of the Executive Government. I believe that everywhere the practice is that where information is desired, it is obtained from Government itself, and for a very good reason; the information that

is sought must be complete, and must be such that Government is prepared to be responsible for it, and for which the Legislature can take Government to task if it proves unsatisfactory or unreliable. For these reasons I think that the proposal of the Honourable Member is not only impractical but also undesirable from the constitutional point of view; and if I fail to comply with his invitation to show greater confidence in Members of this Assembly in this respect, I do so on substantial grounds; for I believe that such a measure as he desires would be unwise from every point of view.

Rai Bahadur Lachmi Prasad Sinha: On hearing the reply of the Honourable the Home Member I beg permission, Sir, to withdraw my Resolution.

The Resolution was, by leave of the Assembly, withdrawn.

RESOLUTION RE KING'S COMMISSIONS FOR INDIANS.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural):
Sir, I beg to move the following Resolution:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

In moving this Resolution, Sir, the first thing I want is that Honourable Members of this Honourable House may not misunderstand my motive in moving this Resolution. I am not actuated by any racial feeling; I do not wish to in any way minimise the great services rendered to the Indian Army by the British officers for a very long time past. British officers in India have played a great part in teaching discipline to the Indian army and in maintaining peace and order in the country. The great quality of a Britisher of knowing his duty is well known to all Members of this Honourable House, and the whole House, I hope, will agree with me and will support me in appreciating the services which British officers have been rendering to India. They have taught such good discipline that the fruits of it were found on the battlefields of France, Mesopotamia, Palestine, South Africa, China and other places. British officers have led the Indian troops in a remarkable way, and they have won great fame for the Indian army. So I do not want in any way, as I said in the beginning, to minimise the services of British officers. My motive in moving this Resolution is a totally different one. My first object is to try and get the stigma which attaches to Indian soldiers as a class removed. This is, I suppose, the only country where we have got regiments from a civilized country and from martial races officered by men of other nations. Indian officers have played a great part and they have shown great capacity in many a field and they have proved that they can be capable officers. If such officers who have distinguished themselves in the army are promoted only up to the rank of a Lieutenant or in rare cases, to that of a Honorary Captain, I think it is not doing justice to them; it will mean that their services are not properly appreciated. Indian soldiers and Indian regiments have won battles for the Empire and it was through Indian hands and Indian soldiers that success was achieved for the British Army in countries like Mesopotamia and Palestine. I think, Sir, that when Indians have proved themselves so worthy as soldiers of the Empire, they deserve better treatment and their services should be properly appreciated and recognised and in a more liberal manner. In India we have got a particular class from among whom

[Mr. Muhammad Yamin Khan.] It had been for a long time considered that the Indians who come to join the Army are illiterate people and they could not go above a certain status. Now, I find from that very class of people and among them there are a good many people who are very well educated. The sons of soldiers, the sons of Viceroy's Commissioned officers are very well educated now. They are receiving their education in public schools, in universities and they can be very efficient officers, if they get a commission from the King. They have got a martial spirit. They have got a tendency. They have got behind them the spirit of centuries. A son of a soldier comes to join the Army and probably the same regiment to which his father belonged. And it is happening in most cases and there is no reason why, if a sufficient number of young men can be found from amongst these people, they should not be given King's Commissions and their status should be limited to getting a Viceroy's Commission only. I think that great liberality should be shown towards these people and they deserve it. Up to now, Sir, one difficulty that was the foremost difficulty was that among the martial classes educated people could not be found and that I have explained that difficulty is being removed every day. Even if that difficulty had not been removed, was not going away by itself, it was the duty of the State to provide proper education in recognition of the services of these soldier classes so that they may be properly educated and they may be trained after the manner of their forefathers. Indian regiments were recruited in the time of the East India Company in this way. The Indian regiments of the East India Company had Indian officers among them but a certain incident—unfortunate incident which happened in 1857 took away the confidence we had in the Indian officers of the Indian regiments, and a policy was pursued after that of keeping proper control over the soldiers. And that policy was pursued on account of this that, if the officers were Europeans, they would properly control and there would be a safeguard for the East India Company or afterwards for the Crown too. I dare say, Sir, that that may not be the solitary fact, that may not have been the only guiding factor in adopting that policy. It might have been that the East India Company wanted to train their soldiers after the manner of European discipline and they imported British officers from England to train the soldiers on those lines. But times have changed since then. Now, we find in India many young men who go and receive education in England. They have received education in European style, and this has been widespread in India for the last three decades at least and a sufficient number of young men are available who can be trained like British young men are trained at Sandhurst. In this way, Sir, I have been saying that for some time past His Excellency the Commander-in-Chief has shown some liberalism in getting King's Commissions for Indians in a larger proportion than used to be the case formerly and India is thankful to him for that. But I should say, Sir, that the number in which the Indians are getting to-day is not sufficient and that is not satisfying my conscience. My object in moving this Resolution is that there ought to be two bodies of army organisation in India, one purely the British Army and the other purely Indian Army. The Indian Army should be officered by Indian officers only and the British regiment should be officered by British officers. and I will not in any way go beyond what circumstances will permit. I quite realise that India at present depends largely on British assistance and British control in this country. If the British left to-day, there will be anarchy in India. But though we may not be able to defend our shores,

though we may not be able to defend our frontiers, I want that Indians should receive proper education and proper training to defend their country, and the best course of doing it would be by giving effect to the Resolution which I am proposing. My Resolution, Sir, has been misunderstood in some quarters. I found some discussion in the press which is due to a misunderstanding of my Resolution altogether. My object is not that if a vacancy falls in the regiment of the rank of a Colonel, a new Indian should be brought there and appointed a Colonel or a Major or even a Captain or even a Second-Lieutenant to-day. My object in moving this Resolution is that officers of the Indian regiment should be limited now. Particular offices should be reserved for the Indian Army, and I suppose that is so, unless they are changed from the British Army. But there should be no change from the British Army. The officers who are reserved for the Indian regiments must stick to the Indian regiments. Suppose there is a vacancy in the rank of Colonel. Of course, a Major, *ipso facto* either in this very regiment or from the other regiment, whoever is senior, will take his place and will be promoted to the rank of Colonel. People from below will take their precedence and will have promotion. Now, the only vacancy in this way will be that of a Second-Lieutenant or a Lieutenant, and this should be filled by an Indian. All the vacancies which will occur as Second-Lieutenant in the Indian Army should be filled by properly trained Indian officers. I propose in this Resolution that Indians should be given King's Commissions in such number that they may fill all those vacancies which may occur as Second-Lieutenants in future. Now, Sir, by this process, if I am not wrong, as far as my information goes, it takes 22 years to become a Colonel—it may be something more than 22 years, it may be 24 or 26 years, but whatever period it takes, after that time, these Indian regiments will be officered by Indian officers only. So, if effect is given to my Resolution to-day, it will take at least 22 years from now to Indianise the Indian regiments only. In this way there will be no harm, and when we have got the reformed Councils, when we have got the statutory period fixed at ten years for revision which, of course, the Government have acceded to curtail sometime ago according to the debates in the Assembly—then, Sir, if it had been for ten years we would have known how much progress India has made towards getting its own army. In ten years probably we would have had all the Captains in the Indian regiments Indians, and only Majors and Colonels would be by that time British officers, but by slow process they would be replaced by Indian officers. There is another safeguard. I know that it might be argued that the English character—British character—that it might be argued that the English character—British character—that when I use the expression "English" I hope the House will understand me to include in it the Scotch and Irish as well (*A Voice*: "How Irish?")—will have to be preserved. The British character will continue and all the officers will give these young men proper education, and these young men who will come there as Second-Lieutenants will be associating with the British officers and will receive the same training as the British officers in the same regiments and preserve the British character. The same discipline will continue and that will be purely after the English style. After that period, there will be a great saving in the Indian regiment. Now, in the Indian regiments we have got a double system of officers. We have got King's Commissioned officers and Viceroy's Commissioned officers, a double system of Commissioned officers. I do not see what is the use of having two systems, two kinds of officers. The Indian officers are simply kept to help the British officers, or their chief work is, I understand, simply to get recruits. In British regiments we have not got this double system. They have got the non-commissioned officers which we have got in the

[Mr. Muhammad Yamin Khan.]

Indian regiments as well, but these Viceroy's Commissioned officers are simply there for show, or to give help to these King's Commissioned officers. If effect is given, after 22 years we shall have only one kind of officers, and probably before that comes, once we have got all the Captains and Lieutenants in the Indian regiments Indians, then there will be no necessity to keep a risaldar major or risaldar or other officer of lower rank. Those people who will come as such will bring recruits or there might be a certain percentage in every regiment appointed as a recruiting officer. Now, Sir, I think that will be a great saving in the Indian revenue and the Indian Army will be able to stand by itself. This will not affect in any way the position of British regiments in India. The point which has been argued and which might be argued on behalf of the Government that there is always a fear of breach of the peace might be removed too. Last year in the Budget speech His Excellency the Commander-in-Chief said and that gave rise to a lot of criticism in this House that it would take years and years to get the Indian Army. Of course I am not going into controversial matter and I do not wish to revive the same discussion to-day. I do not wish to move this Resolution in that spirit but I wish to move this Resolution in the spirit in which I have spoken to-day. There used to be one bogey. Every time there was a question of Indianisation of the Indian Army the Afghan bogey was put forward and there is the question of Bolshevik Russia. The Afghan bogey is no more. We have got no fear from those quarters. There is a treaty settled with the Afghan King and Afghan Government is a peaceful ally of the Indian Government. Bolshevik Russia is far removed. I think even if those questions were present to-day, my Resolution would not affect them because this would not bring in any sweeping change. This would not bring a change in a day or two, in a year or two but it will bring a change certainly after more than 20 years. Then, Sir, riots may take place in India like those in Malabar. For the purpose of keeping down such things, there might be a strong British army, if that British army is really required in the strength in which it is kept. That is a question on which I do not wish to dwell because that question is covered by another Resolution of mine, which is not for discussion to-day. We find that the regiments which were employed in Malabar were mostly Gurkhas and other Indian regiments too. So I can say that Indian regiments can always be safely trusted to deal with situations like that and there is no reason not to trust the Indian officers who would be trained in the British style and according to the traditions of British regiments. This is, Sir, my chief motive in moving this Resolution, and I think, Sir, and I hope that it will meet favourably from the Government party, and I hope and I think this is not such a request which may be not granted. I hope His Excellency the Commander-in-Chief will see his way, knowing the need of the country and the object for which I wish to move this Resolution and what is my idea, to accept it.

Mr. Deputy President: Resolution moved:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

His Excellency the Commander-in-Chief: Sir, I welcome this opportunity to say a few words in reference to this Resolution. The Government are well aware that Members of the Legislatures, and indeed an

even wider circle of political opinion in India, are deeply interested in this very important problem. I can assure you that the Government have taken, and are taking, an equally keen interest in it, though circumstances have so far not made it possible to make a definite announcement with regard to the matter or to state the measures that are in contemplation in order to secure the object which the Honourable Mover has in view. From statements already made in this House Honourable Members are aware that the Government is still not able to set on foot any specific scheme of Indianization, or even to say really now when this will be possible. It is hoped, however, that it will be possible to make an announcement at no very distant date when the correspondence which is still proceeding between the Government of India and the Secretary of State has been concluded. The correspondence has been prolonged, and the consideration given to the matter has been very thorough, as indeed the importance of this matter deserves. The Resolution does not therefore deal with any new proposal but with one which has already been very fully explored. In these circumstances, it will be clear that it would not be open to the Government to accept the Resolution as it stands, since they cannot prejudge a matter which is still under discussion. On the other hand, the Resolution is not unwelcome, since it gives me an opportunity of placing before the House some at any rate of the considerations on which a decision must ultimately depend, and also of stating in their proper relation the measures which the Government have already undertaken to grant His Majesty's Commission to Indians. Now I presume it is thoroughly understood by every Member of this House that Indianization is a process which relates only to the Indian Army. I am not sure that there has not been in certain quarters some misunderstanding in this respect. Indianization is in no way connected with the British units which serve in India or with the question of reducing their numbers. The question of Indianization arises only in regard to a specific portion of the Army in India, namely, the Indian Army, and the object in view is, primarily, the replacement of British Officers of the Indian Army by Indian Officers holding King's Commissions.

Now, before I go any further I want to say that you cannot expect me as Commander-in-Chief in India to view with unmixed feelings the possibility of eliminating the British Officer from the Indian Army. Whatever may happen in the future, if India is in the end able to do without the British Officer in the numbers that have hitherto been employed, Honourable Members of this House and I hope also a much wider circle will recognise the inestimable value of the services which the British Officer has rendered to India in the past and of the conspicuous part that he has played in building up and consolidating the Indian Army, an army of which the people of India have every reason to be proud. The Indian Army has a traditional reputation for efficiency and reliability which is I think universally acknowledged. It will be unnecessary for me to dilate on their heroism, their self-sacrifice; for Honourable Members all know the great achievements of the Indian Army before the great war, during the great war and since the great war, both in India and overseas. And if any testimony as to the share which the British Officer has had in these achievements were required, it would be, I know, readily forthcoming from the most authoritative quarter possible, namely, from the Indian Officers and the Indian soldiers themselves. To me one of the happiest, and most striking features of the British Raj in India is the respect, unquestioning obedience and, I would add, the genuine affection which

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for many years his Indian comrades have invariably given to the British Officer of the Indian Army. I should not do justice to anyone, least of all to the representatives of the people of India if I did not at the very least pay this tribute to the order which the Resolution of my Honourable friend apparently seeks to change. Now, it would be idle to ignore, on the other hand, the desire for change that comes very naturally with changing times, and I can readily understand that as the people of India claim increasing independence they should also claim increasing opportunities to fit themselves for self-defence. A desire that the Indian Army should be Indianized follows as a natural sequence, and Government, as I have already said, have for a considerable time recognized that a demand of this kind is inevitable and they have spent much time and pains in investigating the best means of assisting the people of India to realize their ambition without at the same time sacrificing even for a time the traditional efficiency of the Indian Army. It goes without saying that even in the transitional stage it will be essential to preserve the country's means of defence efficient and unimpaired. This is the first and the greatest difficulty of the problem before the Government. An efficient army is composed of intensely human factors, one of the chief of which is an inherent dislike for violent changes. A change of this nature which would rapidly eliminate a large number of British Officers would certainly be a violent one. Obviously a step of this kind would best be taken when the skies are clear and the process of transformation undisturbed by the presence of dangers either external or internal. And I need hardly remind the House that ever since the end of the great war India has never wholly been free from some form of external or internal menace. Neither of the difficulties which I have mentioned, however, have discouraged the Government from attacking the issue. And what I wish here to emphasise is that, while larger schemes have been maturing, definite measures have been taken to secure the grant of King's Commissions to individual Indians who are suitable and qualified. The first results of our efforts to secure suitable candidates for Sandhurst were not very encouraging. The number of Indian boys who came forward in itself was small and very few of them were found to have reached the standard of educational and physical fitness which are required to qualify a candidate for the first stage of a military career. It will probably interest the House to learn in some detail the steps which the Government have taken to overcome these difficulties. The story is one of steady and continuous progress. In the first instance, during the war and since, 371 Honorary King's Commissions have been granted mainly as war rewards to Indian Officers holding the Viceroy's Commission in the Indian Army. In addition to these, there are now some 66 Indian Officers holding the full King's Commission and serving in the Regular Indian Army, or doing the normal period of attachment with a British regiment, which is required of every officer, whether British or Indian, before he joins the Indian Army. Of these latter some were originally in the Imperial Cadet Corps and were commissioned from the Indian land forces. Others were commissioned from the Cadet College established during the war as a temporary measure at Indore; others were again promoted from Viceroy's Commissions and others have been commissioned after a regular course of training at Sandhurst. In addition to these, there are at present some 23 Indian Cadets under training in the Royal Military College at Sandhurst, who, if successful, will

shortly qualify for King's Commissions. But we have dug the foundations even deeper than this. In order to enable Indian boys who desire to enter the Army to acquire the qualifications for admission to Sandhurst we have, as this House is well aware, established the Prince of Wales Royal Indian Military College at Dehra Dun. At the present moment there are 38 boys in residence in the College and by April 1923 I hope there will be 70 boys. The report on the first term's work of the Dehra Dun College was distributed to Members of the Legislature and I have only recently received a report on the working of the second term, the contents of which are most satisfactory. I should like to quote you a few passages from this Report. It says:

"The lines on which the cadets have been organised into sections and also into divisions for studies, have proved eminently satisfactory and will be continued. The Cadet Captain and Section Commander are with experience realising their responsibility, acquiring an aptitude for command and have carried out their duties in a manner which does them credit. The continuance of this system will, it is hoped, enhance their usefulness and lead to beneficial results in general."

And again it says:

"There has been an all-round improvement and many cadets, who had apparently played no games before they joined, show a wonderful change in their physique, manliness and agility. The Inspector of Physical Training inspected the Cadets in November and expressed himself fully satisfied with the results."

I myself recently inspected the College and found that the school has been admirably organised and is being well administered by an exceptionally efficient staff. Nothing more could have been done, beyond what has already been done to ensure its success, and—as the Honourable the Finance Member is not here I may perhaps refer to it—I am contemplating in the not very distant future an increase to this College by a considerable amount. I hope that, perhaps within twelve months it may be possible to double the numbers that are already there.

You are also aware that the Government contemplate the establishment of other military institutions which will provide an education, preliminary to the education to be obtained at the Royal Indian Military College, Dehra Dun. We are doing this because it has been realised that, if Indianization is to be given the fullest chance of success, it is essential that Indian boys, who desire an Army career, should have precisely the same opportunities and facilities in the matter of education, both physical and mental, as have always been enjoyed by English boys who are destined for a career in the Army.

Finally, in regard to this aspect of the case, I think the Legislature ought to know that, in order to remove the possible discouragement that might otherwise have existed, Government provide education at Dehra Dun at a cost to the parent below the cost to Government of maintenance of this institution.

The facts which I have just stated are sufficient to show without any further comment from me that, in anticipation of wider proposals for Indianization, Government have adopted a markedly progressive and thorough policy, for the purpose of securing qualified Indians as officers for the Indian Army, and the only further point to which I desire to draw particular attention is that, so far as human means can devise, the Indian cadet is being given every opportunity to make himself as efficient an officer as his British confrère.

I presume by the way that Honourable Members understand why we attach so much importance to the preliminary education of candidates for King's Commissions. In all modern countries good education, as

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the foundation of character, has always been regarded as essential for those who desire to take up the profession of arms in the capacity of officers. An officer is first and foremost a leader of men, and it is necessary for him at the outset to acquire the knowledge and the character which will not only enable him to face danger himself, but will give him the power to induce others to follow him when danger threatens, and to inspire them with trust and confidence in his ability to lead them to success. Initiative, resolution, coolness of judgment, and capacity to command, are the essential qualities of an officer, and the education of those who aspire to hold His Majesty's Commission, must from early boyhood be designed to develop these qualities to the fullest possible extent.

Again, the profession of arms has at all times had its scientific side, but this aspect has in recent years, and particularly since the great War, become very much accentuated. The education of an officer does not cease when he receives his first Commission, as some people are very liable to think. In reality it is then only beginning and it continues throughout his whole career. I am myself still learning every day from Honourable Members in this House, whose ideas are sometimes new and the expression of them forcible. In recruiting officers for the Army, we have to look for those who will not only be successful as combatants but will be successful also in the technical, administrative and Staff Department of an Army. These considerations must, however, be familiar to all. I have laid some stress on the matter because it leads me to one of the specific objections which debar Government from accepting the Honourable Member's Resolution. To accelerate progress by the grant of King's Commissions on any considerable scale in the near future to officers who at present hold the Viceroy's Commission would not be a practicable scheme since the latter do not as a rule possess the educational qualifications or the capacity for educational betterment which are essential not only in the junior ranks of the army but also, and more particularly, in the senior ranks. The problem is not merely to get a sufficient number of Indian officers as such, but to obtain those with the character and educational qualifications which will enable them to rise to positions of trust and responsibility. To make an Army you require to have officers trained in combatant, technical and staff work capable of discharging the duties of the multifarious posts which are necessary for the successful administration of a modern Army. No one knows better than I do what a magnificent body of men are the Indian officers holding the Viceroy's Commission to-day and what superlative services they have rendered and are rendering to India and the Army. Many of them have received the King's Commission, largely as a reward for gallantry and distinguished service in the field and we shall continue to recognise such distinguished services by the grant of further King's Commissions to this class as time goes on. But you may take it from me as certain that it would be wholly impracticable to find the bulk, or even a large proportion of the officers required for the Indian Army from this source alone. There is also, as it appears to me, another obvious flaw in the proposal of the Mover of this Resolution. As I read his Resolution, he suggests that the recruitment of British officers should now wholly cease and that in future none but Indian officers should be recruited from the Indian Army. In the light of what I have said to you, in view of the paramount necessity of maintaining your capacity

for defence unimpaired throughout the transition stage, would it be wise or even practicable for Government to commit themselves to the wholesale Indianisation of the Indian Army before they had had an opportunity of proving either the success or failure of such a change by Indianising some portion of the Indian Army, and by testing a wholly Indianised unit not only in peace but also in war or in some form of frontier service. Perhaps the House will allow me to quote the observations on this point of a very distinguished Member of this House whose presence we miss here to-day but whose interest in this problem and whose knowledge of its intricacies is probably unequalled amongst Indians—I refer to my friend, Sir Sivaswamy Aiyer, who, writing in the *Nineteenth Century Review* not very long ago, said:

"No sane Indian politician advocates the filling up of the higher ranks of the Army with Indians without training or experience."

and he adds:

"As a matter of fact, no one has asked that the commissioned ranks should be exclusively recruited from among Indians: we have been pressing only for the removal of the barriers against us and for the recruitment of Indians to the higher ranks on a liberal scale to start with progressive annual increments."

I wish he was only here to-day to take part in this debate because he has studied the question to my knowledge with great care and very profoundly.

I think I have said enough to indicate a few of the difficulties with which this problem bristles. Some of the barriers have already been removed. The attitude which Government have so far adopted in regard to this matter, though it has been prudent, has also been reasonably liberal. I have mentioned that further changes are in contemplation. What form these will take I am not in a position at the present moment to reveal. But in reference to Mr. Yamin Khan's Resolution I would say to the House: "Don't try to go too fast. Don't try to run before you can walk. If you do, you will assuredly fall down." In dealing with the Indianisation of the Army, India must proceed by degrees and by well-considered stages, if her advance towards the desired independence in other departments of the administration is to progress surely and safely without undue risk or danger to the community at large.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): In the first instance, Sir, I solicit your leave and the leave of the Assembly to move a few verbal amendments to the motion put before the House by Mr. Muhammad Yamin Khan and if that leave is not allowed I shall speak to the Resolution itself. The amendments that I ask your leave, Sir, to move is to substitute the word "or" for the word "and" in the second line, to omit the word "all" in the third line, to omit the word "only" in the fourth line, and to omit the word "wholly" in the fifth line.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Read the whole after filling in the amendments.

Sir Deva Prasad Sarvadhikary: I am going to. We have had many lectures from Dr. Gour, but that hint from him is hardly needed. The Resolution as I would amend it will stand like this:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment or by promotion from the rank of Viceroy's Commissioned Officers in such number that vacancies in the Indian Regiments be in future filled by such Indian Officers till all Indian Regiments are Indianised."

Have I your leave, Sir?

Mr. Deputy President: Yes.

Sir Deva Prasad Sarvadhikary: Sir, the Commander-in-Chief is in a learning mood

Mr. R. W. Davies (Madras: Nominated Official): But the leave of the House has not been obtained. I object to the amendment.

Mr. Deputy President: I have allowed the Honourable Member to proceed with his speech. It is for the House to accept or to reject the amendment.

Sir Deva Prasad Sarvadhikary: I have leave to move the amendments. That has been given. It is too late now to object to it. Well, Sir, the Commander-in-Chief is in a learning mood and he learns even in this Assembly. We are also in a learning mood now and ever. We have learnt much from what His Excellency has told us this afternoon. Much have we heard that heartens and encourages us for the future. We recognise the difficulties of the situation and the limitations of the position. While we do that, we are anxious to place before the Government and the public some substantive and substantial form in which we make our demand. We recognise the difficulties of the Government of India. It is not merely Whitehall, as Dr. Gour cried out in the course of the Commander-in-Chief's speech, that is interfering with us. Whitehall for this purpose is a mere post office between us and what the War Office stands for—the military organisation of England. Even when Whitehall is sympathetic, it will not be able to have its own way altogether. That, however, will not prevent our making our demand.

My first amendment has reference to what the Commander-in-Chief said regarding the present position, calibre, status, and education of the Viceroy's Commissioned officers, and it will not be possible, if we retain the word "and" to have recruitment according to the military authorities requirements from that body to any very considerable extent. My amendment, however, will not shut them out in suitable cases. The matter is left entirely to the military authorities to decide whether it can and shall be by recruitment or by promotion from the Commissioned ranks of the Viceroy's Officers. That gets rid to a certain extent of the objection that His Excellency has put forward with force that I recognise.

Sir, when Indian officers are going to take the place of British officers, even though it be in the Indian regiments, I do not for one moment want to countenance the position that they shall be inferior to the British officers in any way, by education, by training and character and various other things which are inseparable from a good soldier as well as a good citizen. He ought to be able to hold his own in the Army, as Mr. Rangachariar suggested this morning they ought to be able to hold their own in the Civil Service. Therefore, that is a *sine qua non* which nobody will want to do away with. We are entirely at one with Sir Sivaswamy Aiyer reference to whose work we appreciate. Conceded that, the Army Authorities and the Government will find it difficult to resist our demand so far as that is concerned.

Then we recognise the difficulty of rushing things. Apart from considerations of expediency, where are the men to be had immediately to take all these places as vacancies occur? It would to a certain extent be a gain for the present if suitable men, like those

that gave such good account of themselves in the Bengal Ambulance Corps and the Calcutta University Corps—as they come along, are given promotions and this amended Resolution would secure this object. I do not think piling up of superlatives such as "all," or "only," or "wholly" will add to the force of the demand. Indianisation is Indianisation. It has a definite meaning. Whether Indian Regiments are to be wholly Indianised or largely Indianised or mainly Indianised will be determined by the exigencies or the circumstances for the time being. Our goal, our objective, our ideal, here as elsewhere, is that Indianisation shall proceed as far as possible and as fast as possible, without detriment to efficiency, without detriment to the high standard which we must maintain in our Army, as everywhere else. If all this is conceded, where comes the difficulty in accepting the substance of this Resolution? Government is busy corresponding, framing schemes; we have indications which show what the mind of the Commander-in-Chief and the Government here is. That is encouraging, but that does not go very far, for they are handicapped. We want definitely to say that this is the ideal that we aim at and we should like to know what there is to prevent that ideal being accepted and being given effect to cautiously, slowly, if you like, but steadily and without any detriment to the goal and objective in view. Sir, the Commander-in-Chief has himself said that this is a deeply important matter. We consider this to be vital. Everything else pales in importance where nation building is concerned. If the Reforms are to be a real success, we must have an abundant part in the national defences of the country and must be prepared for it apace, but certainly without detriment to efficiency again. That we are quite agreed about.

Sir, the Commander-in-Chief has said that it must be made quite clear that Indianisation applies only to Indian regiments. The motion before the House does not take us any further than that. But may we not some day hope that just as he wants the British officer to continue in the Indian regiments it may be possible for Indian officers to take their place alongside British officers in British regiments? What has happened in other walks of life, the civil service, commercial life, educational and medical including the Indian Medical Service, service in law, engineering, everywhere? The Indian who has been tried and found not wanting has had conceded his place above his British colleagues and the Britishers, be it said to their credit, have loyally served them. Are we not seeing this now in the Secretariat, in the Honourable Indian Members' Departments, in the High Courts, at the Bar, in commerce, in education, everywhere; wherever an Indian had his chance he has justified himself (*A Voice*: "and as soldiers"). And as soldiers. This was unthinkable only a few years ago and still it is so. A time may come, who knows, why not soon—when India will have her own British regiments untrammelled by considerations of War Office Routine—of British regiments officered by British and Indian officers,—who knows that Indian officers will not be welcomed by British regiments themselves to take their place alongside British officers. Sir, that is not the objective of this amendment, but as the Commander-in-Chief has introduced the matter, I think we may be permitted to express the hope that a time may come, when by soldierly and citizenlike qualities an Indian soldier may be permitted to take his place alongside the British officer in British regiments as well. But that must be for another day.

Sir, the value of the Indian Army is recognised. Its gallant officers by war services have earned King's Commissions,—371 of them. Many more of them have given their lives and many more have fought gallantly.

[Sir Deva Prasad Sarvadhikary.]

Could not many more have been given Commissions? If the authorities had their scheme ready, if they are really sympathetic and fully prepared, they could and would have done what is or must be inevitable in the near future. Sir, I do not want to take up the time of the House too long. There must be many other Members who are anxious to speak but I think it is up to us in this Assembly clearly, definitely and strongly to say that we want something, definite, substantial and intelligible, on the lines of the amended Resolution. At one time I thought that one or other of the amendments might suit the circumstances of the case better, because one does recognise that one cannot decide in detail these things in an Assembly like this and in a hurry. But what we are proposing to-day, subject to the amendments that I move, is fairly definite but not aggressive or inadmissible so that the authorities may not have any option in the matter. They have to accept the principle and give effect to the spirit of the Resolution as soon and as well as they can. If this proposal is accepted they can do this in the near future and must.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I move that the discussion be adjourned.

The Honourable Sir Malcolm Hailey (Home Member): It disturbs me to have to place before you a motion which is, for me, of an unusual nature. Usually such motions come from my friends on the opposite side. (A Voice: "Not always.") The fact however is that this evening we have a very important Executive Council meeting at 5-30 p.m. at which the presence of all Members of Council is necessary; it is therefore difficult for us to continue this discussion. I would, therefore, ask you, Sir, to adjourn.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 25th January, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 25th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

VIEWS OF LOCAL GOVERNMENTS ON MATTERS OF PUBLIC IMPORTANCE.

259. *Mr. Manmohandas Ramji: Will the Government be pleased to state:

- (a) whether they ask the opinions of Local Governments as a whole, that is, the Executive Members and Ministers together, or separately, when referring for opinion on matters of general public importance,
- (b) whether they have received the opinions of the Members and Ministers jointly or separately,
- (c) if not which of the Local Governments do not submit the opinions of Ministers, and
- (d) whether the Government propose to consider the desirability of directing all Local Governments to do so in future?

The Honourable Sir Malcolm Hailey: The normal course followed by the Government of India in consulting a Local Government is to ask for the opinion of the Local Government which means the Governor in Council in relation to reserved subjects and the Governor acting with his Ministers in the case of transferred subjects. The Governor General in Council is not primarily concerned with the procedure adopted by the Local Government for the formulation of its opinion on such references, but I would invite the attention of the Honourable Member to clause IV of the Instrument of Instructions to the Governors of the various provinces in accordance with which the Governor is directed to encourage the habit of joint deliberation between himself, his Councillors and his Ministers. Generally speaking the opinions received from Local Governments are given as the joint opinion of the Local Government, though occasionally the particular opinion of individual Members of the Executive Council and Ministers is given separately. The Government of India have no sufficient information to enable them to discriminate between Local Governments in this respect, and they do not propose to issue any direction in the matter.

RENTS IN DELHI AND SIMLA.

260. *Munshi Iswar Saran: (a) Will Government state the basis on which rent for the Government houses in New Delhi is charged from the occupants of those houses?

(b) Is it a fact that a number of junior officers occupying Government houses in New Delhi are also paying rent to Government for their houses in Simla?

(c) Is it a fact that for the five months that these officers are in Delhi, they have to pay separately rents for two houses, one in Simla and the other in Delhi?

(d) Is Government aware that in such cases the combined rent for the Simla and the Delhi houses, even excluding the charge for furniture, works out to a high percentage of their salary?

(e) Do Government propose to direct that the total house rent charged by Government for residence provided by it should not exceed 10 per cent. of the officer's salary?

Colonel Sir Sydney Crookshank: As the answer to this question is very lengthy, I propose, if I have the permission of the Chair, to lay it on the table.

(a) Rents for residences in Delhi are recovered on a seasonal basis, the season being reckoned as a period of five months.

2. The rent assessed for each building is a sum calculated to cover cost of

(a) interest charges on the capital cost calculated at the rate at which Government is borrowing money at the time of construction,

(b) maintenance charges,

(c) municipal and other taxation.

The amount that can be recovered from each individual is, however, limited to 10 per cent of his pay, but over and above this, extra rent, which is not limited in any way, is recovered for electric installations, special services such as water supply and plumbing, and furniture. Each of these being assessed in a similar manner to the rent of the building itself.

3. As the rate of interest under 2 (a) above has varied considerably since construction was first started in Delhi, advantage was taken this year when revising rents—as necessitated by the introduction of the Fundamental Rules—to pool the interest charges so as to ensure all being treated alike. For the sake of convenience rents were pooled for (a) officers' residences, and (b) residences of ministerial establishment. The average rates so calculated worked out to

Officers.

4½ (round) in the case of buildings and electric installations.

4½ (round) in the case of special services.

Ministerial establishment.

4½ (round) in the case of buildings.

4 (round) in the case of electric installations.

4 (round) in the case of special services

as compared with the uniform rate of 3½ per cent in force before the issue of the Fundamental Rules. The allowance made for repairs is as follows:

	Officers.	Ministerial establishment.
	Per cent.	Per cent.
Building	2	1½
Electric installations	3½	4
Special services	3½	5½

The maintenance charges vary with the specification of the work.

(b) Yes.

(c) Yes.

(d) The proportion which actual recoveries bear to salaries is as follows:

- (i) Junior officers drawing Rs. 1,350 to Rs. 1,999 . . . 10·6 without furniture and 12·2 with furniture.
(ii) Junior officers drawing Rs. 900 to Rs. 1,349 . . . 12·2 without furniture and 14·4 with furniture.

(e) The matter is under consideration.

UNIVERSITY ELECTIONS.

261. *Munshi Iswar Saran: Will Government state if the Hindu University at Benares and the Muslim University at Aligarh will be given the right of electing their own representatives in the coming election?

The Honourable Mr. A. C. Chatterjee: Government do not at present propose to take any action in this direction.

Mr. K. Ahmed: Isn't that derogatory to the principle of education, and that is one of the reasons why students are boycotting the Government Universities and they say that they should be nationalised? Isn't that so, Sir?

The Honourable Sir Malcolm Hailey: It is a question of opinion.

STATEMENT OF GOVERNMENT BUSINESS.

Mr. Deputy President: I should like to know from the Leader of the House if he has any announcement to make with regard to the forthcoming business before the House.

The Honourable Sir Malcolm Hailey (Home Member): We propose, Sir, to hold a meeting to-morrow, Friday, to continue the discussion on the Criminal Procedure Code (Amendment) Bill. As regards next week, it will

[Sir Malcolm Hailey.]

be devoted entirely to Government business. But we do not propose next week to continue the discussion on the Criminal Procedure Code Bill. There will probably be four or five meetings, and it is proposed to take into consideration the Reports of the Joint Committees on the following Bills which were presented on the 15th and 16th January:

The Indian Boilers Bill,

The Indian Mines Bill,

The Cotton Transport Bill, and

The Cantonments (House-Accommodation) Bill.

It is also hoped to take into consideration at an early date the Report of the Joint Committee on the Workmen's Compensation Bill which was presented yesterday. It is also proposed to refer to a Joint Committee the Indian Cotton Cess Bill which was introduced in the Assembly on the 23rd instant.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Is there any meeting on Saturday next?

The Honourable Sir Malcolm Hailey: It is not proposed to hold a meeting on Saturday.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Will there be an off day in the week following?

The Honourable Sir Malcolm Hailey: In the week following we shall have an off day either on Saturday or Friday; it depends on the progress we make with business.

Mr. Deputy President: The House will now proceed to the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, the amendment which I have to move is intended merely to make clear what is apparently the intention, namely, when a person, after having undergone some portion of his imprisonment is released on condition and that condition is broken, and he is again ordered to go back, he must give security only for the unexpired portion of the period. That is the object of the amendment in clause 6, paragraph 2 and paragraph 3, section 124. My amendment has been slightly altered by the draftsman which Government accepts, and therefore, Sir, in place of the amendment as it stands, I move that the following be substituted:

"That in sub-clause (iii) of clause 23, for the second paragraph of the proposed new section 6 the following be substituted:

"(a) Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

equal to the period between the date of the breach of the conditions of the discharge and the date on which except for such conditional discharge he would have been entitled to release) the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion, and

(b) in the third paragraph for the word 'may' the words 'shall, subject to the provisions of section 122' be substituted; and after the words 'original order' the words 'for the unexpired portion aforesaid' be inserted."

Both these amendments are merely intended to make it clear that the bond required or to be given will only be for the unexpired portion. I want to make it clear that it should not be for the whole length of time, because he has already undergone a portion of that period. To make that clear, I move that amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, Government accepts these amendments.

Mr. Deputy President: The amendment moved is:

"That in sub-clause (iii) of clause 23, for the second paragraph of the proposed new section 6 the following be substituted:

"(a) Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of the discharge and the date on which except for such conditional discharge he would have been entitled to release) the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion, and

(b) in the third paragraph for the word 'may' the words 'shall, subject to the provisions of section 122' be substituted; and after the words 'original order' the words 'for the unexpired portion aforesaid' be inserted."

The question is that that amendment be made.

The motion was adopted.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment (No. 84) standing in my name

Sir Henry Moncrieff Smith: I think this amendment has been disposed of by the discussion we had the other day. It is substantially the same as the amendment moved by my learned friend Mr. Rangachariar, and the House on that amendment expressed the opinion that they would prefer to have the law as it stands in the Code maintained. If my friend is moving the proviso, that is a different matter; but the first part, the substantive amendment has been disposed of.

Mr. Deputy President: I take it that the Honourable Member is moving the second part: "Provided further that in case, etc., etc. . . ."

Bhai Man Singh: I do not propose to move the second part.

Mr. Deputy President: The question is that clause 23, as amended, stand part of the Bill.

The motion was adopted.

Mr. Deputy President: Under the ruling I have given amendment No. 86* in the List of Business is outside the scope of the Bill and is therefore out of order.

No. 87† is also outside the scope of the Bill and therefore I have to rule it out of order.

The question is that clause 23-A stand part of the Bill.

The motion was adopted.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muhamadan Urban): Sir, on behalf of Mr. Agnihotri I move:

"That in clause 24 in sub-section (1) of section 133 for the words "he thinks fit" the words "is adduced" be substituted."

The new section 133 (1) says:

"Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed etc."

Now, Sir, when a Magistrate wants to take evidence under this section it is in order to show that there is a necessity for taking action, and I think it is better that the evidence adduced should be allowed to be taken by the Magistrate. Because he may otherwise decide to take only such portion as he thinks fit and not the whole. This section leaves it too much to the discretion of the Magistrate, and I therefore suggest the addition of the words "is adduced."

* "86. After clause 23-A insert the following clause:

'23-B. To section 128 of the said Code the following proviso shall be added, namely:

'Provided that no such force shall be used to the members constituting such assembly if they do not offer resistance to their being arrested'."

† "87. After clause 23-A insert the following clause:

'23-B. After section 131 of the said Code, the following section shall be inserted, namely:

'131-A. Where under the provisions of this Chapter any person proceeds or determines to disperse any such assembly by the use of fire-arms the following rules shall also be observed:

(1) Fire-arms should be used only if such assembly cannot otherwise be dispersed and no fire-arms should as a rule be used except on the written authority of a Magistrate of the highest class available on the spot. Provided that when immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public the seniormost police or military officer present on the spot may give the written authority instead and the same shall be communicated to the nearest Magistrate forthwith.

(2) Before the assembly is fired upon the fullest warning should be given by all available means to the assembly that unless it disperses within a given time it will be fired on.

(3) The person giving the authority to fire shall ordinarily give such interval between the warning and firing as he considers sufficient in all the circumstances of the case.

(4) A full report of the occurrence shall be made in all cases when such assembly is dispersed by the use of fire-arms to the nearest first-class magistrate within 24 hours of the occurrence and such report shall be a public document.

(5) If the person is himself a first-class Magistrate his report shall be made to the District Magistrate and if the person is a District Magistrate his report shall be made to the Local Government.

(6) Notwithstanding anything contained in section 132 any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms may make a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter."

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, in this Chapter of the Code we are dealing with public nuisances and it will be seen that the amendment proposed refers to the first step in the procedure. The District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class on receiving a police report or other information and on taking such evidence, if any, as he thinks fit—is empowered to issue a conditional order. The order, Sir, is only a conditional order, an order to the person to whom it is directed to appear and show cause against or else to comply with the direction in the order after it has been received by him. It is open to him later to produce any evidence he thinks fit and to show cause against. I submit, Sir, that it is entirely unnecessary here to make it compulsory for the Magistrate to take all the evidence which is adduced, because the full inquiry follows afterwards. The words in the Code as they stand at present are, "as he thinks fit," and it is not proposed in the Bill to amend those words. I submit, Sir, that this is all that is necessary, in view of the fact that we are dealing only with the preliminary stage. It is just the same thing as if you were taking cognizance of an offence on a complaint. You merely examine the complainant and then a summons is issued and so on, and you proceed to hear evidence afterwards. The conditional order under this section has practically no more effect than a summons addressed to an accused person. In these circumstances, Sir, I submit that it is entirely unnecessary to make the amendment proposed by my Honourable friend.

Rao Bahadur T. Rangachariar: Sir, I support the amendment. The object of this clause is for a Magistrate to make up his mind on a complaint made either by the Police or it may be by a private individual. He has got to decide it himself in the first instance and he asks the man to appear either before himself or some other Magistrate of the first or second class and move to have the order set aside. So that in the first instance it is a conditional order. Therefore the Magistrate has to adjudicate on the information given by private parties, and the only option given to the party to whom notice is given is to set aside that order. It is therefore but right that the Magistrate should take the evidence which is adduced before him before he makes that order. It is not as if you issue notice on a complaint or anything of that sort. I therefore think that there is a great deal of substance in the amendment.

Dr. H. S. Gour (Nagpur Division: Non-Muhamadan): Sir, I oppose this amendment. If the Honourable Members will turn to section 133 they will find that an order that has to be passed for the abatement of a public nuisance may refer, for instance, to any building, tent or structure, or any tree in such a condition that it is likely to fall. Now, if the Honourable Mover's amendment is accepted, is the structure or building to fall in the meantime while evidence is being recorded by the Magistrate? And any person who wishes to give evidence may summon and resummon witnesses and the danger to be averted in the meantime may not be averted at all. The object of section 133 is to provide a speedy remedy in cases of public nuisance. The chapter itself beginning with section 133 is of a quasi-criminal character; the proceedings are more or less of a civil character, and I therefore submit that the amendment, if adopted, will delay the proceedings and no good will be served by taking all the evidence that is adduced in a case. The Magistrate may think that one or two witnesses are quite enough to

[Dr. H. S. Gour.]

establish a good *prima facie* case for immediate action. If his discretion is fettered by having to record all evidence that is adduced, it may be wholly unnecessary and it may be wholly superfluous. The evidence will be recorded and in the meantime the public nuisance may be perpetrated. I therefore submit that the discretion given to the Magistrate is a sound one and should not be interfered with.

Mr. Jamnadas Dwarkadas: (Bombay City: Non-Muhammadan Urban): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is:

"In clause 24 in sub-section (1) of section 133 for the words 'he thinks fit' substitute the words 'is adduced'."

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: (Madras: Nominated, Non-Official): I beg to move the amendment (No. 89) which stands in my name, *viz.*:

"In clause 24 in sub-section (1), paragraph 2 of proposed section, 133, insert the words 'from any public place or' after the words 'be removed' and omit the said words where they at present occur in the said sub-section."

The amendment is purely a drafting suggestion. If the Government is not prepared to accept it, I am not going to press it. The section would read better if my suggestion is adopted. The second clause of section 133 reads thus:

"that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public or from any public place, or"

I am asking that the words "from any public place or" be transposed immediately after the words "be removed." If my suggestion is adopted, the paragraph will read thus:

"that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public, or"

That is purely a drafting suggestion. I move it and leave it there.

Sir Henry Moncrieff Smith: Sir, I suggest that it is unwise for this Assembly to make this amendment for the very simple reason that if a change is made in the law, the Courts would ask what the intention of the Legislature is. The actual transposition of the words will not affect the substance of the clause, but some Magistrates may ask why the words have been transposed now and they may come to the conclusion that the intention of the Legislature is to make the words "from any public place" governed by the words "which is or may be lawfully used by the public." I think it undesirable that we should make a change.

Mr. T. V. Seshagiri Ayyar: If the Government draftsman does not want it, I do not press it to a division.

Mr. Deputy President: Amendment (No. 89) was, by leave of the Assembly, withdrawn.

Lala Girdhari Lal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, my two amendments Nos. 90 and 93 go together and I therefore ask for leave to move them together.

Mr. Deputy President: It would be convenient to the House if the Honourable Member would move his amendment No. 90 at this stage.

Lala Girdhari Lal Agarwala: Sir, my object is this. Amendment No. 90 would be necessary only if amendment No. 93 is there; otherwise it would not be necessary at all. Both go together. I may be allowed to explain this. These amendments are amendments in the proposed new section 133 about conditional order for removal of nuisance. It says: "Whenever a District Magistrate, etc., on receiving a police report or other information and on taking such evidence (if any) as he thinks fit, finds that the conduct of any trade or occupation, or the keeping of any goods or merchandise is injurious to the health or physical discomfort of the community". Now, the amendment I propose is that after the word "health" the word 'morality' may be inserted and the word 'physical' may be expunged, and at the end an Explanation may be added to the following effect:

"Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badni or share-marketing as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicants."

The word 'physical' would become unnecessary if this Explanation is added, because there are some discomforts which may not be called physical discomforts, which may be mental discomforts. For example, if a brothel is maintained close to the house of a gentleman, although he would have no physical discomfort, he will have mental discomfort. Of course, I know that in some districts action has been taken under the section "Nuisance" in matters like this. But others think that the section 'Nuisance' is not wide enough to include these matters. As the section is being redrafted, I submit that it should be made quite clear that this sort of nuisance should be allowed to be removed whenever there is any just cause for grievance. Now, I have added the words "Satta, Badni or share-marketing" with this object. In some places there is gambling and there is a law for gambling. Similarly there is gambling in shares which becomes a nuisance in certain places. Government should have power in certain cases to stop licenses or to regulate them. That is the object of my amendment which I move. It runs thus:

"In clause 24 in section 133, sub-section (1), paragraph 3, after the word 'health' insert the word 'morality' and omit the word 'physical', and at the end of section 133 add another Explanation as follows:

"Explanation.—Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badni or share-marketing as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicants."

Sir Henry Moncrieff Smith: Sir, I think my Honourable friend's amendment will probably meet with little support in this House and therefore I shall deal with it very briefly. The question of morality is explained by my friend's second amendment. He intends to give Magistrates power under this section to deal with brothels. I would suggest to the House that this is a matter which is much more suitably dealt with by provincial legislation. We have numerous Municipal laws. (A Voice: 'And by the Municipalities.') There is no Municipal law in the country which does not make provision for this matter. There is a Cantonment Law which also

[Sir Henry Moncrieff Smith.] provides for it. As regards gambling there are at present no less I think than nine gambling Acts in force in the various Provinces, and I think the Code of Criminal Procedure should not attempt to entrench upon them. In regard to intoxicants again, we have our Excise Law; every province has its Excise Law and the matter is fully provided for. It is therefore unnecessary that we should introduce this matter into the Criminal Procedure Code.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I move that the question may be now put, Sir.

The motion was adopted.

Mr. Deputy President: The amendment is:

"In clause 24 in section 133, sub-section (1), paragraph 3, after the word 'health' insert the word 'morality' and omit the words 'or second,' and add the Explanation as follows:

Explanation.—Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badai or share-marketing as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicants."

The motion was negatived.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, my amendment is:

"In clause 24 in the last paragraph of proposed section 133 (1), omit the words 'or second.'"

Section 133 is used in very exceptional cases, and the right of the public is rather interfered with by District Magistrates or Sub-Divisional Magistrates. Sometimes if a building is being constructed, under this order it will have to be stopped, or if any man is carrying on a lawful trade, it will have to be stopped, and many other things which are done in the exercise of the civil rights of the people are to be stopped under the orders of the Magistrate. In such cases we want a Magistrate of the first class or a Sub-Divisional Magistrate who has got ample experience of these matters to issue the orders. The section provides that either a District Magistrate or a Sub-Divisional Magistrate, or a Magistrate specially empowered by the local Government on this behalf, shall issue these orders. But the last paragraph of clause 24 (1) says:—"to appear before himself or some other Magistrate of the first or second class." My point is that these cases being so important and involving intricacies of civil law and construction, should not be tried by second class Magistrates, but only by first class Magistrates, who are Magistrates of ample experience.

Mr. H. Tonkinson: Sir, my Honourable friend suggests that in these provisions we are interfering with the right of the public. I venture, Sir, to suggest that we give power in this Chapter of the Code to interfere with the actions of single persons who are committing a public nuisance. He suggests that because we are dealing with all these matters, the inquiry should only be held by a first class Magistrate. Now, Sir, under the existing law (and the Bill makes no change whatsoever in this respect), it is a District Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the first class who makes the conditional order. Now, as we all know, in many Provinces the Sub-Divisional Magistrates will be stationed at headquarters, and there will nevertheless be tahsildars and so on scattered throughout the district. The public nuisance may be committed anywhere in the

district, and it is clear that the present law conduces to the interests of the subject by enabling the Magistrate who makes the conditional order to direct that this shall be inquired into by a Magistrate on the spot. That, Sir, is the reason why in the present law it is permissible for the further inquiries to be held by a second class Magistrate, and I submit, Sir, that it would be quite a mistake of this Assembly if they make any change in this respect.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): I think, Sir, the amendment proposed is a very sound one. The matter is so very important that only a first class Magistrate should issue the conditional order. The idea is that he is an experienced officer, a man of very ripe experience and he knows what is what. And therefore, in its subsequent stages to entrust the inquiry to a second class Magistrate, a person who ordinarily resides in the tehsil or mufasil towns and not at headquarters, and has not much experience, is I think not very desirable.

Sir Henry Moncrieff Smith: Sir, I think my friend who has just spoken has provided one argument against the amendment. He says second class Magistrates ordinarily reside in the sub-divisional or mufasil towns. Is it not necessary that in these cases of preliminary inquiry, the inquiry should be made by a Magistrate who is on the spot? If this amendment is accepted, then in the cases to which my friend refers all the witnesses will have to move along to the headquarters town of the district where the first class Magistrate is. They will be put to considerable inconvenience and my friend, I think, by supporting this amendment is rendering himself liable to a charge of adding to the already long list of public nuisances.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): The question may now be put.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I oppose this amendment on various grounds; firstly that it is not convenient. Supposing the obstruction or nuisance is committed at a tehsil, will you ask the first class Magistrate to go there, or will you ask the applicant to go to the place where the first class Magistrate is? He will have to take a number of witnesses and he will have to go himself. This will not add to the convenience and expedition of the work, rather it will impede it. On these grounds I oppose the amendment.

(Several Honourable Members: The question may now be put.)

The motion was negatived.

Mr. Deputy President: The question is that clause 24 stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, my amendment runs as follows:

"In clause 25 for the words 'and in the manner' substitute the words 'and substantially in the manner'."

It relates to section 139 and is a very modest and necessary amendment. That is to say, the person against whom the order is passed has to comply with it "within the time" and "in the manner" specified in the order. Honourable Members have no doubt noticed the numerous cases enumerated in section 133: to fence a tank or a well or an excavation; to repair a building; to remove or support a tree. All these

[Rao Bahadur T. Rangachariar.]
things are given. I only provide for the safeguard that if he substantially fulfils the order in the manner required, he should be deemed to have complied with the order. I mean, supposing he is asked to put up a teak-wood support and he substitutes another equally strong wood support he would have complied with the order substantially, although not exactly in the manner required, that is to say, not literally, but substantially in the manner required. Supposing he is asked to put up a steel beam and he puts up an equally strong concrete beam, why should he be deemed not to have complied with the order? Therefore, in order to make it clear, I introduce the word "substantially."

I move the amendment, as it stands in my name.

Mr. H. Tonkinson: Sir, the Bill proposes to require the person against whom an order is made under section 133, either to perform the action directed within the time and in the manner specified in the order, or else to appear and show cause. The Bill inserts the words "and in the manner." These words were inserted by the Committee presided over by Sir George Lowndes and, if Honourable Members will refer to the remarks of that Committee on this clause, they will find that they say that "a small amendment is also required in section 135-A by reason of the amendments we have proposed in section 133." That is to say, these words have been proposed to be inserted in section 135 because of the changes that the Committee proposed in section 133. Now, Sir, what are those changes? They relate to the orders which may be issued by the Magistrate in the first conditional order. The first case in question is as follows:

Orders:

"to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation."

The next case in which an amendment was made by the Committee is:

"To remove such goods or merchandise or to regulate the keeping thereof in such manner as may be directed."

Another case is—

"To destroy, confine or dispose of such dangerous animal in the manner provided in the said order."

Now, Sir, I would ask my Honourable and learned friend whether there can be any question of desisting from carrying on or removing or regulating substantially in the manner directed any trade or occupation. Can there be any question of regulating the keeping of goods or merchandise substantially in the manner directed or of disposing of a dangerous animal substantially in the manner directed? Sir, what we want in this case to provide for is absolute compliance.

I think that the amendment proposed is open to much graver objection on another ground. My Honourable friend wishes to permit the person to whom an order is directed to plead substantial compliance. Now, Sir, what would be the result of being able to plead substantial compliance? The Magistrate will know that compliance is to be vague. Therefore, the original order will be vague. What we want, Sir, is a precise order, from which the man to whom it is directed will know

exactly what he has to do. I submit, Sir, that if this amendment is accepted, we shall be doing more harm to these people whom my learned friend desires to benefit than good.

Dr. Nand Lal: Sir, I feel bound to oppose this amendment. In the first place the word "substantially" is very vague; it is extremely difficult to determine what is "substantially" and what is not. Therefore, it will make the task of the Magistrate very cumbersome.

In the second place, I do not find any justification for introducing this word. My learned friend, perhaps on account of lack of time, failed to see what matters and what affairs this provision relates to. The word "substantially" will be misplaced altogether, and, therefore, in brief, on these two grounds, I oppose the amendment.

Mr. R. A. Spence (Bombay: European): I move that the question be now put.

Mr. Deputy President: The question is:

"That in clause 25 for the words 'and in the manner' substitute the words 'and substantially in the manner'."

The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: The question is that clause 25 stand part of the Bill.

The motion was adopted.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I propose:

"That in clause 25A the following should be substituted for the proposed section 139A, sub-sections (1), (2) and (3), namely:

"139A. If the order made absolute under section 137, sub-section (3), or section 139, sub-section (1), is concerning the obstruction, nuisance or danger to the public in the use of any way, river, channel or place and the contention of the person against whom such order is made, is that there is no public right in respect of such way, river, channel or place, the order of the Magistrate shall be subject to any subsequent decision of a competent Civil Court."

to which I wish to add, with the permission of the House, the words "on that point".

I shall explain my meaning, Sir. To understand the section we must go back to section 133, which says:

"Whenever a District Magistrate, a Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a police-report or other information, and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, etc., etc."

Now, the proposed section says:

"Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter."

[Mr. J. Ramayya Pantulu.]

(2) If on such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

Well, the object of the new section is first to give the party against whom an order is made, a warning that he can set up a defence that the place or river or the way in regard to which the order is made is not a public place, and, secondly, if he sets up that plea and the Magistrate finds reliable evidence in support of that plea that he should stop further proceedings until that point is decided by a competent Civil Court.

Well, it seems to me that the first remedy that is proposed to be provided by this section is unnecessary because, according to the wording of section 133 which is that "any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place," the question whether the place, river or way is a public one or not is directly an issue as soon as a preliminary order is made. The preliminary order will state that there is reason to believe that a nuisance or obstruction has been created in a place, river, or way, which the public have a right to use, *i.e.*, in regard to which there is a right of way to the public. So, whether there is a public right of way or not is a question directly in issue in the case and is a question that arises out of the preliminary order issued by the Magistrate, and I do not see any necessity for the Magistrate again warning the party appearing before him and asking him whether he sets up a defence on the ground that there is no public right of way. When the preliminary order is issued, what is the party against whom it is issued going to do? Clearly he must either say that the place or river or way is not a public one, or if he admits that it is a public one he must say that no obstruction has been created on it. These are the only two defences he can set up. The law itself makes it clear that the Magistrate has got information that the way, etc., is a public one. If there is no public right to it, if the public has no right to enter upon it, then there is no case and the preliminary order cannot be made at all. So the question whether a place is a public one or not is directly in issue and arises out of the preliminary order itself. I do not, therefore, see why the Magistrate should give a special warning to the party appearing before him. That is quite unnecessary.

Some of my friends might think that I am arguing from the bureaucratic point of view. Well, we have been acting the defence pleader rather too much during the last few days but we are here to treat the matter in a fair and dispassionate manner from the point of view of the Judge who has had to deal with these cases.

Then supposing the party sets up a plea that there is no right of public way to the place, etc., the proposed section says that the Magistrate shall not decide that point, but that if he finds there is reliable evidence in support of that contention, he shall stay the proceedings pending the decision of a Civil Court. But how is the matter to go to the Civil Court? The party against whom the preliminary order is made will certainly not go to the Civil Court. He has achieved his object. Why should he go to the Civil Court? And if he does not go, who else is to go to the Civil Court? This is a matter in which the public as a whole is concerned and the public is too diffused

to resort to costly civil proceedings. Then, is the Government to go to Court? This also is impracticable. Moreover Government can, at this rate, be driven to a Civil Court in every case. My point is that the Magistrate should himself go into the question whether there is a public right of way or not. If he finds there is no such right he will discharge the preliminary order. If he finds there is such a right to his satisfaction, let him make that order absolute but subject to the decision of the Civil Court. Then it will be for the party against whom the order is made absolute to go to the Civil Court. He will be compelled to go to the Civil Court. If he can show that the place is not a public place, then the order of the Magistrate will become null and void. That seems to me to be the only businesslike procedure in the matter, and I therefore propose this amendment.

Sir Henry Moncrieff Smith: Sir, there are very great difficulties about this amendment. If Members of this House will look at the report of the Joint Committee on the Bill they will find that the Joint Committee devoted a considerable amount of attention to this matter, and I can say from personal experience that they also devoted a great amount of time. My friend, Mr. Pantulu, wants to defer a decision as to the existence of a public right of way—to defer a decision from the Civil Court—till after an order has been made absolute. Now that is distinctly contrary to the views of practically all the High Courts. What the Joint Committee did in this case was to try and give effect to the law as interpreted by the High Courts of this country. The High Courts have laid down over and over again that where there is a denial of a public right based on substantial grounds the Magistrate's jurisdiction is ousted at once. He cannot proceed any further in this matter of removing a public nuisance. But what would be the effect of my Honourable friend's amendment? The Magistrate himself apparently (whether with or without the aid of a jury, I am not quite sure) will proceed to determine the question of the existence of a public right. Well, if he decides there is no public right, then of course it goes no further. But supposing he decides there is a public right and he makes his order absolute. My Honourable friend says, "Well, then the party aggrieved goes to the Civil Court," and after possibly very dilatory proceedings he gets his declaration that there is no public right. But will that help the man in whose interests Mr. Pantulu has moved this amendment? You have got to remember that in this case we are dealing with the removal of a nuisance or an obstruction or a danger. The obstruction may be a tree, quite a valuable tree. The Magistrate has decided that there is a public right and he has confirmed his order that the tree is to be removed. If the man does not remove it, you will see if you look at section 140 of the Code, that the Magistrate can have the tree removed himself. What good will be the subsequent decision of the Civil Court that there was no public right? The tree will have gone. It may not be a tree; it may be something of far more value. It may be a building. The building will have gone, and what compensation is the man going to get for what he has been forced to remove? The amendment made by the Joint Committee in the Bill in this respect was I think made entirely in the interests of the subject. Where there is a *bonâ fide* denial of a public right there can be no question of going on and taking executive proceedings to force the man to remove the obstruction or the nuisance. My friend asked what will be the effect of staying the proceedings when the Magistrate finds that there is a *bonâ fide* claim that no public right exists. The man has achieved his object. He has established his claim. The Magistrate has said, "I cannot

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proceed any further. My jurisdiction is ousted." Who is going to settle the matter? The obstruction continues. It is the person who is aggrieved by the obstruction who will have to take the necessary steps. If the place concerned is in a municipality, the Municipal Corporation will bring a suit. That is not an unknown thing. If it is Government property, a suit will be filed by the Secretary of State. To lay down that, even when there is a *bona fide* claim or denial of a public right, the Magistrate must and ought to settle that matter himself and can then proceed to make an order absolute, is, I think, most undesirable and, as I said, it is contrary to the views of all the High Courts. That matter must be decided by a competent Court. There is no question about it that a Magistrate taking an executive proceeding under this Chapter is not the proper person to decide so serious a matter as a question of title.

Bhai Man Singh: On a point of order. I submit that my amendment No. 99 is practically just the same as 95 and I may be allowed to move it and give my views upon it.

Sir Henry Moncrieff Smith: Amendment No. 99 is entirely different. It does not seek to get rid of Section 139A as it stands at present. It does not get rid of that part of the section which lays down that when there is a *bona fide* claim the proceedings must be stayed.

Mr. W. M. Hussanally: (Sind: Muhammadan Rural): I think, Sir, there is a considerable amount of force in the contention of my friend, Mr. Pantulu. It must be remembered that proceedings under this Chapter are summary and no Magistrate will have the time or the leisure to make any elaborate inquiry into a matter of a public right of this kind. Moreover that is a matter specially within the province of the Civil Court and not within the jurisdiction of a Criminal Court. The point that has to be considered in a matter like this is whether there is a public right or not. Now, if the Magistrate comes to a decision that it is a public right, even then the man against whom that order is made absolute must have the option to go to the Civil Court and the decision of the Magistrate which will be made absolute for the time being only must be subject to the decision of a competent Civil Court where the matter will have to be threshed out at some length and after taking all the evidence that is necessary. If on the other hand the Magistrate decides that there is no public right, then what happens? Who has to go to the Civil Court? So far as the person against whom the order is made, he is quite safe. He need not trouble about going to the Civil Court at all and supposing this takes place where there is no municipality, then who has to go to the Civil Court. Certainly no member of the public will go to the Civil Court and not even a municipality in a town will care to go to a Civil Court because the Civil Court procedure is very long and costly. **Sir Henry Moncrieff Smith** said that the Secretary of State would file a suit. For the Secretary of State to file a suit of this kind is not an easy matter and it will take a long time. A case ought to be made out and it ought to be of sufficient importance for the Government to interfere and bring a suit of this kind on behalf of the Secretary of State. Meantime the public suffers and if the matter is not of sufficient importance to move the Government to bring a suit in a Civil Court on behalf of the Secretary of State, the public suffers. The procedure laid down in the clauses of the new proposed section are clumsy and cumbrous and I believe the amendment as proposed by my friend, Mr. Pantulu, is short and to the point. I therefore support this amendment.

Mr. Jamnadas Dwarkadas: I move that the question be now put.

Dr. Nand Lal: Sir, to my mind the amendment seems to be superfluous. I do not think this is a useful amendment and deserves the support of the House. May I invite the attention of my learned friend, the Mover of this amendment, to clause (2):

"If in such inquiry ^{and} the Magistrate finds that there is any reliable evidence in support of such denial ^{that} he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court."

Mr. W. M. Hussanally: Who is to go to the court?

Dr. Nand Lal: That is a separate question. The Magistrate is quite prepared to give him time to have it determined.

Mr. W. M. Hussanally: Why should he go?

Dr. Nand Lal: The man, who thinks he is aggrieved, may go to the Civil Court and have it determined. If he wishes that the thing may be expedited he may do his level best to see that the decision is given on that question. Should the Secretary of State go to the Civil Court? Here time is allowed to him to have the question decided. And as I have already submitted, if he wishes the whole thing to be expedited, he may go at once and have adjudication upon that question at once. The clause says:

"until the matter of the existence of such right has been decided by a competent Civil Court: and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require."

In the face of this provision, as I have already submitted, it seems highly improbable that this amendment may seek for the support of this House.

Sir Henry Stanyon (United Provinces: European): Sir, one can appreciate and sympathise with the motive which underlies this amendment. It is this—that by the somewhat summary order of a Magistrate, a man should not be finally deprived of what he may consider to be his private rights. But we must look also at the other side of the question, and I think there are insuperable difficulties in the way of giving support to this amendment. We can understand the position best by putting forward a simple illustration. A man is ordered to remove an obstruction from a public way. He opposes that order on the ground that the way is not a public way. If an order is made against him, as the law stands, he is not prevented from going to the Civil Court to establish his title. Or, he resists the order upon the ground that, though it is a public way, his act does not constitute a nuisance. That is a totally different position. The Magistrate finds after inquiry that it is a nuisance and he orders its removal. Are we by this amendment going to allow a man against whom the order is passed to go to the Civil Court the next day and get an injunction staying obedience to the Magistrate's order. Again, who is to be the defendant in a case of that kind to show on the opposite side in the Civil Court that it is a nuisance? Difficulties arise in connection with the arraignment of parties. It seems preposterous that every time a Magistrate makes an order regarding a nuisance which is disputed by the person against whom it is made, the Secretary of State, or the Government, or some representative of the public, should be dragged into the Civil Court to answer the claim. And, again, the amendment does not touch the other side at all. What is to happen if the Magistrate decides in favour of the person

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against whom proceedings were instituted holding that there is no nuisance? The amendment does not provide that the unfortunate public against whom the order goes in that case have to go to the Civil Court. The amendment is one-sided. It is only with regard to the private individual against whom an order is made absolute. Therefore, I think that upon a balance of advantages and disadvantages we shall be better without this amendment.

(Some Honourable Members: "I move that the question be put.")
The motion was adopted.

Mr. Deputy President: The question is:

"That in clause 25A substitute the following for the proposed section 139. (1), (2) and (3), namely:

'139A. If the order made absolute under section 137, sub-section (3), or section 138, sub-section (1), is concerning the obstruction, nuisance or danger to the public in the use of any way, river, channel or place and the contention of the person against whom such order is made, is that there is no public right in respect of such way, river, channel or place, the order of the Magistrate shall be subject to any subsequent decision of a competent Civil Court on that point.'

The motion was negatived.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I will, with the permission of the House, take the two amendments separately.

Mr. Deputy President: I think it will be to the better convenience of the House if the Honourable Member would take the first amendment first.

Mr. T. V. Seshagiri Ayyar: Sir, my first amendment is in these terms:

"In clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bona fide* dispute relating to the existence of any such right'."

I had better mention to the House in what stage we are when section 139A is to be enforced. First of all, there is a police complaint or police information or some evidence before the Magistrate; on that the Magistrate comes to the conclusion that an order should be passed, a conditional order, as it is called, should be passed; and on passing the conditional order, he calls upon the person against whom the accusation is made to show cause why he should not be restrained in a particular manner. It is at this stage this section, 139A, comes in. 139A says:

"Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter."

Then comes this clause, namely:

"If in such inquiry"—that is after the conditional order, and when the inquiry is being made—"the Magistrate finds that there is any reliable evidence in support of such denial." The House will remember that

there is to be a third inquiry either under section 138 or section 139. Therefore this is, as it were, a preliminary inquiry before the Magistrate makes up his mind either to proceed against the man or to give him a jury. At this stage to speak of reliable evidence is altogether useless. As has been pointed out by the Calcutta High Court, what ought to be done in such a proceeding is this. The Magistrate should satisfy himself that there is a *bona fide* dispute. The language used by me is that used by the Calcutta High Court in 31, Cal., 979. They refer to an earlier decision and say (you will find it on page 982), that the Magistrate at this stage has to see to the *bona fides* of the claim—then he has either to decide under section 138 by means of issuing a summons and so on, or if the person accused claims, he has to send the matter up before the jury. At this stage, to speak of reliable evidence is likely to put the accused in a very embarrassing position. Therefore all that has to be done at this stage is for the Magistrate to satisfy himself that there is an honest dispute, a *bona fide* dispute on the subject which requires to be further proceeded with. Under these circumstances, I submit to the House that the words 'reliable evidence' are unnecessary. I move that these words be deleted, and that the words which I have mentioned should be substituted.

Mr. Deputy President: The amendment moved is:

"That in clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bona fide* dispute relating to the existence of any such right'."

Sir Henry Moncrieff Smith: Sir, personally, I regard this as more or less a matter of drafting,—and naturally I prefer the drafting of the Bill to my Honourable friend's attempt to improve it. Mr. Seshagiri Ayyar towards the end of his remarks explained that he had attempted to take the words used by the Calcutta High Court into the Bill. Well, in the first place, I would suggest that that is not a very good argument to advance in support of an amendment, because the High Courts, when they write their judgments, are certainly not drafting laws; they are trying to expound the law, and they try to do so in plain and ordinary language. But when Mr. Seshagiri Ayyar went on to read what the High Court said, I did not find the word 'dispute' at all in the extract he read. He said that the Calcutta High Court had said that the *bona fides* of the claim must be inquired into. Well, that is quite another thing. A dispute connotes two separate parties, a dispute between one person and another person. A claim is quite another thing. 'Claim' is really the word that we use in the Bill as it stands. It is not actually a claim, it is a claim of a negative proposition,—I think my Honourable friend will admit—a man comes up, and claims that there is not a public right,—and what do we shorten that into?—that there is a denial of a public right. 'Denial' is the word used, and when there is a denial of a public right, the Magistrate inquires into that denial. My friend suggested that the word 'inquiry' which occurs in the beginning of sub-section (2) of section 139A, is the inquiry which results from the issue of the notice to him to show cause under section 133. It is not quite that. If my Honourable friend will carry his eyes back a little way along sub-section (1) of section 139A, he will find that if the Magistrate questions him—that is the first thing,—the real inquiry has not yet begun—if the Magistrate questions him as to whether he denies the existence of a public right, and if the person does deny the

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 existence of that right, the Magistrate shall inquire into the matter, that is to say, he shall not inquire into the whole matter of the notice issued under section 137, but shall inquire into this denial. If the Magistrate inquires into the denial, what does that mean? It means that he must take evidence. I cannot conceive what is wrong with saying, "if the Magistrate finds reliable evidence in support of the denial he shall act accordingly." I can see no improvement whatever in the words proposed to be substituted by my Honourable friend. He professes to have taken them from a High Court ruling; but that High Court ruling does not contain the words. (Mr. T. V. Seshagiri Ayyar: "Bonâ fide claim.") There is a difference between 'claim' and 'dispute.' The claim is one in a negative form; in other words it is a denial, and that is the word we are using. Moreover, as regards the words *bonâ fide*, the High Courts use it over and over again, but can my Honourable friend point out the word anywhere in the Code? My friend is rather fond of Latin tags. (A Voice: "It means good faith.") Well, let us have good faith perhaps, but *bonâ fide* is quite another matter; it is not used anywhere in the Code. I put it to the House that the Bill in this respect, as drafted by the Joint Committee, is perfectly clear. The Magistrate inquires into the denial. That involves his taking evidence. We merely say that if he finds reliable evidence in support of the denial he shall stay proceedings. I cannot see how that is improved by saying that "it appears to the Magistrate that there is a *bonâ fide* dispute" between the person who is asked to show cause and some other imaginary person who is not indicated at all. There is no ground whatever, I suggest, for making this amendment, which to my mind is really nothing more than a drafting amendment, and a drafting amendment on lines which would not commend themselves to a draftsman of experience.

Mr. Deputy President: The amendment moved is:

"In clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bonâ fide* dispute relating to the existence of any such right'."

The question is that that amendment be made.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, I feel very unwilling to move the next amendment*, for the reason that Sir Henry Moncrieff Smith who has been speaking on behalf of the Government seems to think that he has done the best thing possible in the circumstances, and that every suggestion to improve the section must be regarded as altogether unnecessary or mischievous. I think myself that my amendment No. 97 (3) would certainly make the section read better; but if the Government is of opinion that they have done the very best thing possible in the circumstances,

* "(3) A person who on being questioned by the Magistrate under sub-section (1) does not deny the existence of a public right of the nature therein referred to or whose denial is not supported by *prima facie* evidence as to the right claimed in himself shall not in the subsequent proceedings be permitted to make any such denial nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138."

I do not press my amendment as there is no use in taking up the time of the House. I move it, Sir, formally, and if the Government does not accept it I do not press for a division.

Sir Henry Moncrieff Smith: Sir, I oppose the amendment.

The motion was negatived.

APPOINTMENT OF A ROYAL COMMISSION ON INDIAN SERVICES.

The Honourable Sir Malcolm Hailey (Home Member): With your permission, Sir, I desire to interrupt for a moment the discussion on the Criminal Procedure Code in order to make an announcement to the House. I think it necessary to take this course because the matter is of such importance to the House and to the public that I should feel myself to blame if I did not place it in possession of the information at my disposal at the very earliest moment. The House will remember that a short time ago we issued a communiqué with regard to certain reports in the press on the subject of the appointment of a Royal Commission for the Public Services. We stated that those rumours were unauthorized and inaccurate. (Mr. N. M. Samarth: "and premature"). Our words were those I have quoted. They were certainly unauthorized; they were also in their terms inaccurate. But since then, the matter has proceeded further and His Majesty's Government have arrived at a definite decision in the matter; it is that decision which I wish to take the opportunity of communicating to the House. If you will permit me I will read the exact terms of the announcement which has been authorized by His Majesty's Government, and I would ask the House to note those terms particularly, as they show at once the intention of His Majesty's Government in the matter and the exact scope of the inquiry which is to take place. I will make a copy of this available as soon as possible. The announcement is as follows:

"His Majesty's Government have decided to appoint a Royal Commission on the Services in India. The precise terms of reference to the Commission have not yet been definitely settled but will be wide in their scope. It is contemplated that the Commission will be required, having general regard to the necessity of maintaining the standard of administration in conformity with the responsibility of the Crown and the Government of India and to the declared policy of Parliament in respect of the increasing association of Indians in every branch of the administration and having particular regard to the experience now gained of the operation of the system of Government established by the Government of India Act, to inquire into the organization and the general conditions of the services, financial and otherwise, of the superior civil services in India and the best methods of ensuring and maintaining the satisfactory recruitment of such numbers of Indians and Europeans respectively as now may be decided to be necessary in the light of the considerations above referred to."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Who pays for this Commission?

The Honourable Sir Malcolm Hailey: Might I suggest that a discussion on this matter might suitably be raised either by question or by motion. I have only made the announcement now because I thought it due to myself and to the House as a matter of courtesy that I should place this announcement before them at the very earliest moment that I could do so.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Sir, while we are extremely grateful to the Honourable the Home Member for giving

[Dr. H. S. Gour.]

this House the earliest opportunity of learning of the appointment of the Royal Commission, I think I am voicing the general sentiments of this side of the House when I say that the news has come to us as a shock and that we shall take the earliest opportunity of moving the adjournment of this House to protest against the appointment of a Royal Commission. I ask you, Sir, to give us the earliest opportunity for discussing this question which is of urgent public importance, and in view of the various number of questions that have been put by Honourable Members in this connection and the discussion that has gone on in the public Press, I hope you will afford us an early opportunity of discussing this question.

Mr. Deputy President: I wish to draw the Honourable Member's attention that under the Manual of Procedure a certain procedure is laid down for the adjournment of the House and I am sure that if the Honourable Member moves it, the needful will be done at the proper time.

Mr. Deputy President then called on Mr. Agnihotri to move amendment No. 98, relating to the Code of Criminal Procedure (Amendment) Bill.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): On a point of order. Dr. Gour has expressed views on behalf of one side of the House, and

Mr. Deputy President: It is open to any Member to move the adjournment of the House at the proper time and the question will be decided upon at the proper time.

Mr. Jamnadas Dwarkadas: I only wanted to say that the National Party associates itself with the remarks made by Dr. Gour.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Bhai Man Singh: I move, Sir, the amendment that stands in my name, which is as follows:

"In clause '25A add the following sub-section at the end of the proposed section 139A:

"(4) Nothing in this section or in section 133 shall prevent any aggrieved person from filing a civil suit about the existence of a public right in the way, channel, river or place concerned or the question of his title therein, and any order made under this Chapter shall be subject to the order of the Civil Court in such a suit."

The learned framers of the Code have adopted the principle of the Court rulings and as a result of these rulings, 15 Calcutta 564 and 35 Calcutta 283, they have come to the conclusion that if the Magistrate thinks it proper and a *bona fide* objection is made as to whether there exists a public right or not in such a channel, and the Magistrate does not find that the claim is a flimsy one, he can refer it to the Civil Court or, if he thinks that there are no proper grounds for the claim, he can proceed with the case. But there has been another side to the question which has been left out, viz., whether the order of the Magistrates in regard to the public way or right is or is not final. No doubt, Sir, there exists some ruling. There are some rulings which have held definitely that if anybody thinks

aggrieved on the point that there does not exist a public right, he can go to the Civil Court. That principle, Sir, has been held in that ruling:

"A Civil Court is not competent to set aside the order of a Magistrate made under section 521 of the Code of Criminal Procedure, on the ground that such order was made without jurisdiction because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under section 521 by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place as between the parties to such suit and those who claim under them."

Now, Sir, while lawyers were discussing this case, there was very great difficulty in arriving at this decision. There were different authorities and they had to convince their Lordships. I need not take up the time of the House in going through the history of these rulings. I simply want to submit that there is no reason why we should not lay it down very clearly and definitely that an order which refers to a right of the public in respect of the way, river, etc., should be subject to the final decision of a Civil Court. The sections of this Chapter as they stood did not make any reference to a Civil Court, but in the proposed sub-section (3) we have laid down as follows:

"A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138."

No doubt, Sir, we simply deny him the right to ascertain his position in those proceedings under this Chapter. But having denied him that and not having touched the existing law about Civil Courts, there is the danger that our intentions might be misunderstood, and there is no reason why while incorporating the results of certain other decisions of the Court, we should not at the same time incorporate the decisions arrived at in other rulings and make the law quite clear on the point.

The Honourable Sir Malcolm Hailey: Briefly put, my argument is that there is nothing in the Bill or Code which prevents a party from going to a Civil Court, and I think indeed the ruling which the Honourable Member read out confirms this statement. With regard to the latter part of the amendment, namely, that any order made under this Chapter should be subjected to the order of the Civil Court in such a suit, that question, I think, has already been decided by the House on Mr. Pantulu's Amendment No. 95. In these circumstances, I think I can very fairly put it to the Honourable Member that his amendment is not really required.

Mr. T. V. Seshagiri Ayyar: Sir, I think this is a very dangerous amendment to introduce. Ordinarily any order passed by a Magistrate would not stand in the way of the establishment of civil rights. If you once begin to introduce a provision of this nature, it would lead to trouble. The difficulty will arise as to whether Article 11 or 13 of the Limitation Act or whether the ordinary law of limitation should be availed of. I think if you once introduce an amendment of this nature and say that the order of the Magistrate should be questioned by the Civil Court, it would lead to great complications. Under these circumstances, I would request my friend to withdraw the amendment. The Courts have never found any difficulty in coming to a conclusion that Civil Courts can declare the rights of the parties.

Bhai Man Singh: I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Deputy President: The question is that clause 25A stand part of the Bill.

The motion was adopted.

Bhai Man Singh: The amendment that stands in my name refers to clause 26 and runs as follows

Rao Bahadur T. Rangachariar: Amendment No. 101 will be taken afterwards?

Mr. Deputy President: Amendment No. 101 may be taken later.

Bhai Man Singh: My amendment runs as follows:

"In clause 26 (1) insert the following as sub-clause (i) and renumber the subsequent sub-clauses accordingly:

(i) In section 144, sub-section (1), after the words 'in cases where' and before the words 'in the opinion of' the following words shall be inserted:

'on credible information received'."

I think it would be better and for the convenience of the House that I should move only the first part of my amendment at this stage. With your permission I should like to speak only on this part of the amendment first.

Mr. Deputy President: Very well.

Bhai Man Singh: Sir, it is a subject which really vitally touches the rights and liberties of my countrymen. Section 144 is one of those sections of which there has been the greatest abuse, and this section is perhaps the widest possible in its scope, and against it there is practically absolutely no remedy provided. Therefore, Sir, I would beg the Honourable Members of this House to give their careful attention to the point whether we are to leave this section 144 as wide and the powers of the Magistrates under it as free as they are at present. Sir, there have been cases where the most respectable, most responsible persons have been ordered not to enter a certain town. I remember very well when our well known countryman Pundit Madan Mohan Malaviya was ordered not go to Ambala City and not to deliver his lecture, and I know as a matter of fact that Ambala City is perhaps the most docile town in India—(An Honourable Member: "You come from it")—I come from it, of course, and if there are wrong-doers there, you may take it that they are an exception, as the history of my own city shows that there have been no sort of affrays or riots there on political grounds, and perhaps Ambala has supplied the least number of political prisoners during the last two years. So Ambala was a most peaceful place where the most innocent speech of Pundit Malaviya would never have caused any disturbance of the public tranquillity or public peace, nor would his entry into the city of Ambala have caused danger to human life or safety. But all the same the terms of the section are very wide and in the opinion of the Magistrate he has to comply with it. I submit that we must provide very strong safeguards against the abuse of the power given under this section, and this is one of the first safeguards that I am suggesting. I am suggesting, Sir, that the Magistrate should only take action "on credible information received." In the Code we find that whenever we give a power to a Magistrate, he can only move on information received. For example, I may refer Honourable Members of the House to

sections 107, 108, 110 and 133. In section 107 the Magistrate is informed. Similarly section 110 says when the Magistrate "receives information" that any person within the local limits of his jurisdiction is a habitual robber, etc. For the purpose of even robbers and worse criminals where we provide that there shall be a regular trial later on, even in those cases, we want the Magistrate to go upon a certain sort of information received, and I submit that, in revising this Code, we have improved upon those words, I do not remember the exact words. If I knew we were going to amend the Code like that, I would perhaps have suggested those very words instead of my present form of "on credible information received." All the same I submit there is no reason why a Magistrate should proceed on no information being received. Certain rulings of the High Court too are in my favour. I refer the House to 38 Calcutta, page 876. In that case the petitioner excavated a tank on his own land adjoining the house of the opposite party, and the latter objected to the excavation on the ground that his house would be thereby rendered unsafe. No likelihood of a breach of the peace appeared from the police report or the written statements of the parties, but the Magistrate made the order under section 144 of the Criminal Procedure Code without inquiry or recording any urgency. There are two things, Sir, without inquiry and without recording any urgency. Then, Sir, in the body of judgment when the facts are being described, it is said:

"Then, on the 19th April, and without further enquiry and without recording any urgency in the matter, the Magistrate made his Rule absolute not on the ground reported by the police, but as appears from his present explanation, from his personal apprehension that the parties would break the public peace"

Everywhere under the criminal law we want to exclude the personal information of the magistracy, but under section 144, as it at present stands, the Magistrate has the right to order a person not to enter such and such a place on his own personal information. I am sorry there was no revision or appeal provided directly against this section. Whenever the matters have come before the High Courts, it has been mostly in an indirect way. In certain cases the High Courts have inquired about it while they were discussing the fact whether the Magistrate had properly exercised his jurisdiction or not, or whether he had fulfilled all the formalities laid down under this section or not. Most of the rulings under this section are concerned only indirectly with this matter, as when a man has broken an order and has been convicted under section 188 of the Indian Penal Code and those matters have gone on revision to the High Court, then the High Courts had chances to pass remarks about the work of the Magistrate. In this case the High Court have definitely held that the order was not passed on any real apprehension properly arrived at. By using the words "properly arrived at." Their Lordships definitely meant that the Magistrate should come to his conclusions by recording some sort of evidence, by getting some sort of information about it. There is absolutely no reason why the Magistrates should proceed without any information. Further on, Sir, we have got a series of rulings where the High Courts have held also that they should record evidence. I draw the attention of the House to 13 Weekly Reporter, page 46. Of course these are old rulings and they refer, therefore, to sections of the old Code.

"Section 62 of the Code of Criminal Procedure does not authorise a Magistrate summarily to direct a person to remove a wall erected on land that has belonged to any other person in the absence of evidence showing that a riot or affray was likely to occur."

[Bhai Man Singh.]

There are a number of rulings which have held to that point. One ruling says:

"There is nothing in section 62 of the Criminal Procedure Code to justify a Magistrate in making an order for the removal of a bund or other obstruction or nuisance on the mere report of a police constable."

Not only has it been held that the Magistrate is not to proceed on his own information but it has been held that he is not to proceed merely on the report of the police.

"Before making such an order he ought to take evidence from the defendant and, if necessary, on both sides."

Again, Sir, if we look to other series of rulings where cases have gone to the High Courts when there has been a conviction under section 188 of the Indian Penal Code, there the High Courts have held that, if there is no strong, no clear, evidence that the disobedience of the order would lead to a breach of the peace, then the conviction is illegal. I submit, Sir, if the Magistrate has not got good evidence to support his order, where is the use of his passing an order? Supposing he passes an order under the section, a man who breaks it cannot be punished. Unless there is very clear evidence to support the conviction and to prove that there would have been a breach of the peace on account of the disobedience of the order the man would go scot free. Where is the use of making any law behind which we have got no sanction? The last principle was held in 4 Punjab Record, 1916, and in many other rulings. So, I submit, there is absolutely no reason why we should not see what are the definite safeguards that should be provided under section 144. I may point out one more fact, Sir. No doubt an order under the section stands for two months only; but two months may mean a lot; two months may sometimes have disastrous effects on a person. Supposing, Sir, having delivered a very fiery speech on some religious matter, I have made myself obnoxious to a certain class of persons at Ambala and the Magistrate thinks that my going there would cause a riot or a breach of public tranquillity. A certain person at Ambala has filed a suit against me for Rs. 20,000. I have defended that suit, I cannot altogether depend on giving written instructions through a pleader. I want to be present personally. Well, the District Magistrate says: "My dear Sir, I do not care for that, you can appear through a pleader." There is a very clear provision in the civil law that a man can appear through his pleader. The District Judge could very well say "I do not care for the order of the District Magistrate; you can appear through your counsel." There could be another thing. Supposing a man says "I think Man Singh will become bankrupt and run away. In that case there might be an attachment before judgment. Where should I be? There can be infinite hardships through the abuse of this section. The very liberties, the very right of speech, the very right of political propaganda even within proper limits, has been checked by the abuse of this section, and there is absolutely no reason why we should allow this section to remain as it stands without providing sufficient safeguards against its abuse.

Sir, with these remarks, I recommend this amendment, No. 1 of this series, to the House.

Dr. Nand Lal: Sir, there has been an amount of criticism in connection with the applicability or inapplicability of this section, namely, 144, of the Criminal Procedure Code, and I think the author of this amendment has rendered some service in putting forward the amendment under discussion. May I invite your attention, Sir, to the general principle of law? It is this, that every Magistrate and every Judge has to form his opinion on some data before him. I think no Honourable Member of this House will deny the correctness of this proposition. But, when we come to the provisions of this section, what do we find? The section says: In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate (it has been amended a bit) specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, immediate prevention or a speedy remedy is desirable. If there is some sort of evidence before the Magistrate, of course the matter being so urgent, he is fully competent to take action. His opinion based on some evidence must be respected and the orders passed by him must be given the greatest possible regard. But the defect in the present provision is this, that he can form any opinion, *suo motu*, of his own accord, without having anything before him, and, therefore, the provisions seem to be very defective; and I think the arguments which have been advanced in favour of the insertion of the words "on credible information received" will meet the criticisms which have been, as I have already submitted, levelled against this section.

On this ground I very strongly support this amendment.

Sir Henry Moncrieff Smith: Sir, the Honourable Mover of this amendment said a good deal about section 144 as a whole. What he said about his amendment amounted, I think, only to this, that he desired that the law should lay down that a Magistrate should not act on his own knowledge but should receive credible information from some outside person that action under the section was necessary. Sir, I doubt whether it carries us very much further, because, if the Magistrate forms an opinion, he can only form that opinion on information that he has received. If he takes action on his own knowledge, well, his knowledge was not

born inside him but comes from outside. The House will remember, I think, what the purport of section 144 is. In the first place, it is a power in the hands of the Executive to take speedy and immediate action. It is placed deliberately in the hands of the Executive, in the hands of those who are responsible for the maintenance of peace and order in the district, in the hands of those who are responsible for seeing that there is no disturbance of the public tranquillity. Bhai Man Singh referred to a case where a certain gentleman received an order under this section to prevent him from visiting Ambala. Well, in that case the Magistrate must have acted on information. The information as a matter of fact in that case would probably come from some other place, possibly Allahabad, where the gentleman in question lives. It must have come from there and in that case the amendment which my friend proposes to sub-section (1) would not have carried the Magistrate's case any further, nor would it have carried the case of Pandit Madan Mohan Malaviya any further. The House has already on one or two occasions adopted the phraseology of section 204, which is at the beginning of the Chapter, which tells a Magistrate how he is to proceed on a complaint. The words are "If in the opinion of the Magistrate there is

[Sir Henry Moncrieff Smith.] sufficient ground for proceedings." The Government, Sir, has no objection to introducing these words into section 144. They do not fit in very well. It would read something like this then:

"In cases where in the opinion of a District Magistrate"—or of any of the other Magistrates referred to—"there is sufficient ground for proceeding under this section, and immediate prevention or speedy remedy is desirable."

That is not entirely satisfactory because of the form of the section, but I think it would meet the views of the House?

(Some Honourable Members: "Yes.")

Bhai Man Singh: I would accept the amendment.

Sir Henry Moncrieff Smith: Then I would ask leave to move the amendment in that form as an amendment to my friend's amendment No. 102.

Mr. T. V. Seshagiri Ayyar: Will the Honourable Member read out the amendment as he himself would have it—the whole of it?

Sir Henry Moncrieff Smith:

"In cases where in the opinion of a District Magistrate"—I leave out the other Magistrates referred to—"there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable."

Mr. T. V. Seshagiri Ayyar and Dr. Nand Lal: Yes, that will meet the case.

Mr. Deputy President: The amendment moved is:

"That in Clause 26, to sub-clause (i), add the following:

'and after the words "under this section" the words "there is sufficient ground for proceeding under this section and" shall be inserted.'

The motion was adopted.

Mr. B. Venkatapatiraju: Sir, I move:

"That in clause 26 in sub-clause (i) after the words 'of the' insert the words 'second or'."

It evidently means that the delegation by the Local Government to District Magistrates and Chief Presidency Magistrates should be limited to first class Magistrates. Already there is power, Sir, for Sub-divisional Magistrates but there are first class Magistrates who are not Sub-divisional Officers. This is an important section and I think it would be better to confine it to first class Magistrates. I may mention that under this section the other day in the Nellore district a second class Magistrate issued a notice that no meetings should be held in that town, and it so happened that the District Board had to meet. They did not know what to do. In defiance of the order of the Magistrate they held the meeting, and the Magistrate was unable to do anything. Subsequently the District Magistrate cancelled the order. In such an important matter as this, therefore, it is absolutely necessary that we should entrust it to persons who have much experience, and I propose therefore that first class Magistrates only should be given this power. I move the amendment.

The Honourable Sir Malcolm Halley: We have already considered the possibility of the Local Government empowering a first class Magistrate. Mr. Raju would now make it impossible for them to empower a second class Magistrate. He quoted as a reason one instance in which a second

class Magistrate issued an order which certainly seemed objectionable. But his friends here I know would be prepared, were I to invite them to do so, to produce a large series of orders by first class Magistrates and even by District Magistrates themselves which were equally from their point of view objectionable. The fact that a second class Magistrate occasionally issues an objectionable order is not in itself sufficient ground for saying that no second class Magistrate should be empowered under this section.

I said the other day—and I hope Mr. Agnihotri will not mind my saying so—that my friend is liable to a crisis of nerves whenever certain sections of the Code are touched. Our treatment of meetings is just one of those points which affects my Honourable friend in this regrettable way. But this Chapter has a very wide scope and extends far beyond the treatment of meetings. There must be many occasions in which a second class Magistrate, distant many miles from a first class Magistrate or Sub-divisional Officer, finds himself face to face with a crisis of this nature. He has not time to wait. The matter is urgent and in the words of the Code "a speedy remedy" is desirable. He cannot afford to state the case to the first class Magistrate and get his orders. I would put it to this Assembly that this is a matter which really must be decided on the spot and on first hand information, and it is necessary that, in many out of the way places where there is only a second class Magistrate, he should be empowered to pass the necessary orders. Again I would ask the House not to confine itself entirely to the case of meetings, for, as I say, the Chapter has a very much wider scope.

Mr. Deputy President: The question is:

"That in clause 26, in sub-clause (i) after the words 'of the' the words 'second or' be inserted."

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, the amendment which I move runs as follows:

"In clause 26 to sub-clause (i) add the following at the end:

"and after the words 'such Magistrate' where they first occur the words 'after recording his opinion that the other powers with which he is entrusted are insufficient' shall be inserted."

That is to say, the object of my amendment is this. This is a reserve power in the hands of the Magistrate—section 144. I ask Honourable Members to remember what all powers we have hitherto given to the Magistrate to secure public peace and public tranquillity. We have now extended the scope of the chapter relating to taking security for keeping the peace. Honourable Members will remember that breach of the peace or disturbance of public tranquillity takes place either by the direct act of the party concerned, that is, by himself committing the breach of the peace or by committing a wrongful act which will provoke a breach of the peace. Both those cases have been provided for in section 107. Persons of bad character are already provided for. As Honourable Members remember, persons convicted of offences involving a breach of the peace are also provided for by section 106. I said that the scope of the preventive powers has been extended by the amendments we have hitherto carried. I mean this. When proceedings under the security chapter are being taken, we have now given power to the Magistrates to pass interim orders pending the inquiry, so that persons called upon to give security either for keeping the peace or for good behaviour are called upon to give interim

[Rao Bahadur T. Rangachariar.]
bonds in urgent cases, so that urgent cases are also provided for. Now under this section 144, I may mention to Honourable Members, action may be taken against wrongful acts and also against rightful acts which are likely to create a breach of the peace or disturb the public tranquillity. Honourable Members who have either applied this section or practised in courts where they have to apply this section will remember on many an occasion perfectly legal acts on the part of the individual have been prohibited because public peace is of more importance than the exercise of legal rights, so that temporarily even the exercise of legal rights can be suspended under this section 144. That is the object of this section. Whereas section 107 prohibits only wrongful acts, section 144 can prevent rightful acts. Let us remember that. Therefore having regard to that, the Magistrate's duty, it will be readily conceded, is to protect subjects of His Majesty in the exercise of their lawful rights. But if he finds it impossible to protect the subject, having regard to the urgent nature of the case, having perhaps regard to the fact that he has not got sufficient police force at his back in order to enforce the exercise of the right or having regard to other circumstances, he is obliged to take action under section 144, he is permitted to resort to this. High Courts have recognised this power. The legal exercise of lawful rights has been prohibited under this section because it is necessary that this reserve power in the hands of the Magistrate should exist. Now, I say deliberately that this is a reserve power because in order that he may suppress the exercise of lawful rights, he must have taken all other measures in his power, such as taking security from the person who threatens to commit a breach of the peace. Now, for instance, I have known of cases where in consequence of some religious disputes between parties or in consequence of caste disputes between parties, low castes and depressed classes have been prohibited from carrying processions in streets because it was not a *mamool* and the higher castes take exception to this innovation and therefore the Magistrates in Madras very often had to prevent the exercise by these poor people of their lawful rights by having resort to this section. I am not going to refer to merely political cases. In ordinary cases which come up before Magistrates, in consequence of disputes between various castes, in consequence of disputes for precedence for honours in temples and other places, section 144 is a section which is frequently used and therefore it has been laid down by the High Courts that this section should not be resorted to unless the other powers with which the Magistrate is entrusted are found to be insufficient. I have taken the language from a decision of the Madras High Court so early as in 6 Madras, where in consequence of religious disputes between Hindus and Muhammadans, in consequence of the question as to whether Hindus can beat drums in front of mosques, this question came up before the courts. This particular case was an offshoot of what is known as the Salem riots case, which originated in consequence of this dispute between Hindus and Muhammadans. There the High Court had to examine the propriety of the order. They point out there distinctly that the power conferred upon a Magistrate under section 144 is an extraordinary power and the Magistrate should resort to it only when he is satisfied that the other powers with which he is entrusted are insufficient. The authority of the Magistrate should be exercised in defence of rights rather than in their suspension. But at the same time they recognised there may be occasions when he may have to suspend, that is when he is powerless, when the other powers which he has got are not sufficient and therefore I say that before taking action under this section

he should deliberately come to the conclusion that the other powers, namely, sections 107, 108 and 109 and the police force at his back are insufficient to secure public peace and he must come to that conclusion before he takes action under this section and the heading of the chapter also will support my argument as Honourable Members will notice. These are temporary orders in urgent cases of nuisance or apprehended danger. So that it is really intended for the preservation of the public peace, because the Magistrate is powerless to act otherwise. For instance, I know of a case where a person walking down a street saw a flag on the top of a house which offended his feelings and directly he passed an order to pull down that flag. Who is going to take offence at the flag being hoisted on a particular man's house? That is a right. It was a Home Rule flag. In those days Dr. Annie Besant was not a favoured person at the hands of the Government. She was a suspect and now she is the accredited representative of Government. Therefore an extremist of to-day becomes a moderate of to-morrow and the non-co-operator of to-day may become a co-operator of to-morrow and I am not sure whether Mr. C. R. Das will not be an honoured guest in this House. Therefore in the political passions of the moment action is taken. Section 144 was applied to Dr. Annie Besant as mercilessly and as ruthlessly as against other persons who did not find favour with the authorities. There was, I remember, Sir, another case where a person carried Dr. Annie Besant's portrait on his chest, and, Sir, he was ordered to take it down because he was going to offend the feelings of the loyal and law-abiding section who take offence at these trifles—these people who profess loyalty take offence at these things on mere pretences, as we all know, and on this pretext action is taken; and therefore, Sir, I ask that by all means prevent the exercise of lawful rights, the exercise of legal rights of holding public meetings; preaching to the public is a legal right, we have understood it, of British citizenship in the British Empire. Pandit Madan Mohan Malaviya, who once adorned this Chamber in its former existence, has been prevented from preaching at public meetings. By all means resort to this procedure. I have no objection. In fact the Honourable the Home Member the other day spoke of me as being the ingenious lawyer who suggested to them this extraordinary and exceptional course. I disclaim that compliment. But assuming that it is correct, then I am here, Sir, trying to undo the mischief which I have done. Will you please assist me in undoing that mischief? You say you have acted on my advice—I feel it a great compliment that you acted on my advice, that the Government of India, the mighty Government of India have acted on the advice of poor Rangachariar—assuming that it is correct, I am trying to undo the mischief which I have done myself; and therefore, Sir, I ask, not that we should prevent the use of this section. I know in many cases this section is a very useful section. I know it from my practice of 32 years, I know that section 144 is a very necessary section, but at the same time Magistrates are tempted, the police are tempted, to make use of this section, when parties, rich parties at times of religious disputes, resort to this section. Other persons resort to this section, find it a cheap method of getting an order in their favour,—one order under section 134, another under 145, and the man who is able to get the ear of the police or of the Magistrate gets an order under this section, and the lawful rights of ordinary persons are thus invaded under the guise of this section. Therefore, I ask that there should be this safeguard which I suggest—it has also been suggested by a Full Bench of the Madras High Court in 6 (Madras 203) and also as early as in 19 Calcutta by the Calcutta High Court (19 Calcutta 248, 876) and also

[Mr. Deputy President.]

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

Abdul Majid, Sheikh.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Ayyar, Mr. T. V. Seshagiri.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Das, Babu B. S.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Shahani, Mr. S. C.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—45.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Pyari Lal, Mr.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned for Lunch till Quarter to Three of the Clock.

The Assembly re-assembled after Lunch at Quarter to Three of the Clock. Mr. Deputy President was in the Chair.

Bhai Man Singh: Sir, I suppose my amendment* No. (2) was included in the previous amendment and so I shall proceed with clause (3) of my amendment No. 102. It runs:

"Add the following sub-clause after the present sub-clause (i) and renumber the subsequent clauses accordingly:

"(iii) in sub-section (1) the words 'or tends to prevent' shall be omitted."

* "(2) Substitute the following in place of the present sub-clause (i):

'in sub-section (1) for the words 'of any other Magistrate' the words 'a Magistrate of the first class' shall be substituted."

If we read the terms of section 144 we will find that it is not only unchecked but it is as wide as possibly it could be; we are to see now whether there is any necessity or whether it is advisable at all to bring in all possible things under this section and within its scope. The section runs:

"In cases where in the opinion of a District Magistrate, a Chief Presidency Magistrate, a Sub-divisional Magistrate, or of any other Magistrate.....immediate prevention or speedy remedy is desirable,

such Magistrate may..... direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or disturbance of the public tranquillity or a riot or an affray."

Now, there are three things included in it, one, actually preventing, the other tending to prevent, and the third, risk to life, property, etc. Now, I submit that the term 'tend to prevent' is such a vast term, that anything, even the remotest cause, may be brought within it. We are giving the magistracy a power which should be used very sparingly, a power which is highly summary. I cannot understand why we should make this section so vast that not only should we provide for an order to prevent, but for an order tending to prevent, annoyance, etc. Everything, perhaps even the remotest causes, can be said to tend to prevent a thing. A man, a perfectly good and honest man, is passing through a place where goondas live; some people come and chaff at him; his friends might object to it and they might even find a little quarrel over it. If we stop that man from going there altogether,—his motives may be perfectly right, his object may be perfectly sound, he may be going there on a perfectly lawful errand—but the order to stop him from going there may tend to prevent a breach of the peace. It is such a far-fetched thing that I at least cannot see anything to justify the inclusion of such words in the section. I think the matter is so very clear that no further discussion over it is needed and I hope the Government will see the reasonableness of the demand.

Sir Henry Moncrieff Smith: Sir, the point here is perhaps a little subtle, but I hope to be able to make it clear to the House. The removal of the words 'tends to prevent' would undoubtedly weaken the section very much and I do not think there is any risk of their being used to meet such a case as has been cited by the Honourable Mover. Of course the words 'tends to prevent' are much milder than the words 'likely to prevent,' but we should consider what the section lays down. We will take any case referred to in the section; say it is a case of obstruction; the Magistrate has come to the conclusion that a speedy remedy is desirable to prevent this obstruction; he has to do his best to provide that remedy. He thinks of a course of action; he is prepared to issue a direction under this section, but he says "This course that I propose—I cannot conscientiously say to myself that it is likely to prevent the obstruction; I cannot foresee what the result of my action will be; but it is up to me to do my best, to do all I can towards helping to prevent that obstruction." In other words, he has to do what he can; he has to take action which in his opinion will tend to prevent the obstruction. The word 'likely' in fact is equivalent to 'probable' in this case; and the wording 'tends to' is perhaps slightly stronger than 'possibly.' That is all. We cannot be certain that his action will probably prevent a breach of the peace, and yet, my friend by suggesting the omission of the words

[Sir Henry Moncrieff Smith.]

'tends to prevent' will prevent him from taking any action, though he has come to the conclusion that an obstruction is imminent, that he must take immediate steps and if he does not he will be called into question, no doubt by his own Local Government, for not having after all done anything whatever to prevent the obstruction. Therefore, I suggest that these words 'tends to prevent' must remain and that there is no risk whatever of their being used in the fashion in which the Honourable Mover has suggested.

Mr. Deputy President: The question is:

"That in clause 26 add the following sub-clause after the present sub-clause (i):
(iii) in sub-section (1) the words 'or tends to prevent' shall be omitted."

The motion was negatived.

Bhai Man Singh: Sir, my next amendment is:

"That in sub-section (1) the word 'annoyance' wherever it occurs shall be omitted."

I think I am treading on very safe ground in proposing this amendment. Perhaps I was quite safe in my previous amendment also, but it has met with a contrary fate; but I think I am on the safest ground in proposing this thing. In giving such summary powers, such clear executive powers; why should we give power to order not only something that removes any annoyance but something that is likely to prevent, that tends to prevent an annoyance?

We have got here the words 'obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety.' Therefore 'annoyance' here means something that is not covered by injury to human life, injury to human health or injury to human safety. Sir, if there is anything that causes annoyance the doors of the regular courts are open to everybody to take any steps he likes. So where is the reason, where is the justification for saying to a man 'Look here, I am annoyed by such and such action of yours. I will go to the Magistrate and get an order issued against you.' Suppose there is a marriage going on in the house of a rich man, and the *tom tom* is being beaten near by. Another man may have some influence with the Magistrate; he goes to him and writes a letter saying that 'so and so is beating his *tom tom*, which causes great annoyance to me.' The Magistrate goes forth and says 'thou shalt not beat thy *tom tom*!' No doubt the order is only for two months, but to a person who is stopped from celebrating his festivities in connection with his son's or daughter's marriage, it means a great thing. Similarly, a man gets up at 5 o'clock in the morning and begins to sing. It causes annoyance to me. Well, the Magistrate to whom I complain, goes forth and issues an order to stop him from singing in the mornings at 5 o'clock because a speedy remedy is necessary, because so and so is annoyed. I really cannot understand what you mean by speedy remedy and immediate prevention consistently with the idea of annoyance where no danger to human life or health or safety or obstruction or injury is concerned, or where there is no danger of a disturbance of the public peace or tranquillity. I for one really fail to see how on earth we can put in this word in this section. I hope therefore that my Honourable friends will consider well and vote for this amendment.

Mr. R. A. Spence: Sir, I oppose this amendment for the reasons put forward by the Honourable Mover of it. I consider that if this word 'annoyance' is left out, and if the Magistrate has not got powers to prevent people from committing annoyances, there is a very great danger of loss of life and possibly of loss of property. What we propose to do in our law is to prevent crimes as far as possible. There might be many other crimes committed, because people lose their temper owing to annoyance caused by the beating of *tom toms*, and I think that, should a Magistrate be of the opinion that annoyance is being committed which is likely to cause some one to commit a breach of the peace, then it is a very sensible law that the Magistrate should be able to stop that man from committing such annoyance. Therefore, if this clause is left out, I think there will be a danger of loss of life and loss of property to which the Honourable Mover of the amendment so feelingly referred. Therefore, I hope that Honourable Members in this House will not be of the opinion of the Mover of the amendment and that they will not give him that favourable consideration which we should like to give him if only we agreed with him.

The Honourable Sir Malcolm Hailey: I should like to supplement, if I may, in two words, what my Honourable friend, Mr. Spence, has just said. I must say that when I heard Bhai Man Singh's speech, it did occur to me what a bad Magistrate he would make; for he thinks of a variety of things which would never enter the mind of one of our Magistrates. Could he really imagine that a Magistrate would pass an order in favour of a rich man that no body should beat a *tom tom* in the vicinity of his wedding?

Bhai Man Singh: Such orders are daily passed.

The Honourable Sir Malcolm Hailey: All I can say is, that if Magistrates do exist to whom such considerations occur, then I have never met them.

But, why do we desire the retention of the word 'annoyance'? I can answer it by referring to what Mr. Rangachariar said this morning. He realised that under section 144 a Magistrate has very often to deal with cases of a religious origin, and there is no greater source of trouble in certain parts of the country than cases in which one person sets out to cause annoyance to another religious community. I put it that action of this kind is not and would not be covered by the words of the section unless we retain the word 'annoyance'. It is simply for that reason that I think the retention of this word is salutary, and I commend it to the Assembly on that ground and on that ground alone.

The motion was negatived.

Bhai Man Singh: Sir, the amendment that stands in my name reads as follows:

"In clause 26, the present sub-clause (iii) in the proposed sub-section (5) omit all the words after 'showing cause against the order' and re-insert them as sub-section (7) in the form given below, and add the following and re-number the sub-section (5) as sub-section (8):

'and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence that may be adduced'."

I think the last words "that may be adduced" have been omitted, and I may be permitted to add them, because the sentence is incomplete without them.

"(6) Such inquiry shall be made, as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

[Bhai Man Singh.]

"(7) If, upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially it shall pass an order to that effect, otherwise it will accept the application and while passing any such order about the application the Magistrate shall record his reasons in writing for doing so."

I also beg leave of the Chair to alter the word 'it' to 'he', because it is a clear mistake—I do not know whether it is my mistake, or it is my typist's mistake or it is of the printers here.

The object of my amendment, Sir, is very clear. I want that when a man is asked to show cause, and when he appears and objects to the order and files an application, that order should stand, and he should be given full opportunity to produce his evidence as in a summons trial, and the order of the Magistrate in disposing of the application should be like a judgment, really speaking in the sense in which we have got the word 'judgment' in the Criminal Procedure Code. I do not know, Sir, how the learned members of the Joint Committee in this respect tried to keep on the section as a mere executive thing in the Criminal Procedure Code. I should like to read out the note of the Joint Committee on this clause:

"We accept the amendment made in section 144 by this clause. It was suggested to us that section 144 should be elaborated so as to enable a person aggrieved on an order made under the section to require the Magistrate to make a judicial inquiry regarding the truth of the information on which he had acted and thereby to bring in the revisional powers of the High Court. With the exception of Saiyid Raza Ali we think this proposal goes too far and that it is necessary to maintain the executive character of the provisions under section 144."

This shows clearly, Sir, what is the object of avoiding such like provisions in the section and keeping it the mere summary thing. We are, however, prepared and we have proposed an amendment to this effect, to lay down that a person aggrieved shall be entitled to apply to the Magistrate and show cause against an order and that the Magistrate shall give him an opportunity to be heard in person or by pleader and shall record his order in writing giving his reasons for his rulings. Sir, there is absolutely no use in taking half-hearted measures in adopting half measures in such matters. If it was the business of the Magistrate to see to it, where was the use of providing that he should record his reasons or anything of that sort, if you think that he should be altogether unchecked and uncontrolled in this matter? If his discretion is to be a judicial discretion in the real sense of the word, I see absolutely no reason why we should avoid the writing of evidence in such cases.

Sir, while speaking on my first amendment to section 144 I submitted to the House a long list of rulings wherein the High Courts have consistently held that the Magistrate should take evidence before passing orders and in cases where there had been convictions the High Courts have required that there should be very credible evidence on the file to show that such and such dangers were actually apprehended otherwise they have quashed the convictions under 188 for disobedience of such orders. I submit, Sir, that, if the Magistrate shall have the right evidence, if the man disobeys the order in order to secure his conviction, I see absolutely no reason why he should shrink from doing so at this preliminary stage when the original order is being passed. It is all very well to say: "all these are summary proceedings, these are very minor things." But, Sir, how on earth is it to be tested? At present, as I submit, Sir, there is only an intricate method of testing the validity of such orders, that is through revision. Some of

us have sent in amendments to provide for revision or an appeal against this order by itself and if we are to have any revision or appeal to this order we must make this provision here also that the Magistrate should take the proper evidence in the case. I cannot imagine why such evidence should not be taken. If there is danger of annoyance, if there is danger to the public safety, if there is danger of a breach of the public peace, why should the Magistrate try to keep his information secret? Why should the executive action fear the light of the sun and try to issue its orders in darkness? Where is the ground in giving such powers to the Magistrate that he should not write any evidence and should maintain or quash his own orders. I should really feel obliged if any of the Honourable Members from the Government would tell me the substantial injury, the substantial loss that would occur if the Magistrate is required to write evidence in such cases. The worst criminals, when they are required to procure security, are given that chance. Their trial is to be according to a summons trial as provided in the courts. I for one, Sir, cannot understand why on earth should we leave this section as it is and let the Magistrate decide arbitrarily whether he should or should not do. I submit, Sir, that this is just in the spirit of what our highest courts have held and while we are amending this section, we should not let this point escape and should bring in the spirit of these rulings in the courts itself.

Mr. Deputy President: Amendment moved:

"In clause 26, the present sub-clause (iii) in the proposed sub-section (5) omit all the words after 'showing cause against the order' and reinsert them as sub-section (7) in the form given below, and add the following and renumber the sub-section (5) as sub-section (8):

'and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence that may be adduced.'

'(6) Such inquiry shall be made, as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.'

'(7) If, upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially he shall pass an order to that effect, otherwise it will accept the application and while passing any such order about the application the Magistrate shall record his reasons in writing for doing so.'

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, with regard to the provisions which have been so strongly criticised by my friend, Bhai Man Singh, I think it is necessary to remember that under every criminal law, under the criminal jurisprudence of every civilised country, there are first the penal provisions which punish a man who has committed an offence, and there are other subsidiary provisions which enable the authorities to prevent the commission of crimes and also others which will prevent the disturbance of public tranquillity. Now, the question is whether we should have in this Code provisions which come under the head of those that prevent disturbances of public tranquillity. Now, if in enacting those provisions, we were to take up the position that we were trying offenders and the inquiry should assume the form of a trial, whether a summons case or a warrant case whatever it may be, that it should take the form of a trial, we must then contemplate to what extent this inquiry will be enlarged. Now, I ask you, apart from being technical lawyers—as ordinary men—do you think that provision like these should assume the form of trials? Are not these provisions intended to be taken when a responsible officer thinks that there is a disturbance of tranquillity and the other things mentioned in the

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come to the conclusion after hearing them. This will more or less be a satisfaction to him. But if he is debarred from putting forward his evidence, then certainly he will say that justice has not been done to him. And on the top of it what will be the effect on the public mind? They will think that orders are being passed simply in accordance with the whim or sentiment and opinion of the Magistrate and no proof is taken. Then the Honourable the Opposer of this amendment says, "It is purely discretionary. The Magistrate is allowed to exercise his discretion." Certainly the Magistrate should be allowed to exercise his discretion. In connection with an amendment which was moved some time back I submitted to the House and I am reiterating the same submission that the discretion should be based on some data. The discretion should not emanate from the mentality of the Magistrate alone. The discretion, in any case, must be based on the inference which is to be drawn from the material on the record, and if this discretion is based on some proof on record, and has been exercised judicially, then certainly it must be respected. The Court of revision will take it as a true and proper discretion, namely, the High Court will then feel reluctant to interfere. But if this discretion is to be exercised in the manner in which my learned friend wishes, then, I say, his view is erroneous. It is altogether wrong. My learned friend opposed this amendment on this ground and I think that that ground is a fallacious one. Look at the stringency of the law which is embodied in this section. Arguments have already been advanced by the Mover, with reference to certain words and the natural consequence thereof, and I, sympathising with those arguments, submit that the present law, as is incorporated in section 144, has invited a great amount of criticism. It has evoked that criticism which it is extremely difficult to meet with. I submit that the amendment, which has been proposed, is a very modest one and will be a good safeguard, and I think the Government will be pleased to accept it. Where is the difficulty in accepting this sort of amendment? It (the amendment) suggests, "and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information". Are the Government Benches really serious to say that he should not inquire into the truth? I think they will accept my contention that the Magistrate ought and should inquire into the truth of the information. Unless and until he finds the truth of the allegations he should not pass the order. Then clause No. 6 says:

"Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

All of you know, Sir, that this is a very innocent form of procedure. It does not mean that a regular charge will be framed and after framing the charge the witnesses will be recalled for cross-examination once more.

Then my learned friend, the Opposer of this amendment, says, "Oh, what is the use of a regular trial?" I may tell him that real trial begins after framing the charge. But here trial means that evidence will be recorded and the Magistrate will come to certain conclusion after having gone through that evidence. It is not a regular trial which we find in warrant cases, because a charge is framed, the accused is called upon to explain and then to adduce evidence. Similarly sub-clause (7) is also of a very modest nature.

"If upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially it shall pass an order to that effect."

[Dr. Nand Lal.]

I think the whole House will agree with this view which has been suggested and recommended. If after having gone into all these materials he is satisfied, that the order should stand, it may be done so. Now what is the difficulty in the way of accepting this innocent sort of amendment? It will set at naught the criticism which has been levelled against section 144 of the Criminal Procedure Code. Therefore with these few remarks I support this amendment very strongly.

Mr. H. Tonkinson: Sir, I rise to oppose the amendment. I believe it will not be necessary to make more than a very few remarks to support those made by my Honourable friend, Mr. Subrahmanayam. Let us remember, Sir, what this section deals with. It deals with cases in which immediate prevention or speedy remedy is desirable. In such cases the order absolute has already issued. That order will only remain in force for 2 months. Under sub-section (4) of section 145 of the Code as it stands at present, the Magistrate has power to rescind or alter the order which he has made. The Joint Committee inserted a provision in that sub-section to enable the Magistrate to take such action either *suo motu* or else on the application of the person aggrieved. Then in sub-section (5) the Joint Committee has provided for the action which they consider should be taken when the person aggrieved appears before the Magistrate. In place of these provisions, the Honourable Member proposes to introduce the whole paraphernalia of a summons trial, and that, in a case of an order which is to remain in force for two months only. I submit, Sir, that the proposal would entirely change the character of the provisions of this Chapter and would involve a gross waste of time.

The motion was negatived.

Rao Bahadur T. Rangachariar: Much as I have reason to be despondent, I rise again with full optimism in moving my amendment which is as follows:

"In clause 26 after sub-clause (iii) insert the following sub-clause:

"(iv) after sub-clause (6) as renumbered the following shall be inserted as sub-section (7); namely:

"(7) In all cases where action is taken under this section preventing a person or persons from holding or addressing meetings a report shall forthwith be made to the Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same, and pass such orders as he thinks fit."

When I look behind me for my followers, they have deserted me. They have deserted me, nearly 60 of them are quietly absent in their homes—60 of the so-called people's representatives. Is it any wonder that people outside threaten to repudiate debts contracted by this Assembly when their representatives choose to absent themselves like this, on important occasions? Sir, I said I am not despondent. Although I am like a general without soldiers, I see in front of me gentlemen to whose intellect I am going to make an appeal and I rely on their sense of gallantry that they will receive a general without soldiers with open arms and make honourable peace with him. Sir, the amendment which I move is an old friend, he is coming up again. (Mr. J. P. Cotelingam: "Sessions Judge.") It is with reference to the use of these executive sections for preventing meetings being held or preventing people from addressing meetings. Sir, it must be admitted that the credit for applying this section to public meetings and to public speakers belongs not to the Government of India but to the Burma Government, the Upper Burma Government. Some Magistrate in Upper

Burma in the year of grace 1916 for the first time applied this section to prevent a meeting being held. That was the solitary instance in which section 144 was applied till the eventful year of 1921, the latter part of which saw the use of this section spreading like plague and other diseases all over the country. One of the objections raised the other day was that we single out this out of the lot, as my Honourable friend for whose opinion I have got very great respect pointed out, I mean Sir Henry Stanyon. Why we single out this out of all the rest is answered by this fact, namely, that it is a novel use of this section—you will agree with me that it is a novel use of section 144 to prevent citizens from exercising their elementary rights of either addressing their co-citizens or holding meetings. Sir, some of my legal friends had their legal conscience very much perturbed, especially my Honourable friend, Mr. Mukherjee, that I spoke of action being taken, that I spoke of action being taken to prevent a person from addressing or holding meetings. They said, "Oh! What bad language you have used? Under section 107 action is not taken, but order is passed." Therefore your language is wrong. Under section 107 action is not taken to prevent a meeting being held or to prevent a person from addressing a meeting, but to get security for keeping the peace. Therefore your language is unhappy." Therefore, they said it is out of place in section 107. I am glad to be able to satisfy them in that respect so far as section 144 is concerned. Magistrate acts under this section. Magistrate prevents a person from doing a particular act. Therefore, those two technical objections which were taken advantage of even on the Government Benches disappear. Now, the third objection taken was, "What an ineffective remedy you are providing? A report to the Sessions Judge!" Well, he reports to the Sessions Judge. It may be based on materials or it may be based on no materials. What is the Sessions Judge to do? It is said what is the object of this remedy? It is so ineffective. Do you really believe that the Government think it is ineffective? If it is so ineffective, why do they oppose it? If it is such a harmless remedy that I am proposing, why do they oppose it? Have we not got reason to suspect that there is something behind this opposition? Do they not think this is going to be a good remedy? Are they not afraid of it? When you find the Government arguing that it is an ineffective remedy, we are men, we are not children, and we might suspect really that they believe it is going to be an effective remedy and that is why they oppose it. Therefore, Sir, these are the objections taken to this provision, when applied to section 107. Under section 144 there may be an *ex parte* order; there may be a final order afterwards. In both those cases the Magistrate will have some material to go upon because he has to record his reasons, he has to record the statement of facts. And moreover further proceedings are contemplated by later amendments to the Procedure Code which provide for revision. Therefore it will not be a case in which there will be no papers for the Sessions Judge to act upon. There will be records to go upon. Therefore the Sessions Judge will be able to cancel proceedings in case they are improperly taken, when he is satisfied the proceedings are improperly taken. There is one other objection. I look with trembling feet to my friend, Mr. Samarth, who is now out of his place. I hope he will be out of his place in the lobby also this time. He thinks this is a weapon I am inventing for the benefit of the non-cooperators. I am not sure my friend will not one day be caught in the same meshes in which other people are caught. I know his sense of patriotism. When this Royal Commission comes along and when perhaps we shall have to organise a procession to the Viceroy's residence in the same way as the unemployed did to the Premier's house, I am not sure

[Rao Bahadur T. Rangachariar.]
 he will not join that procession. That section will then come into effect, and the District Magistrate of Delhi, who is I think called the Deputy Commissioner, will serve an order on my friend, Mr. Samarth: "How dare you lead a procession protesting against the appointment of the Royal Commission?" I heard my friend, Mr. Subrahmanayam, saying this was a power which belonged to other countries. I have yet to find a section in the English procedure which empowers the Magistrates to interfere in processions or meetings.

Rao Bahadur C. S. Subrahmanayam: The police, not the Magistrates.

Rao Bahadur T. Rangachariar: The police have power to interfere in case of actual disturbances. They are ready with their batons and not with their fire-arms. Batons are their weapons when these enormous crowds assemble in the various squares. Magistrates of the first class do not serve orders on Mr. Ramsay Macdonald or even on Mr. Keir Hardie preventing them from holding meetings. And my European friends, whose assistance I also implore in this connection are noted for their love of liberty; I know they will not lose their liberty in this country or in any other country, and I appeal to them also to join hands with me in this matter. Sir, liberty of speech, liberty to hold meetings is a sacred right. When that right is sought to be destroyed, when it is sought to put it down under foot in this manner in which it has been done, when the Government confesses its impotence to deal with crowds while they have got such eminently highly-paid police and military to look after the peace of the country, when they think action under section 144 is necessary in order to prevent some speeches in a country where mild Hindus predominate, Sir, I am despondent about the Government. I ask them to look at it from that point of view. There are Magistrates and Magistrates who take different views of different matters. Why, Sir, the wearing of *khaddar* is obnoxious. If you put on a Gandhi cap, as it is called, it annoys, it wounds, and directly an order is passed under section 144 to remove the cap. Is our Indian Government so weak that they should resort to such silly method? Sir, I therefore say we must provide a remedy for this. I hope I have not over-stated the case. If I have, please forgive me, but this is a very vital matter. I hope you will find some remedy for the extraordinary use of these sections. I am confident that the remedy I have proposed is not as efficient as I might have made it. I purposely refrained from other remedies. I purposely refrained from suggesting that the section should not be used for such purposes, because, as I stated the other day, there may be cases when actual incitement to rebellion may take place in meetings, in which case section 144 might legitimately be used. Short of that I do not think it should be used. When it is used for such a purpose, is it not just, does it not occur to you that it is necessary that there should be some safeguard by some superior authority? What is the harm in providing this remedy I suggest, namely, that the records go to the Sessions Judge, who is a senior servant of your own, to bring his judicial mind to bear on the subject and see whether the action has been rightly taken under this section or not. May I therefore in my despondent spirits appeal to the Government Benches and my Honourable colleagues who are presenting an organised front before me, and a disorganised force behind me, to give to this modest motion the treatment which it deserves. I move the amendment which stands in my name.

The Honourable Sir Malcolm Hailey: Sir, I confess to a novel and refreshing feeling of pleasure when I hear a leader of that large and compact body of voters, whom we see so often leading his cohorts into the lobby against us, appeal to us to be merciful and not to use our strength. We are so accustomed to come into this Assembly a faithful little band of voters, prepared to encounter an enormous and determined majority on the other side, that we can hardly credit our ears when we hear that it is we who are strong, we who must not use our voting power, we who must for once listen to reason. But I feel great sympathy for Mr. Rangachariar. As he pathetically says, he stands alone. His forces are dissipated; his followers are gone. Might I suggest a remedy to him? Here is a place for him on the Government Benches; let him join us over this Bill; he may be certain that we at all events do not neglect our posts. Our faithful few are always here, and, if you do not see their faces, yet you know that they are close at hand, within call of a bell. If he will join us, he will never want followers.

But to the point, we have been through a great deal of this amendment before. We have heard before, in regard to section 107, many of the arguments which Mr. Rangachariar has addressed to us to-day. If we were hard-hearted then we curiously enough found adherents in the House. Could it have been that we and not Mr. Rangachariar were for once in the right? At all events, we are equally hard-hearted on this occasion also. Mr. Rangachariar might perhaps have had some arguable case in regard to section 107, by which an order can be passed against an individual, binding him over for a period of a year. He might have had some justification for claiming that the circumstances justified this new revisionary procedure, the order to protect the liberty of action of that particular person. But here, what does the Magistrate do? He issues an order for two months only. Mr. Rangachariar would have the proceedings of the Magistrate sent to the Sessions Judge. Meanwhile the person affected will under our new clause have asked the Magistrate to review his own order; by the time the order has become absolute some considerable period will have elapsed. Three-quarters of the mischief will be done, at all events, before the Sessions Judge can get to work on the case. Mr. Rangachariar suggests that he and some of his friends might intend to go in procession to-morrow to His Excellency the Viceroy to protest against the appointment of Royal Commission; and draws a picture of the District Magistrate issuing an order under this section against him. I would advise them not to do so, because, I understand, that His Excellency will be absent from Delhi to-morrow. (*Rao Bahadur T. Rangachariar:* "We will wait on you then.") But even if they should contemplate doing so, I do not think they need fear that the District Magistrate of Delhi will issue an order against them; for judging by to-day's confession the band will be so small that he will hardly notice its existence in the street. But seriously even if we had this procedure Mr. Rangachariar desires to introduce, what would happen? The District Magistrate would issue his order to Mr. Rangachariar. Mr. Rangachariar, using our new sections (4) and (5), would go to the District Magistrate and make an application for review. The District Magistrate after making due inquiry, would make his order absolute. The papers would be sent to the Sessions Judge. Clearly, even if Mr. Rangachariar secured the good offices of the Sessions Judge, it would be a long time before he had access to His Excellency the Viceroy.

I have used this illustration to show really how little ground there is for applying this revisionary procedure in the case of proceedings so

[Sir Malcolm Hailey.]

essentially emergent in their nature and temporary in their effect. I do not here again seek to defend any action that we have taken under section 144. I do not again refer the House to the fact that Mr. Rangachariar himself advised us to use section 144. He had, I may say, predecessors in the advice which he gave us. I remind him of the debates in the Legislative Council on the subject of the amendment of the Seditious Meetings Act. On that occasion, there were authorities no less than the late Mr. Gokhale, who advised that we should use the existing sections of the Act, and I remember that it fell from the lips of Mr. Mazrul Huque himself that section 144 was sufficient for all our purposes. But that, Sir, was section 144 as it then stood. When our friends advised us then to use section 144, they contemplated section 144 in its original form; they did not, I think, ever contemplate that it should become a semi-judicial proceeding, liable to a new form of revision at the hands of the Sessions Judge. Regretfully then, in spite of all my sympathy with Mr. Rangachariar in the unhappy circumstances in which he finds himself, I ask the House to re-affirm the decision on this subject which they gave three days ago.

Mr. T. V. Seshagiri Ayyar: Sir, there has been so much good humour in the speeches which have been delivered on this amendment, that I am afraid to sound a note of seriousness in the discussion in regard to this question. Sir, none the less, there is a feeling of consternation in the country regarding the use of section 144 and I do not think I would be justified in keeping the Government ignorant of that feeling. Mr. Rangachariar's amendment would have this effect—it would check the vagaries of the Magistrates; it would enable the Sessions Judge to examine the records and come to a conclusion whether the Magistrate has acted rightly or wrongly. It is for that purpose that my Honourable friend has brought forward this amendment.

Sir, I should like briefly to explain the reason for the enactment of this section and how it is being misused. I think I am right in saying that you do not find a similar power in England, a power similar to the one which is given by section 144. (*The Honourable Sir Malcolm Hailey:* "That is right.") I think I am right in that, and I am glad to hear the Honourable the Home Member supporting me in that. The reason why section 144 has been enacted in this country is this. It was felt that the rights of advancing the ordinary citizen's rights should be secured as against the possible attacks of turbulent and unruly men who may feel tempted to take the law into their own hands. It was felt that in a country like India, where there are numerous sects and numerous religions, it is possible that the rights of one sect may be interfered with by persons belonging to another sect who are larger in number, more disciplined and who have got larger resources at their disposal. Therefore, the object of enacting section 144 was to enable the minority, who have got rights, to exercise those rights without being harassed or put down by the larger section which has got money and influence behind its back. It was for the purpose of giving this facility for the exercise of rights of the minority that this section was introduced, and you will find in the case which was quoted this morning, 6 Madras, that the Judges of the Madras High Court pointed out that the section must be used for the purpose of advancing rights and not for curbing or putting down rights.

Now, that must be the position which ought to be taken up by the Government. But, unfortunately, the section has been so used during

the last two years that Magistrates have begun to forget why it was enacted. They have begun to forget that the object was to advance the rights of citizens; and they have begun to think that the object is simply to put down the exercise of those rights. And you will find all over the country that Magistrates are on the alert and are on the look-out to get police information or some other information for the purpose of preventing the exercise of these rights. Sir, this has gone on too long and it has created, as I said in the beginning of my remarks, a sort of consternation in the country; and it is desirable that the Government should know what the feeling in the country is. I believe they know it and, as we have not the power of saying that this section cannot be used at all, I think we should accept the modest amendment that Mr. Rangachariar has brought forward that there should be a power vested in the Sessions Judge to call for the records and examine for himself as to whether the section has been used for the purpose of advancing justice or for the purpose of stifling it.

Sir, there is only one other word I should like to say and I will sit down, and it is this.

It has been said, and very rightly, in responsible quarters that the Government is doing itself injustice by allowing this section to be used in the manner in which it is used. I believe the Government is aware of what is known as the "safety valve." It would be very much better for the machinery itself, for the proper working of the machinery as well as for the safety of the machinery, that there should be a safety valve. If the safety valve is not allowed to work, the result will be that the machinery itself will break down; and I think that by putting down public meetings, by not allowing persons to speak at public meetings and by not allowing them to have their say, the Government is not doing justice to itself, but are rather impairing the efficiency of the administration. There is already great discontent in the country and I believe the Government can do a great deal to allay that discontent by modifying section 144 in the way we have suggested; and as Mr. Rangachariar would have put it, I implore the Government to see that some safeguard is provided; otherwise I fear there is great danger of the whole machinery of Government being wrecked.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, there is just

one aspect of the case which, I think, has not been fully brought out. It is this—several Honourable Members say that the Magistrates are not carrying out the law properly—that is to say, they are taking advantage of section 144 to enforce certain propositions which are not intended by the Code. But I do not find any statement by Honourable Members to the effect that the High Courts have held that the Magistrates were in any way justified in doing anything which would bring the law into contempt. That is to say, the objection taken is chiefly that the Magistrates are not carrying out the law correctly. The High Courts, for instance, have laid down the circumstances calling for an order under section 144. There must, they say, be some emergency, and an order passed when there is no emergency is without jurisdiction. Then again they say that the existence of such an emergency is a condition precedent to the Magistrate having power to proceed. There must be information or evidence to that effect, and the facts must be set forth in the order fully and in detail.

[Mr. P. E. Percival.]

My observations have reference not only to the remarks of the last speaker but also to some previous remarks that have been made. In fact, the High Courts have already laid down certain restrictions. They go on to say that, if no immediate danger is apprehended, the Magistrate should proceed under section 133 and not under this section. So I submit, Sir, that the only remedy is to apply to the High Courts. The High Courts are the proper authority. If the High Courts say that the provisions of the law are not sufficient, it is of course up to Government to amend them. But what we find is the contrary. They say that in certain cases some Magistrates have not acted according to the law. The obvious inference is that the correct action to take is to apply to the High Courts and to get them to keep in check unruly Magistrates who do not act in accordance with the law as laid down by the various High Courts.

Well, Sir, turning to the particular amendment in this case, I am a little surprised that my friend Mr. Rangachariar should again bring up the same point, because it is really very similar to the one which has been decided by this House already. The chief argument, which I ventured to put forward on the previous occasion, I suggest, the Honourable Member has not really replied to. It is simply this, that cases of this sort do not go to the Sessions Judge. The Sessions Judge is quite a separate authority. The two authorities are the District Magistrate and the High Court. So why bring in the Sessions Judge, who is not the authority concerned in the case? The present proposal is that in certain particular cases involving meetings, the matter should go to the Sessions Judge, but that in all other cases it should go to the District Magistrate and the High Court. That was the view I suggested in regard to section 107. It is the same point here. As the Honourable the Home Member said, the case is stronger now. It is an order for two months, while the order under section 107 might be for a prolonged period. But the underlying principle is in either case the same. It is a matter, for the District Magistrate and the High Court. Therefore I suggest that, as on the previous occasion this House threw out the proposal of Mr. Rangachariar, the same course should now be adopted in regard to the present amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Rural): Sir, I venture to place certain points before this Honourable House. I stand up in spite of what has been said by my redoubtable friend opposite me and I do so with my courage in my hands. I want to draw the attention of the House to one feature of the proposed amendment. The portion of the amendment which requires special consideration comes, last, and there I suppose lies the most contentious point in the whole amendment. I refer to the words "the Sessions Judge may pass such orders as he thinks fit." I take it that thereby a new power is proposed to be given to the Sessions Judge, so far as the revision of the orders prohibiting public meetings, is concerned. Now, Sir, looking at section 435 of the Code, to which I had the honour of drawing the attention of the House the other day, in connection with a similar point, I find that orders passed under section 144 do not come within the purview of that section. I looked at the proposed amendments in the tabled list with regard to this section and I asked myself whether it was contemplated that this section 435 should be amended so as to bring cases under section 144 within its scope. But I found there was no amendment to that effect in the list.

Rao Bahadur T. Rangachariar: There is a proposal to that effect.

Dr. H. S. Gour: I have an amendment about that.

Mr. J. N. Mukherjee: My friend's amendment is to the effect that the whole of sub-clause (iii) in clause 114 be deleted.

Dr. H. S. Gour: That is enough,

Mr. J. N. Mukherjee: That is not enough. If the amendment be carried, and the whole sub-clause is deleted, this section 435 remains as it is in the Code now, and under this section, as it stands now, revision of orders passed under section 144, Criminal Procedure Code, is not permissible. No doubt, an attempt has been made in the Bill to extend to some extent the operation of section 435 by introducing certain other sections, namely, section 143 and so forth in sub-clause (ii), but so far as section 144 is concerned, it does not make any alteration whatsoever even supposing that my Honourable friend, Dr. Gour's amendment is accepted, that is to say, that sub-clause (iii) is omitted. I wish therefore to draw the attention of the House to this point.

Rao Bahadur T. Rangachariar: That is not an insuperable difficulty.

Mr. J. N. Mukherjee: No, it is not. I say if the House agrees to accept the principle of the proposed amendment and decides that revisional powers should exist in the Sessions Judge, with regard to section 144, Criminal Procedure Code, means can be improvised by which that difficulty can be obviated. But the point is one, which, I think I ought to clearly bring to the notice of the House in order that something may be done to avoid the complications and the inconsistencies—if I may say so—which are bound to arise, if my friend's amendment is adopted.

Colonel Sir Henry Stanyon: Sir, I trust that what I have to say on this amendment will not lose me the good opinion which my Honourable friend, Mr. Rangachariar, has been pleased to offer about my judgment.

Rao Bahadur T. Rangachariar: Certainly not.

Colonel Sir Henry Stanyon: The less one deserves a benefit of that kind the more one wants to hold on to it. The pathos in his appeal moved me very deeply, and if I allowed my heart to have any part in dealing with the manufacture of laws I should probably draw my sword and take my position behind the deserted "General".

But in my humble opinion, feelings, emotions and sentiments are out of place in dealing with a measure of this kind. What we have to see is the effect upon the administration of justice of this proposed amendment. The position of the Honourable Mover is quite different here to what it was in connection with a similar amendment which he proposed when we were discussing section 107. But, in my humble opinion it is not any stronger. I have not been impressed by the argument which has been used, more than once, that there is no provision of this kind to be found in the English law. I think it is high time that we understood clearly that what is sauce for the British goose is not sauce for the Indian gander. I do not put that forward as propaganda but merely as my humble opinion. Here we are dealing with section 144, a measure which provides for action, immediate and prompt, to meet an emergency. Any order, however

[Colonel Sir Henry Stanyon.]

absolute, under that section has a life of exactly two months. Now, suppose that this amendment were introduced in the law. Suppose that when, after inquiry, the Magistrate has made his order absolute, he is required to report the proceedings to the Sessions Judge, and the Sessions Judge thought one way, or the other, before he passed any orders. If he acted upon the usual line of Sessions Judges, a judicial line, he would issue notice to one party or the other, or to both parties, to appear before him and argue their respective cases. He would not set aside the order of the Magistrate without issuing a rule to him to show cause. He would not support an order of the Magistrate without issuing a rule to the person against whom that order was made to show cause. How long does this Honourable House think the Sessions Judge would be occupied in completing this procedure? Sir, we have heard it said that there are Magistrates and Magistrates and I myself have accepted responsibility for saying that I have met them "from A to Z." There are also Sessions Judges and Sessions Judges, and I have met them "from Z to A." But, as a general rule, they are authorities who proceed in a judicial manner with care and deliberation and take time. In nine cases out of ten, before the Sessions Judge passed his order, the Magistrate's order itself would have died from efflux of time. Then, another point against this amendment is that it is the one breach of the rule which we find in the Code of not allowing such slow judicial interference with the executive and preventive action of Magistrates; and I think to introduce it here would not do any good to the public or to the administration of justice; but would hamper Magistrates and put Sessions Judges in a position of considerable difficulty. For these reasons, even at the risk which I feared at the opening of my remarks, I venture to oppose this amendment.

Mr. R. A. Spence: I move that the question be now put.

Dr. H. S. Gour: Sir, before this very important question is put to the vote, I should like to say a few words in support of this amendment. I was somewhat surprised to hear my Honourable friend who hails from Bombay (Mr. Percival) saying that the orders passed under section 144 are subject to the revisional jurisdiction of the High Courts. He is right so far that the Chartered High Courts exercise revisional jurisdiction on orders passed under section 144; not by virtue of any power conferred upon them by the Code of Criminal Procedure but despite that power and under the special power of general superintendence which is vested in the Chartered High Courts over all courts subordinate to them. But my friend cannot forget that all the courts in India are not Chartered High Courts and that there are courts which have to act and to derive their power under the Code of Criminal Procedure. Now, Sir, what does the Code of Criminal Procedure lay down. My friend the Honourable Mr. Mukherjee has pointed out that there is a special provision in section 435 which lays down that an order passed under section 144 is not a proceeding within the meaning of that section and what is its effect. The effect is that the order passed by a Magistrate, however wrong, erroneous and perverse it may be, is not subject to the revisional jurisdiction of the non-chartered High Courts. Can this Assembly tolerate this state of things? My friend, the Honourable Mr. Mukherjee, drew the attention of this House to an amendment tabled by me, Amendment No. 321, in which I shall ask the assistance of this House to delete that clause which prevents non-chartered High Courts to revise orders passed under section 144 and other sections of this preventive chapter of the Code of Criminal Procedure. But I do not know when that

time comes whether my friend, the Honourable Mr. Percival or the Honourable Mr. Mukherjee or the Honourable Sir Henry Stanyon will not forge fresh weapons from their copious armoury and find fresh arguments for the purpose of combating my amendment. If I could be sure that Sir Henry Stanyon will draw his sword and go for the Government when this amendment is moved, I shall feel some assurance that there is some hope at any rate on the other side and that they are prepared to listen to reason and give the non-chartered High Courts a jurisdiction over matters contained in section 144 and orders passed in that chapter: but can we be sure of it? Can you be sure of it? Are the Government prepared to give an undertaking that they will not use that small and compact band to vote down this amendment when it is moved and so long as we cannot be sure of it, I think we shall be justified in pressing the amendment of the Honourable Mover on my left to vote. Now, Sir, the Honourable Mr. Percival has given away the whole case by saying that an order passed under section 144 is revisable by the High Court; and when I have pointed out that it is not revisable by all the High Courts, this ground upon which my friend, the Honourable Mr. Percival, perilously stands slips from under his feet. I have not been quite clear as to what my friend, the Honourable Mr. Mukherjee, meant when he wanted to point out some technical or super-technical difficulty in the way of the Honourable Mr. Rangachariar. If I understood him aright, his point of view appears to be that the High Courts possess ordinary criminal jurisdiction over matters of this character, and it would be setting and creating a novel precedent to arm the Sessions Judge with similar revisional powers. Now, Sir, I beg to ask—it has been said this morning and said with a certain amount of cogency—that these preventive sections require a Magistrate to pass an immediate order. If that is the case, the Sessions Judge is nearer to the Magistrate than the High Courts: and I submit, therefore, if we confer upon the Sessions Judge the power to revise an order passed under this section, the procedure may be novel but it is necessary. I was somewhat surprised at that champion of popular rights and ex-Judge, Sir Henry Stanyon, standing up and saying, that though his heart was with the Mover of this Resolution, his head turned away from it. I am sure, Sir, that if he will visualise for one moment the history of the misuse of this section during the last six months or a year, and if he will bring himself to think for a moment of the huge political and public clamour that exists against the misuse of this section, I am perfectly certain, Sir, that his head will second his heart. He has said that there is no doubt that the proceedings of the Sessions Judge are judicial but they involve delay. I ask, Sir, Members of this House, what will they have,—speedy injustice or dilatory justice? I should not be unwilling to sacrifice time, I should not be unwilling even to cause a little delay if in the end the person against whom an order is passed is assured of justice. It has been said that this order is very short-lived, it can only be in force for two months, but I am sure my Honourable friend will remember cases after cases in which this order on the expiration of two months was re-affirmed and repeated, and there is nothing in the Code of Criminal Procedure to disentitle a Magistrate from passing that order again and again—and it has been done, I am told by my friends that it has been done; and I know that if the order was of a longer duration, the Sessions Judge would be entitled to interfere. I ask him, Sir, is not that an argument in our favour for voting for the amendment when we know as a matter of fact that the short period of two months can be prolonged indefinitely by the Magistrate passing the same order on expiry of the

[Dr. H. S. Gour.]

period of two months allowed by the Statute. (*An Honourable Member*: "A separate order is passed each time.") We have been told, Sir, and told with a certain degree of insistence that this is an order calling for urgency, and the Honourable the Home Member has said that this is a preventive section, but I beg to ask what is the difference between a preventive and a punitive section when you repeatedly use this section for the purpose of preventing a man from the lawful exercise of his legal right? The Honourable Mover of this Resolution has pointed out cases in which this section is liable to be abused—and we know as a matter of fact that the magistracy in this country have not wisely used this section on numerous occasions. Knowing that full well as we do, will this House be oblivious of the cries raised during the last year and the year before asking for some redress in the direction of curbing the vagaries of the subordinate judiciary of this country? Are we here, small and scattered a band though we may be, are we here to lay the conviction of our minds and sacrifice our convictions on the shrine of delay, prevention and urgency? I am sure, Sir, that the Members of this House will rise to the height of this occasion. I beg of the Members to remember that this is a section which involves a great principle, and I hope that Honourable Members will conjointly rally to its support. The Honourable the Home Member, when he has a weak case, has a strong humour: not being able to defend a position assailed by a General without any host, he said that the Viceroy won't be here to-morrow,—as if my friend would be undisturbed if he allowed the procession. I am perfectly certain that if the Honourable Home Member had to grapple with the main issue, he too like Sir Henry Stanyon would draw his sword and come to our support. He has invited, Sir, the Honourable Mr. Rangachariar to a seat on the Treasury Benches and promised him the support of his small but consistent cohort. May I, Sir, reciprocate the compliment by inviting the Honourable the Home Member to an honoured place on this side of the House, if only for this occasion and support us not in the name of prestige, delay, prevention, urgency or power, but on the broad ground of commonsense and justice? Sir, I support this amendment.

Mr. H. Tonkinson: Sir, the whole of the remarks of the last speaker were based upon the difference between a High Court of Judicature and other High Courts which fall within the provisions of clause (j) of section 4 of the Code of Criminal Procedure. It is true, Sir, that the Code of Criminal Procedure provides no remedy by way of revision, and that nevertheless the High Courts have held that if a Magistrate exceeds his jurisdiction under this section, then they have power to interfere in the exercise of their powers of general superintendence and control given to them by section 107 of the Government of India Act. Now, if my Honourable friend would refer to the Central Provinces Courts Act establishing the Judicial Commissioner's Court at Nagpur: if he would refer, Sir, to the Lower Burma Courts Act establishing a Chief Court in Lower Burma, and to any other of the Courts Acts in question, he will find that these powers of superintendence are given to all those High Courts.

Dr. H. S. Gour: Sir, may I just rise to a point of order. I can inform the Honourable speaker that there has been a recent decision in the Central Provinces by a Bench of the Judicial Commissioner's Court negating the power of that Court to revise proceedings under this Chapter.

Mr. H. Tonkinson: I would suggest, Sir, that perhaps if the case had been more fully argued before the Judicial Commissioner a different ruling

would have been given. We will proceed, Sir. The basis of the interference by the High Courts with orders passed under this section is that the Magistrate had no power to pass such orders under the section; and I would suggest that there is not a single lawyer in this House who would not be able to go up to any High Court and get that Court to interfere because section 144 does not apply, which is the only reason, Sir, why the High Courts of Judicature have interfered in cases under this section.

There is another point to which I should like to refer and that is the argument that one order could be extended. I see here, Note 49 on page 262, Sohoni, that it was held in Calcutta that a Magistrate cannot by passing successive orders under this section extend the operation of an order indirectly beyond the time limited by sub-section (5).

Rao Bahadur C. S. Subrahmanayam: Sir, if I were satisfied that this clause which my Honourable friend wants to tack on would do any good, I should certainly have supported him. But I am fully convinced that this clause is not going to do any good even if, with the eloquent support it has received, it is passed. Now, the cases in which this section is frequently used are cases in which religious or caste disputes arise. Take a few concrete instances which have come under our own observation. In a place which is a Hindu stronghold a missionary comes and preaches the impropriety of worshipping idols and so on. Some years ago it was not an uncommon thing. That would naturally tend to a breach of the peace: that is, the preaching party being small and in the midst of a Hindu stronghold it would very likely be molested. In a case like that what ought a Magistrate to do? Should he not restrain the enthusiasm of the preacher? (*A Voice*: "Apply 107".) Well, section 107 applies to individuals, but this applies to the whole meeting. And it so happens that sometimes individuals who are restrained retire but others take their place. Or take the case of two sects of Hindus. That is not an uncommon thing, and you will find such cases reported in the Law Reports of the Madras High Court. They may have very serious differences of opinion which may have led to considerable litigation; one of these sections wants to hold a meeting, or what amounts to a meeting, in the midst of the opposing section. What is a Magistrate to do? Is he to stop it or allow it go on and permit the people to break each other's heads? After all there is a good deal of confusion and error about the right of public meeting and all that sort of thing. Where do we get this right? Which constitutional lawyer has told you that you have a right of public meeting? I can quote you Professor Dicey. He will tell you that what is called a right of public meeting is not the right which you have been describing here in this Assembly and a question like that is not a question which can really be discussed in this Assembly. As for the rights of public procession and public meeting, you have read Professor Dicey just as well as I have. But if for a moment you want to rise to heights of eloquence and appeal to the sentiments and feelings of Honourable Members here, you may, I suppose, say that our rights are being disturbed if action is to be taken under this section. But what will happen? A Magistrate passes an order and you go to the Sessions Judge. What materials will the Sessions Judge have before him for examining the propriety of the order? The Magistrate does not record detailed evidence; he has information and knowledge of all kinds placed before him: many a thing is said before him which helps him in forming an opinion: often he has his own private information and ideas: he knows the district, the area in which he is working and the temperament of the parties to the dispute. Those are the conditions under which an order like this

[Rao Bahadur C. S. Subrahmanayam.]
would be passed: and if you ask the Sessions Judge to examine that order; how can he do it? That is the real point. Suppose the Sessions Judge disagrees with the order of the District Magistrate or the Magistrate who has taken action under this section, and he passes an order saying that the meeting may be held. What will happen? The Magistrate is responsible for keeping the peace, but he is told that a particular sect is to be supported in the exercise of its right to hold a meeting. In other words, he has to muster a sufficient force to support these people at a public meeting and so uphold the order of the Sessions Judge who had upset the Magistrate's order. Is that feasible in the districts? Has a Magistrate got sufficient forces under him for these sort of skirmishes? Let us examine both sides of this matter. Do not let us assume hastily that a Magistrate always exercises this power erroneously. That is not a fair assumption to make in arguing on a legislative enactment. If this Assembly were here discussing the particular case of Magistrates, then it would be a different matter. But when a change in the law is proposed, are we to set out with the assumption that a large number of these responsible men are going to use their powers erroneously and that therefore the law must be hedged in in various directions. (A Voice: "Take away all right of appeal".) If there is no right of appeal I think it would be a good thing.

There cannot be a right of appeal. The appellate Courts would not have the proper and fullest materials to judge. Therefore, I think, apart from sentiment, apart from the question of political rights, the rights of public meetings, apart from all these appeals to sentiment, I think this clause, if added to this section, is not going to do any good except probably create a certain amount of protracted litigation, probably the benefits of which will appeal to a certain class of people. Except that, there is absolutely no advantage. It is all very good to talk of the abuse of the section some time ago. Now, there is one effective check on the abuse of these executive powers, that is the check we have been forgetting, viz., the local Councils. If the sections have been misused by any province, the local Councils could have taken action. I ask which local Council has taken action? (Voices: "How?") It has various provisions. It has got more powers than probably you and I are now prepared to mention. No local Council has protested against what you call the abuse of these sections. In my province this section has been used very considerably. Has the local Council said a word about the abuse of this section? And is this Assembly to sit in judgment on the action of Magistrates in my province? What materials has this Assembly, constituted as it is, to judge the action of the Magistrates who have used this section in my province? Now, take any other province. Has any local Council passed a vote of censure against the local Council for the abuse of this section by its executive officers? That has not been done. That is the only constitutional check. Now, you will say that the local Council is so packed with men who do not allow the exercise of rights at public meetings. That is not a point which can be solved by amending this section. Therefore, I think, apart from sentiment, apart from all the patriotic feelings which my friend for the first time has aroused in this Assembly during the discussion of this Code, I think the amendment which my learned friend, Mr. Rangachariar, has put forward is unnecessary.

Mr. R. A. Spence: I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is:

"In clause 26 after sub-clause (iii) insert the following sub-clause:

"(iv) after sub-section (6) as renumbered the following shall be inserted as sub-section (7), namely:

"(7) In all cases where action is taken under this section preventing a person or persons from holding or addressing meetings a report shall forthwith be made to the Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same, and pass such orders as he thinks fit."

The Assembly then divided as follows:

AYES—30.

Abdul Majid, Sheikh.
Abdul Rahman, Munshi.
Agarwala, Lal. Girdharilal.
Ahmed, Mr. K.
Asad Ali, Mr.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Paridit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Gaur, Dr. H. S.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Man, Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Singh, Babu Ambica Prasad.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Subzposh, Mr. S. M. Z. A.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—41.

Abdul Quadir, Maulvi.
Abdullah, Mr. S. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A: M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. B. Venkatapatiraju: Sir, the next amendment, which stands in Mr. Agnihotri's name, runs as follows:

"(a) In clause 26 insert the following sub-clause (iv):

"(iv) in sub-section (4) of section 144 insert the word 'judge' between the words 'magistrate' and 'may'."

"(b) Add the following sub-clause (v): 'insert the following as sub-section (7), namely:

"(7) The words 'certain act' in this section does not include the making of political speeches or the doing of political propaganda work which would be otherwise lawful."

[Mr. B. Venkatapatiraju.]

I do not move clause (a); I propose to move clause (b). Now, Sir, after full discussion on the previous amendment it is unnecessary on my part to dwell upon the object of this section, or the scope of this section and the way it is exercised. The Honourable Mr. Seshagiri Ayyar has already pointed out how this section was abused and misused. Now Sir, whatever be the other causes for which it was intended, this section was never intended to shut the mouths of those who wish to speak on the constitutional changes in the Government. If this Bill were to be introduced with that object in view, to put an end to all constitutional agitation, I think it is high time for the Government to come and frankly say they do not want any political agitation in the country. If they do care for the progress of the country, it is absolutely necessary, that so long as there is a foreign Government, so long as there is discontent in the country, that there should be a proper opening for the people to express their views, and they can only express their views in such a way as may not gladden the hearts of the Magistrates, but to point out the defects in the administration, which annoys the Magistrate when stating the matter plainly, but all the same they are acting constitutionally. And when I say constitutionally, though I am aware that there are certain sections which may act unconstitutionally, and that is the reason why the last clause was added. When it is lawful, why should this section be utilised for the purpose of stifling constitutional agitation? I do not wish to take up much time at this hour, but I think it would be well that Magistrates should not use this section for this purpose. Do you know, Sir, that all meetings, even the reception of Members, are prevented by the Magistrates? A Magistrate has been known to issue an order that men should not go to a particular meeting, and that they should not wear Gandhi caps, and that a meeting should not be held in a particular town. Is that at all necessary and is it advisable for the good administration of the country? Is it at all likely to bring contentment to the people? If the Government wish to secure the contentment of the people, I think it is high time that the Magistrates should be deprived of these weapons where they want to exercise against constitutional political agitation, and unless this is safeguarded, I think you may pass any law now and there will be a time when everything will be changed.

Mr. Deputy President: The amendment moved is:

"Add the following sub-clause (v): 'insert the following as sub-section (7), namely:

'(7) The words 'certain act' in this section does not include the making of political speeches or the doing of political propaganda work which would be otherwise lawful'."

The motion was negatived.

Mr. Deputy President: The question is that clause 26 stand part of the Bill.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 26th January, 1923.

LEGISLATIVE ASSEMBLY.

Friday, 26th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Rao Bahadur T. Rangachariar then took the Chair.

QUESTIONS AND ANSWERS.

RETENTION OF MINISTERIAL OFFICERS AFTER 55.

262. ***Dr. Nand Lal:** (a) Is it a fact that the rule regarding the retention of ministerial officers in service after the age of 55 years has been liberalised since 1918, and that such officers should now ordinarily be retained in service so long as they remain efficient until they attain the age of 60 years, and even after that age in very special circumstances?

(b) Is it a fact that the retention of ministerial officers in service after the age of 55 years is now the rule rather than an exception as it used to be formerly?

The Honourable Sir Basil Blackett: The reply to second part of the question is in affirmative.

RETIREMENT OF MINISTERIAL OFFICERS IN MILITARY ACCOUNTS DEPARTMENT.

263. ***Dr. Nand Lal:** (a) Is it a fact that in accordance with the rule in Civil Service Regulations, as it stood prior to its revision in 1918, when the grant of extension to ministerial officers after the age of 55 years was treated as an exception scores of officers of the Military Accounts Department were granted such retention, in some cases up to the age of 64 years?

(b) Is it not a fact that in 1921, certain officers in the Military Accounts Department were refused extension of service after the age of 55 years, although they were reported efficient and recommended for retention by the Heads of their offices, the reason for refusal being that "Government are averse to the retention of officers and men after they attain the age of superannuation as this retards the promotion of juniors"?

(c) If the reply to part (b) be in the affirmative, is it a fact that certain other officers at Simla in the same Department and similarly situated as those to whom extension was refused, were granted extension of service at about the same time?

The Honourable Sir Basil Blackett: (a) During the war all retirements, except on medical grounds or on grounds of inefficiency, were suspended in the Military Accounts Department and several officers had to be retained in the Department and granted extensions of service after they had attained the age of 55 years. These extensions were necessary in the exigencies of the public service.

(b) In 1921 certain subordinate officers in the Military Accounts Department were refused extension of service after they had attained the age of 55 years. Under the revised scheme of organisation, which was being gradually introduced in 1921 and which is now in force, officers holding the appointments of Deputy Assistant Controllers are not purely ministerial officers as they are in independent charge of branches of the office and are also extensively employed on local audit. The reason for restricting extensions of service in the case of officers of this class was that under the re-organisation scheme the number of officers of the superior service in the Military Accounts Department was reduced in spite of a growth in the volume of work, and it was necessary therefore that subordinate officers should possess sufficient energy to discharge efficiently their new responsibilities.

(c) Extensions have been given to subordinate officers in the Military Accounts Department in cases where it was found absolutely necessary to retain their services in the interests of the State.

LOSSES INCURRED BY M. A. DEPARTMENT OFFICERS ON RETIREMENT.

264. ***Dr. Nand Lal:** Is the Government of India aware that the Officers in the senior grade of the Subordinate Accounts Service of the Military Accounts Department who were working as temporary Deputy Examiners and who have been refused extension of service have suffered the following losses in consequence of the refusal of extension to them:

- (a) Immediate loss of between Rs. 450 and 500 per month or between Rs. 5,400 and 6,000 per annum in income, as also of future increments of pay.
- (b) Heavy loss of pay and pension due to loss of promotion to the grade of permanent Deputy Examiner (now Deputy Assistant Controller of Military Accounts)?

The Honourable Sir Basil Blackett: The refusal to grant an extension of service to an officer involves his being placed on the retired list and his income is necessarily reduced as compared to what he would have continued to draw had he remained on the effective list; but the reduction of his income is no reason for his retention in the service when such a course is opposed to the interests of the State.

DIFFERENTIAL TREATMENT ACCORDED TO RETIRING OFFICERS.

265. ***Dr. Nand Lal:** (a) Is the Government of India aware that the temporary Deputy Examiners in the Military Accounts Department who have been refused extension of service have received pension amounting to about Rs. 240 per mensem, but a large number of Accountants whose pensions, with reference to their permanent pay on 1st April, 1920, would have come to between Rs. 60 and 100 per mensem and who were far junior to the former and have been promoted to Rs. 500 per mensem with effect from that date will be entitled to a pension of Rs. 250 per mensem on completion of 3 years service on this pay?

(b) Is it a fact that some of the temporary Deputy Examiners of the Military Accounts Department, who on account of their superannuation were granted leave preparatory to retirement, were subsequently allowed to resume duty, granted extension of service and made permanent Deputy Examiners, thus allowing them the benefit of higher pay and pension and

the advantage of full average salary, whereas representations, even to His Excellency the Viceroy and Governor General of India, of other officers, similarly situated, for extension of service, were rejected?

(c) If the reply to question (b) be in the affirmative, will the Government of India be pleased to state the cause of differential treatment accorded to quite similarly situated officers of one and the same Department?

The Honourable Sir Basil Blackett: (a) Yes.

(b) Yes.

(c) In the few special cases officers have been retained in service after they had attained the age of 55 years in the interests of the public service.

PENSIONS CALCULATED ON INCREASE DUE TO DEARNESS OF LIVING.

266. ***Dr. Nand Lal:** (a) Is it a fact that increase of pay of clerical and Subordinate Accounts Service of the Military Accounts Department, sanctioned with effect from 1st April, 1920, was on account of dearness of food-stuffs and other necessities of life and is it also a fact that this increase equally occasioned proportional increase in their pensions?

(b) If the reply to question (a) be in the affirmative, will the Government be pleased to state whether any increase was sanctioned for the holders of the appointment of permanent Superintendents who were equally affected as others in regard to pay and pension? If not, was there any special reason for this, beyond the abolition of the appointment, and was it taken into consideration that they would be worse off as regards pension, as compared with their juniors?

The Honourable Sir Basil Blackett: (a) The reply is in the affirmative.

(b) It was not considered necessary to raise the maximum pay of accountants in which category Superintendents in the Military Accounts Department were included.

PAY AND PENSION OF RETIRED OFFICERS IN M. A. DEPARTMENT.

267. ***Dr. Nand Lal:** Will the Government of India be pleased to place on the table a statement showing the following particulars in regard to the establishment of permanent accountants and Deputy Examiners (now Deputy Assistant Controller, Military Accounts) in all India, including those who have been made to retire from service since 1921:

- (a) Their names.
- (b) Rates of permanent pay they were in receipt of immediately prior to commencement of War in 1914.
- (c) Rates of permanent pay, their promotion, if any, between August, 1914, and 1st April, 1920.
- (d) Rates of their permanent pay fixed on 1st April, 1920, owing to revision of pay.
- (e) Approximate rates of pension they would have been entitled to if they had retired on 31st March, 1920.
- (f) Approximate rates of pension they would draw if they retire on 1st April, 1923?

The Honourable Sir Basil Blackett: The statement required by the Honourable Member will necessitate special compilation involving labour which would not be justified in the public interest.

EXPENDITURE ON WAZIRISTAN OPERATIONS.

268. ***Mr. P. L. Misra:** Will Government be pleased to lay on the table the following information:

- (a) Expenditure incurred during the last three years (year by year) on the Waziristan operations;
- (b) Loss of life as regards—
 - (1) British officers and soldiers,
 - (2) Indian officers and soldiers?

Mr. E. Burdon: (a) Prior to the year 1920-21, expenditure on the Military occupation of Waziristan was not distinguished in the accounts from expenditure on North-West Frontier operations generally. In 1920-21, the expenditure on Waziristan, including the Wana Column, amounted to approximately Rs. 14,40,00,000 and in 1921-22 to approximately Rs. 6,93,00,000.

(b) The information desired by the Honourable Member is being compiled and when it is ready I will communicate it to the Honourable Member.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): May I ask a Supplementary Question, Sir? Is it not a fact that His Excellency the Viceroy, Sir William Vincent and Mian Sir Muhammad Shafi went to the North-West Frontier Province after we had dispersed when the September Session was over in Simla to review the situation?

Mr. E. Burdon (Army Secretary): The answer is in the negative.

OFFICE ORDER BY MR. DEWAR, A. G., PUNJAB, *re* ABSENCES FROM OFFICE.

269. ***Mr. P. L. Misra:** (a) Is it a fact that Mr. D. Dewar, Accountant General, Punjab, has signed an office order in which it is stated that he is

“Tired of having his hands forced by men who have sick wives and who cannot work just when they are wanted.”

“In future when employing new men we will take only those who sign a declaration requiring that in the event of their wives being ill it will not be an absolute necessity for them to absent themselves as they are able to make satisfactory arrangements for their being looked after while they are at office.”

“No one who is unconfirmed is to be confirmed unless he signs this declaration.”

(b) Will Government be pleased to state if such order is warranted by any sanctioned authority?

(c) If not, do Government propose to have this order rescinded?

The Honourable Sir Basil Blackett: I understand that the facts are as stated in the first part of the question. Accountants General are entitled to use their discretion in the matter of the recruitment of their offices, but there are objections to laying down hard and fast rules of the kind in

question and the Auditor General is communicating with the Accountant General, Punjab, with a view to the reconsideration of the terms of the order.

Mr. N. M. Joshi: A supplementary question, Sir. Did Government enquire from this officer whether he himself will sign the declaration which he wants the other people to sign?

The Honourable Sir Basil Blackett: I trust the officer will do his duty in all circumstances.

Mr. S. C. Shahani: May I ask a supplementary question, Sir? Will Government be pleased to state if there are any European or Eurasian employes in the office of the Accountant General, Punjab?

The Honourable Sir Basil Blackett: I did not catch that question.

Mr. S. C. Shahani: Will Government be pleased to say if there are any European or Eurasian employes in the office of the Accountant General, Punjab?

The Honourable Sir Basil Blackett: That does not arise out of this question and obviously I shall require notice.

ABOLITION OF DIVISIONAL COMMISSIONERSHIPS.

270. ***Mr. P. L. Misra:** (a) Will Government be pleased to state if they have received any opinions from Local Governments on my resolution moved at the Delhi Session last year regarding the abolition of Divisional Commissionerships?

(b) If so, will Government be pleased to lay the same on the table?

The Honourable Sir Malcolm Hailey: (a) Opinions from all local Governments have not yet been received.

(b) Government do not propose at present to lay the correspondence on the table.

Mr. K. Ahmed: One supplementary question, Sir. Are the Government aware that the Retrenchment Committee in Bengal have abolished these appointments?

The Honourable Sir Malcolm Hailey: The Honourable Member has guessed right.

Mr. R. A. Spence: May I ask a supplementary question, Sir? Can Government give any information as to the loss of money caused by the waste of time of this House by the supplementary questions asked by my Honourable friend.

Mr. Deputy President: Order, order.

PERIOD FOR DISCUSSION OF BUDGET.

271. ***Mr. P. L. Misra:** Do the Government propose to allot full 15 days this year for the discussion of the budget in view of the fact that:

- (a) The time allotted hitherto was inadequate to discuss the demands; and
- (b) The shortness of the time also caused undue strain and inconvenience to the Members?

The Honourable Sir Basil Blackett: I may point out to the Honourable Member that it is the Governor General and not the Government who in the exercise of the powers conferred by rule 47 of the Indian Legislative Rules allots days for the discussion of demands for grants. The Government is not in a position to make any statement on the matter at present.

Mr. N. M. Joshi: May I ask a supplementary question, Sir? Will Government be pleased to approach the Governor General and inform him on behalf of this Assembly that the Members want more days for the discussion of the Budget?

The Honourable Sir Basil Blackett: The matter will be duly considered at the right time.

Mr. Harchandrai Vishindas: Has the Governor General determined the interval that should elapse between the presentation of the Financial Statement by the Honourable the Finance Member and the time to begin the discussion on the Budget?

Mr. Deputy President: Order, order. May I ask the Honourable Member to address the Chair?

Mr. Harchandrai Vishindas: I apologise, Sir.

May I ask a supplementary question? Is Government prepared to state what interval will be allowed by the Governor General in Council, under the rules between the presentation of the Financial Statement and the discussion on it by the Assembly?

The Honourable Sir Basil Blackett: I understand the actual dates have not yet been considered.

Mr. Harchandrai Vishindas: May I ask another question as to when those dates will be considered and information conveyed to the Assembly?

The Honourable Sir Basil Blackett: At the earliest convenient opportunity.

RENTS IN RAISINA.

272. ***Mr. W. M. Hussanally:** (a) Are there any rules for fixing rents on houses in Raisina? If not, what are the determining factors for fixing such rents?

(b) Is the value of land on which such houses stand and the compounds thereof taken into account?

(c) Is the total cost of the buildings, the fittings and the furniture taken into account in fixing such rents?

(d) What percentage is charged as interest upon total investment?

Colonel Sir Sydney Crookshank: (a) There are no rules special to Raisina. Rents are assessed in accordance with the principles enunciated in the Fundamental Rules, which govern the assessment of rents throughout India.

(b) Yes.

(c) Yes, but the hiring of furniture is optional and rent for it is quite separate from the rent of the building.

(d) The percentage charged on account of interest is $3\frac{1}{2}$ per cent. in the case of buildings occupied for the first time prior to 19th June 1922, and 6 per cent. in the case of buildings occupied after that date.

The pooled percentages are as follows:—

I. Officers' quarters.

$4\frac{1}{2}$ per cent. (round) in the case of buildings and electric installation.
 $4\frac{1}{2}$ per cent. (round) in the case of special services.
 $3\frac{1}{2}$ per cent. in the case of furniture.

II. Quarters for ministerial establishment.

$4\frac{1}{2}$ per cent. (round) in the case of buildings.
 4 per cent. (round) in the case of electric installation and special services.
 $3\frac{1}{2}$ per cent. in the case of furniture.

In this connection I would refer the Honourable Member to the reply given by me to a question by Munshi Iswar Saran, M.L.A., at a meeting of this Assembly on the 25th instant.

MUNICIPAL COMMITTEE IN RAISINA.

273. ***Mr. W. M. Hussanally:** (a) Is there any Municipal Committee in Raisina? If so, what are the sources of its revenue?

(b) What are its functions?

(c) How are its members chosen?

The Honourable Mr. A. C. Chatterjee: (a) Yes. Apart from a small income from miscellaneous fees and fines, the revenues of the Imperial Delhi Municipal Committee are chiefly derived from grants-in-aid made by the Chief Commissioner.

(b) The Committee performs the usual functions assigned to Municipalities by the Punjab Municipal Act. Owing to the paucity of its resources these are at present confined to education, sanitation, vaccination and the maintenance of cattle-pounds.

(c) The four members of the Committee are officials nominated by the Chief Commissioner.

ROADS, LIGHTING, ETC., IN RAISINA.

274. ***Mr. W. M. Hussanally:** (a) What is the total annual cost of (i) Estate office, (ii) maintenance of roads, lighting and drainage and other services in Raisina?

(b) Do tenants contribute towards the upkeep of the same?

Colonel Sir Sydney Crookshank: (a) The information is being collected and will be furnished as soon as possible.

(b) No, except through general taxation.

RENT OF HOSTELS IN RAISINA.

275. ***Mr. W. M. Hussanally:** (a) Have the rents of the rooms in the two Hostels for Members and the quarters at Windsor Place been recently

enhanced? If so, what were the reasons or circumstances justifying the enhancement?

(b) Have the rents of other houses been similarly revised? If not, why not?

Colonel Sir Sydney Crookshank: (a) A readjustment of the rents of the quarters for Members of the Indian Legislature was originally undertaken in compliance with the recommendations of an informal meeting of the House Committee, held on the 19th March, 1922, as a result of a few individual complaints which had been received by Government in the matter. In this connection the Honourable Member is referred to the reply given by me to a question by Mr. Beohar Raghubir Sinha, M.L.A., at a meeting of this Assembly on the 13th February, 1922. These rents had not been assessed in accordance with the principles enunciated in the Fundamental Rules, and a further revision was undertaken in common with a revision of the rents of all other accommodation in Raisina and Old Delhi. As a result there has been a general enhancement of rents.

(b) Yes, the rents of all other houses and quarters have been revised in accordance with the principles for assessment of rents laid down in the Fundamental Rules.

ALLOTMENT OF QUARTERS TO MEMBERS OF LEGISLATURE.

276. ***Mr. W. M. Hussanally:** (a) Is it a fact that allotment of rooms and quarters to Members of the Assembly for the current session, were made by ballot?

(b) Is it a fact that no such ballot was held for Members of the Council of State, but that they were given a preference? If so, for what reasons?

Sir Henry Moncrieff Smith: (a) The attention of the Honourable Member is invited to the second paragraph of Legislative Department Circular No. LXXXIV, dated the 18th December, 1922, issued to all Members from which it will be seen that the quarters at Windsor Place only were allotted to Members of the Legislative Assembly for the current session by ballot, the reason being that the number of applicants for these quarters far exceeded the number of quarters available.

(b) The Honourable Member will also see from the Circular referred to that Members of the Council of State were not allotted quarters by ballot but that those Members of the Council of State who had applied for quarters at Windsor Place and who could not be accommodated at Metcalfe House were allotted quarters there. The reason for this was that, whereas there was, after allowance had been made for those Members who as a matter of practice make their own arrangements, ample accommodation for Members of the Legislative Assembly, the accommodation in Metcalfe House for Members of the Council of State is inadequate.

OCCUPATION OF ROOMS IN HOSTELS.

277. ***Mr. W. M. Hussanally:** (a) Is it a fact that rooms in the two hostels are not much in demand by Members either of the Council of State or the Assembly?

(b) How many rooms are there in each of the two hostels; and how many in each have been occupied by Members for the current session?

(c) How many allotments have had to be cancelled in consequence of the Members declining the offer?

Sir Henry Moncrieff Smith: (a) It is a fact that some of the quarters in the two hostels are vacant each Session.

(b) There are 55 quarters in the Western Hostel and 44 quarters in the Eastern Hostel. So far 18 quarters in the Western Hostel and 25 quarters in the Eastern Hostel have been allotted to Members but as Members are still arriving in Delhi it is not possible to say how many quarters will eventually be occupied.

(c) Ten allotments of quarters made for the present Session have been cancelled, but in only three cases was the allotment cancelled because the Member concerned stated that the accommodation offered was not suitable for his requirements.

TREATMENT BY CANTONMENT MAGISTRATE, AMBALA, OF A PLEADER.

278. ***Mr. W. M. Hussanally:** (a) Has the attention of Government been drawn to an article in the *Cantonment Advocate* detailing the circumstances under which the Cantonment Magistrate at Ambala drove away a pleader from his Court? Are the facts given in that periodical correctly stated? If not, what are the correct facts?

(b) Is it a fact that the pleader in question has applied to the Punjab Government for sanction to take legal proceedings?

(c) Do the Government propose to take any action in the matter?

Mr. E. Burdon: (a) to (c) The Government of India have seen the article in question but have made no inquiry whether the facts have been correctly stated. The matter would be one which concerns primarily the Punjab Government to whom, as it appears from the Honourable Member's question, the complainant has already made application.

ALLEGATIONS OF CORRUPTION AGAINST CANTONMENT SUBORDINATES, AMBALA.

279. ***Mr. W. M. Hussanally:** (a) Is it a fact that the Government appointed only one Military officer to conduct the enquiry into allegations of corruption against some Cantonment subordinates at Ambala in the first instance; and subsequently on the representation of the Cantonment Association, Government agreed to appoint a second member if the Cantonment Committee agreed to pay his expenses?

(b) If so, is it a fact that the said Committee declined to bear the charge? If they did decline, for what reasons?

(c) Did the Association offer to bear the expenses? If so, did the Government accept the offer? If not, will Government be pleased to state its reasons?

(d) Is it a fact that in the event no second member was appointed?

(e) Is it a fact that the Association applied to the Punjab Government to grant a general pardon to all witnesses who appeared before the Committee of inquiry and gave evidence against the alleged delinquents?

(f) Is it a fact that the Punjab Government declined the prayer?

(g) Is it a fact that the proposed enquiry proved abortive in consequence?

(h) Do Government propose now to hold a departmental enquiry into the matter? If not, what do they propose to do?

Mr. E. Burdon: The facts are as follows:

(a) The Government of India appointed a senior officer of the Cantonment Magistrates' Department to inquire into the allegations in question. The local military authorities later suggested the appointment of a lawyer to assist the investigating officer in his enquiry.

(b) The Cantonment Committee declined to bear the expenses connected with the appointment of this lawyer. They considered that the expenses of the proposed enquiry should not be paid from the Cantonment Fund.

(c) So far as the Government of India are aware, the All-India Cantonments Association did not offer to bear the expenses in question. The Government of India themselves were prepared to accept the liability but in the end the investigating officer found that he did not require a special legal adviser.

(d) Yes.

(e) On the representation of the Association, such an application was made to the Punjab Government.

(f) The Punjab Government declined to grant immunity from prosecution except to witnesses in regard to whom there was good reason for believing that the bribes said to have been given by them, if given, were extorted by pressure.

(g) The enquiry failed to produce any immediate result as no one was prepared to give evidence in support of the charges of corruption.

(h) The matter is at present under consideration.

AUDIT OFFICERS IN RAILWAY SECRETARIAT.

280. ***Rai Bahadur G. C. Nag:** Is it a fact that there are at present no less than three officers of the Indian Audit Department on deputation in the Railway Secretariat and that one of them has been on deputation for over 18 years; if so, (a) what is the period of deputation fixed for each, (b) for what specific work has each been so deputed and (c) what deputation or other allowances each is paid in addition to his pay?

Mr. C. D. M. Hindley: The facts are as stated by the Honourable Member. There is no fixed period for these deputations. The three officers in question are employed as Secretary, Joint Secretary and Assistant Secretary in the Railway Board's Office and receive, in the case of the first two, the pay sanctioned for the posts and, in the case of the latter, the usual duty allowance of Rs. 250 per mensem given to all Assistant Secretaries drawing departmental rates of pay.

CATERING ARRANGEMENTS OF WESTERN HOSTEL, RAISINA.

281. ***Rai Bahadur G. C. Nag:** (a) Will the Government be pleased to state the terms on which the catering arrangements for the Western Hostel, Raisina, were made with the caterers for the years 1921 and 1922?

(b) Were they paid any compensation or contribution by Government to meet alleged losses in those years?

(c) Who were the caterers in those years and which department of Government made arrangements with them?

(d) What are the terms agreed upon for the current year and which Department of Government has made the arrangements?

Sir Henry Moncrieff Smith: (a) Copies of the agreements entered into with the caterers in 1921 and 1922 are placed on the table.

(b) In 1921 the caterers were paid a sum of Rs. 5,000 in full settlement of their claim for compensation for loss in catering for Members. No compensation was paid by Government to the caterers in 1922.

(c) Messrs. Bestoso and Alasia, Kashmir Gate, Delhi, were the caterers in 1921. Arrangements were made with them by the local Public Works Department. Messrs. Hoosain Buksh and Co., of the Elysium Hotel, Delhi, were the caterers in 1922. Arrangements were made with them by the Legislative Department of the Government of India after consulting the House Committee.

(d) A copy of the agreement entered into with the caterer by the Legislative Department of the Government of India for the current year is placed on the table.

AGREEMENT made the 6th day of January 1921 BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and Mr. NICOLA AZZOLLINI, Manager of Bestoso and Alasia, Kashmere Gate, Delhi (hereinafter called the caterers) of the other part.

WHEREAS the Government have appointed the said Mr. Nicola Azzollini, Manager of Bestoso and Alasia, Kashmere Gate, Delhi, to act as caterers at the Western Hostel and Chummeries for officers in New Delhi and whereas the caterers have accepted and are willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows:—

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorized by the Chief Commissioner of Delhi to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterers will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force for the season 1920-21.

(4) That the caterers shall supply meals to the residents of the Hostel and Chummeries during the period of the Legislative Session at Delhi.

(5) That the caterers shall supply meals on a standard not inferior to the specimen menus given in Schedule A at Rs. 5-8-0 per head per diem as described in Schedule B. The said schedules are annexed hereto and are signed by the parties to this contract the said schedule forming part of the conditions of this contract.

Provided that wines, spirits and mineral waters will be supplied at prices to be determined by the Chief Commissioner of Delhi whose decision shall be final between the parties to this contract.

(6) (a) That the catering service and table equipment shall be in all respects up to the standard of a first class hotel and that the caterers shall maintain a staff of table servants in the proportion of not less than one servant to four residents.

(6) (b) The caterers will either look after the arrangements personally (one of the principals) or will be represented by an European resident manager approved by the Estate Officer, Delhi.

(7) That the caterers will provide fires, free of cost in the public rooms and will arrange to provide bath water and fuel at the rates entered in the Schedule B aforesaid.

(8) (a) That the Government will provide the caterers with free accommodation but that the caterers shall pay hire for any furniture placed therein for the use of the said caterers at the same rates as Government officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is however under no obligation to provide furniture should there be none to spare.

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(8) (b) The caterers will be responsible for the Government furniture in the Dining rooms and service rooms and for keeping these rooms clean and orderly.

(9) That in the event of any dispute arising between the Government and the caterers as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing anywise connected therewith, the said dispute shall be referred for the decision of the Chief Commissioner of Delhi whose decision shall be final and conclusive between the parties to this contract.

(10) That should caterers commit breach of any of the above conditions, the Government will be at liberty to cancel this contract forthwith without payment of any compensation whatsoever. Provided also that the caterers shall be liable to pay to the Government damages for inconvenience caused to the Government on account of the change of the caterers.

IN WITNESS WHEREOF the said parties have herunto subscribed their names at Delhi on the dates hereinafter mentioned respectively.

Signed for and on behalf of the
Secretary of State for India in
Council by
on the day of 1921.

(Sd.) A. M. ROUSE,
Superintending Engineer,
2nd Circle.

Signed by the said
on the day of 1921,
in the presence of

(Sd.) NICOLA AZZOLLINI,
Bestoso and Alasia.

(1) (Sd.) A. H. FAWKES.

(2) (Sd.) F. D. INNIS.

Witnesses.

SCHEDULE A.

Chota Hazri.

Tea and coffee.

Toast and butter.

Fruit.

Breakfast.

Currey or dal and rice.
Tea, coffee, or cocoa.
Preserves.
Fruit.

Lunch.

Salad.
Pudding.
Cheese and biscuits.

Coffee.

Tea.

One plateful of bread and butter and
cake.

Dinner.

Pudding.
Savoury.
Dessert.
Coffee.

Ices on occasion, twice weekly.

(Sd.) NICOLA AZZOLLINI,
Bestoso and Alasia.

(Sd.) A. M. ROUSE,
Superintending Engineer,
2nd Circle.

SCHEDULE B.

1. Daily rate Rs. 5-8-0 per head.

This covers the ordinary meals, special teas or special dishes at dinner will be the subject of special arrangements.

2. If meals, (i.e., breakfast, lunch, or dinner) are served in rooms, there will be an extra charge of 4 annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water—Two annas a four gallon tin. Fuel (coal or wood) at market rates.

4. The caterers will issue to residents such glass, crockery, cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterers.

5. Hours of meals are as follows:

Breakfast	...	...	...	...	8-30	to	9-30	A.M.
Lunch	...	...	...	...	1-30	to	2-30	P.M.
Dinner	...	...	...	...	8	to	9	P.M.

(Sd.) NICOLA AZZOLLINI,
Bestoso and Alasia.

(Sd.) A. M. ROUSE,

Superintending Engineer, 2nd Circle.

26th January 1921.

AGREEMENT made the nineteenth day of December, 1921, BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and HOOSAIN BUKSH trading as and proprietor of the firm of Messrs. Hoosain Buksh and Company of the Elysium Hotel, 2 Underhill Road, Delhi, Hotel Proprietors, Caterers and general merchants (hereinafter called the caterers which expression shall where the context so admits includes his personal representatives and permitted assigns) of the other part.

WHEREAS the Government have appointed the Caterers to act as caterers at the Western Hostel for officers in New Delhi, on the terms and conditions hereinafter mentioned and the Caterers have accepted and are willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows:

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorised by the Secretary to the Government of India in the Legislative Department to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterers will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force from 7 days before the opening of the Winter Session of the Indian Legislature till 7 days after the closing thereof both days inclusive unless previously terminated as hereinafter provided (hereinafter called the said period).

(4) That the caterers shall during the said period supply messing and all necessary attendance kitchen table requirements, etc., of any kind for the residents of and authorised visitors to the Hostel who shall require messing at the scale and charges hereinafter mentioned.

(5) That the caterers shall supply meals on a standard not inferior to or less than the specimen menus given in Schedule A at the charges given in Schedule B. (The

said schedules are annexed hereto and are signed by the parties to this contract the said schedules forming part of the conditions of this contract) PROVIDED that wines, spirits and mineral waters will be supplied in sufficient quantity and of the best quality at prices to be determined by the Government of India in the Legislative Department whose decision shall be final between the parties to this contract.

(6) (a) All food and drink to be obtained from reliable sources and that the catering service and table equipment shall be in all respects up to the standard of a first class hotel to the satisfaction of Government and that the caterers shall maintain a staff of table servants in the proportion of not less than one servant to four residents dismissing any if so required by Government and seeing that they are properly and cleanly clad.

(6) (b) The caterers will either look after the arrangements personally or will be represented by an European resident manager approved by the Government of India in the Legislative Department.

(7) That the caterers will provide fires, free of cost in the Public rooms and will arrange to provide hot bath water as in Schedule B and fuel at the local market rates.

(8) (a) That the Government will provide the caterers' manager with free accommodation but that the caterers shall pay hire for any furniture placed therein for the use of the said caterers at the same rates as Government Officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is, however, under no obligation to provide furniture should there be none to spare.

(8) (b) The caterers will be responsible for the Government furniture, etc., in the dining rooms and service rooms and for keeping these rooms clean and orderly.

(8) (c) Government give no guarantee as to the number that will require messing and take no responsibility for the accounts of those requiring messing nor for any stores, etc., the caterers may bring on the premises.

(9) That in the event of any dispute arising between the Government and the caterers as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing in anywise connected therewith the said dispute shall be referred for the decision of the Secretary, Legislative Department, Government of India, whose decision shall be final and conclusive.

(10) That should caterers commit any breach or fail to observe any condition of this contract Government shall be at liberty to forthwith cancel the contract and make other arrangements at the expense and risk of the caterers without prejudice to recovery of any other damages they may suffer.

SCHEDULE A.

Chota Hazri.

Tea and coffee.

Toast and butter.

Fruit. (Including apples if specially asked for by any resident).

Breakfast.

Porridge or similar dish (with cream).

Fish (Sea fish at least twice a week if obtainable).

One grill.

One dish of eggs and bacon.

Curry or dal and rice.

Tea, coffee or cocoa.

Preserves (English).

Fruit.

QUESTIONS AND ANSWERS.

Lunch.

Soup.

One hot dish.

One cold dish (chicken, ham and tongue on Wednesday and Saturday).

Salad.

Pudding (with cream and sauce alternately).

Cheese and biscuits.

Coffee.

Tea.

Tea

One plateful of bread and butter or toast and cake.

Dinner.

Soup.

Fish (Sea fish twice a week if obtainable).

Entree.

Joint with vegetables.

Pudding (with cream and sauce alternately).

Savoury (Asparagus twice a week).

Dessert.

Sweets.

Coffee.

Ices twice weekly.

Condiments, fresh drinking water, toast and small fresh rolls to be available at every meal.

THE SCHEDULE ABOVE REFERRED TO.

1. Daily rate Rs. 6 per head or a married couple Rs. 11 provided that any one who resides at the hostel for at least one month the charge shall be at the rate of Rs. 5-4 a day or in the case of married couple Rs. 10. This covers the ordinary meals that are specified in Schedule A. Special teas or dishes at dinner will be subject to special arrangements between the person ordering the same and caterers.

	Rs. A.
Children under one year	Nil.
" between one and three	1 8
" between three and six	2 0
" between six and twelve	3 8
" over twelve	5 0
European servant	4 8
Non-resident guests—	
Breakfast	1 8
Lunch	2 0
Tea (without cake)	0 8
Tea with cake	0 12
Dinner	3 8

If meals (i.e., breakfast, lunch or dinner) are served in rooms, there will be an extra charge of 4 annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water—Two annas a four gallon tin. Fuel (coal or wood) at market rates.

4. The caterers will issue to residents such glass, crockery, cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterers.

5. Hours of meals are as follows :

Breakfast	...	...	...	8-30 to 9-30	A.M.
Lunch	...	...	...	1-30 to 2-30	P.M.
Dinner	...	...	...	8-0 to 9-0	P.M.

IN WITNESS WHEREOF the parties have hereunto set their hands the day and year first before written.

Signature of the said Hoosain Buksh (Sd.) HOOSAIN BUKSH & CO.

Witness to signature of Hoosain Buksh.

(Sd.) N. AZZOLLINI,
Manager, Elysium Hotel.

Signed by the Secretary, Legislative Department, Government of India for and on behalf of the Secretary of State for India in Council in the presence of (Sd.) H. MONCRIEFF SMITH.
(Sd.) W. T. M. WRIGHT,
Legislative Department.

AGREEMENT made the twenty-third day of December one thousand nine hundred and twenty-two BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and BENJAMIN PAUL of Nowshera, (hereinafter called the caterer which expression shall where the context so admits include his personal representatives and permitted assigns) of the other part.

WHEREAS the Government have appointed the Caterer to act as caterer at the Western Hostel for officers in New Delhi on the terms and conditions hereinafter mentioned and the Caterer has accepted and is willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows :

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorised by the Secretary to the Government of India in the Legislative Department to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterer will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force from seven days before the opening of the Winter Session of the Indian Legislature till seven days after the closing thereof both days inclusive unless previously terminated as hereinafter provided (hereinafter called the said period).

(4) That the caterer shall during the said period supply messing and all necessary attendance kitchen table requirements, etc., of any kind for the residents of and authorised visitors to the Hostel who shall require messing at the scale and charges hereinafter mentioned.

(5) That the caterer shall supply meals on a standard not inferior to or less than the specimen menus given in Schedule A at the charges given in Schedule B (the said Schedules are annexed hereto and are signed by the parties to this contract the said Schedules form part of the conditions of this contract) PROVIDED that wines, spirits and mineral waters will be supplied in sufficient quantity and of the best quality at prices to be determined by the Government of India in the Legislative Department whose decision shall be final between the parties to this contract.

(6) (a) All food and drink to be obtained from reliable sources and that the catering service and table equipment shall be in all respects up to the standard of a first class hotel to the satisfaction of Government and that the caterer shall maintain a staff of table servants in the proportion of not less than one servant to four residents dismissing any if so required by Government and seeing that they are properly and cleanly clad.

(6) (b) The caterer will either look after the arrangements personally and reside on the premises or will be represented by an European resident manager approved by the Government of India in the Legislative Department.

(7) That the caterer will provide fires, free of cost in the public rooms and will arrange to provide hot bath water as in Schedule B and fuel at the local market rates.

(8) (a) That the Government will provide the caterer or his manager as the case may be with free accommodation but that the caterer shall pay hire for any furniture placed therein for the use of the said caterer at the same rates as Government officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is, however, under no obligation to provide furniture should there be none to spare.

(b) The caterer will be responsible for the Government furniture, etc., in the dining rooms and service rooms and for keeping these rooms clean and orderly.

(c) Government give no guarantee as to the number that will require messing and take no responsibility for the accounts of those requiring messing nor for any stores, etc., the caterer may bring on the premises.

(9) That in the event of any dispute arising between the Government and the caterer as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing in anywise connected therewith the said dispute shall be referred for the decision of the Secretary, Legislative Department, Government of India, whose decision shall be final and conclusive.

(10) That should caterer commit any breach or fail to perform or observe any condition of this contract Government shall be at liberty to forthwith cancel the contract and make other arrangements at the expense and risk of the caterer without prejudice to recovery of any other damages they may suffer.

THE SCHEDULE 'A' ABOVE REFERRED TO.

Chota Hazri.

Tea and coffee.
Toast and butter.
Fruit (including apples if specially asked for by any resident).

Breakfast.

Porridge or similar dish (with cream).
Fish (Sea fish at least twice a week if obtainable).
One grill.
One dish of eggs and bacon.
Curry or dal and rice.
Tea, coffee or cocoa.
Preserves (English).
Fruit.

Lunch.

Soup.
One hot dish.
One cold dish (chicken, ham and tongue on Wednesday and Saturday).
Salad.
Pudding (with cream and sauce alternately).
Cheese and biscuits.
Coffee.

Tea.

Tea.
One plateful of bread and butter or toast and cake.

Dinner.

Soup.
Fish (Sea fish twice a week if obtainable).
Entree.
Joint with vegetables.
Pudding (with cream and sauce alternately).
Savoury (asparagus twice a week).
Dessert.
Sweets.
Coffee.

Ices twice weekly.

Condiment, fresh drinking water, toast and small fresh rolls to be available at every meal.

THE SCHEDULE 'R' ABOVE REFERRED TO.

1. Daily rate rupees six annas eight per head or a married couple rupees twelve. This covers the ordinary meals that are specified in Schedule A—special teas or dishes at dinner will be subject to special arrangements between the person ordering the same and caterer.

Children under one year	...	...	...	Nil.
" between one and three	...	...	...	1 8
" between three and six	...	...	...	2 0
" between six and twelve	...	...	...	3 8
" over twelve	...	...	...	5 0
European servant	...	...	...	4 8

Non-resident guests.

Breakfast	...	...	...	1 8
Lunch	...	...	...	2 0
Tea (without cake)	...	...	...	0 8
Tea with cake	...	...	...	0 12
Dinner	...	...	...	3 8

2. If meals (i.e., breakfast, lunch or dinner) are served in rooms, there will be an extra charge of four annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water will be supplied by the caterer on demand at two annas a four gallon tin and fuel (coal or wood) at market rates.

4. The caterer will issue to residents such glass, crockery cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterer.

5. Hours of meals are as follows:

Breakfast	...	...	...	8-30 to 9-30 A.M.
Lunch	...	...	...	1-30 to 2-30 P.M.
Dinner	...	...	...	8-0 to 9-0 P.M.

IN WITNESS WHEREOF the Honourable Mr. H. Moncrieff Smith, C.I.E., I.C.S., Secretary to the Government of India in the Legislative Department on behalf of the Secretary of State for India in Council has set his hand and the said Benjamin Paul has hereunto subscribed his name at the day and year first before written.

SIGNED by the said Honourable Mr. H. Moncrieff Smith Secretary to the Government of India in the Legislative Department on behalf of the Secretary of State for India in Council in the presence of

(Sd.) H. MONCRIEFF SMITH.

B. M. P. COELLO,

Superintendent, Legislative Department, Government of India.

SIGNED by the said Benjamin Paul }
caterer in the presence of

(Sd.) B. PAUL, Caterer.

S. WEBB-JOHNSON,

Officiating Solicitor to the Government of India, Delhi.

UNSTARRED QUESTION AND ANSWER.

MESTON COMMITTEE'S REPORT.

111. **Rai Bahadur G. C. Nag:** Will Government be pleased to lay on the table a copy of the Meston Committee's report dated 2nd December 1908 and of the Government of India, Home Department Resolution No. 52-61 (Establishments), dated 21st January 1910?

The Honourable Sir Malcolm Hailey: The Report and the Resolution are not published documents, but I will give the Honourable Member copies.

MOTION FOR ADJOURNMENT.

Mr. Chairman: I have received notice of the following motion from the Honourable Munshi Iswar Saran:

"I beg to inform you that I desire to move the adjournment of the House, on Friday, the 26th of January next, for the purpose of discussing a definite matter of urgent public importance, namely, the situation created by the Despatch of the Secretary of State regarding the Resolution adopted by the Legislative Assembly in September 1921 regarding the re-examination and revision of the constitution at an earlier date than 1929."

Under Standing Order No. 21 at page 14 the matter must be a definite matter of urgent public importance. Having regard to the nature of the subject and the procrastination which has taken place already, I decide it is not a matter of urgent public importance and therefore I cannot allow Munshi Iswar Saran to make that motion.

There are two other motions received—one from the Honourable Dr. Gour and the other from the Honourable Mr. Seshagiri Ayyar. I wish to know from Dr. Gour whether he does not consider his motion covered by the Resolution of which I have given notice already.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I have adverted to the Resolution of which you gave notice and the *ipsissima verba* of which are now before me. The Resolution of which you gave notice, Sir, ran as follows:

"This Assembly recommends to the Governor General in Council that he may be pleased to move the Secretary of State for India to suspend the proposed appointment of a Royal Commission on the conditions and alleged grievances of the All-India Services and that the Government of India be pleased to undertake such inquiry with a view to meet legitimate grievances and limit outside recruitment, and, pending such inquiry and report, recruitment outside India to those Services be limited to the bare minimum proportion of the annual requirements."

This Resolution was tabled by you, Sir, before the appointment of a Royal Commission and it is for that reason that the Resolution is worded to the effect that the Government of India should suspend the proposed appointment of a Royal Commission. The announcement made by the Honourable the Home Member yesterday has settled, so far as this Resolution is concerned, its fate. It is no longer a proposal to appoint a Commission for that is a *fait accompli*, and my motion yesterday to the Chair, followed by a written request addressed to the Chair and to the Secretary, is to protest against not a proposal to appoint a Royal Commission but against the appointment made of a Royal Commission. I therefore submit that there is no Resolution before this House which blocks my motion for leave to grant me an adjournment. I therefore submit, Sir, that my motion is in order.

The Honourable Sir Malcolm Hailey (Home Member): May I say, Sir, on behalf of Government that we regard this as a matter entirely for your discretion and on which we do not wish to argue.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I say a word, Sir. If for any reason, having regard to the language used by my Honourable friend, Dr. Gour, his motion is considered as contravening Order 11, Rule 4, I submit, Sir, that, so far as my motion is concerned, that difficulty will not arise. The language of my letter to the Secretary is this:

"I have been asked by the Democratic Party to move the adjournment of the Assembly to-morrow to discuss the announcement made by the Honourable the Home Member on the subject of the appointment of a Royal Commission to inquire into the financial and other conditions of the higher services in India."

It is as regards the announcement made yesterday that I have given notice of this motion. The Resolution, Sir, to which you referred contemplated the possibility of the appointment of a Commission. Here, a Commission has apparently been resolved upon, and it is only the names that have to be filled in. It is that announcement that I want to discuss. Under these circumstances, my motion cannot be affected by the Resolution of which you as a Member of this House, had given notice previously.

Dr. H. S. Gour: May I, Sir, just point out that my learned friend's motion protests against the announcement. My motion protests against the appointment, and I therefore submit that my motion is not only strictly in order but is in full conformity with constitutional practice, and there is absolutely nothing in the language of my notice which contravenes either the letter or the spirit of any rule published in this Manual.

Mr. Chairman: It is with some hesitation that I give my ruling on this matter. I consider Dr. Gour's motion somewhat offending against the rules as it is too general and makes no reference to the decision announced and I consider Mr. Seshagiri Ayyar's motion in order as it relates to the decision recently announced about which no notice has been given. I therefore rule that Mr. Seshagiri Ayyar's motion is in order.

Mr. T. V. Seshagiri Ayyar: Then, Sir, I ask for leave of the House to allow me to move the adjournment of this House in order to consider the announcement made by the Honourable the Home Member yesterday.

Mr. Chairman: May I ask whether the Honourable Member has leave of the Assembly to move the adjournment? Unless any Member objects there is no need to stand. I will read out the motion to the House:

"For leave to make a motion for adjournment of the business of the Assembly for the purpose of discussing a definite matter of urgent public importance, namely, the decision of His Majesty's Government to appoint a Royal Commission on the Services in India."

(No Member objecting) leave is granted and the motion will be taken up at 4 P.M. to-day or at an earlier hour with the consent of the Honourable Member in charge if our business terminates earlier. The House will now proceed to consider the Bill further to amend the Code of Criminal Procedure, 1898.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, the amendment that I propose runs as follows:

"In clause 27 insert the following at the end of sub-clause (i):

'and in the first proviso for the words 'such order' the words 'such report or information' shall be substituted'."

It is really very short but it relates to a very long section. I am afraid there will be some difficulty in drawing the Honourable Members' attention to my point and I think I shall have to trouble them with section 145. The section is a very long one and contains about seven clauses and two provisos, if the present amendment is allowed it will contain about nine clauses. Section 145 contemplates that whenever a District Magistrate, Sub-divisional Magistrate, or other Magistrate of the first class is satisfied, from a police report or other information, that there is a dispute likely to cause a breach of the peace, he will issue certain proceedings, call upon the parties and declare possession of a party until any of the parties has obtained the decision of a proper civil Court. There you will find after clause (4) there are two provisos. The first proviso is:

"Provided that, if it appears to the Magistrate that any party has, within two months next before the date of such order, been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date."

My amendment relates to this proviso. This proviso contemplates that if the Magistrate finds that a party had been dispossessed two months before the date of the order, which is called the preliminary orders served upon the parties, then the Magistrate will decide the actual possession to be with that party and declare possession to that party. Several cases have arisen where actually between the date the Magistrate issued the preliminary order and the actual dispossession took place, it was about more than two months, or three months or two months and fifteen days, or sometimes there was some difficulty to prove actual possession exactly just before two months. In these cases the Magistrates have always committed an error and have declared possession of the party whom they considered to be in possession at the date of the order and within two months. This has really placed rather a premium on high-handedness and taking forcible possession by some party. I shall illustrate this. Now, Honourable Members many of them have left their homes and have come here and I think will continue to be here from January till the end of March. As soon as I came away say, somebody, my neighbour, trespasses upon my land and perhaps my servant is not able to protest or to bring evidence enough to induce the police or the Magistrate to issue a preliminary order asking the parties to lay their claims about possession. After my return, say, after three months, I find that really my land has been trespassed on. Then I go on my land and the other party comes and a sort of a breach of the peace is apprehended. Then a report is made and the Magistrate issues an order. By that date, by the date the Magistrate issues the preliminary order, as I was absent, the possession had been taken by the other party before three months. The law lays down that the Magistrate will take evidence about the fact of actual possession and this proviso says:

"Provided that, if it appears to the Magistrate that any party has, within two months next before the date of such order"

[Mr. B. N. Misra.]

My point is this. He issues the preliminary order three months after and evidence is taken. He finds that the opposite party, my opponent, has been in possession for three months from the date of the order I am referring to, although some information was given by my servant or some report was made and the Magistrate did not make up his mind to issue the order earlier. It happens in many cases that whenever there is some trespass accompanied by any violence, cases are filed for trespass or for hurt and the Magistrates generally make it a point to await the result of such cases, then go through those records and issue a preliminary order. In such a case also, 3 or 4 months elapse before the actual dispossession and the Magistrate's preliminary order. Strictly speaking, it was practically a delay due to a certain procedure and not due to the party, who was dispossessed, putting forth his case after some delay. If this proviso is allowed to stand, it really does not give power to the Magistrate to go beyond the two months. Unfortunately the Magistrates regard this provision to be a two months' limitation. It is an advice given by the Legislature that they would not go beyond two months. If they find that a man was dispossessed beyond two months from the date of the preliminary order, then he must go to a Civil Court, and the Magistrate actually puts in possession the party whom he finds in possession on the date of the order. Really it is doing harm to a man who has been dispossessed wrongfully and it is assisting the highhanded and the oppressive aggressor who had somehow or other taken possession and it may be even without the knowledge of the owner in some cases. There are several cases in the Allahabad Law Journal and in Indian Cases, specially in 10 Indian Cases. I would have read that last case but unfortunately I am told the Legislative Assembly Library has not got that book. It is still at Simla. Therefore I cannot procure the book. In that case it so happened that there were two zamindars. One party was practically absent and the other party tried to collect rent and there was a sort of disturbance and one Magistrate came and told the parties without issuing a formal order not to create a disturbance and so on. They kept quiet for some time and then the situation became rather serious and the parties began fighting. By that time actually four months had passed and then the Magistrate issued a preliminary order in writing. It was contended that as the opposite party was in possession for four months prior to the date of the order, the Magistrate had no power to put that party in possession because we find in the proviso that the Magistrate can put him in possession under section 145 if he finds that the man was dispossessed only within two months. Really this wording gives very often sanction to violence and aggression of one party and if somehow or other a party can manage to get the two months to pass away from the date of dispossession to the date of the preliminary order, the Magistrate finds that he is unable to put the party who was wrongfully dispossessed, in possession. Therefore I have brought in this amendment that instead of "such order" the words "such report or information" shall be substituted. Take the case of a man who knows the law and he says "If I somehow or other can manage to be in possession for two months, the Magistrate cannot dispossess me and the other party will be driven to a civil suit" and we know the difficulties of going to a civil court and the expense to be incurred and the long delay to be incurred. Suppose a man wants to buy a piece of land from a man who has encroached on it and the man has somehow or other kept his possession concealed and the other party does not know it. He comes to know after some time and then both parties fight and there

is a dispute. In such a case the report is made but so far as actual possession is concerned, the wrong doer has been already in possession for four months and this entitles the Magistrate to declare actual possession under 145. My submission therefore is that we should give speedy remedy and if the Magistrate finds that if really a man has been wrongfully dispossessed, then he should put that party in possession. The two months criterion should not come in here and the two months should count only from the date on which the information was given or the report was sent. Sometimes mischief is made in the Magistrate's office. Sometimes a man knows that such a report has been made by the police. Somehow or other the record is kept concealed from the Magistrate and the two months pass away. Then the Magistrate sees the record and he issues a preliminary order as is contemplated and then practically the Magistrate has no power under this proviso to put that party in possession. Under these circumstances the two months criterion works as a hardship and causes failure of justice and the object of the section fails. So the words "such report or information" should be substituted for the words "such order." I therefore move:

"That in clause 27, at the end of sub-clause (i) and in the first proviso for the words 'such order' the words 'such report or information' shall be substituted."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I think this House will be prepared to admit that it is the duty of the House as a whole to examine with great care every amendment that is proposed to be made in the law and particularly is that obligation laid on a Member for the examination of an individual amendment for which he is responsible. When I received notice of this amendment I doubted whether Mr. Misra had considered the effect of his proposal on the law as it stands. After listening to his remarks in support of his motion, I am certain that he has not considered it. I shall now try to explain to the House what the effect will be. The case Mr. Misra contemplates is a case where the Magistrate has been satisfied that a dispute regarding land exists, which is likely to cause a breach of the peace. He has called on the parties to put in their claims regarding possession of the property. Then, when they appear, without reference to claims as to title, he examines their claims as to actual possession on the date of the order. I want the House to hear that carefully in mind. He has to ascertain which party was in possession on the date of his order. That is the law as we have now got it. These three sub-sections (1), (2) and (3) are already on the Statute Book and Mr. Misra does not propose to amend the first part of (4). Therefore the Magistrate is setting out to find out who is actually in possession on the date of his order. Now Mr. Misra comes in and proposes an amendment in the proviso to the effect that if the Magistrate finds that there has been wrongful and forcible dispossession within two months before the date of the information, then he may presume that the party wrongfully dispossessed was in possession on the date of the information. Now, is that going to help the issue at all? What the law lays down is that the Magistrate has to find out the fact of actual possession on the date on which he received information will not enable him to decide the case or issue any order whatever. I suggest a case to the Honourable Member. Suppose that there has not been any forcible dispossession before the date of the information, but after the Magistrate gets information, and before he issues an order one party goes on the land and forcibly dispossesses the other. There

[Sir Henry Moncrieff Smith.]

will be no presumption in that case at all. The dispossession was not previous to the date of the information and though it was previous to the date of the order the Magistrate has to find that the party who had forcibly occupied the land had actual possession on the date of the order and has to confirm him in his possession until the Civil Court ousts him. I think if Mr. Misra had considered the effect of his amendment, he would have saved the time of this House by not moving it.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I do not think Mr. Misra's amendment is so very unreasonable as Sir Henry Moncrieff Smith's remarks would lead one to believe. I think it is really a good amendment, and I beg to support it. This section relates to disputes about immoveable property in regard to which there is an apprehension that there would be an immediate breach of the peace unless the Magistrate intervenes. Now all that the Magistrate has to find out in this case is, who was in peaceful possession of the property in dispute at a particular time, and he has to keep him in possession of that property until he is evicted by an order of a competent Civil Court. Proviso 1 says that if there is evidence to show that one of the parties who claims possession of the property had been forcibly dispossessed of it within two months immediately preceding the date of the preliminary order the Magistrate may treat the party so dispossessed as if he had been in possession at such date for the purpose of this section. What Mr. Misra proposes is that if the party who had been forcibly dispossessed of the property within two months immediately preceding, not the preliminary order issued by the Magistrate but immediately preceding the complaint made by the party dispossessed the Court should find that he was in peaceful possession either to the police or to the Magistrate, I will quote a probable case. Suppose there is a dispute about a piece of immoveable property between two parties. Suppose that one of the parties which had been in peaceful possession of the property has been wrongfully dispossessed of it. Suppose that that party complains to the Magistrate, and suppose the Magistrate does not feel justified in issuing a preliminary order simply on the strength of that complaint, but sends the complaint to the police for investigation and report. I quote this as a hypothetical case but it is the sort of case which very commonly happens. Suppose the complaint is sent to the police for report. The police take their own time over the matter and then send up the report. Suppose thereupon the Magistrate makes up his mind and issues a preliminary order; and by the time the Magistrate issues the preliminary order, it happens that the dispossession becomes more than two months old. Therefore, the Magistrate cannot give possession to the man that was dispossessed. But the delay in the issue of the preliminary order was not due to the party which had been dispossessed but to the Magistrate or, it may be, due to the police. Why should the party which has been forcibly dispossessed be prejudiced by the delay on the part of the police or on the part of the Magistrate in issuing the preliminary order? What is there sacred about the date of the preliminary order? The law says, if a man has been dispossessed within two months immediately preceding the issue of the preliminary order, he shall be considered to have been in peaceful possession of the property. But why should he not if he comes to the Court within two months after being dispossessed, be considered to be in time? If there is no default on his part, if there is no delay on his part, if he comes and complains before the Court in time, and the Court takes long in arriving at a decision, it is not the fault of the party. Therefore I think it is

quite just that dispossessions made within two months immediately preceding the complaint by the party should be treated as wrongful, and the man who has been forcibly dispossessed should be put in possession of the property. Therefore, I support the amendment.

The Honourable Sir Malcolm Hailey (Home Member): I do not know if Mr. Pantulu has realized that the whole object of this Chapter is to allow the Magistrate to decide the facts of actual possession of the subject in dispute. I quote the exact words of 145 (4):

"Whether any and which of the parties was, at the date of the order before mentioned, in such possession of the said subject."

That still stands; nobody proposes to amend that; and therefore the object of the Magistrate is to decide simply one point: who was to be considered in possession at the actual date of the order? There is an obvious reason: that the future conduct of parties has to be regulated on that order of the Magistrate. It is of no value to the parties or to anybody else if the Magistrate decides that some three months before—it may be four according to Mr. Pantulu—such and such a person was in possession. That helps no one. What you want for the purposes of this section is that you may get an order which will regulate the position of the parties in regard to the fact of possession as from the date of the Magistrate's order.

Mr. Chairman: The motion before the House is:

"To insert the following at the end of sub-clause (i) in clause 27 'and in the first proviso for the words 'such order' the words 'such report or information' shall be substituted."

The motion was negatived.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammadan Rural): Sir, on behalf of Mr. Rangachariar I beg to move the following amendment:

"To clause 27, sub-clause (ii), add the following:

'and at the end of sub-section (6) insert the following Explanation:

'Explanation: A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person.'

Sir, the object of section 145 is to prevent a breach of the peace in order to preserve the actual possession of the party. The question now is, who is in actual possession?—naturally, the person who was in actual possession or any other person on whose behalf the person was in possession, as he was in possession on behalf of the rightful owner; and even in cases where the complaints were obliged to be brought up before higher tribunals on account of a misunderstanding or misapprehension of the rule by the lower Court or Magistrate,—I will quote an authority, not one but a number of authorities wherein it was stated that naturally possession includes the possession of a servant on behalf of his master or of an immediate tenant on behalf of his landlord and of the usufructuary on behalf of the mortgagor. It is not a question whether we have to consider about the rights or wrongs of the parties or the lawful or unlawful possession but in order to make the legislation clear that this was suggested; so that Magistrates may not think that there is an absolute necessity that the person who complains or puts in a petition should be in actual possession while his servant is in possession on his behalf. The complainant should be permitted to state that he was in possession through his servant, and

[Mr. B. Venkatapatiraju.]

therefore, Sir, in order to make the point clear which has all along been accepted by the highest tribunals, I move this Explanation which would serve the purpose of elucidating the point more clearly.

Mr. Chairman: The Honourable Member has not moved the amendment.

Mr. B. Venkatapatiraju: I move the amendment, Sir:

"That in clause 27, (ii), add the following:

'and at the end of sub-section (6): insert the following Explanation:

'Explanation: A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person'."

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, out of compliment to yourself, I should have been very glad if I could have been able to accept this amendment, but I am afraid that I am not able to do this. I think of the position of the poor Magistrate who has to decide what was the object of the Indian Legislature in inserting this explanation in this section. He will think, that it can scarcely mean merely that the Indian Legislature wished again to affirm the ruling reported in 9 Bengal Law Reporter at page 229, which has already been read by the Honourable Mover of this amendment. In that ruling it was stated that by 'actual possession' is meant possession of a master by his servant, the possession of the landlord by his immediate tenant, the person who pays rent to him, the possession of the person who has the property on the land by the usufructuary. Now the Magistrate will say, 'this cannot have been the intention. We all know that. We have been brought up on it. There must have been some other reason.' He will refer to sub-section (1) and will see that that is the sub-section in which the words "actual possession" are used. He will see that the words have to be applied in determining the parties concerned and he will turn, say, to the Full Bench ruling in 31 Calcutta, page 48, *Dhondhai Singh versus Follet*. That was a dispute relating to an indigo factory: Mr. Follet was the Manager of the factory and Dhondhai Singh was the other party. The case came before a Full Bench of the Calcutta High Court. It was held that there was jurisdiction in the Courts under section 145 of the Criminal Procedure Code to make an order in favour of persons who claimed to be in possession of the disputed land as Agent or Manager for the proprietor when the actual proprietors are not resident within the appellate jurisdiction of the High Court. He will begin to think, 'does the word "deem" in this explanation mean that it must be the proprietor who has to be made a party? Is it impossible for the Manager to be made a party? Did the Indian Legislature intend to overrule that Full Bench decision?' Or perhaps, Sir, he will think of the case reported in 32 Calcutta, page 287, *Bhola Nath Singh versus Wood*. Mr. Wood was the Manager for the Nawab of Murshidabad. One point taken in the High Court was that the Magistrate had no jurisdiction to make the Manager a party instead of his employer, the zemindar. As regards this point it was held that the course adopted by the Magistrate was a mere irregularity or at most an error of law which does not affect his jurisdiction. Perhaps, Sir, he will think that the intention of the Indian Legislature was to prevent a tenant being made a party. Then he would think, perhaps, of the case of *Beni Prasad Koeri versus Shahzada Ojha*, reported in 32 Calcutta at page 856. There the Magistrate had

taken possession under section 146 in a dispute between two sets of rival tenants. It was held that it was quite within the law for him to apply section 145 in such a case, and it was held that the Magistrate's attachment under section 146 was an attachment on behalf of those tenants who might subsequently be found to be entitled to the possession. Perhaps, Sir, he would take the other side and think that the intention is that the zemindar, the proprietor, shall never be a party; that we must have the man who is in immediate possession. It is perhaps unnecessary to refer to rulings on the point, but in 25 Calcutta at page 423, it was held that a person who was in possession of land merely as the Manager for the actual proprietor could not be made a party to the proceedings under section 145 when the circumstances are such that the proprietor himself can readily be made a party. Of course, Sir, these proceedings are usually proceedings preliminary to a civil suit, and it is clearly advisable as a general rule that the proprietor himself should be the party, because it is no use, or very little use perhaps, to say that the Manager is the party in possession when in the subsequent civil suit it must be the proprietor who moves. Perhaps, Sir, the Magistrate will have a brain wave and think that the word "Manager" refers to the Manager of a Hindu joint family. He will have heard perhaps that the amendment was made at the instance of an eminent Hindu lawyer and will think he possibly was thinking of such Manager. Well, Sir, I do not think it is necessary to proceed further. I think that if we add this amendment we shall not make the position of the Magistrate any better. He knows quite well the old ruling in Bengal Law Reporter which has been recited to us, and if once he begins to think of what was the intention of the Legislature in putting in the explanation, his last stage will be worse than the first.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, with the gracious permission of the Chair I rise to oppose this amendment. It seems to me that the introduction of this clause, if it was made law, would not merely place Magistrates in great difficulty, but it would be in the direction of carrying the provisions of this section beyond the scope of the Chapter to which it appertains. What is the primary object of this magisterial interference in disputes over immoveable property? This country has a long record of broken heads and bones and lost lives in disputes over immoveable property? The sole and primary object of this section is to prevent breaches of the peace. It does not exist merely for the settlement of disputes, even as to lawful possession. A Magistrate can only interfere when he finds that the dispute is of such a kind as requires immediate settlement to prevent a breach of the peace. Now, the first part of the section requires the Magistrate to inquire into the fact of actual possession. There is nothing particularly technical about that word "actual". A good deal of forensic argument and judicial learning no doubt have been expended on the word. But here it means, in my humble opinion, what one would understand it to mean in the ordinary affairs of life. If I go to the club in the evening leaving my house in charge of my servants, my actual possession is not interfering with or disturbed. If I go to Mussoorie for the season and sublet my house to a tenant my actual possession so far as this section is concerned, with all respect for the contrary opinion whether expressed in rulings or elsewhere, is certainly suspended. All that remains is what lawyers call constructive possession. I am one of those who think that the clause which allows a Magistrate to interfere with a trespass one month and twenty-nine days old is a clause foreign to the purpose of this section.

[Colonel Sir Henry Stanyon.]

because, suppose even during my short absence at the club, my servant's possession is interfered with by a trespasser, a Magistrate can restore the servant's possession just as well as my own. I need not go and claim; it is quite enough to put up my servant and the Magistrate will restore actual possession and thereby restore my constructive possession. With regard to my friend's illustration in his earlier speech that when a Legislative Member comes to Delhi leaving his land in the possession of his servant or agents and someone dispossesses him, it would involve a hardship not to treat his possession as actual possession for the purposes of this section, I submit that it is quite unnecessary to do so. It does not follow that the apprehended breach of the peace should be with a person dispossessed. The danger of a breach of peace may be with anybody. It may be when a servant is dispossessed that the danger arises when the master wants to get his property back; that will be danger of a breach of peace between trespasser and owner; but the Magistrate will inquire into the actual possession of the servant. If he finds that it has been illegally disturbed, within his jurisdiction, he can restore it. Where a constructive possession is interfered with and a Magistrate is not inclined to use this Chapter, the argument that the owner is left only with the delayed procedure of a regular civil suit entirely overlooks section 9 of Act 1 of 1877, a suit for summary possession. There need be no delay. But if we introduce here this particular clause, we shall then be giving a particular definition, as it were, to the word "actual," which in practice—especially in magisterial practice—will create tremendous difficulties; and for that reason in support of the principle that these preventive sections should be kept as simple and as straightforward as possible, I would oppose this amendment.

Mr. T. V. Seshagiri-Ayyar (Madras: Nominated Non-Official): There is some little difficulty, Sir, in understanding the position of the Government. An earlier decision was referred to by Mr. Tonkinson in which it was pointed out that the possession of the tenant is the possession of the owner, and the possession of the agent is the possession of the owner. Later on there have been some doubts, in Calcutta itself. They have held that the object of the section is not to deal with constructive possession. Unless the section is made clear, it is likely to lead to further difficulties. If the possession is with the tenant and the dispute is between the tenant and the principal, it is doubtful whether this section should be applied. There are authorities which hold that this section should not be resorted to where the dispute is between the principal on the one hand and the tenant on the other. But where the possession is by the tenant on behalf of the landlord and a third party encroaches upon it, then the possession of the tenant will be regarded as the possession of the landlord and the matter should be inquired into. There would therefore be difficulties if we leave the section as it is, and it is, I take it, for the purpose of making it clear that this amendment has been put forward, namely, that where the dispute is between a person who is in possession of the property through one of these subordinate agents of his, e.g., the tenant, and if that possession is sought to be disturbed by a third party, the matter should be inquired into. That would bring the law into conformity with what has been decided in the earlier cases, and it would to a certain extent, weaken the force of the later decisions which point out that constructive possession is not what was intended. I believe, Sir, it is desirable when we are revising the Code to make this position clear. There are two points which ought to be made clear, one is that

where there is possession in the tenant and that possession is disputed by the landlord the section has no application; the other is where there is possession in the tenant and that possession is on behalf of the landlord and a third party disputes it, then this section can be resorted to. That must be made clear. I do not see, with all deference to the draftsman of this amendment, that that position is made clear by him. But it is desirable to clear it up. If that is done, I think, it would avoid much trouble that is likely to arise in the construction of this section.

Mr. Chairman: The question is:

"To clause 27 (ii) add the following:

'and at the end of sub-section (6) insert the following Explanation:

'Explanation: A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person.'"

The motion was negatived.

Mr. B. N. Misra: Sir, I beg to move the amendment which stands in my name, viz.

"Omit the whole of sub-clause (iii) of clause 27."

Sub-clause (7) of the same section 145 runs thus:

"When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding, is, all persons claiming to be representatives of the deceased party shall be made parties thereto; and

My friend is asking me to withdraw the motion. I am sorry my conscience does not allow me to withdraw it without placing it before this Honourable House. The object of this section is to prevent a breach of the peace. Whenever breach of the peace is likely to be caused, section 145 is resorted to. If a man is dead, where is the cause? If a man dies, has the widow to come to fight or has she to mourn the loss of her husband? I am putting it to you. A man has got little children, two or three babies, two or three daughters and sons aged 3, 5 or 10 years, will they not be mourning the loss of their father? Are they going to fight? Will they be able to fight? Why are you dragging these innocent representatives, legal representatives, to be brought on record? The Criminal Procedure Code has never contemplated the civil rights of parties to be decided by Magistrates. If you say in a case like this that the legal representatives must be brought on record, what will be the effect? There are three children; they cannot come. In law, they are minors. They cannot represent themselves. You must appoint a guardian. Then, Sir, the Magistrate will see who will be their guardian. Ten persons might claim to be guardians of a particular minor. The brother will claim to be the guardian; the father's brother will claim to be the guardian; the mother's brother will claim to be the guardian, and so many others will also come claiming to be the guardians. Is the Magistrate to decide that? And without deciding that guardianship, can you bring a minor on record? The greatest legal difficulty will arise to bring a minor on record. Of course you bring in the criminal court such minors as are capable of committing some offence or crime, but in a case like this how can you bring the minor into the record of this case unless you appoint a guardian of that minor? Supposing there is a

[Mr. B. N. Misra.]

family of four or five brothers. One brother is dead, you need not bring the children of the deceased, or his widows because there are the other brothers. Supposing there are five brothers and one of them is a quarrelsome fellow who likes to create a quarrel and the others do not like to quarrel, why should you drag the others in who do not wish to quarrel simply because they happen to be the brothers of the man who is dead? I consider, it is very unjust to drag in such legal representatives who have no reason at all to be represented, because with the death of the man the likelihood of committing a breach of the peace has ceased. Suppose a man is dead who has left some property and there are two or three daughters, what happens ordinarily? One says, the deceased had adopted him and he must be made a legal representative? Is the Magistrate going to decide the question of adoption? If the representatives come to fight there will be a report and this section aims about the likelihood of the breach of peace at bringing such persons on record and nothing but that. You say "and shall thereupon continue the inquiry." If the party who was fighting is dead why should you continue the inquiry? You stop there, unless and until you get others coming forward to fight. Of course the object of the Criminal Procedure Code is never to allow any claims of right to be decided by a Magistrate. Clause (4) of section 145 says:

"The Magistrate shall then, without reference to the merits of the claims of any such parties to a right to possess the subject of dispute, peruse the statements so put in, etc."

In clause (4) you say he will not go into the merits of the claims; now you are going to consider the claims. The one is contradicted by the other. The magistrate is concerned only with actual possession and the likelihood of there being a breach of the peace. I submit if we allow power to the magistrate to consider claims as regards the legal representative, of an adopted son, or illegitimate son, or any relation, or all these conflicting claims, this will be giving a really dangerous civil power into the hands of the magistrates. In these circumstances I move my amendment,* that this clause should be omitted.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, the speech made just now is one against my amendment†, not against the section as drafted by the Government. The Government do not want that there should be any decision by the magistrate, on the other hand they in the draft want everybody to be brought in and want the proceedings to go on. It is I, Sir, who want the magistrate to decide summarily as to who is the legal representative, so that there may be a speedy termination of the proceedings. The reason of my amendment is this. If one of the parties to the dispute takes it into his head to prolong the decision, he can easily set up a third party, and as this section is worded by the Government every objector should be made a party.

* "Omit the whole of sub-clause (iii) of clause 27."

† "In clause 27 (iii) in the proposed sub-section (7) omit all words after the words 'and shall thereupon continue the inquiry' and substitute therefor the following:

'and if more than one person claims to represent the deceased, the Magistrate shall forthwith decide who shall be the representative for the purpose of the proceeding before him; and it shall be open to the Magistrate to remove, add or substitute representative or representatives in the course of the same proceeding'."

Sub-section (7) proposed in clause 27, sub-clause (iii), says:

"When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto."

Therefore once you say the proceedings shall continue, it will be open to one of the parties to the dispute to set up a person who claims to be a legal representative, and thereby prolong the inquiry. The object of this chapter is that there shall be a speedy determination of the dispute between the parties. It is on that ground that I have given notice of this amendment, that where there is a dispute among the legal representatives, powers should be vested in the magistrate to decide summarily as to who is the true legal representative, and to put that representative, on the record to continue the proceedings. I provide that if it is thought by the Magistrate that the legal representative brought in is not the proper one, nothing should prevent him from removing such legal representative and substituting another in his place. I want to bring the rule into conformity with the civil practice in regard to this matter. The old Civil Procedure Code, section 367, says:

"If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit."

It has been made simpler in the new Code, and it has been held that where once a party has been put on the record, the proceedings shall be continued in his presence and the decision shall even act as *res judicata* against the true representative. For that purpose, there must be a summary decision. And having regard to the fact that a proceeding of this nature is not final, and the rights of the parties in the Civil courts are not affected, I think it would conduce to the administration of justice better if we give power to the Magistrate to arrive at a summary decision. My object is as far as possible, to expedite matters, and as the object of Chapter XIII is to give a summary remedy, and as the section, as now worded, will put into the hands of a person who is disposed to prolong the inquiry, the power of bringing in a person who may have a very shadowy right to come in, I have drafted my amendment. It is in these terms:

"In clause 27 (iii) in the proposed sub-section (7), omit all words after the words 'and shall thereupon continue the inquiry' and substitute therefor the following: 'and if more than one person claims to represent the deceased, the Magistrate shall forthwith decide who shall be the representative for the purpose of the proceeding before him; and it shall be open to the Magistrate to remove, add or substitute representative or representatives in the course of the same proceeding.'"

As I said before it is only, Sir, for the purpose of carrying out the object which the Chapter has in view that I have brought forward this amendment. I know at the same time that the Government think that they alone can draft a section rightly and that no one else is competent to do it. There is that difficulty in my way.

Mr. H. Tonkinson: Sir, the Honourable Member proposes to substitute another sub-section for the proposed sub-section 7 of section 145. He suggests, that Government consider that they are the only people who can draft these provisions properly and that he therefore understands that they object to this provision. I would submit, that this provision was not drafted by Government; it was drafted by Sir George Lowndes' Committee

[Mr. H. Tonkinson.]

(Mr. T. V. Seshagiri Ayyar: "It was a Government Committee.") Not a Government Committee at all, Sir. Sub-section (7) of the present section 145 provides that "proceedings under this section shall not abate by reason only of the death of any of the parties thereto." Sir George Lowndes' Committee noted:

"We have expanded this sub-section, which deals with the death of a party while the proceedings are pending, in accordance with sub-clause (iii) of the Bill."

That is to say they thought their amendment was an obvious one, and I suggest that that is strictly the case. The Bill says:

"All persons claiming to be representatives of the deceased party shall be made parties thereto."

I suggest, Sir, that that is entirely in conformity with the spirit of the whole section. If we look at sub-section (1) it will be seen that the Magistrate requires all the parties concerned, all the persons claiming, to put in written statements of their claims. For example, take a recorded case, two parties had been summoned and appeared in Court. A tenant happened to be present; he claimed to be put in as a party and he was allowed to be put in as a party. All persons who have a claim are allowed in these proceedings to put in their respective claims. Further, if we adopt the suggestion of my Honourable friend, we will only be prolonging the proceedings. I remember, Sir, the papers about the amendment to the Code of Civil Procedure, which was passed in 1920, relating to the steps taken to do away with the delays in appeals to the Privy Council. One of the main reasons for delay that was referred to in those papers was the delay in putting in legal representatives. I have here, Sir, the letter received from the Madras High Court on the subject. They say: "Much of the delay is incurred in bringing on the record the legal representatives of deceased parties."

Sir, we have a summary proceeding provided for in this section and we do not want to lengthen those proceedings by adding to the labour of the Magistrate the question of deciding who is the legal representative of the deceased party.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I also oppose this amendment. In addition to the reason given by the Honourable Mr. Tonkinson, I would point out to the House that, if the amendment is permitted, it would in some cases tend to destroy the effect of the order passed under section 145. Suppose A and B both claim to be legal representatives and the Magistrate in a summary inquiry holds that A is the legal representative and passes an order against him. B institutes a civil suit, and says that he is the legal representative, being, let us assume for the sake of argument, the adopted son of the deceased. Will this order bind B who is excluded under the inquiry made under section 145? (A Voice: "Not at all.") Not at all. Very well. The order therefore would be rendered nugatory if all the persons who claim to be legal representatives are not brought on the record. That is my additional objection to the amendment.

Lastly, I ask what is a legal representative? The present Civil Procedure Code defines a legal representative in very wide language. Any person who is in possession, even in wrongful possession, of the property of the deceased is a legal representative, and, if my friend's amendment prevails, there would have to be a definition of a legal representative

and then an inquiry as to who is a legal representative. If the definition is enlarged to the extent it has been by the Code of Civil Procedure, it will let in all comers, real and pretended claimants to the property, and the inquiry, however small, is bound to be a protracted one.

I therefore submit, Sir, that this amendment should be negatived.

Colonel Sir Henry Stanyon: Sir, the question raised by this amendment is by no means free from difficulty, and the amendment is not one to be lightly brushed aside by this Honourable House. As section 145 stands at present, we have these words only as sub-section (7):

"Proceedings under this section shall not abate by reason only of the death of any of the parties thereto."

These words do not bind the Magistrate in any way. A Magistrate has reached a point in his proceedings where he finds in a dispute between A and B that A was in actual possession of the property on the date of the order. B's death would not prevent the Magistrate, without taking any steps to bring any representative of B on the record from passing the order maintaining A's possession. Now, the framers of the Bill propose to amplify this clause so as to make it necessary in every case, where one of the parties dies, to bring his representative or all persons who claim to be his representatives, jointly or in rivalry, upon the record. A tenant is in possession of a plot of land which his landlord claims to have been obtained by trespass. Within two months of the date on which, at the landlord's instance, the Magistrate made an order under section 145, that tenant dies. From the four points of the compass come four claimants to represent him, each perhaps armed with the usual *lathi*, and each is thereupon brought on the record under this new clause by the Magistrate. What is the Magistrate going to do?

I think, Sir, that in a case like that he will have a case within a case. He will have, first of all, to settle the peace between these four threatening *lathials* before he goes on with the original case. Not only that, but it is a difficult thing at all events, it strains my imagination too much,—to understand how the heir of a deceased person, except in the limited cases where he was joint with that deceased person, was, on the date of the Magistrate's order, in actual possession of the property so as to be entitled to get an order in his favour. The whole of this arrangement of representation is out of place, whether (as put in the amendment) it be on the basis of a summary decision in favour of one person, or lets in, temporarily, everybody who claims to be a representative. I fail to understand how such procedure carries out the original purpose and object of the section. The man who was, or claimed to be, in actual possession on the date of the order is dead. If there is another person on the spot who claims to have been with him in joint possession or claims to have acquired possession at the moment of his death, one can understand the proceedings being continued, though even in the latter case you would be dealing with the actual possession of a new person and not the original possession upon which the matter came before the Magistrate. But why should they be continued for heirs or claimants not in actual possession. Therefore, without absolutely committing myself to the amendment proposed by the Honourable Mover, I would strongly suggest to Government that this point of introducing representatives in a preventive case of this kind should be very carefully considered.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I would not have stood up unless I was of opinion that there are certain points in this very difficult matter which require to be cleared up. I should like to make my position clear by stating at the outset that I am rather inclined to support the amendment of my Honourable friend Mr. Seshagiri Ayyar and that I do so upon a balance of all the difficulties that seem to me to exist on one side or the other of the question. Now, Sir, my Honourable friend Sir Henry Stanyon has pointed out some of those difficulties. But it seems to me, that this section 145 Criminal Procedure Code, as it is, was enacted with a view to obviate some, at any rate, of the difficulties which crops up in connection with the proceedings under it, and which require speedy solution, in case of death of one of the parties to a proceeding during its pendency. Now, Sir, I will take up the question of actual possession, first. In this connection, the difficulty that was pointed out is a difficulty which has not been created by the proposed amendment itself, but it is a difficulty which already exists within the four corners of section 145 itself in enacting that the proceedings under this section shall not abate by reason only of the death of any of the parties thereto. The Legislature evidently contemplated that there should be some sort of decision as to representations after the death of one of the parties to the proceedings, and it evidently contemplated that the actual possession of the person in respect of whom proceedings were drawn up, and who was arrayed either on one side or the other, was the actual possession contemplated by the proceedings. The possession of his legal representative is practically a continuation of the possession of his predecessor in such cases. The next point for consideration is—who should carry on the proceedings, and adduce evidence in support of the case for the party who is dead? There must be some sort of adjudication on that point, and I suppose, the legal representatives of that party must be considered to be the persons who are likely to be interested in the matter and are calculated to adduce proper evidence in support of the possession of the person who is dead. Here again, Sir, I would point out to the House that if my Honourable friend Mr. Misra's amendment had been carried out, what would have been the effect? Supposing there is a powerful party who contests the possession of the opposite party and the latter dies during the pendency of the proceedings and after the death of the original party his successor in *de facto* possession, happens to be his widow, who may be in her bereavement, crying and shedding tears, and being busy with taking care of the fatherless children may feel helpless in asserting her possession. What would be the effect if the proceedings abated by reason of such death? The strong party, though wrongfully attempting to assert his possession, would at once take possession of that land in dispute. . . .

Mr. Chairman: Order, order. We have disposed of that amendment. The Honourable Member must speak to this amendment.

Mr. J. N. Mukherjee: I am coming to that, Sir. I submit the law as it stands contemplates that there should be some sort of adjudication as to representatives upon the death of a party pending the proceedings. Now, I will pass on to the point raised by Sir Henry Stanyon. He pointed out some of the difficulties. We have here according to him a case within a case under the circumstances because the Magistrate will be called upon to come to a decision as to representative of a deceased party. Suppose there are four persons who are trying to assert possession in respect of the land or immoveable property of a deceased party. Now questions which

such contentions raise have to be decided, under the existing law, first of all, between the sets of contending persons amongst the four claimants to the property left by the deceased, the original party now dead, and the Court, in order to do justice, must decide that question, and it must be decided, not in the presence of fictitious claimants, but of persons who have a real interest in the matter. Therefore it will be necessary to find out who is the legal representative of a deceased party to a proceeding under this section 145. We cannot in the instance in point admit all the four contending claimants because thereby they would succeed in getting a footing as regards the property in question, by reason of the assertion of their false claims, which they would never be able to do, if left out of the proceedings. If all the four claimants were allowed to represent the deceased, they might all be declared to be in possession, in the event of the Magistrate deciding that possession was on the side of the party who is dead.

Dr. H. S. Gour: How?

Mr. J. N. Mukherjee: The case as to possession has to be decided amongst two contending parties. On the one side is the original party who is not dead. On the other side is a party who is dead. Three false claimants have sprung into existence and the fourth happens to be the rightful claimants. Now what happens? By declaring possession, to be on the side of the deceased party, all the claimants get a footing as regards possession. That is a result which the amendment of my Honourable friend Mr. Seshagiri Ayyar deprecates. That is to say, instead of giving indiscriminately all the false claimants a chance of asserting a false claim through magisterial declaration of possession, the proposed amendment suggests that a third party, however summarily it may decide the question, come to a decision as regards the legal representative of the person who is dead. Now, balancing all the inconveniences and difficulties, it seems to me, that although the determination of the question as to who the legal representative of a deceased party may be, may cost a little time and a little energy on the part of a Magistrate, it is better to have that done at that little cost, than to bring into existence a fresh dispute, among contending claimants to a deceased person's property and to give a footing to wrongful claimants, in that way. Therefore, Sir, I submit that if a third party,—a Court or a Magistrate,—be vested with powers to give some sort of decision as to who the legal representative of a party is, that, on the whole, will secure to the people better justice than in the case of all persons rightfully or wrongfully claiming as legal representatives, possession of the property which is the subject matter of the proceedings.

These are considerations which lead me to think that my Honourable friend, Mr. Seshagiri Ayyar's amendment solves the difficulty to a larger extent than in the case of the Government proposal.

Sir Henry Moncrieff Smith: Sir, I wish to refer very briefly to a portion of the speech of my Honourable friend, Sir Henry Stanyon. I understood him to deprecate any revision of the law at all for bringing the legal representative on the record. I think the House has expressed its opinion on that point by the very emphatic manner in which it threw out Mr. Misra's amendment,—the House decided that we should have some provision in this respect. Sir Henry Stanyon, if I understood him aright, suggested that there would be very great difficulty in the Magistrate's mind, after the heir of a deceased party had been brought on the record, in holding that the heir was in actual possession. Of course, Sir, the heir himself, unless he was a member of a joint family, could not have been in actual

[Mr. B. Venkatapatiraju.] where the right can be exercised at all times of the year three months' grace is given to them in order to complain against the invasion of their rights, my amendment only goes to show that three months' grace should also be allowed where right is exercised on particular occasions or at particular seasons along with the other provisions already in the clause. I don't think, Sir, I need argue the point further because the point is very clear. I only ask you to admit to the seasonal exercise of rights the grace of three months also, so that my amendment will be in conformity with the object of the introduction of this clause. Therefore, I move this amendment, Sir.

Mr. Chairman: Amendment moved:

"In clause 29 in the proviso to sub-section (2) of proposed section 147, insert the words 'within three months as aforesaid or' between the word 'exercised' and the word 'during'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—29.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asad Ali, Mr.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barna, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Das, Babu B. S.
Gour, Dr. H. S.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.

Jatkar, Mr. B. H. R.
Muhammad Ismail, Mr. S.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—34.

Abdul Rahim Khan, Mr.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Iunes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Pyari Lal, Mr.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: I want, in clause 29, in sub-section (4) of proposed section 147 to delete the words "in subsequent" and substitute the word "the". The clause, as it is, reads as follows:
"An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction."
Supposing on the same day the order is passed, there is also a civil court decision which is not known to the Magistrate. Why should it be held

that, unless there is a subsequent decision, the Magistrate's order should prevail? If there is a Civil Court's decision, it stands to reason that the Magistrate's order should give way. I think in those circumstances it is desirable to delete the words "in subsequent" and substitute the word "the" there. Suppose the decision which has been passed is taken in appeal or in revision. Then the appeal may be withdrawn. Under those circumstances, if you allow the word 'subsequent' to stand, it is likely to lead to difficulties. Therefore I move that the words "in subsequent" be deleted and the word "the" substituted therefor.

Mr. Chairman: Amendment moved:

"In clause 29 in sub-section (4) of proposed section 147 for the words 'in subsequent' substitute the word 'the'."

Sir Henry Moncrieff Smith: Sir, I feel truly sorry that I am not in a position to accept the amendment of my Honourable friend. The point is quite a simple one. If the matter has been decided by the Civil Courts already, then the Magistrate should not act under section 147. It has been held by the Courts that if the question of title has already been decided, then there is no dispute between the parties as to the title. The question of title has been set at rest by a judicial decision and the Magistrate cannot conscientiously say that a dispute still exists. But, if, on the other hand, he still fears a breach of the peace, that the parties are not going to observe and follow the decision of the Civil Court, then the High Courts have said that, though he cannot take action under section 147, it is always open to him to take action under section 107. That is the simple reason why this clause does not provide that the decision of the Magistrate should be subject to a previous decision. In any case I much regret to point out that I do not find Mr. Seshagiri Ayyar's drafting quite satisfactory. Surely it is not quite correct to say that the order which the Magistrate has made should be subject to a decision which has been previously passed. He could not make the order. As I have already pointed out, the Courts have laid down that when the Civil Courts have decided the question of title the Magistrate's jurisdiction under section 147 is ousted and he should not proceed at all under that section; if he does, his order would be set aside by a superior Court; he must take action under section 107.

The motion was negatived.

Clause 29 was added to the Bill.

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Santhal Parganas: Non-Muhammadan): I move:

"In clause 30 before the words 'In sub-section' insert the following:

"In sub-section (2) of section 148 for the words 'read as evidence in the case' the words 'proved and used as evidence in the case' be substituted'."

In a proceeding under section 145 the Magistrate practically exercises a quasi-civil jurisdiction and the parties thereto are arrayed more or less as plaintiffs and defendants in civil suits. In clause (4) of that section you will find that the Magistrate has to take evidence, viz., such evidence as may be produced by the parties to the proceeding. I understand "such evidence" to mean such evidence as is adduced according to the procedure laid down in the Indian Evidence Act; that is to say, if the evidence is oral evidence, witnesses have to be examined, cross-examined, and re-examined, and if the evidence is of the nature of a document, it has to be proved in

[Rai N. K. Sen Bahadur.]

accordance with law. Now, in a proceeding under section 145, if a Magistrate considers that a local inquiry is necessary he may depute any subordinate Magistrate to make the inquiry and he may furnish him with such written instructions as may seem necessary for his guidance. What generally happens is this, that a Magistrate deputed by the trial Magistrate goes to the spot, gathers all sorts of information, measures the land and submits his report and that report generally consists of a measurement paper, a map and his opinion regarding the question of possession as he finds on the spot. This report as laid down in section 148 (2) is used as evidence without any legal proof against the party against whom the report stands. It has so happened that in certain cases the Magistrates have decided proceedings under section 145 merely on such reports, and I may cite a case in I. L. R. 31, Mad. page 82 where this was actually taken. This mischief is due to the provision in this section 148. I beg to submit to this Honourable House that I have not been able to find any justification as to why such a report should be only read as evidence when in the same proceeding a Magistrate is required to take the evidence of both the parties in accordance with the procedure laid down in the Evidence Act. There is a section in the Code of Criminal Procedure to which I would like to refer. That is section 288, where certain evidence is allowed to be taken in without proof in a Sessions court but there that evidence is taken in the presence of the parties and in the presence of the accused. He may or may not have cross-examined the witnesses, but still that evidence is recorded by the committing Magistrate in the presence of the accused. I find further in the new amendment of section 288 the following words added, "shall be treated as evidence in the case, for all purposes subject to the provisions of the Indian Evidence Act." This is the new amendment in section 288. I shall be very thankful if the Honourable Member in charge of this Bill will be pleased to explain to us the justification or the necessity of such a provision as this which has done more harm than good up to this time. If the only plea is that it has stood for a very long time, I may submit that it has not justified its long existence or long life. With these submissions, I propose to move the amendment.

Sir Henry Moncrieff Smith: Sir, it seems to me that the Honourable Mover of this amendment has got somewhat confused between a report and evidence. He has cited the case of section 288. That is a case, as he himself pointed out, of evidence taken in the presence of parties by a Magistrate. Now this section 148 (2) contains no idea whatever of enabling evidence taken by a Magistrate making the inquiry to be brought on the record as evidence. It is merely the report of the Magistrate which is going to be brought on the record. What Mr. Sen desires is that the report should be proved and used as evidence. The present law says that it may be read as evidence. What will proving the report of the Magistrate consist of? The Magistrate at headquarters has thought a local inquiry necessary. He has sent directions to the Magistrate of the Tahsil or sub-division, perhaps 50 or 80 miles away, to make a local inquiry. The Magistrate inquires and sends his report to headquarters. Mr. Sen desires that that report should be proved. What will happen? The Magistrate will be asked to suspend work for two or three days and come up to headquarters and all he will say is "This is my report. I wrote it." You are not going to require the Magistrate to prove every fact in the report that he has had deposed before him. I would suggest to the House that the only effect of this amendment is to drag Magistrates to headquarters solely to

make a statement that the report is his. Everybody knows that it is the Magistrate's report and to bring him to headquarters would be futile and a waste of time for all concerned. This is no new provision in the Code. I would invite the attention of the House to sections 509 and 510. Section 510 lays down that the report of a Chemical Examiner shall be taken as evidence in the case. It is not required to be proved. It is solely a report of the Chemical Examiner's opinion but it goes on the record as evidence and I see no reason why if a Chemical Examiner's report is allowed to be read as evidence, the report of a Magistrate should not also be allowed to be read.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): After hearing Sir Henry Moncrieff Smith, I think this amendment is superfluous and not needed. From my experience as an Honorary Magistrate I say that ordinarily the report of a Magistrate is read; and if he lives at some distance, the procedure will be cumbersome if you ask him to come simply for the purpose of proving that. I therefore think that this amendment is altogether superfluous and uncalled for.

Mr. Chairman: The question is:

"In clause 30, before the words 'In sub-section' insert the following: 'In sub-section (2) of section 148 for the word 'read' the word 'proved' shall be substituted'."

The motion was negatived.

Mr. Chairman: The question is that clause 30 do stand part of the Bill.

The motion was adopted.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Chairman (Rao Bahadur T. Rangachariar) was in the Chair.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, my amendment is a very simple one. It arises under section 157 as now amended. Now the clause in question relates to two cases. Under proviso A, section 157, sub-section (1) there are two cases,—one when the officer in charge of the police station does not consider the offence to be of a serious nature, and the other when he thinks there are not sufficient grounds for investigation. Now the amendment in the Bill proposed is that in the latter case when there are not sufficient grounds the informant should also be informed of the same. I do not see any reason why that should not apply to the first clause A also. My amendment is intended to supply that deficiency, that is, that in either case the fact should be notified to the informant where the offence is of a serious nature or where there are not sufficient grounds for investigation. My object is that the same reason which induces the amendment of the clause should also apply to the other case, the object being that whosoever has given information to the police officer should have an opportunity of knowing that his information has not

[Mr. Harchandrai Vishindas.]
 been acted upon so that he can get an opportunity of taking further action. With these remarks, Sir, I move my amendment which runs thus:
 "That in clause 31 (ii) delete the words 'in the case mentioned in clause (b) such officer',"
 so that both the clauses will be treated in the same way.

Mr. Chairman: The amendment moved is:
 "That in clause 31 (ii) delete the words 'in the case mentioned in clause (b) such officer'."

The Honourable Sir Malcolm Hailey: Sir, Mr. Harchandrai Vishindas will, I think, admit after he has heard our explanation that his amendment is moved under a misapprehension. Clause (a) (i) provides for two cases: in the first, if the offence is not of a serious nature, the officer in charge of the police station need not proceed on the spot or depute a subordinate officer to make an investigation on the spot, but, of course, he will make an investigation though not on the spot. Clause (b) provides that if there are no sufficient grounds for making an investigation, he will not make one at all. Now in our sub-clause (2) we provide that if he does not intend to make an investigation at all, he shall notify the informant, if any, of the fact. It is, I think, quite unnecessary that he should notify the informant of the fact that he proposes to make an investigation but not on the spot. The point is, I think, quite clear.

Mr. Harchandrai Vishindas: After this explanation I ask for leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Chairman: The question is that clause 31 stand part of the Bill.
 The motion was adopted.

Mr. Chairman: The question is that clause 32 stand part of the Bill.
 The motion was adopted.

Mr. J. Ramayya Pantulu: Sir, my amendment is:
 "In clause 33 for the words 'for any purpose' substitute the words 'as evidence' and omit the words from '(save as hereinafter provided)' to the words 'such statement was made'."

Mr. H. Tonkinson: Sir, may I suggest that the amendment be taken in two parts, and that we take as the first part:

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence'."

Mr. Chairman: I think it will be for the convenience of Members to take your amendment in two parts.

Mr. J. Ramayya Pantulu: I think the two parts stand together, but I have no objection to moving them separately. I propose that:

"In clause 33 the words 'as evidence' be substituted for the words 'for any purpose'."

This clause relates to section 162 of the Criminal Procedure Code. Sub-section (1) of that section as it stands runs thus:

"No statement made by any person to a police officer in the course of an investigation under this chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence:"

For this the Bill substitutes the following:

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:"

My arguments with regard to both parts of my amendment are indivisible. I, therefore, find it somewhat difficult to argue on the first part of my amendment only and I shall state the whole of my argument.

The principle underlying sub-section (1) of section 162 is that, although every witness who is examined by a police officer is bound to answer the questions put to him, he is not bound to speak the truth to him; so that a statement made by a witness to a police officer cannot be used as evidence of the truth of the statement itself. Therefore, the law as it stands takes care to lay down that the statement made by a witness to a police officer shall not be used as evidence in any case whatever. But the section as amended in the Bill says:

"It shall not be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made."

That greatly qualifies the effect of the section as it stands, which states that such a statement shall not be used as evidence for any purpose whatever. The amended section limits the prohibition of the use of the statement only in connection with the inquiry or trial arising out of the investigation at the time. It is therefore greatly to the disadvantage of a man making such a statement; for there is a chance of his statement being used as evidence against himself in some other proceeding, or as evidence against other persons in some other proceeding. The principle being that nobody is obliged to speak the truth to a police officer, just as he is obliged to speak in a Court of law, a statement made to a police officer should not be taken to be such as can be used as evidence in any case except as already provided for in the proviso to the section. It can be used for the purpose of contradicting that witness in further proceedings. Therefore, I think, Sir, that the section as amended in the Bill will take away the safeguard which the existing section provides against statements made to the police being made use of to the annoyance or inconvenience of the public; not only of the person who makes the statement, but also of other people. I therefore think the amendment made in the Bill encroaches greatly upon the liberty of the people and is altogether unwarranted. I therefore propose, Sir, that the amendment which stands in my name. . . .

Mr. Chairman: On further consideration, I think the amendment, if it is limited to the first portion, will not be quite intelligible to the House. I think therefore that it is but right that the Honourable Member should move the whole amendment as it stands. If he desires to say anything more on that he may do so now.

Mr. J. Ramayya Pantulu: My objection to the section in the Bill as it stands is that it greatly restricts the effect of the existing law, which lays down that a statement made to the police is not to be used as evidence:

[Mr. J. Ramayya Pantulu.]

it can only be used for the purpose of contradicting that man in the course of the same proceeding. And I submit that such a statement should not be capable of being used as evidence against the man making it or any other person in any proceeding whatever. I submit that the law must stand as it is and the proposed section is bad. Therefore I move the amendment which stands in my name.

Mr. Chairman: The motion before the House is:

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence' and omit the words from '(save as hereinafter provided)' to the words 'such statement was made'."

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, the portions of this clause which my Honourable and learned friend's amendment seeks to delete may be divided for our purposes into three parts. The first portion seeks to substitute the words "as evidence" in place of "for any purpose" and the second portion seeks to delete the words within the brackets. Now, in regard to . . . (Mr. J. Ramayya Pantulu: "To the end of the paragraph.") No. I am dividing your proposal into three parts because our position in regard to the first two portions is different from our position in regard to the third portion. So far as the substitution of the words "as evidence" in the place of "for any purpose" and the deletion of the words within brackets is concerned, Government is prepared to accept these two modifications of the clause proposed by my Honourable friend. "As evidence" was no doubt the expression in the old Act. That was also, as far as I recollect, the phrase used in the Bill as originally drafted. The expression "for any purpose" was substituted by the Lowndes Committee, so that so far as the Government is concerned, the words "as evidence" having been the original expression proposed by them, they are willing to accept the amendment in so far as this substitution is concerned. We further agree that the retention of the words within the brackets, viz., "save as hereinafter provided" is unnecessary, for the proviso being a portion of the section itself, the repetition of these words in the first part of the sub-section is redundant.

But as regards the elimination of the concluding words of this clause, it seems to me that the position has not been well understood by my Honourable friend; otherwise, I fancy that he would not insist on the elimination of those words. It is quite true that if those words are eliminated from this clause, the result would be that neither the statements nor the record of statement referred to in this clause would be admissible as evidence in any case whatever; that is to say, neither in the trial of that case nor in the trial of any other case against that particular accused or against anyone else would those statements and the record of these statements be admissible. It is a well known rule of law that a special enactment providing for particular set of facts overrides the general provisions of a general enactment and in consequence if these words were to be left out, the clause would exclude the applicability of the Indian Evidence Act to these statements and to this record would make these entirely inadmissible in evidence. But is that conducive to the administration of justice? That is the question which the House has to bear in mind; I submit not. Now, let me give you but one or two instances, instances which I feel will appeal to those Honourable and learned gentlemen who are members of the profession to which I am proud to belong. Let us assume a case in which a Sub-Inspector of Police had concocted a false charge against a person

residing within the jurisdiction of his police station who had given him some cause for offence. Or take another case. Suppose a rich and influential person residing within the area of a police station had induced the Sub-Inspector to concoct a false case against an enemy of his. Suppose yet another case; a rich and influential zemindar or other person brings about the murder of an enemy of his through one of his own dependents or through a hired villain and then greases the palm of the Sub-Inspector to let the real culprit off and substitute in his place some other person, possibly another enemy of this rich and influential zemindar. Imagine yet another case in which a murder has been committed and the real murderers have remained untraced. Honourable Members are aware that a serious offence of that kind if untraced is counted to the discredit of the Sub-Inspector in charge of a police station. It results in a blackmark against him. We have come across, those of us who have practised at the bar and have had to do with criminal cases, have occasionally come across cases in which in order to avoid the resulting censure or disgrace the Sub-Inspectors of Police run in innocent persons. Now, in all these cases where a Magistrate subsequently trying the case finds that the Sub-Inspector of Police has concocted a false case against the accused and the accused is able to establish his innocence at the trial, even though the Sub-Inspector of Police may have prepared false diaries, may have not recorded statements of witnesses produced by the accused before him or even the statement of witnesses who are subsequently produced in Court as witnesses for the prosecution correctly, yet if the law is to be amended, as my Honourable friend would have it amended, the result would be that in case the Court ordered the trial of the Sub-Inspector for having concocted a false case, for having prepared a false record, all these statements and the records of those statements in the handwriting of the Sub-Inspector of Police himself, and therefore constituting the most valuable evidence in the subsequent trial of the Sub-Inspector for having concocted a false case or prepared false documents, would be absolutely inadmissible if the amendment proposed by my Honourable friend were to be accepted. Surely that would not be conducive to the administration of justice. Indeed by the acceptance of this amendment you would be excluding from admissibility most valuable evidence which could be produced against dishonest police officers, and I submit that that is in the highest degree undesirable in the interests of justice. Other cases can also be conceived in which a sweeping provision like the one that my Honourable friend wants to retain in the Code by the elimination of the last words of the clause would be highly detrimental to the interests of justice. It should be remembered that the retention of these words which we have produced does not make these statements or records of these statements admissible in all other cases. It does not override the provisions of the Indian Evidence Act. All it says is that these statements shall not be admissible in this trial, in the trial of the case in connection with which the inquiry has been held. In order to make these statements or this record of evidence in a subsequent case, you would have to look at the provisions of the Evidence Act. Now, section 5 of the Evidence Act lays down in express terms:

"Evidence may be given, in any suit or proceeding, of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others."

These words "and of no others" are very significant, so that the result of the provision embodied in section 5 of the Indian Evidence Act is this.

[Dr. Mian Sir Muhammad Shafi.]

The statements recorded under section 161 referred to in section 162 of the Code of Criminal Procedure would be evidence in a subsequent case only if they were either themselves facts in issue or facts relevant to the issue.

Now in a case such as I have already mentioned to the Assembly, that is to say, if a Sub-Inspector of Police were charged with having fabricated a false case or false documents, the record of those statements and the statements would be facts in issue, and at any rate, these certainly would be relevant to the issue at that trial. But in another case it is obvious that they would not be admissible; they would not be admissible against a third party. And the reason is very simple. Unless those statements are dying declarations, they would not be admissible in any of those sections which relate to previous statements, section 32, etc. It is obvious therefore that the circle of admissibility, if I may use that expression, of these statements and of this record in any subsequent case is very limited, and limited only to such cases in which their admissibility is conducive to the best interests of justice. In those circumstances I submit that the elimination of these concluding words of this clause would result not in the interests of justice, but would be highly detrimental to the administration of justice. The one case which I can think of in which these statements and this record would, without any doubt, be admissible, is the case of the sub-inspector of police, and in that very case the acceptance of this amendment would make these documents and these statements admissible in the subsequent case against the sub-inspector of police. I submit therefore there is not only no *a priori* reason justifying the elimination of these words, but on the contrary the elimination of these words would be in the highest degree detrimental to the administration of justice.

Mr. Chairman: I think before the discussion proceeds further, in view of the remark which fell from the Honourable the Law Member, I propose to put the first portion of the amendment, namely:

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence,' and omit the words 'as hereinafter provided,'"

which are purely verbal changes. I put them to the House now, so that the discussion may proceed on the rest of the amendment, that is "nor shall such statement be used as evidence."

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I wish to oppose the amendment and give some reasons for doing so.

Mr. Chairman: You want to oppose the verbal change?

Mr. K. B. L. Agnihotri: Yes, and show why the change is undesirable. I rise with some hesitation to oppose the amendment moved by Mr. Pantulu to substitute the words "as evidence" for the words "for any purpose." Sir, the word "evidence" is rather more restricted in its meaning than the phrase "for any purpose." This by itself is a sufficient reason for not substituting the words "as evidence," for "for any purpose." It is better to have under this section a word of a wider meaning than of a restricted one. If we look to the object of section 162 we find that this section was inserted in the Code to provide as a safeguard against an unscrupulous police officer. As Mr. Pantulu has pointed out, a witness is not bound to state the true facts to the police, he may come and state anything he wants to. It may be false or it may be true, or it may be only to

please the police officer, or it may be with some ulterior motive to implicate some person. It was therefore thought necessary that such a provision should be included in the Code and that the evidence of such a person should not be an *ipso facto* evidence before the court, and the accused should not be convicted on such statements. It has also been pointed out by the Honourable the Law Member, that there may be certain unscrupulous police officers who may take advantage of the want of such a provision and may have such evidence brought on to the record in order to implicate certain persons. We therefore find that the insertion of section 162 in the Code of Criminal Procedure is an essential one to do away with the mischief of the police officers or of an untruthful witness. The words "for any purpose" as put into the Bill, seem to be very desirable and guard against all possible injury to accused. For instance, a man is summoned by a police officer to make a certain statement before him. He goes and makes a statement to please that police officer, and to avoid the trouble which may otherwise be the result if he refuses to state that which the police officer wants him to state. He states that such and such a man has committed this offence. Now if we do not admit this portion as evidence, that person against whom he has made a statement may not be liable to be convicted, and at least the truthfulness or the veracity of the witness could not be challenged and the witness could speak the truth before the Magistrate. Supposing I have made a statement before a police officer, and I am a witness for the defence. A police officer comes forward and says "this witness has made a different statement before me, and therefore the statement he has made in the court is contradictory and should not be believed." On that statement made by the police officer, or on that statement recorded in his diary, the judge will be perfectly justified in holding that I am not telling the truth, even though I have stated the truth on oath and I may have spoken a falsehood before the police officer to please him. So if we retain these words "for any purpose," in this section the prosecution can not produce such a statement and challenge my veracity on the ground that I had made a different statement before the police officer. Therefore the words "for any purpose" should be retained in this Bill, and should not be substituted by the words "as evidence," because in that case the police diary may be brought before the Magistrate to contradict the witness and show that he had stated something contradictory before the police officer. That would not be promoting justice and would be encouraging unscrupulous police officers and would fail in its very object. I therefore oppose the amendment.

Colonel Sir Henry Stanyon: I also rise to oppose the amendment. It has been sufficiently demolished by the illuminating exposition of the clause in the appeal made by the Honourable the Law Member, and I rise only to draw attention to one point in connection with this clause.

The clause reads:

"Nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) . . ."

The only point I think which requires to be made clear, so that the House may vote correctly on this amendment, is whether these words "hereinafter provided" refer only to that proviso, because, if they do, then a most important use of these diary statements provided for by section 172, clause (2) is shut out. I see no amendment in this Bill to section 172, clause (2), which provides that for the purpose of aiding any

[Colonel Sir Henry Stanyon.]

inquiries in trials the Judge may use the police case diaries. The words "save as hereinafter provided" are ambiguous. "Herein" may refer to the Code or it may refer to the section. That is the only point I have to make.

Mr. Chairman: The question before the House is to substitute in clause 33 the words "as evidence" for the words "for any purpose (save as hereinafter provided)."

The Assembly then divided as follows:

AYES—3.

Muhammad Ismail, Mr. S.
Ramayya Pantulu, Mr. J

Samarth, Mr. N. M.

NOES—47.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Blackett, Sir Basil.
Bradley Birt, Mr. F. B.
Burdon, Mr. E.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.

Jatkar, Mr. B. H. R.
Ley, Mr. A. H.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Nag, Mr. C. C.
Neogy, Mr. K. C.
Percival, Mr. P. E.
Pyari Lal, Mr.
Sarfaraz Hussain Khan, Mr.
Sarvadikary Sir Deva Prasad.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subzposh, Mr. S. M. Z. A.
Vishindas, Mr. H.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Chairman: The rest of the clause is now under discussion. I must read it to the House so that Honourable Members may follow it. It runs:

"Nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided)."

We are carried so far.

The further words thereafter, viz.:

"at any inquiry or trial in respect of any offence under investigation at the time when such statement was made";

the proposal now is that all those words be omitted.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, with your permission I should like to say a few words. My Honourable friend, Mr. Seshagiri Ayyar, and other Honourable gentlemen having agreed to the retention of the concluding words in this clause, we have, as must have become clear from the division which has just taken place, agreed to the retention of the words "for any purpose" instead of "as evidence";

and I understand the position now to be that Honourable Members are prepared to accept the clause as it originally stands in the Bill. But I must make it clear that this will not in any way affect the provision embodied in section 172.

Mr. T. V. Seshagiri Ayyar: Subject to any further amendments.

The Honourable Dr. Mian Sir Muhammad Shafi: Yes, quite.

Mr. K. B. L. Agnihotri: Sir, I have been placed in a somewhat false position. The leader of my party has accepted a certain compromise with the Government. I do not question that compromise, but at the same time I wish to put before the Members of this Honourable House my difficulties in the matter, and if on re-consideration the Honourable Members still agree to the compromise, then I shall be satisfied. My reasons for moving for the omission of those words are, Sir, that it may happen that an unscrupulous police officer may know that a statement made by a certain witness before him is not admissible for the offence under investigation at that time, but may be admissible in respect of some other offence that may be before him but may not be under investigation at that time,—and with this knowledge this unscrupulous police officer may record that evidence which, as the clause now stands, will make it admissible later on. This would be a very real danger if we allowed the clause to stand as it is. The Honourable the Home Member said if an unscrupulous police officer were to behave in this way, why should he not be prosecuted. That certainly is a real difficulty, and if the Government were to make special provision to that effect, that in the case of a police officer making a false diary just as they have done in respect of section 32 of the Indian Evidence Act, such statements should not be admissible; if the Government were to make such a provision, it would I think satisfy the purpose and solve some of the difficulties. I have known a case under the Arms Act in which a man was prosecuted for not having intimated to the police about the transfer of certain arms. The police were investigating this offence—that is, his omission to report the matter to the police; but under this offence they also recorded evidence in the same diary about the arm having been exported by another man from a Native State into British territory, without a license with a view to compromise that man if the prosecution for omission to report failed. If this clause is allowed to stand, that evidence would be certainly admissible and will create additional hardships. Therefore it would be better if this clause were omitted and the Government might except the case of police officers in the second sub-clause of section 162. I therefore move the amendment that:

"In sub-section (1) omit the words under investigation at the time when such statement was made."

Mr. Chairman: The question before the House is:

"That the words 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made' be omitted from sub-clause (1) of clause 33."

The motion was negatived.

Mr. Chairman: Amendments Nos. 129 and 130 (a) fall through.

Mr. K. B. L. Agnihotri: Sir, I beg to move that:

"In clause 33 in the proviso to sub-section (1) insert the words 'allow inspection to the accused and'; after the word 'shall' omit the words 'may then if the Court thinks it expedient in the interest of justice,' and omit the words 'if duly proved.'"

[Mr. K. B. L. Agnihotri.]

Sir, the proviso as it stands in this Bill is to the effect that if the accused requests a Magistrate to go through the statements of certain witnesses before the police, the Magistrate shall go through the statements and if he finds that in the interests of justice a copy of such statements be provided to the accused for purposes of the defence, the copy of the statements will then be given. Sir, the statements that are taken by the police are generally made in the absence of the accused, and the accused cannot be in a position to know the statements that any particular witness may have made before the investigating officer. It therefore generally happens that though the accused knows nothing about the statements still he requests the Court to go through the statements and to find out if there was any contradictions and the Magistrate has thus to waste his time unnecessarily in going through those statements to find subsequently that the statements made by a particular witness before the police were exactly the same as he made before the Court. This procedure involves much waste of public time that could very well have been avoided had the statements of the witnesses appearing before the Court been supplied to the accused beforehand and the accused would then have found out for himself any statement contradictory to that made before the Court, and could then ask for permission from the Court to contradict that witness on that statement. I think the proposed amendment will be more wholesome and will save much of the public time than will otherwise be the case if the clause is allowed to remain as in the Bill. Secondly, Sir, there is a provision in the proviso—"and may then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof."

Mr. Chairman: The Honourable Member might perhaps put his amendment in three parts—first, allowing inspection to the accused—that will be better.

Mr. K. B. L. Agnihotri: I therefore submit that the inspection of the statement ought to be allowed and with this view I beg to move that in the proviso to the same sub-section insert the words "allow inspection to the accused and."

Dr. H. S. Gour: Sir, I strongly support this amendment. Honourable Members will observe that this clause has been the battle-ground for the last thirty years that I have been practising at the bar. In the old Code copies were furnished to the accused; later on in the consolidating Act this proviso was modified and found its place as it does in the current Code of Criminal Procedure. Ever since this proviso was inserted I have had numerous cases in which I have asked the Judge or the Magistrate as the case may be to refer to the statements of witnesses made before police; he has looked at it and he says to me "I have referred to it and thus complied with the provisions of this proviso." But I was none the wiser by the Judge's reference to the police diary, and the result was that I was not able to cross-examine witnesses with reference to their previous contradictory statements which in the appellate Court was a revelation to me, because when these very statements were read out I found in several cases that they were diametrically opposed to the statements made in the lower Court. I therefore submit that it is a perfectly innocuous provision which does nobody any good and is calculated to lead to a dereliction of judicial duty to say that the Judge or the Magistrate as the case may be shall refer to the statements made by a witness to the police, on a request being made to that effect to the Court. In the statement of objects and reasons which

heralded this proviso it was stated that as the statements of witnesses to the police were very inaccurate and were not taken down by persons accustomed to the recording of evidence, therefore it was unsafe to treat them substantially and practically as pieces of evidence. On the other hand, it was pointed out that in a very large number of cases witnesses go back upon their own statements either because they are tutored to do so, or because they feel that by going back upon their statements they will improve the case of the side they represent, and if the counsel for the accused exercises his power and asks the Court to refer to the case diary, the Court does not look at the case diary from the same point of view as the accused and his counsel. He has got certain things in his mind, the Court has got quite a different thing in its mind, and the result therefore is that the object with which this latitude was allowed in the present Code has been practically neutralized by reason of the fact that the Court is not bound to give a copy or to allow the inspection of the statements of witnesses made to the police on a request being made to that effect to the Court concerned. I therefore submit, Sir, that the insertion of these words in this provision, namely, "to show the statements to the accused and to allow inspection to the accused," would be a salutary improvement and I hope the Honourable the Law Member and his colleagues on the Treasury Bench will see the strength of our arguments and accede to the amendment proposed by the Honourable Mover.

Colonel Sir Henry Stanyon: Sir, I also rise to support this amendment very strongly. Perhaps my experience of this proviso has not been as great as that of other Members of this Honourable House, but I have had a certain amount of experience in its working. The existing proviso has been absolutely useless. In many places it had been the habit for investigating police officers to write in one book their diaries interpolated by statements of witnesses examined by them during the investigation. The diary is a sealed book in such cases to the accused; yet under this proviso the accused is expected, by some process of divination which I cannot understand, to make a request to the Court to examine the statements of certain prosecution witnesses; and then discretion was left to the Court to give him a copy of those statements for the purpose of cross-examination. Now in actual practice a date is fixed for the Sessions Court to begin its labours. It starts to follow the procedure for trials laid down in this Code. I do not remember one single instance in 7 years' work as a Divisional Sessions Judge in which I was ever asked to delay the trial so that copies of these statements might be prepared and handed over to the accused. The thing was really unworkable. What I found it necessary to do and what I dare say a great many other Sessions Judges have found it necessary to do, was, where the witness's statement in Court differed widely from his statement made at the police investigation, to ask him questions on it myself. Well, that is not carrying out the section. The clause which is now proposed to be substituted is no better. Once again, it leaves the initiative in the matter to the accused person who knows nothing whatever about the contents of the statements recorded by the police. I have never been able to understand why these statements, which in a proper investigation should be recorded quite separately from the case diary but which are not so recorded in many cases, why the statements should be put any more behind the veil than that important document—the first information. They are merely statements made by witnesses in the course of an investigation—sometimes they are made publicly, sometimes they are made very privately. But they are there, whatever they are worth. Why not

[Colonel Sir Henry Stanyon.]

let the accused person see them and then, when he finds that certain of the prosecution witnesses have gone right away from what they said to the police, let him have copies and leave the cross-examination to him and relieve the Sessions Judge or the Inquiry Magistrate from the duty of cross-examining Counsel. Therefore, I urge that this amendment is entitled to the support of the House. It asks for nothing more than this that these statements which are recorded and should be recorded, apart from the diary, may be shown to the accused in order that he may be in a position.

The Honourable Dr. Mian Sir Muhammad Shafi: *Shall be shown, not may be shown.*

Colonel Sir Henry Stanyon: I still think that he ought to be allowed to inspect these statements because there is no question that they do influence decision. Section 172, clause 2 refers only to *diaries*: but Courts and Judges who look at these diaries under that clause, though they do not use them as formal evidence, are still very much influenced in their judgments by what is written there in the form of statements of witnesses. Therefore, I think that this amendment ought to have the support of the House.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, I venture to point out to the House that the position taken up by my friend, Dr. Gour, is materially different from the position of the Honourable the Mover of this amendment. Honourable Members will recollect that my Honourable and learned friend emphasized the fact that, when the Court had a discretion in the interests of justice to furnish the accused with a copy, there was no reason why similar discretion should not be given to the Court to allow inspection of these statements if the accused wants that inspection. There is something in that position taken up by my Honourable and learned friend. But what the Honourable Mover asks for is this that the House should introduce into this clause the words "allow inspection to the accused" and, if you look at the proviso, the only place where these words do fit in at all is after the word "shall" "shall allow inspection" and so on. Now, if I may venture to say so, this is a case in which it would not be conducive to the interests of justice if it were to be made obligatory on the part of the Court to allow inspection in any and every case. As a matter of fact.

Dr. H. S. Gour: That was in the Code of 1882.

The Honourable Dr. Mian Sir Muhammad Shafi: With all deference, I would remind my Honourable friend, Dr. Gour, of what he said only a short while ago. It seems to me, Sir, that just on the very grounds on which the Code of 1898 and the present clause makes it discretionary for the Court to permit copies of these statements, on these very grounds it would be in the highest degree detrimental to the interests of justice if it were made obligatory on the part of the Court to allow inspection. In fact, the two portions of the clause would almost become contradictory of each other. To say that in one case the Court is bound to give inspection and in the very next breath to say that the Court shall have discretion to direct that a copy of that statement be given to the accused would become self-contradictory. Had the Honourable Mover chosen to move an amendment to the effect that just as the Court is given a discretion to allow copies of these statements being furnished to the accused, similarly it

may be allowed discretion to allow inspection, that would have been quite a different matter,—a position with reference to which possibly the Government would have been prepared to meet him halfway. But as he makes it obligatory on the part of the Court to allow inspection, I regret that the Government cannot accept that proposition. It seems to me that in cases of this kind the Court ought to be allowed discretion, for these statements really are not part of the judicial record at the trial. Of course, if they were part of the judicial record at the trial, every accused person would be entitled as of right to demand inspection and to demand copies. But when these statements do not form part of the record at the trial but form part of an entirely different record, record prepared by the police during the police investigation, it is only where the Magistrate thinks that in the interests of justice the accused ought to be furnished with copies or ought to be allowed inspection that the Legislature ought to allow him that discretion: but to make it obligatory on the part of the Magistrate to allow inspection, I submit, would be going beyond what is required by justice as well as by the equities of the case.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, to put this matter in ordinary common language is better I think than using legal phraseology. When an offence is committed, an investigation proceeds. That is, policemen come there, examine the various people, take down their statements, write down what those men tell them. So they go on for a number of days. Latterly, they believe that a particular man is guilty of the offence and put him up before the Magistrate in the first instance in serious cases. When the accused person comes before the Magistrate, he or his pleader wants to know on what materials he is placed before the Magistrate, on what materials he is charged with this serious offence. He asks the Magistrate. The Magistrate says, "I do not know. You will learn. Witnesses will speak in Court and then you will learn." The witnesses do speak. The accused or his adviser believes that the witnesses at that time have improved their story, or to fit into other circumstances, are giving an altogether different story from what they told the police at the earlier stages, that is, before they had time to cogitate, to think and to find out the consequences of their statements. That is they make their story fit in with other circumstances, from the unimpeachable circumstances, which have transpired. Now those are the conditions in which often times an accused person is placed. Then it becomes very important and material to know what these witnesses had in the first instance told the police and it is then that an application is made to the magistrate to see the originals, that is the statements where these depositions are recorded. Now looking at that position, I think in the interests of justice an accused person must have the right, not as a matter of discretion of the magistrate, to see what is it in black and white made at a very early stage, when there was no opportunity to coach up the witnesses or to improve or to embellish their statements. Now, I ask, apart from all technicality and apart from other arguments, is it or is it not fair to give the accused person a chance, as much chance as the prosecution has at that stage. Now what is the harm. If your policemen have been doing their duty honestly what is the harm in telling the accused what they have done. Should the law be made enacted in a manner to shield a slovenly policeman or a dishonest policeman or an over-zealous policeman? Why should you give that opportunity? I say nothing will be lost. Justice will not suffer if you show the accused person the earlier statements recorded in writing by the policeman

[Rao Bahadur C. S. Subrahmanayam.]

who made the investigation of the offence and if those witnesses have swerved from what they had said substantially, well the magistrate or the court will be in a position to judge of their veracity. If the swerving is slight in some matter of minor detail, then also the Court will see that the change is not of substance. Therefore it seems to me on grounds of ordinary justice it is fair that the accused person should have the right, not merely at the discretion of the magistrate which will vary and which we have never found exercised properly on occasions like this, to inspect these statements. Now, Sir, I have for a large number of years had direct experience of trials and inquiries. I know this was one of the sore points in every magisterial inquiry and in every Sessions trial. Some judges used to read these diaries, those who have some patience. These statements are recorded in the vernacular. Most of the judges are not able to read the originals in the vernacular. They would not therefore take the trouble to read these early statements and to ask a judge to read those statements and then tell me whether in the interests of justice I should get it or not is too much to ask of a judge in the hurry, in the hustle and in the pressure of a trial. You cannot ask a judge to read all these illegible manuscript documents and tell you whether they are important or not. You cannot ask that. Therefore, I think this provision has been very considerably misused. The accused person till a very very late stage is not in a position to know what the materials against him are,—and what is the good of a trial like that? And what happens? Justice fails in the original Court, and in the appellate Court, by the help of counsel and others there, things are raked up, re-trials are ordered, or convictions are upset, and all this delay, all this annoyance and worry is caused. Therefore I think in the interests of justice it is better to give the right to the accused person. There is one other argument which I feel strongly, and it is a strong argument in support of this request, and it is this: you will make the policeman write down, take down statements with greater care; he will not write them out in an indifferent manner. He will know that these statements will be brought up before the Magistrate, and therefore in taking down these statements he will take them down with care, with precision. And now what happens now in these times? Things are mixed up; there is one paragraph of the statement, and two or four paragraphs of information, opinion and suspicion,—and all to the prejudice of the accused person. And when the judge reads it all, he naturally gets prejudiced against the accused because there are so many things against him, which cannot be evidence in a Court, embodied in that diary. He is told, the accused is a notoriously bad man; he is a great gambler. All these impressions are formed. So it is a salutary thing if you will allow, as a matter of right, the inspection of these documents, for then the police will enter in these statements only useful matter, and if he has got opinions and impressions, he will record them in another place, and so the two will be separated, and what the accused gets will be a mere statement. What is a confidential document will be a confidential document and no inspection of it will be claimed. It will work in the interest of the efficiency of the police, for the integrity of the work, and also it will save a lot of unnecessary worry and annoyance to the accused.

Mr. T. V. Seshagiri Ayyar: I move, Sir, that the consideration of this section be adjourned.

Mr. Chairman: It will automatically be adjourned at Four.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move that the question be put. (*Cries of 'No, no.'*)

Dr. H. S. Gour: I understand, Sir, that the matter will automatically close for the day as soon as it is Four of the Clock.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I venture to make a suggestion which will cut short this discussion,—that 'shall' should be changed into 'may.'

Dr. H. S. Gour: I rise to a point of order. I understood the Honourable the Law Member to indicate a desire to compromise this matter with Members on this side of the House; and if I understood him aright, he was in a compromising mood. We also are anxious that there should be a settlement, so that the official bludgeon may not descend upon the non-official Members on this side of the House; and I therefore submit that we should give the Government a little more time to think. They will come better prepared to meet our wishes at the next sitting. I therefore submit that it is one of those cases in which nothing is lost in giving time.

MOTION FOR ADJOURNMENT.

APPOINTMENT OF A ROYAL COMMISSION ON CIVIL SERVICES.

Mr. Chairman: Order, order. The Council will now proceed to discuss the motion for adjournment of the House to discuss a definite matter of urgent public importance, namely, the decision of His Majesty's Government to appoint a Royal Commission on the Civil Services in India.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I rise, Sir, to move the adjournment of the House to consider the announcement made yesterday by the Honourable the Home Member that His Majesty's Government in England have decided to appoint a Royal Commission to inquire into the financial and other conditions of the Civil Service.

Before I proceed very much further, Sir, I should like to advert to a sentence in the letter of Mr. Montagu—one of the greatest friends of India—which he addressed to the London "Times" on this subject. Speaking of the Legislature in relation to the Civil Services, he says, that the Legislature has very often exhibited hostility to that Service and has occasionally used violent language towards it. I am sorry that such a good friend of India should be so unfair to the Members of the Legislature. Sir, during my career as a Judge of the High Court I have worked with many Civil Servants. I have very many friends among them even to-day; I have supervised their work, I say with confidence that they are good friends, loyal colleagues and willing subordinates. They have done exceedingly good work in the past and I have no doubt they will continue to discharge their duties as efficiently and as willingly in the times to come. In fact, Sir, when I look at the Treasury Bench, which contains such a large number of Civil Servants in this House, which is supposed to be a popular Assembly and when I find how wholeheartedly they give their time and intellect to the work, I have every hope that the Civil Service in the years to come will discharge their duties even better than they did in the past. Therefore, Sir, I do not expect that any friends of mine, certainly not myself, will use any language which will be hostile to the Civil Servants and which would show that we are not willing to treat them justly and generously. Sir,

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I doubt whether this move on the part of His Majesty's Government is in the interests of that Service. I am inclined to think that the best minds in that Service do not like an inquiry of this nature as that would antagonize the Indian people and would probably not result in any good, to them.

Look at the matter, Sir, from the point of view of the mode in which this announcement has been made; look at the time of the announcement; we have been asking for the Indianization of the Services; a Circular has been sent round for eliciting opinion on that question. It is only yesterday, or day before yesterday, that a bombshell was thrown by the Secretary of State's decision not to make any further advance in regard to constitutional reforms. The financial position of the country is very unfavourable; and at this period, and at this time to have resolved upon appointing a Commission with the avowed object of making the position of the Civil Servants better financially is a step which is calculated to damp the ardour of the most earnest amongst us who want to befriend the Civil Service. Sir, is there any country which enjoys self-Government in which such an idea has been entertained? I think I am right in saying, Sir, that the idea of appointing a Royal Commission is opposed to the pronouncement made, time after time, in the Houses of Parliament; it is opposed to the Preamble of the India Act; it is opposed to the language used by Mr. Montagu at the time when he made the famous pronouncement. What does the Preamble to the Act say? It says that Indians should be increasingly associated with Europeans in the service of the country. It also says that the object of the Parliament is to develop the self-governing capacity of the people with a view to progressive realization of responsible Government in this country. Now, Sir, I ask the question, is it possible to have progressive realization of responsible Government in this country if the Indian Government and the Indian people are not to consider the pay and prospects of the services, but that Parliament should appoint a Commission to consider the grievances and the conditions of service of the Europeans. What does it come to? It means this, that these European Civil servants will have their pay fixed by a body outside India, although they will have to work under Ministers who represent the people of this country. Now, is that a position which can be contemplated with equanimity—a service which will be irremovable, which will have its pay fixed by an outside body, to work under the people's Ministers? That would mean that the Ministers can have no control over them. Certainly that is not the way by which you can facilitate “progressive realisation of self-Government in this country.” I began by asking is there any self-governing country in which such an idea has been entertained or could be entertained? Certainly you do not find in the self-governing Colonies any attempt made by the British Parliament to impose a civil service on them. I was reading, Sir, the other day an interesting debate in the House of Lords on the question of the civil service in Ireland. An amendment was moved in these terms by Lord Glanaway.

The amendment was:

“The civil servants in Ireland should have a statutory right to compensation on retiring owing to the change of Irish Government.”

This was opposed by the Government, and there were not half a dozen Peers to stand up for this proposition. That shows that in the House of

Lords such an idea was considered to be too ridiculous to be pressed for a division. In this country however without consulting the Legislature, without understanding our views on this matter, already a decision has been come to that there must be a Royal Commission to examine into the grievances of civil servants. Sir, I must point out at this stage that if a Commission is appointed the inquiry will be practically one-sided. The whole country has been against the appointment of a Commission and it is not right to expect that we, the representatives of the people, would co-operate with a Commission which may come out here for the purpose of making such an inquiry. It is impossible to think of any co-operation being given to a Commission which has been forced on us. The country from one end to the other has raised its voice against this step and if against our will, notwithstanding our protest, a Commission comes, it will find that we are not prepared to co-operate with them; the whole inquiry will be one-sided and will have no effect upon the people or on the Government. Sir, if a Commission is necessary, there are means by which it can come into being. Why should not the powers given under the Government of India Act be availed of? There is section 96B. (A voice: ‘96C.’) yes, 96C—thanks—which enables the Government to appoint a Public Services Commission which can go into the question of pay, prospects and pension, etc., of the services. If that is done, the Legislature will have a voice in the matter; then there will not be as much grievance as we have now. Instead of availing themselves of the powers given under the Government of India Act, against the teeth of that very power, an outside body has resolved upon appointing a Commission which the people do not want and which the Legislature resents. Sir, as there are a large number of my friends who wish to speak on the subject, I do not want to take up much more time. But I must say this that there has been a feeling in this country, and the feeling is growing, that the Conservative Government at Home is not friendly to Indian reforms, Indian progress. The practical dismissal of Mr. Montagu was at the instance of a large number of Conservative Members of the House of Commons. Ever since his disappearance from the India Office, we have heard of attempts being made by Whitehall to limit and to resist any attempt made by the Government of India to give to the people of this country more privileges. It has been said, times without number, that mandates have come from Whitehall to stop attempts made by the Government on the spot to take the people into their confidence and to invest them with larger powers. These apprehensions exist, and the people call to memory that in the old days the Conservative Government have never shown itself friendly to progress in this country. Sir, this attempt on the part of the present Government to force upon us a Royal Commission which the people do not want is another instance in point. They want to prevent, as far as possible, all attempts at reforming the constitution. They may say, Sir, that they will not go back on the pronouncement made by Mr. Montagu. They may say that the preamble of the Act is there and that they will give effect to it. They may keep themselves within the letter of the law, but the spirit to carry the people with them, the spirit to assist the people in obtaining responsible self-government is certainly not in evidence, and I am sorry that Lord Peel should have fallen into the mistake of appointing this Commission, which is certainly ill-advised and uncalled for. For all these reasons I move that this House shall adjourn as a protest against the appointment of the Commission which was announced yesterday.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):
Sir, in supporting this motion, I desire in the first instance to convey our

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thanks to the Honourable the Leader of the House for making as early an official announcement here as he could and thus giving us an opportunity of entering a strong, I shall not add indignant, protest at the way that this Commission is proposed to be appointed. It emphasizes Lord Curzon's pronouncement that the Government of India is but a subordinate branch of the British Government. Well, I rubbed my eyes hard when I got a copy of the pronouncement, thanks again to the courtesy of the Home Member, and I asked myself what the authority and the constitution was under which this Commission was going to be appointed. At one time it had occurred to me that the authority was what Mr. Seshagiri Ayyar has referred to—section 96 (c) of the Government of India Act. Well, whoever is responsible for the decision, and we are considering the *decision* now because the appointment has not yet been made, was however wide awake. Section 96 (c), clause (2), gives authority to the Public Services Commission mentioned there to discharge in regard to recruitment and control of public services in India such functions as may be assigned thereto by rules made by the Secretary of State in Council. The bomb thrown two days ago has been spoken of by Mr. Seshagiri Ayyar. That is the Despatch of the 2nd of November, published here on the 24th. But it was a bomb that was well expected. In that Despatch occurs memorable advice to the Legislature to explore the structure of the present elastic constitution for development within the limits of what would be probably called expanding conventions. The Secretary of State himself however did not explore what was provided for under the Government of India Act. Though near upon three years have elapsed the rules contemplated in section 96C and the Commission suggested there have yet to come. Supposing, Sir, this Commission and the rules were there, as they should have been long ago, and if the Services made their grievances known through the usual channels, what would there have been to prevent "two people sitting down of a morning," as Lord Islington puts it and setting right those grievances in the light of growing exigencies and changing circumstances, economic and otherwise? In 1915, at the expenditure of near upon six lakhs of public money, and three years of time, the Public Services Commission made recommendations which were published in 1917. What has happened since? The question of percentage whether of 25 or 33 per cent. or something else has been somehow dealt with. Though we are not satisfied with the percentage, we are waiting and watching. That is not what is troubling those who are responsible for this Royal Commission. Questions of pay and prospects, statutory security, thereabout and, adroitly enough, the question of Indianisation have been more or less vaguely introduced in this scheme which probably could not be done by the machinery under section 96C of the Government of India Act. The country will probably be called upon to pay another six lakhs. I should like to know what the Honourable Sir Basil Blackett or the House will have to say in regard to that or whether the charges are to be borne by the Secretary of State or the British Treasury. Sir, the Retrenchment Committee is sitting. Supposing, like the Bengal Retrenchment Committee, this Committee were to suggest a lower scale of pay right through and the Royal Commission makes other recommendations, where shall we be? How are these not unlikely extremes to meet? It is more than inopportune, therefore, it is unfortunate that, without taking all these circumstances into consideration, without invoking in the first instance the machinery at the disposal of the Secretary of State, this Royal Commission should have

been decided on. Who is in its favour? Is the public opinion in India in its favour? Is the thinking public opinion, as voiced in the Press—Indian and Anglo-Indian—in its favour? Are men who know all about these things, men like Lord Islington, who has dealt with the question of the public Services, here, fully in its favour? No. Mr. Montagu has no doubt indicated that an investigation is necessary; that may be in his own justification. But there is other machinery for investigation than a Royal Commission. Why, for example should not that investigation have been made by a Committee like the one which your (Mr. Rangachariar's) intended motion in this House suggested that the Government of India should undertake as the Secretary of State has failed to appoint his Commission under section 96C of the Act. Are we quite sure again that the Services like it? My friend, Mr. Seshagiri Ayyar, has suggested that they do not; that is my belief also. The chances on the other hand are that under the Fundamental Rules and many other rules which we very little understand they are really not doing badly, some of the gain may not bear examination.

Then, Sir, there is the question of reconciling public opinion. We had only two days ago the dictum about its being "too early to think of revising or going back upon what has been done." The very significant word "now" comes in this announcement. Within two months of the Secretary of State's pronouncement that certain other things of a revisionary nature are not to be undertaken because of things that are not before the public.

Is the Government of India in favour of this Commission? Of course, the Government of India will never tell us. Yesterday, however, in another place, not very far from here, it was suggested that the Government of India did not like this Commission and was in fact opposed to it, and I believe that that was not denied, certainly not stoutly denied. (Mr. N. M. Samarth: "Not categorically denied.") Not categorically denied. I am thankful to my Honourable friend for that suggestion. If my reading of the situation is correct, if the Government of India is opposed to it, if the thinking Indian public is opposed to it, if men like Lord Islington are opposed to it, if the Service itself as some of us think, is opposed to it, where is the necessity, or justification, where is also the authority under the constitution for this Commission?

Sir, belittling of and constant interference with the Government of India does not and cannot make for progress. Mr. Seshagiri Ayyar has spoken of likely non-co-operation. When the Commission come I hope he and others like him will not take up any attitude like that but will, when the Royal Commission comes place all materials before the Commission, and make them see that much of what is proposed cannot be done. But there are other and real non-co-operators. Will not this sort of action be strengthening their hands? Will they not be able to say and say with great force: "Here is your machinery; you have been toiling hard; you have been given a constitution which is not to be interfered with for 10 years (as we were told in November last) and now here is an attempt to go back upon the whole question, because the scope of the reference is to be wide enough to permit question of organisation, general conditions, financial and otherwise of a certain Service, being gone into and for ensuring and maintaining satisfactory recruitment of such numbers of Indians and Europeans respectively as may be 'now' decided to be necessary." The go by is thus to be given if possible to the previous agreement—I shall not call it decision—about percentage and various other questions relating to the Services. What has happened since November that we are told now that for the purpose of

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maintaining the standard of administration in conformity with the responsibilities of the Crown and the Government of India, a new step has to be taken. Has anything happened within the last twelve months that this new departure is necessary, or has the Crown now had further responsibilities imposed upon it that it had not, when the Government of India Act was passed?

Then, Sir, we have a reference in this announcement about the necessity of promoting the increasing accession of Indians to every branch of the administration. It is put in a way that will prove acceptable from certain points of view. I do not know whether the Military Service also is going to be taken up by this Commission or not. It would depend on the actual terms of reference, but we have in the announcement a widely suggestive indication. There is certainly nothing according to this announcement to prevent even the Military Services being taken up, because there also we want increasing association of Indians. Sir, the right way of looking at the question, the practical way is as Lord Islington has put it. No inquiry will get rid of what is the real trouble in the mind of the people agitating for the Commission. What does Lord Islington say:

"It is inevitable that the gradual pruning of political power of the service shall come."

No inquiry can get rid of that possibility for that is in the day's work under the Reforms. Whoever suggested or can suggest that the pay or prospects or even the status in the ordinary sense of Indian Civilians are or will be in jeopardy, unless the Government of India become absolutely Bolshevik and revolutionary,—who is going to say that section 96B of the Government of India Act is to be inoperative? Time will not permit my drawing the attention of the House to the details of the guarantee provided in that section—every possible safeguard is there, when Parliament or Government in England or here is powerless in enforcing these statutory regulations there will be more than chaos. What jeopardy, earnestly and seriously speaking, does the Superior Civil Service as it is called in the announcement apprehend that it requires to be protected against? I desire to associate myself with every word that Mr. Seshagiri Ayyar has said with regard to the members of the Civil Service and with feelings like those animating the Legislature, no harm can come to it. We have our differences. We have our grievances. We are trying to put them right and square; there are, I believe, many who will remain with us and earnestly and loyally co-operate with us. What is the good of upsetting all this friendly and amicable feeling and why should the situation be forced upon them and upon us which will put us on the defensive. (*An Honourable Member*: "What about their convictions?") They will take care of their convictions whatever that may mean. We are here to speak upon our convictions and to put the case before the country and the Government here and the Government and the public in England in the best of our light.

Sir, it will take a whole sheet of foolscap paper to enumerate the various Commissions and Committees we have had of late. Lakhs and lakhs of rupees have gone on the Decentralisation Commission, the several Financial and Exchange Commissions, Public Service Commissions, Railway Commissions, University Commission, Industrial Commission and Fiscal Commissions. What has come of them? What will come of this Commission particularly, I repeat if the Retrenchment Committee does its duty and lays down dicta that no Royal Commission will be able to reconcile themselves

to? If any revision was necessary and it is undoubtedly necessary in some ways why could not they do it by the machinery permissible under the Act? Supposing—I am assuming it—Lord Ronaldshay comes out as the President of the Commission, does he not know all about the situation? He was a member of the Public Services Commission; he was a very successful Governor of Bengal; he knows Indian conditions and Service conditions; his articles in the Magazines show that he is in touch with the country. Supposing he comes as President—I am only supposing it—would he advance matters here—would he not have been able to help the Secretary of State with advice which would be in addition to what a Commission under section 96C of the Government of India Act would have and had to secure? Therefore on constitutional grounds, on financial grounds, on grounds of public opinion, on grounds of expediency, on grounds of the need of keeping up the status and prestige of the Government of India, we oppose, if we can oppose, a Royal Commission. Certainly we protest against its appointment, and its appointment in the way that has been indicated. We shall be doing less than our duty if this House as far as possible, unanimously—because we cannot expect the Government to vote with us—if this House does not unanimously voice the opinion of the country that this Royal Commission is unnecessary, unfortunate and undesirable.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I should like to take the House through a few facts for the purpose of demonstrating to it not only the utter futility of the Royal Commission but of its intrinsic and inherent illegality considered in its unconstitutional aspect. Honourable Members will remember that only two days back the Honourable the Home Member read out the Secretary of State's despatch on the subject of further reforms. In that despatch occurred these pregnant sentences:

"The new constitutional machinery has to be tested in its working as a whole. Changes have been made as the results of the Act of 1919 in the position, powers and responsibilities not only of the legislature but also of the executive government."

Then later on His Lordship says:

"It is clear that sufficient time has not elapsed to enable the new machinery to be adequately tested."

This was written on the 2nd of November 1922. And now mark the language of the Communiqué published to this House yesterday by the Honourable the Home Member:

"It is contemplated that the Commission will be required, having general regard to the necessity of maintaining a high standard of administration in conformity with the responsibilities of the Crown for the Government of India, and to the declared policy of Parliament in respect of the increasing association of Indians in every branch of the administration and having particular regard to the experience now gained of the operation of the system of Government established by the Government of India Act."

The experience had not been gained on the 2nd of November when the Secretary of State dated his despatch. Within six weeks the experience has been gained and has so accumulated that a Royal Commission has been appointed. I ask, Sir, is this not a contradiction in terms? The Secretary of State assured this House that the reforms cannot be re-examined until sufficient time elapses and experience is gained, and within a few weeks we have the announcement of the decision of His Majesty's Government to appoint a Royal Commission to re-examine the question of the superior Civil Services. Honourable Members will note the wording of the Communiqué:

"Having general regard to the necessity of maintaining a standard of administration in conformity with the responsibilities of the Crown."

[Dr. H. S. Gour.]

Now, Sir, I ask the Honourable the Home Member what are the responsibilities of the Crown, and are not the responsibilities of the Crown in a state of transition? We have been told that the reforms are an experiment, and it was explained that the experiment means that it is in a state of transition. Further reforms will be conceded to this country after the statutory period. If so, I ask, is it not a fact that the responsibilities of the Crown to this country will vary from time to time, and has not the Secretary of State himself pointed out that we have not yet fully exploited the existing Reforms Act? If further progress under the Reforms Act is to be achieved, the responsibilities of the Crown must correspondingly diminish. How is a Royal Commission, then, to inquire into the condition of the Imperial Services without at the same time inquiring into the responsibilities of the Crown? How is the financial question to be dissociated from the political question? That, I submit, is the crux of the whole question. The Secretary of State says that so far as the political side of the question is concerned it is not time yet, but when it comes to the question of the pay and promotion of the superior services, he says the time has arrived for a further inquiry.

Then, Sir, I said at the outset that I have a shrewd suspicion that this Royal Commission has not only been forced upon the people of this country but also upon the Government of India. Only the other day, I think only yesterday, the Honourable the Home Member was challenged to deny a statement that the Government of India had opposed the appointment of a Royal Commission.

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member will, I am sure, excuse me in interrupting him. No such challenge was made to me.

Dr. H. S. Gour: If such a challenge was not made, Sir, in another place, I make it here and now. Is the Honourable the Home Member prepared to deny that at no time and at no stage the Government of India resisted the appointment of a Royal Commission?

I say, Sir, I shall assume, till a direct categorical contradiction is given by the Honourable the Home Member, that the Government of India did resist the appointment of a Royal Commission. If that is so, it raises a grave constitutional issue. It imperils the reforms. When these reforms were inaugurated, we were told by high personages of authority that the reforms will be worked alongside of the report of the Joint Parliamentary Committee which annotates them. In clause 33 of the Joint Parliamentary Committee's Report it has been said that, whenever the Government and the Legislatures are in agreement, the Secretary of State should not ordinarily interfere. Now, Sir, the Government of India are not unaware of the strong feeling in this country against the appointment of a Royal Commission. They could not have been unaware of the strong feeling in this House against such an appointment. I take it, therefore, that the Legislature and the people of this country were opposed to the appointment of a Royal Commission. And I further state, Sir, the Honourable the Home Member has not yet contradicted me,—I further state, Sir, that the Government of India were opposed to the appointment of a Royal Commission. There being, therefore, an agreement between the Government of India and the Legislature on the question of the appointment of a Royal Commission, the appointment by the Secretary of State of this

Commission is unconstitutional and contravenes the recommendations of the Joint Parliamentary Committee. This, I say, Sir, raises a grave constitutional issue. And I further submit that it is not really a question of necessity, expediency or of general policy—it is a question which cuts at the very root of the fundamental principle upon which the Reform Act is based. Then, Sir, passing on to the question of the utility of the Royal Commission, we have had Royal Commissions galore. We have had Royal Commissions after Royal Commissions, but what is their result? Is it not, in fact, ordinarily said, if you wish to shelve a question appoint a Royal Commission? And I ask Honourable Members in this House what are the Royal Commissioners to do? The grievances of the Civil Services in this country are known and well known. If you wish to redress them, redress them. If you do not wish to redress them, do not appoint a Royal Commission. We have been told that the appointment of a Royal Commission is a costly luxury. One Honourable Member of this House has lent me a copy, Sir, of a communication he received from the Home Department, the purport of which is that, though they have no figures showing the cost of Royal Commissions, they can say (1) that the cost of the Royal Commission of 1912-15, debited in the accounts of the Accountant General, Central Revenues, was Rs. 5,91,874—roughly speaking six lakhs. And that was a smaller Commission. This is going to be a much larger one. And we shall be told that the cost of a Royal Commission—we may safely say that the cost of a Royal Commission will run into several lakhs. This raises another grave constitutional issue. Who is going to pay for it? Is it to be included in the Indian Budget? Will it be submitted to the vote of this House? If it will be submitted to the vote of this House, it would be adding insult to injury. You have not been consulted on the subject of the appointment of a Royal Commission and you are made to pay for it. I submit, Sir, on every conceivable ground the people and the representatives of the people of this country should oppose the appointment of a Royal Commission, and I have no doubt that the Government of India must be sympathising with the people of this country in this year of financial stress when every effort is being made to economise in national expenditure. It has been said

Mr. Chairman: Is the Honourable Member intending to proceed to another point? His time is very nearly up.

Dr. H. S. Gour: My speech also is very nearly over. We have been told Sir, in another place that we should welcome this Royal Commission, because the terms are large and liberal. We have been told that it is not merely to inquire into the general condition of service, financial and otherwise, but it will also inquire into the "best methods of ensuring and maintaining the satisfactory recruitment of such numbers of Indians and Europeans respectively as may be decided to be necessary in the light of the considerations above referred to." I beg to ask, Sir, how is this reconcilable with the statement made in the Montagu-Chelmsford Report which lays down the programme of progressive Indianisation of the superior services for the next ten years? Are we to go back upon that report? Are we to scrap it? Are new problems to be presented to the Royal Commission, and if they are, they would be inconsistent with the Montagu-Chelmsford Report, inconsistent with the Government of India Act, inconsistent with the recommendations of the Joint Parliamentary Committee. I therefore support the motion on the ground that the appointment is unconstitutional, it is unnecessary, it will serve no useful purpose and will unnecessarily antagonise the people.

Mr. R. A. Spence (Bombay: European): Sir, the need for Englishmen in the various services of the Government, not merely in the Indian Civil Service, but in the Public Works, the Police, and the other Services of Government, and the necessity of securing to them due recognition of their services and security of tenure, are, I think, recognised by every thinking man in India. The Secretary of State has full power to appoint a Royal Commission for any purpose which the Government at Home considers right, but if this is not desired by the Government of India, if it is not desired by the people of this country, one can but deprecate the appointment of a Royal Commission which is bound to disturb public opinion. The various tributes, the various just tributes which have been paid to-day and which are daily paid throughout India to the work done by Englishmen in the services in this country are surely a justification to us that their services will be recognised and looked after by the Government in this country without the appointment of a Royal Commission.

Mir Asad Ali, Khan Bahadur (South Madras: Muhammadan): Sir, it is my policy, that I should not speak on every subject in or out of season except when there is need for it. Now, I think, Sir, that it is essential to say a few words on this occasion. After hearing the best speeches of the Presidents of the Democratic and National Parties and the case made by them, and after hearing Mr. Spence's speech, there is very little for me to say on this subject. As one of the representatives of the Mussalmans of Madras, it is my duty to join with the sentiments expressed and to protest on behalf of myself and my community against the Provincial Royal Commission on the services.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, it was last year when I entered into the discussion of the Budget, I likened this House to a married couple, the Legislature as the husband and the Government of India as the wife and I foresaw in the Sessions of 1921, evidence of family disturbance which almost ended in a divorce in 1922 and I also said to this House "what the Honourable Edwin Samuel Montagu had joined together, let no Budget put asunder." It seems as if the marriage bond is being put asunder by that very man who brought it about and I am very doubtful which way to view this proposition which involved the appointment of a Royal Commission; whether it spells the obituary notice of Mr. Montagu, or the I. C. S. or the Indianisation of the Services. I think it will be viewed from this triangular point. There is no doubt, Sir, that it has dealt a severe blow to Mr. Montagu, for the idol of this House seems to have fallen. I have heard the views expressed to-day by some of the leading Members and it seems to be very unnecessary for me to offer a wail in the wilderness opposing those views, especially after hearing what my friend, Mr. Spence, said. There may be something more than meets the eye in the case of this Royal Commission. The Indian Civil Service has certainly a lot to complain about. We accept that and one Member said "Why not institute an inquiry in this country so as to remedy these grievances?" How can you institute that inquiry and at the same time dissociate from that Committee the official element? There is no doubt that the Indian Civil Service has not been viewed as it should have been since the last Public Services Commission of 1913. There is not the faintest doubt also that in the minds of many members of this Service there exists a feeling of insecurity mainly in regard to their pension. It is very nice to publicly state here that no fear need be entertained on that score. But

has the Government made that pronouncement? Have the Government at Home made that pronouncement and allayed this fear? Then there are certain other difficulties which present day living has forced upon the Civil Service. Has that Service been treated in the same generous way as other Services in this country? I submit with all respect we must prove in this House that it has not been treated with such generosity. If that Service needs certain revision, is it the duty of this House to oppose the appointment of a Commission that is going to remedy it? And again is it the duty of this House to oppose a Commission whose object may be—the furtherance of Indianization, or may not. We have nothing to go upon. The point is that it may decide for greater Indianization, or it may say it is against it. Nobody knows. It may be that the intention of this Commission is to seek out the root of the dissatisfaction that exists—and it does exist to a large extent among the members of the Indian Civil Service—and it may be that this Commission will be more productive of good to India than anything else. I desire to ask in this House why are we afraid of the Commission coming out? If the Commission is going to investigate the condition as it exists to-day in contradistinction to what it existed in 1913 when the last Commission sat, why should we as a body oppose it simply on the ground of not having been consulted, in the first instance. It must be remembered that the Home Government has the power to appoint a Royal Commission. I repeat why are we not prepared to give it a chance? Let us see what it is going to do. Rs. 5 lakhs 6 lakhs is nothing, is nothing if it gives you Indianisation. Whatever it costs, if it is going to do any good to India—and I should like to see whether it is going to do any good to my community,—why object? I therefore, Sir, do not oppose this, but at the same time I think there is another side to this picture. Honourable Members may say it is the wrong side, but I say it may be the right side, and therefore I do not oppose it.

Sir Montagu Webb (Bombay: European): Sir, I desire to join my voice to that of those who have protested against the appointment of this Committee. I cannot myself understand at present the necessity, or even the desirability, of the appointment of a Commission of this kind. I find it still more difficult to conceive that the Government of India can possibly have demanded the appointment of a Commission of this character; and that being so, it seems to me that the appointment of this Commission merely lends a weapon to those hostile and adverse critics who suggest that the Government of India and the Legislature are being discredited, or overruled by the Secretary of State. It seems to me, Sir, that the appointment of a Commission at this particular juncture is particularly unfortunate. It can but create suspicion in more directions than one, and I myself cannot see that it can possibly do any good, at this stage. Reference has been made to the anxiety which some members of the Services may feel with regard to their position or their pensions. Well, to me, Sir, I confess it is inconceivable that any Legislature in this country, or that Government here or at Home could do otherwise than carry out Government's obligations to all the Services strictly and to the very last letter. In these circumstances, Sir, I agree with the previous speakers, that the appointment of this Royal Commission is inopportune and ill-advised, and I have no hesitation in supporting the motion now before this House.

The Honourable Sir Malcolm Hailey (Home Member): I recognize that I have at this moment a difficult task, for I have to meet not arguments but an atmosphere, not facts but suspicions: not definite statements,

[Sir Malcolm Hailey.]

whether the continuation of the services at all is necessary in many technical departments; whether you could not, that is, substitute short-term service or contract officers, particularly in departments controlled by Ministers. I emphasise these because it is there if financial conditions permit, that progress must be most rapid, and novel experiments most quickly worked out. That, as I say, is a minor point. But I come to more important question, less one of organization than of personnel. I need not dwell on the insistence of the demand for further Indianisation of the services. If I deal with it here, it is not to argue its merits, but to state some of its implications, which have perhaps escaped some of those who have voiced the demand most strongly. It is not a mere question of arithmetic. It is not a question of taking a present rate of 33 per cent. of recruitment and increasing it to 50 or 60. It goes far beyond that. Everywhere in India the question is now being discussed whether in view of a larger recruitment of Indians, we ought any longer to recruit them on an all-India basis. The growing sense of provincial independence and individuality, the necessity for satisfying Provincial aspirations, seems to demand that they should be recruited by the Province for service in the Province and at Provincial rates of pay. Burma has already made this demand in the most emphatic form; I see an equally emphatic demand coming from other Provinces in their turn. Here is a question to find the solution of which you will have to dig deep into the roots of our present system, and I say you cannot do this, and you cannot solve the large question of what numbers of Europeans and Indians respectively are required in the light of experience of the Reforms without a thorough, an independent and far-reaching inquiry. Let me pause for a minute; I pause because I remember, as no doubt the House will remember, what Dr. Gour said on the latter subject. He suggested that this Commission is likely to go back on the proportions laid down in the Montagu-Chelmsford Report. Well might I refer to the creation of an atmosphere of prejudice, and the difficulty of my task in meeting it. I ask anybody here whether they feel themselves honestly able to join with Dr. Gour in such a suggestion? We have already gone far beyond what the Montagu-Chelmsford report laid down. Our percentages are far higher; not only are our percentages far higher, but our rate of recruitment is in excess of those percentages. (Mr. Jammadas Dwarkadas: "Because you cannot get candidates in England.") I shall come to that presently. Yet Dr. Gour finds it in his conscience to suggest that the Royal Commission may now go back on the Montagu-Chelmsford percentages.

Here then are two outstanding questions which you must solve before you can make progress with the consideration of the Indianisation of the services. The consideration of those questions will involve an inquiry far beyond the scope which has to-day been assigned, but wrongly assigned, to the reference to a Royal Commission. I do not say that it will not also have to consider the question of the conditions under which the services are now working. It is not true, as was stated, that the sole purpose of the Commission was to go into the pay and prospects of the services. I claim emphatically to have proved that this is not the case. But, equally, the circumstances regarding the services must be considered. I take, for Indianisation of the services, more than one speaker declared that he and his friends did not wish to exclude entirely the European element in the services. For my own part, I sincerely believe that in thinking India at

large there is on the contrary a firm determination that a strong European element in the services should be maintained. But what are the facts at present? We are failing to obtain recruits. I could support that statement with figures, but I do not desire to take up the time of the House, and the House may safely take the fact from me. There are two reasons. The first is the economic condition of the services out here which re-acts on recruitment at Home; secondly, the doubt that exists in the minds of those who might be candidates as to their future in India. Now, I agree with Sir Montagu Webb that it is unthinkable that any Indian Parliament would seek to repudiate its obligations in respect of pensions and the like. I welcome the recent declaration made by Mr. Seshagiri Ayyar, speaking on behalf of the largest party in this House that they regarded any such suggestion as damaging and pernicious. But that is not the whole of the case. The case is that men who are entering on life now desire to know what is to happen to them if, as a result of the recommendations of the first Parliamentary Commission, it should be necessary for Government to dispense with their services, some six or seven years hence. I do not think they ask for funds to be set aside in trust to provide for such a contingency. They merely desire to know, and it is a reasonable request, what the conditions of compensation will be if, after some years' service their careers out here are brought to a close. Then again, as regards the economic conditions under which present servants of the State are suffering and which, as I say, are re-acting on recruitment. There is no more tangible proof of these difficulties than the heavy list of premature retirements which are every month depleting our services of some of their best men. It has been admitted here to-day by Dr. Gour—and I thank him for the admission—that the services have difficulties; it was admitted by others to-day; it was stated in our Indianisation debate that India was prepared to see those difficulties adjusted. I desire to say nothing more than to refer, Sir, to your own Resolution, which stated that those difficulties should be inquired into though you preferred to have them inquired into here. But there is a final factor in regard to the services which I am bound to mention. If one can accept what one hears here, what one sees in the reports of Provincial Retrenchment Committees, or what one hears again in such bodies as our own Standing Finance Committee, it is clear that we now have to face a different atmosphere in regard to Indian pay to that which was represented before the Public Services Commission. Everywhere now we hear Indians complain that we have left them an onerous legacy; we have fixed the pay of our services on a European basis and on European requirements, and, insensibly, the pay of Indian members of those services has crept up towards the European standard. It is suggested that we must revise the whole scheme of emoluments from a different aspect. We have to lay down a basic pay which will be appropriate to India, to Indian requirements, and Indian conditions. We are told that if India has to employ Europeans, it is prepared to face the necessity of paying them their market value, but is not prepared to pay Indians emoluments in excess of those which a man should expect who is serving his own country and in his own country. We hear that view expressed, everywhere, and I think I can claim that I have stated the proposition fully and fairly. But, Sir, that proposition is not an easy one either for the Indian Government or for Local Governments to investigate or to carry into effect, for they would have a very powerful body of vested interests against them. Yet, unless that can be investigated fairly and independently, unless the body which investigates is so authoritative as to carry the utmost weight, any

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new basis of remuneration cannot be carried into effect; and if so, what becomes of the Indianisation of the Services—at all events as an economic proposition? It may be well enough to satisfy national aspirations or national feelings by Indianising your services, but unless that process is carried out on a purely Indian basis of pay, you will lose the whole of the financial saving which has been held out as a principal attraction to the scheme.

Mr. Chairman: Your time-limit is up.

The Honourable Sir Malcolm Hailey: I ask indulgence for one minute more. I claim that at all events I have established the necessity for an authoritative investigation of these grave problems on wide and liberal terms of reference. And if it is admitted that such an investigation as I have outlined is necessary, than three-quarters of the opposition to the Royal Commission should go. For let us face the facts. It is admitted that we need an enquiry. It might be that an inquiry undertaken entirely by the Government of India might be more rapid, less expensive and perhaps under influences which would appeal to this Assembly as more suitable. But would it carry the necessary authority? I say again, there is no use shutting our eyes to the facts. You have to meet two influences, and satisfy two elements. You have not only India to consider. It was Parliament that was associated at every stage with the inauguration of the Reforms. Parliament has an equal right—nay, an equal duty—to associate itself with an inquiry into those changes in the structure of the administration which the Reforms have necessitated. The Indian public can safely banish any suspicion that this inquiry has been dictated by unworthy motives, that its sole object is to retard the Indianisation of the Services—to me an unthinkable suggestion; or that its sole or main purpose is to satisfy the existing members of the services. And so far from the appointment of this Commission being unconstitutional, I take the opposite ground. Parliament, I say, initiated the Reforms; His Majesty's Government equally has a duty to associate itself with an inquiry into administrative changes which are corollary to the Reforms; and it has a duty to ensure not only that the development of our services shall comply with the requirements of the Government of India Act, but that the constitution and conditions of service for all branches shall be such as to give members of our great services, so far as the new conditions permit, as full opportunities as in the past of exhibiting the character, the independence and the high sense of duty which have done so much for India.

Rai Bahadur G. C. Nag (Surma Valley *cum* Shillong: Non-Muhammadan): Sir, I move that the question be now put.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I rise, Sir, further to support the motion for adjournment so ably placed before the House by my Honourable friend, Mr. Seshagiri Ayyar; and I feel bound to say that the splendid advocacy of my Honourable friend, the Leader of the House, has left me absolutely unconvinced as regards the necessity and wisdom of the appointment of this Commission. I do not find fault—no one in this House or outside can find fault—with the splendid advocacy of the Honourable Sir Malcolm Hailey but in this case he had the misfortune of advocating a very, very bad cause. What has Sir Malcolm Hailey told us to justify the appointment of this Commission? Sir Malcolm Hailey says the terms are wide and liberal. They may be

wide, but there is not the slightest doubt that the terms are vague also, and the existence of this vagueness makes us suspect that the vagueness is due to the fact that a lot of harm may be done to the interests of this country by raising the emoluments of the services and a set-back may be given to the cause of Indianisation. My Honourable friend, Colonel Gidney, suggests "Who knows? The Commission may make a recommendation which might accelerate the pace of Indianisation." Is it likely, Sir, I ask, that a Commission appointed by the reactionary Government of Great Britain at the present moment could ever help the acceleration of the pace of Indianisation? Why, Sir Malcolm Hailey himself said one of the reasons why a Commission is being appointed is that you cannot get recruits in England; you cannot get away from that fact; Sir William Vincent replying to my own Resolution here said it was a fact that you cannot get recruits in England to-day. The reasons assigned by Sir Malcolm Hailey are in the first place economic and secondly that a doubt exists among the present incumbents as regards their own and their successors' prospects. Colonel Gidney says the pace of Indianisation may be accelerated. In order to attract recruits for the Indian Medical Service this very reactionary Government has just given out special terms and thirty appointments have been made on special terms in the teeth of the opposition of the whole country. In answer to a clamour for further advance, this very reactionary Government through the Secretary of State for India has given us a Despatch which is—although it pretends to have been written after very careful consideration—hardly worth the paper on which it is written; and we are told that we should expect that a Commission appointed by this Government is going to accelerate the pace of Indianisation. Sir Malcolm Hailey has given two reasons for not being able to find recruits in England. May I give a more substantial reason, not a reason which is a concoction of my own imagination, to use his words, but a reason given in the letter of Mr. Montagu himself to the London "Times"? This is the reason that he assigns. He says: "Some of those who lament the difficulties of recruitment most vociferously are apt to forget how much a bearing the altered circumstances of the day have on this question. Commercial enterprises are enlisting more than they ever did before the assistance of University graduates. For those who seek Government employment the opportunities for such employment have increased at Home and the over-riding factor of all this is to be found in the destruction of a generation as the price that was paid for victory in the war."

The Honourable Sir Malcolm Hailey: Nevertheless he advocates a Commission.

Mr. Jamnadas Dwarkadas: That may be, on that we differ from him; this is the last paragraph of his letter that he sent to the "Times." Let us not forget that of all the reasons the greatest reason why you cannot get recruits in England to-day is that the flower of your community has yielded to the necessities of the war, and perished fighting for its country. Those that are left they have the best prospects in England itself and no one while he has prospects at Home would ever like to go out to a foreign country under the present circumstances. Then, Sir, is it merely the economic reason that prevents recruits from coming to India, to appear as candidates for the Services? There is one more additional reason and that reason is this: after the establishment of representative institutions in accordance with the Government of India Act, however

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much you may increase the salaries of the Services, you can never give to the Civil Servant in future that amount of power which he enjoyed in the pre-reforms days. Is not that perhaps the reason? Can that reason be remedied by any one, and if it is the intention of the Commission to remedy that reason, then, Sir, our protest against the appointment of the Commission is all the stronger than it ever can be. For, while we do not in any way run down the Services,—we appreciate, and we have never failed to appreciate in this House the services they have rendered in the past and are still rendering. We fail to understand how, consistently with our demand for self-Government at an early date, we can ever again restore the power that they used to enjoy in the pre-reform days. In this very House many Members including myself have re-asserted that if the present incumbents of the Civil Services have any grievance with regard to lack of social amenities or have economic grievances, the reasonable among them will be handled sympathetically and generously, if I may say so, by the Members of the Legislature. What other grievances can there be? Sir, the cause of Indianisation can never prosper at the hands of a Commission appointed by a reactionary Government. So far as the grievances of the Services are concerned, they can never be remedied except by the Members of the very Legislature who are prepared to go into the legitimate grievances of the Services and remedy them. So far as their political power is concerned, it is beyond any one, even the Royal Commission, to remedy it. So far as the recruitment of Englishmen is concerned, you have the solid reason given by the late Secretary of State himself that it is difficult to find recruits in England now, that the war has taken away so many, and of the others that are left, many are attracted to the Services in England, and others to commercial enterprises. What, then, Sir, I may rightly ask, is this Commission going to do? What is the use of appointing this Commission in the teeth of the opposition of the whole country? Is it not because the forces of reaction have been triumphing ever since the resignation of Mr. Montagu? You have a demand made by the whole country, represented to the Government through its Legislature for a further advance. That demand is summarily dismissed. You have another blow thrown at the country in the appointment of those 30 men to the Indian Medical Service on special terms, and now, here is a third. I ask if the Home Government is helping those that have stood by the Constitution at the most critical moment to carry out their duties in the face of the strong opposition that prevails in the country? I submit, Sir, as one who has always spoken plainly in this House, and as one who has always stood for the maintenance of the British connection, at any cost, I feel that it is acts like these that render our task most difficult; it is colossal blunders, political blunders of this character resulting from ignorance of men who sit six thousand miles away that will make the position of constitutionalists difficult. Sir, I support this motion.

(Loud cries of "The question be now put" from all sides of the House.)

Khan Bahadur Zahiruddin Ahmed (Dacca Division: Muhammadan Rural): Sir, I oppose this Resolution moved against the appointment of a Royal Commission tooth and nail, fully knowing that my Honourable friends, the intelligentsia of the country, the Honourable Non-Officials of this Assembly will call "shame" on me. Here is my humble explanation for my conduct. To me the truth, however unpleasant, is very dear

and must be told, the duty, however thankless, must be done. It is imperative, in my opinion, that a Royal Commission is most needed to find out the reasons why these lions' cubs are not coming or refusing to come to the Indian jungles as they used to do before. It is better that the Majestic lions' cubs should be the masters of the Indian jungles rather than the pack of wolves or that of the wild dogs. I boldly assert that misgovernment by my countrymen is no proper substitute for good Government by the Britishers. Some of my Honourable friends argue: "Let us fail one hundred times and even after that, if we succeed, that is something." But I humbly submit that each failure may end in a great catastrophe to the country, may bring endless sufferings to countless millions. I shudder to think of it.

I emphatically say that any extravagance on the British portion of the Indian Civil Service at the present moment is the greatest economy for the country at large in the interests of the millions of the masses. Even for the success of these reforms we need the services of the British portion of the Indian Civil Service. I may admit that Indian-born Civil servants may be suitable in some respects but a poor substitute for the British-born ones, just as a square peg will suit as nearly as may be a round hole, just as a wooden leg suits a legless man.

I appeal again and again to the good sense of my countrymen composing the Honourable Non-Official Members of this Assembly not to sacrifice the interest of the masses in the interest of a few intelligentsia of the country, though that intelligentsia may be our kith and kin.

It was my sad experience for years that in whichever district an Indian becomes a District Magistrate and Collector, the efficiency in the administration suffers, the bribery and corruption increase. This is very, very unfortunate, but this is a fact. Honesty compels me to admit this sad truth and I do so in the interests of the millions of the dumb masses.

May I quote in conclusion a Persian proverb *Khatai bojurgan gireftun khata ast* which means "To find fault always with superiors is also a great fault."

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I came down to the House this evening without the slightest intention of intervening in any way in this debate. I would not have done so had it not been for Mr. Jamnadas Dwarkadas' intervention—his intervention, I may say, in his very best style. He stood up and he tore his passion to tatters before us. He flung his papers about and in his usual way he appealed to the emotions of the House. But, Sir, in the excitement of the moment, he made just one or two statements which I should like to contradict. He referred to the reasons why we cannot get Englishmen to come out to the Indian Services. He explained the reluctance of the Englishman to come out to the Indian Services to his own satisfaction and he quoted Mr. Montagu. He stated that one reason was that England had lost practically a generation in the war. He stated that the flower of the English youth was now going in for commerce and was refusing to enter the Services in the way that they used to. And he said also that another reason why the young Englishman could not come out to India was owing to the changed conditions under which the Indian Civilian works, and the fact that he does not now exercise the same power as he used to exercise before the war. Now, Sir, let me state my views on this point. I come from a family which has served India from father to son for over

[Mr. C. A. Innes.]

a hundred years. (Sir Deva Prasad Sarvadhikary: "May the race go on.") My grandfather joined the Madras Presidency about 1830. My father served in this country for 20 years. I myself have served in this country for 4 and 20 years. And I have got four sons. One of these sons is now at Oxford. He is just the sort of boy who in the ordinary course would have followed in his father's footsteps in the Indian Civil Service. He writes out to me and asks me: "Shall I go into the Indian Civil Service?" And he tells me what they are saying about the Indian Civil Service at Home. He has no desire—there are many other lads at Oxford in like case—no desire at all to go in for commerce. They would like to do as their fathers have done before them and serve the country and serve India in accordance with the traditions of their family. But there are the obstacles in the way. What do they know about the position of the Civilian out here? They know absolutely nothing. What they do know is that India at the moment is in a transition stage. As Sir Malcolm Hailey pointed out, in 1929 there must be a Commission and there may be great changes and they want to know, "Supposing I come out to India, am I going to lose my appointment five years hence?" That is the obstacle which is keeping these young boys from coming out to India. That is what paralyses them, and that is the feeling which is common in Oxford and Cambridge. That is the main reason why you cannot get the English boys now to come out to the Indian Civil Service. It is common, and that is one of the reasons why it is not sufficient merely to have an inquiry out here, either an inquiry by Members of this House or of the Indian Government. You must have the sort of inquiry which will carry conviction to the people at Home, and I assure you that that is the only reason—to remove these fears and to get the English boy of the right stamp to come out to India in the future in the way that he has done in the past, and I think that I may assume that every one in this House does want the English boy of the right stamp to come out and serve India in the service of this country.

There is only one other remark. I do not propose to traverse all the grounds which have been so ably covered by my Honourable friend, Sir Malcolm Hailey. There is only one word, there is only one remark that I wish to make. Mr. Jamnadas Dwarkadas referred more than once to this reactionary Government at Home. He tried to create again that atmosphere which I had hoped, fondly hoped, Sir Malcolm Hailey had succeeded in dissipating. What is all this cry about a reactionary Government? Reactionary Government merely because they have appointed this Royal Commission? (Cries of "No, no.") Why? Mr. Montagu himself, a friend of India—Mr. Montagu also asked for a Royal Commission of this kind. (Cries of "Let the question be now put.")

Mr. Chairman: The question is that the question be now put.

The motion was adopted.

Mr. Chairman: The motion before the House now is: "That the House do now adjourn."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 29th January, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 29th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

The Honourable Sir Malcolm Hailey (Home Member): I hope, Sir, that you will allow me to draw aside for one minute that veil which hides the personality of the Chair and to express, as I am sure I may do on behalf of the House, its great pleasure at your return to your duties. (Hear, hear.) It is not, Sir, that we have not had in your absence able lieutenants, trained in the traditions which you have inaugurated in this House, and to them our gratitude is due. Nevertheless, we feel the keenest pleasure in your return. We feel pleasure in your return not only because you are our President, but because, since you are also the friend of the House, we have to congratulate you on your recovery from an illness which at one time filled us with grave anxiety. (Hear, hear.)

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadian Urban): Sir, on my own behalf, and on behalf of my friends, I very wholeheartedly join in what has fallen from the Honourable the Leader of the House. We welcome you back here and hope that there will not be occasion for the same anxiety again. In the strenuous times before us good sense and good temper, of which good health is always the basis, should prevail all round. The Honourable Sir Malcolm Hailey has told you of the anxious time that we had and we do not want it repeated.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I beg to associate myself with everything that has been said by the Honourable Sir Malcolm Hailey in welcoming you back amongst us. He has told you, Sir, that, during your absence, we have been served by very able lieutenants. That, Sir, is a compliment not only to their ability, but is a compliment to yourself for having trained them to lead us in your absence and for the atmosphere which you have created in this House. Therefore, Sir, we are happy to see you back once again amongst us and, as Sir Deva Prasad Sarvadhikary has said, we hope the occasion may not again arise of welcoming you back in the way in which we have done, but you are always welcome and we are always glad to see you amongst us.

Mr. President: Gentlemen, I need hardly say that the words used by the Leader of the House and by my two Honourable Colleagues have greatly touched me and I have to thank them and the Assembly for the manner in which they have received me on my return from what was, after all, though a somewhat prolonged, yet not in any sense a dangerous illness. I have followed with great interest the proceedings of the House from a distance and I am glad to have the endorsement by the Leader of the

House himself of the opinion which I had myself formed that my presence here was not in the least necessary. (Cries of "No, no.") And though of course duty compels me to return to the Chair, I should very willingly have returned in the form and habit of a private Member in order to sit under those able Chairmen whose services you have all enjoyed.

Gentlemen, once more I thank you.

MEMBERS SWORN:

Captain Ellice Victor Sassoon, M.L.A. (Bombay Millowners' Association: Indian Commerce).

STATEMENT LAID ON THE TABLE.

Sir Henry Moncrieff Smith: Sir, I lay on the table the information promised in reply to questions by Dr. H. S. Gour on the 16th January, 1923 regarding amounts drawn by Members of the Council of State and the Legislative Assembly on account of travelling and halting allowances.

Statement showing the amount drawn by Members of the Council of State who travelled in reserved compartment.

Serial No.	Names of Members.	Amount.
		Rs. A. P.
DELHI SESSION, 1921.		
1	Hon'ble Diwan Bahadur V. Ramabhadra Naidu	708 8 0
2	" Rai Bahadur Lala Ram Saran Das, C.I.E.	117 12 0
3	" Mr. C. N. Seddon	849 0 0
4	" Raja Moti Chand, C.I.E.	369 0 0
5	" Colonel Sir Umar Hayat Khan, K.C.I.E., C.B.E., M.V.O.	177 0 0
6	" Mr. G. S. Khaparde	617 0 0
7	" Raja Sir Harnam Singh, K.C.I.E.	85 14 0
8	" Sir A. H. Froom, Kt.	649 0 0
9	" Sir Dinshaw Wacha, Kt.	649 0 0
10	" Maharaja Sir Manindra Chandra Nandy, K.C.I.E., of Kasimbazar.	766 4 0
11	" Maharaja Bahadur Keshava Prasad Singh, C.B.E., of Dumraon.	415 8 0
12	" Mr. Lalubhai Samaldas	324 8 0
13	" Mr. K. V. Rangaswamy Aiyangar	1,338 6 0
14	" Mr. E. S. Lloyd	1,245 0 0
15	" Sir M. B. Dadabhoy, Kt., C.I.E.	659 0 0
16	" Mr. Abdul Majid	292 8 0
17	" Maharaja Soshi Kanta Acharjya Chaudhury of Muktagacha	447 2 0
18	" Sardar Jogendra Singh	170 4 0
19	" Raja Pramada Nath Roy of Dighapatia	800 0 0
20	" Sir Alexander Murray, Kt.	677 8 0
21	" Mr. Altaf Ali	81 2 0
22	Right Hon'ble V. S. Srinivasa Sastri	622 8 0
23	Hon'ble Sir Edgar Holberton, Kt., C.B.E.	677 8 0

Statement showing the amount drawn by Members of the Council of State who travelled in reserved compartment—contd.

Serial No.	Names of Members.	Amount.
		Rs. A. P.
SIMLA SESSION, 1921.		
1	Hon'ble Mr. P. C. Sethna	971 0 0
2	" Raja Moti Chand, C.I.E.	670 8 0
3	" Dr. Ganganath Jha	588 8 0
4	" Maharaja Sir Manindra Chandra Nandy, K.C.I.E., of Kasimbazar.	1,063 0 0
5	" Haji Chowdhary Muhammad Ismail Khan	1,211 4 0
6	" Mr. E. S. Lloyd	1,815 0 0
7	" Sir M. B. Dadabhoy, Kt., C.I.E.	1,011 4 0
8	" Mr. Altaf Ali	649 8 0
9	" Sardar Jogendra Singh	458 8 0
10	" Colonel Sir Umar Hayat Khan, K.C.I.E., C.B.E., M.V.O.	247 12 0
11	" Raja Sir Harnam Singh, K.C.I.E.	221 8 0
12	" Sir Dinshaw Wacha, Kt.	1,043 0 0
13	" Sir A. H. Froom, Kt.	1,069 8 0
14	" Sir Alexander Murray, Kt., C.B.E.	966 4 0
15	" Rai Bahadur Lala Ram Saran Das, C.I.E.	172 4 0
16	" Sir B. C. Mitter, Kt.	1,037 0 0
17	" Mr. K. V. Rangaswamy Aiyangar	2,143 14 0
18	" Maharaja Soshi Kanta Acharjya Chaudhury of Muktagacha	1,194 0 0
19	" Diwan Bahadur V. Ramabhadra Naidu	2,104 0 0
20	" Sir Zulfqar Ali, Kt., C.S.I.	354 8 0
21	" Mr. Lalubhai Samaldas	1,043 0 0
22	" Lala Sukhbir Sinha	202 6 0
23	" Maharaja Bahadur Keshava Prasad Singh, C.B.E., of Dumraon	775 0 0
24	" Sir Edgar Holberton, Kt., C.B.E.	549 14 0
25	" Raja Pramada Nath Roy of Dighapatia	1,128 8 0
DELHI SESSION, 1922.		
1	Hon'ble Diwan Bahadur S. R. M. Annamalai Chettiar	1,409 0 0
2	" Mr. G. S. Khaparde	863 4 0
3	" Mr. K. V. Rangaswamy Aiyangar	1,617 0 0
4	" Mr. E. S. Lloyd	826 0 0
5	" Khan Bahadur Aminul Islam	752 8 0
6	" Mr. H. T. S. Forest	388 4 0
7	" Raja Sir Harnam Singh, K.C.I.E.	114 8 0
8	" Mr. Chandra Dhar Barua	376 4 0
9	" Maharaja Bahadur Keshava Prasad Singh, K.B.E., of Dumraon.	490 8 0
10	" Rai Bahadur Lala Ram Saran Das, C.I.E.	154 8 0
11	" Colonel Sir Umar Hayat Khan, K.C.I.E., C.B.E., M.V.O.	433 10 0
12	" Sir Dinshaw Wacha, Kt.	746 8 0
13	" Hon'ble Sir A. Froom, Kt.	746 8 0
14	" Mahamahopadhaya Dr. Ganganath Jha.	223 0 0
15	" Dewan Tek Chand, C.B.E.	123 0 0
16	" Raja Moti Chand, C.I.E.	446 8 0
17	" Diwan Bahadur V. Ramabhadra Naidu	1,733 12 0
18	" Raja Pramada Nath Roy of Dighapatia	832 8 0
19	" Sir M. B. Dadabhoy, Kt., C.I.E.	768 0 0
20	" Mr. P. C. Sethna	1,119 12 0
21	" Maharaja Soshi Kanta Acharjya Chaudhuri of Muktagacha	1,021 0 0
22	" Haji Chowdhri Muhammad Ismail	954 0 0
23	" Khan Bahadur Ibrahim Haroon Jafar	865 8 0
24	" Sir Alexander Murray, Kt.	752 8 8
25	Right Hon'ble V. S. Srinivasa Sastri, P.C.	1,119 8 0
26	Hon'ble Rai Bahadur Lala Ram Saran Das, C.I.E.	556 6 0

Statement showing the amount drawn by Members of the Council of State who travelled in reserved compartment—concl'd.

Serial No.	Names of Members.	Amount.
	SIMLA SESSION, 1922.	Rs. A. P.
1	Hon'ble Raja Sir Harnam Singh, K.C.I.E.	233 0 0
2	" Maharaja Soshi Kanta Acharjya Chaudhury of Muktagacha	1,531 12 0
3	" Sardar Jogendra Singh	308 8 0
4	" Nawab Sir Bahram Khan, K.C.I.E., K.B.E.	236 0 0
5	" Sir A. Froom, Kt.	1,268 0 0
6	" Colonel Sir Umar Hayat Khan, K.C.I.E., C.B.E., M.V.O.	630 0 0
7	" Raja Venganadrāsda Raja, C.I.E., of Kollangode	2,589 12 0
8	" Sir Alexander Murray, Kt., C.B.E.	540 14 0
9	" Sir M. B. Dadabhoi, Kt., C.I.E.	948 12 0
10	" Maharaja Bahadur Keshava Prasad Singh, C.B.E., of Dumraon.	937 8 0
11	" Mr. P. C. Sethna	633 0 0
12	" Piwan Bahadur Annamalai Chettiar	1,681 8 0
13	" Sir Dinshaw Wacha, Kt.	949 8 0
14	" Mr. K. V. Krishnaswamy Ayyangar	1,493 2 0

Statement showing approximately amounts drawn by Members of the Council of State and of the Legislative Assembly on account of travelling and halting allowances paid to them since the inauguration of the "Reformed Councils" and for their attendance on the various Committees, etc.

Nature and period of the charge.	Amount.
	Rs. A. P.
<i>Bills paid during the year 1920-21.</i>	
Members of the Legislative Assembly	1,45,751 0 0
Members of the Council of State	54,615 0 0
<i>Bills paid during 1921-22.</i>	
Members of the Legislative Assembly	4,06,602 0 0
Members of the Council of State	1,40,946 0 0
Bills paid during 1921-22 for attendance on various committees:—	
Repressive Laws Committee	7,059 0 0
Press Laws Committee	4,937 0 0
Indian Students Committee	8,461 0 0
All-India Income-tax Committee	1,916 0 0
Indian Fiscal Commission	10,458 0 0
Piece Workers Committee	754 0 0
	+1,421 0 0
<i>Bills paid during 1922-23.</i>	
Members of the Legislative Assembly	1,37,376 0 0
Members of the Council of State	55,691 0 0
Bills paid during 1922-23 for attendance on various Committees:—	
Arms Rules Committee	8,726 0 0
Railway Risk Notes Committee	4,750 0 0
Criminal Procedure Committee	618 0 0
North-West Frontier Committee	20,360 0 0
Racial Distinction Committee	6,694 0 0
Standing Committee on Indian Emigration	5,046 0 0
Workmen's Compensation Committee	3,400 0 0

(Sd.) O. S. PEREIRA,

Assistant Accounts Officer,

Office of the Deputy Accountant General, Central Revenues, Delhi.

QUESTIONS AND ANSWERS.

"INDIAN RAILWAYS" BY RAI SAHIB C. P. TIWARY.

282. *Mr. N. M. Joshi: Has the attention of Government been drawn to the remarks relating to the meagre details presented with the railway budget, appearing at page 398 of the book called Indian Railways by Rai Sahib Chandika Prasad Tiwary? If so, do Government propose to furnish the members with copies of the establishment rolls and working estimates referred therein?

The Honourable Mr. C. A. Innes: Government have seen the remarks referred to. They regret that Members cannot be furnished with copies of the establishment rolls and working estimates, as these can be got ready only after the grant of sanction by the Legislature and after the Budget orders thereon are communicated to individual railway administrations.

Mr. N. M. Joshi: Will Government be pleased to furnish us with copies of the establishment rolls of the previous year?

The Honourable Mr. C. A. Innes: I am afraid, Sir, that that would be a very expensive business. Here is a copy (shown) of the establishment rolls and working estimates for a single railway.

Mr. N. M. Joshi: May I ask, Sir, how many copies are printed when the copies are printed for the use of the office?

The Honourable Mr. C. A. Innes: I am afraid I do not know, Sir.

Mr. N. M. Joshi: Will Government inquire?

The Honourable Mr. C. A. Innes: Yes, Sir.

LIGHTING ON B. & N. W. RAILWAY.

283. *Khan Bahadur Sarfaraz Hosain Khan: (a) Are the Government aware that some of the compartments of the passenger trains on the Bengal and North-Western Railway are not usually provided with light?

(b) Do the Government propose to advise the authorities to make proper arrangements for light in all the passenger trains of the Railway?

The Honourable Mr. C. A. Innes: (a) The Government of India understand that all compartments of passenger trains on the Bengal and North-Western Railway are provided with lights and their maintenance receives the continual attention of the Railway Administration. Specific cases of complaint in this respect brought to the notice of the Administration will receive attention.

(b) Government do not consider that any instructions to the railway authorities are necessary.

Mr. J. Chaudhuri: Is the Honourable Member aware that there are no adequate arrangements for refreshments along the same line?

The Honourable Mr. C. A. Innes: I do not see how that question arises out of the question I have just answered.

Mr. J. Chaudhuri: Because the railway exists for the convenience of passengers and food is a greater necessity than light.

Mr. President: That question does not arise.

PRESS FINE FUND.

284. *Khan Bahadur Sarfaraz Hosain Khan: (a) Do the Government maintain a fund called the Press Fine Fund in the interest of the employees of Government Presses?

(b) If the answer to the above question be in the affirmative, will the Government be pleased to state:

(i) The total amount of the fund up to December last?

(ii) The total number of press workmen who have got relief in their distress?

Mr. A. H. Ley: (a) Yes.

(b) (i) Rs. 2,592-6-0.

(b) (ii) Two grants have been made from the fund in the Delhi Press. No application for grants has been made in the Calcutta or Simla presses.

ADVANCE OF PASSAGE MONEY.

285. *Khan Bahadur Sarfaraz Hosain Khan: Is it a fact that the Imperial Services have recently been granted the privilege of obtaining advance of passage money for themselves and their families to enable them to go home on leave, whereas the European members of the Provincial Civil Services have not been allowed this privilege?

The Honourable Sir Basil Blackett: Orders are under issue extending the concession to Provincial Services.

Mr. K. B. L. Agnihotri: Does the Government intend to extend the privilege to the Indian Members of Council who may desire to avail themselves of it?

The Honourable Sir Basil Blackett: I think that question does not directly arise out of this answer.

ATTENDANCE AT MEETINGS OF THE LEGISLATURES.

286. *Maulvi Miyan Asjad-ul-lah: (1) Will the Government be pleased to state the names of the members who have not attended a single meeting of any session or more sessions than one of the Indian Legislatures held between February, 1921, and the September session of 1922, and the respective constituencies they are returned from?

(2) Are the Government aware that there are no provisions of rules enforcing attendance of members except for those who will be absent for a period of two consecutive months while going abroad (out of India)?

(3) Do Government propose for the benefit of the country to make necessary provision in the rules to compel members of the Legislatures to vacate their seats for not attending the meetings of the Council and the Assembly regularly?

Sir Henry Moncrieff Smith: (1) Government has no certain information as to the Members of the Indian Legislature who have not attended a single meeting of any Session or who did not attend more than one Session between February, 1921, and the September Session of 1922, but the number of such Members so far as is available, is given in the Statement which is laid on the table.

(2) and (3) The Honourable Member is obviously aware of the provisions of Section 93 (2) of the Government of India Act. That section empowers the Governor General to declare that the seat of a Member has become vacant if, for a period of two consecutive months, such Member is absent from India or is unable to attend to the duties of his office as a Member. There is no other statutory provision having the effect, directly or indirectly, of enforcing the attendance of Members. The Government do not propose to take any action in the matter as they are of opinion that under the reformed constitution an elected Member of a Legislature is primarily responsible to his constituency for the due performance of his duties as a Member. In any case where a Member fails to attend meetings regularly, it is open to his constituency, should it feel itself aggrieved by his absence, to move the Governor General to exercise the power vested in him by Section 93 (2).

Statement showing the number of Members absent from meetings of the Indian Legislature.

LEGISLATIVE ASSEMBLY.

Number of Members who did not attend any meetings of the Delhi Session, 1921 (the first session of the Indian Legislature).	2
Number of Members who did not attend the second session from September 1921 to March 1922.	5
Number of Members who were absent throughout the September Session, 1922.	19

COUNCIL OF STATE.

Number of Members who did not attend any meetings of the Delhi Session, 1921 (the first session of the Indian Legislature).	Nil
Number of Members who did not attend the second Session from September 1921 to March 1922.	Nil
Number of Members who were absent throughout the September Session, 1922.	7

Mr. J. Chaudhuri: Has the Government asked any non-official nominated members who have been regularly absent to resign their seats and nominated others in their place?

Sir Henry Moncrieff Smith: No non-official nominated member has been asked to resign his seat; but I think the Honourable Member will have seen recently that one seat previously occupied by a nominated non-official member has been declared vacant.

POLICE SUPERINTENDENT ON FOREIGN SERVICE.

287. *Sir Montagu de P. Webb: (a) What is the rate of contribution levied by Government from a foreign employer on account of the pension only, of a District Superintendent of Police transferred to foreign service?

(b) Does the rate of levy represent the value, expressed as a portion of his pay, of the transferred officer's pension?

(c) If not, what does it represent?

The Honourable Sir Basil Blackett: (a) The revision of the rate of contribution is under consideration, recoveries are at present being made provisionally at the rate of $\frac{1}{2}$ of pay, foreign employers being told that the amounts are liable to alteration.

(b) and (c) The rate is intended to represent the ratio that the cost likely to be incurred by Government in respect of an officer's pension bears to the cost of his pay.

PAY AND PENSIONS OF SERVICES.

288. ***Sir Montagu de P. Webb:** What is the actual annual increase in the charge upon public funds since the 1st August, 1914, under each of the heads (a) pay and allowances, (b) pensions, including refund of contributions, and (c) family pensions, in respect of each of the following cadres:—

(A) The Indian (Imperial) Police.

(B) The Indian Civil Service.

The Honourable Sir Malcolm Hailey: The information is being collected and will be supplied to the Honourable Member. I may explain that it will not be available for some time as we shall have to ask Audit Officers, the India Office and the High Commissioner for figures.

TRAVELLING FACILITIES FOR 3RD CLASS PASSENGERS.

289. ***Mr. N. M. Joshi:** Will Government be pleased to state what steps they have taken to give effect to the resolution passed by the Legislative Assembly on 7th September 1922, regarding the improvement of travelling facilities for 3rd class passengers?

The Honourable Mr. C. A. Innes: The Railway Board have been in correspondence with the principal Railway Administrations on the subject and have asked them to submit special reports on the principal points of complaint relating to third class passengers. The reports are being received and when they have been examined, the question of publication will be considered.

COAL MINE ACCIDENT AT PERBELI.

290. ***Mr. N. M. Joshi:** Will Government be pleased to state (a) the cause of the accident in a coal mine that recently took place at Perbeli, (b) the total number of persons killed and injured in the accident, (c) what steps Government propose to take to prevent such accidents hereafter and (d) whether compensation will be paid to the families of those who were killed and to those who will be permanently disabled?

Mr. A. H. Ley: (a) Government have not yet received information as to the cause of the accident beyond the bare statement that it was the result of an explosion of gas.

(b) So far as known, seventeen persons were killed outright and 58 injured, of the latter all save one have succumbed to their injuries.

(c) An official enquiry under section 18 of the Mines Act has been ordered by the Government of Bihar and Orissa, and, until a report of that enquiry is received, it is impossible to decide on the steps to be taken to prevent the occurrence of such accidents hereafter. Government will give the question their most careful consideration.

(d) There is at present no statutory obligation on employers to compensate the families of the killed or the injured. But Government are confident that a Company of the high standing of the Bengal Coal Company will do all in their power to relieve the hardship and suffering caused by this most lamentable accident.

Sir Deva Prasad Sarvadhikary: Is it a fact that these accidents due to gas explosions have been on the increase of late? If so, what are the reasons? And when Government receive this report will enquiries be made as to whether that is a fact and whether steps cannot be taken for preventing them?

The Honourable Mr. C. A. Innes: I cannot give the Honourable Member a categorical answer to that question, but I may point out that our mines are now beginning to get deeper and as coal mines get deeper the danger of gas becomes worse. The whole question of safety lamps and other preventatives against these accidents has, I believe, been for some time under the consideration of the Mining Board. I am afraid that is the only answer to the question that I can give.

CATERING DEPARTMENT, B. N. RAILWAY.

291. ***Mr. N. M. Joshi:** Will Government be pleased to state (a) the functions and activities of the Catering Department of the Bengal Nagpur Railway, (b) the amount spent during the year 1921-22 on the Indian Branch and the European Branch of the Department separately and (c) the amount of profit or loss made on each branch during the year 1921-22?

The Honourable Mr. C. A. Innes: (a) The functions of the Catering Department of the Bengal Nagpur Railway are:

- (i) to ensure the service of good meals and refreshments for the benefit of the travelling public;
- (ii) to provide the staff with meals when on the line and with facilities for readily obtaining their provisions and stores at reasonable prices.

(b) The amount spent during the year 1921-22 on the Indian Branch of the Department was Rs. 33,289 and on the European Branch Rs. 2,79,700.

(c) The net profit made on the Indian Branch including licence fees aggregating Rs. 27,460 was Rs. 28,319 and on the European Branch Rs. 20,558.

Mr. N. M. Joshi: Considering these figures, will the Government see the necessity of increasing the amount spent on the Indian Branch and decreasing that on the European Branch as the European Branch does not pay so much as the Indian Branch?

The Honourable Mr. C. A. Innes: They both pay, but I should like to point out that the European Branch is a misnomer, as the European Branch provides not only for Europeans but for all Indians who live in the European style.

Mr. N. M. Joshi: Does the Government consider this sufficient reason for their spending money on a Branch which does not pay so much, neglecting another Branch which pays more?

The Honourable Mr. C. A. Innes: Both Branches pay and Government consider that Railways must consider the comfort and convenience of all classes of passengers.

Sir Deva Prasad Sarvadhikary: Is there a similar department in connection with the East Indian Railway or the Eastern Bengal State Railway? If so, what is the result of working there?

Mr. President: I think the Honourable Member must give notice of that question;

X'MAS CONCESSIONS ON RETURN TICKETS.

292. ***Mr. N. M. Joshi:** Will Government be pleased to state the reasons why the X'mas concession on return tickets is not extended to the Intermediate and third class passengers?

The Honourable Mr. C. A. Innes: Government understand that the reason for limiting the X'mas concession to 1st and 2nd class passengers is that there is ordinarily more accommodation available in these than in the other classes.

As already stated in the reply to question No. 145 on the 17th January 1923 Government are bringing the matter of extending these concessions to the notice of Agents who will no doubt act in this direction as circumstances and conditions permit.

Mr. N. M. Joshi: Am I to understand from the answer that in the case of first and second class carriages there is a surplus available always?

The Honourable Mr. C. A. Innes: The intention of the answer is to bring out the fact that railways are commercial undertakings and that they give these concessions in order to increase traffic.

PUBLICATIONS OF PUBLICITY BUREAU.

293. ***Mr. N. M. Joshi:** Will Government be pleased to state (a) whether copies of the publications of the Publicity Bureau of the Government of India and of the annual report relating to the moral and material progress of India will be given free to all the members of the Indian Legislatures and (b) whether any copies of such publications are distributed free outside India and if so, what is the number of copies thus distributed of each publication?

The Honourable Sir Malcolm Hailey: (a) Copies of the Moral and Material Progress will in future be supplied free of cost to Members of the Indian Legislature. It is not considered necessary to provide copies of other publications free of cost.

(b) Yes, Twelve hundred copies of the Moral and Material Progress Report are sent to the Secretary of State for submission to Parliament. No copies of other publications are distributed free outside India.

Mr. N. M. Joshi: May I ask if the other publications of the Government of India are sent free to people who are not members of the Legislative Assembly?

The Honourable Sir Malcolm Hailey: The question referred to copies of publications of the Publicity Bureau of the Government of India. If the Honourable Member will subsequently ask me about the other publications I shall be able to supply the information asked for.

Mr. N. M. Joshi: Am I to understand from this answer that these publications are given free to members of the Assembly?

The Honourable Sir Malcolm Hailey: Which publications?

Mr. N. M. Joshi: Publications of the Publicity Bureau?

The Honourable Sir Malcolm Hailey: I have said, Sir, that copies of the Moral and Material Progress Reports will be given free. It is not considered necessary to give other publications.

Mr. N. M. Joshi: My question, therefore, is whether Government is aware that copies of the other publications are distributed free to Members of Parliament in England.

The Honourable Sir Malcolm Hailey: No, Sir; I do not understand that; my answer was that copies of the Moral and Material Progress Report are distributed free but not other publications.

Mr. N. M. Joshi: My question is about other publications also and I want a reply about the other publications.

The Honourable Sir Malcolm Hailey: And I cannot reply to a question which does not refer to the subject matter of the original question. The Honourable Member asked me about copies of the Moral and Material Progress Report issued by the Publicity Bureau of the Government of India; I am not at present prepared with information regarding other publications.

Mr. N. M. Joshi: Please look at my question; it is whether copies of publications of the Publicity Bureau of the Government of India and of the Annual Report are distributed free; I want to know whether publications besides the Annual Report are distributed free.

Mr. President: Order, order; the Honourable Member has had his answer; if he looks at it when printed he will find that it is full and sufficient.

INCONVENIENCES AT RAISINA.

294. ***Rai Sahib Lakshmi Narayan Lal:** Are Government aware of the great inconvenience to which the residents of Raisina, Delhi, are put to owing to the want of (1) a high school for boys, (2) schools for girls (both European and Indian), and (3) recreation grounds, (i.e., football, tennis, etc.), for Government servants and their children? If so, do they propose to take necessary steps at once for the construction of the buildings required for the above institutions, etc.

The Honourable Mr. A. C. Chatterjee: For some years primary schools for Indian boys and girls have been located temporarily in clerks' quarters at Raisina, while during the winter season accommodation has been provided for a private school for European children of both sexes whenever asked for and whenever available. The construction of a high school will be begun in February next, while that of two primary schools, one for boys and the other for girls is nearing completion.

There are three clubs in Raisina which between them provide recreation for all classes of Government servants, except the artisans and menials. At all of these tennis can be played. There are also temporary public recreation grounds for football and hockey. The laying out of permanent grounds is now in progress.

ASSAULT ON A MEMBER OF LEGISLATIVE ASSEMBLY AT CAMPBELLPUR.

295. *Mr. Mohammad Yamin Khan: (a) Is it a fact that a Member of the Legislative Assembly while getting into a first class compartment of the Bombay Mail at Campbellpur Junction of North-Western Railway on the morning of the 7th January, 1923, was insulted and assaulted by the Guard in charge of the train and the said Member made a report to the Station Master?

(b) What action, if any, has been taken by the Government?

(c) Do the Government propose to make an inquiry if the matter has not reached the Government as yet?

Mr. C. D. M. Hindley: A report has been called for from the Agent, North Western Railway, and it will be decided what action has to be taken, if any, on receipt of that report.

SEARCH LIGHTS ON TRAINS.

296. *Mr. Mohammad Yamin Khan: (a) Has it been suggested to the Government that there should be a powerful search light at the head and at the back of every passenger train to avoid collision in night time?

(b) If suggestion of this nature has been made do the Government propose to consider this question?

Mr. C. D. M. Hindley: (a) and (b) The question of the provision of electric head-lights on engines to ensure greater safety has been under consideration for some time and some Railway Administrations have already introduced them on certain sections experimentally. The question was informally discussed by the Indian Railway Conference Association at their meeting which was held in October last and the matter is now under correspondence between the Railway Board and the different railway administrations.

UNSTARRED QUESTIONS AND ANSWERS.

GRATUITIES ON RAILWAYS.

112. Mr. N. M. Joshi: Will Government be pleased to say (a) whether the order regarding the gratuities of the Railwaymen passed by the Secretary of State for India and His Excellency the Viceroy in the Government Gazette of 12th July, 1922 (Order No. 571-F-17), has been communicated for action to the different Railway administrations; and if so, (b) whether it is being acted upon by them?

Mr. C. D. M. Hindley: (a) and (b) The orders referred to have been communicated to the different Railway Administrations and as far as the Government are aware, are being acted upon.

REDUCTIONS ON RAILWAYS AND IN POSTAL DEPARTMENT.

113. Mr. N. M. Joshi: Are Government aware that reductions in low-paid sections of the establishments are made on the several Railways and in the Postal Department without any consideration whatsoever, of their long-standing and loyal service and throwing them out of employment practically with nothing to depend upon?

UNSTARRED QUESTIONS AND ANSWERS. 1613

Mr. C. D. M. Hindley: The Government regret that they are unable to consider sweeping statements of this nature. If any railway establishment is reduced, endeavour is invariably made to provide in other departments of railway working for those members of the permanent staff of long and loyal service whose appointments are abolished.

I would, however, remind this House that when the Railway budget for 1922-23 was being considered, great stress was laid, especially by non-official members, in the interests of economy, on the necessity for reducing ordinary working expenses.

All Agents have been giving this matter very close attention.

The principal means, in fact almost the only one, of securing such reduction is by getting rid of staff who are considered to be not absolutely indispensable.

These reductions have only been made after very careful investigation often by an officer specially appointed for this purpose.

No existing appointments in the Postal Department have so far been abolished, but the Director General, Posts and Telegraphs, has recently issued orders that permanent vacancies at the lowest points of chains of arrangements due to retirements, deaths, etc., in certain postal establishments should be temporarily left unfilled as far as possible and when this can be done with due regard to efficiency. Officials, therefore, have not been thrown out of employment, nor have their prospects been affected. Should it be found necessary to abolish appointments in the interests of economy special care will be taken in selecting the officials for discharge in consequence.

CHINAMEN IN RAILWAY WORKSHOPS.

114. Mr. N. M. Joshi: Are Government aware that while Indian workers are discharged from Railway workshops, their places are given to Chinamen on much higher wages?

Mr. C. D. M. Hindley: Government do not admit the truth of the allegation contained in this question.

"G. I. P. WEEKLY NOTES."

115. Mr. N. M. Joshi: Is the paper called the *G. I. P. Weekly Notes* intended for the highly paid officials only; if not, why is it not supplied to all who ask for it though some of the notices appearing therein also affect the welfare of the workers?

Mr. C. D. M. Hindley: Government has no information on the subject.

NICKEL EIGHT AND FOUR ANNA PIECES.

116. Lala Girdharilal Agarwala: (a) Are nickel-made eight-anna and four-anna pieces current coins at present?

(b) Is it not a fact that Delhi merchants refuse to accept them on the allegation that a prohibitory order has been issued in this respect by the local authority?

(c) What action do the Government propose to take in the matter if any?

The Honourable Sir Basil Blackett: (a) and (c) I invite the Honourable Member's attention to the answer which I gave on the 23rd instant to a question on the same subject by Mr. K. N. Mitra. Nickel eight and four-anna pieces are current coins; the former are not now coined and issued by Government, but coins already issued are current like any other coin.

(b) There is no foundation for the allegation that a prohibitory order has been issued in this respect by any local authority.

CATTLE DETERIORATION.

117. Lala Girdharilal Agarwala: Has the attention of the Government been drawn to a letter issued by the Honorary Secretary, Marwari Association, Calcutta, on the 10th December, 1922, on the subject of cattle deterioration? If so, will the Government be pleased to lay the same on the table for the information of the House and state whether any action has been taken or is proposed to be taken in the matter?

Mr. J. Hullah: A copy of this letter has been received by Government and is appended. The attitude of Government in the matter was defined by the Honourable Mr. Sarma in his speech on the 19th September, 1922, in the Council of State in reply to the Honourable Lala Sukhbir Sinha's Resolution regarding the appointment of a Committee to enquire *inter alia* into the condition of grazing lands and the Government of India see no reason to depart from that attitude.

THE MARWARI ASSOCIATION.

100, HARRISON ROAD.

Calcutta, the 10th December 1922.

FROM

THE HONORARY SECRETARY,
MARWARI ASSOCIATION, CALCUTTA,

TO

THE HONOURABLE RAO BAHADUR B. N. SARMA.

DEAR SIR,

In view of the grave economic situation which has been created by the gradual but steady decline and deterioration of the cattle stock of the country, I am desired by the Marwari Association to address this appeal to you on the urgency of providing pasture land for the grazing of our draught and dairy cattle.

The villages in the interior where the nation lives furnish unmistakable proof of the awful decline and deterioration that have taken place in the number and quality of our cows, bulls and bullocks. In most of the rural homes, cows, bulls or bullocks are now conspicuous by their absence, the few that can be seen in others are mostly famished animals with visible ribs which can hardly be expected to be either good milkers or good plough cattle, and milk and milk products are scarcely available and extremely dear in consequence. But it is a matter of common knowledge that only a few decades back, cows, bulls and bullocks formed part of the possessions of almost every householder, many people used to keep large herds and milk and milk products were to be had in plenty and at a cheap price.

Ample evidence of their falling off in number and quality is available in the official records also. According to the live stock statistics recently published by the Government of India, the total number of cattle which was 147 millions in 1914-15 came down to 145 millions in 1919-20, in other words, there was a decline of more than 2 per cent. in 5 years. Is it necessary to point out that if the decline continues at this rate, the time is not far distant when the whole race of cow will be extinct in India?

As a result of this decline, the number of cattle per hundred of population now comes to 59, while it is 74 in Denmark, 79 in the United States of America, 80 in Canada, 120 in Cape Colony, 150 in New Zealand and 259 in Australia. The proportion is still higher in some other countries. If it is remembered in this connection that all the above countries are industrially far more advanced and economically far more prosperous than India and their people are not dependent mainly upon agriculture for their livelihood or upon milk and milk products for their nourishment like the people of India, it will be clear that the proportion of cattle per 100 of population is far too low in India.

In fact, the number of cattle now available in the country is inadequate for its needs. According to the official records, the area of arable land in British India is 228 million acres, but the number of plough cattle is only 49 millions. Leaving aside 25 per cent. of this number as sick, old and infirm and 25 per cent. for other works, 24½ millions only are available for purposes of cultivation. It means that a pair of cattle which, as every one knows, cannot properly till more than 5 acres of land in a season, has to till 19 acres, in other words, has to do the work of 4 pairs. It also means that India has only one-fourth the number of cattle required for the cultivation of its arable land. No wonder that cultivation in the country has become extremely inefficient and the rate of outturn of even the staple crops, such as wheat and rice, extremely poor compared to that of other countries. While the outturn of wheat is only 11·5 bushels per acre in India, it is 32 in Japan, 33 in Denmark, 30 in Great Britain and 32·5 in Switzerland. As regards rice, while India produces 35 bushels to the acre, Spain turns out 101 bushels. No wonder that although India requires about 9 crores tons of food grains for the consumption of her people every year, she is unable to produce much more than half that quantity and crores of people have to drag on a miserable existence, living on one meal a day or on semi-liquid food like rice water from years end to years end and many have to starve.

More deplorable is the condition in regard to our stock of milch cattle. The country does not possess more than one-eighth the number required to supply the people with a fair quantity of milk. There are said to be 50 millions of milch cattle in the country but ill fed and famished as they are, they have mostly lost their characteristics as good milkers. How greatly our milch cattle have deteriorated in quality will be evident from the fact that while only a quarter of a century back, the daily average yield of milk per head of cattle was 5 seers, it is 1 seer now. But where is the wonder? Can we expect milk from mere bags of bones? In England and Denmark the average yield of milk per day per head of cattle is 20 lbs. Could deterioration of Indian cattle go further? But this is not all. According to official publications, some of the finest breeds are in danger of total extinction. Where is the wonder that milk and milk products have become extremely scarce and dear, the rich man's luxury, beyond the reach of the middle and the poorer classes? While the price of food grains has risen 5 to 7 times during the last 60 years, that of milk has risen more than 40 times and even at such high price pure milk is not available.

The above figures reveal a terrible state of things from the point of view of the country's economic future and the health of the people and necessitate serious reflection.

Having regard to the fact that the cattle problem of the country is inseparably linked up with its health and bread problem, it is not a moment too soon now to find out the causes and to take necessary steps to remove them. One of the main causes which have contributed to bring about this serious decline and deterioration of India's cattle stock is the utter inadequacy of grazing grounds which, according to expert opinion, tells severely upon their health and is the most important circumstance adverse to cattle breeding. What generally happens is that the owners, who are mostly poor and cannot afford the expenses of sufficiently feeding their cattle at home are compelled to sell them at a young age as they become too weak and emaciated to be of any service. None but the butchers care to buy such cattle and so, after serving their masters ill fed and ill nourished, throughout the few years of their life, these most useful domestic animals ultimately but prematurely go to the butchers' knife. Statistics show that about 10 millions of cattle are slaughtered every year in India. Who knows how many millions more find relief in death otherwise?

From official publications it appears that gradual encroachment on grazing lands both by the State and the people has led to the present awful want of pasture land and, as in other respects so in this, the condition in India is now the worst of all countries in the world. The area of land available per head of cattle for grazing is only 1·7 acre in Bengal and a little more in other parts of India, while it is 1·6 acres in the United States of America, 1·35 acres in New Zealand and 1·44 acres in Germany.

though the price of land in those countries is far higher than in India. Cultivation of fodder crops is also very scanty, being only a little over 1 per cent. of the cropped area while in America it is 3.5 per cent. The prevalence of infectious diseases like rinderpest which carries off a large number of cattle every year is said to be due to no small extent to this cause.

The foregoing paragraphs show unmistakably that the miserable condition of the cattle stock of the country, their awful decline in number and deterioration in quality, is due chiefly to neglect on the part of the Government and the people. It is very much to be regretted that in a country where, in the olden days, the laying aside of a tenth part of every village for pasturage was the law, where the keeping and rearing of cow was regarded as an act of merit and entitled the owners to titles of distinction, the people should forget themselves so far as to neglect the cow, the bull and the bullock. But the result of this neglect has been terrible. The inefficiency of cultivation, poor outturn of crops, scarcity and unparalleled rise of milk and milk products which constitute the chief nourishment of the people, insufficient supply and dearness of food and the consequent deterioration of the physical stamina of the people which makes them subject to frequent attacks of all sorts of diseases, heavy mortality among women of the child bearing age, and among infants for want of nutrition and the gradual but steady advent of wasting diseases like tuberculosis are all attributable, in a large measure, to the depletion and deterioration of the cattle stock. To continue to neglect these animals is to invite irretrievable economic disaster to the country.

It is therefore high time that Government were approached for legislation on the subject authorising the District Boards and Municipalities to spend some portion of their income to acquire land for the free grazing of cattle till sufficient land has become available for the purpose in their jurisdiction, permitting free grazing in specified areas of Government forests and on the sides of public roads and providing for pasture land in Government Khas Mahals. My Association feel that while pressing the need of such a law on the attention of Government, if the Maharajas, Rajas, Nawabs and other big landlords, members of legislatures and the self-governing institutions of the country, such as the District Boards and Municipalities, will strive heart and soul and with a harmonious singleness of purpose to do what can be done independently of Government aid, it is yet possible to minimise the difficulties of the situation and to avert that otherwise inevitable disaster, at least to a large extent. All that is needed is to prevent encroachment upon pasture lands and where there is no land set apart as such, to see that all the available land is not brought under the plough every year, but that some portion is left uncultivated for two or three years at a stretch to be utilised for cattle grazing. When in due course that area is taken up for cultivation, an equal portion may be similarly left out elsewhere. While removing the want of pasture land, it will also increase the fertility of the land to the great benefit of the cultivators themselves. The fact cannot be ignored that by bringing every inch of available land under the plough every year and by depriving the household cattle of their grazing, more harm than good is done to the country.

It is therefore the earnest hope of my Association that in the best interests of the motherland you will do all that lies in your power to see that the existing inadequacy of pasturage is removed.

Yours faithfully,

(Sd.) DEBI PRASAD KHAITAN,
Honorary Secretary.

AUTUMN SESSION OF THE LEGISLATURE.

118. **Lala Girdharilal Agarwala:** Will the Government be pleased to state whether they contemplate holding a session of the Legislative Assembly and the Council of State during August or September this year? If so, when approximately and where (Simla or Delhi)?

Sir Henry Moncrieff Smith: The Government are not in a position to give the information asked for by the Honourable Member. I would remind him that under sub-section (2) of section 63-D, it is the Governor General and not the Government who has power to appoint such times and places for holding sessions of either Chamber as he thinks fit.

INTERMEDIATE AND THIRD CLASS PASSENGERS.

119. **Lala Girdharilal Agarwala:** On what Railways are intermediate and third class passengers not allowed to travel by mail trains (except servants)?

Mr. C. D. M. Hindley: The Honourable Member is referred to the time-tables and guides published by railways from time to time in which he will find the information he requires.

INTERMEDIATE & THIRD CLASS PASSENGERS ON MAIL TRAINS.

120. **Lala Girdharilal Agarwala:** Are the Government reconsidering and revising the rules so as to allow intermediate and third class passengers holding long journey tickets to travel by mails uniformly on all Railways?

Mr. C. D. M. Hindley: The rules in this respect vary necessarily with the conditions of traffic on different railway systems, and Government do not interfere ordinarily in a matter of this kind. If there are any special cases where the present rules cause serious inconvenience Government have no doubt that the railway administrations concerned will be prepared to listen to representations on the subject.

SERVANTS TRAVELLING BY RAIL.

121. **Lala Girdharilal Agarwala:** Do the Government propose to modify the rules with regard to travelling of servants accompanying their masters on mail trains on Indian Railways by doubling the maximum number of servants in the case of first and second class passengers and also allowing one servant to travel with intermediate class passengers?

Mr. C. D. M. Hindley: Government do not consider that the present is a suitable time to take up this question in view of the limited accommodation for servants on mail trains.

3RD CLASS BOOKING OFFICE AT GHAZIABAD.

122. **Mr. Mohammad Yamin Khan:** Is it a fact that the 3rd class Booking Office at Ghaziabad station is outside the station and far removed from the 3rd class waiting hall and passengers suffer great inconvenience during rain and heat?

Mr. C. D. M. Hindley: The question was referred to the Agent, East Indian Railway, who reports that the third class Booking Office and waiting hall at Ghaziabad station are contiguous.

FANS ON R. & K. RAILWAY.

123. **Mr. Mohammad Yamin Khan:** Does the Rohilkhand and Kumaon Railway line provide fans in the 1st and 2nd class compartments during hot season? If not, will the Government be pleased to ask the Company to provide them?

Mr. C. D. M. Hindley: Fans are provided, during the hot season, in 1st class compartments on the Rohilkhand and Kumaon Railway. Hitherto 2nd class compartments on this railway have not been provided with fans but these are now being fitted.

SECOND GUARD ON O. & R. RAILWAY.

124. **Mr. Mohammad Yamin Khan:** Is it a fact that there used to be a second guard on the Oudh and Rohilkhand Railway who was generally an Indian? Does he still continue in addition to the Conductor?

Mr. C. D. M. Hindley: On grounds of economy Conductor Guards were taken off mail trains in November last.

Mail and passenger trains on the Oudh and Rohilkhand Railway carry either a Second Guard or Brakesman in addition to the Head Guard.

THIRD CLASS WAITING SHEDS.

125. **Mr. Mohammad Yamin Khan:** Is the Government aware that the 3rd class waiting sheds at Lucknow, Moradabad and Bareilly are occupied mostly by the stall-keepers to the discomfort of the passengers?

Mr. C. D. M. Hindley: The question was referred to the Agent, Oudh and Rohilkhand Railway, who reports that steps are being taken to reduce the number of vendors in third class waiting halls at Lucknow and Bareilly, and that similar action will be taken in the case of the waiting hall at Moradabad, if necessary, on completion of investigation.

WATCHMEN ON BRIDGES.

126. **Mr. Mohammad Yamin Khan:** Does the Government appoint watchmen on all bridges during the rainy weather after the incident near Amroha?

Mr. C. D. M. Hindley: Bridge watchmen are posted only where special circumstances render it desirable, and it has not been considered necessary to make any alteration in the arrangements for watching bridges owing to the Amroha accident. Railways are however usually patrolled during the rainy season.

BASAL STATION, N. W. RAILWAY.

127. **Mr. Mohammad Yamin Khan:** (i) Is there a raised platform on the Basal Junction station, North-Western Railway?

(ii) Is there a waiting room on the said station?

(iii) If the answer to (i) and (ii) is in the negative, will the Government be pleased to erect them?

Mr. C. D. M. Hindley: (i) No.

(ii) No.

(iii) These facilities are provided according as the number of passengers using the particular station justifies them and it is generally left to the Railway Administrations concerned to decide whether such facilities are or are not required at individual stations on their systems.

REGISTRAR, REVENUE AND AGRICULTURAL DEPARTMENT.

128. **Mr. K. C. Neogy:** (a) Is it a fact that the Registrar, Department of Revenue and Agriculture, Government of India, is on extended service?

(b) Is it a fact that his two predecessors were also granted extensions of service?

(c) Has it become a practice in the Department to grant extensions of service to every Registrar?

(d) When is the present Registrar of the Department due to retire?

(e) Is it contemplated to grant him further extension of service, and is the approval of the Honourable Member in charge of the Department required under Departmental rules to the grant of such extension of service?

(f) Do the Government intend to consider the desirability of discontinuing the practice of granting such extensions of service as these block promotions?

Mr. J. Hullah: (a) No.

(b) Yes.

(c) No.

(d) On the 1st July 1927, when he will attain the age of 60.

(e) The first part of the question does not arise. The orders of the Honourable Member are taken on all cases of extensions of service to gazetted officers of the Department.

(f) There is no such practice and such extensions are given only for special reasons.

REGISTRAR, R. & A. DEPARTMENT, AS ASSISTANT SECRETARY.

129. **Mr. K. C. Neogy:** Does the Government contemplate appointing the Registrar of the Department of Revenue and Agriculture as Assistant Secretary in the near future? If so, on what pay?

Mr. J. Hullah: The Registrar has been appointed temporarily as Assistant Secretary in addition to performing his own duties. The change was necessitated by the fact that the Under Secretary in the Department has gone on leave and it is not proposed to fill up the post pending consideration of the Incheape Committee's proposals. In addition to his pay as Registrar he draws a duty allowance of Rs. 250 per mensem for carrying on the dual duties. The net effect is a saving of Rs. 1,600 per mensem.

SUPERINTENDENTS IN R. & A. DEPARTMENT.

130. **Mr. K. C. Neogy:** (a) Is it a fact that no Indian has been appointed as a permanent Superintendent in the Department of Revenue and Agriculture since that department was created?

(b) If the reply to part (a) be in the affirmative will the Government please state the reasons for the same?

(c) Will the Government now promise to give effect to the policy of Indianisation by appointing permanent Indian Superintendents as several other Departments have done?

Mr. J. Hullah: (a) Yes.

(b) The reason is that only a few Indians were recruited in the early days of the Department, and the only two Indians who have so far become eligible by seniority for permanent appointment were both declared unfit to hold the post of Superintendent after being given a trial in that appointment.

(c) Promotion is by seniority subject to the test of efficiency and Assistants will be promoted on this basis regardless of the fact whether they are Europeans, Anglo-Indians or Indians. No promise can be given that Indians will be promoted out of their turn.

OUTSIDERS IN REVENUE AND AGRICULTURE DEPARTMENT.

181. **Mr. K. C. Neogy**: Will the Government kindly state:

(a) as to how many outsiders have been appointed in the Department of Revenue and Agriculture to the ministerial staff since 1916?

(b) how many of them were placed in the seniority list above other Assistants?

(c) what were the educational and special qualifications possessed by such outsiders?

Mr. J. Hullah: (a) The question is not understood. All appointments to the Department are necessarily made from outsiders.

(b) One.

(c) He passed the High School Examination for European Schools and studied up to the B.A. standard and was specially recommended as a good clerk and fit for a Superintendentship.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, before we proceed to the legislative business I have to ask your permission to move that the name of Mr. Rangachariar be added to the Select Committee which has been appointed to consider the Married Women's Property (Amendment) Bill. The rules provide that when the Law Member is not a member of this Assembly, one of the Chairmen shall be a member of the Select Committee. I wish to make this motion for the consideration of the Assembly.

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Hailey: I wish to place the House in possession of any plans we have for the disposal of business for the remaining days of the week. The House will see that they will be in the hands of Mr. Hullah and Mr. Innes and Mr. Burdon for to-day and probably to-morrow. If there is any business remaining over from the motions which will be put forward by those Honourable Members, we shall continue that business and finish it on Wednesday, and shall then proceed with the Criminal Procedure Code (Amendment) Bill. On Thursday there are two important Government Resolutions which will be put forward by Mr. Hullah. I hope to-morrow morning to make a statement regarding the business on Friday or Saturday. I cannot at present state whether our free day will be Friday or Saturday, but we shall be working on one of those two days.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Will the Honourable the Home Member inform the House of the two important Resolutions coming on for discussion?

The Honourable Sir Malcolm Hailey: Resolution regarding emigration.

Mr. J. Hullah (Revenue and Agriculture Secretary): Resolutions moving that the notifications already laid before the Assembly in respect of emigration to Malaya and to Ceylon be approved.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): I beg to move, Sir:

"That this Assembly do recommend to the Council of State that the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India, be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of twelve Members."

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, before the House commits itself to the principle of the Bill I wish to make a few observations. I do not in any way wish it to be understood that I rise to oppose the Bill; but I wish to point out one or two dangers against which I hope the Select Committee will make a provision. The first danger is this: the Fiscal Commission has unanimously recommended that there should be no export duty on cotton, for this reason—that if an export duty existed middlemen would take advantage of the existence of an export duty and try to get cotton from the growers at very cheap rates. Now, a cess is justified when the revenue derived from the cess is used for the purpose of benefitting the industry itself. I wish that the Select Committee would provide against the danger of middlemen exploiting this cess for the purpose of deceiving the grower of cotton into selling him cotton at cheap rates. That is the first danger. The second danger against which also a safeguard may be provided is this: as the Fiscal Commission has unanimously condemned the principle of export duties I wish the Select Committee to provide specifically that the instance of this cess may not at a future date be used as precedent for levying an export duty. These are the two dangers against which I hope the Select Committee will provide safeguards.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, as one primarily interested in agriculture and one personally interested in the growing of cotton, I am afraid this cess will eventually fall upon the producer. The primary objects in view which the Central Cotton Committee had are for the benefit of the industry; but to levy this cess on exported cotton is sure to fall upon the producer. The example of the import duty levied in Bombay for the Town Improvement Trust has already shown that the producer suffers by the addition of these cesses and duties, for the prices fall down and the buyers take advantage of these cesses and duties and reduce the price which the producer eventually gets. Almost all the objects which the Central Cotton Committee have in view are for the benefit of the spinner and the industry will have to pay for such improvements which are to be effected on the recommendations of the Central Cotton Committee and not the producer. Sir, the producer will profit, if for instance the marketing conditions are made better; but I find very little trace of any attempt being made in that direction. On the other hand, most of the objects in view are for improving cotton so as to

[Rao Bahadur T. Rangachariar.]

be available in finer quality for the spinner and the industry. Therefore, Sir, I ask whether it is at all necessary, having regard to the objects in view, that you should tax exported cotton, whether you should put this cess on exported cotton, whether you will not get enough amount by merely imposing a cess on the cotton consumed in the mills in the country. I think, Sir, you will readily realise that, after all, the recurring expenditure which the Cotton Committee have in view is about 2 lakhs per annum. One lakh goes to the expenditure of the Committee itself, and one lakh for the Technological Institute which they propose to establish. In allowing a good margin a return of 2 to 3 lakhs will be ample for carrying out the purposes which the Cotton Committee have in view, and so far as I am able to see from the papers placed before us, I do not see what other objects there are on which this money is going to be spent. They expect to raise between 8 and 9 lakhs, and I am sure it will go up to more than 10 lakhs in good years, and what they are going to do with this money is rather problematic. I therefore think, Sir, having regard to the immediate needs, it is enough if the cess is imposed merely on the cotton consumed in the mills in the country.

Then, Sir, the persons who are going primarily to profit by the efforts of this department will be the persons who will not pay for it and the producer will suffer thereby. The example of the Empire Cotton Growing Association in England is to be kept in view in this connection, as they propose to levy an import duty on all cotton imported into England. There, Sir, it will fall on the industry and not upon the producer, but here by imposing the cess on the export of cotton the burden will fall on the producer who, in many cases, are poor ryots and who cannot afford to lose the 4 annas or 8 annas as the case may be per bale. It may be said, for instance, that there are such violent fluctuations in the price of cotton that this cess will not really affect the price which the producer will get. But, Sir, past experience has shown everywhere that the imposition of a duty or a cess like this really falls on the producer, and I do not think therefore that it is right to impose this cess on exported cotton. That is the first point that I wish to make.

Another matter which I wish to mention is this, at this rate I am afraid the agriculturist in this country may have to face further legislative measures in view of the scientific improvements which are to be effected in this country for the benefit of agriculture. Take for instance the sugarcane industry, tobacco industry or any other industry in this country. If the Government are going to find departments and institute research work for the purpose of improving those commodities, are we going to have cesses like these imposed upon every kind of crop grown in the country? Are not the general revenues to meet the requirements in this connection? Is the present cess going to be a precedent in other directions? Therefore, Sir, I want to sound a note of warning that, these cesses, although they may sound small individually, when piled up will fall heavily upon the producer. Therefore this is likely to be a bad precedent, and I am not sure whether the Government of India's decision in 1919-1920 which they have now reviewed at the instance of the Central Cotton Committee, whether their first decision was not the right decision in this matter, whether the Government of India did not come to a right conclusion when they refused to accept the recommendation of the Central Cotton Committee in the first instance. They have now reviewed that decision because the Central

Cotton Committee has asked for a reconsideration of the matter. I am aware, Sir, in this connection that the Local Governments have not raised any opposition to this measure, but at the same time I do not know, agriculture being a transferred provincial subject, whether we are not trenching upon the provincial fields, and I feel that when we impose a cess like this it is really a cess on agricultural products.

Again, there is a difficulty in the administration of the fund which is going to be raised. There will be provincial jealousies created in the application of the funds. I am aware that a Committee is being constituted, but, Sir, look at the composition of the Committee. It is far too large. I have counted about 29 in the enumerated list, and the Government are going to add to it by nomination. An unwieldy Committee of this size, a miniature Central Legislative Council as it were, for the purpose of improving cotton is being constituted by this Bill. Look at the travelling allowances and other expenses which you will have to pay for all these Members to come here; when you have expert Agricultural departments in almost every province which are now working with great credit, what is the object of instituting a Central Cotton Committee of such unwieldy dimensions? When are they to meet, how often are they to meet, how far are these committee meetings going to be of any real use that it should spend one lakh of rupees by raising this cess, I mean the advantages to be derived are rather problematical, the inconveniences rather large, and I am not sure whether really we are doing a wise thing in perpetuating this Central Advisory Body as it were. Is it not enough if the heads of the Agricultural department in each province meet, as they do meet? Why should a Committee be constituted for this purpose? Could not the Government of India be trusted to distribute the funds in this matter, and the local representatives here in the Legislative Assembly to give advice on the disposal of the funds thus raised? Why should this Committee be created for this purpose—a costly machinery—I fail to see.

Sir, there is one other matter which I wish to mention, and that is the question of the employment of experts when once this fund has been raised for the Technological Institute or for research work. Sir, the experience of the past has shown that, when we have other expert departments where experts are employed, Indians have not been given the full benefit which they ought to have been given. When I asked a question the other day whether the Indians who were trained in the Dehra Dun Institute had become sufficiently fit to be appointed as experts, I was told that they were not yet fit. So similarly, where you import costly foreign experts, I hope they will be imported only on contracts limited to a short period and you will make it a condition precedent that they should train Indians and that speedily and without any delay or hesitation in that matter. In this connection I may point out, Sir, that the progress of creating Indian experts in these matters has not been as rapid, as sound and as satisfactory, as it should have been. I do not oppose this Bill, but I do think these matters require to be carefully considered in the Select Committee, and I hope when the Central Cotton Committee comes into existence, it will be one of its primary functions, if it is really going to profit the country, to see that more facilities are created in the shape of marketing the commodity for the producers. I therefore, hope, Sir, in according my support to this Bill, the Government of India will take it that we are not likely to encourage such further measures as this if the attempt is made to tax other agricultural products, because already land revenue in this country is a crushing burden, and why with all this land revenue especially

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in provinces where ryotwari settlement prevails where we have got periodical revisions and all sorts of cesses are raised on the land, should the producer again be called upon to pay this cess? After all, although these cesses are indirectly levied on the produce exported, as I have said, they are bound to fall on the producer. I therefore, Sir, make these remarks in order that the Select Committee may consider them carefully.

Mr. B. H. R. Jatkari (Berar Representative): Sir, I wish to offer some remarks about this Bill before it is sent to the Joint Committee. I entirely agree with my Honourable friend, Mr. Rangachariar, in saying that, whatever cess is imposed upon cotton would ultimately fall upon the producer and the grower of the cotton. And, if this Bill is to do any good to any person, it should be to the grower and not to the trading classes. The entire fund would be coming from the pockets of the grower of the cotton and it should be the principal aim of this Bill to provide for agricultural research and agricultural research only, and also for the improvement of the marketing of cotton. But the title of the Bill refers also to the improvement of the manufacture of cotton. The improvement of the manufacture of cotton should not be the aim of this Bill. Even the Indian Cotton Committee, while recommending that a cess should be imposed, has distinctly stated that the funds should be utilised for agricultural research, so as to increase the production of long staple cotton and also to increase the yield and ginning percentage of cotton. That also is embodied in one of the recommendations of the Central Cotton Committee, where it is stated that an improved yield per acre and the production of suitable types of plant combining long staple with high yield and hardiness are essential to real progress, and this can only be achieved by provision for agricultural research on a scale not yet attempted. So that, whatever funds should be raised out of the cess should be solely utilised for agricultural research and not for the improvement of the manufacture of cotton or for the benefit of the trading classes. Our friend, Mr. Jamnadas Dwarkadas, has given the view of the manufacturer of cotton. In the constitution of the Central Cotton Committee we find that only four persons are stated to be the representatives of the growers and these four persons are to be nominated, one from each of the provinces of Madras, U. P., C. P. and the Punjab. The part from which I come—I mean the four districts of Berar only—yield not less than 1/6th of the total produce of India. That, of course, can be said to be included in the Central Provinces, but the representation given to the growers is very poor. I think cotton growers have got some organisations in my part of the province at least, and these representatives should be elected by those cotton growers' organisations, like agricultural unions, seed unions and agricultural societies.

About marketing not a word is said in the Bill. There are cotton markets in Berar under a special law which are not found in any other part of the country. That has been praised by the Indian Cotton Committee, it is true, but a cotton market is also for the benefit of the trader and for the purchaser of the cotton. There is nothing to encourage the organisations of growers themselves who bring to the cotton markets thousands of carts and are completely at the mercy of the purchasers who are either mill-agents or the agents of the exporters. It would be much better if this Bill would provide for creating such organisations and encouraging them so that the growers of cotton who bring their cotton

to the markets for sale should be enabled to withstand the caprices of the purchasers. If anybody has experience of these cotton markets and the prices of the cotton, which are telegraphed every day from Bombay to all the outlying stations, he will find that the rates prevailing in the various cotton markets are far below what are prevalent in Bombay itself, and these cotton growers who bring their carts of cotton have got no other alternative but to sell them at whatever price they are offered by cotton purchasers. They are entirely at the mercy of the purchasers. But if there are better organisations and if they are encouraged, I believe the growers can withstand pressure of the purchasers and get better prices for their cotton. So that I would only suggest that in the Bill itself this aim of the improvement in the manufacture of cotton should be taken away and the provision for spending funds for technological research should also be omitted, and the Bill should be confined only to the improvement and development of the growing and marketing of cotton. With these remarks, Sir, I join wholeheartedly in the remarks made by my friend, Mr. Rangachariar.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, when this Bill was introduced we thought that it was going to be an absolutely uncontentious and innocuous measure. It looks as if it is going to be otherwise. We from Bengal have a small, but not negligible, interest in the matter, which, I think, ought to be pressed on those who, in the name of avoiding the bogie of provincial jealousies, are really fostering them. The question arose some time ago, Sir, in this House about the steady deterioration of Bengal cotton for which we wanted a remedy and we were told that that was a matter for the provincial Government as Agriculture was a transferred subject. Evidently that opinion has not found support in the movement represented by this Bill, for it seeks to promote research from the point of view of all Provinces. I therefore welcome it. Bengal cotton, which at one time was good, is not what it used to be, and we are therefore much interested to see that steps are about to be taken by which Bengal cotton may get back something of its old lost place. Steady research, no matter benefitting which province, is necessary in that direction. I do not agree, Sir, that the cess should fall only on consumption in the mills in this country. There is no reason in that. That would indeed make it a worse excise than prevails at the present moment. Nor do I agree with Mr. Jamnadas Dwarkadas, that it is entirely in the nature of an export duty which has to be guarded against with regard to the possibility of future contingencies. It has partially that character, no doubt, but, as the cess is to be on the local industries as well as on exports, the objectionable character of both will be taken away and there will be a balancing which, I think, ought to be welcomed both by the industrial element as well as the exporting element. Whatever you may do, the producer has in the first instance to pay. Mr. Rangachariar's apprehension is well founded so far. But does he think that the mills, with some of which I am concerned directly, in making their purchases will try to exploit the producer in the same way as the man exporting cotton and will he not take it out of the grower in the first instance? But it must fall on the consumer in the long run. And the grower is ultimately benefitted as was pointed out by the last speaker. Therefore, we should not grudge that possibility of advance in the science of cultivation. I quite agree that marketing and manufacturing ought not to claim the place that has been given in the Bill to the producer's point of view. The producer ultimately gains and so does the industry and so does the country more or less. I do not want in this

[Sir Deva Prasad Sarvadhikary.]

connection to go into other apprehended contingencies about other agricultural produce having to be taxed in future. It may or may not be taxed. We are crying out for retrenchment in many directions which cannot be resisted. At the same time we cannot neglect these researches which Central Finance cannot any longer pay for. Therefore somebody will have to pay for them. If the country at large out of its revenues is not prepared to pay for research, the interest concerned will have to pay. You have an admirable illustration in the case of the tea cess. Not exactly for the purpose of promoting the growth but for propaganda work this tea cess is of much benefit to the tea industry. The tea industry willingly and cheerfully submitted to it and welcomed it. They have other arrangements for carrying on research in the Indian Tea Association apart from the tea cess which is utilised for propaganda work. Therefore if the industry or the agriculture concerned understands its real interest it will welcome and promote research even at its own cost. Somebody will have to pay for it. I should very much like that the Central revenues or the Provincial revenues as occasion required should pay for it, but if in the lean times that we have this is not possible, the interest concerned directly will have to pay.

Regarding the Central Committee, mentioned in the Bill, Sir, I share Mr. Rangachariar's apprehensions and I am sure ways and means may be found by which the working expenses may be cut down as far as possible. But it is too late in the day after assenting to the principles of the Cotton Transport Bill to resist this measure, because.

Rao Bahadur T. Rangachariar: What has that got to do with this? What has cotton transport got to do with the cess on cotton?

Sir Deva Prasad Sarvadhikary: It has. The Transport Bill is necessary because inferior cotton has to be dealt with and we want to get rid of that possibility altogether or at least in a large measure by better production. Therefore, if not immediately and directly, the question of controlling cotton transport has more than indirectly to do with this question. As soon as we are in a position to minimise the deterioration in product in every province the question of vitiated transport will ease of itself and the rigorous measures in the Transport Bill will not have to be extended in future to the same degree. It has therefore that bearing. For all these reasons it appears to me, Sir, that the Bill is in the main on proper and acceptable lines, and the questions that have been raised will undoubtedly be dealt with in the Select Committee. Out of the Select Committee a very acceptable measure ought to emerge. I therefore give the measure my support.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, my friend, Mr. Rangachariar, although he accorded his support to this Bill, gave it in a very grudging manner, and while doing so expressed certain fears regarding this Bill. I am sorry I have to differ from my friend Mr. Rangachariar in his views. Mr. Rangachariar was actuated, I think, by very orthodox views about taxation in this matter. I am not so rigid, I mean not so rigidly orthodox in my view of taxation. Taking a broad and a very large view of the matter, the only way to look at this measure is whether this cess will in the long run benefit the country and produce more wealth for the country. I believe if the staple of the cotton and the quality of the cotton is improved by research, it will bring in from foreign

markets far more wealth into the country in the shape of better prices both for the producer and for the industrialist; if that is so, I believe we ought to support this Bill wholeheartedly. I do think from what I know of the agricultural aspect of cotton growing that a cess like this, if it is utilised well, is likely to improve cotton and thereby bring much larger wealth for the producer and also for the industrialist. Mr. Rangachariar expressed the fear that this Bill would prove a bad precedent. That depends upon this House. Each Bill has to be considered on its own merits. This Bill need not necessarily be a precedent. When the next Bill levying a cess comes before us if it is vicious in its principle, we can throw it out and we need not be carried away by the idea that this is necessarily a precedent. Regarding the unwieldy character of the Central Committee I have to point out to Mr. Rangachariar that after all the expenses of that Committee will be met from the proceeds of this cess. If this cess defrays the cost of that Committee, if the Committee pays its own way and if it does not prove an additional burden on the general revenues of the country, well, we need not be very much particular about it. As long as this fund is self-contained and is able to pay for the expenses of the Committee, I think we need not grudge the unwieldy character of that Central Committee.

Mr. J. Hullah: Sir, the points raised by Honourable Members will of course receive the careful attention of the Joint Committee but I should like to make a few remarks upon them. Mr. Rangachariar has told us that a cess on exports will fall upon the producer. I confess that I do not know on whom the burden of the cess will fall. The opinions in the papers circulated to Honourable Members are extremely divergent. The Bombay Chamber of Commerce, for instance, is of opinion that the cess will not in any way fall upon the producer. It occurs to me that when Indian cotton is of such very great importance in the world market, the purchaser of that cotton will be bound to pay the whole of the cess or at least a part of it. The position is very much the same as in the case of rice. The surplus available from the Indian and Burma rice crops bears so great a proportion to the surplus available for the world generally that it is admitted on all hands that the small export tax of three annas a maund on rice has not been felt in any way by the producer.

More important is the attack that has been made on the Bill—a sympathetic attack, I think—on the ground that it does not do enough and will not do enough for the cultivator. When I introduced the Bill I attempted to lay special emphasis on the fact that the Indian Cotton Committee, the Central Cotton Committee and the Government of India placed in the forefront of their proposals measures for the benefit of the cultivator, and we do not in any way intend to let this Bill operate as a measure for the benefit of the milling industry and the milling industry alone. The Central Cotton Committee itself has rejected a proposal that part of the scientific work of the proposed technologist should be the testing of yarns and cloth for the mills. When I introduced the Bill I gave a very brief account of the definite measures of agricultural improvement that we propose to undertake and which have already been approved by the Central Cotton Committee. But the Honourable the Deputy President, who was in the Chair, was constrained to call me to order because I was exceeding the time usually allowed to a Member in introducing a Bill, and that is why I gave only a very brief description of the measures that we have in view. I have before me now here and I could, except that I again do not wish to take up too much time, tell the House of about a dozen

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definite proposals in different provinces for definite schemes already approved by the Central Cotton Committee. The cost of those schemes altogether runs up to more than 17 lakhs. The proceeds of the cess, as I said before, we anticipate will be from 8 to 9 lakhs. I refrain again from setting forth these schemes in detail, but no doubt the Joint Committee will require to be satisfied about them when they consider the very important point of the amount of the cess,—whether it is to be, as we propose, four annas per bale. Are we going

12 Noon. to have cesses on everything, asked Mr. Rangachariar. I see no objection to a cess if it is paid by the industry and the industry is ready to bear it. In all cases where we have cesses, the lac cess, the indigo cess and the tea cess, the cess has been imposed on the industry itself and is paid by the industry. Mr. Rangachariar once told me that he was in favour of restricting the export of oil-seeds. What about the burden occasioned in that case? I do not say that the burden of a tax on the export of oil-seeds would fall on the cultivator, but Mr. Rangachariar's present attitude at any rate is hardly consistent with that which he adopted then. (Rao Bahadur T. Rangachariar: "The cultivator will be benefitted by the manure.") We are told that the Committee is too large. We rather feel that ourselves. It is a very big Committee. But there are so many provinces and interests to be represented and there has been so marked a feeling that the agricultural interest has not been sufficiently represented that we have added four agricultural representatives. But I may say that the power of nomination given to the Governor General in Council is intended to be very sparingly used, if used at all. Lastly, Mr. Rangachariar mentioned the question of Indianisation. That is in the forefront of everything, and I, for one, do not deny that it should be so. As I remarked to an Honourable Member this morning we have even Indianised the temperature of this room. (Rao Bahadur T. Rangachariar: "You cannot Indianise India.") That is not for me. It may be of interest to the Assembly to know that in the Agricultural Department, at any rate, Indianisation is proceeding apace. So far as it is possible for the provinces to fill up vacancies in their sanctioned posts, these are being filled by Indians. Out of 12 appointments in the Imperial Service made in the last eighteen months, 11 have been given to Indians. Among the proposals which are before the Central Cotton Committee regarding the purpose to which the proceeds of the cess will be devoted is a scheme of research studentships, for six students in the first place, who would be selected from among distinguished graduates of Indian Universities and placed under experienced research workers to be trained in agricultural research. The object of the scheme is gradually to build up a corps of trained Indian research workers.

I now commend my motion to the House.

The motion was adopted.

THE INDIAN BOILERS BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I beg to move:

"That the Report of the Joint Committee on the Bill to consolidate and amend the law relating to steam-boilers be taken into consideration."

I have already explained fully in this House the reason why we wish to get this Bill passed. Briefly, that reason is this. There are at present 7 different Boiler Acts in 7 different Provinces, and the Acts and Regulations differ in material respects. The result is that measures designed to secure the safety of human life are not the same in all Provinces. Under the Devolution Rules the Government of India, the Central Government, is charged with the duty of all-India legislation with regard to boilers and we want by means of this Bill to enforce, all over India uniform regulations and uniform procedure in regard to boilers which, as I have already stated, are very dangerous vessels. The Bill which I submitted to the House last September has been examined very carefully by the Joint Committee, and the Joint Committee has submitted a very full report. That report has been in the hands of Honourable Members for the last seven days and I have no doubt that it has been studied with the care and attention that it deserves. In the circumstances, I do not propose to delay the House any further, especially as I have been given notice of certain amendments. I move that the Bill be taken into consideration.

The motion was adopted.

Clauses 1, 2 and 3, as amended by the Joint Committee, clause 4, clause 5, as amended by the Joint Committee, were added to the Bill.

Mr. President: The question is that clause 6, as amended by the Joint Committee, do stand part of the Bill.

Mr. B. H. R. Jatkar (Berar Representative): Sir, I have sent in an amendment to this clause 6. In clause 6 (e) I propose that the following amendment be made:

"Omit from the words 'where the Local Government etc.' to 'certificates of competency', and substitute 'of competency' for 'required by such rules'."

That is the amendment that I have sent in.

The Honourable Mr. C. A. Innes: I am afraid I have received no notice of this amendment. I must take a point of order, Sir, because this is a very technical Bill and I think I am entitled, at any rate, to some notice of the amendment. I cannot be expected to deal with amendments suddenly raised on the floor of the House to the Bill.

Mr. President: No notice has reached me. Therefore, I am afraid I cannot allow the amendment. I uphold the point of order raised by the Honourable Mr. Innes.

Clauses 6 and 7, as amended by the Joint Committee, were added to the Bill.

Mr. President: The question is that clause 8, as amended by the Joint Committee, do stand part of the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): The amendment I move is:

"In clause 8 in proviso to the sub-clause (4) substitute the words 'for reasons provided in sub-clauses (b), (c), (d), (e) and (f) of sub-section (1)' for the words 'owing to making of any structural alteration, addition or renewal'."

Sir, under this clause 8 a person is also required to send along with the application for renewal, a certain amount of fee, and this fee has been exempted in certain cases. That exemption has been provided in the

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proviso to sub-clause (4). There it is laid down that in the case where the certificate has ceased to be in force owing to the making of any structural alteration, addition or renewal, the fee may be excused. The certificate ceases to hold good in certain cases that have been provided in sub-clause (1). It may be on the expiration of the period or it may be on account of any accident to the boiler or some structural alteration or addition or renewal or some other causes. These have been provided there. I would like to have put in this proviso that the exemption should also extend to all those cases except to such cases where the period for which the certificate was granted has expired. It is not proper that the person should be required to pay the fee over again where the period of certificate has not expired. If the period has expired, then the fee may by all means be charged, but when the period has not expired and only some alterations or renewals have been made, as provided in clauses (b), (c), (d), (e) and (f) I think the fee should not be charged, as there is no good reason for charging it. The fee once paid continues up to the end of the period for which the certificate was granted; why should it then be necessary that a further fee be charged? If it is said that the renewal, alteration or construction or addition might require the Chief Inspector to inspect the boiler, and this inspection will entail some waste of the time and energy of a public servant, so the person who makes the renewal, etc., should be made to pay for it. But this argument fails when you exempt the person who makes some alteration or renewal. In that case also the Chief Inspector will have to inspect before renewal of certificate; and so if there is an exemption in that case there should be an exemption in other case too if the period of the certificate has not expired. If the period has expired you should certainly charge an additional fee, but not otherwise. Therefore I commend my amendment for consideration.

The Honourable Mr. C. A. Innes: I should first like to point out that this proviso does not provide that exemption shall be given. It merely gives the Chief Inspector power to remit the fees if he thinks fit. The next point I desire to make is this. We have to remember now that we are dealing with a matter which closely affects Local Governments. The theory of course is that they charge sufficient fees in order to recover the cost of the services rendered. Now if there is an accident to a boiler, or if a steam pipe of a boiler is found to be in a dangerous condition, and the certificate has to be renewed, what does it mean? It means the Chief Inspector may have to go a long way and spend a long time in making a very careful examination of that boiler, and surely, as this is a business department rendering a very useful service to the boiler owners, the Local Government should be entitled to charge fees for those services. In England the Government undertakes no responsibility in regard to the inspection of boilers; it is left to the Insurance Companies with whom the boilers are insured. Out here, owing to the fact that the Insurance Companies do not do that business, we have to undertake the work ourselves, we have to undertake it because it is very important in the interest of human safety and human life, and if we do undertake that work, surely the Local Government which provides the inspection staff should be entitled to charge fees for the valuable services that inspection staff renders.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): What is the amount of the fees so charged?

The Honourable Mr. C. A. Innes: The amount of fees is regulated by the Local Government under the rule-making power.

The motion was negatived.

The motion that clause 8 do stand part of the Bill was adopted.

The motion that clauses 9 and 10 do stand part of the Bill was adopted.

Mr. K. B. L. Agnihotri: Sir, the amendment which I propose to move in this clause is to the effect:

"That in sub-clause (a) of clause 11, omit all the words after the word 'obtained'."

Sub-clause (a) of clause 11 runs as follows:

"(a) if there is reason to believe that the certificate or provisional order has been fraudulently obtained or has been granted erroneously or without sufficient examination; or."

My amendment will make the sub-clause read:

"if there is reason to believe that the certificate or provisional order has been fraudulently obtained."

Sir, the object of clause 11 is to provide for revocation of certificates or provisional orders, and it has been provided that if a certificate has been erroneously given, or given without any sufficient examination, that certificate may subsequently be revoked or cancelled. Now this will make all the certificates that are given before that uncertain and a man may not be certain at what moment the Chief Inspector may come round, and say, 'Well, it was a mistake I committed as I did not make a proper examination and your certificate is revoked.' Such a state of affairs is undesirable. They will always be in terror and fear of the certificate being revoked at any time at the sweet will and mercy of the Inspector or Chief Inspector. There are other remedies provided and certificates cease to hold good, under circumstances provided in clause 8, and there seems to be no necessity to provide such a drastic provision in addition. If the Chief Inspector finds that in any way the boiler is in a dangerous state or some other things have happened, he may proceed under clause 8, and the certificate will cease to hold good. Why then should you allow him to turn round at any moment to say that the certificate had been erroneously granted or given without sufficient examination? Therefore to safeguard the interests of the boiler owners and managers, I put before the House my amendment for acceptance.

The Honourable Mr. C. A. Innes: Sir, the object of the words which the Honourable Member suggests should be omitted is to enable the Chief Inspector, if he finds a mistake has been committed, to correct that mistake. The words are taken from the existing Acts. They occur in the Central Provinces Act, from which Province the Honourable Member comes. As far as I am aware, the existence of those words in the Act has never given rise to any of the results to which the Honourable Member has referred. As I have said, we are merely continuing the existing Act and the existing practice. It is a useful power for the Chief Inspector to have because it enables him to correct a mistake if one has been made. In these circumstances I hope the House will leave the words as they are.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, the amendment I move is:

"In sub-clause (d) of clause 11, after the word 'who' insert 'does not hold a certificate of competency, and'."

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Clause (c) refers to such Provinces where a Local Government has prescribed a condition that only that person can hold charge of a boiler who holds a certificate of competency; and clause (d) lays down that in Provinces where there is no such provision and where the Chief Inspector finds that the man in charge of a certain boiler was not competent under certain circumstances to hold charge of the boiler, the certificate be revoked. My submission is that in those Provinces in which the Provincial Governments have not prescribed such rules, there may be engineers in charge of boilers who may be holding certificates of competency obtained from other Provinces. If there be such persons who hold such certificates they should not be declared to be incompetent under sub-clause (d) but if they hold a certificate and are declared to be incompetent then the certificate might cease to hold good, not otherwise. Therefore I put my amendment before the House for acceptance.

The Honourable Mr. C. A. Innes: This clause, Sir, was the result of very careful thought and examination on the part of the Joint Select Committee. The facts of the case are that both the Indian Industrial Commission and the Boilers Law Committee examined very closely this question of certificates of competency and they condemned the system root and branch; they said it was not useful for the purpose for which it had been devised. Consequently, in the first draft of the Bill which we sent out we made no provision for certificates at all on the ground that we did not regard this system of certifying boiler attendants in any way as essential to the safety of human life. After all, that is the main thing we have in view in this Act. When the Bill was circulated, we found that in one province, namely, Bombay, there was a strong opinion both among the mill owners and also in the Bombay Government itself that that system was useful there and should be continued. That being so, we said that any Local Government which might wish to continue this certificate system should be allowed to do so, and we have provided accordingly; but we have no intention of prescribing or enforcing a certificate system in every province in India. Bengal, Madras and Mysore also have never gone in for a system of certificates; they have never found the use of it, and we do not want that any province which does not believe, as we do not believe, in the certificate system should be compelled to recognise certificates given by another province. There is nothing to prevent a man who has got a certificate from another province from obtaining employment as a boiler attendant in a province where the system is not in force, but, if the Chief Inspector, having regard to the condition of the boiler, considers that that man is not competent, then he will be able to exercise the powers under sub-section (d) subject to the reservations in the proviso to that sub-section. In provinces where the certificate system is in force, the Local Government can withdraw a certificate, if it so thinks fit. In provinces where the certificate system is not in force, the Local Government will have no power to withdraw a certificate given by another Local Government. In these circumstances, I do not think it is necessary to make the change suggested by my Honourable friend. If a man, who has obtained a certificate, say in Bombay, goes to Madras and obtains employment as a boiler attendant there, then I consider, if the Chief Inspector finds his boiler in a bad condition, the Chief Inspector should be entitled to withdraw that certificate for the boiler, unless the attendant is removed.

I oppose the amendment.

The motion was negatived.

Clause 11, as amended by the Joint Committee, was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move the following amendment:

“Omit clause 12, and in clause 13, after the words ‘renewal in or to any’ add the words ‘boiler registered under this Act and in or to any’.”

Sir, under clauses 12 and 13 the owner or person in charge of the boiler is required to do certain things before he can make any alteration, addition or renewal to the steam boilers and to the steam pipes. In clause 12 it is laid down that he should obtain the sanction in writing of the Chief Inspector before he undertakes any structural alteration, addition or renewal in or to a boiler. In clause 13, which deals with steam pipes, it has been laid down that the requirements of this Act will be satisfied if he simply sends an information to the Inspector, of his intention to make such alteration or renewal. What I beg to move is that in either case, whether in the case of steam boiler or in the case of steam pipe it should not be necessary for the man to obtain the sanction of the Chief Inspector before he undertakes a structural alteration, addition or renewal of either the steam pipe or the steam boiler. My reasons for this are that, if the owner or the person in charge of the steam boiler makes any alteration, renewal or addition, then the certificate ceases *ipso facto* to hold good. And where the certificate ceases to hold good, the person has to apply for a renewal of the certificate and the Chief Inspector has to go, inspect and examine the boiler and, if he finds that it is in a satisfactory condition, then only will the certificate be renewed, otherwise not. Therefore, it is not necessary that the man should obtain the sanction in writing of the Chief Inspector before he undertakes any structural alteration, renewal or addition. This provision 12 seems to be superfluous in view of clause 8 which we have just passed. Therefore, the person in charge of the boiler and the steam pipe should be left at liberty to make any alterations, additions or renewals which he thinks proper or desirable in his interest. The certificate will cease to be in force and he shall have to apply for renewal. If the renewal, after the certificate has ceased to hold good, the Chief Inspector finds that it is not in a proper condition, or is in a dangerous condition, then he can stop the renewal of the certificate. When we have got one provision which is sufficient for all purposes, why should we add this superfluous provision which may lead to delay in factories.

The Honourable Mr. C. A. Innes: Sir, clauses 12 and 13 should be read with the definition of “structural alteration” in clause 2 (g) of the Bill. A structural alteration for the purpose of these two clauses is really a major alteration, addition or renewal. I am quite prepared to admit that clause 12, as at present drafted, seems somewhat drastic, as compared with clause 13, but it was drafted in this form deliberately and after taking expert opinion all over India, primarily in the interests of the boiler owners themselves. This House has got to remember that these boilers are extremely dangerous vessels; they are extremely intricate vessels also; and, if a person, only after merely giving notice to the Chief Inspector, proceeded with an important structural alteration, addition or renewal to his boiler, then, as Mr. Agnihotri correctly pointed out, his certificate would immediately lapse. That boiler would then require examination by the Chief Inspector, and the owner might then find, either that his boiler would not get a certificate of renewal at all, because the Chief Inspector could not approve of the additions, alterations or renewals.

[Mr. C. A. Innes.]

that had been made, or he could get a certificate only for working at a much smaller maximum pressure than had hitherto been allowed. It was for that reason that we put this clause in a somewhat drastic form. The Bill has been circulated to all Local Governments and all over India, and I think it is possibly a sufficient answer to the Honourable Member when I say that we have had no objection to this clause from any province or from any commercial body in India.

I oppose the amendment.

The motion was negatived.

Clause 12 was added to the Bill.

Clause 13, as amended by the Joint Committee, was added to the Bill.

Clauses 14, 15, 16 and 17 were added to the Bill.

Clause 18, as amended by the Joint Committee, was added to the Bill.

Clause 19 was added to the Bill.

Clause 20, as amended by the Joint Committee, was added to the Bill.

Clauses 21, 22 and 23 were added to the Bill.

Clause 24, as amended by the Joint Committee, was added to the Bill.

Clause 25 was added to the Bill.

Clause 26, as amended by the Joint Committee, was added to the Bill.

Clauses 27 and 28 were added to the Bill.

Clause 29, as amended by the Joint Committee, was added to the Bill.

Clause 30 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

That in clause 31 add a proviso to sub-clause (2), namely:—
Provided that no regulations or rules so made shall be published unless the same has been laid in draft, in case of regulations, before the Indian Legislature, and in case of rules, before the provincial legislature and have been approved by a Resolution of the Legislature or the local Council, as the case may be, either with or without modification or addition, but upon such approval being given the regulations or rules, as the case may be, be published in a form in which they have been so approved.

Sir, under clauses 28 and 29 of the Bill the Central Government and the Provincial Governments are empowered to make regulations and rules consistent with this Act. It has become a practice for some years to take away many points from the Acts and to embody them in the rules. The rules are very rarely put up before the Legislatures before publication and the Members do not have any chance of offering suggestions or modifications to those rules or to any rules which may not be proper. I suggest that a provision similar to that in the Cotton Transport Bill—which is to come before us shortly, should also be made under this Bill to the effect that whatever rules and regulations be made under this Bill they should all be put up before the Imperial and Provincial Legislatures and the Members thereof should have a voice in the shaping of those rules before they are published. I beg to move, Sir, that this provision which seems to be a wholesome one should be incorporated under clause 31 in this Bill, so that the Provincial and the Imperial Legislature may have a hand in the framing and publication of the rules.

The Honourable Mr. C. A. Innes: Sir, the Honourable Member referred to the Cotton Transport Bill which I hope the House will read to-day. It is perfectly true that we have given certain powers to the Legislature in regard to that Bill. The local Legislature has been given power in that Bill to decide whether the provisions of the Bill should be applied to the province or not. But that is an entirely different matter from rules and regulations under this Bill, and I object to the Honourable Member's proposal that these rules and regulations should be laid in draft before this Legislature and the local Legislature before they are made effective. The reason why I object is this. In the first place, as regards the regulations, I think I may say without disrespect that no useful purpose would be served by laying these regulations before this House. The regulations are most extraordinarily technical. No layman can understand them in the very least. I do not pretend to understand them myself. The Honourable Member will find a draft of the regulations in the Appendix to the Boiler Committee's report.

Now, Sir, is it any use laying rules of a highly technical nature before a popular Assembly of this sort? It is not our job to go into technicalities of that sort. What we propose to do is to publish these rules for general information in order that those who understand the rules and the formula, that is to say, engineers, may object to them if they think fit. I assure the House it will cause great delay and would otherwise be entirely useless if we adopt the Honourable Member's suggestion. And further I should like to point out that the Assembly and the local Councils have other and more important work to do than to deal with the details of rules and regulations of this kind. I think that in matters of this kind the Assembly and the local Councils will do well to trust the Government. We have provided the safeguard that these rules and regulations shall not become effective until they have been previously published.

The motion was negatived.

Clause 31 was added to the Bill.

Clauses 32, 33, 34 and 35 were added to the Bill.

The Schedule was added to the Bill.

The Title was added to the Bill.

The Preamble was added to the Bill.

The Honourable Mr. C. A. Innes: I move, Sir, that the Bill, as amended, be passed.

The motion was adopted.

THE INDIAN MINES BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I beg to move, Sir:

"That the Report of the Joint Committee on the Bill to amend and consolidate the law relating to the regulation and inspection of mines be taken into consideration."

Here again, Sir, the report of the Joint Committee has been in the hands of Honourable Members for several days and as notice has been given of a number of amendments, I think the best plan will be to get at once to those amendments, and therefore I do not propose to delay the

[Mr. C. A. Innes.]

House by making a speech on the motion that the Report be taken into consideration. I move, Sir, that the Bill be taken into consideration.

Mr. N. M. Joshi (Nominated: Labour Interests): While supporting this motion, Sir, I would like to make a few remarks on the principle of the Bill as it has emerged from the Joint Committee. The House will remember that when this Bill was last discussed in the Legislative Assembly I laid special emphasis on the necessity of prohibiting the employment of women underground. I am glad, that the Joint Select Committee has made some improvement in the Bill although I am not fully satisfied with what they have done. The Joint Committee has recommended that the power of prohibiting the employment of women under certain conditions should be transferred from the Local Government to the Government of India. So far as it goes, I think it is an improvement. The Joint Committee has also accepted the principle of the prohibition of employment of women underground and they have recommended to the Government of India to take up this question with the Local Governments in order that the total prohibition of women on underground employment should be accomplished within five years' time. So far as this goes I think the Committee has also done a great service to the women workers in mines. But, Sir, I would like to make one or two remarks on this question. In the first place the Joint Select Committee came to the conclusion that if they had recommended the total prohibition of women or even prohibition of women after five years in the Bill it would have been necessary to recirculate the Bill. Sir, I differ from this view taken by the Committee. The Joint Committee knew very well that when the Bill was discussed last time I myself laid great emphasis on the point during the discussion that took place on the appointment of the Joint Committee. Therefore, the Local Governments as well as the mine owners had sufficient notice that this point might be raised in the future discussion on this Bill. If they, the Local Government and the mine owners, did not give sufficient consideration to this point, it was their fault; and therefore I feel that the view taken by the Joint Committee on this question was not the correct one. Then, Sir, in the report of the Joint Committee I think the figure of women workers involved is somewhat exaggerated, or is put there by mistake. The Joint Committee says that the number of women workers involved by the change is 90,000. I think the number of women workers who work underground in Indian mines is about 50,000 and not 90,000

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): 90,000 does not relate to those who work underground; it relates to the total number that are at present working in the mines.

Mr. N. M. Joshi: The question with which I am dealing now is the prohibition of the employment of women underground. Therefore I say that the number of women involved is not 90,000 but 50,000. Now, if we consider how plentiful cheap labour in India is, is it a very difficult problem for the mine owners as well as the Government to replace the labour of 50,000 women in India? We are now sending thousands and thousands of people from our country to outside countries because they do not find sufficiently remunerative labour in India.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): How are the women to live?

Mr. N. M. Joshi: How are the women to live? I see; the women ought to live on the wages of the men. Sir, that is a different point altogether. My point was that in India it is not difficult to replace the labour of 50,000 women at all. But, Sir, I do not propose to deal with this question any further. I feel that although the solution arrived at by the Joint Committee is not wholly satisfactory, it is a good working compromise; it is at least a step further and I am quite satisfied with that further step. The next question about which I should have liked the Joint Committee to have taken some further steps was to protect the young boys that will be employed in the mines, boys between the ages of say 13 and 16. In the English law there are provisions to protect such young persons as well as women. Their employment is restricted; they are not, for instance, allowed to be employed in moving waggons. Again in the English law there is provision that young persons who are novices

Mr. President: Order, order. I have allowed the Honourable Member to go into considerable detail because I was not quite sure what his intention was. The intention of a motion of this kind is, I think, obvious—not to provide an opportunity for the discussion of each clause in detail, because that opportunity comes at the next stage, but for the House to decide whether the Bill as returned by the Joint Committee has been returned in such a form as they can conveniently take into consideration, clause by clause. The Honourable Member may reserve his remarks upon each separate point which he has been raising for the clauses as they will come up *seriatim*, when we have passed this motion.

Mr. N. M. Joshi: I never intended to go into all the clauses at all. I simply wanted to refer to the employment of children because these clauses do not at present exist in the Bill. I should have liked the Joint Committee to have introduced these clauses and safeguards for the protection of young persons. Then, Sir, lastly I would only touch upon one point, namely, this Bill as it has emerged from the Joint Committee does not make sufficient provision for safety against accidents and the Bill leaves everything to the rules instead of taking some important points as regards safety in the Bill itself. This is a great drawback in my opinion in the Bill; and although I have not attempted to send in amendments on this point, because the task of sending amendments on such a point is indeed a very great one, still I feel it is my duty to point out that Government, when they make rules on this point, should provide sufficient protection against accidents. With these remarks, Sir, I support the motion.

Mr. President: The question is:

"That the Report of the Joint Committee on the Bill to amend and consolidate the law relating to the regulation and inspection of mines be taken into consideration." The motion was adopted.

Clauses 1 and 2 were added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, my amendment* relates to sub-clause (c) of clause 3. In this sub-clause 'child' is defined to be a person under the age of thirteen years. It appears to me, Sir, as if this Honourable House is going to prepare a dictionary or to give meanings to words which are ordinarily understood in another way.

* "That in clause 3, sub-clause (c) for the words 'under the age of thirteen years' the words 'between twelve to fifteen years of age' be substituted.

[Mr. B. N. Misra.]

Generally, a child in India means a person below the age of 16; that is, up to the age of 15 we generally take them to be children; in law we have minor and major; and a child or minor would mean any person up to the age of 18; above that age he will be a major. In England a child or infant would mean any person up to the age of 22 and after that age.

Mr. President: Order, order. The Honourable Member has apparently neglected to provide any description for a person up to the age of 12 years. I cannot allow an amendment to be moved which makes nonsense.

Mr. B. N. Misra: I am sorry, Sir, but this has reference to section 26, and so I have put in this amendment to this section. The law provides that a child shall be employed in a mine or be allowed to be present in any part of a mine which is below ground.

The Honourable Mr. C. A. Innes: What about the child under twelve?

Mr. President: The Honourable Member is attempting to make nonsense of the clause. I do not propose to allow him to do it.

Mr. N. M. Joshi: May I, Sir, point out that unfortunately I do not take the view which you have taken of the definition of a 'Child'. Take for instance the Factory Act, in which I think the child is defined as between the ages of 12 and 15 years. My impression is that in that Act when the prohibition is laid against the employment of children below 12, the section simply says that persons who are below 12 are prohibited and the word 'child' is applied to persons between certain ages. That is my view.

The Honourable Mr. C. A. Innes: I may point out that in the Factory Act the word 'child' is defined as one who is under the age of 15 years.

Mr. President: If the Honourable Member cannot draft his amendment so as to express what he means, he cannot expect to move it.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"That in sub-clause (e) of clause 3 omit all words after 'under this Act'."

Sub-clause (e) of clause 3 defines an "Inspector", and it says "Inspector" means an Inspector of Mines appointed under this Act and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform". Sir, I beg to submit that this provision of including a District Magistrate as an Inspector is not desirable, in this way, that the District Magistrate is the head of the executive and judicial functions in the district. Under this Bill the duty has also been laid on him as an Inspector, to institute prosecutions. Therefore, the District Magistrate shall have to institute prosecutions in the courts subordinate to himself and that may not be desirable in the interests of justice and the owners. I therefore submit, Sir, that "District Magistrate" may be excluded from the term "Inspector", and other Inspectors may be provided instead of "District Magistrate". The District Magistrate being the head of the district can have the powers of supervision and will be the head of the Department in the district but he should not be made to perform all the functions of the Inspector. The Inspector is also required to be an expert in mining matters. The District Magistrate has already got much to do in the district.

and has his hands always full, and so he cannot be expected to be such an expert as to properly look after the mines as well as to the interests of the public and workers in the way in which an expert Inspector is expected to do. Therefore, Sir, I submit that the District Magistrate should be excluded from the definition of the term "Inspector". It might perhaps be argued, Sir, that there are many districts in which there are very small mines and the employment of Inspectors is not possible and may not be desirable on the ground of cost and so the District Magistrate is required to work as an Inspector under this Bill. My submission in that case would be that if there are such mines in a district and the appointment of separate inspectors for such districts is found too costly, then one Inspector may be put in charge of mines in those districts also instead of District Magistrates being made to perform the duties of Inspectors in their districts. Therefore, I move, Sir, that the word "District Magistrate" should be excluded from the term "Inspector" under this Act.

The Honourable Mr. C. A. Innes: Sir, in this sub-clause we have merely followed the existing Act. The existing Act gives the District Magistrate such powers as an Inspector may have and as may be vested in him by the Local Government. This sub-clause read with clause 4 (3) says that the District Magistrate is expressly debarred from exercising such powers conferred by section 19 or section 32, but otherwise he performs the duties of the Inspector subject to the general or special orders of the Local Government. As the Honourable Member indicated in the last part of his speech, it is necessary because of the very large size of India and the large number of mines that are in India with a very small inspecting staff. We have 1,760 mines under the Mines Act situated in different parts of India. We have only 4 Inspectors, and it is quite impossible for those 4 Inspectors to exercise their powers as an Inspector all the year round over all these mines. Now this Mines Act is intended very largely for the safety of workers down the mines, and if we cannot provide technical Inspectors for the supervision and control which is necessary in various parts of India, it is absolutely necessary that we should have the District Magistrate, who is the head of the District, to exercise those powers. It is specially necessary in provinces like Madras where there are not very many mines, and where the most convenient course is to let the District Magistrate exercise the powers of an Inspector. The only objection taken to the practice is that the District Magistrate may in the course of his inspecting duties have occasion to order prosecutions. The fear has been expressed that the subordinate magistracy of the district will always convict if the District Magistrate has ordered a prosecution. Well, Sir, we have safeguarded that, because you will find later on in the Bill that no case under this Act may be tried except by a first class Magistrate. I have been a first class sub-divisional Magistrate myself, and I cannot imagine any Magistrate of the first class allowing his judgment on any case which comes before him to be swayed in any way at all by the fact that formal sanction of the prosecution has been given by the District Magistrate. The present practice is convenient, it is the existing practice, and I submit, Sir, that no reason has been shown why it should be changed.

The motion was negatived.

Mr. B. N. Misra: Sir, I move:

"That in clause 3, sub-clause (k), for the words 'the enforced absence of the injured person from', the words 'inability to attend to' be substituted."

[Mr. B. N. Misra.]

Because "serious bodily injury" is defined as injury which involves or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of or injury to the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding 20 days. I submit, Sir, in this the term "enforced absence" is not quite clear, because who will enforce? Will really the mine owners enforce the labour to absent from work? Certainly they are not going to do that. Their interest is to bring the injured person to work and to show that he has not received any serious bodily injury. I think it is rather meaningless, because in the Indian Penal Code we have got the term "grievous hurt" defined as "inability to attend to work for 20 days, etc." The words "the enforced absence of the injured person from" is rather meaningless, and if we substitute the words "inability to attend to" it would be quite all right. It would mean the inability of the person to attend to his work. So I move this amendment.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I also beg to move an amendment to 1 p.m. sub-clause (k) of clause 3. My amendment is to the effect: "That between the words 'from' and 'work' the word 'his' be inserted."

Sir, as the definition in sub-clause (k) stands there seems to me some ambiguity in the interpretation of "serious bodily injury." It is just possible that my interpretation may not be the proper one. It may be due to the lack of a proper knowledge of English on my part that I may not be able to properly interpret the clause or to suggest a proper amendment. But I find that similar difficulties have arisen in the courts of law in interpreting sections 325 and 326 of the Indian Penal Code and from the little experience that I have, I have ventured to put in my amendment. As the sub-clause stands, it may mean that, if a person who has suffered the bodily injury were to be able to work in a different department of the mine or in a different place or if he were able to do the work of a different nature, then that injury may not fall within the purview of this definition. And my object by this amendment is to restrict its meaning in the way that only such injury be regarded as serious bodily injury if a man were to suffer an injury of a nature that he could not attend to the work for which he was employed, that injury shall be deemed to have been a serious bodily injury. For instance, he may be working in a mine for raising loads and a load may have fallen on his leg so that he could not do the loading work himself, but at the same time he could be employed by his master in watching the persons going into the mines, or as a watchman. May I know if such an injury is the injury referred to in such a definition or is it not? As the clause stands, probably it will not be included in this definition and the man shall not be said to have suffered a serious bodily injury. But, if we were to so amend this clause that, where a man suffers from any injury the nature of which is such as to disable him to do that work which he ordinarily did before he received such injury, that injury should be deemed to be a serious bodily injury. I do not know whether or not the amendment which I propose will solve my difficulty but I simply put before the House the object of my amendment. If the Legislative Department or the draftsman in the Government of India think that my object will be served by the insertion of the word "his" so much the better. If not, I would request them to suggest a wording which will make the meaning clear and be in conformity with the object.

The Honourable Mr. C. A. Innes: Sir, I do not pretend to be a lawyer nor yet a draftsman and I must confess that my Honourable friend's speech left me in some doubt as to what his difficulty was. All I have got to say is this; this definition of "serious bodily injury" was taken from the rules existing already in Bengal and Bihar and Orissa, and that is the reason why we adopted it. Secondly, I should like to point out that the exact wording of the definition is not a matter of any great importance. We are not discussing the Workmen's Compensation Bill: we are discussing the Mines Bill. The object of this clause is to explain the clauses later on in the Bill, clause 20 for instance, which required notice to be given of accidents, causing serious bodily injury, and clause 40, which prescribes a slightly higher penalty in cases which serious bodily injury results from the contravention of the inspection rules. I submit that the matter is of no importance at all and I hardly think it worth while making the amendment suggested by the Honourable Member.

The motion was negatived.

Clauses 3, 4 and 5 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, here I am in the same difficulty as I was in while considering the definition of "serious bodily injury."

My amendment is:

"In clause 6, sub-clauses (a) and (b), substitute the words 'may be necessary' for the words 'he thinks fit'."

Clause 6 empowers the Inspectors to make such examination and inquiry as they think fit in order to ascertain whether the provisions of this Act and of the regulations, rules, etc., have properly been complied with. The words used show that the discretion lies with the Inspector. The Inspector may think fit even an absurd inquiry, an absurd examination even though it may or may not have any connection with the provisions of this Act. That is to say that the words "he thinks fit" depend on his personal opinion rather than depend on the object of the inquiry which he may have in view. So, if we were to substitute the words "as may be necessary" this clause would be governed by and will be dependent on the object of the inquiry. The Inspector will not have any personal discretion at all. The Inspector shall have to judge about the necessity of the inspection from the object which he has in view and that could also be found out by superior officers whether a particular inquiry of a particular nature was essential under the particular circumstances or not. If there is any objection made to the examination of the inquiry by an Inspector, the Inspector can say "well, it may or may not be necessary for that object but I think it fit to examine and make such inquiries and therefore I do so and am not liable for my acts under this Bill." Therefore, I think but I am not quite sure "as may be necessary" will be a better and more desirable wording than "as he thinks fit", and I beg to move that the substitution be made.

The motion was negatived.

Clause 6 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, under clause 7 powers are given to the Inspectors to enter the mine for the purpose of surveying, etc., at any

[Mr. K. B. L. Agnihotri.]

reasonable time by day or night. The amendment, which I beg to move is:

"To substitute the words 'during the working hours of the' for the word 'by' before the word 'day'."

That part of the clause will then read as follows:

"any part thereof at any reasonable time during the working hours of the day or night."

Sir, it may be said on behalf of Government that the words "reasonable time" will cover my amendment, but it is also likely that it may be interpreted in a different way. It may be said that "reasonable time" may mean during early portion of the night and in that case it may create some inconvenience and hardship to the owners and managers. So it will be better if you make it clear and lay down that the Inspector and the Chief Inspector will have authority to inspect and enter the mine or do all things mentioned in the clause only when the mine is working, that is, during the working hours and not when the work has been stopped. Therefore I submit that the words "during the working hours of the day or night" may be included in clause 7 so that the Inspector may have no right to go and enter the mine, take level or survey, it at any time other than the working hours of the day and night.

Mr. President: Amendment moved:

"Substitute the words 'during the working hours of the' for the word 'by' before the word 'day'."

The Honourable Mr. C. A. Innes: Sir, I think that if there be anything in Mr. Agnihotri's amendment, he may be sure that mine owners throughout India would have taken the point. None of them have done so. No one has suggested it. The real reason is that in most mines, especially coal mines, work proceeds by day and night. There are no special working hours. The work always goes on.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): There are the words "after giving not less than three days' notice to the manager of the mine" in the clause. This clause therefore provides that three days' previous notice should be given, and if the mine owners have any objection, they can take the objection within those three days. So I do not think there is force in the Honourable Member's contention.

The motion was negatived.

Clause 7 was added to the Bill.

Clause 8 was added to the Bill.

Clause 9 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 10, in sub-clause (b), omit 'the Chief Inspector or an Inspector' and add 'any qualified and experienced mining engineer not being in the service of the Government and not being a Chief Inspector or an Inspector'."

Clause 10 provides for the constitution of the Mining Boards and it has been provided in the clause as it stands, that the Chief Inspector or

the Inspector could also be a member of the Mining Board. My amendment is to delete this provision and to exclude the Chief Inspector or the Inspector from the Membership of the Mining Board. I have said before that the Chief Inspector or Inspector is practically the chief mining authority with whom the mine owners shall have to deal. He is the executive authority whose complaints and references may be put before the Board and who has to launch prosecutions against mine owners for the breach of the rules of contravention of the regulations. Therefore it is undesirable that such a person should be on the Mining Board formed or constituted by the Government. It is better that instead of a Government official in the form of a Chief Inspector or an Inspector, some other person, an expert in mining matters be nominated in his place. Therefore, I suggest that instead of the Chief Inspector or Inspector a non-official Mining Engineer who has an expert knowledge of the working of the mines be nominated as a Member of the Mining Board. With these words, Sir, I move my amendment.

Mr. President: Amendment moved:

"In clause 10, sub-clause (b), omit the words 'the Chief Inspector or an Inspector' and insert the words 'any qualified and experienced mining engineer not being in the service of the Government and not being a Chief Inspector or an Inspector'."

The Honourable Mr. C. A. Innes: Sir, I think the Honourable Member has not fully apprehended what the functions of these Mining Boards are. The main functions of the Mining Boards are to scrutinise draft rules, regulations and bye-laws. These draft rules and regulations—regulations especially—will be drawn up in the first instance by the Chief Inspector of Mines. We also propose to lay down that they should be referred to the Mining Board before we published them for general criticism. The Board is practically an advisory body to the Chief Inspector of Mines or to the Inspector and to the Local Government, and I think the House will see that it is absolutely essential that the Chief Inspector of Mines should be a Member of that Board. He must be there to explain his draft rules, to answer criticisms and generally to discuss the rules. There is no need for the Honourable Member to think that the Chief Inspector of Mines is always up against the mineowners and the mine managers. From personal experience I can tell him that it is not so. Both the mine managers and the Chief Inspector and the Inspectors have one main object in view. They are anxious to get the regulations and the rules drafted in such a way that they provide in every possible way for the safety of the workers, and I think the House will agree with me that when you are discussing rules and regulations of this kind, it is very much better that they should be discussed by the Mining Board with the Chief Inspector there as a Member of the Board and able to answer criticisms and discuss the rules. It will be seen that he is only one out of a Board of six. I hope, Sir, that the House will not accept this amendment.

The motion was negatived.

Mr. N. M. Joshi: Sir, I beg to move the following amendment:

"In clause 10, sub-clause (1) (c), omit the words 'of whom one shall be a person qualified' and substitute in their place the words 'in consultation with the organisations of employees if such exist'."

There are two questions involved in my amendment in the first place, the original Bill proposed that there should be two persons nominated by Government out of whom one shall be qualified to represent the interests.

[Mr. N. M. Joshi.]

of the employees. The amendment which I propose is that the two persons to be nominated should be both appointed to represent the interests of the employees. My reason is this. Under this clause, the employers are given two representatives on the Mining Board, and if the employers are to have two representatives on the Mining Board, it is but fair that the employees should also have an equal number. Sir, I believe that the stake which the employees have in the industry is as much as the employers have, if not more, than the stake of the employers. This is true particularly of the mining industry. The House knows very well that the mining industry is a very dangerous industry. Every year this industry takes a toll of about 200 lives of the working classes. This is a great stake which the working classes have in this industry. If the mines are not properly worked, the mine owners suffer only loss in money. But if there is an accident and the regulations are not properly observed, the workers have to pay with their life. I therefore feel that the stake which the employees have in the proper working of the mines is as much as if not more than, the stake which the employers have. Therefore, instead of having only one representative on the Board they should have two representatives as the employers also have.

The second point involved in my amendment is that the persons to be nominated by Government on behalf of the employees should be nominated in consultation with the organisations of the employees where they exist, or if such exist. Sir, in the case of employers this clause provides that the representatives of the employers should be appointed by the employers themselves. If there had been well organised organisations of the employees, naturally this power of appointment would have gone to them also. Unfortunately, there is no central well organised association of the employees. Therefore I admit the desirability of Government nominating the representatives of the employees on the Mining Board. But I want to provide that when such well organised associations of the employees do come into existence, they will automatically be given the power of appointing representatives of the employees on the Mining Board. Sir, we all know that these Acts are not modified very often. As a matter of fact, this revision of the Mining Act has come after about 22 years. I am quite sure the next revision may come after 22 years or 25 years. (*The Honourable Mr. A. C. Chatterjee*: "No, no.") Within that period workers' organisations are bound to come into existence and grow very strong. I therefore think that we should provide in our Bill that as soon as workers' organisations come into existence they should have a voice in any nomination of their representatives on the Mining Board. I hope therefore that my amendment will find favour with the House.

The Honourable Mr. C. A. Innes: Mr. Joshi has told the House that mining is a very dangerous industry. I agree. It is also an industry which requires a very great deal of technical expert knowledge. Mr. Joshi has also told the House that it is unfair that the workers should have only one representative on the Mining Board while the employers should have two. The difference between Mr. Joshi and myself in this matter is that Mr. Joshi is concerned with the rights of workers and I am concerned with their safety. As I have said, this Mining Board exists for scrutinising the regulations for the safety of the miners. If Honourable Members will turn to the rule-making power, they will find the sort of things which the Mining Board has got to deal with rules for providing for the ventilation of mines and the action to be taken in respect of dust and

noxious gasses; for providing for the care, and the regulation of the use, of all machinery and plant and of all electrical apparatus used for signalling purposes; for requiring and regulating the use of safety lamps in mines; for providing against dangers arising out of the accumulation of water in mines; for prescribing the qualifications of managers of mines and of persons acting under them. We have got to look at where the labourers come from. The labourers are for the most part aborigines, Santhals, aborigines from the Santhal Parganas. On the Mining Board the people we want are mainly people who have sufficient expert knowledge to understand these rules and these regulations. That is why we have the Chief Inspector of Mines on it. That is why we provide two persons nominated by mine owners. Whom do the owners nominate? Their mine managers, all qualified certificated mining engineers, and I am quite sure that it would not help the workers if, on a consideration of what Mr. Joshi thinks their rights, we in any way weakened the technical power and technical knowledge on the Board. There are certain matters which come before the Board, matters connected with health, sanitation, and so on in which the workers' representative may give some useful advice, and we endeavour to meet Mr. Joshi by providing that there should be one representative of the workers on the Board and I think that the House will recognise that it is a sufficient advance for the present.

Then, Sir, Mr. Joshi suggests that these representatives should be nominated by the Local Government in consultation with organisations of employees if such exist. Well, Sir, I am not a draftsman, and as I have said before, I am not a lawyer. It seems to me that in a law of this kind it is bad to put in a hypothetical clause of this kind. What we have to consider is there are no organisations of employees at present, there are no unions of any sort or kind. If they come into existence and if, as Mr. Joshi says, they become very powerful, I have no doubt they will compel us to give them a share in electing their representatives on this Board. It will not merely be a matter of nominating in consultation with the organisations, the organisations will claim and will get the right of electing their representatives themselves, and I suggest that, instead of putting in a clause of this kind which does not mean very much,—you do not impose any obligation on the Local Government at all except the obligation of consulting these organisations if they exist—the Local Government is not bound in any way to accept their advice,—I suggest that it would be wiser to wait until organisations come into existence and until we can provide for them in a proper way.

I have another objection. As I have said, Mr. Joshi is concerned here more with the rights of workers. He wants us to put in a clause in the Bill which will compel the Local Government to recognise organisations of workers of whatever kind. Now, I say, Sir, that by making this suggestion to the House Mr. Joshi has brought into it a matter which requires separate consideration, that is, the whole question of the registration of trade unions. That question, as the House probably remembers, is now under consideration and one of the most difficult questions connected with it is whether we should make registration compulsory or whether we should make it voluntary. If we make it voluntary, one of the incentives to registration will be this recognition, this consultation by the Local Government. Mr. Joshi prejudices the decision on that point. If we accept this, the Local Government will be compelled to consult a labour organisation or labour union whether that union has registered or not. On both grounds, on the ground of the interest and safety of the workers themselves and on the

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other ground which I have just given, namely, that Mr. Joshi is asking us to take a premature decision on what is really an important point of principle, I hope that the House will reject this amendment.

Mr. K. B. L. Agnihotri: I have also given notice of a similar amendment and I think my amendment may be taken as an amendment to Mr. Joshi's amendment. Therefore, Sir, with your permission, I move my amendment as an amendment to Mr. Joshi's amendment. My amendment is:

“In sub-clause 10 (1) (c) after the words ‘in mines’ add the following:

‘Provided that such nomination shall be based on the recommendation of organisations of employees where they exist’,”

and with your permission, Sir, I add the words:

“and are recognised by the Government.”

The Honourable Mr. Innes has put forward two grounds for opposing Mr. Joshi's amendment, one that Mr. Joshi's amendment puts in hypothetical words, and secondly, that there is a separate matter involving consideration about trade unions and their recognition. If my amendment be accepted, both these points would go away, because I do not provide a hypothetical word “if” but instead the words “where they are already in existence,” and at the same time, to meet the Honourable Mr. Innes half-way I have added “and where they are recognised by the Government,” say, after a consideration of the point whether trade unions

Mr. President: I do not understand how the Honourable Member proposes to make his amendment, an amendment to Mr. Joshi's amendment.

Mr. K. B. L. Agnihotri: For Mr. Joshi's amendment, Sir, my amendment be adopted.

Mr. President: The Honourable Member is aware that his amendment comes at the end of the clause and Mr. Joshi's amendment in the middle. We must dispose of Mr. Joshi's amendment before we come to his.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, as I have said, I made those two points to the Honourable Mr. Innes. I think it would be desirable in the interests of the labour organisations to provide that they be authorised to recommend their nominees, and on that recommendation the Government would nominate such persons on the Board. If there be no labour organisations at present, my amendment would not come in the way of Government nominating any person, but will apply only where the organisations exist and are recognised by the Government and this will be a wholesome provision. The present Bill may not be taken up for revision, say for 20 or 25 years. Therefore I submit, that such a provision should be added to this sub-clause. With these words I commend my amendment to the House, namely:

“In sub-clause (c) after the words ‘in mines’ add ‘provided that such nomination shall be based on the recommendation of organisations of employees where they exist’,”

The motion was negatived.

Clause 10 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

“In clause 11, for sub-clause (a) substitute:

“(a) Two Judges of the High Court of the Province the senior of whom shall be the Chairman of the Committee.”

Sir, clause 11 provides for the constitution of the reference committees. In the English law on which this law is based, it is provided that two of the members of the reference committee should be Judges, similar to what I have provided in my amendment. I shall read to the House section 117 of the Coal Mines Act, 1911, which refers to the appointment of the reference committee. Clause (3) of section 117 lays down:

“The Reference Committee shall consist of the Lord Chief Justice of England, the Lord President of the Court of Session, and such person especially qualified by eminence in mining knowledge as the Lord Chief Justice and Lord President may select.”

Sir, it is on the basis of this Coal Mines Act of 1911 that the clauses concerning the Reference Committee have been inserted in this Bill, and therefore it is desirable that, instead of any person being appointed by the Local Government as the Chairman of such Committee, we should have two Judges of the High Court on the Committee, and the senior Judge of the High Court should preside over the Reference Committee. These Reference Committees will have power under the Bill to settle disputes between the Government and the mine-owners. Therefore it is necessary that a Judge be appointed as the Chairman of such a Committee and another Judge be a member. As the Government happens to be one of the parties through the Chief Inspector, while the mine-owner becomes the other party, the person appointed by the Government will be no better than a person in Government service and so it will be better that an independent person be appointed as Chairman of the Committee. Therefore I suggest to the House that my amendment be accepted, and instead of a chairman being nominated by the Local Government or by such officer or authority as the Local Government may authorise in this behalf, a Judge be a chairman and the clause be made to read: “Two Judges of the High Court of the Province, the senior of whom shall be the chairman of the Committee.”

The Honourable Mr. C. A. Innes: Sir, the Honourable Member has evidently again failed to understand what the functions of this Committee are. He talked of disputes between the workers and mine-owners and he talked of the Local Government being a party to those disputes. Therefore he suggested it was wrong that the Chairman should be nominated by the Local Government. This Committee exists merely for the purpose of appeals against orders under section 19 of the Act. Section 19 gives the Inspector very drastic emergency powers. If he finds any practice which is not otherwise provided for by rules under the Act to be extremely dangerous, he can require that that practice be remedied, and where the practice is very dangerous, he can even order the removal of the workers from the mine. If the power is abused by the Inspector, an appeal is allowed to the Chief Inspector, and then an appeal is allowed to a Committee. Ordinarily I do not believe these Committees have often sat. Very rarely they will come into existence, but when they do, what are the sort of things they will have to inquire into? Probably it will be the sort of case where the Chief Inspector thinks that the robbing of pillars has gone to such an extent that a certain part of the mine or the whole mine has become so

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dangerous that the mine ought to be closed. The Committee may have to go to the mine and inspect it and decide the matter on the spot. It is a very technical work and not the sort of work which is suitable for two Honourable Judges of the High Court. I do not think they should be taken away from their Benches and taken down to the mines to report on matters of this kind. The provisions providing for the constitution of this Committee are precisely what they have always been. I think we have made one small change, to provide for a representative of the employees, but substantially we have not altered the constitution of the existing Act which has worked very well, and I see no reason why we should change it now.

The motion was negatived.

Mr. N. M. Joshi: I wish to move the following amendment:

"That in sub-clause (c) of clause 11 (1) after the word 'nominated' the words 'in consultation with the organisations of employees if such exist' be substituted."

Sir, undeterred by the fate of my last amendment, I propose to move this amendment again in the hope that it will meet with a better fate. Sir, the objections taken to this amendment are likely to be the same which were urged against my previous amendment. It was said in opposition to my first amendment that the workers will not be able to select their representative, or select a proper representative for the Mining Board. It is said that the workers are Santhals and some such people and they have not got sufficient sense to elect a man who knows anything about mining. It is also said that if the workers are given the choice of electing, they will elect somebody that has only some theoretical knowledge of mining operations. Sir, I believe if workers are given the right of nominating their representative there are greater chances of their appointing a man who has got practical experience of mining operations than if the Government undertakes to do that work. Secondly, the question was raised that my amendments involve the question of the recognition of trade unions. I do not know whether this question is at all open to Government. Government does recognise trade unions, if not of the working classes, at least trade unions of the employers. After having recognised trade unions of the employers, are they going to say that they are not going to recognise the trade unions of the employees? I doubt if any Government at all will take up that attitude.

Now, Sir, this amendment also is much simpler than my previous amendment. In my previous amendment I had mentioned organizations. In this amendment there is no mention of organizations at all, so there need not be any organization of employees and there need be no fear of the recognition of the organization of trade unions. Before I request the House to accept my amendment, I want them to consider why these Committees will be appointed. They will be appointed when there is some trouble, some disaster, some accident, in a mine.

The Honourable Mr. C. A. Innes: No, that is a court of inquiry.

Mr. N. M. Joshi: Yes, only about matters concerning one mine. The Committees are not going to consider the large questions of mining operations. These Committees will consider questions as regards only one particular mine. If my impression is wrong, I am open to correction. Now, when a matter concerning the safety of the employees of a mine is to be

discussed, the representative to be appointed on behalf of the employees should be appointed in consultation with these employees, and, as the number of the employees would not be a very large one, it will not be difficult to consult their wishes. Sir, our Factory Act, in one of its sections at least, provides that the workers in a factory should jointly make a certain request and, when they make a certain request, that request should be considered. If the employees of a factory can jointly make certain requests and ask for certain changes in the rules, then certainly the employees of a mine ought to be entitled to do the same without difficulty. I therefore feel that whatever may have been the fate of my previous amendment, this amendment is free from even the objections which were raised to my previous amendment.

I therefore hope that this amendment will be accepted.

The Honourable Mr. C. A. Innes: Sir, I am not going to follow the Honourable Member into any discussion re-opening the question of organizations. In this particular amendment all that Mr. Joshi asks is that, before a member is appointed to a Committee to represent the employees, those employees should be consulted. What does that mean? I presume it means that, before a Local Government can make a nomination, it has in some way to call together a mass meeting of the miners down a mine and try to ascertain whether they know of any person who will be competent to give an opinion upon the point at issue. That point is nearly always a technical mining point, a point as to whether it is safe to work down a particular part of a mine owing to the pillars being inadequately strong, or whether the fire area of a mine has got so much out of control that the whole of that mine should be closed down. I cannot see that it will be the least use to call together this mass meeting of employees and ask their opinion on a question like this. It will merely cause delay. And one has got to remember that it is a very urgent matter for the owner of that mine that he should get a decision on his appeal against the Chief Inspector's order. His mine during the whole of this time may have been closed down and the workers may have been removed. If this House will agree that no material advantage is to be gained by the procedure indicated by Mr. Joshi, I think we ought not to incur the further delay which will result from consulting the employees. Moreover, this particular amendment was brought up by Mr. Joshi in Select Committee. I mentioned it to a mine owner and he said "That would suit me very well, because I could get my men to nominate exactly the person I wanted."

I think, Sir, on every ground we should object to this amendment.

Rao Bahadur T. Rangachariar: Sir, I am sorry to interpose, but there is a great deal in favour of the amendment moved by Mr. Joshi. It is admitted that these are merely Committees constituted for a particular dispute relating to a particular mine, so that it would be the employees of that mine whose interests would be involved. It is admitted in the Bill as it stands that the interests of the persons employed in a mine have to be protected, and it is supposed that this Local Government is so omniscient that they can find a person to represent their interests better than the persons themselves. How is a Local Government, situated hundreds of miles away, to know these interests. We know what it means. An Assistant Secretary or an Under Secretary will put up recommendations and the whole thing is done. The Local Government is supposed to know the interests of these employees better than the employees themselves. No doubt, Sir, where there is no will, you can exaggerate difficulties in the

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way. In a vast country like this people's opinions are gathered and, when they want to rely on people's opinions, they will say "the masses think otherwise, it is the educated minority who agitate for a thing which the masses do not want." I do not know how the Government know the opinion of the masses. But, here, if you were to consult the people themselves, I do not think it would be very difficult. The Chief Inspector or the Chairman of the Committee, by rules which you may prescribe, may hold a meeting of the employees and make a nomination. I do not think the difficulties are so great that you cannot find out the wishes of the employees as to who their representative should be.

I heartily support the amendment.

The Honourable Mr. A. C. Chatterjee (Education Member): With every sympathy for the object aimed at by Mr. Joshi and Mr. Rangachariar, I feel bound to oppose this amendment. I think my Honourable friend Mr. Rangachariar has not estimated the difficulties that will arise if the amendment is accepted and if we now legislate that, before a representative of the employees is appointed to a Committee, a mass meeting of the employees should be held. I do not know if either Mr. Rangachariar or Mr. Joshi is acquainted with the mine fields. I have some acquaintance with them, Sir, and I do not think it is realised that the mining population is shifting from day to day. How are you to find out who are the actual employees in a mine on a particular day or who are particularly interested in any matter which is referred to a Committee? Similarly, if there are two factions in the mine, it would often be extremely difficult for the Government to choose between the nominees of these two factions. The Honourable Mr. Innes has already referred to the very serious danger that will arise if the mine-owner gets round a large body of his employees and persuades them to accept a man who would really side with him. I see very serious dangers in accepting this amendment until the trade unions system is properly organised in the mines. I do not think, Sir, that an amendment to this Bill of the nature that Mr. Joshi suggests will be very difficult when the trade unions system is properly organised in the mine fields. Let us wait till then. Let us not prejudge the question and get into serious difficulties. Sir, I am as much in sympathy with labour interests as perhaps Mr. Joshi is, and I strongly oppose this amendment.

Mr. B. C. Allen (Assam: Nominated Official): Sir, I must protest against the description given by Mr. Rangachariar of the methods followed in appointing representatives of labour. I have some personal experience of the matter myself. There is in the Assam Council a representative of the garden coolies. I need hardly say that it is quite impossible to find any garden cooly who is capable of representing in the Council the interests of his fellow-workers. But when the duty was laid upon Government of selecting a gentleman to appear on behalf of garden coolies, all those who had any experience or who were in a position to give reasonable advice were consulted. The matter was investigated most carefully. There was no question whatever of merely asking an Under Secretary to submit a name. Divisional Commissioners and District Officers were asked for advice and ultimately a gentleman was selected whom everybody, I believe who has any cognizance of the facts would admit to be the most qualified representative of the labourers on whose behalf he was appointed to appear.

Mr. J. Chaudhuri: Sir, I support my Honourable friend, Mr. Joshi's amendment. He says "in consultation." He does not say that the representative should be elected by the employees. We remember that in the Legislative Councils formerly public bodies used to nominate representatives and the Government accepted them. So pending the formation of the Union of employees, I do not see any harm in the Local Government consulting the employees and accepting their recommendation. That is why I ask the House to accept this amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, it has been proposed that an amendment should be made in the Bill. I do not intend to deal with the substance of the amendment. But from the drafting point of view I should like the House to consider what the proposed words will mean when they are in the Bill. Mr. Joshi will have the Member of the Committee nominated by the Local Government in consultation—that is to say, there is to be a consultation between the Local Government and the workers in the mines. How that consultation is going to be brought about, I for one entirely fail to understand, and I have not yet heard from Mr. Joshi or Mr. Rangachariar how the consultation is going to take place. Mr. Rangachariar suggested that the Chairman might be asked to intervene. That would not be a consultation between the Local Government and the coolies in the mines, because the Chairman is in no sense a representative of the Local Government. I think, Sir, purely from the drafting point of view, if this amendment were carried, it would be a blot on the Statute Book.

Mr. N. M. Joshi: Sir, I have no right of reply but if you will permit me, I shall only make one remark with regard to the point raised by Sir Henry Moncrieff Smith.

If Sir Henry Moncrieff Smith finds any drafting difficulty in this clause, I would only draw his attention to the draft which he himself perhaps has made in the Factory Act, and it is this:

"At the request of the employees concerned periods of rest of not less than half an hour each, so arranged that for each period of six hours work done there should be periods of rest of not less than one hour.....and that no person shall work for more than five hours continuously."

Here the words used are "at the request of the employees." There is nothing said there about who is to make the request or who is to decide.

Sir Henry Moncrieff Smith: That is quite different from consultation.

Mr. N. M. Joshi: The employees in a factory may be in thousands. Take the case of Tata's Steel Works. They have got 30,000 employees. But nothing is mentioned in this section of the Factory Act as to how the request is to be ascertained, who is going to decide whether the request should be made or not or anything of the kind.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I wish to add a few words to the remarks which have fallen from Sir Henry Moncrieff Smith. If one mistake has been made in the Factory Act....

Sir Henry Moncrieff Smith: No.

Mr. W. M. Hussanally: I do not think another should be perpetrated in this Act. In my opinion, any system of consultation would be so unworkable that it would be impossible to come to any decision in the

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matter at all if the miners or the employees were to be consulted. Supposing, Sir, the miners were consulted by a District Officer and some voted in favour of one gentleman or gave their vote to one gentleman and the others gave it in favour of another gentleman. How is the vote to be taken, and how is it to be decided? If the body of employees are to be consulted, this means an elaborate procedure of voting, which must be gone into, and I think if the House is minded to have this 'consultation' brought in, a much more detailed system of voting ought to be put in to the Act so as to make the thing workable. Otherwise as the amendment stands, it will be entirely unworkable.

Mr. President: Clause 11. Amendment moved:

"In sub-clause (c) of sub-section (1), after the word 'nominated' the words 'in consultation with the employees' be inserted."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahsan Khan, Mr. M.
Asad Ali, Mir.
Ayyar, Mr. T. V. Serhagiri.
Bagde, Mr. K. G.
Chaudhuri, Mr. J.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Mahadeo Prasad, Munshi.

Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapattiraju, Mr. B.

NOES—36.

Abdul Majid, Sheikh.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.

Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Pyari Lal, Mr.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned for Lunch till Five Minutes Past Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes Past Three of the Clock. Rao Bahadur T. Rangachariar was in the Chair.

MESSAGE FROM THE COUNCIL OF STATE.

Mr. Chairman: I understand that a Message has been received from the Council of State.

Secretary of the Assembly: The Message runs as follows:

"From the Secretary of the Council of State, to the Secretary, Legislative Assembly:

I have the honour to inform you that the Council of State at its meeting of the 29th January has agreed without amendment to the Bill further to amend the Criminal Tribes Act, 1911."

THE INDIAN MINES BILL.

Mr. Chairman: The question is that clause 11, as amended by the Joint Select Committee, do stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 12 and 13 do stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 14 and 15 do stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, in clause 16 I move to substitute the word 'or' for 'and' between the words 'agent' and 'manager' in sub-clause (1). Sir, this clause has more or less been taken out from the English Coal Mines Act, 1911, section 102. There the word 'or' is used between the words 'agent' and 'manager'; and I do not know why that has been changed to 'and' in this clause of this Bill. I think that if the word 'and' be allowed to stand in sub-clause (1) between the words 'agent' and 'manager' it is just likely that it may be taken to mean that the owner and agent and manager, i.e., all these three persons, will be liable for penalty under clause 16. I think that will not be proper and desirable and therefore it is better to put the word 'or', and to make the owner, or agent, or manager, whoever is found to have committed any of the breaches of the rules or regulations under this Act, him only to be held liable. Therefore, Sir, I propose that instead of the word 'and' the word 'or' be substituted between the words 'agent' and 'manager' in sub-clause (1) of clause 16.

The Honourable Mr. C. A. Innes: Sir, I must challenge the accuracy of what the Honourable Member has just said. He said that the English Act used the word 'or' between the words 'agent' and 'manager' instead of the word 'and'. I will now read section 101(2) of the English Coal Mines Act, 1911: "If a mine is not managed in conformity with this Act, the owner and agent and manager thereof shall be deemed to have been guilty of an offence under this Act." So the House will see that the Honourable Member is entirely incorrect in his main argument for his amendment. I should just like to explain that the first two clauses of this section are part of the existing Act. The whole matter was very carefully discussed in the Joint Committee, and the Joint Committee by a majority decided to follow the English Act by adding the proviso which is shown in italics. I

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may say that I was one of the minority, but at the same time the matter was very carefully discussed and we are quite prepared to accept the decision of the Committee. By that proviso we have brought this section into accord with the English Act except in regard to certain additions which the Honourable Member proposes to make later and which are the subject of his later amendments. In any case in view of what I have said and in view of the inaccuracy of the Honourable Member's remarks I hope the House will not accept this amendment.

Mr. K. B. L. Agnihotri: On a point of explanation, Sir. The Honourable Mr. Innes has said that the word used in the English Act is 'and' and he has read section 101(2) of that Act. But I referred to section 102 which provides for penalty and there you will find the word used is 'or' and not 'and'.

The Honourable Mr. C. A. Innes: You have got to read the two together.

The amendment was negatived.

Mr. K. B. L. Agnihotri: I drop the amendment to sub-clause (2), and I do not wish to press it.

Mr. Chairman: The question is that clause 16 as amended by the Joint Committee

Mr. K. B. L. Agnihotri: I have got other amendments to clause 16, Sir.

Mr. Chairman: But you said you did not wish to move them.

Mr. K. B. L. Agnihotri: No, Sir, the portion I did not press was that which related to sub-clause (2). I have moved the amendment in respect of sub-clause (1) only and I said I did not wish now to move the amendment to sub-clause (2) as it was similar, but I shall move amendments, with your permission, Sir, adding other sub-clauses to clause 16.

Sir, my further amendment to clause 16 is:

"Add the following sub-section to the proviso to clause 16:

"Nothing in this Act shall render the owner, agent or manager of a mine liable to a penalty in respect of any contravention of or non-compliance with the provisions of this Act if he proves that the contravention or non-compliance was due to causes over which he had no control and against the happening of which it was impracticable for him to make any provision."

Sir, this amendment I have taken out from clause 102 of the English Coal Mines Act of 1911. The provisos (a), (b) and (c) and sub-clause (3) to clause 16 in our Bill have also been taken out from section 102 of that Act, while other provisos to that section have been left out by the Joint Committee. I wish to propose, Sir, that the sub-sections that have been left out by the Joint Committee should also be incorporated by the House in clause 16. This seems to me to be a very desirable provision because if the manager, owner or agent committed any contravention of the rules or regulations or of any provisions under this Act, and it is proved that such contravention was due to impracticable causes over which he had no control and it was for him to provide against its happening, then such owner, manager or agent be exempted from the penalty under clause 16. Therefore, Sir, I propose that this addition to clause 16 be made.

The Honourable Mr. C. A. Innes: Sir, I received notice of this amendment only at 10-30 A.M. on Saturday morning, and I have not been able fully to consult my legal advisers upon it. I don't remember whether we actually considered in the Joint Committee whether we should add these two clauses. But the reason why, as far as I can see, we did not include in our Bill a clause corresponding to clause 4 of Mr. Agnihotri's amendment, that is, clause 102 (3) of the English Act, was that it was thought that it was sufficiently provided for by clause 16 (2) of the Bill, which is the existing law. Clause 16 (2) says:

"In the event of any contravention of any such provisions by any person whomsoever, the owner, agent, and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention."

We thought, therefore, that we provided for the substance of the English sub-clause by the existing clause 16 (2) of the Bill.

As regards the second amendment "Nothing in this section shall be construed"

Mr. Chairman: It is not before the House.

The Honourable Mr. C. A. Innes: That, Sir, is the reason why we did not include a clause corresponding to clause 102 (3) of the English Act in our Bill. As far as I am concerned, I am quite prepared to leave the matter to the House. I do not think it is a matter of much importance, but it seems to me that clause 16 (2) of the existing Bill sufficiently provides for what the Honourable Member wants.

Mr. K. B. L. Agnihotri: In that case, Sir, I may be permitted to withdraw it.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, as I was a Member of the Joint Committee I may say that I thought that in law all that was needed was that reasonable means should be taken by the manager, owner or agent; and "reasonable means" means necessarily that if the instructions are unreasonable he has a good defence and he can say 'These I cannot carry out; these are not reasonable,' and he gets out of it by these words.

The amendment was, by leave of the Assembly withdrawn.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That the following sub-clause be added to clause 16 of the Bill, namely:

"If a boy or girl was employed on the representation of his or her parent or guardian that he or she was of an age at which his or her employment would not be in contravention of this Act and under the belief in good faith that he or she was of that age or if a person has been employed in any capacity or in any manner on his representation that he fulfilled the conditions as to age, experience and otherwise necessary for such employment and under the belief in good faith that such representation was true, the owner, agent, or manager of the mine and employer shall be exempted from any penalty and the parent or guardian or the person making such representation as the case may be, shall in respect of the misrepresentation, be guilty of an offence under this Act."

Sir, this is also a sub-section of section 102 of the Coal Mines Act of 1911. In the present Bill we have provided that children below a certain age shall not be employed in the mines. The amendment which I suggest to this section will have the effect, that if the owner or manager or the agent

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of a mine employs any person on the representation of the person himself or on the representation of the guardian or the parents of such children, then he (the manager, owner or agent) would not be held liable to penalty under this section. Secondly, the guardian or the parent or the person who makes such a representation will also be held liable for having made a false representation to the owner, manager or agent for such employment, and therefore I suggest that this provision of making the person who makes such false representations, liable under this clause, will be very salutary in preventing the employment of children in the mines. Therefore, I submit, that this amendment be accepted and added to clause 16.

Mr. N. M. Joshi: I rise to a point of order, Sir. This is a complicated amendment, and I think it should not be allowed.

Mr. Chairman: Do you object to it?

Mr. N. M. Joshi: Yes, I object to it.

Mr. Chairman: As the amendment is objected to, and as Honourable Members have not been furnished with a copy, for want of notice, I think I should disallow it.

The Honourable Mr. C. A. Innes: Sir, may I point out that it will delay the whole Bill. I think I can explain the point to Mr. Joshi's satisfaction.

Mr. Chairman: If Mr. Joshi is willing to hear you.

Mr. N. M. Joshi: I have taken my objection.

Mr. Chairman (to the Honourable Mr. Innes): You may address the House as to why the objection should not be allowed.

The Honourable Mr. C. A. Innes: I think, Sir, the rules provide that two clear days' notice must be given for these amendments. These amendments reached me on Saturday evening, and from our point of view the objection can be upheld. I do not know why copies of the amendments have not been supplied to Members. The real point I want to make is that I am anxious not to delay this Bill on the ground that Members have not been given notice of an important amendment which I think I can dispose of quite easily.

Mr. K. B. L. Agnihotri: I think Mr. Joshi will reconsider his objection.

Mr. Chairman: In the circumstances explained, I suspend the Standing Order and allow the amendment.

The Honourable Mr. C. A. Innes: I think it is a very dangerous thing for us to try and transfer from the English Act a provision of law which may be and is entirely unsuitable to our own Act. In the first place, the form of Mr. Agnihotri's amendment is unsuitable. It talks about a boy and a girl. We have no definition in our Act of a boy or a girl. We have only got a definition of a child. In the second place, the intention of the amendment is to penalise misrepresentation as to the age of a child by the parent of that child. Now, everybody in this House, I think, will realise

that the Indian miner will have the very greatest difficulty in saying definitely whether or not his child is or is not below 13 years of age and therefore in clause 27 of our Bill we have made a special provision to meet this very case. Clause 27 says:

"If any question arises between the Chief Inspector or the Inspector and the manager of any mine as to whether any person is a child, the question shall, in the absence of a certificate as to the age of such person granted in the prescribed manner, be referred by the Chief Inspector or the Inspector for decision to a qualified medical practitioner."

In all cases, therefore, where it is uncertain whether or not a child is or is not below 13 years of age, we make provision for the settlement of the dispute. It seems to be quite unnecessary to impose on these ignorant miners the obligation of telling the truth with regard to the age of their children when they themselves probably do not know what that age is.

Mr. N. M. Joshi: Sir, I also oppose this amendment. It provides for a penalty on the parents of the children on the ground of misrepresenting the age of their children. I think, Sir, in the case of these illiterate people, anything can be proved against them, and therefore I think that such a provision is most dangerous. I therefore oppose it.

The motion was negatived.

Clauses 16, 17 and 18 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move that sub-clause (7) of clause 19 be deleted.

Sub-clause (7) is to this effect:

"Nothing in this section shall affect the powers of a Magistrate under section 144 of the Code of Criminal Procedure, 1898."

Sir, under this sub-clause we give authority to a Magistrate to stop the mines and take proceedings under section 144 of the Code of Criminal Procedure. The House will remember that only a few minutes ago we have provided that the District Magistrate may be made an Inspector in a district. Sir, if the District Magistrate is declared to be an Inspector in the District, this clause becomes superfluous because, in his capacity as a District Magistrate, he could take action and in his capacity as an Inspector also he could take action; moreover, under this Bill, we have also provided that the Chief Inspector or the Inspector, if he finds that the mine is in a dangerous condition or something to that effect, can under clause 19, sub-clauses (1) and (2), close the mine. So this power under 144 will be superfluous when the same thing could be done by the Inspector or the Chief Inspector and by the District Magistrate. They can also withdraw the workers from the mines and they can stop the working of the mines. It might be said that there may be a likelihood of a breach of the peace and therefore the Magistrate's intervention may be necessary but this very thing could be done by the Chief Inspector and the Inspector under the other sub-clauses of clause 19 and therefore this sub-clause (7) is superfluous and unnecessary and should be deleted.

The Honourable Mr. C. A. Innes: Sub-section (7), Sir, is in the existing Act. As I understand the matter, it is as follows: "under section 144 of the Criminal Procedure Code a Magistrate has power to take certain action in an emergency—that is a general power. Under clause 19 of this Bill we confer upon the Chief Inspector and the Inspector special powers to take action also in an emergency. The object of sub-clause (7),

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as I understand it, is to make it perfectly clear that nothing in the special powers which have been conferred upon the Chief Inspector and the Inspector override or interfere with the general powers exercised by a Magistrate under the Criminal Procedure Code. It is by no means clear to me whether, if you remove this section from the Bill, you would in fact deprive a Magistrate of his general powers under section 144 of the Criminal Procedure Code. To take the question, on the merits, whether a Magistrate should be allowed to exercise these powers, I would point out, as I have just pointed out on an earlier amendment, that we have only got four Inspectors in all India. Quite conceivably, there might arise a case where a part of a mine becomes extremely dangerous, where a Magistrate has to take action on the spot without waiting for an Inspector to come down. It seems to me, Sir, whether it makes any difference or not if we remove this sub-clause, it will be a mistake to do so.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I think Sir, the Government is not well advised in having a clause like this. If they once bring in a special act of reservation in respect of a particular section of the Criminal Procedure Code, it would mean that the Magistrate cannot exercise any of the other powers conferred by the same Code. For example, take section 133. Does the Honourable Member mean to suggest that, unless power is given by this Bill to exercise powers under that provision of the Criminal Procedure Code, the Magistrate could not exercise the power? I think, if he thinks the matter over, he will find that the introduction of this clause is likely to lead to a great many difficulties. If we specifically mention section 144, it would imply that the other powers are not open to the Magistrate; I do not think the Government would be well advised in having a clause like this. Once you mention a specific section you exclude the exercise of powers under other sections of the Criminal Procedure Code. Take section 133—taking precautions in respect of danger to property. If you leave out that and put in section 144, what would be the effect? It would be regarded as if you had made provision for exercising powers under section 144, but that the Magistrate cannot exercise powers under section 133. I think it is a dangerous innovation and is likely to lead to difficulties.

The Honourable Mr. C. A. Innes: It is not innovation: it is in the existing Act.

The Honourable Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, in reply to my Honourable and learned friend who has just spoken, I should like to point out that section 144 and this particular clause of the Bill that we are now considering deal with the same matter, deal with an emergency where speedy remedy is desirable. Section 133 is another matter altogether: that deals with the case of a nuisance. I would point out one mistake into which Mr. Agnihotri has fallen. I understood him to say that, as the District Magistrate has the powers of an Inspector under the Act, he can as an Inspector use his powers under section 19 to meet the emergency and therefore it is quite superfluous to allow him any power or any Magistrate any power under section 144. Mr. Agnihotri has, Sir, I am afraid, overlooked the clause of the Bill under which the District Magistrate gets his powers under the Bill. If he will look at sub-section (3) of section 4 he will find that the District Magistrate is not, and cannot be, invested with powers under this particular section 19. It is

one of the two sections which is excluded from the scope of the Magistrate's action under this Bill. Therefore, Mr. Agnihotri's sole argument to support this amendment has disappeared. A District Magistrate cannot take action under section 19 and we make it quite clear that he can take action under section 144 of the Criminal Procedure Code.

Mr. Chairman: Amendment moved:

"In clause 19 delete sub-clause (7)."

The motion was negatived.

Clauses 19, 20 and 21 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 22, substitute 'in the local official Gazette' for the words 'at such time'."

Sir, clause 22 of this Bill is to this effect:

"The Local Government may cause any report submitted by a Committee under section 11 or by a court of inquiry under section 21 to be published at such time and in such manner as it may think fit."

My amendment will make it obligatory on the Local Government to publish it in the local official Gazette, in addition to the other modes that the Local Government may decide to give publication in as required. My reasons for this are, Sir, that the local official Gazette is practically the mouth-piece of the Government. Every event, order or piece of legislation, rules or regulations and every report that has to be published by the Government, unless it is of a very voluminous size, is generally published in the local official Gazette and every person including a mine owner is expected to know it and even the law presumes that whatever has been published in the Government Gazette is a proper communication to the persons who may be concerned. Therefore I suggest that it would be better that in addition to the other modes of publication the Local Government may think proper that the publication should also be made in the local official Gazette so that no person could complain afterwards that he had not the knowledge of it because the manner of publication under the Bill remains uncertain and may not probably be known to every mine owner or to persons concerned; while they are expected to know and actually know that there is a Government Gazette which contains these publications. Therefore, it will be better if the local official Gazette is inserted in this clause and the Local Government be required to publish the reports, etc., in the local official Gazette in addition to the other modes that they may think right.

The Honourable Mr. C. A. Innes: I would just point out, Sir, as a point of form, that if this amendment is adopted, it would seem necessary to add before "manner" the word "such". Otherwise the clause will stand "in the local official Gazette and in such manner as it may think fit." That will probably amount to an injunction for the Local Government to consider whether it should be printed in small pica or big pica or whatever it may be. But apart from that, Sir, I do not think I need take the time of the House over this amendment. Surely in a matter of this kind we can leave it to the Local Government to decide what is the most suitable method of publishing a report of this kind and I do not see why we should tie them down in this Bill to any particular method.

The motion was negatived.

Clause 22 was added to the Bill.

Mr. B. N. Misra: Sir, my amendment runs as follows:

"(i) That in clause 23, sub-clause (b) for the word 'sixty' the words 'forty-eight' be substituted.

(ii) That in clause 23 (c) for the words 'fifty-four' the words 'forty-two' be substituted."

Clause 23 runs as follows:

"No person shall be employed in a mine:

(a) on more than six days in any one week;

(b) if he works above ground, for more than sixty hours in any one week;

(c) if he works below ground, for more than fifty-four hours in any one week."

My amendment relates to clauses (b) and (c). The first sub-clause says that no person shall be employed for more than six days in one week. Practically a labourer has to work sixty hours in six days, and if he has to work sixty hours in a week, it comes to this, that he has to work ten hours a day. I consider that this ten hours' continuous work is really very unwholesome and it will greatly tell upon the health of the labourers. The object of the Bill is to protect the safety and health of the labourers. Generally labourers go to work at about 7 in the morning, come at about 12, prepare their meals, have their bath and so on. They go to work at 3 P.M., come back at 6 P.M. An ordinary labourer works 8 hours a day. That is outside, in the open fields. In this case, if the present conditions are allowed, they will have to work 10 hours. For instance, if they go early morning at 7, they will complete their ten hours' work by 5 o'clock without any recess. If some recess is allowed for their bath and their food,—you must allow at least two or three hours,—even if you allow only two hours, they will have to work till night 7 o'clock. I think two hours' recess is absolutely necessary for their bath and other things. Practically they will have to work from morning 7 till night 7, if any recess is allowed. If no recess is allowed, as is not contemplated, they will have to work continuously from 7 A.M. till 5 P.M. I wish to point out to Honourable Members that we began just at about 11 o'clock and we went for our lunch at 2 P.M. That is, after three hours' work we had one hour's rest. I think Honourable Members will have some sympathy and some consideration for these hard working poor labourers. If two or three hours' work is sufficient for an hour's rest for us, don't you think that these labourers who have to work in pits deserve your sympathy! I am told sometimes these pits are 5,000 feet deep and some are 2,000 feet deep and they have to work at such depths underneath the ground that they do not get any free air, and the pits are very warm and very unhealthy. Do they not, as human beings, require some sort of concession and do you think it proper that they should be so much tormented and work for ten hours a day at such depths? Sub-clause (c) provides that they will have to work only fifty-four hours underground. That means that underground labour is required to be 9 hours a day and above-ground work 10 hours a day. There is no definition of what is above-ground work and what is underground. We do not know which they will call underground work—200 feet or 300 feet or 1,000 feet under the ground. In these circumstances, to labour for 9 hours or 10 hours a day is very unwholesome for these labourers. Probably my Honourable friend, Mr. Innes, will tell us that we have to conform to the decision of the Geneva International Conference which has accepted 10 hours' labour to be the minimum. I submit that for this particular kind of work, which is really very difficult, and in a country

like India where the weather is really so uncharitable or so specially hot in summer, it is very difficult for labourers to work for 9 or 10 hours a day. I think 5 or 6 hours will be really very tiresome for any labourer who really wants to work. If you simply want them to be there even till 10 o'clock, they might be idling away their time. In the interests of hard work you have to give them some rest. If you give less hours, they can work more energetically and more vigorously, and they can turn out more work than if you allow them to be there for 20 hours or 15 hours or any longer hours. The result that the mine owners will get by allowing these people to work more hours, will not be profitable to them, because we must imagine that the workmen are after all human beings and no man can do hard work continuously for more than 7 or 8 hours. If you keep him there for 10 or 15 hours I do not think it will be profitable to the mine owners. Probably, it may be said that these labourers will get more money. As a matter of fact, they do not get more money. The work is carried on on a contract system. Say, the cooly sirdar takes 10 or 12 coolies. He takes a contract and whatever extra money is got is taken by the cooly sirdar from the mine owner or his agent. The actual coolies do not get any profit, because the coolies continue to get the same daily wages. The gain goes to the sirdar, or headman or contractor. I submit therefore that if they work hard it will not benefit them. I do not think that such provision will really bring any benefit to these labourers. Then, probably, it may be said that in the Factory Act we have also 10 hours labour. I submit to this House that labour in a factory and labour in a mine is quite different. Labour in a factory is more comfortable where they have to work under buildings or in open air, whereas this mine work is really very tiresome and unwholesome work. Ten hours labour is very difficult even above ground and 9 hours a day or 54 hours in the week is really very very difficult to do. Of course, we are not making any provision that those who have worked 4 or 5 hours underground should be brought above-ground and another set should go underground. If there were some such provision, there might be reason in that, but there is no such provision. So, a man working underground will always be there continuously 9 hours which is very difficult. In these circumstances I move:

"That in clause (b) instead of '60 hours' '48 hours' be substituted and in clause (c) instead of '54 hours' '42 hours' be substituted."

Mr. Chairman: Amendment moved:

"That in clause 23, sub-clause (b), for the word 'sixty' the words 'forty-eight' be substituted."

Mr. N. C. Sircar (Bengal National Chamber of Commerce): The provision is that in respect of work overground it is 60 hours, that is, ten hours a day. Ordinarily, there are 12 hours in a day, I think my Honourable friend understands it. The practice in our coal mines is that the above-ground labourer gets two hours' rest from 12 to 2 P.M. In ordinary days, I mean in the summer season, the sun rises at about 5-30, and the labourer goes to work at about 6 o'clock. After working 6 hours he gets two hours' rest, and then he comes back at 2-30 or 2 and goes back home at 6 o'clock. We get 10 hours' work and at the same time they get two hours' rest. So, that meets the desire that a labourer should get a certain amount of rest. (A Voice: "What about winter?") In the winter season, they get their two hours' rest all the same, but they cannot get to work before 7 o'clock, and they are always let off at 5-30 P.M. In

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the winter season we do not get 60 hours' work. (A Voice: "Why is it provided in the Bill?") Then there must be two provisos that in the summer season it ought to be 60 hours and in the winter season it must be 54 hours. But in respect of underground work, the provision is for 54 hours and six days in the week which means nine hours a day. Of course, we have not at present the shift system in the mines, in fact, it is impracticable, because some miners come to work from a distance of 5 or 6 miles and therefore they cannot return home every day. Therefore they stop at the coal mine and they are expected in their own interests to work 9 hours. But the miners generally go down at 8 or 8-30 and sometimes at 9 o'clock. Whoever goes later is to come out later and from 8 o'clock they work up to 4 o'clock which means actually 8 hours and we do not get more than 8 hours' work. Of course, the provision is for 9 hours but we shall be quite pleased if we get 8 hours' work from the miners. As a matter of fact, we do not get more than 8 hours work. The same thing applies here as in the case of surface labour that in the winter season we get a certain amount of less work because they cannot go down until it is 9 o'clock and in the hot season, of course, they go down a bit earlier. At any rate, they do only 8 hours' work under the mines, and such being so, I do not see what effect the amendment is going to have on the practice already in force in the coal mines.

The Honourable Mr. C. A. Innes: My Honourable friend, Mr. Misra's speech contains so many startling mis-statements that it left me panting and breathless at the end of it. He referred to coal mines 5,000 miles deep. (A Voice: "Feet.") He referred to the Geneva Conference which was a conference which dealt with seamen. What he really meant to refer to was the Washington Conference, the conference which mainly dealt with factory labour. The whole of his speech indicated, I think, that he had never been to a coal mine, and that he had not even read the previous debates in this House in regard to this Bill. Mr. Misra evidently thinks that in the coal mines at 6 o'clock every morning you ring a bell and miners come out from neatly whitewashed houses and troop down the mine, and at five in the evening a bell is rung and the miners troop out of the mine. That is not so, for the mine labour in India, especially in the coal mine, is, I regret to say, very unorganised. It is difficult enough to get the labour at all. When the miner comes, he comes often from a long distance. The men come with their families. They go down the mines and come up whenever they like, they stay there as long as they like, and they are paid entirely by results. They do not do any fixed number of hours work. They merely cut so many tubs of coal. When they cut enough tubs of coal sufficient to maintain them for a week, up they come and away they go. That is why in making for the first time an effort to limit the hours of labour in a mine we have contented ourselves with fixing a weekly limit of hours, and in fixing that limit of 60 hours for labour above-ground, we have followed the desire expressed by this House, the mandate of this House. The Washington Conference recommended that in India the limit of 60 hours a week should be adopted for all workers in industries covered by the Factory Act and in mines. The House recommended to the Governor General in Council that that draft convention should be ratified and that is why we have adopted the 60-hour a week for labour above-ground. That is, we have adopted for labour above-ground in mines precisely the same limit as we have adopted for ordinary factory labour. Is there any reason why we should treat

above-ground labour in mines with more consideration than similar labour in factories? As regards underground labour we have gone rather beyond the prescriptions of this draft convention. We have adopted a 54-hour week, and we did that for a special reason. At the Washington Conference there was a special Committee sitting. It did not go as far as recommending the inclusion in the Convention of a 54-hour week for underground labour in mines, but it made a special recommendation to the Government of India that we should consider that proposition. We embodied these two propositions in the Bill. We have addressed all Local Governments and all Local Governments except one, Burma, which objects to the limits and thinks they are too low, have agreed to them. At this stage it would be very difficult for us to go further and lay more drastic limits down. And since in this Bill we have carried out the mandate of this Assembly, I think that this Assembly should reject this amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I am afraid I think a further lowering of the maximum working hours will affect the growth of some indigenous industries such as mica and coal, and will reduce their output.

Mr. Chairman: Will the Honourable Member kindly speak up.

Rai Bahadur S. N. Singh: Ten hours a day is not considered intolerable even for brain workers and there is no sufficient reason why a labourer should not put in 60 hours a week or 10 hours a day above ground, and 54 hours a week or 9 hours a day below ground, especially as it has been made clear that he must have absolute rest for one whole day in a week of seven days. In this connection I would venture to invite reference to the opinion of the Punjab Coal Company, which considered that the limitation of the hours of employment in mines and the enforcement of a weekly day of rest would be the death blow of the Punjab collieries. This provision has on the whole met with the approval of the Local Governments and the representative public bodies as the maximum limit reasonably enforceable, but even then, Sir, it is recognized that it will be necessary to make some rules to exempt the cases of firemen, pump-men and other labourers of an intermittent kind, at least for a considerable time to come, as it will not be an easy matter to provide specially qualified men of this class in the near future. Also, Sir, it is a matter of some significance that even the veteran hero of the labour classes in India (Mr. Joshi) favours the retention of this clause, as his proposed amendments to this clause would go to show.

In the circumstances, Sir, I think this amendment should be readily outvoted.

Mr. N. M. Joshi: Sir, I have great pleasure in supporting this amendment. The hours of work suggested by this Bill are no doubt too long and I hope the House will accept the amendment proposed by my Honourable friend, Mr. Misra. I am of opinion that no man should be allowed to work for more than six hours a day and for more than six days a week and that for adequate wages. I do not think my friend, Mr. Sircar, really made out a strong case. He himself admitted that people do not work for more than eight hours. If they do not work for more than eight hours why should you not accept the amendment?

Mr. N. C. Sircar: I meant to say as regards sub-surface work.

Mr. N. M. Joshi: If they do not work very long and for more than two days, why should he object to the amendment? I think if the amendment is accepted, we shall be following the modern and latest European standards. I therefore feel that this House should accept this amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I did not want to speak, but having heard my Honourable friend, Mr. Joshi, I should like to say a word or two on certain aspects of this question. There is one thing to which I would like to draw the attention of the House particularly. It is that the clause in question merely lays down the outside limit. Clause 23 of the Bill does not compel every labourer to work for 10 hours or any other specified number of hours. What it says is that no person shall be employed in a mine (a) on more than six days in a week, (b) if he works above ground, for more than sixty hours in any one week, and (c) if he works below ground, for more than 54 hours in one week. Now, Sir, we have just heard one of the coal proprietors from Bengal, and we know now that physical laws and economic laws cannot be very often resisted, in spite of regulated hours of work. So that if at certain seasons of the year workmen are obliged to work shorter hours and at other times longer hours, these periods have to adjust themselves to the needs of surrounding circumstances. That is a point, Sir, we should not lose sight of. Therefore if the amendment proposed be accepted, and then on any occasion if somebody is required to work for 10 hours, and he does so willingly and even for his own gains he will be punishable under the law according to the proposed amendment. That is what the present law wishes to provide against. It does not require any labourer to definitely work for 8 or 10 hours. Unlike my Honourable friend from Orissa (Mr. Misra), I have been in a mine myself and have seen things as they are. Sunrise or sunset has very little to do there. Down there, it is pitch dark relieved only by electric bulbs and one has to move about there with difficulty. I may repeat, one has very little to do with sunrise and sunset in marking his hours, when working in a mine. Putting aside these questions, I submit that clause 23 of the Bill provides for the maximum limit only for the period of work for a labourer in connection with a mine, and bearing this in mind we should not raise objections which might interfere with the output of coal, or with the cost of the output of coal, and may bring about economic conditions which may place India at a disadvantage in the economic world. Therefore, Sir, I oppose the amendment.

Mr. Chairman: The amendment before the House is:

"That in clause 23, sub-clause (b) for the word 'sixty' the words 'forty-eight' be substituted."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 23, sub-clause (b) substitute the words 'fifty-four' for the word 'sixty', and in sub-clause (c) substitute the words 'forty-eight' for the words 'fifty-four'."

I do not think that this amendment requires any argument. The Honourable Mr. Innes gave us two grounds in opposing Mr. Misra's amendment. The first was that generally these people were not required to work for more than eight hours, and certainly not for 10 hours, as Mr. Sircar has pointed out. The second was that we have adopted the draft Convention which lays down 60 hours, and it is thus necessary to adopt that as a principle for fixing the maximum hours of work in the mines.

But, Sir, we have already deviated from the draft convention in adopting 54 hours as the maximum period of work underground, and there is no cogent reason why should we put a maximum of 60 hours and stick to the convention. Mr. Sircar has pointed out that the labourers generally work for only 8 hours. (Mr. Sircar: "I was not speaking of surface labour, Sir.") Say, 10 hours in summer and less in winter. But, Sir, even clerks and other people employed in offices whose work is not of such a fatiguing nature as that of the labourer are never required to work for more than six or seven hours in the day. (Voices: "No, no.") From 10 to 4 o'clock or 5 o'clock: what does that come to. (A Voice: "Till 10 o'clock.") Office hours generally are from 11 to 5 or 10 to 4. If a man works later than that, it is his own lookout. When therefore we people who have light work to do, work only for seven or at the most eight hours, why should we take more work from the labourer whose work is much heavier and tiresome and make him work for 10 hours a day as is being provided in this Bill. And if, as pointed out by Honourable Mr. Innes and Honourable Mr. Sircar, they actually work for less than 10 hours, then there should be no objection to fix the maximum of working hours at 54. Even that will amount to nine hours work a day, which is in itself too much. Therefore I suggest that by way of a compromise the Government should accept this proposal for the substitution of 54 instead of 60, in place of 48 which has just been thrown out. The Honourable Mr. Mukherjee has said that that is only the maximum period which has been fixed. I do, of course, realize that in the mines where illiterate labourers work, they are never expected to be punctual in attending to their work, and often they come late. But there is no necessity to keep the maximum at a figure which is not desirable, because that may give an excuse to some mineowners to extract 60 hours full work from them and the Government could not interfere. Mr. Sircar has said that if a labourer comes late, he has to continue late. Therefore I submit it is better to reduce the work from 60 hours to 54 and if a man has to do underground work, from 54 to 48. Therefore I move that this substitution be made.

The Honourable Mr. A. C. Chatterjee: I do not think the Honourable Mr. Agnihotri has advanced any new arguments at all. He has referred to the fact that men working in commercial and Government offices do not usually attend office for more than 6 or 7 hours, but have we ever passed any law preventing any man from working for more than 10 hours in a commercial or a Government office? I wish we had, because then I personally should have some relief from occasionally working from 6 in the morning to 8 o'clock at night. The whole principle here is different. We are preventing people from working more than a certain number of hours. Therefore we have to be extremely cautious. My friend, Mr. Mukherjee, has already emphasised the fact that we are laying down maxima. We are not laying down minima at all. I hope all the Honourable Members of this House will bear that fact in mind. Then the Honourable Mr. Agnihotri has utilised the statement made by Mr. Sircar that as a matter of fact these men in the mines do not actually work more than 8 hours underground. That is quite true. I would go further. From the statistics that we gathered, we learnt that as a matter of fact the hours they work underground are even less than 8 per day on the average but then there is no reason why we should restrict them from working hard and working fairly decent hours if they want to. The fact is, and I think Mr. Sircar will bear me out when I make this statement, that most of these people who work in the mines are also at present agriculturists. The result is

[Mr. A. C. Chatterjee.]

that they devote a certain number of hours of work to the mines and devote the rest of the week to work on their fields. Therefore they do work rather shorter hours in the mines both above ground and below ground than they ordinarily do in the factories. But we all know that the standard of living in these mines among the mine workers is extremely low. Our aim should be to raise the standard of life amongst these workers and then and then only their condition will improve and the condition of the industry will improve. Therefore our aim should be to get as many men to work all the time in the mines as possible and not devote their time half to agricultural work and half to mines. When they do that, they will certainly be expected to work fairly long and steady hours in the mines and we should do nothing in our present legislation to prevent any such tendency. I think, Sir, everybody will admit that this House has been most progressive in the matter of labour legislation. Even in the very first Session on the motion of Government this House agreed to laying down a 60-hour limit for workers in mines and in factories. In the present case we have gone even further. Government have made the proposal that the labour of miners underground should be limited to 54 hours. This has been done (as the Honourable Mr. Innes has already explained) with special reference to a recommendation made by a Committee at Washington. Therefore we are not really deviating from the Resolutions that were passed by this House two years ago. We are only carrying out the further suggestion that had been made at Washington. Everybody agrees that that suggestion is a sound one. Therefore Government cannot be considered to have been inconsistent in having made this proposal. I do not think, Sir, that Mr. Agnihotri's proposal will tend to the well-being of the miners. I think, Sir, in their own interests they should not be prevented from working a decent number of hours above ground. I hope, therefore, Sir, that the amendment will not be accepted.

Mr. W. M. Hussanally: I wish to add a few words, Sir, to what has fallen from the mouth of the Honourable Mr. Chatterjee. If I understood the Honourable Mr. Innes aright and if these miners are not paid by the day, it will make a very considerable amount of difference in their daily earnings if the time of working is further curtailed. That is the first point which must be taken into consideration. Secondly, I think that if there is a further curtailment of the hours of work for these miners, the price of coal must necessarily go up. That would cost a good deal to our industries. There is another point which has also to be considered in coming to a decision on this matter. We all want more coal and more industries. If we go on limiting the hours of work in this manner from time to time, I think our industries will not prosper so fast as we all wish. I therefore oppose the amendment.

Mr. Chairman: The amendment before the House is:
"That in sub-clause (b) of clause 23 substitute '54' for '60'."

The motion was negatived.

Mr. B. N. Misra: Sir,

Mr. Chairman: Is the Honourable Member formally moving it? He has already made a speech.

Mr. B. N. Misra: I have already made a speech, Sir; that is what I was going to express. I think I have dealt with both the clauses, and I submit

that at least this amendment (42 hours a week) for underground work should be accepted. I therefore move:

"That in clause 23, sub-clause (c), for the words 'fifty-four' the words 'forty-two' be substituted."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move this amendment, viz.:

"That in sub-clause (c) substitute the words 'forty-eight' for the words 'fifty-four'."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move:

"Add the following sub-clause to clause 23:

'(d) for more than ten hours in a day'."

Sir, we have provided 60 hours' work in a week, but we have not provided the limit of the hours for which a labourer is to work in a day. Therefore I propose, Sir, that a man may not be made to work for more than 10 hours a day.

The Honourable Mr. C. A. Innes: Sir, this point has been examined very carefully not only by the Government of India but also by a special Committee which sat on the Coal requirements in the coal-fields in 1919 and 1920. We have been advised on all sides that it is quite impracticable as things are at present in the coal-fields to impose any daily limit of hours. If the House will remember, we had a debate on this very subject in September last and I then explained in full detail this fact, namely, that it is not possible, as things are now in the coal-fields, to enforce a daily limit, and, since it is impossible to enforce a daily limit of hours, I think the House will agree with me that we ought not to impose one.

The motion was negatived.

Mr. Chairman: I think it will be for the convenience of the House if we adjourn now.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 30th January, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 30th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

STATEMENT OF GOVERNMENT BUSINESS.

The Honourable Sir Malcolm Hailey (Home Member): We have proceeded further with the allotment of business. Honourable Members will find that Thursday's list has already been distributed to them. We propose to have no meeting on Friday. On Saturday we propose to ask that the Report of the Joint Committee on the Workmen's Compensation Bill be taken into consideration, and we anticipate discussion on this important measure will also occupy us again on Monday. On Tuesday we assume that there will still be some discussion left over on the Workmen's Compensation Bill, and after that we shall proceed with the further consideration of the Criminal Procedure Code Bill. On Wednesday we shall again proceed to the consideration of the Criminal Procedure Code. On Thursday there will be discussion on the private Resolution regarding Company *versus* State management of Railways. I shall subsequently announce the business that is fixed either for Friday or Saturday following. On the following Monday we propose to again consider the Criminal Procedure Code Bill and also on Tuesday the 13th. Wednesday is a public holiday. On Thursday the 15th we propose to consider the Resolution regarding the Fiscal Commission's recommendations.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I know, Sir, with regard to the business on Thursday the 8th, supposing the Indianisation of the Army question is concluded, will some other Resolution be allowed to be brought up on that day or is the whole day to be given to that question?

The Honourable Sir Malcolm Hailey: Thursday, the 8th, Sir, is a public day, which we have given up for the consideration of the question of Company *versus* State management of Railways. I think it is unlikely that we should be able to take any further business on that day.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): And will that be on a Government Resolution?—Company *versus* State management of Railways?

The Honourable Sir Malcolm Hailey: It is a Government day but we have allowed a private Resolution to come forward on that day as it is a matter of great importance to the Assembly, and the Assembly will remember that they asked that I should bring this on as early as possible. I may say, of course, that it was open to us to use this public day for a Resolution of our own, but, as a private Resolution had been tabled on the same subject we propose instead to take the opportunity of discussing it on that day.

MESSAGE FROM THE GOVERNOR GENERAL.

Mr. President: I have to acquaint the Assembly that I have received a Message from His Excellency the Governor General:

"In pursuance of the provisions of sub-section (3) of section 67A of the Government of India Act, I hereby direct that the heads of expenditure specified in that sub-section shall be open to discussion by the Legislative Assembly when the Financial Statement is under consideration."

(Sd.) READING,
Governor General."

The Assembly will now resume consideration of the Report of the Joint Committee on the Indian Mines Bill.

THE INDIAN MINES BILL.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment:

"That to clause 23 the following sub-clause be added:

'(d) for not more than 11 hours in a day'."

I will take the latter part of my amendment separately. Sir, the evils which my amendment seeks to remedy are the evils of long hours of work in one day. By the Bill we have provided that there should be 54 hours of work in a week underground and 60 hours of work on the surface. Sir, by providing merely a limit for the week's work we do not stop the evils of the long hours of work. As a matter of fact, it was admitted during the discussion of the hours of work for the week that the workmen in the mines do not work generally more than 54 hours a week at all. Therefore, when that limit was placed, it was not placed to remove any evil because the evil of the long hours of work in a week did not exist at all. That limit was placed in order to satisfy the Washington Convention: that is all. But, even when you have a limit of 54 or 60 hours a week, you do not prevent long hours of work during the day. It is quite possible that the 54 hours may be worked in three days of 18 hours. Sir, it is not an exaggeration when I say that sometimes people do work for 18 hours a day in the mine and finish their week's work in that way. As a matter of fact this has been admitted both by Government and my Honourable friend, Mr. Sircar.

Mr. N. C. Sircar (Bengal: National Chamber of Commerce): I did not admit it.

Mr. N. M. Joshi: He says he did not admit it. Sir, he at least admits that there are not more than 54 hours in a week and he also admits that these people do not work for more than 3 or 4 days in a week. After working for 3 or 4 days these people go home. Sir, if these people work for 2 or 3 days or at most 4 days and finish the week's work which is about 54 hours' work, I think I am right in saying that the people in the mines must be working more than 13 hours and even sometimes 18 hours in a day. My Honourable friend, Mr. Sircar, may refuse to admit the fact which all the same exists. How does he propose to divide the work of 54 hours in three or four days' time unless the people work for 18 hours or at least more than 13 hours a day?

If my Honourable friend, Mr. Sircar, and the Government maintain that people do not work even for 54 hours a week, I can understand it.

(1670)

But if they say that the people do not work for 54 hours, my contention is, why did they not accept the amendment of my Honourable friend that there should not be more than 48 hours in a week? If people do not work more than 48 hours in a week why should they object to the amendment? As a matter of fact people do work more than 48 hours. They work 54 hours and therefore the 54 hours' limit was accepted. Sir, this evil is not imaginary. Not only people work up to 18 hours in a day but sometimes a large number of people remain in the mine for the whole day including night and for days together. Sir, I do not wish to request the House to take my word unsupported by an authority. I therefore propose to read a sentence from the latest report of the Chief Inspector of Mines. The Chief Inspector of Mines in his latest report says:

"The practice of sleeping underground is only too common although it is usually forbidden."

(An Honourable Member: "What does 'sleeping' mean?")
"Sleeping" means spending their night. Sir, as a matter of fact, people cannot but do that. Both Government and my Honourable friend Mr. Sircar will admit that they do not make provision for the housing of all the people who go to work in the mines, and if there is no provision of a residence on the surface, people do not mind sleeping underground and go on working as long as they can work. Both Government and my Honourable friend have admitted this fact that a large number of people come from their village to the mines.

Mr. N. C. Sircar: I rise to a point of order, Sir. I did not say that they are not provided with housing accommodation. What I said was that people coming from a distance of 5 or 6 miles do not go home every day. They go back home after their work is over.

Mr. N. M. Joshi: Sir, my contention is that all the people who work on the mines have not been given residential quarters in the mines. Are there residential quarters in the mines for all the people that work there? Again, there are a large number of people who come from the villages to work on the mines. Do you mean to say these quarters have been built for not being occupied at all? As a matter of fact, a large number of people have not got sufficient residence on the mine. Therefore a large number prefer to go on working from one morning to the next morning, having practically little rest, sleeping somewhere and again beginning work and finishing the 54 hours for the week. This has been going on for a long time and the remedy that we have proposed in this Bill is no remedy for that evil. We simply propose that there should be 54 hours in a week. That is no remedy for stopping over-work during one day. Sir, the evil effects of the long hours of work in a day are both economic as well as from the point of view of health. If people go on working without sound sleep and without sufficient rest in the day for three or four days continuously, their health is bound to suffer. Again, from the economic point of view, neither the workman gains nor do the employers gain. The workman has to work 54 hours in a week. If he works these 54 hours after taking sufficient rest at intervals, I am quite sure he will be able to produce more during the 54 hours than if he works those 54 hours without sufficient rest. From the same point of view the employers also do not gain very much. Neither do the employers gain by this practice nor do the workmen gain economically. From the point of view of the health of the workmen there is a great loss. Thus, this practice of working without any limit of rest during the day is harmful from all points of view.

[Mr. N. M. Joshi.] me. I say, Sir, I have to read the passage from the "Times of India" as the Honourable the Home Member has refused to give us free copies of the reports of the different Departments. This is the passage:

"The practice of sleeping underground is only too common, although it is usually forbidden. The institution of regular shifts would discourage this and many managers would welcome a statutory regulation of hours of labour. They are at present deterred from regulating hours by the fact that miners would probably resent the enforcement of the regulations and leave their mines for other mines where such regulations were not in force. Were the hours of labour regulated, many difficulties in respect of supervision would disappear and the efficiency of inspection by officials would increase."

That is the opinion of the Chief Inspector of Mines, namely, were the hours of labour regulated, many difficulties in respect of supervision would disappear; not only will there not be greater difficulties of supervision, but the difficulties of supervision will disappear. That is the opinion of the Chief Inspector of Mines on this point. Sir, I want the House to see that when the Chief Inspector of Mines talks of the regulation of hours, he is talking not of the regulation of the weekly hours, but the regulation of the daily hours of work. This is clear from the fact that he is, at the beginning of the paragraph, mentioning the habit of sleeping underground. Moreover, not only does the Chief Inspector of Mines consider this practice desirable, but he says that many managers also consider this practice desirable. Therefore, the only difficulty in their way is that they fear that the miners may not like this regulation. It is true that the miners will not like the regulation. Nobody likes any control, nobody likes any regulation when first introduced. But, Sir, the Government has got experience of regulating the hours of work in other directions. They have regulated the hours of work of people who were not in the habit of having their hours of work regulated in the factories. People naturally would resent in the beginning, but I am sure the working classes would take to it if Government once introduced this regulation. The real difficulty in introducing this limit voluntarily is that when one mine introduces such a limit the mine owner is afraid he would lose his labour, and the labour might go to some other mines. Therefore, this regulation cannot be introduced voluntarily. It can only be introduced by legislation. That is the opinion of several managers of the mines. That is the opinion of the Chief Inspector of Mines. I hope, Sir, the Government will follow the advice of their Chief Inspector in this respect.

Lastly, I would only like to say one or two words to the Members of this Assembly. I have specially made the amendment so moderate, putting the daily hours of work at such a high figure as 11, because I want to make the principle of the regulation of daily hours of work recognised. If there is any Member here who can show any other way of getting the same principle recognised, I shall be only too glad to accept his suggestion. If there be any Member here who makes a proposal that the 11 hours of work should be increased but we shall recognise the principle of the limitation of the hours of work, I shall seriously consider that proposal. But what I want the House to do is that this principle of the regulation of daily hours of work should be recognised.

Sir, there is one point on which I should like to speak before I finish and it is this. Members of the House are likely to be told by Government that the Local Governments have not been consulted. I repeat my yesterday's argument. Local Governments must know that this point would be discussed if they had followed the discussion that took place in the Simla Session on the appointment of the Joint Committee. If the Local

Governments and the mine owners have not considered that point, it is not my fault. The Members also may be told that as Government are opposed to this amendment Government may withdraw the Bill and there may be difficulties. The Bill may be at least postponed. Members need not entertain any fear on that score also. The Bill is going to come into operation at the end of July 1924, 18 months from to-day. So, if Government wants to introduce any modifications they like, they can do so. There will be no postponement of the Bill at all because the Bill will come into operation from July 1924, 18 months from to-day. There is no likelihood of any delay being caused by our accepting this amendment. I therefore hope that the Members of this Assembly by a majority will accept my amendment.

The Honourable Mr. C. A. Innes (Commerce and Industries Member):

Sir, I wish first to take up some points which Mr. Joshi has raised against me. He first admitted that he himself had never been to the coal fields and had never studied the conditions of life in the coal fields. He then asked what advantage Mr. Chatterjee and myself had gained from going to the coal fields and making inquiries there for ourselves. He pointed out that in the course of a visit or two one could not enter into the feelings of the labourers in the mines. Now Mr. Joshi has made one mistake. My friend, Mr. Chatterjee, here has not only visited in his capacity as Secretary to the Government of India in the Industries Department many coal fields but he has spent many years of his life in those fields. He tells me that he lived there for many years as a child and therefore Mr. Chatterjee may claim real acquaintance not only with the conditions of life but also with the feelings of the labourers in the field and, as for myself, I possibly approach this coal problem from a point of view which is perhaps wider than that of Mr. Joshi. Mr. Joshi stands before this Assembly as the representative of a class. He asked this Assembly to consider class interest only. We on the Government Benches have to take other points of view into account. We have to consider the effect of any legislation which we may pass upon the country as a whole. I would ask the House to remember that this legislation which we are dealing with to-day affects in a very peculiar degree the most important industry in all India. Coal is the life blood of Indian industries. Any hasty legislation and any ill advised legislation which we may pass must have the most disastrous effect. It may send up the price of coal for every industry in India. It may even have the result that there will not be enough coal to go round and I hope, Sir, that the House will bear that fact in mind. I speak with some experience of this matter. For the last three years one of the most constant anxieties of the Government of India has been the coal position of India and I do hope that the siren voice of Mr. Joshi will not lead the House to adopt measures which will make an already difficult position much more difficult. Mr. Joshi then asked why it was that we did not adopt the advice of the Chief Inspector of Mines. He read an extract from the Chief Inspector's last Report. In that extract the Chief Inspector said that not only he but many mine managers in the fields were strongly in favour of a system of shifts. Sir, the Chief Inspector has been consulted in every line of this Bill. The Chief Inspector, as Mr. Joshi well knows, was present at the meetings of the Joint Committee and, Sir, I have assured myself that the Chief Inspector, however much he may be in favour of a system of shifts, is quite satisfied that it is impossible either to introduce a shift system at present or to impose a daily

[Mr. C. A. Innes.]

limit of hour. I have also satisfied myself by meeting many of the leading mine managers in the coal fields (and I say here and now that I have never met a more enlightened set of men), that these men are entirely in favour as we are all in favour, of a system of shifts if it can be introduced, but deprecate any immediate statutory imposition of that system of shifts. Then, Sir, as I said when this Bill was discussed last September, not very long ago we had a committee which inquired into the whole question of labour in the fields. That committee also referred to this question of introducing the system of shifts. They admitted that many mine managers in their evidence had said that what the coal fields really wanted was a system of shifts but they went on to say they were afraid that it was premature to introduce such a system by legislation and surely, Sir, when we appoint a representative committee of this kind we must attach weight to their words. As I said, I entirely agree that we could not confer a greater benefit upon the coal field than if we could assist mine managers to introduce a system of labour by shifts. But I deprecate attempting to do so before the time is ripe and I think the best way of dealing with that problem would be to deal with it in the same way as we have dealt with the equally difficult problem of women labour. That is when we address Local Governments in the terms of the Joint Committee's Report on the question whether a time limit could not be given for the employment of women in the fields we might at the same time consult them as to the possibility of setting a time limit by which a statutory system of shifts should be introduced throughout the fields. That I think will be the wisest and the best way of dealing with that problem. I am not in favour at this time of imposing a statutory limit of hours. I think, Sir, no one can accuse us of being reactionary in this Bill. We have made in the Bill some very real advances. We have for the first time prohibited the employment of children down mines. We propose, if the House will agree, to prohibit even the presence of children in the mines and that will inevitably reduce the number of women who go down those mines. That will reduce the labour population in the mines and this House has got to remember that the real difficulty which confronts every coal manager in India is the difficulty of getting sufficient labour. I say, that those measures are sufficient for the present and I am not in favour of going further and at this moment imposing a daily limit of hours. We have imposed a weekly limit of hours. Mr. Joshi asks what is the difference between a weekly limit and a daily limit. He says:

"If you are prepared to enforce a weekly limit, why can you not equally enforce a daily limit."

Then he went on to say that the reason that he wanted a daily limit was that he merely wished to enforce a principle. Now, Sir, that is the very reason why we have begun by imposing a weekly limit. We want to enforce a principle, but I do not say and I have never claimed that that weekly limit is going to make any material difference to the amount of hours' work in the fields. To the best of my belief, miners do not work 54 hours a week below ground, but we think it important that in this Bill we should recognize the principle of a weekly limit of hours. I may say here now that I would not have included that provision in the Bill had I thought that the enforcement of the provision would disorganize labour and the miners and would involve many prosecutions of mine managers for infringement of the rule. But it is different with the daily limit. Mr. Joshi, as he said, wishes to impose a daily limit merely to recognize the principle. My fear is that if you impose a daily limit, it will not be

possible at all to enforce it without a very large increase in the inspecting staff, and even if we did make that increase in the inspecting staff, and did try to enforce the limit, it would mean numerous prosecutions and disorganization of the whole of the coal field labour. We have got to consider what the conditions of labour on these fields are. The men do not go down at any stated time of the day, they do not come out at any stated time of the day. They are not paid by time, they are paid by results. Labour in the fields is a labour under small raising contractors. The labourers go down when they like. They cut coal, they put it into the tubs, and they are paid so much per tub. How, therefore, are we going to enforce a daily limit? As I have said, the whole of the labour does not go down at the same time and does not come up at the same time. The only way of enforcing a daily limit of hours would be to have an inspector in each mine, for that inspector to check for each man down in the mine precisely at what time he went down in the mine and whether he had exceeded the daily limit. We have been advised by the Chief Inspector, we have been advised by every mine manager, that it is impossible to do that,—that the only way we can enforce this method would be to impose a shift system and I have already given reasons why we wish to take the reform slowly.

Then I wish to point out to this House that it is not a question of men working 11 hours a day for 6 days in the week. Many of these miners, especially in the Raneeunge coalfields, are agriculturists; they come in, it may be, 6, 8, or 10 miles to the mines. They live in their villages and work in their fields. But they come into the coalfields, they go into the mines, they cut as much coal as they think necessary, they rest, possibly sleep, down the mine, and then they go back to their villages. They are not working 24 hours at a time; they are not working all the time, for half the time they are sleeping; and when they go back to their fields, they have cut 6 or 7 tubs of coal in order to supplement their earnings in the fields. The House has got to remember that this is not a question of miners working day after day 11 hours a day. It is a question of agriculturists coming in and spending two or three days at the outside, sometimes only 24 hours, in a mine, working as it suits them,—possibly sleeping down the mine and then going back to their fields. Mr. Joshi says that they sleep down the mines because houses are not provided for them. He has accused the coal miners of not providing sufficient house accommodation. That charge, to the best of my belief, is entirely inaccurate. Houses,—bustees—are provided by every coal miner at every mine. But people who come in, who live 5, 6 and 7 miles away, they do not want houses; if they sleep in the mine, it is because it suits them and their convenience to do so. Now, Sir, I think I have met most of the points which have been brought against us by Mr. Joshi. I wish this House to remember that this is a very important question. I wish this House to remember that Government have put forward a Bill which goes as far as they are prepared to go. We may be accused, and when we come to clause 25 we shall be accused, of having gone too far, but I shall ask this House not to be in a hurry, not to run the risk of disorganizing a very important industry merely in order, as Mr. Joshi says, to enforce a principle, to enforce the principle of a daily limit of hours. I have said that I am quite prepared to consult Local Governments whether we could not fix a time limit within which a system of shifts should be introduced in the coal fields; and I think the House will agree that that is the right way to advance in the direction in which we all wish to go.

Mr. N. C. Sircar: Sir, Mr. Joshi has said that the miners sleep down below because of want of house accommodation. I invite Mr. Joshi to go to the coal mines and see if there are not houses for them. There are houses, and the houses are now being regulated by the Mines Board of Health,—and in a few days the miners will get as good houses as many of us would like to live in. There are houses in the collieries in which the permanent labour lives,—and there are also houses in the collieries, which are purposely meant for sojourners who come and work for certain hours and go back. I must tell my friend, Mr. Joshi, that when he says there is a want of houses, that we do not provide houses for labourers, that he must be labouring under a mistake. Mr. Joshi has said that I said yesterday that the miners work for two or three days in the week. I never said so, that is a wrong statement. Then my friend says about the habits of the people. I invite him to go to the coal mines and see what sort of labour we have to deal with. We have 101 castes of labour, and everyone in the House can imagine how difficult it is to change the habits of so many castes and creeds, especially illiterate as they are. Then my friend says about 11 hours' work. I welcome if the labourers will work 11 hours, but as a matter of fact they do not.

Mr. N. M. Joshi: Then why do you oppose?

Mr. N. C. Sircar: I am coming to the point. As a matter of fact I shall be too pleased if the underground labourer would work for only 8 hours, but as my friend, Mr. Mukherjee, pointed out yesterday, 54 hours, that is 9 hours a day, have been the utmost limit. But as a matter of fact we do not get more than 48 hours' work. Then about the 11 hours I was going to say that as my Honourable friend, Mr. Innes, has said, no daily working hours can be fixed until the shift system can be introduced, and it is impossible at the present moment unless and until we are a bit independent of the labour by electrifying our coal mines and introducing electric coal cutters. Some of the miners are resident of villages 5 or 6 miles away from the collieries. As has been pointed out by my Honourable friend, Mr. Innes, they are also agriculturists. They work in their fields in the morning and go down the mines in the afternoon and work up to such time as they please; some times they sleep underground and some times come to the surface to sleep and go down again about 2 o'clock in the morning, work till sunrise and then go home, after which they are 24 hours off. So, unless and until we are independent of this class of labour, and unless and until we can introduce the shift system, I cannot see how it is possible to introduce a daily system of 11 hours; and if the Legislature attempts to introduce such a system we shall, I am afraid, lose a good deal of our underground labour. The House knows what difficulty we were put to in 1921, having to buy ten lakhs of tons of coal from foreign countries at a cost of about two crores of rupees over and above what we would have paid in this country for same. With these remarks, Sir, I oppose the introduction of an 11 hours' working day.

Rai Bahadur Bakshi Sohan Lal (Jullundur Division: Non-Muham-madan): Sir, the object of limiting the number of working hours in a week to 60 and 54 provided by clauses (b) and (c) is to protect the health and eventually the life of the labourer. But will that provision alone have the desired effect if a greedy labourer works 18 hours daily for three days consecutively and takes three days holiday consecutively? It may be admitted without much argument that 18 hours work a day continuously may do much more injury to the labourer's health than 9 hours daily work for six days. Therefore it is more necessary to limit the hours of work a

day than the number of hours in a week. Without limiting the number of hours work in a day, the limiting of the hours in a week is of no avail. The labourer may become a total invalid after 18 hours work in a day or after 54 hours in three days. Unless such daily work is limited, the provisions of clauses (b) and (c) may also be evaded easily by the labourer working three days under one mine owner and three days under another mine owner without being detected. Neither mine owner will know the hours he has worked with the other. I consider that even 11 hours work in a day is excessive. The labourer requires at least two hours off for preparing his food; that makes 13 hours, which means the whole day continuous work during summer and more than the day continuous work during winter. Thus 11 hours daily work is too much, but as the amendment comes from Mr. Joshi who represents labour, I am bound to support it.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muham-madan Rural): Sir, I am really surprised at the change in the attitude of the Government of India, during the last decade about the limitation of working hours. It is easy for the Honourable Mr. Innes with his persuasive eloquence to convince everybody that the key industry, coal mining, would be ruined unless we sacrifice human beings for that purpose. When the attempt was made for the limitation of working hours, in introducing changes in the Factory Act in the year 1905, the Government of India were unable to pass the Bill, or perhaps they were unwilling to pass it. At any rate the Bill was not passed. But subsequently, in spite of the advice of the Factory Commission to the effect that no such limitation should be made—their advice being:

"We are strongly opposed to any direct limitation of adult working hours, because we consider that there is no necessity for the adoption of this drastic course, because we are convinced that it would cause the greatest inconvenience to existing industries, most of which have never worked long hours, and because we think that such a measure would seriously hamper the growth of industrial enterprise."

That is what the Commission said, and most of the members who represented the Bombay cotton mills strongly opposed the limitation of working hours of the operatives in their factories. But in spite of that, Sir, the then Government were more influenced by the humanitarian point of view than the industrial point of view. On the advice of the late Mr. Harvey, the Government of India said, they "were unable to accept the recommendation of the Factory Commission that an indirect method should be adopted for obtaining a limit to the working hours of factories." After throwing out the recommendation of the Commission, in the Act XII of 1911, it was enacted that "no woman shall be employed in any factory for more than eleven hours in any one day. No child shall be employed in any textile factory for more than six hours in any one day. And no person shall be employed in any textile factory for more than twelve hours in any one day." Have we not then proceeded any further since the year 1911? Mr. Joshi has asked for the enunciation of a principle admitting the utility and the necessity of restricting hours of labour. We have it already in the Factory Act. It is bad enough that women are allowed to work in mines; it is bad enough that they are allowed to sleep underground; but now Government says that the industry would be ruined if we do not sacrifice these men and permit them to be employed for over 11 hours a day. Of course it is easy to see that it would not be their policy to overwork them; but these are people whose interests ought to be protected by others who know better. It is opposed to human nature for any person to work above or below ground for more than 11 hours a day.

[Mr. B. Venkátapattiraju.]

Is it not therefore the business of the Government in introducing such a Bill to limit the hours of work to even eleven hours a day? I therefore strongly support the Honourable Mr. Joshi's amendment and I hope the House will unanimously agree to that small modicum of mercy meted out to these unfortunate people in order to improve their condition.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I believe the quotation which my friend, Mr. Raju, gave the House is likely to mislead the House, as quotations very often do. The quotation had reference only to factory labour, which is much more organized, where the hours of work are under the control both of the Manager and probably of Government. With regard to mine labour, the whole question, as the Honourable Mr. Innes has told us, is working and cutting the coal by results. That is the most differentiating factor between the two.

12 Noon. The workman in the mines works voluntarily for certain hours just as it suits him to produce a particular quantity of coal in a particular quantity of time by piece work. I have no practical experience, I must admit, of mines, but if it is pardonable to give my practical experience of stone quarries, in which matter I think I have some experience (as I own lime stone quarries of a considerable extent which furnish the stone to a large province, and have had experience extending over some years), I think it would be pardonable if I give my own experience regarding the habits of the people and what they themselves like. Now, I have seen a large number of workmen preferring of their own will and accord to come for work, especially during the hot summer months, not according to the regulated hours but even so early in the morning as 4 o'clock, because it is cool, and go on working from 4 o'clock in the morning say till 12 or 1 or 2 o'clock, as long as they like; not that they work continuously during that time, but they work, for instance say for one hour, then take rest, then continue to work for two hours, again take rest, then continue to work for another hour and then take rest until they earn enough for the day. Now, when I tried to induce them to give up that habit and to regulate the hours both in their interests, in the interests of their health and in our interest for the sake of supervision, I believe they did not like it. Now, I recognise, as my friend, Mr. Joshi, says, that there should be a daily limit introduced sooner or later. In the abstract I do know that that will be to the interest of the workman and to the interest of the industry. But as the Honourable Mr. Innes has rightly pointed out, we are now passing legislation which is of a transitional character and while on the one hand we must not be carried away by purely academic considerations, on the other hand we must also see that in our enthusiasm for regulating labour we do not throttle industries which are for the benefit of the community at large. I therefore think that those of us who have the interests both of the industry and of the labour at heart should not support Mr. Joshi's amendment, howsoever good it may be in the abstract. Mr. Joshi brings to bear upon his discussions, no doubt, a close study of the question of the labour problem, but a study more or less from the academic point of view. I do wish really that he should add to his study a practical experiment, actual experience of handling workmen, even half a dozen workmen for half a dozen weeks, so that he may really see their mentality, what they themselves like and what is to their own real interest and convenience. Looking at it from this point of view, therefore, and the transitional character of this problem on the whole I think it would not be practicable at this particular stage to introduce a daily time limit.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I do not own a mine, nor have I ever had the privilege of working in a mine, either underground or above-ground. As the House is aware, I do not represent, as my friend, Mr. Joshi, is supposed to represent, the working classes, but at the same time I wish to say that I do not feel greatly interested in the mine owners either. My object is to see what is really in the interest of the country as a whole. Before I proceed, Sir, I wish to express my wholehearted agreement with the Honourable Mr. Innes in his statement that there are some very progressive changes introduced into the Bill which Government has placed before us. Mr. Innes has taken Mr. Joshi very politely and very kindly to task, because he has had no experience of mines. If I am not very much mistaken it was John Bright who once speaking in the House of Commons said that on one occasion he had ventured to express some opinion about America without having ever visited that country and he was at once met by people like Mr. Innes who said 'Oh, you have not been to America; how dare you express an opinion about it.' But it so happened that subsequently John Bright's opinion was found to be correct and the opinions of all those who had been to America not once but twice or thrice proved to be wrong. Mr. Innes has been to these mines and Mr. Chatterjee,—whose ability and whose eminence I gladly acknowledge—as a child has lived round about the mines and has therefore come into touch with the mine owners. (*A Voice*: "Mine workers.") Mine workers, yes, that is still worse. Mr. Chatterjee, as I have said, is one of those distinguished Indians of whom we are proud; but if Mr. Innes' description of Mr. Chatterjee is correct, Mr. Chatterjee must have been a very precocious and abnormal child. Mr. Bray says he was; most certainly. Sir, we are told, to use Mr. Innes' words, that coal is the life-blood of our industry. Is it therefore necessary that the life-blood of human beings should be sacrificed in order that the life-blood of our industry should be kept up? We are told that Mr. Joshi's proposal is premature, that it will lead to numerous prosecutions and it will lead to the disorganization of labour. All that may be true and I am not in a position to contradict these statements because I have no intimate knowledge of the working of these mines. But looking at the question perhaps from a point of view of more or less detachment, I wish to ask, Sir, the House to consider in all seriousness whether we shall allow these people to work for more than eleven hours a day. Is it in the interest of their health, is it in the interest of the well-being of that class, which, unfortunately, is to work underground? My friend, Mr. Sircar, says that he will be delighted if these people work for 8 hours. Where, then, I ask, is the difficulty? Why not then introduce a rule that no labourer will be allowed to work for more than eleven hours a day? It is said that this question is academic and so on. Sir, this word academic is a very vague word. I think this question is intensely practical, it is intensely human. I am addressing you as an Indian not in any special manner interested either in the workers or the owners but as one interested in the well-being of the country as a whole. Call me a visionary or whatever else you will. Strong words do not break any bones. I say industry or no industry these people should not be allowed to work for more than eleven hours and if they are willing to work for more than 11 hours as indeed many of them may be, they have to be saved against themselves. This is the need for this legislation. It is said that you must think of your industry; most certainly. There is no enlightened Indian who is not anxious that industries should make progress in India. But, Sir, the industry exists for the people and the

[Munshi Iswar Saran.]

people do not exist for the industry. These are the considerations, Sir, why I think that the House should accept Mr. Joshi's amendment.

Mr. Joshi in his anxiety made one unfortunate remark, and it is this. He said 'I do not mind even if you make it 12 hours provided I am able to enforce this principle.' I entirely dissent from that view. I do not care, Sir, in the least whether this principle or that principle is enforced or accepted. What I am most anxious about is that human beings should not be treated as beasts or at any rate, they should not be allowed even if they so choose to work as beasts.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, after the perfervid oratory of my Honourable friend, Munshi Iswar Saran, I feel a certain amount of diffidence in addressing the House. I am in entire agreement with the oracular sentiments that he has placed before the House. I entirely agree that we should look at this question in the interests of the country as a whole. I also agree, Sir,—and I believe I have mentioned this before in this House—that industries exist for the people and the people do not exist for industries. But, Sir, unfortunately my Honourable friend has completely lost sight of, or perhaps he had never any knowledge of, the actual conditions of the people in those parts of the country where mostly mines are to be found. Therefore, Sir, in his love or admiration for abstract principles he has forgotten the actual application of those principles. It is on behalf of the miners themselves, Sir, that I would resist the amendment proposed by my Honourable friend, Mr. Joshi. I do not remember whether Mr. Sircar had explained that there were really two classes of workers in these mines. There are a number of wholetime workers, people who come from distant districts and provinces, but a very large proportion of the workers are recruited from the neighbouring villages. When I say neighbouring villages, I mean villages within a radius of about 10 miles of the mine. My friend, Mr. Joshi, tried to make capital of the fact that the owners of the mines did not provide dwellings for these workers and therefore they had to come all this long distance. Mr. Sircar has stated that there are enough dwellings. Personally, Sir, I should be extremely sorry to see all those villagers congregated round the mines, for in that case their conditions will become almost as miserable as of those workers who live in *chawls* in Bombay and Ahmedabad. I would much rather, Sir, that the present system did continue and these people lived comfortably and happily in their homes and came to the mines to add to their livelihood and went back to their homes getting a little bit of the sun and a little bit of the rain of Bengal as well. It is really in order to protect this class of workers from hardship and suffering that Government decided not to introduce at once the principle of a daily limit of work. If that principle is introduced, this class of workers will be entirely deprived of work in the mines. As Mr. Sircar has already explained, they work in the villages on their own fields or on the fields of their neighbours. They come to the mines, walk these 10 miles, arrive at the mines, work for two, three or four days and go back to their villages. They do not want all this regulation of 11 hours inside the mine and then a number of hours outside on the surface to be spent in those wretched *dowras* that exist all round the mines. These *dowras* are much better, I admit, than the *chawls* of Bombay; they may be better even than the quarters provided for labourers in jute mills, but certainly they are not as comfortable or as private as their own homes. They want to go back to their homes; why should you deprive them of those facilities? It is all very well to say that no man should work for more than

11 hours a day. I would certainly endorse that principle if a man is going to work 11 hours a day every day for six days in the week and for 365 days in the year. But when a man works only for two or three days and then takes complete rest, if he works even more than 11 hours a day, I do not think it really hurts his health. I am as anxious to see our workers healthy and comfortable as Mr. Joshi, but I think that he drives what he calls his principles too hard indeed. As a matter of fact, the miners do not work 11 hours a day at a stretch. As Mr. Sircar has explained, they go down the mine, they do a certain amount of work, and then rest and come up for food and drink. In these circumstances, it would be absolutely impossible at the present moment to bind them to a definite shift system; it would be extremely hard on these miners themselves, and I beg the House not to accept this amendment in the interests of the miners themselves.

Mr. President: Amendment moved:

'That to clause 23 the following sub-clause be added:
'(d) for more than 11 hours in a day'.

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—29.

Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mr.
Asjad-ullah, Maulvi Myan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Gajjan Singh, Sardar Bahadur.
Ginwala, Mr. P. P.

Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Nag, Mr. G. C.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Sohan Lal, Mr. Bakshi.
Venkatapatiraju, Mr. B.
Zahiruddin Ahmed, Mr.

NOES—44.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.
Kamat, Mr. B. S.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.

Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

[Mr. B. N. Misra.]

won't get used to work. In England even a cobbler's son or a shoe-maker's son can become a Prime Minister, and any poor man or a man of the labouring class can occupy very high positions. That is not so with Indian labourers. You cannot expect from this poor labouring class to get men who will get so much educated or who will rise so much above their class that they can occupy any high position in life. Generally these people continue to be labourers. We know very well how our caste system is working and we know that in India a peasant is always a peasant, a Brahman is always a Brahman, a blacksmith is always a blacksmith.

Mr. President: Order, order. Caste has nothing to do with employment of children in mines.

Mr. B. N. Misra: I am simply showing the analogy. The labourers who work in a mine cannot suddenly turn so rich and earn so much money that they can afford to send their children to schools. If the words, I propose, are omitted, the children will be given an opportunity of working near about the mine and they will earn a livelihood, and will help their parents and also learn how to work so that when they grow up, they can work in the mines or even elsewhere. In these circumstances, I submit that this Honourable House will accept the amendment. If my amendment is accepted, the objection on the part of the mine owners that they will lose labour and the industry will be ruined for want of labour will not hold good and the people will be allowed to work as much as they can above ground. With these words, Sir, I move my amendment, which runs as follows:

"In clause 26, the words 'be employed in a mine, or' be omitted."

The motion was negatived.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move that:

"In clause 26, omit all words commencing from 'or be allowed' to 'ground'."

The effect of my amendment will be, Sir, that the prohibition about the presence of children in the mines will go away. The clause as it stands in the Bill provides not only that the children be not employed in the mine but it also provides that they should not be present or allowed to be present in any part of the mine which is under ground. Sir, I subscribe to the principle that children should not be made to work in the mine. I also subscribe to the principle that they should not be allowed to be present under ground in the mine. But, Sir, if we look to the consequences, we find that this will lead to much obstruction in the working of the mines. This will result in driving away the women from the work. I do realise that the Government have expressed their intention and desire and they have adopted it as their principle that women should not be employed in the mines. But looking to the practical side of the thing I cannot say how far that will be desirable,—I mean industrially, and not from the humanitarian point of view or from the point of view of health. Work in a mine, Sir, is generally on a family system.

Where a man is required to cut coal, the woman is required to carry and take it away. In some places and on some occasions, if a man has not got his wife, he has to employ other women to do the work,—to carry

away the coal cut by him. Sir, those who are acquainted with the system of work that prevails in the part of the country from which these labourers are imported, one will find that most of the work is left to the women and less to the men. (*A Voice*: "Shame.") It may be a matter of shame, but it has been done for ages and continues to be done in that way. The Honourable Mr. Chatterjee will be surprised to hear that in certain backward parts of certain provinces women give birth to a child and immediately after that, take away the child and walk for miles together. That will show how hardy those women are. My object is this, that we should not encourage the employment of women in mines so far as possible, but if you were to stop it for some years before the public opinion amongst those people has developed, the result would be there will be a shortage of labour in the mines and other industrial centres. A man would not like to go away leaving his family at home, because probably the wages may not be attractive for him, and if we make the wages attractive, that will injure the industries a great deal. Therefore, it will be necessary to employ women in the mines and I suggest that it will be much better and more desirable that this provision making it penal for children to be in the mines be deleted. With these words I commend my amendment to the House.

The Honourable Mr. C. A. Innes: The effect of Mr. Agnihotri's amendment, if it is accepted, will be that there will be no prohibition against a child being taken down a mine as long as he is not employed underground. Now, Sir, quite deliberately the Government have included in the Bill this clause. Quite deliberately, we have decided that the Bill should take a step towards the prohibition of the employment of women below ground in mines. Quite deliberately, we have arrived at the conclusion that it is not right that small children, very small children should be taken down by their mothers into the mines and left in the mines when their mothers are working there.

This question of the employment of women in mines has a very old history. As far back as the nineties, we were warned by the Secretary of State that it would be wise in the infancy of coal mining to prohibit at once the employment of women in mines. Unfortunately, we did not take the step then. The Secretary of State warned us that the longer we delayed that step the more difficult it would become, and that is exactly the position that we are now in. There are 250,000 miners in India and not less than 90,000 are women. There are 170,000 miners on an average on the coal mines and 50,000 are women. I do not agree with what Mr. Joshi said yesterday that it will be an easy matter to replace those women. On the contrary, it will be a difficult matter, but I do hold that sooner or later, we have to face this problem of the employment of women in coal mines. As the Joint Committee has recommended, we shall take up with the Local Governments the idea of enforcing prohibition within a specified time. In the meantime, we propose to take this small step. We propose not to allow small babies or children to be taken down mines. We quite recognise that the result may be that some women will not go down the mines at all, and there may be a diminution in women labour; but at the same time, after full consideration with the Chief Inspector of mines, with mine managers in the coal fields, and finally in the Joint Committee we have decided that it is right to face that risk and to take this step, and this being so, I hope that the House will not accept the amendment.

The motion was negatived.

Mr. President: The question is that clause 26 do stand part of the Bill.

Mr. N. C. Sircar: I have got an amendment as regards clause 26, that is, to delete the clause.

Mr. President: Does the Honourable Member want to speak on it?

Mr. N. C. Sircar: Yes. I rise to speak but I am not a speaker, and I do not know if my speech will influence the Honourable Members to come to my side and vote for me—the Honourable Mr. Innes, the Member for Commerce, being on the one side, and Mr. Joshi, who represents the Labour Party on the other side to oppose me. Yet I must speak, because I owe an obligation to the Indian Mining Federation of which I am the unworthy President, and which Federation represents 40 per cent. of the Indian coal mining interests and 300 members, quite a big army to fight the Honourable Member for Commerce in order to exact their dues. Sir, I was associated with the Joint Select Committee appointed to consider this Bill and I did my duty with what you know is the give and take system, but in one particular point, I could not agree with the Committee Members and I was obliged to sound a note of dissent, and the point where I could not agree with them is clause 26 coupled with sub-clause (1) of clause 46, which indirectly contemplate dealing a death-blow to the coal industry and I am going to explain how. The object in view of prohibiting children from going down the mines is, indeed, a laudable one and I am at one with my Labour friends that this should be done, but not at once. The idea underlying this proposal, as has just been explained by the Honourable Mr. Innes, is what we are afraid of. It indirectly contemplates prohibiting female labour from going down the mines, as has already been apprehended, and justly apprehended by the Honourable Member for Commerce. Sir, it is the practice in the coal mines that women when they go down the mines, take their little babies underground, they keep them covered with their clothes in a basket and they go to work with their husbands, and the women thus have an opportunity of watching them there and taking care of them instead of leaving them on the surface with nobody to take care of them. I do not object to the prohibition of the employment and presence of children in the mines who are between the ages of 8 and 13, but what I object to is the prohibition of the presence of infant children in the mines, my reason being that the mothers can take care of the children. It is reported by the Joint Committee and it has been just said by the Honourable Mr. Innes that there are ninety thousand women working in the coal mines of which a fair estimate can be made that about 60,000 work below the mines and then again of these 60,000, a large number must be mothers and if they are prevented from taking their infant children down the mines it will mean that these women may not go down the mines and we will lose a very large quantity of output. A further danger is that these women work in the mines as partners to their husbands. The husband cuts the coal and the wife carries the coal and fills the basket. She is practically the partner of the husband in working in the mines. If the woman is thus deprived of taking her infant child down the mine, the woman would not go down and most likely the husband would not go down also. He will say "Why should I go and work alone below. I would rather take some work on the surface where I can work with my wife and earn a better wage." Now, Sir, what would be the consequence? We will be losing a large quantity of labour of women and most possibly of

men also. The output will go down very very considerably. It must be vivid in the mind of everybody what was the consequence in 1921 of a short output. The Government had to buy about 10 lakhs of tons of coal from foreign countries and at a price Rs. 20 above that which was obtaining here then. It meant a loss of about 2 crores of rupees to the country. As I have said, I do not object to the principle of prohibiting children from going down. There is in the Committee's report that Government is contemplating the prohibition of women from going down the mines and it is in the contemplation of the Committee to recommend a period of five years after which that prohibition is to come into force. As I say I do not object to the principle. I am at one with the Honourable Mr. Innes and I am at one with the Honourable Mr. Joshi. What I want in the interests of the coal trade is that time must be given to adapt the collieries to the change, so that the output may not considerably go down. With these remarks I propose that clause 26 be deleted.

The Honourable Mr. C. A. Innes: My Honourable friend Mr. Sircar began by making an appeal *ad miseri cordiam* that he was not a speaker. We have all heard his speech and I think that we can assure him that he was unduly diffident about his powers. The trouble about Mr. Sircar's amendment here is that it goes a great deal further than he intended. He wishes to take clause 26 entirely out of the Bill and merely to reserve power to the Government of India to restrict or prohibit the employment of children in mines by the rule making power. That is to say, the Honourable Member wishes to place us in exactly the same position as we are in the existing Bill. That is to say, he wishes to remove all our proposed restrictions on the employment of children. We are bound by the Washington Conference not to allow children to be employed in mines, even as we are bound not to allow them to be employed in factories. That is one reason why I say that the Honourable Member's amendment goes too far. But, Sir, he has explained that he entirely agrees in principle that we should take this step sooner or later towards the prohibition of the employment of women. All he asks for is a little longer time. We discussed this point very carefully in the Joint Committee and eventually we came to the conclusion that if we provided that this Bill should come into force in July 1924 we should give the mining industry sufficient notice. It must be remembered that one-half of the mining industry has accepted this clause without any complaint at all. It must also be remembered that in many mines in the coal fields even now small children are not now allowed to be taken down. I have just been reading a report on labour in the coal fields, and in that report it is said that where the entrance to a mine is by shaft even now children are prohibited from being taken down that mine. All we propose to do is to extend that prohibition to all mines, whether they are approached by inclines or whether they are entered by means of shafts. I think, Sir, that the House will agree with me that we must take this step and that 18 months is long enough notice to the mine owners interested, especially as half the mine owners have agreed to the clause.

Mr. President: The question is that clause 26 do stand part of the Bill.
The motion was adopted.

Mr. President: The question is that clause 27, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 28, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: I understand from the Honourable Member that the amendment he proposes to move to clause 29 is really consequential, including the proviso at the end.

Mr. N. C. Sircar: That has been already disposed of by my amendment to clause 26.

Mr. President: The question is that clause 29, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 30, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 31, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 32, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 33, 34, 35, 36, 37, 38, 39, and 40, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 41, 42 and 43, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 44 and 45, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: Clause 46. Mr. Sircar.

Mr. N. C. Sircar: Sir, it is consequential on clause 26 and since my 1 P.M. amendment to clause 26 was lost, I do not want to move this.

Clauses 46 to 50 were added to the Bill.

The Schedule was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. C. A. Innes: I move, Sir, that the Bill, as amended, be passed.

Mr. President: The question is that the Indian Mines Bill, as amended, be passed.

The motion was adopted.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Mr. E. Burdon (Army Secretary): Sir, I beg to move:

"That the Report of the Joint Committee on the Bill further to amend the Cantonments (House-Accommodation) Act, 1902, be taken into consideration."

This Bill was introduced in the Assembly last March, and last September it was referred to a Joint Select Committee of the two Houses. I think I may safely say that the principles which the Bill embodies have from the first met with the general approval of this House, and I need not therefore at this stage detain Honourable Members with a further exposition of what those principles are. The Select Committee have effected a number of amendments in the Bill, chiefly in respect of the procedure and practice which are to be followed in applying its provisions and these are fully set forth in the Report which was presented to the House on the 15th January. I should like, however, to take this opportunity of thanking the Members of the Select Committee for the trouble they have taken in dealing with the Bill and preparing their Report. Some of the points raised were not wholly free from contention and many of them were intricate. In spite therefore of the presence of the few amendments on the paper, I think I may venture to say that the results of the Committee's labours may be regarded as extremely satisfactory. Sir, I move that the Report be now taken into consideration.

Mr. President: The question is:

"That the Report of the Joint Committee on the Bill further to amend the Cantonments (House-Accommodation) Act, 1902, be taken into consideration."

The motion was adopted.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, the amendment that I move is that in clause 1, sub-clause (3), the whole of the proviso be omitted.

Sir, it will be seen that section 3 of the Act limits the application of this law to only such houses in cantonments as are required by a military officer or may be required by a military officer, and with that object in view the framers of this law have decided to issue a notification, and before issuing the notification they have provided the procedure to be followed in this respect. But this proviso seems to nullify the provisions of clause 3. This proviso says that any notification issued under section 3 of the Cantonments (House-Accommodation) Act, 1902, that is, the present Act that we are considering, which is in force at the commencement of this Act shall be deemed to be a notification made under section 3 of this Act. Sir, the underlying idea is that there may be any number of houses in a cantonment, for instance there may be 300 houses in a cantonment but only 50 are required for the residence of military officers. The provisions of this Act should apply only to these 50 and not to the other 250, because, Sir, those who have house property in cantonments know it to their cost, that as long as a fear attaches to a house being at any time required or appropriated by military officers, it prevents the general public from going anywhere near it, they won't have it, and if they won't have it, who is to suffer?—The house owners; and therefore the Government have very wisely made this provision in section 3, that is to say, in future this Act shall only apply to such houses as are actually required; but what they give with one hand they want to take away with the other. Therefore if this proviso is allowed

[Mr. Pyari Lal.]

to stand what happens is that the notifications issued before this Act shall remain in force. If they remain in force, what is the good of clause 3? If they want to perpetuate the same mischief which they are going to remedy by clause 3, where is the use? Then, again, Sir, if you read sub-clause (3) of clause 1, you will find it says: 'It shall come into force on the 1st day of April, 1923, but it shall not become operative in any cantonment or part of a cantonment until the issue, or otherwise than in pursuance, of a notification as hereinafter provided by section 3,' which means that previous notifications which indiscriminately cover all the houses in a cantonment, those notifications shall be in force until the time when notifications under section 3 are issued. I say that this will meet the necessity of the case; but perhaps the cantonment authority might say, 'Oh, while those notifications are there, these houses are liable to be appropriated, but when you pass this Act and cancel all those notifications, what will happen to military people; they will be without any law to appropriate houses for them.' But this sub-clause (3) that I have read meets that case; that is to say, they will be allowed sufficient time to issue their notifications under section 3, clause 3, and until such time those notifications shall remain good. I can understand that, but to provide in the next clause, to put in this proviso, that those notifications shall remain good for all time to come, I say where is the use of clause 3? Sir, with that object I submit that this proviso should be deleted.

Mr. President: In clause 1 amendment moved:

"To omit the whole of the proviso at the end of sub-section (3)."

Mr. E. Burdon: Sir, if the amendment which my Honourable friend has proposed were to succeed, and the Bill with this amendment were to be passed into law, then I should like to explain that the result on the 1st of April next could only be one of two alternatives. The first is that there would be no House-Accommodation Act for cantonments at all, and the second would be that Local Governments would have re-enacted the notifications which were issued under the previous Act. There would be no other course open to us. I quite see the point which my Honourable friend has in mind. The suggestion is, I think, that as under this new Bill the Government will be the tenant of the houses in cantonments instead of individual military officers, and as the Government will take the houses which they lease for a considerable period—the period will be 5 years—therefore it will be possible to arrive at greater stability and greater certainty in regard to the number of houses which should be appropriated; that is to say, it should then become possible for Government to determine more or less, once and for all, how many houses they require to appropriate for the use of military officers, to apply the Act to those portions of the Cantonment in which these houses are situated, and thereafter to exempt from the operation of the Act the rest of the cantonment. I think it is quite possible that something of the kind may be done, but the House will realize that before the limitation which my Honourable friend desires can be put into practice it will be necessary for the local military authorities to assess in the light of the provisions of this Bill the number of houses they will require on an average, to find out those which are most suitably located, and thereafter to submit proposals to the Local Government probably after consultation with the military authorities at headquarters, defining as precisely as possible those portions of the Cantonment which should be set free from the operation of the Act. This is a process which

will take time. I can give my Honourable friend an assurance that we shall endeavour to limit the application of the Act in the manner which he desires; but I do not think that it would be an appropriate way of seeking this end to omit the proviso. The proviso, I think the House will realize, is of a very ordinary character. It merely continues an arrangement which was necessary under the old Act until revised arrangements under the new Bill can be brought into force. There is one further point which I should like to mention. The existing Act may be declared to be operative in any Cantonment or part of a Cantonment; in the present Bill we repeat this provision. "The Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette declare this Act to be operative in any Cantonment or part of a Cantonment situated in the province." The Bill therefore, in so far as this matter is concerned, does not introduce anything new. As a practical matter, stricter limitation may be possible and we shall endeavour to carry this out, but more as an executive matter. For the reasons which I have given I oppose the amendment.

Mr. President: The amendment moved is to omit the proviso at the end of clause 1 (3).

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 1, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. E. Burdon: Sir, I beg to move the following amendment:

- "(i) That clause 2 (1) (i) be omitted and the subsequent sub-clauses re-lettered.
- (ii) That in clause 2 (2) for the words 'President of the Cantonment Committee' the words 'Commanding Officer of the Cantonment' be substituted."

The amendment is of a purely formal nature. The words "President of the Cantonment Committee" only occur in the passages of the Bill which I have quoted and in no other, and there is no purpose of substance which requires their being retained at all. Actually, the Commanding Officer of the Cantonment is in all cases President of the Cantonment Committee and he is referred to by the former designation in every other clause of the Bill under which functions are vested in him. In principle too, the amendment which I propose represents correctly the facts of the matter. In appropriating houses in Cantonments for military officers the Commanding Officer of the Cantonment acts in his capacity as such, as the representative of Government. He should not and cannot correctly be viewed as acting in his capacity as President of the Cantonment Committee. The matter is of no great practical importance at present but it will become important if, and when, Cantonment Committees acquire more of the character of a local self-government body. For these reasons the amendment which I now move is, I venture to submit, clearly desirable.

Mr. President: The amendment moved is:

- "That clause 2 (1) (i) be omitted and the subsequent sub-clauses re-lettered."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The further amendment moved is:

"That in clause 2 (2) for the words 'President of the Cantonment Committee' the words 'Commanding Officer of the Cantonment' be substituted."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is that clause 2, as amended, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 3, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 4 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 5, 6, 7, 8, 9 and 10, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. Pyari Lal: Sir, the amendment that I move is:

"That in clause 11, sub-clause (1), the figures and word '21 days' be substituted for the words 'four days'."

This particular sub-section of clause 11 states that when a house owner receives a notice that a certain house is required, the house owner shall vacate it within four days from the service of the notice. But under section 30 the owner who receives this notice is given the right of appeal against such a notice, and for that appeal he is allowed a period of 21 days. Section 30, sub-clause (2), says:

"No such appeal shall be admitted unless made within a period of twenty-one days from the service of the notice aforesaid."

Now, I submit, Sir, that if the house owner has to vacate his house within four days of the receipt of that notice, what use will an appeal be to him, because it is not likely after he has vacated the house and the military are in occupation that they will give it back to him. This provision therefore will cause a great deal of inconvenience and in fact it is directly opposed to the other provision allowing 21 days for an appeal.

Mr. E. Burdon: In the interests of the convenience of the House, may I say that I am quite prepared to accept this amendment.

Mr. President: The amendment is:

"That in clause 11, sub-clause (1), the figures and word '21 days' be substituted for the words 'four days'."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is that clause 11, as amended, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 12, 13 and 14, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 15 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 16, 17 and 18, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 19 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 20 and 21, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. President: I think I will take the adjournment at this point, and we will discuss clause 22 afterwards.

POSTPONEMENT OF GENERAL ELECTION IN KENYA.

Mr. J. Hullah (Revenue and Agriculture Secretary): With your permission, Sir, I should like to make an announcement, which I think will be of interest to the House in view of the numerous questions that were recently put to me, on more than one occasion, regarding the political situation in Kenya and the possibility of postponing the general election until the question of the franchise has been settled. Have I your permission, Sir?

Mr. President: Yes.

Mr. J. Hullah: We have received this morning from the Secretary of State for India a telegram informing us that the Secretary of State for the Colonies has authorised the Governor of Kenya to make an announcement in the following terms:

"The unavoidable delay in settling outstanding questions including that of Indian representation has made it necessary for the Secretary of State to choose between a postponement of the general election and dissolution of the new council after its election. In adopting the former course the Secretary of State has been influenced by the fact that from the date of his predecessor's original attempt to secure a settlement by agreement it has been intended that the new constitution should be framed in time for it to be brought into force on the occasion of the general election now due."

The Assembly then adjourned for Lunch till Twenty Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes Past Two of the Clock. Rao Bahadur T. Rangachariar was in the Chair.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Mr. W. M. Hussanally (Sind : Muhammadan Rural): Sir, the first amendment that stands in my name is:

"That in clause 22 (1) (b) the following words be deleted:

'who shall be persons ordinarily resident and liable to pay taxes, in the cantonment'."

The effect of this amendment, if carried, would be that the two members nominated by the owner concerned will be appointed by him to serve on the Arbitration Committee without any restriction. There will be no limitation to the effect that these two arbitrators named by him should be persons resident within the cantonment or pay taxes to the cantonment fund. I do not think, Sir, many words are needed for me to support this amendment as it is almost self-evident. Under clause 22, the Government have by sub-clause (a) the right of nominating two members on their behalf, whomsoever they like, and there seems to be no reason why the house-owner should be limited to select two arbitrators who are necessarily resident within the cantonment and are also paying taxes. I submit, Sir, he should be a perfectly free agent to select any two arbitrators from wherever he likes and he should not be compelled to select two arbitrators necessarily resident within the cantonment. The effect of the clause as it stands would be that, while a common shop-keeper having a stock-in-trade of say Rs. 50 in his shop and paying 4 annas in the shape of halalkore cess to the cantonment fund, becomes a fit person to be an arbitrator, while a very big landlord owning house property within the cantonment area say to the extent of some lakhs and paying thousands of rupees in the shape of taxation to the cantonment fund but having the misfortune of residing within the adjacent civil area, cannot become a fit person to be nominated by the house-owner as an arbitrator. I think, Sir, that this will be a very anomalous position, and so far as the Karachi Cantonment is concerned, I know of certain gentlemen of very high position who own a very considerable amount of house property within the cantonment but reside within the adjacent civil area which is only about a stone's throw. All these gentlemen will be disqualified under these words which I want to be deleted, and I suppose Sir Montagu Webb will bear me out in this statement that several owners of house property within the cantonment area reside in the adjacent civil area of the town. Sir Montagu says—on the other side of the road.

There is another difficulty, Sir, that will also arise, I believe, very shortly if these words are retained. It is, I believe, proposed in several important cantonments, for instance in the Cantonment of Ambala, to remove the Sudder Bazar, which is at present a part of the cantonment, and make it into a separate municipality. Thus the cantonment proper in places where these Sudder Bazars will be removed from the cantonment, will be very much more limited than at present: and it will be a practical difficulty in the way of a poor house owner to find men in whom he has got confidence and who will be fit persons according to this clause to serve as arbitrators. That is a difficulty which we ought to keep in view, but which I believe the Government have not taken notice of. That also serves, therefore, as an additional reason why these words should be deleted.

Primâ facie there appears to be no reason whatever why the discretion of the house owner to name his two arbitrators should be fettered in any way. He may bring two arbitrators from wherever he pleases provided he has got sufficient confidence in them. The only argument that would

probably be advanced from the Government Benches against my amendment would be that if these two arbitrators are resident within the cantonment area, they will be acquainted with the conditions of the cantonment far better than persons residing outside it. That, to my mind, will be the only argument that will be advanced, but I do not think, Sir, there is much force in it. Conditions in the cantonment are not so difficult that a man of common intelligence whether he be resident within the cantonment or not, cannot acquaint himself with, by a little inquiry. After all, what is the purpose of this Arbitration Committee? The purpose of this Committee is to fix rental values, and I suppose that any man of ordinary intelligence can do that without much difficulty after acquainting himself with the conditions prevalent in the adjoining civil area as well as within the cantonment itself. Therefore, I think, Sir, there is no reason why these limitations should be placed on the choice of two arbitrators to be named by the house-owner, and I hope the House will agree with me that these words should be deleted.

Mr. Chairman: Amendment moved:

"That in clause 22 (1) (b) the following words be deleted:

'who shall be persons ordinarily resident and liable to pay taxes, in the cantonment'."

Mr. E. Burdon: Sir, I submit that the clause, as approved by the majority of the Select Committee, is for at least two definite reasons better than it would be if amended in the way my Honourable friend, Mr. Hussanally, has proposed. The point of the amendment is, I may say, not a new one. It has been considered and discussed previously. The clause as it stands provides that the Committee of Arbitration shall consist of persons who are responsible persons and who have some local association with the cantonment area in which the subject matter of arbitration arises and may therefore be presumed to have some knowledge of the circumstances which would ordinarily determine the findings of the Committee of Arbitration. Now, this provision is to my mind rightly based and indeed it follows good and established practice. I cannot personally believe that, if the words to which my Honourable friend takes exception are retained, the field of choice will be limited as he seems to anticipate. I think his amendment would only provide for a remote contingency.

The other point which I would submit for the consideration of the House is of a very practical nature. In devising the arrangements which form one of the main purposes of the Bill, namely the arrangements which secure that, when a house is appropriated by Government, rent shall be assessed in a manner which shall be scrupulously fair to the landlord, it has been necessary to provide for certain formalities and elaborations of procedure. Now, it is obviously desirable to limit these complications to the minimum absolutely necessary. We want an Act that will work smoothly and with reasonable expedition. Well, if the recommendation of the Committee of Arbitration is likely to be delayed, inconvenience will certainly be caused to the military officer who may in the meantime want to occupy a house and there will be greater delay if the owner of the house is at liberty to nominate as representatives on that Committee of Arbitration persons who may reside at a considerable distance. My Honourable friend has referred to the possibility of Sadar Bazaars being excluded from

[Mr. E. Burdon.]

cantonment areas and to the further limitation of choice which would result if this were to take place. Now, my Honourable friend is perfectly well aware that it has not yet been decided to exclude any particular Sadar Bazaar from the cantonment area. The matter is still under consideration, and in the present Bill we only take into account the existing state of affairs. I wish to lay considerable emphasis on the practical objection which I have put forward. There is a very grave danger that the elaborate procedure of the new Act may place serious practical difficulties in the way of its operation and I hope the House will agree with me that it is desirable to limit the complications of the Act as much as possible. These are the objections which I have to offer to the amendment and I would ask the House to look at the matter in this light. The clause as it stands seems to provide sufficiently and appropriately for the requirements of any ordinary case. More than that I do not think can be expected of any Bill. Sir, I oppose the amendment.

Mr. Pyari Lal: Sir, as a member of the Select Committee, I think it my duty to explain that the considerations suggested by my friend, Mr. Hussanally, were not present to my mind when I agreed to this provision in the Bill as it now stands. It is a fact, Sir, and the Honourable Mr. Burdon has not denied it, that it is in contemplation, or, as he puts it, under consideration, to separate the Sadar Bazaars from the military areas proper or to cut away the civil portion of the population of cantonments from the military portion. Supposing, Sir,—and I have very strong hopes that it will come to pass,—supposing this measure is carried out, then what will happen? There are cantonments now, for instance of Ambala and of Meerut, where the Sadar Bazaars only contain people of intelligence or any social status. These are not to be found in the cantonment areas proper. Then, where will you find fit and proper nominees for the house-owners—surely you do not expect the house-owners to appoint for their arbitrators men who would be petty grocers or petty traders or mere hawkers who would then inhabit the regimental portion after the Sadar Bazaars have been separated and the chief portion of the civil population would have gone. So, if my Honourable friend will consent to it, I would propose that some two or three words might be added to the clause as it stands, that is to say “persons who are ordinarily resident or pay taxes or live in the immediate vicinity of the cantonment.” That would provide for these contingencies which he has suggested, that is to say, the persons who are living very near the cantonment area, across the road, as has been said. For persons who are well-to-do do not live in the cantonment proper, yet they are very near it. Or, in case the cantonments and Sadar Bazaars are separated, then the present inhabitants of the Sadar Bazaars would also come in as arbitrators. That would meet requirements of my friend and at the same time retain all those advantages in this provision which we had all along contemplated.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I do not think this amendment of Mr. Hussanally should be accepted. It is always desirable in such cases to bring in responsible men familiar with the subject-matter of the dispute, and men coming from outside the cantonment area do not necessarily possess any knowledge of the state of things existing in the cantonment and would have in fact no stake therein. Sir, when committees are appointed in municipal areas to revise or review

municipal taxation, the members elected are as a rule municipal rate-payers and I see no reason why any other criterion should be adopted in a cantonment.

Mr. Chairman: Do you move this as an amendment to that clause?

Mr. Pyari Lal: Yes, Sir, I beg to move:

“That the words ‘who live in a cantonment or pay taxes or lives in the immediate vicinity’ be substituted for all the words after ‘persons’.”

Mr. E. Burdon: I should be perfectly prepared to accept the sense of the Honourable Member's amendment. The form in which I would put it would be:

“For all the words after ‘persons’ substitute ‘liable to pay taxes in the cantonment and ordinarily resident therein or in the immediate vicinity thereof’.”

Mr. W. M. Hussanally: So far as I am concerned, Sir, I have no objection.

The motion was adopted.

Mr. W. M. Hussanally: Sir, the second amendment which stands in my name is:

“(ii) That, in clause 22 (1) (c) for the words from ‘and not having’ to the words ‘of the cantonment’ the following be substituted:

‘to be elected by the four members nominated under clauses (a) and (b) or a majority of them. Should there be no majority in favour of any person, the District Magistrate shall, on the request of the Commanding Officer of the cantonment, nominate the chairman of his own selection.’”

The effect of the clause as it stands is that a chairman must be selected who shall be a person not in the service of the Government or the Cantonment Authority and not having any interest in house-property in the cantonment, which has been appropriated or is liable to appropriation under the Act and who shall be nominated by the Commanding Officer of the Cantonment. My object is to take away this power from the Commanding Officer and to give it to the District Magistrate of the adjoining civil area. The reason why I make this suggestion is that under clauses (a) and (b) 4 persons are nominated as arbitrators, two by the Government and two by the house owner, and the house owner, as settled only a little while ago by the amendment of my friend Mr. Pyari Lal, is confined to select the arbitrators from amongst the residents of the cantonment or persons paying taxes therein but residing in the immediate vicinity thereof. So that, practically it comes to this. Of the four arbitrators thus selected, two are to a certain extent under the influence of the Cantonment Authority and the Commanding Officer is given the right of nominating the Chairman, he practically gets 3 of the 5 under his influence. Therefore, any decision arrived at by the Committee or the majority of them will not in the eyes of many of the house owners look as very just. At least it will give a handle to the people to think that the arbitration has been more or less one-sided, whereas if the power of nominating the Chairman is vested in the District Magistrate of the adjoining civil area, there is nothing lost so far as the Government is concerned, but the house owner will have reason to think that he has met with fair justice at the hands of the Committee as a whole. I therefore commend my amendment to the House.

Mr. J. P. Cotelingham (Nominated: Indian Christians): Sir, in order to understand the amendment that has been moved by my Honourable

[Mr. J. P. Cotelingam.]

friend Mr. Hussanally, I would like the House to take the clause as a whole. Clause No. 22 lays down the constitution of Arbitration Committees that will be called into existence when there is a disagreement about the amount of the purchase money of a house between the military authorities and the house owner. A cause of disagreement may also arise where the rent becomes a question of dispute. For these purposes Committees of Arbitration have been constituted, and this clause, as I have said, lays down the constitution of such Arbitration Committees. Two of the members of the Court are to be appointed by the Officer Commanding the Cantonment and in the choice of these two members of the Court he is restricted. He is to appoint one who is an officer of the Military Works Services or of the Public Works Department. The house owner the rent of whose house is a matter of dispute or the amount of the purchase money of whose house is a cause of dispute, has the option of nominating two persons to this Arbitration Committee. Then comes the question of the appointment of the Chairman. Usually a Chairman is elected by the members of the Committee. In other words, the Committee elect their own Chairman. But there are occasions where a controlling authority also appoints the Chairman. There are circumstances which make it very necessary that the Officer Commanding the Cantonment appoint the Chairman of the Arbitration Committee. Honourable Members will see from Chapter IV, which deals with Committees of Arbitration, that the whole matter has to be gone through as expeditiously as possible. Mr. Hussanally proposes that the four members, two elected by the Officer Commanding and two by the house owner, meet and choose their own Chairman. I am not aware of a Committee choosing a Chairman outside its own body. Mr. Hussanally proposes that the four members meet and choose an outsider as their Chairman.

Mr. W. M. Hussanally: Under the Bombay District Municipal Act such an Arbitration Committee can choose a Chairman from outside.

Mr. J. P. Cotelingam: Further, Sir, the Honourable Member says that they may be elected by the four members. I do not know how in the absence of an electoral roll for the purpose such a Chairman can be elected.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): By votes.

Mr. J. P. Cotelingam: The object of the Arbitration Committee is to expedite business and it may not always be possible for the two members nominated by the Officer Commanding the Cantonment to agree to a Chairman elected or selected by the two men who represent the interests of the house owner. If these are to meet and if they differ one from the other in their choice a good deal of time will be lost, and the object for which the Arbitration Committee is constituted will not be achieved. In the next place, the Officer Commanding cannot exercise any undue influence. He is restricted in his choice of the Chairman. He is to nominate a person not in the service of the Government or the Cantonment authority and not having any interest in house-property in the cantonment. This restriction secures a non-official as the Chairman of the Committee of Arbitration.

This matter was fully discussed in the Select Committee and the majority agreed to the nomination of the Chairman by the Officer Commanding. In the event of any irregularity in the procedure, the clause

provides for the District Magistrate to step in and appoint the Chairman or other member of the Arbitration Court. There is also a further safeguard provided for. If the aggrieved party is not satisfied with the award of the Arbitration Court, he has the right of appeal to a Civil Court. For these reasons, Sir, I think that the clause as it stands in the Bill and supported by a large majority in the Select Committee will commend itself to the House.

Mr. Pyari Lal: I do not think, Sir, that I can support the amendment of my Honourable friend. I think it is a matter of very small importance whether the person who appoints the Chairman is the Officer Commanding of the cantonment or the District Magistrate. We know as a matter of fact that the District Magistrate is a very heavily worked official, and as a rule, he is not in touch with the cantonment affairs. Therefore he would rather consider it very irksome when he is called upon to make the choice of a Chairman in matters which he probably does not care for. The Commanding Officer of the cantonment is a gentleman probably unconnected with any of the parties, a gentleman fresh from England, and a person who does not involve himself in the ordinary civil affairs of the people. And then when you restrict his choice that he shall only appoint a man who is not interested in the property, the subject of appropriation, that he shall appoint a man who is not in Government employ or in any way subordinate to him, I suggest nothing could be fairer than to ask him to make the appointment. Besides, our object in making this provision is to avoid unnecessary delays, because, after all, the house is very urgently required and as soon as possible. If you interpose at every step delays of months and weeks, what will happen? The provisions of this Act will then be absolutely nugatory, mean nothing, and therefore I think the clause as it stands should be allowed.

Mr. E. Burdon: Sir, my Honourable friends Messrs Cotelingam and Pyari Lal have anticipated most of the objections which I have to offer to this amendment. It is quite clear that in substance nothing could be gained by the proposal that the Chairman of the Committee of Arbitration should be elected. In the first place, election could always be made to fail by the two Government Members of the Committee declining to vote for any particular candidates, and they would always do so if there were any element of contention present. Consequently, in every case in which the principle of election would *ex hypothesi* be of value, it would be necessary to resort to nomination. This, of course, was recognised by the framers of the Bill. I need not touch on the point of the undesirability of adding unnecessarily to the delays of the proceedings of these committees of arbitration. Mr. Pyari Lal has explained this matter very clearly.

There are only two further points which I should like to mention very briefly. One is that the clause as it stands gives a guarantee that the Chairman of the Committee of Arbitration shall be a non-official, and that is a point on which very great stress has always been laid by those interested in cantonment reform. My Honourable friend's amendment would not necessarily have the same result. The other point is this. Let us suppose for a moment that the Commanding Officer of the cantonment, in exercise of his powers of nomination, makes an unsuitable choice, and this were to affect the ultimate decision of the Committee of Arbitration, what would happen then? The owner of the house, under the provisions of this Bill, will have the right of appeal to the Civil Court. I have heard it said

[Mr. E. Burdon.]

that when you provide this remedy of appeal, you provide everything that any reasonable person can ask for. It is quite clear that the Commanding Officer of the cantonment with the knowledge of this fact before him, namely, that there is the right of appeal, would never deliberately make an unsuitable choice, and he would not do so for other reasons as well. It would be his object to bring the proceedings of the Committee of Arbitration to a close as quickly as possible and to do everything that he could to ensure that the proceedings of the Committee should be non-contentious. For these reasons I oppose the amendment.

The motion was negatived.

Clause 22, as amended, 23, as amended by the Joint Committee, 24, as amended by the Joint Committee, 25, and 26 were added to the Bill.

Mr. W. M. Hussanally: As regards this clause 27, I have two amendments standing in my name.

Mr. Chairman: Move them one by one.

Mr. W. M. Hussanally: They are connected with each other and I should like to move them together, because if one is carried the second follows. They are:

"(a) That in clause 27 after the words and figure 'Section 7 and' the following be inserted:

'in places where there are no populated civil areas adjoining cantonment areas'.

"(b) That to clause 27 the following be added:

'Where, however, there are populated civil areas adjoining cantonment areas, the annual rent on cantonment buildings may be fixed at such percentage on their market value as is for the time being recoverable by way of annual rent on the market value of similar houses in the adjoining civil area in the locality concerned'.

It will be observed that in the amendment as printed there occurs the word "shall" and with your permission, Sir, and the permission of the House, I should like to substitute the word "may" instead of "shall". I shall explain, Sir, why I propose these two amendments.

It was represented to me by some landlords in Karachi, I mean the Karachi Cantonment, that if rental values in the cantonment for such bungalows as the Government commandeers are fixed by reference to the adjoining bungalows in the cantonment, the result will not be satisfactory so far as the landlords are concerned, because the rental values of such bungalows, at any rate, in the Karachi Cantonment were fixed several years back, perhaps 30 or 40 years back. Times have changed since then

and the cost of repairs and the prices of materials have gone up considerably. Therefore fixing the rental values for bungalows to be commandeered by Government in reference to the other adjoining bungalows will not necessarily meet the case. Therefore they suggested it to me that a clause should be inserted that comparison should be made between the bungalows in the cantonment and the bungalows in the adjoining civil lines, in cantonments like Karachi, so that a fairer rental value should be fixed for these bungalows which are to be taken over by Government on long leases, and it is with that object that I differentiated between these two classes of bungalows: because if the bungalows are situated in a cantonment which has no civil area adjoining, there could necessarily be no comparison between any bungalows in Civil lines and the bungalows in the cantonment. Necessarily therefore any

comparison that can be held will only be amongst the bungalows in the cantonment. But when there are bungalows with similar accommodation and construction in the adjoining civil area of a cantonment, reference ought to be made to the rents that exist in these civil areas. But I am told that in certain cantonments this is not possible and that the rents of houses and bungalows in the civil area are much smaller than the rents within the cantonments. It is with the object of meeting that difficulty that I want to remove the word 'shall' and put in the word 'may', so that the amendment as I propose now will suit both the cases. When there is a cantonment by itself having no civil area adjacent and no bungalows within the civil area to which the rents of these bungalows within the cantonment can be compared, the comparison should be to the other bungalows in the same cantonment but when, in certain cases like Karachi as I have described, there are civil areas adjoining with bungalows of a similar kind the comparison should be made between the cantonment bungalows and the other bungalows, so far as the rental value is concerned and I hope that this amendment will be acceptable.

Mr. Pyari Lal: I strongly object to this amendment. My Honourable friend is probably unaware of the state of things in this part of the country. There is a great deal of difference in the value of the houses situated in the civil area and those within the limits of a cantonment. There are different considerations altogether in judging both these cases. The considerations that apply in one case will not apply to the other. In cantonments, the site of the houses belongs to the Government. We are liable to be turned out at any moment. We do not consider it to be our property at all and therefore when we build houses we practically take a very serious risk and for that risk we are paid by way of compensation a higher rental value. In cantonments I know, for instance Ambala or Meerut, the annual rental value of the house is about 12 per cent. of the estimated market value, whereas in the city it is only 3 or 4. Persons who have spent Rs. 10,000 for their houses in the civil area get about Rs. 25 or 30 rent, whereas persons who have spent a similar amount on their houses in these cantonments get Rs. 100. Therefore to have any recourse for purposes of comparison to the houses in the city will not be advantageous to the house owners and therefore will never do.

Mr. W. M. Hussanally: Quite the reverse is the case in Karachi.

Mr. Pyari Lal: My friend wants to change 'shall' into 'may'. He wants "to run with the hare and hunt with the hounds." In one case he wants a particular rental and in another case another rental. That will not do. There must be a uniform rate and I think the method of calculating the rent suggested in the Act as proposed is a very sound one.

Mr. E. Burdon: My Honourable friend, Mr. Pyari Lal, has, I am afraid, taken the words out of my mouth. If I have understood my Honourable friend Mr. Hussanally correctly and if I may speak colloquially, he wants "to have it both ways." If rents in the adjoining civil area are high, then rents in cantonments should be raised by an artificial process irrespective of natural causes. On the contrary if rents in the adjoining civil area are low, then those in cantonments should be maintained at their existing high level. I now wish to put the case, if I may, as I see it myself. Houses in cantonments only are to continue as in the past liable to appropriation for the use of military officers and it is

[Mr. E. Burdon.]

only in houses in cantonments that military officers are permitted to live. They are not allowed the option of residing in any adjoining civil settlement. Now these facts have a necessary effect in determining the value of houses situated in cantonments and the value of houses in adjoining civil areas has nothing whatever to do with the matter. The criterion which my Honourable friend seeks to introduce for the purpose of fixing rents in cantonments would be clearly alien and inapposite. I do not think, however, that I need elaborate the argument. I have no doubt the House will appreciate the point I have put forward. With these remarks I oppose the amendment.

Mr. Chairman: The question is:

"That in clause 27 after the words and figure 'Section 7 and' the following be inserted:

'in places where are no populated civil areas adjoining cantonment areas', and that to clause 27 the following be added:

"Where, however, there are populated civil areas adjoining cantonment areas, the annual rent on cantonment buildings shall be fixed at such percentage on their market value as is for the time being recoverable by way of annual rent on the market value of similar houses in the adjoining civil area in the locality concerned."

The motion was negatived.

Mr. Pyari Lal: The amendment which I beg to move is that to clause 27 the following proviso be added, namely:

"Provided that due allowance shall be made in respect of the cost to the lessee of maintaining the house in a state of reasonable repair during the period of the lease."

I am sure that this is an amendment that my Honourable friend Mr. Burdon will jump at and I propose it simply to show that when he has been just generous to us in the matter of the provisions of this House Accommodation Act we are equally prepared to meet him in the same fair minded attitude. Sir, this amendment can be inferred from the various portions of the Act. But I only introduce it to put the matter in plain words and beyond all doubt. In the Act itself it is provided that the house will be taken for five years certain, that in the beginning the repairs will be done at the expense of the owner, and for the period during the tenancy, the repairs will be done by the tenant, and in the matter of assessing rent we shall be allowed the same amount as to the other house-owners possessing similar houses in the cantonments. But we know as a matter of fact that other house-owners have to meet the cost of these repairs annually, so that the rent which they receive is minus the cost of these repairs. We want to put the Government tenant on the same footing as these other tenants. These tenants have not to bear the cost of repairs; and therefore I propose that this amendment might be accepted. Again, Sir, it might be said that in the matter of ordinary tenants there is generally no dispute about repairs. In the case of military officers there is always a great deal of heart-burning and trouble over the extent and the cost of these repairs. They generally are persons of dainty taste who want much more repairs than the house owners can afford, and more often than not, the whole of the rent hitherto, used to be absorbed in these repairs alone, and so the owners practically got nothing. So it might be objected that by the provision that I am now introducing the same state of things may recur. But I say, no. Mr. Burdon has been kind enough to define the phrase 'reasonable repairs'. Now

it can never be disputed. Clause 2, sub-clause (j) defines what the phrase 'reasonable repairs' means:

"A house is said to be in a state of reasonable repair when (i) all floors, walls, pillars and arches are sound and all roofs sound and watertight—*there can be no dispute that this is just*—(ii) all doors and windows are intact, properly painted or oiled, and provided with proper locks or bolts or other secure fastenings—*again there can be no dispute*—(iii) all rooms, out-houses and other appurtenant buildings are properly colour-washed or whitewashed."

Beyond this, under this Act the Government cannot go, and therefore those former disputes are not likely to arise. I must, Sir, congratulate the Honourable Mover on his introducing into this Assembly a Bill of this just and generous character.

Mr. Chairman: You will have time to do that when the motion is made that the Bill be passed into Law.

Mr. Pyari Lal: I shall say one word, with your permission.

Mr. Chairman: Later on. Amendment moved:

"That to clause 27 the following proviso be added, namely:

'Provided that due allowance shall be made in respect of the cost to the lessee of maintaining the house in a state of reasonable repair during the period of the lease'."

Mr. E. Burdon: Sir, I gladly accept the amendment proposed by Mr. Pyari Lal. It is obvious that the Committee of Arbitration should not be entitled to include in the rent which they fix as payable to the owner the cost of repairs which are being directly and separately borne by Government. The omission was, I must acknowledge, due to an oversight, and I am much obliged to my Honourable friend for providing me with the means of remedying it. Sir, I accept the amendment.

Mr. Chairman: The amendment before the House is that to clause 27 the proviso which I have already read be added.

The motion was adopted.

Mr. Chairman: The question is that clause 27, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 29, 30, 31 and 32, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Clauses 29, 30, 31 and 32 were added to the Bill.

Mr. Chairman: The question is that clause 33 stand part of the Bill. The motion was adopted.

Mr. Chairman: The question is that clauses 34, 35 and 36, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clause 37 stand part of the Bill. The motion was adopted.

Mr. Chairman: The question is that clause 38 stand part of the Bill. The motion was adopted.

Mr. Chairman: The question is that clause 39, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that this be the Schedule to the Bill.

The motion was adopted.

The Title and the Preamble were added to the Bill.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I should draw the Honourable Member's attention, before he moves that the Bill be passed, to an obvious omission in sub-clauses (i) (j) of clause 2—'a house is said to be in a state of reasonable repair when (i) all floors, walls, pillars and arches are sound and all roofs sound and water-tight'. But there is no mention of the word 'wind tight',—a house ought to be wind-tight,—it is a usual clause inserted in every lease. Supposing the roofs do not leak, but a storm blows into the house; I hope it will be remedied.

Mr. Chairman: Order, order. Mr. Burdon.

Mr. E. Burdon: I move that the Bill, as amended, be passed.

Mr. Pyari Lal: Sir, I consider that the provisions of this Bill have been conceived in a very just and generous manner. It has always been a sore point with cantonment house-owners that their houses were commandeered by military officers and they got no return for their money, and this has caused a great deal of trouble hitherto. But now everything has been put on a very satisfactory footing. Not only is the notice to appropriate a house, good enough, but against that very notice an appeal has been allowed, and that must give a great deal of satisfaction. Then again in the matter of repairs, the house-owner can have a Committee of Arbitration, and the constitution of the Committee of Arbitration leaves nothing to be desired. From a decision of the Committee of Arbitration—and this again is very good—a right of appeal to the Civil Court has been given, and we can go up to the District Judge. What more could a house-owner in a cantonment want? Then again on the question of rent also we are to get the same value for our money, to get the same rent, as house-owners of the neighbouring houses. Then in cases of dispute again there is the same Committee of Arbitration, and the same right of appeal. Sir, everywhere, all along the line, we have been treated most fairly, and for this our unbounded thanks are due to the Honourable Mover, Mr. Burdon, and I only hope that this Bill is but an earnest of what we expect from his generous nature in future in the way of cantonment reforms.

Mr. W. M. Hussanally: Sir, I associate myself with every word which has fallen from the lips of Mr. Pyari Lal regarding the Honourable Mr. Burdon.

Mr. E. Burdon: Sir, I should like very briefly to thank my Honourable friends for the kind things they have said about the Bill and about myself. But I think that it is only right to say that greater acknowledgments are due to my predecessor, who really laid the foundations of this piece of reforms, which I know has been very anxiously desired by the owners of houses in Cantonments.

Mr. Chairman: The question is:

"That the Bill further to amend the Cantonments (House-Accommodation) Act, 1902, as amended, be passed."

The motion was adopted.

THE COTTON TRANSPORT BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I beg to move, Sir,

"That the Report of the Joint Committee on the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, be taken into consideration."

Sir, this Bill has already been before the House on two occasions and on both of those occasions I have made a speech explaining the objects of the Bill. In the circumstances I do not propose to detain the House very long to-day. The Bill is a very modest measure. Some people indeed think it is too modest a measure. It is a very modest measure intended to give Local Governments, if they so desire, a remedy against a very real evil, namely, the evil of mixing cotton. As I have explained previously, this evil of mixing bids fair to ruin the reputation and, incidentally also, the price of some of India's best staples. I wish to emphasise the point that though this Bill is a modest Bill, yet it should assist Agricultural Departments in the very beneficent work they are now doing in improving and maintaining the quality of staple cottons in certain tracts. For instance, some Members of this House may have seen in the course of the last day or two an article in one of the Bombay papers. That paper draws attention to the fact that the work done by the Agricultural Department in Bombay in the Surat and Navsari tracts, which is one of the tracts I may mention about which the Bombay Government is most nervous, has resulted in giving the cotton of that tract a premium of Rs. 20 to 21 an acre over the cotton of the adjoining Broach tract. And the article goes on to say that there is a danger that, owing to this evil practice of mixing, the work which the Agricultural Department is doing in this respect may be entirely neutralized. Our Bill is an attempt to enable a Local Government, it is faced with a problem of that kind, to apply at any rate a partial remedy. I move, Sir, that the Bill be taken into consideration.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): I move, Sir:

"That the Bill be recommitted to the Joint Committee."

My object in moving this amendment is not in any way to deprecate the measure or to put any obstruction in its passage. But, Sir, I find that there are certain apparent defects in the Bill that has emerged from the Joint Committee which I think cannot be amended on the floor of this House. With this object, Sir, I move that the points which I will suggest later, be taken into consideration by the Joint Committee, to provide the necessary checks to safeguard the interests that may be concerned.

This Bill when circulated for public opinion had a mixed reception. Some approved of it while others deprecated it. On the one hand

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the Bombay millowners and the Bombay Chamber of Commerce welcomed it with open arms, and not content with that, they even took the Government to task for having delayed such a wholesome measure. On the other hand, the United Provinces and some people in the Central Provinces were not satisfied with the Bill, and they thought that it was not a good measure and disapproved of it. Other provinces were quite indifferent to the Bill; and generally the opinion was divided. Sir, the objects with which this Bill has been introduced are very wholesome and desirable no doubt. In the cotton trade there has been fraud and deception practised in the country, inferior cotton used to be mixed up with good cotton of reputation. But the measure which has been brought before us will create many other hardships and troubles against which it is necessary for us to provide safeguards. Many people think that this measure will not be able to check the deceit and fraud complained against while others think that it may hamper the internal trade of the country. Some people think that even the agriculturists, for whose benefit this measure has been introduced, will not welcome it as they will be hit hard by it. For instance, only yesterday one of my friends said to me—suppose a man were to cultivate long staple cotton in a particular area, a portion of which may not be fertile enough for that particular variety and hence yield an inferior variety, while another portion might yield a superior variety. How can that agriculturist distinguish between the two and separate them? There is also the objection, Sir, that the cotton growing area in certain provinces is very limited and scattered. From these scattered parts the cotton has to be transported to central localities where ginning factories are located. Some people suggest that the cotton could only be improved by improving the agricultural processes and by the Agricultural Department and the fraud could be checked by the agents of mill owners specially deputed for the purchase of superior cotton.

The first of the difficulties in this Bill, as will appear to Honourable Members, is that the Bill provides the railway staff with authority to prohibit the transportation of any cotton from a place to any place in a notified area. No doubt, as the Honourable Mr. Innes has pointed out, very extensive powers have been given to Local Governments to notify areas and to notify the variety of cotton that they may desire to prohibit or protect. But the power given under the Bill to the station staff is highly extensive and undesirable. We not only give power to the railway staff to stop transport of cotton, but we also give them power to discriminate as to whether the cotton handed to them for transport was or was not of a prohibited variety. For instance, suppose the Central Provinces Government notifies that the Berar or Akola area is a protected area. And that short staple cotton should be prohibited from entering or being sent to that area but long staple cotton to be a protected variety, and not be prohibited. They may do this to prevent the admixture of short staple cotton with the long staple cotton. I go with a bale of cotton having long staple and I give it over to the railway station master or to the goods clerk or any other railway officer authorised in this behalf to forward it to Berar area. I tell him 'Here is a bale of cotton, kindly forward it to Akola.' Under the provisions in clause 4 the station master, if he thinks that the variety of cotton contained in this bale is not of a variety that has been notified by the Government, as the protected variety of cotton, the result will be that that station master might stop the transport of that cotton

from the station. Here we give the authority to the station official to discriminate between different kinds of cotton. I may insist that the cotton was good long staple cotton which is protected and not prohibited. The station master may say 'It is a prohibited cotton and therefore I forbid it.' Moreover, Sir, he will be too prone to refuse the transport where cotton is handed over to him outside the notified area. For instance, under a subsequent clause, Sir, we have also provided—probably in clause 6—a penalty that if a station master or station official were to allow the transport of prohibited cotton from being sent to a notified area that station master or that station official will be liable to a penalty under this Bill. Now, in this case, Sir, we provide a penalty that if he lets cotton to be transported he will be punished. At the same time, we do not provide a penalty that if the station master or the station official were wrongfully to refuse to receive or transport it to that area he will be punished. There is no provision to that effect. All this goes to show that the Bill, as it has been put before us, is a defective measure and is not quite a perfect one. All of us, Sir, are fully cognisant of the corruption that went on during the period of control when priority certificates were required to be obtained for goods wagons. Everyone of us knows what mischief the railway officials played in those days. Corruption was prevalent not only amongst small station staff, but even amongst some of the high officers of the railway company. I do not mean to say that all the high officials of the railway behaved in that way or were corrupt, but there were to be found some officials who were corrupt. When such a thing could happen at one time, where could there be safety or check at other times also for the non-recurrence of such a thing at the hands of petty station officials who are not much literate and who cannot have proper power of discrimination between long staple cotton and short staple cotton. I could very well have understood if any provision had been made in this Bill of giving such power only to some expert licensing authority or agricultural authority. But no such provision has been made. The Honourable Mr. Innes might say that the Local Governments may make rules in that respect, but I doubt whether the Local Governments can make rules for checking or controlling the station officials for abuses under clauses 4 and 5. And, Sir, I submit that the safeguards or checks that we might put by way of amendments may not be sufficiently proper safeguards. It has also been seen during the last two or three days that when an amendment is moved and if there is any slight mistake in it, we are taken to task and no such amendment can succeed. Under these circumstances, Sir, it will be very difficult for us to put in proper amendments. Moreover very few amendments have been notified in this Bill. I do not mean to say that amendments have not been notified because there are no objections or imperfections in the Bill. I shall be very much obliged if any Honourable Member can point out the safeguards that have been provided against wrongful actions on the part of the station officials in this Bill. I shall be very much obliged if any Honourable Member will point out the safeguards that have been provided against the transport of cotton by road or by way and the agency that has been provided for in this Bill. It might very well be said on behalf of the Government that this agency could very well be declared by the Local Government, but may I know where the funds will come from? No such source of revenue has been provided here, and therefore I submit that these imperfections could only be remedied if the Bill goes back again to the Joint Committee for amendments. With these words, Sir, I commend for the consideration of the House that the Bill be recommended to the Joint Committee.

Mr. Chairman: The original motion was:

"That the Report of the Joint Committee on the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, be taken into consideration."

Since when an amendment has been moved:

"That the Bill be re-committed to the Select Committee."

Captain E. V. Sassoon (Bombay Millowners Association: Indian Commerce): Sir, the interests which I have the honour to represent have desired even stronger measures than those afforded by the Bill. But we accepted it as it stands as a step in the right direction. I confess, Sir, that I have been rather at a loss to understand some of the remarks that have fallen from the lips of the last speaker. He talks of growers who grow long staple and short staple cotton and he appears to think that this Bill would cause some grievance to these growers. I do not see anything in the Bill which prevents any person from exporting from his district long staple as well as short staple cotton. It merely prevents anybody from importing short staple cotton into a long staple district. As to the further point which the last speaker made as to the powers in the hands of the station staff, supposing that a consumer in a district wanted to import cotton and was in some doubt as to whether it would be accepted by the station master, his district being a notified area, there would be no difficulty for him to obtain a license as is available under this Bill. The moment he has got his license, the station staff have no power to withhold his right to import. He has, furthermore, the right under the license to import any sort of cotton that he may need for his particular purposes. He may need in a long staple area to import short staple cotton if he happens to have a mill there and under the safeguard, that is to say, by having a license, he is enabled to do this. I therefore fail to see any reason, Sir, why this Bill should be recommitted to the Joint Committee and on behalf of the interests, which I represent, I strongly support it.

Mr. B. H. R. Jatkar (Berar Representative): Sir, I rise to support the motion which has been made by Mr. Agnihotri. It is very necessary that the Bill as it stands should be improved further. From the opinions of the several Local Governments that have been received, it appears that the Bill as it stands, if passed, would be a dead letter and would not be availed of by many of the Local Governments. Mr. Agnihotri has only given the opinions of two of the Local Governments. If I read to the House the opinions of the other Local Governments, I can positively say that the majority of the Local Governments say that the Bill is either not necessary for their provinces or impracticable and unworkable. In the face of these opinions of the Local Governments should we consider and adopt a Bill which would be a dead letter soon after it is passed? Probably the Bombay Government alone is wholeheartedly in support of this measure. And I think to meet the wishes of only one province this Government should not adopt a Bill which will not be of any use to the other provinces. Moreover, the defects in the Bill have been pointed out by my Honourable friend, Mr. Agnihotri. I would add something more to what he has stated. Where is the classification of the variety of cotton which are to be protected? Is it to be left to the Local Government to specify the varieties of the cotton or is it to be left to the Station Masters to whom the goods are consigned to detect the variety of cotton that is being consigned. The Bill itself does not make any provision for the classification of the several varieties of cotton. The Indian Cotton Committee have specifically stated

that it should be the first concern to classify the varieties of cotton before any other thing is taken in hand. I therefore consider that classification is necessary whether in this or in any other Bill, because the present varieties of cotton are named after railway stations or after provinces. For instance, the House may be surprised to learn that the cotton which is known as Bengal cotton does not grow in Bengal at all. So I think it will be desirable to have the classification of the varieties of cotton before we give protection to any area for growing that sort of cotton. Moreover, the evil of mixture about which so much has been said is with the middlemen or the ginning and pressing factory owners. It has also been recommended that there should be some Act to provide for the licensing of ginning and pressing factories, and I think that legislation must also be considered along with this legislation, otherwise it would be of no use to pass this Bill without checking the malpractices in the ginning and pressing factories.

The last speaker pointed out that there is absolutely no hardship to the cotton growers, but I think there will be a hardship to them in this way. Suppose the Khandesh area is protected or the Berar area is protected for certain varieties of cotton. Up to now the cotton growers take their cotton carts from one province to another, and he has only to cross the border to take it to the nearest cotton market, but if you give protection to any such area, it will certainly cause hardship to the cotton growers in the adjoining area.

Moreover, in the definition of 'cotton,' cotton seed has been included. Cotton seed if restricted wholesale would cause very great hardship to the public. One of the Local Governments,—I believe the Government of the United Provinces—has stated that cotton seed should be excluded. There is also this difficulty. Where cotton seed is imported for sowing purposes it must be restricted, no doubt, but the wholesale restriction of importing cotton seed which is meant for oil or to be used as food for cattle would be a great hardship to this province or that province, because it would be very difficult to detect what cotton seed is imported for food, for cattle or for seed.

One of the provinces has also condemned the wording of section 4 because it gives too much discretion to railway officers and I do not know how it can be removed by an amendment here or an amendment there. For this purpose, therefore, it would be necessary to recommit the whole Bill to the Joint Committee once again. The Joint Committee that was appointed consisted of 10 members, and the House will be surprised to know that 5 members had not taken part in the deliberations of the Committee at all, and out of the 5 members who have taken part, three represent Bombay. Of course I have nothing to say personally against any one of them, but I submit that all the provinces were not represented on this Joint Committee and the advantage of their experience has not been taken in regard to this Bill. With these remarks, Sir, I support the motion before the House.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I oppose the amendment. I believe both my friends Mr. Agnihotri and Mr. Jatkar have entirely misconceived the object of the Bill. I do not think the Bill, as it has emerged from the Select Committee, is so radically defective as to deserve a recommitment to a Joint Committee. Mr. Agnihotri spoke about the safeguards which he wanted. May I point out to him an unusually good safeguard which this Bill introduces, namely, the safeguard under clause 8? That is the best safeguard which I can think of. "No notification under section 3 or rule under section 7 shall be issued by the

[Mr. B. S. Kamat.]

Local Government of any Governor's province, unless it has been laid in draft before the Legislative Council of the Province, and has been approved by a Resolution of the Legislative Council, either with or without modification or addition, etc." I think, Sir, this is a safeguard which we ought to value. No Local Government under this Act will be in a position to issue any notification restricting the transport of cotton unless the Members of the Local Legislative Council get an opportunity to see the draft.

Mr. Jatkár spoke about the classification of cotton, and he thought that every Station Master on every railway should be conversant or should be made conversant by rules or by the Act with all the thousand and one varieties of cotton in the country. I believe, Sir, it is a task so stupendous that no Act or Railway Administration can ever hope to accomplish. All these things could be done with reference to specific tracts of the country only by the Local Government of the province, by special notifications and with the consent of the Legislative Council of the province concerned. That is, I believe, the safest safeguard which one can think of.

Then again Mr. Agnihotri seemed to labour under another misapprehension. He seemed to think that under clause 4 of this Bill the whole responsibility of determining the quality of cotton is thrown on Station Masters. Sir, the Bill attempts to do nothing of that sort. The only duty of the Station Master under this Bill will be to ask for a licence from the consignor. If the consignor is honest enough, he will be able to produce his licence, and I don't think Mr. Agnihotri is against the principle of licensing. At the beginning of his speech he admitted that the objects of the Bill were good. He also admitted that the transport of cotton ought to be checked. He also admitted that it could be checked only under a system of licences. All these three premises being granted, I believe it follows that somebody must issue licences, and the duty thrown on the station master is only to see that the consignor has got a licence in his hands. The terms and conditions of the licence will be determined by the Local Government and placed in draft before the Legislative Council, so that every condition in the licence, the very form of the licence, will be shown to Members of the Legislative Council. I believe that is a pretty good safeguard.

Then Mr. Jatkár spoke about the growers' inconveniences and hardships. I do not know where the hardships for the grower comes in. The Bill does not check the cultivators from growing any particular variety of cotton. They can sow in their fields, even side by side, and acre by acre, any class or variety of cotton. The only attempt which the Bill makes is to prevent smuggling under a false name and consigning under false pretences. I believe, Sir, cotton, especially when it is exported, is getting a bad name if the whole cotton is mixed up and adulterated with different varieties. What we want to save is the name of Indian cotton, particularly in foreign countries so that we may get a good price for it. Secondly there is often adulteration in the cotton seed which the cultivator gets. Cotton is mixed in ginning and pressing factories under this process of smuggling. The seed which the cultivator sows in the fields is after all not pure, good seed of a good quality but it is mixed seed which comes from ginning factories, and therefore the crops which he realises are never pure, unadulterated cotton which he exports, with the result that he suffers by this process of mixing of seed. It is therefore to his interest to pass the Bill. I do not think anything would be gained by recommitting this Bill to the Joint Committee, and, if at all my friend Mr. Agnihotri thought that there were

serious difficulties in the Bill, he could have sent in any number of amendments. I see, however, that there are only two or three amendments in his name showing that either he or his friends had very little else to suggest to improve the Bill, and from this very fact I think we can take it for granted that nothing can be gained by recommitting it to the Joint Committee.

The Honourable Mr. C. A. Innes: I desire, Sir, to add a few words in support of what my friend, Mr. Kamat, has said. I wish to make this point. Mr. Agnihotri and Mr. Jatkár in their speeches both attack what I might call the whole scheme and the whole principle of the Bill. It is no use sending points like that to a Select Committee. A Select Committee must work upon the assumption that the scheme of the Bill, the general principle of the Bill, has been accepted by the House. A Joint Committee could not alter materially our clauses (4) and (5). They could not deprive the station master of the power we give him to refuse a consignment of cotton unless it is accompanied by a licence without altering the whole scheme of the Bill. A point of that kind, Sir, is a point which has to be decided by the whole House. This is a Bill of only 7 clauses. It is not a very difficult Bill to understand and I think, Sir, that this House is quite competent to deal with the points raised by Mr. Agnihotri.

I desire to make just one other point. Mr. Jatkár pointed to the fact that 3 out of the 4 non-official members of the Select Committee had come from Bombay. He suggested that the Bill had been drawn up in the interests of the Bombay cotton trade and the Bombay mill owners. Now, Sir, that is entirely untrue. This Bill is intended largely for the benefit of the growers. Does Mr. Jatkár realise what are the evils that we are trying to meet? One of the evils is the dishonest middleman. He rails cotton from a short staple tract to a station inside a well known long staple tract. He thereby gets on his bale the station mark of the long staple tract. He thereby gets a better price for his cotton, but in the process he helps to destroy the reputation of the cotton in that long staple tract. Again, cotton from a short staple tract is railed to a long staple tract and is there mixed with cotton of the superior variety. Again, it is fraud pure and simple and again it is the cultivator that suffers. And finally, and this is the worst of all, you get unginced cotton railed from a short staple tract to a long staple tract. The cotton is ginced in the long staple tract. It is mixed with the long staple cotton and gets the higher price. Again, it is fraud. And the seed is used for sowing in the long stapled tract. Thus you set up a process of deterioration in the whole of the cotton of that tract which it may take years to arrest. I say without fear of contradiction that the purpose and object of this Bill is to maintain the reputation of our best cottons in India. It is a Bill which offers Local Governments a remedy if they desire to use it and it is for each Local Government and local Council to decide whether they will apply the remedy which we offer them. But let no one in this House say that we are here introducing a Bill against the interests of the cultivator and solely in the interests of the trade, for it is not true. I submit, Sir, that this amendment should not be accepted.

Mr. Chairman: Amendment moved:

"That the Bill be re-committed to the Select Committee."

The question is that that amendment be made.

The motion was negatived.

Clauses 1, 2 and 3, as amended by the Joint Committee, were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That to sub-clause (1) of clause 4 the following proviso be added:

"Provided that the railway officials so refusing shall without any unreasonable delay inform the consignor and the authority entitled to grant a licence for transport, the fact of such a refusal and shall carry out the order that the licensing authority may pass directing him to so receive for carriage or to so forward, or allow the cotton to be so carried."

Sir, in clause 4 of the Bill we read:

"the station master of any railway station or any other railway servant responsible for the booking of goods or parcels at that station may refuse to receive for carriage at, or to forward or allow to be carried on the railway from, that station any cotton consigned a notified station, being cotton of a kind of which delivery at such notified station has been prohibited, unless both stations are in the same protected area, or unless the consignor produces a certified copy of a licence for the import of the cotton into the protected area in which such notified station is situated."

Sir, as will appear from what I have read out, the station master or a railway official can refuse to receive or to transport the cotton consigned to any notified area, if it is cotton of a kind of which the delivery at such notified station has been prohibited. Sir, when I moved my amendment for the recommittal of the Bill to the Select Committee, the Honourable Mr. Sassoon and the Honourable Mr. Kamat were pleased to say that the licence would have to be produced before the station master and on seeing that licence the consignment would be received or transported. But, Sir, on reading this clause, I find that the cotton that has been prohibited from being sent to a notified area requires a licence, but for cotton of a variety that has not been prohibited from being transported to that area no licence is necessary. And so the difficulty would come in where any consignment of the variety of cotton that is not prohibited from being sent to that particular area, is tendered to the railway official for transport. In that case the official may be pleased to say that in his opinion the cotton tendered to him was of a different variety or of the prohibited variety, and he may refuse to receive it for transport. This point was not cleared up by any of my Honourable friends who opposed that motion. Neither was this point touched by the Honourable the Commerce Member. If we say that the licence could be applied for and was required even for such a variety of cotton, then there will be another difficulty. Every place is not expected to have a licensing authority. It is only big places or the large trade centres that may be the headquarters of the licensing authority and the dealer, the trader or the agriculturist or the cotton grower, who wants to transport that cotton, shall have to go to that licensing authority, and shall have to request him to have an inspection of the variety of cotton that he wants to transport and to give him a licence and only when he is able to satisfy the licensing authority he would be entitled to transport that cotton to such a station in a notified area but not otherwise. This will necessarily involve much inconvenience and trouble to the dealers. The Honourable Mr. Innes said that I objected to the principle of the Bill. Not in the least: far from it. I do welcome the principle on which this Bill has been based and, if I had any objection to the principle of the Bill, I would not have requested for its recommittal to the Select Committee but I would have opposed it outright. If my interpretation of this

section is correct, the station master has to discriminate and find out for himself and to judge whether or not the consignment of cotton that is produced before him is one of the prohibited varieties. The consignor comes and says, "This is not of the prohibited variety" while

the station master says, "This is of the prohibited variety and I refuse to receive it." Where is the remedy? My friend Mr. Kamat said that he should obtain a licence and then produce it. But if he thinks that it is of a variety which is not prohibited, where is the necessity for a licence? If he goes to the licensing authority, that officer will say, "Well, I am only required to grant a licence for such varieties of cotton that may be prohibited from going into a particular notified area." Therefore, I submit, Sir, that this state of things will lead to real hardship to agriculturists and to persons who may have occasion to consign goods at wayside stations. With this view, Sir, I propose a safeguard in the form of a proviso to clause 4. I am conscious of my weakness in the English language, and it is just possible that my amendment may not be in a proper form or be properly worded. But my sole object is that there should be a check, a safeguard, over the station official when he refuses to receive or to transport a consignment of cotton, and that that safeguard should be provided in the Bill. That is my object, and with that object I move the amendment that in case the station official refuses to receive such consignment, he should inform the consignor and at the same time he should send an intimation to the licensing authority, if any, appointed within the area and that such licensing authority's orders shall be final in that respect, and that if the licensing authority issues a licence to him or advises the station master to transport that cotton, then the station master should obey him. That is the proviso which I wish to put in. With these words, Sir, I put my amendment before the House for consideration.

The Honourable Mr. C. A. Innes: Sir, Mr. Agnihotri has so completely misapprehended the scope of this clause that I find it rather difficult to answer him. Mr. Agnihotri appears to be under the impression that certain varieties of cotton will be allowed to be imported into a prohibited area and that other varieties will not be so allowed, and that it will rest with the unfortunate station master to decide whether any particular consignment which is offered to him for carriage belongs to the prohibited or to the non-prohibited variety. Let me assure Mr. Agnihotri that we intend no such thing. We have defined "cotton" in clause 2 (c) as meaning every kind of unmanufactured cotton; that is, ginned and unginned cotton, cotton waste and cotton seed. We have adopted that particular form of definition in order in clause 3 to allow a Local Government to exercise its discrimination whether it should prohibit the import into the notified area of every kind or only of one kind of cotton. The Local Government may say that in a particular season, they will allow cotton seed to come in without any restriction, or they may allow cotton waste which may be required for some particular purpose. But the Local Government will not say that particular varieties of cotton may come in under license and other varieties may not. We recognise that in these notified areas there may be mills which may require for perfectly legitimate purposes cotton from outside. What will happen then is that the Local Government will issue through a licensing authority a licence to that mill to import so much cotton into that area. (Mr. K. B. L. Agnihotri: "Any kind of cotton?") Yes, any kind of cotton. When the cotton comes before the station master of the consigning station, the only obligation that we lay upon him is to see whether or not that particular consignment is covered by a proper licence from the licensing authority. The station master will have no other duty than to see whether or not the consignment is covered by a licence. He will have nothing to do with the variety of the cotton or anything of that kind. His duty is perfectly clear. And the reason why we have had to

[Mr. C. A. Innes:]

put in this clause is this. Under the Railways Act, every railway administration is required to provide reasonable facilities for the transport and carriage of goods. The railway administrations are not entitled to refuse to receive goods for carriage unless they are particularly dangerous goods in which case they may receive it on conditions. But ordinarily, a general carrier like a railway administration must receive the goods; and that is why we propose to empower the station master to refuse to receive cotton for consignment to a notified area except when there is a licence. We must make provision for that in this Bill and that is why we have put in the words "Notwithstanding anything contained in the Indian Railways Act." Now this amendment suggests that if the railway official refuses to receive cotton which is not covered by a licence, and which it is proposed to send to a notified area, he should at once without delay inform the consignor of the fact. There is no need to provide anything of that kind. What happens when you take goods to a railway station? You tender it. If it is refused, you are told on the nail why it has been refused. Moreover, in all these cases when a notification has been issued by the Local Government, that notification will be communicated to the railway administrations and posted up in all goods sheds. Then it is suggested that the station master must inform the licensing authority, in order presumably, that the licensing authority may issue a licence if he so thinks fit. That is not the job of the station master. That is for the person who wishes to consign cotton. If he has got any particular reason why he wants cotton to get into a particular area, it is for him to go to the licensing authority in that area and get the necessary licence. I do not see that there is the slightest necessity for making the amendment suggested by Mr. Agnihotri. As I have pointed out, Mr. Agnihotri has entirely misapprehended the whole scope of this clause. I oppose the amendment.

Mr. K. B. L. Agnihotri: Then may I know why you have inserted the words "being cotton of a kind of which the delivery at such notified station has been prohibited"? If you were to omit these words, then the interpretation which you suggest will be correct. But so long as you retain those words, you give the station master discretion to find out whether the cotton is of that variety or not.

The Honourable Mr. C. A. Innes: It is explained by clause 3 of the Bill.

Mr. Chairman: The amendment before the House is:

"That to sub-clause (1) of clause 4 the following proviso be added:

"Provided that the railway officials so refusing shall without any unreasonable delay inform the consignor and the authority entitled to grant a licence for transport, the fact of such a refusal and shall carry out the order that the licensing authority may pass directing him to so receive for carriage or to so forward, or allow the cotton to be so carried."

The question is that that amendment be made.

The motion was negatived.

Mr. Chairman: The question is that clause 4, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, my second amendment is similar to the one that I moved before. The Honourable Mr. Innes was pleased to point out in answer to my amendment dealing with the necessity for information

to the consignor that the consignor was informed at the moment his consignment was refused and not booked. But the Honourable Mr. Innes I regret to say has not seen to this that there are three stages when the consignment could be refused. The station master may refuse to receive or to forward or to allow it to be transported. He may receive it and may subsequently disallow its transport. It may happen like that, and therefore such information was necessary, but as the clause is thrown out, I need not say anything further. I beg to move:

"That in clause 5 the following proviso be added:

"Provided that the railway officials so refusing the delivery of the cotton shall, without any unreasonable delay, give an intimation of such refusal to the consignee and the authority entitled to grant a licence for transport and shall not return the cotton but will give delivery to the consignee if so ordered by the licensing authority."

The Honourable Mr. Innes has pointed out that I am under a misapprehension as to the railway station official's right to judge or find out for himself the quality or variety of cotton consigned, but he has done me an injustice in not looking to the subsequent insertion made by the Joint Committee and to its effect on clause 4 and to its effect on the whole of clause 5. If the insertions had not been made, the station official would have on non-production of the licence been simply entitled to refuse the delivery or refuse to receive for transport, as the clause in the Bill had a provision that unless both the stations be in the notified area or the consignor produced a licence, the railway official could refuse. He could have done that even before, but by this insertion you do give him further power to discriminate and find out for himself the variety of cotton consigned. The moment the Local Government notifies that a particular variety of cotton is prohibited from being sent or transported to a particular area, it will certainly mean according to my interpretation that he shall certainly be justified in making that discrimination and finding out for himself whether or not that particular variety of cotton has been prohibited. In the subsequent amendment that I put before the House I provide that if the delivery has been refused, the consignment should not, *ipso facto*, be returned to the station from which it had been received but the station official should inform the licensing authority and the consignee also in order to enable them to take such steps that they may be pleased to take in order to have the delivery made. With these words, I commend my amendment again for the consideration of the House. It will be very hard for the consignee to have the goods transported back to station from which they emanated even though, in the meantime, he may be taking steps for obtaining a licence from the licensing authority. Therefore, it is necessary that the consignee should be intimated and at the same time the licensing authority should also be intimated of the refusal of delivery of such consignment to the consignee. With these few words I move my amendment.

The Honourable Mr. C. A. Innes: Sir, Mr. Agnihotri spent the greater part of his speech not in dealing with the amendment to clause 5 but in expressing his dissatisfaction at the rate of his amendment to clause 4. In the circumstances, perhaps, I need not speak at any great length upon the amendment to clause 5.

I should like the House to consider what the objects of this Bill are. They are, as I have said, to stop a real danger to our cotton in India, a danger which is based upon a fraudulent practice. We have been accused in this Bill of not going far enough. The Bill is an experimental Bill and

[Mr. C. A. Innes.]

we have deliberately made the penalty as light as possible. There is no penalty at all upon station master who forwards cotton not covered by a licence. But a statutory obligation is placed upon the station master of the receiving station. All that he is required to do is to return the cotton. Surely, we could not have a Bill which is much more lenient than that. But Mr. Agnihotri wishes to destroy the effect of even the modest measure which we propose. He wishes the station master to delay and to inform the consignee and to give him a chance of obtaining a licence. Surely, that is unnecessary. The cotton will have to wait for 14 days. The consignee, if he is an honest consignee or if his licence is wrong, will have that period in which to appeal to the licensing authority. But I wish again to say that it is not the business of the station master to have any concern at all with the licensing authority. The duty laid upon him is perfectly clear. It is to see whether or not a particular consignment is covered by a licence. Sir, I hope that the House will not accept this amendment.

The motion was negatived.

Clause 5, as amended by the Joint Committee, was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move an amendment to clause 6 which is to this effect:

"After the words and figure 'sub-section (1)' the words and figure 'of section 4 and' be inserted."

Clause 6 provides for penalties for the import of prohibited cotton. It also provides that if any station master allows delivery of cotton in a notified area, of a variety which has been prohibited by the Local Government, that station official is liable to a penalty under clause 6. I regret to say that I have not yet been convinced that clause 4 does not serve. . . (Laughter) I beg to revert to clause 4 because I move an amendment for the inclusion of that clause in clause 6, and with that view I am constrained to make a comment on the wording of clause 4 again. If the insertion printed in italics in that clause had not been made, clause 4 would have had the same interpretation as has been given by the Honourable Mr. Innes, but by that insertion, I am still of the same opinion, that you authorise the station officials to discriminate the variety which has been prohibited from the variety permitted by the Local Government. If my interpretation is correct, in that case I submit that the insertion of sub-clause (1) of clause 4 is absolutely necessary in clause 6 also. If the station master wrongly or maliciously refuses the transport of cotton or does not allow the cotton other than the prohibited variety to be transported from his station to a station in the notified area he should be made equally liable to the penalty as has been provided for in the case of his giving delivery of the prohibited cotton within the notified area. Therefore I submit that the penalty should also be provided against a station master wrongfully refusing to receive the cotton or to transport it to a station in the notified area. This will provide a check on the railway official who would otherwise be prompt in refusing until he is bribed or satisfied otherwise, and this will lead to much corruption and obstruction of trade.

Mr. Chairman: You are moving all the clauses (a), (b) and (c). Otherwise it will be meaningless.

Mr. K. B. L. Agnihotri: It comes to the same thing. If (a) fails then the others go.

Mr. Chairman: Then they have been moved together.

Mr. K. B. L. Agnihotri: You may take it that way, Sir.

The Honourable Mr. C. A. Innes: I have some difficulty in understanding what is intended by this amendment. Mr. Agnihotri is still harping upon the failure of his amendment to clause 4 and apparently he wishes by this amendment to clause 6 in some way to achieve the object he had in view when he proposed his amendment to clause 4. Shall I be in order in again explaining away his difficulty in regard to clause 4.

Mr. Chairman: That is not necessary.

The Honourable Mr. C. A. Innes: At any rate his amendment to clause 6 is as follows. He wants in clause 6 to introduce a penalty for a station master who refuses to forward cotton. That is not within the scope of this Bill. As I have explained we are placing in this Bill a statutory obligation upon a station master at a receiving station to refuse the delivery of the cotton unless that cotton is covered by a licence. Naturally when we place a statutory obligation upon an officer or upon a person we provide a penalty for that person. Mr. Agnihotri wants us now to revert to clause 4 and wants us to provide that a station master who refuses to forward cotton improperly should also be penalised. Mr. Agnihotri however has not realised that matters of this kind should be dealt with by an amendment of the Railways Act or of the Carriers Act. I am not quite sure which it is. It is under these Acts that Railway Administrations have to provide reasonable facilities and if any penalty is to be provided when those facilities have been withheld improperly by a station master, it should be provided by an amendment of those Acts and not by introducing entirely unnecessary sentences into a clause of this Bill which is intended for an entirely different purpose.

Mr. Chairman: The motion before the House is:

"That in clause 6:

(a) after the words and figure 'sub-section (1)' the words and figure 'of section 4 and' be inserted;

(b) after the words 'upon him' the words 'refuses to receive, forward or allow to be carried, or returns or' be inserted;

(c) after the words 'other person' the words 'fails to carry out the order of the licensing authority' be inserted."

The motion was negatived.

Mr. Chairman: The question is that clause 6, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 7 and 8, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clause 9, the Title of the Bill, and the Preamble of the Bill do stand part of the Bill.

The motion was adopted.

The Honourable Mr. C. A. Innes: Sir, I move that the Bill, as amended, be passed.

Mr. Chairman: The question is that the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, as amended, be passed.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 31st January, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 31st January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MESSAGE FROM THE GOVERNOR GENERAL.

Mr. President: I have received the following Message from His Excellency the Governor General:

'For the purpose of sub-section (1) of section 67A of the Government of India Act, and in pursuance of rules 43, 46 and 47 of the Indian Legislative Rules and of Standing Order 70 of the Council of State Standing Orders, I, Rufus Daniel, Earl of Reading, hereby appoint the following days for the presentation to the Council of State and to the Legislative Assembly of the statement of the estimated annual expenditure and revenue of the Governor General in Council (in the said Rules and Standing Order referred to as the Budget) and for the subsequent stages of the said Budget in the Council of State and in the Legislative Assembly, namely:

Thursday, March the 1st, Presentation of the Budget in both Chambers.

Monday and Tuesday, March 5th and 6th, General discussion in the Legislative Assembly.

Wednesday, March 7th, General discussion in the Council of State.

Monday to Saturday, March the 12th to 17th, Voting of demands for grants in the Legislative Assembly.

(Signed) **READING,**
Governor General.

GIFT OF BOOKS BY SIR WILLIAM GEARY, BART.

Mr. President: I have further to acquaint the Assembly that through the generosity of an English gentleman interested in the welfare of the Indian Legislature, namely, Sir William Geary, Bart., the Library of the Indian Legislature now possesses some interesting Parliamentary records of English history. These records are mainly in the form of Reports of the Proceedings of the House of Commons, and in some cases also of the House of Lords, during the 17th and 18th Centuries. They have an historical interest of their own, and they form the foundation of the procedure which we ourselves are engaged in practising from day to day within these walls. I am sure I shall be voicing the unanimous feeling of the Assembly if I transmit to Sir William Geary, the donor of these volumes, our very cordial thanks for this substantial pledge of his interest in the welfare of the Indian Legislature. (Cheers.)

THE INDIAN NAVAL ARMAMENT BILL.

Mr. E. Burdon (Army Secretary): Sir, I move:

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be taken into consideration."

When I introduced the Bill in this Assembly last September I explained briefly its purpose and significance. The legislation contemplated arises out of the Treaty for the limitation of Naval Armament signed at Washington on behalf of His Majesty, the King, and certain other Powers on the 6th February 1922, the object of the Treaty being to contribute to the maintenance of the general peace and to reduce the burden of competition in armament. The Bill requires no further justification or explanation from me.

Mr. President: The question is:

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be taken into consideration."

The motion was adopted.

Mr. President: Clause 1. The question is that this clause stand part of the Bill.

The motion was adopted.

Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14. The question is that these clauses stand part of the Bill.

The motion was adopted.

Mr. President: The question is that this be the Schedule to the Bill.

The motion was adopted.

Mr. President: The question is that this be the Title and the Preamble of the Bill.

The motion was adopted.

Mr. E. Burdon: Sir, I move that the Bill be passed.

Mr. President: The question is:

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be passed."

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

On the last occasion when the proceedings were interrupted the Assembly was engaged in the consideration of the amendment by Mr. Agnihotri to the effect that in clause 33, in the proviso to sub-section (1), insert the words 'allow inspection to the accused and'.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I think it is advisable in the first instance to endeavour to remove the misapprehensions which have been disclosed in the debate which has already proceeded

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on this amendment. Clause 33 proposes to substitute a new sub-section for sub-section (1) of section 162. That, Sir, is one of the most important sections in the Code of Criminal Procedure, not only from the point of view of the investigation of offences but also from the point of view of the proper prosecution of offences, particularly, if I may say so, in our Magistrates' Courts. Now, Sir, in the course of the debate, my Honourable friend, Dr. Gour, said that "under the Code copies of these statements were furnished to the accused. Later on in the consolidating Act this proviso was modified and found its place as it does in the current Code of Criminal Procedure." He was referring, Sir, to the Code of 1882. Section 162 in that Code ran as follows:

"No statement, other than a dying declaration, made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it or be used as evidence against the accused."

I am aware, Sir, of the different rulings under that section, but it is clear that Dr. Gour was not quite correct in suggesting that it expressly gave the accused the right to obtain copies of these statements. That section was replaced by section 162 of the present Code, and we are dealing now with the proviso inserted by the Lowndes Committee in lieu of the proviso to sub-section (1) of that section. That proviso, Sir, introduces a difference in the ordinary rule of evidence regarding the use of previous statements made by witnesses. Generally speaking, they may be used not only for corroborating the evidence of witnesses in Court but for discrediting the evidence. The proviso in the Code of 1898 and the proviso in the clause as drafted by Sir George Lowndes' Committee restricts the use of these statements to the purpose of impeaching the credit of a witness produced for the prosecution. I want also, Sir, to impress upon the House that we are dealing here with statements recorded by a police officer. We are not dealing with the police diary. Police diaries are dealt with under section 172, and in the police diary the police officer day by day enters his proceedings, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and the statement of the circumstances ascertained through his investigation. That, Sir, is a different thing entirely to the statements which we are now dealing with. In the police diary there may be the purport of the statement of a witness to the police, but the record of the statement will not usually, or ought not to, be contained in the diary. Now, under the proviso it will be seen that the court is required on the request of the accused person to refer to such writing and may then, if the court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof. The Honourable Mover of the amendment wishes to make it compulsory on the part of the court to allow to the accused person inspection of the statements in all cases. What were the arguments used in support of this amendment? In the first place my Honourable friend Mr. Agnihotri said, referring to the time when the accused was brought up for trial: "It therefore generally happens that though the accused knows nothing about the statements, still he requests the court to go through them to find out if there are any contradictions, and the Magistrate has therefore to waste his time unnecessarily." The whole ground, therefore, of his amendment, as stated by him, was that the present procedure involves a waste of time. I submit, Sir, that in the circumstances of India, in view of the prosecuting agency which is usually available to our Magistrates, it is most necessary that the Magistrate should refer to these statements. It is his duty to do so; that is the only way in which he can

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find out what the witness is able to testify to, and it is the only way in which he can be sure that he is conducting the trial properly. I think, therefore, Sir, that we may at once neglect this argument.

My Honourable friend Sir Henry Stanyon stated that he did not remember one single instance in seven years' work as a Divisional Sessions Judge in which he was ever asked to delay the trial so that copies of these statements might be prepared and handed over to the accused. As regards that suggestion, Sir, I will merely remark that in my own experience I have used the provisions of the proviso and I am sure that that must be the experience of other persons in this Assembly who have experience as Magistrates or as Sessions Judges.

I turn now, Sir, to the objection raised by my Honourable and learned friend Dr. Gour. He says, "Ever since this proviso was inserted I have had numerous cases in which I have asked the Judge or the Magistrate, as the case may be, to refer to the statements of witnesses made before the police. He has looked at it and he says to me, 'I have referred to it' and thus complied with the provisions of this proviso; but I was none the wiser by the Judge's reference to the police diary and the result was that I was not able to cross-examine witnesses with reference to the previous contradictory statements which in the appellate court were a revelation to me." Well, Sir, that is an entirely different question and I propose to return to that later. We must remember, as I have said already, that we have here a modification of the ordinary rule of evidence as to the use of previous statements, and I submit, Sir, that it is impossible for us to provide in the Code that it shall be compulsory on the part of the Magistrate to allow to the accused person inspection of these documents in every case. Let us refer, Sir, to the remarks in the report of the Select Committee on the present section 162—I mean the Select Committee which sat on the Code of Criminal Procedure Bill which became the present Code of 1898. They said:

"In the first place, it is essential in the interests of public justice that the sources of police information should be kept secret. If the names of informers or detectives and the nature of their information be disclosed the detection of crime would be seriously crippled."

Well, Sir, does this Assembly wish to cripple the detection of crime? I am sure that the answer is 'No.' But if this amendment in the form in which it has been moved is carried, I submit that we shall be going a long way towards crippling the detection of crime. These statements, Sir, are the statements of a witness; a portion of them may be of use to the accused, it may be in the interests of justice that he should see them in order to be able to discredit the statements made by the witness in the court afterwards. But, Sir, they may contain all sorts of other information. Why do we have that provision in section 125 of the Indian Evidence Act which says that:

"No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence."

The sources of police information may well, Sir, be contained within the four corners of these statements, and we cannot therefore amend the Code so as to require that in all cases the accused person shall be able to inspect these statements. I agree, Sir, that in cases such as those referred to by

Dr. Gour the intention of the present provision in the Code is that, if it is in the interests of justice that the accused should be supplied with a copy, and unless there is some paramount reason against this course being taken, the court ought to supply a copy of the statement. I hope that most Courts would do that at the present time without requiring any amendment of the provisions in the proviso. But in order to meet the wishes of the Mover of this amendment and of those who supported him, I would suggest that in lieu of the present amendment the following amendment should be made, viz.,

"That in clause 33 in the proviso of the proposed new sub-section (1) of section 162 for the words beginning with 'may then' and ending with 'in order that any part of such statement,' the following be substituted, namely:

'shall then direct that the accused be furnished with a copy of such part, if any, of the statement as the Court thinks it expedient to furnish in the interests of justice in order that such part,'"

and so on. (Dr. H. S. Gour: "That is no good at all.") I will read out the proviso as it will stand:

"Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall, on the request of the accused, refer to such writing and shall then direct that the accused be furnished with a copy of such part, if any, of the statement as the Court thinks it expedient to furnish in the interests of justice in order that such part may be used to contradict such witness in the manner provided"

(Dr. Nand Lal: "I do not think it will serve the purpose.") That, Sir, meets entirely any substance that there is in the arguments which have been adduced in favour of the amendment now before this House. We must, Sir, retain for the Court the power of deciding. It is impossible, Sir, for us to provide in the Code that these statements shall in any case be given over to the accused. That would be the result of the amendment proposed. As soon as any witness appears the accused will ask the Court to refer to the statement. It will be the normal course; it will be done every time, and then the Court is bound to hand it over. That, Sir, I submit, would entirely cripple the detection of crime in this country. (Voices: "How?") because as I have said already these statements not only contain statements which may be of value to the accused person but they will also contain all sorts of other information. (Dr. H. S. Gour: "That is part of the case diary"); (Dr. Nand Lal: "Confidential reports are quite separate.") Before I sit down, Sir, I would like to refer to another point. It will be remembered that in the course of the discussion of Mr. Pantulu's amendment on the first part of section 162, an arrangement was come to between the Honourable Members opposite and the Members on this Bench. The amendment moved by my Honourable friend Mr. Pantulu was for the substitution of the words "as evidence" for the words "for any purpose". We, on this Bench, were prepared to accept that amendment, but at the instance of Honourable Members opposite, we decided not to vote for it, because they agreed that when discussing section 172 later we should provide in it for the use of these statements in the same way as the diary may be used to assist the Court in its inquiry. The Court, Sir, must be able to use these statements to this extent; otherwise, what, Sir, is the use of the police officer recording these statements? It will be of no value at all if it cannot be used for any purpose in the inquiry or trial of the offence which is then being investigated. This, Sir, is not a new amendment at all. It follows definitely from the discussion of Mr. Pantulu's amendment, and after the amendment which I have just

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moved has been put to the House, I should propose, with your permission, Sir, the following amendment also:

"That in clause 33 to the proposed new sub-section (1) of section 162 the following proviso be added, namely:

"Provided further that the Court may in the course of the inquiry or trial send for the record of any such statement and may use such statement not as evidence in the case but to aid it in the inquiry or trial."

We propose, Sir, that this should be included in section 162 rather than in section 172 which was suggested by my Honourable friend, Mr. Seshagiri Ayyar, because section 172 refers to the diary, and this section, which refers to the recorded statements taken down by a police officer is the proper section in which to provide for this provision.

Mr. President: I cannot put the amendment moved by the Honourable Member on my right, because, though it offers an alternative to the amendment standing in the name of Mr. Agnihotri, it cannot be included in the same place. I propose, however, to allow the discussion to proceed on the basis of the alternative proposed, so that the matter open now is not only the original amendment of Mr. Agnihotri but the alternative proposal of the Government, on the understanding that if hereafter we come to the actual moving of the amendment by Mr. Tonkinson that will be treated as a formal stage.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, this is a very important amendment before the House. If the administration of criminal justice in this country is to be improved at all, this amendment ought to be carried. It is not only my opinion, Sir; it is only yesterday I received a letter from a gentleman who is practising in Coimbatore for the last 35 years and he is not a politician at all, as he says. He says:

"The reason for my troubling you is my very grave anxiety and concern in the matters which I am now placing before you. I have had nearly 35 years' experience in the mofussal Courts mostly on the criminal side, and I feel very strongly that as the law is now being administered in the mofussal, unless these amendments are embodied in the Bill, accused persons are gravely handicapped and there will be a strong feeling that there is no longer British justice. As you know, I have never been an Indian politician, never joined the Congress and I am supposed to be an anti-Congressman. The amendments that I consider very essential are that the grant of copies of statements under section 162, etc., to the accused should be made mandatory and imperative and not discretionary as it now is and that they should be granted as soon as the inquiry or trial has commenced and before the accused are called upon to cross-examine the prosecution witnesses."

Sir, let us remember where we are and what the matter is. We are now in a Court of Justice. The police have passed the stage of investigation of the crime and placed the accused before the Court; and, as a matter of fact, under this section, the witness is actually in the box, mark the words—provided that when any witness is called for the prosecution, etc.,—then only this question arises. Therefore it is not the detection stage which my Honourable friend has in view and which he is so anxious to safeguard. The detection stage is already over; we have now come to the prosecution stage. The police are in possession of evidence which they place before the Court, and this witness is actually put in the box against the accused person. And what is wanted? His previous statement recorded by the police. For what purpose? In order to see if he has made contradictory statements. Sir, it is admitted in the section as it stands that

it will be useful for the accused that these previous statements shall be available to the Court, but what the section now lays down is that the Court is to determine whether it should allow a copy to be given or not. Sir, those of us who have to practise in the profession know how little the Courts know as to what the accused wants. The accused is the man to judge. He knows his line of defence; he knows what the weakness of the prosecution witness is. He knows best how to deal with the previous statement made by a witness in the defence. How is the Court in a position to judge? The Court is not in possession of the full facts of the case. The prosecution has just begun; the prosecution witnesses are being examined. The Court does not know what the case of the accused is and what his evidence will be. Therefore the Court is called upon to do a thing which it is humanly difficult for any human being to perform. Therefore I say this is a futile provision. And it is not only a futile provision. In this country as we know all executive and judicial functions are combined in the same individual and Magistrates depend for their promotion and livelihood on the goodwill of the District Superintendent of Police, and also on the District Magistrates. Sir, what is the meaning of leaving this discretionary power in the hands of Magistrates like that? I can understand Sessions Judges being entrusted with discretionary powers like that; they are only concerned with justice. We, Sir, in this Legislature are anxious to promote the administration of justice. Courts do not exist merely to secure convictions; Courts exist to promote justice. Let the accused have full opportunity. What is it after all? Here is a public officer—a policeman is a public officer—who records a statement from a witness. It is that statement which is asked for. How is it going to prevent a detection of crime, I fail to see. That is the substantial argument used by Mr. Tonkinson, because the accused looks at the previous statement of a witness. Is it my Honourable friend's contention that the witness in the box has made statements not relating to the case about some other crime? Is it that the witness has not made statements with reference to the crime under investigation, but has been called upon to make statements irrelevant to the crime? Then, Sir, if that is the practice, the sooner that practice is abandoned, the better, and this will be the best method of having that practice abandoned. Let all statements be confined to the particular case concerned. Why should the police go about hunting for information about other cases from witnesses connected with the crime? Therefore I fail to see how detection will suffer. My Honourable friend referred to section 135 of the Evidence Act. I fail to see what that has got to do with it. We are now concerned with the previous statement of the witness, not with the source of knowledge of the policeman or the officer. It is not a question of the accused trying to ferret out information which the policeman may know. This is a record made of this man's statement who now comes forward as a witness. What the prosecution will be afraid of is that this man has made a contradictory statement beforehand and they will carefully suppress it. They do not want the accused to know what this man has said. That is the real secret of the opposition of the police in many cases to showing these statements to the accused person. Therefore, Sir, justice suffers by this provision remaining as it is. It is a futile provision to entrust this discretion to the hands of Magistrates who are not judicial officers pure and simple. Therefore, Sir, I think this right ought to be given to the accused person, and I strongly support the amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, as one who I think may claim to take just as much interest in the proper

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administration of justice as my Honourable friend, Mr. Rangachariar, I feel very anxious indeed that the House should not treat this matter lightly, and that they should understand most carefully what it is they are setting about to do. I still see some indication that there is some confusion in the minds of Honourable Members with regard to these two matters, sections 162 and 172. Members are freely talking about diaries. 162 does not deal with the diaries. Do let us get that point clear in our minds. Members have talked about diaries being shown to the defence.

Rao Bahadur T. Rangachariar: We did not say anything about diaries.

Sir Henry Moncrieff Smith: Section 172 lays down what the diary contains:

"Every police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation."

Now the statement of the circumstances ascertained through his investigation will mean the purport of the evidence that he has received from the witnesses; it won't be the statement, certainly not the statements recorded under section 161 of the Code. Now we are not concerned in this case with showing the defence the diaries at all. These are statements recorded in full and verbatim, quite apart from the record of his proceedings which the police officer makes in the diary. Now what Mr. Agnihotri's amendment of this clause contemplates is this. A case comes before the Magistrate. A prosecution witness is called. That is how the proviso begins. A prosecution witness is called and the Court hands the defence the statement. This is to be obligatory and is to take place on every occasion on which a prosecution witness is called. That will be sometimes on the average 25 times a day in every Magistrate's Court; the Court will hand across this statement. (Mr. K. B. L. Agnihotri: "No.") My Honourable friend says no. He has not the slightest idea of the amount of criminal work our Magistrates have got to get through. If they take up twelve cases a day, and two witnesses per case is not an extravagant number to allow, I say and I repeat that some 25 times a day the Magistrate will have to hand over to the accused a copy of the statement which has been made by the prosecution witness who is being called at that moment and who is stepping into the witness box. Now, Sir, what will be the effect of that? The police will know that this is going to happen. They record what the witness says to them. What the witness says may be relevant or it may not. My Honourable friend, Mr. Rangachariar, said everything that a witness said, everything that is recorded is relevant, and therefore the accused should have it. Now, Sir, is the ordinary investigating officer so familiar with the law of evidence that he knows what to record and what not to record, which statements made by the witness are to be relevant and which are not? He does not know, Sir. He takes down everything that is said to him by the witness hoping that there may be something which, though for the moment he cannot see the relevancy of it, will aid him in his investigation. Now the police officer, as I say, being in the habit of recording this statement in full, will say to himself "if I put the witness into the witness box, the whole of his statement will have to be handed by the Court to the defence." What is going to be

the effect of that? Honourable Members will find that there is no provision in the Code which makes it compulsory for a police officer to record a statement in writing. Section 161 gives the investigating officer power to examine witnesses orally. If the statement is of any importance he records it in writing; if it is not, there merely goes down in the diary a record that such and such a witness was examined and corroborated another witness, or just the purport goes into the diary. If these statements are all going to be made available to the defence, every word of them, the police officer will say "If I am to disclose to a particular accused person all the sources of my information, I shall record nothing; I shall merely put into the diary a bare purport of what I have discovered from examining a witness under section 161." The defence will get nothing, the Court will merely get the assistance under section 172 of that brief record; the Superintendent of Police will be prevented from checking thoroughly the work of his subordinate investigating officers; the diaries will not be of much help to him, to the Court or to the accused. That is the first effect. 25 statements handed over by the Magistrate daily to the defence to use or not to use as they think fit. Surely, Sir, this House will realise that the present system, where discretion is left with the Magistrate, is much more convenient and tends much more to the speedy administration of justice. Cases will be intolerably delayed when the witness is put into the witness-box and the defence pleader says: "Give me ten minutes: I want to read this and see what I can get out of it." The duration of every case will be prolonged and, if you go by the figures of cases that the Magistrates try, the delay in the disposal of criminal cases will be intolerable.

Mr. Rangachariar said that the courts do not exist merely for the purpose of securing convictions. I would seriously ask this Assembly to put it to itself whether the Legislature exists merely for the purpose of securing acquittals.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, may I know from the Honourable Sir Henry Moncrieff Smith, what is the object of the criminal administration of justice? The object is to secure justice to a man who is supposed to have committed a crime. The police are asked to investigate. Why? Simply to save the time of Magistrates in going over matters which may, after all, result in nothing. The object is that the police officer may go to the place where the crime is supposed to have been committed at once, that is, at the earliest opportunity, collect together the men who are living in the locality and learn from them as to what is the real state of things. If he does his duty, he records the statements made to him. Having done so, what is there to hold those statements back from the accused. It is perfectly plain that the police must place their cards on the table. If they have done their duty, they have nothing to fear; but what I know happens, especially in the mufassil, is this. It is all very well in the abstract to say the Magistrate shall in every case exercise his discretion. But I know, as a matter of fact, that they do not, especially in the mufassil, where you have a number of Honorary Magistrates, who, to use an Urdu expression are *anari* Magistrates, that is to say, they are perfectly ignorant. I happen to be an Honorary Magistrate myself, and, therefore, I have the courage of my convictions to say before this Assembly what I generally notice. These Magistrates, Sir, are under the thumb of the police. (Mr. R. A. Spence: "Are you not an Honorary Magistrate?") Are there no exceptions, Sir? In the mufassil what happens is this. When the police chalaan a case

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they consider it to be a point of *izzat*, they consider it to be a point of honour, with them, that the man whom they have sent up should be convicted. For this purpose they bring pressure to bear on the Magistrate and if, unfortunately, he is an Honorary Magistrate, a kind of pressure which he is not able to withstand. The result is that this provision in the law that a Magistrate is allowed a discretion remains a dead letter. Sometimes, when the Magistrate is a mild sort of a gentleman, he smiles at the request of the counsel for the defence and says: "Yes, I will go into it," and in the end you find he has not done so and that you have trusted to his mere word. As the saying goes 'It is much better that 100 guilty men should escape rather than that one innocent man should suffer.' What I submit is that the Magistrates and the Courts exist for the purpose of doing justice, and no matter what amount of time they have to spend over it they must do their duty. I do not quite realise what the Honourable Sir Henry Moncrieff Smith means by saying that it would mean any amount of inconvenience to the Magistrates who have got very heavy work. There may be 80 witnesses that they have to go through and if they are to supply copies, how will they get through their work? That is all very well, but, if they are there, they must do their work properly; whether it takes them two days or a week, they must get through it, because it may be a matter of life and death for the person who is standing in the dock as an accused. I submit, Sir, that these statements made to the police are not only necessary for the purpose of contradicting witnesses, who appear before the Court, but they are very important in other respects, and I say this from my experience of the last 40 years both on the Bench and at the Bar. You find a particular witness comes before the Court and deposes to a certain state of things. The private information of the counsel for the defence is that this witness is not speaking the truth and that this witness said something very different before the police, and that this witness was procured 8 or 10 days after the actual occurrence and at the instance of the accused's enemies. Now, how are you to clear up those points? The man may say exactly what he had said, but he has said so to the police 8 or 10 days after the crime, whereas, if he were a truthful witness, he ought to have been present when the police officer went to investigate the crime, on the same day. We also want to know whether this witness has come forward of his own accord or whether some pressure of the kind suggested by the accused has been brought to bear on him.

Now will not these things matter very seriously in deciding as to whether the witness is credible or otherwise, and therefore from all points of view I do not see any purpose in the Government withholding those police papers from the accused at the time when he is put on his trial.

Mr. P. P. Ginwala (Burma: Non-European): Sir, in my opinion no case has been made out by the Government for the rejection of this amendment. The last speaker on behalf of Government made the remark that it would be extremely inconvenient if on every occasion a Magistrate had to give a copy of a witness's statement as he was being examined in Court. I do not understand what he means by that argument at all. Why does he suppose that if the Magistrate is deprived of this discretion and if the furnishing of copies is made obligatory, copies will have to be as these witnesses are produced in Court. The accused can apply for copies of statements made before the police in the same way as he applies for copies of evidence, in the ordinary way.

Mr. H. Tonkinson: What is the position if any witness is not called by the prosecution?

Mr. P. P. Ginwala: That is so, no doubt. But before the case actually commences a list of witnesses is drawn up and is filed on the record as the Honourable Member (Sir Henry Moncrieff Smith) must be aware. But even if there is a certain amount of inconvenience involved in this, it will be counterbalanced by the convenience of the accused and the safety of the accused. I can see no objection whatsoever to the copies being furnished as soon as the police have made up their minds as to what witnesses they are going to call. True the prosecutions are conducted in the lower courts in the most perfunctory fashion. The police do not know what witnesses they are going to call. They call them as they require them, so to say. But if the furnishing of copies was made obligatory, it would be incumbent on the police to make up their minds before the case begins in Court as to which witnesses they are going to examine, and as soon as they have made up their minds it would be quite convenient to furnish copies to the accused if he applies for them.

Now I will tell the House my experience of this business. I come from a province from which my friend Mr. Tonkinson also comes, and as he knows, the administration of justice in that province is not as developed as in India. And what happens there? We have Magistrates there who would refuse to refer to the police papers if the accused asked them to do so. I say that from personal knowledge. They will say "Oh, what is the use of that? The witness is being examined in Court, we shall do it later on." If the Counsel for the Prosecution happens to be fair-minded especially when the accused is undefended, he draws the attention of the Court to some statement by a particular witness before the police. The Magistrate, instead of feeling grateful to the Counsel for the Prosecution, goes for him and says it is no part of his business to draw the attention of the Court to what took place before the police. I am not exaggerating at all. I have heard it with my own ears and I have been rebuked by the Court on several occasions and the Court has been rebuked back by me—it is needless for me to say. Things like that do happen.

Sir Henry Moncrieff Smith: In Burma.

(Some Honourable Members: "In other Provinces also. All over India.")

Mr. P. P. Ginwala: In Burma; I have experience of another Presidency also, but I hope that Presidency has improved since I left it.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Burma is a part of India.

Mr. P. P. Ginwala: The point remains, Sir, that,—I would put it in this way—that prosecutions are conducted in such a perfunctory fashion in the courts of the Magistrates that unless a Magistrate is extremely conscientious, and, what is more, not afraid of the police at all, all the facts will not be produced before the Court.

I will give you another instance. On several occasions even in the Sessions Court—the High Court this time and not the Court of a Magistrate—I have discovered that when a case was committed to the Court the Magistrate had been so careless as not to have made a reference to the statement made before the police by a witness though it was entirely

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different from that made before the Court, and no Court could have convicted if the Magistrate had been careful enough to go into the police papers and get the truth out of the witness.

And do you think you are going to prevent the accused from obtaining copies of these statements? If an accused person is a well-to-do individual I have always noticed that he is extremely well prepared as to the facts which have been taken down by the police. How does that happen? I have seen, in a large number of cases, actual copies of statements made before the police in the possession of the Counsel for the accused.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): The police is fair-minded, I suppose.

Mr. P. P. Ginwala: I have known a Judge of the High Court ask Counsel for the accused, how he had come to know what a certain witness had said to the police; and this Counsel for the accused had to tell the Court to mind its business. In any case, the facts were in his possession. On the other hand, in the case of an undefended accused, even if the Counsel for the Crown has read the statements recorded by the Magistrate; and he is, unfortunately more interested sometimes in obtaining convictions than in securing justice. There are such men, there is no doubt about that. He himself has not studied the police papers. The Judge sits there. He has never examined the police records. The poor accused is undefended. A most important statement might have been made to the police which escapes the attention of the Court, the Counsel and the Jury, and the accused is convicted.

Now, Sir, is it worth while running so much risk in order that some time may be saved to the police and to the Courts, for that is what the argument amounts to.

Another argument put forward by the last speaker on behalf of Government was that the police do not know what is relevant and what is irrelevant when they take down a statement. Well, I say if the police is so incompetent, change it. They ought to know their business and because they do not know their business that should not be an argument. When they are investigating a case, they must know what facts are relevant and what are not; and supposing a fact that is irrelevant is recorded by the police, what injury will it do to the prosecution that an irrelevant fact gets into the hands of the accused. If the accused were entitled to obtain copies of statements, there would be a certain guarantee that the police would do their work in a more efficient manner, would be more careful, would be more honest; and, it would certainly lead to the purification of police administration. You may take it from me, Sir, when I say this, that it is true—that when an accused is a well-to-do individual he manages to obtain copies of statements or is placed in possession of statements made before the police. And that is a thing that ought to be put a stop to.

Then it was stated that it is not obligatory on the part of the police to record statements. What police officer is going to run the risk of keeping in his memory a statement which was orally made to him? He will never be able to get a conviction. He knows his business too well to run that risk; for a witness may be examined by him to-day and may not be produced in Court for a month. Is the police officer going to take the risk of his forgetting or remembering what that witness stated? He is bound

to take it down for his own protection and for the protection of justice. A statement which ought to be taken down under section 162 can not be entered in the diary alone. He must take down the statement in the ordinary way. In addition to that, he has to summarize it down in the diary. The diary is more for the guidance of the police themselves, whereas these statements are more for the guidance of the Court, and he cannot impose on the Court by transferring to the diary what he ought to have recorded in another place: that would be thoroughly dishonest—to record statements in the diary in order to prevent the accused from knowing what a particular witness stated. There is also another reason. He has got to have a certain guarantee that a statement made to the police will be adhered to by the witness when examined in Court. And where is the guarantee if he does not take the statement down? For his own protection he has got to take the statement down. If the prosecution is

12 Noon. prepared to take the risk of the statement not being taken down the accused is prepared to do so likewise. The accused does not care whether the prosecution witnesses' statements are taken down by the police or not. I repeat, Sir, that for his own protection the police officer should make a point of taking down the statements unless he wishes to be thoroughly dishonest and takes it down in some other record to which the accused cannot have access in the ordinary way. I submit, further, that far from taking more time it would facilitate the ends of justice, it would expedite the prosecution cases if the accused before he is tried is furnished with copies of the statements because it is common experience that many questions have to be put by the counsel for accused to witnesses as to what they might have stated to the police, and that is a way in which more time is likely to be wasted than would be the case if counsel were to be prepared with copies of the statements before he comes into court; and if he finds there is nothing in those statements, if he knows his business, he will not waste the time of the court. On the other hand you cannot shut out counsel from asking questions, very often irrelevant questions, which take up more time than the relevant questions and which he would not have put if he had got copies of the statements. On these grounds I support the amendment and I hope there will be no question of a difference of opinion on this point on the part of those at least who are interested in the administration of justice and who have practical experience of the working of magisterial courts as well as courts of sessions.

The Honourable Sir Malcolm Hailey (Home Member): Sir Henry Moncrieff Smith has given so luminous a description of our position, that I should not have attempted to add to it, if we had not since he spoke heard lately to my own astonishment and, I think, to the astonishment of the House also, some very extraordinary statements. We were told, for instance, that Magistrates are entirely under the thumb of the police. I shall illustrate to the House, by one of the best methods of testing the truth of such statements, the extent to which our Magistrates are under the thumb of the police. I assume that where you have a highly developed police system the police must have all the greater authority over Magistrates, and you would in such circumstances secure, if the charge is true, almost universal convictions. Now take the figures for a single year in one province, Bombay. (Mr. K. Ahmed: "Take Calcutta.") My case would be even stronger in Calcutta. Out of 207,735 persons who were under trial, these extremely subservient Magistrates only convicted 125,000 or under 62 per cent. Take the most serious classes of offences, offences against person

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Official): Were they all police cases, may I know, or cases on complaint also?

The Honourable Sir Malcolm Hailey: Take the police cases only if you will—instance for offences affecting life—1,164 persons under trial and 443 convictions; or serious hurt—25,000 persons under trial—2,000 convictions. This is the extent to which our Magistrates are under the thumb of the police. I have been told again that the statements recorded under this section under discussion must be open to inspection because they are useful for a good number of other purposes—that is Mr. Pyari Lal's description of them. Well, if they are used for any other purpose, then it is a clear breach of the law; the law lays down that they are to be used for one definite and defined purpose only and for no other.

Then Mr. Ginwala tells us that cases are put forward in the courts by the police in a haphazard way; he says that since the list of witnesses is prepared in advance, the accused ought to be able to obtain, as soon as that list of witnesses is put in, a copy of their statements. The police officers, he says, ought to make up their minds what witnesses they would put in. Is it for the police to do that or for the prosecution? Does the Government Prosecutor or the police choose what witnesses should appear? He also says in addition that the threat which Sir Henry Moncrieff Smith held out—though indeed it is more correctly described as an apprehension from my point of view—that if this amendment were carried the police officers would not record statements—he says that that would be an act of distinct dishonesty on the part of the police. Why? I suppose that he holds the theory that the police only record these statements to assist the court or the accused. That is not so. The statements are recorded mainly for the assistance of their own superiors in deciding on the necessity for and for guiding prosecution. It is true that the law by a somewhat exceptional provision allows these statements to be used for challenging the credibility of certain witnesses; but the primary object of recording these statements is not, as he suggests, in order that they may be used as any species of evidence before the court; they are primarily recorded for police purposes. That we in India allow them to be used for the specified purpose provided in the Act, constitutes an unusual procedure, confined, I imagine, to India alone. Do you in English courts have statements made before the police regularly recorded, and utilised for purposes of rebutment or conviction by the Court? Of course not, the law nowhere compels the police to record statements, and the exceptional procedure for the utilization of such statements as have been recorded for police purposes has only been introduced because such statements happen to be recorded; it would be no act of dishonesty at all if the police officer did not record those statements; the law does not direct him to do so. Nor would it be an act of dishonesty on the part of the senior police officers if they ordered that statements, instead of being recorded at length by police officers, were simply to be taken orally, and the purport given in their diaries. He says that the police officer would do it for his own protection. He seems to regard a statement recorded by a police officer as something equivalent to a statement recorded by a Magistrate for the purpose of binding down a witness to his statement. It is obviously nothing of the sort, the law does not allow it to be used in that manner. Now, will or will not the passing of this amendment mean that such statements will not be recorded? I say emphatically that the chances are that it will have this consequence. It will be likely to have this consequence, because the police will have

reason to see real harm in making such statements public. Some doubt has been passed upon Mr. Tonkinson's substantive statement that if this amendment is carried it will be a serious hindrance to detection. Mr. Rangachariar argued that we are now at the stage of prosecution and that detection is over; the making of these statements public could not, he says, hinder detection. But I will give a concrete instance within my own experience, an instance which could perhaps be paralleled by other officers here, to know how the placing of statements of this nature, (and the amendment demands that the whole and not part of the statements should be given) in the hands of the defence would seriously re-act on detection. We were investigating a widespread conspiracy case which ended in the throwing of bombs. I believe that the approver's statement to the police ran up to 40 printed pages. Certain accused were subsequently brought up in regard to one stage only of those transactions. It was a largely ramified conspiracy which operated all over India; one particular case was brought up before the courts in regard to incidents which occurred at Lahore alone. Now I ask you—was the whole of that approver's statement to be placed in the hands of the defence? (A Voice: "Yes.") An Honourable Member says: "Yes." I welcome his interruption as allowing me to show the absurdity of any such contention. It is obvious that if you had placed the whole of the statement of the approver as recorded by the police in the hands of the defence, you would have prejudiced very gravely indeed the possibility not only of conviction but even of arrest in other cases. You would have endangered the life of more than one informer. We could not wait in that case until we had traced the whole of that conspiracy with its many ramifications throughout India; we prosecuted in the one section where we had the evidence. There must be many such cases. Take a big dacoity case. Look at its development. The police do not know exactly in the first instance what to look for, what is likely to be relevant or irrelevant; but thinking that their witness knows something about it, take down the whole of his evidence. It turns out to refer to a large series of transactions of a gang. I have known gang cases which have taken in the trying many months, have involved hundreds of accused, and a vast series of transactions. Are you going to place, in the course of the trial of one small transaction only, the whole of the statement of a witness who made a statement referring to some 10 or 20 different transactions? Is that a reasonable proposition? If you do demand this and if you secure this, then the inevitable result will be that the police will be chary of recording statements in this way. They will depend on a number of records in their diaries, and there will be no statements available for the purpose which you suggest. In the alternative if such statements are recorded, and are placed in the hands of the defence, they will very gravely impede the course of detection. That is the point I wish to make against Mr. Rangachariar. We are, it is true, considering here the stage of prosecution; that is perfectly true. We wish as much as anybody here to give the accused every fair chance of rebutting the evidence against him. We are no more anxious that a sentence of conviction should be passed on an innocent man than any one else. But at the same time we must realise that although we are now at the prosecution stage yet there are cases, it may be many cases, in which to place in the hands of the defence a large number of statements ranging over a very considerable number of transactions, may re-act on the possibility of detection of crime, may endanger the lives of informers, may allow other guilty men to escape, and I do not think that anybody here seriously desires that result. If we are anxious to secure justice for the accused, we should be equally anxious to secure

[Sir Malcolm Hailey.]

the protection of life and property by aiding as far as possible in the detection of crime.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I have listened to the arguments on both sides in regard to this question with great interest. I have experience of a Magistrate's duties for about 20 years both stipendiary and honorary as my friend Mr. Pyari Lal calls it. There can be no denying the fact that in the mofussil some Magistrates, particularly of the second and third class, are considerably in the hands of the police; but I have also noticed in some cases weak first class Magistrates are also guided by police inspectors and sub-inspectors. I may say that probationary *mamlatdars*, what are called in Sind Mukhtiarars, or Tahsildars in other Provinces and acting men are so prone to police influences that very often justice in their courts cannot be properly obtained. No doubt Magistrates of position and education and having an independent character are not so much under the thumb of the police as others of the class I have mentioned are; and so far as the province of Sind is concerned I know when I was in service orders had been issued by the Police Superintendents to all inspectors and sub-inspectors not to send copies of statements to courts at all and sometimes it happened that even when the Magistrate called for these statements they were refused. So far as Sessions Courts are concerned, they always call for these statements through the Magistrates committing cases to their courts, almost invariably, because they know that these statements are not supplied to Magistrates. Within my own experience, when Sessions Courts fixed the hearing of cases committed to their courts, they particularly called for these police statements to be submitted to their courts. This will show how anxious the police always are to suppress these papers from the Magistrates to whose courts they send such cases. I know, Sir, that very often these statements are very important and very often contradictions are brought to light between the statements made by witnesses in courts and the statements they made before the police, which have a considerable bearing on the cases themselves. But at the same time I can imagine cases in which it would be extremely unwise and hazardous to allow the accused to have a look at these statements or to allow them to take a complete copy. Yes, it may be in the interest of the accused to allow him to have copies of extracts from these statements, and that will lead to better justice being dealt out to the accused. But in every case to give a complete copy of the statement will be prejudicial to the interests of justice itself. For instance, if a person belonged to a secret society and he gave certain information to the police, and his statement was recorded, what would be the result if the statement is made public and the secret society learns how the police got at them through this particular individual. I think the result of such a course would be that in 9 cases out of 10 the man would be murdered immediately—and cases have occurred in which witnesses have been murdered. Therefore, it is no doubt not a very reasonable thing to allow in every case the accused to take complete copies of statements made by witnesses before the police. I see, Sir, however, that there are arguments for both sides. I quite admit that in 9 cases out of 10 it is very important that the Magistrate or the trying Court should allow copies of statements to be given to the accused, and more especially in ordinary cases. But in delicate cases and extraordinary cases it would be very unwise to allow the accused to have complete copies of these statements. I would, therefore, Sir, with your permission suggest a sort

of a compromise between the two parties; I would say, if the Government accepts that compromise, that in ordinary cases copies should be allowed to the accused, but if the Magistrate or the trying Court, for special reasons to be recorded, thinks it inexpedient to allow copies of such statements to the accused, he may have the power of refusing the same to him. I think a compromise of this kind would suit both sides, and ought to be accepted by the Government as well as by my friends on this side.

Mr. T. V. Seshagiri Ayyar: Sir, the section under discussion is of such a far reaching character that it is desirable to clear the air to some extent, especially as regards one answer which the Honourable the Home Member gave regarding the objection put forward on this side. The answer was this; if there is to be a detection of crime—and that also was voiced by the last speaker—if the statement made by one of the witnesses is in the hands of the counsel for the defence, the probability is that the accused will know who are the persons who gave the information; that may lead to unsavoury consequences so far as the persons who gave the information are concerned. Sir, the answer to that is very simple. Ordinarily speaking, a statement recorded by the police must be relevant to the case which is to be put up against the accused. If there is to be any information regarding the origin of the crime, and regarding the complicity of others in the crime, that matter would probably go into the diary and not into the statement recorded for the purpose of proving a case against the particular accused. If we make this difference, namely, that the statement must be confined as far as possible to the case to be charged against the accused, and any extra information that may be obtained during the course of the inquiry regarding the origin of the crime, regarding the existence of a conspiracy and so on, should find a place in the diary, there would be no difficulty in accepting the amendment. If, on the other hand, you refuse to give the accused a copy of the statement, the result of it will be that he will have to be groping in the dark, he will not know what evidence has been given against him, and he will have, as pointed out by Mr. Ginwala, to ask his counsel to put a large number of questions which will take more time of the Court than is necessary. Executive instructions can be issued to the police to take down in the statement, only such facts as are relevant to the case under inquiry and to relegate to the diary all the information which will be required for the purpose of following up the clue and finding out where a particular conspiracy has been hatched and where the conspirators are to be found. In that way information which you are anxious to safeguard and keep back from the accused can be very easily kept back; and information which it will be necessary for the accused to have for the purposes of defending himself will be available to him. Sir, one inconvenient question was put by Mr. Pyari Lal, and that is, what is the object of the Criminal Procedure Code if you are going to keep back information from the accused which would enable him to defend himself? There has been no answer to that. After all, the object of Criminal Procedure Code is to enable the accused to defend himself. It was stated by the Honourable Sir Henry Moncrieff Smith that the result of compelling the Court to give copies of the evidence will be that the police will only note down a very meagre statement and that would be of no use to anybody. Sir, I take it the police will be acting honestly,—that the police are not dishonest. I take it that the police, if it is good, will be recording all the statements which have been made by a witness relevant to the inquiry and it is that statement which it is necessary for the accused to have, in order to enable him to show that the witness has not been speaking truth. Sir, it

[Mr. T. V. Seshagiri Ayyar.]

will also have this further effect. If a witness knows that he will be confronted by the statement previously made by him he will take care to speak the truth; if on the other hand he knows that there is no chance of his previous statement being used against him, he will boldly speak falsehoods, and he will not be inclined to place the true facts of the case before the Court. Therefore, the amendment will have a good effect also upon the witness. Sir, there is one other aspect of the case as to which I take a very different view from others who have preceded me and it is this. I consider it is a misfortune that in this country the Magistrate is given the discretion either to refuse or to allow any portion of the statement to be given to the accused. What is the result? Supposing the Magistrate is honest. He is asked by the accused on information which he has obtained from elsewhere to look into the statement and to find out whether there is anything in it which is favourable to him. The Magistrate finds that there is nothing favourable but a great deal that is unfavourable to him. What is the position of the Magistrate? The Magistrate ought to keep an open mind until the whole of the evidence is recorded; and he must be in a position to judge impartially between the accused and the Crown; but where he has got some information which he considers is prejudicial to the accused and not favourable to the accused, can a second or third class Magistrate be expected to wipe out from his memory all that he has learnt from the statement; and could he be expected to judge as between the complainant and the accused and fairly,—if this information is kept back from the accused and at the same time the Magistrate is allowed to pursue it; Sir, in every other country the Magistrate is asked to keep his mind altogether free from anything which has not been recorded and which will not be part of the evidence of the case on which he is to give his judgment. *Per contra*, this section enables the Magistrate to look into the diary and to find out whether it is favourable to the accused or unfavourable to him. If he considers it to be favourable and if he considers it is in the interests of justice that the accused should have it, then he is directed to give a copy; if he considers it unfavourable, certainly his mind will be prejudiced and the accused will be all the worse for having made the request to the Magistrate. Under those circumstances, the discretion given to the Magistrate to look into the statement and to keep the information to himself without furnishing a copy to the accused is likely to be prejudicial both to the Magistrate and to the police. I am speaking of the statement, not the diary. Under these circumstances, Sir, it seems to me that the provision as it is proposed to be enacted is not in the interests of justice. On the other hand, I think it is likely to stand in the way of the accused getting fair play and is also likely to make the position of the Magistrate very irksome. For these reasons, Sir, I think the amendment which has been moved is a very reasonable one and should be accepted by the House.

Dr. Nand Lal: Sir, the desire of the House, in the main, is that the discretionary power of the Magistrate or the court may be taken away and that a right may be given to the accused that he may obtain copies of the statements of those persons who have been called as witnesses against him in that prosecution. Now, Sir, there are Magistrates and Magistrates and there are courts and courts. There is no doubt about it that some Magistrates are very efficient and very conscientious. But the Honourable the Home Member cannot deny the correctness of the proposition that there are some Magistrates and some courts who are not efficient and who do not

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perform their duties conscientiously. Now, the desire of the Assembly is that no room for doubt should exist and that those who are not efficient and are not conscientious may be made to perform their duties in a certain fixed manner. That is the real object of the House. The House is not prepared to say in a sweeping way that the whole judiciary is inefficient. That is not the object of the House. The object of the House, I may be allowed to repeat, is simply that the grievances which are occupying the mind of the public in these days may be redressed, and the easiest method of extending redress to them is by taking away this discretionary power from Magistrates and courts. Now, the Honourable Mr. Tonkinson said that there will be a mass of irrelevant evidence . . . (Mr. H. Tonkinson: "No") a mass of irrelevant things brought on to the records of the police, namely, persons, to whom questions may be put by the investigating officer, may make reference to things which have no concern with the case, and the answers, given by them to the investigating officer, may expose them to prosecution. May I invite his attention to the provision which is incorporated in sub-section (2) of section 161 of the same Code:

"Such person shall be bound to answer all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

Therefore the fear which has been entertained by the Honourable Member seems to have been misplaced.

The other ground which was advanced by him was that the police diary, for all intents and purposes, will be placed in the hands of the accused. In reply to that I may say at once, it will not happen at all. The accused will, simply, be entitled to obtain copies only of those statements in regard to which witnesses are called. He has not got the right to ask for copies of the statements of all the persons who have given answers to questions put by the investigating officer, namely, only of the statements of those witnesses who will be called by the prosecution. This proposition, therefore, Sir, will advance the cause of the administration of justice; the witnesses who come before the police officer investigating a case will realize their responsibility, they will know that a copy of the statement which they are making before the police, can be obtained by the accused and they will be subjected to cross-examination; they will consequently speak the truth and know that if in their depositions in court there is any contradiction, that contradiction will be brought on the record under the provisions of section 145 of the Evidence Act. They will therefore be induced to speak the truth. But in the present condition of the law in this behalf, they do not care; they, in some cases, regard themselves as irresponsible men who can make any statement they like. To my mind the procedure, proposed, now will improve the administration of justice and the statements recorded by police officers will become more accurate.

The other ground, which has been advanced on behalf of the opposition to this amendment, is that it will be very inconvenient and the work of the courts and Magistrates will be impeded. Of course there is some force in that; it will not be so convenient as it is now; work will not be done so expeditiously as it is done now. But, Sir, consider the advantage which the Government will derive—an advantage of sterling worth; for justice will be done; there will be no room for injustice. Is not that a good return, Sir? Even if two hours more are spent in arriving at the correct conclusion, I think that expenditure of time may be considered as worth while. So, on the ground of convenience, or on the ground of expedition, I may say, the opposition has got no case.

Sir Henry Moncrieff Smith said, "Oh, then the duty; they won't put many questions to witnesses; they won't put down a line or two giving the gist of the whole thing." We grudge that? If the police officer writes his diary in full statements in a brief manner, that will save public time. So on that ground also the opposition has no case.

Then the Honourable the Home Member took this exception, namely, that this amendment will not be of any utility, because, confidential documents will be open to the public through the medium of that accused, and most probably that will spoil the prosecution. In reply to that I may submit that the statement of the approver is recorded generally by a very responsible officer, the Superintendent or Deputy Superintendent, and that is if I mistake not, no part of the investigation within the scope of section 161, Criminal Procedure Code. I think the Honourable the Home Member will accede to this contention which I am placing before him in reply to his argument. In the second place, that statement is recorded before the Magistrate. So the statement of the approver will not, if I think aright, come within the purview of section 162.

On these grounds, in brief, I support this amendment which speaks for itself and will be very useful both to the public and to Government. I trust that the Government Benches will accept the recommendation of the amendment.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I venture to suggest that after this lengthy debate the question before the House has narrowed itself to two points of importance. The first point for the House to decide is whether these statements recorded by the police can safely in the interest, not only of the accused but of other witnesses and of the maintenance of peace and order, be practically made public, and if the House is of the opinion that this cannot be done, that such statements cannot without any restriction be made public, to what extent it should be permitted and who is to regulate it. Now, Sir, with regard to the first point, I trust the House has listened with attention to the remarks that fell from Mr. Hussanally. Mr. Hussanally spoke as a stipendiary Magistrate of many years' standing and also as an Honorary Magistrate. He spoke as one having full knowledge of police methods. He said that in his opinion many subordinate Magistrates, especially of the lower grades, were at times unduly influenced by the police, and yet he said he could not recommend that any such statements should as a matter of course and as a matter of right be practically made public in Court, because of the grave danger involved to other witnesses in the case or to other persons whose names may be mentioned in the statement. I hope the House will take that seriously into consideration, because it is a point that, I suggest, those who have supported this amendment are rather apt to overlook. The Honourable Mr. Seshagiri Ayyar stated that the whole object of Criminal Procedure is to enable the accused to defend himself. I suggest that there are other considerations. There is such a thing as the maintenance of law and order, the maintenance of peace, the protection of innocent persons, the protection of witnesses who honestly give evidence in the Courts. These are not things to be lightly overlooked or entirely ignored. It has been suggested that the difficulty can be overcome if only the police will record in these statements what is strictly

relevant to the case; and Mr. Ginwala made some very scathing remarks on the utter incompetence of a police officer who could possibly include in a statement of this kind things that were not strictly relevant to the statement that the witness now before the Court is about to make in Court. Possibly Mr. Ginwala has never taken part in the investigation of a crime. (Mr. P. P. Ginwala: "I am very thankful for it.") Well, he may be congratulated on not having had that unpleasant duty to perform, but had he taken part in the investigation of a crime, he might not have been perhaps so scathing in his remarks upon the unfortunate investigating policeman. How is a police officer when he begins to investigate crime and to record the statement of a witness to know exactly what is relevant and what is not? He goes to a village where a dacoity or a murder has been committed. Perhaps a man comes forward who appears to know a good deal about what was going on in the village on the night of the occurrence and for the sake of getting an accurate record of what that man says, not trusting to his memory, he proceeds to record what the man tells him. How can he possibly conceive at that stage what is and what is not going to be relevant to the case? Minutest facts may come out which appear to have nothing whatever to do with the case and yet may prove of vital importance later on. The man may depose, for example, 'I went the day before to see about a buffalo or something of the kind' an apparently trifling occurrence, which may in the end be the very fact on which detection is based. It is absurd to suppose that these statements recorded by the police in the course of investigation can refer simply and solely to just the fact about which the witness will be asked to depose in Court. (Dr. H. S. Gour: "These are not the statements.") I do not understand what Dr. Gour means by saying that these are not the statements. These are the statements in the case; and these are the statements Dr. Gour wants to have produced in Court. Well, Sir, I submit, that if we once grant that these statements must contain much that may be irrelevant to the immediate statement of the witness that is going to be made in Court, it is essential that the disclosing of them should be a matter of discretion, because we cannot take the risk of allowing all these things to be published and possibly not only to interfere with the detection of the offence itself, but to involve other persons and other witnesses. The Honourable the Home Member has given a striking example in the matter of the big conspiracy case that he referred to, and I do not need to cite any further examples. That is one very convincing instance of a case in which the whole statement could not be allowed to be disclosed. Well, in that case, who is to exercise the discretion? No other person can possibly do so except the Magistrate or the Judge. You cannot leave the matter entirely to the police as to whether they are to exercise a discretion, or to the prosecuting counsel. The only person who can be vested with the discretion is the Magistrate in charge of the case. With regard to these Magistrates, I venture to make a reference to something that Mr. Rangachariar was pleased to say. He said that Magistrates "depend for their promotion on the good will of the District Superintendent of Police," and he added (as an after-thought), and "also of the District Magistrate." Well, Sir, so much has been said in the course of this debate about the influence of the police over Magistrates that I venture to contradict categorically that statement that subordinate Magistrates depend on the District Superintendent of Police for their promotion. The District Superintendent of Police has nothing whatever to do with the promotion of Magistrates. (Laughter.) Honourable Members laugh, but I know . . . (Rao Bahadur T. Rangachariar: "We know the contrary"; Dr. Nand Lal: "Secret

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhamadan): That will come in after my amendment has been accepted.

Mr. N. M. Samarth: Meanwhile the proposal for a complete copy to be invariably furnished, which is the nature of Mr. Agnihotri's amendment, should be thrown out.

Mr. President: The question is:

"That in clause 33, in the proviso to sub-section (1) insert the words 'allow inspection to the accused and'."

The Assembly then divided as follows:

AYES—38.

Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Iwar Saran, Munshi.
Jatkar, Mr. B. H. R.

Kamat, Mr. B. S.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Zahiruddin Ahmed, Mr.

NOES—36.

Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.

Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Sinha, Babu L. P.
Spence, Mr. R. A.
Tonkinson, Mr. H.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the next amendment which I beg to move is consequential on the amendment that has just been allowed by the House. If we allow inspection of the statement to the

1 P.M.

Mr. President: Amendment moved:

"In clause 33"

Sir Deva Prasad Sarvadhikary: May I have your leave, Sir, to move an amendment on the lines suggested by Mr. Hussanally.

Mr. President: The amendment which the Honourable gentleman has placed before me necessarily can only be moved later on.

Sir Deva Prasad Sarvadhikary: It will depend upon certain words being deleted on the lines of Mr. Agnihotri's amendment.

Mr. President: I am only pointing out that I cannot put the amendment laid before me at the present moment as an amendment of Mr. Agnihotri's amendment; it is in substance an alternative, but in form it cannot be put now, because it comes at a later stage. The House will understand that if Mr. Agnihotri's amendment should be defeated, such a proposal as the one made by Sir Deva Prasad Sarvadhikary would still be in order. But I cannot put one proposal against the other, because they do not stand together in the same position in the clause.

(An Honourable Member: "The question may now be put.")

Mr. N. M. Samarth (Bombay: Nominated Non-Official): May I speak on Mr. Agnihotri's amendment? I fully appreciate the difficulties which are at the bottom of Mr. Agnihotri's amendment and the arguments of those who have supported it to meet them, but I put it to the House, do they or do they not appreciate also the strength of the argument that to make it obligatory to give a complete copy of the whole of the statement made would, in the interests of justice and on grounds of expediency, be sometimes undesirable. I am not drawing upon my imagination; I can recall a case in which there was a statement taken down by a police officer of about 40 pages, in which the names of five different public men were said to have been involved, and it would have been unfair to these men if the giving of a copy of that whole statement were made obligatory. I trust, therefore, that a *via media* will be found acceptable to the Members of

"That in clause 33 in the proviso to sub-section (1) omit the words 'if duly proved'."

We have allowed that the statement made before police be shown to the accused in the Court. Then, when the statements coming from the police are used for the prosecution, it is not necessary that, for the purpose of contradicting a witness, the statements should be proved. Therefore, Sir, the words 'if duly proved' become unnecessary and should be deleted.

Sir Henry Moncrieff Smith: Sir, I did not quite follow Mr. Agnihotri's reasons for cutting out these words "if duly proved". If the words are removed—he suggests that they are unnecessary—then this copy of the statement which is furnished to the defence will be used in the manner provided for by section 145 of the Indian Evidence Act. Perhaps Mr. Agnihotri suggests that section 145 lays down that the statement must be proved. This is what section 145 of the Evidence Act does say: "but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him." Therefore, section 145 clearly contemplates that the statement must be proved though it does not actually require it, and it is necessary to retain these words in section 162. The removal of the words will simply mean that any statement made to the police officer, though it may be proved or may not be proved, can be used to contradict the witness. That, surely, I think the House will realise, will be extremely dangerous.

The motion was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

The Honourable Sir Malcolm Hailey: May I suggest that the further consideration of this clause be postponed. Many of my friends here have, I think, a feeling that it is justifiable, in view of the previous decision of the House, to place on the Bill some proviso which would obviate the danger, to which many of us referred, of the whole of the statements referring to a large number of transactions being handed to the defence. From several parts of the House we have heard an admission that that would be dangerous; and I suggest that the consideration of this clause be not completed until we have had an opportunity of considering the advisability of inserting some such proviso.

Mr. President: The original question was:

"That clause 33, as amended, do stand part of the Bill,"
since which an amendment has been moved:

"That further consideration of clause 33 be postponed."

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 34, sub-clause (i) omit all words commencing from the words 'and any Magistrate' to the words 'Government may'."

This clause 34 of the Bill provides that the authority may be given by the Local Government even to a second class Magistrate to record confessions of accused persons. The recording of confessions is a very complicated affair and it is better that it should be restricted only to experienced first class Magistrates and not to other Magistrates. As the Honourable Mr. Wali Mahomed Hussanally and the Honourable Mr. Pyari Lal have pointed out, there are Magistrates of the second and third class who are not quite experienced enough to realise that they are not to be guided by any outside influence but are to do justice in the case and they are often influenced by the police. Under section 164 we have provided for the admissibility of these confessions when they are made before the Magistrate and have excluded the confessions made before the police. It is necessary that the second and third class Magistrates should not be authorised to record confessions and this could be done by omitting the words as suggested in my amendment. Sir, the Honourable Members must be aware that the complications and difficulties in the recording of confessions have been recognised by the various High Courts. They will find from the law reports that the confessions recorded even by first class Magistrates were often not recorded with the proper safeguards, and care necessary in such cases. Therefore, Sir, I submit that it is undesirable and would be very dangerous to extend this power of recording confessions to second class Magistrates.

With these words I move my amendment.

The Honourable Sir Malcolm Hailey: As the House will see, what the Honourable Member proposes, is that:

"Any Magistrate of the first class may, if he is not a police officer, record any statement or confession made to him."

In consequence, no Magistrate of the second class, even though specially empowered by the Local Government, would be able to record a statement. I do not know whether the Honourable Member, who laid great stress on the question of confession, realised that that would be the effect of his amendment. Such, however, is the effect. The original Bill proposed a distinction between statements and confessions; it contemplated that any Magistrate could record a statement but only first class Magistrates, or specially empowered second class Magistrates, should record a confession. The Joint Committee, however, went further and limited the recording of a statement to first class Magistrates and to second class Magistrates specially empowered in this behalf.

Something may, of course, be said perhaps for special safeguards in regard to confessions. They must be recorded with particular care and by highly responsible Magistrates. That may be the case, but in the case of statements, is it necessary that the House should show such mistrust of even second class Magistrates, even when specially empowered by Local Governments, as to refuse to allow them to record statements? What would be the consequence? Often these statements are not of the

Mr. H. Tonkinson: Sir, that amendment having been adopted, I should like to move the amendment of the memorandum:

"In clause 34, sub-clause (ii) (b) after the words 'that' insert the words 'he is not bound to make a confession and that if he does so'."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 34 in sub-clause (ii) after sub-clause (a) insert the following sub-clause (aa), 'after the word 'unless' the words 'when satisfied that the deponent has been free from police influence for at least twenty-four hours and' shall be inserted'."

Sir, under the present clause when an accused is put before a Magistrate for recording a confession, the Magistrate may record it. What I wish to provide is that when the accused is put up before the Magistrate the accused should be kept away from police custody for about 24 hours before his confession be recorded. It may be within the experience of many of my lawyer friends that when an accused has been brought up before the court and has made a confession, he often retracts his confession afterwards,—sometimes before the trying Magistrate or sometimes in the Sessions Court. This retraction may be due either to his second thoughts, or it may be due to the fact that he is away from police custody; and some times he confesses before the police but if Magistrates before recording such confessions put the accused in jail custody and when the accused appears the next day, he declines to make any confession. All these things go to show that when the accused is put before the Magistrate he is often under the police influence. In order, therefore, to do away with that influence it is necessary that some time should be allowed to enable the accused to think over for himself as to his best course and whether or not he should make a confession. Therefore I propose for the acceptance of the House that the insertion be made and the accused be allowed at least 24 hours time free from police custody before his statement is recorded.

The Honourable Sir Malcolm Hailey: We should all agree that a confession made directly under police influence (to use Mr. Agnihotri's words) ought not to be admitted in evidence at all; on that we should all agree. Mr. Agnihotri seeks to prevent this by providing that no confession shall be recorded unless the deponent has been free from police custody for 24 hours; but let us see in what terms he proposes it. The deponent, he says in his amendment, shall have been free from police influence for 24 hours. I do not know how he seeks to define influence; nor how he will set and limit on the duration of the effects of a threat or of force. He supposes that the magistrate will have such psychological skill that he will be able to probe into the mind of an accused person—a mind disturbed and unbalanced by the recent commission of crimes and by arrest—and to determine exactly at what time, to the very second, the effect of such a threat or such inducement has passed away. An inducement in itself is not an easy thing to define. I have had the curiosity to look into a commentary on the Evidence Act and I saw that the discussion on what

Mr. President: The amendment moved is:

"In clause 34 in sub-clause (i) omit the words 'and any Magistrate of the second class, specially empowered in this behalf by the Local Government'."

The motion was negatived.

Sir Henry Moncrieff Smith: Sir, before we leave sub-clause (1) of clause 34, I would like to invite the attention of the House to what is obviously a somewhat serious omission in the clause as drafted by the Joint Committee. It has till just this moment escaped the notice of the House. In the way it is drafted, no Presidency Magistrate can record a statement or confession. I think this is a most serious defect and I would like to ask the indulgence of the House to enable me to move an amendment which will remedy that defect. The amendment will run as follows:

"That in sub-clause (i) of clause 34, before the word 'Any Magistrate', the words 'Any Presidency Magistrate,' be inserted."

The motion was adopted.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, on behalf of Dr. Gour, who is absent, I move that:

"In clause 34 (ii) (a) after the word 'that' insert the words 'he is not bound to make a confession, and that if he does so'."

Sir, this clause is practically in force in some Provinces—that is, under departmental instructions Magistrates are enjoined to tell a person who is put before them to make a confession, to tell him that he is not bound to make a confession. This clause is intended to give statutory force, to make it obligatory upon the Magistrate, to say that as well, to tell the man that he is not bound to make a confession and that if he makes a confession it will be used against him. There is no harm in this, it is only a safeguard.

Mr. H. Tonkinson: Sir, as my Honourable friend, Mr. Subrahmanayam, says, this is one of the precautions which are laid down in some Provinces by executive orders as to the course which a Magistrate must take before he records a confession. It is only one of many instructions which have been issued to the Magistrates to guard against any abuse of the recording of confessions. I do not think, Sir, that any very great purpose would

...es some four or five pages; the effect of
...ed would, I imagine, establish a case law which
...but twenty-five pages. But that is the sort of
...proposes to set before the Magistrate.

L. Agnihotri: I will put in 'custody' instead of 'influence'.

The Honourable Sir Malcolm Hailey: I do not like it at all; and wish to point out that when Mr. Agnihotri sets out to draft amendments to a Code of this complexity, which has stood so long in the Statute Book, he should exhibit more thought if he is to avoid the most obvious and glaring mistakes. However I shall not further argue the question of influence; because the Mover has already given it up. One could have developed, had it been necessary, a sufficiently interesting and even amusing argument on the subject. He would now, recognizing his mistake, propose that the deponent should not have been within police custody for 24 hours. Therefore, if the police find a murderer red-handed and glorying in his crime and bring him immediately before a magistrate, that officer is not to be allowed to record his confession. Again, will Mr. Agnihotri tell me how his stipulation is possible in practice? The magistrate has a man brought before him by the police. This will not do; he must send him to the jail. Here he must wait till 24 hours are up. But who, Sir, will bring him from the jail but the police? The magistrate is here again at a stop; he must send him back to jail until he can be brought back thence by some other agency, or keep him in his court for 24 hours in order that he may not see a policeman before his confession is recorded. It will all end in one thing only, the magistrate will in every case have to go to the jail to record a confession. Is all this reasonable? It is so unreasonable that I would again attempt to bring home this lesson to the Honourable Member, that a little more thought, a little more care, a little more prevision is required in attempting to modify a code which has served our purpose so long. I have answered Mr. Agnihotri; but lest any one should think that there remains the shadow of substance in what he says, I would refer the House to the very ample guarantees and safeguards that are provided already under section 24 of the Evidence Act in regard to confessions, and those safeguards ought to be sufficient.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, this section 164 deals with the statements and confessions made to magistrates at any time before the commencement of the inquiry or trial. If they are accused persons they make confessions; if they are witnesses they make statements; but an accused person may make a statement which may not amount to a confession. We are now concerned with a magistrate who really takes part in an investigation, as is were, who assists in the investigation of a crime, not the Magistrate who actually tries the case. This is because this section deals with cases at any time, i.e., either during investigation or at any time afterwards before the commencement of the inquiry or trial. The object of my amendment is that any oral statement which may be made by the accused person to a magistrate who is taking part in this way in an investigation should not be used against the accused person. I have come across cases where the provisions of this section have not been complied with. Still the magistrate who

holds the inquiry as it were in the course of the investigation prior to inquiry or trial sometimes gives evidence that the accused told me so and so, probably to contradict the defence which the accused may put forward later on. Supposing in the course of the investigation, the accused person is casually asked by the magistrate and he says something to the magistrate, that statement is sometimes used against the accused person at the trial or inquiry. I want to prevent the use of such statement and I do not want the accused person's statement to be brought in against him—that is as amounting to admissions but not amounting to confession. Of course if they amount to a confession, then they should be recorded in the manner required for a statement under section 364 and, under section 91 of the Evidence Act, oral statements cannot be used in evidence. I am quite alive to that, but there may be oral statements which may be used against the accused person but not amounting to a confession. In such cases sections 364 and 164 would not apply and it is not safe to rely on the memory of a magistrate who goes and takes part in an investigation or assists the police in investigating the crime and it is not safe to allow that evidence to be used against the accused person. That is the object of this amendment. Of course confessions do not require this clause. It is only statements which do not amount to confessions which will come under this saving clause which I provide and therefore I move, Sir, that to clause 34 the following sub-section be added, namely:

"To clause 34, add the following sub-clause at the end:

"(iii) After sub-section (3) the following sub-section shall be inserted, namely: 'Oral statements made to Magistrates by accused persons shall not be admissible in evidence against them unless the provisions of this section are complied with'."

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, under the main section, as my Honourable friend has admitted, it is only the confessions made by accused persons that are recorded in the manner prescribed. If the amendment which my Honourable friend seeks to introduce into the section were accepted by the House, it would mean that a Magistrate, during the course of the investigation, would be bound to record any and every statement that an accused person may make to him, whether it amounts to a confession or not, before he is able to make any statement in court with regard to such statement. I submit that neither the ends of justice nor any principles of law justify the enactment of such a provision as this by the Legislature. My Honourable and learned friend said that he had come across cases in which Magistrates had made statements in order to contradict what the accused stated in court, that is to say, they have stated that on a certain occasion during the investigation the accused had made such and such a statement. That may or may not be. When the Magistrate makes a statement like this in the witness-box he is just as much a witness as any other person produced as a witness by the prosecution. That statement by the Magistrate is subject to cross-examination by the accused and the counsel for the accused just as much as the statement of any other witness. If the Magistrate has told a lie, I have no doubt that the court will be in a position to judge for itself whether it ought or ought not to believe that statement. But to say that no Magistrate shall be allowed, practically it comes to that, to make any statement as a witness during the course of the trial with regard to statements made by the accused to him, statements other than confessions, is, I submit, carrying legislation a little too far. Such a provision introduced in an Act would be unreasonable and the Legislature is presumed to be reasonable in all the provisions that it may enact into a

Mr. K. Ahmed: Is it not a fact that there were petitions after petitions with regard to the mosques which have been dismantled at Siki Burji and if so what has happened to them?

Mr. A. H. Ley: I am afraid I must ask for notice in the absence of my friend the Honourable Mr. Chatterjee.

Mr. K. Ahmed: Is it not a fact that two mosques have come within the Lady Hardinge Medical College and have been totally closed for the outside Muslims and even the Muslim menial staff in the hospital are not allowed by the Principal to give Ajan?

Mr. A. H. Ley: I am not aware of the fact.

Mr. K. Ahmed: Will you be good enough to inquire into the matter and do the needful by removing the anomaly?

EMPLOYMENT OF PROFESSOR RUSHBROOK WILLIAMS.

300. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (i) For what specific period was Professor Rushbrook Williams, Director of the Central Bureau of Information, on deputation in connection with the tour of His Royal Highness the Prince of Wales in India?
- (ii) What were his emoluments during the period and were they paid by the Foreign and Political Department or by his own office? and
- (iii) During that period who acted respectively as Director and Assistant Director of the Central Bureau of Information? What were their emoluments and by which Department were they met?

The Honourable Sir Malcolm Hailey: (i) Forenoon of 11th October 1921 to afternoon of 31st March 1922.

(ii) Rs. 2,000 per mensem paid by the Home Department *plus* a halting allowance of Rs. 15 a day for actual halts on the Royal tour. This allowance was paid from Royal Visit Funds presided over by the Royal Visit Finance Sub-Committee.

(iii) Mr. R. S. Bajpai acted as Director and received the full pay of the post, namely, Rs. 2,000. This expenditure was shared equally by the Home Department and the Royal Visit Funds. The post of Assistant Director was not filled during this period.

MORAL AND MATERIAL PROGRESS REPORT OF INDIA.

301. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (i) When was the Moral and Material Progress Report submitted by the Secretary of State for India to the House of Parliament in the years 1919, 1920, 1921 and 1922?
- (ii) Were all or any of these reports, in full or in parts, prepared by Professor Rushbrook Williams?
- (iii) If so, did he prepare them in his personal capacity or as part of the duties of the Director of the Central Bureau of Information?

The Honourable Sir Malcolm Hailey: (i) Copies of "India in 1919" were sent from India to the Secretary of State in June 1920 and presented to Parliament in July 1920.

Copies of "India in 1920" were sent in May 1921 and presented to Parliament in June 1921.

Copies of "India in 1921-22" were sent in July 1922 and presented to Parliament in August 1922.

(ii) They were prepared by Professor Rushbrook Williams with the help of material supplied by Departments of the Government of India and Local Governments.

(iii) As part of his duties as Director, Central Bureau of Information.

TOURING OF OFFICERS OF CENTRAL BUREAU OF INFORMATION.

302. ***Mr. K. G. Bagde:** Will the Government be pleased to lay on the table a statement showing:

- (i) The period during which (a) the Director and (b) the Assistant Director of the Central Bureau of Information were on tour in the years 1921, 1922 and 1923;
- (ii) The places which they visited;
- (iii) The travelling and other expenses incurred by the tours; and
- (iv) The purpose and result of the tours?

The Honourable Sir Malcolm Hailey: Statements giving the information required in parts (i) and (ii) will be supplied to the Honourable Member.

(iii) The total cost for the period mentioned is:

	Rs.	A.	P.
Director	5,761	7	0
Assistant Director	6,154	0	0
TOTAL	11,915	7	0

(iv) The Director and Assistant Director, Central Bureau of Information, go on tour under the direction of the Home Department for the purpose of consulting on publicity matters with provincial publicity officers and local Governments and sometimes local officials. The Assistant Director also has to be in Calcutta for several weeks in connection with the publication of the annual Moral and Material Progress Report which is presented to Parliament. The results of the tours have been satisfactory.

Sir Deva Prasad Sarvadhikary: Have these officers any authority over the provincial officers in regard to publicity? If so, what?

The Honourable Sir Malcolm Hailey: They have no such authority.

SECRET SERVICE GRANT EXPENDED BY CENTRAL BUREAU.

303. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (i) Is it a fact that an annual allotment is made to the Central Bureau of Information called the Secret Service Grant?
- (ii) If so, what were the allotments made, and how were they spent in the years 1921 and 1922?

The Honourable Sir Malcolm Hailey: Government are not prepared to make any statement regarding expenditure from funds provided for Secret Service.

M. K. Reddi Garu: Is any account kept of the Secret Service Grant?

The Honourable Sir Malcolm Hailey: Certainly; but I am not prepared to reveal it.

Mr. T. V. Seshagiri Ayyar: Is this grant placed before the Standing Finance Committee—the way in which it is spent? Will the Committee have a voice in deciding the matter.

The Honourable Sir Malcolm Hailey: Secret Service funds are devoted for secret purposes and it is not possible to consult our Committee as to the manner in which they should be expended.

Mr. W. M. Hussanally: What are the objects upon which this fund is spent?

The Honourable Sir Malcolm Hailey: Secret objects.

Mr. K. Ahmed: Is the amount spent for secret service votable or non-votable and is it open to the Assembly to criticise the expenditure for the secret purpose?

The Honourable Sir Malcolm Hailey: It is part of the votable funds.

Mr. N. M. Joshi: Are these accounts audited by the Auditor General?

The Honourable Sir Malcolm Hailey: Yes.

RE-EMPLOYMENT OF PENSIONERS.

304. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (i) Is it a rule that Government pensioners should not, after retirement from service, be re-employed in the offices of the Government of India?
- (ii) Have any such men been so employed?
- (iii) If so, what are their names, ages, and the offices in which they are working?
- (iv) Will they consider the desirability of adhering to the rule rigorously in future?

The Honourable Sir Malcolm Hailey: (i) No. Government pensioners can be re-employed on public grounds under Article 520 of the Civil Service Regulations.

(ii) Yes.

(iii) The information is being collected and will be supplied to the Honourable Member in due course.

(iv) This does not arise.

Mr. K. Ahmed: Instead of giving or furnishing information to the questioner, would it not be desirable, for the benefit of the public, that each and every Member of the Assembly should also be furnished with the information in question and that it should be published in the proceedings of the business of the House?

Mr. President: It is not necessary for every answer to every question to appear in the Report. If the Member of Government answering the question considers it to be of sufficient public importance, then he may, on

his own responsibility, lay it on the table; otherwise it is an economical and proper procedure to supply the information only to the Member who asked for it. It is perfectly open, on the other hand, for any other Member to repeat the question and ask for the information in a public form.

RULES UNDER GOVERNMENT OF INDIA ACT.

305. ***Mr. K. G. Neogy:** Have Government any information as to whether and when it is intended to make rules under Section 19A of the Government of India Act for the purpose of regulating and restricting the exercise of the power of superintendence, direction and control, vested in the Secretary of State and the Secretary of State in Council, so as to give effect to the purposes of the Government of India Act?

The Honourable Sir Malcolm Hailey: The attention of the Honourable Member is invited to the rules published with the Reforms Office notification No. 835-G., dated the 14th December, 1920.

UNSTARRED QUESTIONS AND ANSWERS.

MR. AGARWALA'S BILL *re*: IMPROVEMENT OF CATTLE.

132. **Babu Ambica Prasad Sinha:** Will the Government be pleased to lay on the table Lala Girdharilal Agarwala's last Bill on the subject of the Improvement of Cattle with all correspondence on the subject?

Sir Henry Moncrieff Smith: As the Honourable Member is aware there is no such Bill before the House.

In the exercise of his statutory powers under section 67 of the Government of India Act, His Excellency the Governor General refused his previous sanction to the introduction of Lala Girdharilal Agarwala's latest Bill on the subject of the protection and improvement of cattle. The Bill cannot therefore be introduced. The Government cannot see their way to lay on the table either the Bill or the correspondence relating to it as they consider that such a course would not, in the circumstances, be proper.

PROTECTION OF CATTLE.

133. **Rai Sahib Lakshmi Narayan Lal:** (a) Has the attention of the Government been drawn to the resolutions passed for cattle protection in India at a public meeting of the citizens of Calcutta and suburbs presided over by Dr. H. W. B. Moreno in December last?

(b) Has the attention of the Government been drawn to the following rules for the restriction of slaughter of cattle in slaughter houses contained in Government notification No. 1286-955-XIII of the Central Provinces dated 31st May, 1922 (referred to in resolution No. 2 of the said meeting):

"Rule 6 of the said notification."

The following animals shall be rejected and returned to the owner:—

- (1) Any animal which in the opinion of the supervisor is
 - (a) pregnant or
 - (b) in milk.
- (2) All cows.
- (3) Any animal other than sheep or goats which in the opinion of the supervisor is of or under the age of 9 years."

(c) Are the Government aware that all-India Cow Conference has, year after year, been craving some substantial steps by the Government for the protection of the cattle?

(d) Are the Government aware that substantial steps have been taken for the protection of cattle in Afghanistan and Hyderabad?

(e) Will the Government be pleased to consider the advisability of addressing other Provincial Governments regarding the desirability of restricting the slaughter of cattle in their provinces, on the lines of the aforesaid Government notification of the Central Provinces and take such other substantial steps for the protection of the cattle as the Government think fit and proper?

(f) Will the Government be pleased to state whether the Government are going to do anything in the matter?

Mr. J. Hullah: (a) and (b) Yes.

(d) The Government have no information as to what has been done in Afghanistan and Hyderabad.

(c), (e) and (f). A full statement on the subject was made by the Honourable Member in the Department of Revenue and Agriculture in the Council of State on the 19th September, 1922. The Government have nothing to add to that statement.

THE INDIAN FACTORIES (AMENDMENT) BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I move for leave to introduce a Bill further to amend the Indian Factories Act, 1911. I feel rather ashamed, Sir, standing before this Assembly with yet another Bill, but this time at least I can plead that it is a very small Bill. Sections 3, 4 and 5 are entirely unimportant. Section 3 clears up an ambiguity in the Act. Sections 4 and 5 correct obvious errors. The only clause of any importance is clause 2; and I hope, that if Honourable Members will read the Statement of Objects and Reasons, they will find that it fully explains why we have inserted this clause in the Bill. The fact of the matter is that when we introduced a Bill to amend the Factories Act two years ago we proposed to prescribe that the weekly rest day should always be on the same day. We did not propose to give employers any discretion at all to substitute other holidays for that day. That proposal was adversely criticised in many quarters, and it was represented very strongly that employers should be allowed to substitute an important Hindu or Muhammadan religious festival. Subsequently the Government proposal was turned down by the Select Committee and by the Legislature, and the Legislature left section 22 of the Act practically as it was before, that is to say, it enabled an employer to substitute for a Sunday a holiday any one of the three days preceding or any one of the three succeeding the Sunday. At the same time we introduced into the Bill a clause defining the week as beginning always on a Sunday and we also introduced into the Bill a prescription that the weekly hours of work must not exceed sixty. I am afraid that nobody realized what the effect of these three provisions, taken together, would be, and the effect of the three provisions taken together has been to neutralize what was the expressed intention of the Legislature. I can explain it by a very simple instance. Supposing an important religious festival occurs on a Saturday. The

employer gives his workman a holiday on that Saturday and makes him work on the following Sunday. That employer is working 10 hours a day. The result is that in the first week he works 50 hours, in the second week he works 70 hours because the week begins on a Sunday and in the two weeks together he only works 120 hours; but in the second week he has worked 70 hours, and therefore he has infringed the law which prescribes a weekly limit of 60 hours. We have consulted Local Governments and also our Standing Departmental Committee, and we have decided to put up to the Assembly this proposal to amend the law in order to bring it into accord with the expressed intention of the Legislature when the Factories Amendment Bill was carried this time last year. I move, Sir, for leave to introduce the Bill.

Mr. President: The question is that leave be given to introduce a Bill further to amend the Indian Factories Act, 1911.

The motion was adopted.

The Honourable Mr. C. A. Innes: Sir, I introduce the Bill.

RESOLUTION RE EMIGRATION OF UNSKILLED LABOURERS TO CEYLON.

Mr. J. Hullah (Revenue and Agriculture Secretary): I move, Sir:

"That this Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

This Resolution, Sir, is of a kind altogether unfamiliar in the history of the Indian Legislature. It is a direct outcome of section 10 of the Emigration Act which we passed about a year ago, and which lays down that emigration for the purpose of unskilled work shall not be lawful except to such countries and on such terms and conditions as the Governor General in Council by notification in the Gazette of India may specify in this behalf. The Act goes on to say that no notification shall be made under this section unless it has been laid in draft before both Chambers of the Legislature and has been approved by Resolution in each Chamber, either as it stands or with modifications. It will thus be seen that the Assembly has been given practically full power over the emigration of unskilled labour. It can not only regulate it, but it can control it, it can stop it, and let it begin, and so forth. That is a very big power and one which should obviously be exercised with the greatest care. It not only concerns the interests of the labouring population in India and the extent to which they should be able to avail themselves of outlets abroad, of work under conditions which are often far superior to those which they know at home, but it also involves the interests of those labourers when they reach the countries to which they emigrate and the interests of those who are already there; and lastly, it may involve, and I think it must involve, a very considerable degree of interference with the domestic arrangements of other countries and other Governments.

I hope that Honourable Members will bear with me for a while if I set forth certain facts many of which will be known to them; my reason for doing so is that although they are known to Members, it is possible that

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establishing systems of insurance against sickness, invalidity, old age and other similar social risks to agricultural wage-earners on conditions similar to those prevailing in the case of workers in industrial and commercial occupations." Well, Sir, we have none of these laws at present, even with regard to industrial workers. We have no old age pensions; we have no laws relating to compulsory or state insurance of workers even in industrial undertakings; indeed, we have no insurance data on which such laws could be framed; and I think it is quite obvious that if ever a movement in this direction takes place it will first take place in regard to forms of labour in which it is easy and practicable, or may be found easy and practicable hereafter, to introduce such measures. That again, I think, is a point of view which it is perhaps unnecessary for me to labour.

In conclusion I would desire to express my opinion that the principle of this draft convention and this recommendation is in the case of India an unsound principle. The principle of it is to prevent any discrimination between industrial and agricultural workers in respect of laws which may be enacted to provide for insurance against accident, sickness, old age and the like; that is to say, it is designed to compel a nation which adopts it to legislate, at one and the same time and together, not only for industrial workers but for all kinds of agricultural workers. Whatever view may be held, Sir, as to the wisdom or the soundness of that principle in the case of countries like England and other European countries, whose agricultural and industrial workers are well-educated, comparatively speaking, fully organised and fully developed, I venture to put forward the view that it is an unsound principle in the case of a country like India where agricultural and industrial workers are not only uneducated on the whole, undeveloped and unorganised, but where the stages of development, education and organisation are so wholly different in respect of different classes of workers. It is much easier obviously to develop measures of this kind in the first instance in the case of organised industries, for example. It is surely a much better principle to adapt measures of this kind as time goes on to such classes of workers and in such conditions, in respect of which it may be found practicable and desirable to apply them. It is much better to do that, I say, than to make, if I may say so, a leap in the dark and adopt wholesale a measure for which I think it is obvious the country as a whole is not ripe. With these words, Sir, I move this Resolution.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment to the Resolution which has been placed before the Assembly by my Honourable friend, Mr. Ley. My amendment runs thus:

"At the end of the Resolution add the following, namely:

"and request the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organised plantations in India."

Sir, it is quite obvious from the terms of my Resolution that I am not opposing the main body of the Resolution at all. Although I do not approve of the attitude taken by Government in this Resolution, I do not propose to oppose it also for reasons which are obvious to Members of this Assembly. But Sir, the only thing which I asked the Assembly to do is that after having accepted the Resolution put forward by the Government we should ask the Government to do one little thing, namely, that they should inquire whether it is possible for them to take

some action as regards these matters in the case of organised plantations. What I ask is only an inquiry. I do not anticipate the result of the inquiry at all. Now my reasons for asking for this inquiry are these. In the first place, from the speech of my Honourable friend, the Mover, it was not clear at all whether Government before placing this Resolution before the Assembly had made any inquiries whether any action could be taken or not. I had seen some Resolutions placed by Government about the Conventions and the Recommendations of the International Labour Conference before, and I had seen that in the case of those Resolutions Government had made certain inquiries, the Local Governments had been consulted, and we were placed in a position to know what the views of the Local Governments were and what the result of the inquiries was. I should like to know whether my Honourable friend, the Mover, had made any inquiries as to the practicability of certain action being taken on these Resolutions. From his speech it was clear that no such inquiry was made, and therefore it is quite obvious that this Assembly should insist that out of mere courtesy, if not respect, for the Conventions and Recommendations of the International Labour Conference, the Government of India should make an inquiry into these matters. But, Sir, when I ask for an inquiry you will find that I am not only not unreasonable but am more moderate than I ought to be. Sir, my Resolution does not ask for an inquiry as regards the application of these Conventions and Recommendations to the whole sphere of agricultural work in this country. I ask for an inquiry only into a very limited portion of the agricultural work in India, and that is, the agricultural work on organized plantations. The words "organized plantations" are, I think, well known to Government Members. (*A Voice from the Government Benches*: "No.") Well, somebody here says "No". Therefore for their benefit I would like to define these words. Organized plantations in my humble opinion are those plantations where a large number of people work under one master and in one place. For example, the tea plantations in Assam, the tea and coffee and rubber plantations in Madras, where 100, 200 or 500 or more people work under one master and in one small locality. Such plantations are called "organized plantations".

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): What do you want to do with that?

Mr. N. M. Joshi: Yes, I am going to explain that. Now I do not ask for an inquiry into the whole sphere of agricultural work. I ask for an inquiry only as regards the organized plantations. Government knows that some of these organized plantations in India are governed by some special laws. So it is not difficult for them at all to find out what those plantations are and I ask for an inquiry only as regards those. Now what is the inquiry going to be about? The inquiry is going to be about the two questions mentioned in this Resolution, namely, whether the Workmen's Compensation Act should be applied to the workers on these plantations. (*A Voice*: "What is the risk they run?") I will explain it presently. Secondly, whether any action on the lines of social insurance should be taken as regards these organized plantations. Sir, as regards the Workmen's Compensation Act, I am asked "what is the risk that the workers on these plantations have to undergo? My Honourable friend, Mr. Rangachariar, was, I think, a Member of the Committee that considered the Workmen's Compensation Bill, and as a member of that Committee he ought to know that in this Bill there is a provision

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for what are called 'occupational diseases'. This question of workmen's compensation was considered by a committee which was appointed by Government last year, and when the Committee discussed this question, it was urged that organized plantations should be included in the scope of the Workmen's Compensation Bill. If my Honourable friend, Colonel Gidney, who is an authority on medical matters had been here, he would have told the members of this Committee that Kala Azar, which is a disease from which the workmen on plantations suffer, may be considered as an occupational disease. Sir, this is only one matter.

Rai G. O. Nag Bahadur (Surma Valley cum Shillong: Non-Muhammadan): Hookworm also.

Mr. N. M. Joshi: My Honourable friend, Mr. Nag, says that hookworm also is very prevalent and that might also be regarded as an occupational disease. Therefore, it will be quite clear to Honourable Members that there is a sufficient case for an inquiry whether the workers on organized plantations should be brought within the scope of the Workmen's Compensation Bill or not. I need not take more time on this question.

Then, Sir, there is the other question of social insurance. My Honourable friend, Mr. Ley, said that in the first place, we should not discriminate between agricultural and industrial workers if we want to legislate for both of them together.

Mr. A. H. Ley: That is exactly the opposite of what I said, Sir.

Mr. N. M. Joshi: He says that he said quite the contrary. I can understand the partiality of my Honourable friend for the industrial workers. I am told that he is the Secretary of the Department of Industries. It is quite natural that he should say that the industrial workers should be first given the benefit of these ameliorating reforms. But, Sir, may I ask my Honourable friend whether as Secretary to the Department of Commerce and Industries he has ever read an Act called the Assam Labour and Emigration Act?

Mr. A. H. Ley: Yes.

Mr. N. M. Joshi: He says 'yes.' Sir, section 135 of that very Act by legislation provides that the employers on plantations should make provision against sickness for the workmen on these plantations. He therefore ought to have known that the Government of India had already legislated in the case of agricultural workers before they had done anything as regards the industrial workers. Therefore, it seems to me that the views which he has propounded at least did not find favour with the Government of India of 20 years ago. Moreover, my Honourable friend Mr. Ley, being in charge of this department, ought to have seen the Report of the Assam Labour Committee which was appointed only last year, and which has reported very recently. I will read only one sentence from that Report. My Honourable friend has already told the Assembly that the social insurance relates to the provision against old age and provision against invalidity. I have told him how the Government of India themselves have made provision against invalidity in the case of these plantations. I wish to tell him from this Report what the planters of

Assam have done for old age, etc. "Some gardens give small pensions in cash to deserving coolies who have earned them by long and faithful service on these estates, but the practice can hardly be described as common, though it is admitted that there is scope for the extension of the system." The Committee itself recommends that this system of giving pensions for old age for the workers on the plantations should be extended, and here is the Government of India saying that no action should be taken as regards social insurance. Sir, it seems to me that my Honourable friend was unnecessarily frightened by these modern words 'social insurance' and such things. As a matter of fact, these ideas are quite well known to the Government of India and the planters in Assam. Therefore, there is nothing wrong if the Government of India makes an inquiry on these questions as regards these plantations. As a matter of fact, on these matters inquiry has been made. My only regret is that the Government of India did not care to consult the Assam Labour Committee whether these Conventions could be brought into practice or not. If the Government of India had been serious as regards these Conventions and recommendations, they could have placed these Conventions before this Committee and this Committee could have expressed its opinion on these matters, as it has already done on some questions, and the expression of view of this Committee is absolutely in my favour. I, therefore, hope that the Members of the Assembly will agree to my amendment for which there is the approval of the Government of India of old itself as well as of the Committee which was appointed by the Assam Government and which has recently reported.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, my friend, Mr. Joshi, claimed this morning that he was extraordinarily and unusually reasonable in his amendment which he has moved. After he elaborated his argument, it seemed to me he was beginning to suffer from some occupational disease himself—his occupation probably being labour legislation. Just as there are political idealists in this country who think Swaraj could be achieved before the 31st of December every year, there are also, I fear, a few labour idealists who think that, even in the matter of agriculture, the millenium could be reached by legislation within a very short time, even the short time assigned to a Member of this Assembly, namely the three years of his term of office. It seems to me, Sir, that, in the first place, the amendment of my friend, Mr. Joshi, is in a sense a direct negation of the original proposition. The original proposition of Mr. Ley said that no action be taken on the Draft Convention. My friend, Mr. Joshi, states on the other hand that some action by Government may be taken. I leave it to the House to reconcile these two things. Then, again, Mr. Joshi wants a limited inquiry and he claimed by reason of the very fact that he wanted a limited inquiry, that he was reasonable. He overlooked the fact, which Mr. Ley pointed out, that, so far as the Draft Conventions of the International Labour Organisation went, you can either take full action with reference to these Conventions or no action at all, and there was no question of a limited application or reservation with reference to the confirmation or ratification of any Convention of the International Labour Organisation. Even supposing the Government concede that there should be a limited inquiry with reference to the organised plantations, what would be the result? They can report the result of their inquiry to this House only but they cannot send a message to the International Organisation of Labour that they are prepared to take any action with reference to organised plantations for the simple reason that, under

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the rules of the International Labour Organisation, there could not be any such thing as a limited ratification at all.

Now, speaking on the merits of this inquiry, Sir, it seems to me my friend, Mr. Joshi, is carried away by a little bit of zeal, as I said in the beginning. Those who were on the Committee of the Workmen's Compensation Bill have realised how difficult it is even in matters of industrial concerns to legislate at the present stage of India for compensations. We have all our sympathy for workers, and I think it should be the duty of this House to extend to them the privileges of compensation, wherever it is possible and feasible, but in the field of agriculture which though it may be the mainstay of this country the field and the scope of enquiry are too large and yet the conditions so very difficult, I believe it would be premature even to begin to give compensation in the organised plantations to which my friend, Mr. Joshi, referred. Eventually, when we have tried industrial compensations and we see the result of the experiment, it may be possible to extend the privilege and the advantages of compensation to agricultural workers. But at the present moment, I believe the question is outside the sphere of practical politics and it would be nothing but a waste of time to go into this question, so far at any rate as the ratification of the Draft Convention of the International Labour Organisation is concerned. I, therefore, think the Members of this House should not support Mr. Joshi's amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I just wish to add a word or two to what has fallen from my Honourable friend, Mr. Kamat, and I may at once say that I stand up to oppose the amendment of my Honourable friend, Mr. Joshi. I do not know, Sir, whether I am suffering from any occupational disease, but, if there is any in me, I suppose it is the disease of the brakesman. I want to put on the brake whenever I find the coach of the social reformer is proceeding at a breakneck speed. My submission to the House is that, in this matter of agriculture, just as in other matters where labour is employed there are already elements present which go to protect the labourer. What I mean to say is that in affairs relating to employment of labour it is very often the self-interest of the employers themselves which leads them to provide healthy conditions for their labourers and so forth. And Government to some extent, is doing what it can in that respect. In the case of Kala Azar or hook-worm, the Government is not idle. It is looking after these evils and trying to prevent them. But to suppose that an employer of agricultural labour should be made responsible for Kala Azar or hook-worm where the disease is not caused by anything organised by the employer himself, and is due to natural causes alone, it seems to me, Sir, that such a supposition would amount to extending the principles of compensation unduly. We must also bear in mind that it is to the self-interest of the employer himself to induce labour into his organisation by old-age pensions, etc., and in that respect we see that these principles are to some extent in operation already. In the case of Government, it pays pensions to its servants. Other employers also often pay pensions. But the real question is whether those things should be organised on the scale on which Europe is organising them, whether the conditions in India are such as to induce us to import wholesale all these principles which have been adopted in England under conditions altogether different from those existing in India. These are considerations which ought to actuate us. Because some means are adopted

on a certain scale in European countries, owing to the necessities of the situation in those countries, is it any reason that we should adopt those means without waiting to consider what their effect will be in our own country? I submit, Sir, that such a policy will not be a wise policy on the part of ourselves. My Honourable friend, Mr. Joshi, might ask "What is the harm in starting an inquiry?" My submission on that point is that Government should spend money only when there is a *prima facie* case for starting an inquiry, that is, where the conditions are such as to justify the Government in spending money. Every inquiry means money. In the present instance when we know from existing circumstances that a case has not been made out for an inquiry—because conditions here are widely divergent from those existing in Europe, and America, when we know on the face of things that the conditions are such, we should not unnecessarily ask the Government to start an inquiry. I have very little more to say, Sir. In relation to the present question, the principle of compensation already exists in some form or other, in this country, though it may be, in a more or less elementary form, I think, Sir, the ordinary responsibilities of Government should not lead it to take action wherever it thinks action to be unnecessary. The crux of the whole question is, whether in the present case, we should adopt that complicated machinery which exists in the highly organised countries of Europe or America and similar places. I submit, Sir, that the time has not come when India should go in for legislation of a social character like that contemplated by the Honourable Mover of the amendment, and I oppose it.

Rao Bahadur T. Rangachariar: Sir, when I saw this Resolution tabled, I was wondering what had possessed the Government of India in asking the Assembly to affirm the obvious, and when I see there is a friend of the labourer, Mr. Joshi, I now see why the Government of India had felt the necessity for a motion of the kind which has been tabled. One observation, Sir, strikes me, and that is that the Government of India are not doing the right thing nor all they should in sending representatives to the International Labour Conference. I am afraid they are not choosing the right representatives. I think the agricultural interests, the vast interests of this country, are not sufficiently represented at that Conference. I must emphasise this point. Instead of the Legislature being asked to affirm obvious Resolutions of this sort I think this must be driven home to the Members of that Conference that these Conventions should not apply at all to India. Somebody should be there to tell them the real agricultural conditions of India and take note of all these things. I am afraid idealists alone go there without reference to practical politics. (Mr. N. M. Joshi: "Mr. Chatterjee had gone"). Then I am sorry I will have to classify him also as an idealist. Probably he is far remote from practical agriculture because he is in high heights and therefore does not condescend to go to his village and look after his land, if he has any. Sir, I think the time will come when we may not be able to cultivate our wet fields, where the unfortunate labourers have to go with bare feet and work in the mire, and my Honourable friend, Mr. Joshi, may tell us "Give them mire-proof boots." All this counsel of perfection may be given to us, and in the meanwhile, the country which is already a poor country will grow poorer. There will be no food to consume. The landlords are poor and the labourers are poor. As regards the plantations, I do not know why an invidious distinction should be made in the case of the plantations. Not that I am quite satisfied with the lot of the labourer there, but improvement is needed in other directions. You can improve their wages. You can remove the

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penal clauses which exist in local legislative measures. I am quite willing to assist Mr. Joshi in those directions. I fail to see, Sir, how all these ideas of social insurance in agriculture are going to be inculcated in the minds of even the educated people in this country, not to speak of the labourers. These are ideas which are quite foreign to this country and which will be quite impracticable. I think we will be landing the country in trouble if we allow things to go on like this. I think, Sir, it is time that the Government of India should send along with Mr. Joshi to the International Labour Conference some real corrective, some heads of Agricultural Departments. I am not sure whether my Honourable friend on my left (Mr. T. V. Seshagiri Ayyar) who himself is a big landlord, and others like him should not go to this Conference at least at their own expense in order to see that such ideas are not promulgated there. I therefore oppose the amendment and strongly support the Resolution.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, it seems to me that Mr. Joshi in his enthusiasm for the agricultural labourers is undoing the service that he is here to render to the cause of industrial labour. I have not here, a copy of the Draft Convention before me, but so far as I recollect, I think the Draft Convention lays down that no distinction should be made between the measures to be adopted in the case of industrial labour and in the case of agricultural labour. (*The Honourable Mr. A. C. Chatterjee*: "Yes.") That was probably due to the fact that there was a preponderance of agricultural labour representatives at the Conference, who, seeing that all the benefits were going to the industrial labour insisted that the benefits should also be given to them (agricultural labour). Now, we either ratify the Convention or do not ratify the Convention. If we ratify the Convention with regard to agricultural labour also, we are precluded from having a separate legislation for industrial labour. The immediate practical effect of ratifying the Convention or of instituting an inquiry pending the ratification would be that Mr. Joshi and this Legislature will be unable to legislate on the lines of the Workmen's Compensation Bill that is coming before this Assembly in a day or two. I wonder if in his enthusiasm for agricultural labour Mr. Joshi is doing a service to the cause of industrial labour which it is within the sphere of practical politics for this Assembly and for this country to render service to by means of legislation. Conditions in this country do not permit at the present moment of undertaking legislation to benefit agricultural labour, in the same way as you can undertake legislation for industrial labour for this it will be recognized, that this House at the initiative taken by Government has already accomplished much. I therefore think that Mr. Joshi, considering this point, will see his way to withdraw his amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The original question was:

"That this Assembly recommends to the Governor General in Council that no action be taken on the Draft Convention relating to workmen's compensation in agriculture and the recommendation concerning social insurance in agriculture adopted by the Third Session of the International Labour Conference at Geneva in 1921."

Since which an amendment has been moved that:

"At the end of the Resolution the following be added:

'and requests the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organised plantations in India'."

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the following Resolution be adopted:

"This Assembly recommends to the Governor General in Council that no action be taken on the Draft Convention relating to workmen's compensation in agriculture and the recommendation concerning social insurance in agriculture adopted by the Third Session of the International Labour Conference at Geneva in 1921."

The motion was adopted.

RESOLUTION RE PROTECTION OF WOMEN WAGE-EARNERS IN AGRICULTURE.

Mr. A. H. Ley (Industries Secretary): Sir, the next Resolution I have to put forward before the House is in the following terms:

"This Assembly having considered the recommendations concerning the protection before and after child-birth of women wage-earners in agriculture, the night work of women, children and young persons employed in agriculture and the living-in conditions of agricultural workers adopted by the Third Session of the International Labour Conference at Geneva in 1921, recommends to the Governor General in Council that legislation to secure their enforcement should not be introduced at the present time."

I feel, Sir, a little diffidence in moving this Resolution. I recollect, two or three days ago when we were dealing with the Mines Bill, a certain amount of criticism, good humoured criticism I may say, was expressed on the want of practical acquaintance with mine labour displayed by certain Honourable gentlemen who took part in that debate. My friend, Mr. Joshi, if I remember rightly, anticipated an attack from the Honourable Member in the Industries Department that his knowledge of the subject was more theoretical than practical. Well, Sir, I must say that in regard to the present Resolution my sympathies are entirely with Mr. Joshi. I am in much the same position. I shall rightly be accused of having nothing more than an academic knowledge of this subject. But, Sir, while this is no doubt the case, I claim to yield to no one in my consciousness of the serious importance of the subject. It relates to matters which do merit the serious consideration of this House, as far as certain kinds of work are concerned. But I think it is obvious to everybody, whether he has any practical or any theoretical acquaintance with the subject, that as far as agricultural work is concerned, legislation of this kind is, in present day conditions in India, not only unenforceable and unnecessary but quite beyond the sphere of practical politics. I will just go through these recommendations. I have grouped them together in one Resolution for the sake of brevity. They all relate to more or less kindred subjects. The first one deals with protection before and after child-birth. The recommendation runs as follows:

"The General Conference of the International Labour Organisation recommends that each Member of the International Labour Organisation take measures to ensure

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to women wage-earners employed in agricultural undertakings protection before and after child-birth similar to that provided by the Draft Convention adopted by the International Labour Conference at Washington for women employed in industry and commerce, and that such measures should include the right to a period of absence from work before and after child-birth and to a grant of benefit during the said period, provided either out of public funds or by means of a system of insurance."

It will be observed, Sir, that the recommendation refers back to a Draft Convention passed at Washington, I think it was in 1919 (if I am wrong in my dates my friend the Honourable Mr. Chatterjee will no doubt correct me). That Draft Convention sought to impose compulsory absence from work for a period of six weeks before and after child-birth of women labourers in industrial and commercial undertakings and to provide for compulsory maternity benefits. There were other provisions as to the production of medical certificates regarding the condition of women during these periods. That Convention has not, like the Convention I was dealing with in my previous Resolution, been laid before this Legislature for the simple reason that India was never asked to ratify it; presumably because it was realised that it was premature to apply it to this country. India was not asked to ratify it, but was asked to make a study of the question. India was asked by a Resolution passed at the Washington Conference "to make a study of the question of the employment of women wage-earners before and after confinement and of the maternity facilities before the next Conference and to report on these matters to the next Conference." Well, that inquiry was made. It was made of all Local Governments and of everybody interested in the subject and a report was drawn up and was laid before the next Conference at Geneva in 1921. The result of those inquiries was that all Local Governments and everybody consulted were agreed that it was beyond the sphere of practical politics to adopt them at this time in connection with industrial workers. It will be obvious that it would be equally impossible to adopt a measure of this kind in respect of agricultural workers. The conditions of life of course are in their case much healthier and therefore the need is much less urgently felt. I pass now to the other parts of this Resolution. As regards the recommendation regarding the night work of women, children and young persons employed in agriculture, I do not think I need read these recommendations out,—they simply provide for a period of rest at night time—9 hours in the case of women and young persons and 10 hours in the case of children. Everybody knows—even I know,—that women and children in this country do no agricultural labour at night; even during harvest time they do not work at night at all; I believe I am correct in saying that,—and what is more, it is obvious that if you pass legislation of this kind, it will be quite impracticable to enforce it. It is easy enough in the case of industries for which there are factory inspectors; I do not know whether you contemplate having agricultural inspectors in all the villages of the country, groups of villages all over the country, looking to see when women go to bed and when they get up in the morning. It is clearly cut of the question. Finally, Sir, I must refer to the living-in conditions of agricultural workers. I think I must read the recommendation out, though it is somewhat longer. The General Conference of the International Organization recommends:

"That each Member of the International Labour Organisation, which has not already done so, take statutory or other measures to regulate the living-in conditions of agricultural workers with due regard to the special climatic or other conditions affecting agricultural work in its country, and after consultation with the employers and workers' organisations concerned, if such organisations exist."

Secondly:

"That such measures shall apply to all accommodation provided by employers for housing their workers either individually, or in groups, or with their families, whether the accommodation is provided in the houses of such employers or in buildings placed by them at the workers' disposal."

And thirdly:

"That such measures shall contain the following provisions:

- (a) Unless climatic conditions render heating superfluous, the accommodation intended for workers' families, groups of workers or individual workers, should contain rooms which can be heated;
- (b) Accommodation intended for groups of workers shall provide a separate bed for each worker, shall afford facilities for ensuring personal cleanliness; and shall provide for the separation of the sexes. In the case of families, adequate provision shall be made for the children;
- (c) Stables, cowhouses and open sheds should not be used for sleeping quarters."

And finally—this is important:

"That each Member of the International Labour Organisation take steps to ensure the observance of such measures."

The International Labour Organization, I may say, did not indicate what kind of steps would be practicable in a vast agricultural country like India; obviously it is not practicable. Indeed, Sir, it is also obvious that this particular recommendation was framed solely with a view to conditions in certain parts of European countries,—it was clearly also framed, I think, more to provide for the moral than the material well-being of agricultural workers in certain circumstances. No one can suggest, I am the last person to suggest, that there is an evil of this sort to be dealt with in India at all, as far as agricultural workers are concerned,—and I say that it is all to the credit and fair name of India that that is so. I can say this with absolute certainty of the full support of the House.

I move the Resolution, Sir.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I rise

to oppose the Resolution. The Resolution contains the words "at the present." What is the present time? What is the real situation now in the country? My friend, Mr. A. H. Ley, has not described that. And if, Sir, this Convention of the Third Session of the International Labour Conference at Geneva have passed and accepted this recommendation, why does it not suit India? If it suits labouring women in other countries why is it not suitable for our labouring class women here? Are they not persons who deserve the same sympathetic treatment as the agriculturists and labourers across the sea in other countries? These are the people who pay five rupees Chaukidari tax per year and these are the people whom we represent here in this Assembly. On Mr. Ley's previous Resolution speaker after speaker spoke, and Mr. Joshi tried to move an amendment to the main Resolution on the right direction. But my friend from Poona, who must be sitting in a non-Muhammadan seat, is probably a contractor, and therefore possibly he likes to see the miserable condition of the labourers continuing to the profit of the contractors of this country. From such people, these unfortunate agriculturists and labourers can have no sympathy. He tried to twist the tail of my friend Mr. Joshi, because he had moved the amendment which did not suit his views. As a matter of fact, Sir, Mr. Joshi is a nominated Member representing the labour of India. Mr. Joshi was sent by the Government of India, who picked him up as the representative of Indian labour to go across the Mediterranean

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to represent India at that Conference last year, and I supposed the year before as well, 1921-22. My friend, Mr. Joshi, unhappy man, wanted to ameliorate the conditions of these poor people. Government allowed him to represent India at the International Labour Conference held at Geneva, but now when he speaks on behalf of the people, what is the answer of the Government? He is thrown over-board. Mr. Ley says that his own Resolution is the best and therefore it should be carried. I wish the Government of India had sent Mr. Ley as their own representative and not of the people across the Mediterranean. I know the facts, Sir. Government and not the people of this country are represented. I know that my friend the Honourable Mr. Chatterjee was sent to represent India, also his colleague, our intimate friend, Mr. J. N. Gupta, who wanted to take a trip on account of ill-health. These gentlemen were sent instead of the Government selecting persons who are real representatives of the country and are the fittest persons to represent India at the International Labour Conference at Geneva. Yes, Sir; a one-sided statement has been made on behalf of the Government by Mr. Ley that effect should not be given to the recommendations of the Labour Conference at Geneva giving concessions to workmen and labourers. Sir, if it suits the civilised people, the labourers and the agriculturists of the West, it will suit certainly the labourers and agriculturists of this country as well; otherwise it is a shame. Members representing these poor people have come here to ameliorate their condition. We are not here to support the Government, every Member of which is drawing a salary after every 30 days. Here I quote Lord Curzon. Lord Curzon while inquiring into the condition of the agriculturists and the labouring population of India, said that these persons, *viz.*, the agriculturists and the labouring classes, are the backbone and the sinews of the country. Every copper that comes from their pocket is an addition to the revenues of the country, and their case should be considered and condition looked into by the Government. Is this the time, may I ask, is this the proper time, for Mr. Ley to move a Resolution not to give effect to the recommendations of the International Labour Conference at Geneva? It is given effect to in the case of the agriculturists and labourers of those prosperous countries and we protest against effect not being given to the recommendations in the case of the miserable agriculturists and labourers of this poor country. My friend, Mr. Rangachariar, speaking for the landholders of Madras, said in regard to the other Resolution that this sort of concession is not fit for Indian Labour. He represents the Non-Muhammadan labourers and agriculturists. He forgets that the agriculturists and the labourers have been paying Chowkidari tax. He is supposed to represent them and do things which are proper and fit for the country and to try to uplift the condition of these poor agriculturists and labourers. Mr. Mukherjee, who himself is a landholder and who represents the landholders, forgets the poor condition of the millions which form the great majority of the population, especially in the province of Bengal. I suppose, Sir, this Resolution which Mr. Ley has moved is not a properly worded Resolution. My friend says that he has consulted all the provincial Governments and some other persons with regard to the actual situation. I want to know who those other persons were. My friend is putting his case probably in a one-sided way—as we say sometimes in legal language, “the judgment of the learned Judge is one-sided and not properly worded and explained. It is a stereotyped one.” And that is the summary way in which a case has been put in the Assembly for this House to accept. A Resolution of

this description, Sir, is an obstacle in the path of progress of this country, and in the path of progress of the world. Why should India be kept out like this, and why should not these poor people have the same kind of concession given to them as the people of other civilized countries? And why should not India and the people of this vast country be properly represented at the International Labour Conferences? I know, Sir, the secret fact. It is not easy to pick out a man from the West to represent this country, and thereby the poor unhappy people of this country of more than 300 millions most of whom are agriculturists are left without any light. They are totally ignorant because they are kept ignorant. My Honourable friend, Mr. Ley, at the time he was moving the Resolution, said that the Indians are very orthodox and said that these agriculturists have got different religions and different castes (I hope I am not wrong), but how does the question of caste come in with regard to this concession being given to these poor people?

Mr. A. H. Ley: Sir, I never said anything about caste at all.

Mr. K. Ahmed: Different kinds of people having different ideas in this country. If a child is dead, whether the child is an Indian child or a mixture, or whatever that child may be, the concession for that poor unhappy child is the same in this country as the concession for a child of a prosperous country. The International Labour Conference at Geneva has passed this concession and we are here to act according to it, but my friend says no, this is the recommendation of the Governor General in Council that this legislation to secure enforcement should not be introduced at the present time. The time is very bad, Oh! it is a troublous time, any my friend might say that there is a war going on, the Bolsheviki might come. Indian children might become prosperous; they will be properly educated; they will be properly fed; they will be strong enough to ameliorate their own condition, and then there will be the time when from the department of my friend, Mr. Innes, a Resolution of this kind should be moved. And we representing the people of this country, are we here to support that sort of proposal of the Government Member in charge? Sir, I vehemently oppose the Resolution and think it should not be accepted by this House.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment which stands in my name:

“At the end of the Resolution the following be added:

‘and requests the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organised plantations in India.’”

Sir, at the outset may I make one request to those people who would like to criticise my amendment, that they should first take care to understand the terms of the amendment and then criticise it. Sir, I will again bring to the notice of the Honourable Members of the Assembly that my amendment does not touch the whole agricultural sphere. My amendment only touches agricultural work as confined to the organized plantations. If any Honourable Members here want to criticise my amendments let them show that no action need be taken or can be taken in the case of these organized plantations. If I am going to be held responsible for remarks which I do not make or for terms which I do not put in my amendments, it will be difficult for me to make any reply to such critics.

Sir, the original Resolution deals with 8 or 4 things. It says that no legislative action should be taken as regards the protection of women

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before and after child birth, no action should be taken as regards the prohibition of the employment of children in agriculture nor as regards certain improvements in the living-in conditions of agriculturists, and as regards the prohibition of night work of women, children and young persons employed in agriculture.

Now, I wish to take each of these items, one by one. In the case of legislation for the protection of women before and after child birth, may I again draw the attention of the Honourable Mover of this Resolution to the fact that already on organized plantations a good deal is being done by employers in helping women during their pregnancy. I shall only read one or two sentences from the same report from which I quoted a few minutes back:

"The Budla Beta Tea Company give leave for three months before and three months after birth with full pay for the whole period."

"The Doom Dooma Company allow a similar period of leave with five seers of rice a week, free of cost, and Rs. 1/8 in cash."

Several other companies mentioned in this report make provision for the protection of women before and after child birth. But, Sir, in a case of this kind, it is necessary that there should be legislation, otherwise, those employers who are generous-hearted and who are willing to spend money, cannot do so on account of the fact that our industries are based on the system of competition. The employers, who are generous-hearted, cannot introduce reforms because they feel that they will be beaten in competition by their less generous rivals. For this reason, in order that the condition of the working classes may be improved, there should be legislation. And it should not only be national legislation, but it has been found that, unless all countries join and there is international legislation, there cannot be much improvement in the condition of the working classes.

Sir, my critics will find that, when I ask that there should be legislation for the protection of women before and after child birth, I am not asking for something ideal. My plan is not merely theoretical or the plan of an idealist; it is being put into practice by a large number of generous-hearted people like my Honourable friend, Mr. Jamnadas Dwarkadas: it is not only the plan of an enthusiast who talks without practical experience.

The second question, Sir, is that the employment of children should be prohibited during their childhood. Now, I will also read something about conditions on plantations.

It has been found that when schools are started on these plantations at the suggestion of Government or by the free will of the planters, they do not get sufficient students. Why? Because—I will explain the reason which is given by the Committee—in the first place, children are a valuable asset to the garden—their work is a valuable asset to the garden; they are earning a welcome addition to the family income. Therefore the employers gain and the parents gain by the employment of children. But is it right that children should be so employed?

Mr. A. H. Ley: Sir, I rise to a point of order. There is nothing in this Resolution about the employment of children at all except at night.

Mr. N. M. Joshi: I am sorry and I apologise to the House. There is the question of night work for children and night work for women. Sir,

nightwork has been prohibited by our factory law both for young persons as well as for women. It is not a new thing that we are going to introduce. The legislation for prohibiting night work exists in India. My amendment only seeks that that legislation should be extended to women working on these plantations. Sir, there are real dangers for women if they have to go out and work on these plantations at night. I do not wish to dilate on these dangers here; I may do so on some other occasion. Then, Sir, there is the question of the living-in conditions. I want Government to find out whether they can legislate for improving the living-in conditions of the workers on plantations. As a matter of fact, while speaking on the last amendment, I did tell my Honourable friend that there exists some legislation on the statute-book of the Government which provides for improving the living-in conditions of workers on plantations. If he refers to sections 132, 133 and 134 of the Assam Labour and Emigration Act, 1901, he will find that that Act makes provision for house accommodation, water supply, sanitary arrangements for labourers, supply of foodgrains, provision for rest, for medical attendance, etc. These matters have been dealt with by legislation by the Government of India as regards the very people for whom I want legislation. The only difference is this—this Act was intended for people who entered into contracts for which there was a punishment of imprisonment. Now those contracts in a large number of cases are not now made. But there is a very large number who are free labourers. My one contention is that the benefit of this legislation which already exists for the contract labourers, should be given to free labourers. Sir, is there any Member here who will say that they will give the benefit of such beneficent legislation only to those who enter into what are called penal contracts, but they will not give its benefit to the free labourers. Everyone will see now that there is no difficulty in legislating on such matters. Legislation exists. The only thing is that we give the benefit of such legislation to a workman when he is prepared to sell his liberty and to become a slave. My friend, Mr. Kamat, has no objection to the legislation passed on these lines. But if a labourer wants to be free, then, he is not to benefit from such legislation. Sir, this is the democracy which unfortunately I have to see in this Assembly.

Sir, it has been said by my friend, Mr. Rangachariar—"How can we legislate only for planters?" As a matter of fact there is no difficulty. We have been doing that all along. When we legislated in the matter of industries, we legislated only for the organized industry. Our Factory Act defines a factory as a place, a workshop where there are 20 people employed and where there is some mechanical power used. We do not legislate all the industrial workers at all. So, what is the difficulty that he finds when we want to legislate only for the organized factories. We therefore can legislate for organized plantations, and there is no difficulty. There is no discrimination if we legislate for organized plantations, because we have been doing that.

Then, Sir, my Honourable friend, Mr. Jamnadas Dwarkadas, without troubling to understand the terms of my amendment said that I wanted the ratification or non-ratification to be hung up. I do not want that. My amendment does not say that any action need be taken for the present but that an inquiry should be undertaken.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadsan Urban): It would be implied.

Mr. N. M. Joshi: I do not see how it can be implied. I have not changed the original words of the Resolution at all. I accept that no action should be taken for the present, I accept that part of the Resolution. I only say that you should begin an inquiry. If you want to write to the International Labour office to-day, write that you cannot take any Legislative action to-day. But there is nothing to prevent your making an inquiry even from to-day. Then, Sir, some capital is made out of the fact that the terms of the Convention cannot be changed and that if we want to accept it the whole of it should be accepted. That is true. But what prevents your taking action here? If you cannot accept the convention to its very letter, it does not prevent your taking action in the spirit of the convention. I cannot understand, Sir, what prevents our taking action in the spirit of the convention. After all if my Honourable friend, Mr. Kamat, or if my Honourable friend, Mr. Jamnadas Dwarkadas, consent to vote for some legislation in favour of labour, do they do it for the sake of the International Labour Conference, or do they do it for the sake of their country and for the sake of their countrymen? If they are not doing it for the sake of the International Labour Conference, there is nothing wrong in their not ratifying the convention, and at the same time taking some action. I therefore hope that my amendment will find favour with this House.

Sir, there is only one word more. Some people wonder why I go on moving amendments when there is not much support to my proposals. Sir, I am an optimist both by nature and by training. I do not despair. If only a few people vote with me and none speaks for my proposal, I hope there will be a time and not a very distant time at that when instead of one man speaking for labour there will be several Members speaking for labour in this House. I feel sure also that there will be a time when the labour Members make speeches people like my Honourable friends, Mr. Jamnadas and Mr. Kamat, instead of trying to pour ridicule on them will consider themselves fortunate if the labour Members smile upon them or speak to them a word or two. With these words, I put my amendment before the House.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, it has often been my very pleasant duty to be associated with my Honourable friend, Mr. Joshi, in advocating the cause of labour in this House, and it is with the greatest regret especially after his most eloquent peroration that I rise to oppose his amendment. Mr. Joshi, Sir, is an idealist; I have also been described with a certain amount of sarcasm during this morning's debate as an idealist; but I think, Sir, that I am not quite as impatient an idealist as the Honourable Mr. Joshi. That is why, Sir, I feel that I cannot agree with Mr. Joshi's views as propounded in the present amendment. My difficulty is entirely a practical one. Mr. Joshi wants an inquiry made into the possibility of certain reforms being carried out in organised plantations. On the first Resolution which we disposed of a little while ago, Mr. Joshi defined organised plantations as places in agricultural districts where a certain number of persons worked under one master and in one locality. Sir, if that definition is followed, I think we will have probably to include practically every Zemindar, every landholder, practically every large tenant cultivator in the whole of India. Does Mr. Joshi wish us to make an inquiry of this all-embracing character? As a matter of fact, Sir, the Government of India have not been neglectful in this matter. They have made inquiries. Mr. Joshi himself has quoted

copious passages from the Report that has quite recently been made in Assam over the conditions prevailing in plantation labour there. That only indicates, Sir, that the matter is already engaging the attention of the Government of Assam. Similar inquiries on specific subjects have been made in the Dooar tea plantations in Bengal. On the earlier occasion Mr. Joshi said that no inquiries have been made with regard to workmen's compensation being extended to agriculturists all over India. Mr. Joshi knows perfectly well that inquiries had been made. On the original letter that was issued by the Government of India, it had been distinctly stated that the Government of India would like to know whether the provisions regarding workmen's compensation could be applied to agricultural workers or not. Mr. Joshi says that certain provisions are already made in the Assam Labour and Emigration Act, and therefore it is quite in the competence of Government to make further provisions. Earlier during the morning, Sir, Mr. Joshi passed very laudatory remarks with regard to the Government of 20 years ago as compared with the Government of to-day. I do not wish, Sir, to defend the Government of to-day, but I leave it to the House to determine whether the Government of to-day has been behindhand in the matter of social and economic legislation. As a matter of fact, Sir, Mr. Joshi himself has given the answer to his own question. He pointed out that the Assam Labour and Emigration Act applied to persons who entered into certain penal contracts, and it was the duty of the Legislature, it was the duty of the State particularly to protect those persons. When free contracts are made, when an agricultural labourer goes and works for a tenant cultivator or for a landholder, I do not think it is particularly incumbent on the State to make provision for his well-being unless a special case is made out for such provision. Mr. Joshi has not given an iota of fact to prove that conditions amongst agricultural labourers either in the plantations or elsewhere are bad. There is no necessity for any special inquiries beyond those that are being made by Government, and those that have already been made.

Similarly, Sir, Mr. Joshi wanted legislation prohibiting the night work of women and children in agriculture. My Honourable friend, Mr. Ley, has already pointed out that even if legislation is adopted it would be absolutely impossible to enforce such legislation. We, in India, Sir, have always taken care, we have always taken credit to ourselves that when we do pass legislation, we take steps to enforce that legislation; we do not want shop-window legislation.

Then again, Mr. Joshi has talked about living-in conditions. My Honourable friend, Mr. Ley, has already read out the passages from the draft recommendation on this point. While we were at Geneva, Sir, we took care to point out to the Conference there that these recommendations were absolutely inapplicable to the conditions prevailing in India. I know my Honourable friend, Mr. Rangachariar, has taken us to task for not having done our duty at the Conference. I think, Sir, if he had only taken the trouble to read the reports of the Conference, he would not have accused us of indifference towards the interests of India. We pointed out there that those conditions were absolutely inapplicable to India. But, Sir, these International Conventions are passed not with reference to the needs of any particular country but with reference to the needs of the whole world. As a matter of fact, we did succeed in carrying a suggestion that these recommendations, these proposals regarding agriculture, instead of being embodied in Draft Conventions which have a very much stricter

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authority, should be embodied as Recommendations. We did succeed to that extent, and this House has not got the same responsibility with what are technically called Recommendations as they have with regard to Draft Conventions. I do not think, Sir, that my Honourable friend, Mr. Joshi, has made out a strong case, or for that matter, any case whatever for the acceptance of his amendment by the House, and with all due respect to his love for labour and the work that he has done for the betterment of the conditions of Indian labour, I respectfully beg this House not to accept his amendment.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I had no idea at all of taking part in this discussion, but the remarks made by some of the speakers incline me to the view that I should not let them pass unchallenged. Sir, I am not one of those who invariably express approval either of Government action or of Government choice, but I must say that Government were very wise in sending Mr. Joshi as our representative. (Hear, hear). Remarks have been made, which, when read outside this House might lead to the impression that Mr. Joshi had not our confidence. I wish to say that Mr. Joshi has our confidence, and we wish to pay our tribute or admiration for the work that he has done outside India and for the work that he is doing in this country. It has been said, Sir, that Mr. Joshi has got the vocational disease, but some people have got the ague of sobriety, which leaves them cold, and it is impossible for them to be moved to action or to any generous impulse or generous enthusiasm. If Mr. Joshi under the influence either of vocational disease or under the influence of patriotism is moved to action, it is not open to those who may perhaps be dead to those impulses to cast reflections upon him. Sir, I deprecate those references, and I protest against the remarks that have been made by some of the speakers here in this hall. Whom do they want to send? Some big landholder who engages thousands upon thousands of coolies to represent labour? (*A Voice*: "Why not?") Well, why not send a wolf to represent the sheep?

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I had not intended to intervene in this debate, but my Honourable friend, Munshi Iswar Saran, as he usually does, tries to please when he says he is not out to please. All that I said was that the Government of India should associate others with him and not that they did wrong in sending Mr. Joshi. It was far from my intention to say so. What I said was that the Government of India should associate other people with the deputation to represent the actual conditions from their point of view.

Mr. N. M. Joshi: You won't like that.

Rao Bahadur T. Rangachariar: Some employers may be represented, and not the landlords.

Mr. N. M. Joshi: If landlords sleep, what can be done?

Rao Bahadur T. Rangachariar: If they sleep, it is the duty of the Government of India to awake them, it is the duty of Mr. Joshi to awake them. But I do not think that they are really sleeping. We in this country do not think that these Labour Conferences really represent India or Indian views. That is the view we take. We do not take them seriously. It may be wrong to do so.

Well, now, to turn to the subject having regard to practical conditions, let us take the case of night work of women, what is night? After 6 P.M. I suppose it is night. (*A Voice*: "After 10 P.M.") Well, if it is after 10 P.M. I do not think even men work after 10 P.M. It is very very seldom that even men work after 10 P.M. and that too perhaps in the very busy harvest season. There may be some work to be done after 10 P.M., but it is very rare indeed. I have not come across such cases even in our temperate climate in Madras where people like to spend their nights in the open rather than inside a house or a shed; even there their work seldom goes beyond 10 P.M. Well, mention has been made about pregnant women. I think work for pregnant women will do a lot of good before delivery. In fact, women of the working classes have their confinement very easily, whereas for women who are confined to their homes like our girls in their luxurious homes, we have to employ midwives and nurses and sometimes call in doctors; who can deny work outside in the open air does them a lot of good. After all, what is the work that these working class women do? They pluck leaves, remove weeds, they transplant, and they take their hours of work easily. I do not know whether it does them any injury at all. Three months before child-birth and three months after child-birth! Can any country afford to get labour at such a cost? I ask this question in all earnestness. I hope I am not conservative or orthodox in these matters. Orthodox I may be, and very crude perhaps I may be supposed to be, but I am bound to give expression to my views in this matter. Does my Honourable friend, Mr. Joshi, really expect labour women in this country to desist from labour for three months before child-birth and three months after child-birth? My Honourable friend read that some generous planter has made provision like that. If it is true, he must be a very generous man indeed. I do not think I can find the like of him in this world—at any rate not in the provinces of this country. (*Mr. K. Ahmed*: "What about other countries?") We are not in other countries. We are here for India, and we are here to legislate for Indians in India. We are not in other countries. This is a counsel of perfection. Even in your own homes, do not your women work generally in that period? Do they not draw water from wells, and attend to all other domestic work? These are idealist's theories incapable of being carried into effect. Does my Honourable friend, Mr. Kabeer-ud-Din Ahmed, observe this rule with reference to his own servants? (*Mr. K. Ahmed*: "I do.") I am glad to hear that. Then, Sir, as regards these various living-in conditions which were mentioned, what is to be done? Take any planter. Take a planter in the Nilgiris. What do you expect him to do? You want so many rooms, you want so much accommodation. You know our gregarious habits. We live in a joint family system. The people would put up with any amount of inconvenience and live in the same house. Even if you provide a separate house, they won't go in there. Therefore, I think these are conditions which are incapable of being applied in this country. I quite sympathise with the object of improving conditions of labour and their wages. By all means remove all the penalties provided by special legislation for the benefit of the planters and enforced labour. But at the same time, where free labour is resorted to why should we interfere? I do not think that all planters after all are so bad as we suppose them to be and as they are painted. After all they have brought wealth to this country. The hills which were wastes have been brought under cultivation and they have got good seasons and bad seasons too. I know many a planter went to ruin in Mysore, in Nilgiris and in Wynad. I do not think it is after all correct to assume that they

[Rao Bahadur T. Rangachariar.]

are making huge fortunes. Therefore, I do not think these are practical propositions. I therefore heartily support the Resolution and I am sorry with all respect to my friend, Mr. Joshi, that I cannot support his amendment. I do not want to cry down his work. In fact, I won't say this. It is not necessary for me to say this but for the fact that Munshi Iswar Saran supposed that I did cry down Mr. Joshi's work. I disclaim any such intention on my part. On the other hand, I have every admiration for his work. But at the same time I consider him an idealist in these matters.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The original question was that:

"This Assembly having considered the recommendations concerning the protection before and after child-birth of women wage-earners in agriculture, the night work of women, children and young persons employed in agriculture and the living-in conditions of agricultural workers adopted by the Third Session of the International Labour Conference at Geneva in 1921, recommends to the Governor General in Council that legislation to secure their enforcement should not be introduced at the present time."

Since which an amendment has been moved that:

"At the end of the Resolution the following be added:

'but so far as the organised plantations are concerned requests the Government of India to consider the advisability of undertaking legislation to introduce these reforms'."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the Resolution be adopted.

The motion was adopted.

The Assembly then adjourned for Lunch till Quarter to Three of the Clock.

The Assembly re-assembled after Lunch at Quarter to Three of the Clock. Mr. President was in the Chair.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The House will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898 and the Court fees Act, 1870.

Mr. K. B. L. Agnihotri (Central Provinces, Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"That in clause 47 in the proposed sub-section (1) clauses (b) and (c) all words after the words 'is subordinate' be omitted."

Sir, under section 195 in the existing Code, it was laid down that the Magistrate was not to take cognisance of any of the offences enumerated therein without the sanction of the Court concerned or of the Court to which it was subordinate and under the present Bill and its proviso, we have removed

the provision requiring the sanction and have retained that the cognisance could only be taken on the complaint of that court or the complaint of the court to which it is subordinate. We also go a step further and provide that the court can also take cognisance of the offence on the complaint made by order of or under authority from the Local Government. I beg to object to and move the removal of this additional clause which provides that cognisance may also be taken on the complaint made by order of or under authority from the Local Government. Sir, by the omission of a provision of this kind I am sure the administration of justice will not be hampered in any way. The courts in which the offences specified in this section are committed will be watchful and competent enough to file a complaint as required and in cases in which the courts concerned have not filed a complaint, the Local Government could if thought desirable, request those subordinate courts to take such action. It is not necessary to provide herein that the complaint be filed by order of the Local Government or under their authority. It will not only encumber the provisions of this Code but will also be undesirable in the ends of justice. For instance, where a Local Government orders the filing of a complaint before a subordinate Magistrate of the district, the subordinate Court will naturally think that that complaint has been filed by the Local Government, after good and thorough consideration of the facts concerned, and that the Local Government's opinion formed after consideration of these facts must be very sound and, on that basis the Magistrate will have no alternative in his own mind but to convict such person. Therefore, Sir, I suggest that this provision authorising the filing of the complaint on orders of the Local Government be deleted. Moreover, Sir, the provisions that have been provided in these two sub-clauses (b) and (c) relate to the offences that have been committed in the Courts during the trial of cases before them and they relate to such offences, for instance, perjury, making false statements or using them as true or filing false or fraudulent suits, removing property from being taken possession of under processes of the Court or for contempt of Court or filing or using as genuine forged documents. For these offences committed in courts it is unnecessary that the Local Government should order the filing of a complaint. The Magistrate in whose courts these offences have been committed or their superior courts will be the best persons to decide whether or not such complaints be filed; therefore, I suggest, Sir, that this provision be deleted.

Mr. President: Amendment moved:

"In clause 47 in the proposed sub-section (1), clauses (b) and (c), omit all words after the words 'is subordinate'."

The Honourable Sir Malcolm Hailey (Home Member): It is true, that this is an addition to the existing Code. The reason for making it is given in the Report of the Lowndes Committee,—which I would again remind the House was not a Government Committee in any sense of the term. Section 195, they thought, caused constant difficulty:

"We have no doubt that it will not be possible to remedy the evils which are connected with this section so long as private individuals are allowed to prosecute for offences connected with the administration of justice. In our opinion, the only effective way of dealing with this section is to allow a prosecution to be launched only by the Court or, in exceptional cases, by the Local Government—who no doubt before long will be represented in such matters in their own provinces by a Director of Public Prosecutions."

It was intended therefore to provide only for exceptional cases in which the Local Government might find good reason for launching a prosecution. Mr. Agnihotri says this is dangerous—because if the sanction or complaint

[Sir Malcolm Hailey.]

is made by the Local Government, the Magistrate will no doubt consider that such complaint could only have been made after due and proper consideration. In that, of course, my Honourable friend is quite right; such a complaint would only be made after due and proper consideration, but I see no reason why Mr. Agnihotri should use this as an argument against allowing a complaint to be made by the Local Government.

Mr. K. B. L. Agnihotri: It will be prejudicial to the accused.

The Honourable Sir Malcolm Hailey: Why it should be prejudicial to the accused that the complaint is made only after due and proper consideration is a mystery which I will not attempt to solve. He has forgotten, I think, equally that we have the sanction of the Local Government in such a case under section 196. Is that, again, prejudicial to the accused? If so, I think that it is worthy of note that no body has so far ever attempted to amend section 196—indeed in the whole course of our exceptional legislation, if I may say so, there has been one continual demand on the part of critics, namely, that prosecutions should not be launched without the sanction of the Local Government; and there is, of course, very little difference in so far as it affects the accused between the Local Government lodging a complaint through the proper agency and the Local Government giving sanction to the complaint. But I have given the sole reason, why this addition has been made in this section of the Bill.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, after hearing the Honourable the Home Member I feel convinced that the amendment is right and the explanation given by the Honourable Home Member is both unconvincing and wrong. Honourable Members will find that the offences categorised in clause (b) of section 195 are offences described in the Indian Penal Code as offences committed in the course of judicial proceedings, except in very exceptional cases to which I need not advert. The Honourable the Home Member has referred to the difficulty which both judges and practitioners felt in the working of section 195 coupled with section 476 of the Code of Criminal Procedure. I shall briefly advert to that difficulty. Under the existing law the courts were empowered either to complain on the motion of the party aggrieved or *suo motu* in respect of any offence committed in the course of proceedings before them. If they complained the matter was not open to revision and the accused had no redress except in a trial held in pursuance of that complaint. If, on the other hand, the court merely recorded a sanction for the prosecution of the accused, the accused had the right of appeal and revision, and the order of the court concerned was revisable both by the court of appeal and the ultimate court of revision. The difficulty to which Sir George Lowndes and his Committee advert is a difficulty of a different character upon which the High Courts in India have been at variance. The difficulty was not so much with reference to the complaint or sanction under section 195, but with reference to the inquiry possible under section 476. So far as the question of complaint is concerned, no difficulty arose, but when the question of granting a sanction to the party aggrieved was concerned, it sometimes happened that the person obtaining sanction did not prosecute the case within six months and he came to terms with the would-be accused; and there were other difficulties. These are the difficulties which confronted Sir George Lowndes' Committee and it was suggested by that Committee that it should do away with the distinction between complaint and

sanction. I welcome that change. So far as the artificial distinction between complaint and sanction was concerned the present Bill is an improvement. But when it goes further and arms a Local Government with the power of ordering a prosecution or complaining, as required by section 195, clauses (b) and (c), there is occasion to pause and consider. The Honourable the Home Member has told the Honourable Members here what differences there are between a complaint made by a court and a complaint made by the Local Government. Surely, Sir, the Honourable the Home Member could not be unaware of the fact that a complaint made by a court is made by a judicial authority after hearing all parties concerned, while a complaint by a Local Government is made by an executive authority without giving the party aggrieved any chance of complaint or redress in the lawfully constituted courts of the country.

That is a vital difference between a complaint of a judicial officer and a complaint by an executive authority. I, therefore, submit that
3 P.M. the distinction between the two must be borne in mind by Honourable Members before they record their votes. Then, it has been said by the Honourable the Home Member, what difference would it make if the Local Governments are empowered to complain under section 195, when, as a matter of fact, they had possessed the power of complaining under section 196? Honourable Members have merely to advert to section 195 to see the difference between the two sections and the power of the Local Government in the one case should not be extended in the case of the other. Let me read to Honourable Members section 196 to which reference has been made from the Government Benches. That section, Sir, reads as follows:

"No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code (except section 127), or punishable under section 108A, or section 153 or section 294A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council the Local Government, or some officer empowered by the Governor General in Council in this behalf."

These, Honourable Members will observe, are disabling provisions which prevent any complaint being lodged except upon the motion of the Local Government, while section 195 (b) and (c) are intended to extend the powers of the Local Governments by placing within their jurisdiction cases which would not otherwise be within their jurisdiction. That is a difference, and, I submit, a very important difference. The analogy of section 196 is rather against the contention raised by the Honourable the Home Member and not in favour of it. It simply places an embargo upon all complaints against certain persons and in respect of certain offences except on the complaint of the Local Government. It is intended to protect certain persons from vexatious and frivolous prosecutions. That is not the object of the amendment which is inserted in clauses (b) and (c) of section 195. These clauses are intended to give the Local Government, as chief executive authority, power to initiate prosecutions on their own authority and it is that which is the gravamen of my friend, Mr. Agnihotri's contention. Mr. Agnihotri, Sir, has rightly observed, that, constituted as the Courts are in this country, it is very difficult for the poor accused to defend himself against a prosecution launched under the ægis of the Local Government. The Courts will assume: 'Here is a prosecution launched by no less a person or body than the Local Government. This man who stands here to defend himself has not a ghost of a chance.' The prosecution, I submit, play with loaded dice, the defence on the other has a forlorn hope. That, I submit, is the danger of arming the executive

[Dr. H. S. Gour.]

Government with a further power of complaining and ordering prosecutions. Sir George Lowndes' Committee contemplated, Sir, the institution of the office of a Director of Public Prosecutions, and if I understood the report of the Committee aright, they wanted to do away with section 195 as such and to substitute therefor an independent machinery for the purpose of dealing with cases referred to in section 195. That is entirely a different matter. If the Government had introduced in the present Code an amendment to the effect that all prosecutions against public justice for perjury, making false charges and the rest, are hereafter to be investigated and initiated by a special judicial officer, call him either the Director of Public Prosecution or the Prosecutor General as the case may be, and that officer will give the party aggrieved a chance of defending himself and showing cause why the order against him should not be recorded, I do not think this House would have any ground for complaint. It would be the creation of an independent tribunal to examine and judge of the *prima facie* culpability of the persons against whom such prosecutions are initiated; but to give this power of a purely judicial character to an Executive Government who will not hear the accused, who will act *in camera*, and order prosecutions, is, I submit, a reactionary piece of legislation, against which this House should vote.

Munshi Mahadeo Prasad (Benares and Gorakhpur Divisions: Non-Muhammadan Rural): I beg to associate myself with what has fallen from the Mover of the amendment. When we look at the Criminal Procedure Code we find that the offences dealt with by section 195 are offences connected with contempts of lawful authority of public servants, and also offences relating to false evidence and offences against public justice; and when we refer to section 196 we find the offences referred to in that section are offences against the State. So the analogy between sections 195 and 196 is not sound. Further when the Court tries a case and goes into its *pros* and *cons*, both parties have a right to be represented by counsel. But Sir, when the matter goes to the Local Government, everything is done *in camera*, and I submit, Sir, the arguments put forward by Dr. Gour have very great weight and I support the amendment moved by Mr. Agnihotri.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I rise to offer just a few remarks with reference to those which fell from my Honourable and learned friend, Dr. Gour. I wish, Sir, to explain the type of cases in view of which this provision has been inserted. It will be seen, Sir, that this section, read with section 476, abolishes sanction in these cases and substitutes complaint. The idea was, Sir, that in cases of complaints by the High Courts it might be difficult to get them to move and that it was therefore desirable in these exceptional cases—and the provision will only be used in very exceptional cases—to take this power for the Local Government to institute a prosecution by means of a complaint in these particular cases. My Honourable friend also stated that in cases instituted on the complaint of the Local Government the counsel for the defence were working against loaded dice. I would suggest that some 50 per cent. or more of the important prosecutions in this country are made under the orders of the Local Government. This, Sir, is also, I would submit, a provision very similar to provisions in the English law. If we take the Vexatious Indictments Act of 1859, perjury is one of the offences included there, and the indictment may be made by His Majesty's Attorney General or His Majesty's Solicitor General.

Dr. H. S. Gour: Is that the Local Government?

Mr. H. Tonkinson: His Majesty's Attorney General and His Majesty's Solicitor General are part of the Government.

Dr. H. S. Gour: They are Law Officers of the Crown.

Mr. H. Tonkinson: They absolutely make indictments on behalf of the Crown in exactly the same way as the Local Government moves here: there is no difference whatsoever.

Then, as regards the Director of Public Prosecutions, I was surprised, Sir, to learn that this officer was to be a judicial officer, an officer who was to make judicial inquiries. When we have been considering the appointments of Directors of Public Prosecutions in the past, we have always assumed that they were to be officers of the same character as the Director of Public Prosecutions who was constituted in England in 1879. That officer exercises no judicial functions at all, and I would submit that my Honourable friend is quite mistaken in what he assumes to have been the intention of Sir George Lowndes' Committee in their reference to a Director of Public Prosecutions.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I rise, Sir, to support my friend, Mr. Agnihotri, and, in addition to the reasons advanced by my Honourable friend, Dr. Gour, I shall only advance one more reason in support of the amendment. Suppose, Sir, I am an aggrieved party and I apply to the Court that it do lodge a complaint against the person at whose hands I am aggrieved, and the Court refuses to lodge that complaint. I then approach the Government, and Government, without reference to the Court, lodges a complaint on its own initiative. What happens? The Court is discredited by the Government, and the Government on its own initiative lodges a complaint against the considered opinion of a Court of law established by itself. If the Government wish to have a complaint lodged in cases of this kind, there is nothing to prevent it from moving the Court to lodge the complaint. That would be the proper procedure to adopt and not direct action on their own initiative. I therefore support the amendment.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I rise to oppose the amendment. Here is the amendment. It runs:

"In clause 47 in the proposed sub-section (1), clauses (b) and (c), omit the words 'is subordinate'."

Now, Sir, I do not understand why when the subordinate court has power to sanction a prosecution, the prosecution should not be started at the instance of a court higher than that or by the Local Government. It cannot be supposed for a minute that the Government would be so foolish as to act against the interests of its subordinate officers.

Mr. P. P. Ginwala (Burma: Non-European): May I know, Sir, whom the Honourable Member is addressing. We cannot hear him.

Mr. President: He is addressing the Chair.

Khan Bahadur Sarfaraz Hussain Khan: So I do not see any necessity whatsoever for this amendment, which would stop a court to which that

[Khan Bahadur Sarfaraz Hussain Khan.]

court is subordinate from starting a prosecution or stopping the Local Government from doing so. This procedure will not help the administration of justice and I therefore oppose the amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadian Urban): Sir, I beg to invite the attention of the House to one point to which no reference has been made so far, and it is this. According to the amendment of section 195, which has been proposed in the Bill, the right of appeal, if I may so describe it, which now exists under clause (6) of the section, has been taken away. Clause 6 of the present section says that any sanction given or refused under section 195, Criminal Procedure Code, may be revoked or granted by any authority to which the authority giving or refusing it, is subordinate. "No sanction shall remain in force" and so forth.

Mr. President: I do not quite see the relevance of that to the amendment. I am not a lawyer like the Honourable Member, but it is a matter of common sense.

Mr. J. N. Mukherjee: Therefore Sir, the question arises whether by vesting the Local Government with power to complain or order the prosecution of a person an important right which was reserved to the party who has been put upon his trial has been taken away. So that the position is this. The Local Government does not hear the case, the Local Government has no direct knowledge of the facts. Somebody represents to the Local Government that somebody ought to be prosecuted, and the conclusion that is formed by the Local Government or the representative of the Local Government is come to behind the back of the person who is going to be put upon his trial. Now, Sir, as I have pointed out, there is an important provision as to appeal under section 486 of the Criminal Procedure Code where certain offences of the nature of contempt have been committed. That section provides that if an offence is committed in the presence of a Court, the Court can put him on his trial under certain sections of the Indian Penal Code.

Dr. H. S. Gour: Those are not the sections here.

Mr. J. N. Mukherjee: Those are not all the sections of the Penal Code mentioned in section 195 of the Code of Criminal Procedure. I say those sections of the Penal Code, in respect of which an accused has been deprived of his right of appeal by clause 47 of the Bill, are different from the sections mentioned in section 486 of the Criminal Procedure Code. A complaint has been made by a person who has no direct knowledge of the facts. It is otherwise in the case of contempt proceedings. Therefore, Sir, the question arises whether the Local Government should be vested with powers of setting the criminal law in motion under these circumstances. I submit, Sir, when the right of appeal has been taken away, there can be no control of the orders of the Local Government. A complainant has to be tested when it is made before a Magistrate. The complainant has to be examined in all cases, and if a Magistrate has reason to distrust the complainant, a police inquiry is ordered, or something of that kind takes place. The inquiry that takes place at that stage is an open inquiry, a judicial inquiry, and the Magistrate has the right to dismiss a complaint under section 203, Criminal Procedure Code, for an adequate

cause. Whereas in the case in point, the Local Government formulates its order behind the back of the person who is going to be put on his trial. It comes to a conclusion in his absence, and he is deprived of all the safeguards which exist in the Code in the case of all complaints before a Magistrate. Surely, Sir, there is some value in the principle of testing a complaint, which principle the Criminal Procedure Code recognises to the full, and here is a provision which is going to be introduced by clause 47 of the Bill which will deprive the person who is going to be put on his trial, of a very important right. I have, therefore, great pleasure in supporting the amendment of my Honourable friend.

Mr. President: The question is:

"That in clause 47 in the proposed sub-section (1), clause (b), omit all the words after the words 'is subordinate'."

The Assembly then divided as follows:

AYES—38.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Akram Hussain, Prince A. M. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Faiyaz Khan, Mr. M.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva, Prasad.
Shahab-ud-Din, Chaudhri.
Sinha, Babu Adit Prasad.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—31.

Abdul Rahman, Munshi.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.

Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 47 in the proposed sub-section (1), clause (c), omit all the words after the words 'is subordinate'."

Sir, this is the same amendment which I moved in respect of clause (b), and I need not say anything further. It is consequential.

The motion was adopted.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, my amendment is a very modest one and I believe that the Government are rather inclined to favour me this time. Sir, my amendment is this. In the proviso in the third clause of section 195 which reads thus:

"For the purposes of this section a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or, in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court of ordinary civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate."

I move, as agreed to by the Government, to omit the word "of" and substitute the words "having ordinary". That carries out the idea which I have in view.

I move, therefore:

"In clause 47 (4) in proposed sub-section (3) after the words 'principal Court' omit the word 'of' in order to insert the words 'having ordinary'."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, the Government supports the amendment moved by my Honourable friend.

The motion was adopted.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I will move my amendment in separate parts:

"In clause 47 after sub-clause (4) insert the following sub-clause:

'(5) After sub-section (4) of the same section as renumbered the following sub-sections shall be inserted, namely:

'(5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the same'."

Honourable Members will notice that under section 195 there are three classes of cases in which proceedings are intended to be taken. The first portion, clause (a), deals with an offence that is committed in relation to contempt of the lawful authority of public servants (172 to 188). Then clauses (b) and (c) are offences committed in relation to matters which come before the courts. Now, the public servant concerned or some other public servant to whom he subordinates may complain under clause (a). Under clauses (b) and (c) as now amended the court or any court to which such Court is subordinate will have to make the complaint. It is not clear to me—I raise this question now—whether the complaint referred to in clauses (b) and (c) of section 195, whether in making that complaint that court has to adopt the procedure which is laid down for it in 476. Apparently it is the intention to do so, in which case I should like the word "complaint" to be followed by the words as provided in section 476 or some such thing introduced. If it is the intention of the Government that in making the complaint under clauses (b) and (c), that court has to adopt the procedure under section 476, it is not made clear. Even so 476 contemplates only "after such preliminary inquiry if any, as it thinks necessary". But that is not enough. I want to make it obligatory upon the court also that it will give notice to the accused of the charge against him and make him show cause against the proceedings. That is so far as the courts are concerned. The courts, the public servant or the superior authority, I think it is better that all of them should give an opportunity to the person against whom they intend to take proceedings to show cause against the same. Ordinarily in practice they do it but I want to make it a statutory obligation; in this way public money will be

saved and vexation avoided. Much annoyance will be avoided and no harm will be done by giving an opportunity to the person against whom proceedings are intended to be taken to show cause against the same.

Mr. H. Tonkinson: Sir, with reference to this amendment, I think it is desirable to take the different classes of cases dealt with under clauses (a), (b) and (c) of sub-section (1) of section 195 separately. That has been done, I admit to some extent by my Honourable and learned friend, Mr. Rangachariar. Take the case, first, Sir, of prosecutions for a contempt of the lawful authority of public servants which are dealt with under clause (a). Those sections, Sir, are the offences punishable under sections 172 to 188 of the Indian Penal Code. Honourable Members will observe what class of offences they relate to: Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information; Knowingly furnishing false information to a public servant; Giving false information to a public servant in order to cause him to use his lawful power to the injury of another person and so on. Now, Sir, these are offences against the authority of a public servant. It is true that we ought as we do in section 195 to prevent prosecutions in such cases being made on the complaint of a common informer, but why should not the public servant be able to complain himself in those cases just in the same manner as an ordinary private person can complain when he is the aggrieved person? Imagine, Sir, a Sub-Inspector of Police having to complain under clause (a). Suppose a Sub-Inspector of Police has received false information. He has gone to great trouble to inquire into the offence, and then he decides that the evidence is absolutely false and that he will proceed under section 182 of the Indian Penal Code. Why should he not be able to make a complaint? The person who gave information to him had sufficient opportunity to show cause during the inquiry into the offence. Why should he not then be able to go and make a complaint at once? Why should he have to ask the man to show cause before he makes a complaint? What is the procedure going to be in such cases? I presume, Sir, you will have to include all these papers among the police papers, and they shall not be produced in court. The Honourable Member is unable to trust this Sub-Inspector of Police. As regards the offences under clauses (b) and (c), as suggested by my Honourable friend, the intention is that the Courts should proceed under sections 476A and 476B in such cases. I should think, Sir, that this is quite clear; there is in fact a definite reference to section 195, sub-section (1), clauses (b) and (c) in section 476 as it is proposed to be revised by this Bill. What will happen if a Court decides to complain under these clauses? It can take action under section 476 after such preliminary enquiry as it thinks necessary. Now, Sir, we have similar words to this in section 476 of the Code at present and everybody knows what the meaning of those words is. Of course, Sir, the Courts will at once apply the old rulings to the interpretation of this provision. But we have gone beyond this in the proposed section 476. There is full power of appeal and so on in section 476B, and I submit it is entirely unnecessary, as regards the Courts, to make such a provision as has been proposed by my Honourable friend. It is worse than unnecessary in the case of offences dealt with under clause (a).

Dr. H. S. Gour: Sir, the short answer to my Honourable friend Mr. Tonkinson is this. He has only referred to certain sections enumerated in

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clause (a) but he has omitted to mention the rest, and I shall do so. Section 172—Absconding to avoid service of summons or other proceeding from a public servant. Section 173—Preventing the service or the affixing of any summons or notice, or the removal of it when it has been fixed. Section 174—Not obeying a legal order to attend a certain place in person or by agent. 175—Intentionally omitting to produce a document. 176—Intentionally omitting to give notice or information. 177—Knowingly furnishing false information to a public servant. 178—Refusing oath when duly required to take oath. 179—Being legally bound to state the truth and refusing to answer questions. 180—Refusing to sign a document. 181—Knowingly stating to a public servant on oath that which is false. 182—Giving false information to a public servant. 183—Resistance to the taking of property by the lawful authority of a public servant. 184—Obstructing the sale of property offered for sale by the authority of the public servant. 185—Bidding for a person under legal incapacity to purchase that property at a lawfully authorised sale. 186—Obstructing a public servant in the discharge of his public functions. 187—Omission to assist public servant when bound by law to give such assistance. 188—Disobedience to an order lawfully promulgated by a public servant. These are the various offences categorised in clause (a) of section 195, sub-clause (1). These offences may be committed before any public servant. They may be before a Collector. They may be before a public servant other than a sub-inspector of police instanced by my friend the Honourable Mr. Tonkinson. There is a conglomeration of these various sections in one particular clause and if these sections have been collected under clause (a) it is perfectly obvious that there are numerous cases in which the party aggrieved may have a very good defence and which he would be deprived of if he is not called upon to show cause. I therefore submit that it is idle to contend that these are cases in which nothing is gained and much would be lost by giving notice to the accused. I think, Sir, Mr. Rangachariar's amendment is a necessary amendment and the House should vote for it.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the Honourable Mr. Tonkinson put this question to us. If a private person has got the right of complaining, why a public servant may not exercise the same right? That is the main question which has been put. The answer is obvious. If a private person lodges a complaint and eventually it is established or determined by the court which tries that case that the complaint was unfounded then that private person, who was the complainant, wasted his time and money and then he is defeated. There are a number of private persons. They lodge complaints. Their complaints are dismissed and they do not mind and the public has not got notice of that, I mean the public at large. But if a public servant goes to the court without examining fully what explanation the accused has got to give and he lodges the complaint and if the complaint is dismissed, in the first place, public money is wasted. In the second place, who is defeated? The public servant, and that defeat will give a bad name to the executive department, because that defeat will minimise the prestige and it will go to indicate and may be talked over that the public servants do not do things with that amount of carefulness which they should observe. That is the answer which I can give to that question. Now, Sir, if a man who is going to be prosecuted is given the chance of explaining his con-

duct and the explanation which he gives is satisfactory, then there will be no necessity for lodging the complaint, and if the same explanation is not taken before the complaint is lodged and subsequent to that that explanation is given in court and considered sufficient, then the whole procedure in connection with that prosecution will be considered futile, and therefore, it is very desirable that before a public servant comes to the Court, he should try to see whether there is some force in his complaint, whether there is not sufficient rebuttal which could be given by the other side subsequently, and consequently this amendment in regard to this clause (a) is a very commendable one. As to clauses (b) and (c), the Government benches

(Honourable Members: "We are not concerned with them.")

Dr. Nand Lal: All right. Therefore I, Sir, strongly support this amendment, which commends itself.

Sir Henry Moncrieff Smith: Sir, my friend, Dr. Nand Lal, has said that public servants may make complaints on their own initiative without giving the accused persons an opportunity to show cause, that some of these complaints may be false, that a horrible disaster will happen, and that public time and public money will be wasted. The Government is to be blamed for that. Hundreds of complaints are lodged every day in the Courts of this country by private individuals which lead to nothing—they are dismissed, perhaps dismissed under section 203; hundreds of complaints lead to nothing, and public time and public money is wasted. Who is to blame for this I should not like to say,—but it is not the Government. Why a distinction should be drawn in this matter between the private complainant and the public servant who wants to complain I entirely fail to understand.

Dr. H. S. Gour: Is it not that a private complainant is fined for a frivolous prosecution?

Sir Henry Moncrieff Smith: He can be fined for a frivolous prosecution, yes, but we are not talking about frivolous prosecutions. Public servants do not waste their time by making frivolous prosecutions at all. They are all too busy. Dr. Gour, Sir, read long extracts from the Second Schedule to the Criminal Procedure Code, and I thought he was going to build up some argument. He apparently decided not to do so after he had read out a description of the offences that are included in section 195 (1) (a). Let me take one of these, Sir. He read out to the House section 188: disobedience to an order promulgated by a public servant, that is, an order issued under one of the preventive sections of the Code. The man to whom it is issued takes no steps to comply with the order,—takes no steps to show cause why he should not comply with the order; the public servant thereupon calls upon him to come and show cause why he should not be prosecuted for not having complied with the order. Sir, there will be no finality in this matter. Surely the public servant can be trusted in this case to exercise his discretion wisely and well. Mr. Rangachariar, Sir, suggested that it was the practice at the present moment for public servants to call upon persons whom they intended to prosecute to show cause. That is not my experience at all. I have never heard of such a suggestion, that it is the practice, nor, until this moment, have I ever heard it suggested that it should be the practice.

- [Sir Henry Moncrieff Smith.]

Dr. Gour's main argument, which came out in his well known peroration, was to the effect that the man might have a very good answer to the charge indeed, and that if you don't enable him to come and show cause, you are depriving him of a very valuable defence. Sir, I hope the House will not be deceived by that argument. The trial has not begun yet. The complaint is going to be lodged. If the man has got a very good defence, he will have ample opportunity to raise it. Take the case, Sir, of a process server who wants to lodge a complaint. He goes to his superior officer and says to him, "I desire to lodge a complaint against this man who has refused to obey my orders." Is the process server going to issue notice to the man to come and show cause before him? If the man does appear to show cause how is the process server to hold a judicial inquiry and decide whether the complaint should be lodged or not?

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, under the existing law, when the offences enumerated in clauses (a), (b) and (c) could be taken cognizance of by courts on the complaints of private individuals with the previous sanction of courts or the public servants there was at least this satisfaction that the public servant or the presiding Judge of a court, when he decided upon the application of a private individual as to whether sanction to prosecute should be accorded or not acted as a judge or arbitrator, that is, as a third party. But under the proposed law, he himself is to be the complainant. In all cases in which he can complain under the proposed section, offences will not be committed in his presence and very often he will have to form his opinion upon the report of one of his subordinates or menials, say, a process server. Therefore it is not only fair but I think quite consonant with judicial principles that before initiating proceedings he should call upon the person concerned to show cause; and if, after examining and hearing him, he is satisfied that there is really a good case against him, he should start the prosecution. But if, on the other hand, simply on the report of a menial, he is entitled to start a prosecution or initiate a complaint, that in my humble opinion will be an injustice to the person proceeded against. Therefore, no complaint should be lodged by any public servant or presiding Judge in regard to offences enumerated in clauses (a), (b) and (c) without giving an opportunity to the person concerned to appear before him to show that the complaint which is proposed to be lodged against him is not warranted.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, how halting Sir Henry Moncrieff Smith's opposition to the proposed amendment is was shown by the way in which owing to his enforced halt in his speech more than one Member of the House was deceived and rose in his place to address the House before he had as it proved quite finished. I am surprised, Sir, that this very necessary, important and valuable safeguard should be resisted by the Government as they have done. We have not heard anything from the Government Benches yet which is likely to convince this House of the necessity for rejecting this amendment. The state of things has partially changed. Complaint has been substituted for sanction. Whether that is good, bad or indifferent is quite another matter. In the changed order of things it would be more than a safeguard to have this preliminary inquiry. Sir Henry Moncrieff Smith asked whether a man who refused to attend was to be called upon to show cause why he should not be prosecuted for not attending under certain circumstances. Does

he not remember the story of the Irishman who came in his father's stead to show cause why his father had not appeared as a juror. He had thirty-nine reasons, Sir, and the first was that his father was dead. Well, Sir, in many of these cases, as Chaudhuri Shahab-ud-din has pointed out, on the report of a process server or a menial—sometimes a very coloured and exaggerated report—proceedings have been ordered to be taken and then it has turned out that there was absolutely no substratum of truth underlying the whole of the proceedings. Before all that elaborate and expensive procedure has been gone through, what do we ask? We simply ask that the man should have an opportunity of explaining his conduct if he has any explanation to offer, and then if that is not satisfactory, you can go forward. I think enough has been said, Sir, by more than one Member to support the amendment. There is just one matter that I should like to suggest to Mr. Rangachariar to consider, viz., if he is pressing his amendment—as I hope he will—whether he would not like to consider the phraseology. The amendment ends with these words: "Shall be given an opportunity to show cause against the same." Against what? Is it against the proceedings? I take it that Mr. Rangachariar's intention is that the person should have an opportunity of showing cause against the proposal to lodge complaint. (Dr. H. S. Gour: "We all see it.") I am glad Dr. Gour sees it. It is sometimes impossible for him to see things for the time being. I hope he will consider that and with your leave suggest such verbal alteration as is necessary and press the amendment.

Mr. P. E. Percival (Bombay: Nominated Official): I only wish to point out to my Honourable friend that the word "complaint" existed in section 195 (a) under the old law. There has been no change in section 195 (a) in regard to any substitution of "complaint" for "sanction"; so that the proposal now made is an addition to the existing law in section 195 (a), against which no objection has been raised hitherto. My Honourable friend Dr. Gour quoted different sections—section 172 and other sections. I would like to point out that these offences are of a very mild character—section 172, "absconding to avoid service"—punishment, simple imprisonment for one month. And similarly with regard to the other sections, the offences are of a very mild character. We have to remember that at this stage the man is not being tried for any offence. In respect of other offences a man may be put on his trial without any complaint or anything of the kind. Merely the Police send up the case. But in the cases now under consideration the officer in question has to give his approval to the prosecution before it is started. Now, it is proposed to go still further. Suppose that the public servant gives an order and that the man does not obey his order. First of all the public servant has to call upon him to show cause why a complaint should not be made and then he has to make a complaint; all this for the matter of a sentence of one month's imprisonment. After all these things are done, then the trial begins. (Dr. H. S. Gour: "Section 177—punishment 2 years.") That may be so in some cases. We cannot take an extreme case. As observed by my Honourable friend Mr. Tonkinson, in respect of clauses (b) and (c) the amendment will not make much difference. But the important clause is clause (a); and there is no ground whatever, I submit, for making any change in respect of section 195 (a).

Mr. K. B. L. Agnihotri: Sir, if we look to clause (a) of section 195, we find that it has been inserted with the object of protecting the public against the prosecutions or complaints, filed by a public servant vexatiously

[Mr. K. B. L. Agnihotri.]

or lightly, and with this view, the old clause provided that except with the previous sanction, or on the complaint, of the public servant concerned or of some public servant to whom he was subordinate any cognisance of the offence was not to be taken. Here, you have removed the words "with the sanction of the public servant." We do not object to that, but by removing "sanction" you have also removed the clause (6) which existed in the old Code. Under clause (6) if a sanction to prosecute was given by a public servant, that sanction could be revoked by a higher authority. We have taken away that provision from this new section; and, therefore, now we leave the matter absolutely in the hands of the public servant aggrieved to file a complaint if he so pleases and no authority has been given to revise or revoke it. It therefore becomes necessary that the amendment which has been proposed by my Honourable friend, Mr. Rangachariar, be seriously considered and inserted in this section.

The Honourable Sir Malcolm Hailey: I wish to point out to the House how very far it proposes to go in this respect. Our Criminal Procedure Code lays down certain rules for Courts. Incidentally it also lays down certain rules as regulating those proceedings of the police which are preliminary to action being taken by the Courts. Here you propose to go much further; you propose to lay down proceedings for revenue servants, executive servants of all kinds. If a revenue officer has to file a complaint you first of all demand that because he is a revenue officer, he should undertake semi-judicial proceedings in advance.

Rao Bahadur T. Rangachariar: They do it. The Evidence Act applies to them also in certain matters.

The Honourable Sir Malcolm Hailey: Whether any arrangement can be made for bringing the proceedings taken by that public servant before the review of any Courts to see if they were adequate or appropriate or not I am not sure. I will only remark that the amendment refers to complaints made by all public servants, and the definition of public servant occupies over a page in the Code. They therefore apply to a very numerous class of persons for whom the Code usually lays down no rules of procedure whatever; and you are proposing that this extensive class of public servants should be placed under an embargo on making complaints which any man in the street can undertake. We are told that the time of the Court should not be wasted on infructuous prosecutions. Then why do you not, in justice and logic, lay down that any person, before he files a complaint before a Magistrate, should give the person against whom the complaint is to be filed an opportunity to show cause why the complaint should not be made? Every argument you have urged against the right of the public servant applies equally to the rights of the private individual.

Mr. President: The amendment moved is:

"That in clause 47 after sub-clause (4) insert the following sub-clause:

'(5) After sub-section (4) of the same section as renumbered the following sub-section shall be inserted, namely:

'(5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the same.'"

Sir Henry Moncrieff Smith: I should like to know whether we are asked to vote on this amendment with reference only to clause (a) or to all the clauses?

Rao Bahadur T. Rangachariar: I have no objection to putting it clause by clause.

Mr. President: There can be no misunderstanding about it. The question I have put means that the new sub-section proposed by Mr. Rangachariar affects the section, that is, the whole section (a), (b) and (c).

Does the Honourable Member wish to make any verbal alteration?

Rao Bahadur T. Rangachariar: I am prepared to make a verbal alteration so that the last part of sub-clause (5) will read "shall be given an opportunity to show cause against the proceedings."

Sir Henry Moncrieff Smith: Against the making of the complaint I suppose the Honourable Member means.

Rao Bahadur T. Rangachariar: I accept Sir Henry Moncrieff Smith's amendment.

Sir Henry Moncrieff Smith: It is not my amendment.

Mr. President: The amendment will read:

"The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the making of the complaint."

Mr. K. Ahmed: Wouldn't the words "proceeded against" be more appropriate, Sir?

Mr. President: I did not catch the words of wisdom which fell from the Honourable Member from Bengal.

Mr. K. Ahmed: I repeat, Sir, I think the words "proceeded against" would be better and more appropriate.

Mr. President: Amendment moved:

"In clause 47 after sub-clause (4) insert the following sub-clause:

'(5) After sub-section (4) of the same section as renumbered the following sub-section shall be inserted, namely:

'(5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the making of the complaint.'"

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—36.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Akram Hussain, Prince A. M. M.
Asad Ali, Mr.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Shahab-ud-Din, Chaudhri.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—33.

Abdul Quadir, Maulvi.
 Abdul Rahman, Munshi.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.

Ley, Mr. A. H.
 Lindsay, Mr. Darcy.
 Mitter, Mr. K. N.
 Moir, Mr. T. E.
 Moncrieff Smith, Sir Henry.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Sarfaraz Hussain Khan, Mr.
 Sassoon, Capt. E. V.
 Singh, Mr. S. N.
 Spence, Mr. R. A.
 Tonkinson, Mr. H.
 Townsend, Mr. C. A. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Zahiruddin Ahmed, Mr.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move the following; I do so with some diffidence:

"In clause 47, after sub-clause (4) insert the following sub-clause:

'(7) In Provinces where a Provincial Director of Public Prosecutions has been appointed, any complaint by him in respect of offences mentioned in this section shall be deemed to be a complaint under this section'."

Then the *Explanation*:

"The Local Government may appoint from among persons qualified to be Judges of the High Court a Director of Public Prosecutions for the Province."

Sir, as has been pointed out just a few minutes ago, the Lowndes Committee on which so much reliance is placed by the Government Benches have recommended this and therefore I have the highest authority, that authority of the Lowndes Committee, for recommending this procedure in the case of prosecutions in this country. Sir, it will be a very welcome addition to our criminal procedure if prosecutions, not only in cases in which the Government are interested such as offences against the State but ordinary prosecutions for murder and other serious offences, the initiation of proceedings and their conduct can be placed in charge of a Director of Public Prosecutions as is the case in England. It will be a very good departure indeed. Much of the complaint against the administration of criminal justice in this country will disappear if we can place prosecutions in the hands of a responsible officer, a legal gentleman who can bring a judicial mind to bear upon the conduct of prosecutions—not hold judicial proceedings as Mr. Tonkinson misunderstood. As it is now, in each province you have got only public prosecutors in the districts who are seldom consulted in the case of prosecutions before Magistrates. Before Magistrates you have got the police as prosecutor in the shape of prosecuting inspectors of police. I am speaking of the system which is prevailing in my province—I do not know if a similar system prevails elsewhere. Again there is a very responsible function to be performed by the Local Government in these matters. There are offences against the State; there are offences which we have just been dealing with—contempt of lawful authority of public servants—and there are offences of a serious nature such as big conspiracies and other things and in which before undertaking a prosecution if the Government have the assistance

of a person like this it will be very helpful indeed. The system of Director of Public Prosecutions has been tried in England from the year 1879, and, Sir, he occupies a very important position indeed. All the serious prosecutions are in his hands; the police are bound to give him such information as he wants; he takes charge of prosecutions at any stage he thinks fit; he can appoint assistants; he can appoint counsel to conduct the prosecutions in various cases and, Sir, I think it will be a very right departure to make. Sir, we have advanced very far in this country. We are not in those ancient days when the country had not got the advantages of that education and other amenities that we have now. Therefore the time has come for each province to appoint a Director of Public Prosecutions who will be very useful not only in conducting prosecutions and in advising prosecutions and in initiating criminal proceedings against subjects of the Crown, but also useful to the Crown in cases where appeals against acquittals have to be preferred. Sir, what happens now? Under our present Criminal Procedure Code, the Government has got the power to appeal against acquittals. How is that power exercised? Some investigating officer is dissatisfied with the verdict of acquittal given in a Sessions case and he moves his District Superintendent of Police who moves the District Magistrate who moves the Secretary in the Home Department of every Local Government. Sir, how can you expect the Government to bring a judicial mind to bear in respect of these matters? What machinery have they at their disposal? No doubt some times they consult the Public Prosecutor in the High Court whether an appeal should be filed or not. Sometimes they are consulted, sometimes not. Public Prosecutors in the High Court have their hands very full indeed with their ordinary criminal work, appeal work and revisional work which they have to look after. In England you have got not only an Attorney-General, but a Solicitor-General and a Director of Public Prosecutions, and this Director of Public Prosecutions performs a very important function. There are three pages in this book where the duties of such Director of Public Prosecutions are described. The procedure adopted there is conducive to the sound administration of criminal justice:

"Before 1879 there was no provision for the systematic prosecution of offences in England such as there was in Scotland and in most countries on the Continent. Except in those cases in which the Attorney-General intervened on the ground that they were of special public importance, the initiation of prosecutions was left to the injured parties, encouraged by the provision made for defraying the costs of the prosecution out of the public funds. By the Prosecution of Offences Acts, 1879 and 1884, more adequate provisions were made for a national and public system of prosecutions.

"By the Act of 1879 a new department of 'Director of Public Prosecutions' was created, to be distinct from the previously existing legal departments of the Crown. By the Act of 1884, this department was merged in that of the Solicitor to the Treasury. But this arrangement was found not to work well, and accordingly, by the Prosecution of Offences Act, 1908, the two departments were again separated and power was given to the Secretary of State to appoint a Director of Public Prosecutions, and such number of Assistant Directors as the Treasury may sanction."

Then:

"He is subject in all matters including the selection and instruction of counsel, to the directions of the Attorney-General. He is 'to institute, undertake or carry on criminal proceedings'"

Mr. President: Order, order. I observe that the amendment turns upon the existence of an office known as the Director of Public Prosecutions. Now the Honourable Member apparently proposes to create that office by an unusual procedure, namely, by an Explanation. On looking at

[Mr. President.]

the Code I find that there is a Chapter, Chapter II dealing with the constitution of Criminal Courts and Offices. It seems to me that it is a very unusual procedure to attempt to create a new and important office under the criminal law of the country by a sub-section which deals with a comparatively small matter, and unless the Honourable Member can satisfy me that such office already exists, I don't think that his amendment is in order.

Rao Bahadur T. Rangachariar: I am sorry, Sir, no such office exists, and my object is to educate the Government on the necessity of such an office

Mr. President: I have given the Honourable Member a fair opportunity of educating Government, and I must now rule his amendment out of order.

Clause 47, as amended, was added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I propose that clause 48 be omitted. Clause 48 is section 196B, which is entirely a new section in this Code. Section 196B says "In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in section 155, sub-section (3)." Sir, the offences contemplated in sections 196A and 196B are very serious offences. They are practically offences relating to Chapter VI, namely of committing depredation on the territories of any Power in alliance with Her Majesty or receiving property taken in war or committing the depredations mentioned in sections 125 and 126. They are really very serious offences. Section 196A provides that "No court shall take cognisance of such offences except on the complaint of the Governor General in Council or the Local Government." I submit really that when such a thing as a depredation on a foreign territory takes place or if anybody receives property or commits the depredations mentioned in section 125—when such serious offences take place—it will be known throughout the country, and the Governor General in Council and the Local Government will certainly not remain idle or fail to inquire, and will accord sanction to such offences being tried. But when both the Local Government and the Governor General in Council do not take the matter into their consideration, it must be that either no such offence was committed or it must have been really a false case that might have been represented to the District Magistrate. If really the state of affairs is such that the offence is not very serious, then to allow the District Magistrate to make an inquiry through an Inspector of Police would be unnecessarily troubling the people. Of course, Sir, we have already in this Code provided for several actions to be taken by the police in the security proceedings and so on and I do not think really an inquiry should be made by the District Magistrate where the Local Government or the Governor General in Council do not take any steps. The inevitable result will be to put the people in a state of commotion when they are at peace, if you have this inquiry by the District Magistrate or through the Inspector of Police. Sir, there is a saying in our country that if you have no business, or if you have nothing to read, you go on coughing and disturbing people. If an inquiry is made by the Inspector of Police it will

simply make the people believe that they are being unnecessarily harassed. An inquiry in such cases will cause needless annoyance to the people. I submit that if steps are to be taken they must be taken under 196A, and 196B should be omitted from the Code. With these words I propose this amendment.

The motion was negatived.

Clause 48 was added to the Bill.

Mr. K. B. L. Agnihotri: I have been authorised by Bhai Man Singh to move the next amendment, No. 164, which stands against his name. It runs as follows:

"In clause 49, sub-clause (i), for the words 'the authority having power to order or, as the case may be, to sanction the removal from his office of such Judge, Magistrate or public servant' substitute the words 'the Local Government'."

Sir, under the old clause 197 of the existing Code the Judge or the public servant could not be removed from his office without the sanction of the Government of India or the Local Government and if he were accused as such Judge or public servant, the cognisance of the offence could not be taken without the previous sanction of the Local Government.

The Honourable Sir Malcom Hailey: May I be excused for interrupting the Honourable Member? I do not know if anybody else wishes to oppose his amendment: I do not desire to do so.

The motion was adopted.

The Honourable Sir Malcolm Hailey (Home Member): I move, Sir:

"That in clause 49, sub-clause (ii), after the word 'substituted' the following words be inserted, namely:

'and after the word 'Judge' the word 'Magistrate' shall be inserted'."

The reason for this, Sir, is sufficiently obvious. The word "Magistrate" has dropped out in drafting this clause.

Mr. President: The question I have to put is that that amendment be made.

The motion was adopted.

Mr. President: The question is that clause 49, as amended, stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 50, in the proviso:

(a) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person,'

(b) omit the words 'with the leave of the Court'."

Sir, I beg to move both amendments (a) and (b) together. Under this clause 50, any person with the leave of the court could file a complaint on behalf of a minor or a person of unsound mind or a female or an idiot or any person who owing to sickness or infirmity cannot make a complaint himself. By my amendment, Sir, I provide that instead of 'some other person,' the 'guardian or a close relative care of such person' should file such a complaint, and that in the case of such a person, no leave of the Court should be necessary. I move my amendment.

Mr. President: Amendment moved:

"In clause 50, in the proviso:

'(a) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person, or an agent'."

Rao Bahadur T. Rangachariar: I do not think he moved the words "or agent".

Mr. K. B. L. Agnihotri: Yes, Sir, I did not move the word "agent".

Rao Bahadur T. Rangachariar: I do not think he moved it, Sir.

Mr. President: Amendment moved:

"In clause 50, in the proviso:

(a) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person'."

Mr. H. Tonkinson: Sir, I do not know whether it is really necessary to oppose this amendment. Let us consider for a short time what it really means. A guardian. What does my Honourable friend mean by a guardian, Sir? When we use the expression two or three sections later (in the proposed section 199A) we have indicated clearly what it means. Here we have the word "guardian" used without any qualifying word to indicate the meaning which is to be attached to it. Then, Sir, he goes on to say "a close relative". Who, Sir, is a close relative? Does the Honourable Member include a second cousin or step children? What does he mean by "close relative"? Really it seems almost useless arguing against an amendment of this character. He objects also to the provision in the Bill which enables the Court to give leave to the person who shall make the complaint. Why should he not do like my Honourable friend Mr. Rangachariar and trust our Magistrates? I would suggest, Sir, that there is no doubt that an amendment of this character should not be accepted.

Mr. President: The question is that that amendment be made.
The motion was negatived.

Mr. President: The question is that clause 50 stand part of the Bill.
The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 51 after the words 'said Code' all words from 'after the' to the words 'same section' be omitted, and that after the word 'absence' in the original section the words 'may with the leave of the court' shall be inserted and to the same section the following proviso shall be added, that is, that the leave of the court should not be made necessary in the case of persons except on a complaint under section 199 of the Code."

I therefore move this amendment.

Mr. R. A. Spence (Bombay: European): How will the section read as amended by this amendment? The Honourable Member has not read out the section as it would appear after amendment.

Mr. President: The section will read thus:

"In section 199 of the said Code, the following proviso shall be added, namely:
'Provided that where,' etc."

Sir Henry Moncrieff Smith: The reason why the Joint Committee made an amendment here in this respect was that the Lowndes Committee undoubtedly by an oversight provided twice over for the absence of the husband. In section 199 of the Code as it stands (and they left it unaltered), there was a provision that in the absence of the husband complaint may be made by some person who had the care of such woman on his behalf at the time when such offence was committed. The Lowndes Committee then provided also for the absence of the husband in the proviso, and for that reason the Joint Committee cut 'absence' out of the proviso and left it in the main section. The Joint Committee thought that we should have the leave of the court for making of a complaint by some person in the absence of the husband. The reason is very simple. The person having the care of the woman at the time the offence was committed may have interests which are entirely inimical to those of the husband. The Court will have to satisfy itself that there was an identity of interest between the person who desired to make the complaint and the absent husband. If no leave of the court is required in this case, there is, I think, a very grave danger of false charges being brought up by a person who desired to score off an enemy during the absence of the husband using the unprotected woman as his tool in the matter.

Mr. President: The question is that that amendment be made.
The motion was negatived.

Mr. President: The other two parts of Amendment No. 172 fall out.

The question is that clause 51 do stand part of the Bill.
The motion was adopted.

Mr. President: The question is that clause 52 do stand part of the Bill.
The motion was adopted.

Mr. President: The question is that clause 53 do stand part of the Bill.
The motion was adopted.

Dr. H. S. Gour: Sir, in moving the amendment which stands in my name, I am quite prepared to adopt the draft prepared by the Government, namely,

"That in clause 54, for the proviso to the proposed new sub-section (1) of section 202, the following be substituted, namely,—'provided that no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200, or (b) where the complaint has been made by a Court under the provisions of this Code'."

Mr. President: Do I understand that the Honourable Member is not moving the first part of Amendment No. 179?

Dr. H. S. Gour: I shall very briefly explain, Sir, what my amendment amounts to. I accept the alteration suggested by Government to clauses (a) and (b), and I simply suggest to the Government the advisability of adopting improvements which I submit I have made in the first clause, that is to say, in clause 54 (1), for the words 'thinks for reasons to be recorded in writing', substitute the words, 'for reasons to be recorded in writing, considers that there are grounds for thinking that the complaint is not true'. It is merely a drafting change, and I hope the Government will accept it also.

Mr. President: Amendment moved:

"In clause 54, sub-section (1), for the words 'thinks for reasons to be recorded in writing' substitute the words 'for reasons to be recorded in writing, considers that there are grounds for thinking that the complaint is not true'."

Sir Henry Moncrieff Smith: I regard this amendment of Dr. Gour's as slightly more than a matter of drafting; I think there is some substance in it, and in so far as there is substance in it, I think the House ought not to agree to the amendment being made. If Dr. Gour's amendment is embodied in the Code, it will prevent a Magistrate ordering an inquiry unless he can record in writing the reasons which lead him to consider that there are grounds for thinking that the complaint is not true. Sir, there are many cases in which the Magistrate really, on the complainant's statement, cannot make up his mind, cannot form an opinion even, whether the complaint is true or false. The complainant appears and makes a statement, but in some cases he cannot tell you much about the case—he says, 'the facts I have mentioned have been told me by my servants; they saw it during my absence'—and in that case, Sir, I think it would be rather hard to lay down that the Magistrate . . .

Dr. H. S. Gour: I am quite prepared, Sir, to accept the Government amendment in substitution of the whole of my amendment.

Mr. President: The question is that leave be given to the Honourable Member to withdraw the amendment which I have just put.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause 54, for the proviso to the proposed new sub-section (1) of section 202, the following be substituted, namely,—'provided that no such direction shall be made (a) unless the complainant has been examined on oath under the provisions of section 200 or (b) where the complaint has been made by a Court under the provisions of this Code'."

The question I have to put is that that amendment be made.

The motion was adopted.

Mr. K. Ahmed: I beg to move that in clause 54, sub-clause (1) . . .

Mr. President: The Honourable Member's amendment is covered by the amendment which Dr. Gour has just moved and which has been accepted by Government.

Mr. J. Ramayya Pantulu (Godavari cum Kistna: Non-Muhammadan Rural): Not exactly, Sir.

Sir Henry Moncrieff Smith: The Honourable Member has not heard the revised amendment which Dr. Gour has read.

Mr. President: The amendment which the House has carried is a different amendment to the one standing on the printed paper. It has just been unanimously carried by the House in view of the fact that Dr. Gour and the Government had come to an agreement.

Mr. K. Ahmed: Sir, I beg to move that:

"In clause 54 (i) after the proviso to proposed sub-section (1) insert the following further proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry'."

Honourable Members will find that under section 200 of the Criminal Procedure Code as soon as a complaint is made, the Magistrate has to take down the substance of the evidence and if he thinks it is a good case, he at once issues warrant or summons as the case may be. But if he finds any difficulty in coming to a decision, he has, after recording the substance of the evidence, to pass an order to the effect that a police officer or some Magistrate other than the Magistrate passing the order, shall make an inquiry. But I ask, Sir, in the event of the complaint being made against a police officer, is it in the ordinary course of business likely that an inquiry by another police officer into a brother officer's delinquency will be made in a fair and just way and the true inquiry report placed before a Magistrate? I therefore say, Sir, that when a complaint is made against a police officer it should not be inquired into by another police officer. And my view, Sir, is supported by a recent ruling of the Patna High Court, Volume No. 9 or 10. In that case, Sir, it has been decided very recently that a complaint of this kind made against a police officer ought not to be inquired into by another police officer, and it was held that a Magistrate was not justified in passing such an order of inquiry held by the police. In this particular case the complaint was found to be a true one; and the Patna High Court held that the learned Magistrate ought to have sent the case for inquiry to some other judicial officer. That being so, Sir, I suppose my friends will support me.

Mr. W. M. Hussanally: May I ask the Honourable gentleman to read the ruling?

Mr. K. Ahmed: I am sorry the Government of India has not got it, and I am sorry at the same time that I could not carry it from my own Library all the way.

Mr. President: Amendment moved:

"In clause 54 (i) after the proviso to proposed sub-section (1) insert the following further proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry'."

The question is that that amendment be made.

Mr. President: I think the 'Noes' have it . . .

Chaudhri Shahab-ud-Din: Sir, may I take it that this amendment has been put to the vote without any Member being given an opportunity to speak and without the Government opposing it? I want to speak in favour of it. I think this is a scandal in the country and the Government should remove it. I can point out cases . . .

Mr. President: Order, order. The Honourable Member must have observed that I looked round the Chamber and nobody gave any indication of getting up.

Chaudhri Shahab-ud-Din: The usual practice is that after an amendment is moved the Government Member stands up to oppose or accept it. We are bound therefore to await and see whether the Government Member stands up or not and then we stand up. If Government does not want to oppose the amendment, I think we may take it that it is accepted (*Voices: 'No'*); otherwise we stand up and support or oppose the amendment.

The Honourable Sir Malcolm Hailey: Our action in these cases is intended to avoid wasting the time of the House. If I think an amendment is not going to gain support, I do not take the trouble of arguing it. I did not possibly assume that an amendment of this nature was likely to be supported by anybody.

Chaudhri Shahab-ud-Din: Sir, I seek the leave of the Chair to support the amendment for reasons which are within my knowledge. There are District Magistrates in certain districts of the Punjab who have issued orders that all complaints against police officers should be sent to the District Superintendent of Police. I know of a district where a number of complaints were made against certain Police officers and all those complaints were made over to the Superintendent of Police. He sat over them and he never reported on them. When the police came to know who the complainant is either he does not appear or compromises the case. Justice requires that this should not be allowed to go on. I do not depreciate the services of the police. The Police Department is a very useful Department, but there are black sheep in that department as in all others, and I think the Government should not hesitate to protect the law-abiding and poor citizens from the machinations of certain police officers. Corruption is rampant in several districts in the Punjab and I think police officers are robbing right and left; and the civil authorities are helpless. In certain districts there is police rule and not civil rule. The civilians are very honest and upright. There is not that relation between the subordinate Magistrates and the civilian District Magistrates which exists between the District police officers and their subordinates. Therefore, the District police officers protect their subordinates, and consequently whenever there are complaints against the latter, the former do not pay much heed. Consequently it is only fair that whenever there is a complaint against a subordinate police officer it should be inquired into by a Magistrate or by some other authority, and not by the superior officer of the subordinate against whom the complaint is lodged. The proposed amendment is a very wholesome one and I request the House in the interests of justice to support it and thus protect innocent people from the police. Government should welcome such an amendment. If there are any complaints against the police, no one can maintain that they should not be inquired into. Then why should not, I ask, those complaints be inquired into by a Magistrate and why should those complaints be referred to the Superintendent of Police? He may sit over a complaint and may not submit his report, and the subordinate Magistrates have not the courage even to call for the reports. Sometimes they send reminders but they are not heeded. If the Government wants any information, I shall confidentially give some particulars. I request the House to support the proposed amendment very strongly.

Mr. R. A. Spence: Sir, may I, in the interests of justice, also ask that the floor of this House be not made the place for attacking the police when they are given no opportunity of refuting such attacks? The Honourable Member who just sat down has stated that he is able to produce definite cases. I say, if so, why does he not go to the competent authorities instead of coming to the Legislative Assembly and making this Assembly a place for absolutely unjustifiable and unwarranted attacks upon the people who exist for the protection of the interests of law-abiding citizens. I protest against this Assembly being made the place where attacks, such as we have just heard here, are made.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved by my Honourable friend Mr. K. Ahmed. It is very surprising that even such a modest amendment should not be allowed or accepted by the Government. On the contrary opposition is offered if we make any suggestions for improvement in the procedure. My Honourable friend, Mr. Spence, has given us a lecture on the point whether we should make suggestions and insinuations based on our own experiences of the working of the police in our Provinces. Sir, we make those remarks here and if the official Members who represent the Local Governments think those insinuations are not based on good grounds, it is certainly open to them to request the Member who makes them to give definite information on the point. But it is not clear to me that if a matter has been referred to a Court of Law and from the Court of Law that matter has been sent to the District Superintendent of Police for a report and if the report is not sent to the Court of Law, how can those complaints be made to the Government officers outside the Court of Law? The only proper procedure in these cases is to proceed to the Appellate Courts. We cannot approach the superior executive officers. Our suggestions are based on personal experience and surely a Member is allowed to put his experience before the House for the consideration of the other Honourable Members so that they may judge from their own experience whether or not the remarks of a particular Member are correct. As far as the question before the House is concerned, it goes without saying that, if a complaint is made against a police officer in 90 per cent. of cases the police officer to whom such complaint is made for inquiry will be inclined to believe a person of his own department rather than some one outside. We have seen here, champions of the Services who champion their cause even in this House, so it is possible and probable that the officers of a particular department may be inclined to be partial to their own departments. Probably it will be a surprise to my Honourable friend, Mr. Spence, if I were to tell him of one case within my own experience which happened in my own district. A complaint was filed by a pleader of the district against a police head constable. The Magistrate issued a summons to that head constable for appearance in his Court and the District Superintendent of Police, through whom the summons on the head constable was to be served, refused to serve it, and wrote back on the summons: "I decline to serve the summons as no sanction has been taken from me under section 42 of the Police Act." When police officers can go to such a length to shield their officers . . .

Mr. R. A. Spence: Was he justified?

Mr. K. B. L. Agnihotri: I think he was not, and that order of the Superintendent of Police was criticised by the Sessions Judge and he was taken to task for it. Sir, when the Police Superintendents can go to such lengths to shield their officers, is there not a probability that these police officers may shield their subordinate officers in the inquiries also? Moreover, Sir, the inquiries that are made by the police officers are not made under oath. A man may go and say what he likes before a police officer and there is nothing to show that the report of the police officer is a proper and good one. Therefore I suggest that in 90 cases out of a hundred there is a possibility of justice not being done if the complaints against these officers are submitted for inquiry to the police officers. I submit that the amendment is quite an appropriate one and should be supported by everyone in this House.

The Honourable Sir Malcolm Hailey: I am sorry that we should have been led into a discussion on a very old theme. As 5 P.M. I said before, it is our custom, when we think that an amendment is not likely to be debated in the House, to avoid troubling the House with discussion; and it is for that reason that we did not proceed to argue the amendment of Mr. Kabeer-ud-din Ahmed. It has given an opportunity, however, to Mr. Shahab-ud-Din, speaking, I think, with added warmth, because he thought that he had been excluded from the discussion, to make a general attack on the police. He used language such as the machinations of the police; and the difficulties under which the ordinary man labours of securing justice owing to those machinations. He used in short language which on calmer reflection he would probably desire to modify. After all, I am sure that he, as much as other Members of this House, recognise the great difficulties under which the police work, the sterling good work which that force does, and the magnificent loyalty to Government which has characterised the police in spite of many unjust attacks and provocations during the last few years. It would have been welcome if at this late stage of our discussions on the Criminal Procedure Code we could have avoided these depreciatory references to the work of the police which some Members found themselves obliged to make when we were dealing more specifically with the police sections. General accusations of that kind prejudice the debate and add very little to the wisdom of our deliberations, nay, they tend to confuse the issues. I am not at the moment intending to pose as a champion of the police or of any other Service; I think it is unnecessary to say more than this, that the police work in this country, taking it generally and discounting all that you sometimes have to discount, is such that it entitles them to the gratitude instead of the condemnation of the general public. I shall say no more on the subject.

Chaudhri Shahab-ud-Din: May I interrupt with a word of explanation? I am one of those who admire and have always admired the working of the police. I think they are to be admired for keeping peace and order in the country, and I believe that in the police force there are excellent officers, some of them very sympathetic, and they are indeed very useful both for the country and for Government. I referred only to those who were actually black sheep, and I do not think that Government or anybody else can maintain that there are not both good and bad people in the Police Force. We have got very good officers in the Punjab and most of them very upright and honest, I admire them and their work. Perhaps when addressing the House, I was excited or was a little misunderstood.

The Honourable Sir Malcolm Hailey: I was quite sure that Chaudhri Shahab-ud-Din did not really wish by hasty expressions to prejudice the views of the House on the subject of this particular amendment; for after all it is only this particular amendment, and not the general attitude of the police that we are discussing. As he says, the police force, like every other force, contains its black sheep. It is unavoidable. The very large numbers of men that we have to employ, the somewhat poor pay that until recently we were able to give them, made that inevitable. I do not think that you can say with justice that the police contains more black sheep than the revenue or any other department. But, ought we to legislate in every case on the basis of the existence of some few black sheep in the department? Ought we so to frame our legislation that it takes account only of extreme possibilities, instead of providing a fair working rule for ordinary action under ordinary circumstances?

This amendment makes it impossible for any Magistrate to investigate through the police a complaint in which any police officer is concerned. Examine the implications of this. We will take it that a police officer has been charged with theft of Government property. The Magistrate desires to know more about the case; he is not able to let another police officer investigate even a case of this kind. Then again, we will take such cases as an assault by a constable. It may not be a grave offence. The Magistrate wishes to know more about it; but he cannot send it for investigation by a police inspector, and why? Because Mr. Agnihotri says that the police inspector will be inevitably so prejudiced in favour of the constable that he would not be prepared to make a fair investigation. Honestly, I think we ought to waive that kind of thing aside. We know that there are in the Police Force, as Chaudhri Shahab-ud-Din has said, black sheep, but we also know that in the upper ranks at all events there are men whose lives and character would disprove at once such an insinuation as that put forward by Mr. Agnihotri.

Mr. K. B. L. Agnihotri: I said there was a possibility. I never said that all police officers are like that.

The Honourable Sir Malcolm Hailey: But, as a result, you rule out entirely investigations which may be very helpful to justice. I could understand that a Magistrate, where a case comes up which gravely concerns the local reputation of the Police Force, which has aroused a good deal of public attention, and which, if given against the police, might seriously affect their local prestige should hesitate to send the case for investigation by another police officer. That is obvious. And if he is a sensible Magistrate, he will not do so. But do not place on the Statute Book an amendment which would have the effect of ruling out the possibility of investigations which may give you correct and proper results merely because you are afraid that in one or two cases that system of investigation may be wrongly utilized by Magistrates. Let me again suppose—I will proceed with my illustrations—that a somewhat complicated case arises which a Magistrate desires to send to the police for further investigation. Is it realised that by an amendment of this nature you would prevent an officer of justice from utilising the services of the one trained detective agency which they have for the purpose? On a question like this, I think the House might very well leave the matter to executive instruction, and not place an absolute embargo, as the Honourable Member proposes to do, on investigation by the police in cases in which police officers are concerned. It might be left to the discretion of Magistrates not to send to the Police for investigation cases in which they know that the interests of the police are so much concerned that the investigation will not be a fair one. That ought to be sufficient.

Mr. Darcy Lindsay: I move that the question be now put.

Dr. H. S. Gour: Sir, I think there is a good deal more in my friend Mr. Kabeer-ud-Din Ahmed's amendment than meets the eye. The Honourable the Home Member has adverted to one aspect of the question, but he has not adverted to all aspects of the question. Let me present them to him. A Sub-Inspector of Police is accused of extortion and corruption before a Magistrate. The Magistrate refers the complaint for investigation to his superior officer, the Circle Inspector.

The Honourable Sir Malcolm Hailey (and other Honourable Members): Not necessarily.

Dr. H. S. Gour: Ordinarily: the Circle Inspector will order the villagers to appear before him and substantiate the complaint. The villagers meet and say "These are all birds of the same feather. He has taken a bribe to-day; that fellow will take it to-morrow. How are we going to appear before him and make a complaint at all?" It is not that the sub-inspector is corrupt; it is not that the circle inspector is unfair; but it is the widespread and popular apprehension in the minds of the public to go before a police officer to accuse his comrade. Surely, Sir, the Home Member could not be unaware of such a term as *esprit de corps*, and surely the police officers who discharge their duties in this country so efficiently on the whole do so because they possess that *esprit de corps*, and it may be, consciously or unconsciously there is a bias in favour of a member of their own service, and consequently, without going to the length to which some of the previous speakers have gone of saying that the police officers in investigating a case are consciously and perversely biased in favour of a brother officer, I make bold to say that there is an unconscious leaning towards a member of their own service, firstly, because they are members of their service and secondly because if the offence is brought home it would bring discredit upon the whole police force. Consequently, I submit it is in the interests of public justice that when an inquiry of this character is to be made it should be made by persons free from such prejudice or bias, or at any rate free from the suspicion of such prejudice or bias which witnesses must necessarily feel in a case of this character. Now it has been said by my Honourable friend the Home Member—he took a very apt illustration which certainly suited his arguments. Suppose, he said, a police officer is charged with the theft of Government property. But how many cases are there against the police for bribery and corruption, and how few cases there are of theft by police of Government property? We are dealing here with normal cases, not with a certain few individual stray abnormal cases. Now, Sir, there is no aspersion cast upon the police force; if such an aspersion is cast, it has been cast by the Statute law of this country. Is my friend, the Honourable the Home Member and his colleagues who adorn the Treasury Benches unaware of the provisions of the Indian Evidence Act which prohibit the making of a confession to a police officer, and any confession made to a police officer as inadmissible in evidence? Sir, some protagonists of the police may rise and say that it is an obnoxious provision, that it casts an unmerited slur upon the police force and that the Indian Evidence Act is an anachronism enacted as it was in 1872. But it is not against individuals that the provisions of that Act are directed; it is not against individuals that this amendment is directed; it is against a system and against a human weakness which surely members of the police force cannot be said to be innocent of. Surely, *esprit de corps camaraderie* and a friendly feeling does exist amongst the rank and file of the police and that makes for the solidarity of the force and for strength of character; and all that the Honourable the Home Member has said I echo as regards the services that the police force in this country is doing. But that is entirely wide of the mark. We are here concerned with a short and narrow issue, that if a police officer is accused before a Magistrate of an offence and the Magistrate thinks it necessary that it should be inquired into, whether it should go before another police officer for inquiry or before an independent tribunal. It is with this short question we are concerned, and I have no doubt, Sir, that the House will support this amendment.

Rai Bahadur G. C. Nag (Surma Valley *cum* Shillong: Non-Muham-madan): I move, Sir, that the question be put.

The motion was adopted.

Mr. President: Amendment moved:

"That in clause 54 (i) after the proviso to proposed sub-section (1) insert the following proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry'."

Mr. President: I think the 'Noes' have it.

Mr. K. Ahmed: 'Ayes' have it.

Dr. H. S. Gour: We don't want a division.

The Honourable Sir Malcolm Hailey: Did you order a division, Sir?

Mr. President: Honourable Members must make up their minds before I put the question a second time. The division must now proceed.

The Assembly then divided as follows:

AYES—23.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Akram Hussain, Prince A. M. M.
Ayyar, Mr. T. V. Seshagiri.
Basu, Mr. J. N.
Bhargava, Pandit J. I.
Chaudhuri, Mr. J.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.

Kamat, Mr. B. S.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Shahab-ud-Din, Chaudhri.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.

NOES—36.

Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Innes, the Honourable Mr. C. A.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Samarth, Mr. N. M.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Rao Bahadur T. Rangachariar: We are not concerned now with the police, we are concerned with Magistrates in my amendment.

My amendment reads as follows:

"In clause 54 (ii) after the word 'oath' insert the words 'and, may, if he thinks fit, allow the person complained against to attend his inquiry'."

Now Honourable Members will notice that clause 54 (2A) provides that "Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath". I propose that he may also, if he thinks fit, allow the person complained against to attend that inquiry.

[Rao Bahadur T. Rangachariar.]

Sir, I know there is a practice in the Presidency Magistrate's Courts in Madras—I don't know how far it prevails elsewhere, that when a Magistrate does not issue process for compelling the appearance of the accused when he wants to inquire into the truth of the case beforehand, the Presidency Magistrate always allows the accused person to be present in the inquiry which he makes under section 202. After all, it is the Magistrate who is examining and he is examining the persons on oath. I give it only as a discretionary power to the Magistrate, I don't say it should be done in all cases. If the accused asks for it, and if the Magistrate has no objection, he may allow him to be present. The object of his presence is this, because at this stage you are committing persons to certain statements on oath, and it is always the case that when a person against whom you give evidence is present, witnesses hesitate to speak lies, but when the person against whom you give evidence is not present, witnesses are prepared to tell any amount of lies, so that you will be safeguarding the interests of the persons against whom you will be giving evidence by allowing him to be present. If the Government do not agree to this, we are sure to lose the amendment, but if the Government accept it, I will be thankful to them.

Mr. H. Tonkinson: Sir, I think it is only necessary in opposition to this amendment to read the sub-section as it will stand if the amendment is made. The sub-section will run as follows:

"Any Magistrate inquiring into a case under this section may, if he thinks fit, take the evidence of witnesses and may, if he thinks fit, allow the person complained against to attend his inquiry."

What, Sir, is the use of these words that my Honourable friend proposes to add to the sub-section? It is no use for his purpose at all. He himself has informed us that in Madras at present it is the practice for the person complained against to appear at the inquiry. As he says himself, Sir, it only gives a permissive power. Why, then, put it in? There is nothing whatever in the Code to prevent a Magistrate doing it without any words of this kind being added to the sub-section.

Mr. W. M. Hussanally: Sir, I rise to support the amendment. I have got magisterial experience and I know several Magistrates are in the habit of allowing accused persons to appear, and notices are issued to the accused if they wish to appear. But in some cases I know Magistrates have actually refused to allow the accused to take part in the proceedings even if they appeared in the courts of their own accord, and that, I think, is not right.

Mr. President: I cannot regard Honourable Member's argument as relevant. The amendment gives the discretion to the Magistrate.

Mr. W. M. Hussanally: Yes, Sir, if the discretionary power is given to the Magistrate, it will follow that as a rule they will have to allow accused to appear and that will safeguard their interests. I don't think that anything is lost by allowing the accused to appear when the witnesses are being examined in a preliminary inquiry.

The motion was negatived.

Clause 54 was added to the Bill.

Mr. K. B. L. Agnihotri Sir, I beg to move:

"To clause 55, add the following:

"And to the same section the following proviso shall be added, namely: 'provided that when the investigation or inquiry was made by police under section 202 the Magistrate shall before dismissing the complaint give an opportunity to the complainant to prove the complaint.'"

Sir, I need not say that the clause which I wish to insert becomes much more important owing to the defeat of the amendment of Mr. Kabeer-ud-Din Ahmed. In its acceptance we will have one safeguard that in case a complaint against a police officer has been adversely reported on by another police officer, the complainant shall have an opportunity of adducing the evidence before the Magistrate and the Magistrate could then dismiss it if he found that there was no case against the police officer or he could continue if he found that there was a case against him. Apart from this, Sir, it often happens that, in cognizable cases where the police officer does not take cognizance of the offence, the complainant runs to the Magistrate and files a complaint against the accused and if in such cases the complaint is sent back to the police for inquiry, it will happen as it generally happens—that the police, in order to keep up their own opinion will try to substantiate their own previous report submitted to their officer for declining to interfere in that case, and will submit to the Court a report similar to the former. And, Sir, this will be avoided if this clause be inserted. Further as I pointed out before, that before the police officer the statement may not be given on oath or the complainant may not like to appear before the particular police officer or the witnesses may not state the truth, in which case it will be a very hard case for the complainant if his complaint were to be dismissed on the adverse report of the police officer. Therefore, I submit, Sir, that in such cases the complainant may be given an opportunity to prove or substantiate his case if he so likes. It might be argued, Sir, from the Government Benches that the very object for which this section has been inserted, will be defeated by allowing insertion of this clause. My reply to that will be, Sir, that the object was to do justice in all cases. And, if in certain cases the complainant finds that he has a grievance against the police officer, that his case was not properly inquired into by the police officer, why should he not be permitted to put in and adduce his evidence. If the complaint has been sent to a Magistrate for inquiry it would be reasonable not to allow and I also do not provide that the complainant should be given such opportunity. Because the subordinate Magistrate who, on being required by another Magistrate, inquires into such cases will examine the witnesses on oath and will have nothing to do with the cognizable or uncognizable nature of the case. Therefore, I submit that my amendment will be more desirable especially after the defeat of the amendment moved by Mr. Kabeer-ud-Din Ahmed.

Sir Henry Moncrieff Smith: Sir, there are, I think, two simple answers to my Honourable friend's amendment. The first is this. The Magistrate has decided that he will have an inquiry made into the case. It means that he has doubts in his mind as to whether he ought really to proceed, because if he has no doubt in his mind, under section 204 he issues a summons at once for the attendance of the accused. He sends the case to be investigated. In this particular case we are dealing with, he has it investigated by the police. It is quite possible that in a case where the Magistrate already has doubts and sends the case to the police, the police will confirm those doubts and the Magistrate then proceeds to dismiss the complaint. Now, if we are going to lay down in our law that in every case where a Magistrate dismisses a complaint after reading the police report the complainant is to be allowed to come up and say: "we ought to have another inquiry by the Magistrate," what will be the result? The Magistrate will not send cases to be investigated by the police at all. He will say, "I am wasting time. I expect that the police report in this case will be hostile to the complainant. Therefore, why should I waste time by sending

[Sir Henry Moncrieff Smith.]

to the police when I shall have to do it over again myself? I will do it myself now." The other answer, Sir, is simply this. Honourable Members have, I think, in the debates on sections 202 and 203 overlooked the fact that the dismissal of a complaint is not necessarily the end of the matter. They have probably overlooked section 437 of the Code in which a High Court or the Sessions Judge can direct a further inquiry by the District Magistrate into the dismissal of a complaint under section 202. I think that in itself is a safeguard which is an answer to my friend's amendment.

Dr. Nand Lal: Sir, no doubt the amendment does not seem to be very happily worded, because it is of a general character. But there may be two cases in regard to which this amendment may deserve sympathy. Those two cases are as follows:—Firstly, suppose a police officer, say a constable, has assaulted a private individual and the latter has lodged a complaint. That complaint has been forwarded to the police department. The officer who may investigate into the truth of that complaint may be an honest man. He may hold an inquiry in the right method. But yet there will be room for criticism that this complaint was against a constable or a police officer, that it has been forwarded to the Police Department, and that therefore justice has not been done to him. In order to meet that criticism it seems to me desirable that this amendment may be countenanced. The other case is this. Supposing there is a cognizable case, the complainant, who may be taken as an informant, goes to the police thana. He makes a report purporting to say that he has been robbed of his property or that a theft has been committed in his house or that his house was broken into. All these offences are cognizable offences. The police officer in charge of the thana or any other police officer competent to record that report does not hear him. He says 'Go to the Court.' The report is not recorded and he is forced to lodge his complaint. That very complaint has been forwarded to the police officer, perhaps the same officer who was in charge of the same thana where he went and he attempted to make a report and his attempt was not given a very favourable response. In that case that police officer, barring a few noble exceptions, will be the last person to hold that the complaint of the complainant is correct. If he arrives at that conclusion so far as the report goes then it will go against him to a certain extent. Therefore, in order to meet such sort of cases also, it seems very desirable that the Government Benches may very kindly give favourable consideration to this amendment, though it is of a very general character. On these two grounds I very seriously support this amendment with reference to those cases, which I have enumerated above before the House.

Chaudhri Shahab-ud-Din: Though the amendment proposed by Mr. Kabeer-ud-Din has been lost, yet I fail to see any force in the amendment proposed by my Honourable friend Mr. Agnihotri. There is absolutely no force in his amendment. The words of section 203, as amended, do not make it obligatory for a Magistrate to dismiss a complaint after the receipt of the report but it is discretionary with him to do so. If after considering the statement made by the complainant and the report made by the inquiring police officer, the Magistrate thinks that in his opinion there is a good case for further investigation or inquiry, he is not precluded from ordering or holding it under the section. Therefore I oppose the amendment as unnecessary.

Mr. J. Ramayya Pantulu: The amendment as worded now is no doubt untenable but, I would, with the permission of the Mover of the amendment, make a slight alteration at the end of it: "give an opportunity to the complainant to show cause why the order of dismissal should not be made." The effect of this amendment will be this. If a complaint is made to the magistrate and forwarded to the police for inquiry and the police make a report to the magistrate, the magistrate dismisses it without the party knowing anything as to what was done by the police, that is, behind his back. What I suggest is that before passing an order, he should give notice to the party saying that the police have reported that the complaint has not been proved and asking the party to show cause why the complaint should not be dismissed. I think that is a salutary provision. The party will have knowledge of what has been done in the case. It may be that he will be able to convince the magistrate that the police inquiry has been perfunctory and there are reasons why the magistrate should try the case. I do not think he should be given an opportunity of proving the complaint. That would mean trying the case, but he should be given an opportunity to show that the police investigation has been perfunctory and that there are grounds why the magistrate should not act upon the police report. That would, I think, be the effect of my amendment.

Mr. President: Further amendment moved to the original amendment:

"Omit the words 'to the complainant' at the end and insert the words 'an opportunity to the complainant to show cause why the order of dismissal should not be made.'"

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the original amendment be made. The motion was negatived.

Clause 55 was added to the Bill.

Clause 56 was added to the Bill.

Mr. President: Clause 57.

Mr. H. Tonkinson: I rise to a point of order, Sir. In connection with this amendment No. 184 and the four amendments following,* my Honourable friend proposes an entire revolution of the procedure for inquiries before

* 184. In the beginning of clause 57 before the words 'In sub-section (2)', insert the following:

"To sub-section (1) of section 210 the following shall be added at the end, namely:

'and shall, at the same time, make an order committing the accused for trial by the High Court, or the Court of Session (as the case may be) and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment'."

185. After clause 57 a new clause be inserted to omit sections 212 and 213 of the Code.

186. In clause 57-A after 'Code' insert the following:
"the figures '210' shall be substituted for the figures '213' and."

187. After clause 57-A a new clause be inserted to provide that in section 216 of the Code the words 'and has been committed for trial' and also the words 'as have not appeared before himself' be omitted.

188. (a) To clause 58, sub-clause (1), add the following:
"and the words 'and examine' shall be omitted."

(b) For sub-clause (2) of clause 58 substitute the following:
"(2) Sub-section (2) of section 219 shall be omitted."

[Mr. H. Tonkinson.]

commitment. In order to bring that procedure into force, Sir, he proposes the deletion of two sections which are not touched by the Bill. The Bill, Sir, only touches very minor points in this Chapter, and I would submit, Sir, that these amendments are outside the scope of the Bill.

Mr. President: I ask the Honourable Member whether what Mr. Tonkinson has said in substance is actually his intention.

Mr. J. Ramayya Pantulu: Yes.

Mr. President: Then I must uphold the objection raised by Mr. Tonkinson.

Mr. J. Ramayya Pantulu: I think, Sir, I am right in proposing this amendment, because the Bill itself deals in clause 57 with section 210, and I have got a right, I think, to propose an amendment to section 210—and the other four amendments are consequential on the amendment which I propose in section 210. Section 210 is amended by the Bill, I think, therefore, Sir, I have got a right to propose further amendments in section 210.

Mr. President: The amendment which the Honourable Member proposes to section 210 seems to me to be entirely outside the scope of the section to which he refers. But in any case the Honourable Member has admitted that his purpose is as defined by Mr. Tonkinson, and I am afraid I must uphold the objection put to me by Mr. Tonkinson.

Clause 57 was added to the Bill.

Clause 57A was added to the Bill.

Clause 58 was added to the Bill.

Mr. President: Clause 59. Dr. Gour.

Dr. H. S. Gour: Sir, my amendment is intended to direct that in a charge the particulars of the charge should be set out. Honourable Members will see that clause (1) of section 221 of the Code of Criminal Procedure as at present enacted requires that every charge under this Code shall state the offence with which the accused is charged. Now there are a very large number of sections of the Indian Penal Code in which the general offence of rioting, unlawful assembly or hurt, grievous hurt and the rest are specifically designated as such offences. But there are numerous sub-clauses under those sections under which, as in the case of unlawful assembly and rioting the nature and object of the unlawful assembly and the nature and object of the riots may be different. In several reported cases of the High Courts,—I will only instance one, 33 Calcutta page 295—it was pointed out that in all cases of rioting and unlawful assembly particulars must be given in the charge of the nature and object of the members of the unlawful assembly or of the riot; and without such charge how is the accused to defend himself. In that case what happened was that the charge was framed that five or more persons have committed the offence of rioting. Now, what was the object of that unlawful assembly which committed the rioting? If you refer to section 141 and the following sections of the Penal Code you will find that a member may be a member of an unlawful assembly for various reasons

and those reasons are as divergent as different sections of the Penal Code. Consequently, it happens in several cases which have been reported—I have only given one but I could give many more—it is found that the accused is tried upon one set of facts; he is charged generally for rioting or for being a member of an unlawful assembly. Subsequently there is a fresh development and he is convicted upon a very different set of facts to which he never adverted and upon which he never defended himself. The case goes in appeal and one of his grounds is that the whole case of the prosecution was based upon a certain set of facts upon which he never defended himself. He says, I now find that the prosecution have sprung a surprise upon me; in the charge nothing was said as to what was the unlawful purpose for which this assembly met and what was the unlawful object of this gang who committed the offence of rioting. It happens that the appellate courts set aside the conviction on the ground that the offence tried was different to the offence for which the accused has been convicted. That is unfair to the prosecution. They assumed all along that everybody knew what the accused was being tried for. It is unfair to the accused because he was under an apprehension that the prosecution had led evidence to prove a certain set of facts and that those were the facts upon which he has to defend himself. I therefore submit that it is in the interests of justice, in the interests of the prosecution and in the interests of the accused that the particulars of the charge should be set out in the charge sheet. It might be said on behalf of the Government that there is a provision in the existing law to set out the particulars of the charge and reference would conceivably be made to sections 222 and 223. I therefore refer to these sections. Section 222 says:

“The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing, (if any), in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.”

Now, this certainly does not meet the case. I will now read section 223. It runs as follows:

“When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for the purpose.”

Half a dozen people enforce a right of way. Half a dozen people on the other side also claim a right of way. There is a collision between these two opposing gangs and there is a fight. The object of one is the assertion of a right of way—a public right; the object of the opposing gang is defence of private property on the ground that the way is private and it is their exclusive property. All that section 222 enjoins is that the charge shall contain particulars as to the time, place and the persons committing the offence, and section 223 says that the charge shall contain the manner in which the alleged offence was committed. If these two sets of people used *lathis* the charge shall say that the rioting was committed by means of *lathis*. If they exchanged blows, the charge shall state that the rioting was committed by the exchange of blows. If there were any section which demanded that the particulars of the charge, the specific statement of facts which constitutes the offence should be shown in the charge, there would be no cases. The reported cases are far too voluminous for me to read before this House at this late hour. But I assure the House that if such a thing

[Dr. H. S. Gour.]

did exist in the existing law, there would not be so many cases as there are on the subject, and I, therefore, Sir, move the following amendment:

"In clause 59 before the words and figures 'In sub-section (7)' insert the following:

'In sub-section (1) of section 221 of the said Code for the word 'state' the words 'specify particulars of' shall be substituted and '."

I consider it to be an improvement on the existing law, and I hope it will be passed.

Sir Henry Moncrieff Smith: Sir, all that Dr. Gour has explained to the House is, I think, that Magistrates make mistakes and not that the Code is wrong. The provisions of the Code in sections 221, 222 and 223 are ample. I think there is no question about that at all. But, Magistrates following section 221 only frame incomplete charges. They do not regard the other sections and section 223 in particular which requires them to state such further particulars as may give reasonable notice to the accused of the offence with which he is charged. If my Honourable friend's amendment is carried, we shall have in section 221 a provision to the effect that every charge under this Code shall specify particulars of the offence with which the accused is charged, somewhat inconsistent with the next provision which lays down:

"If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only",

to which you have to add particulars as to the time and place, and the person, etc.

All the things that Dr. Gour would have put into the charge are already provided for in the Act by either section 222 or 223. All that the High Courts have to say is that the Magistrates framed charges wrongly, not that the law did not enable them to frame charges aright. I would suggest that the amendment be negatived.

The motion was negatived.

Clause 59 was added to the Bill.

Clause 60 was added to the Bill.

Clause 61 was added to the Bill.

Dr. H. S. Gour: Sir, I move the adjournment of the House. It is 6 o'clock and the remarks which I have to make on clause 62 will take some time.

Mr. President: It is not in the power of the Honourable Member to move the adjournment of the House. He may offer reasons why the House should adjourn. If the Honourable Member assures me that he is going to make a long speech, I will adjourn the House.

Dr. H. S. Gour: Yes, I intend to make a long speech.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 3rd February, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 3rd February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MEMBER SWORN:

Mr. Andrew Gourlay Clow, M.L.A. (Industries Department: Nominated Official).

RAILWAY CAPITAL EXPENDITURE.

Mr. O. D. M. Hindley: I lay on the table the information promised in reply to a question by Mr. P. L. Misra on the 17th January, 1923, regarding Railway Capital Expenditure.

As the Finance and Revenue accounts of the Government of India so far as Railways are concerned have been recast from 1920-21, references are given to the volume for that year. The details of the total capital expenditure to end of 1920-21 from different sources are given below:

	Rs. (Lakhs.)
Direct Government outlay	308,26
Capital contributed by Company's and Indian States	75,74
Grants from Famine Relief and Insurance	5,27
Grants from Imperial and Provincial Revenues	6,12
Liabilities involved in the purchase of Railways undischarged at end of 1920-21	124,90
Total	523,19

The Honourable Member's attention is invited to Account No. 74 (pages 280 and 281) of the Finance and Revenue Accounts of the Government of India for 1920-21.

The difference between the above and the figure of Rs. 558,32 appearing in Appendix 4 of Volume II of the Administration Report is largely due to the fact that while the figures in the Finance and Revenue Accounts represent the standing liability of Government on railway account, the figures in the Administration Report represent the capital cost of the Railways. Capital liability to the extent of Rs. 24,51 as shown in Column 12 of Account No. 74, on page 281 of the Finance and Revenue Accounts, has been redeemed through the operation of annuity and sinking funds.

QUESTIONS AND ANSWERS.

GRANT TO THE IMPERIAL INSTITUTE.

306. ***Mr. W. S. J. Willson:** 1. Is it a fact that the Government of India decided to discontinue the annual Indian grant to the Imperial Institute with effect from the end of the present financial year?

2. Is it a fact that at the time when the Government decided to discontinue this grant the British Government and the Governments of the Dominions and other overseas countries of the Empire had decided largely to enhance their grants to the Imperial Institute?

3. Did the question of severing the connection of the Government of India with the Imperial Institute arise on the report of the Indian Industrial Commission, and is it a fact that no representative of the Institute was invited to give evidence oral or written to this Commission?

4. Did the Government receive a statement prepared by the Committee for India of the Imperial Institute, controverting the conclusions in respect of the Institute arrived at in the Report of the Indian Industrial Commission?

5. Did the Government, after the receipt of this statement, call for a report from Sir William Meyer, the High Commissioner for India, as to the advisability of continuing to subscribe to the maintenance of the Imperial Institute?

6. Are the Government aware that Sir William Meyer framed his Report without communicating with the Committee for India of the Imperial Institute, or the Director of the Institute, and without giving the representatives of the Institute any opportunity of being heard?

7. Are the Government aware that neither Sir William Meyer's Report nor any statement of the grounds on which the Government decided to discontinue the grant has been communicated to the Imperial Institute?

8. Have the Government received from the Association of British Chambers of Commerce in England a Resolution passed unanimously by that body in July 1922 regretting the decision of the Government of India to discontinue the annual grant to the Imperial Institute, and expressing an earnest hope that in view of the valuable work which the Imperial Institute has done for India, with which the British Chambers of Commerce have in recent years been closely associated, the Government of India will reconsider its decision?

9. Has the Government of India's attention been called to a similar Resolution passed by a majority of the Associated Chambers of Commerce of India and Ceylon at their annual meeting held in Calcutta on the 8th and 9th January, 1923?

10. Will the Government be pleased to lay on the table all the papers connected with the discontinuance of the grant, including the despatch of the Government of India to the Secretary of State for India dated 29th November, 1918; the reply to this despatch made by the Committee for India of the Imperial Institute on 24th November, 1919, and also Sir William Meyer's Report?

11. Do the Government, having regard to the requests of the Chambers of Commerce of the United Kingdom and of India propose to reconsider the decision to discontinue the annual Indian grant to the Imperial

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Institute, in the light of the testimony that has been furnished as to the value of the work of the Institute to India?

Mr. J. Hullah: (1) Yes.

(2) Yes with the exception of Australia and South Africa which were unable to grant any subsidy.

(3) No representative of the Imperial Institute was invited to give evidence to the Industrial Commission, but it was not as a result of that Commission's report that the Government of India decided to sever the connection with the Institute. In fact they had come to that conclusion 3 or 4 years before the publication of the Industrial Commission's Report.

(4) Yes.

(5) Yes.

(6) Yes.

(7) It is a fact that Sir William Meyer's report has not been communicated to the Imperial Institute. It is not a fact that no statement of the grounds of the Government of India's decision has been communicated to the Institute. The grounds of this decision were fully set forth in this Government's despatch to the Secretary of State for India, No. 9, dated the 29th November 1918, a copy of which has been seen by the Committee for India of the Imperial Institute.

(8) The Government of India have received the Association's Resolution, not from the Association itself, but from the President of the Associated Chamber of Commerce of India and Ceylon, and also from the President of the Indian Merchants' Chamber and Bureau, Bombay.

(9) Yes.

(10) The Government of India are not at present prepared to lay on the table the papers mentioned. They will however consider further whether these papers should be made public.

(11) The Government of India see no good reason to reconsider their decision.

INDIAN ARMY EXPENDITURE ON STORES.

307. ***Munshi Iswar Saran:** (a) Is it a fact that the total value of stores such as provisions, forage, medical, ordnance, clothing, mechanical transport, animals, petrol, lubricants and miscellaneous stores required and consumed by the Indian Army during 1921-22 was about 10 crores and a half? If this figure be wrong, will Government give the correct figure?

(b) Is it a fact that the cost of maintenance of the Departments for storing and distributing these stores during 1921-22 was about 5 crores and 30 lacs i.e., about 50 per cent. of the value of the stores? If this figure be wrong, will Government give the correct figure?

Mr. E. Burdon: (a) No. On the assumption that by the "Indian Army" the Honourable Member means the Army in India, the correct figure is Rs. 18 crores.

(b) No. The correct figure is Rs. 5 crores.

INDIAN ARMY STORES MANUFACTURING DEPÔTS.

308. ***Munshi Iswar Saran:** (a) Is it a fact that the cost of the maintenance of manufacturing depôts, inspection and testing of stores during

1921-22, was over 3 crores of rupees? If this figure be wrong will Government give the correct figure?

(b) Is it a fact that the value of the output of the Military Manufacturing Departments during 1921-22, was under 3 crores of rupees? If this figure be wrong, will Government give the correct figure?

Mr. E. Burdon: (a) No. Rs. 38 lakhs, approximately.

(b) Yes. Rupees two crores 31 lakhs. This figure represents the value of articles turned out for the Army only.

The above answers are based on the assumption that the Honourable Member is referring to Ordnance and Clothing Factories only.

CONDEMNED MILITARY STORES.

309. ***Munshi Iswar Saran:** Will Government state the total value of stores and equipment which were condemned or lost and the cost of which was written off and borne by the State during 1921-22?

Mr. E. Burdon: The total value of medical stores written off during the period in question is Rs. 1,17,339.

With regard to Supply and Transport Stores and equipment, the total value of stores written off by the Government of India during the year 1921 was Rs. 18,97,936. This figure does not include losses written off by General Officer Commanding, etc., under their financial powers, information regarding which is not at present available.

The value of marine stores (including coal) written off during 1921-22 was Rs. 67,179.

Particulars of ordnance equipment written off are being collected and will be communicated to the Honourable Member as soon as possible.

BRITISH ELEMENT IN INDIAN ARMY.

310. ***Munshi Iswar Saran:** Will Government state if the direct and indirect cost of the maintenance of the British element in the Army in India of about 70,000 British officers and other ranks is over 42 crores while the cost of the maintenance of the Indian element of about 2½ lacs is about 23 crores? If these figures are wrong, will Government give the correct figures?

Mr. E. Burdon: The direct cost of the British Army in India is shown separately in the Budget, to which I would refer the Honourable Member. In that part of the Budget which relates to the Indian Army will be found figures of the direct cost of British officers and British other ranks; the figures for British officers include the cost of Indian officers holding King's Commissions. In order to ascertain separately the total cost of the British element and the Indian element in the Indian Army, it would be necessary to undertake a laborious compilation which could not be justified, and actually it would be impracticable to apportion correctly under these two heads miscellaneous charges such as contingencies, travelling allowances, staff charges and so on.

INDIAN MEDICAL OFFICERS IN REGIMENTS.

311. ***Munshi Iswar Saran:** Will Government state the number of Indian Medical Service officers required for a regiment of 1,000 strong before and after the War?

Mr. E. Burdon: Before the war one Indian Medical Service officer was attached to each Indian regiment. Since the war the station hospital system has been introduced for Indian troops and medical officers are no longer attached to regiments. The strength of an Indian regiment both before the war and now is less than 1,000 men.

INDIAN ARMY SICK BEDS.

312. ***Munshi Iswar Saran:** Is it a fact that sick bed accommodation at 5 to 12 per cent. of the strength making an average of over 7 per cent. for the whole Indian Army is maintained as against 5 per cent. of the pre-war days?

Mr. E. Burdon: No. Sick bed accommodation at 5 per cent. of the strength is maintained everywhere, except at Lahore, where 7 per cent. of the strength is maintained.

BED ACCOMMODATION IN MILITARY HOSPITALS.

313. ***Munshi Iswar Saran:** Is it a fact that an average of about 50 per cent. bed accommodation in the hospitals in the Indian Army remains unoccupied? If this percentage be wrong, will Government give the correct percentage?

Mr. E. Burdon: 50 per cent. is an approximate average for the whole year, but during certain periods of the year, when the rate of sickness is high, the whole of the bed accommodation is occasionally required.

DUTIES OF I. M. S. OFFICERS

314. ***Munshi Iswar Saran:** 1. Will Government state the average number of sick in the Indian Army which an Indian Medical Service officer does actually look after?

2. (a) Is it a fact that in a number of military hospitals—British and Indian—there are not more than 4 patients of minor ailments in charge of a medical officer?

(b) Are such medical officers given some other work by the Military Department and if so, what is the nature of the work so given?

Mr. E. Burdon: 1. The number varies widely according to the circumstances of different stations and different times of the year. It is impracticable to calculate the average with any degree of accuracy.

2. (a) No.

2. (b) Medical officers have much work other than the actual care of the sick in hospital, which is only a part of their duties. The work of a medical officer comprises the general medical supervision of troops, pathological investigation, and hygienic measures necessary to the maintenance of the health and the physical development of troops.

RETIRED INDIAN MEDICAL SERVICE OFFICERS RE-EMPLOYED.

315. ***Munshi Iswar Saran:** (a) Will Government state the number of (i) European and (ii) Indian retired Indian Medical Service officers who are still re-employed?

(b) Are such officers in receipt of their full pension as well as the pay of the rank or the post which they hold?

(c) Will Government state the special reasons for the retention of such officers?

Mr. E. Burdon: (a) to (c) No retired officers of the Indian Medical Service, European or Indian, are employed by the Government of India. It is understood that a retired European officer of the Indian Medical Service is employed by the Government of Bihar and Orissa in an appointment which is outside the cadre of Indian Medical Service appointments. The terms of his engagement are not known to the Government of India.

CHINA MURDER CASE.

316. ***Lala Girdharilal Agarwala:** What are the correct facts of the case known in Delhi as the China murder case and what was the result?

BANIA MURDER CASE.

317. ***Lala Girdharilal Agarwala:** What are the correct facts of the case known in Delhi as Bania murder case or uncle-nephew murder case and what was the result?

The Honourable Sir Malcolm Hailey: In reply to Lala Girdharilal Agarwala, I propose to answer questions 316 and 317 together. Both the cases referred to in the question were very fully reported in the Press at the time. The brief facts and the result of the trials are as follows:

CHINAMAN MURDER CASE.

In this case a Chinaman, silk seller, was decoyed to the Public Works Department store godown at Chandrawal by certain tonga drivers and there robbed and murdered with a kirpan. The clerk in charge of the stores was granted a pardon and turned approver. One Inayatullah and another man were convicted and sentenced to death while a third was acquitted by the Sessions Judge, Delhi. The High Court of Judicature at Lahore accepted the appeals and acquitted both the appellants on the ground that there was not sufficient corroboration of the approver's statement.

BANIA MURDER CASE.

In June, 1922, a Bania youth, named Ram Krishan, who was a cloth broker, disappeared. In July his body was unearthed by the Police in circumstances which led to the trial of his uncle, his cousin, and four other men (of whom two became approvers) on a charge of murder. The Sessions Judge, Delhi, convicted one of the four, and acquitted the remaining accused. The appeal is still pending in the High Court.

UNSTARRED QUESTIONS AND ANSWERS.

CANTONMENT COMMITTEES.

134. **Lala Girdharilal Agarwala:** What is the proportionate representation of owners of property (or their agents) on the personnel of Cantonment Committees framed under the Cantonment Act?

Mr. E. Burdon: The constitution of Cantonment Committees is determined by sections 3 and 4 of the Cantonment Code, 1912. No special provision is made for the representation of owners of property or their agents on those Committees.

CHAKRATA CANTONMENT COMMITTEE.

135. **Lala Girdharilal Agarwala:** What is the total number of members of the Chakrata Cantonment Committee and how many of them are owners of property within the said Cantonment?

Mr. E. Burdon: The total number is six. None of them owns property within the cantonment.

RENT IN CHAKRATA.

136. **Lala Girdharilal Agarwala:** (a) Is it a fact that the cost of labour and materials of building has increased in Chakrata Cantonment?

(b) Has there been any corresponding increase of rents of houses?

(c) Have rents decreased in any case?

Mr. E. Burdon: (a) Yes

(b) No; not as a general rule.

(c) No.

INDIANISATION OF THE ARMY.

137. **Rai Sahib Lakshmi Narayan Lal:** (a) Have the Government got any programme of Indianisation of the army?

(b) If so, will the Government be pleased to give a definite idea as to the period in which that programme is to be fulfilled?

(c) If not, do the Government propose to consider the desirability of settling a programme for the Indianisation of the army at their earliest convenience?

Mr. E. Burdon: (a) to (c) The attention of the Honourable Member is invited to the speech made by His Excellency the Commander-in-Chief on the 24th January, in this Assembly on the Resolution moved by Mr. Mohammad Yamin Khan, regarding the grant of King's Commissions to Indians.

TRAINING OF INDIAN OFFICERS.

138. **Rai Sahib Lakshmi Narayan Lal:** (a) Have the Government got any scheme for a proper machinery for the training of the Indian Officers for the army in this country?

(b) If so, what is the estimate for the scheme and when is the scheme likely to be given effect to?

(c) If not, do the Government propose to consider the desirability of having such a scheme and estimate prepared at their earliest convenience?

Mr. E. Burdon: (a) to (c) The Honourable Member's question is answered almost entirely by the speech which His Excellency the Commander-in-Chief made in this Assembly on the 24th January, on the Resolution moved by Mr. Mohammad Yamin Khan, in regard to the Indianisation of the Indian Army. The total cost of the measures which have been adopted and are in contemplation for the training of Indians for a military career has not yet been fully estimated.

BRITISH ELEMENT IN IMPERIAL SERVICES.

139. **Rai Sahib Lakshmi Narayan Lal:** (a) Will the Government be pleased to state what is the minimum and maximum of the British element which they require in the Imperial services of the country?

(b) Have the Government got the minimum fixed as yet?

(c) If not, do the Government propose to consider the desirability of fixing such a minimum at its earliest convenience?

The Honourable Sir Malcolm Hailey: The issues raised by the Honourable Member will doubtless be considered by the Royal Commission, the decision to appoint which I announced in the House on the 25th January.

CURTAILMENTS IN BUDGET GRANTS.

140. **Rai Sahib Lakshmi Narayan Lal:** (a) Will the Government be pleased to lay on the table a full statement of the amounts curtailed under each head on account of the curtailment of the amount of 9 crores of rupees by the Assembly in the last Budget?

(b) Could the Government keep their expenditure within the limits fixed by the said curtailment?

(c) If not, will the Government be pleased to lay on the table a full statement of the amounts spent in excess of the said limits under each head?

(d) Will the Government be pleased to state as to how the Government have been able to manage for the amount spent in excess of the said limits?

(e) If the said excess, if any, has been managed by loans, will the Government be pleased to lay on the table a full statement regarding the loans giving the dates, the amounts, the rates of interest and the creditors of the said loans?

The Honourable Sir Basil Blackett: (a) The aggregate reduction made by the Assembly in the demands for grants presented in March last amounted to Rs. 95,72,000 and not 9 crores.

(b), (c) and (d) As the Honourable Member is aware, the Assembly voted in September last, a supplementary grant of Rs. 13,09,000 to which extent it was then estimated that the aggregate grant voted in March, 1922, would prove insufficient. It was expected, however, that the bulk of this excess would be set off by savings under non-voted expenditure.

(e) The revenue deficit in the current year has been met out of the borrowings of Government, but no portion of the latter has been specifically earmarked for this purpose. More recent figures of probable expenditure and information on the other points referred to by the Honourable Member will be available to the House when the Budget is presented next month.

SECRET SERVICE GRANTS.

The Honourable Sir Malcolm Hailey (Home Member): I ask your leave to make a statement to the House in regard to an answer I gave a few days ago to a supplementary question in regard to certain Secret Service grants. At the moment I forgot that there are two sources of expenditure namely, the Director of the Central Bureau of Information, and the Director of the Intelligence Bureau.

I stated that the Secret Service funds under discussion were part of the votable expenditure that was audited. I was thinking at the time of the regular expenditure of the Director of the Central Bureau of Information; this is voted and is audited. The Secret Service funds, which are controlled by the Director of the Intelligence Bureau, are not audited and are not part of votable expenditure. I am sorry that in answering the question, I did not keep these two cases separate in my mind; and I have thought it proper to give the House the correct information on the subject at the earliest opportunity.

HIGH COMMISSIONER IN ENGLAND.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, before asking the question of which I have given private notice, may I with your permission, Sir, convey to the Government of India through the Honourable the Commerce Member our thanks for having appointed an Indian to the high office of High Commissioner in England, and for having made an excellent choice. Sir, the question of which I have given notice is this: What is to be the pay of the new High Commissioner in England?

The Honourable Mr. C. A. Innes (Commerce and Industries Member): With your permission, Sir, I will thank Mr. Seshagiri Ayyar for the remarks he has made. I need only say that we are quite satisfied that we could not have made a better selection for this high office.

As regards Mr. Seshagiri Ayyar's question, the answer is that the salary of the post has been fixed at £3,000 per annum.

Mr. T. V. Seshagiri Ayyar: What was the pay of the late High Commissioner, and had he a pension in addition to the pay?

The Honourable Mr. C. A. Innes: His pay, Sir, was £3,000 per annum and he did not draw his pension in addition.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, as my Honourable friend, Mr. Seshagiri Ayyar, has made a reference to the appointment of an Indian as High Commissioner, may I, on behalf of the National Party, also express our gratitude to the Government for the appointment of an eminent Indian to the post of High Commissioner. And I may also add that in the opinion of the National Party there is hardly an Indian more fitted for the post in the whole of India than Mr. Dalal.

THE WORKMEN'S COMPENSATION BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I beg to move:

"That the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, be taken into consideration."

Perhaps, Sir, I may remind the House of certain points which I brought to their notice when I introduced this Bill in September last. The first point I desire to make—or rather, to re-affirm, is that this is no piece of hasty ill-considered legislation. The Government of India indeed have had this legislation under continuous consideration for the last 3 years. In 1921 we put to Local Governments and to the public certain provisional conclusions. We received a very large number of replies to that circular and those replies disclosed the fact that all over India there was complete acceptance of the principle of legislation of this kind and almost complete unanimity of opinion that the time had come to introduce this legislation. It is easy enough, Sir, to agree to the principle of legislation of this kind. It is only when we get to the details that the real difficulties begin, and that is why in July last we assembled a preliminary Committee. I think I may say that it was a strong Committee, a Committee upon which employers and workmen were adequately represented. We placed before the Legislature a Bill based upon the recommendations of that Committee and that Bill has again been circulated to all Local Governments and to the commercial public. I think I may claim again that the Bill has had on the whole a very favourable reception, but I do not wish to be misunderstood. I do not claim that the Bill is in any way a perfect measure. On the contrary, I realise that many clauses of the Bill are open to criticism. But what I do claim is that the Bill is an honest carefully thought-out attempt to adopt to Indian conditions a very difficult piece of legislation; and I think also that I can claim that the Bill is an earnest of the Government of India's desire to undertake progressive legislation of this kind when we are satisfied that it is right to do so. There are one or two points now that I will ask the House to remember.

In the first place, the Bill in many of its clauses represents a compromise between interests which, in a matter of this kind, must conflict. I refer to the interests of the employer, on the one hand, and the workpeople on the other hand. Our policy in that matter has been to endeavour to hold the balance between these two conflicting interests to the very best of our ability; and I think I may claim that as a result of that policy we have been able to carry employers with us in a very remarkable way. In fact, nothing has surprised me more, and nothing has pleased me more than the extraordinarily generous reception that this piece of legislation has met from employers all over India. And I will make the further point that in social legislation of this kind it is a matter of the greatest importance to carry your employers with you instead of trying to impose legislation upon unwilling employers.

The next point I desire to emphasise is the serious responsibility that the Government and the Legislature incur in this legislation. The experience of workmen's compensation legislation in all countries has been that it has led to a very great amount of litigation. We have always to keep that danger before us—we have had it before us throughout in drafting the Bill. We have so attempted to draw the Bill that an employer and a workman, merely on reading the Bill, may know where they stand.

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The employer will know his obligations; the workman will know his rights. It is that consideration which accounts for many of the features of the Bill which have no doubt attracted notice. I refer to such facts as that we have relied upon the principle of relationship rather than dependence and the proof of dependence. It is also seen in the machinery we have provided for the settlement of disputes. The policy of the Bill is that all cases arising out of the Bill must first be settled if possible by agreement between the parties. It is only if the parties themselves cannot arrive at an agreement that we provide machinery for the settlement of those disputes. We have tried to make that machinery as simple and as inexpensive as possible. There is yet a third point which I wish to impress upon the House. I think we have got to be careful in legislation of this kind that we do not impose too heavy a burden upon industry. We have got to remember that the provisions of this Bill will apply not merely to large employers of labour but also to small industries; and I think that at the present time when industries have not advanced very far in India and when we hope that they will now begin to advance we ought to refrain from imposing upon these industries a burden which may have the effect of stunting and retarding their growth and development. I move, Sir, that the Bill be taken into consideration.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I feel my first duty is to congratulate the Government of India and my friend, the Honourable Mr. Innes upon producing a measure of such a beneficent character. The Honourable Mr. Innes told the House that this is not a hasty piece of legislation; that is perfectly correct. The Government of India have taken a great deal of pains over this measure for over two years. The close investigation which they have applied to this subject, which is no doubt of a very technical character, has been thorough and comprehensive; I also believe they have consulted public opinion both from Local Governments and from the industries concerned to a degree which is noteworthy in this piece of legislation. Then again, Sir, as the Honourable Mr. Innes told us, we are glad to hear that this measure is an earnest of similar beneficent legislation for the welfare of the labouring classes. Indeed with the advent of machinery into India the chances of accidents to workmen grew a good deal, and it is but natural that in the wake of machinery there should come legislation which safeguards the interests of workmen from such accidents. Sir, I think I must make it clear to the House that this Bill affects not only employers in private industries, but, I believe, it affects even the State as employers in certain concerns, for instance, in Telegraphs, and Railways, Port Trusts and similar concerns; also it affects municipalities. It is, therefore, a sign of good spirit and a sense of fairness on the part of Government that along with other employers they are also coming forward to share their liability and the responsibility in the application of this Bill. The Honourable Mr. Innes told the House that the employers consulted by Government have been able to go a great length in meeting the interests of workmen. I am very glad to hear it. It only proves that in matters which concern the real welfare of the working classes, the employers, whether private or State, take up a very fair attitude in these matters. Then again it will be seen that those industries have been roped in which are organised and in which the hazard to the workmen is particularly peculiar and of a dangerous character; further, I believe the Bill takes another precaution, namely, to see that points in dispute between the workmen and the employer will be as few as possible. Indeed every section, every sub-clause has been

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[Mr. B. S. Kamat.]

thoroughly threshed out and so far as the workman is concerned every facility is thrown in his way, so that the procedure will not be complicated for the workman to get his right and obtain the relief for which this Bill is intended.

Although, Sir, on the whole the general provisions of the Bill are good, there are some points which, I recognise, may be found wanting in this from the point of view of certain people. I do think one or two points which really speaking should have been included in the scope of this Bill have not been included. I may instance one or two of such points. One was the case of Indian seamen. Under the present Bill probably Indian lascars will not be able to get a relief easily if an accident happens to them on the high seas or if the lascars happen to be employed by shipping companies under the British Shipping Registration Acts. That is a difficulty which we all felt in the Joint Committee. The Indian seaman, if he is to get relief not under the Indian Workmen's Compensation Act, but under the English Act, will find it extremely difficult to lodge his claim in British Courts and to obtain the relief, say, in London. I believe that in this matter this present Bill does not go as far as it should go. It is extremely difficult for an Indian lascar, for instance, to seek relief and get compensation by putting in a claim in a court in London; the question of jurisdiction and the alternatives for relief which he has under the Indian Act and the English Act were points so technical, I believe, that those who framed this Bill had to give a wide berth to them and to leave the difficulty unsolved. If some of my lawyer friends can suggest a solution for this difficulty I think the House would be grateful.

There is one more point to which I wish to refer, and that is that along with the Workmen's Compensation Bill there will come to India I hope a new social order, a new era for the workmen; I daresay they will try to be more organised than they are now. It would be a very good thing indeed from the workmen's point of view if this new social era is opened up to him; along with this there will also come I am sure another feature, namely, Insurance Companies will have to frame schedules and a sort of system of insurance to cover the liability of employers. The point which I wish to bring to the notice of the Government in this connection is this: in all other countries where Workmen's Compensation Acts have been in force, I believe insurance in some form or another has been an invariable accompaniment. The question here will be when insurance companies frame their schedules whether Government will exercise some sort of supervision over their rates of premia. Speaking from the point of view of employers and those who will have to cover the risk, I do think the State will have to exercise some sort of supervision over the insurance companies' rates. After all the compensation which will be paid on behalf of the industry to the injured workman will fall on the industry and just as in other countries there is a sort of supervision over the insurance companies, I believe even here the State ought to exercise some sort of supervision. Indeed in other countries the methods of insurance are different from what they probably will be here. In America, for instance, there is a State fund for insurance. In Italy, Switzerland and other countries there is a compulsory sort of insurance; not so in England, I know. But there, there is definite supervision on the part of the State to see that the Insurance Companies do not charge extraordinary rates of premium for the industry. In fact, definite percentages have been laid down, so that out of the total premium received so much shall be for the management of

the Insurance Companies and no more, and the rest shall go towards the benefit of the insured. That sort of thing, I believe, will have to be done by the State even here.

There is one point, Sir, to which I wish to refer, namely, the machinery that has been set up for the carrying out of the provisions of this Bill. In order that there should be cheap and expeditious justice and settlement of claims, this Bill sets up a Commissioner for dealing with the Workmen's Compensation Act provisions. Now it is indeed a great convenience, that all disputes should be referred and all points should be settled by this Commissioner. So far as the expedition in the settlement of disputes is concerned, it is a great convenience. On the other hand, it must be recognised that a great deal will depend on the *personnel* of these Commissioners and the spirit in which they work the provisions of this Bill. Well, if they work the provisions in a good spirit and hold the balance even between the employers and the employes, I believe the justice which they will deal out will be very good. But, on the other hand, I do feel that the provisions of this Bill give the Commissioner a very large amount of power, and it depends upon him to work those provisions in a proper, just and equitable manner. However, we are making this as an experiment, namely, centreing of this power into the hands of the Commissioner alone. That will be an experiment which shall be tried in the first instance. Just as in England the workmen's compensation has gone through a process of evolution and it has been amended on various occasions, probably here also in the light of experience gained we shall have to amend our own provisions. But I bring it to the notice of Government that in appointing the Commissioners and leaving to them the sole duty of settling disputes between the employers and the employees they should see that, after all, the spirit in which the Commissioners work this Bill should be a spirit of absolute even-handed justice between the two conflicting interests. Otherwise, I must say that the powers which we have entrusted in the hands of these officers will have to be greatly curtailed in the light of the experience which we may gain. I do hope the House will give its warmest support to this Bill both in the interests of workmen as well as the industry. This is, I say again, a very beneficent measure, and I accord my warmest support to it, and once more thank the Government for having brought out a Bill of such a character for the first time in India.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, may I also, with your permission, congratulate the Honourable Mover of this Bill on the beneficent measure which he has placed before this Assembly. I do not wish to speak on those provisions of the Bill which will be discussed here in detail. I shall refer only to a few sections which have been omitted by the Joint Select Committee and upon which I shall have no opportunity hereafter to speak. The sections to which I refer are sections 3, 4 and 5 of the original Bill defining the liability of the employers in the case of certain accidents. Sir, I feel that these sections in the Bill ought not to have been omitted by the Joint Select Committee. In the first place, the Committee which was originally appointed by the Government and which my Honourable friend, Mr. Innes, said was a very strong Committee, had approved of those sections. Sir, I am also of opinion that the Committee which considered originally this Bill, excepting one of its members, was indeed a Committee of experts. I am therefore surprised very much that the Joint Committee should have omitted those sections altogether, and this omission, in my opinion, is a great defect.

[Mr. N. M. Joshi.]

Sir, I need not remind the Members of this House that the principle underlying the Workmen's Compensation Bill and the principle which underlies what is called the Employer's liability are quite different. In the case of workmen's compensation the principle is that when a man introduces certain industries which involve risks to others he should be held civilly liable for those risks. In the case of workmen's compensation, therefore, there is no question of the negligence or fault of either the employers or the employes. The workman receives compensation because it is in the interests of the industry that he should receive compensation and because the risks which cause the accidents are incidental to the industry. The principle of the employer's liability sections which were originally included was that where an employer was negligent under certain circumstances and had failed to make proper provision to safeguard safety of the workmen, he should be held civilly liable for damages. Sir, this principle of employer's liability has been accepted in England since the year 1880. It is now more than 40 years, therefore, that this legislation defining the employer's liability has been in existence in England. I am, therefore, surprised that the representatives of the Government of India on the Joint Committee should have yielded to the majority of the Joint Committee in this matter. This omission will be particularly felt by those employes who are somewhat educated and better paid. In the case of an ordinary workman, I do not think he would ever think of going to the Civil Court for damages, even though the negligence of the employer may be very clear, because action in a Civil Court is more costly and there are several other difficulties if he takes up that course. But in the case of better paid employes, who are also educated, if it is clearly shown that the employer has been negligent, those employes should have the right to go to the Civil Court. Sir, I therefore feel that the Bill in this respect is clearly defective, even the sections in the original Bill were not quite satisfactory. If I had my way, I should have extended the employer's liability to all workmen, but in the original Bill it was applicable only to those classes of workmen who are governed by the Workmen's Compensation Bill. But even though those sections were deficient, the Joint Committee thought it fit to omit them. With these remarks, Sir, I offer my congratulations to the Honourable Member on having introduced this measure.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, when the Bill which is now before this House was brought to the attention of those members of the Millowners' Association, including myself, to whom the matter had been referred, with one exception we declared that the Bill was a bad Bill. We considered that it had sacrificed principle for expediency and that the Legislature and its Committees had shown a complete lack of vision in their attempt to deal with this most important development in the industrial progress of this great country. We felt that, rather than that such an emasculated measure should take its place on the Statute Book, we would prefer the subject to be studied afresh to enable a Bill to be put forward which would more nearly approach the problem from a modern western standpoint. The exception to whom I have referred, Sir, was my predecessor in this House, Mr. Saklatvala. Mr. Saklatvala, suggested that, before the Committee gave a definite opinion, it might allow him to impart to me as his successor to this House the information on this subject which he had been able to gather through his work on the Select Committee. This he proceeded to do by sending round those weighty packets of files which Members

of this House are so intimate with. Sir, by dint of burning much midnight oil, I succeeded in acquiring some faint glimmerings of the difficulties of the subject and the attempts that the Select Committee had made to deal with it; with the result that, when we met again, I found it necessary to inform my Committee that my views had altered and, so far from this Bill being a bad Bill, hastily thrown together with no regard to the problem and its needs, I considered that this Bill though there was hardly a clause which could not be amended or debated on and justifiably so was still an extraordinarily carefully thought-out piece of work in its main lines and designed to act as a solid foundation on which future developments could be built as experience dictated. My Committee was good enough to approve our views and I stand here to-day on behalf of the millowners of Bombay to welcome this Bill as a first step and an experiment, appreciating the fact that in passing this measure the labours of the Government and of this House will have only begun with their desire to deal with a subject which I confidently say all classes, whether ruling, employing or employed, wish to see handled sympathetically, adequately and practically.

Sir, the view that I take of the problem is that there are certain basic aims which should be always before us, even though they may not be immediately practicable: Firstly, that those who fall by the wayside in the industrial fight for existence, through no fault of their own, should be adequately cared for; secondly, those truly dependent on them should not be asked to bear the full brunt of the blow due to the incapacitation of the breadwinner, but at the same time should be encouraged to help themselves so as not to become pauperised; thirdly, that a generous scale of benefits should be provided at the lowest possible cost. And this, Sir, leads one to certain practical considerations that are of vital importance. Every workman who takes compensation by a fraudulent claim or by malingering, every workman who does not take advantage of offers to be cured speedily and delays or aggravates an injury, often turning a slight temporary disability into a serious permanent one, every workman who is allowed, or in any way encouraged, to exaggerate his disability, thus bringing into play those vast and little-known forces of auto-suggestion and so prolonging or intensifying his injury, everyone of these, Sir, by receiving compensation which should not be necessary is adding to the total cost of compensation, and thus either reducing the benefits to the genuine cases or adding unnecessarily and unjustifiably to the general cost of living; for I need hardly tell this House that the payment of compensation, as one of the costs of production, has eventually, in part at any rate, to be borne by the consumer. There is also another important consequence to be considered. If the workman be encouraged to dwell on any slight ailment in the hope that it may develop into something that may justify compensation, his character will be affected, his moral fibre undermined and his value as a man and citizen depreciated. I am afraid that a study of the effects of the Workmen's Compensation Act in England leads one to wonder whether a hysterical unbalanced trait has not been developed in the national character which was not so prominent in the past.

Now, Sir, as regards the Bill before us, I would suggest that it be strengthened in every way to reduce the possibility of fraud, malingering and costly litigation, even at the risk of appearing unsympathetic. The passing of this Bill will make one thing certain and that is, it will greatly increase the demand for doctors. If this Bill results in encouraging the young

[Captain E. V. Sassoon.]

Indian to take up a medical career in preference to a legal, I for one should consider this as an additional point in its favour. Honourable Members will consider that I am unduly prejudiced against lawyers but I cannot forget the remark that was once made by Voltaire, who said that he only regretted going to law twice, once when he lost his suit and once when he won it. Sir, it is a great deal more valuable to the country that an injured workman should recover his health than that he should win a suit and get good compensation for his injuries, and I commend this point of view to the Honourable and learned Members of this House when they are about to decide on a suitable career for their sons.

In conclusion, Sir, any legislation which succeeds in satisfying the general aims I have so roughly sketched would prove, I think, immeasurably superior to similar legislation existing in other countries, no doubt partly owing to the fact that there was so little practical experience in existence when those measures were instituted and partly because they started by legislating on too ambitious a scale. Let us profit, therefore, by their mistakes and develop our programme by steady evolution. I venture to assert that by following that road the eventual results of our efforts will make them worthy of being copied by those western nations who admittedly lead to-day the cry of the injured workers.

With these words, Sir, I welcome the Bill before us.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I welcome Captain Sassoon's suggestion that we should have more doctors and better doctors, if necessary, at the sacrifice and expense of the lawyers. I have a double-barrelled personal consideration: less lawyers will give us existing lawyers a better chance and more doctors will be welcome to me because I am trying to nurse a race of doctors. I wonder, Sir, why, having said all that Captain Sassoon has said, I do not see any amendment tabled by him on lines brought out by him that I should have welcomed, viz., that the Commissioner to be appointed by the Act should have a medical referee associated with him in some effective way. Much of the difficulties, even if you otherwise succeed in keeping down litigation, much of the difficulties that will be experienced in the working of this Act will disappear if there be independent and reliable medical opinion to balance that on behalf of the employer and of the workman, if the latter can afford it. Doctors are notorious for difference of opinion and, when diversity of interest is at stake, that difference is likely to be accentuated. Therefore, I should have welcomed some provision by which the Commissioner who is invested with large and salutary powers, had a capable Medical Referee to fall back upon so that the workman and the employers would be better protected. The Commissioner would also be better able to do his work by falling back on those who can give him independent medical advice. I appreciate, Sir, there are difficulties in the way of this being done everywhere. Industries are expanding in this country and it may not be possible everywhere in the outlying tracts of the country to have suitable medical referees. But a first beginning might have been made. This is a first step, a very important and very good first step, towards healthy labour legislation. I believe in treating labour well both from the humanitarian and State point

of view as well as from the point of view of expediency. Labour better treated is always good from the investor's point of view and the Government are realising and the people who are supporting them are realising that labour should be better treated before labour organises for the purpose of extorting protection as in other countries. I am unable, however, to share Mr. Joshi's regret that the employers' liability question has not been mixed up with the question of workmen's compensation for slow development is healthy in these matters. Well, we have had, to borrow Mr. Rangachariar's classical phrase, homilies preached in many quarters that when a Committee of this House goes into a question thoroughly, it is not up to this House to bring up questions in detail again and have them thrashed out as if the whole House was again going into Committee. Paragraph 3 of the Joint Committee report fully deals with the point which Mr. Joshi has raised. The position taken up there is I believe technically doubtful, it is doubtful whether a Select Committee can pick and choose like this. I should like however to wait and see how this Act works and what developments may be necessary. If, Sir, in 1886 or later on we had taken up the question of codification of the law of torts which has been waiting since then, some of our difficulties might have been at an end. It is no use regretting that now. But in the absence of that, these first piecemeal steps are becoming necessary and they will have to expand as we grow. With these words, Sir, I should like to give a very warm welcome to this measure and express the hope that the machinery for insurance will develop under Government care. Without it an Act like this cannot properly work if the employer and the employed are to be protected.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, there can be no two opinions about it that the Bill is of a very useful character and I share the view that the Government may be thanked for the introduction of this measure. My study of the Bill leads me to believe that some of the provisions, no doubt, in some cases, will offer temptations to labourers to abuse the provisions of this Bill. But at the same time I feel that there are some sections which will give a great amount of encouragement to labourers to flock to our factories, and consequently, eventually, there will be a great aid to the industrial development of the country. The most important characteristic of this Bill, as it seems to me, is that it is a measure which has got the sympathy both of the employers and the employees. I can hardly come across any measure, in regard to which either the one party or the other party has not got a serious complaint. But, as I have said before, this is a Bill which has got, more or less, the approbation of both sides, and therefore the Government and the Honourable Mover must be thanked for it. There have been some remarks in regard to the introduction of work for Doctors and it has been said that there will be some sort of reduction, so far as the work of the legal practitioners goes. In reply to that I may say that in the first place we do not grudge it. We have got ample work. But I may tell you, for your information, that there is a provision in this Bill—section 30—which allows a great loophole. There is a provision for appeals in this section and lawyers will have a sufficient share in that direction. I must say in the end that I appreciate all the remarks which have been made in favour of this Bill as a complete Bill, but I have got to differ from the Honourable Mr. Joshi, when he says that it is not comprehensive in its character. This is a tentative measure and when we see that our workmen have proved themselves fit and up to it, then we may extend the provisions of this Bill to some other class of labourers. But for the present, circumstanced as we

[Dr. Nand Lal.]

are, this is a complete answer to the requirements of the country. With these remarks, Sir, I support the motion very heartily.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I do not rise to speak on the Bill, but I ask your ruling upon a very important matter which the Bill as put before this House raises. It is this. When the question was discussed before the Bill went to the Joint Committee, the Bill contained provisions relating to employers' liability as well as to the compensation to be paid by employers. This House then approved of the principle of both those objects, namely, employers' liability due to negligence and compensation due to accident. After the Bill has been considered by the Joint Committee, it comes to us in a denuded form. The portion relating to the liability of employers due to negligence has been cut out; and the result is that this House is not in a position to discuss a matter for the principle of which it had given its sanction before committing the Bill to the Joint Committee. My question to you is this. Is it open to a Joint Committee to which a Bill containing two principles has been submitted, to cut out one of the principles and thereby make it impossible for the House to give its opinion upon that principle? That is the point which I submit for your consideration.

Mr. President: Having no notice of the point of order which the Honourable Member wishes to raise I have not yet had time to give mature consideration to it. I have not the original Bill before me. The Honourable Member will see that the last clause in the report of the Joint Committee says:

"We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended."

But I must assume, until I am able to give it further consideration, that the Joint Committee would not have inserted the last clause unless they had been satisfied that the Bill was not altered in the manner the Honourable Member suggests. I notice that there were several prominent lawyers on the Committee, one of whom is sitting beside him; and I should imagine that if the Bill had been so altered, the eagle eye of his Honourable colleague from Madras (Mr. Rangachariar) would not have allowed the point to escape him.

Mr. T. V. Seshagiri Ayyar: I had the consent of my Honourable friend from Madras to make this motion. I consulted him about this. The title of the Bill also has been altered. The point which I raise for your consideration, Sir, is this. Is it open to a Joint Committee to give up a principle without that principle being submitted for the consideration of the House? The original title of the Bill was "Employers' Liability and Compensation." That has been altered into "Workmen's compensation." They have cut out a particular portion of the title itself, and they have cut out the provisions of the Bill which related to employers' liability thereby making it impossible for this House to give its decision upon those provisions. It is a difficult point and I think it is a point which must

12 Noon. be decided because on future occasions a similar question may arise; and it is desirable that the House should have your guidance in a matter of such importance, namely, where the House has approved of certain principles can the Joint Committee omit one of those principles making it impossible thereby for the House to express its opinion thereon. That is a very serious problem, and if it is submitted to it may lead to grave

complications. Therefore, Sir, it is desirable that there should be a definite and decisive ruling upon the point. Paragraph 3 of the Joint Committee's report says:

"Perhaps the most important alteration which we have made in the Bill is the elimination of the provisions relating to employer's liability. The majority of us are not satisfied that it is either necessary or wise to retain these provisions in the Bill. It has not been demonstrated

and so on. So, by a majority the Joint Committee have come to the conclusion that this portion should be omitted from consideration. It may be that the minority there may find support in this House; but the result of this deletion is that this House is debarred from going into those provisions. That is a great and serious matter upon which I ask your ruling.

Mr. President: What is the practical point that the Honourable Member raises? Do I understand that the practical point which the Honourable Member raises is this:—Whether it is open to the Assembly to discuss clauses which the Joint Committee have excised? The Bill as sent up by this House to the Joint Committee contained these clauses and therefore it is perfectly open to the Assembly to restore them. If that is the essence of the point of order raised by the Honourable Member then I uphold his contention.

Sir Montagu Webb (Bombay: European): I think it is competent for the House to restore the provision which has been excised.

Mr. President: It is perfectly competent for the House to restore the provision which was in the Bill and which has been excised by the Joint Committee.

Mr. T. V. Seshagiri Ayyar: Having regard to your ruling, Sir, I hope this House would allow amendments to be sent in before the matter is again taken up for consideration, because on the Bill as it stood we were not in a position to send in any amendments on this question and we were not sure what the ruling of the Chair would be upon a matter of this importance. Having regard now to your ruling, I hope you will give permission to send in amendments so that the matter may be taken up for discussion before the Bill is finally disposed of.

Mr. President: In the meantime we may proceed with the Bill.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): We may proceed with the Bill and before it is finally disposed of, any Member who likes may move that these sections which have been omitted by the Joint Committee may be re-inserted in their appropriate places.

The Honourable Mr. G. A. Innes: I have no objection to any Member who wishes to restore the provisions in the original Bill moving now an amendment to that effect or giving me notice now of the amendment to that effect. I take it, Sir, that we shall not probably come to that question till Monday. I suggest that any Member who wishes to put in an amendment to the effect that the clauses of the Bill omitted by the Joint Committee should be restored may give notice of that amendment to-day.

Mr. N. M. Joshi: May I ask, Sir, why amendments should be restricted to the original sections? We may like to improve the original sections.

Mr. President: The Honourable Member is perfectly aware that any sections before the House are open to improvement. That is why they are before them.

It is impossible for any one to say at the moment how long the consideration of this Bill will last; but, without actually committing myself, I am prepared to meet the Honourable Commerce Member and the House generally on the point of waiving the period of notice required. But I think it would not merely be a courtesy to the promoter of the Bill but would conduce to the efficient despatch of legislation if Honourable Members who wish to insert any amendments of that character would draw them up at the earliest possible moment and give the Government the longest possible notice. Otherwise, we may encounter undue difficulties due to hasty drafting.

On the raising of points of order of this kind, I should like to appeal to Honourable Members to give the Chair the maximum possible notice of their intention to do so. Least of all qualities which I wish to claim is omniscience, and therefore I should like to have full opportunity of consulting both the officers of the Department at my disposal and the documents at my disposal in order to arrive at considered conclusions. On a matter of this importance, on which it so happens that I was able to give a decision without previous consideration, I should like to appeal to Honourable Members to give the utmost possible notice, because, as Honourable Members are aware, rulings given from the Chair are apt to create precedents.

The motion, that the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, be taken into consideration, was adopted.

Mr. President: The question is that clause 1 do stand part of the Bill.

Mr. T. V. Seshagiri Ayyar: If you are going to allow amendments to be sent in which would include employer's liability, this clause will have to be altered. May I suggest that the consideration of this clause be postponed?

Mr. President: As a matter of fact, it may have escaped the Honourable Member's notice that clause 1 in the original Bill reads exactly in the same terms as clause 1 in the amended Bill. If Honourable Members, however, think that it is desirable to amend the short title, I am prepared to accept a motion for discussion that the consideration of clause 1 be postponed.

Mr. T. V. Seshagiri Ayyar: I move that the consideration of clause 1 of the Bill be postponed.

Mr. President: The question is that the consideration of clause 1 of the Bill be postponed.

The motion was adopted.

Mr. President: Clause 2.

Mr. N. C. Sircar (Bengal: National Chamber of Commerce): I sent in notice of my amendment before I read the whole Bill. Clause 2 is at

the very start, but before I read the whole Bill I was under a misapprehension that the compensation increased and decreased according to the number of dependants. But as it is not so, I do not move the first two amendments.*

Captain E. V. Sassoon: When I placed my amendment on the paper I quite realised that in treating of the question of dependants it was very difficult to know where to stop in placing on record those who were to be allowed to divide up the compensation as laid down in this Bill. But at the time it appeared to me that a widowed sister would have been more or less in the same position as an unmarried sister. I consider that the workman brother would have had to look after her as he would his unmarried sister. But Members who know more than I do, ignorant as I am of the customs in India, tell me that the widowed sister is generally looked after by her husband's relatives. If that is the case, my whole argument for putting forward the widowed sister falls to the ground and I therefore will not press my amendment.†

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan Rural): Though the custom prevails that the widowed sister is supported by the family of her husband, it may often happen that she was supported by and was dependent on the earnings of her deceased brother. In such a case it will be very hard if we do not allow the widowed sister also some advantage under this Bill. Therefore I propose that the words "or widowed" should be inserted after the word "unmarried" and before the word "sister".

Mr. President: Amendment moved:

"In clause 2 (1) in sub-clause (d), before the word 'sister' insert the words 'or widowed'."

The Honourable Mr. C. A. Innes: The reason why we do not include the widowed sister is the very reason which has been given to the House by Captain Sassoon. We understood that ordinarily a widowed sister lives in the family to which she is married. That is certainly the case over the greater part of Madras. There may be exceptional cases where a widowed sister does depend for maintenance on her deceased brother, but, Sir, I do not think that in a Bill of this kind we should try to provide for every exceptional case. It seems to me to be a much sounder principle to keep the list of relatives as small as possible, and in the whole Bill we have tried to make the list of dependants as small as ever we possibly could in order that the real dependants may get the benefits of the Bill.

Mr. J. Chaudhuri: Sir, I support the amendment and for this reason. The criterion should be whether the widowed sister lives in the husband's family or in a brother's family. We know that in Bengal and some other places a widowed sister may live in a brother's and not in a husband's family. It all depends upon the circumstances. In many cases the husband's family is not of sufficient means to maintain the widow; then the widow comes back to her parents' house and lives in her parents' family.

* "That in sub-clause (d), of clause 2 (1):

(a) the word 'husband' be omitted;

(b) after the word 'mother' the words 'if he or she is infirm or disabled or has no other son or daughter to provide for him or her' be inserted."

† "That in sub-clause (d), of clause 2 (1) after the word 'unmarried' the words 'or widowed' be inserted."

[Mr. J. Chaudhuri.]

In such cases I submit it will be hardship to her not to have the advantages provided in this Bill for her benefit as well.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, my friend has referred to the widowed sister. He is a lawyer, but he seems to have forgotten the elementary principle of Hindu law that a widowed sister has no claim, no legal claim upon her parents for her maintenance: and when under the general law she has no claim I fail to see why under the provisions of this Bill she would be given an exceptional treatment. I oppose the amendment.

Rai D. C. Barua Bahadur (Assam Valley: Non-Muhammadan): Sir, I beg to oppose this amendment also. It is too much to expect from the employer anything in the shape of compensation or maintenance for the sister. Sir, under the Hindu law a sister is not an heir to a brother, but in this case of payment of compensation the employer is going to be compelled to make good the deficit, and to pay compensation to the deceased's sister when her brother is dead. Sir, it will be extending the principles of humanity to a very great extent. The institutions of public utility will suffer to a great extent if we go on extending such benefits to such relations as a widowed sister. And there is another aspect of the matter, Sir. When a brother dies of accident or injuries, then the sister will be brought from her husband's family into the family of her deceased brother, and she will be put forth to claim compensation on account of the decease of her brother. So there will be many difficulties in giving compensation or ascertaining whether the compensation should be given to the sister or not. So, Sir, in these circumstances at least I beg to oppose the amendment.

(An Honourable Member: "I move that the question be put.")

The motion was adopted.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. N. M. Joshi: Sir, I beg to move the following amendment:

"In sub-clause (d) of clause 2 (1):

'After the word 'sister' insert the words 'grand-father, grand-mother, minor grand-son and unmarried grand-daughter'."

Sir, I generally accept the principle enunciated by the Honourable Mover of this Bill that we should not have a very large number of relatives in addition to the list already given. But even after having accepted that, I propose that these four relatives mentioned by me should be added. The cases which I have suggested are not exceptional cases. You will always find some cases where a grand-father or a grand-mother is dependant upon a grand-son or grand-daughter, and *vice versa*, and it is therefore necessary that we should include them in this list. I may add for the information of my Honourable friend, Mr. Barua, that by adding to the number of relatives here the amount of compensation is not increased at all. The simple effect of my amendment will be that in those cases where a man leaves only a grand-father or a grand-mother or a grand-son or a grand-daughter, these relatives, namely, the grand-father, grand-mother, grand-son or grand-daughter will not be without compensation if they are found to be dependant upon a deceased workman. Sir, my amendment will, I hope, be acceptable to the House.

The President: Further amendment moved:

"In sub-clause (d) of clause 2 (1), after the word 'sister' insert the words 'grand-father, grand-mother, minor grand-son and unmarried grand-daughter'."

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): May I rise to a point of order. My amendment runs 'or such others as being closely related absolutely depend on, or are entitled to maintenance by law and custom'. This will cover the persons that have been proposed by Mr. Joshi. So, practically, if his amendment is voted against, my amendment will be rather weakened. I think, my amendment being of a more general character, it ought to precede his amendment.

The President: As regards that, Honourable Members may in this case simply vote against Mr. Joshi and then move their own.

The Honourable Mr. C. A. Innes: Sir, Mr. Joshi, I am glad to see, has agreed to the general principle of this clause as at present drafted, namely, that we should keep the list of relatives confined to a comparatively small number. The only point, the only difficulty, is, exactly where we should draw the line, and I should like briefly to explain why we put it as in the Bill, why we have kept the list as small as ever we could. In the first place, as I explained when I made my speech this morning, we are out for simplicity and ease of working in the Bill. That is the reason why we have tried to keep the list of dependants confined as far as possible to people ordinarily living in the same house as the deceased workman. We also felt that if we included in the list, as proposed in the amendment, a long line of distant relatives who might not be at all dependent on the workman, we might add to the work of the Commissioner, since under clause 8 (4) the Commissioner would probably feel bound to issue notices to all those relatives. That might result in delay in distributing the compensation to the people, to the closer relatives who really ought to get the benefit of it. And another obvious disadvantage in a long list which rather weighed with me was that the Commissioner under clause 8 (4) might not be able to give these remote relatives any compensation at all. We feared that if we had an unduly long list, we might excite hopes which, in practice, in the result, would not be fulfilled, and we might create a good deal of heart-burning. These dependants might go to the Commissioner, claim compensation, and find that the Commissioner had decided to give the whole compensation to the widow, the sons, and so on, and would refuse them any compensation at all. On the whole therefore we decided that the wiser course was to keep this list of relatives just as small as ever we could, and that is the reason why we excluded the grand-father and the other people mentioned by Mr. Joshi.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I wish to say only a few words on this amendment of Mr. Joshi's. I agree with Mr. Joshi and also with my Honourable friend, Mr. Innes, that the list of relatives or dependants should be as small as possible. But I think the suggestion that Mr. Joshi has made has a good deal of force in it. Our experience is that we do find a grand-father and grand-mother dependant upon the grand-son, and if the grand-son suddenly passes away it would be difficult for the old grand-father and the old grand-mother to maintain themselves in their old age. So, as far as that part of Mr. Joshi's amendment is concerned, in which he wishes to extend the benefit to the grand-father and grand-mother, I am entirely in agreement with him. Unless

[Mr. Jamnadas Dwarkadas.]

this benefit is extended to them, I feel, Sir, that it would be a great hardship to the grand-father and grand-mother to have to maintain themselves in their old age.

With regard to the minor grand-son and unmarried grand-daughter, I am not sure that the amendment is necessary. We find, Sir, from statistics that there is scarcely a workman above the age of 40; therefore you are not likely to find a workman leaving a minor grand-son or an unmarried grand-daughter. This part of the amendment, I think, is not necessary, but so far as the first part of the amendment is concerned, I give my strong support to it.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I rise to oppose this amendment as I think it should not be accepted. Sir, I think the definition of the term "dependant" is already wide enough and I am sure any undue further extension would not be allowed by the House. The obvious result will be the whittling down of the amount payable to each such relation and an increase in litigation in some cases.

I am aware that some representative public bodies consulted in this connection have pointed out that the term "dependant" covers a much wider range under the corresponding English Act than is proposed to be assigned to it in the Bill under consideration. But I am also aware that some of them have made it clear that this term should cover only such close and near relations as are actually dependent upon the deceased or his earnings at the time of his death. The remarkable point in this connection is, however, that the Honourable Mover of the amendment is not true to his own original idea, as expressed in his Note of Dissent, where he stated that under "dependant" he would include 'grand-father, grand-mother, in case both the parents are dead, and minor fatherless grand-son and minor fatherless grand-daughter.' It goes without saying, Sir, that this amendment covers a much wider field than was originally intended by Mr. Joshi. I think, Sir, that the general feeling among those concerned is that the list of dependants should be kept reasonably small. I beg therefore to suggest, Sir, that the definition of the term "dependant" as already amended, may remain as it is and we may very well wait and see how it works.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I have only one word to say on the drafting of this amendment. Mr. Jamnadas Dwarkadas expressed a doubt as to whether we should find a minor grand-son or an unmarried grand-daughter. I also have a very grave doubt as to whether we shall find any unmarried grand-fathers or grand-mothers.

Dr. Nand Lal: Sir, if I may be allowed to move my amendment (No. 6) I believe Mr. Joshi will withdraw his amendment.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, one practical difficulty which weighed both with the original Committee which sat in June and again with the Joint Select Committee, was that if the grand-father or the grand-mother had other children who were earning their livelihood it would be wrong to bring them in to participate in the benefit. As some Honourable Members have expressed considerable feeling in the matter, I may say on behalf of Government that we shall be willing to

accept a compromise so as to include the paternal grand-parent provided that both parents are dead and the son's children, that is, the minor children, if their father is dead. If that is accepted by the House generally we shall introduce that addition, provided that my friend, Sir Henry Moncrieff Smith, is able to put in a draft which avoids unmarried grand-parents.

Mr. President: Am I to understand that the Government Member has an amendment ready?

Sir Henry Moncrieff Smith: I have nothing ready, Sir. I would suggest that consideration of this point be postponed to give the drafting Department time to look into it.

Mr. President: The amendment moved is:

"In sub-clause (d) of clause 2 (1) after the word 'sister' insert the words 'grand-father, grand-mother, minor grand-son and unmarried grand-daughter'."

The original question was that that amendment be made.

Since which an amendment has been moved that further consideration of sub-clause (d) of sub-section (1) of section 2 be postponed.

The Honourable Mr. C. A. Innes: Sir, I do not know if Sir Henry Moncrieff Smith would accept it, but we have got the whole clause re-drafted. If so, I think the House might possibly be prepared to go on with the consideration of this clause. What we suggest is that clause 2 (1) (d) read as follows:

"'Dependant' means the following relatives of a deceased workman, namely: wife, husband, parent, paternal grand-father if the parent be dead, minor child, minor brother, unmarried sister and son's children if their father be dead'."

That seems to me to bring them all in, Sir.

Mr. President: I think we might proceed to add this sub-section of the clause to the Bill on the understanding that the Government will insert this particular amendment in another place. I imagine that the terms of this amendment are not likely to lead to a constitutional crisis between the two Chambers.

Mr. N. M. Joshi: Sir, I ask for leave to withdraw my amendment.

The amendment (No. 4) was, by leave of the Assembly, withdrawn.

Mr. President: Does the Honourable Member for Commerce also ask for leave to withdraw his motion?

The Honourable Mr. C. A. Innes: Yes, Sir.

The motion was, by leave of the Assembly, withdrawn.

Mr. President: That disposes of amendments Nos. 4, 5, 6 and 7.

Dr. Nand Lal: Not No. 6, Sir.

Mr. President: I am prepared to hear the Honourable Member from the Punjab why it is not disposed of.

Dr. Nand Lal: Sir, the amendment which stands in my name runs as follows:

"That in sub-clause (d) of clause 2 (1) after the word 'sister' insert the words 'sonless grand-father, sonless grand-mother, parentless minor grand-child'."

[Dr. Nand Lal.]

The clause which is before the House when read with the proposed amendment will read as follows:

" 'Dependant' means the wife, husband, father, mother, minor son, minor daughter, minor brother or unmarried sister, sonless grand-father, sonless grandmother, parentless minor grand-child of a deceased workman."

Mr. President: I must point out to the Honourable Member that though he is in order technically in moving this amendment, in substance, as the Honourable Member knows, he has the explicit pledge of the Government that they are going to introduce a new sub-clause in another place to meet precisely the point which he wants.

Dr. Nand Lal: If I rightly followed the Government to my understanding, it does not include grand-child, and if it does, certainly I shall be the first person to appreciate that idea.

May I ask that the amendment which the Government proposes to place before the House may be read out?

The Honourable Mr. C. A. Innes: I will answer the Honourable Member, if I may. The amendment which the Government proposed was that the whole clause should be re-drafted as follows:

" 'Dependant' means the following relatives of the deceased workman, namely: Wife, husband, parents, paternal grand-parent if both parents be dead, minor child, minor brother, unmarried sister, son's children if their father be dead."

Dr. Nand Lal: Yes, Sir, it includes my amendment, and I therefore withdraw my amendment (No. 6).

Mr. B. N. Misra: Sir, my amendment is rather different from the amendments put forward by other Members. I move my amendment, which runs as follows:

" In sub-clause (d) of clause 2 (1) after the word 'sister' the following be inserted:

' or such others as being closely related, absolutely depend on, or are entitled to maintenance by law and custom '."

Sir, some dependants of the workmen have been included in the clause, but as far as I understood the Honourable Member for Commerce, Mr. Innes and Mr. Joshi, they said that they do not want a large number of dependants as it will complicate matters, there will be difficulty and litigation, the amount they will get will be very small and so on. But I do not contemplate such a case. What I contemplate is where there is a person absolutely dependant on the workman, say, for instance, grand-mother—mother's mother. The mother's mother owing to natural affection brought up the grandson. In fact the mother's mother spent all her earnings and income for the grandson and brought him up. When the grandson grew he earned money and helped the grandmother. But when the grandson passes away, the grandmother is really at a disadvantage, having spent all her income and property over the grandson, on whom she was absolutely dependent. I do not contemplate a case in which if the grandson dies there are others living to help her. Take the case where there is a grandmother and grandson. The grandson grew up and was employed in some factory or somewhere else and died on account of some injury or accident. Then, the grandmother is, I think, in justice entitled to have a share from the compensation given to such a deceased workman. I consider it is only just to classify her as dependant or relation absolutely dependent upon the deceased workman. I think there will be

no objection to giving some compensation or classifying her as a dependant. For instance, there is a widow sister-in-law. There are two brothers. The elder brother died and the elder brother's wife brought up her husband's younger brother. When this boy grew up, he got employed and supported his brother's wife, because she spent all her money over him and took so much trouble over her husband's brother. If this man dies, the woman should be entitled under those circumstances to get compensation, because she was absolutely dependent on the deceased workman. The present definition covers minor son. But sometimes there may be a grown up son, who is blind, or a grown up son either deaf or dumb. Such incapable persons who are unable to earn are naturally dependent upon the income or earning of their father. In such cases even the Hindu law states that such blind, deaf or dumb sons or a son who suffers from leprosy or other incurable diseases should be maintained by the father even if they are grown up. There is no such provision. The provision only enables the minor son to be a dependant on the workman. But, in such cases, as I have pointed out, according to the Hindu Law, the father is bound to maintain them. When such a workman dies, I think these blind, deaf or dumb sons should be classified as dependants and they should get compensation. I think, Honourable Members of the House will not view my amendment as adding to the list. My amendment meets such other urgent and exceptional cases. I hope Honourable Members of the House will accept the amendment. And then the second part includes those who by law and custom are entitled to maintenance. I think all the lawyer Members of this House will agree with me that the grandfather or grandmother or grandson are real dependants. Such persons ought to be allowed to be classified as dependants of the deceased workman, because they are entitled to maintenance by law. With these words, Sir, I move my amendment.

Mr. J. Chaudhuri: I oppose this amendment, Sir. My friend is under a misapprehension that we are discussing the law of inheritance here. We are neither considering the question of Hindu Law or Muhammadan Law or any other law. The simple principle is that when a workman is injured in the course of employment in a risky industry whether his immediate dependants would get compensation or not; and I submit that the amendment that Government proposes to introduce with regard to this clause is as far as we can reasonably go. The compensation will be available to Hindus, Muhammadans, Christians, Jews and other communities, all alike. So I hope my friends will not misunderstand the scope of this Bill and go off at a tangent and discuss Hindu law of inheritance or the Muhammadan law of inheritance or any other law or custom with regard to maintenance or similar intricate questions. With these general remarks I beg to oppose this motion.

(Several Honourable Members: "The question may now be put.")

(Mr. J. N. Mukherjee made a remark to a Member behind him, which was inaudible.)

Mr. President: If the Honourable Member wishes to speak, he should address the Chair.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): I beg to address the Chair, and I beg the Chair's pardon. I stood up to speak but was interrupted by my friend from behind. However, I observe that a tendency is growing up on the part

[Mr. J. N. Mukherjee.]

of certain Members of the House to cry "vote, vote" without trying to enter at all into the merits of a question. It is all very well for people who cannot imagine that they may at any time be the possible recipients of any portion of the compensation money that may have to be paid to a deceased workman's relations, to consider these question unsympathetically, and to try and rush things in an undeserved manner. I stand up, however, to protest against any such tendency. I submit, Sir, that the question before the House is a very important one, and we can not lose sight of the question of the distribution of the compensation money. The question is not one of heirship. Many of my Honourable friends have misunderstood it. The idea underlying the question is that those who have been deprived of support by the death or injury of a workman should continue to receive support. I think, Sir, that if the clause which deals with the distribution of the compensation money by the Commissioner is defective in any respect, it should be amended in its appropriate place. But, at the present moment, what we are considering is, in what manner the ring of recipients should be determined in the first place. My Honourable friend, Mr. Chaudhuri, stood up and said that there was no question of inheritance involved in the case. Certainly, there is no question of inheritance in the amendment proposed by my Honourable friend, Mr. Misra. It refers only to those relations of a deceased workman, who are entitled to maintenance by law and custom. The point is, if a workman is killed while working, certain dependants of his are thereby deprived of their maintenance or support, which they used to get from the deceased workman in his life-time. That is the chief point we have to keep in view. That being so, the question of heirship does not arise. The Commissioner, or the person who has got to distribute this money is given by the Bill some discretion in the matter, and he may pick out of the persons specified in this circle or ring of men those who are best fitted to receive the compensation. So, the question ought not to be a very complicated one; at any rate, we ought not to complicate it by imagining things which do not exist in the body of the Bill. Therefore I submit that, although as a matter of fact there may be some other dependants, as for instance, old maid servants or such like persons, who are not contemplated by the proposed amendment or by the Bill, the amendment suggests only such persons as are closely related and absolutely dependent on the deceased workman. I suppose the words "absolutely depend on" undoubtedly mean those dependants who are within the circle of his relations. If not, the matter may be cleared up.

Mr. B. N. Misra: I meant relations.

Mr. J. N. Mukherjee: Clause 8 of the Bill bears on this question of compensation. The first sub-clause of it says:

"Compensation payable in respect of a workman whose injury has resulted in death shall be deposited with the Commissioner, and any sum so deposited shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to him or, if he is a person under any legal disability, be invested, applied or otherwise dealt with for his benefit during such disability in such manner as the Commissioner thinks fit."

Then we pass on to where it is not a case of death

Mr. President: Order, order. I point out to the Honourable Member that we are dealing here with the definition of dependants and not with

the procedure to be adopted by the Commissioner in dividing up the proceeds of any compensation.

Mr. J. N. Mukherjee: What I am pointing out is not a question of procedure at all, but a question of right to receive the compensation. If I can make myself intelligible, what I mean to say is this. If the ring of possible recipients of this compensation money be not unduly restricted, the Commissioner will have the opportunity of paying the money to the person or persons who, to his mind, may be the fittest person or persons, among the relatives of the deceased workman to receive the compensation money; and what is more, it is provided in the Bill that in case there is no such dependant within that ring mentioned in the definition, the money is to be escheated or returned to the person or employer who has got to pay the money to the Commissioner. Therefore in view of the danger of unduly restricting the number of possible recipients we are by the proposed amendment attempting to enlarge the circle and reduce the chance of an escheat or return back of the money to the person who paid it. If the object of the Bill is to provide for the distribution of the compensation money in a suitable manner, so that the dependants, that is to say, the persons who should have a share in the compensation money, the number of such relations should not be unduly restricted, in the manner proposed. The effect of such restriction will be what I have submitted to the House. Therefore it is not a question of procedure; it is a question of right which is intimately mixed up with this question of definition. I think, Sir, there is a great deal to be considered so far as the present amendment is concerned. We know that there are certain persons in the body of Hindu law who are not heirs, but who receive maintenance and whom a Hindu is bound to maintain. If a definition is laid down in the Bill without contemplating the existence of such people, my idea is that it will work great hardship and the whole object of the Bill will be frustrated by so unduly restricting the circle of dependants entitled to receive the compensation, and for the reason I have just submitted, namely, that if they are not mentioned or otherwise indicated in the definition, the compensation will revert to the person who paid it. I therefore submit for the consideration of the House that this amendment be taken into sympathetic consideration.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, as one of those unfortunates who unintentionally offended Mr. Mukherjee, a word of explanation as to why we asked that the question should be put may be in order. Sir, the object and scope of this Bill has not been correctly understood by the framers of this amendment. It is creating a special right, a special remedy, a speedy remedy in order to benefit workmen and their dependants. We did not want to complicate the procedure by entering into questions of who are dependants and who are not dependants. We wanted a rule of thumb by which the Commissioner is not to embark upon an inquiry whether a certain person was dependant or not. The law presumes in certain cases they must have been dependant, and we take care to enumerate from our limited knowledge as to who are the likely persons who can be safely said to depend without any evidence about it. What is it this amendment wants? "Such others as being closely related." In the first place the Commissioner will have to determine whether the person claiming compensation is closely related or related in any other way, and what is the definition of close relation? Is my wife's sister a close relation of mine or not? I know, Sir, of many a case where an unfortunate widowed sister lives with

[Rao Bahadur T. Rangachariar.]

her married sister and depends upon that sister and her husband. My friend, Mr. Mukherjee, knows that my wife's sister or my mother-in-law, who is often a welcome visitor in my house has no legal claim on me. Now, you have the case of those closely related or absolutely dependant upon. How is the poor Commissioner to determine between these two questions and again who are entitled to maintenance by law or custom? Is it a family custom? Is it *kala achar* or *desa achar*? What is this poor Commissioner to do? I have great respect for my friend, Mr. Mukherjee, and usually he has a clear vision in this matter. How is the custom to be proved? The poor Commissioner, in distributing this small amount of Rs. 200, Rs. 300 or Rs. 500, as the case may be, has to embark upon an inquiry as to whether there is a custom and how many witnesses there are to prove the custom; whether there have been prior judgments in support of the custom and whether it has been recognised in a court. All these things have to be determined. Is this the way this special remedy is to be given? If my Honourable friends will think about it they will see it is quite out of place. Therefore, you must have a rule of thumb, and the Legislature must provide that rule of thumb. I earnestly appeal to them not to complicate the machinery in this way.

Sir Deva Prasad Sarvadhikary: Sir, Mr. Rangachariar's misfortunes are so few that, when he brings forward one, one is inclined to sympathise with him. He knows his part of the country; Mr. Mukherjee and I know ours, and Mr. Misra knows his. Therefore, even at the sacrifice of losing reputation for clarity of vision at Mr. Rangachariar's hands, I give my support to this amendment. Mr. Misra has mentioned a very pertinent case, the widow of the brother, divided or undivided, does not matter. Mr. Rangachariar's mother-in-law and sister-in-law may be able to take care of themselves, for they may have their brothers or other relations but this poor widow, of whom Bengal knows so well (*Rao Bahadur T. Rangachariar*: "Of whom we all know so well"), Orissa knows so well, needs protection which the amendment suggests.

Mr. Mukherjee was referring at some length to clause 8 of the Bill. That helps us in realising that there is really no difficulty of this kind that Mr. Rangachariar thinks of. The Commissioner, who knows the local circumstances, knows local customs and knows exactly how matters stand among the classes of people concerned, will be able to deal with the question of apportionment under the very large discretionary powers that are given to him under clause 8. What are you doing here is merely extending the scope of the definition but not the liability of the employer or very much adding to the work of the Commissioner.

Supposing this widow that I am referring to—and she looms very large in Bengal—was the only dependant, not in the sense of the definition here, but the only dependant in the family, as she often is, she being not in the list, she will be absolutely unprovided for although money may be available. I do not see, Sir, that very great difficulty will come in because what is close relation, what is absolute dependence, what the law and custom in a particular tract of country is, are not fully defined. No one will be any the worse for this expansion of scope. The Commissioner may have some more work to do, but under sub-section (1) of clause 8 discretion is allowed to him to do as he thinks fit.

Mr. J. Chaudhuri: I move that the question be now put.

The Honourable Mr. A. C. Chatterjee: Sir, my Honourable friend, Mr. Rangachariar, has stated the Government case so well that I had thought it would be unnecessary for us to participate in the debate on this amendment. But my Honourable friend opposite has quoted, or stressed his experience of the conditions of Bengal, and therefore I feel more or less bound to get up and intervene.

I think my Honourable friend, Sir Deva Prasad, as well as Mr. Mukherjee over here, are really confusing the issues very considerably. They are thinking of iniddle-class families. We want this Bill to apply to the working-classes, to people whose income is very limited indeed. Personally, Sir, I think I have as much experience of Bengali families as my Honourable friends have, and I do not think among the working classes it is at all common to find a brother's widow dependent on a younger brother.

Sir Deva Prasad Sarvadhikary: Many.

The Honourable Mr. A. C. Chatterjee: Excuse me. I do not agree. They all earn their own livelihood. The earnings of a man are not really sufficient to maintain a very large family of widows. Therefore, Sir, I do not think the sentimental question arises at all. As Mr. Rangachariar has already pointed out, the whole scope of the Bill is based on the idea that dependency will not have to be proved and I think this amendment will cut athwart the whole principle of the Bill. I hope the House will not accept the amendment.

The motion was negatived.

The Honourable Mr. C. A. Innes: Sir, have I your permission—the Legislative Department have now put into shape the amendment of which, with the permission of the House, I gave notice a little while ago—have I your permission, Sir, to move it?

[Permission given.]

I beg to move:

"That for clause 2 (1) (d) the following be substituted:

"(d) 'Dependant' means any of the following relations of a deceased workman, namely:

A wife, husband, parent, minor son, minor daughter, minor brother or unmarried sister;

and includes the minor children of a deceased son of the workman, and, where no parent of the workman is alive, a paternal grand-parent."

The motion was adopted.

Mr. N. C. Sircar: My amendment is:

"That in sub-clause (f) of clause 2 (1), after the word 'person' the words 'or body of persons whether incorporated or not' be inserted."

In clause 2 (1) (c) in the definition of 'employer' we have the words "whether incorporated or not" after the word 'persons,' and I want in the case of managing agents likewise to insert the words "or body of persons whether incorporated or not" after the word 'person,' because the managing agent may be the managing agent of a limited liability company and the company may be incorporated; therefore I want to insert those words after the word 'person'.

Mr. President: Where does the Honourable Member mean to insert those words, after the word 'person' in line 1, or after the word 'person' in line 3?

Mr. N. C. Sircar: I want the insertion in line 3.

Mr. President: The question is:

"That in sub-clause (f) of clause 2 (1), after the word 'person' in line 3 the words 'or body of persons whether incorporated or not' be inserted."

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, my amendment* relates to the definition of the words "qualified medical practitioner." As it now stands in the proposed Bill, Honourable Members will see that "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending the same, or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners or in any area where no such last-mentioned Act is in force any person declared by the Local Government by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act. The object of my amendment is to omit the words "where no such last-mentioned Act is in force." The result of that will be that the Local Government may declare a person to be a qualified medical practitioner for the purposes of this Act even in places where a Medical Act or any other Act referred to previously is in force. My object is this: I want to give wide power to Local Governments to qualify medical practitioners for the purposes of this Act. Now, medical practitioners have to certify as to the injuries sustained by these workmen and as we know, Sir, our country is not full of western medical practitioners. It is very difficult to find such medical practitioners even in taluk centres practising western medical science or fully qualified to be registered under this Act; and I know also there is a prejudice among this learned body of doctors to include in their fold persons who, although they may be qualified in the western science, take in the assistance of Vaidyans or Hakims; they consider that to be a disqualification. In fact, I know there was a case in Madras

Mr. Jamnadas Dwarkadas: In Bombay also.

Rao Bahadur T. Rangachariar: I do not know of Bombay, but I know of two cases in Madras where two very eminent men of the medical profession practising the western medicine had committed the sin of consulting a Vaidyan in very serious cases. The Vaidyan gave them good and sound advice and saved the life of the patient. They had not succeeded by the western system and so they had called in the assistance of the Vaidyan and succeeded in effecting a cure. This was considered a grave dereliction of duty and breach of discipline: (*A Voice*: "Grave misconduct.") So that there was a considerable agitation amongst the gentlemen practising the western science that they should be excluded from the register of medical practitioners. Sir, I know one doctor, who is also my doctor, who is well known in Madras, and who does not scruple about these things. When he finds that with the western system he cannot succeed in a case he invokes the aid of the Indian medicine. In fact, he

* "That in clause (i) of clause 2 (1), the words 'in any area where no such last named Act is in force' be omitted."

was put on special duty by the Madras Government to investigate the possibilities of including these drugs also in the pharmacopœa—I hope I am using the right word—of these medical people. Sir, therefore I want to provide that persons who are not on the register should also be declared to be qualified. I do not say that they should be declared qualified by any irresponsible person. I will leave the power to the Local Government. I fully trust the Local Government, I fully trust to the judgment of the Local Government, and I say that if the Local Government chooses to say that a certain person may be declared to be a qualified medical practitioner for the purposes of this Act, why should we quarrel with it? Why should we deprive the Local Government of the power to declare certain people qualified because this Medical Act is in force? In other places where the Medical Act is not in force you trust to the judgment of the Local Government, but if the Medical Act is in force then the Local Government is not to be trusted. I think it is not right. Therefore, I want to give the power to the Local Government to declare a person to be a qualified medical practitioner for the purposes of this Act even in places where the Medical Act is not in force. That is the object of this amendment. I therefore, Sir, move the deletion of these words.

The Honourable Mr. A. C. Chatterjee: Sir, I think my Honourable friend, Mr. Rangachariar, has moved this amendment under a misapprehension. It struck me when he was speaking that he thought that unless the definition of a qualified medical practitioner was amended in the way suggested by him, it would not be possible for a man to be attended by a Vaid or Hakim, and it would not be possible for him to tender the evidence of a Vaid or Hakim or of a man who was not qualified in the manner as at present suggested, before a Commissioner. I think, Sir, that is not the intention of the Bill. So far as I can discover, the reference to 'a qualified medical practitioner' comes in only in clauses 6, 11 and 32. The Honourable gentleman will find that it is only where a workman applies for a review under clause 6 that he has to produce the certificate of a medical practitioner. Also it is only where an employer compels a workman to accept either examination or treatment given by his own doctor that the definition of 'a qualified medical practitioner' comes in. Sir, in the interests of the workman himself, I think it would be most dangerous to authorise the employer to employ any kind of medical practitioner who may be available in the locality. There is nothing whatever to prevent a man from putting forward the opinion of his own Vaid or his own Hakim or any kind of medical practitioner before the Commissioner regarding the injuries sustained by him.

Dr. Nand Lal: He will be recognised by the Local Government.

The Honourable Mr. A. C. Chatterjee: I am coming to that. Then, Sir, my Honourable friend is trying to draw a red herring across the whole discussion by quoting the case of a man who was disqualified in Madras, according to his account, because he consulted Vaid and Hakims. Well, Sir, the Honourable gentleman himself has mentioned the case of his own medical attendant who has been entrusted by the Local Government with most important inquiries in spite of the fact that he does consort with Vaid and Hakims. I think, Sir, my Honourable friend has demolished his own case.

My Honourable friend has suggested that we should not distrust the Local Governments. I, Sir, have no desire whatever to suggest that

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we should not trust Local Governments. But these Acts, which are referred to in the definition, have been passed by local Legislatures. All these Acts have been passed by the representatives of the people in the local Legislatures and it is for the local Legislative Councils to amend the Acts if they consider it desirable to do so. We would really be interfering with the discretion of the representatives of the people, of men who are serving on the local Legislative Councils. If the amendment of the Honourable Member is accepted, there will be a very serious danger indeed of a certain amount of conflict between the Local Governments and the local Legislative Councils. My Honourable friend shakes his head in his usual oracular manner, but I again repeat my assertion that we will only be creating friction between the Local Governments and the local Legislative Councils. Sir, I have here all the local Acts. I do not know if my Honourable friend has studied them. He will find that under these Acts practically everybody is entitled to registration. I will just quote from the Madras Act. According to the Schedule of that Act, all the following persons are entitled to be registered:

"Persons possessing the degree of Doctor, Bachelor and Licentiate of Medicine, and Master, Bachelor and Licentiate of Surgery, of the Universities of Madras, Bombay, Calcutta, Allahabad and Lahore. Persons possessing a diploma or certificate granted by the British Indian Government or the Government of Ceylon to any person trained in medical college or school (*I emphasise the word 'school'*) declaring him to be qualified to practise medicine and surgery."

Mr. T. V. Seshagiri Ayyar: There are rules also.

Mr. A. C. Chatterjee: Yes, of course there are rules. That is what I am suggesting. We are really leaving it to the local Legislative Councils to consider which persons should be considered as qualified medical practitioners.

Rao Bahadur T. Rangachariar: Should also be registered. Why so?

Mr. A. C. Chatterjee: Yes, exactly. We are leaving it to the representatives of the people. My Honourable friend in this case does not trust the representatives of the people. He wants to give the discretion to Local Governments. I think, Sir, his amendment is extraordinarily unsound and I hope the House will reject it.

Dr. Darcy Lindsay (Bengal: European): I agree, Sir, with my Honourable friend, Mr. Chatterjee, that this is a most undesirable amendment to make. It would be a grave error for this House to indicate to Local Governments that there should be any lower standard of qualification for medical practitioners than their several Acts allow. We have the Indian Factories Act, and the Act of 1858 referred to in this clause. There is also, Sir, the point of view of insurance. We have heard from my Honourable friend, Mr. Kamat, that insurance forms a very important feature of this Act and that the employer is to be safeguarded by effecting insurance and, as Mr. Kamat said, at most favourable rates. That being so, Sir, we must take into consideration the point of view of the insurance companies, and any weakening of the medical qualification will, in my opinion, strike at the very root of the Act. The uncertainty of the position if it is left to Local Governments to modify the qualifications may make it almost impossible for insurance companies to give that protection that Mr. Kamat desires. The Advisory Committee which sat in Simla had the advantage of the expert opinion of Mr. McBride, a gentleman who has

a world-wide knowledge of the Workmen's Compensation Act and he was very emphatic on this particular point that the reins must be tightened where medical qualifications were concerned. One point where the advice of the medical officer is of great importance is this. A workman may go to his country and his return to work is indefinite. The employer or the insurance company who is protecting the employer wishes to know whether the workman is able to return to work. A qualified medical practitioner has to be engaged to examine the man and report. As my Honourable friend, Mr. Chatterjee, pointed out, if the company or the employer is permitted to engage the services of a man of lower qualification, he may come to a decision greatly against the interests of the workman himself and I do not agree with Mr. Rangachariar that this amendment would be for the benefit of the workman. My Honourable friend in his note of dissent says "There may be persons who for reasons of their own may not wish to register themselves or who are not fully qualified to come on the register and yet qualified enough to say 'a man has lost a thumb'." I ask you, Sir, is that any qualification—to say a man has lost a thumb? Anybody can say "a man has lost a thumb" but what we want is qualification for the proper treatment of the injured thumb, and also to say whether the wound is sufficiently healed to enable the workman to return to his work. With these words, Sir, I strongly oppose the amendment.

Dr. Nand Lal: Sir, I am in support of this amendment. Three grounds have been advanced in opposition to it. The first is that the employer will appoint a man according to his own choice, and that man, possibly to see that the object of the employer is attended to, may not act properly and may, thus, eventually prove prejudicial to the workman. The other ground which has been advanced is that it is quite probable that inefficient surgeons or inefficient physicians may be recognised and this recognition may not be beneficial either to the employer or to the employee. The third ground which has been advanced, in opposition, as I said before, is this, that if there are such people they may make efforts to be qualified, and after their having been so qualified, their names will have an entry on the register and therefore they will come within the scope of this Bill, and if they are not sufficiently able to stand the test, then they are utterly unfit to handle this work, and so the amendment is of no avail. These grounds have been set forth, as I have already submitted, in opposition.

When I examine all these grounds I find that there is no force in any of them. First of all, if the employer is without scruples, he is quite prepared to stoop low, then there will be nothing to prevent him from stooping low in the case of recognised medical practitioners too. The Government Benches will bear this in mind that no quack or inefficient man will be allowed to give certificate or stand as a witness, but a man who has authoritatively been recognised. That recognition is the greatest test. Only that man will have that distinction who is really sufficiently able to certify or examine. Therefore, there is no fear, so far as that ground is concerned. The other ground that he will be incapable, so far as that question goes, there have been a number of cases where our Indian physicians and surgeons, though they have not passed the test in some first class recognised medical colleges, are equally able, and as regards these, this appeal is made. Suppose, in some area, there is no man who has got a diploma or a degree from some officially recognised medical college, but there is a man who has had training, officially enabling him to practise and, so far as practice goes, he has a fairly good experience and

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is fully capable of giving a certificate and fully capable of examining patient or injured workman and the expression of his opinion will be sufficient to determine the question of disablement. Why should the workman be deprived of the services of the man who is living close by? On the other hand, why should that able man be depreciated so far as merits go? The third ground is that he should make efforts to qualify him in that behalf. Does my learned friend seriously mean to say, that in order to give the benefit of his services and ability to a workman or to the employer he may undergo a special test? It is not necessary at all. If he is capable and able to handle these questions, then he will be recognised and will be considered sufficiently well-qualified for the purposes of this Act. (Mr. J. Chaudhuri: "Leave it to Local Government.") Yes, it will be done. That is why I am recommending this. (Rao Bahadur T. Rangachariar: "That is my amendment.") Therefore, I have submitted there is not much strength in the opposition, and consequently, being in favour of the spirit of the recommendation which has been embodied in this amendment, I very strongly support it.

The Honourable Mr. C. A. Innes: Sir, I would appeal to the House not to accept this amendment of Mr. Rangachariar, for if that amendment is accepted, it may have a very mischievous result. I should like just to give a history of this case. When I submitted the Bill to the House, we had a very much more stringent definition of qualified medical practitioners, and we made the definition very stringent indeed because we knew what an effect upon the Insurance Companies it would have if they thought that we were in any way inadequate in our standards of medical practice. In the Select Committee, in deference to views expressed to the Select Committee, we watered down our original definition and we adopted the existing definition of qualified medical practitioner, which has been taken from the Factories Act. Now, Sir, that definition came before the House only two days ago in regard to the Mines Bill. Exception was not taken to it by my Honourable friend, Mr. Rangachariar, nor by anybody else in this House. In this particular case the thing is of far greater importance, and yet Mr. Rangachariar wishes to alter the definition here. As I have said, it may have a very great effect upon the working of this Bill. It may send up the insurance rates for every employer in India, and I suggest, Sir, that if Mr. Rangachariar wishes to get recognition or registration of his Vaid or Hakims or anybody else, let him do so by a separate Resolution but let him not prejudice the chances of this particular Bill working successfully. I oppose the amendment, Sir, most heartily.

Mr. N. M. Joshi: From the point of view of the working classes, I think, Sir, there is some disadvantage as well as some advantage in the amendment of my Honourable friend Mr. Rangachariar. In my opinion the disadvantage is that it may encourage them to go to Vaid or Hakims, which I do not want them to do. But unfortunately, Sir, knowing the conditions of the working classes in this country and knowing very well section 11, sub-section (4), I think there is a great advantage in the amendment also. Unfortunately Government has thought it fit to include in the Bill, sub-section (4) of section 11, which is not found at least in English legislation. According to this clause a workman, if he is not treated by a qualified medical practitioner, stands to lose something. Sir, I know very well that a large number of the working class people do go to Vaid and Hakims, and therefore if this section stands, that is, sub-section

(4) of section 11, then evidently there is a great advantage in having the expression 'qualified medical practitioner' defined, as my Honourable friend, Mr. Rangachariar, has done; otherwise a large number of the working class people when injured will lose the benefit of the Workmen's Compensation Bill, because a large number of them go to Vaid and Hakims, and it would be quite easy for the employers to show that the injury was aggravated on account of the Vaid, that the workman got treatment from an ordinary qualified medical practitioner and not from a registered medical practitioner. I think therefore that on the whole I would support the amendment instead of opposing it.

Mr. Jamnadas Dwarkadas: Sir, the grievance, as far as I understand, that Mr. Rangachariar makes is this. He does not want men with lower qualifications to be included in the section of this Act. I think what Mr. Rangachariar complains against, is the exclusion of certain men, otherwise qualified men who have taken degrees in the recognized Universities, the exclusion of these men from the definition under the Act.

(Dr. Nand Lal was rising from his seat.)

I can explain better if I am not interrupted. Mr. Rangachariar, I think, complained that there have been cases in which qualified medical men, who were known to have degrees and were recognized by the Universities, were excluded by the Medical Council because they showed tendency in many cases to prefer the Ayurvedic or Unani system to the English system, or because they also took the assistance of these two systems of medical examination in certain cases. Some years ago in Bombay we had a case like that, I mean the case of Dr. Popat Prabhuram, L.M.S. of the Bombay University, a well-known and highly respected physician of many years' standing. He has been qualified medical practitioner for many years past, but he was disqualified by the Medical Council on the ground—and this Medical Council I am constrained to say consisted mostly of Indian doctors—he was disqualified on the ground that he was guilty of grave misconduct in as much as he used to take the assistance of the Ayurvedic or Unani systems of medicine. That is a grave injustice; there is not the slightest doubt about that. I may also point out that in Bombay at any rate the English doctors, who are not in the Council, unfortunately, fought in favour of the inclusion of Dr. Popat and said that they themselves had found that in many cases the assistance of men who knew the Ayurvedic system was very helpful to them. Now the difficulty when you come to deal with Ayurvedic and Unani practitioners is that you have not got an organization from which you can, say, pick out the best qualified men. I quite recognize that difficulty, though there should be nothing in the Act to prevent such men as advocate the use of the Ayurvedic system from being registered; and if they refuse to be registered because their advocacy of the Ayurvedic system is challenged, then I should think they are doing an act which commends itself to us and is worthy of our respect rather than of our condemnation. But in laying this grievance we should not forget that it is a case which can be fought out on its own merits. I am in entire agreement with the grievance that Mr. Rangachariar makes. I think it is a great grievance and it has got to be redressed and fought out. But I think it ought to be made the subject of a full-dress debate if this Assembly has the power to have a discussion on it! Or, at any rate, we ought to agitate in our provinces to get the local Legislatures to amend the Act so as to make the inclusion of such practitioners possible under the definition given in the Act. I therefore think that we should be justified in carrying the section as it stands and in

[Mr. Jamnadas Dwarkadas.]

throwing out Mr. Rangachariar's amendment. If I may suggest to Mr. Rangachariar—I am very happy to do so—I think this grievance may form the subject of a separate debate.

Dr. H. S. Gour: Sir, I am afraid my friend on the left has taken advantage of the provisions of this Workmen's Compensation Act to deliver a flank attack upon a wholly different Act, the Medical Act of 1858. I deprecate, Sir, any reference to that Act, because the main question with which we are at close grips in connection with this Act is, what will be the value and effect of a workman injured in the course of his employment if he is treated by a quack instead of a qualified medical practitioner. (*Rao Bahadur T. Rangachariar:* "Will the Local Government qualify a quack?") My learned friend says, will the Local Government qualify a quack? If my friend has no apprehension of that character, he must know that the medical practitioners who are registered under the Act are also registered under the Acts of the various local Councils which are lawfully constituted bodies and exclude only those who indulge in nostrums and drugs which, time and test have proved to be not only innocuous but in many cases mischievous. But, I say, Sir, I shall not be led into a digression from the main point. The main point with which this House is confronted is this. A workman is injured. Mr. Darcy Lindsay, who is an insurance expert, has told you that if you are to enlarge the provisions of this definition of a qualified medical practitioner, you will raise the insurance premia. Is the House prepared to do it? And that is the only question with which we are at present concerned. If my friend Mr. Rangachariar has any grievance against the operation of the Medical Act, I have no doubt he will be able to find time and opportunity for ventilating it. But, so far as the working of the Workmen's Compensation Act is concerned, we must take it as a fact—I hope my Honourable friend will take it as a fact—that we shall weaken the salutary provisions of this Act by such a definition of a medical practitioner; and that being the sole question—and the sole question before this House—I would invite the attention of this House to this—and this question only—and I hope that they will unanimously throw out Mr. Rangachariar's amendment.

(*An Honourable Member:* "I move that the question be now put.")

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, there appears to be some understanding on both sides. The proposed definition in the Bill gives Local Governments the power to notify as "qualified medical practitioners" persons who are registered either under the Act of 1858 or under the subsequent local Acts, which have been passed in almost all provinces of India during the past ten years; and it further provides that where no such Act is in force, the Local Government is free to notify any person as a qualified medical practitioner for the purposes of this measure. Now, let us see who are possibly excluded from the category of practitioners if full operation is given to the definition as it stands. The Vaid is the first class and Hakims is the second class of persons who are excluded but this is not all. There are practitioners of the western system of medicine who have not thought fit to get their names registered under the local Acts which have been passed in the various provinces, because they do not perhaps like to bind themselves and bring them under certain restrictions to which every person who is registered and is a member of the local medical council is subject. So, if the amendment proposed by Mr. Rangachariar is not adopted, the one result will

be that such eminent men who have not thought fit to get themselves registered shall be excluded. That is to say, the Local Government shall not be in a position to notify them as "qualified medical practitioners" for the purpose of this Act.

The Honourable Mr. A. C. Chatterjee: Can you name any such eminent men?

Chaudhri Shahab-ud-Din: I can certainly point out some.

The Honourable Mr. A. C. Chatterjee: Are there any such men? Can you name any now?

Chaudhri Shahab-ud-Din: There are some non-co-operators who do not want to come under these Acts.

Then the second class of practitioners of western medical system who will be excluded is of those who were once registered as members of the Medical Councils, but who, for some technical reason, have been excluded from Councils, say for technical misconduct. Such gentlemen may not perhaps be fit to be registered as members of medical councils but yet if they are eminent practitioners and people have faith and confidence in them, there is no reason, if a Local Government deem it proper to notify them as qualified medical practitioners, why the Local Government should not be given an opportunity to do so. And as regards Vaid and Hakims, I quite agree that it is not fair on the part of Mr. Rangachariar that he should take advantage of this amendment incidentally to have a very complicated point solved one way or the other. The status of Vaid and Hakims is a big question and it should be fought in the local Councils. But as regards the first class of men, that is, men who practise the western medical system, they should not be excluded, especially when this is left to the discretion of the Local Government. It is not left to the discretion of any Legislative Council or a private individual. If the Local Government deems it fit to notify a certain person as a "qualified medical practitioner," even though he is not registered as such, I think the discretion of the Local Governments should not be fettered, and it should be left to them to notify such persons as "qualified medical practitioners" if they care to do so. Mr. Rangachariar is enlarging in a sense the definition, and is not narrowing it, and I have no apprehension, absolutely no fear, that a Local Government will ever, in any case, notify a Hakim or a Vaid as a "qualified medical practitioner" for the purposes of this Act.

Dr. H. S. Gour: Then the amendment is superfluous.

Chaudhri Shahab-ud-Din: No, it is not. I have pointed out that there are two important classes of men who stand a chance of not being notified as "qualified medical practitioners" under this Act if the amendment proposed by Mr. Rangachariar is carried. I would join issue with those who hold that there are no medical practitioners who have kept themselves aloof from the so-called medical councils. There are such men; I need not name them; I know some of them. Similarly, there are men who have been excluded. And if there are such men, a Local Government must be given an opportunity to notify them as qualified medical practitioners if it deems fit to do so, for the purposes of this Act. For this reason I support the amendment, though there is a danger indeed of its being extended by some Local Governments beyond the proper limits.

[Mr. K. C. Neogy.]

for this Legislature to legislate for Indian seamen who were engaged on ships registered under the British Merchant Shipping Act. I must confess that so far as this question of legal difficulty was concerned, we had not the advantage of any outside legal opinion. We had to depend upon the advice which was tendered to us by the Legislative Department. I am very sorry I had not the opportunity of consulting Dr. Gour himself, for the very good reason, that he was not here at that time.

Now, Sir, the first answer that we got when we raised this question was that the benefits of the English Workmen's Compensation Act are available to the Indian seamen engaged on ships registered under the British Act. But I pointed out with reference to some particular cases of which I had papers with me showing the amount of difficulty which the Indian lascars has to experience while trying to get the benefits of the English Compensation Act. For instance, I had with me papers relating to cases of injured seamen residing in Calcutta who were asked to go to England in order to prove the nature of their injuries. In another case, where an Indian lascars had died as a result of an accident sustained at a French port, no compensation was received by his widow or other dependants. In yet another case I found that the mother of an unfortunate lascars who lost his life as a result of a similar accident wrote to the Government of India, to the Shipping Master, to the Marine Department of the Government of Bengal and other authorities asking for compensation.

That shows that these people are absolutely at a loss to find out as to which party to look to for help in these matters. So that, so far as these difficulties are concerned, I don't think that there is any question that the Indian lascars are deserving of every sympathy of this House.

Now, Sir, we have it on the authority of the Indian Seamen's Union of Calcutta that the class of lascars whom we are going to exclude from the benefits of this Act forms by far a large majority of the Indian lascars. In other words, for all practical purposes we are excluding all the Indian lascars from the benefits of the present Bill. Well, this is what the Indian Seamen's Union says with regard to this matter: "It practically deprives by far the major portion of the Indian seamen of their rights and privileges under the present legislation." Dr. Gour has referred to the Government of India Act, and he maintains that we have authority to legislate in this matter. I am not in a position to make any assertion in regard to that. But I would point out that the English Merchant Shipping Act of 1894 in section 125 recognises the right of the Indian Legislature to legislate in certain matters in regard to the engagement of lascars. This is what it says under the head 'Agreement with Lascars':

"The agreement shall be made in such form and contain such provisions and be executed in such manner and contain such conditions for securing the return of the lascars to his own country, and for other purposes, as the Governor General of India in Council or the Governor in Council of any Indian residency in which an agreement is made, may direct."

As I have already stated, I do not wish to dogmatise on this point, but I think this is a question which ought to be explored further than it has been up to now.

The Honourable Mr. C. A. Innes: Sir, I entirely agree with Mr. Neogy's last sentence. I entirely agree that this very difficult question of Indian seamen does require further exploration, and as the House will see from the

Joint Select Committee's Report, we have every intention of making that further investigation and exploration. All I want the House to do is not to be in too much of a hurry. We are up against here an extremely difficult question, a question which raises difficult points of constitutional law on which I for one am not in a position to give any opinion whatsoever. Now I should like to make it perfectly clear that I recognise and the Government recognise that we have to give in a Bill of this kind every consideration to the claims and needs of Indian lascars seamen. We have recognised that, and we always have recognised it. Let no one in this House think that we have not recognised that from the beginning and that we have not devoted a great deal of time and attention to the subject. We have. We discussed it in the Committee in July; we discussed it again in the Joint Select Committee. Now, the first objection I have to Mr. Ahmed's amendment is that obviously it goes a great deal too far. In the first place, the amendment as it stands makes absolute nonsense of the preceding clause in the Bill, so we can hardly accept it as it stands. And in the second place, the amendment as it stands goes a great deal further than even the English Workmen's Compensation Act has ever tried to go. The amendment states that it shall include any Indian seaman who has entered into a contract of service with any shipping company or its agent or master of a ship in India. That is to say, supposing a German or a French or a British ship or a ship of any other nationality comes to India, picks up a lascars seaman here and the lascars seaman enters into a contract with the master of the ship, that seaman is eligible for the benefits of the Bill. Now, the English Workmen's Compensation Act does not go as far as that. What it says is: "Members of the crew of any ship registered in the United Kingdom or of any other British ship or vessel, the owner or managing agent or manager resides or has his principal place of business in the United Kingdom." Mr. Ahmed's amendment goes further than that. He does not make it a *sine qua non* that the owner or managing agent or manager should have his place of residence in British India. Further, looking at it in another way, the amendment does not go far enough. Because, if we are going to introduce this provision into the Bill, Mr. Ahmed does not make any suggestion that we should make provision for the detention of a foreign ship. Supposing a man enters into a contract of service with the master of a foreign ship. While the ship is still in port, he suffers injury by accident. He gives notice of the accident and he lays his claim before the Commissioner. What is there to prevent the owner of that ship from clearing out of the port or going off to, it may be, France or Germany? The English Merchant Shipping Act makes provision in cases of that kind for detention. Mr. Ahmed's amendment does not go as far as that. Now, our difficulty is that the lawyers on the main point disagree. Dr. Gour seems to have no doubt that the Indian Legislature can make this Workmen's Compensation Bill cover accidents occurring outside the limits of British India. Our advice received from the Legislative Department was that it was very doubtful whether they could do so. We arrived at the conclusion that, if we introduced provision of this kind, it would merely cover the case of accidents occurring either when the ship was in the Indian port or when it was within Indian territorial waters. And we did not think it was going to do much good to introduce partial legislation to cover accidents of that limited class. What is the real grievance of the Indian lascars seaman serving on a British ship in this matter? You have got to remember that the lascars serving on a ship registered in the United Kingdom is covered by the English Workmen's Compensation Act already. He can, and he does, recover compensation under that Act. He has done so frequently. But we

[Mr. C. A. Innes.]

recognise that it must be inconvenient for a lascar to sue in the British courts and in the Industries Department, what we thought ought to be done was to see whether we could not provide him with an alternative remedy, the option of suing under the English Act in the English courts or of suing under the Indian Act in the Indian courts. And, if we can do that, then we shall have done far more for the lascar seaman than will be effected by Mr. Ahmed's amendment. Now, I have promised, we undertake to take up that question with the Board of Trade at Home. All I ask the House to do is this—I ask them to remember that this is an experimental Bill, that we are merely making a start with this Bill in a difficult piece of legislation. And I am quite prepared, when we have cleared up that question, to make further provision for the Indian lascar seaman and I hope the House will accept that as a reasonable solution for the present of a very difficult question.

Dr. H. S. Gour: Sir, in view of the assurance given by the Honourable Mr. Innes, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. N. C. Sircar: Sir, my amendment is:

"That in clause (2) (1) (m), the following be added at the end:
'or any bonus earned by the employee'."

This section deals with wages. It says:

"Wages includes any privilege or benefit which is capable of being estimated in money."

Bonus is a privilege which cannot be estimated. Bonus is generally paid occasionally for any good work done by any employee and it cannot be part of wages and cannot be estimated. For these reasons, Sir, I ask that the words "or any bonus earned by the employee" be added at the end of the clause.

Mr. A. G. Olow (Industries Department: Nominated Official): Sir, I rise to oppose this amendment. I am quite unable to see any difference between a bonus and wages. Mr. Sircar himself admits in his own amendment, by the use of the last four words that a bonus is earned by an employee. Let us suppose that this amendment is carried. How is the Commissioner to say what is a bonus and what is wages? Some mills—I can give instances to Mr. Sircar,—pay a weekly bonus, some mills pay a monthly bonus and some pay an annual bonus. There is no difficulty whatever in estimating the amount of the bonus. The amount of the bonus is announced in the company's reports and is published in the newspapers. It is known to the employer and to the worker. The only effect, if we agree to exclude a bonus, will be that the employers will gradually cease paying wages at all. Month by month they will hand over Rs. 20, Rs. 25 or Rs. 30 to the employee and say: "This is a bonus which I give you because you have done excellent work for me." This is not a fanciful suggestion. At one time in an Income-Tax Act, they specified that salary would be included and bonus would not be included, and the result was that they gradually found that salaries were disappearing and that bonuses were increasing correspondingly. I ask the House to do justice to workmen. What we are trying to do is to give compensation that will bear some relation to the earnings of the workman before he was injured. Mr. Sircar

himself admits that this is part of the workman's earnings, and I ask the House to include it in his wages.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. N. C. Sircar: Sir, my next amendment is:

"That in sub-clause (n) (ii) of clause 2 (1), for the word 'three' the word 'one' be substituted."

My ground for moving this amendment is this. A workman generally does not get more than Rs. 100 as a monthly wage. It is only Supervisors who get a higher pay than Rs. 100, and the workmen generally never get more than Rs. 100. I therefore ask that the word "three" be substituted by the word "one".

The Honourable Mr. A. O. Chatterjee: Sir, the Honourable gentleman has not given any arguments at all in support of his amendment. I do not really think it is necessary to waste the time of the House at this late hour of the day. I only want to say, Sir, that ordinarily, there ought not to have been any limitation with regard to wages, especially as we had put in other limitations in other parts of the Bill. But we purposely wanted to limit the application of this Bill to the poorer classes, to the lower middle classes, that is to say, to the artisans, the skilled artisans, and the foremen in the factories. A great many of them do earn more than Rs. 100 a month now-a-days and I think it would be extremely unjust to a very deserving class of artisans, skilled mechanics and people of that type if my Honourable friend Mr. Sircar's amendment is carried.

The motion was negatived.

Mr. President: The question is that clause 2, as amended, do stand part of the Bill.

The motion was adopted.

Mr. President: In view of the fact that there is an important Select Committee sitting this afternoon, I propose to adjourn now.

The Assembly then adjourned till Eleven of the Clock on Monday, the 5th February, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 5th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

INTEREST-FREE ADVANCES FOR PASSAGES TO EUROPE.

318. ***Lieutenant-Colonel H. A. J. Gidney:** (a) Will Government be pleased to state why Government servants of Asiatic domicile have been excluded from the recent concession of interest-free advances for passages to Europe?

(b) Does not the concession in effect apply, almost exclusively, to officers in the Imperial Services?

(c) If it is thought that facilities are required to enable Government servants of non-Asiatic domicile to visit their homes, do Government contemplate granting similar advances to Government servants employed in Delhi who wish to visit their homes, for example, in Madras?

(d) Will an advance be granted to a Government servant of Asiatic domicile who has made or proposes to make his home in England or to visit that island on medical advice for reasons of health, or to such a Government servant who wishes to educate his children there?

(e) Is it a fact that Government servants of non-Asiatic domicile already draw additions to their salaries in the way of overseas allowance and, in some instances, higher salaries than those fixed for the same posts when not held by officials recruited outside India?

(f) If so, will Government be pleased to state why at this late date it is necessary to super-add a concession which is denied to other officials?

The Honourable Sir Malcolm Hailey: (a) Because the officer of non-Asiatic domicile is not working in his own country whereas officers of Asiatic domicile are.

(b) No. It is being extended to officers of non-Asiatic domicile in the provincial services.

(c) No. The concession has been granted entirely on account of the high cost of passages to Europe.

(d) This is not permissible under the rules for the reason stated in answer to part (a).

(e) Officers of non-Asiatic domicile in certain departments who are drawing pay under a time-scale receive overseas pay. At present certain officers of Asiatic domicile also draw this pay, but new entrants, except Indians entering the Indian Civil Service by means of the open Competitive examination in London, until 1925, draw pay according to domicile, only those of non-Asiatic domicile being eligible for overseas pay. There is no

overseas pay for posts above the time-scale, and there is no differentiation in pay according as the incumbent is of Asiatic or non-Asiatic domicile.

(f) The Honourable Member is referred to the answer to parts (a) and (c) of this question.

Lieut.-Colonel H. A. J. Gidney: The Honourable Member in reply to part (c) of my question stated that the concession was due to the high cost of passages in force now. I should imagine that this reason should apply equally to the excessive railway rates that obtain to-day in India.

Mr. President: That is not a supplementary question. That is an assertion.

CONCESSIONS TO TEA-GARDEN COOLIES ON A. B. RAILWAY.

319. ***Rai Bahadur G. C. Nag:** 1. With reference to the information supplied privately to me in reply to my question No. 165 asked on the 17th January, 1923, that concessions in fares have been granted by the Assam Bengal Railway to coolies of tea-gardens in Assam firstly because the Railway has directly benefited by the development of the tea industry in Assam, and secondly because the coolies on the expiry of their employment on tea-gardens settle down and help in adding to the sources of revenue to the Government of Assam by clearing jungle and taking up land for cultivation, will the Government kindly ascertain from the said Railway since when these concessions have been granted, and since when the Railway discovered that these concessions could be justified on the two grounds mentioned?

2. Will the Government ascertain from the said Railway if it grants such concessions to the people who annually migrate in large numbers to Assam merely to take up land and settle down as cultivators?

3. Are the Government of India aware of the large influx of immigrants in recent years from the Eastern Bengal districts to Assam who have helped in reclaiming waste-lands in Assam? Are such people granted concessions in fares by the Assam-Bengal Railway? If not, why not?

Mr. C. D. M. Hindley: The information is being obtained from the Agent, Assam Bengal Railway, and will be communicated to the Honourable Member in due course.

TONNAGE OF MERCHANT MARINE.

320. ***Mr. W. M. Hussanally:** What is the gross tonnage of the Merchant Marine respectively of (1) Great Britain, (2) France, (3) Spain, (4) Portugal, (5) Japan, (6) America and (7) India?

Mr. A. H. Ley: The gross tonnage of vessels of 100 tons and over as recorded in Lloyd's Register Book, 1922-23 edition, belonging to the countries specified is as follows:

Great Britain	19,295,637
France	3,845,791
Spain	1,282,757
Portugal	285,878
Japan	3,586,918
The United States of America	17,062,460
India and Ceylon	235,100

These figures include steamers and motor vessels and in several cases also sailing ships. The figures given for the United States of America include those of vessels plying on the Great Lakes.

Mr. W. M. Hussanally: Cannot we have any figures for India alone without Ceylon?

Mr. A. H. Ley: I must ask for notice of that question.

Mr. W. M. Hussanally: The question did not ask for figures for Ceylon at all.

INDIAN COASTAL TRADE.

321. ***Mr. W. M. Hussanally:** What is the total amount of Indian coastal trade? How much of it is served by Indian Merchant Marine and how much by Merchant Marines of other countries?

Mr. A. H. Ley: The Honourable Member is referred to the "Annual statement of the Coastal Trade and Navigation of British India" which contains all the statistical information available about coastal trade.

INDIAN SHIPPING COMPANIES.

322. ***Mr. W. M. Hussanally:** How many Indian Shipping Companies were started during the past 50 years? How many of them succumbed and why? How many of them still survive?

Mr. A. H. Ley: The Honourable Member is referred to the answer given to a somewhat similar question (No. 136) asked by the Honourable Mr. Lalubhai Samaldas in the Council of State on the 24th March, 1922. I may add that a later issue of the Statistical Department publication "Joint Stock Companies in British India and Mysore," i.e., for 1919-20, has also been placed in the Library.

DEFERRED REBATE SYSTEM.

323. ***Mr. W. M. Hussanally:** (a) What is "deferred rebate system"? How much is this rebate granted by Shipping Companies to shippers in and from India? Which companies grant this rebate and why?

(b) Is it a fact that this "deferred rebate" is granted only by Shipping Companies belonging to foreign countries for the purpose of keeping shippers in hand?

Mr. A. H. Ley: I am afraid that I cannot undertake to give within the limits of an answer to a question a description of the system known as the 'deferred rebate' system. The whole subject has recently been under inquiry by the Imperial Shipping Committee at home, and I hope to be able shortly to place in the Library a copy of the Imperial Shipping Committee's report which will give the Honourable Member full information.

Sir Deva Prasad Sarvadhikary: Is it a fact that a part of the deferred rebate system is that the rebate is paid at the end of a specified period and is forfeited if the party entitled to it happens to give his custom elsewhere.

Mr. A. H. Ley: I believe that is so.

RATE WAR AMONG SHIPPING COMPANIES.

324. ***Mr. W. M. Hussanally:** (a) Is it a fact that a sort of rate war exists among foreign shipping companies as against Indian Companies?

(b) If the system of "deferred rebate" and of rate war exist in India do Government propose to make these systems impossible by Statute?

Mr. A. H. Ley: The Government of India have no information regarding the alleged rate war. They propose to take no action in regard to the deferred rebate system until they have been able to study the report referred to in the answer to the previous question.

AIDS TO SHIPPING FIRMS.

325. ***Mr. W. M. Hussanally:** (a) Have the Government of India, in the past, given any direct or indirect aid to any Indian National Shipping firm, such as bounties, mail contracts or subscriptions, cheap loans, preferential railway rates, reservation of coastal trade and the like, with a view to encourage Indian ship-building and navigation as is done by other countries? If not, why?

(b) If the answer to the above question be in the negative, do Government propose to offer any such aid to Indian Shipping firms in the near future?

Mr. A. H. Ley: (a) Mail contracts are purely business transactions and differ intrinsically from the aids specified in the Honourable Member's question. The Government of India have given no assistance of the nature indicated to any shipping company whether registered in India or not.

(b) The Government of India have no present intention of doing so.

I would add that information regarding Mail services by steamers is given in Appendix XI to the Annual Report on the Posts and Telegraphs of India for the year 1921-22. The contract of the British India Steam Navigation Company expired on the 31st January last and has been extended for one year. It is proposed shortly to call for tenders. Mail Contract with the P. and O. S. N. Co. is arranged by His Majesty's Postmaster General and the payments are allocated between different administrations according to the Morley Award.

B. I. S. N. COY.'S TRADE.

326. ***Mr. W. M. Hussanally:** (a) Is it a fact that the British India Steam Navigation Company has almost the total monopoly of carrying all coastal trade and mails in India? What was the amount received by this Company, from Government of India in 1921-22 for (i) carrying mails, (ii) carrying Government stores?

(b) What amount was paid in the same year to the P. & O. Company for similar purposes?

(c) When do contracts with these Companies expire?

(d) Do Government propose offering these contracts to Indian Shipping firms on the expiry of the above contracts with a view to encourage Indian National Shipping?

Mr. A. H. Ley: The Government of India have no information of the proportion of the coastal trade of India carried by the ships of the British India Steam Navigation Company.

Particulars asked for about the mail contracts and the payments made under them are being collected and will be furnished by the Department which deals with this subject. The Government of India have no knowledge what stores departments or Local Governments may at times have sent by sea from one port to another in India and do not propose to endeavour to collect it.

(d) The action that will be taken in this matter will be decided when the event arises.

RAILWAY PREFERENTIAL GOODS RATES.

327. ***Mr. W. M. Hussanally:** (a) Is it a fact that Indian Railways or any of them, allow preferential rates to any foreign shipping companies for the carriage of such goods as are intended to be exported abroad; or imported from other countries?

(b) And is it a fact that railway freight rates for goods transported from one place to another within India and intended for local consumption are higher? If so, why?

Mr. C. D. M. Hindley: (a) The reply is in the negative and (b) therefore does not arise.

INCOME FROM INCREASED POSTAL RATES.

328. ***Mr. W. M. Hussanally:** 1. With reference to answers given by Sir Sydney Crookshank to supplementary questions to No. 249 on 23rd January, 1923, will Government please state (a) the income from increased postal rates sanctioned last year up to 31st January, 1923, or 31st December, 1922, (whichever be available) as compared with the income for the same period the year before? The income from Telegraphs to be excluded?

2. Has the anticipated income been reached?

3. What has been the cost during the above period of reprinting, overprinting, re-labelling, re-packing freight and all other incidental charges incurred in consequence of the increased postal rates?

4. Deducting this expenditure what has been the nett income from the increase in postal rates?

Colonel Sir Sydney Crookshank: The necessary information is being collected and will be supplied to the Honourable Member as soon as it is available.

VACCINE FOR BOVINE TUBERCULOSIS.

329. ***Rai Bahadur G. O. Nag:** Are the Government aware of the alleged discovery by the Pasteur Institute of Lille, of a vaccine for conferring immunity from tuberculosis on bovine animals and will they consider the advisability of instituting suitable inquiries of the French

Government with a view of enabling the treatment to be introduced into this country as soon as possible?

Mr. J. Hullah: The researches referred to in the question are well known. In 1921, Mr. Edwards, now Director of our Bacteriological Institute, at Muktesar, was in personal communication with the Sub-Director of the Institute at Lille on the subject, but so far as he is aware the work has not yet gone beyond the experimental stage.

The question of bovine tuberculosis is receiving attention in the Muktesar Laboratory. Such statistics as are available indicate that the disease is rare in this country, and it has not yet been settled whether Indian cattle are more resistant than European cattle or whether the bacillus in India is less virulent than in Europe. Work on these problems has already been published in India and the Director of the Institute at Muktesar is now about to conduct further investigations. Bovine tuberculosis is one of the subjects for discussion at a veterinary conference to be held at Calcutta this month.

N.-W. F. COMMITTEE REPORT.

330. ***Dr. Nand Lal:** (1) Is the Government of India aware that the public is anxious to know as to when the N. W. F. Committee Report will be out?

(2) Will the Government of India be pleased to state as to why its publication has been delayed?

(3) Will the Government of India be pleased to enlighten this Assembly as to when it (the aforesaid report) will be placed on the table?

Mr. Denys Bray: (1) Yes.

(2) The Report has only recently reached Government in its complete form and is still under consideration.

(3) I regret that I am unable to give the Honourable Member the information for which he asks.

ROYAL COMMISSION ON PUBLIC SERVICES.

331. ***Rai Bahadur G. C. Nag:** Will Government kindly state what expenditure was incurred by it on the Royal Commission on Public Services in India respectively in 1886-87 and 1916?

The Honourable Sir Malcolm Hailey: The Commission of 1886-87 was not a Royal Commission. It was appointed by the Governor General in Council. The expenditure incurred on it in that year was Rs. 3,29,734. Some expenditure was also incurred in the following year but actual figures are not available.

The total cost of the Royal Commission in 1912-15 was Rs. 12,28,159. It has recently been ascertained that the figure given by Sir William Vincent in reply to a question asked in the Assembly by Mr. M. K. Reddi Garu in September, 1921, did not include expenditure incurred in England which has been included in the above estimate.

UNSTARRED QUESTIONS AND ANSWERS.

LICENSE FOR RAILWAY VENDORS.

141. **Lala Girdharilal Agarwala:** 1. Is it a fact that vendors of articles of food, etc., are not allowed to sell those articles to passengers on railways without making some payment to the Railways for that sort of license?

2. Is this sort of tax permissible under any rule or law, if so, what?

3. Are not the Railways bound to look to the convenience of passengers while travelling without any direct or indirect taxation?

4. Will the Government be pleased to state what is the total amount thus realized by the Railways within the last 3 years and do Government propose to stop the practice in future?

Mr. C. D. M. Hindley: (1) Yes.

(2) and (3) This is not a tax.

The ordinary practice is that a small charge is made to vendors and contractors licensed to sell sweetmeats, etc., on station platforms, and it is to the convenience of passengers as well as of railways that only authorised vendors subject to railway control and inspection should be allowed on the platforms.

(4) Government is not in possession of the information and as at present advised do not propose to take up the question of interfering.

REDUCTION OF B. N. RAILWAY STAFF AT KHARAGPUR.

142. **Mr. N. M. Joshi:** (a) Is it a fact that a large reduction has been made in the low-paid Indian staff in the Bengal-Nagpur Railway workshop at Kharagpur?

(b) Is it also a fact that the number of working days and the daily hours of work have been reduced so as to considerably reduce the earnings of the employees who are working?

(c) Will Government be pleased to explain why this step has been taken?

(d) Will Government be pleased to state what they propose to do to remedy the sufferings caused by the unemployment or insufficient employment? and

(e) Is it a fact that at this very time or only a short time ago some highly paid officers have been appointed on the above-mentioned Railway?

Mr. C. D. M. Hindley: (a) The services of a certain number of daily paid staff in the Bengal Nagpur Railway workshop have been terminated. The men affected were unsatisfactory workers.

(b) Short time in the Kharagpur Workshop has been introduced.

(c) This step has been taken for financial reasons.

(d) Government propose to take no action as the services of only those men have been terminated whose work did not justify retention.

(e) I presume that the Honourable Member means to enquire whether additional highly paid posts have recently been created and if so this is not the case.

THE AMBALA CANTONMENT COMMITTEE.

143. **Mr. Pyari Lal:** 1. Is it a fact that the Ambala Cantonment Committee has refused to entertain applications for the construction of upper storeys in that cantonment since June 1922?

2. Is the Government aware that this said Committee has taken this action on the plea of there being a general prohibitory order therefor, by the District Commander?

3. Will the Government be pleased to state the nature of this prohibitory order and the reasons for which it has been given?

4. Is it a fact that on a reference by the All-India Cantonments Association to the Lahore District on the subject, the District Commander has denied the existence of any such prohibitory order under its letter No. 20537-9-Q.-2, dated the 20th December, 1922 to the Honorary Secretary of the Association?

5. Do the Government propose to direct the Cantonment Committee, Ambala, to entertain and consider such applications, on their merits?

6. Is the Government aware, that in several cases, the applicants gave written assurances that no pipe water shall be used in the construction?

7. Do the Government propose to take immediate action on the matter?

Mr. E. Burdon: 1—7. Government have no information on the subject, but are inquiring. I will inform the Honourable Member of the results as soon as possible.

THE BENARSI DASS HIGH SCHOOL, AMBALA.

144. **Mr. Pyari Lal:** 1. Is the Government aware that an application for the construction of upper storey in the Benarsi Dass High School, Ambala, was delayed in the Cantonment office for more than six weeks and then rejected?

2. Is it a fact that the applicant informed the Secretary, Cantonment Committee, of his treating the application as sanctioned under Section 92 (1) of the Cantonment Code, and asked him to return the plans?

3. Is it a fact, that instead of returning the plans, the Secretary stopped the applicant on a public road and insulted him by saying that he blindly signed the letter for the return of the plans under the influence of his "Jackals"?

4. Has the attention of the Government been drawn to the "Cantonment Advocate" of 25th November, 1922 giving details of the above incident?

5. Will the Government be pleased to state the facts of the incident?

6. If the facts be as stated in the "Advocate," will the Government take necessary action in the matter?

7. If so, will the Government be pleased to state what action it proposes to take?

Mr. E. Burdon: 1—7. The Government of India have no information on the subject but are inquiring. I will let the Honourable Member know the results as soon as possible.

CANTONMENT ADMINISTRATION.

145. **Mr. Pyari Lal:** 1. Is it a fact that the control of civic Cantonment Administration has now been transferred from the Q. M. G., Army Headquarters to the Commands?

2. If so, is the Government aware that there is no civic expert on the staff of the Commands?

3. Will the Government consider the desirability of appointing such an expert to the staff of the Commands?

4. Has the Government seen the article headed "Decentralisation in the Army Department", published in the "Cantonment Advocate" of 25th December, 1922?

5. Is the Government aware that as stated in the aforesaid article, the All-India Cantonments Conference has already passed a Resolution to request the Government to transfer this control to its civic Department?

6. Has the Government considered this suggestion? If so, with what result? If not, will the Government be pleased to give it their early consideration?

Mr. E. Burdon: 1. The process of decentralising control is now generally under consideration by Government. A partial delegation to Commands has already taken place.

2. Yes.

3. The question of appointing officers to assist the General Officers Commanding-in-Chief in exercising control is being examined.

4 and 5. Yes.

6. As I have already indicated in my reply to the first part of the question, the whole matter of the future administration of cantonments is, at the present moment, under consideration.

NON-OFFICIALS ON CANTONMENT COMMITTEES.

146. **Mr. Pyari Lal:** 1. Is the Government aware that there is great dissatisfaction in Cantonments at the nomination of the non-official members of the Cantonment Committees, under Section 4 of the existing Cantonment Code?

2. Has the attention of the Government been drawn to an article headed "Why is election delayed", published in the "Cantonment Advocate" of 25th December 1922?

3. Is the Government aware that the Government of India Cantonment Reform Committee has urged on page 36 of its printed Report that "action" on such of their proposals as can be given effect to, should not be delayed?

4. Is it a fact that in pursuance of this recommendation the Government has already modified Section 216 of the existing Cantonment Code?

5. Will the Government be pleased to state the reasons why action has not been taken to give effect to the Reform Committee's recommendation regarding the introduction of elective principle in Cantonment Committees so far, by a modification of Section 4?

6. Will the Government be pleased to do so now?

7. Is the Government aware that there is great misunderstanding in cantonments with regard to the genuineness of Cantonment Reform, owing to the great delay in its introduction?

Mr. E. Burdon: 1. Government are aware that a change of the existing system is desired in certain quarters.

2, 3 and 4. Yes.

5 and 6. Government have decided to introduce legislation which will provide, amongst other things, that a certain number of the members of cantonment committees should be elected members; but they consider that it is unnecessary and would not be convenient to introduce this particular change in advance of their wider proposals.

7. No.

LALA GULZARI LALL OF CANTONMENT COMMITTEE, NEEMUCH.

147. **Mr. Pyari Lal:** 1. Is the Government aware that no action has been taken so far in restoring Lala Gulzari Lall to his seat on the Cantonment Committee of Neemuch as was contemplated by the Government reply No. 13668/3 (A. G.-8), dated the 18th September, 1922 to the All-India Cantonments Association?

2. Will the Government be pleased to state why the action has been delayed so long?

3. Will the Government be pleased to take immediate action in consonance of the reply referred above?

Mr. E. Burdon: 1—3. Enquiries are being made in the matter and I will inform the Honourable Member of the result as soon as possible.

AMRITSAR GRIEVANCES.

148. **Mr. Pyari Lal:** 1. Is it a fact that the action contemplated in the Government reply dated 23rd October, 1922 to my question regarding (Amritsar Grievances) has not yet been taken?

2. Is the Government aware that as a consequence of this delay the grievances of Amritsar people remain unredressed?

3. Will the Government be pleased to state reasons why action has not been taken so far in the matter as indicated by the Government reply quoted above?

4. Is the Government aware that both the question and reply were published in the *Cantonment Advocate* of 25th October and 10th November, 1922 respectively?

5. Does the Government know that the non-cancellation of the order even after the Government's admission of its illegality, has given rise to grave discontent in Amritsar and other cantonments?

6. Will the Government be pleased to take immediate action in the matter?

Mr. E. Burdon: 1—6. Enquiries are being made, and I will let the Honourable Member know the result as soon as possible.

THE CRIMINAL LAW AMENDMENT BILL.

The Honourable Sir Malcolm Hailey (Home Member): I have to introduce:

"The Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings."

The Bill has already been introduced by publication, and therefore under the rules I have not to ask for the leave of the House to introduce it. But the circumstances are so unusual and I myself feel the occasion in some sense to be so momentous that I cannot content myself simply with laying the Bill on the table of the House. There is possibly no question on which European and Indian feeling in this country has been more divided than in regard to the maintenance of racial distinctions, as we use the term, in criminal trials. There is no question on which antagonism has been more pronounced. To me therefore this is not merely a question of revising a chapter of our Criminal Procedure Code; it is not merely a question whether we should attempt a formal improvement of procedure in a sphere of justice, where, it is alleged that justice has often broken down. These may be important objects in themselves; but the character of this Bill transcends them; there are aspects of the question which bring it almost to a different plane. I would ask the House to consider with me all the circumstances of the case. I shall not attempt to go into the long history of the conflict between the communities on this question; nor need I revive memories of the embittered controversy of 40 years ago. That is past, and those memories had best stay in the past which holds them. But I emphasize this fact only, that for 40 years we have made no movement designed to bring us together on a question the solution of which is vital if we are to secure understanding and good will between the two communities. Other barriers which seemed irremovable have yielded; and claims which at first seems impossible have been conceded. But here we have stood fast. To the Indian the retention of the trial privileges of Europeans has appeared to be the wanton ascertainment of a claim of superiority on the part of one race over the other. If that seemed inexcusable in itself, it was aggravated by the general belief, supported in some cases by statements of judicial authority, that the retention of these privileges had on occasion led to a complete denial of justice. If that has been the Indian view, we ought at the same time to remember what the European view has been. To Englishmen there is no more deeply-rooted tradition than that of the inviolable right of trial by a jury of their own countrymen. Further than this, a large portion of our English population out here does not come to India of its own choice, for those who are in the British Army in India are drafted here in the course of their military service. Then again you must also remember that there have been occasions, some of them unfortunately in the not distant past, when racial feeling has run so high that Europeans here might well be justified in believing that there was a danger that false prosecution, tainted evidence and social pressure on the Indian Magistracy, might involve a real denial of justice to them.

But I do not wish to enlarge on the picture as it appeared to one side or the other. I can speak to-day of the case as it stands to-day, and not as it stood in the long yesterday. For to-day, for the first time in 40 years, we have the earnest of a solution of this question. The House knows well

[Sir Malcolm Hailey.]

the stages by which we have proceeded to this Bill. It is not a Government proposal; it is based on the recommendations of a Committee as representative, as impartial in temperament and as skilled in law as we could ever hope to attain. There were only three officials on it; one, I regret to say, no longer an official of the Crown, though I think the Crown has no more loyal friend. Much as India owes to Sir Tej Bahadur Sapru, not the least of its debts will be to him as Chairman of this Committee; and much as the Committee itself was indebted to his legal acumen and great knowledge of the law, his greatest contribution was the sense of moderation and of equity with which he guided its deliberations. There were on that Committee in all six Europeans, nine Indians and one representative of the Anglo-Indian community. Their final conclusion was admittedly a compromise. While it proposed to withdraw many of the exclusive privileges enjoyed by the European British subject, yet on the other hand it sought to improve the position of Indians generally in regard to criminal trial procedure. Whatever the fate of this Bill, yet the report of the Committee is in itself a great achievement; history will recognize that it exhibited a spirit of tolerance and a sense of moderation rare in the affairs of life and perhaps unique in the annals of India. All honour is due to the representatives of two communities which could arrive at a common understanding on a question with such a past, so pregnant with difficulties, and so rife with points of difference.

We have translated that understanding into our Bill. There are of course some exceptions; the House knows them, and I do not wish to dilate on them save in two points of importance. If His Majesty's Government have been unable to agree that Dominion subjects should be deprived of the status which they now enjoy in common with the European British subject, and if in addition they have had to make a reservation regarding the transfer of certain classes of cases to the High Courts, nevertheless I do not think their attitude should be misinterpreted. They have not stood out against the proposals of the Committee in regard to the withdrawal in great bulk of European privileges generally. So far they have followed the common understanding on which the Committee arrived. But as regards Dominion subjects, they had a peculiar and a difficult position. We know well the feelings of India on the subject of franchise and other disabilities which Indians suffer in the Dominions; I think there are few Englishmen in India who do not sympathise with them. But, at the same time I do not think that India can cavil if His Majesty's Government, with an outlook on the essential solidarity of the Empire as a whole—and especially at this time—were unable to accede to a measure which in their belief would alienate the Empire from India, and destroy all chance of bringing into full effect that Resolution of reciprocity to which the greater part of the Empire representatives agreed. Then, again, as regards the reservation in respect of transfer in certain cases of charges against men coming under the Army Act, here also His Majesty's Government stood in a special position. As I have said, the majority of these men come out to India not of their own choice, but because they are drafted here in the course of their Military service. As a result of this Bill they will already be in a position less favourable than that which they enjoy in England under the English Law. It is not unreasonable that His Majesty's Government should seek by this measure of reservation to prevent any discontent which might arise in the British Army owing to the reduction under this Bill of privileges which they now enjoy in offences which do not fall within the special category.

Here then the case now stands. Perhaps the greatest achievement of the Committee is that whereas the present discrimination in trial procedure turns in part on the race of the trying Magistrate, that distinction has now gone. Such privileges as the European will retain will be privileges of procedure only; there will be no provision in our Code which lays down that a European should not be tried by an Indian. That in itself is an advance exceeding even the most optimistic expectations of those who considered the question 10 or even 5 years ago. There are no doubt those who are disappointed that the privileges now enjoyed by European British subjects will not be entirely withdrawn; and there may be others, who while they do not go to this length, are dissatisfied with the details of the Bill. But, in India, for that reason, prepared to reject a measure which shows that the two communities are prepared to arrive at a common understanding on a question which has for many years kept them apart? The solution is not a final one. It offers no obstacle to further advance on the road which has already been marked out. Indians have evidence that Europeans resident in India are prepared to place a growing confidence in the sense of justice of Indian Magistrates and of Indian Courts. More than that, they have patent proof, for all the world to see, that the European community in order to foster that goodwill with Indians, which is so vital to both communities, are prepared to make sacrifices of principle and to surrender safeguards to which they had hitherto held with great tenacity. Believe, me, the sacrifices that they are prepared to make are to them no light ones. I am quite sensible that Indians who have joined in this compromise have also, on their side, felt that they were making sacrifices in that they withdraw their claim for a full cancellation of all privileges enjoyed by European British subjects. But it is just those mutual surrenders that give the understanding its unique value. It is only by mutual surrender that you can ever arrive at a solution of differences which strike so deeply into the life of two communities. Whatever confidence you may have in the ability of India to shape its own course, and ultimately to gain a position in the Empire which will satisfy its own aspirations, no one can doubt that if in that struggle it carries with it the goodwill and secures the co-operation of Europeans in India, the advance will be more rapid and the foundations of its position will be more secure. (Hear, hear.) It is because I feel that this Bill establishes a new landmark in the mutual understanding of Europeans and Indians; it is because I feel that it gives to India so conspicuous an opportunity of showing to the outside world a tangible proof that Europeans and Indians are prepared to work together with a mutual knowledge of each others difficulties and with a mutual desire to work together in a common understanding, that I commend it to this House. Of all things the spirit of compromise and goodwill is the most elusive. Capture it while you may, and enshrine it in an imperishable form in your Statute Book.

THE WORKMEN'S COMPENSATION BILL.

Mr. President: The House will now resume consideration of the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I have given notice of an amendment for the re-insertion of the provisions

[Mr. K. C. Neogy.]
relating to employers' liability which were omitted from the Bill by the Select Committee. I move:

"That after Chapter I the following be inserted as Chapter I-A:

"CHAPTER I-A

EMPLOYERS' LIABILITY.

Defence of common employment 3. Where personal injury is caused to a workman:
barred in certain cases.

- (a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or
- (b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or
- (d) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

4. In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk arising from any negligence, act or omission, referred to in section 3, was fully understood by the workman and that the workman voluntarily undertook the same.

5. The provisions of this Chapter shall not apply in the case of any suit for damages in respect of an injury which is instituted after the expiration of six months from the date of the injury."

It will be noticed that I have taken these amendments *verbatim* from the clauses as they stood in the original Bill with a slight alteration in clause 4. Now, Sir, the distinction between workmen's compensation and employers' liability may be briefly stated to be this. This Bill, in the provisions relating to workmen's compensation, provides for an automatic remedy in the case of accidents arising out of the employment of any workman irrespective of any negligence on the part of the employer or any superintendent or any co-worker. But the employers' liability provisions relate to the workman's right to damages in cases where any injury has been sustained by him on account of any act, omission or negligence either on the part of the employer or any co-workman or a superintendent. Under the workmen's compensation provisions, there is a monetary limit to the amount of compensation, but under the ordinary law the employers' liability to pay damages to an injured workman, when the injury results from any negligence on the part of the employer, is not limited by any such monetary

maximum. It is interesting to note that the necessity for legislation on employers' liability arose in England as early as 1880, while the first Workmen's Compensation Act was passed in 1897. This necessity arose in England because of the peculiar application of the doctrine of common employment of the Common Law of England to certain cases of accident which defeated the claims of the workmen on the ground that the injury was a result of any act or default of their fellow-workmen of different grades. Now the question has been raised as to whether the same necessity exists in India. It is admitted on all hands that, so far as this defence under the Common Law of England is concerned, it is an unjust defence, and the question is whether that defence is open to any employer in India. A learned Judge of the Madras High Court has asserted that the Judges of the Indian Courts could be depended upon not to apply that pernicious doctrine in India. But Mr. Justice Coutts-Trotter is only one among several Judges of one out of several High Courts in India, and while his opinion is entitled to great respect, I do not think it can be accepted on his authority that the High Courts will rule out any such defence. Besides, there is no knowing that there will be any uniformity of decision in this matter in the various High Courts. It may be said that the Common Law principle of common employment will not be applied to India because the Common Law rules do not apply to India; and that the principles of justice, equity and good conscience will guide the High Courts in India. But I think it has been pointed out by as high an authority as Sir Frederick Pollock that the Common Law principles are apt to be introduced into India, not as Common Law principles, but as principles of justice, equity and good conscience. After all, what do you lose by providing for any such contingency as may arise on the application of the doctrine of common employment in India? Turning now to objections taken not on legal grounds but on the merits of employer's liability, I find that the Bengal Chamber of Commerce is prominent among the objectors. But these provisions are unanimously approved by the Local Governments, and while the Bengal Chamber of Commerce takes exception to them I may point out that the Bombay Chamber of Commerce has given its positive approval to this proposal, and similarly other commercial bodies also have approved, or at least not signified their disapproval, of these provisions. Now the report of the Select Committee says that it has not been demonstrated to their satisfaction that the necessity for legislation on these lines has arisen in India, and that if the doctrine of common employment is aimed to be applied to such cases in India the defence of common employment and that of assumed risk should be removed not only from the very limited class of workmen to whom this Bill will apply, but from all workmen. I should have given effect to this recommendation of the Joint Committee in my amendment had it been open to us to do so, because we have already adopted the definition of 'workman' in clause 2; and therefore it is no longer open to us to change that definition for this particular chapter. I may suggest to the Government, if they are prepared to accept these provisions, to amend the definition of workman in another place so as not to place any restriction on the definition of workman so far at least as the employer's liability provisions are concerned.

On a point of order, Sir, shall I move each clause separately, or all the three clauses together? I have made certain changes in clause 4 of this chapter which may have to be explained later on. Really the discussion will turn upon clause 3, as to whether or not we are going to accept this provision.

Mr. President: As a matter of form, the Honourable Member had better move each clause separately.

Mr. K. C. Neogy: Therefore I beg to move clause 3 as read out by me.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadian Rural): Sir, before we proceed to the discussion of this clause I want a ruling from the Chair on one or two points. The first is whether the Mover is entitled to make changes or even a slight change as he called it in the wording of the three or four sections as they stood originally. I can quite understand that he could ask for the reinsertion of the old sections as they stood, but what he is now trying to do is to insert certain changes of his own from the original sections. Whether he can do that without any notice to us is the first point. Secondly, I want to know whether in the event of these sections being carried by the House I can move an amendment which would be a consequential amendment; because, there are certain sections in the English Act from which the Mover has got his amendment, on which I may base my amendments. Whether I would be allowed without notice to insert my consequential amendments, if his amendment is now carried, is the second point on which I seek your ruling.

Mr. President: I see no objection to the Honourable Member proposing to amend the Bill as it came back from the Joint Committee by inserting a clause in a somewhat different form, but we will deal with that point as it arises; it does not happen to arise on clause 3. On the other point raised by the Honourable Member as to whether he will be able to move amendments to this amendment without notice, I think on the understanding which we came to on Saturday I undertook that I would waive in principle at all events any objection which the Chair might uphold to want of notice; and unless very good reason is offered to me by objectors I shall continue to proceed on the course which I laid down for myself on Saturday.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I should just like to explain the position of Government in regard to this matter. I shall briefly begin by re-stating in my own words what I understand the English law in regard to employer's liability to be. Under the English common law the liability of an employer to compensate a workman for accident arising out of his employment used to be limited very seriously. Even if the workman could prove that the injury was due to the negligence of an agent of the employer, the employer had two important lines of defence open to him. One was what is known as the defence of common employment, and the other was the defence of assumed risk. Consequently as far back as 1880 before the English Government or any one had ever thought of workmen's compensation, the English Government passed the Employer's Liability Act. The effect of that Act was that it removed the defence of common employment; that is to say, if a workman was injured by reason of the negligence of any superintendent or manager or foreman, the employer was made liable. The Act did not affect the doctrine of assumed risk, though that defence has been removed in certain American Acts. It is important to notice in this connection that there is an essential difference between an Employer's Liability Act and a Workmen's Compensation Act. Under the former Act the workman has to prove negligence; under a Workmen's Compensation Act the workman has not to prove negligence. Therefore, a Workmen's Compensation Act is far more in favour of the workman than any Employer's Liability Act. Now, the original position of Government was this. We

assumed that the Indian Courts would adopt as a matter of course the English common law in respect of this doctrine of common employment and we also assumed that they would adopt the doctrine of assumed risk; that is, we thought that in the event of a suit by a workman against an employer, the Indian courts would allow an employer to set up these two defences. Originally, our idea was therefore that we should remove these two defences in India in respect of all workmen. We thought that *prima facie* defences of this kind were inequitable defences; and we thought it right and proper that we should not allow employers to set them up in India. That was our preliminary tentative position when we assembled our Committee in July last year. In the course of the discussions in that Committee we put forward that proposal, and we were warned by Mr. Macbridge, a very great expert on all questions of this kind, that if we made our employers liability clauses in this Bill applicable to all workmen in India, the inevitable result must be that we should open the door for a vast amount of litigation. Now, as I have frequently explained to this House, one of our main objects throughout this legislation has been to limit litigation as far as possible. Consequently as a result of our deliberations, that Committee recommended that the employer's liability clauses of the Bill should merely apply to the workmen covered by the workmen's compensation clauses. We in the Government, as our Notes show, recognised that that conclusion was not a particularly satisfactory one, but our policy in drafting the Bill was to follow as far as possible the advice of the July Committee. That was our policy, because we recognised from the first that the proposals included in this Bill must be in the nature of tentative proposals and that those proposals would be circulated and criticised all over India. But on further examination we found that we had landed ourselves in great difficulty, in a position which we really could not defend. If it is inequitable that the employer should be allowed to set up defence of this kind, it seems perfectly obvious that it is equally obvious that those defences should be removed, not in respect of particular classes of workmen, but in respect of all classes of workmen. On the other hand, as I have said just now, we were warned that if we did remove those clauses in respect of all classes of workmen, we would open the door to a large amount of litigation, and that was the position in which the Bill stood when we got to the Joint Committee.

Then again, on further examination we found reason to believe that the whole assumption on which we had proceeded was probably not well founded. As I have explained, we had always assumed that the Indian Courts would apply the English common law in this matter as a matter of course. Mr. Neogy has quoted the remarks of Mr. Justice Coutts-Trotter in this matter. Mr. Justice Coutts-Trotter, I may say, I happen to know, had a good deal of experience of workmen's compensation and employer's liability cases in England before he ever came to India, and what Mr. Justice Coutts-Trotter says is this:

"The doctrine of common employment is now recognised as judge-made law and every writer of authority regards it as an illogical anomaly. I would rather leave it to the Indian Courts to reject its application in toto as an accident of the English law dictated neither by equity or good conscience which, I hope, they could be trusted to do rather than truckle with it, as has been done in section 4 of the Act."

Mr. Neogy says that there is no guarantee that Mr. Justice Coutts-Trotter is right, that there is no guarantee that the Indian Courts will not apply this doctrine. But what I should have liked to hear from Mr.

[Mr. C. A. Innes.]

Neogy and from the other lawyers in this House is whether they can point to any case-law in India, whether they can point to any large body of case-law in India, which shows that the Indian Courts up to date have applied these two doctrines. I understand that there is one case on record, I believe there is a case reported in the Allahabad High Court which tended to show that the Courts would have adopted this doctrine of common employment. But I understand further that the remark was more in the nature of an *obiter dictum* than a considered judgment. Therefore that is my point. If we leave these clauses in the Bill, they will apply only to a limited class of workmen; and will do very little good to the limited body of workmen who are covered by this Bill. Those workmen will utilise the workmen's compensation clauses of the Bill; they will have nothing to do with the employer's liability clauses of the Bill. One has got to remember that in most countries of the world the Employer's Liability Act and the Workmen's Compensation Act are not really supplementary pieces of legislation; they are intended to provide alternative remedies. And you have also got to remember that the English Employer's Liability Act was passed as far back as 1880. It was passed in 1880, that is long before any Government in the world had conceived the idea of workmen's compensation. The English Employer's Liability Act was of the nature of a feeler in the direction of workmen's compensation legislation, and now that we have the workmen's legislation in England, what has been the result? The result has been that the Employer's Liability Act has become more and more of a dead letter. In the year 1918, I think I am correct in saying, that the total number of suits filed in England under the Employer's Liability Act was only 63, and the departmental committees of 1920 which sat on this matter in England, pointed out that the comparative success of the first Workmen's Compensation Act and the comparatively very limited operation of the Employer's Liability Act made it clear that it was along the lines of workmen's compensation rather than employer's liability that the future legislation of this class must develop. Now we are beginning, we have got all experience behind us, we can choose on what lines we are going to proceed, and we have chosen to proceed at once without the preliminary step of an Employer's Liability Act, upon the lines of the workmen's compensation, and I think that that being so, the Employer's Liability Act is for the moment unnecessary. As I have pointed out, these sections, if Mr. Neogy's amendment is passed, will apply only to a very limited class of workmen. The majority of the workmen will not use the Act at all. It may be of some limited use to the higher paid workmen who might be able to get higher damages under the Employer's Liability Act than under the Workmen's Compensation Act. But as I have shown, there is no certainty, there is no guarantee that the Indian Courts will apply these two doctrines at all. That being so, I suggest that it is wiser to leave the Courts to deal with the matter as they think fit and to reserve our legislation until the necessity for it has been proved, and if the necessity is proved, we should legislate, not for a very limited class of workmen, but for all workmen. In this view, Sir, I hope that the House will reject this amendment.

Mr. B. S. Kamat: Sir, I speak with a certain amount of diffidence on this amendment of Mr. Neogy on the ground that I am not a lawyer and not fully conversant with the section of the Employer's Liability Act of England of 1880. But it seems to me, Sir, that Mr. Neogy who was a

Member of the Joint Committee which considered this Bill has now as an after-thought proposed to insert all these sections which the Joint Committee after a great deal of deliberation thought fit to omit. The question involved is this, whether in addition to the remedy which we give to the ordinary workman we should provide an alternative remedy, namely, by incorporating the additional provisions of the Employer's Liability Act of 1880, or whether we should give him the rough and ready remedy which the Workmen's Compensation Bill provides; and secondly, if we give him an additional remedy by the employer's liability sections, whether we should take away the right of defence or two defences which an employer might be able to raise in the Courts in defence of himself.

Mr. Neogy thinks that if it is not sufficient that the remedy provided by the Compensation Bill alone should be allowed. He wants an additional and an alternative remedy. Now, I do not think it would serve the interests of the workman himself to have an additional remedy. As my friend, the Honourable Mr. Innes, has pointed out, there is an amount of litigation involved in that proposal. Those who have read the provisions of the Employer's Liability Act of 1880 and have also read the literature that has sprung around it owing to the interpretations of each and every section of the Act will be almost bewildered, and I am sure if they go through the whole literature they will find that it is far better to leave the Employers' Liability Act alone. Now, if you adopt Mr. Neogy's amendment, as Mr. Innes pointed out there might be litigation over each and every word and phrase in these clauses. The defences that are likely to be raised are: what do you mean by "Superintendent"? Is he the properly authorised superintendent? Then, the question will be raised whether the workman did not enter the service voluntarily or the principle or the maxim of law which the lawyers call *volenti non fit injuria* even if you shut out the doctrine of common employment. Now, how is the ordinary workman in India to fight in the Court against these subtle and ingenious arguments which might be raised. It only means he will have to go into the hands of the lawyers and we want to save him in the Workmen's Compensation Bill from going into the hands of the lawyers in order to fight out such subtle interpretation of law, as to whether it was an assumed risk or whether the man entered the service knowing full well the service which he was entering into and whether also, secondly, he was not more highly paid than similar classes of workers outside because there was a greater hazard. Now, all these subtle interpretations of law he will have to face through his lawyer and I think it is far better not to entangle him in these different provisions of law. Then, again, my friend, Mr. Neogy, while stating his case, pointed out that one great advantage of giving the alternative remedy to the workman is that, if he wants to sue the employer under the provisions of the employer's liability section, there would be no limit to the damages that might be claimed for. I do not know whether he is quite correct in the statement of facts. The Employer's Liability Act, 1880, does not show any such thing. (Mr. K. C. Neogy: "What about the present Bill?") Indeed, if you want to be equitable at all, and I am sure my friend, Mr. Neogy, wants to be equitable, if he wants to copy the provisions of the Employers' Liability Act in this Compensation Bill, then in a sense of fairness it is also necessary that he should adopt section 3 of the Employer's Liability Act, which provides a limit to the damages. It is not correct to say that a workman can go to the Court and claim damages even to the extent of ten or fifteen thousand rupees. The Employers' Liability Act, if he has read it correctly, does provide a limit in

[Mr. B. S. Kamat.]

section 3. That section lays down that the amount of compensation recoverable under this Act (*i.e.*, the Employers' Liability Act) shall not exceed such sum as will be found to be more than his estimated earnings during the three years preceding the injury. Now, it is not correct to say that the workman can go and claim any amount of damages under the Employers' Liability Act. The utmost he can claim is a sum not more than 3 years' earnings preceding the injury. Now, I want to ask Mr. Neogy whether he is prepared to accept as a consequential amendment, if his amendment is carried, my amendment that section 3 of the Employers' Liability Act shall also be inserted in this Chapter. (Mr. K. C. Neogy: "No, no.") Now, if he is not prepared to accept that, then I say he is inequitable and unfair. Because you are giving two remedies or two weapons to the workman, and it is not fair that he should have these two remedies and that, at the same time, you should take away the two defences from the employer, namely, the defence of common employment and the defence of assumed risk. The two things go together and I think, if this House is not prepared to have section 3, namely, the section which puts a limit to the amount of damages claimable, that the other sections should be inserted according to the amendment of Mr. Neogy. I have no serious objection to Mr. Neogy's amendment on the merits, but I contend that if he wants to insert those provisions of the Employers' Liability Act of 1880, then, I say, equity requires that section 3 also of that Act ought to be incorporated and ought to be copied here. I do hope the House will see that it is fair and just and equitable that section 3 of the Employers' Liability Act is also embodied in the Act, if the sections which Mr. Neogy wants to insert are carried in this House.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I think there is some misapprehension in the mind of my Honourable friend, Mr. Kamat, about these sections giving an alternative remedy to the workman. I think he was led to believe that, on account of some remarks which fell from my Honourable friend, Mr. Innes. Mr. Innes said that in some countries the Employers' Liability Act is enacted as an alternative remedy. But neither was the Employers' Liability Act so enacted in England as an alternative remedy nor are the sections which Mr. Neogy wants to put in here also an alternative remedy. The alternative remedy, both in England and in India, exists already. Even if the sections may not be in the Bill, the alternative remedy will remain to the workman. My Honourable friend ought to refer, in order to be convinced of that, to section 5 of this Bill. Sub-section 5, clause 3, of the Bill deals with the alternative remedies. Therefore, it is absolutely clear that the sections which my Honourable friend, Mr. Neogy, wants to put in do not give a new alternative remedy. What these sections do, is to remove certain defences which employers can plead in England. That is the only thing which these sections do. But they do not give an alternative remedy at all. Sir, everybody seems to be agreed on the point that these sections are not quite adequate. If the employers' liability is to be defined, it must be defined for all workmen. But unfortunately the Government does not promise to bring forward another Bill immediately or within a short time, in order to define employers' liability. If the Government would promise to bring forward another Bill, I should certainly advise my Honourable friend, Mr. Neogy, to withdraw these sections from this Bill altogether because there is an advantage in having the employer's liability defined for all classes, and there is no difference of opinion on this point at all. In the absence

of any such promise from the Government, however, I think it is better to have the employer's liability defined at least in the case of those workmen who are included in the Workmen's Compensation Act. My Honourable friend, Mr. Neogy, has already explained that these sections will be particularly useful to those workmen who get wages varying from Rs. 80 to Rs. 300. I think there is a large number of workmen belonging to this class and these sections will be particularly useful to them. I therefore on the whole support the amendment of my friend, Mr. Neogy.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, if I were to give my vote as a member of the Bar I would have supported the amendment which has been proposed by Mr. Neogy. But I am afraid I have to give my vote as a legislator. And I have got to see not only the profit of the legal profession but I have got to see the other side also, that is the workman and the employer. Giving my deep consideration to this question, I feel constrained to oppose this amendment for a number of reasons. The first reason which has actuated me to stand in opposition to it is this, that it is sure to give rise to litigation and litigation of a very highly technical character, which may involve both the workman and the employer very seriously and perhaps both of them may become regular combatants in the law courts, which will mean, so far as my way of thinking goes, a great expense of money. Not only that. It will, no doubt, hamper the progress of the Workmen's Compensation Act also. These are the three grounds which compel me to go against my own profit and to be in favour of the development of industry in this country. I agree with Mr. Joshi when he says that we have got some other law in India which can come to the help and assistance of the workmen beyond the scope of the Workmen's Compensation Act. In spite of this knowledge of his, he yet supports the amendment, and it is extremely difficult for me to say that he is consistent. If there is any law according to his way of thinking, then he will have to accede to my contention that the present amendment is unnecessary. Is he really serious to over-burden our Statute Book? If a law is already in existence, as he himself admits, then this new law need not be devised. On that ground also the amendment according to the very argument of Mr. Joshi has got no force. The third ground is that which centres round the question of practicability. We cannot ignore that question, and I fully agree with the Honourable Mr. Innes when he very ably expressed this view, which view is based on history. When we look into the case law, we find that the Workmen's Compensation Act has been much more resorted to and the Employers' Liability Act was not used so frequently. The latter was not called in to help the workman, whereas the Workmen's Compensation Act was generally resorted to. Why? Because, the Workmen's Compensation Act gives you cut and dry material. Certain formulæ have been incorporated. A certain maximum amount of compensation, in some cases is allotted. The nature and description of injuries of a permanent character are fully described. The workman can understand very well what compensation he will be entitled to. He makes a reference to the employer. If the employer enters into an agreement or technically compromises, then he feels contented with that agreement. Otherwise he goes to the law court and seeks redress. From this we can easily deduce that this method is naturally more convenient to the workmen as well as to the employer and decidedly less expensive. Therefore, having this precedent in our favour, we feel justified in saying that the amendment is not such an amendment as should have the support of this House. Therefore, in brief, I oppose this amendment.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, if I felt that there was any practical need of incorporating this clause in this Bill I should have given it my hearty support. As it is, however, reading clause 3 of the Bill as it stands and the concluding portion of clause 3 of Mr. Neogy's amendment, in this Bill at all events this provision is unnecessary, and to be able to say that in regard to any amendment is, I think, to plead for its rejection. What is the present clause 3? "If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employers shall be liable to pay compensation in accordance with the provisions of this Chapter." And then the clause has certain provisos excluding the possibility of damages being awarded in certain events. I need not read those out but shall draw the attention of the House to the corresponding words in Mr. Neogy's amendment. They are: "a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer." Comparing those words again with the words in the present clause 3, we have this, that if the injury is caused to a workman by accident arising out of and in the course of his employment, the employer except in certain eventualities is liable. Therefore, to a certain extent at least there is over-lapping of ground. I need not go in detail into the question that Mr. Kamat has raised, because if you have the poison, there must also be the antidote. If you have what Mr. Neogy proposes, then Mr. Kamat's proviso must come in. That would only add to the complexity of the Bill and would take away from it the simple straightforward and comprehensive nature which I believe is one of the features of the Bill and which ought to commend itself to the House. Sir, I have spent much of my life in drafting pleas, tenable and untenable, and many other pleas than of common employment and assumed risk would occur to the draftsman which the amendment of Mr. Neogy cannot provide against. I think India may well congratulate herself that its simple Civil Procedure Code has helped us in doing without that fearfully complex plea system till lately obtaining in England, and that the practitioners here, in spite of what Dr. Nand Lal has said, have never troubled themselves about nicety of pleas that is yet the privilege of English draftsmen. What has been apprehended by Mr. Neogy is therefore more or less imaginary, particularly in view of the plain straight and unambiguous provisions of the Workmen's Compensation Bill that we are now considering. Sir, Mr. Neogy himself has alluded to it and the Honourable Mr. Innes has brought it out more clearly that the Workmen's Compensation Act was the result of a sort of evolution. Much earlier than that Act, the Employers' Liability Act came and when the Workmen's Compensation Act came, the Employer's Liability Act became more or less obsolete, and that for very good reasons. Supposing we were here to say or be told, Sir, that before we have reforms in this country in still more generous measure we should have to go over the whole ground covered in England commencing from the Magna Charta, I do not think we shall be in a very enviable state of things. We have the result of the toils and struggles in England resulting in the Workmen's Compensation Act and we ought to begin to build upon that. And if it is really felt that some enactment of the nature of the Employer's Liability Act is necessary it ought to be much more comprehensive whether the Government gives the guarantee which Mr. Joshi wants to have or not. I do not, in leaving out these sections, read

a desire on the part of the Joint Committee that the go-by shall be given to the principles of the Employer's Liability Act, but I think that they must have felt that what the present Bill provides is sufficient as a good first step as I called it in welcoming this measure. I myself had my doubts, Mr. Seshagiri Ayyar voiced them, whether the Joint Committee should have done what it did in picking and choosing. We have an opportunity here in this House now of considering on its merits what the Joint Committee has rejected and I hope that having regard to all the points of view that have been urged the House will be of opinion that for practical purposes the Bill that is before us is a good first step and we need not complicate the issues.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, as one of the Members of the Committee when it first sat, I wish to voice my opinion regarding Mr. Neogy's amendment. I support that amendment mainly because it affords provision to a class of workmen whose pay ranges from Rs. 83 to Rs. 300 and who, as provided by the Joint Committee, will only receive compensation graded on the salary of Rs. 83. I consider that those people who are in receipt of a higher salary up to the limit of Rs. 300 are entitled to a proportionate rise in compensation according to their salary, because as drafted or re-drafted by the Joint Committee, these workmen will not receive that compensation. I therefore consider that the Employer's Liability Act will provide an adequate compensation for these workmen, and if the Workmen's Compensation Act, as presented to this House for acceptance to-day, denies these workmen that compensation, I consider they should be given an opportunity of another source of compensation. I have listened very attentively to what the Honourable Mr. Innes said, and much as I agree with all that he has said in the avoidance of excessive litigation which would almost stifle this Bill, so far as its practical application is concerned, surrounded as we are in India with so many difficulties, with so many castes and creeds demanding specific investigations, yet at the same time, even at the risk of increasing the number of lawyers in India, I support Mr. Neogy's amendment, because, as I have said before, it does provide adequate compensation for a certain class of workmen which the present Workmen's Compensation Act denies them.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I cannot help saying that those of this House who have opposed this amendment have not considered the serious situation which would arise by omitting provisions relating to the liability of employers. I do not know whether the Honourable Mr. Innes means to suggest that by not making a provision we are in any way facilitating the work of the Courts or bettering the condition of the workmen. The law as regards employer's liability and the law as regards the liability to pay compensation to workmen are both existent in India as well as in England. Supposing you had no law relating to workmen's compensation, there would still be the remedy to the Indian workman by a suit for damages. You are only simplifying the work by enacting a few provisions by which the Commissioner will be enabled to fix the compensation in an easy manner. As regards the liability of employers, although you may not make a provision in this Act, still the liability would be there. If I am convinced that by not introducing the provision we are likely to help either the capitalist, or the employee, or the Court, I would have voted against the amendment, but the absence of law does not suggest that there will be no remedy for the wrong. The remedy will

[Mr. T. V. Seshagiri Ayyar.]

be invoked, and in invoking the remedy what will be the position? Instead of turning to certain specific provisions in an Act, the party would be compelled to have recourse to the English law. There are doubts in this country as to how far the common law of England or the Acts of the English Legislature would be applicable in this country. I have got before me two articles, both practically within a month. One of these articles points out that in Madras it has been held that the common law of England is not applicable except in the Presidency Towns. But in another article it is pointed out that, although by Statute the common law is not made applicable to mofussil towns, the principles of equity, justice and good conscience would be invoked and the principles of English law would be brought in for the purpose of determining these cases. Therefore, by omitting provisions in the Workmen's Compensation Act, you will not shut out the remedy. The remedy will be sought in the complicated decisions of the English Courts, and I am sure no greater danger to the Courts or to the workmen can be apprehended than the bringing in of a large body of undigested decisions of Courts in England. It is for this reason desirable that you should introduce provisions in the Act itself which would simplify the procedure and would make the remedy easy for the workmen. It is for that reason that I take it Mr. Neogy has asked for the introduction of these provisions. There is no use in running away from danger when you have got it before you. If you do not introduce the provision relating to employer's liability the workman will know that he can fall back upon the English law. He will certainly have recourse to it, and what will be the result? Instead of having a cut and dried formula, instead of well-defined provisions in the Act, you will drive him to have recourse to a large number of undigested decisions of the English Courts with the result that the work of the Court, the work for the workman would be made more difficult than before. Therefore, the idea which the speech of the Honourable the Commerce Member has brought in, namely, that by not introducing the provisions relating to workmen you are minimising the chances of litigation and bettering the position of the labourer, must be wiped out of your mind altogether. As soon as he finds that there is provision for workmen's compensation, if he find that there is negligence on the part of the employer, the workman would undoubtedly have recourse to the Courts and if he has recourse to the Courts, are you bettering his position by not making a provision in the Act? Are you making it better for him, or for the capitalist, or for the Courts by driving him to have his relief in English law? That is the position you have to consider. I will not say that the provisions as introduced by Mr. Neogy are perfect. They are capable of improvement. It may be, as pointed out by Mr. Kamat, some restriction will have to be placed upon the liability of the employer. That is not a matter upon which I am speaking. I am arguing the general principle whether this House will be justified, will consider it proper not to have these provisions relating to the liability of employers in an Act which provides for compensation to workmen. If the Honourable the Commerce Member will be good enough to say that very soon he would introduce an Act relating to the liability of employers, then it may be that we shall stay our hands and will not press the amendment. But if he is going to say, 'I shall have only an Act relating to workmen's compensation and I shall have nothing to do with an Act relating to employers' liability, then he is courting danger' which he is anxious to avoid. For these reasons I ask that these sections be adopted as part of the Bill.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I wish to remind the House of a remark which fell from my Honourable and learned friend, Dr. Nand Lal, a remark which I should like to endorse most heartily, that this Legislature should not cumber the Statute Book with any provision unless it is perfectly satisfied that there is a necessity for that provision. With regard to this amendment of Mr. Neogy, Sir, what is the question we have to ask ourselves? It is whether the necessity has been proved for introducing this particular chapter on the employers' liability. From the Joint Committee's report it appears that they considered this question very carefully. They discussed both sides of it and by a majority they formed the opinion that the necessity was not proved. The question of the necessity, Sir, depends upon the answer to another question, which is whether our courts in India will follow the old English doctrine, the judge-made doctrine, the common law doctrine of the employers' liability and assumed risk. Now, as regards the supporters of this amendment, Sir, I listened to the debate carefully, and until Mr. Seshagiri Ayyar rose, I did not hear any suggestion that there was any probability much less any certainty whatever that our Indian courts would adopt the English law in this respect. I do not think, Sir, that Mr. Seshagiri Ayyar himself has shown that there is really any risk at all. He has referred to certain discussions, general discussions, but no discussions relating to this particular matter. What is the actual position with regard to that, Sir? Is any Member of this House satisfied that there is at the present moment any risk of our Indian courts adopting these doctrines and applying them to suits between employers and employees? We have one very definite opinion and that is an opinion of a High Court Judge in this country, a Judge of the same High Court of which my Honourable friend, Mr. Seshagiri Ayyar, himself was at one time such a distinguished member. He has expressed an opinion that the courts in this country will not and cannot follow those judge-made doctrines, an opinion which apparently in his own mind amounts to a practical certainty. Sir, if the courts do apply these doctrines, then I think will come the time for legislation but we should not legislate to meet a hypothetical danger. Mr. Innes has explained to the House several times already that this Bill is an experiment. He has explained also that it is particularly desirable that we should start this Bill on as simple and clear lines as possible. Let us proceed with the Bill on that understanding and should necessity arise in the future it will not be a difficult matter to add provisions to the Bill on the lines of the Employers' Liability Act of 1880.

Mr. Darcy Lindsay (Bengal: European): In rising to oppose the amendment, I do not wish it to be understood that I necessarily oppose the principle of the employers' liability but I hold very strongly that this Workmen's Compensation Bill should stand on its own footing and not have tacked on to it what should be, if necessity arises, provided for by a separate Act entirely. In the Statement of Objects and Reasons given by the Government for the inclusion of Chapter II, in the draft Bill, it is stated "modifications are made in the ordinary civil law affecting the liability of employers for damages in respect of injuries sustained by their workmen;" and the very meagre reference to employers' liability in the Bill as originally drafted, shows that the one idea was to amend the common law or to improve the common law. I maintain that there are other means of bringing about that end, if it be at all necessary or desirable. Again, the Select Committee in their report admit that this reference to employers' liability in the original draft was only a partial remedy. Well, then, Sir,

[Mr. Darcy Lindsay.]

why apply only a partial remedy? It is likely to lead to great confusion. We have heard from several Members that the great object of this Bill is to avoid litigation in every possible way. We are told, on the other hand, that the employers' liability section is likely to create litigation. I would also point out to you, Sir, that practically none of the provisions of the Bill which apply to the workman's compensation section apply to the employer's liability. We do not, or we did not in the Bill as originally drafted, allow our Commissioner to deal with the settlement of employer's liability. No, the workman would have to go to court to obtain his relief. The Honourable Mr. Innes has told us, that when the Workman's Compensation Act came into operation in England, application for damages under the Employer's Liability Act became far and few between. That shows that the workman in every way prefers to claim under the Workman's Compensation Act and not run the risk of a suit under the Employer's Liability Act.

Another point was raised by the Honourable Mr. Kamat that if my Honourable friend, Mr. Neogy's amendment were carried and the employer's liability section reinstated in the Bill, there is no provision made for limit of award of damages. Now, that is a most important issue. We have been informed that in England the Act allows three years' wages as a maximum. Talking as a late insurance official, because I am now numbered amongst the "unemployed," I feel that to support my late profession I ought to support this amendment, because it undoubtedly means considerably more premium. Where there is no limit to the risk involved, the premium must of necessity be higher. That to my mind has got a very important bearing on Mr. Neogy's amendment and that is a very strong reason why it should be rejected. As I have said before, the experience in England goes to show that the Employers' Liability Act is more or less a dead letter; and, therefore, why cumber the Indian legislation with what is no longer found of any use at Home? I think my Honourable friend, Mr. Seshagiri Ayyar, is really in agreement with me that there should be a separate Act. If there is any necessity for such an Act in future—and the Honourable Member has, I think, explained both in the Report of the Joint Committee and also in what he stated to the House to-day—that if later on it is found necessary to adopt an Employers' Liability Act the Government will take measures to bring in such a Bill. I strongly advise the House, Sir, to reject this amendment and not confuse what, to my mind, is a very first class Bill—the Workmen's Compensation Act.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I move that the question be now put.

Mr. President: Amendment moved:

"That after Chapter I the following be inserted as Chapter I-A:

"CHAPTER I-A."

EMPLOYERS' LIABILITY.

3. Where personal injury is caused to a workman:

- (a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the

employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

- (b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or
- (d) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer."

The question is that that amendment be made.

The motion was negatived.

Mr. President: That disposes of clauses 4 and 5.

Dr. Nand Lal: Sir, I beg to move:

"That in clause 3 (1) after the word 'personal' add the words 'and bodily'."

When we see the provision of clause 3 (1) we find that the expression 'personal injury' occurs there. The House will agree with me that the word 'injury' is not defined in the Bill. If some definition of 'injury' had been given, I would not have attempted to move this amendment. But the fact is that the word 'injury' seems to be such a word that it ought to be defined. When I see the General Clauses Act, I cannot find any definition of this word. I do not think the English Act gives the definition of this word either—I am subject to correction—but my recollection of the study of the English Act is that the definition of this word 'injury' is not given there. We have got the Indian Penal Code, no doubt, where the word 'injury' is defined. But that definition serves the purposes of the criminal law. Sir, you will be pleased to see section 44 of the Indian Penal Code. There the definition runs as follows:

"The words 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property."

Now the definition which is available to us is of a very abiguous character, and perhaps it will not be of any help to us for the purposes of the Bill which is under debate now. Because if a workman feels irritated or feels aggrieved he will have no cause of action. If, again, his implement is broken, then according to the scope of this Bill he shall have no cause of action. If in consequence of some obnoxious smell in the vicinity of the factory he suffers, he shall have no cause of action. He shall have cause of action only in the case where he has got some bodily injury. And my contention seems to be supported by the mere perusal of Schedule No. I. When we go into that Schedule we find the descriptions of various injuries given there. From that the natural inference can be drawn that the Select Committee, or the framers of these clauses, contemplated that injury, to all intents and purposes, so far as the purview of

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this Bill goes, means bodily injury. But, Sir, this inference in the absence of a statutory definition, will not be of great avail. Whenever there will be a 'question,' whether a certain injury comes within the scope of the word 'injury,' which is incorporated in clause 3, the question will require determination. Both parties will set forth their own construction, according to their own convenience and profit, and in some cases, Sir, it may give rise to unnecessary litigation. And therefore the champion of labour will have to give serious consideration to this point. The help that is sought to be extended to the workman will not be such as they desire to extend to him. It is quite probable, Sir, that Honourable Members who may oppose this amendment may premise or argue, 'that supposing on account of work which is entrusted to the workman he has become lunatic or there is some sort of mental shock given. Say, he is working in the mine or is working in the factory, and there is a fall or the engine bursts or something like that happens and it may give rise to a shock and that shock may affect his brain. It could be argued in this way, that the definition which I am going to propose will not meet such a case. In reply to that I would submit that you have not made such provision as may cover that case. Now, Sir, you will agree with me that the word "personal" is very ambiguous. And when we are going to frame a law we should try and see that the meanings which are attached to a word in common parlance should not be given prominence, because this is a Statute, it is to be interpreted in a certain way, with reference to a particular significance or sense. Therefore either the word 'personal' should have been defined or the word 'injury.' I quite concede that the word 'personal' was indispensably necessary; if the word 'bodily' had been used in place of the word 'personal' then clause 3 would have been considered very defective. However, the defect, to my mind, now is that the word 'bodily' is not incorporated in the clause and I suggest that this Honourable House will consider the character of this amendment and will accept it. Otherwise I am afraid there will be loopholes for litigation and the poor workman who has been given some help will eventually say "Well, the help which was given to me has been practically wasted in the form of litigation." Therefore, Sir, with these few remarks I commend this amendment to the House and I hope the Government Benches will also support it, because it is more or less a verbal sort of amendment.

Mr. Darcy Lindsay: I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The question is that the following amendment be made:

"That in clause 3 (1) after the word 'personal' add the words 'and bodily'."

The motion was negatived.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move that in clause 3 (1) in proviso (a) substitute the word 'seven' for the word 'ten.'

By this clause, Sir, we exempt the owner from his liability for certain classes of injuries; and in proviso (a) we provide that if the injury is of such a nature that it does not result in the disablement of the workman for a period exceeding ten days, the employer shall be exempted. Sir, when we look at the English Act—the Workmen's Compensation Act of 1906—we

find that the period there has been fixed at seven days only and not ten days. I do not know why that period has been changed into ten days in this Bill. The period when the workman is injured and is away from his work is the period when he needs the help most and therefore it is very necessary that this period should be reduced. It may be argued that where the injury were of a nature that the workman received some cuts or some light bruises or some scratches, the employer should not be made liable to pay him compensation for that. But there is no fear on that point as we have already provided in the Bill the definitions of injuries under which the employer will be made only liable. Therefore it is necessary that the period should be reduced as much as possible in the interests of the workman and his family. I move, Sir, that the period fixing it at ten days should be reduced to seven days only.

The Honourable Mr. C. A. Innes: Sir, I sincerely hope that the House will not accept this amendment. This particular clause which the Honourable Member proposes to amend is a very important clause indeed. Practically every Compensation Act in the world makes provision for a waiting period, that is the period for which disability must last before compensation is due. The reason why this waiting period is provided is, in the first place, to minimise the risk of malingering. In the second place, the waiting period prevents a very large number of claims which will be so trivial that the administrative expenses would consume most of the amount awarded. It is true that the English Act provides a waiting period of one week. In America, on the other hand, the waiting period is 14 days and in other countries it is very much longer still. In Sweden, I believe, it is as much as 60 days, and in Denmark I believe it is as long as 13 weeks. My fear is, that the period of 10 days provided in the Bill is not long enough. Originally, the Government proposed 20 days, but after very careful discussion we arrived in the July Committee at this period of 10 days, and that has been accepted also by the Joint Committee, and I hope that the House will accept that period as a fair period, a period which is generous to the workmen. I should like this House to remember this. If we adopted this amendment which Mr. Agnihotri proposes, we should probably increase the number of cases under this Bill by as much as 20 per cent. That is the estimate which we have framed after studying figures based on English and American experience. It is not going to give very much benefit to the workmen; it is only a matter of three days. On the other hand, we are going to increase the work caused by this Bill enormously. As I have said, the waiting period has been carefully arrived at in consultation with two Committees, and I hope that the House will stick to the period drafted in the Bill and will not accept the amendment by Mr. Agnihotri.

The motion was negatived.

Rai Bahadur Lachmi Prasad Sinha (Gaya cum Monghyr: Non-Muhammadan): Sir, I beg to move:

"That to proviso (b) (i) of clause 3 (1), at the end the following be added:

'Provided the employer is not aware of the fact before the workman joined his work under such intoxication on the date of accident'."

Sir, I move this amendment which is in the form of a proviso to clause 3, sub-clause (1) (b) (i). In moving this amendment, I do not think that much explanation is necessary because it is self-explanatory. Sub-clause (b) (i) as it stands provides that the employer will not be liable for payment of compensation to a workman if the latter joined his work, before

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the accident or injury took place, under the influence of drink or drugs. Sir, in this connection may I ask whether the employer or his agent is or is not to see that his workmen who are, or may be, liable to injuries or accidents from the nature of their work do not join their work under such intoxication. I think the House will admit that in such cases the responsibility lies on the employer and not on the employee. Moreover, Sir, it may be urged how is the employer or his agent to find out as to who amongst his labourers are intoxicated. In this connection, I would simply say that I want to throw the responsibility on the employer in such cases, and I hope the Government will kindly try to suggest some means which will have the desired effect of the proposed amendment. We are not all draftsmen here, and we can only recommend some principles on which certain clauses or sub-clauses of Bills may be based and drafted, and so far as the drafting is concerned it rests with the Government drafters to carry out the suggestions if accepted by this House.

Lastly, I would like to draw the attention of this House to the Minute of Dissent attached to the Joint Committee's Report by the Honourable Mr. Raza Ali who says "According to the English law, the employer is liable to pay full compensation in the case of death or permanent total disablement even if the accident is due to the misconduct of the workman." With these remarks I move my amendment.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I rise to support the amendment on the ground that, unless some such provision is made in the Bill, which will in these cases throw the responsibility on the employer, illiterate workmen will find it a very difficult job to obtain any compensation from their shrewd employers. In the majority of cases where compensation is claimed by working men who have sustained injuries, the employer will try to shelter himself under this clause on the plea that when the workman did come to his work he was under the influence of intoxicants and as such is not eligible for compensation. The case of such a nature will be more explicit and clear if I quote the example of firemen or drivers on running train engines. Their duties, as I think, Honourable Members are aware, are such that, in spite of their utmost vigilance and watchfulness, accidents and injury happen to them, and in some cases so serious as to result in death. Now, in such cases, it is very easy to refuse compensation on the plea that they were at the time drunk. What the amendment attempts is to ensure that the employer should engage a supervisor to see that no workman under the influence of intoxicants goes to his work. Unless this amendment be made, Sir, any employer, who is generally much more intelligent than the employed, can give the plea that the workman was under the influence of intoxicants, so it should be made the duty of an employer to see that the employee is not under that influence. With this in view, I support the amendment.

Mr. A. G. Clow (Industries Department: Nominated Official): Sir, I suggest, in the first place, that the common-sense of the House will not allow this amendment to be carried. The spectacle suggested to us by the speeches of the two Honourable Members on my left is that of the employer in the morning drawing a chalk line in front of the factory and asking all his workmen to step solemnly along it. I do not think you will get the workman to agree to an examination every morning as to whether he was sober or not.

But, apart from this, is there any employer who is going to allow a man whom he knows to be drunk to enter his factory, to work with his machines possibly to involve him in a very serious accident costing many lives? For he will certainly have to pay for the other workmen injured, even if he is excused liability on behalf of the drunk workman.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move:

"In clause 3 (1) in proviso (b) (ii) after the word 'workmen' add the words 'and not countermanded by a person in authority superior to the workman'."

Sir, we have provided in this clause that, if a workman were to wilfully disobey an order expressly given or a rule expressly framed for the purpose of securing the safety of the workman, such a workman should not be entitled to any compensation under this Bill. So far as this rule goes, it is very wholesome and desirable, but there may be cases in which an employer or superior officer may order such a workman to do a particular work which may amount to disobedience or the breach of such rules and in such cases the employer will get the benefit of the obedience to his orders by the workman which the workman had no alternative but to obey being the immediate order of his employer or superior officer and with the knowledge that his act would amount to breach of the rules or the regulations or orders expressly laid down for the safety of such workman. Under these circumstances, I think it desirable that no loopholes should be given to the employers which would give undue advantage to him over the workmen and therefore I move this amendment. Sir, it may happen that the amendment which I have proposed may not be in strict accordance with the drafting rules or the draft may not be approved by the Members on the Government Benches, but my whole object is to put before the Government my view and difficulty on this point and to request them to make the necessary changes in the Bill.

The Honourable Mr. C. A. Innes: Sir, as far as the Government Benches are concerned we think that we have provided for the point raised by Mr. Agnihotri by putting in the word "wilful". It must be "wilful disobedience". I put it to the House that the inclusion of the word "wilful" covers the point raised by Mr. Agnihotri and that his amendment is not necessary.

Mr. President: The question is that the following amendment be made:

"In clause 3 (1) in proviso (b) (ii) after the word 'workmen' add the words 'and not countermanded by a person in authority superior to the workman'."

The motion was negatived.

Mr. K. B. L. Agnihotri: As "wilful" has been explained to cover my second amendment* which I also wanted to put before the House, I beg permission to withdraw it.

Mr. N. M. Joshi: Sir, I beg to move the following amendment which stands in my name:

"To proviso (b) in clause 3 (1) at the end add the following:

'Unless the injury results in death to the workman or in his permanent total disablement in either of which cases the employer shall be liable to pay compensation to which the workman would otherwise have been entitled'."

* "In proviso (b) (iii), after the word 'workmen' add the words 'unless done under orders of a person superior in authority to him'."

[Mr. N. M. Joshi.]

Sir, in order that the House may understand the exact scope of my amendment I would like to explain first what the original section 3 (b) is. That section is intended to prevent compensation being given to workmen in cases of accidents which take place on account of the serious and wilful misconduct of the workman. Serious wilful misconduct is defined in this section in three ways, namely, first, when the workman goes to work under the influence of drink, ~~secondly~~, when the accident is due to the fact that the workman has wilfully disobeyed a rule and thirdly, when the accident which takes place is due to the fact that the workman had removed a safety guard. Now, Sir, to a layman, this clause seems to be quite reasonable, and my Honourable friend Mr. Agnihotri just mentioned that he approved of it. But, Sir, to those people who have studied the principles on which the Workmen's Compensation Bill has been framed and the principles on which the Workmen's Compensation Acts of other countries are based, this clause itself is altogether against those principles. The principle of the Workmen's Compensation Bill, as has been explained several times, is that the industry which creates risks for workmen should bear the civil liability for the accidents that take place. While defining that principle, there is nowhere mention of negligence either of the employer or of the employee. This is the general principle of the Workmen's Compensation Bill. If the principle of negligence is to be brought in here, then certainly we must bring in negligence of the employer also. If on account of the wilful misconduct of the employee he is to be deprived of the compensation, then certainly the employee deserves more compensation in those cases where the negligence of the employer is proved. You cannot modify the principle only in the case of the employee and not modify it in the case of the employer. The Bill, as it is before us, provides no additional compensation for those cases where the wilful negligence of the employer will be proved. I therefore think that this clause, as it has been drafted, is against the principle of workman's compensation.

Then, naturally, you will ask me, how did this come here at all? My surmise is that this clause has been introduced here on the model of the English Workmen's Compensation Act. But the misfortune of the workman in India is this, that although the clause is based largely upon the English clause, this Bill drafted in such a way that, while portion of the clause which was in favour of the employer has been taken in here, the portion of the clause which favoured workmen has been taken out. That is the misfortune of the Indian workman. I do not know what explanation the Government can give for putting only one part of the English clause in the Bill and omitting the other part which favoured the workman. Sir, I would like the House to remember, in the first place, that the amendment which I am proposing is just to restore the English section in our Bill—in principle, I do not say the words—but I want to restore the spirit of the English section, namely, even where wilful misconduct of the workman is proved and the accident has caused the death of the man or has totally disabled him, compensation should be paid. Sir, the principle on which the English clause is based is this, that in the case of death and total disablement, when you refuse to give compensation to a workman you do not punish the workman at all. You punish those people who depend upon the workman or those people who have to maintain the workman. This is the principle on which the English practice of giving compensation even where wilful misconduct is proved is based.

Sir, this principle was mentioned by Mr. Gladstone now Lord Gladstone when he introduced an amendment in the English Workmen's Compensation Bill exactly similar to the amendment which I have moved. Therefore, the House is assured that it is not an argument of my invention. There was another argument which was given by Lord Gladstone when he introduced this principle in the English Act, and that was this. Where a workman is killed on account of the accident, if you charge him with causing the accident on account of serious wilful misconduct, you are charging a dead man whose lips are sealed, who cannot give evidence and show to the world that the charge brought against him is false. That was the second argument given by Lord Gladstone when he moved an amendment similar to mine in the House of the Commons. I hope these arguments will find favour with the House.

But, Sir, there are also other arguments why my amendment should be accepted. In the first place, several times when amendments are being discussed, arguments are brought forward that we must not put too great a burden upon the industry. I assure the House that even if they accept my amendment, the burden on the industry is not likely to be too great. After all, are the cases of wilful misconduct causing the death of workmen going to be too many? What is the meaning of a workman by wilful misconduct causing the accident and killing himself? It means that the man is practically willing to commit suicide. Take the third sub-clause of this clause (b)—“the wilful removal or disregard by the workman of any safety guard.”

When a workman wilfully removes the safety guard he is prepared to commit suicide. Is there any one here who believes that such cases of practical suicide will be too many? Personally I do not take that cynical view of human nature at all. I do not also believe that there will be in many cases a wilful disobedience of orders. Sir, as this is also the English law, we must therefore go by the experience of England in this respect. Are the cases under this clause going to be too many? In order to assure the House that the cases are not going to be too many, I propose to quote to the House an authority from England. When this amendment was being discussed in the English House of Commons, Mr. F. E. Smith, a very distinguished and famous lawyer and who is now Lord Birkenhead, occupying one of the highest positions in England, gave this as his experience of this clause. He said:

“The point of view which appealed to me so strongly was this. An workman would not commit a breach of rules for any improper motive if the result of that breach was likely to inflict upon him permanent disablement or death. The Legislature however was not only entitled but bound to provide against cases where a man might well say ‘Whatever happens is a trivial matter and I shall get compensation’. But to say that it was necessary in the case of where a man's life or limbs were concerned was flying in the face of all human experience.”

Mr. F. E. Smith, now Lord Birkenhead, says that to say that a man will wilfully do something that will cause his death or disablement is to fly in the face of human experience. Sir, I therefore feel that the burden on the industry, if my amendment is accepted, will not be very much indeed. Then, Sir, there is likely to be used another argument. It may be said that the conditions in England are quite different from the conditions in India. I therefore want to show to the House that whatever may be the difference in the conditions between England and India, there is no difference between the conditions in England and India as regards this point at least. Let us see what are the conditions which are material in this respect. The first is

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the workman having been at the time thereof under the influence of drink or drugs. Is there any one, who is likely to say the working classes in India drink more than the working classes in England? I do not think there will be anybody here who will make that statement. Then the second section is about the wilful disobedience of the rules. Is there any one here who will say that an Indian workman or for the matter of that an Indian is less law-abiding than an Englishman? My experience is that an Indian is a quiet, docile creature and he obeys the laws more readily than even the Englishman. What about the third? The third is the wilful removal or disregard of any safety guard. This I consider to be suicide. Is it proved by anybody that an Indian is more prone to commit suicide than an Englishman? I do not think any one can show that. I therefore think that the argument that the conditions in England and India differ does not hold good at least in this case.

Sir, I have thus shown that the clause as it stands is against the principles of the workman's compensation, and even though my amendment be accepted it will only be a compromise, because the ideal amendment would have been to drop this clause altogether. But I do not take the ideal course; I am prepared to accept a compromise which was accepted in England. Thirdly, I have shown that my proposal has the support of experience—experience, not of a theoretical man like myself, but the experience of English statesmen, English lawyers, who had very great experience of the working of the Compensation Act in England. Sir, if necessary, I would like to add one authority more in my support. When reading this debate in the House of Commons I came across the Division List. I looked through the list of people who had voted in favour of this amendment and I found there the name of Mr. Rufus Daniel Isaacs. Sir, this gentleman I think is well known to my Honourable friend Mr. Innes and to the other Members of this House. He is no other than His Excellency Lord Reading. I have therefore shown, Sir, that my amendment has not only the support of experience as well as of principle, but of great personages. I need not therefore say anything more, and I strongly hope that the House will accept my amendment.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, I notice that the first point which Mr. Joshi insists upon is that his amendment is required to balance the fact that the employee cannot get anything from the employer even should he suffer through the wilful negligence of the employer. But surely, Sir, as the Honourable Mr. Innes has pointed out to us and as has been emphasised from the Treasury Benches, should it be found that under ordinary common law the workman has not got his rights safeguarded, a Bill for employer's liability will be brought in. That I think covers this point.

The second point Mr. Joshi makes is that the industry should compensate the injured workman for all accidents. I notice that he does not suggest that the workman who is drunk or suffering from drugs or wilfully disobedient, etc., should get compensation unless the injury should cause death or permanent injury. Now, if the industry is to compensate for all accidents, why are these left out? Surely, surely, because we want to put every discouragement in the way of the workman coming to his work drunk and removing the safeguards wilfully. We should not forget, Sir, that a wilful act such as the removal of safety devices does not only endanger

the limb and the life of the workman himself but may also endanger those of his innocent fellow workmen. Now, Sir, Mr. Joshi has pointed out that the present Lord Birkenhead said that he could not conceive a workman disregarding a safety device if he thought that this might lead to his permanent injury or death, and that he may only do this if he thought that the injury would be a trivial one. Sir, is the House to encourage a workman to risk a trivial injury which may become a serious injury, and say to him, "because you thought it would only be a trivial injury, we will not therefore penalise you, by saying you are not to receive compensation?" That seems to me to be the point. Merely because a very high Member of the House of Lords at Home, who is also a very high legal exponent, should have said this in his more youthful days, I see no reason why we should follow. Surely, we should take advantage of the experience gained since the debate which Mr. Joshi referred to.

Mr. N. M. Joshi: They have not repented it yet.

Captain E. V. Sassoon: There is no reason to think that because they have not repealed it, it was not wrong. We have seen the results. We hope, therefore, to benefit by the results. It may be that if our method is shown to be better than that of the Home Government, they may bring in an Act amending their present Act. Now, Sir, it appears to me that the only point that Mr. Joshi can bring forward—and which he has not brought forward—is that this allowance should be given to the family as a compassionate allowance. That seems to me to be the only argument that could be brought forward. "The workman is not alive to be told not to do it again and his poor dependents are the ones who are going to suffer. Therefore let us give them something that they do not deserve." But, Sir, should this be brought under this Bill? Surely, if you are going to tell the widow and the children that they are going to have an allowance though they are not entitled to have it because the husband was killed or permanently injured, why should they not have an allowance if the husband was killed or permanently injured while walking down the street, or in any case which does not come under this Act? Surely, if we are going to bring in a measure of this kind, this is a matter which should come under a National Accident Insurance Act, and not under this particular Bill. In other words, why should the widow receive compensation as a compassionate allowance just because her husband happens to be a workman? Under this Bill therefore, I do not think that this point should be brought in, in this place. If it is intended that everybody who gets killed by an accident or is permanently injured is to have compensation, then this should be done in a much wider measure. Therefore, Sir, I oppose Mr. Joshi's amendment for these reasons, firstly we do not want to encourage anybody to go to work drunk or under the influence of drugs or to remove safety devices, and secondly, from the point of view of a compassionate allowance this is not the place to make the provision.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I strongly support this amendment. I may confess that my feeling as regards this Bill has been one of distrust. Having regard to the fact that industries in our country are not yet developed, this Bill may work as a deterrent to the growth of industries and industrial activities in this country. Therefore, I am one of those who would like to be very cautious in enacting provisions to the benefit of the workmen and to the injury of the employer. But, in this case, Sir, I feel strongly

[Rao Bahadur T. Rangachariar.]

that I can trust to the Britisher's commonsense. His commonsense has told him that it is not likely that a man for the sake of a paltry sum of hundred or two hundred or three or five hundred rupees that he may get that he would willingly kill himself or permanently disable himself. If death results, or if total disablement results, the law presumes—that is how I read the English law—that it cannot be wilful or culpable neglect on the part of the employee. It will be a safe presumption to draw in such a case for I have yet to find a man who will kill himself for the sake of two hundred rupees, unless he is insane or temporarily insane. I mean it is human nature. Therefore it is a safe rule of evidence to go upon; and as we are anxious in this case, as we have been told several times, to avoid the clutches of lawyers and law courts, why give a loophole to employers to resort to law in such a case. You want to save the employee from the clutches of the law, but you put the employers in those clutches by suggesting these differences. I do not know if Captain Sassoon would like to be placed in my hands: What is it you are doing here? A man has killed himself. He is an employee, poor fellow, who leaves behind a widow and children quite unprovided for. All that the amendment says is in such a case compensate him to the limited extent which this Act provides. What does it provide? Forty-two months' wages.

Mr. N. M. Joshi: Thirty months' wages.

Rao Bahadur T. Rangachariar: And in the case of total disablement, something more. Therefore I think it is not a very harsh measure to adopt, it is a reasonable course to adopt. Captain Sassoon suggests that we should wait for national insurance legislation. I do not know when we are going to get that; but here we are legislating for workmen's compensation as between employers and workmen. Why not take this opportunity to provide for this case here? Captain Sassoon, by this very argument, admits the necessity for some legislation. In his generous heart he feels no doubt that some compassionate allowance is needed for the widow and poor children of the workman. He feels that; then why not provide for it in a measure which deals with the liability of the employer to the workman. In this country it is much more necessary than in England, because the presumption of ignorance here can be more safely drawn than in the case of English workmen. English workmen are educated; they know the value and use of the appliances which are provided there. But here, Sir, even members of highly placed families do not know the actual use of the various parts of the machinery installed in the works. I know, Sir, of the case of a daughter of a Member of the Executive Council who very nearly killed herself by tying her silk cloth to the switch of an electric fan. Thereby she was about to be killed. What I mean is that ignorance is so great in these cases that you can safely draw the presumption, if such accident occurred that it was due to ignorance and not to wilful disobedience to any lawful order or rule. I therefore submit, Sir, that it is but right that we should provide for such cases. The Government themselves recognise the necessity for it in the original Bill. That is a strong argument in favour of this amendment. No doubt the original Bill as introduced provided only for half compensation; but now I see Mr. Joshi has grown more ambitious and he is asking for full compensation as in the English Act. The English Act allows full compensation and therefore Mr. Joshi asks for it. If any one will move for half compensation, I am willing to accept it, whether Mr. Joshi is willing to accept

it or not. But it seems to me that it is a case where we must provide for some compensation; otherwise we shall be acting cruelly in the case of the ignorant workman for whose benefit we are enacting this measure. The one argument that has been used against this is that it will encourage carelessness. Sir, it is an argument which has no weight behind it. As I have stated already, a man cares more for his life than for anything else. Therefore it is not likely to have that effect; if we pass this amendment it is not likely to have that effect. I therefore strongly support the amendment.

The Honourable Mr. C. A. Innes: Sir, as Mr. Rangachariar has just pointed out, Mr. Joshi's amendment goes further than we went in the original draft of this Bill. We provided in these circumstances only for half compensation, and I wish to point out to the House that there was no clause in the Bill which aroused greater opposition than that. Practically every employers' association in the country condemned it, and no less than six Local Governments thought that there was no justification for that clause. I desire to point out to the House that Mr. Joshi's clause is even more drastic; it is not a matter of half compensation—it is a matter of full compensation. Now, Sir, let us see what Mr. Joshi's arguments are. His first argument is that the omission of this clause is against the whole principle of workmen's compensation. I deny that in toto. What is the main principle of the Workmen's Compensation Act? The main point of it is that the workman has not got to prove negligence on the part of the employer. Now what I want to point out here is that we are not dealing with negligence; we are dealing with accidents arising when a workman is directly under the influence of drink or drugs; we are dealing with accidents arising out of wilful disobedience of rules expressly framed for a workman's safety; we are dealing with accidents arising out of wilful removal of safety devices. It has nothing to do with negligence. In each of these cases we assume that there was not merely negligence, but something wilful. Therefore, Mr. Joshi's argument that the omission of this clause is against the principle of workmen's compensation is entirely unfounded.

Now, let me take Mr. Joshi's next argument. He has got no argument at all. All he can say is that this appears in the English Act and therefore we must have it in our Act; and here again I join issue with him at once. All the way through we have made it perfectly plain that we never intended our Bill to be a slavish imitation of the English Act. We made it perfectly plain that we intended to legislate for India and India's conditions. Now, I am not going to say—and I hope Mr. Joshi will not think that I am going to say—that my objections to this clause are due to any difference between the conditions of India and the conditions of England. I am not going to base my objections to the clause on any argument based on different conditions of industry. I make Mr. Joshi a present of arguments of that kind. My objection to the clause, as usual, is based on principle. As I have said, all that Mr. Joshi has been able to say was that this appears in the English Act. He said that we must adopt the principle of the English Act. Now, what is the principle on which this clause of the English Act is based? Mr. Joshi has told us. He says in the first place it is a principle that you should not punish the sons and the children for the sin of the father. If a man by reason of his being drunk kills himself in a factory, then, he says, it is wrong in principle that his dependants should be punished, and therefore you must pay compensation which otherwise if the workman had not been drunk and had been killed you would

[Mr. C. A. Innes.]

have had to pay to his dependants. Now, I put it to the House, is it right in principle? It is purely a matter of a compassionate allowance. Is it not the way of the world? Suppose a man is accused of murdering another man and suppose he is hanged; his dependants suffer, his wife and children suffer; does any one pay them compensation? The wife and children of the murdered man suffer; does any one pay them compensation? Here you have got a precisely similar case; when a man by reason of his being drunk does a thing which reacts most terribly on his dependants, why should you say that compensation shall be paid to his dependants? At any rate, why should you say that the employer should pay that compensation? If you want to pay compensation let the State pay it; do not put it upon the employer; do not let the employer have to pay compensation for an act which he could not have prevented. Then again, Mr. Joshi referred to some arguments used apparently by Lord Gladstone, or Mr. Herbert Gladstone, as I think he was then, in the House of Commons. Mr. Herbert Gladstone said that it was unfair to make a charge of this kind against a dead man. It seems to me, Sir, a singularly weak argument. In this case we are not merely dealing with a dead man, but we are dealing with men who are permanently disabled, so that that argument loses its force. I say that we are here now to legislate for India. We are not here to copy the English law merely because it is the English law, and if we are going to copy the English law, I say that that provision of the English law must satisfy our sense of logic and our reason.

Now, Sir, I come to the main objection to this clause, the objection which has weighed most with me. What is the main object, what is the main benefit that we hope to get from this legislation? We are placing a burden upon the employer; we are placing upon him the obligation to pay compensation to workmen for injuries referred to in this Bill. We hope that by doing so, and by the pressure of the Insurance Companies, those employers will be more and more careful in their factories. They will pay more and more attention to the safety of their workmen; they will go in for safety devices; they will frame more carefully rules for the safety of their workmen. And yet, Mr. Joshi comes and says that he wishes to introduce a clause which makes it very nearly useless, for an employer to put in those safety devices, to make those safety rules. According to him, if a workman injures himself or kills himself by his own wilful misconduct or by his disobedience to rules or by the removal of the safeguards, still the employer has got to pay; therefore why should the employer go in for these safety devices? That is one of my main arguments against this clause. The other argument is this. You cannot defend a clause like this by any argument based on reason, and you cannot pretend that it is fair to the employer to make him responsible for accidents which he could not possibly have prevented. Sir, I oppose the amendment.

Mr. B. S. Kamat: Sir, after the very able manner in which the Honourable Mr. Innes has shown the weakness of some of the arguments of Mr. Joshi, there remains very little for me to say, but there is one point to which I wish to draw the attention of the House with reference to the English Act. But before I do so, let me explain my own position in the matter. I have my sympathy for the desire of Mr. Joshi to give some sort of compassionate allowance to the workman who loses his life even by his own wilful misconduct, and if he had drafted out an amendment to

that effect in the proper manner, probably it would have been possible for me to support it; but as it is, I am afraid his amendment, as drafted, cannot be supported.

Mr. N. M. Joshi: May I say one word, Sir? Compensation is compassionate allowance, and it is nothing but that. That is the principal argument.

Mr. B. S. Kamat: Mr. Joshi based the whole of his case on the parallel of the English Act, and he led the House to believe that under the English Act the amount of compensation or compassionate allowance claimable by such workman or his dependants would be the same as if in the case of death due to any other cause and not by drunk or wilful misconduct. There is nothing like that in the English Act at all. If he carefully and critically studies that Act, he will see that all that the Act provides for is this: "If it is proved that the injury to a workman is attributable to his wilful misconduct, then in that case his claim shall not be disallowed except in case of death. Well, this only means his claim is only allowable"

Mr. N. M. Joshi: According to the Act.

Mr. B. S. Kamat: There is a good deal of difference between the fact that his claim, in spite of the fact that he was drunk, is allowable and the fact that he is entitled to the same allowance as otherwise such claim is referred to an arbitrator who probably allows one-third or one-fourth or the full amount of compensation as he deems fit. Under Mr. Joshi's amendment on the other hand what Mr. Joshi wants is that, although the workman, by his drunkenness or by his mischief has brought on his own death, the employer is to be penalised by the giving of the full amount of the compensation, as if the workman was not drunk. There is no such provision in the English Act at all. All that the English Act provides is that his claim should be allowed. There is a worldwide difference between that and Mr. Joshi's amendment. And, although I have full sympathy with the object Mr. Joshi has in view, I am afraid I cannot support him in the amendment as drafted by him.

One word as regards what has fallen from Mr. Rangachariar. He says no men would bring death on himself for the sake of two or three hundred rupees. Well, we do not say that he would bring death on himself for the sake of the money. Whatever may be the motive, why should an innocent man; i.e., the employer, be penalised? If Mr. Rangachariar wants to give him something out of sympathy, he can devise to give something in another form. But don't penalise the employer for no fault of his.

Mr. R. A. Spence (Bombay: European): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

"To proviso (b) in clause 3 (1), at the end add the following:

'Unless the injury results in death to the workman or in his permanent total disablement in either of which cases the employer shall be liable to pay compensation to which the workman would otherwise have been entitled.'

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—22.

Abdul Majid, Sheikh.
Abdul Rahim Khan, Mr.
Agnihotri, Mr. K. B. L.
Ahmed Baksh, Mr.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Faiyaz Khan, Mr. M.
Ibrahim Ali Khan, Col. Nawab Mohd.

Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Latthe, Mr. A. B.
Misra, Mr. B. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—51.

Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.

Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mahadeo Prasad, Munshi.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nand Lal, Dr.
Percival, Mr. P. E.
Ramji, Mr. Manmohandas.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Ujagar Singh, Baba Bedi.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned for Lunch till Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock. Sir Campbell Rhodes was in the Chair.

Sir Montagu Webb (Bombay: European): Sir, I beg to move:

"In clause 3 (2) omit the words:

"If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax or."

The effect, Sir, of this amendment, if it be carried, would be to exclude the disease of anthrax from the operation of the Act. I do not suppose that I need occupy the time of the House by any lengthy description of the disease of anthrax. It is a cattle disease; and it also affects sheep and goats. In recent years, it has been communicated to human beings, and

shows itself in the form of a malignant pustule, or boil, or carbuncle which generally proves fatal. In Europe and in the United Kingdom, one or two people have died of this disease every year. I believe a little over 100 people have died of anthrax in the last 25 years; and in the United Kingdom and in Europe a determined effort is now being made to stamp out the disease.

Now, I desire at the start to make it quite clear that I have not the slightest desire to relieve the employer from his liability, make full, proper and adequate compensation to any labourer who contracts an occupational disease who may suffer or die of anthrax whilst working for that employer. But what I do submit, Sir, is that in this country among the people who work in those trades—who handle wool, hair, hides or skins—men, women and children, it is a matter of extreme difficulty, if not impossibility, to decide where, how and when anthrax may have been contracted. In the first place, a great quantity of hair and wool, bristles, hides and skins come into India from outside, partly over the sea, and more largely over the land frontiers. Now, no arrangements exist, no organisation, by which hair, or wool, or hides and skins infected by anthrax can be examined, there is no means of detecting the presence of the anthrax germ. Then again, skins, bristles, hides, wool and so forth are transported all over this country. There is at no stage any organisation or machinery to detect whether those goods are infected by anthrax or not. The germ is a difficult one to detect and a very difficult one to kill. I believe that it can retain vitality for many years under the most unfavourable circumstances. Now in these circumstances although Government may from

3 P.M. time to time notify that different parts of the country and the cattle in those districts have been affected by anthrax, it is impossible, I submit, to make regulations which would protect all the people who may handle wool, hair, bristles, hides or skins. Then again, Sir, in my experience the people who are engaged in this trade are very often daily labourers. They are not permanent employees. Those people who are engaged in picking and sorting wool and handling skins are very often coolies taken on in the morning and discharged in the evening. I would ask this House how are these people to be examined to discover the presence of anthrax. It looks like some skin disease which is very very common in India. How are these coolies and labourers to be examined? How is medical provision to be afforded? Are they, before they commence the day's work, to be stripped, men, women and children, to discover if they have any sore on their bodies, which may possibly turn out to be anthrax? And then supposing that there is a sore, is it every doctor who can tell whether that sore is anthrax or not? I believe that it requires a bacteriological examination to decide whether the sore or boil or whatever it is, is anthrax or not. It is a matter of the very greatest difficulty to detect. I have not been able to discover with the information at my command, that anybody in this country has died of anthrax through handling hair, wool or hides or skins. They may have done so. I am very familiar with the wool business myself and within my own experience nobody handling wool has died of anthrax. I believe some little time ago somebody who used a Japanese shaving brush died of anthrax. That is not quite the same case as that of labourers who are engaged in the wool trade or the hides and skins trade. I have during the course of the last ten years myself attended more than one conference in Yorkshire and London, and I am very familiar with all the steps that have been taken and the legislation that has been passed to endeavour to check and

[Sir Montagu Webb.]

eradicate this disease in Europe, but I feel that it would be a matter of very great difficulty to apply those measures and steps in this country where the conditions are so entirely different. It is for this reason, Sir, that I move that we take anthrax out of the scope of the operation of this Bill. I do so, Sir, not because I do not recognise the danger of anthrax, not because I do not recognise the liability of the employer to compensate work people who may suffer from that danger, and not because I am not aware of the fact that anthrax is included in similar legislation in other countries. I do so because I urge that conditions in India are such that the practical application, the equitable application of the principle of compensation as between employer and workman will in practice prove to be almost impossible. If anthrax be included in this Bill, it will mean that labourers, men, women and children either must be inspected to discover if they are affected by anthrax, or, the employer will be liable to pay compensation for people who die of anthrax who have not contracted the disease whilst in his employ, but have caught it somewhere else. It is for these reasons, not because I desire to relieve the employer from the liability to compensate, but because the practical difficulties in this country are so great as to make the equitable application of the principle in practice almost impossible, that I move that the words which I have read out, be omitted from the beginning of clause 3, sub-section (2).

The Honourable Mr. C. A. Innes: Sir, I am afraid I must oppose this amendment. Sir Montagu Webb's first point was that anthrax requires bacteriological examination and that no ordinary doctor can diagnose a case of anthrax straight off without first having some bacteriological examination. Well, Sir, I have taken expert advice on that very point. I have taken the advice of the Sanitary Commissioner with the Government of India, who is himself a very great expert on anthrax and who has just attended on our behalf an Anthrax Conference in London. He tells me that it is by no means necessary that every factory and every woollen mill should keep a trained bacteriologist. He says that the malignant pustule which is the ordinary manifestation of the disease can be diagnosed clinically and no doctor would think of awaiting the result of a bacteriological examination before commencing treatment. Even in Germany only in 50 per cent. of the cases is the material sent to a bacteriological laboratory in order to confirm diagnosis. I think, Sir, I have answered the first point made by Sir Montagu Webb.

Sir Montagu Webb's second point was that, as far as he knew, cases of anthrax were of very rare occurrence in India. If that is so, and I believe it is, then I do not think that employers need worry very much if we do include anthrax within the scope of the Bill. We have included anthrax within the scope of the Bill because essentially it is an occupational disease; possibly it is the most typical occupational disease there is: and I think I am correct in saying that every Workman's Compensation Act in the world, or practically every one, makes provision for anthrax. We included it in the Bill because in woollen mills, in exporters' godowns of wool, hides and other places where anthrax is liable to occur—in these industries anthrax is essentially a disease of the industry. Moreover, I think there are certain things that can be done for the workman in places like that. In England pictures of the malignant pustule are placed everywhere for the information of workmen, so that they may seek early treatment. Pictures of this kind are hung up in the factory. Nor is there I think any neces-

sity why those workmen should be inspected before they come to work. After all it is for the workman to prove that he has got the disease.

As regards Sir Montagu Webb's last point, namely, that in these woollen mills and in exporters' wool godowns daily labour is usually employed, I think I am correct in saying that the disease of anthrax supervenes very quickly; not only that, its fatal effect follows very quickly. On the whole, I think, that the case for inclusion of anthrax in the Bill particularly strong and I would repeat that anthrax is the most typical occupational disease that any one could think of.

Lieut.-Colonel H. A. J. Gidney: Sir, when this subject was brought up in the Committee which sat on the Bill I pressed strongly, and I think I was left almost unsupported in the end, for the inclusion of other occupational diseases besides anthrax. In fact I went so far as to enumerate a few diseases, such as lead poisoning, kala-azar (which is a residential disease pathognomonic to certain parts of India), chrome poisoning, etc., etc. The Committee did not agree with me. At the same time I think they felt that when this Bill had been in operation for some time—this being an experimental stage of it—there would be need to include these occupational diseases to a greater extent than they have seen fit to do to-day. There is no doubt that the occupational diseases included in a similar Bill in England cover a very large field indeed, and to only include anthrax in this Bill is, I consider, a very very conservative attitude to take up; and, for this reason, I do not agree with Sir Montagu Webb's amendment; in fact, I oppose it. If Sir Montagu Webb is correct in his figures that no deaths from anthrax, to his knowledge, have taken place in such occupations in India, why, as Mr. Innes said, why should the employer trouble himself about its inclusion as an occupational disease in this Bill? But as such deaths are likely to take place, and are most certainly due to occupation I think the employees so occupied should be protected especially when one considers the extreme rapidity and fatality of this disease and the difficulty owing to the paucity of research institutions of diagnosing it in its earliest stages in India as compared to England. Sir Montagu Webb has not adduced any good reasons in support of his amendment except to plead the cause and protection of the employer. His other reason is that conditions in India are such that the equitable application of compensation between the employer and employee will be almost impossible of execution. If anthrax be included, labourers he says, must be inspected. That is exactly what the Workmen's Compensation Act is going to lead to, viz., more careful inspection of employees. If anthrax is to be excluded from this Bill it would deprive the Bill of a very important and necessary safeguard. I, therefore, oppose the amendment, Sir.

Mr. Darcy Lindsay: I move that the question be now put.

The motion was adopted.

Mr. Chairman: Amendment moved:

"In clause 3 (2) omit the words:

"If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax or..."

[Mr. Chairman.]

The question is that that amendment be made.

The motion was negatived.

Mr. N. M. Joshi: Sir, I beg to move the following amendment which stands in my name:

"In clause 3, sub-clause (5), after the word 'person' insert the words 'and damages have been awarded in his favour'."

This, Sir, is the clause where alternative remedies have been dealt with. The clause as it stands states that a man who goes to a Court for a suit in damages for an accident is prevented from going to the Workmen's Compensation Commissioner. My amendment proposes that if a man goes to a Civil Court for damages for an accident and if he succeeds in getting damages he should be prevented from going to the Workmen's Compensation Commissioner. But if he does not succeed in his suit, then it should be open to him to go to the Workmen's Compensation Commissioner. Sir, this amendment is again an instance of my fondness for slavishly following English legislation. To frankly admit, I admire the English legislation; I admire the English people also, at least the English people in England. But, Sir, I cannot understand why my Honourable friend Mr. Innes should not like Indians like myself slavishly following the English legislation. I am, therefore, causing great disappointment to him by asking the House to slavishly follow the English legislation. After all, what is the argument to prevent a man going to the Workmen's Compensation Commissioner if he fails to get any damages from the Civil Court? The argument is that the man should not be encouraged to go into litigation. Sir, if that is the argument, this clause does not prevent that. The man has his alternative remedies. If there had been any clause here to prevent a man going altogether to the Civil Court, I should have supported it. I am in favour of giving only one remedy to the working classes. To give them two remedies no doubt is to put them at a disadvantage; and therefore if the Government had proposed that the workman should have only one remedy I should have supported it. But unfortunately they put before the working class man—they suggest to him, as a matter of fact he does not know it himself—they suggest to him by means of this section that there are two remedies open to him. Is it right, after having done that, to penalise the man if he sometimes makes a mistake and goes to the Civil Court. Therefore I think it is absolutely wrong—at least as long as the working classes in India are illiterate and ignorant—to penalise them for a small mistake of theirs. I hope therefore that the House will accept my amendment.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved by Mr. Joshi. I shall take the House through clause 19 also which will show that this sub-clause (5) is absolutely unnecessary. In clause 19 we provide that 'no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner'. Now if this clause stands in this Bill, then sub-clause (5) becomes unnecessary for the simple reason that a Civil Court will not entertain any suit and to penalise the worker for his ignorance in merely approaching the Civil Court for a remedy which the Court cannot and will not grant, will be very very hard for the workman. And if Mr. Joshi's amendment is accepted, then even though the sub-clause be superfluous, it will have some meaning. I therefore suggest that Mr. Joshi's amendment be accepted.

The Honourable Mr. C. A. Innes: Sir, I should just like to explain the view the Government has taken on this very difficult question of alternative remedies. Our view is that we have provided a special law which enables the workman to recover compensation from his employer. We have also provided a special machinery to enable him to recover that compensation. The law is special in that the workman has not got to prove negligence. We deprive the employer of what would be a defence under the common law. We treat the injury as a risk of the industry. We make the employer in the public interest pay. That is to say, the law to that extent imposes a special disability upon the employer, and it gives a special benefit to the workman. Now having done that for the workman, we think it only right that we should do something for the employer. We think it only fair that we should protect the employer from being harassed, not only by claims under this Act but also by suits in the Civil Courts. Therefore we give the workman his choice. He can go to the Civil Court if he likes. He can lay a claim before the Commissioner under this Act if he likes. But he must exercise his option; he cannot do both.

And the second point is that under this law we want to encourage him to use this Act. It is for that reason as I explained before that we tried to draw the Bill in such a way that both the workman and the employer can understand it, and that they can come to an agreement among themselves. And if there are disputes we try to encourage the workman to take our simple and inexpensive machinery of the Commissioners. Our whole object is to prevent the workman from wasting his money in the Courts, and the employer from being harassed by suits. That is my objection to Mr. Joshi's amendment. Mr. Joshi wants that the workman should first be able to go to Civil Courts; if he gets his damages there well and good; he cannot go any further; but if he fails in the Civil Court, he must be allowed to file a claim under this Act against his employer. I say that bearing in mind the objects with which we set out, the course suggested by Mr. Joshi is not right, and that it is fair that the workman should be required to exercise his option whether he should go to the Civil Court in the first instance or whether he should claim under this Act. I oppose the amendment.

Rao Bahadur T. Rangachariar: Sir, this is one of those cases where people in this country, especially the English people, expose their dread of Courts. I do not know why they have a dread of Courts at all. It is there they get justice; after all we are concerned in seeing justice done. I think lawyers in this part of the country are perhaps to blame. The heavy fees in Calcutta perhaps account for it; the gold mohurs which they reap in Calcutta apparently account for this dread of Courts; but the poor pagodas of Madras do not drive parties away from Courts. Now, Sir, what is the object of this? Let us remember that this Act provides a new right and a new remedy, a new right which depends upon one set of circumstances, whereas the ordinary remedy under the law depends upon another set of circumstances. Here the liability arises by the mere fact of employment. This law assumes, as the Honourable Mr. Innes told us just now, that by the mere fact of employment this liability arises on the part of the employer; and in order to give relief in respect of that liability a special machinery is created. Under the ordinary law a workman, if he resorts to the ordinary Courts, has to prove other circumstances, not merely the fact of employment; he undertakes another burden, namely, he has to prove negligence on the part of the employer before he can get a farthing; so that a man may be entitled to compensation under this Act but will not

[Rao Bahadur T. Rangachariar.]

be entitled to damages in the Civil Courts. This section provides a punishment, therefore, for a man daring to go to the Civil Courts. We are enacting a law here saying "Be afraid of Courts; if you go anywhere near the precincts of a Court, take care, we will come down upon you. Although you may be entitled under this Act to compensation you may not be justly entitled to damages in the Civil Court. But you are entitled to something in law which this law creates and we will deprive you of it; we impose a fine on you, the fine being that we will deprive you of what is justly due to you." Sir, can any civilized Legislature support such a proposition? Is a Legislature going to say,—"Impose a penalty on people going to the Courts established by His Majesty and by the Government of the country"—not national Courts established by the Congress Party—I can quite understand if a penalty is imposed by saying that if you went to these panchayat Courts established by the Congress party we will impose a penalty. But, Sir, what is the crime he has committed? He has committed the sin of approaching a Court established by this very Government, and the Legislature says "We will impose a penalty upon you. How dare you go?" Therefore, we will deprive you of what is justly your due. Therefore, Mr. Joshi's amendment has got substance behind it, principle behind it, justice behind it. On the other hand, the proposal made by Government is ridiculous on the face of it. The Government expose themselves to ridicule. They themselves dread their own Court which they established. That is what they are saying in so many words. Sir, if a man goes to a Civil Court and loses, he pays costs. If he is an unsuccessful party, he pays costs; costs no doubt oftentimes are not fully compensatory of the actual costs incurred—that I know. But that is not all. That may be a reason for increasing the costs to be awarded by altering the rules by which costs are to be awarded. But do not make it a penalty for a man going to the Court and say "we will deprive you of what is your due." We deal with a set of ignorant people. The man may be an innocent person in the hands of a scheming lawyer. (Mr. R. A. Spence: "Are there any?") I suppose there are. Just as there are scheming merchants—are there not scheming merchants who took advantage of the war boom? Now, Sir, there are black sheep in every fold. Let us not therefore sneer at only one set of people. There are honourable persons and other kinds of persons in every class and profession. Therefore, I say, Sir, it is quite reasonable to suggest that if a man has already got compensation for injuries sustained, let him not have any more. But where his action failed? As I said before, if the cause of action is the same for both cases, that is, if he has to prove only the same set of facts in either case, then no doubt I can understand it. But, where he has to prove more in one Court and less in another Court, that the Court where he has to prove less should say: don't give him any compensation because the other Court has already refused it; that seems to me illogical and to be a case of creating jealousy. Don't give it to him because he has been to my neighbour. It seems to me to be a very indefensible position for any Government or anybody to take up. I therefore, Sir, support Mr. Joshi's amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, my object in rising to address the House is to draw pointed attention to certain aspects of the Bill and of the clause under consideration to which attention has already been drawn to some extent. My Honourable friend, Mr. Agnihotri, has said that section 19 drives the party injured to the

Commissioner. I submit, Sir, that seems to me to be the effect of section 19 (1) and (2) of the Bill. It reads:

"If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by the Commissioner."

There is no other alternative. Then the second sub-clause says:

"No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner."

Therefore, Sir, I think in almost 99 cases out of a hundred, all matters which crop up in connection with compensation for injury have to come up before the Commissioner, and they are required by the Bill to be decided by him. Therefore my Honourable friend, Mr. Joshi, suggests that the words "and damages have been awarded in his favour" be added to sub-clause (5) which will read as follows after the addition proposed has been made:

"Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and damages have been awarded in his favour."

That is how it will read when the present sub-clause (5) is supplemented by the words proposed by him to be added. Otherwise, the first portion of the clause, being followed by the subsequent portion of it, gives no intelligible meaning to the following words "and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury if he has instituted a claim to compensation in respect of the injury before a Commissioner." These words must mean that the same matter is covered by the civil suit as well as by the proceeding before a Commissioner, not cases where there are other elements justifying a claim for compensation or damage, which can be taken before a Court of law for adjudication. We are not concerned with the question of agreement, but of a civil suit instituted before the Civil Court. Therefore, there seems to be an inherent inconsistency in the Bill itself as framed because it compels an injured workman to go to a Commissioner in all cases under the Bill and then vaguely mentions the Civil Court. We can get some meaning out of it only when we contemplate that in such cases only where the facts justifying a claim for compensation both before a Commissioner as well as in a Civil Court overlap each other, the former proceedings operate to the exclusion of that in a Civil Court and in no other. Nobody can go before the Civil Court for compensation within the meaning of clause 19 of the Bill, but he must appear before the Commissioner for redress in all cases arising in any proceeding under the Bill. Therefore, I submit, Sir, the matter deserves grave consideration by the Honourable Members and to my mind, my friend's amendment, to say the least, suggests some way out of the difficulty. Without it you give the injured man no relief by pointing out to him the road to the Civil Court. I leave the matter in the hands of the House with these words.

Mr. R. A. Spence: Sir, I have even a greater feeling for lawyers than my Honourable friend, Mr. Rangachariar, and I am basing my arguments against this amendment because I have a great belief in them. I don't

[Mr. R. A. Spence.]

believe there are any scheming lawyers. The Honourable Mover of this amendment, as far as I understand him, objected to the workman being able to go to the law and also being able to go to the lawyer. And he complained, I think, that, if this amendment was not supported by the House, a man who had gone to the lawyer would not be able to go to the law of this Act. Well, now, surely, if he had gone to the lawyer and the lawyer had advised him that under the Civil Code he had a claim for damages and he had exercised that power of free will, which my Honourable friend Mr. Rangachariar thought no man should be deprived of—the right of going to the Courts which has been established by this Government and not by the Congress Party—if exercising that power of free will, he goes to the Civil Court as advised by his lawyer and if he loses his case, surely the lawyer will tell him that his case, having failed in the Court, had failed because he had got no case and therefore he would have no case under the law of this Act and therefore there would be no hardship for him in being prevented from taking proceedings under this Act.

The Honourable Mr. Innes has told us the reasons which have induced Government to cut down that clause and honestly I think his arguments are very strong and I think we ought to refuse to accept this amendment.

Dr. Nand Lal: Sir, I am in favour of this argument advanced by the Honourable Mr. Innes that the workman may be made to adhere to this Bill. I am also in favour of this argument which has been advanced by the same Honourable Opposer that the employers should not be harassed. Conceding to that extent, yet I feel bound to submit before this House that things opposed to equity should not be countenanced in the form of any provision. There is a workman, altogether ignorant; he seeks for legal advice. Unfortunately, he is ill-advised and goes to the ordinary Civil Court, contemplating that he will secure a decree there, and his suit in regard to damages,—not for compensation as defined by the present Bill which is being debated upon—is unfortunately dismissed. Now injury he has sustained. He has suffered. There is another rule of law which can be availed of by him but he is deprived of it. Why? Because he was ill-advised. It is simply inequitable that he should be deprived of the provision of this Bill so far as compensation, with reference to certain prescribed injuries goes. I concede that if he is allowed any damage from the Civil Court, the amount of that damage may be deducted. But there is no reason why we should allow a peculiar provision in this Act that he should altogether be deprived of his remedy under the Workmen's Compensation Act if he resorts to the Civil Court with a view to seek ordinary remedy. Apart from that, you will be pleased to see, Sir, that the wording of clause 3, sub-clause (5) is: "Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person." Supposing he has got a different cause of action against a person other than the employer. Then, in that case also, he is told "Oh, you should not go to the Commissioner under the Workmen's Compensation Act." Now, in this case the employer will not be harassed. It is "any other person". Is this House going to deprive the workman of another remedy against another person? I submit that this House will support the amendment which speaks for itself and is really commendable. With these few remarks I most heartily support this amendment which is based on equitable grounds.

Sir Henry Moncrieff Smith: Sir, Mr. Joshi, if I understood him aright, was professedly attempting to follow the English law. I should like to explain to the House as briefly as possible that Mr. Joshi's amendment is really not the English law at all. There are certain special provisions in the English law which recognise claims in the Civil Court—in the County Court. But when claims are made there, they have one particular effect which Mr. Joshi has not mentioned and which perhaps the House did not realise, and that is, that if the Civil Court proceeds to assess compensation, it shall, if it is of opinion that the proceedings ought to have been brought under the Workmen's Compensation Act, award to the employer the whole costs of the case. Now, we have not got that in our law. It might be rather a dangerous provision in our law if Mr. Joshi amends it in that way, because the workman having got something out of the Civil Court and having had costs awarded against him would say, "At all events, let me again try my luck with the Commissioner; at least I may get something which will be a set off against the costs which have been awarded to the employer against me." In India a provision of that sort would probably swallow up most of the compensation subsequently awarded. As has been suggested, not by laymen in this House at all but several times to-day by lawyers themselves, this might be an advantage to the lawyer. It will force every workman, once he becomes acquainted with the law, to go to a lawyer and seek his advice as to the Court where he will stand the best chance of getting adequate damages or compensation. I would remind the House that compensation under this Act is not damages. It is quite another thing from damages—damages which a Civil Court can award. In this particular case compensation is defined as the compensation obtainable or awardable under the provisions of this Act. Now, Sir, if the workman is to be driven to take legal advice—it is suggested that he should and ought to take legal advice . . . (Mr. N. M. Joshi: "I am against it. You can prevent it.") Mr. Joshi will prevent the workman taking legal advice in this matter, he would like the workman to make up his own mind without any assistance whatever in the matter as to the proper course he should pursue. I think that is dangerous too, because it will merely tend to swell litigation. The workman, as a matter of fact, in such a case, would not proceed to file a suit for damages without some advice, and I think the House will realise how dangerous it is for any would-be client to decide on litigation without taking advice. In many places he can get it very cheaply. There are struggling pleaders just beginning their career, or perhaps pleaders who have struggled for many years without establishing a career, who are quite prepared to give advice—advice that certainly is not fit to be followed in every case—without due consideration of the law on the subject and of the facts. Sir, I think, if the workman deliberately or even inadvertently goes to the Civil Court and decides to bring a claim there for damages, then he should stand by what he has done. No provision is made in this case—I do not quite know what Mr. Joshi's contention is, but would he allow the workman half way through the proceedings in the Civil Court to change his mind and ask the Court to stay proceedings and then say, "I am going to the Commissioner to get compensation in that way. I wish to take no further proceedings in this case." In such a case the workman's money will have been wasted, and he will undoubtedly have to pay the cost of the suit up to that time. (Mr. N. M. Joshi: "Something is better than nothing.") I do not agree that something is better than nothing. If we are going to have anything in the law, we must have the thing complete. It is these "somethings that are better than nothing" that lead to difficulties

[Sir Henry Moncrieff Smith.]

and to a series of rulings on every difficult section or provision in our law in India. I entirely disapprove of that suggestion that we should have something that is better than nothing. I would suggest that the workman should in this case choose his remedy and should stick to it.

Mr. Chairman: Amendment moved:

"In clause 3, sub-section (5), after the word 'person' insert the words 'and damages have been awarded in his favour'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Ginwala, Mr. P. P.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—40.

Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.

Kamat, Mr. B. S.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Shewpershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, I beg to move:

"That in clause 3 (5) the following be substituted for sub-clauses (a) and (b):

"If he has received compensation in respect of the injury under the provisions of this Act except with the leave of the Commissioner and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages."

Sir, this amendment deals with the converse case. We have just now dealt with the first portion of this section in which if a man went to a civil court we told him he ought not to claim compensation under this Act. This latter portion of the section deals with the case of a man where he is

sought to be prevented from going to the ordinary court. And on what ground? Mark the words—"if he has instituted a claim to compensation under the Act he cannot go to the civil court." If he has merely instituted a claim, which may be infructuous, he cannot go to the civil court. Honourable Members may have noticed from the various provisions of this Bill this compensation is awarded under various restrictions. The man has to give notice of the accident within a reasonable time. He has to give notice of the claim, and if he does not do this it is left to the discretion of the Commissioner whether to award compensation or not. Then again, the amount awarded under this Act is very small. Again, as Honourable Members must have noticed, the nature of the accident may be such that more compensation and damages would be awarded in the civil court. Therefore the right to go to a civil court is inherent with us. Whenever there is a wrong there is a remedy. That is a well-known rule of law. There can be no wrong without remedy. Therefore the right to go to the civil courts established by the Government of the country is the inherent right of every subject of His Majesty. By this clause we propose to take away that right; and for what reason? Because the man has merely instituted a claim for compensation which may or may not be successful. Therefore it is not right to have such a clause. You cannot take away this valuable inherent right of every citizen except for good cause; the good cause will be if he has recovered sufficient compensation. But merely the instituting of a claim should not be a ground for driving him out of court. That is why I have proposed, Sir, that "if he has received compensation in respect of injuries under the provisions of this Act" he should not go to the civil court unless the case is so serious that the Commissioner considers that he can give leave for going to the court. It will be seen, I do not permit him to go to Court without the leave of the Commissioner. I provide safeguards against vexatious claims, so that if he has received compensation he cannot go to the civil court except with the leave of the Commissioner, and even when he goes to the civil court, I make adequate protection to the employers by providing "and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages." Therefore, it is a just provision; the employer does not suffer, the employee does not suffer; on the other hand the inherent right of every subject of His Majesty is preserved. You do not do any violence to that well known rule of law "No wrong without a remedy." On the other hand, if you leave it as it is, you simply say because you have instituted a claim to compensation, therefore you should not go to the civil court or because merely an agreement has been come to. If an agreement has been come to, what is the satisfaction to the man by merely having an agreement. If compensation had been given under the agreement, I can understand it. Supposing he does not register the agreement as is required under the Act, the agreement is no good. Therefore, in either case only if he has recovered compensation, he should be deprived of the remedy which he has under the law. Therefore, I move the amendment which stands in my name.

The Honourable Mr. C. A. Innes: Sir, if Mr. Joshi's amendment was bad, then I say Mr. Rangachariar's is worse, much worse. In the first place if the amendment proposed by Mr. Rangachariar is accepted, it will mean that there will be no objection to a workman filing simultaneously a suit under the common law and a claim under this Act, and that goes, as I have said, against one of our principles. I should be prepared to say

[Mr. C. A. Innes.]

that there was something in Mr. Rangachariar's argument if there was any chance of a workman losing his claim before a Commissioner on the ground that he was not a workman covered by the Act. If he lost it purely on a technical point, then naturally he ought to have his remedy in the civil court; but he has got his remedy, for this Act, as you see, applies only to workmen as defined in this Bill. If, therefore, a man is non-suited in a claim before the Commissioner on the ground that he is not a workman, then there is nothing to prevent him from filing a suit in a civil court. Then, again, Mr. Rangachariar makes an important point of the fact that merely if a workman has instituted a claim before a Commissioner, he is not allowed to go to the civil court and he points out that this is unfair. He suggested that there might be some reason in it if we only debarred him from going to the civil court if he got compensation from the Commissioner. But this Act is far more favourable to the workman than the common law. If a workman filing a claim before a Commissioner where he has not got to prove neglect, fails, then *a fortiori* he will fail before a civil court. We are preventing him from wasting his money. But the real reason why I object to Mr. Rangachariar's amendment is this; let us assume that the workman has obtained compensation from the Commissioner and then wants to be allowed to file a suit in the civil court. If we accept the amendment, we practically tempt the workman to waste the compensation that he has got from the Commissioner in prosecuting probably a useless case in a civil court. Sir, I say that is not right and I oppose the amendment.

(At this stage Mr. President took the Chair.)

Mr. President: Amendment moved:

"That in clause 3 (5), the following be substituted for sub-clauses (a) and (b):

'If he has received compensation in respect of the injury under the provisions of this Act except with the leave of the Commissioner and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages.'

The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move the following amendment which stands in my name:

"In clause 3, in sub-clause (5), omit sub-section (b)''.

We have deprived, Sir, the workman from going to a civil court for damages in two cases. The first is where he has instituted a claim before the Commissioner in respect of any claim and the second is where an agreement has been come to between the workman and his employer providing for the payment of damages or compensation in respect of the injury in accordance with the provisions of this Act.

I beg to move an amendment that this sub-clause (b) which deals with 4 P.M. the agreement, may be deleted.

Sir, in the former portion of sub-clause (5) we have already provided that the workman may bring a suit for damages against any other person if he so likes. When he can bring a suit for damages against a person other than an employer, why should he be debarred from bringing that

suit if an agreement has been arrived at between himself and his employer in respect to the liability of the employer. This will be incongruous. Sir, it is also possible that the employers may take advantage of this sub-clause, and at the time when a workman seeks employment the employer might say to him that he would only be given employment if he gave an agreement that in no case will he be entitled to go to the Civil Court for damages; and the workman will have to agree to it for the sake of work and this will be very hard for the workman. Therefore, I beg to submit, that this sub-clause (b) should be deleted.

Mr. A. G. Clow: Sir, I ask the House to reject this amendment. I do not think the Honourable Member has considered what the effect of it will be. The obvious effect will be that the good employer, the benevolent employer, who at once puts his hand into his pocket and pays out the compensation will still be liable to a suit for damages, whereas the quarrelsome employer who says "No, I refuse to give any compensation," and who forces the employee to file a claim before the Commissioner will thereby protect himself from a suit. Now, our whole object has been to encourage employers to pay compensation without any trouble. We have tried so to frame the Act that they will be able to calculate compensation without legal help, without official help; and the amendment moved by the Honourable Member simply strikes at the root of all this. It is a direct incitement to the employer, in order to protect himself, to refuse to pay compensation at once.

Mr. N. M. Joshi: Sir, I should like to know from my Honourable friend Mr. Clow or from anyone else how the workman by this clause is protected against a dishonest employer. Suppose an employer, who is a very wealthy man and a very well educated man, persuades his employee, who is a poor illiterate man, to come to an agreement that he should accept compensation of Re. 1 or Rs. 2 a month, whereas if the complaint is made to the Compensation Commissioner a compensation of Rs. 10 a month will be due to him. How is this case provided for by this clause. As a matter of fact, my fear is that if you keep this clause, many poor people, illiterate people, will, in sheer ignorance accept a very small dole or small monthly payment from the employer, and if they once accept it and if any other people afterwards tell them that they have made a mistake they shall not be able to go to the Workmen's Compensation Commissioner and complain that they were cheated. I therefore think that this amendment is a very proper amendment and should be accepted in the interests of the ignorant and illiterate working classes of this country.

The motion was negatived.

Dr. Nand Lal: Sir, the amendment which I propose to move is as follows:

"That in clause 3, sub-clause (5) (b), for the words 'an agreement has been come to,' substitute the words 'a lawful compromise in writing has been arrived at'."

Supposing, Sir, a workman goes to the civil court and institutes his claim; he will be confronted with this plea, which I am afraid in a majority of cases may be raised, that there was an agreement between the employer and the workman who is now suing in the civil court. It is very risky so far as the interests of the workman go, because agreement covers both oral agreement and an agreement in writing. If the agreement which

[Dr. Nand Lal:]

I should like to be substituted is reduced to writing, then that is a pretty good safeguard against injustice. But if the mere word "agreement" remains, as it has been proposed, in this clause, then every employer when he will be impleaded as defendant will say, "Oh, there was an agreement between myself and the workman"; and then both parties will be compelled to produce a number of witnesses. I think the House will agree with me that if both the parties have got to produce evidence it is very expensive, very costly, and litigation may be prolonged. But if this modest amendment of mine is accepted, Sir, the natural result thereof would be that there would be no fear of this sort. A compromise which has been reduced to writing will be produced there and then, and it will put the whole litigation to an end. Of course a second question will naturally crop up, and that would be whether that compromise is lawful or unlawful. To substantiate my contention in this connection, I may put forward a hypothetical illustration. Supposing a workman is a minor and he goes to the court and the employer says: "There was an agreement between this minor and myself." Will this House approve of this agreement which has been entered into by a minor forming one party and the employer the other party? The whole doctrine of minority would be set at naught altogether; in some cases we protect minors. But here is an Act of a very peculiar character in which the minority is also not protected. That minor workman may be duped away, he may be induced to subscribe to an agreement or bond or a deed of compromise. Therefore that deed or that bond or that agreement will be altogether unlawful. If this amendment is accepted by this House it will decrease litigation instead of increasing it. Many Honourable Members have been showing themselves averse to litigation. Here is an amendment, and I shall see how many of them will now come forward and express their sympathy with it. With these few words, I place this amendment before the House.

Captain E. V. Sassoon: Sir, the Honourable Member seems to have omitted to look at clause 28 and clause 29 of the Bill, from which he will see that no agreement is effected unless it has been registered by the Commissioner who will only do so on being satisfied as to its genuineness. On the other hand, if the employer omits to send the agreement to be registered by the Commissioner under clause 29, the workman has all his rights under this Act. Therefore, the Honourable Member will realise that the workman is well protected from the unscrupulous employer who may try and make him sign an unjust agreement without having to go to the law at all.

The Honourable Mr. C. A. Innes: Sir, I would like to supplement what my Honourable friend, Captain Sassoon, just said. As Mr. Sassoon has correctly pointed out, all important agreements under this Act have to be registered, and therefore have to be written. But I think probably Dr. Nand Lal had in his mind, when he proposed his amendment, the case of half-monthly payments for temporary disability. We definitely decided that we should not insist on the registration of those half-monthly agreements for the simple reason that the Commissioner would be flooded up with applications for registration if every petty compensation for a few days' temporary disability had to be reduced to writing and had to be registered with the Commissioner. So what we have tried to do is to provide another remedy for the workman. Supposing the employer and the workman come to an agreement for half-monthly payment, the workman

always has the power under clause 6(1) of the Bill to apply to the Commissioner for a review of that agreement, and further powers are given under section 10 where the Commissioner is empowered to accept a claim, whether by way of half-monthly payment or otherwise, even though that claim may be time-barred under the rest of the Act. I think we have met the point sufficiently well.

The motion was negatived.

Mr. President (to Mr. N. M. Joshi): Is your point not met by the amendment just disposed of?

Mr. N. M. Joshi: No, Sir. I beg to move the amendment which stands in my name, namely:

"To clause 3, sub-clause (5) (b), at the end add the following:

and provided the agreement has been registered with the Commissioner."

Sir, this amendment will practically make the registration of agreements almost compulsory. The Honourable Mr. Innes just said that important documents will be registered, but the unimportant ones will not be registered, and it is not that every agreement will be registered. It is necessary at the present stage of our working classes who are mostly illiterate and ignorant that every agreement should be registered. I have personally no fear that there will be hundreds and thousands of these agreements from every province and from every district so that the Workmen's Compensation Commissioner will be flooded with them. I do not believe accidents take place in such large numbers as was made out by my Honourable friend, Mr. Innes. I therefore think that my amendment will safeguard the interests of the illiterate and ignorant workmen against dishonest employers and I hope that protection is due to them.

Mr. J. Chaudhuri: Sir, may I suggest that the word "settlement" may be substituted for the word "agreement" in Mr. Joshi's amendment, as the word "agreement" is likely to cause difficulties in many cases.

The Honourable Mr. C. A. Innes: Mr. Joshi said that he did not believe that there would be many claims under this Act and he didn't believe that, if we prescribed that claims for half-monthly payments must be registered, the Commissioner would be flooded with applications for registration. Well, Sir, English experience shows that most claims for compensation arise in respect of temporary disabilities and small accidents, and I find that in one year there were no less than 355,000 claims admitted. As I explained in reply to Dr. Nand Lal, we have tried to provide for this point in another way. We do not propose, we never have proposed to insist on the registration of half-monthly payments but we have provided under clause 6 (2) a machinery for the purpose and we have given power under clause 10 (1) to a Commissioner to extend the period for a claim if he so thinks fit. I do not think myself that that amendment is either necessary or desirable.

The motion was negatived.

Clause 3 was added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I beg to move:

"In sub-clause A (i) of clause 4 (i), for the word 'thirty' the word 'sixty' be substituted."

[Mr. B. N. Misra.]

This clause provides that in the case of death of a workman only thirty months' wages will be paid as compensation; that is quite sufficient. Sir, probably some of the Honourable Members will call me very greedy as I am always asking a little more. But I think Honourable Members will find that this proposal to raise thirty to sixty months' wages will not entail such hardship on the mill-owners, factory owners and rich people, nor will they find it difficult to make that payment for it will be a payment in the interests of labour itself. Sir, the workmen that are in view come mostly from the labouring class who get say about Rs. 15 to 20 or say 25 a month. The amount that is contemplated under this section will probably be from Rs. 600 to Rs. 800. Rupees 20 to 25 has been ascertained to be the average monthly wages of the workman. Now, Sir, will this payment really entail hardship upon the millowners? It has been said that it is a new Act and that industry will perhaps be ruined if workmen are allowed such compensation. Sir, this is not a general order of things. Accidents are, of course, rare. For instance in the case of agriculture or in the case of landed owners, we get famine or we get floods occasionally. We do not get them often. What is done in such cases? Whenever there is a flood or a famine, even the benign Government not only gives up the rent from the poor tenants but also comes to the relief of the famine-stricken or the flood-stricken people. I think that is a very wholesome rule observed by the Government.

Mr. President: Order, order. The Honourable Member has wandered very far from his own amendment.

Mr. B. N. Misra: Sir, I was giving an illustration.

Mr. President: The illustration is out of order.

Mr. B. N. Misra: The mill-owners, factory-owners or mine-owners, are not such poor people as will find it difficult to meet these occasional accidents which will be due to the negligence or it may be really due to some actions on the part of the owners themselves or it may be due to some natural causes. But these rich people amass their wealth with the labour of these poor labourers. The prosperity of these industries is due to the workman's labour. If the workmen are not properly looked after or if there is not sufficient inducement to workmen, I think these industries cannot prosper. These small payments, instead of being a hardship to the millowners or factory-owners or mine-owners, will really do good to them inasmuch as it will induce the workmen to readily come forward and join the factories, etc. Now, Sir, the amount that has been fixed is thirty months' wages in case of death. Is that the value set upon a man's life—whether he be a workman or any other man? If you put it at thirty months' wages, I think it is too little. If it is intended to help his dependants, then also it is very little. Of course the maximum is fixed at Rs. 2,500. Probably that may help the higher paid men such as engineers and others who get perhaps Rs. 200 or Rs. 300 a month. In their case Rs. 2,500 may be sufficient. But in the case of poor workmen, thirty months' wages is very small. The Honourable Mr. Innes said that even when a man is murdered, nobody compels the murderer to pay compensation to the relations of the deceased. When a man has murdered, the moment it is found out, he is hanged by the neck and nobody lives to pay compensation. Our civil law lays down that no man's heirs or successors are responsible for the guilt or criminal

action of his predecessors. That is why the heirs or successors are not asked to pay compensation. The man is either transported to the Andamans or is kept in jail for several years.

Mr. President: Order, order. The Honourable Member is getting even further from his amendment.

Mr. B. N. Misra: Sir, my submission is, it is really a moral duty on the part of these owners who are rich men to meet this occasional expenditure which will really be a relief to the workman and will not really tell so much upon the industry. I therefore submit that thirty months' wages is too small and that it ought to be increased to sixty months' wages.

Mr. President: Amendment moved:

"In sub-clause A (i) of clause 4 (1), for the word 'thirty' the word 'sixty' be substituted."

The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In sub-clause A (i) of clause 4 (1), substitute the words 'thirty-six' for the word 'thirty'."

My amendment is based on the same principle as that of Mr. Misra. No doubt I am more modest in my demand than Mr. Misra. I have followed the period that has been allowed in the English Statute, and I shall not be ashamed of my slavish imitation of the English provision where it is beneficial to workmen. Sir, in the English Statute, thirty-six months' period has been allowed. My own impression is that even sixty months' period which was moved by Mr. Misra was not a long period. But thirty-six months' period is not much longer than the thirty months which has been allowed in the Bill. I do not know, Sir, on what basis these periods have been fixed. I submit that thirty-six months will not be long enough to put heavy pressure on the employer or the owner but will be much more convenient to the workman or his family. No doubt, the standard of living in England is higher than that in this country. But at the same time, the number of dependants here is much larger than what it is in England. I submit that such a modest amendment as to substitute "36" for "30" should be accepted by the House.

Mr. President: Amendment moved:

"In sub-clause A (i) of clause 4 (1), substitute the words 'thirty-six' for the word 'thirty'."

The Honourable Mr. O. A. Innes: A scale of this kind must always be more or less a matter of opinion. We worked at it very hard. We had a Committee on it, as the House knows, in July, and we had a Joint Committee on it. Both the Committees have agreed that this scale is, having regard to the conditions of India, on the whole not only a fair scale but a liberal scale. It has been accepted generally throughout the country, and I do hope that the House will be guided by the advice which it has received from the two Committees and by the fact that the country generally has accepted the scale that we have proposed. I deprecate most earnestly any tampering with the scale at this time. I hope that the House will reject this amendment.

The motion was negatived.

Mr. N. M. Joshi: Sir, I move the following amendment which stands in my name:

"In sub-clause A (i) of clause 4 (1) after the word 'or' insert the words 'the sum of five hundred rupees whichever of these sums is the larger but not exceeding in any case' and omit the words 'whichever is less'."

The object of this amendment is to put down the minimum limit of Rs. 500 as compensation in a case of accident where the workman will be killed. Sir, Schedule IV of this Bill lays down the minimum compensation of Rs. 240. It sets down Rs. 8 as the lowest assumed wage, so that 30 months' wages come to Rs. 240. I consider that this minimum wage is too little taking into consideration the wages in India as well as the prices in India. In the English Act—I am very sorry to refer to the English Act again and again—the minimum compensation provided for is £150 which comes to Rs. 2,250. After all, the prices in India are not ten times as low as in England and the wages in India are not also ten times as low as in England. I therefore think that in placing the minimum at Rs. 240 we are really giving too little for the lower paid workman who may be killed on account of an accident. The sum of Rs. 240 as compensation for death to the wife and children of the workman I think will be considered by the House as too low. The minimum limit that I have proposed is only Rs. 500, about one-fourth of the minimum limit proposed in the English law. I have not proposed a very exorbitant limit at all. It only assumes that the minimum wage taken should be about Rs. 16 or 17. I therefore hope that the amendment proposed by me will be accepted by the House.

The Honourable Mr. C. A. Innes: Sir, I am afraid that I must again oppose this amendment. It is perfectly true that our lowest assumed wage for the purpose of Schedule IV is Rs. 8 a month, and therefore the actual minimum amount of compensation which is payable for death is Rs. 240. But for the individual workman the minimum compensation which he is going to get depends upon the amount of wage that he was drawing. If a man was drawing Rs. 30 a month, his minimum compensation will be Rs. 900. Mr. Joshi has drawn attention to the fact that £150 is the minimum compensation payable in England. That remark is not strictly accurate, if Mr. Joshi will permit me to say so, for the English law makes provision for a case where the workman leaves only partial dependants and in that case £150 has not got to be paid but such amount as may be considered reasonable. But taking £150 as the minimum compensation payable under the English Act, let us compare that with the minimum compensation we pay. What does £150 really represent in England. The average wage of a workman in England may be taken to be £2 and therefore £150 mere means 75 weeks' wages or say 18 months' wages. Our minimum compensation is based throughout on 30 months' wages and I say that having regard to our conditions in India our scale is already adequate and liberal and I oppose the amendment.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: I beg to move:

"That in clause 4 (1) in sub-clause A (ii) the word 'five' be substituted for the word 'two'."

In this Bill we have provided that compensation in the case of the death of a minor shall be Rs. 200 only which I consider to be very low and

I propose that Rs. 500 instead of Rs. 200 would be a very reasonable amount. The death of a minor is as valuable as the death of an adult member, if not more. There are minors who have dependants and in such cases the award of Rs. 200 will be absurdly small. Moreover if the minor were alive, his dependants would enjoy the benefit of his work for a longer period which they lose by his death. I move therefore that Rs. 500 be substituted for Rs. 200 which is very low. With these words I move my amendment.

Mr. B. C. Allen (Assam: Nominated Official): Sir, I hope that the House will throw out the amendment of Mr. Agnihotri. If it were carried my own amendment would be killed before it was born, a fact which as the prospective parent I cannot contemplate without horror. I oppose the amendment mainly on the ground that it cuts across the whole principle of the Bill. If you look at the Statement of Objects and Reasons you will see that the Bill is intended to remove the hardship caused by the death of a workman. There is no question whatever of penalising the employer or of offering a solatium to the wounded feelings of the parents. Mr. Agnihotri has stated that the death of a minor is as "valuable" as the death of an adult. He suggested that minors had dependants. I think he has overlooked the fact that a minor under the Act is less than 15 years old, and although there may be husbands of the age of 14, I imagine that the number of fathers at that age is very small. Even if there is an occasional father of 14, the chances of his being killed are almost infinitesimal. There is another perhaps even more important principle which Mr. Agnihotri's amendment ignores. I feel some diffidence in referring to the English Act, but if you turn to that Act you will find that in the case of persons who have no dependants the compensation is limited to £10, or rather to the cost of medical attendance and funeral expenses not exceeding £10. You will also find if you turn to the English law that it has thought it necessary to prevent parents from benefiting from the death of their children. Under the various English Acts a father as such has no insurable interest in his child. The Friendly Societies Act also limits the payment made on account of the death of a child to £10. Now, if these precautions are necessary in England I imagine that they are also necessary in India. I do not for a moment mean to suggest that Indian parents are not very fond of their children. In my experience it is one of the most pronounced characteristics of Indian families. But English parents are fond of their children also, and I cannot feel that the House will be acting wisely in disregarding a precaution which has been found necessary in the mother country.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. B. C. Allen: Sir, as Captain Sassoon has withdrawn his amendment and as Mr. Agnihotri's amendment has not been carried, perhaps the House will accept the amendment which I have to move without further debate. (Cries of "No.") I understand that they do not agree. I move. Sir:

"That in clause 4 (1), sub-clause A (ii), the word 'one' be substituted for the word 'two'."

I only have to emphasise the points to which I have already called attention when speaking to Mr. Agnihotri's amendment. The draft Bill is departing from the principle of the English Act: is departing from the principle of the Bill that was originally laid before us: it is introducing a

[Mr. B. C. Allen.]

new and in my opinion unsound principle. There is a further aspect of the case. Honourable Members will perhaps say, "why on earth should this compensation be reduced when the representative of the Millowners is willing to raise it"? I must confess that when I first read his amendment, I felt that I was being smitten by one in my own house. Various explanations came across my mind. I thought of Tennyson's "wealthy men who care not how they give" and the danger such wealthy men may be to the body politic. Then I thought of that horrid tag of Virgil's—*"Timeo Danaos,"* which might I suppose be translated 'you must look even a gift horse in the mouth if the giver is a Greek'. But my Honourable friend has since cleared away all my doubts. When he addressed us on the introduction of the Bill he explained with a frankness and freedom which I have always associated with the late President Wilson, that though the millowners would disburse this money they would subsequently recover it from us the consumers. And this is a point which I want the House to bear in mind, because previous experience has, I believe, almost invariably shown that when you put a cess upon an industry and that industry can and does proceed to recover that impost, it generally recovers a good deal more. In fact in this particular case it would probably be unavoidable. You could not divide the small sum payable over each individual *dhoti, chaddar* or whatever it is produced in these mills, and the price of each article would have to rise probably by at least one anna. Now, I have no doubt that the cotton mill industry could recover this sum. They are a highly organized industry, and it seems not unlikely that at no distant date they will be protected and will be able to recover the money. But we all know that all industries are not in that position. What about the rubber industry which some time ago was not able to extract from the consumers even so much as the cost of production? I fancy that there will be a considerable number of small Indian industries in this country, which will not be in the position of wealthy industries like the mill industry. I think that we should remember what The Honourable Mr. Innes said when introducing the Bill. It is very important to consider the small industries and to carry the manufacturer with us, to make him feel that he has been fairly and justly treated. Now, what is the reason, what is the excuse offered by the Select Committee for raising the rate originally laid down in the Bill when it was submitted to the House? They say that they have to impose this charge upon the industry, not because it is a good charge, or a right charge, not because it is the just or proper thing to do, but because it "meets the views of those who were of opinion that the original provision appeared to hold somewhat cynically cheap the life of a minor." Now, I ask this House, is that a sufficient reason? Are we to do what we do not think right simply because somebody may say that we held the life of a minor cynically cheap? Is there any rule of guidance for this House except that it should do what it thinks right? Are we to do a thing which we do not approve, simply because somebody may say something? I suggest that rather than do that, we had better close our doors and retire from the work of legislation altogether.

Mr. N. M. Joshi: Sir, the argument of my Honourable friend Mr. Allen seems to be that small industries will be ruined. Again, Sir, I want to know whether there are any small industries such as coffee where accidents take place in large numbers. If accidents do not take place in large numbers, a sum of Rs. 200 is not going to ruin the industry. I think, therefore, the amendment is not acceptable to any Member in this House.

Captain E. V. Sassoon: Sir, I would like to point out to the Honourable Mover of the last amendment that even the mill industry is not always in a prosperous condition and we fully appreciate that there may be times when anything that raises our cost of production would have to be very carefully reviewed. I have pointed out to this House already that it is true that any increase in the cost of production does perhaps in part fall on the consumer, and it is so in the long run; but as far as these particular charges are concerned, my own view is that whether Rs. 100 or Rs. 300 is paid as compensation for the death of a minor, the insurance premium in this case would not differ very much. All these matters come back to the amount of the insurance premium. Now, Sir, the reason why I did not move my previous amendment was not perhaps so much due to Mr. Allen's remarks on Mr. Agnihotri's amendment, as those of the Honourable Mr. Innes when speaking on the amendment moved by Mr. Joshi. It seems to me that if an adult might receive Rs. 240 or Rs. 260 as compensation, it would not be logical for me to suggest that the amount of a minor should be raised from Rs. 200 to Rs. 300. But I would like to defend the Rs. 200 as supported by the Select Committee. The point I take is that though it may be perfectly true that the minor of 14 or 15 has no dependants, at the same time his parents or grand-parents have been to some expense and trouble in bringing him up and may well hope for some return in their old age when he is in his prime of life. His death therefore in a way removes their old age pension, and I think it only fair that they should get, if I may use an insurance analogy, their premium back. For this reason, I hope that the House will not agree to Mr. Allen's amendment and will keep the Rs. 200 as supported by the Joint Committee.

The motion was negatived.

Rai Bahadur L. P. Sinha (Gaya cum Monghyr: Non-Muhammadan): Sir, I beg to move:

- "That at the end of sub-clause A (ii) of clause 4 (1) add the following:
- 'Provided he has no invalid dependants solely depending for their livelihood on the income of the deceased minor.
- '(iii) In the case of a minor having invalid dependants solely depending for their livelihood on the income of the minor, thirty months' wages or Rs. 350, whichever is more.'

Sir, we generally find that amongst the working classes a minor son or daughter of a wage-earner, who has become invalid or infirm, either through natural causes or by accident, maintains the parents or dependants through his or her own earnings. Moreover, the sons or daughters of day labourers begin to work from practically their childhood because they cannot afford to do otherwise. So in the circumstances, I think Honourable Members will agree with me that blind or invalid parents or dependants solely depending on the income of deceased minors for their livelihood should not be thrown into a miserable plight because the minor in his daily duties has got injured and died.

Sir, with these few words I move my amendment.

The Honourable Mr. C. A. Innes: Sir, I do not think that the House will expect me to say very much on this amendment. I think the House would be well advised to do as has been done hitherto and stick to the figure suggested by the Joint Committee.

The motion was negatived.

Mr. B. N. Misra: Sir, if I am not mistaken, probably many of the Honourable Members want it to rain copious showers over the middle of the ocean but they do not want even a drizzle over the scorched and dry land. Their attitude has been always to support the man of wealth. I have already submitted my arguments in my last speech and I do not wish to say anything more here. I respectfully submit to the House my amendment:

"That in sub-clause B (i) of clause 4 (1) for the words 'forty-two' the words 'eighty-four' be substituted."

The motion was negatived.

Dr. Nand Lal: Sir, in face of the fact that amendment No. 31 which was moved by Mr. Joshi has been rejected and the same principle for all intents and purposes is involved in amendment No. 40,* I do not propose to move it.

Mr. W. S. J. Willson (Bengal: European): Sir, I rise to move the following amendment:

"After sub-clause B (ii) of clause 4 (1) add the following:

'Provided that where a workman, who from previous injury suffers permanent partial disablement, meets with an accident which in conjunction with the previous injury results in total disablement the compensation shall be fifty per cent. of the compensation provided under clauses (i) and (ii).'"

Sir, I move this amendment in the belief that I am proposing something not only perfectly fair to the workman and fair to the employer, but of positive advantage to the workman. I have no desire to cut down what is paid to the unfortunate individual who is damaged in his work but if you take the case of a man who has, either before the passing of this Act when he may not have received compensation or after the passing of this Act when he will have received compensation, lost, say, one arm. He would under the Act, if it were his right arm, get 70 per cent. under Schedule I; and then if he loses, in the course of further employment, the other arm, which would be the left arm, he would get 60 per cent., making a total of 130 per cent. of the compensation. Now, I do not think the House will consider that although a man suffers two injuries and suffers twice, he should necessarily get more than the total which he would get if he were totally disabled. Apart from that, if he has already drawn the percentage for the first accident, it seems to me that it would be positively against the interests of a subsequent employer to take him on, if the subsequent employer, by removing only one other arm in the course of an accident, renders himself liable to pay for a total disablement. We will say the first employer pays 70 per cent., the second employer who has the misfortune to lose the man's other arm has to pay 42 months' pay as for total disablement. It may be said and it has been said to me in private conversation that the argument against the amendment is that the poor man who has only one arm will be very much less likely to get a job. But, Sir, I do not think we all take that unkind view. I think there is a good deal of humanity in the world, and I think a great many employers are only too pleased if they can see their way to employ a man who has suffered from some physical disability. We have all, I have no doubt, seen damaged workmen at

* "That in sub-clause B (i) of clause 4 (1) after the word 'or' insert the words 'the sum of rupees two thousand whichever of these sums is the larger but not exceeding in any case' and omit the words 'whichever is less'."

work in Railways and public services. There is no earthly reason why a man with one arm or one leg cannot make a perfectly good gate-keeper on any railway; but if he happens not to be looking when a train came up he certainly would be under a disability in running away and he might lose the other leg. Is the employer to be afraid of that and not employ that man? There are various machines in industries which can perfectly well be worked by a man with one arm or a man with one leg. I need not particularise them; those who are acquainted with industries and machinery will be well aware that what I say is correct. I think, Sir, that no further words should be necessary from me to emphasise the justice of what I say, that my amendment will prove in effect to be perfectly fair and positively beneficial to workmen in certain conditions, and fair to employers in any case.

Mr. A. G. Olow: Sir, this raises a somewhat intricate question, but I think the Honourable Member was really arguing on a fallacy, the fallacy being that the wages of a workman after an injury were the same as his wages before the injury. If he will look at the top of Schedule I, at the head of the column giving the percentage, he will see the phrase "percentage of loss of earning capacity." In other words, what we say is that in the normal case the man who has lost his right arm above the elbow has lost 70 per cent. of his earning capacity, and the wage which he might expect to receive after the injury will, on the average, be only 30 per cent. of the wage he was getting before. Consequently, when he is permanently disabled,—let us take the case of a man on Rs. 30 a month—we estimate that his average wage after the injury will be only Rs. 9. So that when finally he is completely disabled he will get 9 times 42 rupees. If the Honourable Member will take the trouble to work this out, I think he will find it comes to the difference between the compensation he originally got and the compensation he would have got had he been completely disabled.

Now that deals only with one side of the question which is the case of injuries under the Schedule. But as the House is aware, there are other permanent injuries. The Honourable Member's amendment refers not only to sub-clause (i) but to sub-clause (ii) also, and he was careful to make no reference to sub-clause (ii) in the course of his speech. "In the case of an injury", I shall read the sub-clause, "In the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury." In other words, what the Commissioner has to decide is, how much was this man earning before and how much he could earn now? If the Honourable Member can persuade the Commissioner that the workman is now able to earn exactly the same wage as he used to before the injury, obviously no compensation will be payable at all. I hope that this meets the Honourable Member's point.

The motion was negatived.

Mr. K. B. L. Agnihotri: I gave notice of an amendment to sub-clause B (ii) of clause 4 (1) to substitute a clause for the existing one, but with your permission, Sir, I now wish to move an amendment to substitute 'greater' for 'less' instead of the amendment of which I gave notice. Sir, the compensation which we allow in this case is Rs. 15 or a sum equal to one-fourth of his monthly wages, whichever is less. By my amendment

[Mr. K. B. L. Agnihotri.]

it will come to Rs. 15 or $\frac{1}{4}$ th of his monthly wages whichever is greater. There may be cases in which a workman may be drawing, say Rs. 100 or 200 or Rs. 250, and if he gets a partial injury and is unable to work for the time being, he will be entitled to get only Rs. 15 or $\frac{1}{4}$ th or whichever be the less. That means Rs. 15 and this sum for a fortnight will be quite insufficient and inadequate for his own and his family's maintenance. Therefore, Sir, I propose that instead of Rs. 15 it should be Rs. 15 or $\frac{1}{4}$ th of the pay whichever be greater. If we take the analogy of Government servants, who when they are injured generally get half their pay for the month, we find a support to my amendment and the same analogy should

5 P.M. apply in the case of workers who should also be allowed to get the half pay for the month and therefore, Sir, I move my amendment to substitute "greater" for "less."

The Honourable Mr. C. A. Innes: I need only say in respect of this amendment, Sir, that the effect of it will be that, if a workman on Rs. 10 a month gets temporarily disabled, under Mr. Agnihotri's proposal he will get compensation in half-monthly payments of Rs. 15 each half month. That is to say, a workman on Rs. 10 a month will have his pay raised to Rs. 30 a month while he is temporarily disabled. It seems to me, Sir, that the amendment is on the face of it absurd.

The motion was negatived.

Clause 4 was added to the Bill.

Rai Bahadur L. P. Sinha: Sir, I beg to move:

"To sub-clause (a) of clause 5, at the end the following be added:

'Provided the workman was not on leave without pay or under suspension for any period during the preceding twelve months from the date of accident; but in such cases monthly wages shall be calculated at twelve times the rate of monthly salary which he was drawing on the day of accident divided by twelve.'

I beg to move this amendment because there may be cases arising very often that the workman joins his work after remaining for a long time under suspension or on leave without pay. Now, Sir, in these cases, if monthly wages are calculated according to clause 5, sub-clause (a), then the workman will I think lose a great amount of money which he would have received otherwise by way of compensation. As, for example, a workman gets an accident or injury on the 15th of a month: he rejoined his work on the first of the month after six months' leave without pay or remaining under suspension for the same period. Now, taking it for granted that he was at the time of the accident drawing a monthly rate of pay of Rs. 60; if his monthly wage is calculated according to the present clause which is not so very clear on the point I think his pay of six months' active service will only be taken into account whereas if the amendment which I have proposed is accepted, I don't think the workman is expected to lose anything neither will the employer be giving anything more than what the workman's real dues would have been.

With these remarks I move my amendment.

Mr. A. G. Clow: I admit, Sir, that this is an extremely complicated clause. I observe that the Honourable Member has been so impressed by its complications that he has introduced in his own amendment a quite unnecessary complication where he says we should first multiply and then divide by 12. I suggest that the result of that mathematical calculation would be to

bring us back to where we started from. If he agrees with us so far, the latter part of his amendment will read:

"But in such cases monthly wages shall be calculated at the rate of monthly salary which he was drawing on the day of the accident."

Now, Sir, if the thing was as simple as all that, there would be no need for this clause at all. Why should not we calculate every one's wages at the rate of the monthly salary he was drawing on the day of the accident? The real fact is that there are a great many difficulties in calculating salaries. Some men are paid daily, some weekly, some fortnightly. They get bonuses, they get their food, they get other concessions. All these things have to be taken into account. I hope, Sir, that I have demonstrated that if there is any difficulty in the clause, this amendment will not remove it.

But I do not think that I ought to sit down till I have answered the difficulty raised by the Honourable Member at the end, when he said that a man who had been away for six months on leave without pay or under suspension would be compensated at only half the scale he ought to get. That, Sir, is not the case. If the House will look at the Explanation, they will see that "a period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days." The effect of that in this case is that it is only the last continuous period of service that the workman has rendered that counts. In other words, the workman instanced by the Honourable Member would have his wages calculated under sub-clause (b) and not under sub-clause (a) at all, and this sub-clause, although it does, I admit, look extremely intricate, is a very simple one. You divide the remuneration he has got during the period by the number of days during which he has worked. That gives you the average daily wage that he has received during his period of work. You then multiply—I am inverting the order to make it simpler,—you then multiply by 30, which gives you the average monthly wage.

I ask the House to reject the amendment.

The motion was negatived.

Clause 5 was added to the Bill.

Mr. President: The question is that clause 6 stand part of the Bill.

Mr. N. M. Joshi: Sir, while on this clause, I should like to get some information from the Honourable Mover of this Bill. Only a short time ago he referred to this clause as covering the cases of workmen who will be cheated into accepting small monthly instalments by dishonest employers. Sir, clause 6, sub-clauses (1) and (2) provide for the review of half-monthly payments payable for compensation. Clause 6 (1) makes it very clear that this review can be obtained if the workman can show a change in his condition. 'Condition' means condition of health, because there is a reference to the certificate from the medical practitioner. If the review could be obtained only for the reason of a change in the condition of the workman, I do not believe this section will cover the case of a man who is cheated into receiving small payments by agreements. In the same way, the word "review" is found in sub-clause (2) of this clause. I think the word "review" here also means the same thing as in sub-clause (1) of clause 6. Therefore, a review can be obtained only if the workman can show a change in his condition either by a certificate or without a certificate. But I do not think this clause gives the right to a workman to ask for a review if he is cheated by a dishonest employer.

The Honourable Mr. C. A. Innes: Sir, I will have the point raised by Mr. Joshi examined by the Department. I understand that what I said before was correct, but I will have the point re-examined, and if necessary, will consider it further with reference to action elsewhere.

Mr. President: The question is that clause 6 stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 7 stand part of the Bill.

The motion was adopted.

Sir Montagu Webb: Sir, I beg to move that:

"To clause 8 (4) add the following:

'The Commissioner shall on application by the employer submit a statement showing in detail all disbursements made'."

The amendment is self-explanatory. If an accident has taken place and the employer has paid the necessary compensation to the Commissioner, and the Commissioner has distributed the same to the dependants of the deceased, it is not unreasonable that the Commissioner should on application supply to the employer a statement showing how the money has been disbursed. With these words, Sir, I move the amendment.

Rao Bahadur T. Rangachariar: Sir, I do not know if the Honourable Member would substitute any other word for the word "submit". Already there is a fear in the minds of the people in this country that this Commissioner who is going to be appointed under the Act will be at the beck and call of the employers. If the Legislature says that the Commissioner shall, on application by the employer, submit a statement showing in detail all disbursements made, we make him a submissive individual to the employer and he will be quite useless to the employee (servants). I hope Sir Montagu Webb was not led away by his inner consciousness or provision in using that word "submit". I hope that that is not going to be the result of this Act.

The Honourable Mr. C. A. Innes: Of course, it seems perfectly reasonable that an employer who pays compensation to the Commissioner should be allowed to know how that compensation has been distributed. At the same time, I wish to point out that if the employer has paid compensation and if there are dependants, the employer in no circumstances will get back any part of that compensation. He only gets back the compensation if the Commissioner on enquiry finds that there are no dependants. In that case, he gets back all except, say, Rs. 50 for funeral expenses. Therefore from that point of view, it does not matter very much to the employer how the compensation is distributed. My fear is that if we impose upon the Commissioner the burden of submitting—to use the word objected to by Mr. Rangachariar—this statement, we may impose rather a lot of unnecessary work upon him. At the same time, if an employer does want a statement of this kind, it seems only reasonable that he should have it, and I am quite prepared to leave the amendment to the judgment of the House.

Sir Montagu Webb: May I say I am quite prepared to accept the word "furnish" for "submit".

Mr. President: Further amendment moved:

"To substitute the word 'furnish' for the word 'submit' in the original amendment."

The question is that that amendment be made.

The motion was adopted.

Mr. President: Amendment moved:

"To clause 8 (4) add the following:

'The Commissioner shall on application by the employer furnish a statement showing in detail all disbursements made'."

The question is that that amendment be made.

The motion was adopted.

Mr. N. M. Joshi: My amendment is:

"In clause 8 omit sub-clause (7)."

I shall very briefly explain the circumstances under which the case contemplated by this sub-clause will arise. Let us take an adult workman. He meets with an accident, a very serious accident causing permanent total disability. The minimum compensation for such an accident is Rs. 316. The employer is willing to give that compensation and that amount is deposited with the Commissioner. Then the Commissioner finds that the man is in the hospital and he has got very severe injuries. The Commissioner may think that the man may die within six months. If the man had died instantaneously he would have got only Rs. 240. So, the Commissioner may think that if the man had died he was entitled to only Rs. 240 and he ought not to get the benefit of the remaining Rs. 96. Therefore this sub-clause gives a discretion to the Commissioner to withhold this sum of Rs. 96 or any part of the total compensation. I am against this sub-clause altogether, because, in the first place, when we settle the compensation for total permanent disability we do not provide for the life of the man which is really necessary. If a man is totally disabled in an industrial undertaking, it is but reasonable that he should be maintained by the industry till the end of his life. Instead of that, he is given only 42 months' wages. Suppose that this man who is totally disabled lives for more than seven years. Who is going to maintain him? The industry does not take the responsibility. But as soon as the Compensation Commissioner finds that the man is likely to die early he wants to take advantage of the possibility of his early death. Sir, I think this proposal is, for this reason, very mean, because, in the first place, if you provide for the end of his life, then certainly I can understand your saying that if he does not live we should get back the money. But if he lives longer, you say, "Go on the streets," but if there is a possibility of his dying earlier, you say, "Give us the benefit." Moreover, it is not only mean. In some cases this proposal is likely to be very inhuman. A man who suffers from an injury causing permanent disablement requires money for his treatment. If he gets money he can go to a doctor but when the Commissioner finds that the man is likely to die he says: "No. You are likely to die. I shall not give you the whole amount. If you want treatment, I do not think with this treatment you will get better. Therefore I would not give you the money. I will keep the money and see whether you die or not." Sir, this is very inhuman and from my point of view the Government by putting in this clause puts the Workmen's Compensation Commissioner in a very wrong position altogether. What will be the position if a certificate is brought from the doctor that the workman died for want of treatment for which he could not afford the money. The Workmen's Compensation Commissioner will say

[Mr. N. M. Joshi.]

that he thought the man would not die but the doctor will say that the man died because he did not get the money. I therefore hope that the Government will see the wisdom of accepting my amendment.

The Honourable Mr. C. A. Innes: I wish to explain what the position of the Government is in regard to this amendment. I am quite free to admit that the clause in its original form was put in by myself and my friend on my right. We were not advised to put it in by the July Committee. The reason of course is that Mr. Clow and myself come from the north of the Tweed and there is not much sentiment in our composition. We rather pride ourselves on trying to be logical. Now, when we were considering this Bill, the drafting of it, we were rather impressed by the difficulty arising out of the discrepancy between the lump sum payment due in the case of the death of a minor and the lump sum payment due in the case of a permanent disablement of the minor. I take that extreme case. If the minor gets killed, the compensation due is Rs. 200. If a minor is permanently disabled the compensation may be as much as Rs. 3,500. Now, Sir, the House will see that this discrepancy is a very serious thing for an employer. It is a difference between Rs. 200 and Rs. 3,500, and therefore we gave the Commissioner discretion. If a minor was very seriously disabled we gave the Commissioner discretion to hold over the payment of the lump sum up to six months in order that he might see what was going to happen. That seemed only fair to the employer. But in the course of the Joint Committee I must confess that I personally was impressed by one argument which Mr. Joshi brought forward. He pointed out that this difficulty which I have just brought to the notice of the House is incidental to the system of lump sum payments, and definitely we have elected for lump sum payments on account of the conditions in this country. This difficulty is incidental to that system and he put it to us that we could not have it both ways. If you accept the lump sum payment system, you have got to accept the disabilities of that system. I have been personally myself impressed by that argument and as far as the Government are concerned we are quite prepared to leave this point which Mr. Joshi has raised to the judgment of the House. I have tried to explain why we put the clause in and after hearing Mr. Joshi's main argument against the clause I am willing to leave it to the judgment of this House to decide whether the clause be omitted or retained in the Bill.

Mr. President: The question is that sub-clause (7) of clause 8 be omitted.

The motion was adopted.

Mr. President: The question is that clause 8, as amended, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 9 and 10 do stand part of the Bill.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 6th February, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 6th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

WIRELESS INSTALLATION IN INDIA.

332. ***Sir Montagu de P. Webb:** (a) Have Government received from the Associated Chambers of Commerce of India and Ceylon a representation urging the immediate provision through the agency of private enterprise if State funds be unavailable, of a Wireless Installation in India capable of transmitting messages at high speed and of communicating direct with any part of the world?

(b) If so, will Government be pleased to say what steps have been taken to meet this demand and forestall the possible foreign competition of similar world-wireless installations in Pondicherry and Java?

Colonel Sir Sydney Crookshank: (a) and (b) Government received on January 29th the representation referred to, but are not yet in a position to make any announcement as to the extent to which they are prepared to meet the specific demand which it contains.

ROYAL COMMISSION ON THE INDIAN CIVIL SERVICE.

333. ***Mr. B. N. Misra:** (1) Will the Government be pleased to state whether Britain or India is going to meet the costs of the Royal Commission appointed to enquire into the grievances of the Indian Civil Service?

(2) Will there be any Indians in the said Commission?

(3) If so, what is the proportion of the Indians to Englishmen in the said Commission?

(4) Will there be any members of the Indian Legislature on the said Commission?

The Honourable Sir Malcolm Hailey: Government have as yet no information.

UNSTARRED QUESTIONS AND ANSWERS.

OFFICIAL REPORTS.

149. **Mr. Mahomed Hajeebhoy:** Will Government be pleased to state the reasons for the increasing delay in publishing official reports such as the Annual Review of the trade of India?

The Honourable Mr. C. A. Innes: The Government do not know what foundation the Honourable Member has for his general statement that there is increasing delay in the issue of official reports. As regards the Annual Review of the Trade of India, I understand that the proof of this is now

ready. The delay in the issue of the Report was due to pressure of work arising out of the necessity of examining whether and in what directions the activity of the Commercial Intelligence Department could be curtailed, this pressure coinciding with a reduction in the number of officers.

TRANSFER OF ADEN.

150. **Mr. Mahomed Hajeebhoy:** (a) Will Government be pleased to state whether the proposed transfer of Aden is still under consideration and,

(b) If the answer to the above question should be negative, to lay the papers relating to that proposal on the table?

Mr. Denys Bray: (a) Yes.

(b) Does not arise.

INTRODUCTION OF TARIFF VALUATIONS.

151. **Mr. Mahomed Hajeebhoy:** Will Government be pleased to state what, if any, protests have been received against the new tariff valuations introduced with effect from January 1st, 1923, into the Import Tariff Schedule 2, and what action, if any, has been taken in regard to such protests?

The Honourable Mr. C. A. Innes: The tariff valuations are revised every year after taking into consideration the prices prevailing during the preceding year, and after consulting the principal Chambers of Commerce. The only protest so far received against the tariff valuations introduced with effect from January last is in regard to paper and the representation on the subject is under consideration.

REPORT OF CHIEF INSPECTOR OF MINES.

152. **Mr. Mahomed Hajeebhoy:** (a) Will Government be pleased to state what, if any, actions have been taken on the latest report of the Chief Inspector of Mines in India? and.

(b) Whether further action is contemplated to minimise the possibility of fatal accidents in mines?

Mr. A. H. Ley: Government is considering in consultation with the Chief Inspector of Mines the action to be taken on his latest report with the object of framing rules to adopt the existing rules to modern mining practice, and of factories such steps as are possible to minimise the danger of fatal accidents.

TOMBS AND MOSQUES IN DELHI.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, may I ask the Honourable the Home Member whether his attention has been drawn to an article in the 'Muslim' dated the 4th February 1923 in which allegations are made against the demolition of tombs and mosques in Delhi, and whether the Home Member is prepared to make a statement in regard to that matter?

The Honourable Sir Malcolm Hailey (Home Member): I have obtained a copy of the 'Muslim' dated the 4th February 1923 and read it. The article in question refers to a large number of buildings, some 14 in all,

but in no case is it alleged that a mosque has been demolished by Government. In reading the list of buildings, with its reference to mosques lying in ruins, etc., a somewhat mistaken impression might be gained; for very many of these buildings are old ruins which have been abandoned for a very considerable time, the remains of former suburbs and villages, and have suffered from natural decay.

Though it is not stated that any mosque has been demolished, it is stated that some are in danger of destruction. As far as any action of Government is concerned, however, this is not the case. I may note that in one case in particular the mosque at Kalali Bagh, considerable local feeling was created by the fact that a mark, supposed to be a demolition mark, was placed on the compound wall of the mosque. This, however, was not a demolition but a survey mark, and the road which would otherwise have cut off part of the mosque compound was actually diverted.

I am fully satisfied, from my personal knowledge of the facts, that the Chief Commissioner is showing scrupulous care to see that nothing is done to injure any building which can be recognized as religious, and he is fully alive to the necessity of taking local opinion with him in regard to the treatment not only of mosques actually in use in the large area occupied by New Delhi, but of the numerous ruins in this area. I have seen letters on the subject addressed to the Juma Masjid and Fatehpuri Masjid Committees, and those who are acquainted with Raisina will realize that so far from attempting to destroy religious buildings wholesale, we have spent considerable sums of money in conserving them and their surroundings. The Muslim public may, I think, be assured that the local authority is doing its best to prevent any kind of incident likely to cause offence to genuine religious feeling regarding buildings in the New Delhi area.

THE WORKMEN'S COMPENSATION BILL.

Mr. President: The House will now resume consideration of the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

Clause 11, Captain Sassoon.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, whatever views Honourable Members may have about the clauses of this Bill, I feel sure that there will be no disagreement in desiring to minimise fraudulent claims and malingering, and I believe the vast majority, including Mr. Joshi, would also like to see the principle of free medical treatment now supplied by individual firms extended. I am therefore optimistic of getting the support of this House on the amendment to sub-clause (1) of clause 11, which stands in my name:

"That in clause 11 in sub-clause (1) for the words 'he shall if the employer within three days offers to have him examined free of charge by a qualified medical practitioner' the following be substituted, namely:—

'he shall remain in the vicinity of his place of employment for not less than three working days from the date on which service of the notice has been effected on the employer and during such period he shall hold himself available for medical examination and if the employer offers such medical examination by a qualified medical practitioner free of charge within such period he shall.'"

[Captain E. V. Sassoon.]

The purpose of this amendment is to require the workman to stay in the vicinity of his work, that is to say where he may happen to be living during the course of his employment or near by, and that he should give every facility to the employer to have him medically examined, so that not only may the degree of his injury be ascertained, but that he may also have the opportunity of availing himself of any free medical treatment that the employer may offer him. I need hardly tell the House that timely medical treatment would often ward off serious complications which would have ensued had the injuries been neglected. This amendment will therefore benefit the workman. It will also be fair to the employer who, no one can deny, should have the right of establishing the extent of the injury, for which he will have to pay compensation. It may be thought that the period of three working days after notice has been effected is rather long, and that when two holidays intervene, this would mean five days in all. As far as large towns like Bombay are concerned, this maximum would never be reached, but we must consider places where the workman is sent out by his employer to carry out some work on a day before a holiday. He has an accident, sends his notice into the office, two days may elapse before the employer is aware of the accident. The district doctor may be away or he may be ill, and it may be a couple of days more before a suitable doctor can be brought to the spot. But whatever period we allow, we always have one big safeguard. And that is that it is to the interest of the employer to have the man attended to as soon as possible. The sooner he is examined, and if possible treated, the more chances there are of his speedy recovery and the less of dangerous complications, and it must not be lost sight of that the worse the man gets the larger may be the compensation the employer would be liable to pay. Now, let us take the position of the workman. It is true that he must not go away for these few days. But he is in his temporary home or with friends near by; generally he has a relative with him and certainly friends and fellow-workmen near; and he is quite free to make his own arrangements and, should he desire, to call any of the efficient, if unqualified, medical attendants of whom this House has heard so much. Now, if the employer fails to take advantage of this right of examination he leaves himself open to some very large risks. To begin with, there is always the risk of the man who receives a minor injury such as a cut or a gash and not looking after it and developing blood poison or even gangrene and the employer may become responsible for paying compensation for the loss of limb or even death. Then, again, the man may go up-country and he may be persuaded that the loss of a finger or even an arm would mean a large lump sum which would be very useful to pay off the demands of an insistent money-lender. It might be pointed out to him that this would not make much difference to him because he could remain behind and work on the land and another member of the family could go into the factory. I hope, therefore, Sir, that the House would appreciate the fairness of the amendment and that the Government will be prepared to accept it.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I rise to oppose this amendment. Captain Sassoon said that this amendment is fair both to the employers and to the employees. My view is quite otherwise. I consider this amendment as being quite iniquitous to the employees. What does it do? It compels the workman to live in the vicinity of the place of employment, but it does not compel the employer to give him medical

treatment. Captain Sassoon said that I should be in favour of the extension of medical relief. I am in favour of extension of medical relief. But I do not see here in the amendment any proposal for the extension of medical relief. If Captain Sassoon had provided that the man shall remain there and the employer shall give medical treatment, there would have been some fairplay. As the amendment stands there is hardly any fairplay here. All the advantages are on one side and the disadvantages on the other. Sir, there will be great difficulty for the working class people who may suffer from accidents, if this proposal is accepted. In the first place, take the case of a man who receives not a small injury, but a very large injury. He loses his two hands or loses one of his feet or legs. There is no hospital near the factory. What is the man to do? He must stay near the factory; he cannot take advantage of the hospital. Is it really right that the man should be compelled to stay near the factory although there may not be sufficient hospital accommodation near about the factory? My friend will say he has given some power to the Commissioner to make exceptions. I do not know whether he has given it or not. But he may say that he has given the power to the Commissioner to overlook such lapses. But is it right, in the first place, to deprive the workman of his natural right to go to any place he likes after such a severe accident and take whatever treatment he likes? Is it right to take away that right and to compel him to stay at a place where he may not get assistance, where he may not have his relatives near by where he may not get any nursing, where even he may not get any food? Take the case of a man, a miner as my Honourable friend Mr. Sircar would have it, who goes to the mine after walking 8 or 10 miles every day. That man has not got any arrangement for food near about his place of employment. There is no lodging compulsory upon the employer, there is no provision of food compulsory upon the employer. If that is not compulsory upon the employer, what right have you to compel the workman to stay near his place of employment? Sir, if my Honourable friend had made compulsory provision for residence, compulsory provision for nursing, compulsory provision for food, compulsory provision for hospital, I could have understood his proposal being a fair one. But as the proposal stands, it gives unfair advantage to the employer and places the workman at a great disadvantage. I hope the House will throw out his amendment.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I am in the singularly happy position of concurring with my Honourable friend Mr. Joshi in this amendment. Captain Sassoon has not realised what the exact meaning of the phrase 'vicinity of his employment' would be in different cases. My friend, Mr. Joshi, has pointed out a few cases. I will add one more. Take railway accidents. Supposing an employee of a railway, a gangman working on the line, suffers an accident. That place of accident is midway between two stations. Captain Sassoon desires that the man should be in the vicinity of his employment. The workman lives away from the railway line, say 5 or 6 miles away, where he has got his friends and relations. Now, in the vicinity of the employment, that is to say on the main line between two stations, there is neither shelter, nor a friend, nor a relation, nor a hospital. How is that workman to remain in the vicinity of his employment? He will either die there for want of shelter or for want of food. What Captain Sassoon means is this. The man living in his *bustee*, in his residence, should not leave that *bustee* or the place of residence and should not bolt away. That is perfectly logical. But as the amendment is drafted, the phrase 'vicinity

[Mr. B. S. Kamat.]

of employment' places a handicap on the workman without giving any facility whatsoever in the different sorts of cases to the employer to treat the man. I am not, therefore, in favour of Captain Sassoon's amendment as drafted by him.

The Honourable Mr. C. A. Innes (Commerce and Industries Member):

Sir, I should like to explain the position that Government propose to take up in regard to this amendment. The position, as the Bill before the House presents it, is as follows. Clause 10 prescribes that notice of the accident must be given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured. This notice may be delivered by registered post or by hand. Clause 11 then proceeds to say that:

"where a workman has given notice of an accident, he shall, if the employer within three days offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination."

And if he refuses so to submit himself his right to compensation is suspended until he does so submit himself. These provisions, as we have got them now, follow almost exactly the English law. But in the Joint Committee I felt that we had not got the matter quite right, and, though I did not record any note to that effect, I told the Joint Committee that I would have the matter re-examined and, if necessary, would reserve the right to move an amendment in this House.

My difficulties are two. In the first place, in clause 11 we have left it obscure where the medical examination is to be held, and, in the second place, clause 11 leaves it obscure from what date the period of three days specified in that clause is to begin. It was, I think, clearly the intention of the Joint Committee that the workman should not go off to his village which might be a very long way away before submitting himself to examination. I do not think the clause as now drafted brings that fact out clearly enough. That is the reason why I have given notice of certain amendments. I wish to make it quite clear that ordinarily the workman must remain in the vicinity of his employment for a period of three working days after notice of the accident has been received, in order that the employer may have a fair chance of exercising his right to offer the workman free medical attendance; and my amendment suggests that if the workman voluntarily leaves the vicinity before the period specified his right to compensation shall be suspended until he returns and offers himself for this examination. Captain Sassoon's amendment goes further. He proposes that the workman must remain in the vicinity of his employment for at least three days in order that the employer may offer him free medical attendance; and he suggests that if the workman does not remain for those three days all right to compensation shall disappear. That is to say, he proposes a more drastic remedy. Now the point seems to me rather evenly balanced. On the one hand, it seems to me essential that we must let the employer be in a position of satisfying himself that any workman who has been injured by accident in his employment has really been injured. It seems to me essential that the employer should have confidence in the legislation we propose to introduce. I do not think there is anything in the point which has been raised by Mr. Kamat about vicinity. Vicinity is obviously a comparative term, and I have not the least doubt that the Commissioner will put a reasonable interpretation upon that term. Nor do I think that there is anything in Mr. Joshi's point, that this is unfair

to the workman. After all, in this Bill we are doing a great deal for the workman. We are giving him this right to compensation, liberal compensation; we are not imposing upon him at all the burden of proving negligence. Surely in his turn the workman must do something for the employer; and looking at the matter as a whole, I personally think it is reasonable that the workman should be required to stay in the vicinity of his employment in order that the employer may offer him free medical attendance.

I am aware that the English law is different in this matter; but we have in this matter to take into account the different conditions in England and in India. In England you have innumerable medical practitioners. You have innumerable towns; and it is perfectly easy, even if a man does go away from his place of employment, it is perfectly easy for an employer to satisfy himself that he has been examined by a qualified medical practitioner in a neighbouring town. But in India, where we have these enormous distances and where duly qualified medical practitioners are not so numerous, the conditions are different. Take the case of Burma. As everybody knows, Indian labour is very largely employed in Burma. A man gets injured in Burma. Are we to allow to go racing off to say Madras, and are we to suppose that the employer would be content if he gets some sort of certificate from a village in Madras to say that this man has been injured? Surely that employer has a right to say "I want the man examined by my own duly qualified medical practitioner; and if I cannot exercise that right I shall have no confidence that I am fairly called upon to pay compensation." That is why I have put in my amendment. I think it is a reasonable amendment. Whether we should go further and put the severer penalty proposed by Captain Sassoon seems to me a delicate question. As far as the Government are concerned, I am perfectly prepared to leave it to the judgment of the House. I myself and the Government Members, the Members on the Government Bench, will remain neutral in the matter and as far as we are concerned, we shall leave it to the House to decide the point.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, the Honourable Mr. Innes has exploded the fallacies which Mr. Joshi and Mr. Kamat started. The point in clause 11, sub-clause (2), is that if a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding relating to compensation shall be suspended; and in order that the workman may not be mulcted in the way in which the Bill proposes to do, and to remove the defects of drafting which clause (1) contains at present, Captain Sassoon has put forward this amendment. The objections to the amendment disappear when you have in view the proviso which he proposes in another amendment to sub-clause (2), which says:

"Provided further that the Commissioner may for sufficient cause admit a claim for compensation notwithstanding the failure of the workman to remain in the vicinity as required by sub-section (1)."

Captain Sassoon takes into consideration the fact that it may be that there may be sufficient cause for the workman to be removed from the place far away so that he may not be available in the vicinity. Well, he must be in the vicinity in the first place, in order that the employer may have a fair chance of seeing what the nature of his injury is and of giving

[Mr. N. M. Samarth.]

him such medical assistance as may be needed in order that the original injury may not develop into anything serious if neglected.

Mr. N. M. Joshi: There is no question of medical assistance here.

Mr. N. M. Samarth: Yes, given free of charge.

Mr. President: Order, order.

Mr. N. M. Samarth: What is the meaning of his remaining in the vicinity? In order that he may be examined by a qualified medical practitioner and apparently in order that he may be treated. It is surely in the interests of the employer that the injury should be cared for by a qualified medical practitioner, for if it were neglected he would have to pay heavier compensation than he would otherwise have to do. Therefore I say it is in the interests of the employer to see that everything that is needed is done for the injured workman. All the objections as to the necessity of his removal to a distant place or to a hospital, are taken away by the proviso which Captain Sassoon proposes, namely, that if the Commissioner finds that there was sufficient cause for the workman not to remain in the vicinity, then, in spite of the fact that he was not in the vicinity, he will get the compensation which the Commissioner thinks proper in the circumstances of the case. I think, therefore, there is a great deal in Captain Sassoon's amendment which deserves support and I trust the House will accept it.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, the House knows very well that Mr. Joshi is a very practical man, and as a practical man he always advances arguments which, however much we may differ from him, appeal to reason. Only in this instance I was rather surprised to find Mr. Joshi resorting rather to heat, to passion—which is not his weakness at any rate—than to argument, in trying to oppose the amendment put forward by my Honourable friend, Captain Sassoon.

Of course Mr. Joshi has his own views and he is entirely welcome to them, one thing can be said about him, it is this that he always says what he thinks is right. But I think if Mr. Joshi will go a little deeply into himself he will find that it is rather a suspicion. (*Mr. N. M. Joshi:* "Quite natural.") It may be natural I do not know—but it is rather a suspicion of the source from which the amendment comes that is responsible for his opposition. I want Mr. Joshi to come down to the plane of practical politics and remove his prejudice for the time being and not consider the source from which the amendment is coming but to discuss it on its own merits; I want him then to say whether he honestly believes that there is anything in the amendment which is likely to prove detrimental to the interests of the working classes, or on the other hand there is not anything in the amendment which, if carried, is likely to prove of immense advantage to the working man. I want to ask a few questions of Mr. Joshi. I must say at once that I hope Mr. Joshi will not suspect me, as I am afraid he suspects others. (*Mr. N. M. Joshi:* "I am not quite sure.") I want to ask him a few questions. Let us come down to the plane of practical politics. Take the case of Bombay itself where you find more instances of people being in factory life than elsewhere perhaps. Take a case where a man in a mill meets with a serious accident. Suppose this clause as proposed by Captain Sassoon is not provided; what would be the result?

You have to consider it from that point of view. Mr. Joshi knows as well as I do that there is unfortunately a kind of superstition prevailing among these men that as soon as an accident takes place, which may not be at all of a fatal or even of a serious character, the workman begins to feel that he is going to die or that he is going to be permanently disabled, and the one thing that he wants and says is "Let me go away from here to my people, to my village and die there." That is a very admirable feeling, I admit; but I do not think it ought to be encouraged. (*An Honourable Member:* "Why not?") Because by encouraging that feeling you are hastening the death of that man, which probably would never have occurred otherwise if you had made it possible for ordinary medical assistance to reach him in time. *Cries of "No, no"* and interruption). I hope I shall not be interrupted like this; I think it is a practice which ought to be condemned that Members should interrupt another Member when he is speaking, especially when the interruptions are not relevant—I am sorry to digress, Sir—but there is too much interruption, I think. How far are these villages from Bombay? These Bombay workmen come from Konkan or the Ratnagiri district; it takes two or three days to go from Bombay to any places in Ratnagiri district; you know that the journey is not a very pleasant one—you have got to go in a steamer where comforts are very few as Mr. Joshi very well knows. Now, if you encourage that superstition in the man and if he goes away refusing medical aid, being certain that he will get compensation or that his family will get compensation, he goes as it were to die in the midst of the members of his family in a far-off village, the journey to which is very difficult and is sure at any rate either to make his injury more serious or even to make it prove fatal. Now, I think that this amendment proposed by Captain Sassoon aims at protecting the workman against himself; and in India you cannot help it. The one thing that you have got to do is to protect these ignorant workmen against themselves. What does this amendment want? That the man will live in the vicinity of the place of his work. Now, is there anything unreasonable in that? Take the example of a man working in a Bombay factory; he is working for instance in one of the Parel mills; he is not forced to live in the mill itself; he is asked to go and live in a chawl, and I am sure Mr. Joshi will agree with me that if he lives in a chawl for three days, he will have a better chance, a much better chance, a surer chance of being looked after well than if he went to the village where he would be neglected altogether. But Mr. Joshi's argument is this: "I have no objection to this amendment if you make it compulsory on the employer to offer medical assistance to the workman." I take it that I am right in thus interpreting Mr. Joshi's argument. Now, I know that the clause does not make it compulsory on the employer, nor does the Bill do it; even if this amendment is not carried it would not make it compulsory on the employer to give free medical assistance to the man. But what does it amount to in practice? As a matter of fact Mr. Joshi very well knows—I need not tell him here—but I may inform the other Members that in Bombay there is not a single large group of mill agents which does not provide for free medical examination for their workmen.

Mr. B. S. Kamat: But you are taking only the Bombay example.

Mr. Jamnadas Dwarkadas: I am speaking from the practical standpoint; I am speaking of what is done by large employers of labour and if you are not going to act in accordance with that from the point of view of the men who are employed largely in large factories, well, I do not

[Mr. Jamnadas Dwarkadas.]

know what this House is going to be guided by. Therefore as I say in Bombay you have the example of the workmen being given free medical assistance, day in and day out, by mill agents. As soon as a man meets with an accident he gives three days' notice—that is provided for in the Bill itself. Here Captain Sassoon rightly suggests three working days; as a matter of fact my Honourable friend, Mr. Innes, proposes to move an amendment* on the point; that is reasonable, otherwise the notice will not reach the employer at all. Now what happens in these three days? If the employer offers medical assistance—at all events he is bound to offer and speaking about Bombay I know that he is bound to offer medical assistance to the man—if he offers that the man should be medically examined the man should not refuse it. Now, do you want him to refuse it? There again a prejudice obtains among these ignorant workmen that the moment they feel that they have met with a serious accident they do not want to be examined by any medical officer; they want to be examined for instance by some quack, or they want to resort to all kinds of superstitious methods of curing themselves. Now, I think that if we acquiesce in encouraging this kind of practice we are doing, in the name of service to the labouring classes, serious injury to the cause of labour itself, serious injury to the cause of humanity itself. Let us not carry our ideals too far so as to narrow our vision and to blind ourselves to all the good that could come out of a reasonable arrangement like this. Again, is not the employer doing only a reasonable thing in saying that if he has to pay compensation to the workman for the injuries that he suffers from, at least he has a right to be told three working days before the man leaves the place that he has met with a serious accident, that the employer must also have a chance of giving him free medical examination so that the patient may have a chance of being cured by the treatment of an efficient medical practitioner? Now, I say that it would amount to the employer giving free medical assistance to the workman. Would it be anything else than that? Is it not in the interests of the employer to see that the workman is neither totally disabled nor that he meets with death? It is in the interests of the employer to see that the workman is cured as soon as possible so that he may be saved the burden of giving compensation either to the workman if he is totally disabled or to his family if the man happens to die. So, looking at it from the practical point of view, it seems to me that it is an equitable arrangement, it is a fair arrangement; it is in the interests of the employer by all means, but I say it is more in the interests of the workman himself that he should be offered an opportunity of being treated by a qualified medical practitioner. I therefore think that the House would do well in not taking a prejudiced view on this question and to support the amendment, for it really aims at bringing about better results than the clause in the original Bill itself.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, it seems to me that the objection on the part of my Honourable friend, Mr. Joshi, is more on account of the clause as suggested by my Honourable friend, Captain Sassoon, there being no provision in it to compel the employer to offer free medical treatment to his employee, and I understood Mr. Joshi to say that if there was any clause of that kind to compel the employer to offer medical treatment free of charge to the employee he would have no objection to the clause as proposed. If that be his objection, and if I

*See later motion by the Honourable Mr. Innes.

understood him aright, I would suggest to the Honourable Mover of this amendment as well as to Government the addition of the words 'and treatment' after the word 'examination' in the first instance, and also after the word 'examination' in the second instance; that is to say, the employer would offer medical examination and treatment to the employee, free of charge.

Mr. N. M. Joshi: Free board and lodging.

Mr. W. M. Hussanally: I do not know, Sir, whether it is at all necessary to give free board and lodging; because ordinarily he will have his own lodging and board also. It is only in exceptional cases and where the workman meets with an accident at a place which is far distant from his own place, free board and lodging will be necessary. But in such cases, as the Honourable Mr. Innes pointed out, the word 'vicinity' is too flexible a term, and it will be interpreted by the Commissioner as well as by the employer more liberally than what Mr. Joshi thinks it is liable to, and I believe that if the two words that I suggest are added, all reasonable objections will be met. Therefore, I commend the addition of these two words to the Honourable Captain Sassoon as well as to Government.

Mr. President: Has the Honourable Member moved that amendment?

Mr. W. M. Hussanally: Yes, Sir.

Mr. President: Further amendment moved:

"After the word 'examination' where it first occurs in the amendment standing in the name of Captain Sassoon, to add the words 'and treatment,' and similarly in the following line after the word 'examination,' to add the words 'and treatment'."

Captain E. V. Sassoon: Sir, as far as I am concerned, I have no objection to the doctor who examines the injured workman giving him treatment also. I take it that Mr. Joshi does not necessarily insist that the treatment should last as long as the workman might want it, but would give more or less first aid treatment which would be to the greatest advantage of the workman as well as the employer. I should like, however, to point out to Mr. Joshi that there has been a great deal of opposition from workmen against forcing any treatment on them if they did not want it. They may prefer to have one of their own doctors to look after them, and that is the reason why I only suggested in my amendment that the examination should be compulsory, and only the examination. If Mr. Joshi wants the treatment also to be compulsory, I am prepared to accept it.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muhammadan Rural): Sir, a greater responsibility is thrown on the Members of this House by their not knowing whether Government would support or oppose this amendment. In such matters, Government should make up its mind either to support or oppose it, but unfortunately they have not made up their minds. In this case, Sir, Mr. Joshi rightly asked 'what about the provision for free board and lodging of the injured workman' if he stops in the vicinity, which was suggested by Captain Sassoon. I may mention, Sir, that in the Perambore Mills, the Act applies not to Bombay alone—about three-fourths of the labourers live 5, 6 and even 10 miles away from the place of employment. Does Captain Sassoon want that these people should live near Perambore Mills where they work? I may also state that unnecessary anxiety is shown by some of my Bombay friends that some men may court death in order to secure compensation for their dependants, which, to my mind, is against human nature. (A Voice: 'No.') I may

[Mr. B. Venkatapatiraju.]

point out that if Honourable Members will refer to clause 4 in the section itself, they will find that there it is clearly provided that the workman is bound, if the employer offers him medical treatment, to accept such treatment, otherwise his compensation would be reduced. Therefore, there is no difficulty about attendance because it is provided in clause 4 of this very Act. In England, Sir, excepting giving notice of injury, even medical examination is not at all necessary. They say: "The want of notice in the case of death is no bar to the maintenance of action if the Judge is of opinion that there was reasonable excuse for such want of notice". Sir, the object of introducing the amendment, without any provision being made for board and lodging, or even to compel the employer to provide medical treatment, is, that the injured man must stop for three working days near the place of employment, and then he will have the right to claim compensation, otherwise he would forego that right to claim compensation. Then about the examination, the injured man is bound to be examined and he is prepared to be examined, and lastly he is entitled to be treated and he is prepared to be treated, and he cannot avoid being treated by some one engaged by the employer. Supposing there is no house or accommodation available, he lives in the place in which he usually lives. What is the objection? If the employer is so anxious to avoid heavy compensation, he should depute a medical officer to look after the injured person and treat him properly at his residence, because if the injured person avoids medical treatment, he will suffer the consequences. When such is the case, I do not see without sufficient safeguards as suggested by Mr. Joshi and Mr. Kamat, how Captain Sassoon's proposition can be accepted, unless Government will accept the responsibility themselves.

The Honourable Mr. C. A. Innes: I am afraid, Sir, I must oppose the amendment suggested by Mr. Wali Mahommed Hussanally without any notice at all, and I am very reluctant to introduce into this Bill words and phrases, the effect of which I am not certain. Also I do not myself think that the actual insertion of the words is necessary. I am perfectly satisfied in my own mind that if any doctor, and I am sure Colonel Gidney will support me

Mr. President to Mr. N. M. Joshi: I must ask the Honourable Members from Bombay to desist from their conversation.

The Honourable Mr. C. A. Innes: I am sure that Colonel Gidney will support me in this that if any qualified medical practitioner examines an injured workman, he will give him first-aid treatment without being required to do so by any law. I would also point out that clause 4 of the Bill actually presupposes that such treatment will be given. On the whole, I do not think it safe to accept this amendment as I am not fully certain what the effect of the insertion of the suggested words will be. Therefore, I am afraid I must object the proposal to insert the words 'and treatment'.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, this question gave considerable difficulty to us in the Joint Committee, and we thought that it is not easy to provide for all cases which are likely to come up. Mr. Jammadas has been speaking of Bombay city conditions. My friend Mr. Venkatapatiraju spoke of Madras conditions. But let us remember that this Act applies not only to big concerns but also to small concerns, to factories within the meaning of the Factories Act. I think it is to these cases we have to look. Many of them would not have

qualified medical practitioners in their factories, many of the employers running these factories are poor themselves. They would have to search for medical practitioners in order to have the examination that will take them some little time. Therefore, we thought it best to provide for these cases by rules to be made under the proviso, as Honourable Members will see:

"Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act."

The rules will have to be made, having regard to local conditions and we thought that these cases could well be provided for by rules. At the same time, let us remember what is the object of this examination by the employer. The employer wants to get evidence. That is the whole object of it. His object is to get evidence beforehand, as soon as the accident occurs, so that the workman may not exaggerate the injuries, may not aggravate the injuries by bad treatment and all that. So we give an opportunity by this clause to the employer to procure early evidence and his own doctor to examine the employee. Now, if an accident occurs in a factory or in a place where a workman is employed, I think the employer is as much likely to know of it as the workman himself. Because the employer is sure to have a manager on the spot who would know about the accident and therefore, if he wants to have evidence (he is not bound to), but if he wants to arm himself with evidence he will take care to have his doctor ready to examine the man. On the other hand, let us see the point of view of the poor workman. My Honourable friend, Mr. Jammadas Dwarkadas, has spoken of the superstition—but it is not a superstition, it is a sentiment—prevailing among my countrymen. I do not think you can call it a superstition if they want to die in their own homes. I think we ought all to encourage and not discourage it. I do not see the harm, if I like to die in my own house where I was born and among my kith and kin. Why is it a superstition? I think it is a sentiment we ought to honour and respect. And, therefore, Sir, when we have regard to the main object of the provision, namely, to give an opportunity to the employer to secure evidence, I do not see why we should give more facilities than the section as it stands provides. I think Captain Sassoon has forgotten his usual generous sentiments when he came forward with this amendment. He knows he has got three days within which to do that and I am sure in cities like Bombay the rules may provide for examination on the spot and probably there so much time will not be needed. You can have it done in three hours in a city like Bombay. The man is injured and a medical man will be on the spot and probably on the premises and the whole examination could be done in three hours and I therefore submit, Sir, it is unnecessary to interfere with the section as it has been framed by the Joint Committee, which I assure you we took quite a long time in considering, and we left it to the rules to provide for cases and cases. I am rather surprised at the attitude that Mr. Innes has taken to-day in this Chamber. He, as a member of the Joint Committee, instead of pledging the Government to support the Joint Committee's amendment, says the Government are neutral in this matter. If this is the attitude of Government, we should have taken a different line altogether in the Joint Committee. I am supporting the amendment as it was framed in the Joint Committee and I know no reason why the Honourable Mr. Innes should depart from the attitude which he took up there. I oppose Captain Sassoon's amendment and support the clause as it stands.

Lieut.-Col. H. A. J. Gidney (Nominated: Anglo-Indian): Sir, in reference to what the Honourable Mr. Innes has just said, I do give him my support in its entirety. He conceded the principle, and I believe there is nothing further to say on it. As being one who took a considerable part in the deliberations of the Joint Committee when this matter was discussed, I rise to oppose Captain Sassoon's amendment. This House can readily picture a mofussil station where an employee is injured. It has say a small factory which employs a sub-assistant surgeon—a very eminent man in his own way but of mediocre talents so far as emergency surgical operations are concerned. Or it may be the first aid required from this mediocre doctor is not sufficient to render complete aid, or might be the cause of making a mild injury a very serious one. I see no reason why the patient or the employee should not have a free choice as to the medical practitioner he wants. But to insist on that injured man remaining three days in the place of his employment is, I say, a most unjustifiable restriction. I therefore oppose the amendment.

Mr. R. A. Spence (Bombay: European): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The original question was:

"That in clause 11 in sub-clause (1) for the words 'he shall if the employer within three days offers to have him examined free of charge by a qualified medical practitioner' the following be substituted, namely:

'he shall remain in the vicinity of his place of employment for not less than three working days from the date on which service of the notice has been effected on the employer and during such period he shall hold himself available for medical examination and if the employer offers such medical examination by a qualified medical practitioner free of charge within such period he shall'."

Since which an amendment has been moved:

"After the word 'examination' insert the words 'and treatment' in both places where the word 'examination' occurs."

The question I have to put is that that amendment be made.

The amendment was negatived.

Mr. President: The question is that the original amendment be made.

The Assembly then divided as follows:

AYES—28.

Ahsan Khan, Mr. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Cotelingam, Mr. J. P.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Haigh, Mr. P. B.
Holme, Mr. H. E.
Hussanally, Mr. W. M.
Jamnadas Dwarkadas, Mr.
Misra, Mr. B. N.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.

Nayar, Mr. K. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Reddi, Mr. M. K.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

NOES—34.

Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahmed, Bakshi, Mr.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Burdon, Mr. E.
Chaudhuri, Mr. J.
Faiyaz Khan, Mr. M.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.

Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Ley, Mr. A. H.
Mahadeo Prasad, Munshi.
Mitter, Mr. K. N.
Muhammad Hussain, Mr. T.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Singh, Mr. S. N.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Tulshan, Mr. Sheopershad.
Venkatapatriaju, Mr. B.

The motion was negatived.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That in clause 11 in sub-clause (1) for the words 'within three days' the following words be substituted, namely:

'before the expiry of three working days from the time at which service of the notice has been effected'."

Sir, in speaking on the last amendment I explained fully to the House the reason why I have given notice of these amendments which stand in my name to clause 11, and I do not think that there is any necessity for me to waste the time of the House by repeating what I then said. I explained that my object was to clear up a vagueness and obscurity in the section as it stands at present. Mr. Rangachariar in his speech said that the Joint Committee had discussed this question at great length and he suggested that I ought to have been content with the solution arrived at by the Joint Committee. But, as I explained in my previous speech, I never was content with the solution at which the Joint Committee had arrived and I told the Joint Committee, though I did not make any note to that effect in the Joint Committee's report that I would like to have the matter re-examined with the object of moving, if necessary, an amendment in this House.

Rao Bahadur T. Rangachariar: Why do you want "working days"?

The Honourable Mr. C. A. Innes: Mr. Rangachariar says that the proviso to sub-clause (1) of clause 11 meets the point.

That proviso says:

"Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act."

But I am advised that that proviso does not meet the point and that the Local Government could not provide by rules under the Act that the workman must not leave the vicinity of his employment before submitting himself to free medical examination offered to him. That is the very reason why I have put in this amendment. Mr. Rangachariar asks me why I have put in "three working days." The reason is that a notice might be delivered at a factory or a mill on a day when that mill or factory was closed, and it seems to me that if we do give a period to the employer in which he may offer free medical examination, we should make the period a

[Mr. C. A. Innes.]

proper period and that we should not include in that period days when the mill or factory is closed. I commend, Sir, my amendment to the House.

Mr. President: Amendment moved:

"That in clause 11 in sub-clause (1), for the words 'within three days' the following words be substituted, namely:

'before the expiry of three working days from the time at which service of the notice has been effected'."

Mr. N. M. Joshi: Sir, I wish to move a small amendment to the amendment proposed by the Honourable Mr. Innes, and that amendment is:

To omit the word "working".

I have given notice of my amendment to the Honourable Member. Sir, we have been told here that the employers are a very kind-hearted class. Sir, I wish I could believe all that about them. I want to believe that. But, Sir, if the employers are really kind-hearted, why should they not be ready to act on a notice received on a Sunday? If there is notice of an accident on a Sunday, a kind-hearted employer will surely at once move to send a doctor to the employee, and even the doctor, under the rules of his profession, will not grudge sacrificing his Sunday's rest for the sake of an injured workman. I therefore feel that there is no necessity for putting in this word "working" at all. Notice of an accident, at least of a serious accident, on a Sunday ought to be taken as effective notice to the employer. As soon as he sees that there is an accident he must take steps to send a doctor. I am not a lawyer, and not being a lawyer, I do not understand the meaning of the words "service of the notice has been effected". I therefore feel that this word "working" is not necessary at all and that therefore it should be deleted.

Mr. President: Further amendment moved:

"To omit the word 'working' in the amendment moved by the Honourable Mr. Innes."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is that the amendment, amended as follows, be made:—

"That in clause 11 in sub-clause (1) for the words 'within three days' the following words be substituted, namely:

'before the expiry of three days from the time at which service of the notice has been effected'."

The motion was adopted.

Rai Bahadur L. P. Sinha (Gaya cum Monghyr: Non-Muhammadan):

I beg to move:

"In clause 11 (1) between the words 'to have him examined' and the words 'free of charge' insert the following:

'at his place of residence where he lives during his term of employment'."

I am moving this amendment only as a safeguard against the cases which may arise. Take for example a labourer gets some injury by accident arising out of his daily duties and he has given notice of that accident to his employer who according to the proposed clause will only be compelled to have the workman examined within 3 days free of charge but

we don't know where the workman is expected to be examined. It may be that the doctor on receipt of information of the accident from the employer may in his turn send a notice to the workman asking him to present himself for examination at a certain place which may be far away from the workman's usual place of residence; moreover the injured man might not be in a position to attend at the doctor's place owing to his injury being of a more or less serious nature. Now the employer may in certain cases take advantage of this section not to grant him any compensation on the ground that the workman did not submit himself to medical examination which was offered to him by the employer. It is therefore only fair that medical examination should be offered to him at his usual place of residence where he generally lives and where he is employed.

The Honourable Mr. C. A. Innes: I do not think that the amendment should be accepted and that for two reasons. In the first place, I do not think that we ought to tie down the medical examination to the workmen's place of residence. Quite conveniently it may take place, at any rate, in the case of slightly injured persons, at hospitals or dispensaries attached to the factory. In the second place, we have got a proviso here which I think covers the point.

The motion was negatived.

Captain E. V. Sassoon: Instead of moving this amendment now, I prefer, with the leave of the House, to move the amendment as an amendment to the following amendment of the Honourable Mr. Innes.

Mr. President: Does the Honourable Member mean that he wants to move the amendment after the Honourable Mr. Innes has moved the next?

Captain E. V. Sassoon: Yes, Sir.

The Honourable Mr. C. A. Innes: I beg to move:

"That in clause 11 in sub-clause (2) for the words 'and to take or prosecute any proceedings in relation to compensation or in the case of a workman in receipt of half-monthly payments his right to receive half-monthly payments shall be suspended until such examination has taken place' the following words be substituted, namely: 'shall be suspended during the continuance of such refusal or obstruction'."

This amendment, Sir, is not an amendment of any importance. It is a drafting amendment which has been suggested to us by the Legislative Department. It does not affect the merits of the case at all.

Captain E. V. Sassoon: I would like with the permission of the House to move an amendment to this amendment as follows:

"That after the word 'obstruction' at the end of the amendment, the following be added:

'Except in the case of the first examination after notice of accident in which case the employer shall not be liable to pay compensation to the workman in respect of the accident:

Provided that the Commissioner may for sufficient cause admit a claim for compensation notwithstanding failure to comply with the requirements of the clause'."

Sir, I would like to point out to the House, that, as the amendment now stands, should a workman not wait after having given notice but go away, the penalty will be suspension. But, Sir, should the workman, as I mentioned in my previous remarks, sustain a cut or a slight

[Captain E. V. Sassoon.]

injury, and go away without any treatment or examination, this injury would become a more serious one meaning the loss of a limb. He would come back and under the provisions of this Bill, at any time within six months of the notice he would be allowed to make a claim. The claim for a permanent injury would be a lump sum and therefore suspension would really be no penalty at all. The workman therefore will be able to take no notice of these instructions. He can send in his notice, leave, and at any time within six months can come in and say, "I have in consequence of the cut in my arm, lost my arm, and therefore I am entitled to the full benefits under the Bill." Therefore I suggest to obviate any possible, I will not say probable, any possible fraudulent claim it would be only fair that in the event of his leaving within the three days, which are not working days now, and without having been medically examined he should not benefit under the provisions of this Bill, unless, of course, he is able to persuade the Commissioner that his reason for leaving without being examined was a sufficiently strong one to justify the Commissioner admitting his claim.

Mr. President: Is the Honourable Member's amendment the same as that of which he gave notice on the 3rd February?

Captain E. V. Sassoon: With slightly verbal alterations, to the same effect.

The Honourable Mr. C. A. Innes: I think the amendment now moved by Captain Sassoon is in substance the same as amendment No. 50* and No. 53.* Those two amendments have already been fully discussed by the House and the House has voted against them and that being so, I think the House should maintain the same attitude and reject this amendment.

Lieut.-Colonel H. A. J. Gidney: I think Captain Sassoon has suggested a very correct precautionary measure because as a medical man I can put before you an instance of a slight injury to the forearm, involving the destruction of one of the important nerves. It is not apparent to the layman. It is not apparent to the injured person who may come to realise it after some months and he then claims this lump sum for permanent disablement and I think the provision here although it introduces a layman to decide on a professional matter is better than allowing a man to take unfair advantage of this period of detention.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the original amendment be made.

The motion was adopted.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That in clause 11 after sub-clause (2) the following sub-clause be inserted, namely:

(3) If a workman before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination voluntarily leaves the vicinity of the place in which he was employed his right to compensation shall be suspended until he returns and offers himself for such examination."

* On List of Business.

I have already explained the reason for this amendment. The House will see that it is a far more modest proposal than that suggested by Captain Sassoon. All we do is that we say that if a workman leaves the vicinity of the place before submitting himself to such examination his right to compensation should be suspended until he returns and so submits himself. I hope the House will accept this amendment.

Mr. N. M. Joshi: I propose to move a small amendment to the amendment moved by the Honourable Mr. Innes and that amendment is "Omit the words 'returns and' in lines 6 and 7 of his amendment. The effect of the amendment will be that the man must offer himself for examination but it is not necessary that he should return to the place. The reason of my amendment is quite obvious. There will be some cases in which it will be very difficult indeed for a man to return but if the injury is very small, then the man should return but this will be provided by the fact that these medical examinations are going to be according to some rules and it is quite possible to frame rules for the medical examination under the Act to provide that in the case of small injuries causing a particular percentage of disablement the man must return but in other cases the man need not return. The whole thing is provided for by simply saying that the man must offer himself for examination and the interpretation of the word 'offer' will be made according to the rules that will be framed by Government for medical examination. Therefore I think the words 'returns and' ought not to be there. If the injury is small, the rules will provide that the man must return. If the injury prevents a man from returning, then the man will be allowed by the rules not to return but the employer will be asked to examine the man at his place of residence. I think my amendment is quite reasonable and will be accepted by the Government.

Mr. President: Further amendment moved that in lines 6 and 7 of the Honourable Mr. Innes' amendment the words 'returns and' be omitted.

The Honourable Mr. C. A. Innes: I must oppose this amendment. I think it would have been better if Mr. Joshi had opposed the whole of my amendment from the beginning, for by missing out the words 'returns and' he destroys the whole value of the amendment which I propose to make to this clause.

Rao Bahadur T. Rangachariar: Sir, I oppose the amendment and I also oppose Mr. Joshi's amendment. It appears to me quite unreasonable to ask the workman not to leave the vicinity of the place of his employment. That is the object of this clause also. That was the objection to Captain Sassoon's amendment. That is also the objection to Mr. Innes' amendment. As I said, these matters should be decided by rules to be made. There may be cases where it will be quite just to call upon the man to stay in his place of employment for medical examination. There may be cases where he should be allowed to go away to his own home and offer himself for medical examination at or near his place of residence. There are cases and cases which it is difficult to provide for. As the amendment now suggested runs, in every case, whether the injury is one which results in death or whether it be an injury which does not result in death, the workman cannot leave the vicinity of the place. That is what this amendment aims at. I think it is a cruel thing to do that. I think these cases must be provided for by rules. We have passed clause 10. Clause 10 provides that the workman must give notice as soon as

Mr. N. M. Joshi: I think, Sir, the amendment is not a consequential one. It is a serious amendment. I would draw the attention of my Honourable friend, Mr. Innes, to the last words of sub-section (2) of section 11: "*unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.*"

Sir, it is provided that when a man has got sufficient cause not to submit himself for examination during the period of suspension, he shall be paid his compensation; and I therefore think this amendment is absolutely inconsistent with that clause. I hope the House will not accept such an amendment, which is absolutely wrong even in drafting.

The motion was adopted.

Mr. N. M. Joshi: Sir, I beg to move the following amendment:

"In clause 11 omit sub-clause (4)."

I am not moving my other amendment at all.

Dr. Nand Lal: What is the number of your amendment?

Mr. President: The Honourable Member means the clause now re-numbered (5)?

Mr. N. M. Joshi: Yes, Sir; new number (5).

Dr. Nand Lal: May I ask the Honourable Member the number of the amendment?

Mr. N. M. Joshi: It is not printed. It is a very simple amendment; it asks for the omission of clause (4) in the Bill as submitted by the Joint Committee; now it has become clause (5) after the addition of the clause by the amendment of the Honourable Mr. Innes. Sir, this clause is intended to reduce the compensation which a workman may have for his injury, if it is shown that he did not avail himself of the medical treatment which may be offered to him by the employer or of any other qualified medical treatment of which he might have availed. Sir, I think that if this is allowed to be retained a large part of the benefit which the working classes may get from this Bill will altogether disappear. The working classes in this country are not generally ready to avail themselves of the treatment offered by western medical practitioners and if on that ground a man's compensation is to be reduced, I think the working people will lose their compensation in many cases. Sir, I am not an advocate nor am I a supporter of the Ayurvedic and Unani systems of medicine; as a matter of fact the House knows well that when Government showed their sympathy—it may be lip sympathy—for the Ayurvedic and Unani systems of medicine, I was one of those people who opposed the Resolution which was brought forward in this House in support of those systems of medicine. But, Sir, I am not here to propagate my views on the Ayurvedic and Unani systems of medicine. I must take note of the condition of things as they exist in India to-day. To-day it is a fact which no body will deny that the working classes in this country have a great prejudice against western systems of medicine.

Sir, among the opinions which have been received on this Bill, there are some which are in favour of the clause and there are also some which are against it. I would only read one, namely, the opinion of the Government of Madras on this proposal. They say:

"Refusal to receive medical or surgical aid offered by an employer should not debar a workman from claiming compensation for the original injury suffered by him. Though prejudice or ignorance may in some instances induce a workman to decline medical aid proffered by the employer, considering that a differentiation in the award

of compensation between the original injury and its subsequent development is not going to be easy and that it would be very difficult indeed to say that the subsequent ill-effects are due to the neglect of the original hurt or injury, the compensation should, this Government think, be awarded in spite of refusal to receive surgical or medical aid offered by the employer."

In the same way, the United Provinces Government point out the difficulty of the women workers who generally have got a great prejudice against male doctors treating them. Sir, I know very well that this clause does not totally debar a man from receiving compensation for injury even if he refuses to be treated by a qualified medical practitioner. But, Sir, if we leave this loophole in the Bill, the effect will be that every employer, though he may be very kind-hearted, will try to go to the Workmen's Compensation Commissioner before he pays the compensation. It is very easy for an employer to say to the injured workman that his wound aggravated because he received a treatment which was not a treatment from a qualified medical practitioner. Therefore, this Bill will not only deprive the poor workman of a part of his compensation but it will also leave a loophole for the employer to go to the Workmen's Compensation Commissioner. I can hardly think of an employer who will not take advantage of this clause to get the compensation reduced. I therefore think that this sub-clause in the interests of the working classes must be deleted.

Sir, there is another danger, and a great danger too. Many Honourable Members of this House have taken a very cynical view of the psychology of a workman. They had accepted, and many of them advocated, that a working man may commit suicide in order to get compensation or he may get his hand cut off, as Captain Sassoon only a few minutes back suggested, in order to get compensation. But, Sir, what does this clause provide for? Take the case of a factory which is not in Bombay. I want the House not to misunderstand me. I am not taking the case of a factory in Bombay. I am taking the case of a workman who is injured in a small factory in a suburb, or in an out-of-the-way place, where, there may be only one qualified medical practitioner paid by the employer. Now under these circumstances the only qualified medical practitioner available to the injured man is the employer's doctor. Now where is the guarantee that this employer's doctor will give sufficient and good treatment to the injured man? You will say "why not"? Sir, if we are to take a very cynical view of human nature, let us take a similar cynical view of the employer's psychology. Sir, if the man on account of the wound dies, the employer pays Rs. 240; if he lives, the employer has to pay a larger compensation. The difference between the highest limit for compensation for death and compensation for total disablement is Rs. 1,000. If a working class man will commit suicide for the sake of Rs. 240, as some said yesterday, what guarantee is there that an employer's doctor will not neglect the injured man in order to save the thousand rupees for his master? That is what is provided by this Bill, at least in some cases. I hope, Sir, since the House has taken a very cynical view of the psychology of the workman, they take a similar view of the psychology of the employer. Let us be fair to both parties, and, if you are going to be fair, there is a great danger to the life of a wounded man working in an out-of-the-way factory. There is a very great temptation for the employer to save Rs. 1,000 by neglecting him. Therefore, I hope my amendment will be accepted.

Mr. President: Amendment moved:

"In clause 11, omit sub-clause (5)."

Captain E. V. Sassoon: Sir, in the first place, I join issue with Mr. Joshi that the House has taken a very cynical view of the workman. (Mr. N. M. Joshi: "You yourself spoke".) I think that the voting on my amendment would have shown that whatever I have said did not get the approbation of the House. On the other hand, I am prepared to allow the House to take as cynical a view as they like of the bad employer. And, when Mr. Joshi read out the opinion of the Government of Madras on this clause, perhaps, even though I may be one of the hated class of employers, I may be allowed to read out extracts from the opinions of the Mill Owners Association on this very clause. This, I may tell you, is the opinion of a body consisting of men who, according to Mr. Joshi, nearly all of whom, I think he said, would be prepared to go to any length to save a few rupees:

"Section 4.—In connection with this clause, concerning the penalties which may be imposed on a workman as a result of his not availing himself of the services of a qualified medical practitioner when such services are offered to him by his employer, my Committee (that is to say, the Committee of the Mill Owners Association) draw attention to the deep-rooted prejudice that many Indian work people have against western medical methods.

Also, when considering this section it must be remembered that the judgment of the medical practitioner whose services are engaged by the employer may at times be biased in favour of the employer."

This, Sir, is the opinion of the Mill Owners Association of Bombay, not, as you may think, of Mr. Joshi:

"For the foregoing reasons, therefore, my Committee advise that the Commissioner should be advised to make allowance for the Indian workman's prejudices concerning medical practice and that in all disputes the issue of which depends upon a medical decision he should be compelled to take independent medical evidence."

Now, Sir, I do feel that this new clause No. 5 does fail in that respect, and therefore I, though I would oppose Mr. Joshi's amendment which is to remove the whole clause, would like to add safeguards to that clause. Perhaps, Sir, I am not in order in doing that now? I would like to add to the clause that the Commissioner should take advantage of the facilities given him under sub-section (2) of clause 20 and appoint a medical assessor in such cases.

Mr. President: Amendment moved:

"In clause 11, omit sub-clause (5)."

The Honourable Mr. C. A. Innes: Sir, I must object to the amendment proposed by Captain Sassoon. I have had no notice at all of this amendment. It has just been proposed on the floor of the House and I am afraid, Sir, I must rise to a point of order against Captain Sassoon.

Mr. President: We can only deal with that after we have disposed of Mr. Joshi's amendment.

Mr. A. G. Olow (Industries Department: Nominated Official): Sir, I am afraid that my Honourable friend, Mr. Joshi, has unintentionally misled the House as to the opinions received on the Government proposal regarding this very difficult question of medical relief. This Bill was framed after consultation of Local Governments and interests throughout the country; the Government of India issued a circular letter, and in that letter they drew attention to the fact that in a number of American Acts a workman who refuses to take medical relief when offered by his employer

forfeits all his rights to compensation. It was in response to this that the Madras Government said that such a proposal would bear very hardly on workmen in this country who have prejudices, justified or otherwise, against accepting western medical science. And it was in consequence of that opinion and of the opinions received from other Local Governments that the Government of India completely altered the proposal before they drafted the Bill. Now the proposal, as it reads now, merely protects the employer against aggravation of the injury. There is nothing

1 P.M. whatever to prevent the workman being attended by a doctor of the Unani or Ayurvedic school. If the doctor is efficient, if he does not produce aggravation of the injury—and remember, it is for the employer, and not the worker to prove aggravation—if no aggravation is produced, then the worker does not suffer in any way. I think that this is a perfectly reasonable clause. It was accepted by the Joint Committee without change and I am surprised to find Mr. Joshi opposing it at this stage.

Mr. B. S. Kamat: Sir, I think Mr. Joshi's amendment to drop this clause is legislation by obsession. He seems to be obsessed by the fact that every employer for the sake of Rs. 96 upon which he has been harping since yesterday will kill a workman. The second obsession is that every employer

Mr. N. M. Joshi: I never said "every employer."

Mr. B. S. Kamat: Whatever he said, of course he led the House to believe that the employers as a rule will take advantage of this section as a loophole.

Mr. N. M. Joshi: Exactly; some people.

Mr. B. S. Kamat: Now, if his amendment is carried, the whole frame work of this Bill would be destroyed. If a workman, whatever his sentiments or whatever his prejudices might be up to now, wants to take advantage of a social piece of legislation like this which is—a Western product engrafted upon Indian society—he will have to adjust himself to new ideas, namely, if he wants compensation, he must submit himself for some sort of civilized medical examination. Mr. Joshi wants that the employer should be put under certain conditions. But on the other hand, he wants that the employee should be absolutely at liberty either to get his wound not treated at all by a proper man or to apply Unani medicine to it or to apply Ayurvedic decoctions to it and allow septic poisoning of the blood or gangrene or any other disease to intervene. And yet he wants that the employer should rigidly follow the Workmen's Compensation Act so far as compensation is concerned. I do not think, Sir, this is fair. You cannot have it both ways. You cannot have your cake, eat it and keep it in your pocket too. Now, I shall refer to what the Social Service League of Bombay, with which my friend, Mr. Joshi, is connected, and where he is doing such splendid work so as to evoke our admiration uniformly, say on this clause. They passed the following opinion upon this clause:

"The Social Service League of Bombay record the opinion that in this clause there should be this alternative:

"In clause 11 (4) the following should be added, namely, examination by any other qualified medical practitioner provided free of charge by Government or any local authority."

[Mr. B. S. Kamat.]

In any case, I point out, Sir, that he had himself admitted the necessity of some sort of medical examination for the injured person. Now, he is coming forward to delete the whole of this clause and leave the injured man absolutely at liberty either to have no treatment at all or to have Ayurvedic treatment or to take homely domestic applications for the wound and yet to go to the employer and ask for compensation in full. I therefore think, Sir, as I said at the beginning, that this is nothing but legislation by certain obsessions.

Mr. N. M. Samarth: My difficulty, Sir, is this. Mr. Joshi was a Member of the Joint Committee. He has signed the Report of the Joint Committee subject to a certain minute of dissent. He does not, in that minute of dissent, raise any objection in regard to the clause which is under consideration. Is it open to a member of the Joint Committee, who comes before the House signing the Report of the Joint Committee on the Bill subject to a certain minute of dissent in which he does not take any objection to the clause which is under consideration, to do so now?

Mr. J. Ohaudhuri: (Chittagong and Rajshahi Divisions: Non-Muhamadan Rural): Sir, this question was raised when we were considering the Police Bill in Simla during the last Simla session. I think it was understood—I do not recollect if the Chair gave a ruling on the point,—but we understood that the Members of a Joint Committee or of a Select Committee are quite free when the Bill comes up for consideration to move any amendment they like and vote any way they like and we did so. I think my Honourable friend, Mr. Samarth, is in error in this respect.

Mr. N. M. Joshi: May I say one word of explanation? I had learnt one lesson in my childhood and it was this, that it was never too late to learn. There was a time when I thought this clause was innocuous or not harmful as it was. During the last few days, having seen through the psychology of the employer, I have changed my mind.

Mr. President: Amendment moved:

“To omit sub-clause (4) [re-numbered (5)] of clause 11.”

The question is that that amendment be made.

The motion was negatived.

Clause 11, as amended, and clauses 12 to 21 were added to the Bill.

Mr. K. B. L. Agnihotri: (Central Provinces Hindi Divisions: Non-Muhamadan): My amendment is:

“In clause 22 omit sub-clause (1). Under the clause we provide:

‘No application for the settlement of any matter by a Commissioner shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.’”

It is well and good to prevent the workman from going in for litigation or approaching the Commissioner unless he has a real dispute with the employer and which has been left unsettled, but it is otherwise to force that man to enter into an agreement with the employer. So far as there is a recommendation for agreement, I am at one with the Government but so far as there is a compulsion for agreement, there I beg to differ from the Government. Sub-clause (1) of clause 22 practically compels the workman to go to the employer for an agreement and if he fails to get

an agreement on certain points, to go to the Commissioner, which I consider to be very objectionable, because under this sub-clause the workman will be under the belief, that he shall have to agree to the terms that may be made by his employer and if he did not do so, probably he would be ruined by his employer in the future. And he shall be in a way compelled to agree to those terms which he thinks to be undesirable. With that view, Sir, I move that this clause be deleted, which will not make it compulsory to have an agreement with the employer. The workman could approach the Commissioner directly where the need exists and without approaching the employer.

Mr. A. G. Clow: Sir, I do not think that there is any compulsion to reach an agreement. All that the clause provides is that the workman and the employer should first attempt to reach an agreement. We do not want the Commissioner to be flooded with a number of applications, when the workman has not even approached his employer and asked for compensation. If the Honourable Member will read sub-clause (d) he will see that there should accompany the application a concise statement of the matters on which agreement has and on which agreement has not been come to. There is no question of the workman having to accept anything the employer offers. I oppose the amendment.

Mr. President: The question is that in clause 22, sub-clause (1) be omitted.

The motion was negatived.

Mr. K. B. L. Agnihotri: Parts (b), (c) and (d) of my amendment drop out as they are only consequential. I beg to move part (e) of my amendment, namely:

“In sub-clause (3), after the word ‘Commissioner’ add the words ‘or Secretary of any workman’s union or association recognized by the employer or Commissioner and of which the applicant is or the deceased was a member.’”

Under this sub-clause we provide that if the applicant workman is an illiterate person or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner. It will be very hard for the workman to approach the Commissioner for this and he should be allowed to give the information necessary under this clause and the information be allowed to be reduced into writing by any person he chooses; but if it is desired to stop him from asking advice from strangers, he may at least be permitted to get the assistance from the Secretary of the Union of which he happens to be a member. That will safeguard the interests of the worker also and give the information that may be required by the Commissioner. Therefore, Sir, I put before the House that there should not be unnecessary obstruction in his getting assistance from the Union and he may be allowed to have the help of the Union where the Union exists and where the employer or the Commissioner has recognized the Union.

Mr. A. G. Clow: I think the Honourable Member has misunderstood the intention of this clause. There is nothing to prevent the Secretary of any workman’s union or association from preparing the application. There is nothing to prevent the Honourable Member himself, who shows a keen solicitude for workmen, preparing these applications and I hope he

[Mr. A. G. Clow.]

will. All we say is that if the workman is unable to furnish his application and has no Secretary of the Union and no Honourable Member to come to his aid, then he has a right to ask the Commissioner to prepare his application for him.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Clause 22 was added to the Bill.

Clauses 23, 24 and 25 were added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I move:

"That in clause 26 for the words 'in the discretion of' the words 'taxed according to Rules provided in the Civil Procedure Code, 1908, by' be substituted."

This is a new Act and if we leave the discretion to Local Governments, the practice may vary in different provinces and we do not know what the effect will be. I think it will be well to give them some basis. That is why we have it in section 22, that such application will be accompanied by any such fee; and also in section 23 we provide that the Commissioner will follow the Civil Procedure Code in order to take evidence on oath, and in section 24 also we say that a legal practitioner or other person may be authorised to appear. We have almost followed the Civil Procedure Code, and we have already fixed data, and the rules of the Civil Procedure Code provide that the presiding officer of the Court can exercise his discretion, so that the costs should be taxed according to Rules provided in the Civil Procedure Code.

Rao Bahadur T. Rangachariar: What are those rules?

(An Honourable Member: "There are no rules; different Courts have different rules.")

Mr. B. N. Misra: Rules according to which taxation takes place they are embodied. However, my point is that the basis should be to tax according to the rules which obtain under the Civil Procedure Code, instead of a simple discretion being given; I wish that it should be taxed according to rules provided in the Civil Procedure Code.

The motion was negatived.

Clauses 26, 27, 28 and 29 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move:

"That in sub-clause (1) (a), clause 30, after the word 'sum' wherever it occurs, insert the words 'or periodical payment'."

Sir, in clause 30 we allow an injured worker and the employer the right of appeal in certain cases. This right of appeal has been confined only to such cases which involve an allowance or disallowance of a lump sum only, and does not provide for cases where questions of half-monthly or periodical payments are involved. By the acceptance of the amendment which I beg to move we shall be extending this right of appeal even

to the periodical payments which the workman may or may not be entitled to. With these words, Sir, I beg to move my amendment.

Mr. President: Amendment moved:

"In clause 30, sub-clause (1) (a) after the word 'sum' wherever it occurs insert the words 'or periodical payment'."

The Honourable Mr. C. A. Innes: Sir, I do not think that it is necessary to accept this amendment. We wish to limit appeals as far as possible under this Bill, and we wish to limit them to the really important issues. Half-monthly payments cannot in any case exceed Rs. 15. Ordinarily they will not last very long—they are merely given in cases of temporary disability, and I think they can quite well be left to the Commissioner; there is no need for any appeal to the High Court.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, the next amendment which I beg to move is that in sub-clause 1, (a) after the words 'a claim' insert the words 'in full or in part.' Sir, we give a right of appeal to a workman only in case of disallowance of a claim in full. If the amendment which I move be accepted, I think we shall make the meaning of this clause rather very clear; it will mean, even if the claim is disallowed in part, the workman will have the right of appeal. With these words, I move my amendment.

Mr. President: Further amendment moved:

"That in sub-clause (1) (a), after the words 'a claim' insert the words 'in full or in part'."

The Honourable Mr. C. A. Innes: Sir, I have no objection to this amendment. It is governed by the Rs. 300 limit in the proviso. We may have to make a slight alteration in drafting in the Council of State, but no doubt this House will be ready to agree to that.

Mr. President: Amendment moved:

"In sub-clause (1) (a), after the words 'a claim' insert the words 'in full or in part'."

The question is that that amendment be made.

The motion was adopted.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, in view of the policy of this Bill which is of a special character, I do not propose to move my amendment, viz.:

"In the first proviso to clause 30 (1) for the words 'three hundred' substitute the words 'one thousand'."

Sir, I am given to understand that, if I make verbal changes, Government is prepared to accept my amendments. Will you kindly give me, Sir, permission to make verbal amendments? The verbal amendments are, that instead of putting a new clause, I am putting my amendment as sub-clause (3), and instead of saying "section 5," I shall

[Dr. Nand Lal.]

say "the provisions of section 5." Then, I anticipate your permission, Sir, and move my amendment which will run as follows:

"After clause 30 insert the following as sub-clause (3), namely:

'(3) The provisions of section 5 of the Indian Limitation Act shall be applicable to appeals under this Act.'

Since the Government is prepared to accept my amendment, I think I need not detain the House. The amendment commends itself.

The amendment was adopted.

Clause 30, as amended, was added to the Bill.

Clause 31 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 32:

'In sub-clause (1) after the word 'may' insert the words 'with the approval of the Legislature'."

Clause 32 authorizes the Governor General in Council to make rules that may be necessary on matters mentioned in the various sub-clauses of this section. My object is to have those rules before the Legislature for their approval. No doubt, we have to leave many points to the Governor General in Council but it is desirable and necessary that these rules be approved by us. The other day when I moved a similar amendment, the Honourable Mr. Innes pointed out certain anomalies; he pointed out that there were many matters in the Mining or Steam Boilers Regulations that might require expert knowledge which might not be possessed by some Honourable Members of the House and that it would be simply ridiculous to put such proposals before the House. In this case, Sir, no such difficulty will arise. Even if difficulties were to arise, the House is expected to be guided by the opinion and the advice of the Government. I therefore beg to move that whatever rules be made under this Act or under clause 32, they may be placed for approval before the Legislature. It may be said, Sir, that the amendment which I am moving is incongruous with other Acts, because they do not provide such a clause. But I wish to remind the House and take them back to the Lac Cess Act passed the year before last in the Simla Session, which has made a similar provision. With these words, I beg to move the amendment which stands in my name.

The Honourable Mr. O. A. Innes: Sir, Mr. Agnihotri has mentioned one of the objections I took to a similar proposal made by him not in connection with the Mines Bill but the Steam Boilers Bill. But he has omitted to refer to another objection which I took on that occasion. I think it wrong, Sir, that rules of this kind should require the approval of the Legislature before they are made effective.

I think it wrong, as I said on that occasion, that the time of this House should be taken up with details like rules of this kind. Everybody knows—he has only got to look at the list of business—that we have not time as it is to get through all the business before us. Everybody knows that owing to the pressure of Government business, important non-official Resolutions and important non-official Bills never come before this House; and I deprecate our wasting the time of the House with rules of this kind. They are essentially the sort of rules which ought to be left

to the Executive Government, and we provide the safeguard that rules of this kind must be published before they are actually made. That is the proper safeguard. Sir, I oppose the amendment.

The motion was negatived.

Clause 32 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 33, after the words 'subject to' insert the words 'approval of the Local Legislative Council and'."

Sir, this amendment is similar to the one which I just moved. I have simply to answer one of the objections which the Honourable Mr. Innes has put forward, namely, that much time of the Legislature will be wasted if these rules are put up for approval. May I remind the Honourable Mr. Innes that even the rules that are framed about emigration and other laws have to be put before us for approval; and similarly there will be no harm if these rules are also put up. It happens that Bills come before us which though they have been considered by Select Committees and thoroughly considered by the Government still require some modifications which are made when they come to the House, and may sometimes be necessary that the people acquainted with local conditions may be better able to suggest certain changes or alterations in the rules when put before the House. Therefore, Sir, I beg to move this amendment.

The motion was negatived.

Clause 33 was added to the Bill.

Clause 34 was added to the Bill.

Sir Montagu Webb (Bombay: European): Sir, I beg to move that:

"In column 2 of Schedule I:

substitute the figures 10 for the figures 25; substitute the figures 10 for the figures 20; substitute the figure 5 for the figures 10 wherever they occur; and substitute the figures 2½ for the figure 5."

The reason for this amendment is that I feel, and those for whom I speak feel, that the compensation provided in this Schedule for minor accidents is on too high a scale. I am not quite certain, Sir, upon what principle exactly the scale of percentages in Schedule I has been based; but surely there are very few occupations in which the workman would lose one-quarter of his earning capacity by being deprived of a thumb.

Rao Bahadur T. Rangachariar: A weaver.

Sir Montagu Webb: I notice that the Karachi Chamber of Commerce have worked out some of these compensations in the Schedule as they would appear expressed in goats, sheep, cows and so forth; and taking that example, I find that a workman drawing, say, wages of about Rs. 60 or Rs. 70 a month, by the loss of a thumb would receive compensation equivalent in value to 10 cows, or 150 sheep or 200 goats! For the loss of a thumb, it seems to me, Sir, that such a scale of compensation would be too high. The same remarks apply to the scale of compensation for the loss of fingers and toes, etc. For that reason, Sir, I beg to move the amendment which stands in my name.

The Honourable Mr. O. A. Innes: Sir, I can answer the Honourable Sir Montagu Webb's question at once. These scales were worked out after taking the best advice we could get in Simla and Delhi and after the most

[Mr. C. A. Innes.]

careful study of the Schedules in force in the different countries. I should like also to point out to the House that throughout this debate there has been a sort of general understanding that we should leave the scales of compensation as they were left by the Joint Committee, and I think that we ought to carry that understanding right through to the end. In that view, Sir, I hope that the House will not accept this amendment.

The amendment was negatived.

Schedule I was added to the Bill.

Sir Montagu Webb: Sir, I have here a letter from Mr. Darcy Lindsay authorising me to move the amendments standing in his name. I beg to move, therefore, that:

"In Schedule II the following be substituted for sub-clause (vi) (a):

'(a) A building which is designed to be, is, or has been more than one storey in height above ground level, or'."

The object of this amendment, Sir, is only to define more clearly the conditions set forth in Schedule II and to avoid misunderstanding. As it is, the Schedule at present reads: "a building which at the time when the accident on account of which compensation is claimed takes place comprises more than one storey wholly or partly above ground, or." The presence possibly of a single brick might be the deciding factor as to whether a building at the time of an accident was of more than one storey. It appears to me that it would avoid misunderstanding and lessen the possibilities of disputes if the definition were made a little more complete. Therefore, Sir, I beg to substitute the words which I have read out—"a building which is designed to be, is, or has been more than one storey in height above ground level, or'."

The Honourable Mr. C. A. Innes: Sir, I am advised that the amendment moved by the Honourable Member brings out more clearly our original intention than the existing clause. That being so, Sir, we are quite prepared to accept the amendment.

The amendment was adopted.

Sir Montagu Webb: I beg to move, Sir:

"That in Schedule II the following be substituted for sub-clause (vi) (b):

'(b) A building which is used, has been used, or is designed to be used, for industrial or commercial purposes and is, or is designed to be, not less than twenty feet in height measured from ground level to the apex of the roof, or'."

The reasons for this amendment are exactly the same as those which I just put forward a minute ago; they are to make a more exact definition so as to avoid disputes. The amendment speaks for itself and I hope, Sir, that Government will be able to accept it.

The Honourable Mr. C. A. Innes: Government, Sir, are quite prepared to accept this amendment for the reasons I have already given.

The amendment was adopted.

Schedule II, as amended, was added to the Bill.

Schedule III was added to the Bill.

Schedule IV was added to the Bill.

Mr. President: The question is that this be the title of the Bill. The motion was adopted.

Mr. President: The question is that this be the Preamble of the Bill. The motion was adopted.

The Honourable Mr. C. A. Innes: May I point out, Sir, that clause I has not yet been passed which was postponed?

Mr. President: Does it require any amendment?

The Honourable Mr. C. A. Innes: No, Sir, it does not require any amendment, but it has got to be formally passed.

Clause I was added to the Bill.

The Honourable Mr. C. A. Innes: Sir, I beg to move the next motion which stands in my name, and before I do so, I hope that the House will permit me to say just a very few words. I wish, in the first place, to congratulate the House on passing a very difficult piece of legislation, and I wish to thank them also for the great consideration they have shown in dealing with a very intricate and controversial Bill. Government have made every effort to lay before the House a measure carefully thought out to meet Indian conditions. I am sure that I will have my Honourable colleague Mr. Chatterjee with me when I say that if Government have achieved any success in this direction, they owe it very largely to the labours of the gentleman on my right, Mr. Clay. (Applause.) But, Sir, whatever efforts we have made, I am quite free to admit that in almost every clause and in almost every line of this Bill, there is room for a fair difference of opinion and I think, if I may be permitted to say so, Sir, the House has shown the very greatest restraint in dealing with these controversial matters. I think that the House arrived at the conclusion that in dealing with a controversial matter of this kind, the wisest course was to go by the understanding, the implied understanding, which had been arrived at and which had been enshrined in the Joint Committee's Report, and the fact that the House did arrive at this wise decision has enabled us, I think, to get through in a reasonable time this very difficult Bill. I think, Sir, in this Bill we have a very good augury for the future. England has arrived at her present stage of labour legislation by a process of painful evolution, and I am afraid that in that process a legacy of class bitterness has been left. I hope, Sir, that in India we shall avoid that class bitterness, and if we do avoid it, it will be very largely due to the spirit of mutual good-will and toleration which employers and the labour people have shown in regard to this Bill. I have seen representatives of the employers in the persons of the Honourable Sir Alexander Murray and Mr. Saklatwalla and the representatives of labour in the persons of my Honourable friend, Mr. Joshi and Mr. Roy Chaudhury of Bengal. I have seen them day after day sitting across the table, thrashing out together the very difficult questions raised in this Bill, and I have admired very greatly the good-will, the tolerance and the reasonable spirit of give-and-take in which they approached the very intricate problems, and as long as we have that spirit of give-and-take and mutual good-will, I have no fears myself as to the way in which India will deal with her labour problems. I move, Sir:

"That the Bill, as amended, be passed."

Mr. President: The question is:

"That the Bill to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, and as further amended by this House, be passed."

Rao Bahadur T. Rangachariar: Sir, when I give my assent to this motion, I am not without apprehensions as to the effect which this Bill may have on the growth of indigenous industries in this country. Sir, England took more than a century to enact her Workmen's Compensation Act. It was only in the year 1906 that she embarked upon this piece of legislation after she had had a most successful industrial career in the world. India has yet to begin her industrial career, and before we are yet on our feet, these fetters are put upon the growth of industries. But I welcome the measure in the hope that it will be liberally administered. The Government have always got a very serious responsibility indeed in administering this measure which will become law. This measure proposes the appointment of a Commissioner quite outside the ordinary Civil Court. I hope every effort will be made by every Local Government in the selection and choice of the Commissioner. It is no use appointing merely executive officers to discharge the duties which are thrown upon the Commissioner by this Bill. He must be a highly trained judicial officer who has to be in charge as Commissioner to decide the very complicated questions which will arise in the construction of this Act. There is a very great danger in appointing a Commissioner because, having only to work compensation cases, he is likely to get into a groove from which it will be very difficult for him to extricate himself. So it would have been perhaps a better provision to allow these questions to go before the ordinary Civil Courts where sub-judges and district judges would have their ordinary suits to try, where there is less chance or risk of their becoming confirmed specialists with fixed ideas. We have had that experience, Sir, in the case of income-tax officers who have been appointed to settle legal questions. We have had that experience in the Estate Land Act cases in Madras, where revenue officers have been appointed to decide civil disputes. I hope that will not be the result in this case. I hope the officer who is chosen for this responsible position will be a man of ripe judicial experience, although he may cost the country somewhat higher. Sir, in this country labour is quite disorganized. It is not organized at all. Unlike the labourers in England and elsewhere, these people cannot afford the assistance of either skilled lawyers or skilled experts to assist them in the conduct of cases before the Commissioner, whereas before the Commissioner the employer is sure to have the assistance of able counsel and able medical men—while the poor servant will not be in a position to afford the expense. Therefore, we must take care that what we give with one hand is not taken away with the other. So, this measure will have to be very liberally and carefully administered. And there is a chance of this measure increasing the cost of articles consumed by the consumer. Insurance Companies are sure to be started and high premia are sure to be demanded. It is not after all the pockets of the employer that the money required will come out of, but the pockets of the consumer. Here is a great chance for people in this country to undertake ventures in the shape of Insurance Companies. I know, Sir, many a foreign Company have their eye on this country now. They are closely watching the progress of this legislation in this Chamber and in another place. Directly this becomes law I am sure enterprising foreign Companies will plant their Companies and their Agents here. I hope my

countrymen in this Chamber—especially the magnates from the Bombay side—in addition to running mills will also encourage the growth of indigenous Insurance Companies to take advantage of this new Act, so that we may have Indian Companies taking advantage of Indian conditions and adding to the wealth of the country in this way.

Sir, there is one clause which we have passed to-day, to which I ask the serious attention of the Government; that is, sub-clause (3) to section 11. Sir, we have passed it no doubt but I hope in another place it will be set right. We have passed a clause saying that, if a man goes away from the place and if he does not return for medical examination, then the right of compensation is to be suspended. Sir, what is to happen if that man dies and is unable to return? He goes away to his place and he dies on the spot and he does not return. The compensation, according to the clause as it stands, will go. I hope that will be taken note of in another place and the necessary amendment made.

Sir, I support the motion.

Mr. Jamnadas Dwarkadas: May I be permitted, Sir, to say a few words in supporting the motion before us that the Bill be passed? I may say at once, Sir, that I do not apprehend that the passage of this Bill will in any way hamper the growth of industries in this country. Mr. Rangachariar has just told us that, after years of industrial development in other places, measures of this character have been adopted. If other countries have made the mistake of not starting in the right direction and allowing the evils that grow as a necessary adjunct to industrial development, I am sure we, at any rate, will not repeat the mistakes that they have made, especially when we consider the result of the mistake that have been made by other nations. In other countries we find as a result of the mistakes made by them that hatred, suspicion and distrust have come in where mutual understanding and good will ought to have been the rule. In this country we want to avoid hatred. In this country we want to avoid mutual distrust. In this country we want to avoid mutual suspicion. The best way to do it is to start with these precautions and then take up wholeheartedly the industrial development of this country, which seems to be in sight at a not very distant date, and we shall soon find that we shall be a prosperous India, rich, industrially developed, and without the feelings of hatred, mutual suspicion and distrust that are unfortunately in existence in other parts of the world. It is for us to avoid the mistakes that have made possible the existence of all those evil conditions in other countries, and if we begin in the right direction, as I am sure that this Legislature is beginning, we shall have achieved a good deal not only as a service to our own countrymen but as an example to other nations that will in future take upon themselves the task of industrial development. I may also, Sir, with your permission, add a word of congratulation to the Government of India for undertaking legislation of this kind. It has been rightly pointed out by a Labour Leader in Bombay, who has not always been in sympathy with Government actions, that so far as labour legislation in this country is concerned, since the inception of the Reforms the Government have gone beyond even his wildest dreams. Perhaps that is an exaggeration.

(At this stage Mr. President vacated and Sir Campbell Rhodes took the Chair.)

But I feel that a beginning in the right direction has been made. It is to the advantage of the country; it is to the advantage of the world, because—

[Mr. Jamnadas Dwarkadas.]

it will be held as an example to other nations which are going to rise industrially. Sir, with these words, I heartily support the motion before us.

Mr. N. M. Joshi: May I be permitted to say one word in support of this motion? Sir, whatever may be the merits of the clauses and the proposals in this Bill, we owe a great debt of gratitude to the Honourable Mr. Innes, to my Honourable friend, Mr. Clow, and to my Honourable friend, Mr. Chatterjee, for bringing it forward and securing its passage through the Assembly. Sir, this Bill is the beginning of what is to follow in future and I welcome it in that light. The Bill no doubt has got its defects. I have pointed them out during the discussion. But, Sir, I would like to refer only to one of them. I felt greatly pained when I found yesterday the House refusing to help the widow and the children of a workman when he dies on account of an accident although the accident might have been caused by his wilful misconduct. That vote has unfortunately placed a very undesirable stamp upon the whole House. It has shown to the working classes that on certain occasions they may not get justice—not only that they may not get justice but that they may not even get compassion from this House. Sir, that is the effect of that vote and it means nothing else. (*Honourable Members:* “No, no.”) I am glad to hear it does not mean that. I have pointed out one defect of the Bill. I should also like to point out the strong point of the Bill. The strong point of the Bill is exactly that which my Honourable friend, Mr. Rangachariar, said is the weakest point. The strong point is the procedure by which the workman is to get compensation. It is wrong in the present condition of the working classes in India to send a workman to a Court or into the hands of a lawyer. I am not a friend of the lawyer, and I therefore feel that that is the strongest point of this Bill.

There is only one word more. Mr. Rangachariar mentioned in his speech that our industries are only just beginning to be started and established and expressed his apprehension that a legislation of this kind may not help them. May I tell him to learn, as Mr. Jamnadas Dwarkadas told him, by the experience of the western world. If you want western industries, if you want western industrialism, and if you do not adopt the western methods of social insurance and other ameliorative measures, certainly you will not only have the bitterness that you see in the west, but you will see here much worse things than that. Therefore, if the country wants industrialism, I think it is better in the interests of the country that all measures which are necessary to avoid the evils of industrialism should be taken. Nobody will express the opinion here that modern industrialism has no evils, and if these evils are there, we must take measures to prevent those evils before we undertake to develop industries. If you do not do that, then you will suffer not only what the west has suffered but you will suffer more. With these words I again congratulate the Honourable Member for having got this Bill passed in this Assembly.

Dr. Nand Lal: This a very useful piece of legislation and my belief is that it will prove a very effective step towards the industrial development of this country. I feel bound to offer a suggestion to the Government of India, which is this, that they will be pleased to impress on the minds of the Local Governments that, at the time of appointing Commissioners, they will kindly see that either very able and trained lawyers are appointed or judicial officers of great experience are put in charge of this important

work. At the same time, if the Commissioners will be in need of expert assistance, the Local Government should be careful to appoint experts of great capabilities and not pay attention to creed, caste or colour. With these few words I commend the motion which has been very ably moved and I congratulate the Government on this very useful measure.

The motion that the Bill, as amended, be passed was adopted.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock. Mr. President was in the Chair.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Clause 62 was added to the Bill.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Sir, I move:

“That in clause 63, in clause (f) of the proposed section 239, for the words ‘the possession of which has been transferred by one offence’ the words ‘the possession of which has been transferred in the same transaction’ be substituted.”

Honourable Members will find this is an amendment to section 239 of the Code of Criminal Procedure and the clause is “persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property, the possession of which has been transferred by one offence.” Now, section 411, I may inform the Honourable Members of this House deals with the offence of receiving stolen property and section 414 with the offence of concealing stolen property. Now, in the first place I want the Government to explain what they mean by the clause ‘the possession of which has been transferred by one offence.’ Will they illustrate to me how the possession of property of one offence can be transferred so as to constitute offences under sections 411 and 414 of the Indian Penal Code. It seems to me what is intended is that if there is a theft, say, of half a dozen articles one man is made the receiver of property: another conceals that property: the third one assists in the concealment of the property. These are all offences committed in the same transaction and consequently persons who are privy to an act which constitutes a series of acts in the same transaction may be dealt with together. That seems to be therefore the intention so far as we on this side of the House understand it. If the Government justifies the retention of the clause which they have inserted in this sub-clause (f), I shall be pleased to withdraw my amendment. Otherwise I suggest to the Government that the adoption of the amendment made by me is an improvement on the language of the official draftsman.

Mr. President: Amendment moved:

“In clause 63, in clause (f) of the proposed section 239, for the words ‘the possession of which has been transferred by one offence’ substitute the words ‘the possession of which has been transferred in the same transaction’.”

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, my Honourable and learned friend asks that I should endeavour to explain what is the meaning to be attached to the words 'the possession of which has been transferred by one offence' in clause (f) of the proposed section 239. I would in the first place direct his attention to the fact that exactly the same words are included in clause (e), and he has not suggested any change of those words. Now, Sir, the Honourable Member has suggested that the official draftsman should explain what these words mean. This, however, Sir, is not a Government clause at all, it is a proposal of the Lowndes' Committee, introduced by them, and that Committee was not a Government Committee at all. They said, with reference to this clause, 'we accept this clause with certain verbal modifications and have added a new sub-section dealing with offences under sections 411 and 414 of the Indian Penal Code.' The clause is exactly as drafted by the Lowndes' Committee. My Honourable friend proposes to substitute for those words the words 'the possession of which has been transferred in the same transaction.' I would suggest, Sir, in the interests of the accused, that it is distinctly dangerous to make that change. But perhaps it will be sufficient if I merely explain what the meaning of the words is. Take a concrete example. A is a cattle-thief; two cattle are stolen; B is the dishonest receiver to whom A has passed on one of the cattle; C, the dishonest butcher who knows the cattle to have been stolen and assists in their concealment by slaughtering the other. Well, Sir, if A is present, A, B and C can all be tried together under clause (e). If A has disappeared, then this is not possible, and the provisions of clause (f) are required. The possession of these cattle has been transferred in one offence, the original offence of theft. One person has later committed an offence under section 411, and another person has committed an offence under section 414. The two cattle were stolen at the same time, that is one offence. I do not know whether it is necessary for me to go on and explain further as to how the proposed amendment is dangerous, but there is no doubt about it that the amendment proposed by my Honourable and learned friend has a much wider application than the words in the Bill, and I think the House will agree that it is desirable not to make the change.

Dr. H. S. Gour: Sir, in view of the explanation given by the Honourable Mr. Tonkinson, I do not wish to press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Clauses 63, 64 and 65 were added to the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadian): Sir, I beg to move:

"In clause 66, insert the following at the beginning:

'In sub-section (1) of section 245 of the said Code after the word 'accused' the words 'to explain points or circumstances appearing in evidence against him' shall be inserted'."

Section 245 provides:

"If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal."

I wish to insert the words "to explain points or circumstances appearing in evidence against him" after the word "accused." The clause,

as amended, will require the Magistrate to explain the points or circumstances appearing in evidence against the accused and not ask him general questions about other details not against him. Sir, similar provision has been made under section 342 in connection with warrant cases and I think that procedure is more desirable than the one which we have already provided in section 245. Section 245 should also be altered and brought in conformity with the provisions of section 342. With these words, Sir, I move my amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I think this amendment has been moved under a misapprehension. There are several sections of the Code which provide for the examination of the accused at a particular stage of the inquiry or trial. This section 245 is only one of them. In all these places where at a particular stage of the inquiry or trial an examination of the accused has to be made, that examination has to be made in accordance with the provisions of section 342. Section 342 is the provision which guides the Magistrate in all these cases. It is quite unnecessary in section 245 to lay down the details of the examination, because section 342 governs section 245. It is there already and it is quite unnecessary to put it into the Code a second time.

Dr. H. S. Gour: May I just point out, Sir, in addition to what has fallen from the Honourable Sir Henry Moncrieff Smith, that my Honourable friend is wrong in saying that section 342 only relates to warrant cases. If he will refer to Chapter XXIV, he will find that that Chapter deals with general provisions as to inquiries or trials, and consequently it entirely covers the case which my friend is now seeking to provide for.

Mr. President: Amendment moved:

"In clause 66, insert the following at the beginning:

'In sub-section (1) of section 245 of the said Code, after the word 'accused' the words 'to explain points or circumstances appearing in evidence against him' shall be inserted'."

The question is that that amendment be made.

The motion was negatived.

Clause 66 was added to the Bill.

Dr. H. S. Gour: Sir, I beg to move:

"In clause 67 (i) in proposed sub-section (1) for the words 'upon information' substitute the words 'in consequence of information'."

This is merely a verbal amendment and I invite the attention of the Treasury Benches to accept it, if they consider it an improvement.

Mr. H. Tonkinson: Sir, as my Honourable friend has not endeavoured to justify the amendment which he has proposed, I would merely explain the reason why these words as they stand in the Bill are more appropriate than the words proposed by my Honourable friend. Cases are instituted by taking cognizance. Section 190 is the section dealing with taking cognizance of an offence and we want to use the same words as in section 190 in section 250.

Dr. H. S. Gour: I withdraw the amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I move:

"In clause 67, sub-clause (i) in proposed new sub-section (1) of section 250, for the words 'by his order of discharge or acquittal' substitute the words 'at the time of discharging or acquitting the accused'."

That clause runs as follows:

"(1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, call upon the person upon whose complaint or information the accusation was made forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or may, if such person is not present, issue a summons to him to appear and show cause as aforesaid."

Well, Sir, the complainant can only be called upon to show cause why he should not be made to pay compensation, after the accused has been formally discharged or acquitted; and the accused person can only be discharged or acquitted by means of a judgment which is written and signed. The Madras High Court has held that oral judgments are not valid under the Criminal Procedure Code, and so when an accused person is discharged or acquitted, it means that the judgment has been written and signed by the Magistrate. It is only after that that the Magistrate can call upon the complainant to show cause why he should not be made to pay compensation to the accused. So, the order which the Magistrate will pass ordering the payment of compensation can only be affixed or appended to the judgment as a postscript, so to speak. Therefore, it is impracticable for the Magistrate to order compensation or to call upon complainant to show cause, by his order of discharge or acquittal. He can only do it after he has acquitted or discharged the accused. That is the reason why I want to insert the words "at the time of discharging or acquitting the accused."

Sir Henry Moncrieff Smith: Sir, there is something perhaps a little unsatisfactory about this sub-section (1) of section 250, though not for the reason, I suggest, that my Honourable friend Mr. Pantulu has given. I do not think that any real difficulty arises from the fact that the Magistrate is required to do this by his order of discharge or acquittal. But if Honourable Members will look at the clause closely they will find that in the case where the complainant is present the clause requires the Magistrate to call upon him to show cause by his order of discharge or acquittal. When the complainant is not present he does it outside his order of discharge or acquittal. He issues a summons. I think that is distinctly unsatisfactory. I should like to meet my Honourable friend in one way, and I have an amendment here; it does not embody his words "at the time of" because we think that those words are apt to be vague and to lead to difficulties, lead perhaps to additional grounds of appeal and revision. What is the time of discharge or acquittal? We are generally told it takes a clever man to do two things at the same time. If he is delivering his judgment, he cannot at the same time write an order calling upon a man to show cause. Therefore we cannot have the words "at the time." I tried hard to think of a phrase which is satisfactory and have come to the conclusion that it is not possible. We must stick to the order, and I

would suggest that whether the complainant is present or not, the Magistrate must in both cases call upon the accused by his order—where he is present, call upon him directly, or where he is not present by his order direct the summons to be issued. The amendment will then run, if the House will permit me to move it:

"For the words beginning with 'call upon the person' and ending with 'or may,' the following words be substituted:

"if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any such accused when there are more than one, or,"

and then it will go on "if such person is not present, issue a summons to him to appear and show cause as aforesaid." It means another amendment, Sir, a second amendment—for the word "issue" insert the words "direct the issue of."

Mr. J. Ramayya Pantulu: I withdraw my amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

The amendment (proposed by Sir Henry Moncrieff Smith) was adopted.

The second amendment—to omit the word "issue" in order to substitute the words "direct the issue of" in proposed sub-section (1) of clause 67 was adopted.

Mr. K. B. L. Agnihotri: Sir, I move:

"That in clause 67 in proposed sub-section (2) in sub-clause (i) after the words 'such amount' omit all words commencing from 'not exceeding' to the words 'third class'."

Sir, in section 250 of the present Bill we provide that in false and frivolous or vexatious accusations a compensation up to Rs. 100 may be awarded; and in the case of a Magistrate of the second or third class the amount has been limited to Rs. 50. My amendment will make it uniform for all classes of Magistrates, whether first, second or third. I think, Sir, the amount of fifty rupees which was provided in the old Code was a proper amount because if the accused thought that the amount awarded to him was not sufficient he could go to a Civil Court and have compensation or damages from that Court as well. One hundred rupees for each of the accused will be rather a high amount to be awarded in such cases of compensation. Therefore, Sir, I propose that the amount of fifty rupees which was provided in the old Code should be stuck to and should not be changed in this new Bill. With these words, Sir, I propose my amendment.

Mr. H. Tonkinson: Sir, as has been mentioned by my Honourable friend the Bill proposes to increase the amount which may be awarded as compensation under this section from rupees fifty to rupees one hundred in cases dealt with by a first or second class Magistrate. In 1911 the Punjab Chief Court wrote that they would raise the penalty, which is entirely inadequate at present, to Rs. 150, and that, Sir, is the genesis of the present proposal. If Rs. 50 was inadequate in 1911, surely Rs. 100 is inadequate now. My Honourable friend says that it is possible to go and file a civil suit. That is true, Sir, but in this section we provide a summary proceeding with the object of stopping these vexatious and frivolous prosecutions, and I think, Sir, it is most desirable to increase the amount of compensation which may be awarded in the manner proposed in the Bill. I therefore, Sir, oppose the amendment.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move in the same sub-clause:

"That before the word 'third' insert the words 'second or'."

As the first amendment of mine has failed, I wish to provide by this amendment that the awarding of compensation to the extent of Rs. 100 should only be confined to 1st class Magistrates, and 2nd and 3rd class Magistrates could only award compensation to the extent of Rs. 50.

Mr. H. Tonkinson: Sir, the present provision in the Bill which restricts the power of Magistrates to award compensation exceeding Rs. 50 was introduced by the Joint Committee. They thought, Sir, that it was undesirable that a Magistrate who had only power to pass a sentence of fine up to Rs. 50 should have power to order compensation to an amount exceeding Rs. 50. This, Sir, does not apply to the case of a second class Magistrate who can award a sentence of fine up to Rs. 200.

Another point is, Sir, that these cases are very likely to be those in which a second class Magistrate exercises jurisdiction. In these circumstances, Sir, I oppose the amendment.

The motion was negatived.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, practically the first part of my amendment has already been disapproved by the House, which was also the amendment of my Honourable friend, Mr. Agnihotri, and so it remains for me only to move the second* part of my amendment which relates to (2A), the latter portion, that is, "shall suffer simple imprisonment for a period not exceeding thirty days". I propose that 30 days is too long a period. Possibly the offence for which the complaint might have been instituted may be of a very simple nature, and even if an accused was convicted for such offence, he might be sentenced to pay a fine. But when a complaint is presented and it is found to be vexatious and frivolous, to make the complainant in default of payment to pay a fine (which is now Rs. 100) to undergo a sentence of thirty days, will be very severe.

Sir, sometimes it happens that, after a complainant presents a complaint, the accused tries to win over the witnesses so that they may not prove the facts of the case. On account of the machinations of the accused, if the complaint is not proved, he may get Rs. 100. He may perhaps bribe the witnesses Rs. 5 or Rs. 10 each and spend Rs. 20 or Rs. 30 and get a compensation of Rs. 100. This would be very unjust. The Magistrate may hold in cases where the witnesses are won over by foul means the complaint to be false and frivolous. Sometimes it may be that the Magistrate may not be able to study the situation and there may not be many witnesses—there may be a single witness and that witness may be unwilling to appear. In such cases, it is a very hard case to impose a very heavy fine as well as to ask the complainant to undergo such a severe punishment, imprisonment for one month. I submit the result would be that probably many people won't go to court. Supposing a rich man, a big zamindar has given some blows or a slap or abused filthily one of his tenants, the tenant would be afraid to come to Court because the zamindar is an influential man who can win over the witnesses. This poor man will have no remedy, because the Court will again punish him. So the threat of these punishments will deter a man from going to Court. Under these

* "In proposed sub-section (2A) of clause 67 for the word 'thirty' substitute the word 'seven'."

circumstances, I respectfully submit that the House will accept my proposal that the punishment to be inflicted should not be so severe as one month in default of payment of Rs. 100.

The Honourable Sir Malcolm Hailey (Home Member): The existing law provides for Rs. 50 compensation and, in default of payment, 30 days imprisonment. The House has already agreed that the maximum of compensation should be raised to Rs. 100. It hardly seems consistent, therefore, to reduce the period of imprisonment to seven days. I cannot myself exactly follow out the arithmetical ratio which the Honourable Member has in his mind, but it seems to me of a peculiarly inverse nature. The arguments which he has used and the instances which he has quoted apply of course equally against the whole scheme for compensating the accused as the result of false, vexatious or frivolous complaints. I would remind him that all that is provided is a maximum. It by no means follows that, because the law provides a maximum, the Magistrate will invariably, as he seems to suggest, award to a man who brings a frivolous complaint the full imprisonment for 30 days.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, there is a great question of principle in support of the amendment moved by my Honourable friend, Mr. Misra. Sir, it is an uncivilised method of recovering compensation to put a man in prison. I wish he had moved for the total abolition of imprisonment in default of payment of such compensation. How is it a compensation to the accused person—compensation for costs incurred by him in regard to his defence? It is no compensation to put the complainant in jail. Sir, it seems to me ridiculous that the Legislature should provide any imprisonment in this way. By all means recover the amount by selling his movable or immovable property. But if the man is unable to pay, simply because he went to Court complaining of an offence committed against him and may be he is not sufficiently influential to prove it and the Court comes to the conclusion that the complaint is vexatious, you put him in jail! I quite admit that it would be right to compensate, by making payment to the accused money for costs incurred by him. But to go and put a man in jail because he is unable to pay seems to me to be barbarous. I, therefore, Sir, support the amendment.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the principle under which my friend, Mr. Rangachariar, supports this amendment is the principle probably which applies to every provision in our law in which non-payment of a fine, non-payment of a debt is followed under various circumstances by imprisonment. That is, when we attack the entire principle which pervades all branches of law, then I think the argument of my learned friend here would hold good. But why this sympathy for a man who has dragged another into a criminal Court and the Court, after proper inquiry, has found that the complaint was frivolous and vexatious? Why should we assume that the Court which has found that the complaint was frivolous and vexatious came to that conclusion because one man was rich and the other man was poor, one man was able to win over the witnesses and so on? All these considerations are entirely outside the position, the basis on which this compensation has been fixed. We must assume in arguing a question of law, a question of legislative measure, that the court which passed judgment passed it rightly. But if you give the go-by to the finding of a court and then say that the court may have been misled, and therefore the consequences of that judgment ought to be nullified by these provisions, I think that is not a

[Rao Bahadur C. S. Subrahmanayam.]

clean way of arguing a legislative measure. If the Court has gone wrong in its finding there are provisions for revision. There are provisions of law to guard against that. If the compensation is wrong, the man has the right to appeal against the award of compensation. This is a matter on which there need not have been any argument. Because the Bill says "fifty" you want to put in "thirty" or because the Bill says "forty" you want to put in an amendment saying "thirty". You must fix it at some amount. Then this alternative of imprisonment in default of payment exists for ordinary simple debts. If a man gets costs in a civil suit and the other man does not pay it, then he is liable to be imprisoned. Why this tenderness for a man who has brought a criminal case which a court has found to be vexatious and frivolous.

Dr. H. S. Gour: Sir, there has been considerable misapprehension on the part of my learned and legal friends in reading the very elementary provision which prefaces section 250. It is not in a case of frivolous or vexatious prosecution that the Magistrate is empowered to impose a fine by way of compensation. The case must be found to have been false, and either frivolous or vexatious. In the first place, therefore, it must be a false charge, added to which it must be either frivolous or vexatious. In other words, it must be a case not merely which is not proved but a case which has been proved to be a false case and super-added to which a frivolous and vexatious case. That was the premises upon which my learned friend Mr. Rangachariar built up his argument.

Rao Bahadur T. Rangachariar: No, that was not my argument.

Dr. H. S. Gour: He further said that it was an uncivilised and barbaric thing for a man to be imprisoned for not paying his debts. I am surprised at my friend supporting a theory that it is a barbarous and uncivilised thing for a man to be imprisoned for not paying his debts. Surely, Sir, this is much more than a debt. A man has launched a prosecution in court. Let us assume, as the section assumes, that it is found to be both false and frivolous or vexatious. What is the remedy which the aggrieved accused has against the complainant? It is not a debt as my Honourable friend, Mr. Subrahmanayam, assumed, it is in the nature of a fine for having made a false and frivolous case against the accused.

Rao Bahadur T. Rangachariar: It is compensation.

Dr. H. S. Gour: My friend on my left says "compensation".

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): It is a sanction.

Dr. H. S. Gour: If he has not got property, movable or immovable, from which this compensation is to be recovered, is he to go scot-free? If so, it is setting a premium upon all poor people.

Rao Bahadur T. Rangachariar: Upon paupers.

Dr. H. S. Gour: Paupers and vagabonds to institute false and frivolous prosecutions because forsooth they will have nothing to pay, nothing to lose, by implicating respectable people in cases under the Indian Penal Code. I cannot understand, Sir, what my learned friend meant by saying that the case may not be proved, witnesses may have been suborned, influence may have been brought to bear upon the case, and so the case may fail. But

my friend forgets that in all these cases, the Court will acquit the accused, because the case has not been proved. The Court will not pronounce it to be a false case and the Court will not pronounce it to be a frivolous or vexatious case. If it does, you have the right of appeal and revision. I therefore submit that upon every ground this amendment fails and ought not to receive the support of the House.

Dr. Nand Lal (West Punjab: Non-Muhammadan): I oppose this amendment. Take a hypothetical case. Two persons are enemies. One is a rich man and he employs an ordinary man to lodge a false complaint against his enemy who is a very respectable man. The complaint is altogether vexatious and false. It has been dismissed and it has been found by a competent Magistrate that it was frivolous and that it was vexatious. Look at the disgrace to which the accused has been put. He has been dragged to the Court for nothing. He had to spend money in engaging Counsel. He was summoned to the Court, and no wonder in some cases he may be sent to a lock-up. The competent Magistrate after having gone into the evidence, after having examined all the circumstances, comes to this conclusion that the complaint is altogether unfounded and the complainant has been called upon to pay compensation, Rs. 100 if the case is tried before a first class or a second class Magistrate and only Rs. 50 if the case is tried by a third class Magistrate. He fails to pay that. As a matter of fact, he defies the law and then the Code provides that if he does so, he may be imprisoned for a period not exceeding 30 days. It will depend upon the discretion of the Magistrate. He may award imprisonment for 7 days, or for 15 days but not more than 30 days. Then you will be pleased to see the character of the imprisonment. It is simple imprisonment and such a sort of compensation is reckoned to be fine and would be realised as such. I think the amendment has got no justification whatsoever and it should be rejected. On no principle can it be supported.

The motion was negatived.

Mr. K. B. L. Agnihotri: I beg to move:

"In clause 67 in sub-clause (ii) after the word 'substituted' insert the following: 'and the words 'of the second or third class' shall be omitted'."

Sir, it has been said from the Government Benches that second and third class Magistrates have been authorised to award compensation only to the extent of Rs. 50 as otherwise they would have to award compensation beyond their powers, because a third class Magistrate cannot punish an offender and inflict a fine on him of any amount over Rs. 50. Therefore to provide against this anomaly they have provided for the award of compensation by a third class Magistrate to the extent of Rs. 50 only. In the old Code, the amount of compensation that a first class Magistrate could award was fixed at Rs. 50. Now, if a first class Magistrate had inflicted a fine of Rs. 50 on an accused, the accused had no right of appeal against that conviction or order. On that principle, if under the old Code no provision for appeal against an order of the first class Magistrate was made, that was quite sound in principle. But, here, we authorise the first class Magistrate to award compensation to the extent of Rs. 100. If the same Magistrate had awarded a punishment of fine extending to Rs. 100, but not below fifty, the accused could have had a right of appeal against that fine. In this case why should not the complainant have a similar right of appeal against the order of the first class Magistrate? It looks anomalous. If we adopt the principle in one case, why should we not adopt it in the other case?

[Mr. K. B. L. Agnihotri.]

Therefore, I beg to move that even the compensation awarded by first class Magistrates should be subject to appeal as that awarded by second or third class Magistrates. With these words I commend my amendment for the consideration of the House.

Mr. H. Tonkinson: Sir, at the present time there is no appeal from an order of compensation passed by a Magistrate of the first class. I think the substance of the amendment moved by my Honourable friend is that if a Magistrate of the first class passes a fine exceeding Rs. 50 an appeal would lie, why then should an appeal not lie if he makes an order for compensation exceeding Rs. 50? If it would meet my Honourable friends I am quite prepared to agree to an amendment of the Bill on those lines. But I would ask the Assembly to deprecate any extension of the rights of appeal beyond that. There are at present, Sir, in the Code ample provisions as regards revision which will check any possibilities of failure of justice. If that suggestion will meet my Honourable friends, then we on the Government Benches would be prepared to agree to such an amendment.

Mr. K. B. L. Agnihotri: I am quite prepared to accept the amendment which has been suggested by Mr. Tonkinson.

Mr. H. Tonkinson: I would suggest that we may go on to later amendments, with your permission, until the draft of this amended clause is ready.

Dr. H. S. Gour: I beg to move:

"That in clause 67 (iii) after the words 'from the date of the orders' the following be inserted:

'or such further period as the Court may, in the circumstances of the case, think fit to direct'."

This is a very simple amendment and I hope Government will see their way to accept it. The additions made by Government to sub-clause (4) are as follows:

"And where such order is made in a case which is not subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order."

The object is that the payment of compensation should be withheld for a period of one month when giving the complainant a right of revision. But the revision may take a much longer time, and I therefore suggest the addition of the following words—"or such further period as the Court may, in the circumstances of the case, think fit to direct." If the case is already launched on the revisional side of the High Court, it is not likely that it will be disposed of within one month, and therefore I submit that the Court must have jurisdiction to extend the period, and not limit it strictly, as it has been in the amended clause, to 30 days. This is all the more necessary, Sir, in view of the fact that we have already adopted the provision for alternative imprisonment in case of non-payment, and I therefore suggest that the addition of these words should be made at the end of sub-clause (iii).

Mr. President: Amendment moved:

"In clause 67 (iii) after the words 'from the date of the orders' insert the following:

'or such further period as the Court may, in the circumstances of the case, think fit to direct'."

Sir Henry Moncrieff Smith: Sir, I quite agree with Dr. Gour that, if revisional proceedings have been launched, it is not likely that the proceedings will be terminated within one month, and that the Magistrate ought to have power to delay the payment of the compensation. Sir, the Magistrate has got that power: it is quite unnecessary to add it in the clause. If my Honourable friend will look at the clause which the Bill adds, it says that compensation shall not be paid before the expiration of one month from the date of the order. "Shall not be paid before." There is nothing to say that the compensation shall be paid on the expiration of one month. It is perfectly clear that the Magistrate has a discretion, and in a case like that he will exercise his discretion. It is unnecessary to add words to the Bill which would be redundant.

Dr. H. S. Gour: Sir, I withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

The Honourable Sir Malcolm Hailey: I move, Sir, that the final consideration of clause 67 be postponed until we have prepared a draft on the clause which the House has just been discussing.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I wish to move the third amendment which stands in my name, namely:

"In clause 67-A, after sub-section (2) the following sub-section shall be added, namely:

"(3) The Magistrate before proceeding to hear the evidence shall if requested allow the accused reasonable time to prepare his case."

Sir, section 252 as it stands at present reads thus:

"When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complaint (if any), and take all such evidence as may be produced in support of the prosecution."

Sir, it does leave a discretion to the Magistrate to adjourn the case for a reasonable period in order to enable the accused to prepare his case, but what happens often is that the Magistrate takes up the case immediately when it is put before the Magistrate and the accused and his counsel do not generally get an opportunity to go through the *chalan*, or the papers filed by the police in the Court and thus are not able to prepare the case to defend the accused. Therefore, I suggest that provision of the nature I suggest be incorporated in this Code. Then the Magistrates will certainly give some opportunity to the accused to prepare their cases. I do realise that in many cases probably the accused may take undue advantage of this provision and may want to delay the proceedings; I admit that it is just possible, but, I propose that a period considered reasonable by the Magistrate be allowed and not a period which the accused thought reasonable. Therefore, the amendment which I have moved may be accepted by the House.

Sir Henry Moncrieff Smith: Sir, I suggest to the House that this is a case, most certainly a case, in which we should not trench upon the Magistrate's discretion. As my Honourable friend admits, most Magistrates will allow reasonable opportunity for the accused to prepare the case if good cause is shown to them. But, surely, in the ordinary course, the best way for the accused to prepare his case is to begin by listening to the evidence for the prosecution. How else is he going to prepare his case, unless my Honourable friend contemplates the preparation of false defences and that sort of thing? (Mr. Agnihotri: "No, no.") As I said, Sir, I

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think this is a case in which the Magistrate's discretion should not be taken away, just as we, who are sitting in this House, on a question of motion for postponement of business, are entirely in the hands of our President. You are not obliged, Sir, to put any motion for the adjournment of business; it is entirely in your discretion, and it would be a serious hampering possibly of public business if it were not so.

Mr. President: Amendment moved:

"In clause 67-A, insert the following at the end:

'The Magistrate before proceeding to hear the evidence shall if requested allow the accused reasonable time to prepare his case'."

The amendment was negatived.

Clause 67-A was added to the Bill.

Mr. J. Ramayya Pantulu: Sir, mine is merely a drafting amendment and if it does not commend itself to the Honourable Sir Henry Moncrieff Smith, I do not want to press it.

Mr. President: I cannot allow amendments to be moved conditionally. Does the Honourable Member move it or not?

Mr. J. Ramayya Pantulu: I move it, Sir. It runs as follows:

"In clause 68, to the proposed new section 255-A add the following:

'Before passing the sentence'."

The object of my amendment is this. Previous conviction can only be proved after the accused has been convicted. I want to make it clear that this should be done before the accused is sentenced. That goes without saying. But I propose that these words be added at the end in order to make it quite clear that evidence should be recorded before the sentence is actually pronounced.

Mr. H. Tonkinson: Sir, I do not know whether it is really necessary to oppose an amendment moved in such halting terms. I suggest it is entirely unnecessary. There is no doubt, of course that this action will be taken before passing a sentence. It is quite obvious I should think, Sir, to any one that that would be so. I would merely invite the attention of the House to the fact that in Chapter XXI of the Code the sections are arranged chronologically. This provision comes in proposed section 255-A, and the sentence comes in section 258. I think, Sir, that this amendment is therefore unnecessary.

Mr. President: Amendment moved:

"In clause 68, to the proposed new section 255-A add the following:

'Before passing the sentence'."

The question is that that amendment be made.

The motion was negatived.

Clause 68 was added to the Bill.

Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muham-madan): Sir, the amendment standing in my name, runs as follows:

"In clause 69, omit the words 'if the Magistrate thinks fit'."

In place of the amendment that stands in my name, I hold in my hands a copy of the amendment drafted by the Government; and I am advised

Sir, to move it in place of my amendment, and if you permit me, I am prepared to do so, though, I must say, that I am not satisfied with it. But as a compromise and under the circumstances, I am willing to move it in place of my amendment. That amendment, Sir, runs thus:

"That in clause 69 for the words 'either forthwith or if the Magistrate thinks fit at the commencement of the next hearing of the case' the following be substituted, namely:

'At the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith'."

I do not think any speech is required from me to commend it as the Government have, I understand, accepted it. I therefore move this amendment.

The motion was adopted.

Clause 69 was added to the Bill.

Clause 70 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move the following amendment:

"In clause 71, for the words from 'after the' to the word 'inserted' substitute the following:

'after the word 'complainant' the words 'or his authorised agent' shall be inserted, the words 'and the offence may be lawfully compounded' shall be omitted'."

Sir, in clause 71, which refers to section 259 of the Code, we provide that

"When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may in his discretion, notwithstanding anything hereinbefore contained at any time before the charge has been framed, discharge the accused."

Sir, this section of the present Code provides that in the absence of the complainant the case may be dismissed in default if the offence be compoundable. Sir, the Lowndes Committee recommended that in every case instituted upon complaint the case may be dismissed in the absence of the complainant. They said:

"We think that no useful result follows from attempting in ordinary complaint cases to force the complainant to go on against his will. We therefore omit the words 'and the offence may be lawfully compounded,' as has been suggested by the Bombay Government. We think the requirements of justice will be sufficiently safeguarded by the discretion which is already vested in the Magistrate under this section."

What I beg to submit is that if the case has been instituted upon a complaint, whether it was a cognizable case or a non-cognizable case, the complainant should have the liberty to withdraw from the case, or absent himself or not proceed with the case as he thinks fit.

It may be argued, Sir, that in cognizable cases, the State has to look to the interests of the public and such cases may not be allowed to be withdrawn or dismissed in default. Well, Sir, in such cases the clause as it stands now provides that such cases could only be dismissed at the discretion of the Magistrate; so there will be no hampering of justice and no escape of a criminal even in cognizable cases. Moreover, in cognizable cases in 90 out of 100 cases the police do take cognizance of such cases, and even after the filing of the complaint if the police considers that in the interests of justice and to protect the interests of the public it was necessary to take cognizance,

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they could take cognizance, and in that case this section 259 would not apply because 259 applies only in those cases in which a complaint has been instituted in Court at the instance of the complainant. Here 'complaint' does not mean an information to the police, but 'complaint' in this clause means a direct allegation made in a Court of law. Therefore, Sir, the interests of justice would not suffer in any way if my amendment is accepted.

Mr. President: Amendment moved:

"That in clause 71, for the words from 'after the' to the word 'inserted' substitute the following:

'After the word 'complainant' the words 'or his authorised agent' shall be inserted, and the words 'and the offence may be lawfully compounded' shall be omitted'."

Mr. H. Tonkinson: Sir, I admit that the amendment proposed by my Honourable friend would bring the Bill back to the measure as it was drafted by Sir George Lowndes' Committee. I would merely in opposition to the proposal of Sir George Lowndes' Committee and the proposal of my Honourable friend read the remarks of the Chief Commissioner, North-West Frontier Province, with reference to that clause. He said:

"I also would press for the retention of the words 'and the offence may be lawfully compounded', which it is proposed to omit from section 259; otherwise it leaves the door open to blackmail and an abuse of justice, for it will encourage persons guilty of serious criminal offences to pay complainants not to continue the prosecution."

Sir, I submit that that is not an imaginary evil, and that that proposal in the Bill is a proposal which should be accepted as it stands.

The amendment was negatived.

Clause 71 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move:

"That after clause 71 insert the following clause:

'71A. In section 260 of the said Code, in sub-section (1) after the proviso insert the following further proviso:

'Provided further that no case in which the accused objects to its trial in a summary way shall be so tried'."

Sir, here we have

Mr. President: Before the Honourable Member begins to discuss the merits of the proposed amendment, I am not at all satisfied that it is within the scope of the Bill; I am prepared to hear him on that point.

Mr. K. B. L. Agnihotri: Sir, there was an original clause in the Bill which was numbered as 72 and it referred to section 260 of the Criminal Procedure Code. That clause has been omitted by the Joint Committee, and therefore I am entitled to move either its re-insertion or any amendment in that section. On this point I may perhaps mention, Sir, that on the very first day I requested the Deputy President to give me a ruling, and the Deputy President who occupied the Chair on that day was pleased to give me a ruling that I could put in amendments of this nature; and in accordance with that ruling, on previous occasions I have moved amendments referring to clauses of the Bill which have been dropped by the Joint Committee, and as such, Sir, I am entitled to move an amendment in regard to this clause also.

The Honourable Sir Malcolm Hailey: Mr. Agnihotri has recalled a ruling of the Deputy President on this matter. It is true that certain amendments have been allowed on the strength of that ruling. But I think the Deputy President allowed those amendments on their merits because he felt that they did actually refer to the subject matter of the Bill and I submit, that the question whether an amendment does refer to the subject matter of the Bill or not is really the crucial and decisive test. Now, may I put to you, what Mr. Agnihotri proposes in the present case? Section 260 was mentioned in the original Bill but it was proposed to amend this section (which is a somewhat long one) in one small matter only. There were a large number of sub-clauses in section 260 defining the particular offences which were to be brought within the scope of the summary procedure. It was merely proposed to add one additional offence, namely, the offence of attempting to commit suicide, within the scope of that section. This proposal however having fallen through, the whole section has been omitted in the Bill as it came to us; but taking the opportunity of the fact that the section was mentioned (for this very limited purpose) in the original Bill, Mr. Agnihotri now proposes an amendment which makes a substantive alteration in the whole of our procedure regarding trials by summary procedure. I claim then that this is not an amendment which is relevant to the subject matter. As I say, he will by this amendment introduce considerations which are not in any way pertinent to the purpose for which section 260 was mentioned in the original Bill.

Mr. President: I should like to know from the Honourable Member whether he accepts the description given by the Honourable the Home Member about the clause in the original Bill and whether it tallies with his view of it?

Mr. K. B. L. Agnihotri: I have not been able to follow the Honourable the Home Member, Sir

Mr. President: I put the point to the Honourable Member as to whether the statement that clause 72 in the original Bill did in fact refer to a single offence and not to procedure under which offences might be tried tallies with his view?

Mr. K. B. L. Agnihotri: Yes, Sir, it referred to the addition of an offence among the summary trials that are provided in section 260 of the Code, and section 260 was brought before us in the original. If it had been embodied in the Report of the Joint Committee I would have been entitled to move any amendment in that section, according to the ruling that was previously given. In that way, if I could move an amendment to the portion other than that brought before us in the original Bill, I cannot be debarred from moving this amendment in this section.

Mr. President: I will deal with the point raised by the Honourable Member as to the latitude of the Assembly to amend any and every provision within a certain section because that section happens to be mentioned in the amending Bill. The Honourable Member is well aware that a section may cover a great variety of different things. I have not the slightest doubt that the Deputy President gave a perfectly just and accurate ruling in that particular case; but I do not accept the Honourable Member's reading of this case, because the original section only brought an additional offence within the scope of summary trials. Now the Honourable Member is proposing to introduce a very large change in the rights of accused persons who may be brought to summary trial.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): As this is a very important matter, I hope you would allow us to put our case before the House. Sir, when a particular section is brought for the consideration of the House, what is in the mind of the Government is not the governing factor, if I may respectfully say so. We have to vote upon the section, and I take it, Sir, that ultimately you will ask that this clause do stand part of the Code. Therefore, the whole of that section is open to discussion, because I take it from the formal words in which you put the question the clause as presented is to be voted upon. Clause 67 includes the matter which the Government want to take into the Code and you will have to put to the House whether that should stand part of the Code. Under these circumstances, Sir, it seems to me, where one section is brought in the fact that Government have a particular idea in mind should not be the guide and the whole of the section should be allowed to be discussed by the House.

Mr. President: I must be guided by the subjects rather than by the fact that there may be two or three quite different letters in the same envelope.

Dr. H. S. Gour: May I advert to another aspect of the question. When a certain section comes up before this House, the question is as to whether that section should be amended. The Government say that it should be amended in a particular way. Any Honourable Member of this House may suggest that the amendment should take some other form. Consequently, by the very necessity of the case the whole section becomes subject to amendment. I submit that, when this section was an integral part of the original Bill and it was left out by the Select Committee, according to the ruling given by your predecessor in the Chair, the Deputy President, and yourself, Sir, in connection with the Workmen's Compensation Bill (the omission of Chapter II), section 260 which deals with summary trials became relevant and any Member of the House, therefore, became entitled to ask for the restoration of that section as open to discussion by this House and, that section having come up for discussion before this House, it is open to any Member to suggest an amendment to that section. I, therefore, submit that Mr. Agnihotri's amendment is in order.

Mr. President: I am afraid I cannot agree. The Honourable Member has not appreciated the distinction which I have drawn between a section which may raise several different subjects of importance and those subjects themselves. I draw a line between them. Otherwise, as the Honourable Member may well see, liberty to amend the Code would be practically unlimited.

Dr. H. S. Gour: This section merely deals, Sir, with summary trials. It categorises certain offences and says that these offences shall be summarily triable. That is all. Consequently, it comes within the ruling that has just been given, Sir, that it should deal with one single subject—in this case, the mode of trial of certain offences. That is all that the section deals with, Sir. Mr. Agnihotri's amendment is that the mode of trial shall be subject to a certain proviso, which he proposes to insert. A number of different subjects have not been brought together under section 260. It is only as regards the mode of trial in a summary manner that that section lays down one principle and one single fact. And under that section we have a large number of offences which are categorised as triable summarily.

Mr. President: No, I must uphold the objection taken by the Home Member, which seems to me to be valid.

Mr. President: Amendment moved:

"In clause 67, to sub-section (ii) add the following:

'and for the words 'to an accused person' the following shall be substituted, namely, 'or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees'."

The question I have to put is that that amendment be made.

The motion was adopted.

Clause 67 was added to the Bill.

Mr. President: Clause 73.

Rao Bahadur T. Rangachariar: Sir, would the next amendment not be covered (referring to the amendment in Dr. Gour's name) by the ruling which you have just given? The Government propose to include only a particular section. My friend wants to exclude certain sections. He may perhaps move an amendment with reference to the included section but not propose the exclusion of other sections.

Mr. President: Is the Honourable Member discussing clause 73?

Rao Bahadur T. Rangachariar: Yes, Sir.

Dr. H. S. Gour: He is trying to block my motion, Sir.

(Mr. President then called on Dr. Gour to move his amendment.)

Dr. H. S. Gour: Sir, my amendment is to section 261 of the Code of Criminal Procedure which lays down what offences shall be summarily triable. I wish to exclude therefrom certain distinct offences. These are offences punishable by section 292 (sale of obscene books), 293 (possession of obscene books), 294 (the singing of obscene songs), 426 (mischief) and 447 (trespass). Now, Honourable Members will see that the question of what is an obscene book or an obscene song cannot be summarily disposed of. Many of the sacred songs which have the sanction of religion may be described as obscene. Many of the statues which we see in the public galleries and museums may be described as obscene. It is not a matter which can be disposed of in a summary fashion. I, therefore, suggest, Sir, that these three offences dealing with obscenity be excluded from the summary jurisdiction of the Courts. I stand on very strong ground when I say that sections 426 and 447 should also be excluded. Now, if Honourable Members will turn to the definition of mischief and to the definition of criminal trespass given in section 425 and section 441, they will find that they are extremely complicated offences, and so far as regards trespass, the lawyers are not agreed as to when civil trespass ends and criminal trespass begins. Honourable Members know that trespass may be of a dual character. It may be a civil trespass or a criminal trespass, and the civil judges have not yet drawn the clear line of demarcation between these two classes of trespass. How can a Magistrate, wielding summary powers, distinguish what the Civil Courts have failed to discriminate? And the same observations apply generally to mischief. I suggest these are extremely difficult cases, cases which require close and careful scrutiny, and that therefore

[Dr. H. S. Gour.]

Magistrate should not be empowered to deal with them summarily. Over my amendment, Sir, which runs as follows:

In sub-clause (i) of clause 73:

1) After the words and letter 'in clause (a)' insert the following:

the figures 292, 293, 294 and 426 shall be omitted' and

2) Omit the figure '447' where it occurs for the second time."

Mr. President: Amendment moved:

In sub-clause (i) of clause 73:

1) After the words and letter 'in clause (a)' insert the following:

the figures 292, 293, 294 and 426 shall be omitted' and

2) Omit the figure '447' where it occurs for the second time."

Shao Bahadur T. Rangachariar: I do not know whether you have covered the point which I raised, namely, whether this is not covered by previous ruling, because it deals with sections which are not touched by the amendment.

Mr. President: Precisely: it is covered by my previous ruling. The Honourable Member is in order in moving his amendment.

Mr. H. Tonkinson: Sir, I object to the proposal of my Honourable learned friend on the ground that it means a reduction in the jurisdiction of honorary magistrates. This section, Sir, is the section under which Honorary Magistrates try offences. I think that it is most desirable and I hope that I shall have the support of the House, which I believe does a number of Honorary Magistrates (*Voices:* "No, no.") in objecting to my proposal to reduce the jurisdiction of honorary magistrates in this manner. My Honourable friend proposes the deletion of 5 sections from which can be tried summarily under this section. I would refer to House to section 225 of the Code of 1872. Each of those five sections was included in the provision of that Code which corresponds to the present provision. I have never heard it suggested that honorary magistrates are not capable of trying such cases. There may be in a particular case a difficult question of criminal trespass or mischief, but such cases should not be transferred by the stipendiary magistrates to be tried by the honorary magistrates under this section. My Honourable friend objects to the stipendiary magistrates trying these offences. I would merely add that if he refers to all the various amendments to the Village Acts which have recently been made, he will find that such offences are triable by panchayats,—section 294, section 426, section 447 are all triable by panchayats. In the Act that I have here, the Bihar and Orissa Village Administration Act, Under these circumstances I oppose the amendment.

Mr. Nand Lal: Sir, I support this amendment. The grounds which have been advanced in opposition to this amendment are three. Firstly, these are cases which are tried by honorary magistrates." I quite understand that there are honorary magistrates and stipendiary magistrates. Some are really capable and some are not, but the offences being of a highly technical nature and as most important points are involved in them, therefore it is not desirable that the adjudication, upon various crucial points, should be left to the discretion of the honorary magistrates. As for instance, there is a book, a religious book. The case has been sent to the stipendiary magistrate, and in consequence of not sufficient experience and

not having been a trained lawyer he gives a decision which is wrong. Do you know what will be the consequences? It will cause a stir. I think the Government Bench will accept this amendment which commends itself. Section 426 penalizes mischief,—it is extremely difficult to define what is mischief and what is not. Will the Government Bench be in favour of this provision under debate. I should say at once that it will hardly be right. Take the case of section 441. Section 447 is dependent on the definition given in section 441 of the Indian Penal Code which is somewhat difficult. There are such factors and points involved in that very definition that it is difficult to understand and follow the nicety of law in a very short time which the summary trial will allow. I need not go into other grounds of opposition with a view to save time. The suggestion is that summary trial should not be extended to the sections under discussion. I commend this amendment to the Government Bench. I think they will have no objection to the acceptance thereof.

The motion was negatived.

Clause 73 was added to the Bill.

Mr. President: Clause 74. Dr. Gour.

Dr. H. S. Gour: I have an assurance, Sir, from Sir Henry Moncrieff Smith that all these consequential changes* will be considered and made at the conclusion of the debate in this House.

There is no Chief Court in Lower Burma and I take it that it will be taken due note of as a consequential amendment.

Sir Henry Moncrieff Smith: It will not be a consequential amendment in this Bill. The matter is being provided for in another Bill.

Clause 74 was added to the Bill.

Clause 75 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 76, sub-clause (i) after the word and figures 'Chapter XVIII' the words 'and cross-examined by him' be inserted."

Section 288 of the existing Code provides that the evidence of a witness duly taken in the presence of the accused may in the discretion of the presiding judge before whom such witness is produced and examined be treated as evidence in the case. Sir, what I beg to propose is that the mere fact that the statement has been taken down by the committing Magistrate in the presence of the accused should not be deemed to be such evidence as may be admissible in the Sessions Court under section 288 but where the witness has been examined in the presence of the accused and the accused had a chance of cross-examining him or an opportunity of cross-examining him or had cross-examined him in such a case only such a statement may be admissible in the Sessions Court, otherwise not. It may happen, Sir, that in the Sessions Court the witness was cross-examined by the accused while he was not cross-examined in the committing Magistrate's Court and the statement which he had given before the committing Magistrate was not broken down in the cross-examination as

* Amendment No. 229 in List of Amendments:

"To clause 74 add the following:

'and in the same section omit the words 'and includes the Chief Court of Lower Burma'."

[Mr. K. B. L. Agnihotri.]

it happened in the Sessions Court. It will be perfectly justifiable for the Sessions Judge to include that evidence of the committing Magistrate's Court into this Sessions Court and to convict the accused on that evidence. I think this is not a good provision and therefore in order to safeguard the interests of the accused it is better that such a statement should be made admissible in the Sessions Court wherein the accused had a right or an opportunity or has cross-examined that witness. Otherwise not. With this view I beg to move the amendment.

Sir Henry Moncrieff Smith: I should like to read to the House section 238 as it would stand as amended by Mr. Agnihotri:

"The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII and cross-examined by him may in the discretion of the presiding judge be treated as evidence."

I do not know whether it is the evidence which is to be cross-examined or the accused or Chapter XVIII. The word 'cross-examined' might apply to any of those. The substantive to which the words will not apply is 'witness.' Therefore the drafting of my friend's amendment is really hopeless. I think my friend has also overlooked that this is a provision that enables the evidence taken by the committing Magistrate to be taken as evidence in the Sessions Court only after the witness has been examined and cross-examined in the Sessions Court. That is a sufficient safeguard in this case. It would be entirely unreasonable, as my friend suggests, to lay down that unless the witness was cross-examined in the Magistrate's Court it would be impossible to use his evidence in the Sessions Court. It would enable the defence to obstruct, boycott the prosecution altogether. They would be given an opportunity of cross-examining in the Magistrate's Court, and as a matter of fact, Sir, I understand that it is a very common thing for the defence to reserve their cross-examination till they come to the Sessions Court. In every such case, Sir, it would be impossible to treat that evidence, use that evidence, as evidence in the Sessions Court even though the witness might be a purely formal one, a purely technical one.

Mr. President: The question is that that amendment be made.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 7th February, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 7th February, 1923.

The Assembly met in the Assembly Chamber at Twelve of the Clock. Mr. President was in the Chair.

GOVERNOR GENERAL'S ASSENT TO BILLS.

Mr. President: I have to acquaint the Assembly that His Excellency the Governor General has been pleased to give his assent to the following Act:

The Criminal Tribes (Amendment) Act, 1923.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed to the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muhamadan Rural): Sir, as a result of the formal conference we have had and the agreement we have come to, I request your permission for moving, in place of the amendment which stands in my name, another amendment with some modifications. That amendment runs thus:

"That in clause 77, sub-clause (a), before the word 'evidence' the word 'oral' be inserted.

And for the proviso the following be substituted; namely,

"or (c) with the permission of the Court when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced."

*Sir, the principle involved is that the accused should have a right of reply in all cases tried in a Court of Sessions or a High Court. This principle has been recognized by the Lowndes Committee and also by the Joint Committee. This amendment goes a great way in giving the accused a right of reply. I therefore hope that the amendment will commend itself to this House.

Mr. President: The amendment moved is:

"That in clause 77, sub-clause (a) before the word 'evidence' the word 'oral' be inserted."

Mr. H. Tonkinson (Home Department: Nominated Official): I accept that amendment.

The amendment was adopted.

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[Mr. K. B. L. Agnihotri.]

it happened in the Sessions Court. It will be perfectly justifiable for the Sessions Judge to include that evidence of the committing Magistrate's Court into this Sessions Court and to convict the accused on that evidence. I think this is not a good provision and therefore in order to safeguard the interests of the accused it is better that such a statement should be made admissible in the Sessions Court wherein the accused had a right or an opportunity or has cross-examined that witness. Otherwise not. With this view I beg to move the amendment.

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Mr. President: The question is that that amendment be made.

The motion was negatived.

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Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muhammadan Rural): Sir, as a result of the formal conference we have had and the agreement we have come to, I request your permission for moving, in place of the amendment which stands in my name, another amendment with some modifications. That amendment runs thus:

"That in clause 77, sub-clause (a), before the word 'evidence' the word 'oral' be inserted.

And for the proviso the following be substituted, namely,

"or (c) with the permission of the Court when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced."

*Sir, the principle involved is that the accused should have a right of reply in all cases tried in a Court of Sessions or a High Court. This principle has been recognized by the Lowndes Committee and also by the Joint Committee. This amendment goes a great way in giving the accused a right of reply. I therefore hope that the amendment will commend itself to this House.

Mr. President: The amendment moved is:

"That in clause 77, sub-clause (a) before the word 'evidence' the word 'oral' be inserted."

Mr. H. Tonkinson (Home Department: Nominated Official): I accept that amendment.

The amendment was adopted.

Mr. President: The further amendment moved is:

"And for the proviso the following be substituted, namely,

'or (c) with the permission of the Court when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced."

Mr. H. Tonkinson: I accept that amendment.

The amendment was adopted.

Mr. President: The question is that clause 77, as amended, stand part of the Bill.

The motion was adopted.

Clauses 78, 79 and 80 were added to the Bill.

Clause 81 was added to the Bill.

Clauses 82, 83 and 84 were added to the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"That in clause 85, sub-clause (1) omit the figures '211'."

Mr. H. Tonkinson: Sir, I understood that my Honourable friend was not going to move the amendment in this form. We are prepared to accept an amendment on the following lines:

"That in clause 85, in the proposed new sub-section (i), after the words 'ten years' the following be inserted, namely, 'or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years'; and further that the figures '211' be omitted."

The reason for this, Sir, is that under section 211 there are three classes of courts which may try offences

Mr. K. B. L. Agnihotri: I accept the amendment suggested by the Honourable Mr. Tonkinson.

Mr. President: The amendment moved is:

"That in clause 85, sub-clause (i) omit the figures '211'."

A further amendment to the amendment moved is:

"That in clause 85, in the proposed new sub-section (1), after the words 'ten years' the following be inserted, namely, 'or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years'; and further, that the figures '211' be omitted."

The question is:

"That the original amendment be amended by that addition."

The motion was adopted.

Mr. President: The question is that that amendment be made.

The motion was adopted.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, my amendment has been altered slightly. In place of the amendment on the printed sheet, I move:

"That in clause 85, to proposed new sub-section the following be added:

'And shall on application made by the accused furnish him with a copy of such record:

Provided that the accused shall pay for the same unless the Magistrate for some special reasons thinks fit to furnish it free of cost."

Mr. President: The question is that that amendment be made.

The motion was adopted.

Clause 85, as amended, was added to the Bill.

Clause 86 was added to the Bill.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, in place of the printed amendment, I beg to move the following:

"That in clause 86-A in the proposed new section 339-A, for the words 'to whom a pardon has been tendered', the words 'who has accepted a tender of pardon' be substituted."

The motion was adopted.

Dr. H. S. Gour: Sir, in place of the printed amendment, I beg to move the following:

"That in clause 86-A, for sub-section (2) of the proposed new section 339-A, the following be substituted:

'(2) If the accused does so plead the Court shall record the plea and proceed with the trial, and the jury or the Court, with the aid of the Assessors or the Magistrate as the case may be, shall before judgment is passed in the case find whether or not the accused has complied with the conditions of the pardon, and if it is found that he has so complied the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal."

The motion was adopted.

Clause 86-A, as amended, was added to the Bill.

Bhai Man Singh (East Punjab: Sikh): I move, Sir:

"That in clause 87 in sub-section (2) of section 340 before the word and figure 'Chapter X' the word and figures 'Chapter VIII' be inserted."

The object of my amendment, Sir, is that any person against whom proceedings are taken under Chapter VIII of this Code may be a good witness who should be examined on oath in those proceedings. As you will see, Chapter VIII, sections 107, 108, 110 and so forth, concern the proceedings for maintaining good behaviour and for keeping the peace, etc. After all, as we have seen, they don't consist of offences themselves but mostly consist of quite other things. The man might be asked not to commit a breach of the peace. The man might be asked to furnish security for giving seditious lectures. Or the man might be bound down because he had sought to be obnoxious, or his speeches might be so dangerous that anybody would pick a quarrel with him and there might be a breach of the peace and so forth. There is absolutely no reason why that person should not have the chance of appearing as soon as the statement is made and giving his own statement on oath as a witness. I hope in these circumstances that my amendment will be accepted.

Dr. H. S. Gour: Sir, it will be obvious to the House that I am in evident sympathy with my friend Bhai Man Singh's amendment when I have given notice of an amendment much wider in terms. The object of the Honourable Mover of this amendment is to allow the person against whom proceedings have been instituted for being of good behaviour or for keeping the peace to give evidence in his own behalf. In England, by a recent Statute, the accused is now empowered to give evidence on his own behalf, and I intended to extend the provisions of the English Statute to certain offences under the Indian Penal Code. However, on maturer consideration I do not propose to move my amendment; but I think there is a great difference between offences under the Indian Penal Code and proceedings under the Code of Criminal Procedure. Honourable Members will find that this Chapter VIII is a part of Part IV of the Code of Criminal Procedure which is headed "Prevention of Offences." Consequently all proceedings under Chapter VIII are of a preventive character. They may be regarded as of a quasi-criminal character, and I think the rule which obtains in England might well be tried in this country by enabling the non-applicant in all cases of security for peace and good behaviour to be able to give evidence on his own behalf. He will not be compelled to do so. It is purely permissive and optional. If he desires to explain a point which has been proved against him by the Prosecution there is no reason why he may not give evidence on his own behalf. He will no doubt be subject to cross-examination. As Honourable Members are aware, all accused under the present law are entitled to make a statement, and as a matter of fact they have to make statements in answer to questions put by the Court, and all that the present Code provides is that such statements shall be considered by the Court. But they have not quite the same value, evidential value, as the sole statement of the accused who has explained away the points that have been proved against him by the prosecution and who has submitted himself to the cross-examination of the prosecuting counsel. I submit that this procedure in England has been successful, and I do not see why in all cases of this character the accused should not be at liberty to give evidence if he is so minded. I therefore support the amendment.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I am quite prepared to admit that there is a difference between the action taken under the Indian Penal Code and the action taken under our present section; but I will put it to the House that if we are to embark on a procedure which gives the accused the right of giving evidence on his own behalf we ought to treat the question as a whole. The question is one which has had a long history behind it in England; it has a history of considerable controversy behind it in India also. I need not go into the history of the English case; those who have read the proceedings which led to the passing of the English Act will realise how strong were the differences of opinion on the subject. When it has been discussed in India there have been equally strong differences of opinion. Generally speaking, the Indian Bar, when we previously circulated the matter for opinion, as a whole was against it. Obviously in a country where an accused person cannot always afford to obtain first class advice, he is in a very dangerous position if he is exposed to cross-examination on any statement that he may make in his defence. So far we have admitted the accused to give evidence in his own behalf only in regard to cases arising out of those sections of the Criminal Procedure Code which I may describe as of a semi-civil character—Chapters X, XI, XII, XXXVI, the last of course being that which refers to the

maintenance of wives and children, and I think that before we go beyond this distinct category of semi-civil cases and give that right in criminal cases, pure and simple, for there is no doubt that section 110 for instance partakes of that character, we ought to reconsider the question as a whole. It is for that reason that, though I admit there is substance in the points put forward by Bhai Man Singh and Dr. Gour, I think we should be well advised not to follow their proposal, but to leave the whole question over for consideration anew, when public opinion and the Courts have come to some more clearly defined views as to the advisability of admitting the accused to give evidence on his own behalf.

Rao Bahadur T. Rangachariar: Sir, the Honourable the Home Member admits it is a case needing inquiry. How is this inquiry to be made? You must begin somewhere and make an experiment and see how it works before we can come to a conclusion on a matter of this sort. These proceedings against persons calling upon them to furnish security either for keeping the peace or for good behaviour are evidently fit cases where the persons are in the position of quasi-accused; they are not really accused of offences, but they are suspected as persons likely to commit offences. Therefore in such cases there are very many instances to my mind where this procedure will be very apt. In calling upon persons, especially educated persons to give security for keeping the peace as has been frequently done in the last two or three years when politicians have been called upon to give security for keeping the peace, I think it is but right that they should be allowed to give evidence in their own behalf to explain what they are doing, explain the meaning of words which they have uttered or which they are about to utter. I do not think any risk is run by allowing them to go into the box if they so like. No doubt it is a risk—I quite appreciate it—no doubt ignorant persons who are called upon to give security will run a risk, but I take it we can prevent it by giving discretion to the Magistrate. If the Honourable the Home Member would admit it, I would with your permission add the words "wherever the court so permits" or some such words so as to safeguard it further. Not only it is the option of the accused, but also in order to protect ignorant persons from being harassed by cross-examination I would suggest "with the permission of the court." That will be an additional safeguard in order to prevent miscarriages of justice. Now, the Code permits a court to put questions to accused persons under trial for explaining circumstances which appear in evidence against them. I know, Sir, that the power is judicially exercised; it has often been of great use in enabling courts to get at the truth of a case. Honourable Members, if they have read the report of the Racial Distinctions Committee, will have noticed Mr. Carey's minute there. Mr. Carey makes it a point that accused persons where, for instance, they are in distant plantations where the occurrence takes place known only to the accused and the person injured, they ask for a right that the accused should go into the box. Mr. Carey insists on it in his minute, so that it is apparently a privilege valued by Englishmen, a privilege which has been on trial in England for some time and while Dr. Gour is quite right in giving up his amendment and not extending it to all accused persons, yet I think, Sir, we will not be making any very dangerous experiment by allowing it in this case. The law now proposed allows it in certain other chapters of the Code, such as inquiry into urgent cases under sections 144 and 145 and inquiry into maintenance cases—in such cases also the persons against whom proceedings are taken stand in an analogous position as in this case under chapter VIII. Perhaps if there is serious objection

[Rao Bahadur T. Rangachariar.]

to this, then, Sir, why not limit it to cases where a person is called upon to give security for keeping the peace, instead of extending it to persons who are called upon to give security for good behaviour? Probably cases where persons are asked to give security for good behaviour may be said to be more serious cases, because habitual offenders and other cases might come in there. Therefore I think if not the whole of Chapter VIII at least the first portion of it—cases coming under section 107—may be taken; that is persons called upon to give security for keeping the peace under section 107 may be given the option. If the Honourable the Home Member accepts it I will propose it as an amendment—proceedings under section 107 instead of Chapter VIII. I think, Sir, a beginning should be made, and I hope, Sir, the Honourable the Home Member will see his way to accept my suggestion; and I propose, Sir, formally to substitute the words “proceedings under section 107” for the words “Chapter VIII.”

The Honourable Sir Malcolm Hailey: I am quite prepared, Sir, to agree to section 107 being substituted.

The amendment to the amendment was adopted.

The original amendment, as amended, was adopted.

Mr. J. Ramayya Pantulu (Godavari cum Kistna: Non-Muhammadan Rural): I move, Sir:

“That in clause 87, in sub-section (2) of the proposed new section 340, for the words ‘if he so desires, be examined’ the words ‘offer himself’ be substituted.”

That section runs as follows:

“Any person against whom proceedings are instituted in any such Court under Chapter X, Chapter XI, Chapter XII, or Chapter XXXVI, or under section 552 may, if he so desires, be examined as a witness in such proceedings.”

If my amendment is carried out it will read “Any person against whom may offer himself as a witness in such proceedings.” I believe, Sir, that this amendment of mine improves the wording of the section, if I may say so without egotism, and I hope the Honourable the Home Member will accept it.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I agree to this amendment.

The amendment was adopted.

Clause 87, as amended, was added to the Bill.

Mr. K. Ahmed (Rajshahi Division: Non-Muhammadan Rural): Sir, I move:

“That after clause 87 insert the following clause”

Sir Henry Moncrieff Smith: Sir, before the Honourable Member moves his amendment, I want to ask your ruling as to whether it is within the scope of the Bill. The Honourable Member proposes to amend section 342 which is not in the Bill, and never has been in the Bill.

Mr. President: Does the Honourable Member agree with that statement of fact?

Mr. K. Ahmed: Sir, it is admitted by all

Mr. President: Order, order. Before the Honourable Member proceeds to discuss the merits of his amendment, I should like an answer to my question.

Mr. K. Ahmed: The answer is in the negative, Sir.

Mr. President: Objection by the Honourable Sir Henry Moncrieff Smith is upheld.

Mr. K. B. L. Agnihotri: Sir:

“In clause 88 sub-clause (i) after the word ‘substituted’ insert the following:

‘and in the table in the said sub-section, the following amendment shall be made.’

After entry relating to ‘Criminal Intimidation’ add the following entries:

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the Act was committed.”
--	-----	---

Mr. President: I have not been able to follow the Honourable Member. I don't know which portion he proposes to omit.

Mr. K. B. L. Agnihotri: I want to omit the sub-clauses (a) to (f) and start with (g) only.

Mr. President: Amendment moved:

“That in clause 88, sub-clause (i) after the word ‘substituted’ insert the following:

‘and in the table in the said sub-section, the following amendment shall be made’:

‘After entry relating to ‘criminal intimidation’, add the following entries:

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the act was committed.”
--	-----	---

Is that what the Honourable Member wants?

Mr. K. B. L. Agnihotri: Yes, Sir, only that portion.

Mr. President: The question is that that amendment be made. The motion was adopted.

Mr. President: Then the Honourable Member does not move the rest of his amendment?

Mr. K. B. L. Agnihotri: Sub-clause (ii) will come in, Sir:

“In this clause in the proposed table in sub-section (2) of section 345, the following amendment be made.

“Insert in their proper places the following entries:

Criminal misappropriation of property.	403	Owner of property which was misappropriated.”
--	-----	---

Mr. President: Further amendment moved:

“In sub-clause (ii) in the proposed table in sub-section (2) of section 345 make the following amendments:

“(b) Insert in their proper places the following entries:

Criminal misappropriation of property.	403	Owner of property which was misappropriated.”
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Sir Henry Moncrieff Smith: Sir, we are prepared to accept this amendment if the Honourable Member on his part will accept the substitution of the word “dishonest” for the word “criminal,” so that it will read “dishonest misappropriation” instead of “criminal misappropriation.” That is the proper description of the offence.

Mr. K. B. L. Agnihotri: I accept it, Sir.

Mr. President: Amendment moved:

"In the proposed amendment to substitute the word 'dishonest' for the word 'criminal'."

The question is that that amendment be made.

The motion was adopted.

The question is that the amendment, as amended, be adopted.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I now come to the other amendment, namely, criminal breach of trust in respect of property not belonging to the State which is in sub-section (2) (c). This amendment relates to the section of the Penal Code which deals with criminal breach of trust in respect of property. My object in moving for the inclusion of this section under this provision of the Code is that in such cases also the accused and the complainant should be permitted to compound the offence. There may be cases, in which several parties may be aggrieved, the whole public or a number of persons or bodies besides the complainant, be concerned, and in such cases the composition of such offences would be undesirable and objectionable. But this has been safeguarded by putting section 406 in the second sub-section of section 345 which enables the compounding of offences with the permission of the Court only. Were the Court of opinion that permission in such a case should not be given, then it could stop compounding of the offence and there will be no hampering of justice. I would propose therefore that this amendment be accepted. I will just put before the House a case to show how harmful would be the omission of this offence from the list of the compoundable sections sometimes. In one case a lady and her husband's brother were sitting together. Her husband's brother asked the lady for the loan of her wedding ring for a day or two, the request was acceded to by the lady. Thereafter the man went to college and did not return the ring. In the meantime the husband and wife fell out and the wife started proceedings for judicial separation. The brother returned the ring to the husband and declined to return it to the lady, and she in her annoyance filed a complaint against him under section 406 for criminal breach of trust. After the case was filed, the friends and pleaders on both sides thought that the husband and wife should amicably be brought together and reconciled, but this could not be possible unless the case was withdrawn or compounded which was absolutely impossible under the present law. The lady had to take shelter behind a subterfuge that she had no witnesses to offer, and absented herself from the case and the court was kind enough to stop the proceedings. But if the Court had thought otherwise, it could have proceeded with the case and the relations between husband and wife would have been further estranged. Therefore, I submit, that there are also cases in which only individual persons are concerned and in such case there will be great hardship, if we do not insert such a provision but where the accused is one of a bad character, a scoundrel, or has been in the habit of committing breaches of trust, or where there are many persons aggrieved, then certainly he should not get the benefit of this section, and that could be done by vesting the Court with the power to allow the composition of the offence only when it thought desirable.

Mr. President: Amendment moved:

"In the proposed table in sub-section (2) of section 345 make the following amendments:

"(b) Insert in their proper places the following entries:

Criminal breach of trust in respect of property not belonging to the State.	406	Owner of property in respect of which the offence was committed."
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Dr. H. S. Gour: Sir, I have the misfortune to oppose this amendment. The Honourable Member has given an illustration by no means an apt one, and I think if my Honourable friend assumed in the case which he cited that it was a case in which the accused had committed a criminal breach of trust, he is under a wrong impression. If my friend will only turn to the definition of "Criminal breach of trust" in section 405, he will find that the foundation of the offence lies in dishonesty. There must be a breach of trust and there must be dishonesty. In that case there was no dishonesty.

Now, Sir, cases of breach of trust are of a most serious character, and my friend himself admits in omitting to make the rest of the cases compoundable under sections 408 and 409 that all cases of criminal breach of trust are not fit to be compounded. What reason has he then given for making a case under section 406 compoundable? Honourable Members will find that an offence under section 406 is not bailable and if it is made compoundable it will set a premium on blackmail. A man will complain against a person who is immediately arrested and sent to jail and for the purpose of extricating himself out of jail he will open negotiations with the complainant, pay him the money and get out of the clutches of the law. There is no harm done, so far as the complainant is concerned, because he has compounded with the accused, but let us look at the question from another point of view. I employ a porter at the railway station and ask him to carry my baggage to a carriage standing outside. He walks off with it. That is criminal breach of trust. He comes to me and says he will pay me a certain amount of money and I should let him go. Out of misapplied kindness I let him go. I confirm him as a habitual station thief. He goes about as passengers alight from the train, he keeps on committing offences of a similar character, and becomes a licensed thief at the railway station and keeps on swindling people by hundreds, it may be by thousands. Does my Honourable friend think that an offence of such an egregious character should be allowed to be compounded at the instance of the complainant? I give other cases. A person is entrusted with a sum of money. It is his duty to take it to the Bank. Instead of taking it to the Bank, he decamps with it. That is criminal breach of trust. I lay him by the heels. He then asks me to forgive him. I forgive him. He goes again and gets employment with other people and, knowing that the offence is compoundable and he can always purchase his liberty, he keeps on swindling other people. I have been very fortunate in catching him. There may be other people less fortunate and he may decamp with their money. A person who is guilty of such atrocious crimes should, I submit, be not permitted to go free at the instance of a private complainant. He is a danger to society and to the public. Honourable Members will also see that the offence of criminal breach of trust is little, if at all, distinguishable from the general offences of theft and cheating. They all belong to the same genus, and my friend has not suggested—in fact it has never been suggested here—that the offence of cheating or of theft should

Mr. President: The further amendment moved is :

“ And for the proviso the following be substituted, namely,

‘ or (c) with the permission of the Court when any document which does not need to be proved is produced by any accused person after he enters on his defence :

Provided that in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced.”

Mr. H. Tonkinson: I accept that amendment.

The amendment was adopted.

Mr. President: The question is that clause 77, as amended, stand part of the Bill.

The motion was adopted.

Clauses 78, 79 and 80 were added to the Bill.

Clause 81 was added to the Bill.

Clauses 82, 83 and 84 were added to the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions : Non-Muhammadan): Sir, I beg to move :

“ That in clause 85, sub-clause (1) omit the figures ‘ 211 ’.”

Mr. H. Tonkinson: Sir, I understood that my Honourable friend was not going to move the amendment in this form. We are prepared to accept an amendment on the following lines :

“ That in clause 85, in the proposed new sub-section (i), after the words ‘ ten years ’ the following be inserted, namely, ‘ or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years ’; and further that the figures ‘ 211 ’ be omitted.”

The reason for this, Sir, is that under section 211 there are three classes of courts which may try offences

Mr. K. B. L. Agnihotri: I accept the amendment suggested by the Honourable Mr. Tonkinson.

Mr. President: The amendment moved is :

“ That in clause 85, sub-clause (i) omit the figures ‘ 211 ’.”

A further amendment to the amendment moved is :

“ That in clause 85, in the proposed new sub-section (1), after the words ‘ ten years ’ the following be inserted, namely, ‘ or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years ’; and further, that the figures ‘ 211 ’ be omitted.”

The question is :

“ That the original amendment be amended by that addition.”

The motion was adopted.

Mr. President: The question is that that amendment be made.

The motion was adopted.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban): Sir, my amendment has been altered slightly. In place of the amendment on the printed sheet, I move :

“ That in clause 85, to proposed new sub-section the following be added :

‘ And shall on application made by the accused furnish him with a copy of such record :

Provided that the accused shall pay for the same unless the Magistrate for some special reasons thinks fit to furnish it free of cost.”

Mr. President: The question is that that amendment be made.

The motion was adopted.

Clause 85, as amended, was added to the Bill.

Clause 86 was added to the Bill.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan): Sir, in place of the printed amendment, I beg to move the following :

“ That in clause 86-A in the proposed new section 339-A, for the words ‘ to whom a pardon has been tendered ’, the words ‘ who has accepted a tender of pardon ’ be substituted.”

The motion was adopted.

Dr. H. S. Gour: Sir, in place of the printed amendment, I beg to move the following :

“ That in clause 86-A, for sub-section (2) of the proposed new section 339-A, the following be substituted :

‘ (2) If the accused does so plead the Court shall record the plea and proceed with the trial, and the jury or the Court, with the aid of the Assessors or the Magistrate as the case may be, shall before judgment is passed in the case find whether or not the accused has complied with the conditions of the pardon, and if it is found that he has so complied the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.”

The motion was adopted.

Clause 86-A, as amended, was added to the Bill.

Bhai Man Singh (East Punjab : Sikh): I move, Sir :

“ That in clause 87 in sub-section (2) of section 340 before the word and figure ‘ Chapter X ’ the word and figures ‘ Chapter VIII ’ be inserted.”

The object of my amendment, Sir, is that any person against whom proceedings are taken under Chapter VIII of this Code may be a good witness who should be examined on oath in those proceedings. As you will see, Chapter VIII, sections 107, 108, 110 and so forth, concern the proceedings for maintaining good behaviour and for keeping the peace, etc. After all, as we have seen, they don't consist of offences themselves but mostly consist of quite other things. The man might be asked not to commit a breach of the peace. The man might be asked to furnish security for giving seditious lectures. Or the man might be bound down because he had sought to be obnoxious, or his speeches might be so dangerous that anybody would pick a quarrel with him and there might be a breach of the peace and so forth. There is absolutely no reason why that person should not have the chance of appearing as soon as the statement is made and giving his own statement on oath as a witness. I hope in these circumstances that my amendment will be accepted.

Dr. H. S. Gour: Sir, it will be obvious to the House that I am in evident sympathy with my friend Bhai Man Singh's amendment when I have given notice of an amendment much wider in terms. The object of the Honourable Mover of this amendment is to allow the person against whom proceedings have been instituted for being of good behaviour or for keeping the peace to give evidence in his own behalf. In England, by a recent Statute, the accused is now empowered to give evidence on his own behalf, and I intended to extend the provisions of the English Statute to certain offences under the Indian Penal Code. However, on maturer consideration I do not propose to move my amendment; but I think there is a great difference between offences under the Indian Penal Code and proceedings under the Code of Criminal Procedure. Honourable Members will find that this Chapter VIII is a part of Part IV of the Code of Criminal Procedure which is headed "Prevention of Offences." Consequently all proceedings under Chapter VIII are of a preventive character. They may be regarded as of a quasi-criminal character, and I think the rule which obtains in England might well be tried in this country by enabling the non-applicant in all cases of security for peace and good behaviour to be able to give evidence on his own behalf. He will not be compelled to do so. It is purely permissive and optional. If he desires to explain a point which has been proved against him by the Prosecution there is no reason why he may not give evidence on his own behalf. He will no doubt be subject to cross-examination. As Honourable Members are aware, all accused under the present law are entitled to make a statement, and as a matter of fact they have to make statements in answer to questions put by the Court, and all that the present Code provides is that such statements shall be considered by the Court. But they have not quite the same value, evidential value, as the sole statement of the accused who has explained away the points that have been proved against him by the prosecution and who has submitted himself to the cross-examination of the prosecuting counsel. I submit that this procedure in England has been successful, and I do not see why in all cases of this character the accused should not be at liberty to give evidence if he is so minded. I therefore support the amendment.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I am quite prepared to admit that there is a difference between the action taken under the Indian Penal Code and the action taken under our present section; but I will put it to the House that if we are to embark on a procedure which gives the accused the right of giving evidence on his own behalf we ought to treat the question as a whole. The question is one which has had a long history behind it in England; it has a history of considerable controversy behind it in India also. I need not go into the history of the English case; those who have read the proceedings which led to the passing of the English Act will realise how strong were the differences of opinion on the subject. When it has been discussed in India there have been equally strong differences of opinion. Generally speaking, the Indian Bar, when we previously circulated the matter for opinion, as a whole was against it. Obviously in a country where an accused person cannot always afford to obtain first class advice, he is in a very dangerous position if he is exposed to cross-examination on any statement that he may make in his defence. So far we have admitted the accused to give evidence in his own behalf only in regard to cases arising out of those sections of the Criminal Procedure Code which I may describe as of a semi-civil character—Chapters X, XI, XII, XXXVI, the last of course being that which refers to the

maintenance of wives and children, and I think that before we go beyond this distinct category of semi-civil cases and give that right in criminal cases, pure and simple, for there is no doubt that section 110 for instance partakes of that character, we ought to reconsider the question as a whole. It is for that reason that, though I admit there is substance in the points put forward by Bhai Man Singh and Dr. Gour, I think we should be well advised not to follow their proposal, but to leave the whole question over for consideration anew, when public opinion and the Courts have come to some more clearly defined views as to the advisability of admitting the accused to give evidence on his own behalf.

Rao Bahadur T. Rangachariar: Sir, the Honourable the Home Member admits it is a case needing inquiry. How is this inquiry to be made? You must begin somewhere and make an experiment and see how it works before we can come to a conclusion on a matter of this sort. These proceedings against persons calling upon them to furnish security either for keeping the peace or for good behaviour are evidently fit cases where the persons are in the position of quasi-accused; they are not really accused of offences, but they are suspected as persons likely to commit offences. Therefore in such cases there are very many instances to my mind where this procedure will be very apt. In calling upon persons, especially educated persons to give security for keeping the peace as has been frequently done in the last two or three years when politicians have been called upon to give security for keeping the peace, I think it is but right that they should be allowed to give evidence in their own behalf to explain what they are doing, explain the meaning of words which they have uttered or which they are about to utter. I do not think any risk is run by allowing them to go into the box if they so like. No doubt it is a risk—I quite appreciate it—no doubt ignorant persons who are called upon to give security will run a risk, but I take it we can prevent it by giving discretion to the Magistrate. If the Honourable the Home Member would admit it, I would with your permission add the words "wherever the court so permits" or some such words so as to safeguard it further. Not only it is the option of the accused, but also in order to protect ignorant persons from being harassed by cross-examination I would suggest 'with the permission of the court.' That will be an additional safeguard in order to prevent miscarriages of justice. Now, the Code permits a court to put questions to accused persons under trial for explaining circumstances which appear in evidence against them. I know, Sir, that the power is judicially exercised; it has often been of great use in enabling courts to get at the truth of a case. Honourable Members, if they have read the report of the Racial Distinctions Committee, will have noticed Mr. Carey's minute there. Mr. Carey makes it a point that accused persons where, for instance, they are in distant plantations where the occurrence takes place known only to the accused and the person injured, they ask for a right that the accused should go into the box. Mr. Carey insists on it in his minute, so that it is apparently a privilege valued by Englishmen, a privilege which has been on trial in England for some time and while Dr. Gour is quite right in giving up his amendment and not extending it to all accused persons, yet I think, Sir, we will not be making any very dangerous experiment by allowing it in this case. The law now proposed allows it in certain other chapters of the Code, such as inquiry into urgent cases under sections 144 and 145 and inquiry into maintenance cases—in such cases also the persons against whom proceedings are taken stand in an analogous position as in this case under chapter VIII. Perhaps if there is serious objection

[Rao Bahadur T. Rangachariar.]

to this, then, Sir, why not limit it to cases where a person is called upon to give security for keeping the peace, instead of extending it to persons who are called upon to give security for good behaviour? Probably cases where persons are asked to give security for good behaviour may be said to be more serious cases, because habitual offenders and other cases might come in there. Therefore I think if not the whole of Chapter VIII at least the first portion of it—cases coming under section 107—may be taken; that is persons called upon to give security for keeping the peace under section 107 may be given the option. If the Honourable the Home Member accepts it I will propose it as an amendment—proceedings under section 107 instead of Chapter VIII. I think, Sir, a beginning should be made, and I hope, Sir, the Honourable the Home Member will see his way to accept my suggestion; and I propose, Sir, formally to substitute the words “proceedings under section 107” for the words “Chapter VIII.”

The Honourable Sir Malcolm Hailey: I am quite prepared, Sir, to agree to section 107 being substituted.

The amendment to the amendment was adopted.

The original amendment, as amended, was adopted.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): I move, Sir:

“That in clause 87, in sub-section (2) of the proposed new section 340, for the words ‘if he so desires, be examined’ the words ‘offer himself’ be substituted.”

That section runs as follows:

“Any person against whom proceedings are instituted in any such Court under Chapter X, Chapter XI, Chapter XII, or Chapter XXXVI, or under section 552 may, if he so desires, be examined as a witness in such proceedings.”

If my amendment is carried out it will read “Any person against whom may offer himself as a witness in such proceedings.” I believe, Sir, that this amendment of mine improves the wording of the section, if I may say so without egotism, and I hope the Honourable the Home Member will accept it.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I agree to this amendment.

The amendment was adopted.

Clause 87, as amended, was added to the Bill.

Mr. K. Ahmed (Rajshahi Division: Non-Muhammadan Rural): Sir, I move:

“That after clause 87 insert the following clause”

Sir Henry Moncrieff Smith: Sir, before the Honourable Member moves his amendment, I want to ask your ruling as to whether it is within the scope of the Bill. The Honourable Member proposes to amend section 342 which is not in the Bill, and never has been in the Bill.

Mr. President: Does the Honourable Member agree with that statement of fact?

Mr. K. Ahmed: Sir, it is admitted by all

Mr. President: Order, order. Before the Honourable Member proceeds to discuss the merits of his amendment, I should like an answer to my question.

Mr. K. Ahmed: The answer is in the negative, Sir.

Mr. President: Objection by the Honourable Sir Henry Moncrieff Smith is upheld.

Mr. K. B. L. Agnihotri: Sir:

“In clause 88 sub-clause (i) after the word ‘substituted’ insert the following:

‘and in the table in the said sub-section, the following amendment shall be made.’

After entry relating to ‘Criminal Intimidation’ add the following entries:

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the Act was committed.”
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Mr. President: I have not been able to follow the Honourable Member. I don't know which portion he proposes to omit.

Mr. K. B. L. Agnihotri: I want to omit the sub-clauses (a) to (f) and start with (g) only.

Mr. President: Amendment moved:

“That in clause 88, sub-clause (i) after the word ‘substituted’ insert the following:

‘and in the table in the said sub-section, the following amendment shall be made’:

‘After entry relating to ‘criminal intimidation’, add the following entries:

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the act was committed.”
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Is that what the Honourable Member wants?

Mr. K. B. L. Agnihotri: Yes, Sir, only that portion.

Mr. President: The question is that that amendment be made.

The motion was adopted.

Mr. President: Then the Honourable Member does not move the rest of his amendment?

Mr. K. B. L. Agnihotri: Sub-clause (ii) will come in, Sir:

“In this clause in the proposed table in sub-section (2) of section 345, the following amendment be made.

“Insert in their proper places the following entries:

Criminal misappropriation of property.	403	Owner of property which was misappropriated.”
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Mr. President: Further amendment moved:

“In sub-clause (ii) in the proposed table in sub-section (2) of section 345 make the following amendments:

“(b) Insert in their proper places the following entries:

Criminal misappropriation of property.	403	Owner of property which was misappropriated.”
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Sir Henry Moncrieff Smith: Sir, we are prepared to accept this amendment if the Honourable Member on his part will accept the substitution of the word “dishonest” for the word “criminal,” so that it will read “dishonest misappropriation” instead of “criminal misappropriation.” That is the proper description of the offence.

Mr. K. B. L. Agnihotri: I accept it, Sir.

Mr. President: Amendment moved:

"In the proposed amendment to substitute the word 'dishonest' for the word 'criminal'."

The question is that that amendment be made.

The motion was adopted.

The question is that the amendment, as amended, be adopted.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I now come to the other amendment, namely, criminal breach of trust in respect of property not belonging to the State which is in sub-section (2) (c). This amendment relates to the section of the Penal Code which deals with criminal breach of trust in respect of property. My object in moving for the inclusion of this section under this provision of the Code is that in such cases also the accused and the complainant should be permitted to compound the offence. There may be cases, in which several parties may be aggrieved, the whole public or a number of persons or bodies besides the complainant, be concerned, and in such cases the composition of such offences would be undesirable and objectionable. But this has been safeguarded by putting section 406 in the second sub-section of section 345 which enables the compounding of offences with the permission of the Court only. Were the Court of opinion that permission in such a case should not be given, then it could stop compounding of the offence and there will be no hampering of justice. I would propose therefore that this amendment be accepted. I will just put before the House a case to show how harmful would be the omission of this offence from the list of the compoundable sections sometimes. In one case a lady and her husband's brother were sitting together. Her husband's brother asked the lady for the loan of her wedding ring for a day or two, the request was acceded to by the lady. Thereafter the man went to college and did not return the ring. In the meantime the husband and wife fell out and the wife started proceedings for judicial separation. The brother returned the ring to the husband and declined to return it to the lady, and she in her annoyance filed a complaint against him under section 406 for criminal breach of trust. After the case was filed, the friends and pleaders on both sides thought that the husband and wife should amicably be brought together and reconciled, but this could not be possible unless the case was withdrawn or compounded which was absolutely impossible under the present law. The lady had to take shelter behind a subterfuge that she had no witnesses to offer, and absented herself from the case and the court was kind enough to stop the proceedings. But if the Court had thought otherwise, it could have proceeded with the case and the relations between husband and wife would have been further estranged. Therefore, I submit, that there are also cases in which only individual persons are concerned and in such case there will be great hardship, if we do not insert such a provision but where the accused is one of a bad character, a scoundrel, or has been in the habit of committing breaches of trust, or where there are many persons aggrieved, then certainly he should not get the benefit of this section, and that could be done by vesting the Court with the power to allow the composition of the offence only when it thought desirable.

Mr. President: Amendment moved:

"In the proposed table in sub-section (2) of section 345 make the following amendments:

"(b) Insert in their proper places the following entries:

Criminal breach of trust in respect of property not belonging to the State.	406	Owner of property in respect of which the offence was committed."
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Dr. H. S. Gour: Sir, I have the misfortune to oppose this amendment. The Honourable Member has given an illustration by no means an apt one, and I think if my Honourable friend assumed in the case which he cited that it was a case in which the accused had committed a criminal breach of trust, he is under a wrong impression. If my friend will only turn to the definition of "Criminal breach of trust" in section 405, he will find that the foundation of the offence lies in dishonesty. There must be a breach of trust and there must be dishonesty. In that case there was no dishonesty.

Now, Sir, cases of breach of trust are of a most serious character, and my friend himself admits in omitting to make the rest of the cases compoundable under sections 408 and 409 that all cases of criminal breach of trust are not fit to be compounded. What reason has he then given for making a case under section 406 compoundable? Honourable Members will find that an offence under section 406 is not bailable and if it is made compoundable it will set a premium on blackmail. A man will complain against a person who is immediately arrested and sent to jail and for the purpose of extricating himself out of jail he will open negotiations with the complainant, pay him the money and get out of the clutches of the law. There is no harm done, so far as the complainant is concerned, because he has compounded with the accused, but let us look at the question from another point of view. I employ a porter at the railway station and ask him to carry my baggage to a carriage standing outside. He walks off with it. That is criminal breach of trust. He comes to me and says he will pay me a certain amount of money and I should let him go. Out of misapplied kindness I let him go. I confirm him as a habitual station thief. He goes about as passengers alight from the train, he keeps on committing offences of a similar character, and becomes a licensed thief at the railway station and keeps on swindling people by hundreds, it may be by thousands. Does my Honourable friend think that an offence of such an egregious character should be allowed to be compounded at the instance of the complainant? I give other cases. A person is entrusted with a sum of money. It is his duty to take it to the Bank. Instead of taking it to the Bank, he decamps with it. That is criminal breach of trust. I lay him by the heels. He then asks me to forgive him. I forgive him. He goes again and gets employment with other people and, knowing that the offence is compoundable and he can always purchase his liberty, he keeps on swindling other people. I have been very fortunate in catching him. There may be other people less fortunate and he may decamp with their money. A person who is guilty of such atrocious crimes should, I submit, be not permitted to go free at the instance of a private complainant. He is a danger to society and to the public. Honourable Members will also see that the offence of criminal breach of trust is little, if at all, distinguishable from the general offences of theft and cheating. They all belong to the same genus, and my friend has not suggested—in fact it has never been suggested here—that the offence of cheating or of theft should

[Dr. H. S. Gour.]

be compounded. (Mr. K. B. L. Agnihotri: "It is already provided by the Government.") The offence of theft certainly has not been provided for and if they have provided for the offence of cheating they have done so in spite of our protest. But whatever may be the question, we have to deal with the specific case of criminal breach of trust and I submit that he is not an offender against the individual but an offender against the public justice. He is an offender against society and therefore I submit he should not be permitted to be freed at the instance of the complainant. I therefore oppose this amendment.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, this question of compounding an offence may be stated simply in this form. For instance, in breach of trust, the complicated case is of a clerk or a cashier who is entrusted with money and is found not to account for the sum entrusted to him. Then a prosecution is lodged. Proof of the embezzlement is not always easy when it has occurred over a period of time. Oftentimes, owing to the difficulties of proof, men get off. Sometimes, the prosecution itself, i.e., the complainant finds it is very difficult to pursue the case and he tells the Court: "I am not in a position to prove it." That is one form in which an offence like this is allowed to be dropped. Now, whatever may be the heinousness of it, this is a case between two persons and the proof of the offence is within the knowledge and within the control of the complainant. As the law at present stands, the Court has to depend for the proof of the offence on the complainant and if the complainant does not choose to prosecute the case vigorously, then the case must fail because there is no intervention of the police, there is no intervention of a public officer in the prosecution in such cases. Now, that is the position which I think every businessman will understand. Now, in such a case, if the parties have come to some kind of understanding, that is a restoration has been made or the accounts have been settled or, through the interference of other people, what the complainant does is he goes to Court and tells the Magistrate: "Well, I cannot prove it. No doubt I believe the man is guilty but I have not sufficient proof." The Court cannot take up the case from that point. It is not in a position to pursue the case. Now, in cases where there is this settlement between the complainant and the accused, what happens is that this form, which probably everyone in the Court knows is practically compounding of a non-compoundable offence, is going on. Now, instead of allowing people to do this thing in an indirect and secret fashion, what the amendment suggested by my friend, Mr. Agnihotri, seeks to do is, with the permission of the Court, to allow the parties to compound. Now, I don't see any difference between the two. This one is what happens in practice when it is a case between party and party the other is with the permission of the Court to allow the case to be compounded. And therefore the argument of my friend, Dr. Gour, does not apply. If the prosecution is started by the police or by a third party, that is a public body or the State, then it is a different thing. But all that the amendment seeks to establish is that what is done now secretly and *sub rosa* should be expressly set down, and that, with the consent of the parties and with the permission of the Court, the case should be dropped. Therefore, there is a great deal to be said in support of the amendment which my friend, Mr. Agnihotri, has moved.

Sir Henry Moncrieff Smith: Sir, I oppose the amendment very much on the same ground as those already adduced to the House by my friend, Dr. Gour. The real criterion in these cases, in deciding whether an offence should be compoundable or should not, is this: "Is the offence one that affects two persons only? Does it just affect the complainant and the accused or may the effect of the offence go beyond that?" As Dr. Gour suggested, if there is any chance of an offender being a public danger, then in the case of that particular offence there should be no question of composition. I should just like to refer the House to two of the illustrations in the Penal Code under section 405: A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A. A dishonestly sells the goods. Now, that is a matter between A and Z. But the warehouse-keeper has other goods than Z's. Suppose the warehouse-keeper is able to appropriate the goods for his own use and then, by handing back the value of the goods to Z, is allowed to go scot-free. There is a public danger in that, he may do it again and there is no guarantee that he will not do it a second time. Another illustration, Sir. "A, a revenue officer, is entrusted with public money, which he is required to pay into a treasury . . ."

Dr. Nand Lal (West Punjab: Non-Muhammadan): Section 406 will not be applicable to that case.

Sir Henry Moncrieff Smith: May I read the illustration from the Code? "A, a revenue officer, is entrusted with public money and he is either directed by the law or bound by a contract . . ."

Dr. Nand Lal: May I point out, Sir, that you are reading the illustrations under section 405 which gives the definition?

Sir Henry Moncrieff Smith: Where else am I to get the illustrations but in this section?

Mr. K. B. L. Agnihotri: Under section 405 which defines Criminal Breach of Trust, but the illustrations cover cases under sections 407, 408 and 409.

Sir Henry Moncrieff Smith: I see that the Honourable Member has doubts about it. The point really is that a person who commits criminal breach of trust is a danger to the public. I think there can be no question about it. It is not just a matter between the man who loses his property and the criminal who takes it, and in such cases I feel perfectly convinced that there should be no chance of composition.

Dr. Nand Lal: Sir, I most heartily support this amendment and it is no less than a wonder to me that an able lawyer like Dr. Gour has opposed it. Sir, the complainants, who go to court with their complaint under section 406, as a matter of fact, go to court, in some cases, with a view to extort money from their clients, customers or dealers, and therefore the criminal machinery in those cases is abused. The dispute is of a civil character and that civil character is wrongly and unlawfully twisted into a criminal case. My learned friend, Dr. Gour, says that it affects the community and it will give rise to blackmailing. I cannot understand how it would. Supposing A gives two or three clothes to his washerman to wash, but unfortunately the washerman uses those clothes for himself or his children use them, though eventually he returns them. According to the definition as given in section 405, he will come within the clutches of the law and section 406 will be applicable. I ask Dr. Gour what sort of dishonesty has been committed in that action? According to the definition of dishonesty, which means wrongful loss to one person and wrongful gain to

[Dr. Nand Lal.]

another, there is no dishonesty in this case. And yet, that washerman may be prosecuted and most probably he may be convicted of having committed an offence under section 406, because he has used those clothes against the term of his contract. The provision of section 405, Sir, you will be pleased to see, runs as follows, and section 406 is dependent on section 405:

“Whoever being in any manner entrusted with property”—the washerman is entrusted with property—“or with any dominion over property”—he has got dominion over property . . . —it cannot be denied—that he converted to his own use that property,” because he has used those clothes or he has allowed his children to wear them. Taking the technicality of the law he will be considered guilty. Will Dr. Gour countenance this view that there should be so many criminal cases, and that for ordinary things criminal complaints should be lodged? Therefore, the amendment suggests that, in such cases, the complainant, who is the owner of those clothes, and who unfortunately went to court, should be able to say that he will compound it or compromise it. There is no harm done by his doing so. The community does not suffer at all. I cannot understand in what way the community suffers. This is a kind of contract between the complainant and the accused, that is, between the owner of the clothes and the washerman. Then, Sir, section 405 goes on:

“or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged.”

Now, Sir, suppose A has been asked to go to the bazar and purchase a pair of shoes. Well, unfortunately, he uses for his own purpose the money which was given to him. The next day he borrows money from his friend and purchases the pair of shoes as was ordered or desired by his friend or relation or associate. Then, that friend or associate who gave money to him may say “why are you so late?” And he replies “unfortunately I spent the money which you gave me”. He will be within the clutches of the law, because he has not acted according to the directions given by the man who had entrusted the property, that is the money, to him.

The Honourable Sir Malcolm Hailey: Read Explanation 1.

Dr. Nand Lal: I have read that. He will be within the clutches of the law.

The Honourable Sir Malcolm Hailey: Read it to the House.

Dr. Nand Lal: He has used that money for himself, so far as the wording of this definition goes. Has he not used it, Sir? Rs. 5 were given to him, as I have already submitted, to purchase a pair of shoes. He did not spend that money in buying shoes but utilised it for his own use. Technically, taking the letter of the law, he comes within the clutches of section 406 and he may be prosecuted and convicted for that. Then my learned friend, Dr. Gour, says, it will give rise to blackmailing. I cannot understand that. Rather it will be a weapon in the hands of those dishonest creditors, those dishonest dealers who will force other people to be dragged to the criminal courts instead of suing them in the civil court. Supposing there is a contract between A and B to make a chair within two days. Unfortunately, he fails to act up to it and therefore he is unable to execute the contract. According to this definition he will be within the clutches of law, because he has not acted in accordance with the terms of the contract. Contracts and engagements should not be considered a subject matter for

determination or decision in criminal Courts. That is why the Magistracy are crying that so many civil cases are given the garb of criminal complaints and the Courts are flooded with cases. My learned friend, Dr. Gour, says “Supposing you have entrusted property to a coolie to carry” I may tell him that section 406 will not be applicable to that case. It is section 407 which will apply. If anything is handed over to a carrier, he may carry the thing from Delhi to Lahore or from Delhi town to the Railway station. He will be called a carrier. Further, I may point out to my learned friend that section 406 will not, as I submitted before, apply.

Dr. H. S. Gour: A porter is not a carrier.

Dr. Nand Lal: A porter is not a carrier?

Dr. H. S. Gour: Of course not.

Dr. Nand Lal: What is he then? He is not a repository.

Dr. H. S. Gour: He is a porter.

Dr. Nand Lal: Then, Sir, Sir Henry Moncrieff Smith says, supposing money is entrusted to a revenue officer, then also, I may submit, section 406 is not applicable. That is quite a different offence. If a public servant criminally misappropriates money, he will be tried under a separate section. If a clerk or a servant in a company or office commits criminal misappropriation as such, he will be tried under section 408 or 409, but not under section 406. Section 406 is of a very mild character. It relates to the transactions which we find every day in life. (*Dr. H. S. Gour:* “It is non-compoundable, and three years imprisonment.”) There are a number of offences which are non-compoundable, no doubt about that. The illustrations which have been given from the Government Benches are not of sufficient force, so far as the present debate goes. Therefore, in brief, I submit that this amendment which commends itself should be accepted, unless the Government Benches wish that all civil suits and civil contracts should be given the garb of criminal cases.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): I move that the question be put.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): I entirely agree with Sir Henry Moncrieff Smith that you should not allow offences to be compounded with which only the complainant is not concerned but the public at large is concerned. That is a very sound proposition to which I think no objection can be taken. But I am afraid he has not carefully considered the proposition that has been placed before us by Mr. Agnihotri. If you refer to section 407 there you find criminal breach of trust by a carrier. If you refer to section 408 you find criminal breach of trust by a clerk or servant. Again if you go to section 409, you find criminal breach of trust by public servant, or by banker, merchant or agent. The amendment which has been moved by Mr. Agnihotri does not refer to these sections but only refers to section 406. In section 406, then it is obvious that the two persons concerned are the man in respect of whose property a criminal breach of trust has been committed and the man who has committed it. Now, the point is—should the parties be allowed to compound the case? Sir, we find that the clause requires that you can compound it with the permission of the Court. It is not as if these two persons could compound it without giving the Court any chance of deciding whether or not that offence was compoundable. I

[Munshi Iswar Saran.]

submit, if there be any objection to it, it is removed by the provision that this case can be compounded only with the permission of the Court and not without it. It is rather difficult for a humble individual like myself to express any opinion with confidence when two distinguished and learned doctors disagree. We find Dr. Nand Lal on the one side haranguing with his usual force. We find Dr. Gour maintaining his position with equal vehemence. He says, if you allow these cases to be compounded, what is to happen? The man gets into the habit of doing the same thing over and over again. If you refer to clause 88 you find one offence, which can be compounded, is marrying again during the lifetime of husband or wife. Apply Dr. Gour's remarks. If you allow a man to compound that offence, then according to the learned doctor, he gets into the habit of repeating that offence.

Rao Bahadur T. Rangachariar: I wish to point out the grave danger in allowing such cases to be compounded. Take the case of a goldsmith. It is a very common case in almost every village or town. You entrust him with gold or silver for making ornaments and he does work for the public generally, for the village public or the town public. If the man commits a criminal breach of trust and you allow it to be compounded you offer a premium to such dishonest fellows to carry on that trade. Take the case of a tailor. You entrust him with valuable cloth to be converted into clothes. He carries on the trade for the benefit of the public and for his own benefit. If you allow such cases to be compounded, I think you will be running a very grave danger. The safeguard that you do it only with the permission of the Court is an illusory safeguard. The Court is not likely to know of the circumstances or the antecedents of the people. The Court is not omniscient. I think it is allowing too much in the hands of the Court, and the Court has only to dispose of the *particular* case before it. On the other hand, probably, the Court will be very glad that one case is out of its hands. (A Voice: "No, no.") The Court may say "I am saved the bother of trying this case," or as Mr. Subrahmanayam said, it may be a complicated case requiring investigations. So I think we are running a serious risk in allowing such cases to be compounded.

Mr. President: Clause 88 Amendment moved:

"In the proposed table in sub-section (2) of section 345 insert the following entry:

Criminal breach of trust in respect of property not belonging to the State.	406	Owner of property in respect of which the offence was committed."
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The question is that that amendment be made.

The Assembly then divided as follows:

AYES—26.

Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asjad-ullah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramji, Mr. Manmohandas.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Subrahmanayan, Mr. C. S.
Venkatapattiraju, Mr. B.

NOES—47.

Abdulla, Mr. S. M.
Ahmed Baksh, Mr.
Bagde, Mr. K. G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gunwala, Mr. P. P.
Gour, Dr. H. S.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jannadas Dwarkadas, Mr.

Joshi, Mr. N. M.
Latthe, Mr. A. B.
Ley, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Sinha, Babu L. P.
Spence, Mr. R. A.
Srinivasa Rao, Mr. P. V.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. J. Ramayya Pantulu: I move the following amendment:

"In clause 88, sub-clause (ii) in the table in proposed new sub-section (2) of section 345 omit all the entries relating to the offences of (1) Cheating, (2) Cheating a person whose interest the offender was bound by law or by legal contract to protect, (3) Cheating by personation, (4) Cheating and dishonestly including delivery of property or the making alteration or destruction of a valuable security, and (5) Marrying again during the lifetime of a husband or wife."

These offences which I want to omit are offences punishable under sections 417, 418, 419, 420 and 494 of the Indian Penal Code. These are not compoundable at present under the existing law but they are made compoundable with the permission of the court, in the Bill. My proposal is that they should not be made compoundable even with the permission of the Court. Taking the cases of cheating first, they constitute a very serious batch of offences. No doubt, the persons immediately affected are particular individuals and every offence, in the first instance, is a tort, but it is more than a tort. The crime affects not merely the individual but also society at large. It is an offence against society. Therefore a man who commits the offence offends not only against a particular individual but also against society and society has a right to be protected against criminals. Therefore, to make an offence compoundable really amounts to this. You settle the dispute between the criminal and the person who is immediately affected by the crime but the society at large which is also offended against by the commission of the crime is left unprotected and that is the reason why the more serious offences are not made compoundable, because it is not only the party who is immediately affected by the crime that is involved but also the society at large. There is another aspect of this case. The complainant in these cases may not always be the person who is cheated, because the law does not require that the complaint should be made by the person cheated. Suppose the prosecution is conducted by the police and behind the back of the police the accused goes and compounds the offence with the man who is cheated. The prosecutor may know nothing about it. I think that is a very undesirable state

[Mr. J. Ramayya Pantulu.]

of things. The police prosecute a man for the commission of an offence and the offence is compounded without the knowledge of the police. I think, Sir, that there is a great danger in allowing such offences to be compounded. Again, take the case of bigamy, marrying again during the lifetime of a husband or wife. It is an offence against public morality. I do not think such offences should be allowed to be compounded even with the permission of the court. Some of my friends may say, 'You have got the guarantee of proper discretion being used by the Magistrate in refusing to allow the offence to be compounded.' Well, most of these cases come in the first instance before the Magistrates and during all these days we have been trying our very best to show that the Magistrates cannot be trusted to use their discretion properly. That is the game which we have been playing. We now want to believe that these Magistrates will use their discretion properly. Is it not likely, as has been pointed out by Mr. Rangachariar that there may be some Magistrates who would be anxious to get these cases compounded, so that they may not have any more trouble with these cases? We hear of Civil Judges, District Munsifs and Sub-Judges who bring pressure to bear on the parties to compound their cases, and when a party does not want to come to terms, well, generally he is supposed to labour under a disadvantage to that extent. And so it is not at all unlikely that there may be Magistrates who wish to get rid of their cases, who wish to show a clean sheet at the end of the quarter or at the end of the year, and to show all these cases as disposed of. I for one, Sir, would not trust even a Judge to exercise his discretion in allowing such very serious cases to be compounded. I would not give power even to a Sessions Judge to allow these cases to be compounded. I well remember, Sir, a case of cheating in which no less a person than my Honourable friend, Mr. Seshagiri Ayyar, was a victim. There was a man, Sir, who appeared under a false name and cheated my friend, Mr. Seshagiri Ayyar, and not only he but a number of other prominent gentlemen in Madras were cheated by that man. I had the satisfaction of sending that man to jail. Would Mr. Seshagiri Ayyar allow that man to be let loose on society? I think, therefore, in all the circumstances, these offences should not be allowed to be compounded either with or without the permission of the Court.

Mr. President: Amendment moved:

"In clause 88, sub-clause (ii) in the table in proposed new sub-section (2) of section 345 omit all the entries relating to the offences of—(1) Cheating, (2) Cheating a person whose interest the offender was bound by law or by legal contract to protect, (3) Cheating by personation, and (4) Cheating and dishonestly inducing delivery of property or the making alteration or destruction of a valuable security."

The question is that that amendment be made.

Mr. K. B. L. Agnihotri: Sir, I rise to oppose the amendment moved by the Honourable Mr. Pantulu. He has given certain reasons for moving the amendment. One of them is, how would you allow cases prosecuted by the police to be compounded behind their back? If my Honourable friend had taken the trouble of going through the whole of sub-section (2) of this section, he would have found that it is not only those cases which are non-cognizable that have been made compoundable, but there are also other cases which are cognizable and which have been so provided by the Government, and which my Honourable friend has not objected to and has accepted them to remain as compoundable. For instance, sections 324, 325, 327, 328, 343, 346, 347,—all these cases are compoundable and all

these cases are cognizable cases. So, may I ask, how can such cases be compounded with the permission of the Court behind the back of the police? The police ceases to have any right in a case the moment they put up the case before the Magistrate. They have taken cognizance, they have brought it to the notice of the Magistrate that the cases are of a nature in which the public is interested and the offences are such in which the State is interested. When the Honourable Mr. Pantulu would authorise a compromise in such cases, why should he not allow a compromise in cases under sections 417, 418, 419 and 420? The second point advanced in support of his argument for his amendment is that they affect many persons and if you were to allow the compounding of such offences with one man, the other persons would have a grievance against the accused. My humble submission is that in such cases leave it to the discretion of the Court: The Court may or may not permit the compounding of the offence.

Mr. J. Ramayya Pantulu: You trust the Court now.

Mr. K. B. L. Agnihotri: Certainly, the Government gives discretion to the Courts and trust them; I may or may not trust the Court at all, but that does not matter. That is another matter, whether I trust the Court or not, but I can at least claim to use that argument against you who had implicit trust in them so long. Sir, if many persons are affected by any offence which has been put up by the police, and if the complainant on whose complaint the police prosecuted that man compounds the offence with the accused, what barrier is there to bring up the accused again, where is the barrier to prevent the Magistrate or Judge from proceeding against that accused and for not granting that permission which is made indispensable under this clause? My Honourable friend has given a case in which some of our Honourable friends were affected. In that case it was a very right thing that such a man was convicted. Supposing one of them was kind-hearted enough to compound that offence, would the police have been debarred from prosecuting the man again? Would any other person or my Honourable friends have been debarred from prosecuting him again for that? Supposing the charge was framed when such a composition would have amounted to an acquittal of the accused; in that case the Court could not have permitted such composition when many persons were concerned, or when the man had cheated many other persons. The cases in this section refer only to cases which are more or less of a technical nature. It is not only that the present Joint Committee accepted this amendment, and brought it into the Code, but even the Lowndes Committee, which consisted of very eminent lawyers and Judges, considered it desirable that these cases should be included in this clause of the section. My Honourable friend has also referred to section 494—so far as morality is concerned, everyone would certainly admit such a contention, but there are customs and customs prevailing in the different parts of the country, and are not uniform in all parts of the country. Take the case of portions of the country which are in a very backward condition where the man, the husband, may be satisfied with coming to the Court

Mr. President: Order, order. That question is not before the House.

Mr. K. B. L. Agnihotri: So on these grounds I beg to oppose the amendment moved by my Honourable friend.

Mr. R. A. Spence (Bombay: European): I move that the question be put.

The motion was adopted.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. President: Further amendment moved:

"In clause 88, sub-clause (ii) in the table in proposed new sub-section (2) of section 345 omit all the entries relating to the offence of marrying again during the lifetime of a husband or wife."

The question is that that amendment be made.

The motion was negatived.

The Assembly then adjourned for Lunch till Fifteen Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes Past Two of the Clock.

Rao Bahadur P. V. Srinivasa Rao: Sir, with Mr. Agnihotri's permission and on his behalf I move the amendment standing in his name:

"In clause 88 for sub-clause (iv) substitute the following:

(iv) For sub-section (5) the following sub-section shall be substituted, namely:

(v) Notwithstanding anything contained in this Code any case instituted on a complaint, not being one by a public officer as such, may be compounded by the person aggrieved."

Mr. H. Tonkinson: Sir, in rising to oppose this amendment, I think it will be only necessary for me to remind the House of the discussion which took place upon the amendment No. 226 which was moved by my Honourable friend, Mr. Agnihotri, yesterday. My Honourable friend then proposed that in section 259 the words "and the offence may be lawfully compounded" should be omitted. The effect of that, Sir, would have been that in proceedings instituted upon complaint, if the complainant was absent then the Magistrate would be able to discharge the accused. Now, Sir, in substance the present amendment is exactly on all fours with that amendment. When my Honourable friend moved his amendment I believe he secured the support of himself alone. I hope, Sir, that the present amendment will secure the same measure of support.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, I do not move my amendment No. 264, but I move No. 265:

"After clause 88 (v) insert the following sub-clause:

(vi) to sub-section (7) after the word 'section' the words 'The composition of an offence under sub-section (1) if made out of Court may be allowed to be proved by any other evidence' shall be added."

Sir, Honourable Members will notice that there are two ways of compounding an offence. The first clause provides for composition by the parties concerned without the intervention of the Court. The Court takes no part in the composition of an offence when it takes place under the first

clause. Under the second clause the Court's permission has to be obtained. Now, a composition means, not a mere withdrawal, not a mere non-prosecution, but an agreement come between both parties, i.e., the complainant and the accused. They meet out of Court, come to terms as regards how they are going to compose the difference between them, and that forms the composition. So that, invariably it has to take place outside the Court. The complainant receives money or some other consideration for his agreeing not to prosecute the offender for the offence which he alleges the accused has committed. Now, it some times happens that the complainant after receiving consideration, whether it be in the shape of money or otherwise, wants to back out of it. It happens in civil cases; it happens in criminal cases. In civil cases, as Honourable Members know, compromise or adjustment of a suit can take place outside a Court and the Court is asked to record it under section 373. So also compositions are really allowed under the Criminal Procedure Code, because they are more or less quasi-criminal but partaking of a civil nature. That is why the law allows composition. Therefore there is nothing in the section as it stands to prevent the procedure which I have indicated in my amendment. In fact all the rulings recognise that the procedure which I have indicated in my explanation, or rather in my sub-clause, should be adopted. In a case in XXI Calcutta page 103, it was laid down that it is competent to the Court in which the charge is pending to take evidence as to whether there was in fact a composition outside the Court when one of the parties to it refuses to abide by it when the case comes on afterwards for hearing. That is in XXI Calcutta 103. That was followed in Madras in a case reported in XVIII Madras Law Times, page 602. It was also followed in the Patna High Court in I Patna 21. And I do not find any case to the contrary. In fact, almost every Court has followed that. And after all it is only natural that composition should take place outside the Court because the Court does not sit there as an arbitrator between the parties and say "Now come on, you complainant, you accused, what are your terms, how are you going to settle this business?" Composition then must take place, in the very nature of things, outside the Court. And human nature being what it is, sometimes these agents who are hovering round the criminal courts get hold of the parties, and the peace already effected is disturbed by these agents and they try to induce one party or the other to back out of the compromise already effected. And in such cases one party or the other, often times the complainant, after taking the money outside the court, comes forward and says "Very well, I will still insist on prosecuting the accused person." Honourable Members will agree with me that it is not right to permit him to adopt such a course. There must be some way out of it. In Civil cases there is no difficulty. One party or the other puts in a petition to the Court saying "we have adjusted our differences" and wants the Court to record it, and the Court makes an inquiry and records the adjustment if it is satisfied that it is a lawful adjustment. So also here. As the composition takes place outside the Court, one party or the other will inform the Court that we have adjusted our differences, and the procedure is the Magistrate puts a question to the complainant "Have you adjusted it?" When he admits it, the Magistrate records that the case has been compounded. I only want to make it clear in this section that a composition made outside the Court can be, may be allowed to be, proved by any other evidence—that is, the evidence may be in writing, the evidence may be that of a respectable pleader or a family friend, who might have intervened and effected a compromise. If one party backs out of it, then there will be evidence called. I think it is

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but right that we should allow this evidence to be given. It is the practice. I am only trying to introduce what is the practice to-day and what has been recognised to be the rightful practice.

The object of these changes which the Government have introduced in their various amendments is to introduce into the Code matters on which there have been judicial decisions; if there have been divergences of opinion the Legislature makes it clear what it intends. If the judicial decisions have made a certain position clear the amendments which have been introduced hitherto are to make it clear what the Legislature intends. So also, I am not here doing violence to existing practice; I am only seeking to introduce into the Code a practice which is recognised to be legal and regular. I therefore move the amendment as it stands in my name.

Mr. H. Tonkinson: Sir, I rise to oppose the amendment. I think, Sir, that in these cases the position which we must take is that normally unless the complainant or the person who has power to compound the offence appears in Court and admits that he has received compensation, composition should not be permitted. We do not wish, Sir, to increase by any means the number of cases in which Courts have to inquire as to whether a composition has been effected outside the Court. As regards the rulings which my Honourable friend referred to, I notice that the leading case was to the effect that when an accused person alleges that an offence with which he has been charged has been compounded, so as to take away the jurisdiction of the Criminal Court to try it, the onus is on him to show that there was a composition valid in law. Well, Sir, I am not at all clear that if the amendment proposed by my Honourable friend is accepted we shall be in fact giving effect to that ruling. My Honourable friend says that this is the present practice. Well, Sir, if it is the present practice, we would prefer to leave it at that without adding these words to the section.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I oppose this amendment and my reason is this: we would not only be turning a Criminal Court into a Civil Court for the purpose of deciding as to whether a composition has taken place or not, but we would be introducing any amount of delay in the disposal of criminal work. What is after all the object of allowing these offences to be compounded? The object is that the dispute or enmity between the parties which has arisen thereby may for the future be put an end to. But if it has to be proved whether composition has taken place, the same state of things which existed before will continue for ever. So by allowing this amendment, that is, by allowing proof of composition, we will be simply defeating the object of this section. My learned friend, Mr. Rangachariar, says this is the practice usually followed. With all respect for his wide experience and learning I must join issue with him on this point. I have never yet come across a case where a Criminal Court has gone into the evidence as to whether a real composition between the parties has taken place or not. From the mere fact of the section being silent on that point, the Patna High Court or the Madras High Court or the Bombay High Court might have put that interpretation on it. Otherwise to me this state of things, at least as far as my province is concerned—and I am aware of the practice that prevails there—this state of things does not exist; and I therefore think that it will be simply delaying proceedings *ad infinitum* to allow an amendment of this kind.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I also rise to oppose the amendment, and I wish to supplement what has fallen from my Honourable friend, Mr. Tonkinson, and my Honourable friend who has just spoken. Taking into account the comprehensive character of the amendment proposed, I shall presently proceed to consider its effect. The amendment as it is worded says in its first portion "the composition of an offence under sub-section (1), if made out of court, may be allowed to be proved." What my Honourable friend, the Mover of the amendment, evidently means is that the composition must be such as may be lawfully effected. But as it is, it includes all possible cases of composition, lawful and unlawful.

Rao Bahadur T. Rangachariar: Under sub-section (1).

Mr. J. N. Mukherjee: Quite so. Composition of course is doubtful under sub-section (1). But as the amendment is worded it may be taken to suggest all possible cases of composition, lawfully or unlawfully made.

Rao Bahadur T. Rangachariar: Under sub-section (1).

Mr. J. N. Mukherjee: Quite so. But the words "composition of an offence under sub-section (1)" may be taken to throw some doubt as to whether the amendment proposed contemplates even such compositions as those which although mentioned in sub-section (1) are, however, unlawfully made.

Now, Sir, the question that arises in the case of money-payments, referred to by the Honourable Mover of the amendment, comes to this. In all such cases, it must be supposed that it is the accused who pays the money to the complainant as an inducement for the composition; and it may be taken in some cases, that the complainant is made to accept the sum by hook or by crook. Here the accused cannot be a poor man, but he is able to pay, in order to be out of the scrape, and it may often happen that the complainant is not given any *locus penitentia* as it were. The matter may have been simply rushed in such case or a trick may have been played upon the complainant. If the composition was a voluntary one brought about without any undue influence being brought to bear upon the situation, why is it that such a composition, it may be asked, could not last for a short space of time? One would find an element of suspicion in that. It might not be a case of denial after deliberate cheating, after all. Therefore, I submit, Sir, that if the inquiry is to be made following a positive direction of the law, and the composition is enjoined to be proved in all cases of denial, in the way suggested, there is no doubt litigation will considerably increase. There is every chance, in such event, of a crop of cases arising, under the circumstances, which will be extremely undesirable to have. Again, where a monied man happens to be the accused and the complainant is poor, the monied man can always be expected to devise means, by the employment of his money or influence, to make the complainant agree, at least temporarily, to a proposal of settlement and in that way the accused can always have a side-issue as to composition raised in course of a trial in a Criminal Court, and have it decided, one way or another. I think, Sir, that is not desirable. The trial of the case itself being protracted in this way will exhaust the complainant and will ultimately defeat the ends of justice. Apart from other points, it must be remembered that the *ratio decidendi* of

[Mr. J. N. Mukherjee.]

a judgment is always surrounded by facts which govern the conclusion arrived at, in every case, and the conclusion if it be detached from and be shorn of the circumstances of the case, and then be put in an abstract form for purposes of general application, a source of danger of error is likely to creep in by the very process itself of generalization from concrete to abstract. I submit that if it is the meaning of the case law on the point that the Court can consider and decide upon any question of disputed composition, upon the interpretation of the law as it now stands, it can always do so, in a proper case. But it is undesirable to have such cases adjudicated upon in a criminal trial as a rider to the criminal case that is before the Court. This will be the result if the amendment in question be made part of the Statute.

As regards the last part of the amendment proposed, namely, the part which says: "If made out of Court may be allowed to be proved by any other evidence," it is difficult to understand what this "other evidence" is. These are verbal matters no doubt, but the amendment, as it is, apart from the question of drafting is open to objection, as I have submitted, on the ground of the principle underlying it. I therefore, Sir, oppose the amendment.

Dr. Nand Lal: Sir, only a couple of hours back, I was of opinion that this amendment was of no use and that it was futile, but after my deep study of the whole question I now stand converted. I have given my serious thought to it, and I think that this is a very useful amendment. Now the ground which has been taken in opposition to this amendment is simply this, that it will prolong the proceedings in the Criminal Court, and that the Criminal Court shall have to determine whether there was any composition outside the Court, and if so, whether it is lawful or unlawful. Now, Sir, supposing the argument of the opposition holds good and the composition is not accepted. The case proceeds on, the complaint or the chalan as the case may be is proceeded on with, and then naturally it will take greater time.

But, if the composition is accepted, if it is held by the Court that in reality there was composition and the complainant had backed out on account of some dishonest motive, naturally, Sir, you will agree with me that it will nip the whole proceedings in the bud and time will be saved, and, at the same time, the promise which was held out, the contract which was effected outside the Court between the complainant and the accused will be substantiated and will be held as true. It may happen in a good many cases. There is some sort of valid agreement between the accused and the complainant, Sir, outside the Court, and a clear understanding has been arrived at that, when the complainant appears before the Court, he will make a statement that the case has been compounded, but, on account of some dishonest intervention or on account of the inducement held out to him, he backs out. When he appears before the Magistrate, the accused says: Sir, the case was compounded. The complainant says: No. Then, naturally, Sir, it would be better if evidence be recorded in order to determine whether really there was compromise or not. The case is compoundable. It has been allowed by the new provision that certain offences, in regard to which this amendment is moved, are compoundable. So far as the composition goes, it is lawful. Then the question which is the crucial question of the whole case would be whether that composition has

been brought about or not. That point could easily be determined. So, therefore, the ground which has been advanced that there will be delay in the criminal proceedings I may respectfully submit, with due deference, has got no force.

The other point which has been urged by the other speakers on this amendment is this. That, as a matter of fact, it will give rise to a number of points which could naturally arise in a Civil Court and that a Criminal Court should not be called upon to determine those points. In reply to that, my submission is, why not. We have got in any case an analogy. That in civil cases, if the case is compromised and one of the parties says that the compromise was not effected, then there is a clear Statutory law that the Court will take evidence and, if it finds on the ground or on the strength of that evidence that in reality there was a compromise between the parties, then the adjustment of the claim, as it is technically called, will be recorded. So it ought to be in the criminal case which is compoundable. I cannot find in what way it will hamper the work of the Criminal Courts. One of the arguments which was advanced by the Honourable Mr. Mukherjee was that most probably it will give rise to animosity between the parties, that the underlying spirit, which has actuated the Government to incorporate this provision, is that the parties may become friends, and that if the decision is given by the Court again on the same point, then there will be no room for friendship. I say this argument does not hold good. Rather, if this composition is accepted as it has been urged by the accused in the Court before the Magistrate, then there will be friendship again, namely, friendship will be revived. Dishonesty should never be countenanced—we should never set a premium on dishonesty. If the complainant has given an undertaking to the accused outside the Court why should he not be asked to adhere to it? In the interests of honesty, I very strongly support this amendment which will be of great utility both to the Government and to the public.

Sir Henry Moncrieff Smith: Sir, Dr. Nand Lal devoted most of his arguments to showing that there would not be any delay or any prolongation of proceedings if this amendment were accepted. But, Sir, for the most part he confined himself to the one case in which the parties come up and the accused is able to prove that there has been a composition and the Court holds that there has been a composition and therefore acquits the accused. He did not explain, Sir, how delay would be avoided or the proceedings would be expedited in the converse case, which would probably be quite 50 per cent. of the cases, in which the accused was not able to prove that there had been a composition. I wish to put it to the House in another way. Should we not, by introducing this new provision into the Code, be supplying the accused with what in effect would be an additional false defence? The accused person sees the case is going against him. He goes into the Court and says: You cannot go on with the case: we have compounded it. The Court asks the complainant if that is so and the complainant denies it. However, we are going to compel the Court to inquire into it and to give the accused an opportunity of proving his statement. Up comes the accused with all his friends and tries to prove that he did pay the complainant Rs. 5 or Rs. 10 and that the complainant agreed to withdraw the case. Sir, there is a very very grave danger of this resulting in further prolongation of proceedings in this respect. You are giving the accused an opportunity of providing himself with an additional defence which I venture to suggest in 90 per cent. of the cases will be a false one.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, with your permission, I wish to move a verbal amendment to the amendment moved by Mr. Rangachariar, namely, to omit the words "by any other evidence." These words are unnecessary and I ask that they should be omitted.

Rao Bahadur T. Rangachariar: I accept the amendment, Sir.

Mr. T. V. Seshagiri Ayyar: I wish to say a few words with regard to the arguments which have been put forward. I am sorry I was not here when the discussion went on, but I have been able to understand enough of the gist of the arguments against this amendment to speak on it. Sir, Sir Henry Moncrieff Smith just now told the House that the acceptance of the amendment would result in the prolongation of criminal proceedings, and that it is the essence of these trials that they should be expedited. Sir, there is an equally important consideration in regard to criminal trials. We should not give room to a person to blackmail or to behave dishonestly. If a complainant and an accused compose their difference outside the court and if as a result the complainant receives some money but he does not want to report it to the court, what is the position of the accused? The complainant, after receiving money on the understanding that he would not press the prosecution, would persist on prosecuting. Does it not encourage him to blackmail? Does it not encourage him to behave dishonestly? And is it in the interests of justice that we should give room for such a state of affairs? If a man after having agreed to abandon the prosecution and after having received consideration for the abandonment, still goes on pressing the prosecution, in the hope that he may be able to induce the poor accused to pay more money, is it in the interests of justice that he should be encouraged to do so? Sir, I understand it was said that this is unnecessary because there have been some decisions upon the matter. If I understand the position aright, I believe the Lowndes Committee were trying to introduce amendments into the Code with a view to embodying decisions of courts. No doubt there are two decisions of two courts. The matter had to go to the High Court and two High Courts accepted the principle underlying the amendment. Some lower court in other provinces may take it into its head not to follow the decision of the two High Courts. Is it in the interests of justice that we should embody in the section language which would make it unnecessary to parties to resort to the higher court? I think having regard to the two decisions and having regard to the object of the Lowndes Committee, it is desirable to make the position clear, so that there may be no doubt in the minds of the Magistrates who have to try these cases. Under these circumstances, I think this amendment ought to be accepted. Having regard also to the analogy of civil courts, where, if a composition is entered into outside the court, the court allows proof to be given of such composition. I think that we should provide a similar remedy in criminal cases if only to prevent persons behaving dishonestly and blackmailing others.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I rise to oppose the amendment. I wish to support the statement of my friend Mr. Pyari Lal, as I have never come across a case in which an accused person has come to Court and has said that he has compounded the case, although the complainant is not there or denies having compounded the case.

I have never known a case in which the Courts have approved of the compounding of a case in such circumstances, and I do not think they would do so. I find in a Bombay case that:

"When the parties to an offence compoundable without permission of Court produce before the Court a writing signed by them: the Court is bound to act upon it and is not at liberty to call upon the parties to adduce further evidence that the case has been compounded."

This is a decision in favour of the accused. If the accused produces a document signed by both parties, or approved of by both parties, saying that the case has been compounded, the Court does not go behind that. It is not right on the one hand that the accused should be allowed to come forward and say that the case has been compounded, and at the same time that the complainant should not be allowed to come forward and say that the case has not been compounded. The fact is there is no analogy between the civil procedure and the criminal procedure in connection with these proceedings. You cannot expect the Court to go into inquiries entirely outside the criminal proceedings, and say, "I shall inquire into the question whether A paid B Rs. 10 or Rs. 15, or whether they came to an agreement at all." Besides this the Court does not go into the question whether a proper or full amount has been paid for compounding the case or not. All that it considers is that the complainant says in Court "I have compounded the case;" and the Court need not trouble any more about the matter. For these reasons, I suggest there is no reason to make the amendment proposed.

Mr. President: Amendment moved to the original amendment:

"To omit the words 'by any other evidence'."

The question is that that amendment be made.

The motion was negatived.

Mr. President: Original amendment moved:

"To insert the following sub-clause at the end of clause 88:

'(vi) to sub-section (7) after the word 'section' the words 'The composition of an offence under sub-section (1) if made out of Court may be allowed to be proved by any other evidence' shall be added'."

The question is that that amendment be made.

The motion was negatived.

Clause 88, as amended, clauses 89, 90, 91, 92 and 92A were added to the Bill.

Mr. J. Ramayya Pantulu: I move:

"In clause 93, in the proposed new sub-section (2-A) of section 356, after the word 'hand' insert the words 'or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence.'"

I move this amendment to meet the case of a Magistrate or Judge who does not know the language in which the evidence is given. In such cases, it will be necessary for the Magistrate or Judge to have the statement recorded in the language in which the evidence is given. I trust the amendment will commend itself to the House.

Mr. H. Tonkinson: I accept that amendment.

The motion was adopted.

Mr. K. Ahmed: I move:

"In clause 93 for the words 'following sub-section' substitute the words 'following sub-sections' and at the end of the clause insert the following, namely:

'(2-B) In trials before the High Court the evidence of each witness shall be recorded under the direction of the presiding Judge'."

Sir, it is desirable that the presiding Judge should see that the evidence is recorded. Otherwise, it is very, very difficult for the Court of revision or a higher Court, for instance, a Full Bench, to come to a decision and see whether a case has been made out or whether it is a fit case for the Full Bench to interfere with the decision of the Lower Court. In the absence of that, it is very very difficult for any Judge or any court of law to decide a case because the particulars of that case are not before the court.

Sir Henry Moncrieff Smith: I think it will save the time of the House if I am allowed to make one brief remark. I think my Honourable friend has overlooked section 365 of the Code. That section, as amended by the present Bill, lays down that every High Court shall make rules prescribing the manner in which evidence is to be taken and will also lay down that the evidence shall be taken down in accordance with those rules. I think, Sir, that will surely meet the point of my Honourable friend.

Mr. K. Ahmed: That argument is only for amendment No. 277, to clause 96, on the top of page 38.

Sir Henry Moncrieff Smith: I move that the question be now put.

Mr. President: The question is that the question be now put.

The motion was adopted.

The amendment was negatived.

Mr. President: The question is that clause 93, as amended, do stand part of the Bill.

The motion was adopted.

Mr. K. Ahmed: I move:

"In clause 94 (iii) for the words from 'it shall not be necessary' to the word 'charge' the words 'the Magistrate shall record the evidence briefly' be substituted."

Honourable Members will see that in section 362 of the Code of Criminal Procedure, item No. 4. I want the words put in, namely, "the Magistrate shall record the evidence briefly." May I read the section with your permission? "In cases other than those specified in sub-section (1) it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge." My amendment is that the Magistrate shall record the evidence briefly. This House has got the representatives of the people and they will see the difficulty. The matter is entirely at the discretion of the Magistrate to take down the evidence if he likes or not to take it down if it does not suit him. He could convict a man then and there on the substance of the evidence he may have taken down and

the higher court cannot decide a case properly as it has no other evidence except that material on which the man has been convicted. It is the rule of nature, Sir, and no doubt any Magistrate convicting a man must apply that theory and if that theory is applied, then you can appreciate the position of the unlucky accused who is tried and convicted on that portion only of the evidence, the evidence the important part of which has been missed. My amendment is a very important one suggested by able grey-haired lawyers and experienced men of the world and that you must not give discretion to the Magistrate to make note of a portion of the evidence only because it is not safe at all (in this country). Unless you get this down, unless the Magistrate takes it down, records it, word for word, and if the Magistrate records it only briefly, if the more important parts are not taken down, it is for the Revisional Court to see those most important parts, and if these important parts are missed, the poor man is wrongly convicted, and therefore it is for the higher Courts to see that justice is done to him, and under the circumstances, Sir, it is the duty of the Revisional Court under section 439 of the Code of Criminal Procedure, or probably under section 15 of the Charter Act or under the Government of India Act, 1907 and so on, we should make the High Court, revisional side, satisfy itself as to the correctness or propriety of the order. Sir, if there are provisions of the Criminal Procedure Code that appeals should be heard, and cases should be revised, and in the hearing, under those sections, Sir, if the full material is not placed before the Court, is there any purpose which will be served by simply getting a Bill, which has been passed by the Council of State, passed here, if the important portions are missed in the Bill. I ask that this House will see its way, I ask each and every Honourable Member of this House to consider the point, that whether it is a sound theory, a sound principle of law, that it must provide sufficiently that if a man is going to be tried, he must be tried properly. Possibly the Government Member in charge will find that it will be a miscarriage of justice if a Magistrate is given that discretion, if the law does not provide for the safety and protection of the people in the administration of justice, a fair and impartial trial should be held according to the soundest principle of law, that the offence adduced against the accused by the prosecution should be taken down, and it is for the revisional Court to see whether this man has been convicted according to law, rightly or wrongly, properly or improperly. If that is so, Sir, I do not find any difficulty for my Honourable friend to accept it, because that will certainly make the law more reasonable than it is by leaving it to the discretion of the Magistrate, to the sweet will of the Magistrate, and that he should only take down the substance of it and not the real part of the evidence upon which this man is convicted: and it is no use getting a number of Judges, getting a number of appeals and revisions, when you have not got the materials before them, and therefore, you are really doing injustice, because you are supposed to provide everything and all for those higher Courts to revise the cases under revision, but they have not the full material before them, and still you come and say, 'here is your appellate Court, the Judge says that your conviction is right or that your conviction is wrong'—but you have not given that opportunity of a fair trial that was expected. I suppose, Sir, it will be wanting,—in the Bill, it will affect the administration of justice in this country as far as the Criminal Procedure Code is concerned. I ask, Sir, most humbly that the Government will find themselves able to accept it, because, Sir, there is not so much difficulty in it. I would not saddle, Sir, the Government Bench with important rulings of the High Courts, but, Sir, it is:

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[7TH FEB. 1923.]

[Mr. K. Ahmed.]

commonsense. But, Sir, it is a commonsense that if the Government of this country convict a man of an offence and the taking down of the evidence is left to the discretion of the Magistrate, then if the man goes in appeal to the High Court and to the Privy Council, and they will say, "We are sorry; the learned Magistrate did not take down the real essence of the evidence, the important words that you rely on for the defence of this man." Is that, Sir, a sound principle, leaving so much discretion and liberty with the Magistrate? I leave it entirely, Sir. I move the amendment.

The Honourable Sir Malcolm Hailey: I do not intend to go into the merits of the motion that Mr. Kabeer-ud-Din Ahmed has put forward, and for a simple reason. The law regulating the procedure of our Presidency Magistrate has remained unaltered for many years, but it has come under a good deal of criticism. There are many who have expressed the view that the procedure now applicable to Presidency Magistrates is not suitable in view of the present composition of the Presidency Magistrate's Courts and their modern developments. We have been invited at different times to go into the whole of this question; and for myself I think that it would be better if we had an opportunity of investigating it as a whole, and consulting both Local Governments and the High Courts concerned, before we proceed to make any change at all in the law regulating procedure. If changes in procedure are required, they would come better as the result of such an investigation into the whole question, and I would deprecate making small modifications at present in the procedure applicable to the Courts. For this reason, Sir, I hope Mr. Kabeer-ud-Din Ahmed will see his way to withdrawing the amendment before the House.

Mr. K. Ahmed: I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Clauses 94, 94-A and 95 were added to the Bill.

Mr. K. Ahmed: I suppose, Sir, that this amendment is not included in the promise given by the Honourable the Home Member in which he is going to bring these matters into conformity with the laws. This refers not to Presidency Magistrates' Courts but to a Court called the Honourable the High Court. Sir, I move:

"After sub-clause (ii) of clause 96, insert the following sub-clause:

"(ii) (a) To the proviso to sub-section (5) the following shall be added, namely:

"In trials before the High Court the heads of the charge shall be recorded under the direction of the presiding judge and shall be signed by him."

Members will kindly see that if a case (called a Sessions case) is tried by the Quarter Sessions of the Honourable High Court of Calcutta, Sir, that case is tried like this: 9 jurors sit to try that case, and then the case is put before the gentlemen of the jury and the case is made out by the Public Prosecutor. It is heard no doubt at great length, but the difficulty that we come across when we go against the order of the learned Judge, against sometimes the verdict of the gentlemen of the jury, and file an appeal before the Full Bench composed of sometimes five of the learned Judges of the High Court or three of them at least if not more. Then, Sir, the learned Judges who preside over the Session no doubt hear our appeal, but they generally find it very difficult to follow the case, because

the evidence is not before them, because the most important portions of the documents are not before them, the heads of the charges are not even signed by the learned Judge, nor recorded at all by him, and the result is that many of them are censured, and even the Advocate General is censured, because the Advocate General has given his sanction, or fiat which can only apply to that sort of trial. We approach the Advocate General for the sake of getting this fiat, and we move the full Bench with this result. In a case reported in XXIII Calcutta Weekly Notes at page 426 (my Honourable friend, Mr. Chaudhuri, is the proprietor of this Report), five learned Judges of the Honourable High Court in 1919 comprising the Chief Justice, Sir Lancelot Sanderson, Sir John Woodroffe, Sir John Chitty, Mr. Justice Fletcher and Mr. Justice Teunon, made the following remarks. I shall read an extract of the actual words that fell on that occasion from the mouth of the Honourable Chief Justice we have got at present. The learned Chief Justice says:

"Before I conclude my judgment I desire to refer again to the fact that there were no notes of the learned Judges summing up taken by the learned jury and Counsel for the prosecution. In my judgment it is most desirable that in these cases, specially in an important case like this, the learned Counsel for the Prosecution should take a note of the summing up of the learned Judge. It is impossible for the learned Judge himself in his summing up to take a note. What has happened in this case is an instance of how desirable it is that these notes should be given. It may be that if in this case adequate and reasonable notes of the learned Judge's summing up had been taken a great deal of time and expense might have been saved. At all events, I hope that in future regard will be had to what has been said, and that proper notes of the learned Judge's summing up will be taken."

Now, Sir, it is not a Court or Bench where we get a certified copy of the order that you are moving there against the order of another Court or a Judge or a Magistrate or certified copies of deposition that you had applied for and have taken from and enclosed in a memorandum of appeal or have got a certified copy to show to the Full Bench that this is the evidence adduced in the case against you. Nothing of the kind. I hope the majority of the Honourable Members will understand and that this is an extraordinary kind of trial that you have in Calcutta where you do not get a copy of the evidence upon which a man is sent to jail. This is a procedure by which the Court will not take down under what section you are charged, the offence you are charged with and of which you are convicted for so many years. It is a curious part of the law, as the learned Chief Justice has found—as I read out just now. I hope that we will also see, Sir, that this extraordinary procedure should no longer be allowed to continue. Six years have gone when the matter was under contemplation since 1916 and to-day, Sir, in 1923 on the 7th of February we shall have something which is reasonable and which is a sound provision of law; it is high time that we should not be tried under any law which is wrong and in which there is no sound principle laid down. Here we have the assistance of lawyers from all parts of the country and the benefit of all these opinions, and here are amendments brought forward by the representatives of the people, and I ask, Sir, that this amendment, which I shall repeat again, should be accepted, viz., that in trials before the High Court the heads of the charge shall be recorded under the direction of the presiding Judge and shall be signed by him. Thereby we shall be able to get a signed copy and we shall get copies of the deposition and we shall get thereby what Honourable Members will see, is obtained in other parts of the country. Justice is nearer perhaps in the rural districts than in the town of Calcutta. In that place everything can be had, we have got a High Court and a number of Judges; but justice is not accessible to us. I hope this is the high time.

[Mr. K. Ahmed.]

when the Government Bench will probably accept my amendment. I therefore move my amendment and hope it will be accepted.

The Assembly then divided as follows:

AYES—17.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Jatkar, Mr. B. H. R.

Mahadeo Prasad, Munshi.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Venkatapatiraju, Mr. B.

NOES—42.

Ahmed Baksh, Mr.
Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Misra, Mr. B. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Sinha, Babu L. P.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, it has been suggested to me that this amendment* will be coming up under section 497. So, I do not move it now.

The Honourable Sir Malcolm Hailey: We shall be glad to discuss it then.

Clause 96 was added to the Bill.

Mr. President: Clause 97. The amendment† standing in the name of Mr. Kabeer-ud-Din Ahmed is beyond the scope of this clause.

Clauses 97 and 98 were added to the Bill.

* "In clause 95 (iii) for the words 'following sub-section' substitute the words 'following sub-sections' and at the end after the word 'judgment' insert the following:

(7) Nothing in this section or section 366 shall be deemed to prevent the Court from setting the accused at liberty after the conclusion of the trial and before the judgment of acquittal is pronounced."

† "After clause 97 insert the following clause:

"97-A. In sub-section (1) of section 371 of the said Code after the word 'judgment' the words 'of the trial and appellate courts' shall be inserted'."

Dr. H. S. Gour: Sir, the amendment I propose:

"In clause 99, in proposed section 386 (1) (b), omit the words 'or immoveable' and the words 'or both'."

raises a very important question of law. Honourable Members will see that under the existing Code of Criminal Procedure, section 386, fine is only recoverable by distress and sale of moveable property. Under the amendment proposed by Government it is intended to extend the recovery of a fine by sale of both moveable and immoveable property. Now Honourable Members will find that the object of levying fines is not to supplement the State revenues but to punish the offender. Consequently, fine must be levied not with reference to the property which the accused possesses but with reference to the gravity of the offence and due regard being had to the fact that the fine would act as a deterrent sentence. The law up to now has worked so far as I can see, satisfactorily. I do not know why the Government now wish to take the power of recovering fine both from moveable and immoveable property. Honourable Members will see that recently the Government introduced a measure abolishing the sentence of forfeiture of property as a substantive punishment. Under the Indian Penal Code the forfeiture of property could be ordered only in a very few cases. Offences against the State, like waging war against the King, and extreme cases of murder and a few other cases of that character. When the amendment of the Indian Penal Code was before this House, I pointed out that the punishment by way of forfeiture of property had been abolished in England. It had a peculiar history. Honourable Members will remember, I pointed out that in the feudal law a person who had committed high treason was regarded as having corrupted his blood and that in consequence all property in England which was held in fee simple, or as a tenant from the Crown, he was held no longer entitled to hold. But the law of property in this country is quite different. The subject in England is at best a tenant. The ownership vests in the Crown and consequently he has a peculiar relation to the Crown. In India, the right of absolute ownership has been conferred upon the people of this country, and therefore, the owner of immoveable property is under no peculiar obligations as he is in England. But, even as it is, in England the sentence of forfeiture as a substantive punishment has been abolished and it has been abolished now in this country. It was suggested in the Select Committee on the Indian Penal Code abolishing the sentence of forfeiture, that the abolition of forfeiture as a substantive sentence might be sanctioned if fine could be levied both from moveable and immoveable property, and I presume that this amendment is the outcome of that recommendation. But Honourable Members will not accept this amendment because it has been recommended by any Select Committee. They will examine and consider it upon its own merits. Now, let me turn to a very short question that arises in this connection. Take, for instance, the case of a Hindu joint family and assume a case that one member of that joint family has been sentenced to pay a certain fine. Honourable Members know that a member of a coparcenary has no specific property of his own. He has a certain interest in the joint immoveable property. As a matter of fact, if the family is joint and undivided, he is not likely to have any moveable property of his own. In a case like this what will be the procedure? The procedure would be to attach and sell his share, because that would be regarded as immoveable property, and consequently the courts would hold that it is liable to seizure and sale. Now, if this is the view of the law, it will make an inroad upon an ancient and well-established doctrine which

[Dr. H. S. Gour.]

the courts in this country and the Privy Council have enunciated for the last hundred years. Let me refresh the memory of the Honourable Members in this connection. The existing law on this subject is this. Leaving out of account the High Courts of Bombay, Madras, Central Provinces and Berar where a coparcener can alienate his undivided share for valuable consideration, take the case of those who follow the orthodox *Mitakshari* law—the High Courts of Bihar, United Provinces, part of Bengal and the Punjab. What is the position there? An individual member has merely an interest in immoveable property. He cannot predicate that any portion of the joint property belongs to him. That property cannot be sold as such. If there is a decree, if the member sells that property and makes an express representation and the alienee takes it without notice then the High Courts lay down that equity comes into force in favour of the alienee which gives him certain rights, namely, to ask the court that in a partition, the specific share of the estate sold to the alienee may be allotted to his alienor which may be ultimately transferred to the alienee and he may obtain a declaration of his right as an alienee, and if a partition takes place, he can then enforce that equity. I do not wish to take this House through the extremely complicated question of law which surrounds the Courts in this connection. I will rest content with saying that in the case of an undivided *Mitakshara* coparcener, no alienation of immoveable property can take place. But if the coparcener has the misfortune to be convicted of an offence and to be fined, the Code now provides for the sale of his immoveable property. That must of necessity lead to a forced partition or it must of necessity lead to the sale of right, title and interest of the delinquent, in which case his share will be sold for a mere song and in which case the rights of his sons and grandsons will be destroyed, though the *Mitakshara* lays down that every son and grandson has, upon his birth, a vested interest in coparcenary property. I can picture to the Honourable Members far more complicated cases than I have given by way of illustration. I have no doubt my Honourable friend, Munshi Iswar Saran, who has practised and is practising in the Allahabad High Court, will be able to enlighten you upon the numerous difficulties which this clause, if passed into law, will give rise to. I therefore submit that this clause should not be inserted, because it is vicious in principle, it is unprecedented, it did not exist in the previous Codes of Criminal Procedure, and no case has been made out why a departure should be made from the existing law, because the burden is on the Government to show if there have been any cases, in which fines levied by the Court have not been recovered. Lastly, I submit it would lead to the imposition of fines which would be out of all proportion to the nature and gravity of the offence committed. If it is the intention of the Treasury Benches to make a bargain with this part of the House by suggesting that because Government will lose some money as the punishment of forfeiture has been punished it must be now compensated by being empowered to recover fines out of immoveable property, then I have no doubt, Sir, that Honourable Members here will prefer the lesser evil of forfeiture to the greater evil of having fines recovered out of immoveable property. (Sir Deva Prasad Sarvadhikary: "Has that been suggested?") That evil affected an infinitesimally small number of people. It was a practice which was almost abolished and the abolition of forfeiture has merely followed the existing practice which obtained in this country where they did not order forfeiture because they considered the sentence as obsolete. I therefore dismiss that question out of consideration.

The question that because forfeiture was abolished this sentence has been allowed in substitution therefor is wide of the mark. Let us, therefore, examine the question upon its own individual merits. What is there to suggest, what is there to reinforce the arguments of the Government that fines must henceforth be levied both out of moveable and immoveable property? I ask Honourable Members to reflect. I have not given here cases of wives and children. Take the case of Muhammadans. Take the case of even Christians. The fact that the father commits an offence and his property is all sold, will deprive his wife, his children and other dependants of the only means of livelihood. Members must also remember how tenaciously the people in this country cling to their ancestral soil. Let them remember there is land to lose, not because of any wrong they have committed but because some members of the family may go astray and may be convicted and fined and thereupon the whole property may be brought to the hammer. Let them also remember that joint family property may be disrupted. The whole property may be sold for a song. If the intention of the Legislature is, as indeed it must be, of selling the right title and interest of the offender, there are weighty practical considerations which stand in the way of this amendment and I hope Members will pause and reflect upon the great injury that they will do to themselves and to the public at large by voting against this amendment. Sir, I move my amendment.

Mr. President: Mr. Tonkinson.

Rao Bahadur T. Rangachariar: This is a rather important question. May I move that the discussion be taken up later?

Mr. President: I was assuming that this was an important question on which Honourable Members might wish to speak, but nobody rose except Mr. Tonkinson. We had better take up the discussion on the next day on which this Bill is set down.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 8th February, 1923

LEGISLATIVE ASSEMBLY.

Thursday, 8th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

INDIANS IN RAILWAY COMPARTMENTS RESERVED FOR EUROPEANS.

334. ***Rai Bahadur Lachmi Prasad Sinha:** With reference to the reply given by Mr. Hindley to my starred question No. 141, during this Session, will the Government be pleased to obtain the informations from different Railways on the subject and place them on the table?

Mr. C. D. M. Hindley: The Railway Board believe that in practice no objection is offered to Indians who have adopted European dress travelling in compartments reserved for Europeans on the different railways. Government do not propose to call for further information on this point from Railway Administrations at present.

RAISINA CHUMMERIES.

335. ***Rai Bahadur Lachmi Prasad Sinha:** With reference to reply given by Sir Sydney Crookshank to my question No. 137, during this Session, will the Government be pleased to lay on the table a copy of the circular, if any, issued inviting the non-orthodox Indian clerks to occupy the bachelors' chummeries already built at Raisina?

Colonel Sir Sydney Crookshank: No such circular has been issued for the bachelor chummeries or for any other quarters in Raisina. The Government quarters in Delhi have now been classed as "orthodox" and "unorthodox," and may be applied for as such by Europeans and Indians alike.

UNSTARRED QUESTION AND ANSWER.

SAFEGUARDING OF TITLES OF NAWAB, RAJA, ETC.

153. **Lala Girdharilal Agarwala:** What safeguard if any is provided in India for protection of the position, prestige, dignity and paraphernalia of persons created or recognised as Rajas, Nawabs, etc., whether as personal distinction or hereditary, in the past or in future corresponding to the Peers in England with irreducible minimum income or ancient nobility of India with impartible estates?

Mr. Denys Bray: Government safeguard the higher titles of Nawab, Raja, etc., by ensuring that recommendations for such titles are only made in the case of persons of considerable position in their own provinces and possessed of sufficient landed property to enable them to support the title. The Honourable Member is perhaps unaware that in certain provinces steps have been taken to provide for the descent of jagirs by primogeniture and for the descent of estates to a single heir. He appears also to be under a misapprehension as regards the practice in respect of peerages in England.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I beg leave to move that Sir Campbell Rhodes be nominated to serve on the Select Committee to consider and report on the Bill further to amend the Code of Civil Procedure. Honourable Members will remember that on the last occasion I moved for the appointment of a Select Committee to amend certain sections of the Code of Civil Procedure, and that that Committee consisted of the Honourable the Law Member and certain other Members of this House. The Honourable the Law Member has ceased to be a Member of this Assembly, and it is necessary to obtain one of the panel of Chairmen in his place. I therefore move that Sir Campbell Rhodes be appointed a Member of this Committee.

Mr. President: I presume the Honourable Member from Bengal consents to his name appearing in this motion.

Sir Campbell Rhodes (Bengal: European): Yes, Sir.

Mr. President: The question is that Sir Campbell Rhodes be nominated to serve on the Select Committee on the Bill further to amend the Code of Civil Procedure, 1908.

The motion was adopted.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to present the Report of the Select Committee on the Bill to amend the Married Women's Property Act. The Report contains one or two changes which the Select Committee has made. The first is to omit Buddhists from the operation of the amending Bill on the ground that there are very few Buddhists in India, and secondly, the Local Government of Burma propose to introduce legislation to amend the Married Women's Property Act, if necessary, in their local Legislative Council. The second change introduced by the Select Committee is with reference to the original proposal to give retrospective effect to this Bill. The Select Committee thinks that it would be a hardship to give retrospective effect in the matter of insurance policies already effected. These are the only two principal changes. I beg to present the Report to the House.

RESOLUTION RE STATE MANAGEMENT OF RAILWAYS IN INDIA.

Mr. President: The Assembly will now resume consideration of the Resolution moved by Maulvi Miyan Asjad-ul-lah on the 7th September, 1922, in the Simla Session, in the following terms:

"That this Assembly recommends to the Governor General in Council that the Indian Railways Act of 1890 be so revised as to give India the full benefit of State ownership of Indian Railways as is done in other countries where the Railways are owned and managed by the State."

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, before the House proceeds to the business of the day, I have a statement to make which I fear may cause a considerable disappointment.

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This House last September agreed at my request that the debate on this Resolution should be postponed in order that the Government might have time to formulate their views on the question, what form of management should be adopted on the expiry of the existing contracts with the East Indian and Great Indian Peninsula Railways. The Government of India have formulated their views, though perhaps they might have formulated them earlier. I am afraid that the delay is due to my fault and I can only plead that during the last two months I have been rather heavily pre-occupied with work. Our views were wired Home to the Secretary of State at once, but in the time allowed to him the Secretary of State has not yet been able to form his conclusions. Our latest advice received only last night is that he will require another eight or ten days. The position therefore is that if Mr. Samarth's amendment comes on for discussion it will be quite impossible for me to explain our view as to the right solution of this important question. It seems to me therefore that the debate will be an unsatisfactory one, for if it does come on the Government will be unable to take any effective part in it. If therefore Mr. Samarth's amendment does come on, I shall be compelled to move for an adjournment of the debate on that amendment. I have thought it right, Sir, to give the very earliest possible notice of the position. I may say that if the debate on the amendment is adjourned the Honourable the Leader of the House undertakes to give a Government day for the adjourned debate before the end of this month and before the debate on the separation of the Budgets. I quite recognize, Sir, that this statement of mine may cause justifiable disappointment to this House and I can only express on behalf of the Government of India and myself our very great regret. I think it only fair to say that we did not give the Secretary of State very much time for consideration of what is after all a very important question, and for that also the Government of India in general and myself in particular must accept responsibility.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, the Honourable the Commerce Member is right in saying that there will be a feeling of disappointment in the House owing to the suggestion made by him. The Secretary of State has had ample time since the Ackworth Committee's report was presented to make up his mind upon this matter, and it is to be regretted that he should not have come to a conclusion upon this important matter earlier. The country has been agitated upon this question for a considerable time and it is not desirable that the decision should be put off any longer. However, Sir, having regard to the statement made by the Honourable the Commerce Member I do not think that my friends in this part of the House would object to the adjournment which he seeks, but on the understanding that before the end of February there must be a Government day on which this matter could be fully discussed. On that condition, Sir, we agree to the adjournment.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I regretfully subscribe to the sentiments to which expression has just been given. If anything, it illustrates the difficulty of our position; but we must recognize it. Mr. Innes has our complete sympathy in the troublous times that he has had. He has done admirable work and it is not his fault but his misfortune that he was not able to cope with the question earlier. We do feel, Sir, that it would be serving no useful purpose to have only a partial debate. Those of my friends whom I have been able to consult, agree with me that it would be an advantage to let the whole

[Sir Deva Prasad Sarvadhikary.]

question stand over till the end of the month, when we may be able to get all the materials that Government might think fit to place before us. I myself had an intuition that this debate was not coming on to-day and I am glad to be confirmed in my intuition.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I have no doubt everybody will sympathise with Mr. Innes's misfortunes, but I should like to know if the Honourable Member had instructions from the Secretary of State on the substantive motion which was moved during the September Session of this House and upon which surely the Government must have received instructions from the Secretary of State regarding the attitude they should adopt. The Honourable the Member for Commerce and Industry could not be unaware of the fact that that is a wide and sweeping Resolution and that both Mr. Samarth's and my own amendments are merely specific recommendations not confined to the general question but limited to the future management of the two Indian Railways. In discussing these specific questions raised by Mr. Samarth and myself, I have no doubt the Government of India must have adverted to them in connection with the general Resolution which was under discussion during the Simla Session and the postponed discussion of which is set down on the agenda paper to-day.

Another question I should like to address to the Honourable Member for Commerce and Industry is, when did he send up his recommendations to the Secretary of State? (*Cries of "No, no."*) It may be that delay in sending up these recommendations long after

Mr. President: I think it my duty to warn the Honourable Member that if he continues on this line he will forfeit his right of speech on the main Resolution on the adjourned occasion.

Dr. H. S. Gour: I am only asking, Sir, for information to guide me as to the action the Government of India will take in future not only in connection with this Resolution of Mr. Asjad-ul-lah, but with reference to my own amendment to that Resolution. It is for that purpose, Sir, that I should like some further information upon the subjects I have adverted to.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, without making any of those remarks or endorsing them which have fallen from Dr. Gour, I fully recognize the difficulty under which the Honourable Mr. Innes labours at the present moment. Dr. Gour along with myself is a member of the Central Advisory Committee on Railways

Mr. President: I must issue the same warning. There is no motion for the postponement of this debate before the House and therefore I must warn Honourable Members that they will exhaust their right to take part in the main debate on this Resolution if they continue to deliver speeches on the question which is not yet before the House, namely, the question that the debate be now adjourned.

Mr. N. M. Samarth: That is the question upon which I am addressing the House.

Mr. President: The Honourable Member has not moved that motion.

The Honourable Sir Malcolm Hailey (Home Member): As I am not afraid of exhausting any right of speech on this subject, perhaps you will permit me now, taking what I think is the obvious sense of the House, to move formally that this debate be adjourned.

I would only wish to add, in reply to an observation which fell from Dr. Gour that we have received no specific instructions—that was I think the word he used—from the Secretary of State on the general question raised in the debate of September last. I may also perhaps be permitted to add that I and my colleagues feel that though Mr. Innes has very handsomely taken on his own shoulders the blame, if I may use the word, for the disappointment which has been caused to the House, we all feel that we must share that amply and fully with him. The fact is, that for some months the Government of India has been working at very high pressure on a large number of questions of great importance; and it was for that reason and that reason alone, not from any desire to delay this important question, that we were forced into postponing our recommendations to the Secretary of State on the question of State *versus* Company management. We have as a matter of fact—I feel it also due to the Secretary of State to say this—allowed very little time indeed for consideration of a question which, I need not say, does vitally concern him also. That is, I think, enough to say on this particular question. If my motion is carried, it will, I hope, meet with the sense of the House if we proceed to business which is by this time somewhat familiar to the House, I mean the Criminal Procedure Code.

Mr. President: Amendment moved:

"That the further consideration of the Resolution be adjourned."

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the question, in connection with the State management of railways, is of the greatest and most vital importance, and I think sufficient time was not given to the Secretary of State. I share the view which has been put forward by the Honourable Mr. Innes and the Honourable Mover of this motion for adjournment; and I, therefore, am in favour of it and support it.

Mr. President: The question is that the further consideration of the Resolution be adjourned.

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Hailey (Home Member): It will perhaps be convenient to the House if I give some indication of the future course of business beginning with to-day. We have found it useful to meet with Members of the Assembly who have proposed various amendments and discuss with them some of these amendments in advance. This has led to great expedition in debate and I would ask you, if you would give us to-day, before we resume the formal consideration of this Bill, some further time to go through these amendments. I would suggest that if we could continue this process amongst ourselves this morning the House might meet somewhat early this afternoon and continue the formal discussion of the measure.

[Sir Malcolm Hailey.]

With regard to future business, there will be no meeting of the Assembly to-morrow. The list of business for Saturday will be in the hands of Honourable Members in the course of the day. The Malabar Completion of Trials Bill, the Paper Currency Consolidation Bill and the Indian Stamp Amendment Bill will be introduced and the Indian Factories Amendment Bill will be taken into consideration and passed if the Assembly agrees. After that we shall take Mr. Hullah's two Resolutions on Emigration. On Monday, the 12th of February, we propose to continue the consideration of the Code of Criminal Procedure. On Tuesday, the 13th, we propose further to consider the Code of Criminal Procedure, and I hope to finish it. That will, I am sure, be a source of regret to the whole of the Assembly. To me it will be a source of additional regret, as I am beginning to learn a good deal about the Code of Criminal Procedure. After that on Tuesday we shall take up the Official Secrets Bill which has of course passed through the stage of Select Committee. Wednesday is a public holiday. Thursday, the 15th, is a non-official day for Bills. On Friday and Saturday we propose to take up the Fiscal Commission's recommendations (beginning on Friday and continuing on Saturday), and if time is left on Saturday to continue the discussion on Mr. Yamin Khan's Resolution regarding the Indianization of the Army which would otherwise come up on the 22nd. On Monday, the 19th, we propose to put before the House the Racial Distinctions Bill. I may explain, that I have had many conversations with my friends here regarding the proper way in which this Bill should be put to the House; I found that some Honourable Members were in favour of putting it for a Select Committee; others thought that it should come before the whole House. Of course I cannot anticipate the decision of the House when I finally bring the matter up; but, for my own part, I have decided to put before the House on the 19th instant a motion that the Bill be taken into consideration. On Tuesday, the 20th of February, we have a non-official day for Bills. On Wednesday the 21st, we propose to continue the discussion of the Racial Distinctions Bill. Thursday, the 22nd, is a non-official day for Resolutions. On Friday, the 23rd, or Saturday, the 24th—we have not yet decided on which of these two days it is more suitable to sit—we shall continue, and I hope to conclude, the consideration of the Racial Distinctions Bill. On Monday, the 26th of February, we have put down the Indian Penal Code Amendment Bill, known as the White Slave Traffic Bill, for consideration. That, I hope, will not take us long, and it will then be possible to proceed with the consideration of the Resolution which we have postponed to-day and to continue that on the 28th, if necessary, leaving time before the end of the month for the consideration of the further matter in which the House is interested, namely, the separation of the Railway and the ordinary Budget.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): With your permission, Sir, may I ask the Honourable the Leader of the House if he is in a position to give information as to what Resolution will be taken on the recommendations of the Fiscal Commission? Will it be one of those non-official Resolutions of which notices have been given by myself and by my Honourable friend, Mr. Manmohandas Ramji?

The Honourable Sir Malcolm Hailey: I have consulted my Honourable friend, Mr. Innes, on the subject and he proposes to take up the discussion

on a Resolution put forward by Mr. Jamnadas Dwarkadas running as follows:

"This Assembly recommends to the Governor General in Council that a policy of protection be adopted as the one best suited to the interests of India, its application being regulated from time to time by such discrimination as may be considered necessary by the Government of India with the consent and approval of the Indian Legislature."

Mr. Jamnadas Dwarkadas: With your permission, Sir, I should like to hear further on the question. This is only the first of a series of Resolutions that I have given in on the recommendations of the Fiscal Commission. Will not all of them be taken up or will the question be discussed piecemeal? I thought all might be taken up together as was done in the case of the Esher Committee's report.

The Honourable Sir Malcolm Hailey: Mr. Jamnadas, Sir, must not, I think, take up too much the attitude of Oliver Twist. We are doing our best for him by putting forward his own particular Resolution, and we think that this itself, as a matter of fact, will open up the whole question for discussion.

Mr. President: In order to meet the proposal made by the Home Member, I propose to adjourn the House now and meet again at 15 minutes past 2 this afternoon.

The Assembly then adjourned till Fifteen Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes Past Two of the Clock. Mr. President was in the Chair.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

The Honourable Sir Malcolm Hailey (Home Member): I beg to present the Report of the Select Committee on the Bill to amend the Indian Penal Code in order to give effect to certain articles of the International Convention for the suppression of the white slave traffic.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The House will now resume further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State. The amendment under consideration is that moved by Dr. Gour:

"That in clause 99, in proposed section 386 (1) (b) omit the words 'or immoveable' and the words 'or both'."

Mr. H. Tonkinson: (Home Department: Nominated Official): Sir, when my Honourable and learned friend moved this amendment in his well-known stentorian tones he referred to the proposal in the Bill as vicious and unprecedented. I regret, Sir, that I was unable to get down any more of the adjectives which he used, but I propose to show that the provisions in the Bill are essential and that they are not accompanied by any possibility of

[Mr. H. Tonkinson.]

abuse. I want in the first place to refer to the position in England. I suppose, Sir, that all Honourable Members will agree that if I can show that exactly corresponding provisions exist in the English criminal law after all the efforts which have been made by the legislators of the Victorian era and later, then there can be no possibility of these provisions being abuses or that they are unprecedented as suggested by my Honourable and learned friend. Rather, Sir, I would suggest that if such provisions do prevail in England then that is a reason why we should introduce such provisions in India. Well, Sir, as regards the position in England: at common law a fine was rarely if ever imposed on a conviction for treason or felony; fines were imposed on a conviction for misdemeanour, and except for provisions in Magna Charta and the Bill of Rights there was no general restriction upon the maximum amount of fine. For felony the provisions usually resorted to were the provisions relating to forfeiture. It is interesting to observe that as my Honourable friend in his speech when moving his amendment yesterday referred to the history of the abolition of the forfeiture provisions in the Indian Penal Code, so the corresponding history in England is also relevant to this point. I should like to read to the Assembly section 4 of the English Act by which the forfeiture provisions were abolished in England. Section 4 runs:

"It shall be lawful for any such court as aforesaid, if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for felony to award any sum of money not exceeding one hundred pounds, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed to be a judgment-debt, due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the Court to be paid under the last preceding section of this Act."

That last preceding section, Sir, was repealed by the Costs in Criminal Cases Act, to which I will refer later, but I will invite the attention of the House to the words "judgment debt" in that provision. Honourable Members may suggest that these are provisions relating to fines imposed with the object of awarding compensation to the persons aggrieved, but, Sir, in this matter we are in an exactly similar position in India. When serious crimes are committed, it is surely reasonable, and I think many Magistrates do as a matter of course follow that procedure, if they have any reason to think that the fine will be recovered, to impose a fine with the idea of compensating the person who has suffered under the provisions of section 545. Now, Sir, how are these costs recovered in England? They are recovered, under the provisions of sub-section (5) of section 6 of the Costs in Criminal Cases Act, 1908. That sub-section runs as follows:

"Any order under this section may be enforced, as to any costs primarily paid out of local funds, by the council of the country or borough out of the funds of which they have been so paid, and, as to any other costs, by the person to whom the costs are ordered to be paid, in the same manner as an order for the payment of costs made by the High Court in civil proceedings, or as a civil debt in manner provided by the Summary Jurisdiction Acts, and, in the case of costs which a person convicted is ordered to pay, out of any money taken on his apprehension from the person convicted, so far as the Court so directs."

Honourable Members will see that that contains a very similar provision to the proposal in the Bill. We are dealing up to the present with fines inflicted with the object of paying compensation to the person who has suffered from the misdeeds. I will turn now, Sir, to the cases of fines imposed

with the idea that the proceeds will go to the Crown. I will merely read a part of a writ of *fiat facias* for a fine which may be issued in such a case:

"Edward the Seventh, by the Grace of God, etc., to the Sheriff of..., greeting:

We command you that of the goods and chattels, lands and tenements of A. B., you cause to be levied — pounds, imposed upon him in the King's Bench Division of our High Court of Justice before him for his fine..."

That, Sir, is a much more stringent provision than anything that has been put into this Bill.

Well, let us turn now to the position in India. I would like first to refer to the history as regards the abolition of sentences of forfeiture under the Indian Penal Code. It will be remembered that Government made proposals for a limited abolition of such sentences. Well, the Bill in that case, Sir, was referred to a Select Committee of this Assembly. I should like to read the recommendation contained in the Report of the Select Committee. They said:

"We consider that it is better to proceed against the property of an offender under these sections by the imposition of a fine rather than by forfeiture. At present the law does not provide for this, as section 386 of the Code of Criminal Procedure, 1898, does not permit of fines being levied on immoveable property. We, therefore, recommend that fines imposed as a result of a conviction under sections 121, 121A or 122 of the Indian Penal Code shall be recoverable from the immoveable property of the offender if they cannot be recovered from the moveable property, and that this be provided for in the Bill for the comprehensive amendment of the Code of Criminal Procedure, 1898, which is at present under consideration."

I admit, Sir, that that is only a limited recommendation. But, Sir, amongst the signatories to that recommendation was the Honourable Member who moved the amendment. When he was moving the amendment yesterday, he said, that provisions as regards forfeiture only applied in a few exceptional cases. It is better to have those back rather than to be able to recover the fine from immoveable property. But he recommended in an exactly contrary sense when he signed this Report of the Select Committee, and in addition, it is not really true to say that the provisions as regards forfeiture only applied in a few exceptional cases. They applied, Sir, to all those cases which come within the purview of section 62 of the Indian Penal Code which we then repealed, that is, to all cases of persons transported or sentenced to imprisonment for a term of seven years or upwards.

Now, let us turn to the merits of the proposal. Why, Sir, if a man has invested his income in jewellery or other moveable property, should that property be subject to attachment for a sentence of fine when, if he had invested his income in a house, that house would not be so liable to be proceeded against on a warrant for the attachment of property in execution of a fine. There is no reason whatsoever why there should be this difference. My Honourable friend, Sir, suggested that there was no reason for believing that the present provision had been ineffective in any way. That, I submit, is a statement made under an entire misapprehension of the existing difficulties. Any person who has had any experience as a Magistrate will know the difficulty—the enormous difficulty—in recovering a fine under the present provisions, and they will know that some further provision is essential. This was realised in the Bill of 1914. Sir George Lowndes' Committee decided that some provisions were required, but they introduced a large number of safeguards and said in these cases a Civil Court ought to take action. Those are practically, Sir, the provisions in the Bill. In this connection perhaps I should now refer to the red-herring

[Mr. H. Tonkinson.]

of the Hindu joint family to which my Honourable friend referred. Let us see what are the proposed provisions of section 386.

Under sub-section (3):

"Where the Courts issue a warrant to the Collector under sub-section (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court, by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to the execution of decrees shall apply accordingly."

Well, Sir, as regards the Hindu joint family, we have introduced all the precautions contained in the Civil Procedure Code. There is absolutely nothing at all in the danger to the property of the members of a joint Hindu family which was suggested by my Honourable friend. I would like, Sir, just to recapitulate my arguments very briefly. The proposal in the Bill was found to be necessary and was embodied in the Bill of 1914. It was continued in the Bill of Sir George Lowndes' Committee and they introduced provisions so as to secure that all questions as to title should be determined by a Civil Court. That is the present form of the proposal. There is no fear as to the property of a Hindu joint family as it is secured exactly to the same extent as it is secured in the case of the execution of a decree under the Civil Procedure Code. The rules regarding exemption from attachment in section 60 of the Code of Civil Procedure apply also to the execution of such a fine. There are similar provisions in the English law. A Select Committee of this Assembly definitely recommended that we should make such a provision although their recommendation was, I admit, only as regards a few sections. But, Sir, those few sections do not cover the whole scope of the old forfeiture provisions in the Indian Penal Code. Under these circumstances, Sir, I hope that my Honourable friend will not press his amendment.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, my first impression on hearing Dr. Gour was to support him. But on further reflection I find there is really no substance in the amendment proposed by my Honourable friend. I was under the impression that the new section proposed a new liability on immoveable property which did not exist already. If that is the idea under which this amendment was moved, then I find it is a mistaken impression. Under section 70 of the Indian Penal Code all the property of the person against whom a sentence of fine has been imposed is liable for the payment of that fine. It does not make a distinction between moveable property and immoveable property. In fact, the liability lasts for a period of six years and even the death of the offender does not discharge from the liability any property which would after his death be legally liable for his debts. So that, a mere amendment of the procedure section will not remove the substantive law which is enacted in section 70 of the Penal Code. The only difference which is sought to be made by the proposed amendment by Government is this. Hitherto there was no process by which this liability could be enforced under the Criminal Procedure Code. Probably—I must speak with caution on this matter—the Crown would have to file a suit and get a decree in order to enforce this liability on immoveable property. As regards moveable property, under the Criminal Procedure Code as it was, it could be seized and sold. That was the procedure hitherto applied. As regards the liability of the immoveable property, the Crown

would have to figure as plaintiff in a suit and get a decree and then get the decree executed, under the ordinary process of a Civil Court. No doubt, that would lead to delay and if that would save the property from attachment, if that procedure would in any way benefit the accused, I can understand our standing up for omission of this proposed new section. I do not see what defence the accused is going to have when he is put up as a defendant in the Civil Court when the Crown sues him for a fine lawfully imposed by a Court under the law. So it would be a mere formality altogether. The Crown is bound to get a decree. After all, the Crown will have to pay the stamp duty and the defendant will have to engage a pleader and the decree would be a matter of course. I could not understand what defence he could have when such a suit is instituted. So that it will be a meaningless procedure for the man to adopt, it is a purposeless procedure for the accused. After all, the procedure prescribed is only to enforce this liability of treating this order for fine as a decree as it were of a Civil Court and the Civil Court proceeds to execute the decree by attaching and selling the immoveable property of the defaulter. There is a great deal of force in the argument which Mr. Tonkinson has given to-day. Why should persons who invest their savings in moveable property be any more liable than persons who invest their savings in immoveable property? For instance, a business man who believes in stocks and shares may invest his savings in shares and stocks which can be easily seized and sold for non-payment of fine, whereas the other man who invests his savings in immoveable property would escape this liability. It seems to be a meaningless distinction, an unnecessary distinction. After all, it is a debt. He has to pay the debt and his property will be liable for that debt, and this only indicates the procedure for enforcement of the payment of that debt, and I do not know anything harsh in the procedure proposed. The Civil Court will still have power to enquire into any claims with reference to immoveable property. No doubt, it is a complicated procedure. Hitherto the Code of Criminal Procedure did not contemplate such a procedure on account of the attachment, claim sections and further other proceedings which arise out of those claim proceedings. But all those things have to be gone through in case this man has no moveable property from which the fine could be recovered. I wish the Government amendment had provided as in the English Act that if the fine could not be recovered from the moveable property then only the immoveable property should be proceeded against. I mean, if it had been left like that, there would be no objection, that is to say, if the words "issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter," could be slightly modified in this way, "against the moveable, and on failure to recover the same, thereout the immoveable property of the defaulter." As it is, the option is left to the Magistrate to proceed either against the moveable property or against the immoveable property or both. Immoveable property should be the last resort. It is only in case the fine could not be recovered from the moveable property of the accused person, then only the immoveable property should be resorted to. If some such amendment could be made, then perhaps the amendment of the Government would not be open to objection. I merely throw it out as a suggestion. I am sorry I have not given notice of that, but I hope the Government would bring their amendment in conformity with the English procedure which my Honourable friend, Mr. Tonkinson, referred to just now. I therefore see no substance in the amendment proposed by Dr. Gour.

Mr. H. E. Holme (United Provinces: Nominated Official): With due respect to the opinion of the Honourable and learned Mover of the amendment I am bound to say that my own experience at any rate suggests that the present system of realising fines in criminal trials does not work in a satisfactory manner at all. The realisation of such fines even from wealthy offenders is often a most tedious and most difficult process. Many such offenders seem to make it a point of honour not to pay their fines, if they can evade doing so in any possible manner. They are often able to conceal or remove their moveable property or to make it over to their friends or relatives or to persuade the agency deputed to realise the fine to make a false report that no such property is forthcoming. So much so that personally I have had practically to give up the imposing of fines as being a useless waste of public time and money. I have hardly ever taken over charge of a judgeship without having to write off a large amount on account of irrecoverable fines imposed by my predecessors and I understand that the same is the case in Magistrates' courts. This state of things would be entirely altered by the simple expedient of making immoveable property also liable for the payment of fines. I cannot see any reason whatever why criminal fines should not be a source of legitimate revenue to the State. On the contrary, it seems to me eminently desirable that criminals should not only make some compensation to the State for the expense caused by their misbehaviour but should assist in relieving the burden of taxation which so heavily presses on law-abiding citizens. A money-lender who may perhaps be extortionate and grasping is allowed to realise his demands by the sale of the immoveable property of a person whose only crime may be his improvidence, and I fail to see why the State should not realise fines imposed by criminal courts as some inadequate compensation for the misdeeds of criminals. I accordingly oppose this amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I am not one of those, who are opposed to the realisation of fines from immoveable property, but there are certain features in the proposed amendment which to my mind demand careful consideration of this House and of the Treasury Benches specially. I quite see that an offender should not escape payment of fine by investing his money in immoveable property but at the same time the difficulties which were pointed out by my Honourable friend, Dr. Gour, are not entirely obviated by considerations such as those which were referred to by the Honourable Mr. Tonkinson in explaining the situation. What I mean to say is this. Has the Government amendment provided for the exclusion of all moveable properties which are not liable to attachment under the Code of Criminal Procedure, but which may have been attached in execution of a decree for the realisation of fine? To my mind, Sir, there are certain difficulties in the Government proposal for amendment and the difficulty lies in clause (2). The Local Government may make rules regulating the manner in which warrants under sub-section (1), clause (a) are to be executed and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrants.

Mr. H. Tonkinson: May I explain, Sir, that my Honourable friend seems to be under a misapprehension. Clause (a) relates only to moveable property and it has nothing to do with the amendment under discussion.

Mr. J. N. Mukherjee: Yes, of course, strictly speaking, I am not correct. I should have put my reference to this point, last of all. But as regards

the words 'other than the offender,' the House will notice that there are, under the Civil Procedure Code, certain moveable properties which are not liable to attachment, and if those words are to be retained in the clause certain moveable properties belonging to the offender as judgment-debtor—a list of such properties is given in section 60 of the Code of Civil Procedure which are not liable to attachment and sale—will be sold. Is it intended that articles such as implements of husbandry, and other means of subsistence of an agriculturist, are to be attached and sold under the Criminal Procedure Code? If the man was simply fined, is it proper that he should be turned into a criminal by being deprived of all his means of livelihood by the sale of such articles of primary necessity? I would ask the Honourable Members on the Treasury Benches to consider whether the words 'other than the offender' should remain where they are or should be dropped. These words go to exclude all objections that may be preferred by the judgment-debtor himself on the ground that the property attached is not liable to attachment and sale, when he does so as the man on whom the fine has been imposed.

Then as regards immoveable property, there can be no doubt that provision has been made in the clause in question by which the nearest Civil Court, by which any decree for the amount of the fine could be executed, shall be in a position to realize the fine by executing the suit as a decree, and such court shall be deemed to be the Court which passed the decree, and all the provisions of the Code of Civil Procedure as to execution of decrees shall apply. So, my submission on this matter is not so very pointed as that of my learned friend, the Mover of the amendment. I think all the provisions of the Civil Procedure Code relating to the execution of decrees have been made applicable to cases where immoveable property has been attached for the realization of fine. The judgment-debtor under section 47 of the Code of Civil Procedure, in case of a joint property, or any co-parcener in such property under some other appropriate section of that Code can come forward and say that such property is not liable to attachment, on the ground that according to the law prevalent in any part of India, joint property or any interest in such property is not liable to attachment. From that point of view my submission is that the learned Mover of the amendment would not be justified in pressing it. But there is that other aspect of the question to be considered to which I have invited the attention of the Honourable Mr. Tonkinson.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I agree with the Honourable Dr. Gour that the introduction of this new provision, that a man's immoveable property is also liable to attachment, is not a proper one. It would lead to endless complications, considering the state of society in this country. Things in England may be different, but here we are living under a society where the joint family system prevails, where among Muhammadans the system of dower prevails, where, when a criminal Court would impose a fine, in nine cases out of ten it would naturally follow that the matter would have to be taken to the Civil Court to decide as to whether there are any other owners of the property which is sought to be attached. The Criminal Court is not competent to go into the question, the matter will have to be gone into by the Civil Court. When the Civil Court considers that point, there will be any number of hearings, and the case will drag on its slow length and it will be very inconvenient, and in every district the work of the Criminal Courts and of the Civil Courts on this account will be very greatly increased.

[Mr. Pyari Lal.]

Every criminal file will be kept alive till the fine is realized and the case relating to the fine is decided. You will require a special Civil Court to always try such cases. It will of course represent a gain for the legal practitioners working on behalf of Government and those retained by the accused; but the ends of justice will not be very much furthered. The learned gentleman who spoke last said that these fines might be a source of revenue to Government. I am sorry, Sir, to say that the idea of making the imposition of fines a source of Government revenue is peculiar to himself. I do not think this Government or any other civilized Government can take such a suggestion seriously. It is within my experience that the imposition of fines is not a real punishment to the accused but it is so to the members of his family. This punishment is not visited on him but on his wife and children and those immediately dependent on him. I have known cases where after a man has been fined, his wife has been divested of all her ornaments, jewellery and cooking utensils and the poor little homestead that she occupied. What happens is that you inflict any amount of misery on these persons. There may be in cities persons, of whom Mr. Rangachariar spoke, who possess stocks and shares and immoveable property. But in the district a poor man owns perhaps a share in a single little house in a village, in which not only he but his brothers and children and all his collaterals live. If the Government attaches and sells his share of the house what will it amount to? Only a fraction of the house is his and by selling it Government practically gains nothing and the whole family is disturbed by the introduction of a stranger into it, namely, the purchaser of the share. In fact I think that it is a mistake to impose fines in a criminal case; because no sooner is a fine imposed in a criminal case the police pounce upon the house of the accused and cause any amount of inconvenience and trouble and harassment to the inmates of the house. The result is that not only that man but the whole neighbourhood suffers. Then again, if the Civil Court goes into the question there are always any number of claimants, his brothers and collaterals and, in the case of Muhammadans, the whole thing may be charged with the dower debt of his wife. To decide such a question will not be an easy thing.

With these observations, Sir, I support the amendment moved by my Honourable friend.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, in case the House should have been misled by any remarks from my friend, Mr. Mukherjee, I would merely emphasise what Mr. Tonkinson pointed out when he interrupted my friend, namely, that so far as clause (a) of the Bill is concerned, which deals with the attachment of moveable property, we are making no change whatever in the law, nor indeed has Dr. Gour's amendment anything whatever to do with it. As regards clause (b)—immoveable property—Mr. Mukherjee himself pointed out that the Bill lays down that all the provisions of the Code as to the execution of decrees shall apply. Therefore, if the Code exempts any property from sale and attachment in execution of a Civil Court decree, that same property will not be attachable or saleable in execution of a warrant for the levy of a fine. Sir, Mr. Pyari Lal has revived what I thought was a very dead red-herring, viz., that complications will be dragged in in connection with the Hindu undivided joint family. Mr. Tonkinson's arguments on that point were, I think, quite conclusive.

We are introducing nothing new. The Code of Civil Procedure has to deal with these matters in exactly the same way as it will in its application for the levy of fines under the Code of Criminal Procedure. Mr. Pyari Lal thought it a most improper thing that Government should make any revenue out of the imposition of fines. Sir, I do not know whether Mr. Pyari Lal is a Municipal Commissioner in Meerut, but very probably he is. But whether he is or he is not, he is probably aware that all Municipalities make a very large income out of fines imposed in their Municipalities. He has even suggested that we should go so far as to abolish fines altogether—a most iniquitous form of punishment. He has not suggested what we should substitute for it. The only substitute of course is imprisonment; that is the next minor punishment. Sir, if he is not prepared to go as far as that, the only solution of the difficulty so far as I can see is that we should first make a start by abolishing crime.

Mr. B. N. Misra: (Orissa Division: Non-Muhammadan): Sir, I am sorry I have to differ from the learned Dr. Gour as regards his amendment that attachment of immoveable property should be omitted. Sir, the object of the Criminal Procedure Code will be frustrated if immoveable property is not reached in order to realise fines. (Dr. H. S. Gour: "What is the present law?") Of course, immoveable property is reached now. A man may cheat me Rs. 10,000, may commit breach of trust of Rs. 20,000 and invest it in immoveable property, and then the law will have no hand to touch such property. If that be the sense of this Honourable House, I think, then, Dr. Gour's amendment may prevail, but I do not think that any Honourable Member of this House will consent to such criminal robbing of a man and investing money in immoveable property so that the Court cannot attach the same. I submit, Sir, that generally in India, as Mr. Pyari Lal has said, people possess more immoveable property and only in a few cases have got enough of moveable property. In case immoveable property is absolutely excluded from the scope of the criminal courts, really it will be difficult to realise any fine. In some cases landlords rather feel it much beneath their dignity to go to jail; they would sometimes court a sentence of fine. I think they consider it to be a lenient sentence if they are let off with a fine. In such a case if they cannot pay money, the only course left to the Court is to realise the fine by attaching immoveable property. Sir, it has been said that there will be complications in the case of members of joint Mitakshara family. No doubt there may be difficulties but that will not justify the abolition altogether of the attachment of immoveable property. I think that would strictly speaking come under the amendment which I have proposed as an explanation and I think Honourable Members would do well to support my amendment, that is, to attach only the interest of the offender or of the criminal. Sir, I think it has been already supported by Honourable Members and the Honourable Mr. Tonkinson has already explained fully the position. I oppose the amendment of Dr. Gour.

(An Honourable Member: "I move that the question be now put.")

The motion was adopted.

The amendment was negatived.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, may I move an amendment with regard to what my Honourable friend, Mr. Rangachariar, has suggested with regard to this clause if I am in order? The practice has always been to . . .

Mr. President: Order, order.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, the amendment that I am going to move is:

"That in clause 99 in the proviso to proposed section 386 (1) (b) for the words 'undergone the whole of such imprisonment' substitute the following: 'been sent to prison'."

Clause 99 runs as follows:

"For section 386 of the said Code, the following section shall be substituted, namely:

'386 (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways,'"

Mr. President: I think it is unnecessary to read the whole section.

Rai Sahib Lakshmi Narayan Lal: Sir, in the proviso it is said that:

"If the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so."

The present law is that even if the man who has been sent to imprisonment in lieu of fine, has undergone the whole period of imprisonment which he was ordered to undergo, he is not exonerated from his liability to pay the fine. This is very hard, and in many cases it may mean double punishment. There are many to whom an imprisonment in lieu of fine even for a day or even for a few hours means degradation for life in some shape or other, and this degradation is caused from the fact of the imprisonment itself apart from the period for which he underwent imprisonment. The effect of my amendment is that no sooner a man is sent to prison in lieu of fine, he is exonerated from his liability to pay the fine. This change is not likely to create any difficulty in the administration of justice, if steps are taken for the realisation of the fine from the moveable and immoveable properties before the man is sent to prison, especially when new provisions are now being introduced for creating facilities for the realisation of the fine from immoveable properties also. With these few remarks I commend this amendment to the House.

The motion was negatived.

Mr. K. B. L. Agnihotri: (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"In clause 99, in the proviso to sub-section (1) of proposed section 386, omit all words after the word 'warrant'."

The effect of my amendment will be, Sir, that the proviso will read as follows:

"Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant."

Sir, under this law, we provide that in case a fine is imposed on an offender, the Court may direct that in default of payment of fine, an offender may be sentenced to imprisonment for a particular period and that period has also been limited to one-fourth of imprisonment given or some

such period. The period also diminishes proportionately to the amount paid or recovered. Well, the Court has already ordered and directed that he is to be imprisoned in default of payment of the fine and now under the new clause 386 we also provide that the fine could also be realised as a decree. In that case, Sir, this provision of directing the realisation of fines by sentencing the man to imprisonment will become superfluous. This addition itself shows that it is only in rare cases that the imprisonment might be inflicted on the offender in case he fails to pay the fine. If this is the case, then why should that offender be held liable for an extra punishment after he had undergone the extra imprisonment which he had been ordered to undergo in default of payment of the fine. I, therefore, propose that when once a man has undergone the sentence in default of a fine, he should not be made to pay that amount subsequently. With these words, Sir, I commend my amendment to the House.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, this section has to be read with the sections of the Penal Code which provide the substantive punishment of fine and under the Penal Code, if a portion of the fine had been paid after the man had been sent to jail for not having paid the fine, a *pro rata* reduction of the term of imprisonment in default shall be made and if no part of the fine is paid it is also laid down that if he suffers the imprisonment which is provided in default (sections 67, 68, 69 and 70), then again the six years' liability to pay the fine remains. So, it seems to me doubtful how we can here in this clause say that the suffering of imprisonment in default of payment of a fine should absolve the man from being liable to the fine, if the fine could be recovered by other means than by sending him to jail. And, therefore, I think this amendment which my learned friend proposes cannot stand together with the sections of the Penal Code. And it must also be recognised that the fine may be evaded—assuming that the man must pay the fine—then a fine might be evaded by a contumacious person and he may suffer the imprisonment and yet, having the means to pay the fine, not pay the fine. Is that an advantage? Will it work justly? That is another point which has to be taken into consideration. I, therefore, think that this amendment that serving the period of imprisonment provided in default of payment of the fine should absolve the person from being liable to pay the fine—I do not think I can support this amendment.

Sir Henry Moncrieff Smith: Sir, Mr. Subrahmanayam has quite rightly pointed out here that we must be consistent with our Penal Code. It is no good moving an amendment here unless we look to the Penal Code. The chief point against the amendment has already been made. If the fine is realised, or a portion of the fine is realised after the man goes to jail, then there is a proportionate reduction in the term of the imprisonment and we get rid of the man. I ask the House whether it is reasonable that a man should be allowed to be a burden upon the State when he has property from which the fine can be realised. As long as there is property and the Court thinks that the amount of the fine can be realised, I see no reason why in the law of this country, at all events, we should allow the accused to go to jail to lead a comfortable life there, very possibly a life which he enjoys, and to call upon the taxpayer to maintain him there when he has property out of which the fine might be realised.

The motion was negatived.

Mr. B. N. Misra: Sir, I am rather encouraged to move my amendment* which is an explanation, seeing the attitude of many Honourable Members who do not want property to be attached at all. Sir, what I propose is an explanation, and it relates to the section which provides that the property belonging to the offender is liable for the fine. Sir, these words are liable to be interpreted differently by Magistrates and that is why I have proposed this explanation. I had originally put in the words "specific interest in the property," but, Sir, there may be some difficulty in using the word "specific." So, with your permission, Sir, I propose that the explanation should be:

"When the defaulter is a member of a joint family, property of the defaulter means the interest in the property."

I wish to cut out the word "specific," as was suggested by the Honourable Mr. Rangachariar. Sir, many Honourable Members have already described the difficulties of attaching moveable property when they happen to be members of a joint family, and the Honourable Mr. Tonkinson pointed out the safeguards in the case of members of joint Mitakshara Hindu families. But I do not think the Honourable Mr. Tonkinson has met the case of the members who live in Bengal under the Dayabhaga family, or the Muhammadan members or the Sikhs or Parsees or other communities who live jointly in India and also the case of partnership property. There may be some partners having property in common and one man may commit some offence and he may be punished. Of course the property belonging to the firm also belongs to any one of the partners and the Courts will be justified in issuing a warrant and attaching such property. There will thus be several difficulties and I do not think I need add to what I said on the last occasion. I shall only point out, Sir, that instead of the whole property being attached, it will be safeguarding everybody if the interest of the offender alone is attached. This will meet the objection not only of members of Mitakshara Hindu families but also other members such as Muhammadans, Parsees or Indian Christians who are living jointly. With these words, Sir, I propose my amendment which runs as follows:

"In clause 99, to sub-section (1) of proposed section 386 add the following:

Explanation:—When the defaulter is a member of a joint family, property of the defaulter means the specific interest in the property."

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): My amendment is:

"In clause 99 in the proviso to sub-section (3) of section 386 omit all the words after the word 'offender'."

The proviso in which I want this amendment to be made reads like this:

"Provided that no such warrant shall be executed by the arrest or detention in prison of the offender in any case in which the Court passing sentence upon him has directed his imprisonment in default of payment of the fine."

The Honourable Sir Malcolm Hailey: We are prepared to accept that.

The motion was adopted.

* "In clause 99, to sub-section (1) of proposed section 386 add the following:

Explanation:—When the defaulter is a member of a joint family, property of the defaulter means the specific interest in the property."

Mr. J. N. Mukherjee: I ask the permission of the Chair in respect of an amendment I propose, which unfortunately I overlooked before, and which is to the effect that the words in the new sub-section 386 (2) "other than the offender" may be omitted.

Sir Henry Moncrieff Smith: I am afraid I must object to this amendment. The Bill has been under the consideration of this Assembly for over three weeks, and it is rather hard on the Government that when the consideration of the clause is practically complete they should be asked to consider the effect of an amendment sprung upon them without notice.

Mr. President: I must uphold the objection on the ground of notice. The amendment was only handed to me three minutes ago.

Clauses 99 to 103 were added to the Bill.

Bhai Man Singh: My amendment is:

"Omit sub-clause (v) of clause 104."

Sub-clause (v) of clause 104 says

The Honourable Sir Malcolm Hailey: We are prepared to accept the amendment.

The motion was adopted.

Clause 104, as amended, and clause 105 were added to the Bill.

Dr. H. S. Gour: Sir, the amendment which I shall move presently is another important amendment and I would ask this Honourable House to indulge me for a few moments when I explain its provisions. The object of my amendment is that in all cases where the District Magistrate or the Presidency Magistrate or a Magistrate of the first class has passed an order for keeping the peace or giving security for good behaviour, the appeal should lie to the Court of Session and not to the Court of the District Magistrate. Honourable Members will find that under the present constitution the District Magistrate is the head of the district police, the District Superintendent of Police being regarded as his police assistant. All cases in the district relating to the breach of the peace and good behaviour are therefore cases in which the District Magistrate is interested officially and it is only fair that any order passed by a Magistrate including himself should be revisable on appeal by an independent tribunal, such as the Sessions Judge. I am only arming the superior court with appellate authority in a matter in which there are obvious objections to the hearing of an appeal by a person interested in the maintenance of peace and order in the district. On *a priori* grounds I do not think there would be any objection. The only objection which is likely to be raised from the Government side would be that you will be crowding the Court of Sessions with additional work and thereby increasing the cost of criminal litigation. That is no doubt an argument which requires consideration, but on the other hand, I would ask Honourable Members to observe that if any justice is to be done to an offender or an applicant against whom an order has been passed for keeping peace or being of good behaviour, is he likely to get fair and even-handed justice at the hands of the District Magistrate or is it not likely that the District Magistrate who peruses case diaries and police reports and hears a good many things which undoubtedly he is bound to hear about the *budmashes* of his district and about people who are disturbers of public peace, is it not likely that

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justice will suffer and has suffered in the past by such cases being finally disposed of by him rather than by an independent tribunal such as the Sessions Judge is, who will hear these cases and dispose them off in accordance with law. If there is therefore the question of cost on the one side and the question of justice on the other, I have no doubt that this House will vote for justice and after all how much would be the additional cost. I do not think it would be considerable and even if it were considerable, we are now living in times when the nation demands more and more of justice, and justice which is not open to the objections to which I have adverted. On these grounds, Sir, I move my amendment which runs as follows:

"In clause 106 (1) after the words 'said Code' insert the following:

'the words 'other than the District Magistrate or a Presidency Magistrate' shall be omitted, for the words 'District Magistrate' the words 'Sessions Judge' shall be substituted and'."

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I desire to oppose this amendment. In the first place I must draw attention to a remark made by the Honourable and learned Member who moved the amendment in which he said that, if any justice is to be done, there should be an appeal in all cases from the sentence of a Magistrate to an independent tribunal and not to the Court of the Magistrate who is the head of the district police and who is interested in the maintenance of peace and order. Well, if this is really the opinion of the Honourable Member, I should like to ask him why he has not moved a far more sweeping amendment. How can he tolerate the provisions in the Code which lay down that appeals from Magistrates of the second and third classes should lie to the District Magistrate. It seems to me, Sir, that there is a fault in his logic: and that if he is really of opinion that in all cases there should be an appeal to what he calls an independent tribunal which has no interest in the maintenance of peace and order, then he ought to move a further amendment and provide for all appeals from all Magistrates of whatever grade to lie to the Court of the Sessions Judge.

It seems to me, Sir, that he has selected the weakest possible case in proposing that appeals under this section should go to the Sessions Judge and not to the District Magistrate, because he has overlooked the fact that proceedings under this Chapter VIII are only *quasi-judicial*,—they are of the nature of executive proceedings with the object of preventing breaches of the peace and for maintaining order. Now that is not a matter with which the Sessions Judge should be directly connected. The responsibility of seeing that breaches of the peace of the kind provided for in Chapter VIII do not occur lies upon the District Magistrate. Even if he is not primarily interested in the case, the ultimate responsibility in all these matters lies upon him, and it is therefore proper that an order made by subordinate Magistrates under this section should be referred to him in appeal, and that, I submit, is the logical basis on which this section rests. I trust, therefore, Sir, that the House will not support this amendment.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I support this amendment. The Honourable Mr. Haigh endeavoured to correct Dr. Gour, saying that since he has not moved another amendment and that since appeals from sentences passed by second or third class Magistrates lie in the Court of the District Magistrates and not in that of the

Sessions Judge, and that since he has moved no amendment as to those, therefore, this amendment should not be appreciated. That is the main argument which he has advanced, namely, because he has made an omission in one direction, therefore, he may not be allowed to correct a provision of law, which is defective on the very face of it. I may tell my learned friend that a District Magistrate is considered to be responsible for the peace and order of the district. As a matter of fact, in some cases, suggestions, as to security under section 110 emanate, in a way, from him, and consequently, on the information given by the Police in some cases, or on the receipt of information given by some other persons, criminal proceedings, under section 110, are commenced. Now, Sir, I place this point before the House. The very District Magistrate whose desire is that all *badmashes* who do not behave properly, may be bound over, that is may be called upon to give security, should be allowed to hear appeals against such order. Should a man, who has been dragged to the Court and has been bound down, file an appeal against the same order before the District Magistrate, when we see that one of the first class Magistrates, subordinate to him, has passed that order. Is there any logic in it? May I ask this of the Honourable Mr. Haigh? There is no logic in it I may say; it is iniquitous. For all intents and purposes the object of the law of appeal will lose its force. Therefore, on that ground, I support this amendment.

There is another ground. The Honourable Mr. Haigh failed to see that an appeal to the District Magistrate is competent only from the sentence passed or conviction ordered by a third-class or second-class Magistrate, and not by a first class and besides that an appeal will be instituted in the court of the District Magistrate only in case of a conviction or sentence; but when an order is made by a first class Magistrate under section 118 that is not a sentence or a conviction. He will agree with me that the sentence is quite different from an order passed under section 118 of the Criminal Procedure Code. All these proceedings started under sections 110 are considered preventive measures. They are not part of the substantive law. Substantive law is incorporated and embodied in the Indian Penal Code. If a person commits an offence and he is prosecuted and convicted only by a third class or a second class Magistrate then and then alone, namely, only in those cases, appeals, as I have already submitted, from such sentences or convictions, will lie in the court of the District Magistrate. But here there is no question of a sentence or conviction, or third or second class Magistrates. Here is an order, which only a first class Magistrate can pass, enjoining upon a person, who has been brought before the court, to give security for a certain period, and the person who has been called upon to do so, files an appeal from that order. The recommendation, put forward by this amendment, is that it does not look proper that the same officer, who is in charge of law and order, should be entrusted with the power of adjudicating upon the fitness, or impropriety of the same order. Suppose, Sir, that A is in charge of a certain Department and A offers a suggestion that in a certain village or a certain *ilaga* all *badmashes* may be called upon to give security, so that crime may be reduced. Now A passes an order like that, and then A's subordinate first class Magistrate, after having gone into the evidence which has been produced, in that behalf, passes an order appeals against which lie before the same A. Can there be any guarantee that A, though he may be very honest and his intentions may be very good, will not be influenced by the fact that it was he himself who, in a way who was the author of

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these proceedings upon which the orders for taking security were eventually passed. Is he barring some exceptional cases, likely to set aside those orders? On this ground also I support this amendment, which speaks for itself and deserves the sympathy of the whole House.

The third ground is that on the occasion of framing laws or devising rules we must bear two important points in mind. One is, how will the public take it? Our District Magistrates are honest officers no doubt. Dr. Gour has not attacked their honesty or impartiality. His suggestion is that the public will look down upon this provision with contempt, they will misconstrue it. The attempt which has been made through the medium of this very commendable amendment is that we should not leave any room for avoidable criticism. That is the honest desire and the intention of the Honourable Mover of this amendment. I trust that the Treasury Benches will kindly appreciate this amendment and accept it. I may repeat my suggestion that there is no insinuation against any District Magistrate. They are very capable and able men; but the desire is that they should not be entrusted with the decision of appeals against the very orders which in a way, and in some cases, may be traceable to their honest suggestion as executive officers of the District.

With these remarks I support this amendment.

Mr. C. A. H. Townsend (Punjab: Nominated Official): Sir, the last speaker said that all proceedings under section 110 of the Criminal Procedure Code are ordered by District Magistrates directly.

Dr. Nand Lal: I did not say that; I said that in some cases the suggestions in a way emanate from the District Magistrates or executive officers.

Mr. President: If the Honourable Member wishes to correct a statement he must at least have the courtesy to do it standing.

Mr. C. A. H. Townsend: I leave it at that as Dr. Nand Lal apparently does not adhere to what I thought he said. But in this connection I wish to bring one point before the House which bears, I consider, not only on this amendment but on many others that have been moved in this debate by my friends on the left. Years ago, Sir, I was a Settlement Officer (without any Magisterial powers) in a Punjab district not very far from Delhi. As such it was my duty to investigate the affairs of every individual village. It was a district in which, as is common in the Punjab generally, cattle stealing was a very popular form of crime. In one village, Sir,—the same indeed happened at many other villages, but I remember this one village particularly,—the outcry on the matter was very insistent, the assembled grey-beards of the village all said that they had a very strong complaint against the administration. I asked them what that was. They said: "We cannot keep out cattle, they are all stolen away from us at night and the thieves are never punished, and if any persons are by chance sent to prison, they are let out at once." I pointed out to them that nobody could possibly object to innocent men not being sent to prison. They said: "We are not talking of innocent men: we are talking of men who are known to be guilty in the village of these offences. You should lock them up, and what is more you ought to be able to send them to prison on suspicion." There are, Sir, two sides to every story. I fully admit that much discontent can be caused by innocent men being

sent wrongfully to prison. But I do ask this House to realise that discontent which might in the long run be equally dangerous to the administration can be also caused by men who are really guilty not being sent to prison, and before this amendment or other similar amendments are finally disposed of, I would ask my friends on the left to carefully consider this point. I oppose the amendment, Sir.

Rao Bahadur T. Rangachariar: Sir, many of the remarks made by my Honourable friend who just now spoke are irrelevant to the present question we are considering. We are not now concerned with the order imposing security. That is already passed. We are not concerned with sending a man to prison in case he fails to give security, because the law takes its course after the order, if he fails to give security. I do not see what all these remarks which my Honourable friend just now made have got to do with this amendment. We are now concerned with an appeal against the order which has been passed. There are two questions involved in this amendment. Only one question has been dealt with hitherto. The first question is to whom should an appeal go in a case of this sort. The section provides that an appeal shall lie only in the case of orders by certain Magistrates. The section as it stands provides an appeal in the case of orders by certain Magistrates to the District Magistrates. In the case of the Presidency Magistrate and the District Magistrate the Code as it stands provides no appeal. It is rather a curious lapse. If Honourable Members will compare section 406A as now proposed by the Government with section 406, the Code provides an appeal in the case of a District Magistrate and a Presidency Magistrate where he refuses to accept a surety. If he passes an order for security either for peace or for good behaviour, there is no appeal provided. That is the more substantive order, the more essential order and no appeal is provided in the case of an order by the District Magistrate or Presidency Magistrate. In a purely small matter just as refusing to accept a surety, an appeal is provided. I take it it is an unintentional omission in the Code that no appeal should be provided in such serious orders, when the orders are passed by a District Magistrate or a Presidency Magistrate. Look at the consequence of an order passed by a District Magistrate or a Presidency Magistrate, either for keeping the peace or for good behaviour. The man has to go to jail for one year or for three years as the case may be. Now, can such an order remain without an appeal? If a first class sub-divisional Magistrate passes an order, that order is open to appeal. But if it is passed by a District Magistrate it is not open to appeal at all. I do not think, Sir, it is right. Therefore one of the objects of this amendment is a very good and necessary object. As Honourable Members will see you should provide for an appeal in such cases also.

To whom should the appeal go is the next point. Should it go to the executive head of the district or should it go to a judicial officer? The proposal is that it should go to the judicial head of the district. What is the harm in that amendment? An appeal lies; why should not the appeal go to a judicial officer? You have passed an order; the urgency is all gone; an order has been passed; there is no question of any stay or any thing of that sort; peace is not threatened; the vagabond is already bound over; you only give him the chance of an appeal. Give him a fair hearing. What is the good of giving a right of appeal with the one hand and taking away with the other hand? What is this fear of Sessions Judges, I want to know? Here we are accused of distrust of the police; we are accused of distrusting our Magistrates. May I in turn accuse

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those who oppose these amendments that they distrust the Sessions Judges? They have no confidence in their Sessions Judges. I return that compliment to those who attack us. I say, Sir, that the Sessions Judge is the proper authority to deal with this matter and he will bring a judicial mind to bear upon the case.

Sir, there is an omission in the amendment proposed by my Honourable friend, Dr. Gour, which with your permission, Sir, I propose to make up. Sir, I wish to add the words "in the case of an order by a Presidency Magistrate to the High Court;" because if the amendment proposed by my Honourable friend is left as it is, it would read that in the case of a Presidency Magistrate also the appeal should go to the Sessions Judge. Of course the obvious answer which the Honourable the Treasury Bench would at once come forward with is "Where is the Sessions Judge in a Presidency town?" It is a very legitimate question to put, no doubt; but it is an oversight on the part of my learned friend, Dr. Gour, and I therefore, Sir, say that the words "in the case of an order by a Presidency Magistrate to the High Court" should be inserted. It is admitted these are appealable orders, and therefore I say let us give a fair appeal; no party suffers. I support the amendment and I move this amendment to add the words "in the case of an order by a Presidency Magistrate to the High Court," at the end.

Dr. H. S. Gour: I accept the amendment suggested by my Honourable friend, Mr. Rangachariar.

Sir Henry Moncrieff Smith: Sir, Dr. Gour, with his usual optimism and foresight prophesied that we had only one possible argument against his amendment, and that was that it would add to the work of the Sessions Courts and therefore add to the expense. Sir, that is a very strong argument. I think the House has perhaps overlooked the fact that this House is not going to be called upon to provide money for this additional work that will be cast upon the Sessions Courts. This House is proposing to throw a very heavy burden on the already overburdened Local Governments' finances. But, Sir, that might have been the end of our argument.

Dr. Nand Lal: With the permission of the Chair, I submit there are if I mistake not very few cases.

Sir Henry Moncrieff Smith: They may be few, but this House is proposing to make them very many. Dr. Gour went on, and like other Members in this House, proceeded to level an attack against the impartiality of the District Magistrate. I do not think the Government of India can sit down and listen to these remarks without some protest. It is quite true that my friend, Dr. Nand Lal, has said that he intended nothing. He may have intended nothing, but he said a great deal. Dr. Gour, said, justice has got to be done in these cases and is the offender likely to get fair and even-handed treatment from the District Magistrate? Dr. Nand Lal said, that it is the District Magistrate who is responsible for the peace and order of the district and therefore you cannot expect him to be impartial in these matters.

Dr. Nand Lal: I did not say so, Sir.

Sir Henry Moncrieff Smith: I have not got a short-hand report. I have got down as much as I could.

Dr. Nand Lal: On a point of personal explanation, Sir. What I said so far as I can recollect was that our District Magistrates are competent, impartial and experienced, but at the same time we ought to be very careful to see that the appeal is not instituted in the Court of the District Magistrate, because it will be more desirable. This is what I had submitted.

Sir Henry Moncrieff Smith: Sir, it is by no means the case that the District Magistrate always institutes the proceedings in these cases. Far from it. I have been a Magistrate myself for years, and I know it is, as a matter of fact, in most cases the Superintendent of Police who eggs on his Sub-Inspectors to help to preserve the peace of the district by using the powers that they have got to bring offenders of this kind before the Courts. I would suggest, Sir, with reference to this point that a District Magistrate can barely be trusted because he is likely to listen to everything that the police say to him. I would suggest to the House that the District Magistrate who sits at his headquarters and swallows everything that is put before him by the police would find something very different from peace and good Government in his district; he will find most hopeless confusion and unrest in his district in a very short time. The District Magistrate, Sir, I think, must be trusted to keep the reins in his own hands and not to allow himself to be used as a tool by the police.

Mr. Rangachariar, Sir, has introduced his new amendment about the Presidency Magistrates. Mr. Rangachariar has given notice of an amendment himself, No. 298, and since he drafted that amendment he has apparently changed his mind, because if Mr. Rangachariar's amendment No. 298 is applied to the Bill it will have the result of providing no appeal whatever against any order of a Presidency Magistrate. Mr. Rangachariar now is proceeding to assist Dr. Gour to correct his mistake and at the same time to get out of his own. Sir, it has been suggested by Dr. Gour that you must not leave the final word in this matter with the District Magistrate, and Mr. Rangachariar would no doubt add now 'with the Presidency Magistrate.' But there is no question—let not the House be deceived by this argument—there is no question of the final word being with either of these Magistrates. There is revision in these cases. My Honourable friend says: "Ah! revision." I hope he remembers that, Sir, when he comes to move some of his later amendments. Revision, Sir, is regarded by many Members of this House as a most essential safeguard. They are pressing for it here, there and everywhere. But when I point out that this safeguard does exist in this particular case, Dr. Gour says "Ah! revision." There is the safeguard, Sir, and I consider that that is quite enough in the case of the Presidency Magistrate and the District Magistrate. There is a good deal of loose talk in regard to this amendment. It has been assumed that first and second class Magistrates are in the habit of passing orders to secure good behaviour and keep the peace. If Honourable Members will look at sections 107, 108, 109 and 110, they will find that it is only a very limited class of Magistrates who have power to pass orders at all.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I only wish to point out one additional fact, not mentioned by my Honourable friend, with reference to section 125. Section 125 runs:

"The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter, etc."

[Mr. P. E. Percival.]

Now, Sir, if we transfer the appellate power from District Magistrates to Sessions Judges, it seems to me that we shall be putting in a provision contradictory to section 125; for you give the power in one section to the District Magistrate to cancel the bond, and in the other section to the Sessions Judge. If the Sessions Judge rejects the appeal, all the same the District Magistrate can cancel the bond under section 125. The District Magistrate is the sole Appellate Authority dealing with security cases (*Dr. H. S. Gour*: "Prestige"); and that is the reason of the provision in section 125, Chapter VIII, to that effect.

There is one other point. With reference to my Honourable friend, Dr. Nand Lal's remarks regarding the orders given by the District Magistrate, it has been laid down that:

"Where a District Magistrate is executive head of a District and is actively concerned in the institution of proceedings against a person under Chapter VIII, he is debarred from hearing an appeal under section 406 without the permission of the Sessions Judge."

So that the case of the District Magistrate himself being concerned in the case has already been met.

Mr. Jamnadas Dwarkadas: I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: Before I put the question I want to ask the Honourable Mr. Rangachariar whether the amendment he proposes should not be inserted after the words "Sessions Judge" rather than at the end of the amendment.

Rao Bahadur T. Rangachariar: Yes, Sir, after the words "Sessions Judge."

Mr. President: The original amendment was:

"In clause 106 (1) after the words 'said Code' insert the following:

"the words 'other than the District Magistrate or a Presidency Magistrate' shall be omitted, for the words 'District Magistrate' the words 'Sessions Judge' shall be substituted and."

Since which a further amendment has been moved:

"To insert after the word 'Judge' the words 'and in the case of an order by the Presidency Magistrate to the High Court'."

The question I have to put is that that amendment be made.

The motion was adopted.

Mr. President: The question is that the amendment, as amended, be made.

4 P.M. The Assembly then divided as follows:

AYES—35.

Abdullah, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Dalal, Sardar B. A.
Dass, Pandit R. K.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Singh, Raja K. P.
Srinivasa Rao, Mr. P. V.
Venkatapatiraju, Mr. B.
Wajihuddin, Haji.

NOES—30.

Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haig, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. President: The question is that clause 106, as amended, stand part of the Bill.

Rao Bahadur T. Rangachariar: I move:

"In clause 107, in proposed section 406-A substitute the following as clause (b) in the places of clauses (b) and (c):

"(b) If made by any other Magistrate to the Court of Sessions."

The clause is:

"Any person aggrieved by an order refusing to accept or rejecting a security under section 122 may appeal against such order:

- (a) if made by a Presidency Magistrate, to the High Court;
- (b) if made by the District Magistrate, to the Court of Session; or
- (c) if made by a Magistrate other than the District Magistrate, to the District Magistrate."

My proposal is that in place of clauses (b) and (c) we should have the following:

"If made by any other Magistrate, to the Court of Session",

[Rao Bahadur T. Rangachariar.]

that is to say, that if it is made by any other Magistrate than a Presidency Magistrate it will go to the Court of Session. It follows the previous section and I hope there will be no difficulty in accepting it.

Mr. H. Tonkinson: I oppose the amendment. My Honourable friend perhaps consider that his present proposal is consequential upon the previous proposal. I submit that it is nothing of the kind. In section 406A we are providing for an appeal in cases in which there has been no appeal before and I submit that we provide quite sufficiently when we allow these appeals to the District Magistrate, if the order is passed by a Magistrate other than the District Magistrate. In fact, there is not the least doubt that the last amendment that was carried against us and the present amendment are entirely inconsistent with Chapter VIII of the Code. Chapter VIII of the Code gives the full control in these proceedings to the District Magistrate and there is no doubt whatsoever that he should be the person . . .

Rao Bahadur T. Rangachariar: I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Dr. H. S. Gour: This amendment which I move is consequential. It runs as follows:

"In clause 107 for clause (b) of proposed section 406A, substitute the following:—
(b) if made by the District Magistrate or a Magistrate of the first class to the Court of Session; or."

I shall explain to the Honourable Members why it is consequential. In the proposed section 406A it is provided:

"Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

- (a) if made by a Presidency Magistrate, to the High Court;
- (b) if made by the District Magistrate, to the Court of Session; or
- (c) if made by a Magistrate other than the District Magistrate, to the District Magistrate."

Honourable Members will see that such an order may be passed by a first class Magistrate, as Sir Henry Moncrieff Smith has pointed out that first class Magistrates are empowered to deal with these cases of security. Now, Honourable Members know that in ordinary cases the District Magistrate has no jurisdiction whatever over a sentence or conviction of a first class Magistrate and the only Court which is empowered to hear appeals from a conviction by a first class Magistrate is the Court of Sessions. I see no distinction in principle between a conviction and an order refusing to take security and I do not see why if in the one case the Sessions Court is the right Court, in the other case the Sessions Court is the wrong Court and why an appeal should lie to the Court of the District Magistrate. That is, I submit, an anomaly which my amendment seeks to remove. I do not think that the Government should oppose this amendment. It will make the Code more logical and more consistent. It will show that the Sessions Court being the ordinary appellate tribunal for dealing with cases disposed of by a first class Magistrate that Court will also hear all cases in which the first class Magistrate passes an order under the preventive sections and, Sir, the objections which I have raised and which the House has just now endorsed by their vote apply equally to this amendment and I trust that the House will support me.

Sir Henry Moncrieff Smith: I must protest against Dr. Gour's assertion to the House that if the Sessions Judge is the right person to hear appeals against orders requiring security, he is therefore obviously the right person to hear appeals against an order refusing to accept a surety because that surety is not a fit person. The two matters are on an entirely different footing. In the one case you are passing an order definitely that may have the effect of interfering with a man's liberty for a long time. It is quite true that by refusing to accept a surety you may thereby interfere with a man's liberty for a short time. But all he has to do is to find another surety. The man whom he has put up in the first instance has been definitely found after a magisterial inquiry on oath not to be a fit person to stand surety—and I would ask the House to remember that this magisterial inquiry on oath is quite a new thing in the Code. We have provided a safeguard here against improper rejection of sureties and in this inquiry on oath, the Magistrate has to find on definite grounds, which the High Courts have laid down for the guidance of subordinate Courts, that the person offered is not a fit person. He has no money. He lives at a distance or he is a bad character himself. Sir, in that case, does Dr. Gour require the Sessions Judge to decide whether the Magistrate's order was a proper one or not. That is a matter that is well within the competence of the District Magistrate. Dr. Gour has not reminded us again this time of our argument regarding expense. But here again the question of expense comes in very seriously. It is not a laughing matter at all. Local Governments will probably find themselves in the position of having to increase the number of Sessions Courts very considerably. They are always having to put on additional Sessions Judges simply because arrears accumulate and the arrears will accumulate to a far greater extent, if it provides, as the House has already done, that all appeals in security proceedings are to go to the Sessions Judge, and also now by this amendment that further appeals are to go to him when a Magistrate passes a preliminary and unimportant order declaring a surety to be unfit to stand security for a person who has already been found to be either a person likely to create a breach of the peace or likely to be of bad behaviour.

Mr. Pyari Lal: Sir, the Honourable Sir Henry Moncrieff Smith has not met Dr. Gour's arguments. What Dr. Gour says is that you must be consistent. When you provide that all appeals from first class Magistrates should go to the Sessions Judge and not to the District Magistrate, why should you make an exception in this particular case? We must be consistent. That is the first thing that we must preserve and in that view I think he is perfectly right. As to the matter of costs, I do not know how the Honourable the last speaker has run away with the idea that the work of the Sessions Judge will be over-burdened because a few more appeals under these preventive sections will go to his Court. I know it for a fact that security cases for bad behaviour you can count on your finger's ends in the whole year. As regards security cases for keeping the peace, their number may be a little more, but they are not half so important as the security cases for bad behaviour. There might be a dozen cases in a year, and these dozen cases surely will not make any difference in the amount of work the Sessions Judges have to do.

Mr. H. Tonkinson: Sir, I would just like to make one remark as regards a question of fact. The Honourable Member who has just sat down stated that there were only half a dozen cases a year of proceedings under this Chapter. I take the statistics for Madras for the year 1921. There were 1,221 persons ordered to give security to keep the peace—I give

[Mr. H. Tonkinson.]

the figures for persons convicted, Sir,—and as regards “ security for good behaviour ” 1,781, in the same year.

(Voices: “ They were non-co-operation cases.”)

Dr. H. S. Gour: May I ask how many cases were there in which a first class Magistrate has refused a surety? That is the only point we are now discussing.

Mr. H. Tonkinson: We have no record, Sir, of these separate cases; I only got up to refer to a point of fact, as my Honourable friend said that there are only half a dozen cases for security under this Chapter in the year.

Mr. President: The question is that the following amendment be made.

“ In clause 107 for clause (b) of proposed section 406-A, substitute the following :

‘ (b) if made by the District Magistrate or a Magistrate of the first class to the Court of Session; or ’.”

The Assembly then divided as follows:

AYES—25.

Abdullah, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bhargava, Pandit J. L.
Dass, Pandit R. K.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.

Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Reddi, Mr. M. K.
Singh, Raja K. P.
Srinivasa Rao, Mr. P. V.
Tulshan, Mr. Sheopershad.
Venkatapatiraju, Mr. B.

NOES—34.

Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davis, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.
Ley, Mr. A. H.
Misra, Mr. B. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Singh, Mr. S. N.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Clause 107 was added to the Bill.

Mr. President: The amendment* standing in the name of Bhai Man Singh is outside the scope of the Bill.

Bhai Man Singh: I should like to draw the attention of the Chair to the question whether this amendment is relevant to the subject-matter of the Bill or not. There are some 3 or 4 sections wherein after orders are passed I want the right of appeal. One section is 133. We have, Sir, practically remodelled section 133 in the Bill. If Honourable Members will look at clause 24, they will see that we have practically remodelled the whole section 133 of the Code. The other sections are 137 and 139; they are consequential. If we provide any appeal in section 133, we shall have to provide for appeals in sections 137 and 139 also. Then, my case about 144 is still stronger, because if you look at clause 26 of the Bill, you will find that we provide in sub-section (iii) a new sub-section (5) as follows:

“ Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order; and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.”

Mr. President: The Honourable Member has not shown me in the least how his amendment is in order in this place. This clause refers to acceptance of, or objection to, surety under section 122, and as far as I am able to read, it refers to nothing else. The Honourable Member proposes to make it refer to a great many other matters which are not in the clause at all.

Bhai Man Singh: We are now discussing section 406 which refers to appeals from Magistrates to the District Magistrate. Clause 406 refers to appeals. 406-A also refers to appeals. Whether I put my amendment as 406A or B it would not make any difference. We have only to see whether it is relevant to the question of appeal we are now discussing. When we have made important changes in section 144 by providing the right to a man to go and put in his objections and when we have also required the Magistrate to record his reasons in writing for rejecting his application and

Mr. President: Order, order. That is quite good reason for arguing on the merits of the clause itself, but it does not help me to see that it is in order. I think I must rule the Honourable Member out of order.

Clauses 108, 109 and 110 were added to the Bill.

Mr. President: The two new clauses standing in the name of Mr. K. Ahmed (Amendment† No. 313) are also outside the scope of the Bill.

* “ After clause 107 insert the following new clause :

‘ 107-A. After section 406-A, the following section shall be inserted, namely :

‘ 406-B. Any person aggrieved by an order passed by a Magistrate other than a District Magistrate or a Presidency Magistrate under section 137, section 139, section 141, section 143, section 144 (7) or section 145 may appeal to a District Magistrate ’.”

† “ After clause 110 insert the following clauses :

‘ 110-A. To section 411 of the said Code the following proviso shall be added, namely :

‘ Provided that any person so convicted by a Presidency Magistrate, other than the Chief Presidency Magistrate may appeal to the latter if he has been sentenced to imprisonment for a term not exceeding 6 months or to fine not exceeding two hundred rupees.’

‘ 110-B. In section 413 of the said code the words ‘ or of whipping only ’ shall be omitted ’.”

Mr. T. V. Seshagiri Ayyar: Sir, the amendment which stands in my name wants to make this provision in the Code, namely, that where there are two or three persons jointly tried, and against one of them there is an appealable sentence and against the others non-appealable sentences, every one who has been jointly tried should have the right of appeal. I worded my amendment in a particular manner; the Government would like to have it in some other manner; and I am willing, Sir, to move it as it is worded by the Government. It is in these terms:

"In clause 111 in the proposed new section 415-A, for the words 'any of such persons in respect of whom an appealable judgment or order has been passed appeals' the following be substituted, namely:

'an appealable judgment or order has been passed in respect of any of such persons'; and all words after the words 'shall have a right of appeal' be omitted."

Sir, I move the amendment.

The amendment was adopted.

Clause 111, as amended, was added to the Bill.

Clauses 112 and 113 were added to the Bill.

Rai Sahib Lakshmi Narayan Lal: Sir, the amendment which I move is:

"That in clause 114 after the words 'said Code' insert the following:

"In sub-section (1) the words 'empowered by the Local Government in this behalf' shall be omitted."

Under section 435 of the Code only such Sub-divisional Magistrates as are empowered by the Local Government in this behalf have got the power to call for the record of the lower Court. It is only Honorary Magistrates and sometimes Sub-Deputy Magistrates who are subordinate to Sub-divisional Officers, and it is very inconvenient and expensive for people of a sub-division to go to the district headquarters to have a relief like this. It is only Magistrates of mature experience who are placed in charge of sub-divisions and it will be rather lightening the work of the superior officers to empower the Sub-divisional Officers to call for the record of their subordinate Courts. I move this amendment.

The amendment was negatived.

Dr. H. S. Gour: Sir, the intention of this amendment* is to preserve to the High Courts revisional jurisdiction in cases disposed of under sections 144 and 145. Honourable Members will remember that incidentally this question was raised at the earlier part of the debate and the Honourable Mr. Tonkinson pointed out that not only the chartered High Courts but all the non-chartered High Courts, such as the Chief Courts and the Courts of the Judicial Commissioner do, under various local Acts, possess a Statutory power of revision in such cases. It was then pointed out by the Honourable Mr. Tonkinson that those cases were not properly argued. That may be a question of opinion. It may be that those cases were not properly decided. Now, Sir, I ask the House a simple question. If it is a fact, as we have been assured by the Honourable Mr. Tonkinson, that all the High Courts, chartered and non-chartered, possess this power, then I say this clause is superfluous, nay misleading. If it is a fact that they do not possess the power, in that case I ask this House to endorse my opinion that this power is both salutary and necessary. It will not be denied, it has not been denied, by the occupants of the Treasury Benches that this power has in fact been exercised under section 107 of the Government

* "For sub-clause (iii) of clause 114 substitute the following:

'(iii) Sub-section (3) shall be omitted'."

of India Act and other local Acts. If so, so far as this clause is concerned, it conflicts with the express provisions of section 107 of the Government of India Act. It creates utter confusion. If the High Courts have power under section 107 of the Government of India Act to exercise the general power of superintendence over the subordinate Courts, what object is served by inserting this clause that orders under these Chapters 143, 144 and 145 shall not be open to revision under section 435? It might be said that though under the Code of Criminal Procedure the High Courts have not been given that power, still that power is exercised otherwise by the High Courts. I have already replied to this argument. I have, therefore, Sir, confidence that this House will vote for my amendment and place the powers of all the High Courts beyond any shadow of doubt, and I hope, as one Honourable Member suggests, that the Government, out of sheer consistency and due regard being had to what they said on the last occasion, will accept my amendment. I move it.

Mr. H. Tonkinson: Sir, I rise to oppose the amendment. My Honourable friend has referred to the powers exercised by Chartered High Courts in connection with the orders dealt with in this section. I submit, Sir, that all the rulings of the High Courts go to show that if a Magistrate has exercised jurisdiction or purports to have exercised jurisdiction under these Chapters or sections which he did not possess then the High Court may interfere. That, Sir, is quite a different thing from giving a general power of revision as the Mover of the amendment proposes to give. He, Sir, is confusing the general power of superintendence under section 15 of the old Charter Act (section 107 of the Government of India Act at present) with powers of revision. It is an entirely different question. These proceedings under section 144, Sir, are really of an executive order and the same applies to proceedings under Chapter XII. Take the case of section 176. I really do not understand why my Honourable friend suggests that there should be a revision of inquest proceedings. We have had similar provisions in the Code all along restricting the rights of revision in these cases, a revision going into the facts of the case and I therefore oppose the amendment.

Mr. President: Amendment moved:

"For sub-clause (iii) of clause 114 substitute the following:

'(iii) Sub-section (3) shall be omitted'."

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—36.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Dass, Pandit R. K.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Singh, Raja K. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam Mr. C. S.
Tulshan, Mr. Sheopershad.
Venkatapattiraja, Mr. B.

NOES—29.

Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Clow, Mr. A. G.
 Crookshank, Sir Sydney.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.

Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Ley, Mr. A. H.
 Moncrieff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Percival, Mr. P. E.
 Sassoon, Capt. E. V.
 Singh, Mr. S. N.
 Tonkinson, Mr. H.
 Townsend, Mr. C. A. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. President: The question is that clauses 114, as amended, and 115 stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move:

"To clause 116 add the following:

'In section 437 as re-numbered the words 'or District Magistrate' wherever they occur in the said section shall be omitted'."

Now, the present section 437 is the old section 436, and section 436 of the Code provides that in cases which are triable exclusively by the Sessions Judge, if there is a discharge, the Sessions Judge or the District Magistrate, on examining the record, may order a commitment. Sir, by my amendment I wish to take away the power of the District Magistrate in this matter and give this power only to the Sessions Judge. The Sessions Judge is the only competent authority to find out whether the case, after discharge, was such that it should have been committed to the Sessions Court, and my amendment will put this right. (*An Honourable Member:* "Old section 437 is now section 436.") Yes, the old section 437 which is now section 436. What I provide by my amendment is that such powers should only be vested in the Sessions Judge and not in the District Magistrate. With these few words, Sir, I move my amendment.

Mr. President: Amendment moved:

"To clause 116 add the following:

'In section 437, now section 436, the words 'or District Magistrate' wherever they occur in the said section shall be omitted'."

Sir Henry Moncrieff Smith: Sir, I see no reason why this power, which has been with the District Magistrate so long, should be taken away from him now. The District Magistrate has always had this power to cause the person to be arrested and to be committed for trial if in his opinion the person has been improperly discharged. There is this safeguard in the section that no person can be ordered to be committed for trial until he has been given an opportunity to show cause why such an order should not be made. This is only a preliminary matter. A Magistrate who may only be a second class Magistrate is specially empowered to decide whether a person ought to be discharged or not. Surely, if we allow a subordinate Magistrate to form an opinion on this matter, there is no reason why we should not allow the District Magistrate himself to do it.

Rao Bahadur T. Rangachariar: It is not merely the second class Magistrate that comes within the scope of the section. Under section 437—Honourable Members will remember I am speaking of the old section 437, now re-numbered 436—an inquiry is held by a competent Magistrate, may be a second class Magistrate, may be a Sub-divisional Magistrate, may be a Magistrate of the first class. These people after hearing the whole evidence come to the conclusion that no case is made out for the prosecution and discharge the accused. On the same evidence as held by the different High Courts the District Magistrate says:

"I will come to a different conclusion on the evidence. Not having seen a single witness in the box, on the same evidence I take a different view and I will order a further trial before a Magistrate subordinate to me."

Here the District Magistrate of the District on the same evidence comes to the conclusion saying "I differ from the Magistrate who tried the case. Now I order a further trial." What does it mean? It really means a direction to the subordinate Magistrate, "Now take a different view and come to a contrary conclusion." Therefore, it is not right that such a power should be with the District Magistrate. It should rest only with the Sessions Judge. The object of this amendment is that the Sessions Judge should direct a re-trial and not the District Magistrate. That is the object of this amendment and I support it.

The Honourable Sir Malcolm Hailey: May I ask the Honourable Member (Mr. Rangachariar) whether he is arguing on the present section 436?

Rao Bahadur T. Rangachariar: Yes.

The Honourable Sir Malcolm Hailey: Mr. Agnihotri's amendment refers to clause 437.

Rao Bahadur T. Rangachariar: He corrected it, Sir.

Sir Henry Moncrieff Smith: Mr. Agnihotri's amendment cannot apply to the old section 437. Apparently he proposes to omit the words "or District Magistrate" wherever they occur. I do not find the words "or District Magistrate" in section 437.

Mr. President: May I draw the attention of the Honourable Member that the words "or District Magistrate" occur twice in the old section 436.

Mr. H. Tonkinson: Sir, I should merely like to point out that Mr. Agnihotri was arguing definitely for the amendment of new section 437. He referred entirely to the power of ordering committal. My Honourable friend, Mr. Rangachariar, comes forward with an entirely different argument, an argument applicable to an entirely different section, a section to which the amendment as moved cannot apply in actual words.

Mr. President: Amendment moved:

"To clause 116 add the following:

'In section 437 the words 'or District Magistrate' wherever they occur in the said section shall be omitted'."

Dr. H. S. Gour: May I suggest a verbal correction with the permission of the Honourable Mover of the amendment? What his intention was, was to take away the power of ordering further inquiry by the District Magistrate under the old section 437.

Sir Henry Moncrieff Smith: It could not have been the Honourable Member's intention for he has moved for the deletion of the words "or District Magistrate" wherever they occur. The words "or District Magistrate" do not occur at all in the old section 437.

Dr. H. S. Gour: I am surprised that the Honourable Members, being deprived of good arguments have taken to quibbling. Everybody knows what the object of the Honourable Mover of the amendment was. In the old section 437, now section 436, the object, as he has explained, was to take away the power of revising an order of discharge or dismissal of a complaint under section 203 from the District Magistrate and transfer it to the Court of Sessions. That is the sole object.

The Honourable Sir Malcolm Hailey: If that was his object, his speech was curiously silent on the point. If I am right, he referred to commitment, and I would appeal to him to tell us whether he was not arguing on a question of commitment. I refuse to accept Dr. Gour's version of what the Honourable Member said and I believe the Honourable Member himself will refuse it.

Mr. President: The Honourable Member has himself disappeared. The question is that that amendment be made.

Dr. H. S. Gour: There is a clerical mistake. That mistake has arisen owing to misapprehension and the Honourable Member just now asked me to correct that mistake. I am told he has gone to refer to some books.

Mr. President: As has been pointed out by Sir Henry Moncrieff Smith, the section, as re-numbered, will be 436 if you leave out the word 'or.'

Dr. H. S. Gour: We are prepared to drop out the word 'or.'

Sir Henry Moncrieff Smith: Otherwise the whole section 437 become nonsense.

Mr. K. B. L. Agnihotri: There is no doubt that a confusion has been created and the word 'or' is confusing enough but my meaning was the old section 436, which is now 437, though it is not clear in the amendment as it is. There is no doubt about it.

Rao Bahadur T. Rangachariar: The words to be omitted will be "and the District Magistrate may himself make or direct any subordinate court to make."

Mr. President: That is a different amendment at all events in form. Will the Honourable Member tell us what his intention was. If the Honourable Member will take the Code as it stands, which clause does he wish to refer to.

(Mr. Agnihotri stood up but did not speak.)

Mr. President: If the Honourable Member does not know, I must rule the whole discussion out of order.

The question is that clause 116 do stand part of the Bill.

The motion was adopted.

Clause 117 was added to the Bill.

Rao Bahadur T. Rangachariar: Sir, I move the following amendment:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely: 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

What happens, Sir, is this. Under the Code as it stands the High Court have been given the power to enhance the sentence in the case of persons who have been convicted by lower Courts. Now, Sir, the accused person takes the conviction, and he does not care to appeal. Rather than undergo the expense of going to the High Court and appealing against the sentence, he rather suffers the sentence and keeps quiet. But the police are not satisfied with the sentence imposed by the Magistrate or Sessions Judge who tried the case. They say, he should have been given a longer sentence or a larger punishment, and therefore, they drag the poor man to the High Court. When he appears before the High Court, it stands to reason that he should be able to say, "Well, I have been wrongly convicted, but you want to impose a heavier penalty now. I was content to let things alone, but here the police won't leave me alone, they have dragged me to the High Court, now let me establish my innocence, the case is not proved against me, the evidence is false, I want to establish that." Sir, there are Judges and Judges. Here unfortunately the luck of the accused comes into play. It depends upon the particular Judge—as we all know, the High Court contains 5, 6, 8, 9, 12 or 15 Judges. It all depends upon the particular Judge who hears the particular case or the particular Bench which hears the case. If he is a Judge who is leniently disposed, who is merciful, combines justice with mercy in the discharge of his functions, he will say, "if you are not guilty, I am prepared to hear it", but there are other Judges—I have been frequently told, when I had to defend cases, I have been told, "no, no, the conviction stands, you have not appealed, or the time is up, you have got 30 or 60 days for you to appeal, you have allowed the conviction to stand, show cause why I should not inflict the heavier penalty which the police want. I have to ask you to show cause against enhancement." Sir, I have been told so dozens of times; it is an injustice to do that. We must not leave it to the sweet will and discretion of particular Judges to say, whether they will hear that point or not. If the man is able to satisfy the revising authority, if the man is entitled to acquittal, it is only right that the High Court should do so. I understand the Government Benches might say, "who ever said no." As I stated, there are Judges who have said that, in my own experience. Therefore, the principle is accepted, and all that they say is that it is unnecessary to provide it. I say it is necessary not only in my experience but in the experience of other friends who have practised in the High Courts, and I therefore think, Sir, it is a just provision, it is a necessary provision, we should make, and I hope the Government will not oppose it. I move it.

Mr. President: Amendment moved:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely: 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

Sir Henry Moncrieff Smith: Sir, I must oppose this amendment, because I consider it to be entirely superfluous and an attempt to introduce

[Sir Henry Moncrieff Smith.]

an excrescence into the Code. Mr. Rangachariar spoke of accused persons, convicted persons, who themselves did not want to appeal being dragged before the High Court by the Police. I ask whether any Member of this House has known of an accused person being dragged before the High Court by the police.

Rao Bahadur T. Rangachariar: I said so metaphorically.

Sir Henry Moncrieff Smith: The police never go to the High Court and ask for enhancement of a sentence. Occasionally, very occasionally, the Local Government may move the High Court to enhance sentences, but what happens in 90 per cent of cases, or even more than that, is that the High Court, in examining the statements that come up from the Sessions Courts, see what they consider to be an inadequate sentence, and they send for the record themselves, and then they cause a notice to be issued. There is no question of the police in this matter whatever.

Rao Bahadur T. Rangachariar: It does not matter who does it.

Sir Henry Moncrieff Smith: Now, Sir, I say this amendment is quite unnecessary for the following reason. Under section 439, it is definitely laid down that the High Court may in its discretion exercise any of the powers conferred on a Court of Appeal by section 423—I only refer to section 423, that is the only one that is relevant here—and in section 423, sub-section (1), clause (b), you find that one of the powers the High Court can exercise on appeal—and therefore can exercise in any case of revision when it sends for the record itself—is the power to reverse the finding and the sentence and acquit or discharge the accused or order him to be retired, and so on. When the High Courts have there got that power distinctly thrown at their heads in the Code, I do not see any necessity for the Legislature to throw it at their heads again.

Dr. Nand Lal: Sir, I support this amendment which commends itself. It happens in many cases, Sir, that the accused is a poor man who has been wrongly convicted. He has no money, in his pocket, to engage a good Counsel, who in some cases charge somewhat heavy fees. Therefore justice is denied to him on account of poverty. He does not go to the appellate court. To illustrate what I mean, let us take a hypothetical case. An accused is prosecuted and convicted under section 325 by a first-class Magistrate and is sentenced to three months imprisonment. He is sent to jail and undergoes the imprisonment. After that he returns to his village and accosts his accuser: "I was innocent indeed; you put me in jail; however I am out now." That opponent feels jealous of the poor man's freedom and is annoyed. He approaches the police or some executive officer and then a petition for revision is filed in the High Court and notice is issued calling upon the man to shew cause why the sentence should not be enhanced. The man is very much surprised when that notice is served upon him, and he regrets that he has not filed any appeal. He, however, in obedience to the notice, appears, and explains that there is no evidence against him at all, that the conviction is altogether illegal and that the very section 325 does not embrace the injury which he is alleged to have caused to the complainant. The High Court Judge is convinced of the force of his arguments and finds that a real injustice has been

done. What should he do in such a case? Should the High Court Judge, custodian of the justice of the province, not interfere? That is the recommendation, Sir, which has been made in this amendment, a very wholesome amendment, in the interests of justice, namely, that where there has been a miscarriage of justice and an unfortunate man, on no evidence at all, has been convicted but has not appealed against his sentence, that man may be helped by the High Court. Of course only the High Court has got the power of enhancing a sentence, not the Sessions Judge or other court. I think Sir Henry knows that, I think moreover that the Mover of this amendment should be thanked for trying to assist Government in seeing that injustice may not be done. I very strongly support this amendment and I hope the Government Benches will accept it.

Dr. H. S. Gour: Sir, the Honourable Sir Henry Moncrieff Smith has opined that the amendment of my Honourable friend, Mr. Rangachariar, is superfluous. There is no opposition to it on principle. I have only to dispel the doubt which lingers in the minds of the gentlemen on the Treasury Benches and if I can convince them that the amendment is not superfluous, I hope they will then see their way to support this amendment. This appeal against an acquittal is made under section 417 of the Code of Criminal Procedure and the High Court sits as an appellate Court and the sole question which arises is as to whether the sentence passed upon a person should not be enhanced or an acquittal for a graver offence should not be converted into a verdict of guilty and conviction. The provisions of section 439 to which Sir Henry Moncrieff Smith referred are provisions embodied in Chapter XXXII which relates to reference and revision, and section 439 to which my friend referred is a section relating to revision. His argument is that a Court under section 439 is empowered to acquit a person if it comes to its knowledge that the accused is not guilty. Now, let us examine this statement. I have no doubt that my Honourable friend will admit that it is the established practice of all the High Courts formulated in a series of cases that the High Court will not interfere on a question of fact. Consequently, acting under section 439 the High Court cannot revise a finding of fact, or rather it refuses to do so. Therefore, I submit, that when the Court is examining the proceedings under section 439 it will not go into a question of fact. Whereas, assume the case of an appeal against an acquittal or for the enhancement of a sentence already passed. There the Court exercises larger jurisdiction and examines the whole record and can revise both findings of fact and law. That is a distinction between my Honourable friend's amendment and the explanation given by the Honourable Sir Henry Moncrieff Smith. His explanation, I submit, opens an extremely narrow door through which many an accused has failed to get through. It is for the purpose of giving a person who has been brought to the bar of the High Court to answer why a sentence passed upon him should not be enhanced the right of showing by arguments *a fortiori* not only that the sentence should not be enhanced but the whole conviction is wrong and should be set aside. Should he be prevented from doing so? My learned friend says that no Court will ever prevent an accused appearing before the bar of the Court from showing this. He has testified to his own experience; and I regret to say, Sir, that in my long practice at the bar I have known Judges who are blood-suckers and who will strain every point against the accused and who will say surely . . .

Mr. President: Order, order. I do not think I can allow that phrase to pass.

Dr. H. S. Gour: I withdraw it, Sir. I have known judges who are of a convicting predisposition and who will not allow the accused to show that the conviction should be set aside unless they are expressly given the power under the Statute to interfere with a conviction. My friend, Mr. Rangachariar, has referred to the case of a person who did not appeal after his conviction. May I point out to the House that there are cases in which an appeal might have been dismissed against the conviction and the Judge concerned might have reported the case for the enhancement of sentence. And when that case comes up before the High Court the High Court may find that not only the enhancement is unjustifiable but the conviction is equally unjustifiable. In that case what is the High Court to do? There is a conviction, a wrong conviction; there is a motion for enhancement and that enhancement is under trial when the Court comes to the conclusion that both the enhancement and conviction are unjustifiable. Mr. Rangachariar's amendment enables the Court not only to refuse an enhancement but also to set aside a conviction. That, I submit, is a case which is not met by any express provision of the Code of Criminal Procedure, and I therefore submit that this House should support the amendment. One word more, Sir; the circuitous provisions to which Sir Henry Moncrieff Smith has drawn the attention of the House, may I point out, have not been usually used for the purpose of acquitting people in cases covered by Mr. Rangachariar's amendment; and in defining a criminal procedure I would rather err on the side of superfluity and make a matter clear upon which any doubt existed than let matters remain in doubt and suspense and trust the Judges to read section 439 more liberally and use these provisions for a purpose for which they are not normally used and intended to be used. I support the amendment.

Mr. H. Tonkinson: Sir, I rise to offer a few remarks with reference to those words which have just fallen from my Honourable and learned friend, Dr. Gour. It is very difficult, Sir, to follow that portion of his argument which related to appeals from acquittals. That, Sir, has nothing to do with the present question. We are dealing with an application for revision for enhancement of sentence. My Honourable friend suggests that in such cases the High Courts hold that they should not go into questions of fact. That may be true, Sir, about general revision proceedings; but is it true, I ask my Honourable friend, as regards proceedings for enhancement of sentence?

Rao Bahadur T. Rangachariar: Sometimes.

Mr. H. Tonkinson: Most certainly not, as my Honourable friend knows.

Rao Bahadur T. Rangachariar: I know the High Court much more than you do.

Mr. H. Tonkinson: When going into the question of enhancement of sentence you must clearly go into the facts.

Dr. Nand Lal: I think in some fit and deserving cases they go into the question of facts too.

Mr. H. Tonkinson: My Honourable friend, Sir, suggests that there is no express provision enabling the High Court to take this action. Well, Sir, he certainly cannot, I should imagine, have read section 439 with section 423. If he does so he will find that there is a definite express provision of the law enabling the High Court to take the action which is proposed by the amendment of my Honourable friend. I oppose the amendment.

Mr. T. V. Seshagiri Ayyar: Sir, you have very rightly called to order Dr. Gour for the very unparliamentary language he has used regarding High Court Judges. As one, Sir, who has been connected with the High Court, I think it my duty to resent the language which has been used; I believe, in the heat of the moment he allowed himself to be . . .

Dr. H. S. Gour: Is my Honourable friend in order in referring to an expression which I have already withdrawn? It is as good as if I never used it.

Mr. President: If an Honourable Member withdraws an expression and the Chair accepts his withdrawal, the incident is usually regarded as closed; but the Chair has no power to prevent any other Member from referring to it.

Mr. T. V. Seshagiri Ayyar: I only wanted to say further as one who has been connected with the High Court, I am glad that you asked this expression to be withdrawn and I am glad that my Honourable friend has done so.

With regard to the matter which has just been referred to by Mr. Tonkinson, I would like to say a word. When a case comes up by way of revision before the High Court, the Judges consider that in disposing of that matter they are bound by what are called findings of fact. For example, a matter may have been before a second class Magistrate, then on appeal before a District Magistrate or a Sessions Judge; and it would come by way of revision to the High Court. What the High Court Judges do say often is that they will not interfere. But supposing on the findings of fact on examining the records the Judges think it necessary to call upon the accused to show cause why his sentence should not be enhanced; then the High Court Judges may very well say 'we are only giving you notice to show cause why the sentence should not be enhanced and we shall not allow the whole inquiry to be re-opened. That very often happens. I have argued cases, and I have been told by Judges that this is practically what is known as second appeal, that it is not open to the Court to go into questions of fact; and that they must take the findings as they are and pass a sentence which is adequate to the findings which have been recorded. That is what has been said very often, and it is against that Dr. Gour has raised his voice and it is against that the amendment of Mr. Rangachariar is directed. There is nothing wrong in the High Court Judges doing it, because the general power in regard to revision is after accepting the findings of fact to come to a decision on law or on the question of sentence; and very often Judges refuse to re-open the case. But where an accused is called upon to show cause why his sentence should not be enhanced, we want powers to be reserved to the High Courts to enable them to exercise powers of re-opening questions of fact and to find whether there has been a proper conviction or not. It is for that purpose this amendment has been brought in, and I think the Government ought to accept it.

Rai Bahadur D. C. Barua (Assam Valley: Non-Muhammadan): Sir, I beg to support this amendment. I do so among other grounds on the question of economy also. Sir, if a person is really innocent, why should the tax-payer be compelled to pay his expense in the gaol? From the point of view of economy also, I should think that it should be open to an accused person called upon to say why his sentence should not be enhanced to show that he was innocent. Sir, I can imagine cases in which no appeals are allowed. Appeals are not allowed ordinarily in those cases in which a person is sentenced to a month's imprisonment by a Magistrate of the

[Rai Bahadur D. C. Barua.]

first class, or in the case of a person who is sentenced to undergo three months' imprisonment when he is tried summarily or six months by a Presidency Magistrate. Sir, if a person is really innocent why should the taxpayer be compelled to pay expenses for the maintenance of that person in the gaol? Of course, when the High Court or any Court whatsoever revises a case and attempts to find out whether the accused was guilty in a certain manner, it is certainly in a position to find out that he was not guilty also. If the Court really comes to this conclusion, that he was not guilty, then in all fairness he should be acquitted, although a subordinate Court came to the conclusion that he should be convicted. Sir, for these two reasons generally I beg to support the amendment, because in those cases in which the case is not appealable and the accused could not appeal and consequently suffered imprisonment, and if that case goes for revision before a higher tribunal, then it is clearly the duty of that higher tribunal to act in this way or that way—if he is really innocent to acquit him or if he is really guilty or deserves a severer sentence, then to enhance the sentence. Under these circumstances, Sir, I beg to support the motion.

Mr. President: Amendment moved:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—30.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Dass, Pandit R. K.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—27.

Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Singh, Mr. S. N.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was adopted.

Mr. President: The question is that clause 117-A, as amended, stand part of the Bill.

The motion was adopted.

Clauses 118, 119, 120, 121, 122, 123, 124 and 125 were added to the Bill.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, with your permission, I wish to move the following amendment in lieu of the one which stands in my name on the printed list:

"That in clause 126, in sub-section (1) of proposed new section 476, for the words 'order the offence to be inquired into' the words 'record a finding to that effect' be substituted."

This amendment is made in the interests of improved drafting and I leave it for the acceptance of the House.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, in lieu of the printed amendment, in order to make the matter clear, I move, Sir, that:

"In clause 126, in sub-section (1) of proposed new section 476, for the words 'and may, if the alleged offence is non-bailable, send the accused in custody to or in any other case may take sufficient security for his appearance before such Magistrate' the following be substituted, namely:

'and may take sufficient security for the appearance of the accused before such Magistrate, or, if the alleged offence is non-bailable, may, if it thinks it necessary so to do, send the accused in custody to such Magistrate'."

(At this stage Mr. President vacated and Sir Campbell Rhodes took the Chair.)

The object of this is not to make it compulsory on the Magistrate to send the accused in custody even in non-bailable cases. I want to leave a discretion to the Magistrate to come to a conclusion that it is necessary for him to do so. Otherwise he may take security for his appearance. This is a section dealing with complaints made by Courts. With these words I move the amendment.

The amendment was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move the following amendment:

"In clause 126, in sub-clause (3) of section 476, substitute 'shall' for 'may if he thinks fit'."

Under the clause as it has been provided in the Bill, if a civil, revenue or criminal court files a complaint under section 195, sub-section (1) clause (b) or clause (c), the Magistrate has been given discretion to proceed with the case even if the accused has filed an appeal against the decree or order of such Court. This by itself seems an anomalous procedure. If we refer to section 195 (1) (b) and (c) we find that the offences for which such complaints could be filed are such as giving false evidence, producing false or forged documents in evidence, or using false documents as genuine, or filing false complaints, or cases of perjury,—and these are the offences which come under section 195. If the man is to be prosecuted before the appeal in the original case is decided, there will be much injustice done to that man, as the appellate court may afterwards find the very documents to be true and genuine and which the lower Court found to be

[Mr. K. B. L. Agnihotri.]

forged or false. The very evidence which the original Court found to be false or a perjury, the appellate Court may find to be true and genuine; and on that very evidence the appellate Court may set aside the order or the decree of the Lower Court. What will then be the position of such a person who on the basis of the original Court's order had been prosecuted under section 195 or against whom a complaint had been filed? What will be his fate? He would not suffer if the Court was reasonable enough to have adjourned the case when the appeal was filed and had not proceeded with it. At the same time if the Court had proceeded with the case and perchance convicted him, the result would be that the accused might have suffered the penalty before the decision of the appeal in the original case. There will be many cases of such injustice and hardship. It may be questioned that the appeal might take a year or two and should those cases be kept pending so long? I would say that there should be no objection even if the appeal were to take one or two years. Suppose a case is filed before a Magistrate and the Magistrate were to convict the accused and sentence him with imprisonment which may range from one or two to six months, and the appeal is decided after a year, and the appellate court finds that the alleged forged document on which the original complaint was based was a genuine one. What is the fate of this poor accused who was not only convicted but has also served the full sentence passed on him for that offence which subsequently has been found to be no offence at all. It is a very salutary rule that until the appeal is decided the Magistrates should not proceed with the trial of such persons against whom complaints have been filed. I may give a concrete instance. Under the old section 195, a document was found to be forged by the civil court and on that basis that court ordered the prosecution of a person under section 195. The case was prosecuted before a first class Magistrate. I happened to appear for the complainant in that case, who had obtained the sanction, from the Additional District Judge to prosecute that man. The accused put in an application in revision before the Judicial Commissioner's Court; and the accused applied for the postponement of that case, but the learned Magistrate was not pleased to postpone it. He proceeded with the trial of the case. Fortunately for the accused in the revision court the application was soon decided and the revision court, that is the Judicial Commissioner's Court held that the sanction was improper and that the document was not forged. Now, the House can realise what would the fate of the accused have been if the revision court had not passed an early order in that case. This Magistrate may have considered that a District Judge or Additional District Judge who has given such a sanction must have given it on proper and reasonable grounds and may have himself come to the same conclusion as that of the Additional District Judge and may have convicted that man before that revision petition was decided and the accused may even have suffered the punishment. Such a case would have been very hard for that poor accused. In order to safeguard such cases I submit that the amendment which I propose will be a salutary one. I do not mean to say that ordinarily the Magistrates do not allow time. They do allow time but as in the case I have mentioned there are also cases in which the postponement is not allowed. The Magistrates have to explain to the Sessions Judge and the District Magistrate in their calendar statements the reason of the delay in trial. They are anxious to avoid increase of the average duration of trial in their Courts. I submit that if my amendment is accepted it will not hamper justice in any way. I therefore put forward my amendment for the consideration of the House.

Mr. Chairman: The question is:

"That in clause 126, in sub-section (3) of section 476, substitute 'shall' for 'may' if he thinks fit."

Dr. H. S. Gour: The question may be put.

Mr. P. E. Percival: I do not know what the attitude of the Government will be in regard to this amendment, but I prefer Mr. Seshagiri Ayyar's amendment. It is better worded.

Mr. Chairman: The question is that that amendment be made.

The motion was negatived.

Clause 126 was added to the Bill.

Mr. K. B. L. Agnihotri: I propose, Sir, that this section 127 may be taken up later, because at the informal meeting which we had this morning I was told that the Government was prepared to accept the principle and would give us a redraft. The redraft has just been handed to me, but I am not in a position to go through it properly, therefore I request that the consideration of this clause may be taken later.

Dr. H. S. Gour: In view of the lateness of the hour, I move the adjournment of the House; I also have a motion, No. 342,* which will require discussion.

Mr. Chairman: Is it the decision of the House that Amendment* No. 339 should not be taken up but deferred? (Voices: "Yes".)

Mr. K. Ahmed: Sir, I was thinking that this section, amendment No. 341* covers one of those matters in which the racial distinctions question is involved in the Bill which was placed before us the other day and Government, I understand, is going to put it up again, and to see whether they can revise it. If so, I do not like, Sir, to press the amendment, but if that is not so, I suppose there will be a clear understanding from the Government Bench that the matter will come up; if not, Sir, I am afraid I shall have to move it in the ordinary course.

The Honourable Sir Malcolm Hailey: It will come up in the course of the discussion on the Bill referred to.

Mr. K. Ahmed: On that understanding I do not move it, Sir, at present.

Mr. Chairman: The question is that the consideration of clauses 127A and 127B be deferred.

The motion was adopted.

Dr. H. S. Gour: I have already moved, Sir, for the adjournment of the House; I have said that this clause requires discussion, and perhaps it will take some time; I therefore move that the House be now adjourned.

Mr. Chairman: In the temporary absence of the President, I am not prepared to adjourn the House. The motion can be renewed on his return.

Dr. H. S. Gour: Sir, I was given an assurance by the President that this clause would not be taken up to-day, but if you, Sir, insist upon my moving it, I shall do so.

* In the List of Amendments.

Mr. Chairman: If it is the wish of the House that it should be taken up later, I am willing to pass on to the next amendment.

(*An Honourable Member:* "It follows the other.")

Mr. T. V. Seshagiri Ayyar: I may mention, Sir, that the President told us that he would not take up any case after 5-30, that as far as possible he won't take up any case, that unless it was absolutely necessary to continue the discussion, he won't do so—that is what he told me.

Dr. H. S. Gour: If it is the desire of yourself, Sir, that we should continue the discussion, you must allow us to go home and take our supper, and we shall return.

The Honourable Sir Malcolm Hailey: I was not prepared to hear, that any Member of the House should give directions to you, Sir, as to what you should do or think proper. As far as the adjournment is concerned, we are entirely in your hands. If Honourable Members opposite think that they are not able to continue this discussion, and if you are persuaded that their case is reasonable we shall not oppose it. I prefer that these proposals should come entirely from the opposite side of the House. We do not get tired of the good work.

Mr. Chairman: Do I understand that Dr. Gour does not wish to go on with this amendment?

Dr. H. S. Gour: No, Sir. I wish to go on with the amendment but not at the present moment. But if it is the desire of the occupants of the Treasury Benches that the discussion should continue I only wanted a few minutes respite for the reason I have already given. The Honourable the Home Member thought that my suggestion was improper, but I have no doubt that he also occasionally indulges in that impropriety himself.

The Honourable Sir Malcolm Hailey: I said, Sir, that I left it entirely in your hands. The suggestion which I said was improper was that you would have to allow the House to go away to supper.

Mr. K. Ahmed: Sir, only yesterday there was no reason why the House should be adjourned after four o'clock. It was neither left to the discretion of the Honourable the President of the Assembly nor to the discretion of the Honourable Members who wanted

Mr. Chairman: The Assembly now stands adjourned till Eleven of the Clock on Saturday, the 10th February, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 10th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MESSAGES OF CONGRATULATION ON THE BIRTH OF H. R. H. PRINCESS MARY'S SON.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Before the regular business of the day begins, I ask your permission, Sir, to move a Resolution which I am quite sure will be carried with acclamation by the whole House. We saw an announcement in the papers the other day that Her Royal Highness Princess Mary had a son born to her. That makes the first grandson to His Imperial Majesty the King Emperor. Sir, according to Hindu ideas the very name of a king signifies that he gladdens the hearts of people and a true subject is he who rejoices in the success and happiness of the Royal household. Sir, we are very happy that His Imperial Majesty has the first grandson through his daughter, Princess Mary. We wish you, Sir, to convey to the Princess our hearty congratulations on the birth of a son and to His Imperial Majesty our felicitations on the birth of a grandson.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, I associate myself with what has fallen from Mr. Seshagiri Ayyar, and I have been asked by the National Party to request you to convey the same message to His Imperial Majesty the King Emperor.

Sir Campbell Rhodes (Bengal: European): Sir, on behalf of the non-official European community, I have much pleasure in endorsing the Resolution proposed in such eloquent terms by my Honourable friend, Mr. Seshagiri Ayyar. The general rejoicing throughout the Empire at the birth of a son to the daughter of our beloved Emperor will be echoed widely throughout this land, where the advent of a son and heir is not only a happy social event but is also an event of deep religious significance. I heartily support the proposal.

Dr. Nand Lal (West Punjab: Non-Muhammadian): Sir, I most heartily share the view which has been placed before this Assembly by my learned friend, Mr. Seshagiri Ayyar. The birth of a son is an indication of great happiness, and I think the whole Empire will rejoice in it. With these few remarks I support the motion.

Mr. President: The question is that the President be instructed to convey an expression of the profound pleasure and thankfulness of the Legislative Assembly at the birth of a son to Princess Mary; and that a dutiful and loyal message be conveyed to His Majesty the King Emperor of the pleasure of the Legislative Assembly at the birth of a grandson.

The motion was adopted.

THE MALABAR (COMPLETION OF TRIALS) SUPPLEMENTING BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I ask leave to introduce a Bill to supplement the Malabar (Completion of Trials) Act, 1922.

It may be as well perhaps that I should explain to the House the exact purport of this small Bill.

There have been a series of special Ordinances issued by the Governor General in connection with the Malabar Rebellion; I need deal only with that aspect of these Ordinances which provided for the special trial of prisoners. The original Martial Law Ordinance established courts under the authority of the Military Commander, and subsequently a special tribunal was instituted. That Ordinance expired in February last. At the time it lapsed there were still a very large number of pending cases with which the ordinary courts of the districts were not able to deal. A further Ordinance was thus necessary and under the Malabar (Restoration of Order) Ordinance, 25th February, 1922, the Local Government were given authority to appoint special courts, special Judges, special Magistrates and summary courts. That Ordinance, in its turn, expired in August last and on its expiry the Madras Government still found itself confronted with a considerable number of cases. In some instances trial had already begun, in others the accused were arrested and were awaiting trial, and in a large number of other cases the accused had not even been arrested. It was felt in regard to the part heard cases, and those in which the accused were already under arrest that delay must be avoided, and the Governor General in Council, at the instance of the Local Government, passed a still further Ordinance, the Malabar (Completion of Trials) Ordinance, 1922, of 19th August last. Under this special Magistrates and special Judges already appointed were enabled to continue the trial of these cases. Arrangements were thus made for the definite class of cases to which I have referred, namely, those in which trial had begun or accused had already been arrested. A large class of cases however still remained for disposal in which, though information had been lodged and inquiries completed, or were well on their way, the accused had not been arrested. There were limits to the capacity both of the investigating authority and of the courts, and these two causes combined to make it impossible to take steps against a large number of persons who were nevertheless believed to be guilty of crimes so serious that with every desire to arrive at a speedy end of the proceedings, the Local Government could not overlook them. The Madras Government therefore in December last placed before their Legislature and passed a Bill known as the Malabar (Completion of Trials) Bill, the principal effect of which was to extend section 30 of the Code of Criminal Procedure to special Magistrates in the district of Malabar, with power to try under the provisions of that section offences certified to be offences connected with the events which necessitated the enforcement or continuance of Martial Law in the district of Malabar. That Bill further provided a remedy for a technical difficulty arising from the Completion of Trials Ordinance which was passed in August last, and which will expire in a few days time. When it expires there will undoubtedly be some cases in which an appeal has not been finally decided or has not yet been lodged. There will then be left no successor to the courts which will have disappeared along with the Ordinance, and there will therefore be no court to which the appellant could apply for records

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or to which the appellate judgment could be notified. Section 4 of the Madras Act rectified this position by laying down the courts which should have authority for taking action in order to give effect to the sentences passed by the expiring special courts or by any court in appeal regarding the judgments or orders of such courts. Section 5 further provided that notwithstanding such expiration an appeal should lie in any case in which an appeal would have lain but for such expiration, and that such appeal should be heard and decided by the High Court in cases in which under the Ordinance an appeal would have lain to the High Court, and that in other cases appeal should lie to the Sessions or Additional Sessions Judge, South Malabar. Now comes in the purpose of our present Bill. Section 5 of the Madras Act, to which I have referred, so far as it purported to give appellate jurisdiction to the High Court, was *ultra vires* of the local Legislature, and it is therefore necessary that the central Legislature should pass an Act giving the required jurisdiction to the High Court. The purpose of our Bill is therefore to supplement the lack of statutory authority in the Madras Legislature and its effect will merely be to confirm the action of that Legislature in making a provision for appeals to the High Court in cases where but for such provision no appeal would legally lie.

In the circumstances I have explained I have no doubt the Assembly will not only agree to the introduction of this measure, but will have no objection to further consideration being treated as a matter of urgency. The effect of the Ordinance lapses on the 18th of this month, and I propose therefore, if leave is given to-day, to put the further consideration of the Bill down for Monday next.

The motion was adopted.

The Honourable Sir Malcolm Hailey: Sir, I introduce the Bill.

THE INDIAN STAMP (AMENDMENT) BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I move for leave to introduce a Bill further to amend the Indian Stamp Act, 1899.

The facts of this case are clearly stated in the Statement of Objects and Reasons. Non-judicial stamps are at present a provincial source of revenue, but they are subject to all-India legislation. Last year the Bengal Government submitted proposals to us for the enhancement of the stamp duty on these instruments; but on looking through their proposals we saw that there were certain instruments on which the stamp duty must be uniform all over India. Accordingly we reserved those instruments—a list of them is given in the Statement of Objects and Reasons—for all-India legislation, provided that Local Governments, after they were consulted, agreed that such legislation was necessary.

We have now consulted all Local Governments, and as a result of that consultation we have decided that we do not desire to enhance the duty on certain of these instruments such as acknowledgments, bills of exchange, cheques, delivery orders, receipts and shipping orders; but we propose—that is the object of this Bill—we propose to enhance the duty on the remaining instruments—share certificates, letters of allotment of shares, letters of credit and proxies. We also propose to enhance the

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duty upon demand promissory notes and we also desire to make certain changes in regard to policies of insurance such as annual earthquake insurance. As the Act is now drafted they pay the same duty as live assurances, which is a heavy one. We want to bring that class of policy under the same head as fire insurance. The revenue which will accrue from these proposals, if they are accepted by the House, will of course go to the Local Governments.

I move for leave, Sir, to introduce the Bill.

The motion was adopted.

The Honourable Mr. C. A. Innes: I introduce the Bill.

THE INDIAN FACTORIES (AMENDMENT) BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I beg to move that the Bill further to amend the Indian Factories Act, 1911, be taken into consideration. I explained very fully, Sir, the objects of this Bill when I introduced it last week, and at this stage I do not think it is necessary for me to say more. I move, Sir, that the Bill be taken into consideration.

The motion was adopted.

Clause 1 was added to the Bill.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment:

“For clause 2 of the Bill substitute the following:

‘In clause (a) of sub-section (1) of section 22 of the Indian Factories Act, 1911, (hereinafter referred to as the said Act) the words ‘has had or’ shall be omitted, and for the words ‘one of the three days immediately preceding or succeeding the Sunday’ the following shall be substituted, namely:

‘any other day in the week consistently with this Act’.”

Sir, before I ask the House to accept my amendment, I should like the House to consider what were the intentions of the Legislature when the Factory Act was passed last year. The object, the apparent object, with which Government have introduced this Bill and this section is that they wanted to give effect to the intentions of the Legislature. Therefore, it is necessary for us to see what the real intentions of the Legislature were when they passed the Factories (Amendment) Bill last year. I would like the Members to refer to the wording of the section and see what it intends to do. What the section intends to do is that a particular Sunday belonging to a certain week should be transferred from that week into another week for the purpose of calculating the hours of work. In the first place, Sir, I consider this drafting to be not a proper drafting. The other day my friend Sir Henry Moncrieff Smith found fault with some Members for bringing into existence unmarried grandfathers. Now, Sir, I want to congratulate his department on bringing into existence a week of 8 days and a week containing 2 Sundays. That is what the expert draftsman of this Bill has done. Let the Members carefully read the words. I will draw their attention to the wording:

“For the purpose of calculating the weekly hours of work of such person the Sunday be deemed to be included in the preceding week.”

That week should be deemed to have 8 days and that week should be deemed to have two Sundays. This is the drafting of the Bill, but, Sir, I do not mind the drafting at all. What I want the House to do is to give effect to the intentions of the Legislature. Now what were the intentions of the Legislature? Sir, not being a lawyer I cannot discuss with such great skill as some of my friends did discuss that question of the intention of the Legislature last year about the votable and non-votable items. A great deal of skill was exhibited by our friends; I do not propose to do that. Now how are the intentions of the Legislature to be judged? The original section in the Bill which deals with this subject is this:

“No person shall be employed in any factory on a Sunday unless he has had or will have a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday.”

This is the wording of the original section. Now what is found in practice is this, that you cannot under certain circumstances, if you observe all the sections of the Factories Act, substitute the Sunday for every other day in the week, especially you cannot substitute a Sunday by a Thursday or Friday or Saturday. Now my Honourable friend Mr. Innes and his department will say that “if you observe all the rules of the Bill you cannot substitute a particular Sunday by a Thursday, Friday or Saturday; and therefore the intention of the Legislature was to break the other rule.” My point is that what the Legislature intended was this, that this clause about the holiday should be followed as far as it could be followed by observing all the other sections of the Act. It did not mean that in each case the employer should be able to substitute for Sunday any one of the days in the week. That was not the intention of Legislature at all. The intention of the Legislature was that the employer should be able to substitute for a Sunday some other day if it was permitted by the other sections of the Act. I think, Sir, this is the ordinary interpretation which laymen like myself can put upon any section of any Bill.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): There are two holidays per week?

Mr. N. M. Joshi: It may be two holidays, sometimes three holidays. My friend Mr. Jamnadas is surprised to see . . .

Mr. Jamnadas Dwarkadas: I am only asking. . .

Mr. N. M. Joshi: My friend, Mr. Jamnadas, is surprised to see that there should be two holidays in a week. I will draw his attention to the list of holidays which the Mill Owners' Association of Bombay have printed and circulated. In that list at least there are two occasions on which there are not only two holidays in a week but three consecutive holidays. So he need not be surprised. I have got the list. If he wants it I can supply him a copy.

Sir, that was the intention of the Act. The Legislature never intended that the other important sections of the Act should be contravened in order to enable the employer to substitute a holiday for a Sunday. If that had been the intention the Legislature would have made it quite clear. Sir, I admit that the wording of this section is not happy, and if the Legislature had been careful the wording would have been changed. But let the Legislature know how the wording came to be here. I want to explain to Members the circumstances under which this defective wording came into this Act. The original intention of the Government of India was to make Sunday compulsory. The wording was “that Sunday shall be a

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holiday," and there was no option given to the employer to substitute any other day for Sunday. That was the intention of the Government of India; that was the original Bill. The Joint Committee thought that the employer should be given option to substitute some other day for that Sunday. But I accept this that the Joint Committee intended that power should be given to the employer to substitute any other day for Sunday, but it was never the intention of the Joint Committee or of this Legislature that employers should be enabled to do this even by breaking the other rules. No mention was made either in the Joint Committee or in the Legislature that employers should be given the power to substitute any other holiday by even breaking the other rules. Now, Sir, the Objects and Reasons of the Bill make it clear which rule is contravened by the Bill. The rule contravened is that of 60 hours a week. This is not an ordinary small rule. This is one of the main principles of the Act that there should be no more than 60 hours a week. Now what Government tries to do is this. Whenever in such a case where the employer wants to substitute one particular day for a Sunday and where this rule of 60 hours a week is contravened, the Legislature gives him power to calculate this Sunday into the previous week. That is to say, the Legislature gives the power to the employer to give a go-by to the principle of 60 hours a week and introduces another principle, namely, of 120 hours in a fortnight. If, Sir, the employer is to be given the power of substituting another principle, namely, of 120 hours for a fortnight instead of 60 hours a week, the Government can go one step forward, and instead of making 120 hours for a fortnight, let Government say once for all that the employer should have the power of observing 3,120 hours in a year instead of 120 hours in a fortnight. But let the House know that when you substitute for 60 hours a week 120 hours a fortnight, you are making a change in the principle. Sir, moreover, when you make this change of principle of substituting 120 hours a fortnight for 60 hours a week, you are tampering with the International Obligations. They had ratified the convention for 60 hours a week, not 120 hours for a fortnight or 3,120 hours for a year. They had ratified a convention for 60 hours a week and in order to tamper with that convention and that ratification, Government proposes that that Sunday should be transferred into the previous week. I do not think, Sir, that this will be considered to be a very straightforward conduct in a very great Government. Now, Sir, I think the mistake of the Legislature or of the Joint Committee was that, when they changed the original Bill as drafted by the Government of India, instead of making their own draft they lifted up from the original Factories Bill the old clause and put it in the new Bill without knowing that that old clause would contravene the other amendments which are made to the Factories Act. That was the reason why the mistake was made. The draftsman or the Joint Committee, I do not know which, put in the Bill a clause which belonged to the old Act without considering whether that Act would break any other rule, and therefore the mistake was caused. Now, what the Government say is this: As the Legislature have passed these words, therefore the Legislature must have intended that the other rules should be broken in order that effect should be given to these words. What I say is this: That, as these words cannot be given effect to, the Legislature never intended to pass this rule as it is. The Legislature intended to put in some words which could be put in here consistently with the other provisions of this Bill. Now, Sir, I want to know from Government why they are making this change. Is it because they want only to make

the Act consistent or because there is a demand from some people for this change? As far as I know, there is not much widespread demand from the country. I have not seen Calcutta Chambers of Commerce or any other Associations asking for this change. At least Government have not told us that. As far as I know, the Mill Owners' Association of Bombay did want this change in order that they should be able to cut down the holidays which the employees would get according to the present Act. According to the present Act, I think they will have to give about 62 holidays. They are prepared to give 55 or 56 or 57 holidays. The Act gives the employees a few more holidays. The Bombay Mill Owners' Association do not propose to do that. Therefore, they go to the Government of India and ask them to make this change. I want to know, Sir, whether the government of this country is to be conducted by the real Government of India or by the Mill Owners' Association or the Chambers of Commerce or the Landholders' Association. I do not think it was right for the Government of India to have yielded to this demand of the Mill Owners of Bombay in this fashion and introduced an absurd provision in the Act altogether, making the week consist of 8 days and of 2 Sundays. After all, what is the real substance involved in this change?—4 or 5 more holidays which will have to be given to the employees—if you keep the Act as it is or if you accept my amendment in order to regularise the whole Act. Now, is it really worth doing? Even if the Legislature considers that the intention of the Act was to do this. Suppose I do not admit for a moment that the Legislature intended to do what the Government is proposing to do—but suppose, by chance, it is done, is it right for you to take away the holidays from the employees in this fashion? Sir, I do not think the Legislature will accept that proposition, even if the Government of India has brought it forward.

There is one thing more, Sir. It may be said, when my friend Captain Sassoon begins to defend his position or the Government of India's position, that the piece-workers in the factories will suffer, that, if you give them two holidays, they will get less wages. That is an argument, Sir, which has been used always, not on this occasion only. When the Factories Act was amended and the hours of work were reduced from 12 to 10 or from any number of hours to 60 hours a week, the same argument was used. At any time, whenever there is going to be a change either in the hours of work or in the holidays, the same argument will be used that the piece-workers will suffer. But, Sir, no disaster has yet fallen upon the country on account of the several changes that we have made so far in our Factories Act. And by giving a few more holidays to the employees, no very great disaster will follow either. Therefore, Captain Sassoon or my Honourable friend, Mr. Innes need not very much worry themselves about the great loss which the working classes will suffer by enjoying 4 or 5 more holidays in the year. I, therefore, think that my amendment, which gives effect to the real intentions of the Legislature, namely, that the employer should be able to substitute 8 days in the week for the Sunday, should be accepted by the House.

The Honourable Mr. C. A. Innes: Sir, I feel that I am somewhat protean in my incarnations in this Assembly. A fortnight ago, when the Mines Bill was being considered, I was held up to the Assembly by Mr. Joshi as a hardened reactionary. Last week, when I, with the assistance of this House, passed the Workmen's Compensation Bill, I am afraid that some of the employers were inclined to look upon me as a crack-brained idealist. Mr. Joshi for his part regarded me as a pilgrim on the path of progress but

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with frequent backslidings from which he endeavoured to dissuade me. Again, to-day, I stand before you as the henchman of the millowners of Bombay. Sir, I decline to accept that characterisation. If the House wishes to know why I introduced this Bill, it is because I take a different view of my responsibility from Mr. Joshi. Mr. Joshi stands before the House as a picker-up of unconsidered trifles; he stands before the House as a man who wishes to take advantage of an obscurity and defect in the Bill in order to get for labour a few more holidays which the House never intended to give them. I, Sir, stand before the House as a man who does his very best to hold the balance evenly on either side, to do justice both to the employer and to the workman. Now, Sir, let me read the Act. The Act as it stands at present says:

"No person shall be employed in any factory on Sunday unless he had or will have had a holiday for a whole day on one of the 3 days immediately preceding or succeeding the Sunday."

The intention of that section, whatever Mr. Joshi may say, was to enable the employer to substitute for a Sunday an important religious festival whether that religious festival preceded or succeeded the Sunday. And as I explained when I introduced this Bill, we have not been able to carry out that intention because, when we passed the Act, we did not realise what the cumulative effect would be of this clause, read together with the definition of week and read with section 27 which prescribes that no person shall be employed in a factory for more than 60 hours a week. Now, the result of the section as it stands at present is that, if an important religious festival occurs on Friday or Saturday and if the employer gives his workman that holiday instead of the following Sunday, then, if he works for 9 or 10 hours a day in the succeeding week, he will have infringed section 27 of the Act because then he will have worked more than 60 hours a week. That was the point which we had overlooked and that is the point which we now wish to correct by this simple expedient which I have placed before the House. Mr. Joshi has held that up to derision, but I defy Mr. Joshi or anybody else in this House to find a more simple or more convenient way of remedying what is an undoubted defect in the Act. I can speak with feeling on this point for my Honourable friend Mr. Clow and myself spent a whole morning in trying to find out the best way of dealing with that defect. Now, Mr. Joshi has attempted—or I will say he has laboured at the attempt—to prove that the intention of the Legislature was that section 22 (a) should be subject to section 27; that is to say, the employer might substitute a religious festival day for a Sunday provided that he did not exceed the sixty-hour week. Mr. Joshi, I think, has not looked at the proviso to section 22. The proviso to section 22 says:

"Provided that no such substitution shall be made as will result in any person working for more than ten consecutive days."

It is perfectly clear, therefore, that the Legislature did contemplate that a man should work for ten consecutive days and that in these circumstances the sixty-hour week should not be adhered to. Mr. Joshi has also said that my proposal involves an infringement of the International Convention. That is entirely a mistake. The International Convention provides a weekly rest day. Well, Sir, even under my proposal, we do give a weekly rest day. We do give a sixty-hour week. It is true that in certain cases we do not give a sixty-hour week if the week be taken as a week from Sunday to Saturday. But the effect of our proposal will be that in the seven days beginning with Thursday and ending in the following Wednesday the man will not work more than sixty hours. He will always get

one holiday and so, though in a different way, we have entirely carried out our International Convention. The trouble has merely arisen from our definition of 'week.'

Now, let me take Mr. Joshi's amendment. Mr. Joshi says that no person shall be employed in any factory on a Sunday unless he will have a holiday on any other day in the week consistent with this Act. The effect of that amendment will be to make the Act even more restrictive than it is at present, for it will mean that an employer will not be able to substitute for a Sunday any but the first three days of the week. I should like the House to note this point. It means that the employer will not be able to substitute as a holiday for Sunday any but Monday, Tuesday or Wednesday, because, normally, the week begins on a Sunday. We will take it that the first Sunday is given as a holiday. Then the man works six days, then works again on Sunday and then works on Monday, Tuesday and Wednesday. He will then have worked ten days consecutively. The House will therefore see that it will be quite impossible for the employer to substitute Thursday, Friday or Saturday in any circumstances for a Sunday, because he infringes against the ten days' rule. Now, the object of my amendment is to give that elasticity to the employer which is necessary in order to enable that employer to substitute religious festivals for the English Sunday. It suits the convenience of the workman and it suits the convenience of the employer. There is no reason at all why, if the workmen prefer to have a holiday on an important religious festival day, they should not do so. There is no reason why, against their own will and their own convenience, they should be tied down to the Sunday. Mr. Joshi says "Let them have these extra holidays." If that is Mr. Joshi's point, let him make a frontal attack. Let him propose to amend the Act so that they have not 52 holidays in the year but 60 or 62, whatever it may be. You need not take advantage of this hole in the Act in order to say that they ought to get these extra holidays. What will be the result of this? The result, I imagine, will be that the employers will refuse to substitute important religious festivals which fall on a Thursday, Friday or Saturday for the Sunday. They will say to the workmen, "No, we cannot give you this holiday. You must take it on the Sunday." What is going to be the result? Friction all round and strikes merely because Mr. Joshi wishes to get these men a few more holidays and merely because Mr. Joshi is not prepared to carry out what I say was always the intention of the Legislature, merely because Mr. Joshi is not prepared to play fair with the employers. I say, Sir, that this Assembly, this Legislature, has a very real responsibility in this matter. We are not here to be led away by Mr. Joshi's eloquence. We are here to try and do justice to both sides. We are here to try and correct the mistakes that we have made, and that, Sir, is the reason why I have introduced this Bill. Sir, I oppose Mr. Joshi's amendment.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): Sir, I have followed very closely Mr. Joshi's arguments and he has tried to put the case in a manner which is not fair to the employers and not fair to the workmen even. Mr. Joshi says "Give them 5 days more holidays. What does it matter?" He ought to have more information of what the practice in Calcutta is. I am told that in Calcutta the workmen get holidays on Sundays but they are not allowed a holiday on religious days. What will be the effect? As the Honourable Mr. Innes has rightly pointed out, there will be dissatisfaction. The millowners of Bombay do not wish to curtail even a single holiday. What they wish

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to do is to comply with the wishes of the workpeople and give them holidays on their festive occasions. Then again, there is this important point that the industry has to stand competition from other parts of the world. If workmen are given holidays after holidays as Mr. Joshi would have, it means greater cost of production. The workmen, as it is, get more than sixty holidays in a year. That means two full months of thirty days. But taking 25 or 26 working days for a month, it means more than two months. Further, some people are paid monthly wages and others are on piece work. Who will suffer? The workmen themselves; and if they draw less by this arrangement, they will ask for more wages, and more wages means more cost of production. In these circumstances, I think it is not wise on the part of this Legislature to accept Mr. Joshi's amendment.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, Mr. Manmohandas Ramji has referred to the practice in Calcutta. So far as I know, the mills and factories close on important festival days such as, for instance, the *Id* or the *Dushera* which is called the *Durga Puja* holidays, and other important festival days. The workmen do get holidays on these days. I also appreciate the objection that was raised by the Honourable Mr. Innes. If a holiday is to be substituted for a Sunday, sometimes I know that it may be a Muhammadan festival day, and they are let off on that day. But the Hindu workmen are not let off on that day and a Sunday is substituted for the day that is taken off from the week of the Muhammadan community. In this way sometimes it happens on a Friday you have to substitute a Sunday for the Friday. I would think that it would be better if we leave elastic the point for the employers to arrange with their workmen instead of putting in a hard-and-fast rule that if they are made to work on a particular Sunday this day is to be taken off during the next three days and it cannot be taken off the week on a later day. I think that will not be either to the advantage of the employers or of the workmen. Of course, I am not very familiar with the working of factories, but I know that in newspapers sometimes, when the paper is issued on Monday the workmen have to work on the Sunday, and then either an off day has to be given during the week or they have to be paid extra wages. In this particular newspaper business, many of the newspapers are issued on Mondays and some are issued on Sundays. Those newspapers which are issued on Sundays have to work on Saturday, but in the case of the paper which is issued on Monday, Sunday is practically a working day. So, I should not adopt any hard-and-fast rule with regard to this matter but I would make it elastic so that the matter may be arranged amicably between the employers and the workmen.

The amendment was negatived.

Mr. President: The question is that clause 2 stand part of Bill.

Mr. N. M. Joshi: I rise to oppose this section altogether. Sir, it was said by the Honourable Mr. Innes that I wanted to give a few more holidays to the employees by an underhand manner. As a matter of fact, I did not want to do that at all. I did not introduce the Bill. It was my Honourable friend who has introduced the Bill and he is responsible for this change, if there is any one, and not I. He brought forward the Bill to reduce the holidays and I want to prevent that. That is all. I do not want to increase the holidays by any underhand manner.

Sir, I do not think this section gives effect to the real intentions of the Legislature at all. The Legislature intended that the other sections of the Act must be observed if the holidays are to be substituted for Sundays. My Honourable friend Mr. Ramji said, "Why should not the holidays be substituted?" As a matter of fact, that is my amendment that the employer should be given the right to substitute any other day for a Sunday, but the intention of the Legislature should not be contravened, namely, that the other sections of the Act should not be broken at all.

The Honourable Mr. Innes in defending his section said that he was giving effect to the real intentions of the Act and he quoted a section in the Bill newly introduced that the workmen will not be allowed to work continuously for more than ten days. The existence of this clause is an argument in my favour. As a matter of fact, if the intention of the Legislature was to retain the old clause, namely, no person shall be employed in any factory unless he has had or shall have a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday, then there will be no necessity of having this clause at all, because according to the old Factory Act, automatically there was the necessity of a holiday at least once in 12 days; that was the ultimate effect of the old Act. My Honourable friend Mr. Ramji has got experience of the working of the old Factory Acts and he will tell you that even under the old Act it was not possible for any one to work for more than 12 days without being given a holiday. If the old section was to be retained and if that was the intention of the Legislature, then certainly this section was not necessary at all, because according to the old Act it was not possible to continue working a factory for more than 12 days without giving a holiday. It was on account of that, there was no provision in the old Act about continuous working for more than 12 days or 10 days or 15 days. Otherwise the old Act would have provided for this contingency. That was not put in the old Act because it prevented the working of a factory for more than 12 days automatically. It was on account of that there was no provision regarding continuous working for more than 10 days. When the Legislature intended to give this facility to the employer, namely, to substitute another holiday for a Sunday, they thought the employer may be able to go on working for more than 10 or 12 days and that section was put in. As a matter of fact, the argument which was used by the Honourable Mr. Innes is in my favour. The mere fact that a clause has been inserted in the Bill prohibiting working a factory for more than 10 days continuously shows that the Legislature never intended to put in the old clause about holiday in the old Act. Therefore, that argument is altogether in my favour.

Then, my Honourable friend Mr. Ramji said, why should there be two holidays, as if two holidays should never be given. (Mr. Manmohandas Ramji: "Why"?) Then if you pass this Bill you shall have to give two holidays in certain weeks. I am sorry to have to discuss these details in the Assembly. But I shall give an example. Take a holiday on the 5th of any month, Thursday. Sunday will be working. Take a holiday on the 18th of the month, Wednesday. Wednesday will be substituted for Sunday. You cannot do it. You have to give two holidays. Even if you pass this Bill you are not preventing the giving of two holidays once in two weeks at all. If that had been your object I could have understood it. I also pointed out in answering my Honourable friend Mr. Jamnadas Dwarkadas that as a matter of fact—not of law or rule—

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here is a list of the holidays given by the Bombay Millowners' Association. There are these holidays—14th, 15th and 16th March, Tuesday, Wednesday and Thursday—three consecutive holidays. Where was your consideration for the wages of the employees then? Did you object to this? Then, Sir, there is another instance—20th October, 21st October and 22nd October—three consecutive days. Did not the piece-workers suffer? Did you ever take that into consideration? You do not take that into consideration when it suits you and you are afraid of giving two holidays when it does not suit you. If the argument is to be considered that the workman should not have more than two days simply because their wages will suffer, you are not preventing that. I showed that even if you pass this Bill there will be several cases in which you will not be able to substitute that holiday for a Sunday. I have quoted one case. I can quote several. Again I do not think it is right for me to take up the time of the House by putting before them these conundrums and riddles. I therefore hope that this House in the interests of its own integrity as regards the intentions of the Legislature will not pass this. The Legislature never intended that the section about the 60 hours week should be broken or should be tampered with in the fashion in which Government has done.

The Honourable Mr. A. C. Chatterjee (Education Member): I had no desire to intervene in this debate though I feel that I had some responsibility both for the framing of the present Bill and in connection with the passing of the Indian Factories (Amendment) Act last year. I did not wish to take up the time of the House because the facts had been very lucidly explained by my Honourable friend, Mr. Innes. As Mr. Joshi has not been able to overcome his desire to get in a reply to the remarks of Mr. Innes on the amendment, I feel bound to say a few words. Mr. Joshi has referred to the intention of the Legislature. As I said, I had the privilege of conducting through this House the Bill which is now the subject of discussion. I remember perfectly well the discussions that took place in the Joint Select Committee on that occasion. My Honourable friend, Mr. Joshi, was present throughout those discussions. He was not present in the Assembly when the Act was passed. Therefore I think I have as much authority, perhaps a little better authority, than Mr. Joshi has with regard to our intentions when we passed the Bill. I confess it was my mistake as well as that of the draftsman of the Bill that when we changed the original phrasing of the Bill and introduced the present phrasing we overlooked the new provision with regard to the weekly limit of work. It was perfectly plain to everybody during the discussion in the Joint Committee on the motion of Sir Vithaldas Thackersay that we wanted to restore the old system that prevailed in Bombay and in some other parts of the country with regard to holidays. Mr. Joshi is perfectly well aware of that fact and I am very much surprised that he neither made a reference to it when the report of the Joint Select Committee was presented last year nor did he argue against it in the proceedings of that Committee.

Mr. N. M. Joshi: I accepted the Act as it was.

The Honourable Mr. A. C. Chatterjee: I therefore entirely repudiate Mr. Joshi's assertion that it was the intention of the Legislature at that time to give the 60 hours and that at the same time the holidays should

be on the basis which Mr. Joshi now contends that they should be. Then again Mr. Joshi says that the present Bill does not provide that there should never be two holidays in the week. That is quite true. We do not intend that on no occasion at all should there be two holidays in the week. The proviso still exists and we are not proposing to make any alteration in the proviso. On no occasion whatever will a man be compelled to work for more than ten days continuously. That is the continued intention of Government. I therefore hope that Mr. Joshi's objection will not prevail.

Mr. President: The question is that clause 2 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 3, 4 and 5 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that the Title of the Bill and the Preamble of the Bill do stand part of the Bill.

The motion was adopted.

The Honourable Mr. C. A. Innes: I move that the Bill be passed.

Mr. President: The question is that the Bill further to amend the Indian Factories Act, 1911, be passed.

The motion was adopted.

THE INDIAN PAPER CURRENCY BILL.

The Honourable Sir Basil Blackett (Finance Member): Mr. President, I beg to move for leave to introduce a Bill to consolidate the law relating to the Government Paper Currency.

After the astronomical and mental gymnastics through which we have been passing, the House will, I am sure, turn with relief to so simple and lucid a subject as the paper currency in India. I feel that I am really doing a public benefaction. This is a purely consolidating measure and makes no change of any kind in the existing law. It is really a measure to give one day's holiday a week to the hard worked people who deal with Paper Currency Acts. As the House remembers, the Paper Currency Act now in force was passed in 1910. Since that date there have been various amendments—numerous amendments of provisions relating to the constitution of the Paper Currency Reserve passed mostly during the War or just after it. The last series of amendments was made by the Act No. XLV of 1920. I need not dilate on what the provisions of that Act were. It introduced certain permanent provisions and certain temporary provisions to last so long as the created securities, so called, in the Reserve remained created. These temporary provisions were not incorporated in the Act. They did not take the form of specific amendments to the Act and in consequence it is almost impossible to understand the existing Acts in the form in which they are printed. One of the first things that happened to me when I found myself in the Finance Department was that I asked for a copy of the Paper Currency Act in its present form and after a day's hard labour I gave it up. I was then told that I was expected to introduce a Paper

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Currency Bill. As I knew how controversial a subject it was, naturally I was relieved to find that it was merely a Bill to consolidate the existing Paper Currency Acts in order that they may be printed in a consecutive and intelligible form. The present Bill is intended to bring all the existing provisions together in a clear form and as I have already explained it makes no kind of change in the existing law. I beg to move for leave.

Mr. President: The question is that leave be given to introduce a Bill to consolidate the law relating to the Government Paper Currency.

The motion was adopted.

The Honourable Sir Basil Blackett: Sir, I introduce the Bill.

RESOLUTION RE EMIGRATION OF UNSKILLED LABOURERS TO CEYLON.

Mr. President: The House will now resume consideration of the Resolution moved by Mr. Hullah on the 1st February this Session in the following terms:

"This Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

Mr. J. Hullah (Revenue and Agriculture Secretary): I only wish, Sir, with your permission, to make a very brief statement regarding the papers that we have placed in the hands of Honourable Members. The arrangement of these papers, the bringing up to date of certain notes which were placed before the Standing Emigration Committee, and which we have now placed before the House, and the printing of these papers involved heavy and very rapid work. The Honourable Mr. Sarma promised to supply to Members all papers of a non-confidential character. We have gone much further, and have placed in Members' hands papers which have hitherto been regarded as confidential. It will be seen that among them are the full proceedings of the Standing Emigration Committee. These have hitherto been regarded as confidential; and since we informed the Deputations that came from Ceylon and Malaya that these proceedings were confidential, it was necessary for us, after the last debate, to telegraph to the Colonial Governments and ask whether they had any objection to our laying them before the House. We also asked them whether we might lay before the House the correspondence with them. They replied at once that they had no objection. I hope, then, that the House will feel satisfied that this is a set of papers sufficiently full to enable it to take cognizance of all the considerations that are relevant to the subject.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, Mr. Hullah in a very full, lucid and eloquent speech has clearly explained to the House the relations which have existed hitherto between Ceylon and India with regard to emigration and the history of the proposals which have led to the Notification being laid on the table of this House. If I rise to intervene in the debate at the present stage, it is because I have felt that, having regard to some of the observations made by Honourable Members when they asked for time to consider the question

more fully, a further exposition of the policy of the Government, its position and attitude towards this question might help in a speedy termination of the Resolution before the House. The House may rest assured that it is not the desire of the Government to encourage, or encourage unduly, emigration from India either to British possessions or to other countries. The Government know and realize that it is their duty to make the conditions of life in India as easy and comfortable as possible. They realize that, in the interests of agricultural prosperity as well as economic and industrial development, it would be a short-sighted policy to denude the country of labour, and they have been taking and propose to take all steps that may be necessary to improve the conditions of labour prevailing in the various parts of India. But there is no use disguising from ourselves the fact that in certain parts there is an undue congestion, that labour conditions are unsatisfactory, and we have also to recognize the fact that it is the freedom of the individual that we have to respect, that a man should be able to go where he pleases to make the best of the conditions and opportunities which are possible to him. So subject to reasonable exceptions, the freedom of the individual has to be promoted and safeguarded. But the Government have recognized and do recognize that there are essential safeguards to be taken when they are dealing with an ignorant population who are unable to protect their own interests and may be seduced or rather may be induced to go abroad in search of a comfortable living without a full appreciation of the conditions. It is under those circumstances that the Government have passed the emigration law which has been placed on the Statute Book last year and propose to provide suitable safeguards to protect assisted emigrants to foreign countries. But in making rules and in imposing conditions, the House will remember that the relations between India and Ceylon are peculiar. Mr. Hullah has laid stress upon this aspect of the question, and I propose to add only a very few brief remarks. We may treat Ceylon as practically an annexure to or a district of India from the standpoint of proximity and facility of communication and, viewed geographically or ethnologically, we may say that the conditions are so similar that distinctions, such as can be drawn between the overseas possessions of His Majesty, the distant overseas possessions and India, cannot be drawn in the case of Ceylon and India. There is only a very narrow stretch of sea, 22 miles long, which separates the two. There is a large inflow, interchange, of labour between Ceylon—200 or 300 passing from Ceylon.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): There is no interchange of labour.

The Honourable Mr. B. N. Sarma: There is no interchange of labour proper but interchange of population though on a small scale. The Government as far back as 1847 recognized that it was essential—and I lay particular stress upon it—that it was essential to secure the good will of Ceylon to render their emigration policy effective. They have also recognized that the apprehensions which may exist in the case of other Colonies need not be entertained in the case of Ceylon. Honourable Members will recognize also that 25 per cent. of the population, including the emigrant population, are closely allied by affinity to the South Indian Tamilian population, are Tamilians, and even with regard to the vast majority of the Singhalese, if tradition is to be relied on, they come from an Upper India stock which is said to have emigrated more than 2,000 years ago: so that, in substance, you can look upon Ceylon as practically a country peopled with Indian races. We

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shall also have to recognize that with the prosperity of Ceylon is intimately connected the prosperity of South India. The trade relations are very extensive and I would therefore ask the House to remember these peculiar conditions which subsist between Ceylon and Southern India. I am not going to minimise in the slightest degree the fact that there has been anxiety or that there is room for anxiety that ignorant villagers in Southern India may go to Ceylon to better their conditions under various inducements only to find that the conditions are no better there than those prevailing in Southern India. The Government propose in this connection to take effectual safeguards and the Committee has been of very great assistance in formulating proposals as to what may be necessary in this behalf. Now, Sir, if we treat Southern India and Ceylon as practically one country for general trade and labour purposes, if we remember that in the past Ceylon was governed from Madras and was part of Southern India—the Chola Kings ruled that tract for a long time—if you remember all these facts, I suggest that you should treat emigration to Ceylon on a somewhat different footing from emigration to other distant countries. The Government of Ceylon have pressed very seriously and very strongly upon the Emigration Committee their view that there should not be any obstacle whatsoever in the way of a free interchange of populations between Southern India and Ceylon. They have pointed out that no great evils had entered into the body politic of either country by reason of such free interchange in the past and that it would be hard to enforce any restrictions upon such emigration without seriously handicapping the skilled or free unskilled emigrant. Their views are supported by a certain section both in Southern India and in Ceylon, but the Government as well as the Emigration Committee have felt, and I think rightly, that it would be impossible, having regard to public feeling on the subject and the necessity for safeguarding the interests of the labour population emigrating to Ceylon, to accede to these demands, and we therefore propose not to except unskilled labour emigration from the purview of the Act. We have proceeded further and wish to ensure that whenever a labourer goes across this 22 mile stretch of sea to Ceylon and finds himself in uncongenial surroundings or finds that he has been induced to go there under unfulfilled promises or the conditions do not suit him, either by reason of the work he has to do being unsuitable or the wages he is paid being inadequate or for any other satisfactory reason is able to convince the Emigration Agent that it is fair he should be helped, he should be sent back to his home at the expense of the Colony; and the Government of Ceylon have agreed to it. The Government and the Committee have felt it incumbent upon them further to press upon the Ceylon Government to remove all penal restrictions, and whether willingly or unwillingly—let us be charitable and say willingly—the Ceylon Government have removed all such restrictions. But the Emigration Committee were not satisfied—and I do not blame them for it—with regard to the wages that are being paid in Ceylon. I am not going to trespass upon the ground to be covered by the amendments, but that was the one point upon which the Emigration Committee had grave doubts. It was not originally intended to press upon the Ceylon Government the fixing of a basic wage subject to a minimum. I shall have to briefly explain to the House the various stages through which this aspect of the problem presented itself to the Emigration Committee and the Government. In the beginning the idea was faintly hinted at but was set aside on the advice of Mr. Marjoribanks who was deputed by the Madras Government to assist

us and who was one of those who went to study the conditions in Ceylon and the Straits Settlements. They were induced to drop this question on the ground that the labourer was a free labourer and entitled to repatriation when he found that the conditions were unsuitable, and the Tundu having been abolished the conditions of the labour market would adjust themselves and that it was not desirable to fix a minimum which might easily become a maximum. Rightly or wrongly, they at first hesitated to ask that any minimum wage should be fixed. We pressed certain other conditions upon the Ceylon Government which were partially accepted. Then a deputation waited upon us and the question was again raised in the Committee because the Committee has always felt unhappy about this wage question. It was then suggested to the deputation that this problem should be solved at an early date in order to ensure harmonious relations between the two countries. The deputation very strongly pressed upon Government and the Committee the practical difficulties in the way of concluding any investigation in a short space of time, and undertook to inquire into the subject to find a solution so that the position may be made easy for all parties concerned. Then the Committee sat specially to consider this point on the 21st September and resolved to ask the Government of India to negotiate with the Ceylon Government for the purpose of making this inquiry as speedily as possible and for improving meanwhile the conditions of labour; but they did not make it a condition precedent because they recognized that some time must elapse before the inquiry was concluded and its results made known. They further stipulated that any results which might be tentatively arrived at should be placed before them, so that with their suggestions before them the Government may be able to negotiate further before final conclusions are come to and the matter is placed before the Ceylon Legislative Council. Therefore in our last letter to the Ceylon Government we expressed the hope that they would at once take steps to see that the conditions of labour were improved. (*A Voice*: "When was that?") In October, I believe. The last meeting was on the 21st September and in October we wrote to Ceylon asking them to undertake an inquiry, and they wrote back at once saying that they would undertake an inquiry and pointing out the various stages through which that inquiry had to pass, and; having regard to the fact that there were 1,230 estates with varying wage conditions prevailing in different places, they said that some time was required but that they would conclude the matter as early as was practicable. That is where that question stands, and I hope that it will be settled speedily to the satisfaction of this House and to the satisfaction of the whole country. But I ask you, Sir, if we had waited from 1847 up to date without, I will not say any hardship, but if we had waited patiently for the amelioration of the position so long, would it be too much to ask the House to wait a little longer and allow the Government to negotiate with Ceylon wage? The Government has the interests of the labourer at heart. The Government recognises the difficulties in the way of the Ceylon Government. They recognise that the conditions in Southern India are not altogether dissimilar to those obtaining in Ceylon. The conditions of labour in Southern India have to be ascertained to a certain extent, because we have asked the Ceylon Government to fix the wage in such a way as to enable the labourer when he comes back to Southern India to live happily on his savings, which might serve as a pension for him; and, therefore, having regard to these limitations which we have imposed, I would ask the House to recognise that the Government and the Committee have placed as many reasonable conditions as conditions precedent to emigration being

[Mr. B. N. Sarma.]

allowed as are practicable. I lay once more stress upon the fact that confidence begets confidence, and that if we allow this matter to lie at this stage for a little while longer, the Ceylon Government, recognising that we have placed implicit trust in their good faith, in their desire to improve the conditions of labour settled there, would co-operate with our Emigration Agent, if we are so fortunate as to find funds to appoint one there; with his co-operation and the co-operation of the Government of India, I hope that the Ceylon Government would be in a position to place this vexed question on such a satisfactory basis that they and we may be able to co-operate fully for the betterment of the conditions of Southern India as well as Ceylon. And, mark you, Sir, let us not expose ourselves to the charge that by enforcing unduly hard conditions in the desire, in the natural desire, in the just desire, to improve the conditions of our countrymen who may be going abroad, that we shall be unduly depressing the labour market in Southern India; because that outflow, be it on a small scale or on a large scale, is helpful, is good, in the interests of the labourers of Southern India, inasmuch as it naturally raises the position of the labourer and his value in the market. I, therefore, hope that the House would take a very generous view of the difficulties of the Ceylon Government—I am not trying to overdraw the picture, I am not trying in the slightest degree to minimise the difficulties to which labour is subject or the public opinion which faces us and I do not say that public opinion has been unduly exercised having regard to the stories which have been rightly or wrongly propagated with regard to the condition of labour in Ceylon—well, Sir, having regard to the peculiar relations subsisting between us and Ceylon, the fact that their prosperity and our prosperity are bound up together and that we cannot afford to see the planting industries in Ceylon rudely affected, let us trust them a little more; and we have got the power, we have got the will, to enforce and we shall be firm in enforcing a policy which would secure justice for the labourer who may be going to Ceylon from here. Section 13 of the Emigration Act fully empowers the Governor General in Council to stop emigration at any time he considers proper laying reasons therefor and the Resolution he has come to on the table of this House. If this House is dissatisfied with the conditions it is always open to them to recommend to the Government to take such steps, if the Government does not of its own accord take such steps, in that direction as may be necessary. We have got ample power in the Statute Book to enforce our will and we shall do so. Let us show that we trust the Ceylon Government, the Ceylon planters, and if they betray that trust, if they are not fully alive to their responsibilities, then it will be time for this House to ask the Government to lay down rigid conditions so that they may not make a mistake once again. So far Ceylon has fully complied with the conditions which we have asked them to comply with and we have no reason except in this one instance for any grounds for dissatisfaction, and I therefore ask the House to accept the Resolution as it stands.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, the Honourable Mr. Sarma has without bringing the real issue before the House given us a sidelight on the subject in question. I know, Sir, he has supported what the Honourable Mr. Hullah described so fully and moved so eloquently. The Honourable Mr. Sarma is a lawyer, as we know, and when he has got a very bad case it is the lawyer's business to argue that case. That is the real point of the whole matter.

Sir, before I move my amendment in this House I should like to point out that the subject of to-day concerns people who are going mostly from Southern India to Ceylon. They are generally recruited by a class of people called Kanganis, and they go to a land which is not very far across the sea. Probably a man could easily cross the 22 miles that lie between at a jump, as was suggested by the other side. Then, Sir, we have heard also that if labour does not like to stay there in that happy land, it can be repatriated by that beneficent arrangement which has been made by the Colonial Government in that country. Sir, it is very kind of them to have done so; but for those unhappy creatures who desire to be repatriated by any means to their motherland, the difficulties of the situation under which they are placed after they have been recruited by these Kanganis for that country are very great. Some information was supplied to us about two days ago by the Honourable Mr. Hullah. Let us see, Sir, from the perusal of it what the difficulties are of those poor unhappy people going to that country. I don't know whether Honourable Members have it with them, but at page 8—paragraph 11—of "Emigration to Ceylon" they will find the following remarks:

"There is no minimum wage fixed by law. Reliable statistics for all estates are not available. Calculations based on information supplied by particular estates show that actual wages varied in 1917 from Rs. 10 to Rs. 8 for men; from Rs. 6 to Rs. 4 for women, and from Rs. 3 to Rs. 5 for a child."

That is to begin with, and that is the average pay. Now this paper called "Emigration to Ceylon" has been kindly supplied to us by the Honourable Mr. Hullah, on page 7 of which you will find under the heading Appendix "Statistics of comparison between a Ceylon Estate cooly's cost of living and his earnings in cash." There are two headings. Rubber Estates and Tea Estates, and in the sixth column there is a heading "Total average of monthly earnings." The average is probably that which is given on page 3 of this paper per man, woman and child. This is the average for rubber estates. The average monthly salary is from Rs. 6 to Rs. 11; a man gets Rs. 11 in 30 days, a woman gets Rs. 8 and a child gets Rs. 6, and that is the accurate figure, and then the total is Rs. 15 per man, Rs. 10 per woman and Rs. 7 per child. That is the average monthly earning in 30 days.

Then we come to Tea Estates. The average monthly income is Rs. 9 per man, Rs. 6 per woman and Rs. 4 per child, and in the sixth column you will find the total average monthly earning is Rs. 12 per man, Rs. 8 per woman and Rs. 6 per child and for single adult Rs. 8.

Then from page 37 you will find that these people spend much more than they earn. There is a deficit in the family and the cost of living is much more than the amount of earning, and yet attempts are made to encourage emigration to Ceylon. It was pointed out by the Honourable Mr. Sarma that a friendly feeling is established between the Government of India and the Government of Ceylon. The Government of Ceylon, as we all know, is not for the benefit of the Indian. Their feeling towards Indians is like this. There are two brothers living side by side, or there is a partition of their whole ancestral estate; therefore it is probably much nearer than 22 miles distance from Southern India to go to that happy land of Ceylon, and there is a conflict of interest going on between the two brothers under the same paternal house. You know the feeling that generally exists between two brothers under these circumstances, one brother wants to eject the other and take complete possession of the property. That is the position between the Ceylon Government and the

[Mr. K. Ahmed.]

people of this country with regard to their treatment there. Sir, I keep aloof other subjects for the present. How are they taking an interest in the uplifting and safeguarding of our Indian interests generally? Sir, I do not think that the Honourable Mr. Sarma is justified at all in saying that a close relationship between India and Ceylon exists. It is not in the interests of the Government of India that we should allow recruitment to that country and a Kanganis is to take the major portion of the small salary which these people get, and what balance is left them to spend for their living. These debts are incurred through those blood-thirsty Kanganis. People lend money, Sir, at the highest rate of interest and the condition is that if you don't pay you know what the penalties are. I have got, Sir, certain telegrams in the name of my Honourable friend, Mr. Venkatapatiraju, who was probably a member of that Committee that went the other day to inquire into the condition and status and the method in which things are going on in that extraordinary land of Ceylon. I am told, Sir, that my friend submitted a report, which has been kindly forwarded to me by my Honourable friend, Mr. Hullah. In the Standing Emigration Committee, my Honourable friend, Mr. Sarma, said this:

"I think the less said about emigration the better and there is not much to be said either on this specific question. The Deputations to British Guiana and Fiji have not yet reported about the state of things there nor have they made any recommendations."

Well, Sir, I understand the Report has been submitted since.

Mr. W. S. J. Willson (Bengal: European): On a point of order, Sir. Are we discussing emigration to Fiji or to Ceylon?

Mr. K. Ahmed: My Honourable friend again jumps up, seeing things are going very badly against their interests I presume. Probably he has got a good heart and sympathy with the people of Ceylon, so many miles away from the Southern part of India. I congratulate him, but, Sir, when you are talking about the subject of emigration, when you talk about the labourers who are to be recruited in the other country, the labourer in India who is to go to Kenya, Fiji, or any other part of the world, they are all emigrants from India. Their condition is not in any way better than the condition of these poor people who are recruited to that happy land of Ceylon and therefore, Sir, I referred to them. My Honourable friend will have an opportunity to oppose my amendment, if he so wishes, and we shall be very happy to hear him if he has anything to say about Fiji not touching Ceylon.

That being so, I pass on to the telegram from Ceylon which my Honourable friend, Mr. Venkatapatiraju has received. This is a telegram to my Honourable friend, Mr. Venkatapatiraju. I have got it in my possession. My friend after giving me permission to read it does not probably want it to be read now. This is the telegram:

"Mr. Hullah's statement misleading. Excepting removal penal clauses Ceylon Government's concessions useless. Old debts remain. Several cases instituted against labourers in different Courts of Requests. Numbers can be quoted. Several cases transferred to India to attach Indian properties of labourers. Removal Tundu farce. Tundu replaced by discharge ticket. Labourer given notice is asked to pay debts new. Have investigated 500 estate labourers have run into debts for 1922. On average 10 to 15 Rupees. Can be . . ."

Mr. J. P. Cotelingam (Nominated: Indian Christians): "proved".

Mr. K. Ahmed: "... proved from accounts. Education unsatisfactory. Not even 300 estates have schools. Wages very low. Kept so by means of discharge ticket. Indian opinion favour restriction for improvement wages. Will interest Assembly to know why Mysore insisted declaration before Magistrates for recruits. Ceylon Government intend appointing civilian represent labour. Fight for maximum . . ."

Mr. J. P. Cotelingam: "minimum".

Mr. K. Ahmed: "wages eradication debts compulsory Education Committee's recommendations give no protection. Question of repatriation farce. Labourer who as planters said will be afraid of Magistrates in India will they apply to Ceylon official for repatriation. Natesi . . ."

Mr. J. P. Cotelingam: Natesa Aiyar, sender of the telegram.

Mr. K. Ahmed: Natesa, Andival Street, or whatever it is.

This is what the telegram says. Now, Sir, a meeting was held only the other day in Madras. It appears from the *Madras Mail*, dated the 8th February, that the meeting was held only two days ago, and . . .

Mr. President: I must ask the Honourable Member to draw his remarks to a close.

Mr. K. Ahmed: I will just give the House the opinion of that part of India from which my Honourable friend, Mr. Sarma, comes, and I am sure he is familiar with them. The report in the *Madras Mail* says:

"A public meeting was held on last Wednesday evening at the Victoria Hall to concert measures for improving the conditions of Indians who had emigrated to Ceylon. The conditions of Indians in Ceylon were becoming serious and the Government of India were endeavouring—how, it is very difficult to say—to improve them. The Government of India and the Secretary of State, it was hoped, would come to the help of Indians abroad. Why should Indians go abroad as labourers and not stay in their own country? Zemindars, merchants and other rich people should persuade their countrymen not to leave India if they were sufficiently educated to carry on modern industries."

Now, Sir, at that meeting it was also resolved that they wanted an Indian Consulate if it was necessary. Mr. C. R. Reddy, a very able and moderate politician, in seconding the Resolution, said that the Government of India and their own leaders were responsible for the legal status of Indians in the Colonies. The Government had not taken sufficient care of the people and did not discharge their . . .

Mr. President: The Honourable Member will resume his seat after moving his amendment.

Mr. K. Ahmed: I move:

"That after the word 'Ceylon' the words 'for one year only' be inserted and at the end of the Resolution the following words be added:

'and further recommends that a Committee of Inquiry consisting of three persons be sent to Ceylon to investigate the condition of the labour with a view to find out on what terms emigration should be permitted after the 5th of March, 1924'."

In 1924, on the 5th March, if this notification for emigration is continued . . .

Mr. President: Amendment moved:

"That after the word 'Ceylon' the words 'for one year only' be inserted and at the end of the Resolution the following words be added:

'and further recommends that a Committee of Inquiry consisting of three persons be sent to Ceylon to investigate the condition of the labour with a view to find out on what terms emigration should be permitted after the 5th of March, 1924'."

Rao Bahadur T. Rangachariar: As one of those who has sat on the Emigration Committee I wish to give my views on the outstanding questions which remain with the Ceylon Government so that we may know how the further discussion on the amendments should proceed and also those who move these amendments may consider what amendment should be pressed to a division.

There are still only three outstanding questions which remain to be settled with the Ceylon Government so far as I am able to gather the difficulties of the situation. As Honourable Members are no doubt aware, the old tundu system arising on account of this indebtedness of the labourer to the kangany and the kangany to the estate has been abolished but the debts have not been abolished. The moral force of those debts and the slavish sentiment which hitherto had prevailed in the minds of these people still remain and that is a matter which will take some time for the Ceylon Government to adjust because it is a matter of lakhs and lakhs of rupees which have to be written off by the estates as against the kanganies, but as between the kanganies and the labourers there should be no difficulty and the Emigration Committee have pressed it home both on the Deputation and on the Ceylon Government that this indebtedness of the labourer to the kangany should disappear, for the kangany uses it as a moral force to retain the labourer on the estate to which the kangany is attached. The kangany profits by retaining the labour on the particular estate to which he is attached, for he gets so much per

1 P.M. head of cooly which he retains on the estate from the planter and he uses this debt as a force, not as a legal force but as a moral force and these poor ignorant men, although the law gives them freedom of movement from estate to estate, are not able to get out of the clutches of these kanganies. So this debt will have to be abolished but however as I said already it is a matter in which the Committee felt considerable difficulty whether it should be made a condition in the Notification because the Ceylon Government themselves proposed such an Ordinance, only in the year 1921, after considerable agitation there. They themselves proposed some steps should be taken with reference to the abolition of this debt system and it is hoped that they will take those steps very soon and we were assured that such steps would be taken and that only it is a matter of time. The second outstanding question and the most important of all is this question of the wages. I want Honourable Members to understand the real situation as regards the wages. The figures supplied to Honourable Members both by Mr. Hullah in his opening remarks and in the papers circulated are somewhat likely to be misleading. We have to be guided by the wages which each man earns, not by the averages. We should be guided by the lowest figure which each man, woman or child earns. If you go by averages it is no good at all. If you make an average of the income of all the Members of this Assembly, we are not going to distribute it to all the Members. It depends on the lowest income and we have to find out whether it is a living wage. There is no use therefore taking the *kanakupillai* on the estate, the *maistry* on the estate and the kanganies who are also labourers and get their wages in addition to what they get so much per head of cooly who works under him. So you lump these things and strike an average. That is no good at all. And with reference to this matter I wish Honourable Members to realise what are the actual wages which are earned by these labourers when they go there. I mean the minimum, the lowest which they get. If Honourable Members will turn to page 7 of the Appendix, in the first place there is a

misprint there, which I am surprised to see repeated from the final reprint of the Deputation print. We corrected it with the Deputation in the case of tea estates. As regards the daily minimum wage, Honourable Members will see 51 cents marked there. It is a misprint for 41 cents. It is not 51 cents at all. 41 cents is the average for tea estates and 47 cents is the average for men so far as the rubber estates are concerned. Now, Sir, the wages range from 36 to 50 cents in the case of tea estates. That is the lowest wage paid is 36 cents and the highest wage paid is 50 cents. The highest wage is paid in the case of the factory labourer, in the case of *kanakupillais* or these *sillarai* kanganies who actually labour. You may take it that 36 cents means 5 annas 9 pies per day. 5 annas 9 pies per day,—that is the wage which these people earn; and as regards the women, it ranges between 26 and 33 cents; that is, it is merely 4 annas 1 pie, and in the case of a child, he gets 2 annas 11 pies. Now it must be admitted at once that this wage is hardly a living wage. On their own admission, Honourable Members will see taking their own figures, the cost of living is given at page 3—for a man, woman and child, that is, a non-working child, the cost of living would work to, including clothing, Rs. 20 and annas 4. That does not provide for expenses, for festivals, such as Diwali or Pongal or such other festivals, or even for religious worship, or for offering worship, the usual worship: so that the actual, bare cost of living without providing for these things would come to Rs. 20 and annas 4. We have another estimate of that by a man who is well acquainted with the conditions of labour, one Mr. Natesa Aiyar who gave evidence before the Committee. He calculates the cost of living at Rs. 23 annas 8 for a family. We will take the lower figure of the Deputation, namely, Rs. 20 annas 4, and if we allow a few extras for these festivals, festive occasions, it cannot be less than Rs. 21 or Rs. 22 per mensem. What does this man earn? Even on the most favourable calculation you will find, taking 40 cents as the average, or 41 cents as they put it, on an average, or if you take any of these things, it comes to this,—unless the woman also works, the family cannot live; even with the woman working, it is less than the actual cost of living. The Committee were greatly impressed with the fact that the prevailing wages were inadequate even with a man and woman working together, that they were not able to earn the actual cost of living, the estimated cost of living. The Committee were impressed with that fact and they pressed upon the Government of India that they should immediately press upon the Government of Ceylon—as Honourable Members will see from the proceedings—for an immediate rise in the wages, in the existing wages. That was considered most essential. It is quite true the Honourable Mr. Sarma told us that before we had full information the Committee were doubtful about fixing a minimum wage. But after the next meeting in fact when Major Nicholson gave us interesting figures which Honourable Members will find at page 29, we realized the necessity. He is the gentleman who is in charge of the recruitment of this labour. Honourable Members will find the figures given by Major Nicholson as regards wages, which these people get when they go there, are,—a man, 6 annas 1 pie for rubber, and for tea, 5 annas 9 pies; a woman, 4 annas 2 pies, and for tea, 4 annas; children, 3 annas and 2 annas 11 pies. When we got those figures—in fact we got them by telegram during the sittings of the Committee—when we got those figures we thought that the matter required further examination, and therefore we insisted upon it. The Ceylon Government gave us figures which afterwards turned out to be exaggerated. The Ceylon Government gave us figures which Honourable Members will find in their letter of July—Honourable Members will find

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them printed also here—in these papers they exaggerated the income of these labourers—in their July letter, that is printed at page 18—they wanted to make out that a man gets Rs. 16 to Rs. 20 in rubber and Rs. 12 to Rs. 16 in tea. It is hardly correct; for women, Rs. 10 to Rs. 12; for working children, Rs. 6 to Rs. 8. It is not borne out by the figures actually given to us by the Deputation themselves.

The Honourable Mr. B. N. Sarma: That is, before they become efficient; there is a qualifying phrase there—on first joining before they become efficient.

Rao Bahadur T. Rangachariar: Yes, that is so; they do not become efficient till one year. We are not concerned about their efficiency. When they go out of the country what is it they get? That is the point we have to consider. We are now asked to encourage emigration to Ceylon. I quite admit the necessity for it. Therefore I do not want to go into questions of policy; I want to look at it from the practical point of view so that we may come to a practical conclusion to-day. I am not opposed to emigration to Ceylon; I do not want to discourage it. In fact it will be difficult to prevent it having regard to the proximity of the place and the past habit of the people of those districts, especially the Tamil districts. I should like, however, to say just a word in regard to the alleged facility of the journey from these districts to Ceylon. Mr. Hullah has presented a rather exaggerated picture of the easiness of the passage from India to Ceylon. Take the district of Chittoor. It is 300 miles from Chittoor to Mandapam and although it may seem a very easy matter for these poor labourers to cross the intervening 22 miles of sea, I must inform the House that it actually takes them seven days to get across, for there in Mandapam they are kept in quarantine. That is a hardship which is greatly felt, as negotiations are going on between the Ceylon and Madras Governments with a view to removing this hardship, we have not therefore laid much stress upon it. But apart from that there are practical difficulties which have yet to be faced by the Madras Government and by the Indian Government before this emigration question can be satisfactorily settled.

As I was saying, with regard to the figures furnished to us by the Ceylon Government, in June Major Nicholson gave us some figures; in July the Ceylon Government furnished us with another set of figures; when the Deputation came in September they gave us a third set of figures; and we find them irreconcilable, and therefore it is a matter which has to be carefully inquired into. But taking them at their best, the wages are unduly low. It may be true that the wages earned by these people in their own districts are not much better, but I doubt if in any place the wages are so low. From my own experience of several Tamil districts I do not think the agricultural wages are so low as they are in Ceylon. It may be asked, why is it then that these people go at all? The real answer is that you have an army of kanganies. For the recruitment of about 39,000 people 14,000 kanganies are employed; each man recruits three or four labourers, and he gets five rupees for each labourer to begin with and five rupees afterwards; each labourer also gets an advance of five or ten rupees. And probably it is the pleasure of the escapade, the trip which he takes, and the freedom of social life away from his home—that is perhaps the secret of these people going away from their

homes. I have investigated this matter, and I do not think there is much fraud going on. I visited the Trichinopoly camp where about 400 or 500 coolies were waiting; they understood what they were about, and I cannot say that there is much deception practised. I have therefore come to the conclusion that these people go out for such low wages because of their desire for social freedom, to go to a place where no question of Brahman and non-Brahman exists and where various other social restrictions do not exist. It is perhaps a matter which has to be investigated. But I do think, Sir, that in discussing this question we should not take into consideration whether these people are happy or not in their homes. We are bound to make them happy here and we are neglecting our duties if we do not make them happy here. But merely because they may not be happy here is no reason why we should allow them to be unhappy somewhere else. At least let us see that they are happy in other places. I quite agree with the sentiments expressed by the Honourable Mr. Sarma. You must encourage freedom of the individual. I am quite willing to concede that. It is not the question of freedom of the individual here. We are now concerned with assisted emigration of labour. So long as it is unassisted, you are not controlling it. But you give your measure of assistance to Kanganis to go about, to recruit, to advance money and take them over and it is that which we want to prevent. If individuals go there on their own account at their own expense seeking their livelihood on the face of the earth, nobody can have any objection. We have to control, therefore, assisted emigration. Therefore, Sir, I want to impress upon this House that the existing wages are unduly low; admittedly they cannot meet the living cost even on their own modest calculation. The cost is Rs. 21, and man and woman cannot earn Rs. 18. That is why the labourers owe to the Kanganis nearly Rs. 150 lakhs, or Rs. 1½ crores. There is indebtedness of Rs. 1½ crores for these poor people. It is quite true that these people have not got much on which you can realise these debts. But all the same you know that they are under obligation in debt. It is moral obligation and moral fear; moreover, decrees can be obtained here and the little property they may have in the villages can be attached. Another fact which strikes me is this. How is it that people are going there all these years, there has been free emigration to Ceylon all these years and yet not one of them has acquired property in Ceylon? Whereas I was quite satisfied to see the conditions in Mauritius, where, for instance, nearly more than 40 per cent. of the land is owned by these Indian labourers who emigrated there; in Ceylon not an inch of land is owned by these labourers. If Honourable Members will compare the inflow and outflow of figures, they will see that 39,000 people go there and 29,000 people return in the year. So, it is merely a short trip, as it were, which they make and they do not profit by it. This country does not profit by it. The only country which is profited by this labour is Ceylon. The planters on account of this large inflow of labour there are able to keep down the labour market. That is the reason for these low wages. There is too much competition and on account of too much competition the wages are low. If we restricted the number or rather if we compelled the planters to give a minimum wage, then perhaps these conditions would not exist; the conditions will much improve. I think it is our duty to do that. I strongly impress on the Government and on this House that we should take some steps. I do not think left to themselves the Ceylon Government will do it. How many months have they had now? This Emigration Act was a Bill before this House for nearly six months, and before the Select Committee, in fact, I pressed only for six months' time

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to be given under the Act. But, Sir, the House allowed one year. What has the Ceylon Government done? In September we gave them time. What have they done? Have they appointed the Committee which the Emigration Committee suggested to them in order to go into this basic wage? It is still under correspondence. What do they say in their reply of October which the Honourable Member referred to? That conditions in South India have to be investigated! Why should conditions in South India be investigated in order to fix what is the living cost there and what wage should be a good wage? All this is a mere attempt, a ruse, on their part to delay, to gain time; and, Honourable Members will also see that since July last the number of people taken to Ceylon, because the Act does not apply, has considerably increased. They have taken advantage of the fact that the Act does not apply. If Honourable Members will look at page 43, the large increase of numbers begins there. Whereas from January to April the number is only, 1,000, 2,000, 3,000, etc., after May, it is, 7,000, 10,000, 10,000. I rather suspect that taking advantage of the delay in coming into force of this Act, there is more effort put forth by the Commission in order to take more labour, so that they may have a large number of labourers on hand, so that when the Act comes into force the labour market there may be overflowed and they may be able to keep down the wage.

I drew the attention of the deputation to that and they say it is due to normal conditions. I do not believe it. For my part I do not believe this statement. I pressed upon Government to get the publication that the Ceylon Planters issue every month or two months. I do not know whether they have done so yet. That would give them the clue as to why this large inflow of labour is going on. I have not heard whether the Government are going to get this monthly publication which shows the activities of the Ceylon planters. I am satisfied that the Ceylon Government and the Ceylon Labour Commission are one. The deputation was not a Government deputation. Unlike the other deputations which waited upon us from Mauritius and from the Malay States, the Ceylon deputation was really a planters' deputation. There was no Government servant on that deputation. Therefore, Sir, I do not think we should leave it to the Ceylon Government to do the needful. We have left it too long. I insist that this question of wage should immediately be attended to. Otherwise we should put a minimum on the number that should go. I attach the greatest importance to this. I am very sorry I have to do it, but I do not expect much from the Ceylon Government unless we put pressure upon it. Sir, these are some of the remarks I wish to make on this subject.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, we really feel much indebted to the Honourable Mr. Sarma and to Mr. Hullah for supplying us with the printed record in connection with the proceedings and relating to the rules and regulations which are obtaining in Ceylon. I quite recognise the honest efforts, which have been set forth by the Government of India, to ameliorate the condition of Indian emigrants in Ceylon; but one thing is not clear to me, Sir,—it is a puzzle to me; and that is this—whether this Resolution, on behalf of the Government, is being moved for the benefit of Indian labourers or for that of the planters in Ceylon. I should like to be enlightened with a very precise and concise answer to this question. The Honourable Mr. Sarma tells us, and we

thank him for that expression, that the Government, to a certain extent, is reluctant to allow free emigration, but there are certain conditions, subsisting in Madras, which induce Government to allow emigration. What are those conditions? He says that in some quarters and in some months of the year there is congestion—that is, the number of labourers there becomes much more than the work that could be secured to them in that Province. That is the explanation which has been put forward by the Honourable Mr. Sarma. Very good, Sir. If it is out of sympathy with the labourers that they may be given work and that they may not idle away their time, then what about the educated unemployed men of India? Will they be able to secure employment in Ceylon? Will the Government of Ceylon recognise them? Will they be able to hold posts there? Well, if the answer to that is a negation, then I am forced to this conclusion, that our countrymen are sent away simply as coolies, because, coolies cannot be supplied from other quarters. Allow me to say that I, as an Indian, feel ashamed of that and feel very deeply that such may be the condition, that such may be the predicament into which we are, at present, forced. If some of us were to be sent there, as scholars, in the pursuit of knowledge . .

Mr. President: Order, order. The Honourable Member knows perfectly well we are talking about the conditions under which persons going to Ceylon as assisted emigrants may work there. He must confine himself to that subject.

Dr. Nand Lal: Very well, Sir, I shall do so. Therefore, Sir, as I have already submitted, these arguments, which have emanated from the Honourable the Revenue Member, have not appealed to my mind, at any rate. Now, Sir, we are told that the Ceylon Government will see their way to raise the wages after due inquiry and when the proper occasion arises for it. All right, Sir, let us then wait till the Ceylon Government tries to raise the wages of these people. What is the hurry about it? Hurry is not in favour of the labourers or coolies of India. This is being hurried on, if I mistake not, in the interests of the planters of Ceylon, and why so? It cannot be denied that the present wages are too low. It is extremely difficult to see how these unfortunate people live there, and I think, on their return to their own province, they must be coming back without even a farthing with them. That cannot be denied, and, therefore, the Government of India, I think, will feel it their duty to impress upon the Ceylon Government, the necessity of raising the wages of the labourers before they help them, otherwise, they should not help the Ceylon Government. As my Honourable friend, Rao Bahadur Rangachariar, has argued before the House, it is startling to us to see that in some past months there has been a great demand for labour. For instance, he told us that from May onwards there was a very large influx of emigrants in Ceylon. How is that? Where is the need for special demand?

The Honourable Mr. B. N. Sarma: In some months there will be greater emigration.

Dr. Nand Lal: I think the planters anticipate, and they foresee, that the labourers in Ceylon, that is the local men will not be satisfied with this low wage. Therefore, the real desire of the planters, if I can say so, is that the market should be dumped by importing a very large number of Indian coolies, so that the local labour may not be able to raise its head. I take it in that light. If I am wrong I may be excused, but that is the result of my study of the whole situation. Therefore, it seems to be highly undesirable that the Government of India should allow this state of things

[Dr. Nand Lal.]

to continue. If the Government of India are not aware of the labourers' condition in Ceylon, then, I may respectfully submit, it is simply regrettable, and if the Government of India, who have very faithful sources of information, still continue to give assistance to the planters of Ceylon, though indirectly, in spite of their knowledge about the labourers' condition in Ceylon, then, I may say, it is still more regrettable. Now, the Honourable Mr. Sarma has very kindly told us about the proceedings which went on before the Deputation and about the understanding, which was come to between the Government of India and the Deputation. The crux of the whole thing is whether the Deputation has given any effective shape to the question which indirectly concerns the fixing of the minimum wage. They say: "*tundu* has been abolished." It is true that it has been abolished. We are told that the recruiters will not in future be given the liberty of inducing or persuading the Indian coolies to go. We must thank the Government of India for that. But what about the indebtedness which is hanging over their (the coolies') heads? As Mr. Rangachariar very ably put before the House: What about that? Can the Indian coolies' minds be relieved of it? Will they feel themselves free from that civil liability, or encumbrance, so to speak? These are the two points which ought to have been given prominence by our Government, and I am very sorry that the adequate consideration has not been paid to it. I take it, more or less though not exactly, as a kind of slavery, if I may be allowed to say so. May I hope that the English gentlemen here, members of that sympathetic nation that abolished slavery, will help Indian coolies and will join us in giving a defeat to the Government Benches, so far as this Resolution goes? However, Sir, the view of this side of the House is, that, if certain conditions, as described in our amendments, are considered and those conditions, when considered and placed before the Ceylon Government, are accepted, then emigration may be allowed. That is, there should be some increase in the wages, and there must be some practical and suitable arrangement in that behalf, in any case. In addition to that there must be an authoritative stipulation between the Government of India and the Government of Ceylon that the previous indebtedness of the coolies should be removed and the minimum wage fixed for the future. If these stipulations, these covenants are accepted and they are acted upon, then, of course, we shall not have any hesitation to countenance the emigration from India to Ceylon. Unless and until these conditions are fulfilled, unless and until these sympathetic efforts are made, this House is not in favour of supporting this Resolution at all.

Mr. President: I propose to put Mr. Kabeer-ud-Din's amendment in view of the fact that nobody seems inclined to discuss it.

The original Resolution was:

"That this Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

Since which an amendment has been moved:

"That after the word 'Ceylon' the words 'for one year only' be inserted and at the end of the Resolution the following words be added:
'and further recommends that a Committee of Inquiry consisting of 3 persons be sent to Ceylon to investigate the condition of the labour with a view to find out on what terms emigration should be permitted after the 5th of March, 1924'."

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President: I propose now to adjourn and to take Mr. Bagde's amendment after Lunch. I may point out for the information of the Assembly that on the original amendment paper amendments Nos. 2, 4 and 5 are of the same character inasmuch as they make the continuance of emigration for the purposes of unskilled labour in Ceylon conditional on certain action being taken by the Government of Ceylon. And, therefore, it may be convenient to take one or other of these amendments as an amendment in its turn to Mr. Bagde's.

Sir Montagu Webb, in the new amendment put on the paper to-day, raises the same question in a slightly different form. He invites the House to give the Government of Ceylon a time notice of 18 months instead of one year.

The Assembly then adjourned for Lunch till Twenty Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Five Minutes to Three of the Clock. Mr. President was in the Chair.

Mr. K. G. Bagde (Bombay Central Division: Non-Muhammadan Rural): Before moving my amendment I beg the Chair's indulgence to effect some verbal changes in it. They are, before the word "emigrants" I intend to put the word "assisted," and I wish to omit the words "who have been assisted otherwise than by a relative." After introducing these changes the amendment would read thus:

"That after the word 'approves' the words 'with the modification set out below' be inserted; after the words 'the notification' the words 'as approved' be inserted; and at the end of the Resolution the following be added:

'After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April, 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for assisted emigrants to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature.'

'And the subsequent clauses shall be re-numbered accordingly'."

Sir, by this amendment I propose that no emigration should be allowed to Ceylon after the 1st of April 1924, if the Legislature of that country does not pass a law fixing the minimum basic wage for assisted emigrants. This demand for the fixing of a basic minimum wage has been made for a long time. Honourable Members are aware that Mr. Marjoribanks and the Honourable Mr. Ahmed Thambi Maricaire were specially deputed for the purpose of an exhaustive inquiry into the condition of Indian labour in Ceylon and these two gentlemen made certain recommendations. These recommendations are given on pages 4 and 5 of the Memorandum with regard to Emigration to Ceylon that has been distributed to us. There is the seventh recommendation which reads thus:

"The fixing of a minimum wage for labourers."

It is also important to note that the Ceylon Government is trying its best to evade the fixing of this minimum wage. On page 18 of the same Memorandum we find the opinion of the Government of Ceylon with regard to this question of minimum wage. They say:

"As regards the minimum wage this Government is not in favour of introducing such a principle as there is no doubt that it would tend to deprive the coolie of the benefit of higher wages which he earns at times of good crops or scarcity of labour. The cost of living of a family consisting of a man, his wife and two children is approximately Rs. 17 a month for bazar stuffs and rice. This, of course, excludes the cost of cloth, expenditure in festivals, etc."

[Mr. K. G. Bagde.]

This will give a clear idea that the Ceylon Government is trying its best to ignore this question of fixing the minimum wage. Now, I submit that the non-existence of a minimum wage involves a hardship upon the labourers in general. Labourers are allured from this country outside on the prospect of high wages. When they are taken there they find that the promises given to them were all false. They have no other alternative but to stick to the jobs there and work on wages that are offered to them. If a minimum wage is fixed the labourers in this country would know exactly what wages will be paid to them and therefore there would not be much ground for deception. If we look to the present standard of wages in Ceylon we find that it is extremely low in comparison with that which obtains in this country. Even in urban areas we find that labourers are required to be paid more highly than they are paid in Ceylon. There are other amendments than mine which involve the same principle. The Honourable Sir Montagu Webb has got his amendment and there is not much difference between his amendment and mine. In that amendment he fixes the period from the 1st of October 1924, while in mine I mention the period from the 1st of April 1924. I have taken the 1st of April 1924, because it is the beginning of the new official year. Then there is another difference and that is he wants the minimum wage only to satisfy the Governor General in Council, while in my amendment I have added that this minimum wage should satisfy the Governor General in Council and both Chambers of the Indian Legislature. I specially introduce the Indian Legislature in this amendment because this question of emigration is very important. Day by day it is growing more important and the fates of thousands of Indians are involved in this problem. If this amendment as proposed is included in the notification, then a period may arise which will make it necessary for the Government of India to prohibit or restrict emigration to Ceylon. Now, if we look to clause 13 of the Indian Emigration Act, I mean Act VII of 1922, that clause reads thus: "The Governor General may, by notification in the Gazette of India, prohibit from a date and for reasons to be specified in the notification of persons or any specified class of persons from emigrating to any specified country from the territories of any Local Government or any specified part thereof for the purpose of unskilled work. Every notification issued under this section shall be laid before both Chambers of the Indian Legislature as soon as it is made." So that right is vested in this Legislature by this Act, and therefore I think it is not advisable for the Legislature to part with that right. With these words, Sir, I commend my amendment to the acceptance of this House.

Mr. President: Amendment moved:

"That after the word 'approves' the words 'with the modification set out below' be inserted; after the words 'the notification' the words 'as approved' be inserted; and at the end of the Resolution the following be added:

'After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April, 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for assisted emigrants, to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature.'

And the subsequent clauses shall be re-numbered accordingly."

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammadan Rural): Sir, I have given notice of a similar amendment, and therefore I take the earliest opportunity of supporting Mr. Bagde's amendment.

The reason why a minimum basic wage was insisted upon by the Select Committee and why it was proposed for the acceptance of this House is this. Unfortunately, Sir, even if emigration to the Colonies were prohibited, they have fixed a certain wage, not less than one shilling, and subsequently increased it, to suit the conditions in other places. But though we have the advantage of not having long-term contracts in Ceylon which is called indenture, it is worse in some respects. Sir, for a period of no less than 40 years there has been no large substantial change in the wages Bill. Even if we refer to India—and I refer the House to the rise in wages given by the Government of India—you will find that all industries during the last 20 years increased their wages by about 75 to 100 per cent. This is the only place where there has been no substantial increase in wages. In the latest statistics published for Ceylon by an officer of the Government, they state that roughly they may put the increase of wages at 33 to 70 cents per day. I may take it that the high figure is with reference not to the Estate labour but with reference to other labour, because the Ceylon Government admitted that they are paying about 20,000 people employed in the harbour and Public Works and in Railways a wage of Re. 1 to Rs. 1-8, on the average Rs. 1-4. But when we come to State labour, it actually starts with one-third, 5 annas 4 pies. The increase, as pointed out by the Honourable Mr. Rangachariar, is 5 annas 9 pies, it may be 6 annas in some places, according to the ability of the worker. When we have seen that the whole world is moving, why should this country, Ceylon, remain at a standstill? The only suggestion that could be put forth by the planters is that the industry cannot bear a higher wage. But so far as the tea industry is concerned they cannot put forth any such plea, because I have figures before me to show that the productive cost of tea is about 35 cents, whereas the ruling price during the last 12 years, 45, has gone up to 60, even to 70 and I may go further and state that even when it is selling at 43 cents, there are several Companies which made profits of between 50 to 100 per cent. And if detailed dividends given by various Companies are wanted, I would only refer Members who are curious to know to what is called the Rupee Company Book, corresponding to the "Investors' Review". There they will find what dividends were made even when it was selling at a rate of Rs. 43. Therefore there is a sufficient margin; but in spite of a sufficient margin no increase is made. Now, the Honourable Mr. Sarma suggested that Government generally do not interfere. It is true, but they interfere in cases where a powerful organization on the one side and ignorant masses on the other side are concerned. That is the reason why this emigration law has been introduced. The Honourable Sir Barnes made it plain when he introduced this Bill that its object is to protect the ignorant masses of India, to prevent them being duped and advantage being taken of them by powerful and influential persons on the other side. That is the object of this emigration law; otherwise there is no object in bringing it in at all. According to the statements made by the Ceylon deputation, according to the statements made by the Ceylon Government, the actual cost of food alone for a man, woman and two minor children who do not earn, is Rs. 17, and Rs. 17-8 according to the Deputation. The cost of clothing is besides variously valued at Rs. 3-8 and Rs. 5. Whatever it be, Rs. 21 or Rs. 22 is absolutely essential for a man and his family. Moreover, wherever a man gets a decent pay he does not send his wife out to work to supplement the domestic budget. Here even the woman has to work. According to the Government of India's information, the wage for a man is Rs. 10 and for a woman Rs. 8. They can thus between them earn only Rs. 18, while the cost of living is Rs. 22. Is it

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fair that we should allow such a thing to go on? I may say, Sir, that the Government of India since the time of Lord Hardinge, during the Viceroyalty of Lord Chelmsford and in the present Viceroy's time, have made every effort to secure proper conditions for Indians overseas, but Ceylon has escaped notice all along. It is admitted that there are about five lakhs of Indians employed on the estates in Ceylon, and of these about 90 per cent. have nothing to count upon; they have not a pie saved and they have no property whatsoever while they are all indebted to the extent of from Rs. 70 to Rs. 200. Would any Government who cares for the interests of its subjects allow them to go to a foreign country, stop there for many years and in the end have nothing more than indebtedness to fall back on? It is not even suggested that they are wasting their money in drink or other evils. It is economically impossible for these people to save anything. When their expenditure is more than their income how is it possible for them to save? They have indeed to run into debt. With regard to this, one witness who gave evidence before the Committee stated that he has 2,000 coolies on his estate of whom only 150 are out of debt, and he stated that the misery and trouble of these people is due entirely to the low wages which they receive from the planters. These planters are not Europeans, but look like Anglo-Indians or Eurasians. They stated that

3 P.M. unless you raise the wages to at least 75 cents (that is 12 annas), they cannot live; otherwise they must live in misery.

Now, Sir, it is stated,—and it must be said to the credit of the Government of India—that they insisted upon securing the abolition of the penal clauses and they have succeeded in that. Much credit is due to them for this and they have also abolished the *Thundu*, that is indebtedness for failure or breach of contract. For this they cannot be proceeded with criminally and in Ceylon they cannot be arrested civilly, though civil liability still exists. Those things the Ceylon Government have cheerfully accepted and we are also grateful to them for what they have done. But whenever we touch this question of decent wages, we do not expect acquiescence from them, for persons who are accustomed to take large dividends are not the persons likely to agree to forego any profit voluntarily; some pressure must be brought to bear upon them; and that is the reason why the Select Committee insisted that that should be done. The only suggestion that has been made by the Honourable Mr. Webb is that instead of having 12 months, it should be 18 months. Giving 12 months or 18 months must depend on whether there is any prospect of any immediate increase of wages. If there is no increase it will be ruinous to the lakhs of people who are suffering in Ceylon. The reasons why these people go there are numerous. As Mr. Rangachariar said, if so many people have gone there to secure Rs. 10 per head, there are other means of inducing these people to go. It may be that people are not better off in India. That does not redound to the credit of the British administration. If we say “our people cannot get a proper living, therefore let them go on starvation wages elsewhere.” I do not think that would be an argument. But it may be an argument for the Government to take necessary steps for improvement of conditions in India. Therefore, Sir, before we agree to a period longer than one year, which is reasonably suggested by Mr. Bagde, I appeal to the House. The Select Committee have recommended that there should be a basic wage and the Ceylon Government have been advised that they should adopt it, and that Government have stated that they have no objection to institute inquiries. We know what is the meaning of instituting inquiries. We do

not want to leave it in a haphazard manner when the interests of 5 lakhs of people are concerned. This is the only occasion when we can exercise our right. We must insist that there should be a basic wage to the satisfaction of that Government, of our Government and of ourselves. Otherwise, there is no use in bringing forward any Emigration laws when we cannot safeguard the interests of our subjects. It is the fundamental duty of every State to protect its own subjects, and if it does not do so, then it is failing in one of its legitimate duties.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban):

Sir, I rise to take part in the debate because I think we are straying away from the real point which is before the House. On a reference to the literature on the subject with which we have been furnished, I find, Sir, that there is absolutely no difference of opinion as to whether the Ceylon Government should fix a minimum wage. No doubt, the Ceylon Government at one stage raised the question that such fixation of minimum wage might interfere with certain industries in that country. And they were inclined not to favour such a proposition. I refer to page 18 of the paper-book:

“As regards a minimum wage this Government is not in favour of introducing such a principle as there is no doubt that it would tend to deprive the cooly of the benefit of the higher wages which he earns at times of good crops or scarcity of labour.”

But towards the end of the deliberations of the Standing Committee, I find, from the paper-book that the question was put in a very definite form to the representatives who came over from Ceylon, and it was suggested that this question of a minimum basic wage should be settled once for all. At page 44 of the paper-book, the House will find that the Standing Committee:

“Resolved that the Ceylon Government should be asked to make an inquiry into the question of fixing a basic wage subject to a minimum, and of the cost of living in relation to the rate of wages now paid. In the meantime the Government of India should do its best to secure an improvement in wages. On the receipt of the report suggested above, the Emigration Committee would have to consider the findings and to decide whether to ask for a Joint Committee to settle what should be the rate of wages and other details.”

Now, Sir, the question to my mind, is this. But before proceeding further I should say that at page 42 it has been reported that—the Honourable Mr. Sarma stated to the Deputation from Ceylon, that “negotiations on the subject of a basic wage should take place at an early date with a view to an arrangement being arrived at, if possible, before the draft notification under section 10 should be laid before the two Houses so as to enable the Government of India to reach conclusions satisfactory to all and to carry the Councils with them.” That being so, Sir, there is no doubt that the Committee came to the conclusion that the question of the basic wage should be settled before the notification was issued. The House has adopted by its attitude towards the notification, already certain suggestions which were recommended by the Standing Committee, and these have been embodied in the proposed notification. They are of very great practical utility and are entirely in accord with the decision which the Committee arrived at. It is incumbent upon us to see that the notification secures those conditions and safeguards for the benefit of the emigrants. Therefore there is only one question now standing out, for consideration by the House, namely, the fixation of the basic wage. That question, Sir, I may ask the House to consider, will take some time to

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settle, and the result of the amendments proposed will be that if for securing that end in view, we have to wait, and the notification in question be held back, for the present, emigration in the meantime will continue without those safeguards which have been provided in the notification itself and on the old lines, without securing those benefits which the notification intends to secure to the emigrants. The question of a basic wage, if it could have been settled in accordance with the wishes of the Committee, would have been settled before this notification was placed on the table of this House. That having failed of immediate achievement, the only question that now remains is whether we should allow the old state of things to continue, with regard to emigration, or have a notification at once securing most of the ends we have in view and which are exactly in accordance with the conclusions of the Standing Committee. If the wording of the amendments be considered, it will appear that it is more or less inconsistent with the notification itself, and that the amendments in question do not fit into the Resolution. The notification says that emigration shall be valid only if the conditions laid down therein are fulfilled, whereas the amendments that are proposed are to the effect (to take up the first amendment), that:

“ After clause (3) of the draft notification the following clause shall be inserted :

‘ (4) Before the 1st of April 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for emigrants, who have been assisted otherwise than by a relative to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature ’.”

It does not suggest any immediate action. Does it mean that if on the 1st of April 1924 the Legislature of Ceylon fails to enact a law fixing the minimum basic wage, all emigration will then become illegal? As it is, it simply declares a pious wish, because it merely says that the “ Ceylon Government should enact by the 1st of April 1924, a law as proposed to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature ”. It is really a direction to the Ceylon Government, and there are no means of compelling the Ceylon Government to accept the suggestion, and carry it out, within the proposed time-limit. On going through the papers supplied to us, I find that it was not decided by the Standing Emigration Committee that emigration should be stopped. Pending the settlement of the minimum wage questions I could have understood the position if emigration could have been stopped in the meantime and if the Standing Committee came to the conclusion that emigration should be suspended until conditions as to fixation of a minimum basic wage were fulfilled. But that is certainly not to the advantage of the emigrants themselves, or to the people of India. Further whatever we may say, emigration after all is the natural outcome of economic conditions, and therefore it must have operation where economic conditions require it. Therefore, Sir, if we try to stop it in British India, it will seek its natural outlet. If emigration is really wanted it will find some natural mode of operation. On the whole, I think it will not be good for the emigrants themselves if this House desists from all action, and allows things to go on as at present without our doing anything until the question of a basic wage is settled. I submit, Sir, that is not a desirable state of things to have. We have been told,—and it is a fact,—that the Government has retained the power of imposing upon the Ceylon Government certain conditions on the question of a basic wage. Judging from the papers before us, it will certainly take some time to settle this

question satisfactorily. It requires some inquiry, and it cannot be done in a hurry. So that, if we take such a view of the whole question, it will not be difficult to see that it is altogether to our advantage that the restrictions and safeguards, whatever they are, as provided in the notification should meet with the acceptance of the House. We are assured that Government is prepared to act in accordance with the conclusions of the Standing Committee on that point. I for one therefore do not see any reason why in order to gain that one point, we should keep in abeyance the operation of the other clauses as laid down in the notification. I hope the House will consider the whole question from that point of view, and try and cut short the debate on a point which, if gained, will perhaps not carry any advantage to anybody.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, before I enter into the merits of this question, I would refer to section 10 of the Emigration Act. According to that section, from the 5th of March of this year, all emigration to Ceylon will become illegal unless permission is given by notification by the Governor General in Council, and therefore this Resolution is put before the Assembly with certain conditions imposed in regard to emigration.

The new conditions we now propose will no doubt require a certain amount of time to negotiate. And therefore in our amendments we have given a further period to bring these conditions into operation. That does not mean that these amendments would prevent the continuance of emigration under the conditions laid down in the Resolution moved by Government.

Now, Sir, in regard to this question, my Honourable friends who have spoken have entered into the fullest details as regards the conditions of labour, wages and other matters. The point immediately covered by the amendment is the question of a minimum wage. Now, this question is important, apart from other considerations, in that, if the Government of Ceylon fixes a minimum wage, it will be an authoritative notification as it were to all emigrants of what they are sure to get in Ceylon and it will prevent, as has been said by one of the previous speakers, any exaggerated ideas of the wages that await the emigrant to Ceylon. That will be one good result of fixing a minimum wage. As regards this point, the Ceylon Government no doubt said they were agreeable to fix a minimum wage. But they said they would have to make inquiries as regards the prevailing rates in the various estates and also they want to make inquiries in Southern India, that is the area from which these emigrants come. I do not think that these two grounds are really very material. That is, a basic wage, to be fixed by the Government of Ceylon, must I suppose reasonably vary from one area to another. They cannot say that this is the minimum wage for every part of Ceylon. There must be some variation and that they must go about doing as quickly as they can. As to discovering the conditions of labour and all the amenities which the labourer enjoys in his own home, I think that is unnecessary, for this simple reason. You fix your wage just as you like. If the labourer desires it and if he thinks the wage is better than he would get at home, he will come: if not, he will not. For an inquiry like that into the wages earned in this area from which the emigrant generally goes, will not be a satisfactory one unless this Government also takes part in it, and it will be an inquiry which will have to take up various aspects of the question. There is rural agricultural labour, in which it is impossible to fix, impracticable to settle, the actual

[Rao Bahadur C. S. Subrahmanayam.]
amount earned by a labourer, for this simple reason that there are so many things which the agricultural rural labourer in Southern India gets which, if converted into money, would be very much more than the money which the labourer gets in the city. He gets free housing, free vegetables, free fish, free firewood, and always a certain area of land for which nothing is charged in which he can grow his own garden or he can raise some short crops. And, besides, there are certain customary gifts at festivals given to the labourer—both festivals in his own house and festivals in the employer's house. I mean to say an inquiry like that in regard to rural agricultural labour will never be satisfactory. And that, I point out to the House, is at the root of the very low figure which sometimes is given as wages to agricultural rural labourers and all people who are philanthropically minded start saying: They get such a low wage. The test would be to find out what is the wages in towns—smaller towns, bigger towns and even in cities. That should be the test. That could be found out without much difficulty and no Ceylon Commission need come over here to inquire about that. We know, every one in this Assembly knows, that the minimum wage of an ordinary unskilled labourer in the towns is twelve annas.

Dr. Nand Lal: More than that.

Rao Bahadur C. S. Subrahmanayam: More than that. I gather from my friends everywhere that it is more than that. I want to put my case on the most modest scale. I know it is one rupee or Rs. 1-8-0 or it even goes up to Rs. 2. Strong able-bodied men are able to earn Rs. 2 a day. That is by carrying loads from one place to another. Therefore, unskilled labour is not underpaid in India, at any rate in the smaller towns or larger towns. Well, then the question is—and it is a question which it is not easy to answer in one word—if there is such a high wage here, why do people go to Ceylon? We have got two facts. Even according to the highest estimate the wages in Ceylon varies from Rs. 12 to Rs. 17 per mensem. That gives us not more than 8 annas or 9 annas *per diem*. That is an undisputed fact. And we know also as a fact that the wages in India in towns is never less than 12 annas. Why do people go then? That, I consider, is a question which I can only answer by saying that there is some defect in the mental condition of a large class of people and that they do not understand what is good to them. That is all I can say. The question has been asked of me by several friends and I would only say that the defective judgment of these labourers is responsible for their not knowing that in India itself, not far from their homes in the villages, they could find better wages. Well, apart from that question, with regard to emigration to Ceylon, I will not say that there is much that we can say against our own Government. During the last 8 or 10 years the Government of India has taken a good deal of interest in this matter and has endeavoured to protect the interests of emigrants. Even at present, the Government of India are as keen, I have no doubt, as we are; only they are not in a position to speak out as strongly as we do. The Government cannot do that in respect to another Government. But the fact remains that these rural labourers who are admittedly in every country unable to protect themselves and unable to judge for themselves, are persuaded by some kind of promise, by some kind of rosy account, to go to Ceylon, after receiving some money and executing a bond for the amount. If it is not indenture in the strict sense of the term, the bond which they execute for moneys they receive and for moneys which they have not received—that is a point which is admitted in the Government papers and I do not

think there can be any dispute about that—subsists all their lives in Ceylon. The wages they get in Ceylon does not enable them to discharge the debt which they have contracted and the bond which they have signed in India for advances to meet the expenses of the voyage and maintenance during transit. That debt subsists and so long as they are not able to discharge that debt, they cannot come back. Coming back means an expenditure of Rs. 10 or 15 and these people who are admittedly in debt to the tune of Rs. 70 to Rs. 200—that is one of the official figures—are unable to find the money to come back to their homes and therefore they remain there. I think that is an answer why people go there and do not come back. Therefore, the fixing of a minimum wage is an absolute necessity now-a-days.

Then, there is another consideration in regard to this. There are hardly any returned emigrants from Ceylon who could be pointed to as having improved their condition by this emigration. Such instances we have found from emigrants to the other colonies. Though hundreds may have gone under there have always been some who have come back better off than they were when they left the country and those were shown as examples of the advantages of emigration. But in the case of Ceylon we can hardly find a person who has improved his condition either when he came back or who is in an improved condition in Ceylon, having acquired a house, having acquired land or being in a better position.

These considerations ought to lead the Assembly to decide upon the fixing of a minimum wage. It is now too late. If we throw away the Resolution or if this Resolution which the Government has proposed is not passed, the whole thing will be upset and therefore we propose to give a time limit to the Government of Ceylon to fix a basic minimum wage for the labour that goes to Ceylon.

In that matter there is a slight difference in these amendments, but I shall refer to it for this reason. The amendment proposed by Mr. Bagde says that the minimum wage ought to be accepted by both the Chambers of the Legislature. It is a point on which there might be a difference of opinion. Is it necessary to have it before both the Houses of Legislature? Can we not trust the Governor General in Council to accept—I am simply putting the alternative case because I do feel personally that there is very little ground to complain against the action of the Government of India in this matter. I think they may well be trusted to look after the interests of labourers, while I cannot say the same of the Government of Ceylon which unfortunately is peculiarly situated, because it has long identified itself with the planters and all this recruiting goes on at the expense of the Government of Ceylon, and naturally owing to certain conditions in Ceylon the Government has to identify itself with the planters. Therefore, in regard to that point it is a matter on which there might be a difference, but I should prefer not to divide the House on that matter and it is better for us to be unanimous about it. Then as to the time limit there is again this difficulty. A year's limit is proposed in the amendment which my Honourable friend, Mr. Bagde, has moved. Sir Montagu Webb suggests 18 months. I do not know whether we should divide on that point again, whether Mr. Bagde or Sir Montagu Webb cannot either of them give up his position and agree, because we all seem to agree upon the main question that a minimum wage ought to be fixed and I do not see why we should on small matters disagree. Now in regard to the wage, the substantial grievance is the wage figure, 10 and 16. 10 is the figure given in Mr. Mercurbanks' report. That was a report which was published in 1917. I consider that

[Rao Bahadur C. S. Subrahmanayam.]

as a report which the Assembly could readily accept, probably more readily accept than other statements which were made before the Emigration Committee and on other occasions. Now, Mr. Marjoribanks and Mr. Maricair put Rs. 10 as the maximum wages earned by a man and about Rs. 6 as the wages earned by a woman. That is Rs. 16 for both man and woman. Now, it is apparent that when the cost of living is Rs. 20 and annas 4 only for feeding and clothing, without any extras, the husband and wife are both compelled to earn in order to make up only Rs. 16. It means a wage less than that on which they could live in comfort. Now we have another figure. That is the cost of maintaining a person in jail in Ceylon. It is Rs. 6 and some annas. Honourable Members will at once see the disparity between the wages earned and the cost of living.

The Honourable Mr. B. N. Sarma: May I ask the Honourable Member whether he is moving his own amendment or speaking on Mr. Bagde's amendment.

Rao Bahadur C. S. Subrahmanayam: I am only speaking on Mr. Bagde's amendment.

Mr. N. M. Joshi: Are you moving yours?

Rao Bahadur C. S. Subrahmanayam: Please wait. The question of minimum wage is very important and there is great disparity between the wages earned and the cost of living. I have pointed out that it is so great that it has become necessary that we ought to fix a minimum wage. Now, I do not know how you are going to deal with these amendments. I shall however move my amendment now. I do not want to get into conflict with any of those who are at one with me on the main question. That is my difficulty at present. This is not a matter on which I should like to fritter away the support of the Assembly on any small matter on which we may disagree and therefore my amendment is to the effect that we may trust the Governor General in Council to see that the minimum wage which the Ceylon Government may fix is sufficient to keep only body and soul together for these people but also keep them in comfort and keep them in some kind of self-respect and the time limit which I propose is that it may be extended to one year. I have no objection to that. That is the first of my amendments. I have three amendments on the paper. My first amendment reads thus:

"To the Notification the following shall be added, namely:

"Within six months from the issue of this Notification or within such further period as the Governor General in Council may by notification appoint before the 5th March 1924 the Government of Ceylon shall take and complete the necessary steps to legally fix a minimum wage to be paid to emigrants by the Ceylon planters—such wage being one previously approved by the Governor General in Council."

Then my next amendment runs as follows:

"The number of new emigrants after the date of this Notification to Ceylon shall not exceed 10,000 for the period ending 5th March 1924."

It is an important one for this reason. A large overcrowding of these emigrants to Ceylon would necessarily reduce the wages. The competition would be so great that practically either they would be without employment or accept such low wages as the planters, the employers, choose to give them and as during the last one or two years after this question was raised and after the passing of the Act and after the introduction of

the Bill, the emigration activities, the recruiting activities have been very keen, large numbers of people have been taken to Ceylon, and there is a sufficiently large number of labouring population there, it is better to cry halt at this stage so that the numbers that now flock to Ceylon may not reduce the wages and make the rule under which we are going to have a minimum basic wage practically inoperative. It is on that view, I say, that the number of emigrants ought to be restricted. Ordinarily about 25,000 people . . .

Mr. President: I must draw the Honourable Member's attention to the fact that his time is exhausted.

Rao Bahadur C. S. Subrahmanayam: Ordinarily 25,000 people used to emigrate, and as large numbers emigrated later on, so I reduce it to 10,000. Another amendment is that during this period, the transition period, that is, the period before the fixing of the minimum basic wage, undoubtedly we must call upon the planters to raise the wage they are now giving on each estate by 30 per cent., by at least 30 per cent., and that is the third point. I therefore move, Sir, my amendment.

Mr. W. S. J. Willson: Sir, I should like to thank Mr. Seshagiri Ayyar for asking for this complete set of papers which Government have kindly given us, and it has been a most interesting study. Since we have had it, as the latest recruit to the Emigration Committee, I feel that I can make some remarks upon the labours of my predecessors, for which I was not responsible, and I think we may very well congratulate them on the results of their efforts with the Ceylon Government, which tend so much to improve and ameliorate the conditions under which labour is employed in Ceylon. For myself, I am impressed with the Government letter from Colombo dated the 28th October and with the readiness with which the Ceylon Government have yielded to the persuasive powers of our letter of the 11th October and their promise to at once institute an inquiry with a view to ascertaining the cost of living and the rates of wages paid, etc., etc. That wish was the one arrived at by the Emigration Committee, and my own view is that we shall be very well advised to await the results of that inquiry before we attempt to legislate for what ought to happen after the 1st April 1924 or any other date which may be mentioned in these other Resolutions. Sir, this House does not know what it is likely to do itself by the 1st April 1924, or what is likely to be the position anywhere; so that it seems to me rather unreasonable to ask the Government of Ceylon to enact what planters shall do in 1924 in what is now an unknown state of the trade in that year. Various figures were given, particularly by Mr. Raju, and I noticed that he confined his remarks entirely to the wages paid in the tea trade and he referred to the temporary, or at any rate recently accrued, prosperity of the tea gardens. But rubber is very far from being a prosperous concern. Now, Sir, I find it very difficult indeed to lend any support to any amendment in favour of fixing a basic minimum wage. We know very well that to move from his home is in India the common lot of the labourer. I have travelled down through Southern India and I have seen labourers living there in the most miserable mud huts where a man of my size could very easily touch the roof; where they have no facilities of any sort of description and where they earn what seems to me to be absolutely a beggarly wage. It is, as I have said, customary for labour to emigrate everywhere. Even my own syce in Calcutta has found it to his advantage to emigrate from Delhi;

[Mr. W. S. J. Willson.]

with me in Calcutta he gets Rs. 17 a month and no other allowances. Now these gentlemen who emigrate from South India to Ceylon have only to travel a little distance of 22 miles by sea. I have visited plantations, Sir, in Ceylon (though I may say that I am not financially interested in any of them) and I did not go to examine the position personally with a view to addressing this House on the subject but merely as a passer-through. I found there very comfortable outfits generally for the workers on the estates that I happened to come across. They are provided with very good houses and they have all sorts of allowances which I need not go into because they are all reported on in this list. But it strikes me that they had arrived at a state of comfort, convenience and happiness which they—a great many of them—did not have originally in their own homes. Now I say that the proof of the pudding is in the eating. If these men were as well off in their own homes, they would not want to go to Ceylon though it is only just a very little distance away. They are, it is true, of an ignorant class, but they are by no means fools and a man knows when he is well-fed and reasonably housed and what is to his own personal advantage so far as purely creature comforts are concerned. Efforts have been made all the world over to fix basic rates of wages, and so far as I know they have practically all failed. Labour is a commodity and we all live by disposing of our commodities, whatever they may be; they may be our brains, our houses, our goods or the labours of our hands. Labour is employed in producing something. What that something fetches in its turn is governed by the law of supply and demand, and that law must inevitably react on the labour that is used to produce it. One Honourable Member compared the wages paid in places like the docks and harbours in Ceylon, which is Rs. 1/8 a day, with the wages shown in this paper earnable on a tea estate; but the conditions are totally different. In the first place, labour on an estate is rather a pleasant occupation, if any occupation which we have to indulge in to earn a living is pleasant, whereas labour in docks is extremely hard work, and people prefer the lighter duties on an estate and the open air life in the country to those conditions in town labour, where they have to find expensive lodgings, and those comparisons made are, to my mind, outside the point. I should be very pleased indeed if by a mere stroke of the pen we could raise the wages of everybody, of very cooly to Rs. 100 a month, of every clerk to Rs. 1,000 a month, double the wages of every medical practitioner, halve the wages of every lawyer, and so on, but it cannot be done, Sir. Labour has its value which comes out in the article which it produces. Mr. Rangachariar made rather a point about the indebtedness to the kanganis. But I find, from this very excellent brief, that of the 90 lakhs which were at one time outstanding, two-thirds of it have been paid off, and that being so, I think we can leave it to time to adjust the balance. As I have said, Sir, I cannot support any amendment which aims at fixing a basic wage, because I am convinced that it is impracticable, and I have no fear, as seems to be entertained in some quarters in this House, that labour is likely to rush off to Ceylon in such overwhelming quantities that it will bring down the market. Mr. Rangachariar also mentioned the figures on page 43 showing that 49,000 men went between January and August 1922, at the rate of some 10,000 a month during June, July and August. Sir, there is nothing striking in those figures at all, because if he will turn to page 30 of the brief, he will find that in the 9 years from 1913 to 1921, 585,401 coolies went, which divided by 9 gives an average of 65,000 per year, which is a

little less than 5,500 per month, against 6,000 per month that he has pointed out in the figures which he quoted; and, I must remind him that those figures for June, July and August relate to a time of the year when crops are coming on and it is the natural time when labourers should go. I do not think, Sir, that I need labour the point any further about the fixing of a basic wage. I am very much afraid of it. I do not think it will work. I do not think it is right that we should attempt to impose on the Ceylon Government what they ought to do twelve months hence, whereas, I say, we do not in the least know what we are likely to do then ourselves or what the position is likely to be.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I move that the question be now put.

Sir Montagu Webb (Bombay: European): Sir, I have spent most of my life in India. One of the results of that experience is that I yield to no Member of this House in my desire, I may say in my anxiety, to see that all Indians who go overseas to labour, shall be treated fairly and properly, and with that respect which is due to Members of the British Empire. Now, Sir, we have heard a great deal about the alleged misfortunes and the poverty of these unfortunate men who have gone to Ceylon. It has been my good fortune, Sir, to see with my own eyes the state of the Indian labour in Ceylon. I have also seen it in Natal. I have seen it in Central Africa; and in other parts of Africa and of the world. I must say that the impression left upon my mind is that on the whole those Indians who go overseas, generally do very well for themselves and are living very comfortably and satisfactorily, perhaps even more so than they did in this country. I know in some cases that Indians who go overseas not only live comfortably, but they acquire property and they amass considerable wealth. I can recall several parts of the British Empire where Indians own shops, houses and properties far superior to those which some of the Europeans on the spot hold.

(An Honourable Member: "Not in Ceylon.")

Sir Montagu Webb: I remember, Sir, if I may recall the incident, I remember a few years ago when I was travelling in Central Africa,—in Northern Nyasaland to be quite definite,—some hundreds of miles away from the coast, to my astonishment, away in the jungle I came upon an Indian with a little field and a little shop. I was so astonished that I stopped to inquire where this man came from, and he told me "Oh I belong to Porbandar,"—half way between Karachi and Bombay. I felt that I was meeting one of my own countrymen, and I stopped and had a very long conversation with this man. We were very pleased to meet each other. I cross-questioned him closely. He was doing very well. He was satisfied with his surroundings, and he was remitting—this is the point—he was remitting through the Post Office a considerable sum of money to India. A few weeks later when I happened to be talking to some of my European friends in that part of the world about this man, they said "Oh yes, these Indians are not much good to this country because they do not spend very much here; they remit all their money back to India." Sir, I seem to have heard that argument before, about people who do not do much good where they work, because they remit all their money back to their mother country. Sir, I am no believer in those theories.

Dr. Mand Lal: I thought we had to discuss the question of Ceylon only.

Sir Montagu Webb: I mention these facts merely to lend emphasis to my argument that Indians working overseas remit their savings to India, and further that the labour in Ceylon is not nearly so badly off as some of the speeches which we have heard in this House this morning might lead us to believe. Mr. Willson has just given one or two explanations and anticipated my remarks with regard to certain figures of emigration which I had proposed to quote. Now, Mr. Rangachariar could not make out why it was that so many people went from the south of India to Ceylon. May I suggest that the explanation is obvious? They are going there to better their conditions of life. They are going there, Sir, because they are finding better circumstances, and they are better off in Ceylon than they are in the South of India. There is in my mind not the slightest doubt about it. I have been there and seen it with my own eyes. My friend, Dr. Nand Lal, went so far as to hint there was a sort of slavery in Ceylon. Why, Sir, I can only say in reply that there must be still more slavery in Southern India. I suppose it is to escape that kind of slavery that some of this labour goes over to Ceylon. Now, Sir, I have an amendment on the paper which indicates that my sympathies in this matter and those of the movers of other amendments are very much the same. We should all like to see something done to benefit the labour that goes over to Ceylon. But I think Sir,—I do not know if the Honourable Members who moved their Resolutions can see eye to eye with me, but I venture to submit that my Resolution puts the matter perhaps a little bit more acceptably. It proposes for example not to alter the Notification. I have suggested merely that we should add a few words to Government's Resolution. I have suggested in my amendment that we should give another six months—eighteen months in all—to the Ceylon Government in order to do what they can, and I think this House has every reason to feel confidence in the Ceylon Government. They have to consult the different parts of the country; they have to satisfy their own Legislature. All this will take time. There will be consultations with the Government of India and naturally this will take more time. I do not think, Sir, that we should press for too short a period, and I have therefore suggested that we should give the Ceylon Government time up to the 1st of October, 1924, and thereafter, if they have not brought about an improvement in the conditions of labour which this Government thinks satisfactory, we can move again. I quite share the doubts expressed by Mr. Willson as to the possibility of fixing a minimum wage. I do not think such a thing has ever been done in the East yet, and although it was attempted in the United Kingdom, there is no doubt whatever that the attempt has broken down. It is not so easy to fix a minimum wage as some Honourable Members think. At the same time, I am prepared to give the Ceylon Government an opportunity of improving the conditions of this labour. I think it is our duty to do so, and I would therefore ask Mr. Subrahmanayam if he can see his way to accept the proposal I have put forward. I do not know, Sir, whether I can move still another amendment to the amendment that he proposes. Perhaps my friend Mr. Bagde will accept the proposals I have put forward . . .

Rao Bahadur T. Rangachariar: You don't make it a condition. You simply make a recommendation, while the others make it a condition.

Mr. President: I took Mr. Ahmed's amendment first against the Resolution because it stood first on the paper. Then Mr. Bagde proposed to make the continuance of emigration conditional on certain action by the Ceylon Government. The Honourable Member does not propose to do that.

The scope of his amendment is even narrower. I must put Mr. Subrahmanayam's amendment as an amendment to Mr. Bagde's amendment as an improvement or the reverse of it according to the judgment of the House. It depends upon the decision of the House whether that excludes the Honourable Member from moving another amendment.

Sir Montagu Webb: In that case, Sir, I will wait for the opinion of the House, before moving my amendment.

Mr. N. M. Joshi: Sir, although I sympathise with some of the proposals in the amendments proposed before this Assembly, I must say that I cannot accept several others put forward by my Honourable friends. In the first place, it must be made quite clear that I do not want that any restrictions should be imposed upon the labourers against their leaving the country if they feel that by going out of the country they can improve their condition. We have no right to keep them here when they feel so. Sir, although that is my view, it is also necessary for us to see, when we allow large emigration to those Colonies where there are a large number of Indians already settled, that their wages are not lowered by fresh emigration to a point which is undesirable. The solution of this question is not

very easy. We have to reconcile the interests of those people who want to go out to better their prospects with the interests of those people who have already settled in the Colony. If these people who are settled in the Colony are not Indians perhaps this Assembly may not give much attention to that point, but still it is necessary for us to look to the interests of those who are already settled there. I, therefore, feel that, under these difficult conditions, it would have been much better if the whole question of negotiation had been left to Government. I do not believe an Assembly like this is capable of negotiating a treaty with a foreign Government. That is the business of the Government. Unfortunately, even Government, in order to please the Assembly, put a clause in the Bill that such conditions should be approved by this Assembly. The whole difficulty is created on account of that. And, therefore, we see here proposals made which unfortunately we cannot throw out nor can we accept. Take the proposal of my friend, Mr. Subrahmanayam. I sympathise with him that the number of people to be sent should be limited. But how are we to decide whether that number should be 10 thousand or 15 thousand? That is a matter which he should have left to the Government of India and certainly I should have then supported him. As regards the minimum wage, Sir, my sympathies are fixing a minimum wage. I have no fears, which my Honourable friend, Mr. Willson, and my Honourable friend, Sir Montagu Webb, have, about fixing the minimum wage. The minimum wage has been fixed in several countries and these minimum wage laws have not yet been repealed, so we can have some assurance in our minds with regard to these laws. If we fix the wage, to some extent, we protect the interests of those who are already settled. Sir, but it is also out of place to fix the minimum wage in our Assembly. It is a matter which we must leave to the Government of India,—whether that minimum wage should be Rs. 15, or Rs. 16, or Rs. 17. I therefore do not approve of the idea that the fixing of the minimum wage should be in the hands of this Assembly. Sir, when we have to fix the minimum wage, we must see that we do not fix the minimum wage at such a high point that the emigration will be stopped. My Honourable friend, Mr. Rangachariar, said: Why should the Ceylon Government inquire into the conditions of Southern India? It is necessary to find out whether it will be advantageous to the labourer in Southern

[Mr. N. M. Joshi.]

India to go to Ceylon on a particular wage. Therefore, an inquiry into the conditions in Southern India is certainly necessary. But there are some people who are afraid of that inquiry. They know that the inquiry will bring out information which they do not wish should see the light. Only the other day, my Honourable friend, Mr. Rangachariar, was praising the planters of India and he painted a glowing picture of the conditions of the plantations in India. What are those conditions? In the plantations in India people are paid Rs. 6 or 7 or 8. Why should we prevent these people from going to Ceylon to get Rs. 12, even if they do not get Rs. 17? Sir, the other day I also wanted several conditions to be pressed upon the planters in India in order that the conditions should be improved for the labourers, but, Sir, the proposal was not accepted. Unfortunately, the Standing Emigration Committee now comes forward to lay down restrictions upon the planters in the sense that the people should be repatriated under certain conditions, sick leave should be given, etc. If we want that our labourers should not go to Ceylon, the best thing is to improve the conditions in India and therefore I think my Honourable friend, Mr. Rangachariar, instead of painting glowing pictures of the labour conditions in India, should henceforth try to improve them. Sir, Mr. Rangachariar also referred to the debts which these labourers have with kanganis and from that he inferred that the people who are there do not really prosper. It is a wrong conclusion altogether. If he had inquired into the debts which existed on the Indian plantations he would not have been surprised by this at all. It is the business of the planters to keep these people in debt, whether they prosper or not. My friend, Mr. Nag, who has got experience of Assam, will tell you that if a man goes and pays his debt, the planter will not accept the money. That is a fact in India in Assam.

Mr. B. C. Allen (Assam: Nominated Official): I protest against that statement. Mr. Joshi has no foundation whatever for making that statement against the Assam planters.

Mr. N. M. Joshi: I would only refer my Honourable friend to the report which was recently published by the Assam Labour Committee.

(An Honourable Member: "I have got the authority.")

Mr. B. C. Allen: Can Mr. Joshi quote it here? Can he let me have the paragraph?

Mr. N. M. Joshi: I cannot quote it here to-day.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): He has given the authority. The Honourable Member had better consult it.

Mr. N. M. Joshi: I am quite sure of my facts. There is here my friend, Mr. Nag, who has got a lot of experience of plantations in India and I am quite sure he would corroborate that fact. Therefore, the fact that these labourers are indebted to some extent is not a negation of the fact of their own prosperity at all. I therefore think that although we should fix the wage, and it is necessary to fix the wage in the interests of the people who are already settled there, we must not fix it at such a point which will prevent emigration altogether and which will be against the interests of the people who have to emigrate from this country. Therefore, when we try to settle the conditions on which we should permit emigration, we should take into consideration the fact that without sacrificing the interests of

those people who are settled there, and without also sacrificing the interests of those who want to go, we should be in a position to improve their condition. The only way in my humble judgment to secure improvement is that the Government of India should be watchful about the interests of our people. Sir, nobody has mentioned that it is necessary for the Government of India to appoint an agent in these Colonies. I do not know whether the Government of India has decided

The Honourable Mr. B. N. Sarma: It is one of the conditions.

Mr. N. M. Joshi: It is one of the conditions, but I want to know from the Government of India whether they are going to fulfil that condition themselves. This is not a condition to be fulfilled by the Ceylonese Government. It is a condition to be fulfilled by the Government of India. The Government of India have never mentioned yet that, as soon as emigration is permitted, they will appoint an agent. If an agent is appointed, I think that fact in itself will tend to improve the labour conditions in Ceylon. It will enable us to get correct reports upon which we can place reliance and upon which we can take action. Sir, if we have got our agents, then we can get correct information, and if we get correct information, we can propagate that information, so that no person will go out of the country under any misapprehension or on any incorrect information. If they do this much, I think we shall have taken sufficient care of the people who will be going out. But the real solution of the problem lies in our improving conditions here. Unless you improve the conditions here, people will go out, and it is not right that we should prevent their going out. On the whole, Sir, after having seen all these amendments, I am inclined to support the amendment of Sir Montagu Webb, because it does not ask the Government of India to stop emigration altogether but it lays a certain duty upon them to see that a minimum wage will be fixed very soon. With these remarks, Sir, I resume my seat.

The Honourable Mr. B. N. Sarma: Sir, I have been always an optimist in my life and I am sure that after shewing me the indulgence of hearing me once again, the House will agree that the Notification which has been put by the Government of India before them is one that they can readily accept. I do not propose to go into all the details of the criticisms that have been levelled against us for it is a very late hour and it is unnecessary to dwell minutely on the state of the wages in Ceylon. But there are some salient points which have been urged on the attention of the House which I should like to deal with.

A good deal of confusion of thought has been exhibited in the course of the discussion between the causes which have led to the indebtedness of the cooly in Ceylon in the past and existing at present there and the conditions on which we propose to allow labourers to emigrate hereafter to Ceylon. Every one admits that under former conditions the labourer went to Ceylon saddled with debt. The cost of emigration, the advances given to him when he was in India, the penal provisions which were provided to enforce labour, the facilities for his obtaining loans, enabled him, or rather compelled him, induced him to get into debt, and that, as has been shown, is going to be wiped out. He is to be no longer subject to that debt and cannot be imprisoned for it. And under our Notification the labourer from India would go to Ceylon without any debt whatsoever. All the expenses must be met from the common fund. No agreement for more than a month would be valid. The monies that are advanced to him in India, or that may be advanced in Ceylon cannot be recovered.

Dr. Nand Lal: What about civil liability?

Mr. President: Order, order.

The Honourable Mr. B. N. Sarma: I am talking of the labourer that is going hereafter from India and that is the only labourer we have to deal with under this Notification, because the other labourers are there already. This labourer goes saddled with no debt whatsoever. He cannot contract any debt enforceable by arrest. There is no penal provision binding him. At the end of a month he can quit. We have, furthermore, provided that the Government undertake to repatriate him at their expense provided he satisfies our Emigration Agent or other officer who may be appointed in his stead that the conditions do not suit him. Therefore, every precaution that can be taken has been taken under the Notification laid before you. Nor would it be possible for Honourable Members, I think, to justify such a gloomy picture as has been drawn as to the state of wages obtaining in Ceylon. As has been effectively put by one of the members of the Revenue Department, in former days, if you are going to calculate the cost of labour on the footing that every man has to be paid a certain rate, if the cost of cultivation be counted up in money, there would hardly be any profit left to any agriculturist and the wonder would be how any agriculturer could manage to subsist on the soil or pay any revenue whatever. Similarly, elaborate calculations have been made as to what the labourer and his family have been deriving in the past in the shape of wages and their sufficiency. As has been aptly put, the proof of the pudding is in the eating of it. The men find it to their advantage to go there. I go further. We have positive proof. Two members of the Deputation which went to Ceylon in 1917 reported to us that the wages were not altogether unsatisfactory:

“The rate of wages paid on estates (they give calculations) does appear to be sufficient to keep a labourer in health and strength and to leave a margin over.”

I had the curiosity to send for the post office statistics and I find that there were three hundred thousand and odd money orders remitted to India during 1921-22 to the extent of 87 lakhs of rupees. I am not going to contend for a moment that all this represents the savings of labour but surely three hundred thousand traders are not there and the number itself clearly shows that a large number of labourers have been remitting small or large sums to India and they would not have been labouring there if they had not been in a position to do so. I do not wish the House to be under the impression that the Government are satisfied that the wages are as adequate as they might be, but to depict the picture the other way and show that the conditions are absolutely unsatisfactory is, I think, overdrawing it. We have positive information that a large number of labourers have been remitting their savings to this country. It is a fact that about 60,000 or 70,000 labourers have been coming and going back and that shows that the conditions cannot be as unsatisfactory as is imagined by many individuals. The figures that have been quoted in the proof that has been circulated show clearly that every year 60,000 or 70,000 or sometimes as many as 100,000 come back and many go back to Ceylon. It is quite easy to understand those figures, the total labouring population being about six hundred thousand, only 10 per cent. come back owing to various causes and there must be other people who replace them. Apart from the question of new labour, 60,000 labourers are coming and going and in addition to that a certain number of new labourers are added

every year to the plantations in order to replace wastage. That accounts for the figures which have been shown at the last page and my Honourable friend, Mr. Rangachariar, complains there has been a very large influx of labour during the last 8 months into Ceylon showing thereby that the planters were taking a very large number in anticipation of any prohibition which we may seek to impose upon them. 31,000 come down and 49,000 go out again and the net surplus is about 8,000 and as has been pointed out that this occurs in the summer months when there is not much labour here and there is more demand for labour in Ceylon. Therefore we need not be perturbed by these facts. Taking them all into considerations, the conditions there are not so unsatisfactory that a remedy has to be found immediately or the normal flow should be stopped at the end of one year. I commend to the House the view taken by Mr. Joshi. Mr. Joshi has got the interests of the labourers at heart as much as anybody and the view taken by him is eminently reasonable barring one exception in that he accepts the amendment which is suggested by Sir Montagu Webb. These matters are matters which really might be left to negotiation as between the Ceylon Government and the Government of India. That was the view taken finally by the Emigration Committee themselves. No doubt they have felt keenly the desire to improve the lot of the labourer that may be going to Ceylon or that has been already settled there and they press very hard for an increase in the wage and finally when the matter was considered as to whether it should be a condition precedent the final Resolution was that the Ceylon Government should be asked to make an inquiry into the question of fixing a basic wage subject to a minimum and about the cost of living in relation to the rate of wages now paid. In the meantime the Government of India should do their best to secure an improvement in wages. The Government of India immediately addressed the Government of Ceylon and the Ceylon Government have promptly promised to do their best to improve the wages and they have told us so.

Rao Bahadur T. Rangachariar: May I ask whether they answered that portion of the letter?

The Honourable Mr. B. N. Sarma: They have answered that the wages have been rising, that they are closely watching the interest of the labourers, that the *Tundu* system has been abolished, that the labourer has been able to find his feet, that there is a great movement between estate and estate and they say that there has been a rise in wages; and the very fact that there is voluntary emigration on an appreciable scale from India, they point out as a clear proof that the wages have risen in the Colony. They say that they are as anxious as our Government to see that all that can be done is done, and they have promised to institute inquiries at once. But we cannot reasonably blame them for not having instituted an inquiry until they know as to whether we are going to issue a notification, and the Government of India are in a position to press upon the Ceylon Government the institution of an inquiry or any further expenditure on that account, until we make up our mind and tell them that we are going to give them a reasonable margin of time in order to set their house in proper order. I therefore think, Sir, that the Ceylon Government's attitude cannot be depicted or pictured as being an unreasonable one so far as the past is concerned. We need not go back to an Antediluvian period to see what had been done years ago. We have now the fact that they have readily complied with every one of the conditions that we stipulated—they have readily agreed—you may say, some of you, because they had no other

[Mr. B. N. Sarma.] option, but I would not do them that injustice; they have agreed to every one of the conditions that we laid down, and they are apparently going to institute an inquiry. But as I put it some time ago, there are 1,200 and odd tea estates alone, and there is the further difficulty that most of these workers do work on the piece-work system. The figures that have been referred to by Mr. Rangachariar are somewhat illusory for this reason that on the whole, including overtime, including sundries and so on, the wage is between Rs. 16 to 20 in the case of rubber estates and Rs. 12 to 16 in the case of tea estates per adult male labourer. They take into consideration the average wage no doubt, but that does not mean that the minimum is very much below. The figures that have been given were for a particular kind of work which has to be finished, which may be finished within 5 or 6 hours, but after that work is finished, after the task work is finished, there would be ample leisure according to the evidence given in which more money can be earned and the average wage any labourer can earn is between Rs. 16 to Rs. 20 and Rs. 12 to 16. In addition to that, they get some perquisites which I need not refer to at length.

Mr. J. P. Cotelingam: May I point out, Sir, that this includes piece-work and overtime work?

The Honourable Mr. B. N. Sarma: I did not say that. Rs. 12 to Rs. 16, that figure is exclusive of overtime. I am excluding the perquisites in which are marked below 5, 7 and 8 in the last column.

Rao Bahadur T. Rangachariar: It is not everyone that does overtime, only the able-bodied.

The Honourable Mr. B. N. Sarma: Yes, everyone, I suppose, who goes there is an adult labourer, is not lazy, but does work. And then we must also remember the class of labourer which emigrates from Southern India to Ceylon—a large section of the labourers go from the depressed classes and from the classes, in which both men and women work, and even in Southern India we find that it is impossible to maintain a household until both men and women work on the fields. They do work here, and they work in the same way there, to earn their living; and simply because there is a distinct Government, a different Government there, we should not I think interfere unduly between employer and employee. We must let the natural laws operate and make the necessary adjustments, but if we find that those natural laws oppress the weak, the Government may have to step in and will step in. I therefore suggest, Sir, that the Committee and the Government were fully right in imposing as conditions only those that have been shown in the notification, that the Government might be well left to adjust matters and to press upon the Ceylon Government to immediately bring out an increase if it be possible, to see that the interests of the labourers are safeguarded, and that the inquiry is concluded at as early a date as possible. It will be impossible for the Government to accept this limitation with regard to the number of emigrants. For instance, 60,000 people may return on a holiday to their homes in one year; there must be somebody to take their places or they will not be able to come to their homes to see their people, and 10,000 fixed as the limit will be absolutely inadequate. You will, if you introduce such a limit, be compelling the labourers now there to work on year in and year out without a holiday to India. The inflow and outflow of the coolie population to and from Ceylon is on an entirely different footing from that which

obtains in respect of other distant overseas possessions. I therefore submit that the limitation proposed could not work at all.

With regard to the fixing of a minimum wage 30 per cent. above present rates, I suggest that there is some danger in such a course. We have first to see indeed whether it may not be necessary to fix the minimum at an even higher figure, and these artificial interim increases will not only be illusory but will in the end prejudice the cause we have at heart. If we tell them that we will be satisfied with this *ad interim* increase and that be fixed as the minimum, it may become as well the maximum: whereas on inquiry it may be found that it is necessary for us to press for more; and if in the meanwhile we accept this much, we shall be prejudicing our chances of getting what is really needed. And I submit that since we have allowed this system to go on since 1847 up till this date, we may well have patience and wait for another year or two when this inquiry by the Ceylon Government will be finished. The Emigration Committee have stipulated that the report of that committee of inquiry should be put before them in order that they may have their say before the Government take it into consideration, and in order that they may do so in the light of the criticisms they may make, before further representations are made to the Government in Ceylon. In the ordinary course of things it may be impossible for us to consult this House before it meets again in January; and in any case the *ad interim* negotiations could most probably not be carried out in less than 12 or 18 months. I am not asking the House for a moment to rest content. But the Government has said that they will press the matter firmly on the Ceylon Government, and I think having regard to what has been done in the past by the Ceylon Government and the ready and speedy manner in which the recommendations of the Government of India have been accepted by them, this House may I think leave it to us to do a little more in the way of securing a better wage for the labourer.

I do not think, Sir, that I need refer at any length to one or two observations made by my friend Mr. Rangachariar as to the constitution of the Deputation. He complained that the Government entrusted its work to non-officials. The President of the deputation is an eminent lawyer of Ceylon. My friend said that they had not done the right thing in not having a Government official as a member. Well, it shows the confidence which the Government has in its non-officials. That shows the confidence which the Government has in its non-official public in advocating the cause and not being so bureaucratic as to send one of their own men to be in charge; and, apart from that, I would say that the letters from the Ceylon Government show distinctly how anxious they have been not to mix themselves up with the Labour Commission. One of the reasons as to why they would not agree to our first condition is that they said that they would like to adopt a benevolent neutral attitude or an attitude of aloofness where they can press the Labour Commission to adopt any views which they may have to enforce to keep the balance even between the labourer and the planter. They do not want to identify themselves in any way with the Commission or with recruitment for the planters. That is an index to the frame of mind of the Ceylon Government, nor can we blame them for that. I, therefore, think, Sir, that we cannot cavil at the constitution. The constitution is, I think, one of the best that could be constituted and the advocacy has been entrusted to one of the most eminent lawyers of the island and everybody has had an opportunity of having his say and all

[Mr. B. N. Sarma.]

the figures have been placed before the committee fully. My friend, Dr. Nand Lal, had some doubts as to whether the Government of India have the interests of the labourers at heart or the planters at heart and as to why they do not interfere for the sake of the educated few who may be going there. I need hardly assure him that the Government of India cannot at any moment under any circumstances sacrifice the interest of the labourers for the sake of any planters, whether here or elsewhere. I wonder why such a doubt should have arisen in his mind. Nor are the Government prepared to draw a limitation, an adverse limitation, as between the interests of the planters and the labourers. I do not see why there should be any necessary conflict, and if the labourer gets his due and the planter also benefits, I do not see that it is our business or the business of any Government to grudge any indirect benefit which the planter may derive thereby. Therefore, the answer to him would be that it would be primarily the labourer we have in mind and they would not grudge if the planter in Ceylon also gets the benefit of any labour that may go from here. My friend Mr. Joshi was anxious as to whether the Government of India would appoint an agent to watch the interests of these labourers in Ceylon. I thought I already mentioned in my preliminary remarks that the Government of India hope to and believe they will be able to appoint an agent, but if I have not said more, it is because we have to consider as to what it would cost. But there seems to be absolutely no reason as to why out of the money that we would be able to secure in the shape of fees we should not be able to appoint an agent, without burdening the general taxpayer. We hope to be able, Sir, to appoint an agent shortly after emigration is re-opened. I should like to have accepted Sir Montagu Webb's amendment. I appreciate the reason as to why he has substituted 18 months for 12 months. He sees that twelve months would be too short a period and the Legislative Council and the Emigration Committee cannot be consulted within that time. But I would suggest to the House that there is no need for such an amendment. We distinctly put to the Ceylon Government certain conditions which we were going to notify under section 10. The committee did not insist upon the settlement of wage as a condition precedent. The Government of India have not done so, and it is not fair to the Ceylon Government that we should now fix as a condition precedent to any emigration being allowed to that colony, the settlement within a particular period of this very difficult, complicate and intricate question of a basic minimum wage. I think the House may rest content that the two Governments will put their heads together and secure the welfare of the labourer and see that the basic minimum wage is obtained if it is practicable and possible.

Mr. President: I will put Mr. Subrahmanayam's amendment against Mr. Bagde's.

Rao Bahadur C. S. Subrahmanayam: Only the first clause of my amendment, clause 10 of my amendment, and not the others. They do not tack on to Mr. Bagde's amendment. My amendment may be put separately, one by one.

Mr. President: The Honourable Member does not withdraw.

Rao Bahadur C. S. Subrahmanayam: I cannot withdraw them.

Mr. President: Amendment moved:

"That after the word 'approves' the words 'with the modification set out below' be inserted; after the words 'the notification' the words 'as approved' be inserted; and at the end of the Resolution the following be added:

'After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April, 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for assisted emigrants, to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature'."

To which an amendment has been moved:

"Omit all words after the figure 4 in order to insert—'within six months from the issue of this notification; or within such further period as the Governor General in Council may by notification appoint before the 5th March 1924 the Government of Ceylon shall take and complete the necessary steps to legally fix a minimum wage to be paid to emigrants by the Ceylon planters, such wage being one previously approved by the Governor General in Council.'"

The Honourable Mr. B. N. Sarma: May I suggest, Sir, that Sir Montagu Webb's amendment is really a limitation and his amendment to the amendment I think is a condition. It is not a mere recommendation. He says the Council's recommendation shall be enforced from October, etc., provided certain things are done. That is really a condition, and it is in the nature of an amendment. Not that I am accepting. I am only putting it that it is really in the nature of an amendment to the amendment.

Mr. President: In form both of them are recommendations to the Governor General in Council. But I think I must proceed to put this amendment against the other, though no doubt the Assembly in voting will bear in mind that Sir Montagu Webb's amendment is still on the paper. The question I have to put is that Mr. Subrahmanayam's amendment to Mr. Bagde's amendment be made.

The motion was negatived.

Mr. President: The Honourable Member has originally moved three amendments together—10, 11 and 12. Does he wish to insist on 11 and 12?

Rao Bahadur C. S. Subrahmanayam: Yes, I do.

Mr. President: Further amendment moved:

"That after the words 'both Chambers of the Indian Legislature' in Mr. Bagde's amendment, the following be inserted:

'(4A) The number of new emigrants after the date of this Notification to Ceylon shall not exceed 10,000 for the period ending 5th March, 1924'."

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President: Further amendment moved:

"That after the words 'both Chambers of the Indian Legislature' in Mr. Bagde's amendment the following be inserted:

'(4A) The Government of Ceylon shall require the Ceylon Planters Association to increase the existing rate of wages by at least 30 per cent. within three months from the date of this Notification'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

Abdul Majid, Sheikh.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Dass, Pandit R. K.
Ginwala, Mr. P. P.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.

Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—45.

Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.

Joshi, Mr. N. M.
Ley, Mr. A. H.
Misra, Mr. B. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. President: The question is:

"That after the word 'approves' the words 'with the modification set out below' be inserted; after the words 'the notification' the words 'as approved' be inserted; and at the end of the Resolution the following be added:

'After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April, 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for assisted emigrants to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature,' and the subsequent clauses shall be re-numbered accordingly'."

The motion was negatived.

Sir Montagu Webb: I beg to move, Sir, the Resolution standing in my name. I do not think it is necessary for me to repeat the arguments which have already been used. I therefore simply commend my motion to the House.

Mr. President: Further amendment moved:

"That at the end of the Resolution the following be added:

'This Assembly further recommends to the Governor General in Council that the notification shall be in force up to the 1st October, 1924, and shall continue thereafter provided that in the meanwhile the Government of Ceylon shall have fixed by law a minimum wage for labour on estates, such wage having been previously approved by the Governor General in Council.'"

The Assembly then divided as follows:

AYES—32.

Abdul Majid, Sheikh.
Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Cotelingam, Mr. J. P.
Dass, Pandit R. K.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.

Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Srinivasa Rao, Mr. P. V.
Subrahmanayan, Mr. C. S.
Venkatapatiraju, Mr. B.
Webb, Sir Montagu.

NOES—36.

Abdulla, Mr. S. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.

Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Pyari Lal, Mr.
Rhodes, Sir Campbell.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. President: The question is:

"That this Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

The motion was adopted.

RESOLUTION RE EMIGRATION OF UNSKILLED LABOURERS TO STRAITS SETTLEMENTS AND MALAY STATES.

Mr. J. Hullah (Revenue and Agriculture Secretary): I move:

"This Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to the Straits Settlements, the Federated Malay States of Perak, Selangor, Negri, Sembilan and Pahang and to the Unfederated Malay States of Kedah, Perlis, Johore, Kalantan, Trengganu and Brunei, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

Mr. President: Honourable Members will observe that the amendments sent in to this Resolution raise almost precisely the same questions as the amendments to the Resolution which we have just passed, and except in

[Mr. President.]

so far as conditions may vary, and they do vary, between Ceylon and the places named in the second Resolution, it will be a sheer waste of time to continue the debate on the lines on which the previous one has followed. Members will be within the "letter of the law" if we allow the debate to proceed along such lines, but I should think we should be violating the spirit of it.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): I have great pleasure in supporting the motion made by Mr. Hullah. We must make a distinction between Government and Government. I have entirely satisfied myself from the Deputation, from the way in which they behaved, from the very frank and ready way in which they placed facts and figures before us, from the earnestness and anxiety which they displayed for the welfare of labourers, our labourers run any risk in going to the Straits Settlements. The Government there are taking every care so far as I am able to see,—at any rate Mr. Gillman who appeared before us as the representative of that Government gave such a full and frank statement that I was simply delighted with the way in which that Deputation behaved. The wages the labourers earn there are not very high. They earn about 10 or 12 annas a day there, much better than, nearly double of what the people earn in Ceylon, and although we have pressed them to accept an inquiry for fixing the basic minimum wage, they have agreed to it and I think we may trust the Government of the Straits Settlements to see to what is necessary being done. I therefore support the motion.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): In order just to remind the Government of India, I must draw the attention of the Assembly to the fact, why is it that the Chinese cooly works at a higher rate of pay than the Indian cooly there in the Malay States and other places stated in this Resolution. I know, Sir, there are instances before me where Indian people are treated badly while the Chinese people are much better off and apart from that, Sir, there are other nationalities whose condition is much better than the Indians. Indians are looked down upon by the people because the Malayan State Government and others do not appreciate the position of Indians and if the Government of India will try to bring things together and take proper steps, we shall be very thankful. Sir, we have many other things to say but since we have already seen the result of the first Resolution of this morning it is not worth while to discuss the second one when the sun is setting and darkness will now begin. Sir, an eminent authority like Mr. Polak who has worked for 18 years to ameliorate the condition of the labourers says:

"I am strongly of opinion that save upon conditions India ought not to consent to the emigration of Indians. These two conditions are, first the satisfactory settlement of the Kenya question, and secondly, that any scheme that may be considered genuinely partakes of the nature of colonisation and is not merely a camouflaged system of labour emigration. The case of Kenya must be taken as a test by which the question of status is to be judged. If Kenya does not grant that real equality of citizenship to which His Majesty's Government are pledged then there cannot be any kind of certainty that such equal status can be secured at the present time in any other colony or protectorate."

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): May I rise to a point of order? The Honourable Member is talking of Kenya which does not form one of the places about which we are discussing.

Mr. K. Ahmed: I think the Honourable Member will shortly appreciate my point.

Mr. President: What is the Honourable Member talking about?

Mr. K. Ahmed: About Malaya: Mr. Polak says:

"I think that as news of conditions in Ceylon or Malaya is gathered sifted and published, Indian opinion will realise more and more that so long as Indian emigration is practically confined to the ill-paid and worse-organised labouring classes, no real equality of citizenship is possible or even to be expected. Even a clean statute book cannot bring this about. Status is not merely a matter of law; it is still more one of facts."

Then, Sir, in 1857, Lord Salisbury told us:

"Above all things we must confidently expect as an indispensable condition of the proposed arrangement that the Colonial laws and their administration will be such that Indian settlers who have completed the terms of service to which they agree, as the return for the expense of bringing them to the Colony will be free men in all respects, with privileges in no way inferior to those of any other class of His Majesty's subjects resident in the Colony."

I need not point out how this pledge has been fulfilled more in the breach than in the observance, and in so far as the condition of Lord Salisbury is concerned, it has remained up till now a dead letter. Now, Sir, probably what Lord Hardinge has said will be appreciated by my Honourable friend opposite in charge of the Department. Lord Hardinge said this: "That is not the duty of the Government of India to supply coolies to the Colonies"; and the kind of duty that we find that the Government of India, as the great benefactor of these poor, miserable people living in this part of the country, do, is that they have always accepted invitations from the Colonies to supply coolies instead of leaving them in this country. Every State has got that, Sir, and every constitutional Parliament—the House of Commons, I say—the Prime Minister's house, there you find glasses of windows broken—and I hope my Honourable friend who comes from that part of the country realises that he should uplift the condition of these poor people, of these poor, miserable people, and try his utmost to see that their status, their condition is improved. Look at the treatment that they receive at the hands—I do not like to attack any of these colonials—but we did attack and the result, Sir, was not very much satisfactory to our mind, because we got defeated already twice or three times. We are not strong enough but humbly ask Government that they must realise the situation as far as they can, to uplift the condition of these poor people, and see their way to ameliorate their condition.

With these few words—probably, Sir, my position is just the same as my Honourable friend, Mr. Rangachariar—and I do in a way support the motion of Mr. Hullah.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I wanted to make one or two remarks, and I also wanted some explanation from the Government of India on one or two points. In the first place I insist that the Government of India should appoint an agent—I was somewhat apprehensive from the remarks of the Honourable Mr. Sarma that if the Government of India gets sufficient money from the fees, then only would the Government of India appoint an agent. Sir, I deprecate this thing altogether. There was some sympathy shown . . .

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): I did not say that it is only if we get fees that we are going

[Mr. B. N. Sarma.]

to appoint an agent, but that I am looking forward to the fees also as a possible way of our immediately appointing an agent. I did not say that we would not otherwise appoint an agent.

Mr. N. M. Joshi: I do not mean that the Government are looking forward to getting large fees from the planters, but I do not want the Government of India to depend upon those fees. There was so much sympathy shown for the working classes here to-day that I am quite sure that if a proposal were brought forward for sanctioning the salary of the agent, the House would pass it unanimously.

The Honourable Mr. B. N. Sarma: I am glad to hear that.

Mr. N. M. Joshi: And pay a good salary too. I want the Government of India to explain to me whether strikes in Malaya or in these Colonies are legal or not. From my study, I have, Sir, doubts on this point. Sir, the House knows very well that in the case of poor people the strike is the only weapon by which they can get their demands satisfied; they have no political influence at all. Therefore I insist that the Government of India should make an inquiry as to whether strikes in these Colonies are legal or not. If they are illegal, I think the Government of India should at once make a strong recommendation to that Government and say that they must not expect any more labourers unless that law is abrogated. Then, Sir, I find from the papers circulated to us that the Government of Malaya make education compulsory for the Malaysians but in the case of Indians they leave it voluntary. I want the Government of India also to impress upon the Government of Malaya the necessity of giving compulsory education to Indians. It is absolutely wrong for a British Government, whether the Government of India or a Colonial Government, to make any distinction between subjects in their territories. They are after all British subjects; and if education is to be compulsory for the Malaysians, it ought to be compulsory for the Indians. I therefore hope that the Government of India will write to the Government of Malaya on these points and receive satisfaction on all of them.

The Honourable Mr. B. N. Sarma: We will make the necessary inquiries and try to redress the matters complained of.

Mr. President: The question is that that Resolution be adopted.

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Hailey (Home Member): Sir, it has just been brought to my notice that by a notification issued on the 9th of February the Local Government has gazetted next Tuesday instead of Wednesday as the date of *Shivratri* and as a public holiday. We arranged our business on the basis of the former notification issued by the Local Government, and took Wednesday to be the public holiday. In the circumstances, I would ask you to decide whether we should take the business which was put down for Tuesday on Wednesday, taking Tuesday as our public holiday.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I do not think, Sir, that the existing arrangement need be disturbed, because the holiday is for *Mahashivaratri* and we do the puja on the night of that day, and if the next day is a holiday it will be all the better for us.

Mr. President: I do not think I am qualified to pronounce upon the point raised by the Honourable Member from Madras; but will meet the convenience of everybody concerned if, when a public holiday is declared by the local authority within whose province we happen to meet, we also observe that as a public holiday; as the Government would be placed in some difficulty if it attempted to carry on its operations without the backing of the Secretariat. Therefore I propose that we should observe the holiday which has been decreed by the Chief Commissioner. When adjourning the House on Monday I shall adjourn it till Wednesday and I presume that Government will carry their business over from Tuesday to Wednesday.

The Assembly then adjourned till Eleven of the Clock on Monday, the 12th February, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 12th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

VACANCIES DURING PROBATIONARY PERIOD ON RAILWAYS.

336. ***Rai Bahadur G. C. Nag:** With reference to the answer given on the 15th January, 1923, to unstarred question No. 5, is it a fact that vacancies in permanent posts sometimes occur before the probationary period of any of the probationers; and if so, is it the normal practice on railways to make temporary arrangements for filling such vacancies to admit of probationers being permanently appointed thereto on completion of their probationary period?

Mr. C. D. M. Hindley: Unforeseen vacancies naturally do occur. There is no normal practice for dealing with such unforeseen vacancies. Each case has to be decided on its merits, taking into consideration its own particular circumstances.

RULES OF COMPANIES WORKING STATE RAILWAYS.

337. ***Rai Bahadur G. C. Nag:** With reference to the answer given on the 15th January, 1923, to unstarred question No. 84, is it a fact that companies working State railways do not furnish Government with copies of their rules?

Mr. C. D. M. Hindley: There are no orders requiring them to do so. The policy of Government is to interfere as little as possible with details of domestic management.

ESTABLISHMENT OF THE RAILWAY BOARD.

338. ***Rai Bahadur G. C. Nag:** With reference to the statement of "Establishment of the Railway Board" appearing in the Railway Revenue Budget for 1922-23, will Government kindly state (a) which of the posts require engineering qualifications, (b) whether any of such posts have ever been filled by officers of the company-worked railways, (c) whether any of such posts have ever been filled by Indians, and (d) if the reply to either (b) or (c) is in the negative, why not?

Mr. C. D. M. Hindley: (a) The only posts in which engineering qualifications are required are:

- (1) Chief Engineer,
 - (2) Two Assistant Secretaries,
 - (3) Additional Assistant Secretary.
- (b) and (c). No.

(d) The posts are filled by selection and hitherto Indian and Companies officers with suitable qualifications and whose services could be spared have not been available when the vacancies occurred.

I. C. S. AND LOCAL VERNACULARS.

339. ***Mr. B. N. Misra:** (1) Is it a fact that the Indian Civil servants are compelled to pass in Local Vernaculars?

(2) If so, is there any time limit during which they are required to pass in Local Vernaculars?

The Honourable Sir Malcolm Hailey: (1) Yes.

(2) No period is prescribed but officers have the best incentive to pass their departmental examinations quickly as until they do so they are not eligible for increments of pay.

Mr. K. Ahmed: Is it desirable for any judicial officer of the service to perform any functions in the Court, as for instance, to hear evidence . . .

Mr. President: The Honourable Member is asking for an opinion, not for information.

Mr. K. Ahmed: Is it not a fact, Sir, that members of the service cannot possibly discharge their onerous duties when they are sitting on the judicial bench, unless they pass examinations in the vernacular, to take down the evidence of witnesses?

Mr. President: I think that is a matter of opinion too.

Mr. K. Ahmed: Is it not obvious, Sir, that it is impossible for members of the service, unless they know the vernaculars, to record evidence and to write out judgments thereon?

WAITING ROOMS FOR INTERMEDIATE AND THIRD CLASS PASSENGERS.

340. ***Khan Bahadur Sarfaraz Hussain Khan:** (a) Is it a fact that the male and female passengers of Intermediate and Third Classes are not provided with separate waiting rooms?

(b) If not, do the Government propose to order such arrangements to be made as to prevent the male and female passengers of the Intermediate and Third Classes from grouping together at one and the same place?

Mr. C. D. M. Hindley: (a) and (b). It is understood that Railways provide separate waiting accommodation for intermediate and third class lady passengers where necessary.

In this connection the Honourable Member is referred to the answer given on the 14th March, 1921, in this Assembly to question No. 464, asked by Rai Bahadur Pandit Jawahar Lal Bhargava regarding waiting accommodation for third class lady passengers.

WAITING ROOMS AT DELHI STATION.

341. ***Khan Bahadur Sarfaraz Hussain Khan:** (a) Is the Government aware that the 1st and 2nd class waiting rooms at the Delhi Junction have been removed to the upper storey of the station?

(b) If so, will they be pleased to order their removal to some such place as may be close to, and on the same floor, as the Refreshment Rooms?

Mr. C. D. M. Hindley: (a) Yes.

(b) The Railway Administration intend to open the main refreshment rooms in the upper storey shortly. A lift has been installed for the convenience of passengers.

STAMP PRINTING IN INDIA.

342. ***Mr. B. S. Kamat:** With reference to the question of Stamps Printing in India, and the discussion thereon in the Assembly in March, 1922, will Government be pleased to furnish the following information:

(i) Have any steps been taken to notify to Messrs. De la Rue that their contract may not be renewed after 1924;

(ii) Have any steps been taken to find out if any Firms in India, either Indian or European, are willing and able to undertake the contract and if necessary, to import and instal the necessary special plant for stamp printing? If the answer is in the affirmative, will Government please state the nature of their inquiries and the result? Had Government offered to guarantee the contract for a definite number of years?

(iii) Is it true that the Controller of Stamps, Stationery, and Printing was addressed by an Indian Firm of Printers in this matter in 1922, and that he replied that this contract would be given only for one year at a time unlike the contract for 10 years given to Messrs. De la Rue & Co.?

(iv) Is it true that Government have deputed one officer (Mr. Ascoli?) to England to study the question of stamp printing? When is this officer likely to return? What experience had he of printing processes before going to England?

(v) What are the present arrangements for printing Post Cards and embossed envelopes?

(vi) What are the rates and the terms and conditions settled with Messrs. De la Rue & Co., in the matter of their existing contracts?

The Honourable Mr. C. A. Innes: (i) No. The contract does not expire until the 31st December, 1924, and it is only necessary to give six months written notice of an intention to terminate it.

(ii) No detailed inquiries have so far been instituted by Government but information on the subject has been supplied to two firms who have addressed the Controller on the matter.

(iii) Yes, an Indian firm did make certain inquiries of the Controller of Printing, Stationery and Stamps, in this connection in March, 1922. That officer did not say that any new contract would only be an annual one.

(iv) Colonel Willis, an officer of the Mint Department, has been deputed to England to examine the question of the possibility of printing Currency Notes in India. He has also been asked to take up the question of the printing of stamps, and Mr. Ascoli who is on leave in England has been associated with him in the latter inquiry. Mr. Ascoli is expected to return from leave in July next. For some months before he went Home he was on special duty in connection with the re-organisation of the printing presses under the Government of India and in the course of this work he acquired considerable experience of printing processes in India.

Mr. T. V. Seshagiri Ayyar: Has a Secretary been appointed to this Committee?

The Honourable Mr. C. A. Innes: Yes. Mr. J. H. Green.

Mr. T. V. Seshagiri Ayyar: Is it not generally the rule that where a European President is appointed to a Committee, an Indian Secretary is appointed and *vice versa* where there is an Indian President an English Secretary is appointed?

The Honourable Mr. C. A. Innes: I am not aware, Sir, of the existence of any such rule, but I may say that I offered the appointment to an Indian gentleman who refused it.

STATE MANAGEMENT OF RAILWAYS.

Sir Campbell Rhodes: Sir, I wish to ask the Honourable the Home Member the question of which I have given him private notice:

In view of the fact that the Bengal Chamber of Commerce has expressed very emphatic and definite views on the question of State Management of Railways, which views it naturally desires should be voiced in this Assembly by its President, and in view of the fact that Government have provisionally fixed for the discussion of Maulvi Miyan Asjad-ul-lah's Resolution two dates on which it is impossible for the President to attend owing to the Statutory Annual Meeting of the Chamber of Commerce on 27th instant, I beg to inquire whether it would be possible for the Government to allot some other day for the consideration of the Resolution.

The Honourable Sir Malcolm Hailey: I am very sensible of the difficulty due to the fact that we have had to postpone the discussion of this important Resolution to a date on which it will be impossible for the President of the Bengal Chamber of Commerce to be in his place. The Bengal Chamber of Commerce is of course intimately concerned with this question, and moreover we ourselves would have welcomed the assistance of Sir Campbell Rhodes in our discussion on the subject, not only as a representative of the Chamber but on personal grounds. But, the difficulty of arranging another date is very great. It would mean of course that we should be obliged to postpone the discussion till March, but there are few dates available in that month, and it is possible that even those dates must be occupied by other urgent Government business. I am afraid, that in the circumstances I can see no way of surmounting this difficulty.

UNSTARRED QUESTIONS AND ANSWERS.

MHOW GRIEVANCES.

154. **Mr. Pyari Lal:** 1. Has the attention of the Government been drawn to an article headed "Mhow Grievances" published in the *Cantonment Advocate* of 10th November, 1922?

2. Is it a fact that Mr. A. A. Dadabhoy, a representative of the local House-Owners Association nominated to the Cantonment Committee, has been told that he could take part only in those meetings where question regarding house property is to be considered and that his participation in the deliberations of the Committee will be confined to that question only?

3. Is the Government aware that as a protest against this imposition of this limitation on his appointment as a member of the Committee, Mr.

Dadabhoy has never taken part in any meeting of the Cantonment Committee?

4. Is it a fact that as a result of Mr. Dadabhoy's absence from the Committee, the important interests of the House-Owners Association have gone unrepresented on the Committee?

5. Will the Government be pleased to state why this qualification has been imposed upon the appointment of the representative of the House-Owners Association and under what law?

Mr. E. Burdon: 1. Yes.

2-5. The Government of India have no information on the subject, but inquiries are being made. I will let the Honourable Member know the result in due course.

FEE IN CANTONMENT GENERAL HOSPITALS.

155. **Mr. Pyari Lal:** 1. Is the Government aware that fee is being charged in Cantonment General Hospitals for professional services rendered within the premises of the Hospital?

2. Is it a fact that the Cantonment Reform Committee has recommended the desirability of stopping this practice?

3. Do the Government propose to direct or suggest to the Cantonment Committees, the desirability of carrying out the recommendations of the Cantonment Reform Committee in this connection?

Mr. E. Burdon: 1. Fees are leviable for treatment in Cantonment Hospitals and dispensaries under the provisions of Section 207 read with Section 206 of the Cantonment Code.

2 and 3. The Honourable Member is presumably referring to the recommendation made by the Cantonment Reforms Committee in paragraph 64 of their report.

Government have no information that charges of the kind there described are in practice levied, but if the Honourable Member will report to the local military authorities any cases of the kind that have come to his notice, the Government of India feel sure that the matter will receive proper attention. They do not think it necessary to issue directions or suggestions on the subject to Cantonment Committees.

RAILWAY CATERING DEPARTMENTS.

156. **Sir Deva Prasad Sarvadhikary:** (a) Will the Government be pleased to state whether there are any catering Departments in the East Indian Railway and Eastern Bengal Railway on the same lines as that obtaining in the Bengal Nagpur Railway or lines similar thereto?

(b) If there are not, what are the reasons for absence thereof and what takes their place for providing food and refreshment for the travelling public on the journey?

(c) Is it proposed to introduce on the East Indian Railway and Eastern Bengal Railway arrangements like those obtaining on the Bengal Nagpur Railway.

Mr. C. D. M. Hindley: (a) The catering on the East Indian and Eastern Bengal Railways is not done by the Railways themselves as in the case of the Bengal Nagpur Railway.

(b) To introduce the departmental system at the present time, with high prices prevailing, would involve an expenditure on initial outlay which the railways cannot afford. Food and refreshments are provided by Contractors and Vendors under railway supervision and this arrangement has been in force for a number of years.

(c) No, not at present.

INDIAN STUDENTS IN ENGLAND.

157. **Sir Deva Prasad Sarvadhikary:** (a) Will the Government be pleased to state what action has been taken on the recommendations of the Lytton Committee about Indian students in England?

(b) If no action has been taken what action is proposed to be taken and when?

The Honourable Mr. A. C. Chatterjee: The Report has been published and circulated to local Governments and Administrations and is under the consideration of the Government of India. It is hoped that Local Governments will shortly be addressed in the matter.

MUTUAL BENEFIT SOCIETIES.

158. **Rao Bahadur C. S. Subrahmanayam:** 1. Has the Government framed rules under explanation to Section 10 (2) (iii) of the Indian Income-tax Act, 1922, re: Mutual Benefit Societies?

2. Is it a fact that in the Income-tax Manual, page 90, it is stated that no change in law has been made as no rules have been framed?

3. Will the Government be pleased to state whether the rules have been framed, since the publication of the Manual?

4. Will the Government be pleased to state when they will make these rules?

The Honourable Sir Basil Blackett: 1. No.

2. No. The statement in the Income-tax Manual is that "no action can be taken (under the explanation) until a rule is made".

3. No.

4. Applications have been received from several Societies but action has been postponed pending a decision of a High Court to which reference has been made as to whether profits of such Societies are taxable at all.

PRINTING OF STAMPS IN INDIA.

159. **Rao Bahadur C. S. Subrahmanayam:** 1. Will the Government be pleased to state what stage has been reached in the consideration of the question of printing Stamps in India?

2. Will the Government be pleased to state whether Indian States do use Indian-made stamps for their judicial, non-judicial and postal services and if so, which of them and for what purposes?

3. Will the Government be pleased to state how many printing establishments there are under the Government of India?

4. Have the Government instituted a system of exact costing in regard to the printing establishment of the Government?

5. With reference to the Honourable Mr. Chatterjee's answer to my question on the same subject, will the Government be pleased to lay on

the Table the results of any inquiry regarding the system of exact costing obtaining in the printing establishments under the Government of India, that may have been made already?

Mr. A. H. Ley: 1. The question of printing stamps in India has been taken up by Government, and Government are now awaiting a report from an officer who has been specially deputed to examine the practicability of the proposal.

2. The Government of India have no official information on the subject.

3. Twelve, including the printing establishments of minor Administrations, Residencies, Commercial Departments and State Railways.

4 and 5. There is already a system of costing in force in the main Government of India Presses, which shows the cost of each job including overhead charges, depreciation of machinery, etc. Except possibly in one or two minor respects, the existing system seems to be complete; but it is now being subjected to a close examination in order that Government may be satisfied that any defects are brought to light and remedied.

RAILWAY EXPENDITURE IN ENGLAND.

160. **Rao Bahadur C. S. Subrahmanayam:** (a) Will the Government be pleased to state the total amount spent in England on account of the Railways in India and on what class of materials?

(b) Has any attempt been made to get any of those supplies in India?

Mr. C. D. M. Hindley: (a) It is assumed that the Honourable Member desires to know the amount spent in England during the current year. The expenditure to end of November 1922, the latest period for which figures are available, is £5.68 millions.

Materials purchased in England for State-worked railways are those not produced or manufactured in India or not obtainable in India in the quantities required or to the conditions as to quality or price prescribed in the Stores Rules. Generally they include specialised machinery and plant, locomotives, wagons, steel rails, etc. The Company-worked railways have full powers to make their own arrangements for the supply of stores and usually purchase the same classes of materials in England.

(b) State-worked lines are governed by the Stores Rules the general conditions of which are that articles produced or manufactured in India should be purchased in India provided the quality is satisfactory and the price not unfavourable. In accordance with these Rules tenders are invited in India for such articles as are produced or manufactured in India of the requisite quality. Company-worked lines generally speaking follow a similar procedure.

REGISTRARS, ETC., OF JOINT STOCK COMPANIES.

161. **Rao Bahadur C. S. Subrahmanayam:** (a) Are the Registrars of Joint Stock Companies or their Assistants, Chartered Accountants or holders of diplomas in Accountancy?

(b) Will the Government be pleased to see that these or some of these posts are filled by men who possess such qualifications?

The Honourable Mr. C. A. Innes: (a) Under Section 248 (2) of the Indian Companies Act, 1913, appointments of Registrars and Assistant Registrars of Joint Stock Companies are made by Local Governments. The Government of India have not therefore detailed information about the qualifications of the particular officers, but it is understood that the first Registrars at Calcutta and Bombay were respectively a Chartered Accountant and a lawyer well trained in Company Law.

(b) The Government of India invited the attention at the time when the Companies Act was passed of Local Governments to the desirability of appointing a wholetime officer in the large commercial centres, at any rate, with special training and experience fitting him for the work required.

CONSTITUTION AND FUNCTIONS OF THE PUBLIC SERVICES COMMISSION.

162. **Sir Deva Prasad Sarvadhikary:** (a) Will the Government be pleased to state what action, if any, has been taken under section 96-C of the Government of India Act since the answers given to Mr. Samarth in the Assembly on the same subject?

(b) If no action has been taken, will the Government please state when and what action is proposed to be taken?

The Honourable Sir Malcolm Hailey: The constitution and functions of the Public Services Commission provided for in section 96-C of the Government of India Act cannot be determined until a decision has been reached on some of the questions involved in the larger problem of the increased Indianization of the services, which is now under consideration and will doubtless engage the attention of the Royal Commission. It has been decided, therefore, to hold the matter in abeyance for the present.

THE MALABAR (COMPLETION OF TRIALS) SUPPLEMENTING BILL.

The Honourable Sir Malcolm Hailey (Home Member): I beg to move: "That the Bill to supplement the Malabar (Completion of Trials) Act, 1922, be taken into consideration."

I fully explained the circumstances under which this Bill was introduced on Saturday last, and as it is of a formal nature, I need not further enlarge on either the principle or the details of the measure.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I welcome this Bill because it rectifies an error; but I have to draw the Honourable the Home Member's attention to an obvious duty on the part of the Government to rectify other errors, and also to rectify a very serious omission. In the first place, I fear that such omissions and errors have occurred in connection with the Ordinances passed by His Excellency the Governor General. It is obvious, because this is one instance of it. Now the particular matter to which I wish to draw the attention of the Honourable Member is that the last of the Ordinances, one of the provisions of which this Bill proposes to continue by an Act of the Legislature, expires next Monday, and there are other provisions under these Ordinances which have expired and which may result in very serious consequences, as I shall presently point out. I mentioned this matter to the late Home Member, Sir William Vincent, and what I suggested was

that after these Ordinances have expired, it would be necessary to allow the Indian Legislature to pass a General Indemnity Act with regard to the powers exercised under these Ordinances. On Saturday last when this Bill was laid on the table—it was not circulated before but laid on the table—I mentioned it to the present Home Member, Sir Malcolm Hailey. He asked me to give the matter my consideration; but yesterday being a Sunday I have been unable to refer to books and authorities. All the same I have looked into these Ordinances very carefully, all of them, and I am deliberately of opinion that it is absolutely necessary now on the part of the Government to get a General Indemnity Act passed with regard to them.

I shall take first the Ordinance, No. II of 1921, which purports to declare Martial Law with regard to Malabar. That Ordinance has got an indemnity section, section 28, but that has absolutely expired because the life of these Ordinances only lasts for six months. I am not saying this in any captious spirit, but I am pointing out to the Government an obligation, a duty, which is absolutely incumbent on them. Now the first Ordinance which was passed, Ordinance No. II of 1921, was passed on 26th August 1921. What did it purport to do? It purported to declare Martial Law in Malabar. That was quite right and we do not question the policy or justification at all. Now what is our present position with regard to the declaration of Martial Law? My Honourable friend will remember that there was a statutory provision, the Bengal Regulation of 1810. Yesterday being Sunday, I have not been able to look into the date of that Regulation, but my Honourable friend, Sir Henry Moncrieff Smith, will correct me if I am in error. It was a Regulation of 1810, the Bengal Martial Law Regulation, which was extended to the whole of India, and Martial Law could be declared thereunder. That was the position before it was repealed. Under the recommendations of the Repressive Laws Committee, that Regulation was repealed.

Mr. President: I should like the Honourable Member to explain how this matter is relevant to a measure which is extremely narrow in scope, namely, enabling appeals to be made to the High Court which would otherwise not be made, unless we pass this Bill.

Mr. J. Chaudhuri: Yes, I shall explain it this way. Sir, you will notice that the Statement of Objects and Reasons recites that on the expiration of the Malabar (Completion of Trials) Ordinance, this Act is to come into operation. This Ordinance—the Completion of Trials Ordinance, 1922—is the last Ordinance; it will expire next Monday. Some of the later Ordinances refer to some of the earlier ones, some of which have expired. My submission is that Government should come forward with a proper Indemnity Bill. They have now come forward with a Bill, a very proper Bill, for extending the Completion of Trials Ordinance, because if this Ordinance expired on Monday then a number of appeals which are pending before the Madras High Court and other appeals about to be filed will fall to the ground. The Local Legislature passed an Act for continuing the jurisdiction of the High Court of Madras with regard to appeals from trials held under the Malabar Ordinances in Madras; and one of the Acts which was passed by the Local Legislature was found to be *ultra vires*, that is, was against the statute law of India. Now, the Honourable the Home Member has come forward very justly with an Act which would rectify that *ultra vires* legislation. Now, I say since the last of these Ordinances expires on Monday, the 19th instant, and many have expired

[Mr. J. Chaudhuri.]

before, I ask the Government to bring forward an Indemnity Bill before this House.

Mr. President: The mere fact that the Honourable Member finds it necessary to ask the Government to bring forward another Bill shows that his remarks on this Bill are not relevant.

Mr. J. Chaudhuri: What I say is that this Bill

Mr. President: I am prepared to allow the Honourable Member to ask his question of the Government; I am not prepared to allow him to argue the merits of the question.

Mr. J. Chaudhuri: Then, Sir, I shall sum up by putting this question. What I would ask is this. We have got also a responsibility in regard to this matter. When these indemnity sections have all of them expired, I earnestly request the Home Member to bring before this House a general Indemnity Bill, and I can assure him that we are not so wanting in the sense of responsibility as to obstruct. But it is absolutely necessary in the interests of the public servants

Mr. President: The Honourable Member is now arguing the merits of the case; he had better put his question and see whether the Government is prepared to answer it.

Mr. J. Chaudhuri: I ask whether Government will consider that question, and I would point out the obligations of the Government with regard to sections 127 and 128 of the Government of India Act and also ask them to take into consideration the fact that Bengal Regulation with regard to martial law has been repealed. Whether it is repealed or not, in every instance where martial law has been in force an Indemnity Act has been brought before the House; that has been invariably the practice; and I am of opinion that without an Indemnity Act serious consequences may arise

Mr. President: The Honourable Member can use that argument when an Indemnity Bill is before us. I ask him now to confine his remarks to the subject of the present measure.

Mr. J. Chaudhuri: What I wish to point out is that it is an *ultra vires* legislation on the part of the Government of Madras which this Bill seeks to rectify by an Act of the Imperial Legislature. I say that this is not a complete Act; there are other Regulations and things done under the Ordinances which might have been *ultra vires*, and since the Ordinances have expired, they would be regarded as *ultra vires*, and I would therefore ask the Honourable the Home Member to bring forward another Bill embodying general indemnity for the protection of all military and civil officers as also private citizens who have acted under any of these Ordinances. That is all that I have got to say.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I wish to raise a point which I hope you will hold a little more relevant than the one which has been raised by my friend, Mr. Chaudhuri. It is this. I would put it in the nature of a question to the Honourable the Home Member—whether he considers that this constant resort to the central Legislature is desirable or necessary, whether the proper course would not be for moving the Parliament to so change the Government of India Act as to

make it unnecessary for Local Governments to seek the aid of the Central Legislature?

Mr. President: I am afraid the Honourable Member was a little sanguine in his opening remark—in thinking that his point was more relevant than that raised by Mr. Chaudhuri.

Mr. T. V. Seshagiri Ayyar: I am putting it in the nature of a question: whether it is not desirable that we should avoid this constant recourse to the Supreme Legislature, and so amend the Government of India Act as to make it possible for the Local Legislature to pass laws which would be applicable throughout the whole of the Presidency; otherwise we have to come here often and the result is that there will be a great deal of delay. I myself had to apply to the Central Legislature to extend an Act to the Presidency Town, because the Government of India Act was in that respect defective; and also the Government of Madras finds that in regard to the Religious Endowments Bill they cannot pass a law which would apply to the Presidency Towns because the Government of India Act is defective. I bring it to the notice of the Honourable the Home Member so that he may move Parliament for the purpose of correcting this defect and avoiding, if possible, unnecessary resort to the Central Legislature.

The Honourable Sir Malcolm Hailey: Mr. Chaudhuri mentioned to me on Saturday the point which he has elaborated to the House; I am afraid, that I was not able to give to it the same extensive study as he was able to bestow on it, because my Sunday was otherwise engaged—engaged in what will no doubt appear to those who have objections to the taking of animal life, a much less innocuous occupation. But I can nevertheless deal sufficiently with his point. He suggests the necessity of bringing in a general Indemnity Act which will cover anything done under martial law in Malabar and provide for any other case which like the one now under discussion reveals action taken *ultra vires*. A general Indemnity Act is of course a natural corollary to martial law. Those who remember the celebrated discussion in the Imperial Legislative Council of 1919 will bear me out when I say that it was amply proved to that Council that everywhere where martial law has been applied a general Indemnity Act has followed. But equally, it is not usual to bring forward such an Act until practically every incident of Martial law has closed; you cannot propose to the Legislature, that they should give a general *carte blanche* to Government and must place it in possession of the completed story of Martial Law transactions when you are asking it to legislate for indemnity.

As regards Malabar and the incidents which occurred there, it is still a matter of consideration whether we should put forward a general Indemnity Bill, applying to all acts taken in pursuance of Martial Law. Mr. Chaudhuri suggested that the Bill we now propose in itself illustrates an action which needs covering as being *ultra vires*; but the statement which I made to the House on Saturday will show that we are not in this Bill dealing with any act committed outside the law by any officer in exercising Martial Law functions. Nor again are we as he suggests proposing to extend the operation of the Ordinances. The effect of the last of the Ordinances will expire on the 18th or 19th of this month, and in view of that expiration the Madras Council itself passed an Act granting certain Magistrates the powers as a speedy procedure for disposing of a large number of cases still pending on their hands. That Council could not, however, in so doing affect the powers of the High Court because under the Letters Patent the local Legislature has no authority to do so, and that is the sole reason why it is

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necessary for us to legislate in order to confer the necessary powers on the High Court. Our Bill, therefore, is very restricted in scope. It is merely necessary in order to supplement the legislative powers of the Madras Council.

Mr. Seshagiri Ayyar asked whether it was necessary to have such frequent resort to the Central Legislature in order to get over difficulties of this nature. That is a question as to how far we are prepared to legislate or to ask for legislation in order to allow local Legislatures to deal with modifications in the Letters Patent for the Presidency High Courts. I am sure that the Assembly will not desire that I should enter into this question this morning. It is a somewhat important matter and it is one to which we should desire to give a good deal of thought.

Mr. President: The question is:

"That the Bill to supplement the Malabar (Completion of Trials) Act, 1922, be taken into consideration."

The motion was adopted.

Clause 1 was added to the Bill.

Mr. J. Chaudhuri: Sir, with regard to the Title I have to point out . . .

Mr. President: If the Honourable Member had been watching, he would have seen that I gave him an opening. Clause 1 now stands part of the Bill.

Clause 2 was added to the Bill.

Mr. President: The question is that this be the Title to the Bill.

Mr. J. Chaudhuri: It is not clear, Sir, whether this Act is of this Legislature or of the Madras Legislature, and I want to draw the attention of the Honourable the Home Member to it. It is usual to cite the local Acts as the Bengal Act, Madras Act, and so on, and so this omission might lead to confusion, and therefore I would suggest that we should put down the title as the Malabar (Completion of Trials) Act, No. (Madras) of . . .

The Honourable Sir Malcolm Hailey: The Title is put in the present form, because we do not yet know the No. of the Act passed in Madras. But I think that the Honourable Member's intention will be sufficiently met if when we print up the Bill we place in the margin, the proper reference to the Madras Act.

The Title was added to the Bill.

The Preamble was added to the Bill.

The Honourable Sir Malcolm Hailey: Sir, I move that the Bill be passed.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed to the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State. On the last occasion clause 127 was postponed for further consideration in view of the fact that the amendment standing in the name of Mr. Agnihotri, though

acceptable in principle to Government, required re-drafting. I understand that it is now found that the amendment will be more appropriate in clause 127A.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I want to move another amendment which stands in my name, and that is that the order under this section shall be appealable . . .

Mr. President: We are now on amendment No. 339.

Mr. K. B. L. Agnihotri: As advised I beg to withdraw it, Sir. Clause 127 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move that for 127A, the following be substituted, namely:

"127A (1). Section 489 of the said Code shall be re-numbered as sub-section (1) of section 489, and in that sub-section as re-numbered for the word 'fifty' the words 'one hundred' shall be substituted:

(2) To the same section the following sub-section shall be added, namely:

'Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly'."

This clause relates to maintenance section in the Criminal Procedure Code, and this is the draft which the Government and myself have agreed to put into this clause. Therefore, Sir, I propose that this amendment be accepted by the House.

The motion was adopted.

Clause 127A as amended was added to the Bill.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, in moving my amendment No. 342 to clause 129 (2), I wish to point out the law as it stands at present. Under the present Code of Criminal Procedure, a Public Prosecutor can only be appointed in respect of cases triable by the Court of Sessions. The amendment proposed by Government does away with that condition and makes it lawful for the Government to appoint a Public Prosecutor in all cases, whether triable by a Magistrate or by a Court of Sessions. Honourable Members will find that a Public Prosecutor may be appointed either generally or in any specified class of cases or in any particular case by the Governor General in Council or the Local Government. That is the general provision. In the clause under reference, provision is made for the appointment of a Public Prosecutor by the District Magistrate or, subject to the control of the District Magistrate, the Sub-Divisional Magistrate, and it is pointed out that, where such a Public Prosecutor has been appointed, no private Prosecutor can be appointed except in two cases and two cases only, namely, in the absence of the Public Prosecutor or where no Public Prosecutor has been so appointed. Reading the two clauses together, Honourable Members will find the law is boiled down to this that in all cases where a Public Prosecutor has been appointed for any area—let us say a district—no person can be appointed as a Public Prosecutor in any particular case, and therefore no person appointed as such can possess the right of withdrawal from the case. The amendment I propose for the acceptance of this House is intended to enable the District Magistrate or, subject to his control, the Sub-Divisional Magistrate to appoint any pleader as a Public Prosecutor only for the purposes of that case in which he appears—not only in cases where the Public Prosecutor has not been appointed or is absent, but also in cases

[Dr. H. S. Gour.]

where the Public Prosecutor, though generally appointed for the district, is not interested in that particular case. Honourable Members will see that criminal cases in the Courts—and I am now referring to the magisterial cases—are sub-divided by the Criminal Procedure Code into compoundable and non-compoundable cases, but, as Honourable Members are aware, a case may be a compoundable case and yet the prosecutor may desire to withdraw from the case, either because he finds that his witnesses do not support the case or because, for other reasons he thinks it expedient to withdraw from the prosecution of the case. Now, in a case of this kind, let us assume instituted upon complaint and more or less of a quasi-criminal character, take the case of defamation, insult, adultery and the like, in which the Public Prosecutor, though appointed for the district, is not likely to be appointed for the conduct of the prosecution of that case,—what is to be the procedure? The law, as proposed by the Government, would disentitle a pleader appointed by the complainant to prosecute the case and while in full possession of the facts to withdraw from the prosecution because forsooth there exists in the district, in the shadowy background invisible to the Court and unknown to the parties concerned, a Public Prosecutor. Let us assume for the sake of argument that the pleader appointed in that particular case wishes to conform to the provisions of law and goes to the Public Prosecutor generally appointed for the district. He goes to him and says: "My client had complained against the accused for an insult. I find I have no witnesses and therefore I wish to withdraw from the case." The Public Prosecutor will say: "I know nothing about the facts of your case. The law must take its course. The case must go on and must be disposed of upon its merits." Therefore, the Public Prosecutor retained in that case is deprived of the liberty of cutting short a trial and has to prosecute the case, whether he wishes it or not, till its termination, ending in the discharge or acquittal of the accused. I submit this would involve in many cases sheer waste of time on the part of the Magistrate, and I do not see how the interests of justice would be served by disqualifying a private Prosecutor appointed by the Magistrate to conduct a prosecution in a particular case. I quite see the position of the Government of India would be that where in a particular district a Public Prosecutor has been appointed, he is in sole charge of criminal litigation on behalf of the Crown. He is a man who takes a detached and independent view of all criminal cases entrusted to him and he is the best law adviser of the Crown and, as the right of withdrawal is incident to the ordinary functions of a Public Prosecutor, he and he alone must possess that power. Now, on this point, I invite the attention of the House to the provision contained in the Code of Criminal Procedure, section 4, sub-clause (t). Honourable Members will find that provision lays down:

"Public Prosecutor" means any person appointed under section 492 and includes any person acting under the directions of a Public Prosecutor."

It is perfectly clear, therefore, that the power of withdrawal was not intended to be conferred upon a Public Prosecutor alone. It was equally intended by the Statute to confer the power of withdrawal upon the person acting under the directions of a Public Prosecutor, and he is for the purpose of withdrawing from the case included in the general definition of a Public Prosecutor. Therefore the argument that the Public Prosecutor should be the sole public servant who should possess the power of withdrawing from criminal prosecution is certainly not the policy of the law as embodied in

the present Code of Criminal Procedure. But even assuming for the sake of argument that that were the policy of law, my amendment provides that the person who is to be appointed to conduct a prosecution with the power of withdrawal is to be appointed by the District Magistrate or by the Sub-Divisional Magistrate subject to his control, and that gives the legal representative of the Crown, the District Magistrate, ample jurisdiction and discretion to decide whether he will entrust the prosecution of a particular case to the complainant's pleader and thereby confer upon him the right of withdrawal. As soon as an application is made to the District Magistrate by the complainant's pleader or by the complainant that he wishes the case to be prosecuted through a particular law agent and that he should be appointed a Public Prosecutor or a Prosecutor with the power of withdrawal within the meaning of section 492, clause (2), the District Magistrate will open his book and see whether the case in which the application is made for his sanction to prosecute is of such a character as might be left to a Public Prosecutor, and if he finds that the State has a very remote interest, or no interest at all in the case, and that the offence is of a character in which the conflict is between two parties rather than between the State and a private person, he will allow the prosecution to be conducted by the complainant's pleader. If, on the other hand, the District Magistrate finds that the case is of a serious character and one the prosecution of which should not be entrusted to a private individual such as the complainant's pleader, he will withhold his sanction. I therefore submit that any argument that might be addressed to this House on behalf of Government that it would take away a salutary check which at present exists in allowing all prosecutions to be conducted by an accredited agent of the Crown will fall to the ground. I do not see, Sir, in what way the Government will be prejudiced by accepting my amendment. On the other hand, I wish to draw the attention of the Government to the very great benefit and economy of time which will ensue if they accept my amendment. I have already pointed out that the jurisdiction of the Public Prosecutor is now to be extended from Sessions to magisterial Courts. I have further pointed out that if there is a Public Prosecutor appointed for a particular District, not necessarily for the conduct of any particular case, that would be an impediment and an insuperable impediment, to the appointment of a Prosecutor under this section with the power of withdrawing from the case. I have further pointed out, Sir, that if such a person is appointed a Prosecutor, it must always be, as my amendment proposes, subject to the general control and sanction of the District Magistrate and I have further pointed out that in a very large number of cases, if the matter is left to the sole discretion and judgment of the Public Prosecutor, it would be left to the judgment of a person who has probably in many cases least knowledge of the facts of the case. I wish to point out further that in concentrating this power of withdrawal in all cases in a District in the Public Prosecutor, there would be a strong incentive on the part of a private litigant to employ the Public Prosecutor as his Counsel in the case. But that, surely, is not the object of Government. The object of Government is that all State prosecutions must be subject to State control. That object is perfectly intelligible to Honourable Members. It is intelligible to me and I am not combating their views on that subject. The further object the Government have in view that the Public Prosecutor, if he exists, or if he is appointed in any District, he and he alone must possess the power of withdrawal, is a matter upon which I have already addressed this House. I therefore submit that we shall gain nothing by allowing the Government

[Dr. H. S. Gour.]

amendment to be passed into law and we shall, I submit, greatly improve the Code if we make the provisions of section 492, sub-clause (2), a little more elastic to suit cases instituted upon private complaint, at the instance of a private complainant, in which the State is not directly and intimately concerned, and which is after all a matter of quarrel between two parties, the complainant and the accused. What objection can there be to the complainant or his pleader asking the District Magistrate, "Please allow my pleader to appear in this case and prosecute the case possessing the power of withdrawal from the case if he is unable to prove his case or if otherwise he should be so minded." These are matters, Sir, upon which I hope the Government will meet Members of this House half way. I have given notice of my amendment in one particular form but on maturer consideration I find that the addition of the words would satisfy the requirements of my amendment, that is, if after the words "where no Prosecutor has been appointed" "in any case" be added. That will completely satisfy me and serve the purpose I have in view. I have left copies of the amendment with the Secretary to the Assembly. (An Honourable Member: "How would the section read then?") The section would then read thus:

"The District Magistrate, or subject to the control of the District Magistrate, the sub-divisional Magistrate may, in the absence of the Public Prosecutor, or
12 NOON. where no Public Prosecutor has been appointed in any case, appoint any other person, not being an officer of Police below such rank as the Local Government may prescribe in this behalf, to be Public Prosecutor for the purpose of the case."

That ensures the fact that if the Public Prosecutor is appointed in any case he and he alone will conduct that prosecution, but if for any reason owing to the triviality of the offence or other character of the offence the Government do not wish to go to the expense of appointing a Public Prosecutor in any case, it should not debar the District Magistrate from giving power to any other pleader appearing on behalf of the complainant to conduct the prosecution. That, I submit, is all that I want. I think my request is reasonable and I ask the House to endorse it. With these words I move my amendment.

Mr. President: Does the Honourable Member move the amendment as printed in No. 342?

Dr. H. S. Gour: I move it, but I have suggested this alternative change in the form which I think will serve my purpose. I may point out that I am absolutely indifferent how the section is worded. I am only anxious that the object I have in view is brought out. Language is of no consequence to me and I am quite prepared to accept any draft that the Government suggest in conformity with my views.

Mr. President: Amendment moved:

"In clause 129 (2) after the words 'same sub-section' insert the following: 'after the word 'may' the following words shall be inserted, namely: 'appoint a pleader to conduct the prosecution in any case pending in a Court subject to their jurisdiction, and they may and'."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I think it would have been better for the House if Dr. Gour had made clear at the outset which was the amendment he intended to move. He spoke for something like 25 minutes and we all thought he was moving the amendment which appears on the paper. However, he has said he

is prepared to accept any wording that the Government may put into the Bill which will give him what he wants. I am suggesting to the House that the Bill as it stands gives him what he wants. There is no necessity for any amendment whatever. Dr. Gour's real motive seems to me to give a very wide extension to the category of compoundable offences. He said, where a case is a case between two parties, not a case between the State and a party, why should not a pleader, though he may not have been appointed a Public Prosecutor, be able to withdraw? The House spent some time—the Members of this House spent a great deal of time outside this Chamber—in examining the categories, the list of compoundable offences, and decided what offences should be compoundable and what offences should not and I think the House should be prepared to leave it at that. If there is to be a question of withdrawing from a prosecution in a case which is not, according to the decision of the House already arrived at, compoundable under the Code of Criminal Procedure, then the discretion should be in the hands of an impartial authority like the Public Prosecutor. Sir, I have some apprehension that Dr. Gour has not properly understood section 492 (2). First of all, under section 492 (1) the Government has the power to appoint a Public Prosecutor, and under sub-section (2) certain Magistrates have power to appoint a Public Prosecutor in cases where none has been appointed by the Government or any Public Prosecutor appointed by the Government is absent. I think all the lawyer Members of this House at all events know quite well that it is a most frequent thing for the District Magistrate to appoint a Public Prosecutor for the purposes of a particular case. One obvious reason for that is that one person cannot be in several places at the same time. The magisterial Courts in the district are numerous and possibly there is only one Public Prosecutor and he cannot attend to all the cases that are going on. Dr. Gour said, why should there be no power to withdraw a case, because somewhere in the shadowy background there exists a Public Prosecutor about whom the parties know nothing? That remark may have deceived the House. It is quite irrelevant to the subject we are discussing. The point is if the Public Prosecutor is in the shadowy background, a Public Prosecutor will have been appointed for the particular case by the Magistrate and that Public Prosecutor will not be in the background; he will be there conducting the case and he will have the opportunity to withdraw. If it is a case that is compoundable, it does not matter whether there is a Public Prosecutor there or not, or whether there is a person in Dr. Gour's words appointed to conduct the prosecution or not. The complainant is quite capable of compounding the case. I listened to Dr. Gour's remarks to try and ascertain whether he proposed to draw any distinction between "a Public Prosecutor" and "a person appointed to conduct the prosecution". It seems to me they are going to be exactly the same thing. It is not, according to his own words, a person appointed by the party to conduct the prosecution on his behalf. He intends this person to be appointed under the Code in the regular way by a Magistrate, and therefore this person will be a Public Prosecutor just as much as the Public Prosecutor appointed by the Government or by the District Magistrate. Dr. Gour has moved only amendment No. 342 on the paper but he directed his arguments to amendment No. 344 which follows and which is most certainly consequential. That is why I have referred very freely to the Public Prosecutor's powers to withdraw—the withdrawal power coming in section 494 of the Code. The fact is that any Public Prosecutor under the amendment which the Bill proposes in the Code, whether he is appointed by the Government or whether he is

[Sir Henry Moncrieff Smith.]

appointed by a Magistrate, will now have power to withdraw from a prosecution, and it seems to me quite unnecessary to make any further extension of the provisions with regard to the appointment of the Public Prosecutor or with regard to his power to withdraw.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, not only is this amendment unnecessary but I am afraid it may work an injustice to the complainant. Under the law as it stands, under section 495, Honourable Members will notice, the complainant who wants to conduct a prosecution may do so either personally or by a pleader. If this amendment of Dr. Gour's is accepted and if you leave it to the District Magistrate to appoint a pleader to conduct the prosecution, it may imply that without such an appointment by the District Magistrate the complainant may not be entitled to appoint a pleader to conduct the prosecution. There is that risk. Apart from that, I think it is quite unsafe to leave the withdrawal of a prosecution of an offence which is not compoundable in the hands of private parties. Our system ought to aim at all prosecutions for offences in this country to be in the hands of independent prosecutors, prosecutors employed by the Crown. My ideal is to have a Director General of Prosecutions in every province and, under him, Prosecutors, Public Prosecutors, for every district, who will act as independent legal officers bringing a judicial mind to bear upon the conduct of prosecutions in this country. Private prosecutors, we know, Sir, often act from motives of vengeance, motives of spite, and a pleader engaged by a complainant oftentimes partakes of the feelings of the complainant. A Public Prosecutor ought to be above such sentiments and feelings. He is not there to get convictions, as has often been pointed out by Courts; the Public Prosecutor is there to get justice done, and therefore, in non-compoundable cases we ought not to leave it to a private public prosecutor to say, 'I withdraw from the case': it ought to be left to the Public Prosecutor, and I therefore submit, Sir, that this amendment is unnecessary. The District Magistrate has now got the power to appoint persons to conduct a particular case. That, Sir, as has been pointed out, means to conduct a particular case as Public Prosecutor whether in the High Court and in the mufassil. There was never any difficulty felt, because there was a Public Prosecutor in the district who says you cannot appoint a Public Prosecutor to conduct a particular case. That difficulty was never felt,—I have been so appointed; I do not know where my Honourable friend gets the idea that it is only where the Public Prosecutor is not appointed or if the Public Prosecutor is absent from the district, then only a person can be appointed a Public Prosecutor for a case. In heavy batches of cases where riots take place, it is very common to appoint public prosecutors to conduct cases, although the Public Prosecutor of the district may be there and available. Therefore, there is nothing to prevent it, and I submit, Sir, that this amendment is unnecessary and likely to prove injurious to the complainant.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I think, Sir, the House will be delighted to have a house divided against itself; and a party divided against itself is perhaps a better spectacle than a house divided against itself. I am rather inclined to think that sufficient importance has not been attached to the idea which Dr. Gour has in his mind in this matter. A point which seems to have escaped the notice of

my Honourable friend, Mr. Rangachariar, and also of the Honourable Sir Henry Moncrieff Smith, is this. There may be cases in which the Public Prosecutor, even in a non-compoundable case, will not be in a position to conduct the prosecution; for example the Public Prosecutor may have attachments to one of the parties, and it may not be desirable that he should be in a position to conduct the prosecution. Under those circumstances, supposing a person is appointed to be a public prosecutor, should he not have the power to withdraw? Apparently a great deal has been made both by Sir Henry Moncrieff Smith and Mr. Rangachariar based upon the apprehensions which they express, namely, that it is not desirable that in non-compoundable cases private persons should have the right to compound. Sir, these two Members have been to a certain extent confusing the right to withdraw with the right to compound. The two are distinct rights, and I do not think they have placed before themselves the distinctive character of each of these rights. What Dr. Gour wants is this. Not only the District Magistrate and the Sub-Divisional Magistrate should have power to appoint a Public Prosecutor in cases where the Public Prosecutor is unable to be present, but in all cases where it is desirable that a new pleader, that a new public prosecutor, should be appointed for a particular case, the District Magistrate should have the power. He wants to enlarge the powers of the District and the Sub-Divisional Magistrate, and I doubt very much whether the language is quite apt for conveying that meaning. If his view finds favour with the Government, the amendment may be differently drafted, such language may be used as would effectuate the purpose. The intention is this. Not only in cases where according to section 492 (2) the Public Prosecutor is absent or where a Public Prosecutor is not able to be present, but also in cases where it is desirable to supersede him and appoint a person for a particular case, the power should be vested in the District Magistrate for the purpose; and his power should not be circumscribed by the two conditions. If that idea is kept in view, you may use whatever language you like, even though Dr. Gour may have used language which may not be quite appropriate for the purpose, but that purpose should be effectuated by amending section 492 (2) in the manner suggested by Dr. Gour.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, it seems to me, with all respect, that there is a certain amount of confusion between the law as it now is and the law as it will be if the Bill now under consideration by this House is enacted. In the law as it now stands, we have a definition of public prosecutor covering every person appointed under section 492. But under section 494 we have the power of withdrawal from a prosecution permitted only to what I may describe as the original public prosecutor appointed by Government.

Sir Henry Moncrieff Smith: No, No. 492 is being amended.

Colonel Sir Henry Stanyon: Yes, but I am speaking of the existing law. In the Bill we have the appointment of a Public Prosecutor extended to every case, from a mere insult to a murder—from a case which may terminate in an apology to a case which terminates on the gallows—and the Mover of the amendment seems to have overlooked what I may call the consequential amendment of section 494 which has provided for the very inconsistency which he thinks to exist. The power of withdrawal will not be reserved under the amended Act to the prosecutor appointed by the Government but to every public prosecutor as defined in section 4 and as appointed under section 492. That is how I read the amendment. If that view is

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correct, then it seems to me that my friend, Mr. Rangachariar, has correctly described this proposed amendment as unnecessary. I have read the Bill very carefully, and I therefore agree with the view put forward by Sir Henry Moncrieff Smith and Mr. Rangachariar that in the circumstances, assuming that the proposed amendment of section 494 made by the Bill is carried, the amendment now proposed is unnecessary.

Mr. President: The question is that that amendment* be made. The motion was negatived.

Mr. President: The question is that clause 129 stand part of the Bill. The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move the following amendment:

"In clause 130, sub-clause (i), after the word 'omitted' add the following: 'and after the words 'Public Prosecutor' the words 'or complainant in proceedings instituted on complaints' shall be inserted'."

Sir, this clause 130, sub-clause (1), refers to section 494 which authorises any public prosecutor to withdraw any case from any Court. The Honourable Dr. Gour, when he moved his amendment, wanted this power to be extended even to other persons, whether they be public prosecutors or not, whether or not the case was a cognizable one or whether or not the case was a compoundable one. The explanations that came from the Government Benches and the opponents of Dr. Gour went to show that any person could be appointed as a Public Prosecutor for any purpose, and the person who was appointed as a Public Prosecutor could also withdraw the case. But who is to appoint a Public Prosecutor? The Public Prosecutor is to be appointed either by the District Magistrate or, subject to the control of the District Magistrate, by the Sub-Divisional Magistrate. That means that in every case in which a person wants to withdraw the case he will have to approach the District Magistrate or the Sub-Divisional Magistrate to appoint him as a Public Prosecutor in that particular case and for that particular purpose, that is to withdraw the case. This involves an unnecessary burden on a complainant of approaching the District Magistrate for this purpose. In this very section 494, we also provide that even the Public Prosecutor cannot withdraw a case without the consent of the Court in which the case be pending. Therefore, when the consent of the Court has already been provided as necessary in this section, where is the necessity of asking the complainant to go to the Sub-Divisional Magistrate or the District Magistrate for a formal appointment of the complainant or his pleader as a Public Prosecutor for the purpose of withdrawing the case? Even the District Magistrate, were he so minded to appoint the complainant or his pleader as a Public Prosecutor to withdraw the case, would invariably consult the Magistrate in whose court the case be pending, to find out as to whether the case was of such an importance that permission to withdraw should not be given. Why should this further obstruction be put in the way of the complainant or his pleader to go to the Public Prosecutor? I think it would meet the ends of justice and is a

* "In clause 123 (2) after the words 'same sub-section', insert the following: 'after the word 'may' the following words shall be inserted, namely: 'appoint a pleader to conduct the prosecution in any case pending in a Court subject to their institution, and they may, and'."

sufficient safeguard that the Court concerned, that is the Court in which the case be pending, is required to give its consent for the withdrawal of the case to the complainant or to any other person. Sir, there may be many cases which are not cognizable, i.e., in which the police cannot arrest the accused without a warrant. In those cases in which the police cannot arrest an accused without a warrant or in those cases which are not compoundable, it should also be provided that the complainant or his pleader could withdraw with the consent of the Court. The Court could very well look after the interests of the State or the public. If the police thought that the case was of importance and in which the public was interested, the Court may not allow its withdrawal; but in every petty case, say, for instance, of insult, to approach the District Magistrate for the appointment of a Public Prosecutor or to send the record for the perusal of the Public Prosecutor to be appointed by the Government, would be a very tedious job and would much delay the trial of criminal cases. Therefore, I beg to move my amendment; but I shall be willing to accept any amendment of my amendment if any be suggested by the Government and if the Government Member accepts the principle, which I am afraid they do not, because Sir Henry Moncrieff Smith had said that the withdrawal of cases in non-compoundable cases should only be left in the hands of the Public Prosecutor. But from what I have said before, it would seem to be undesirable that in many petty cases this question of withdrawal be left in the hands of the Public Prosecutor or the District Magistrate.

With these words, Sir, I commend my amendment for the consideration of the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I submit to the House that the Assembly has twice very emphatically given its opinion on the subject raised by the Honourable Member. When he moved his amendment No. 226, he proposed that in all warrant cases instituted upon complaint, if the complainant was absent on the day fixed for hearing, then the Magistrate should be able to discharge the accused. Again, in his amendment No. 263, he suggested that all cases instituted upon complaint should be compoundable. In both those cases, Sir, I believe that the amendments secured the support of only one person in this House. The issue raised by the present amendment is exactly the same, and I would submit, therefore, that it is rather a waste of the time of the House to move it. Of course, as I pointed out on the first occasion, and as was accepted by the House, such a proposal really leaves the door open to blackmail and abuse of justice. The amendment would also be entirely in the wrong place, because this Chapter deals with Public Prosecutors and not with private complainants.

The motion was negatived.

Clause 180 was added to the Bill.

Mr. T. V. Seshagiri Ayyar: My amendment seeks to substitute for the proposed proviso to clause 181, the following:

"Provided further that nothing in this section shall prevent a Magistrate acting under section 107, sub-section (4) or section 117, sub-section (3) from imposing such conditions as to him seem advisable before releasing the accused on bail."

This relates to the question of bail. Hitherto, there was no provision like the one which the draftman on the present occasion has introduced. My object is that in regard to cases under section 107, clause (4), and section 117, sub-section (3), the Magistrate should have power to impose such conditions as would enable the accused person to be present whenever

[Rao Bahadur T. Rangachariar.]

Honourable friend proposes. My amendment was to give absolute power to give bail, which I dropped in favour of Mr. Seshagiri Ayyar's modest amendment, because a Magistrate taking a bail bond may impose also certain conditions suited to the case. Therefore I do not see how anybody suffers. It is not that we are anxious to shut a man up in jail whether he is a good man or a bad man. It is not an easy job to find sureties. Many an innocent person is kept in jail because he is not able to find sureties. In the case of a bail bond for appearance I am sure people will be more readily found to stand surety, but to get people to stand surety for good behaviour and for keeping the peace may be more difficult. Therefore there is a good deal of force in Mr. Seshagiri Ayyar's amendment, and my Honourable friend Mr. Tonkinson tried to confuse the issue by referring to an amendment of mine at a former stage which was altogether a different amendment from the present one. There I asked that the man may be released if he executes an *ad interim* bond. That was my amendment—an *ad interim* bond on the same terms and on the same conditions as would apply to a bond which he will have to execute, that is, the security bond itself. But Mr. Seshagiri Ayyar's idea is not a security bond, but a bail bond under section 496, namely, a bail bond for appearance. Therefore, Sir, I support the amendment.

Sir Henry Moncrieff Smith: Sir, just one word. Mr. Rangachariar has explained that the intention of Mr. Seshagiri Ayyar's amendment is to enable a Magistrate, instead of acting under section 117 (8) and taking an *interim* bond for good behaviour during the proceedings, to take bail for appearance with conditions imposed. I desire, Sir, to point out to the House that Mr. Seshagiri Ayyar's amendment will not achieve that. It merely lays down, Sir, that when a Magistrate acts under section 117 (8), that is to say, takes an *interim* bond from the accused, or gives the accused an opportunity of furnishing an *interim* bond for his good behaviour, the Magistrate will then in addition to the terms of the bond be able to impose further conditions. As Mr. Tonkinson pointed out, by adopting this amendment the House will be giving to the Magistrate an opportunity to impose all sorts of onerous conditions on the accused. All we want, Sir, is that the accused during the pendency of the proceedings should be of good behaviour; we do not want to empower the Magistrate to say in addition to that—as Mr. Tonkinson suggested—“You shall not leave your house; you shall stay in a particular place and you are to report yourself at the police station every day.” All these conditions will be possible under Mr. Seshagiri Ayyar's amendment and I think it is distinctly undesirable that that power should be put in the hands of a Magistrate.

Colonel Sir Henry Stanyon: Sir, I venture to oppose the amendment. It seems to me that the proviso entered in clause 131 of the Bill is as necessary for Legislative consistency as the amendment proposed by the Honourable Mover would be inconsistent. We have legislated already on sections 107 and 117 of the Criminal Procedure Code—preventive sections, the primary objects of which are to prevent breaches of the peace and to secure good behaviour. A person brought up under section 107 to keep the peace is not a person accused of any offence whatever; therefore, as Mr. Tonkinson has very clearly pointed out, he is not a person accused of a non-bailable offence, and he can claim to be released on bail as a matter of right the moment he is brought before the court, if the proviso now proposed by the Bill is not introduced. By sections 107 and 117, as

amended by us, we have given a discretion to the Magistrate to detain such a person until the preventive sanctions have been obtained. If the proviso proposed by the Bill to be added to section 496 is not enacted we shall immediately take that discretion away; that is inconsistent. A small illustration will perhaps make clear what the effect of the amendment would be. Having in mind the clear explanation of the difference between a bond to keep the peace and a bail bond, given by my friend, Mr. Rangachariar, A and B anxious to get at each other like two fighting cocks are brought up before a Magistrate who requires them to execute bonds to keep the peace. The Magistrate is of opinion from the evidence before him that, if these two persons are not detained until that bond is executed and they have been bound down as far as they can be bound down to peace by such a bond, a breach of the peace between them will take place. Now, if these people can claim (as they would be able to do under the amendment now proposed or as they would be able to do if the proviso sought to be introduced by the Bill is not introduced) to be released on bail as soon as they are brought up, what is likely to happen? They will gladly find bail for the sake of going and having their fight. Where then would come in the preventive provisions of section 107? A man who is desperate about committing a breach of the peace against any person or body of persons will give a bail bond for his appearance without any difficulty, and then he will go and commit his breach of the peace and then appear in answer to his bail bond. No bond will be broken; there will be no forfeiture, but the breach of the peace which the section was intended to prevent will have taken place. Therefore, for the sake of consistency, the proviso which is sought to be introduced by the Bill is absolutely necessary, and I oppose the amendment.

The amendment was negatived.

Clause 131 was added to the Bill.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I move this amendment* that stands in my name and for explanation make the following observations. The clause of which mine is an amendment is an amendment of section 497 of the Criminal Procedure Code. That provision relates to bail and as the law now stands under section 497 the Magistrate has got discretion to grant bail in non-bailable cases only where there appear reasonable grounds for believing that the accused is not guilty of the offence. Section 497 runs:

“When any person accused of any non-bailable offence is arrested or detained without warrant by the officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.”

Clause (i) of the Bill proposes to substitute words “an offence punishable with death or transportation for life” for the words “the offence of which he is accused.” Now in one way this clause is intended to liberalise the bail provisions as they now stand by not fettering the discretion of the Magistrate in granting bail as it was fettered before so that if there were grounds for believing that the accused was guilty of the offence the Magistrate had no discretion to grant bail, but now he has, except in cases

* In clause 132 (i), omit the words from “in sub-section (1)” to the word “substituted” and in their place substitute the following:

“In sub-section (1) the words beginning with the words ‘but he shall not be’ to the end of the sub-section shall be omitted.”

[Mr. Harchandrai Vishindas.]

where the offence is punishable with death or transportation for life. But if you look into the question a little deeper, this provision in another respect is rather illiberal and goes backwards from the present law. Because under the present law, unless the Magistrate is of opinion that there are reasonable grounds for believing that the man is guilty of an offence punishable with death or transportation for life, he can release him on bail even in cases of such offences, that is to say, if he thinks, or I may put it roughly although I may not be precisely accurate, if the Magistrate thinks that the case is a doubtful one or if he does not think that the accused is guilty of the offences punishable with death or transportation for life. Under the present law he has got the discretion of granting bail in such cases also, but this proviso takes away that right from him, because the section reads thus:

"When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears, or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused."

Rao Bahadur T. Rangachariar: That was so even before.

Mr. Harchandrai Vishindas: I stand corrected, and so far as this part of my speech is concerned, I think I was wrong. Further, I say that the discretion even as regards these offences should not be withdrawn from the Magistrate, because I understand that the conditions attaching to the refusal of bail in all civilized countries, at least in some civilized countries that I am aware of, are that provision should be made to see that the accused person does not run away or escape justice, but otherwise so long as he is under trial his liberty should be granted to him until he is convicted. For that reason I would like that the whole of this clause, as it has been provided, should be withdrawn so that in all cases whether this condition which is prescribed in the last clause of the sub-section exists or not, the Magistrate should have discretion to grant bail.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I have refrained consistently during this month from taking part in the debate over this Bill. I venture, however, this morning to intervene in this debate on the ground that the issue to-day seems to be somewhat important, and secondly on a much more slender ground, that at one time—I do recollect it—I was an unpaid Magistrate, and some years before that still I had my legal training at the University Examination.

Now, Sir, speaking of the merits of this amendment and the issue involved, it seems to me that the amendment which Government propose to make in the Criminal Procedure Code, and on which my friend, Mr. Harchandrai, has just now spoken, is not a desirable one. Section 497 (1) deals with non-bailable offences. The Magistrate under that section has the ordinary discretion to release an arrested person on bail, but that section proceeds to say that he shall not be released if there appear reasonable grounds for believing that he has been guilty of the offence with which he is charged. Government now come forward and say that they want to stiffen this section up. (A Voice: "No, no. It is just the other way about.") Government say that the accused shall not be released if the Magistrate has reasonable grounds to believe that he will be guilty of an offence punishable with death. That is the criterion which Government now

Sir Henry Moncrieff Smith: It is not the Government; it is the Joint Committee.

Mr. B. S. Kamat: Or rather the Joint Committee—the criterion which the Joint Committee seek to introduce is the nature of the punishment. Now we shall take an illustration. Supposing a man is charged under section 409 of the Indian Penal Code, which is a section which deals with breach of trust as a public servant or as a banker, or as a merchant or as an attorney or as a broker or as an agent. Now, technically speaking, that offence is a non-bailable offence and also the punishment provided for it is transportation for life. Both these conditions are satisfied, if I read the Indian Penal Code aright. Now in such a case what is the Magistrate to do? Take the case of a banker in Bombay who is charged, say, with breach of trust or an attorney with breach of trust about a document. Now if the Magistrate puts the strictest construction on this section, he will say the punishment in this case is transportation for life, and I am not going to release even the biggest banker on bail. Is that a correct criterion? The correct criterion should be not whether the punishment for that offence is transportation for life but whether the man will abscond. Now, I will take another section of the Indian Penal Code. Take section 477 which deals with tampering with a will or with the authority to adopt a son. Now supposing a man is charged before a Magistrate with these offences. Now these are non-bailable offences and these are also punishable with transportation for life as an extreme punishment. What is the Magistrate to do if he reads this amendment strictly according to the letter? He will have no other alternative but to refuse bail. Now, a man who is charged with these offences, really speaking, may deserve bail. The only criterion, therefore, which should be introduced is whether the man is likely to abscond and defeat the ends of justice. The wording as proposed by Government does not satisfy that criterion, and I therefore think that I should support this amendment.

Dr. H. S. Gour: Sir, the provisions relating to bail have been the subject-matter of controversy for a large number of years, and the fact that no less than 16 or 18 amendments find their place on the agenda paper shows the wide interest this section of the Criminal Procedure Code evoked in this House. There is no doubt, Sir, judging from the multiplicity of amendments that we are dissatisfied with the present draft, and judging from their multiplicity, there is no reason whatever, Sir, to doubt that we are not quite satisfied with our own drafts. But the fact remains that there is a strong consensus of opinion in this House that the whole of the provisions relating to bail require re-examination and over-hauling, and here, I submit, it is the duty of the Government and the Government draftsmen to meet the generally expressed wishes of this House and bring the provisions of section 497 in conformity with our wishes. Hon-

1 P.M. ourable Members will find that there are two pertinent provisions embodied in the Code of Criminal Procedure which deal with the subject of bail. So far as the High Courts and the Courts of Session are concerned, they possess an unlimited and unfettered power to release any person on bail. That is section 498. But, when we descend from the High Court and the Court of Sessions to the Magistracy, we are immediately confronted with the qualifications which surround section 497 of the Criminal Procedure Code. Now, Sir, the release of a person on bail is often demanded after his arrest and before his trial and sometimes during his trial but before his conviction. In other words, the provisions of section 497 are brought into

[Dr. H. S. Gour.]

requisition in a case which is then *sub-judice*. What does the existing provision, however, provide? It says: no Magistrate shall release a person on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. The Magistrate is to prejudge the case and he is to say to the accused: I have reasonable grounds for believing that you have been guilty of this offence; therefore, whatever may be the reasons which would move me to release you on bail, you cannot be released on bail. That is the sole criterion from which Magistrates in India regard the question of bail. Now, if we turn to the English law, we shall find a very different criterion there for releasing persons on bail, and, in inviting this House to adopt either the one or the other, I shall ask the House to remember what is the underlying principle for arresting a person and releasing him on bail. It requires no large legal training such as my Honourable friend, the last speaker, possesses, nor need one be an unpaid Magistrate to understand that. When a man is arrested, the sole and single purpose of his arrest is that he should not run away, and, when he is released on bail, the sole criterion for releasing him on bail and fixing the quantity of bail is that he should not run away. (Mr. N. M. Samarth: "Nor commit suicide.") Very few people do that; and even people under arrest sometimes commit suicide. That is, then, the sole criterion. Well, I submit, if the Magistrate is assured that the man is not likely to run away—(The Honourable Sir Malcolm Hailey: "How?")—because the quantum of bail, the amount of bail which he gives is the best security against his absconding, is there any reason why he should be detained in custody? That, I submit, is what my friend the Mover of this amendment wants. You shall not prejudge a case, you shall not decide, before you have heard the evidence, whether the accused should be released on bail or not. You place yourself in a position of grave embarrassment to yourself, and you cause unnecessary suspicion in the mind of the accused against the impartiality of the very tribunal before whom his trial is pending. The Magistrate says: "I cannot release you on bail because during the course of this trial I have to examine and see whether you are not guilty, or, at any rate, whether there are not reasonable grounds for believing that you are guilty." Well, the accused says: "Sir, you have prejudged my case. You have prejudged me. You may not release me on bail, but it is perfectly obvious to me that after those observations I cannot consider you to be as impartial as I should expect a judicial tribunal to be." That, I submit, is a wrong view. That, I submit, places the Magistrate in a position of great awkwardness. That, I submit, is a principle of law which is not only contrary to the English law but contrary to the very first principles upon which arrest is made and bail granted. Therefore, Sir, this House demands that you shall place a right principle before the Magistracy for the release of persons on bail. What is the object you have in view? It is that the offender should not escape from justice. Make sure of it and make that the sole criterion for arresting, for keeping under arrest, or for releasing a person on bail. That, I submit, is a salutary principle. I have already pointed out to the Honourable Members that in the case of the High Court and the Court of Sessions, this is the principle. In fact, as I have said in the earlier part of my speech, they have an unlimited and unfettered power of releasing any person at any time on bail. Why should not the same power be conferred upon a Magistrate who has studied the case, who has probably recorded part of the evidence

and before whom the facts are laid by both sides with greater fullness than they can be in the miscellaneous papers filed before the Sessions Court or the High Court. I submit, Sir, that the Government should meet us halfway at any rate upon this point. The provisions of law which they ask the House to concur in are unacceptable to us. They must revise their draft and, if they can show that the object of the Legislature, that the object of the Government would be sufficiently fulfilled if the accused does not escape justice, they shall have combined commonsense with justice.

Now, Sir, one more point and I have done. Honourable Members will find that the Government draft, that is to say, the draft in the Bill is a great improvement on the existing law. It proposes to remedy the rigour of the present Code of Criminal Procedure by allowing the release of persons in circumstances mentioned in the proviso, even in cases where the offence is punishable with death or transportation for life. That is a wholesome change. We welcome it, but, at the same time, I would ask the Government in this connection to see that by the mere enumeration of circumstances which they have provided in their proviso now sought to be added to section 497, they have left out a large number of cases *ejusdem generis* which they could not compendiously enumerate and which would perhaps more conveniently have been stated in a more general principle. If these two conditions are fulfilled, there will be no necessity to press the numerous amendments of which notice has been given and I hope, Sir, that the Government will see their way to compromising with the various authors of the amendments upon the lines I have indicated.

Mr. H. Tonkinson: Sir, my Honourable friend, Dr. Gour, has informed us of what must be clear to anyone from a perusal of this page of amendments that Honourable Members opposite have not been able to suggest any satisfactory criterion to propose in substitution for the provisions in the Bill.

The amendment now before us proposes that in all non-bailable cases there shall be a discretion with the Magistrate to allow the person to be released on bail. I do not know whether my Honourable friend would propose later on the omission of the proviso, for the proviso would be quite meaningless if he makes the first amendment. Well, now, my Honourable friends, Mr. Kamat and Dr. Gour, have both suggested that the reason why we take bail is to secure the attendance of the accused. I accept that suggestion entirely. I accept the dictum of Lord Russell of Killowen in the case of *Regina versus Rose* that "it cannot be too strongly urged upon Magistrates that bail is not intended to be punitive, but merely to secure the attendance of the prisoner at the trial, or to come up for judgment." I accept that as the proper test to be applied in these cases. But, Sir, how are you going to apply that test? The real question is, what are the considerations to be used in applying the test? And here, Sir, I cannot accept at all the suggestion of my Honourable friend, Dr. Gour, that the proposals in the Bill depart from the principles of the English law on the subject. The various rulings as to how the test laid down by Lord Chief Justice Russell of Killowen should be applied have been summarised as follows: The first test should be the nature of the accusation. That, Sir, is a very similar provision to the one which we have in the Bill. The next test is—the nature of the evidence in support of the accusation. That, Sir, is an exactly corresponding provision to the words "reasonable grounds for believing" which my Honourable friend, Dr. Gour, takes so much exception.

[Mr. H. Tonkinson.]

to. The next consideration is—the severity of the punishment which conviction will entail. It is quite clear, Sir, that if you have a case in which the punishment which will be inflicted is very severe, then it does not matter what bail you take; the man will try and get away.

Rao Bahadur T. Rangachariar: What is the next test? Is there no other test?

Mr. H. Tonkinson: The fourth test given in this leading English law book is whether the sureties are independent or indemnified by the accused. We have not got any provision of that kind. These are the only tests given and I submit, Sir, that they are exactly on the same lines as section 497 will be if amended as in the Bill. Let us see what the provisions of section 497 will be. As my Honourable friend Dr. Gour has pointed out, they are subject to section 498 under which a Court of Session or the High Court may release on bail in any case. Now, the Magistrate can in all non-bailable cases under this proposal release any person who is under the age of 16 years. He may in all non-bailable cases release any woman. He may in all non-bailable cases release any sick or infirm person. The only restriction is in the case of a man over the age of 16 years, who is not sick or infirm. If there are reasonable grounds for believing that that man is guilty—of what offence? Of an offence punishable with death or transportation for life—then a Magistrate will not be able to release him on bail. I submit, it may be, and I agree myself, that the existing law in section 497 was unduly restrictive. But is it possible to say that in the conditions in India, these proposals in the Bill are unduly restrictive? Do we not, Sir, want to restrict our Magistrates to this extent? Even the best of our Magistrates make mistakes, and, as I have said, if there is a case which does not come within these provisions, it is always open to the accused to move a Court of Session or a High Court. I submit, Sir, that the proposals in the Bill should be accepted and that the amendment moved by my Honourable friend, Mr. Harchandrai Vishindas, should be rejected.

Colonel Sir Henry Stanyon: Sir, in the choice of several evils I venture to support this amendment. There is no question about it, in my humble opinion, that section 497, as at present law, is thoroughly bad. In sub-section (1) it invites the Magistrate to pre-judge against the defence. In sub-section (2) it invites the Magistrate to pre-judge against the prosecution. Sub-section (1) says: "he shall not be released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused," and sub-section (2) says that he shall be released "if there are not reasonable grounds for believing that the accused has committed the offence." That is a wrong criterion in principle, and it has been disastrous in practice. Magistrates, who, in general, are people desirous of doing honest and straightforward justice, have refrained from forming these prejudices in regard to cases before them. The result has been that in non-bailable cases the granting of bail has been steadily refused, and many persons have been detained whom justice required to be out on bail for the purpose of working up their defence, or because of their status and so on. Some Members of this House—and I include myself among them—have been criticised in the public press as unduly tender towards the criminal. That criticism seemed to me, when I read it in the public press, to be based on a very serious fallacy—a confusion of a prisoner under trial with a criminal. When you legislate a Penal Code,

you provide punishment for a criminal. When you legislate a Criminal Procedure Code, you make law for the fair trial of a person who is presumably innocent until he is proved to be guilty. It has been admitted, in his very fair and impartial remarks on the subject, by my Honourable friend, Mr. Tonkinson, that the ground of arrest and detention of accused persons is simply and absolutely to secure that they shall duly appear to stand their trial. There is no other reason. The law should not ask the Court, until the whole of the evidence is before it, to form any opinion whatsoever on the merits. Hear both sides and then decide whether there are reasonable grounds for believing that the accused is guilty or not guilty. To the four considerations which have been put forward by Mr. Tonkinson in connection with the dictum of Lord Russell of Killowen I venture to mention a fifth, and that is, the status and circumstances of the person accused. A rich banker may be accused of embezzling Rs. 200. He may have large properties, his family, his home and everything that he would lose by absconding, and a good defence if he were allowed out on bail so that he could attend to it. But that is a case punishable with transportation for life and even under the amendment proposed in the Bill before us bail would be refused to such a man. That surely is one instance where without any technicality one's common sense perceives an injustice in the mode of procedure. What Judge or Magistrate or lawyer has not heard the zealous police officer, in perfect honesty and with the best of intentions say "If that accused is let out on bail I cannot prove my case." Is that a consideration which any Magistrate ought to be allowed to hear? Yet that is the kind of thing that is put before him under the present law upon applications made for bail. It is for these reasons that I would prefer the risk of leaving an unfettered discretion to the Magistrate to deal with each particular case upon all its merits—upon all the considerations which have been mentioned—what is the nature of the offence? What sort of evidence is disclosed? Has the accused confessed? What sort of man is he? Is he likely to run away? We should not specify these things or put them in a definition. They should remain available at the discretion of the Magistrate. We must instruct the Magistrate, and then let him exercise his discretion. Let that discretion be controlled by higher authority. I admit in matters of release on bail the higher authority may come rather late. But there are these difficulties in every direction and we have to meet them. We cannot aim at perfection but must do the best we can; and I think it is better to leave an absolute discretion to the Magistrate—a properly trained Magistrate—than to try and limit his discretion with such limitations as exist in the present law and as will continue to exist if we require him under the amendment proposed in the Bill to pre-judge cases—the most serious cases of all, cases punishable with death or transportation for life. On these grounds I support the amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I rise to oppose this amendment. The present position is that in all non-bailable cases the accused person may be admitted to bail unless there are grounds for believing that he has been guilty of the offence of which he is accused. The amendment proposed in the Bill is to confine the refusal of bail to cases where the person is accused of an offence punishable with death or with transportation for life. The proposed provision is therefore a distinct improvement upon the existing position, as the Honourable Member of the amendment has himself admitted. Also, Sir, there is a very wholesome provision to the effect that if the Magistrate at any stage

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of the proceeding or trial does not think that the accused has committed the offence, he can admit him to bail. The object of keeping an accused person in custody is not only to prevent him from running away but also to prevent him from committing mischief outside custody, such as tampering with the evidence available against him, which, Sir, he would be tempted to do in such cases of serious offences. For these reasons I hope this amendment will be turned down.

Rao Bahadur T. Rangachariar: I move that the question be now put.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I have listened with very great respect to the remarks by my Honourable friend, Sir Henry Stanyon, on the subject of this amendment, but I feel constrained, in spite of his long experience, to differ from him. In the first place, I think he argued most of his case on the wording of the old section. He asked the House to remember that this section had been used in such a way that bail was refused in many cases in which it might perfectly, safely and legitimately have been given, on account of the way in which that section was worded. The object of the amendment which has been put forward by the Joint Committee is to remove that very objection from the section. It is admitted that the section was previously too restricted, namely, where the Magistrate was of opinion or had reasonable grounds for supposing that the accused had committed any non-bailable offence, bail should not be granted. But we are now confronted with a very different position. The number of offences in which bail cannot be granted under those provisions has now been very greatly reduced, and the question now before the House is whether an absolute discretion should be given to Magistrates in all cases or not. Well, with all respect to the opinion of my Honourable friend, Mr. Tonkinson, I would suggest in this country there must be some other considerations besides the mere appearance of the accused. (*Rao Bahadur T. Rangachariar*: "Why in this country?") In this country, because we are at present concerned with this country. I would ask my Honourable friend, Mr. Kamat, for example, whether he thinks it is really safe that when a murder has been committed and when a man has been arrested actually in the commission of the offence and is brought before the Court, a discretion should be given to the Magistrate even in such a case to allow the man to be released on bail. There are many cases in which it is obviously most dangerous that it should be possible for an accused in those circumstances to be let free; and, further, Honourable Members who support this amendment have persistently ignored the fact referred to by the Honourable Mr. Tonkinson that they, all of them, all accused in such cases, have an immediate remedy under section 498. They do not even require to go to the High Court; an immediate reference can be made to the Court of Session, and I submit, Sir, that that is a quite sufficient remedy in all cases of so grave a nature as are referred to in the sub-section as amended. Then, Sir, there is another argument which has been used both by Dr. Gour and Sir John Stanyon that the Magistrate has to prejudge the case because he is not to grant bail when there appear reasonable grounds for believing that the accused has been guilty of the offence of which he has been accused. Now, I submit, Sir, that it is not fair to say that this means that the Magistrate must prejudge the case. It merely means that on the evidence that is brought before him, he must see whether there is a *prima facie* ground for supposing that it is reasonable that this man is possibly guilty of this offence. That is quite a different matter from an actual judgment on the case.

Dr. H. S. Gour: It is a belief.

Mr. P. B. Haigh: I did not catch the observation.

Dr. H. S. Gour: There are reasonable grounds for believing.

Mr. P. B. Haigh: Exactly, it is a mere belief. He has not to come to a decision on the point, he has merely got to believe that there are reasonable grounds,—that is to say that the grounds that are put forward when the accused is brought there are such that he may reasonably believe that the accused has committed the offence; it commits him to nothing, and I do not believe that in actual practice Magistrates have been hampered by the provisions of this section. Dr. Gour has asked the Government to meet the Honourable Members on the other side half-way, and I submit this is exactly what this clause as now amended by the Bill does: had the clause been omitted as is now proposed by the other side, they would not have gone half-way but the whole way: Government have accepted the recommendations made by the Select Committee that the old provisions are too restrictive, and they are prepared to remove them, except in the case of specified offences of a very grave nature, and I submit that you could not possibly have a fairer compromise than that, and that in going so far, the Government may be said to have gone exactly half-way. Sir, I oppose this amendment.

Sir Henry Moncrieff Smith: Sir, I do not agree with my Honourable friend, Mr. Haigh, that Government has gone half-way. Government has gone very nearly the whole way. I think I should make the position of Government clear to the House; and it is this—they view this matter with the very gravest concern. Those Members of the Joint Committee who attended its meetings—and Mr. Harchandrai was not one of those—will know how very seriously this matter was argued, and how the Government's point of view was put forward, and how the Honourable the Home Member of that time attempted to persuade the Joint Committee not to go as far as they did,—and how he tried to persuade them to introduce some sort of safeguard in this matter. I only want to make it quite clear to the House, Sir, that Government does view this particular question of bail in non-bailable cases with the gravest concern. I have a few remarks to add to what Mr. Haigh has said on the subject of pre-judging. Now, Sir, in the first place, the words 'having reasonable grounds for believing,' I would ask the House to remember, will only apply to a very limited class of cases; they will not apply to cases punishable with transportation or death, and, therefore, the Magistrate himself, Sir, will ordinarily not be able to try them and will not have to pre-judge the cases at all, any more than he has to pre-judge the case when he has to make up his mind whether he is going to commit the accused or not. He has to do exactly the same thing in this case, as Mr. Haigh has said,—he has to decide whether there is a *prima facie* case against the accused or not; and if the Magistrate thinks that there is a *prima facie* case against the accused, he commits the accused for trial. But he will not be pre-judging the case even to that extent if he says that this is not a case in which bail should be allowed. Now, Sir, we heard a good deal about the one criterion that should be applied in this case,—and that is, whether the accused is likely to abscond or not. We heard it suggested that there are non-bailable offences which are committed by persons hitherto most respectable, and those persons will not be likely to run away, and, therefore, there is no need whatever

[Sir Henry Moncrieff Smith.]

in these cases to impose any restriction on the discretion of the Courts. Sir, we have got to examine this matter from both sides. The House is proposing to enable a stupid Magistrate—and there are stupid Magistrates—a weak Magistrate—and there are weak Magistrates—to let out on bail at once a murderer caught red-handed, a dacoit who has been terrorising his district for five years, who has been caught with the greatest of difficulty; you take him before a weak Magistrate, and you get bail at once,—and the reign of terror proceeds again for another five years before he is caught. There is one very important point which has not been mentioned in this debate at all. The whole question has been argued from the point of view of the Courts. Now if the House will look at section 497, they will find that it deals not only with the question of bail before the Courts but it deals with the question of bail by police officers too, and, here, Sir, is the House seriously proposing to give a police officer full powers to release on bail a person accused of the most serious offence, without giving him any discretion or any guidance as to the way he should exercise those powers? Sir, is it not a very dangerous thing to do? Police officers, we have been told over and over again in the course of this debate, are not always honest, are corrupt: and when it is a question of a very rich man in custody—I understand it is the very rich man that the House is feeling so seriously about—of the very rich man whom the House wants to be released on bail because he can afford to pay and because he has been hitherto respectable, will that man not be able to make it worth the while of the police officer to let him go, and will you ever again catch that man? There is no question about it, that he will never be caught again. The criterion of the likelihood of the accused absconding is a very sound criterion, but if you take the clause as is proposed by the Bill, we are not trenching upon that criterion at all. You take the most serious offences, those punishable with transportation and those punishable with death. Can any Magistrate, any Court, say to itself that the accused person brought before him, who, it has reasonable grounds to believe, has rendered himself liable to the punishment of transportation for life or liable to the punishment of death, is not likely to take an opportunity of absconding? One Honourable Member has suggested that once you get bail,—that is all you want, I think it was Dr. Gour,—what more security do you want than bail that he will appear? Sir, will a murderer, a dacoit, be bound by any tender feelings for his friend who has stood surety for him? Will he, Sir, say to himself: 'my friend stood by me, he has got me out on bail, I must not let him down, I will surrender to the Court, and I will be hanged'? Sir, I do not think a criminal in this country, or the innocent person on his trial in this country as Sir Henry Stanyon has said, is likely to be affected by any considerations of that sort.

Sir Montagu Webb (Bombay: European): I move that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

"In clause 132 (i), omit the words from 'in sub-section (1)' to the word 'substituted' and in their place substitute the following:

"in sub-section (1) the words beginning with the words 'but he shall not be' to the end of the sub-section shall be omitted."

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—34.

Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Das, Babu B. S.
Dass, Pandit R. K.
Faizaz Khan, Mr. M.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.

Jamnadas Dwarkadas, Mr.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Venkatapattiraju, Mr. B.
Vishindas, Mr. H.

NOES—41.

Abdul Rahim Khan, Mr.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bijlikhan, Sardar G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. T. P.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Subrahmanayam, Mr. G. S.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.

The motion was negatived.

The Assembly then adjourned for Lunch till Ten Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Ten Minutes to Three of the Clock. Mr. President was in the Chair.

Rao Bahadur T. Rangachariar: Sir, we have discussed this question at considerable length, and I need only say a few words in commending my amendment No. 352, which as Honourable Members will see from page 46 is as follows:

"In clause 132 (i), after the words 'for life' insert the following: 'and that the accused if released on bail would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial'."

Honourable Members if they read the section will see how it has been amended by the Joint Committee. We have to acknowledge that considerable improvement has been made in the existing provision relating to bails. We acknowledge it with thanks. But at the same time the existing defects in the law, as forcibly pointed out by my Honourable friend, Sir Henry Stanyon, still remain in the most serious of cases,

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 namely, offences punishable with death or transportation for life. If Honourable Members will just glance through the Schedule attached to the Code of Criminal Procedure they will find all sorts of offences which are punished with transportation for life—I counted about 47 this morning and I do not know if there are not more, I have not made an exhaustive count—ranging from criminal breach of trust to offences against the State. Therefore, Sir, it is refreshing to hear from the Treasury Benches an expression of the sentiments of which we have been gravely accused by the Anglo-Indian Press, that the Indian politicians betray such a lack of trust in the police and the magistracy that they do not realise their sense of responsibility, that they hold them up to ridicule and that the full measure of reforms for which they are yearning cannot come because of this over-distrust of the magistracy and the police. I am glad to have our sentiments echoed from the Treasury Benches. Sir, this morning we heard there are stupid magistrates, there are weak magistrates. Which is the more important? Is the accused to suffer at the hands of stupid magistrates or the prosecution to suffer? Is the accused to suffer at the hands of weak magistrates or the prosecution to suffer? That is our complaint. There are weak magistrates, and they succumb to the influences to the subtle influences, to the unseen influences at work, in order to get convictions. To borrow the phrase of my Honourable friend, Mr. Haigh, this is an unfortunate country. Everything must be different in this unfortunate country. I do not know why. I interjected a remark “why in this country?” My Honourable friend said “We live in this country.” He had no other reason to give. As Sir Henry Stanyon pointed out, people should be presumed to be innocent until they are actually convicted by the Judge, Magistrate or jury as the case may be. That is a wholesome principle known to every system of civilised jurisprudence. If the Government will furnish the figures which they have of persons lodged in jail or in custody pending trial and afterwards eventually acquitted either by the trying judge or by the court of appeal, Government will, I daresay, repent, will have serious cause to repent, at the rigour of the existing provisions regarding bail. Even in England more than 50 per cent. of persons who are detained in custody pending trial because they are not able to find bail are eventually acquitted after detention in jail for three or four months pending the sessions trial. If that is so in England, much more so in this country. I wish the Government would give us the figures of people who are kept in custody pending trial and are eventually acquitted. Can they give us the figures for last year? Take any province. The figures of people who are eventually acquitted after being accused of crimes and yet kept in jail pending the trial will reveal an appalling number of persons, innocent persons kept in custody. Sir, they are deprived of their earnings in the meanwhile. Do we compensate these persons who are kept in jail? Do we provide for the maintenance of the families of those persons who are kept in jail? Therefore it seems somewhat odd that people should stand up here to defend the present system by which the discretion of the magistrate is sought to be tied down. Sir, we lost that amendment about leaving it to the good sense of the magistrate to see which case he should let on bail and which case he should not. Sir Henry Moncrieff Smith mentioned, I think, the case of a person caught red-handed committing a murder with the bloody instrument in his hand and asked “Is he to be let out on bail?” I say “No. Your magistrate will not let him out on bail, if he is a magistrate whom you have properly appointed.” But if you appoint weak magistrates, stupid magistrates, that

is no reason why the law should be stupid, because your magistrates are stupid. Therefore that is no answer at all to a case of this sort. The provision as it stands says in effect, “Do not release him on bail if you have reasonable grounds for believing that he is guilty of an offence punishable with death or transportation for life.” It is true that in such cases the magistrate does not actually convict; Sir Henry Moncrieff Smith is quite right in saying that such cases will probably go to the sessions court; not necessarily however; first class magistrates may deal with such cases and convict them of offences—although they may be charged with other offences

—within their jurisdiction. But leaving it there, even as a committing Magistrate he has to come to a judicial conclusion as to whether a *prima facie* case is made out or not before he commits the accused to stand his trial in the Sessions Court. You are now forcing his hands by the section as it stands to come to a conclusion before he has seen the witnesses,—because Honourable Members will notice this comes just at the time either when he is brought in custody or when he appears in Court—you are forcing his hands, even before a single witness is put in the witness box, to come to a conclusion. He simply sees the police diary or the police version or the prosecution version of the case, and he is asked to come to a conclusion beforehand that he has reasonable grounds for believing the man to be guilty. Sir, that is asking him too much. It is asking him to do injustice to the accused beforehand. Therefore it is not a good condition to impose; any way it is there.

Now you want to give one direction to the Magistrate under the clause as it stands. I want to impose another direction, an additional direction, namely, that not only should he have grounds for believing that he is guilty of an offence punishable with death or transportation but he should also be satisfied that if let on bail the accused is likely to evade justice. I won't say that is the only consideration, but that should be the main consideration as the Honourable Mr. Tonkinson very fairly admitted. The primary ground for consideration at this stage should be whether this man is likely to evade justice.

My Honourable friend, Mr. Samarth, interposed with a remark ‘what about suicides?’ I provide for it. If the Magistrate is satisfied on account of the nature of the case, or on account of the temperament of the individual or on account of the gravity of the sentence which may be imposed upon him that a particular accused is likely to commit suicide, then he evades justice, and my amendment safeguards that doubt, and I hope my honourable friend Mr. Samarth will have no more doubt in his mind in supporting my amendment. Sir, that ought to be the test, the only test which civilized countries should impose. Let us not be guided away by the vague expressions about this unfortunate country. Unfortunately my Anglo-Indian friends present here think that this country is peculiar—I hope not all of them will think so. We have got a very good exception in my Honourable friend Sir Henry Stanyon, and I hope others will join his rank. Sir, as the Government feel strongly in this matter, we also feel strongly. Let us not be guided away or led away by those who say ‘Oh, the Government feel very strongly in this matter’. People attach the greatest importance that their liberties should not be deprived before they are convicted. At the slightest provocation Magistrates have shut up persons in custody. Poor fellows are unable to defend themselves. All sorts of conditions are imposed. They have to interview their pleader in the presence of a jailor. What instructions can the accused give under such conditions? Therefore, Sir, it is not right. We should

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give a fair trial and all opportunities to the accused to defend himself. He has got money, probably he is the only member, the only adult male member of the family who can raise money, while you shut him up in gaol; and what is he to do? Are you giving him really a fair trial by shutting him up like that? Therefore I say here 'A Magistrate shall not release an accused if he is satisfied that he is likely to evade justice and that there are reasonable grounds for believing him to be guilty'. Therefore, I don't allow full discretion to the Magistrate. I say if you control it do so with proper safeguards. Do not make it compulsory on him to refuse bail simply because he thinks there are reasonable grounds for believing the accused to be guilty. But let there be an additional safeguard, namely, only if he is further satisfied that the accused is likely to evade justice then alone he should refuse. Sir, I move my amendment.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, in the discussion of this matter, I am afraid certain considerations which are not strictly relevant have been introduced. First, I should like to deal with that expression "reasonable grounds for believing that he has been guilty of offence". Now you may make too much of it, but it has never been understood to mean that a Magistrate has come to the conclusion that the man is guilty. The significance of that expression must be considered when taken with the Court with which we are dealing with in this clause. It is the Court of the Magistrate, not the Court of the Judge who is going to try the offender. That distinction should at once appeal to those who are engaged in the administration of law. That is, the man who is inquiring into the case punishable with death or transportation for life is not the authority who is going to decide as to the guilt of the offender. He only collects the evidence, puts it together and then sends up the evidence and the accused to a higher Court for trial, if he feels that the case ought to be inquired into by a higher Court and not thrown out at once. So, when you take that clause with reference to the authority that is going to apply it, then I think all the argument that the Court is going to prejudge the case falls to the ground. How is it to prejudge? What materials has it to come to a conclusion? I think, with all deference, that difficulty must vanish. Because, after all, the Magistrates are human just as we are. They have got certain reports and depositions. They must in a sense come to some conclusion. If it is not an extreme case, like the one put by Sir Henry Moncrieff Smith of a man caught red-handed, but if there is plenty of evidence that the man has committed murder, no Magistrate, whatever the form of law may be, can shut his eyes or shut his mind and say that the man is innocent. Why, even Judges who try cases, when they start on a case, before going through the evidence, form some kind of first impressions. But their intellectual training, their culture makes them separate the two, separate their first impressions from the final conclusion which they are bound to come to after hearing the evidence, and we must assume in this discussion that the men have got some intellectual calibre, some training in sifting evidence and dealing with cases. If we look at it in that light, I think much of the argument that has been levelled at that clause and the psychological difficulties that that clause would introduce will disappear.

Now Sir, the clause which my friend, Mr. Rangachariar wants to introduce is a clause which will work considerable hardship on the accused themselves. Now, I will tell you. Pause for a moment and consider how a Magistrate is to decide whether the man will escape and avoid justice.

It depends on the temperament of the accused. A very sensitive man, a man who feels the disgrace of a possible conviction and has worked himself to a desperate state of mind, possibly may run away and may go and drown himself or poison himself. Therefore, what criterion do you provide for a Magistrate to find out whether the accused person is a man who will escape (and therefore he will not give him bail) or he is a man who will not escape (and therefore he will give him bail). Is it easy for any Magistrate to come to a conclusion on that clause? Probably this clause will work hardship and I will presently show how it will work hardship. Suppose there is not a very wealthy man but an ordinarily wealthy man. The Magistrate will say, "If I leave this man he would recompense or recuperate the men who have stood as sureties and will run away to some other territory and abscond. Therefore he must be kept in jail." The consideration which will weigh with Magistrates or Courts in letting a man on bail is that he is a respectable man, a man of property and he will not run away. But if you put this clause in the Statute, if, as has been said oftentimes, you crystallise what is a ground of discretion by a clause in the Statute, you run the danger of people who are now getting bail being refused bail, because the Magistrate might say, "He is a respectable man, honourably connected, having respectable relations and leading a respectable life. Probably the disgrace that will follow as a result of the trial might drive him to desperation. Therefore I will keep him in jail." He might say that. While you are getting hold of one extreme, you ought also to consider the other extreme to which this clause will lead. Therefore, this clause is a dangerous clause to tack on to the section, I think as far as Sessions Courts and the High Courts are concerned, barring individual idiosyncrasies, no Legislature can correct them. These Courts generally are inclined to let people on bail on reading the depositions and on seeing the facts before them. As to Magistrates, that is a different business. One thing which I have frequently noticed in the discussion of the various provisions of the Code is not the defect in the law, not the defect in the terms of the law or the enunciation of the law, but in the actual working of the law in the lower courts, and for that, all I can say is that the executive governments of the various provinces are responsible. There is a habit—I mention that in order to make the Assembly understand how it is that such a dead set is made against the Criminal Procedure Code—there is a habit in every Local Government to issue circulars behind the back of the High Courts, circulars which have nothing to do with the recorded decisions and reported decisions of courts. Every Local Government, the District Magistrate, issues circulars saying "You ought to be careful not to let people indiscriminately on bail". I mean some circulars are issued in the form of instructions to subordinate Magistrates who undoubtedly depend for their advancement on the head of the District, circumscribing the discretion vested in them by the law. It is that that is at the root of all the criticism which we have heard here. It is not against the authors of the present Code or the old Code which has been transmitted to us these sixty or seventy years by eminent jurists and lawyers. There is nothing wrong in the language of the Code. When we tried to tack on words to the Code, I sat down in great sorrow at the language which has stood the test of years and years being mangled here, and probably the consequences may be dire in the future interpretation of this section. But the cause of all the trouble which you have been hearing, Sir, is that the executive governments in the various provinces, ignoring the decisions or the interpretations of the High Courts of the actual provisions of the Code, have been issuing circulars ignoring the provisions of the Code and

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 enjoining upon subordinate Magistrates not to exercise a free discretion in the administration of Justice. It is those circulars that have been at the bottom of all these criticisms. I say we here cannot prevent the issuing of the circulars there. It should be a matter for the provinces, for the Provincial Councils to take note of such circulars, bring them up before the local Legislative Councils and see that they are not issued. If you go and mangle the law and add clause after clause to sections which are the result of the labours of very eminent lawyers, jurists and administrators, I am very much afraid that the result will not be what we all heartily desire. The clause, as it stands, gives sufficient discretion for letting off an accused on bail, and if this amendment be introduced, it will cause great trouble. This question of escape is a dictum of the Judges and that dictum is followed in the Higher Courts, but in the Magistrates' Courts it is not followed. I do not see how you can expect a Magistrate to follow that dictum and ask him to follow these dicta and to exercise his discretion this way or that way frequently when the accused is under trial. Why should we assume that in every case the accused person before trial is an innocent man. It is all judicially speaking quite right, but why in the discussion of a provision in the Legislature do you start with the ground that the case is false, that an innocent man has been falsely charged? Is that not an extreme way of looking at the thing?

The case is under inquiry, and so long as it is under inquiry,—it may take a few weeks, and in some difficult cases it may be 2 or 3 months—there must be hardship. That hardship you cannot avoid by any number of clauses in the statute. You cannot prevent one man prosecuting another man, you cannot prevent a policeman making a false charge. You can only await the result of the trial and take such remedies as the law provides. But if you go and mangle these provisions here, I do not think you will thereby be helping a large class of men who are now treated fairly by the Courts. Take the extreme limit of transportation for life. I do not think for a moment that a man who is accused with an offence punishable with death is going to be asked to be let off on bail, but even in such cases after the evidence is concluded and recorded, the Courts have let the men off on bail pending trial. I know such cases from my own experience. Therefore, I do not think that the weakening of this clause will do any good. Therefore I oppose the amendment of my Honourable friend, Mr. Rangachariar.

Mr. H. E. Holme (United Provinces: Nominated official): Sir, with due respect it seems to me that the proposed amendment must be either useless or mischievous, for either the Magistrate will decide on general principles that there is a danger of the accused absconding and evading justice in which case the words will be unnecessary, or else he will consider it his duty not to refuse to release the accused on bail unless and until he has satisfied himself that it is positively proved that the accused is likely to abscond and to hold that if in any case that cannot be said, the accused must be released on bail. As regards the argument that it is necessary for an accused to be at liberty during the trial in order to instruct his Counsel properly and to conduct his case, that argument would apply even if there were a danger of his absconding and therefore it does not seem to be conclusive. As regards the fear expressed that the Magistrate will have to prejudge the case, I should like to point out that, as matters stand, every Court has to, if the word is an appropriate one, provisionally prejudge the case at every stage. The Magistrate has to bear in mind all

through the possibility of its being his duty to discharge the accused at any stage before the charge is framed. The framing of a charge is itself a kind of prejudging, because it implies that if the accused does not cross-examine the witnesses or put in a defence, he will be convicted. As regards the apprehension expressed that many offences punishable with transportation for life are not offences in respect of which bail should be refused, that would be an argument against their being designated non-bailable in the Penal Code; and as regards the instance put forward by an Honourable Member, in many such cases the "respectable" man will be the most likely to abscond, as has often been seen in the case of rich bankers charged with embezzlement. In conclusion, I would deprecate too much attention being paid to the argument that anything which is objectionable to the speaker is opposed to the laws of all civilized countries. We have not before us the laws of all civilized countries, and even if we had, it would be unsafe to conclude that they would be incapable of improvement. Sir, I oppose the amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I rise to support the amendment: After hearing my Honourable friend, the Mover of the amendment, I thought it would not be necessary to supplement his observations by anything that I might add to the discussion. But his speech has been followed by certain others, and owing to the new points which were intended to be made in the course of the debate, I feel I ought to say a word or two in reply to what has fallen from some of my Honourable friends. The first point that I take is that the amendment has been described as either mischievous or unnecessary. Now, Sir, if the matter of granting or withholding bail had been left entirely open for the exercise of free discretion by the Magistrate, we might say that the amendment could be taken as an attempt to restrict the exercise of such discretion. There might be some danger in that. But, as a matter of fact, we are now laying down certain lines along which we ask the Magistrate to exercise his discretion, and we are at present concerned with those lines and those lines alone. Now, it is perfectly clear that the amendment of section 497, Criminal Procedure Code, which the Treasury Benches have proposed is undoubtedly a great improvement upon the law as it originally stood and we are thankful for it. But even with that improvement, the question still remains whether the demands of justice have been fully satisfied thereby. Now, Sir, some objection has been raised on the ground that we should not have any feeling of tenderness for an accused person, and that any too wide a statement or proposition like the one stated above, is injurious to the interests of justice. But, we cannot help it after all. The British system is such that you must presume that a person who has been accused of an offence must be taken to be innocent until proof of his offence has been brought home to him. We cannot help it. We all have to act on that principle and the amendment proposed is only an attempt to give effect to that principle. The various amendments which have been proposed with regard to clause 182 of the Bill, are attempts to improve the amendment of the law brought forward by the Government Bill, still further. Now, Sir, what are the facts? What have we done by proposing the further amendments? We have in a manner indicated that in all cases punishable with transportation or death, the Magistrate shall not release the offender only if there appear reasonable grounds to believe that he has been guilty of an offence punishable with death or transportation for life. Now what we have got to consider is whether we should generalise the two classes of offences in that way and by so doing, include

[Mr. J. N. Mukherjee.]

cases which ought to be left out of the category in question. My Honourable friend, Mr. Rangachariar, has already invited the attention of the House to the fact that offences in the Penal Code which are punishable with transportation for life are, some of them, triable by Magistrates and not by Sessions Courts, alone. I have examined some of the sections of the Penal Code. For instance, we might take section 409, criminal breach of trust as a public servant, etc.; section 394, hurt caused in committing or attempting to commit robbery, 326, grievous hurt caused with a dangerous weapon; offences relating to coins; and many others might be discovered which are triable by Magistrates also. If they are examined, generally speaking, it will be clear that the determination of the offence in a criminal case depends very often upon ascertainment of facts by a tedious process of examination of evidence. So that, if we brought all these cases contemplated by the Bill under careful examination, it will appear that the Magistrate in considering the question of bail will be often handicapped in the exercise of his discretion, if we lay down the law in the manner the Bill proposes to do. Now, Sir, it may be different where a murderer is caught red-handed. In such a case I think it will be the plain duty of the Magistrate not to give bail. But very often we find that murderers and people accused of other heinous offences are acquitted after trial. Therefore, if we hamper the exercise of the Magistrate's discretion in the way suggested by the Bill, we shall not be working justice in many cases, by shutting out bail; and the result will be such as has been pointed out by my Honourable friend, Mr. Rangachariar. Now, Sir, we take up the case of the police officer. It has been suggested by the Treasury Benches that we contemplate in section 497 of the Code, not only Courts but police officers as well. But what can a police officer do in these cases? He can only keep an accused person in custody for 24 hours. After that he has got to take him before a Magistrate, and an order has to be obtained by him for a remand. So that, that is the chief point to be considered with reference to police officers. He is practically unable to do mischief in such cases. In the second place we have got to consider that an undue exercise of favour in respect of an accused person for reasons best known to the police officer, in the matter of bail, will be regulated, if I may say so, by the fact that, if he (the police officer) has to send up an accused person, he will have to say that a good case has been made out against him. Well, in the same breath he cannot say "I find good reasons for letting him off on bail." Either he has got to say that no *prima facie* case has been made out against the accused person, or that such a case has not been made out. Therefore, I submit that the mischief which is apprehended in the case of police officers is not at all a likely event. I submit, Sir, the question of the police officer in this connection may be safely left out of consideration, under the circumstances.

As regards the question of a Magistrate believing, or making up its mind as to an alleged offence, before the conclusion of the trial, I may say, as has been already pointed out, that in the matter of framing a charge by a Magistrate preliminary to commitment, as also in a case triable exclusively by a Court of Session, the law requires that the Magistrate should exercise his discretion in the matter. We have been led into psychological considerations, such as those which have emanated from my Honourable friend Mr. Subrahmanayam. But is there not such a thing as unconscious suggestion? A Magistrate at first sight comes to believe certain things,

Although the impression he then forms may not remain in his mind in a definite form, yet it may, all the same, work imperceptibly in his mind. The principle of the English law is such that it endeavours to place a Magistrate in a situation where things like the above may not work upon his mind at all. Therefore, Sir, wherever it is possible we should always try not to assume that an accused person is guilty before he is proved to be so, on the principle that an accused person is not guilty until his guilt is established. I submit, Sir, here is a case for the accused, with regard to the question of bail. What we have got to consider is—and the deciding factor in the case should always be, whether we are hampering the defence by unnecessarily restraining his movements;—unnecessarily, I say, only in such cases where he is a person who is sure not to try and escape justice. Where he is expected to do so, we shall be justified in putting a restraint upon his liberty of action; in other cases it will help justice if his movements are not restricted during trial. In such matters, the case is always one of balancing advantages against disadvantages. No proposition I may, perhaps, say, can be stated which is not open to criticism; but in all cases of the kind we have in view, we have got to judge between the two opposite aspects of the question, and the determining factor in the present instance, as I have said, ought to be the principle which has been so clearly accepted by the Honourable Mr. Tonkinson, and the principle which was so clearly enunciated by my Honourable friend to my left, Colonel Stanyon. Sir, if all the pros and cons of the question be taken into consideration, it will be clear that the supposed criminality of an accused person should not be brought into the scale at all, in granting him bail, supposing that a preconceived criminality of an accused person can influence the mind of a Judge. We make law in order that Magistrates may follow it, and therefore if the law is such that it will restrict the free exercise of the discretion of a Magistrate we ought not to have it. We should try and facilitate its free exercise in such cases and not restrict it by saying "In such and such a case you might not grant bail," though justice might require otherwise. That is the view, Sir, this House ought to take in the matter.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): In forming a correct judgment upon this and the cognate amendments, I venture to submit it is necessary for Honourable Members to bear certain considerations in mind. In the first place, it must be borne in mind that the very classification of offences into bailable and non-bailable implies certain essential considerations. Offences which are comparatively insignificant or of less importance have by law been made bailable. In all those cases the accused is to be allowed his liberty after the institution of the prosecution until he is found guilty and has been convicted of the offence, the particular offence with which he may be charged. On the other hand as regards non-bailable offences it must be borne in mind that these are offences of a more serious character in so far as law and order and maintenance of peace in the country are concerned. That is the very reason, the basis of this class of offences being made non-bailable. That consideration, I respectfully submit, ought to be borne in mind. Again these non-bailable offences may in themselves be possessed of varying degrees of seriousness, some of less importance in so far as public tranquillity and law and order are concerned, and others of more seriousness and of greater importance. And of all these more serious offences it is obvious that the class of offences for which the Legislature has made capital punishment or life imprisonment as a punishment adequate or desirable,

[Dr. Mian Sir Muhammad Shafi.]

must in the very nature of things be regarded as the most serious. In the amendment which we ourselves have introduced into this section it will be noticed that we have made this last class of offences, the most serious of all offences, as the exception, in so far as grant of bail even in the case of non-bailable offences is concerned. I would ask Honourable Members to bear this fact in mind.

In the second place, let us turn to the actual effect of the amended section as it will stand, should this House accept the amendment which we have proposed and reject the amendments which certain non-official Members have put forward. What will be its effect? While in the existing state of law in respect of all non-bailable offences before a court the court is given discretion to release an accused person on bail, nevertheless it is laid down that in all non-bailable cases the court shall not let an accused person out on bail if certain circumstances specified in the present section exist. In the amendment which we propose in the case of certain classes of accused persons mentioned in the proviso we give the fullest possible discretion to the Magistrate, no matter how serious may be the offence with which such accused person may be charged, to release those accused persons on bail. It is only in the case of a limited number even of this class of persons that we ask the House to lay down that an accused person shall not be let out on bail. And, Sir, in this connection permit me to invite attention to this fact that cases before a Magistrate may either be cases with reference to which he himself has exclusive jurisdiction to try, that is to say, his functions are not limited to what is known as a preliminary inquiry before commitment and also cases in which his functions are so limited. In the case of those offences the trial of which ultimately will be held either in the Sessions Court or in the High Court, as the case may be, his functions are merely limited to what is known as the preliminary inquiry before commitment. Now there is nothing in the amended section as we propose to prevent the Magistrate from letting an accused person out on bail in all such cases until a certain stage. When a certain stage has arisen, that is to say, when on the evidence before him there is reason to believe that the accused person has committed the offence, it is only then that there is an express prohibition that he shall not release the accused person on bail. I see my Honourable friends, Dr. Gour and Rao Bahadur Rangachariar, shake their heads. Let me make the position clear. Now section 497 as amended will run as follows: "When any person is accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station"—let us eliminate that for the moment—"or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life."

Dr. H. S. Gour: When he is brought before the Court.

The Honourable Dr. Mian Sir Muhammad Shafi: Just one minute. As soon as he is brought before the Court, the Court has the fullest power to release him on bail, but he shall not be released if certain circumstances exist, that is to say, if the Court,—may be upon perusal of the police inquiry, may be after taking a certain amount of evidence actually produced before him in Court—has reason to believe that the accused has committed the offence, it is then and then alone that we lay down this prohibition that the accused shall not be so released. At what stage of the

inquiry or of the case the mind of the Court will, with relation to the commission of the offence, reach the position, i.e., believe that the accused has committed the offence, will depend upon the circumstances of each case. That exact position, the mental position so far as the Court is concerned may, as I said just now, be reached at the very first instance, that is to say, after perusing the record of the police investigation or hearing the complainant or it may be reached after half the evidence for the prosecution has been heard or it may be reached right at the end of the inquiry, i.e., when the whole of the evidence has been recorded. But as soon as that position has been reached, the prohibition embodied in this clause comes in. Until that position has been reached, there is nothing to prevent the Magistrate from letting an accused person out on bail even in most serious cases. If this were not the correct interpretation of the clause as we propose—after all, remember that all penal enactments must be construed as far as reasonably may be in favour of the accused person—that is a well known principle of law,—and if the interpretation which my Honourable friends, Dr. Gour and Rao Bahadur Rangachariar, seek to place upon this were to be the correct interpretation, I am afraid you would be driving a coach and four through that principle of interpretation to which I have just referred. If this were not the correct interpretation, then what is the meaning of these words "he may be released on bail"? Those words become absolutely meaningless. If the intention is that in all cases where the police thinks that an accused person has committed an offence and have sent a man up for trial, the Magistrate also is bound *ipso facto* to believe that the accused has committed the offence, then what is the meaning of those words "he may release the accused person on bail"? As I said those words become absolutely meaningless. No, Sir. I venture to submit the intention is this, that the Magistrate has discretion in all non-bailable cases to let an accused person out on bail, even though the offences are non-bailable, but, as soon as, from the facts of the case, from the evidence placed before him or from the circumstances with which he has already become acquainted from the record of the case, he has reason to believe that the accused has committed an offence, it is then and then only that his hands are tied; he no longer possesses any discretion. He must then refuse to release the accused person on bail. And in this connection, let me invite attention to the careful manner in which this clause is drafted. What is the language? It is this: "If there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life." Compare the phraseology adopted in this with the phraseology adopted in, say, section 254 of the Criminal Procedure Code, which relates to the framing of charges in warrant cases against the accused. Now, what is the phraseology adopted in this section 254? Section 254 says:

"If, when such evidence and examination have been made or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, then he shall frame a charge."

Now, if you compare the phraseology adopted in 497, "there appear reasonable grounds for believing that he has been guilty of the offence" with this, it is obvious, at any rate to my mind, that the stage contemplated is the stage of a *prima facie* case having been established against the accused.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Much stronger.

The Honourable Dr. Mian Sir Muhammad Shafi: This one is much stronger.

Dr. H. S. Gour: No. 497 is much stronger.

The Honourable Dr. Mian Sir Muhammad Shafi: At any rate, there is not much distinction to be drawn between these two. Then, I say, Sir, as this prohibition is limited to the most serious class of non-bailable offences and as the offences are in their very nature non-bailable, when once the Magistrate has, upon the record before him, upon the facts before him, upon the evidence or upon the other circumstances established in the case, reason to believe that the offence has been committed, then we as legislators ought to see that the power to release the accused on bail should no longer be exercised after that stage has been reached. To hold otherwise, I submit, would be contrary to all principles of criminal administration.

Now, it was said by my Honourable and learned friend, Sir Henry for whose opinion I entertain the highest respect, that this amounts really to prejudging the case. I submit, it does not. I submit there is no question of prejudging the case. From his own judicial experience, he must have over and over again felt that in the trial of criminal cases a certain stage has been reached, upon the evidence produced before him, when there is reason to think or to believe that the accused person has committed an offence. That does not mean that the case has been prejudged. It only means that a certain amount of evidence has been tendered by the prosecution, or a certain set of facts and circumstances have been established by the prosecution, which have changed the position at the beginning of the trial, viz., the presumption with which the Judge begins in the course of a criminal trial that the accused must be presumed to be innocent and must continue to be presumed to be innocent until his guilt is established, to a somewhat different position, that position being that although the Judge is not yet completely convinced in his mind that the accused is guilty, yet from the facts placed before him, and from the evidence produced by the prosecution, the Judge has reason to believe that the accused has committed the offence. At that stage, I submit his discretionary power of granting bail in these most serious class of non-bailable offences ought to be taken away from him, because the offences are non-bailable and because these offences are the most serious class of non-bailable offences, and the Court trying the accused is neither the Sessions Judge nor the High Court but a Magistrate. I submit that in such cases this discretion ought to be taken away from him, and that is exactly what the clause as we propose contemplates.

Sir, it was said that the sole object of arrest is to prevent a person from running away or from protracting or delaying the trial. As a general rule that is a perfectly legitimate criterion. I admit that that is the main purpose of arrest. But cases might be conceived where other considerations also come in. Let me give but one case, which is not only possible but which we, some of us who have practised at the Bar long enough, can well conceive. A man falls out with two brothers. Bitter enmity subsists between that one man on the one side and the two brothers on the other. He has a fight with these two brothers intending to kill them, but succeeds only in killing one and injuring the other. He is arrested by the police. There is ample evidence against him to prove that he murdered one of the two brothers, and he knows himself that he cannot escape. He knows that he is sure to be convicted and hanged. Well, now, in a case like that, is it not conceivable that he would like to be released on bail in order to go and kill the other brother also before he is hanged? (Laughter.) With all deference, I am afraid that my Honourable friends from the South do

not know what stuff people of the north are made of. It is perfectly conceivable that that man may be anxious to be released on bail in order to achieve the very object with which he assaulted the two brothers, which object he failed to achieve in the first instance, and succeeded only in killing the one and simply injuring the other brother; and knowing that he will be hanged, before he is actually hanged, he may take advantage of his release on bail to go and kill the other brother. Sir, with all deference it is hardly right to say that the sole consideration is his presence at the next date of hearing. There may be other considerations also which come in in cases of this kind.

It seems to me that taking all the circumstances into consideration, seeing that admittedly the clause as we propose it is a decided advance, a decided improvement in the existing law, seeing also that the clause as we propose it gives the fullest discretion to the Magistrate in even the most serious class of cases in certain instances to release on bail and prohibits release on bail only when circumstances or facts have been established which have led the Magistrate to believe or have reason to believe that the accused has committed the offence—only in this very narrow circle is he prohibited from releasing the accused on bail in this most serious of all crimes,—I submit that the Legislature ought not to go beyond that, that the Legislature should limit in such cases the discretion of the Magistrate in so far as release on bail in non-bailable cases is concerned.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the Honourable Mr. Subrahmanayam, while advocating the cause of the opposition, told us, and we feel surprised for that piece of advice, that the Magistrate has got only to collect the evidence and to send the case up for trial. I differ from him. My knowledge of the criminal law tells me that that is not the case always; Magistrates and Courts are not to be taken as post offices. Magistrates and Criminal Courts have got to see whether there is any evidence or not, even in murder cases. When there is a preliminary inquiry, if there is no evidence which can show a *prima facie* case, then the accused is entitled to a discharge. Therefore, this ground which has been set forth by the Honourable Mr. Subrahmanayam has got no force.

The second ground which he set forth was that the Magistrates are cultured people, and highly trained and therefore they will not allow themselves to do injustice and they will not allow themselves to refuse bail. Then in the same breath he asks, how can a Magistrate, how can a Criminal Court, know that the accused will abscond or will not abscond? This argument is inconsistent. In the first place, the Magistrate is said to be cultured and very well trained, and then it is said it is impossible for the Magistrate to find out whether the accused will abscond or not. I place his argument before this Honourable House, and I think the House will agree with me that his argument, in itself, is inconsistent. When a Magistrate is a trained and cultured man and the prosecution raises this contention that the accused will probably abscond or avoid the proceedings, in the inquiry, the Magistrate will give consideration to it,—an application for

4 P.M. bail on behalf of the accused, on the one side, and the reply on behalf of the prosecution, on the other side; the Magistrate then, after having weighed both the contentions, will come to some conclusion. Where is the impossibility as to how the Magistrate will be able to find whether the accused will abscond or not? The other contention which has been raised by my learned friend, the Honourable Mr. Subrahmanayam, was what is the profit, what is the gain? Well, the gain is this,—that the

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accused will be able to defend himself properly. This is the gain, and that ought to be the object of the administration of justice; this will be the profit that the justice will be done to the accused, and he will not be deprived of that right which is allowed to him. That is the gain. Then the Honourable Mr. Subrahmanayam says that the Magistrate will not allow bail if he comes to this conclusion that the accused will abscond away. Only a few minutes back he said it is extremely difficult for the Magistrate to find out whether the accused will run away or not; and after four minutes he raised this point, that if the accused is allowed bail, then the probability is that he will abscond away. I think there is no consistency in these two arguments at all. Why will he run away or abscond away? If he is a man of this type, no surety will come forward; his associates, his friends, his relations would not like to stand as sureties simply because he may leave the precincts of the Court or the District in which he is going to be tried. Then my Honourable friend says, it is better that discretion should be given to the Magistrate and the Magistrate's discretion should not be hampered. If he will read the terms of the amendment, they are, if I rightly follow them, "that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial." This is the second condition which has been laid down. What are those two conditions which will guide the Magistrate in allowing or disallowing the bail? They are these; (1) that the character of the offence will be so and so, that is an offence punishable with transportation for life or with death. (2) The second condition which has been recommended by this amendment is as already described above if there were grounds to believe that the accused if released on bail, will have the opportunity of tampering with the evidence, which is against him or he is going to delay the inquiry; then in those cases the Magistrate will not allow bail. A very reasonable amendment: it covers all the conditions, and therefore I do not find any force in the opposition. The Honourable Mian Sir Muhammad Shafi told us that in serious cases the bail will be allowed under certain conditions, and the provision which has been recommended by the Select Committee is very much improved. I endorse this view that certainly there has been some improvement in the provisions which have been sent up to us for consideration by the Select Committee, and the Select Committee should be thankful, but there is a room for improvement still and on account of that we are discussing the whole thing. He says that only in case of certain offences;—very limited offences which are punishable with transportation for life or death, we have laid down these strict conditions. Of course it is true but our fear is this that even in regard to these cases, if some accused, in some cases, are not allowed bail, there will be room for injustice. The Magistrate should not disallow bail simply because the offence falls within the purview of certain sections which provide a capital punishment or one of transportation for life. That should not be the criterion that, because the punishment provided for the offence is transportation for life or death, therefore, bail should be disallowed. That should not be the measure for accepting or rejecting applications for bail, but something else. What is that something else? It is this as to whether there is a probability that the accused will abscond, whether his real intention is to escape justice or whether his desire is to prolong the inquiry. The mere fact that a complaint is under section 302 or a complaint under a section which provides punishment of transportation for life or death, should not induce the Magistrate or criminal Court to refuse to give bail.

Then the Honourable Mian Sir Muhammad Shafi says that the provision which has been recommended is very lenient. I am sorry I cannot share that view. Words which are of some importance and in favour of this amendment have been lost sight of. They are "if there appear reasonable grounds for believing," not presuming but believing. There could be no belief unless there is some sort of cogent evidence to induce him to believe. Presumption may be based on an inference, but, when you put down the word "believe", then there should be something which may go to show really the accused is guilty. Then, further on, the provision says "that he has been guilty of the offence." So the Magistrate will be prejudging the whole case. But when we go to the provisions of section 254 which has been alluded to by my learned friend—I shall read only the relevant portion—you will find the words "that there is ground for presuming that the accused has committed an offence". Mind that there is a ground for presuming only. Therefore, according to my way of construing the provisions of section 254, I am persuaded to come to this conclusion that the provision under section 497 is stricter, is harder, than that under section 254.

Then my Honourable friend says that there would be great temptation in the way of the accused, who will abscond, to destroy the evidence or to retaliate on other persons, and this argument has been illustrated. The illustration which was given was "that there is a person A who has got animosity with two brothers, and one of them has been murdered by him. Supposing this murderer is allowed bail, when he (murderer) secures his freedom, so far as bail is concerned, he will murder the other brother also. The second brother, who has escaped murder, would be brought before the Magistrate, and would say before him 'I say this murder was committed by the accused'. Therefore, the accused will be tempted to do away with the life of the second brother also, in order to destroy the evidence." And therefore bail should not be allowed. My answer to this illustration is that if there is a case like that, then the Magistrate will not allow bail. The Treasury Benches have said, in so many words, that their Magistrates are very competent and one of the advocates of that view has given a very good certificate to them—they are cultured and trained people, he said. They won't allow bail in such cases. (An Honourable Member: "He shall".) There is no word "shall". The word "may" is given. There is no compulsion in such cases; and this is the recommendation which has substantially been made by the amendment. "If the object of the accused who is seeking bail is to avoid justice or prolong the inquiry, then bail will not be allowed." Sir, it is not the attempt nor the desire of this Assembly that the man who has committed an offence and who is guilty may go scot-free. But the serious desire of this Assembly is that he should be given fair trial, that he may not be hampered, that he may not have an excuse for saying "I was not allowed bail; I had no relation, no friend, no associate and therefore I am going to jail though an innocent man, and I have wrongly been declared to be guilty." That is the very sincere desire of this Assembly and this desire is couched in this amendment. Therefore with these few words I support the amendment.

The Honourable Sir Malcolm Hailey: If I rise to add to what has already been said so admirably by my friends to-day on this question, particularly by Mr. Subrahmanayam, it is because I feel it incumbent on me to do so for one reason only. We have been told that Government feels deeply on this question. Now in arguing matters which are prin-

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cially of legal procedure, matters such as are involved in the Criminal Procedure Code, I am sure none of us really wish to suggest considerations not strictly relevant to the issue, nor to sway a decision by allusions to the general attitude of Government or its critics. We do not on our side say that those who have criticised the proposals of the Lowndes Committee or the Joint Committee have motives that are not in every way proper and public-spirited; I hope that the Assembly will give us credit also on our side, if we do feel deeply on a question like this, for basing that feeling on grounds which at all events have some solid reason and some propriety behind them.

References tending I think rather to obscure the real issue, have been made to the very large number of people who are unfortunately placed in the lock-up pending trial, not having been admitted to bail, and we have been asked to quote the numbers of such persons who afterwards are acquitted. It must not be forgotten however that any figures we could quote on the subject would refer entirely to a previous state of affairs—that is to say, the state of affairs obtaining under the present law—a law which we have proposed to ameliorate to the best of our ability, and the rigours of which we have attempted to remove. On a balanced survey of the situation in regard to bail I am certain that the Members of the House will readily acquit Government of any desire to press too hard on the accused, or of any desire to so dispose its judicial arrangements that innocent men should be put to hardship in proving their innocence. If, as is said, Government feels deeply on this question, the feeling is one only, namely, the desire that the real criminals should not escape; and if we have any one motive in the matter, it is to make life possible and safe for the ordinary man—the man whose property is subject to theft, the man whose life is in danger from dacoity, the man whose possessions or whose safety is likely to be invaded by the more violent members of society. And we have a special responsibility in regard to legislation of this nature, because after all the actual administration of justice and law and order lies with the Local Governments; we do feel that we ought not ourselves to assent willingly to any modification of the criminal procedure which would seriously embarrass the authorities responsible for the maintenance of justice. With every desire to be liberal, that consideration must remain paramount in our minds. Now, it is perfectly true that the primary consideration which must govern Courts in giving bail is whether the accused will or will not appear to take his trial. There are however some other considerations which I do not think we ought to lose sight of. It is true, as Sir Muhammad Shafi pointed out, that we cannot pin ourselves down entirely to that one point. Every one with an acquaintance of district life and especially with life in those districts where violent crime is prevalent, knows that there are circumstances in which it is dangerous to allow at liberty, pending trial, a man of exceptionally violent character or influence for evil. One knows that such a man can, by mere terrorism, absolutely suppress evidence, perfectly trustworthy and reliable evidence that would otherwise have been given against him. I quote only one example, not a definite example of the harm done by releasing such man on bail, but an example illustrating what that harm might be. The House will remember a celebrated case in which a number of accused who were not let out on bail were held under trial in the Alipore Jail. Inside that jail itself they murdered an approver. Now, if men will do that when they are not released on bail, it may be left to

the imagination what they may sometimes do if they are released on bail. I feel that in the matter of bail we do after all occupy a strong and reasonable position. We have greatly liberalised the existing law; the stages are so well known to the House that I need not weary it by repeating them; but in the first place of course a man who desires bail can always apply to the Sessions Judge or the High Court, on whom no restrictions are placed in respect of its grant. It is surely reasonable that in dealing with other Courts and with the police we should apply some restrictions? Mr. Rangachariar has made great play with what Sir Henry Moncrieff Smith said this morning on the subject of weak or stupid Magistrates. I only want to say that Sir Henry Moncrieff Smith this morning was arguing on a slightly different case, a case with which at present we have no particular concern—I mean, the proposal that in all cases bail could be given without any restriction whatsoever. His remarks consequently hardly apply to the present case, for we now are dealing only with the right to give bail save in the case of persons believed to be guilty of grave misdemeanours. I believe the majority of the House will feel it reasonable, that we should lay down some restrictions in the grant of bail by Magistrates, seeing how serious the results may be to the society at large of allowing dangerous criminals to escape under cover of their bail. The safeguards proposed seem to be the minimum. We have been told that men should be held as absolutely innocent before they are convicted and that it is improper to place upon the Magistrate the obligation of deciding whether there is reasonable ground for believing that the accused person is guilty, before bail is granted to him. But does he really have to decide that? Let us be perfectly frank and honest about it. He only decides that there is a *prima facie* case. Does any one believe that any one ever has been prejudiced in the course of his trial by the fact that he has been refused bail? (Voices: "Very often.") Let us be clear however to the exact grounds. Does any here believe that any man has been prejudiced when he came before a Sessions Court or before a Magistrate for trial on one of the graver offences, by the fact that the Magistrate has in refusing bail, prejudiced the case in the sense and to the extent alleged? Do you believe that? If you really believe that, you are in danger of falling into an extraordinarily illogical position—if you follow Mr. Rangachariar; that is to say, you are actually preparing to lay down that the Magistrate shall prejudge the accused not once but twice; he shall not only say, first, that there is a *prima facie* case against this man, but, second, that he definitely believes that he is going to abscond and that he seeks to delay or evade justice. If there is substance in this objection, the accused is doubly damned in advance.

Then as to the second restriction; discretion to grant bail is full save in cases in which the penalty is death or transportation for life. Much play has been made of the fact that transportation for life applies to a somewhat large number of offences. Well, we are at present engaged in considering legislation regarding the abolition of transportation, and there is no reason whatever why, when we bring that legislation into force, we should not, in so doing, take the opportunity of making the restriction in this section, which now applies to transportation, apply only to the graver offences punishable with long terms of imprisonment. We are not particular in insisting on details if the principle is maintained. But leaving that aspect of the case alone, you are not justified in arguing only on the somewhat milder cases of the defaulting clerk or possibly even the defaulting banker (though in England we know how readily he defaults)—you are not justified in arguing only on these cases, because,

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after all, you must provide also for your major and really serious cases in which transportation for life is the penalty, and for which when we abolish transportation, a long term of imprisonment must be the penalty. These, I say, you must keep. Now, Sir, those are the very simple requirements that we have laid down, and which up to date the House has accepted; what does Mr. Rangachariar ask us to add? Mark that in all cases of this kind, the law should seek to apply as far as possible a clear and certain test, a test which will allow the man who makes an application to a Magistrate to know the grounds on which he ought to put that application forward and on which he can fairly hope to succeed. The test should be clear enough to provide the Magistrate with some standard or criterion for decision. Well, we ourselves have got these in the provision as drafted by the Select Committee. But Mr. Rangachariar would add a test which is no test at all, and a criterion which is impossible to work. The applicant will have to prove a negative,—that he is not likely to abscond; the Magistrate will have to satisfy himself as to his intentions. How, I don't know; and no one can tell us how to secure the gift of prophecy to Magistrates, but that is the first of Mr. Rangachariar's requirements. It is a problem in psychology—to inquire into the future intentions of a man with whom presumably the Magistrate has no previous personal acquaintance, or it is to be hoped he has none. That is a task which may well baffle the Magistrate—a task, I think, even more difficult than the one which Mr. Agnihotri set us the other day when he asked us to decide the exact second at which police influence died out in a man's mind. Think of the alternatives: "This is a rich man and he has much to lose; so he will not cut his bail. Yet the disgrace of conviction is all the greater for a rich man; he can therefore afford to cut his bail and indemnify his surety. So probably he will abscond." Or should he say I don't know the answer to that puzzle. Or again: "This is a poor man; he has no position to lose and so conviction will not mean so much. So perhaps he will not abscond. Yet he has no property to forfeit, so perhaps he will." On the whole it looks to me as if the case is rather weighted against the poor man; we have heard so much about the respectable man who will not abscond, that it looks as if Mr. Rangachariar's intention is to favour the rich man; if so, I can only say that we ought not to make an alteration in our law which should weight the case against the poor man. But, as I say, his new provision provides no criterion and no test at all, for it involves a Magistrate in a speculation into the man's future intentions, a speculation of the most difficult nature, for neither the antecedents nor the outward circumstances of the accused can help the Court to probe into the attitude of his mind in regard to future action. The invariable result, let me point out to the Assembly, will be that, if an application of this kind is refused, then there will be a further application to the revisionary Court, and the speculation as to the future intentions of the accused will be canvassed again and in an equally obscure atmosphere of guess work and uncertainty. But Mr. Rangachariar does not end there. We thought, when we first discussed this question, that all that we were required to do was to make sure that the man turns up to stand his trial. He adds, at the end of his proviso, certain mysterious words which I frankly confess have baffled me so far. He adds: "and attempt to escape justice by avoiding or delaying an inquiry or trial." Now, it will be remarked that he thereby lays on the Magistrate the necessity of investigating a double condition, both as to the intention of absconding and his ultimate reasons for doing so.

Rao Bahadur T. Rangachariar: That is the language of the Calcutta High Court, if I may say so.

The Honourable Sir Malcolm Hailey: That may be so, but that is a very different thing from putting the prescription into law. The High Courts, after all, are not the sole repositories of wisdom, when it comes to legislation, great as is their position when it comes to interpreting law. I ask anybody here, looking at that section, to place himself in the position of a Magistrate who has to decide the two things, first, whether the accused if given bail is likely to abscond, and secondly, whether his motive in absconding is only to avoid justice by avoiding or delaying an inquiry or trial (for he might have many other and even more undesirable motives); he will indeed feel that he has set the Magistrate a baffling task. But let me conclude. We have liberalised our law already. Now, legislation of this kind must always be progressive. We have taken one great leap, which I think will be viewed by some people with misgiving. Is it reasonable to ask us, and to ask the Local Government who are responsible for the administration of justice and law and order, to go even further at one operation? Again, is it proper to place on the Magistrates the extraordinarily difficult task of deciding on the intentions of the accused, with all the knowledge that if he decides the conundrum in the wrong way he may make it possible for real criminals to escape from justice by the simple process of evading their bail? I say it is not reasonable to ask us to go these lengths after we have gone so far already in the liberalisation of the law.

Rai Bahadur S. N. Singh: I move, Sir, that the question be now put. The motion was adopted.

Mr. President: Amendment moved:

"In clause 132 (i) after the words 'for life' insert the following: 'and that the accused if released on bail would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial.'"

The question I have to put is that that amendment be made.

The motion was negatived.

Dr. H. S. Gour: Sir, the amendment I have to move is as follows:

"In sub-clause (i) of clause 132 after the words and figures 'sub-section (1)' insert the words 'without special cause' after the words 'so released'."

The object of my amendment is to provide for the release of a person accused of an offence punishable with death or transportation for life for a special cause. Honourable Members will see that the Select Committee themselves recognise this principle in the proviso which they have added to the section, for they have provided that in all cases punishable with death or transportation for life, any person under the age of 16 or any woman or any sick or infirm person may be released on bail. The only difference between me and the Government is this. They have specified four cases of special cause when a person may be released on bail. I want them to make this clause more elastic to provide for contingencies which may occur in practice. I will give the Honourable Members a simple illustration of the limitations which are apparent on this proviso. It has been provided that the Court may direct that any person under the age of 16 may be so released. If the inquiry shows that the accused is just 16 or one day more than 16, the Magistrate will have to say, "That one day makes all the difference in your case, between your enlargement on bail and incarceration in prison. Surely, Government never intended that the proviso should work an injustice as it would in the case I have quoted. Take

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another illustration. It has been recognised, and rightly recognised, by the Select Committee that a person who is sick or infirm is entitled to apply for his release on bail even in non-bailable cases punishable with death or transportation for life. But now suppose, though the person himself is neither sick nor infirm, his wife or his only child is dangerously ill, let us assume, from bubonic plague, and his withdrawal from his wife or child means a probable, if not certain, death of his relation. Is not that a special cause which would justify the Court in releasing the accused on bail? Then other cases might be conceived where in the circumstances of the case and for special cause the Magistrate should exercise his power of releasing the accused on bail. You have yourselves recognised the principle that in non-bailable cases of the character described here the accused may be released on bail for special cause. The only difference is that your enumeration of "special cause" is incomplete and I want to complete it by adding a general clause, namely, "special cause" in the main section, to enlarge its scope. I do not think, if the Government are in a reasonable attitude—(A Voice: "No") some Members here say they are not—I believe they are in a reasonable attitude,—I have not the slightest doubt that they will see that my amendment really supplements the proviso and is a salutary improvement which would meet unforeseen and probable contingencies, and that if my amendment is not passed it will make the proviso inelastic and rigid and shut out from its beneficent provisions some cases, which I have said, are easily conceivable and which I assert are deserving of equal commiseration with those enumerated in the proviso. Sir, I move my amendment.

Sir Henry Moncrieff Smith: Reasonably or unreasonably, I am afraid I must oppose my Honourable friend's amendment, chiefly on the ground of what I may call its hopeless vagueness. The words are "without special cause". The Courts will ask themselves, "What had the Legislature in its mind when it used these words?" The Court will say, "It is perfectly true that the Legislature has put in a proviso regarding a minor or a woman or a sick or infirm person. Now this 'special cause' that the Legislature has introduced into section 497(1) must be something quite different, something on different lines from that. What the cause is going to be, the Magistrate I think will find some difficulty to decide. Dr. Gour has suggested that there are innumerable special cases not covered by the proviso, but, Sir, he has only mentioned one, and that is the case of the accused husband with a wife who is dangerously sick. Sir, I do not see that we can provide for that case. The accused person, the person we are dealing with, is one who is accused of an offence punishable with transportation for life or death, and the Court, Sir, has reason to believe that the person is guilty of that serious offence. Sir, if that person had a sick wife, I think he should have borne that in mind beforehand; the law cannot take any account of those considerations. If the man could commit such a serious crime, or do an act which led the Court to believe that he had committed such a serious crime, then, with his wife ill, Sir, is there any reason why the Court should release him on bail? The chief objection, however, to my friend's amendment is that it is hopelessly vague; it gives the Court no indication whatever of the special causes which are to enable it to allow an accused person out on bail. If there are special causes, Sir, if the Magistrate has gone wrong, and refused bail in a case in which he should have given bail, my Honourable friend will remember that there is the Sessions Court next door and the High Court possibly not very far away, and it is always possible in every

case, whatever the crime may be, and whatever the circumstances may be, to go to those Courts, the Sessions Court and the High Court, and to ask for bail there.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, in clause 132, I am not moving all the amendments standing in my name in the Amendment No. 359 (a) and (b), but I beg your permission to move only clause (b), namely, omit sub-clause (iii). Sir, sub-clause (iii) reads: "the following sub-section shall be inserted after sub-section (2), namely: 'An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.'" Sir, it is much regretted—and as has been observed also by other speakers previous to me, I am constrained to observe that the attitude of the Government on the matter of bail has been unsatisfactory and undesirable.

The Honourable Sir Malcolm Hailey: I presume the Honourable Member means the attitude of the House.

Mr. K. B. L. Agnihotri: Oh, no. I mean the attitude of the Government in not accepting some reasonable amendments put forward by us—I need not attribute it to the House, because, to-day, I think, more than half belong to the Government Benches.

The Honourable Sir Malcolm Hailey: No, no.

Mr. K. B. L. Agnihotri: Sir, we heard some very lucid and weighty arguments advanced by the Honourable Sir Henry Stanyon and the Honourable Mr. Rangachariar in support of further liberalizing the provisions under section 497, but they have all been in vain. And under section 497 we now find that one clog after another has been put to fetter the discretion of the Magistrate. I do not know the reason for not including in this section any clause to the effect that the Magistrate should also give reasons for refusing or for not granting bail but, on the contrary, I find a provision made that he should assign, and write out his reasons, for granting bail. What will be the effect? The Magistrates, of whom, it has been said for the first time to-day, from the Government Benches that some are stupid, will take it as a limitation on their discretion and would be afraid of granting bail to an accused person even where he deserves it under section 497. Therefore, I propose that either there should also be a provision for requiring the Magistrate in cases of refusal to write out his reasons for refusing to grant bail or, if that provision is not to be made in this section 497, then it is much better that even this sub-clause (iii) be dropped.

Sir, I beg to move that sub-clause (iii) of clause 132 be omitted.

The motion was negatived.

Rao Bahadur T. Rangachariar: Before sub-clause (iv) is taken into consideration, I have got an amendment which has been drafted by the Legislative Department which will probably come in this place. It reads as follows:

"That in clause 132:

(a) in sub-clause (iii), for the word 'sub-section' the word 'sub-sections' be substituted and after the proposed new sub-section (3) the following sub-section be added, namely:

(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence,

[Rao Bahadur T. Rangachariar.]

it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered."

(b) In sub-clause (iv) the proposed new sub-section (4) be re-numbered (5) '."

The reason for this amendment is this. As Honourable Members are aware, at the conclusion of a trial in an original Court, often times judgment is not ready for delivery at once, but the Court has come to the conclusion, after taking the verdict of the assessors or the jury in a Sessions trial, or the Magistrate has made up his mind, that the accused is not guilty and, therefore, proposes to acquit him. As sections 366 and 367 stand, a doubt has been expressed whether really the accused could be set at liberty before judgment is actually pronounced. In fact, an unfortunate client of mine, was acquitted like this and judgment was delivered a week later. The complainant took the matter up to the High Court and a Full Bench had to sit to consider the question whether the whole trial was not vitiated by such a procedure. In order to avoid such things, this provision is necessary. Therefore, Sir, I move the amendment as it stands.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 132 after sub-section (4) the sub-section that has just been added—the following sub-section shall be inserted, namely:

'The District Magistrate may release on bail any person accused of an offence in any case; and may revise an order of a Subordinate Magistrate refusing to grant bail in any case'."

Sir, at present as the law stands it is the High Court and the Sessions Judge that have been authorised to release persons on bail in any case or to revise the order of a Magistrate under section 498. But by this amendment I wish to provide that the District Magistrate may also be authorised to grant bail in any case and to revise the order of other Magistrates. I need not remind the House that there are districts where the Magistrates are distributed in the interior far away from the district headquarters and further away from the Sessions Court. For instance the tahsildars or the Honorary Magistrates in the mofussil. If the court of the Honorary Magistrate, or of the Tahsildars or of the Magistrates in the mofussil were to refuse bail to an accused person, then it works very hard for the accused or his friends who have to go up for bail a long distance to the Sessions Courts or a longer distance to the High Courts which are almost inaccessible to many such accused owing to the distance and owing to their poverty. In such cases it will not be undesirable but is an absolute necessity to authorise the District Magistrates to allow granting of bail. Such difficulties have arisen before and the Bombay High Court has held that the District Magistrate could not grant bail in a case where the subordinate Magistrate had declined to grant bail to an accused. So in order to avoid the trouble and inconvenience especially to the poor accused, it is necessary that this provision should be incorporated in this Bill. Therefore, Sir, I move this amendment.

Sir Henry Moncrieff Smith: Sir, I would merely point out to the House that under the law, in the first place the police officer, if it is a case in which the police have effected an arrest, can release on bail. Then, Sir, the Court itself before which the accused is produced can release the man on bail; and if up to this time the accused has not been successful he can go to the Sessions Court; and thereafter, Sir, he can go to the High Court. There are four separate stages at which the accused will be able

to get bail and I would suggest to the House that it is quite unnecessary that we should provide a further fifth opportunity for enabling the accused to obtain bail and be released.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 132 after sub-section (4) the following sub-section shall be inserted, namely:

'For an offence triable in a summary way any person accused of a non-bailable offence shall, during the pendency of trial, be released on bail by any Judge or Magistrate'."

Sir, it will appear that I have omitted certain words in the amendment of which I gave notice and I wish to have your permission to move the amendment in the form in which I have just read. By this amendment I wish to provide that in petty cases or in summary trials the accused should be released on bail. If Honourable Members will refer to section 260 which provides for trials in a summary way they will find that there are many non-bailable offences that could be tried in a summary way where they are of a petty or of a trifling nature. Therefore, I wish to provide that in such cases which are triable in a summary way the accused should always be released on bail. It often happens, Sir, just as was pointed out by Sir Henry Stanyon, that a very well-to-do man or a man of exceptionally good character is accused of a non-bailable offence but of a very trifling character. In that case to keep the accused under lock-up will not be proper and will not meet the ends of justice. In such cases even if they end in conviction the accused would at the most be fined or released on probation under section 562, and so it is undesirable to keep him in the lock-up during the pendency of the trial. I know a case where a son of a big landlord happened to have in his possession a pair of shoes, old and worthless; he was challooned by the police and put up on trial under section 379 or 414, I am not sure which, and when an application was made before the Magistrate, he declined to release him on bail and the accused had to approach a higher authority who granted him bail. So in such cases it is hard to keep them in the lock-up like this. In another case a railway ticket inspector was put on trial for having been in wrongful possession of a pair of wooden pegs and he was not released on bail even though the value of the pegs was only four annas. Such cases are very hard for the accused and therefore, Sir, I suggest that it may not be left to the discretion of the Magistrate in such cases to grant bail, but that in such petty cases the accused should as of right be entitled to be released on bail. With these words I beg to move my amendment.

Mr. H. Tonkinson: Sir, the amendment which has been moved will

take away in these cases the discretion from the Courts; that

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is to say, in all these cases it will be compulsory upon the Courts to release a person on bail. I would merely invite the attention of the House to the fact that section 457, for example, is included in section 260. Such an offence would of course not in actual practice be tried in a summary way, but an offence under that section is in the words of the amendment "triable in a summary way," so that your burglar, the man who has committed house-breaking by night with intention to commit theft, must necessarily by this amendment be released on bail.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, mine is not an amendment to give a fifth or further opportunity to the accused person to be enlarged on bail. My amendment is that the one opportunity he had may not be taken away from him. Here the clause provides that "a High Court or Court of Session, and in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody." This gives the power to these authorities to cancel a bail already given, and that, Sir, without any limitation, without any reason, the Court can do so. Now I provide that it can only do so if it is satisfied that the accused is attempting to abscond or escape justice. There must be some reason on which a bail once granted should be revoked. I heard of a case where a Magistrate ordered the release on bail and then directly a police Inspector turned up and when the accused had gone about 20 or 30 yards, the police Inspector came up and said to the Magistrate "Why did you release him on bail?" He made a noise about it, and then the Magistrate at once cancelled the bail. It ought not to be left to the free will and pleasure of these authorities to cancel the bail once granted. It should only be revoked on proper cause. I have suggested a proper cause, and I submit, Sir, that can be the only proper cause for which a bail should be cancelled. I therefore, Sir, move the amendment, and I hope and trust the Government will not see its way to oppose it. I see a very ominous shake from my Honourable friend Sir Henry Moncrieff Smith that my amendment is doomed. However, I am satisfied with having tried my best in this direction. I move my amendment which runs as under:

"In clause 132 (iv) in proposed sub-section (4) after the word 'may' and before the word 'commit' insert the words 'on being satisfied that the accused is attempting to abscond or escape justice'."

Sir Henry Moncrieff Smith: Sir, I would ask the Honourable Mover of this amendment what is going to happen when the High Court or the Court of Session has caused a person to be arrested and then it is not satisfied that the accused is attempting to abscond or evade justice? As a matter of fact, Sir, Mr. Rangachariar probably put his words into the wrong place of the section.

Rao Bahadur T. Rangachariar: Put them in the right place then.

Sir Henry Moncrieff Smith: As it stands, it will mean this, that the High Court has a person brought before it in custody, and then it has to be satisfied that the person is trying to abscond even before he is committed to custody.

I would suggest to Mr. Rangachariar that once a man is in custody before the High Court, it is rather difficult for the High Court to say to itself: This man is attempting to abscond. He has no chance of absconding. But, Sir, in any case how is the Court going to be satisfied that the man is attempting to abscond? I would suggest to the House that there is no question of attempting to abscond at all. If a man is going to abscond, he absconds. There is no question of attempting, there is no half-way house between them. The man is gone. And therefore, Sir, I think this amendment will not help the accused, it will not help the Court, and that we should throw it out.

The motion was negatived.

Mr. President: The question is that clause 132, as amended, stand part of the Bill.

Mr. K. B. L. Agnihotri: Sir, before you put that question, may I point out that we adjourned the consideration of some provisions under clause 11 to be dealt with in the Chapter on bail. So I think that will have to be considered before the question is put in this connection, and I move that the consideration of this section 132 be postponed.

Sir Henry Moncrieff Smith: Sir, I would suggest that we have already postponed the consideration of this matter for Mr. Agnihotri's benefit for some weeks and I assumed that Mr. Agnihotri would now be prepared to come forward with an amendment on the bail sections which would meet his point with regard to arrest without warrant. I have received no notice of an amendment, Sir, from Mr. Agnihotri.

Mr. K. B. L. Agnihotri: Unfortunately, it only struck me just now.

Clause 132, as amended, was added to the Bill.

Clauses 133, 134 and 135 were added to the Bill.

Mr. J. Ramayya Pantulu: Sir, I propose:

"In clause 136 in proposed section 514-A, omit the words 'under this Code'."

I believe, Sir, the words "under this Code" here are meant to qualify the words "becomes insolvent" and not the word "dies" also. But I have not been able to understand, Sir, what the authors of this section mean by a person becoming insolvent under this Code. I have not been able to discover any provisions in the Criminal Procedure Code regarding insolvency. Therefore, I propose, Sir, that the words "under this Code" be omitted.

Mr. H. Tonkinson: Sir, I admit that my Honourable friend, Mr. Pantulu, has discovered a printing mistake in the Bill. Sir, it is true that people do not become insolvent or die under the Code. I think, however, that we must retain the words "under this Code" and I would therefore propose the following amendment in lieu of that which has been moved by my Honourable friend:

"That in clause 136 in proposed new section 514-A, for the words 'becomes under this Code' the words 'under this Code becomes' be substituted."

Mr. J. Ramayya Pantulu: I agree.

Mr. President: Has the Honourable Member leave to withdraw his amendment?

Mr. Pantulu's amendment was, by leave of the Assembly, withdrawn.

Mr. President: Further amendment moved:

"That in clause 136, in proposed new section 514-A, for the words 'becomes under this Code' the words 'under this Code becomes' be substituted."

The question I have to put is that that amendment be made.

The motion was adopted.

Mr. Harchandrai Vishindas: May I suggest, Sir, that you will be pleased to have the House adjourned as we have a Conference to attend?

Mr. President: I will consider that presently.

Clause 136, as amended, was added to the Bill.

Mr. J. Ramayya Pantulu: Sir, I move only the second part of my amendment:

"In clause 137, in proposed section 516-A, for the words 'such evidence as it thinks necessary' substitute the words 'its reasons'."

The section runs:

"When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of."

I do not think that anything is gained by requiring the court to record any evidence. I think that what is necessary is to require the Court to record its reasons for ordering the property to be disposed of. The Court might record any evidence that it thinks necessary. It will make some sort of inquiry before passing the order, and it is only necessary to require the Court in such cases to record its reasons for ordering the property to be disposed of. With these words, Sir, I move my amendment.

Mr. President: Amendment moved:

"In clause 137 in proposed section 516-A, for the words 'such evidence as it thinks necessary' substitute the words 'its reasons'."

Mr. H. Tonkinson: Sir, I would merely point out to the House that the Bill as it stands does not require that evidence shall be recorded. The evidence which it might be desirable to record will be evidence identifying the property and so on. It is certainly most desirable in such cases to identify the property by evidence before you make an order for the disposal of property pending trial. For these reasons, Sir, I oppose the amendment.

The motion was negatived.

Mr. President: The question is that clause 137 stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 138 stand part of the Bill.

The motion was adopted.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 139, sub-clause (ii), the words "or at any time within one month from the date of the conviction" be omitted.

This clause, Sir, refers to section 522. The section as it is runs as follows:

"Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same."

The Bill proposes to amend this by inserting:

"when convicting such person or at any time within one month from the date of the conviction."

Well, this section gives power to a Magistrate when convicting a person of an offence attended with criminal force to make an order, if any person is found to have been dispossessed of any property by the commission of that offence, restoring the property to the person. The section as it stands does not fix any limit

of time within which that order should be passed. But the Bill provides that such order should be passed either at the time when the accused person is convicted or within a month after that. I propose that the words giving power for the order to be passed within a month after the conviction be omitted. For, I do not see why any time is necessary for a Court to pass an order restoring possession of property to the person who has been dispossessed. All the evidence that is required to enable him to come to a decision on that point has already been recorded in the course of the trial of that offence, and the very fact that the Magistrate has found the man guilty of that offence ought to be sufficient to enable the Court to come to a decision as to whether any person has been forcibly dispossessed of property or not. I do not think that the section contemplates any inquiry subsequent to the disposal of the original case. All the evidence that is necessary to enable the Magistrate to form a judgment in the matter has already been adduced and recorded. That being so, I do not see why any time should be given to the Magistrate to make this order, especially as no such time is given in the present Code. I, therefore, propose the omission of the words as mentioned in my amendment.

Mr. H. Tonkinson: Sir, my Honourable friend suggests that section 522 of the Code at present, if I have understood him aright, requires that possession shall be given simultaneously with the conviction. I do not know if I have understood him aright, but that is what I understood my Honourable friend to say.

Mr. J. Ramayya Pantulu: It leaves the question open. There is no time limit fixed.

Mr. H. Tonkinson: The present clause is to some extent doubtful. There was an old ruling reported in 4 Calcutta Weekly Notes which was to the effect that the order must be simultaneous with the conviction but that has been very frequently dissented from since and there is at any rate one recorded case in which possession was restored after 22 months. Now, Sir, in the Bill of 1914 we proposed to enable such an order to be passed within six months after the conviction. The Lowndes Committee thought it was desirable to reduce that period and they said, they accepted the amendment but they substituted a period of one month for six months from the date of conviction as the time during which an application for restoration must be made, because they said "We do not think that an order of restoration need be made simultaneously with the conviction, but we think that any application for such an order should be made promptly, and that one month is sufficient time to allow for this purpose." Surely, Sir, the Bill is really reasonable in this respect. The complainant may, imagine that as soon as the conviction has been secured in a criminal case, he will immediately secure possession of the immoveable property. But then, if he finds that he does not get the property back, why should he not be able to apply promptly and get an order from the Criminal Court that he should be replaced in possession? For these reasons, Sir, I oppose the amendment.

The amendment was negatived.

Mr. President: The question is that clauses 139 and 140 stand part of the Bill.

The motion was adopted.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, may I submit, before I move my amendment, that this is a very important clause and besides my amendment there are six other amendments which will take a very long time. Honourable Members are anxious to attend a conference as has been represented by Mr. Harchandrai Vishindas. So, we will be obliged if you will kindly adjourn the business now.

Mr. President: We have been considering this Bill now for a very considerable period; and in view of the state of public business I am afraid I must proceed with it a little further to-night.

Mr. B. N. Misra: My amendment* relates to clause 141 which relates to section 526 of the Criminal Procedure Code. This section deals with application for transfer of cases from Magistrate's Courts or appeals from Sessions Judges. Whenever it appears that they cannot get a fair and impartial inquiry in the lower court, under this section they are to move the High Court for a transfer of their case. My amendment relates

Mr. President: Which amendment is the Honourable Member moving? Is he moving both together?

Mr. B. N. Misra: Practically the two parts are connected.

Mr. President: The discussion ought really to turn on the omission of sub-clause (ii). The Honourable Member will move the omission of sub-clause (ii) first. We will go to the other part of the amendment later on.

Mr. B. N. Misra: Side by side, I shall have also to speak about the other. My arguments for both are practically of the same nature. My amendment relates to section 526, clause (5). Sir, clause 5 provides that when an accused person makes an application under this section, the High Court may ask him to execute a bond with or without sureties on condition that, if convicted, he will pay the costs of the prosecution. That was the old section. The present section provides the condition that he will, if convicted, pay any amount which the High Court has power under this section to award by way of costs to the person opposing the application; and the other portion, clause (2), is a new one, entirely a new one; it says that whenever any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay, by way of costs, to any person who has opposed the application, any expenses reasonably incurred by such person in consequence of the application. This is entirely new. Sir, under the original provision, when an order was made by the High Court that, on conviction of a certain person, he will be liable to pay the costs of the prosecutor, it was a case which was never pressed because when the accused was convicted, really the anger of the prosecution ceased, and the man was also in jail;—no doubt it could compel the accused to pay the costs of the prosecution. Then there was no provision made for the costs incurred in the High Court. Really, the cost that were then intended, were the costs of the prosecution in the lower Court; in such cases generally the costs are a very small amount, even if the costs were paid, they were not such a heavy amount and they did not really cause such hardship to the accused. The old Code never made it compulsory for payment of costs by both the parties. It was only in cases of conviction that the accused was asked to pay the costs,—if he was convicted. In cases under 526, it is the prosecution also

* In clause 141, omit sub-clause (ia) and sub-clause (ii)."

who can apply for a transfer. There was no provision made that even if the prosecution or the complainant or the Crown made the application, they were liable to pay any costs. But the amendment as it now stands makes any applicant liable to pay to the other party opposing the application. In the present case it is not only the accused that has to pay the costs of the prosecution, but, if the prosecution applied, and lost his application, he has to pay the costs of the accused. I submit this is really a hardship. It does not make provision, for the payment of costs when the application is granted. When an application is granted, it is obvious that on account of the misconduct or on account of the misbehaviour of the Magistrate the party did not expect to get a fair trial or fair justice. It is obvious, that is why he was driven to go to the High Court. In such a case when the application is granted, I think in fairness the Government ought to provide that the Magistrate on whose account the party came before the High Court ought to pay the costs. I think Government will not do such a thing against the Magistrate whose conduct drove the party to go before the High Court. I submit, Sir, really it is the conduct of the Magistrate that drives a party to go to the High Court. Parties ordinarily do not go to High Court unless they really apprehend injustice—I mean, they apprehend an unfair trial. They apprehend that they cannot get justice. Sir, section 526 says that whenever it is made to appear to the High Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or that some question of law of unusual difficulty is likely to arise—there are also other matters such as a view of the place is necessary and so forth,—or that such an order is expedient for the ends of justice or is required by any provision of this Code—it may make an order to transfer a case from one court to another court. So it is not, simply because, a party apprehends that he cannot get justice in the lower Court but there are many other grounds for which a party can make an application before the High Court. It is not because the accused says that he has not committed a crime or that he is innocent that a case comes before the High Court but for several other reasons. It may be that the accused wants that the trial should not take place before the particular court from whom he suspects that he cannot get fair justice. It is mainly on this ground that a party comes before the High Court. If the High Court refuses the application, it will under the new provision allow the costs reasonably incurred by the party opposing the application. The Criminal Procedure Code contemplated costs to be awarded under certain sections. We know that under section 148 costs are to be awarded by a Magistrate when there is a dispute about immoveable property, and we see also under the same Code costs are allowed under section 488 in maintenance cases. The only section that contemplates costs to be paid to the prosecution is section 545 and under that section the costs that are allowed are only the costs incurred by the prosecution, such as the costs for the Court fees and other things. There are several rulings, Sir, 4 Bombay and 24 Law Reporter Madras I. L. R. If compensation is to be paid to the prosecution, it has to be paid out of the fine and not under a separate sentence.

(At this stage Sir Campbell Rhodes took the Chair which was vacated by Mr. President.)

The particular case, 24 Madras, which I wish to place before the House is this: "The accused was convicted of having caused hurt and fined Rs. 15 and was also ordered to pay compensation of Rs. 12-4, or Rs. 2-4 being Court fees paid by the complainant and Rs. 10 being

[Mr. B. N. Misra.]

damages for other expenses incurred. *Held* that the levy of Court fees of Rs. 2-4 was warranted by section 31 of the Court-fees Act, VIII of 1870, as the duty of the Court to award Court and process fees in addition to the fine is imperative. But under this section the Court has the discretion to award the expenses of the prosecution, which must be taken to exclude those expenses in regard to which the Court has no discretion. Expenses other than Court fees incurred in the prosecution can only be awarded to the complainant out of the fine levied from the accused and cannot be levied from the accused in addition to the fine."

In a case like this, when a man comes before the High Court, the party who opposes the application is to be paid costs. This is an additional cost now being put under the present amendment. We know, Sir, the heavy costs that are incurred in applications before the High Court. Sometimes, if you engage counsels like Mr. Norton or Mr. Hassan Imam, they demand Rs. 1,000 per day. In such cases, if a party opposing an application has engaged such a counsel and paid heavy fees, perhaps the Court may say that these heavy fees were reasonably incurred. It will be really preventing people from making any application before the High Court or from going to the High Court. Sir, when a man comes to the High Court, practically he is under the tyranny of the Magistrate. That is why he comes and now you put another pressure on him in the High Court that he will have to pay so much. Practically he will never dare come before the High Court and make an application for transfer of a case. This will really result in serious injustice, and it will encourage such Magistrates as cannot exercise their discretion properly to do any thing they like. There is grave danger that a party cannot have a fair trial. This will be putting a premium on the high-handedness of Magistrates because the applicants cannot go before the High Court. Sir, I notice that the Honourable Members have left the Chamber, I have no hopes about my amendment being carried. I still say that this is really a very hard provision for one party to pay all the money to the other party for opposing the application in the High Court. I do not know why this provision, which is entirely a new one, has been introduced in this Bill for the first time.

Sir, the second part of my amendment is about frivolous and vexatious applications. Of course it will be something for the lower Court, which is trying the case, to find out and say if the case is frivolous or vexatious. How can the Honourable the High Court find out if a certain application is frivolous or vexatious? The procedure laid down under this section is that a party making an application will have to verify it by an affidavit. The High Court has no opportunity of knowing whether an affidavit is frivolous or vexatious unless there is an inquiry or trial. It is not contemplated that the High Court should find out whether the allegations made in the affidavit are true or false. In such a case, how can the Honourable Judges of the High Court find out that the application is frivolous or vexatious. I submit, Sir, it will be simply shutting out the doors to a party coming before the High Court asking for a transfer, which is really a very wholesome procedure and which very often checks the vagaries of the lower Courts. Sir, the High Court Judges cannot have sufficient materials to adjudge whether an application is frivolous or vexatious. I do not think the Honourable Members of the Government Bench do really wish—that the High Court should adjudge an application to be frivolous or vexatious without any materials before them. In the case of enhancement of punish-

ment at least there is some material before the High Court. In the present case what material is here before their Lordships? Simply there is an affidavit, and they say "we believe it or not;" there is no other material. How can they call it frivolous or vexatious, or ask the party to pay the expenses reasonably incurred by such a person in consequence of the application? I submit that on both grounds it is unjust to introduce the provision that costs should be paid in the High Court by an applicant who loses. Sir, with these few words I commend my amendment to the House.

Mr. H. Tonkinson: Sir, I think it will only be necessary to say a very few words with reference to this amendment. The proposal in the Bill was introduced because of the manner in which section 526 is used, or rather abused, at present. As a matter of fact when the Lowndes Committee noted upon the point they said they were satisfied that advantage is frequently taken of the section to obtain an adjournment which would otherwise be refused without the least intention of making any application to the High Court. "It is reported to us for instance that in the Dacca Division during the past three years adjournments were obtained in not less than 125 cases in which no attempt was made to move the High Court." Well, Sir, that is the reason why such a provision has been introduced. Now, look at the provision. The application must be frivolous and vexatious. This must be found by the High Court and not on an affidavit as suggested by my Honourable friend, but when the application is finally dismissed. You have then got the whole of the trial record before the Court. It is when the final order is made that this order is passed. And when the High Court finds that the application was frivolous or vexatious the clause only provides that it may direct that the expenses reasonably incurred by the person opposing the application shall be paid.

The amendment to omit sub-clause (ii) of clause 141 was negatived.

Sir Henry Moncrieff Smith: Sir, I understand my Honourable friend has also moved the first part of his amendment—in fact most of his speech was directed towards it. The first amendment having been defeated this amendment followed as a matter of course because sub-section (5) is merely consequential throughout to sub-section (6A). It has, however, been brought to notice that there is a mistake in sub-section (5), a consequential amendment which should have been made and which the Joint Committee overlooked. Sub-section (6A) lays down that in every case where the High Court is of opinion that the application was frivolous or vexatious it should have power to award costs to any person who has opposed the application. Sub-section (5) enables these costs to be paid in cases where the accused is convicted. But, Sir, as I said, sub-section (6A) enables these costs to be awarded in every case whether the accused is convicted or not; the criterion simply is that the application was frivolous or vexatious. Further these words are out of place and should be amended to bring them into line with (6A) which the House has now approved. I would therefore with the indulgence of the House move:

"That in clause 141 in sub-clause (ia) after the figure (5) the following be inserted, namely, 'for the word 'convicted' the words 'so ordered' be substituted and.'"

The amendment was adopted.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 141, sub-clause (iii) in proposed sub-section (8) after the word 'inquiry' the words "prior to the accused entering on his defence," be inserted. This section relates to applications made to the High Court for transfer of cases. The

[Mr. J. Ramayya Pantulu.]

existing law is contained in sub-section (8) of section 526. It runs as follows:

"If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make an application under this section in respect of the case, the Court shall exercise powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being made thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal."

Well, the Bill modifies this provision, and the modified section runs thus:

"If in the course of any trial or inquiry or before the commencement or hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon."

It will be seen that so far as trials and inquiries are concerned, the amendment proposed in the Bill makes it compulsory on the Court to adjourn the case on application being made therefor at any stage of the inquiry or trial.

(At this stage Mr. President resumed the Chair.)

Whereas under the existing law, such an application can be entertained,—the Court is bound to entertain such an application if made before the commencement of the hearing. The proposed section makes it compulsory for the Court to adjourn whenever the applications may be made during the trial or inquiry so far as trials and inquiries are concerned. My proposal is that such an application should be entertained, and the Court should be bound to grant an adjournment only when such an application is made before an accused person is put on his defence or before he is charged. I quite conceive that applications on this behalf may be made by the prosecution as well as by the accused, but in either case, I suppose the main ground on which the application for a transfer from a court will be made to the High Court will be that justice and impartial trial cannot be expected from that particular Court. I think the complainant or the accused ought to be able to form a judgment as to the impartiality of the Judge by the time the prosecution is concluded and the accused is put on his trial. From the practical point of view, Sir, the procedure that is prescribed in the new section is likely to result in much delay in the trial of cases. A very frequent sort of cases which arise is this. A charge has been framed against the accused, and the defence evidence has been recorded and the Magistrate adjourns the case for delivering judgment. Supposing at that time the Magistrate is transferred and is waiting to be relieved by his successor. He has heard the case completely and he has only to write the judgment. And at that time, if the accused thinks that the case has gone against him and that he is likely to be convicted, his only chance lies in getting an adjournment of the case in the hope that this Magistrate or Judge may be transferred and, when the new Judge or Magistrate comes, he may have a fresh trial. This is a very frequent trick that is adopted by accused persons to apply for an adjournment to enable him to apply for a transfer after the case has been practically closed. In such cases, it will be very undesirable that the Court should be bound to grant an adjournment. Of course, there is nothing to prevent a Court from granting an adjournment, at any time, even as it is. Under the new section also it can grant an adjournment, whenever a person makes an application, whatever be the stage of the

trial at which that application is made. In cases such as that I have mentioned, it will result in great delay as the new Magistrate will have to start a retrial of the whole case. I, therefore, Sir, propose that in this section, after the word "inquiry" the words "prior to the accused entering on his defence" be inserted.

Sir Henry Moncrieff Smith: Sir, we have no objection to the principle of the Honourable Member's amendment. His proposal is, I understand, in principle to keep the law as it stands at the moment and to keep it as it stood in the Bill as introduced. I would suggest, however, on the subject of drafting, that his words do not come in very well after the word "inquiry" because in an inquiry the accused is not called upon to enter on his defence. Therefore, I would suggest that they be inserted after the word "shall". The present law is that, if an application is made in the case of an inquiry or trial, then the Court shall give an adjournment before the accused enters on his defence so as to enable him to have a reasonable opportunity for making the application. I think it would read better, Sir, if these words "prior to the accused entering on his defence" were inserted not after the word "inquiry" but after the words "the Court shall", and then, Sir, insert the word "shall" before the word "postpone". It will read:

"The Court shall, prior to the accused entering on his defence, adjourn the case or shall postpone the appeal."

Mr. J. Ramayya Pantulu: Sir, I do not know whether that will be all right, but, since you are agreeing to the principle you can put it as you like best.

Sir Henry Moncrieff Smith: Sir, the draftsman suggests that in place of the words proposed to be inserted by Mr. Pantulu the words "before a charge is framed against the accused" might be inserted. It is much the same thing. Of course, the words "entering on his defence" would not apply to an inquiry, but in an inquiry a charge is framed, and therefore the stage of the trial is practically the same, the framing of the charge and calling upon the accused for his defence.

Mr. President: Amendment moved:

"In the proposed amendment, omit the words 'prior to the accused entering on his defence' in order to insert the words 'before a charge is framed against the accused'."

Further amendment moved:

"In line (1) of sub-section (8) to substitute the words 'inquiry or trial' for the words 'trial or inquiry'."

The question is that, that amendment be made.

The motion was adopted.

Mr. President: Further amendment moved:

"That the words 'before a charge is framed against the accused' be inserted after the word 'trial' in the sub-section as amended."

Mr. J. Ramayya Pantulu: That will exclude summons cases. The words "after the accused is put on his defence" will be general,

Sir Henry Moncrieff Smith: I would suggest that after all Mr. Pantulu's original amendment would be suitable after what we have already done in the sub-section.

Sir Henry Moncrieff Smith's amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That the words 'prior to the accused entering on his defence' be inserted after the word 'trial' in sub-section (8) as amended."

The motion was adopted.

Clauses 141, as amended, 142 and 143 were added to the Bill.

The Honourable Sir Malcolm Hailey: Sir, I beg to move that:

"In clause 144, sub-clause (ii), for the words 'in clause (d), the word 'want' the following be substituted, namely:

'the word 'want' where it occurs for the second time'."

I do not think I need comment to this House on this very luminous amendment.

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I should like to move the amendment which stands in the name of Mr. Seshagiri Ayyar, namely:

"For sub-clause (i) of clause 144 the following be substituted:

'(i) Clause (b) shall be omitted'."

The reason being, Sir, that we thought on consideration of Mr. Seshagiri Ayyar's amendment that it was very sound and that clause (b) of section 537 was of no use.

The motion was adopted.

Clause 144, as amended, was added to the Bill.

Clauses 145, 146, 147, 148 and 149 were added to the Bill.

The Honourable Sir Malcolm Hailey: I beg to move:

"That in clause 150 for the words 'and not' the words 'and the method of recovery of which is not' be substituted."

The motion was adopted.

Clause 150, as amended, was added to the Bill.

Clauses 151, 152, 153 and 154 were added to the Bill.

Mr. J. Ramayya Pantulu: I propose that the consideration of the Schedule may be postponed till Wednesday.

Sir Henry Moncrieff Smith: I move:

"That in clause 155 the necessary amendments be made to give effect to the decision of the House with regard to compoundable offences."

Mr. President: The question is that in clause 155 the necessary consequential amendments be made to give effect to the decision of this House in relation to compoundable offences.

The motion was adopted.

Clause 155, as amended, was added to the Bill.

Clauses 156 and 157 were added to the Bill.

The Honourable Sir Malcolm Hailey: I could have wished, Sir, that all our debates on this Bill had been conducted with a harmony such as now prevails. But we are approaching the end of our good work, though we seem to be pursuing it alone. I now propose:

"That in clause 158:

'(1) for sub-clause (iv) (b) the following be substituted, namely:

'(b) the words 'and cannot be recovered by distress of the moveable property of the said (name of complainant)' shall be omitted'."

Mr. President: The question is that that amendment be made.

The motion was adopted.

The Honourable Sir Malcolm Hailey: I move, Sir:

"That in clause 158, in sub-clauses (v) (b) and (v) (d) the word 'moveable' be omitted."

Mr. President: The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is that clause 158, as amended, stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 159 stand part of the Bill.

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, with the indulgence of the House I should like to move the following amendment:

"That after clause 159 of the Bill the following clause be inserted, namely:

'160. This Act shall come into force on such date as the Governor General in Council may by notification in the Gazette of India appoint'."

The reason for the amendment, Sir, is, I think, obvious. When the Legislature is making a very large number of amendments in the Code of Criminal Procedure applicable to the whole country, unless we have a commencement clause of this kind the new law will come into force when it is assented to by the Governor General. It is obvious that we must give considerable notice to the Magistrates and to the lawyers of this country of the amendments that are being made, so that on one particular date which may be appointed hereafter, the whole of the new law shall come into force.

Mr. President: The question is that that clause be added to the Bill.

The motion was adopted.

The Honourable Sir Malcolm Hailey: Sir, we have one or two clauses which we postponed for final consideration on previous occasions. But I do not think we could very well proceed to their discussion this evening, and I would therefore suggest, Sir, that, if you have no objection, we might now adjourn the further consideration of the Criminal Procedure Code.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 14th February, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 14th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN:

Mr. Lancelot Graham, M.L.A. (Legislative Department: Nominated Official).

UNSTARRED QUESTIONS AND ANSWERS.

DEATHS IN DELHI DUE TO COMMISSION OF AN OFFENCE.

163. **Lala Girdharilal Agarwala:** 1. How many dead bodies of human beings were discovered in Delhi including an area within 5 miles of Viceregal Lodge during the last 5 years, in which cases death was reported to have been caused by violence or commission of an offence and in how many of those cases the offender remained unpunished?

2. How many cases of deaths by violence or commission of an offence were reported or discovered in Delhi including an area within 5 miles of the Viceregal Lodge and in how many of them no offender was punished?

The Honourable Sir Malcolm Hailey: The two parts of the question appear to cover the same ground. During the years 1918 to 1922 the number of deaths reported as due to the commission of an offence in the area specified was 60. Of these 9 were found to be due to natural causes. Of the remaining 51 cases 24 were untraced, and in the 27 cases committed for trial, the accused were acquitted in 8 and convicted in 19 cases.

HISTORICAL BUILDINGS IN DELHI FORT.

164. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state the number of Historical Buildings pulled down in the Delhi Fort since 1900?

The Honourable Mr. A. C. Chatterjee: No Historical Buildings have been pulled down in the Delhi Fort since 1900.

HISTORICAL BUILDINGS IN AGRA FORT.

165. **Mr. Mohammad Faiyaz Khan:** Is there any truth in the statement that some of the Historical Buildings in the Fort, Agra, are going to be demolished for making barracks for soldiers?

The Honourable Mr. A. C. Chatterjee: There is no truth in the statement.

IMPORTS OF MOTOR CARS AND CYCLES.

166. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state the number of motor cars, and motor cycles imported into India each year from 1905 till the end of 1922 from England, United States of America, Canada, France, Germany and Italy?

The Honourable Mr. C. A. Innes: The Honourable Member is referred to the "Annual Statement of the Sea-borne Trade of British India" and "Monthly Accounts relating to the Sea-borne Trade and Navigation of British India" which contain all the statistical information available about the import of motor cars and motor cycles. A copy of these publications is in the Library.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I present the report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I have to make a statement which I am sure that everybody in the House will receive with great regret. The Honourable Leader of the House is unavoidably prevented from being present to-day. He was taken ill in the night and cannot possibly take his seat this morning. I am sure I am expressing the hope of every one in this House when I say that we all hope that he will not be long prevented from discharging his duties in this House. (Hear, hear.)

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THE REPEALING AND AMENDING BILL.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I move for leave to introduce a Bill to amend certain enactments and to repeal certain other enactments.

I do not think, Sir, that I need enter into an elaborate explanation of the provisions of this Bill. It is a Bill which the Central Legislature has laid before it from time to time to remove certain formal defects that are occasionally discovered in our law and to remove certain anachronisms. If Honourable Members will refer to the Schedule of the Bill which is in their hands, they will see that there is a column of explanations. Those explanations, Sir, give the reason for every small amendment which this Bill proposes to make in the Statute Book.

Mr. President: The question is:

"That leave be given to introduce a Bill to amend certain enactments and to repeal certain other enactments."

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed further to consider the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

The amendment to clause 11 standing in the name of Mr. Agnihotri was under consideration. Discussion will now proceed on clause 11. The amendment put from the Chair on the occasion when clause 11 was under consideration was:

"In clause 11 for the proposed sub-section (3) in sub-clause (2), substitute the following:

"(3) Every person arrested under this section shall forthwith be released on bail."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, this matter was before the House on a former occasion. It was then postponed because there was a general feeling in the House that this was not the proper place for this amendment and that we should consider it when we came to the Chapter of the Code which deals with bail. When, Sir, we did come to the Chapter which deals with bail, the Honourable Mover of this amendment had his attention invited to the point and he said he was not prepared to move amendments to section 496 or 497. I think the House will agree that the amendment that now stands before it is not a proper amendment to make in the Code. Mr. Agnihotri would enable or rather would require any person arrested without a warrant to be forthwith released on bail unless he was a proclaimed offender under clause *thirdly* or a deserter under clause *sixthly*. I would point out to the House that this would require all the persons under clause *first* to be released on bail as soon as they were arrested. Clause *first* is the clause under which nearly every serious criminal is arrested in the course of police investigations. In the course of an investigation of any serious crime the police arrest a man as soon as they have reasonable grounds for believing that he has committed the offence. They never wait, Sir, to get a warrant from a Court. Therefore, these persons are arrested without a warrant—persons who have been caught shortly after the committing of a murder, dacoits who were being pursued by the police after committing dacoity, and so on,—and these persons whom the police have been fortunate enough to arrest without delay would, under Mr. Agnihotri's amendment, be required to be released forthwith on bail. I think, Sir, the House will agree that this is going much too far and it is a most undesirable amendment to introduce into the Code. The House has had a very full discussion on sections 496 and 497 and it was pointed out to the House on Monday that the provisions of the Code as to bail were now far more lenient than they ever had been and the Government deprecated any further widening or loosening of the provisions. Sir, I oppose this amendment.

The amendment was negatived.

Clause 11, as amended, was added to the Bill.

Mr. President: Discussion will now proceed on clause 33.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, we postponed the consideration of this clause for two purposes. In the first place we wished to deal with the question which arises from the prevention by this clause of the use of the statements recorded by police officers for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The second reason

[Mr. H. Tonkinson.]

why the consideration was postponed was to examine the effect of the amendment which has been accepted by the Assembly which compels the Court to allow inspection of the whole of these statements to the accused. As regards this question the position was indicated by the Honourable the Leader of the House in his statement on the 31st of January. He said then:

"Many of my friends here have, I think, a feeling that it is justifiable, in view of the previous decision of the House, to place in the Bill some proviso which would obviate the danger, to which many of us referred, of the whole of the statements referring to a large number of transactions being handed to the defence."

My Honourable friends, Sir Deva Prasad Sarvadhikary and Mr. Hussanally, were both clear on that point that some amendment of the provision was required. Well, Sir, we have considered this question at length and we have decided that no proviso which does not practically nullify the amendment made by the Assembly would be effective. The alternatives before us if the clause stands as it does now are that either detection will be practically impossible or else proper prosecution of cases in the Magistrates' Courts will be impossible. In these circumstances, Sir, we consider that either this clause must be set right in another place or else in the alternative the whole clause should be omitted and we should return to the existing law. It will be possible to consider that question later.

I now turn to the first point and I wish now to move the amendment of which I spoke on the 31st of January. The position as regards this amendment was indicated by the Honourable the Law Member in his statement on the 26th of January when he said after the amendment moved by Mr. Pantulu had been rejected:

"Sir, with your permission I should like to say a few words. My Honourable friend, Mr. Seshagiri Ayyar, and other Honourable gentlemen having agreed to the retention of the concluding words in this clause, we have, as must have become clear from the division which has just taken place, agreed to the retention of the words 'for any purpose' instead of 'as evidence'; and I understand the position now to be that Honourable Members are prepared to accept the clause as it originally stands in the Bill. But I must make it clear that this will not in any way affect the provision embodied in section 172."

Then, my Honourable friend, Mr. Seshagiri Ayyar, remarked "subject to any further amendments."

The amendment which I then referred to, Sir, is I think an amendment accepted by Honourable Members opposite in principle. We wish to be able to use these statements to just exactly the same extent as the Court is now able to use the diary, and no more.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): No, that was not agreed to.

Mr. H. Tonkinson: If the Court is not able to use these statements in exactly the same way as the Court is now able to use the diary, that is to assist it, to aid it in the inquiry or trial, then there is practically no use in recording these statements at all. I therefore, Sir, move:

"That in clause 33 of the proposed new sub-section (ii) of section 62, the following proviso be added, namely:

"Provided further that the court may in the course of the inquiry or trial, send for the record of any such statement and may use such statement not as evidence in the case, but to aid it in the inquiry or trial."

Those are exactly the words of section 172.

Dr. H. S. Gour: Sir, as I told the Honourable Mr. Tonkinson on the last occasion, statements made to a police officer cannot legitimately be used to the prejudice of the accused. They are statements which may be used for the purpose of benefitting the defence, but never to its prejudice. I have no doubt the Honourable Member is not unaware of the leading case known as Dhal Singh's case. That was a case, Sir, in which a certain learned judge convicted the accused upon statements recorded by a police officer in the case diary. That case went to the Privy Council and the Privy Council observed that it was irregular and improper for a judge to use statements recorded in a case diary, which had never been subjected to cross-examination by the accused, to his prejudice, that such statements were intended to be used for the purpose of checking the evidence adduced by the prosecution, but not for the purpose of supplementing that evidence. It is like a judge using statements not accessible to the accused upon which the accused has had no chance of cross-examining the witnesses, and which so far as the statements are concerned are wholly unknown to him. I submit, Sir, the proviso which my friend, the Honourable Mr. Tonkinson, wishes to introduce in the Code will do away with the principle enunciated by their Lordships of the Privy Council, and which has been worked in practice by the courts in this country. I have no doubt my Honourable and learned friend, Sir Henry Stanyon, who has had long forensic and judicial experience of the administration of criminal law, will bear me out when I say that it would be dangerous to allow statements recorded in the police diary to be used as an aid by the judge in the disposal of criminal cases, and I therefore, Sir, oppose the amendment. The Honourable Mover of this amendment; in the course of his speech, referred to the acceptance of his view by Members on this side of the House. I think, Sir, I am voicing the sentiments of the Members on this side of the House when I say that it was never understood by any one that such a statement should ever be admissible in evidence, or be used as an aid by the judge concerned in the trial of criminal cases to the prejudice of the accused.

Sir Henry Moncreiff Smith: Sir, I think, in spite of what my Honourable friend, Dr. Gour, has said, it is a fact that on the previous occasion when this matter was discussed, there was a feeling in this House that some amendment was necessary to get rid of the effect of the words "for any purpose." Dr. Gour's remarks on this amendment have lacked their usual relevancy; in fact I doubted, as I listened to Dr. Gour, whether he understood the amendment which my friend, Mr. Tonkinson, had put forward. Dr. Gour cited one case on which he based the whole of his arguments. He said it was a case in which police diaries had been improperly used by a Court as evidence to corroborate and substantiate the case for the prosecution. Sir, that undoubtedly was a most improper case, but it has nothing whatever to do with the amendment which Mr. Tonkinson is now putting before the House. Sir, in the first place, we are not dealing with police diaries, we are dealing with statements. In the second place, we are not proposing to use those statements as evidence, we are merely proposing to enable the court to use them in exactly the same manner as the court can use the police diaries under section 172 of the Code.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, with all respect, I am unable to understand the attitude taken up by Government in regard to this matter. This House has resolved, with regard

[Colonel Sir Henry Stanyon.]

to statements made by persons in the course of the police investigation,—persons who afterwards come up as witnesses at the trial,—that the accused shall have access to those statements and be furnished with copies of them. It has been said in general terms, but has not been sufficiently defined so as to make me capable of understanding it, that such a provision will make the prosecution of cases impossible. A witness comes up the day after a murder and says that he saw a person like the accused hurrying away from the place where the murder was committed. Later on he comes before the Magistrate and says

Sir Henry Moncrieff Smith: May I point out that these remarks are irrelevant. Mr. Tonkinson is not in the House for the moment, but Mr. Tonkinson's amendment relates to the words "for any purpose"

Dr. H. S. Gour: May I rise to a point of order? Who is presiding here to determine whether the remarks are in order or not?

Mr. President: Order, order. The Honourable Member may leave the Chair to decide for itself. Sir Henry Stanyon.

Colonel Sir Henry Stanyon: I was putting forward an illustration in connection with a remark made, in introducing the amendment, by Mr. Tonkinson who said that if the original amendment before the House became law, prosecutions would be impossible. As I was saying, this witness comes up at the trial and states that with his own eyes he saw the accused committing the murder. Now is it or is it not just that everybody concerned with the prosecution and the defence, including the judge and the witness, should know of these differences in statement and should have some explanation of them from the witness? How is the prosecution rendered impossible? Conviction may be rendered impossible—that is another thing—but how is the prosecution rendered impossible by the fact of these two different statements being made public. The amendment which is to-day proposed to be introduced adds another instance to a difficulty which already exists. It is suggested that, like the case diary, these statements may be sent for and used by the Court for the purpose of aiding it in its inquiry and trial. "Used by the Court"—in what way? To influence its judgment? To affect it with regard to the credibility of a witness? If so, then, in fact, but not in the name of law, that statement is being used as evidence. My friend, Dr. Gour, cited Dhal Singh's case, not quite accurately. An influential landlord was convicted of murder and sentenced to death. The case came before the High Court of the province, before a Bench of which I was a member. I was responsible for writing the judgment.

Mr. H. Tonkinson: Sir, I rise to a point of order. The remarks of my Honourable and learned friend have nothing to do with the amendment now before the House. They refer, I think, Sir, entirely to the question of the provision—which will come up for discussion immediately afterwards—which was introduced by the Assembly on the 31st January, namely, the right given to the defence to inspect the evidence.

Mr. President: Has the Honourable Member anything to say on that point?

Colonel Sir Henry Stanyon: My intention was to show that in that case an open reference was made to case diary statements and that was criticised by their Lordships of the Privy Council (to whose decision we

must all bow) instead of, as would have been the more correct procedure, for the Judges to allow themselves to be secretly influenced by those same statements. They were honest enough to say in their judgment: "this is what makes us disbelieve the evidence for the defence." That is all that happened in that case. The conviction was upheld by their Lordships of the Privy Council. However, the point is this, that what is now sought to be introduced is another attempt to allow the prosecution to whisper in the ear of the Court. That is a principle which I respectfully submit is opposed to the rules of justice as understood in Great Britain and in British India. I cannot see to what disadvantage anybody concerned is put by the accused knowing what a witness who is giving fatal evidence against him had previously said.

Sir Henry Moncrieff Smith: Again, Sir, that is entirely irrelevant to the amendment before the House.

Colonel Sir Henry Stanyon: If the Honourable the President rules me out of order I shall bow to his decision. I say that this amendment would exaggerate and increase the evil of this whispering in the ear of the Court. I, therefore, strongly oppose the amendment.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, there are two points which ought to be kept distinct. The one is that this amendment does not go against the amendment carried in this House as regards the use of statements to the Police by the accused. This amendment does not affect it. As regards the propriety of the amendment, I respectfully agree with everything that was said by the Honourable Sir Henry Stanyon upon the matter. On the last occasion, when a similar matter came up, I pointed out that this would amount to what is known technically as "corrupting justice." A Magistrate should have access only to such papers upon which he is to base his judgment: he should have nothing else before him. If his mind is to be prejudiced by looking into certain records which are not open to the accused the result of it will be that the accused will be in a very difficult position, the Magistrate's mind having been secretly biased against him by his having looked into certain papers which he has no access to. And, moreover, as I said on the last occasion and I repeat it again, it is of the essence of criminal justice that the Magistrate's mind should be free from any taint of suspicion, that is favouring the accused or favouring the prosecution. If you put into his hand a statement which is not to be used as evidence, on which he is not to base his judgment, then you allow his judgment to be influenced by a document which is not public property. Sir, it is a dangerous thing to do and I do not think that anybody in this House agreed to an amendment of this nature being introduced. We never agreed to an amendment being introduced which would put into the hands of Magistrates a weapon which he can use against the accused without the accused having an opportunity of putting up any defence. Under these circumstances, I strongly oppose the amendment which has been proposed from the Government Benches.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadian Rural): Sir, apart from the considerations which have been put forward in opposing the amendment, I think there is one great objection of principle to be raised against the form of the amendment proposed. It is practically a kind of giving with one hand and taking away with the other, or first laying down a principle and then qualifying it 100 per cent. Because the first part of

[Mr. Harchandrai Vishindas.]

the amendment proposes to exclude these statements from the category of evidence whereas the second part, although worded differently, actually keeps them as part of the evidence. I think it is wrong in principle to introduce legislation on these lines at all. Of course, it may be considered to be a strong word, but I think it is the proper word, to say that such a kind of legislation is "misleading." It misleads those who are responsible for the administration of justice, because a conscientious Magistrate or Judge, while looking at this section, will be puzzled as to what interpretation to put upon it. He would say to himself "if I am not to use it as evidence I am to use it as an aid to the administration of justice." How is it to be an aid to the administration of justice? Therefore, apart from the arguments on the merits which have been put forward by various speakers, I say it is a wrong principle to have any law of this kind on the Statute Book.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I wish to make one point clearer. As I understand the amendment, it is simply to the effect that these statements should be used in the same way as police diaries are used at the present moment. The question of showing the statements to the accused does not arise.

Dr. H. S. Gour: What is the meaning of "use it as an aid."

Mr. P. E. Percival: The amendment does not touch the question of showing the statements to the accused, or of keeping the statements away from the accused. The amendment only is to the effect that the statements of witnesses taken by the police may be used by the Court in exactly the same way as police diaries are at present used by the Court, and to which use no objection has been taken, nor has there been any opposition thereto in this Assembly up to now. Section 172 makes it quite clear that police diaries cannot be used as evidence, but can be used as an aid in such inquiry or trial. Now, under section 162, as it now stands, statements of witnesses to the police cannot be used for any purpose, unless we make the necessary amendment in section 162; and even if this amendment is made they can be used only for the same purpose as police diaries are used. It seems to me that if this amendment is not made, the only practical result will be that the police officers will include all depositions in their diaries instead of including them, as they should include them, in the statements of the witnesses. It is not a question—I wish to make this clear—one way or the other of showing the statements to the accused person. That is an entirely different question. The only question is whether the Courts should not be allowed to use these statements in exactly the same way as police diaries are used, and no objection has been taken by this Assembly to the use of such diaries up till now.

The amendment was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

Sir Henry Moncrieff Smith: Sir, clause 33, as it now stands, is to my mind quite an impossible clause. It has two defects. One defect has arisen from the fact that the House has just refused to pass the amendment moved by my Honourable friend, Mr. Tonkinson. We have it now that the statements recorded by the police cannot be used for any purpose whatever. What we had suggested was that those statements should

be used in exactly the same manner as the police diaries can be used and for exactly the same purposes for which the police diaries can be used under section 172. The second defect in clause 33 has been already referred to by Mr. Tonkinson this morning. We have now an absolute requirement, a mandate to the courts, when every witness steps into the witness box, to hand the defence a copy of the statement which that witness has made to the police. Sir, I do not want to re-open the discussion on this particular point. It was pointed out to the House the other day that it was very dangerous to hand over the whole statement. Mr. Hussanally pointed out that it was very dangerous to hand over the whole statement and Sir Deva Prasad Sarvadhikary entirely agreed. He said that we must have something that will make it possible for the Court to hand over at all events only such part as may be relevant or such part as may in the opinion of the Court be essential to hand over in the interests of justice. Sir, there section 162 stands. Statements made to the police cannot be used for any purpose, and they have nevertheless to be handed over in their entirety to the defence the moment the witness steps into the witness-box. I think, Sir, if the House would try to realise what the effect of that is, they would agree that the administration of justice will be most seriously hampered. What I want to suggest to the House is that rather than allow this clause to pass in this form—Government, Sir, will never, so far as they can help it, allow this clause to emerge from the Legislature in this form—the House should take the very simple expedient of deleting the clause entirely from the Bill and leaving section 162 of the Code as it stands unamended. Sir, we have a large number of rulings on section 162 of the Code as it stands. Those rulings are a guide to the Magistracy with reference to the use of statements made to the police. Those statements, Sir, can be handed to the defence for the purpose of contradicting witnesses and that is about all section 162 amounts to. I would therefore suggest to the House that on this motion that clause 33 as amended stand part of the Bill, it should give a negative vote which, as I say, will merely have the effect of maintaining section 162 in the law unamended. Government, as I said, Sir, will strenuously oppose to the very last moment clause 33 standing in the Bill in its present form. It will undoubtedly be necessary to take the matter before another House and try to persuade that other House to take a more reasonable view of the matter. I therefore, Sir, propose myself to vote against the standing of this clause in the Bill and I hope the House will support me in this matter.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, as my name has been mentioned by the Honourable Sir Moncrieff Smith, I think that I should point out to the House that if the amendment which I had then proposed and actually handed over to the Secretary of the Assembly had been accepted by the Government, all this difficulty would have been avoided. I proposed on the last occasion, that the Magistrate or the Court should have authority in special cases, for reasons to be recorded, to disallow copies of statements of witnesses being given to the accused. That amendment of mine was unfortunately not accepted by the Government and that has led to all this difficulty at this moment. As for the threat Sir Moncrieff Smith has held out to the House of the Government not agreeing to this clause being passed in this form and of their intention to move the other House to negative this clause and to amend it again, I do not think for a moment this House will be afraid of it and should not be. But to make matters more practical I would still propose

[Mr. W. M. Hussanally.]

the amendment which I then handed over to the Secretary of the Assembly, and if I am permitted to move it even at this stage by the Chair as well as by the Government, I think all difficulty will be avoided and the clause as then passed will have the effect of having everything that the Government wants.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, I stand aghast at the attitude adopted by the Honourable Sir Moncrieff Smith. What is it, Sir, that this Assembly has done to merit the covert rebuke which he has administered to it? He is going to appeal to a more reasonable Assembly! Sir, what is his complaint? His complaint is that this House adopted clause 162 as proposed by Government. Clause (1) of section 162; if Honourable Members will turn to page 12 they will find, has been adopted to its fullest extent by this House; I mean clause 33—section 162, clause (1). There was an attempt made by my Honourable friend, Mr. Pantulu Garu, to amend it. That attempt failed. So, the clause now accepted by the House is the very one proposed by Government. If he has any reason to be dissatisfied with anybody, he has reason to be dissatisfied with himself and his colleagues on the Treasury Bench. It is they that proposed this clause and this House had the good sense to accept the reasonable proposal made by the Government. Now, therefore, I do not see what the charge against this House is, that he should hold out this threat that he is going to another House, a more reasonable House,—a House in a more reasonable mood or more reasonable House, whatever it may be. Again turning to the proviso what is the crime, Sir, which this Assembly has committed? All that this Assembly has done is, it has modified the proviso as introduced by the Government. That is to say, we have provided that the accused should not be tried in the dark, that the accused should not be convicted on perjured evidence and that the prosecution should not hold up its sleeve former contradictory statements made by witnesses. The prosecution at a particular stage puts forward a witness as a witness to truth. The accused is given the right to inspect former statements made by that witness. Have we committed a very grave sin in giving that opportunity to the accused person who stands to lose his liberty and probably his life, because we give him an opportunity to inspect the previous statement made by a witness in the box? Certainly, I do not think any House, if it has any reason behind it, if it has any reason in its head, would object to such a clause, to such a power being given to the accused person when he is on his defence for his liberty and for his life. Sir, we are threatened with all sorts of horrors, all this arises out of the imaginary fear that the witness might have spoken not only to the particular case under investigation but to other cases—and this happens in very rare cases. That can be avoided by other methods. Why? Instructions can be given to police officers if really you are going to get a witness who will go about telling other stories than the story connected with the particular case then under investigation, to put those statements down not in the particular statement, but in their diaries, in which case it will be safe from inspection by the accused. Not only that. The Court has ample power always to instruct the pleader who appears—pleaders are officers of Courts—"you are not to use such and such portions because they do not relate to the accused." I suppose you can trust the pleader with a sense of responsibility. I suppose pleaders are amenable to the disciplinary jurisdiction of the Courts. I have known cases where the

most confidential papers are handed over to Counsel for accused because they are trusted and they ought to be trusted. In any administration, in any civilised administration pleaders should be trusted. Therefore, I do not think any real serious risk is taken. The risk that there might be statements relating to other matters may be avoided by the policeman not recording it in the particular record, but in his diary and Government can certainly give instructions to that effect to the police officers. Even otherwise, the Court, if the accused is defended by a pleader, can trust the pleader to use his discretion in the matter. It is not every matter which is introduced in a Court which is made public. Is there not power in the Court to say, if it is really such a serious case where the witness has disclosed facts which are going to affect the public interests or the interests of the State or the safety of the State—the Court is not powerless to hold the hearing *in camera* and not allow it to be published? Therefore, there are ways by which these imaginary fears can be safeguarded. Such being the case, this House has done but bare justice to the accused. This is a thing in which the people of this country have been agitating for a long time, namely, that this sort of secret trial, the policeman holding up in his sleeve certain statements given by a witness and not being at liberty to disclose them to the accused person who is on his trial, is a grave reflection upon the administration of criminal justice in this country. I am glad that this House has risen to the occasion and removed that reproach from that administration. Rather than being sorry for it, I hope the Government will be glad that they are, at any rate, at the last moment doing justice to the accused persons who are on their trial.

Mr. President: Do I understand the Honourable Member from Karachi to move his amendment?

Mr. W. M. Hussanally: If I am permitted to do so.

Mr. President: Amendment moved:

"In the proviso in clause 33 after the words 'Indian Evidence Act, 1872' add the words 'unless for special reasons to be recorded the Magistrate deems it inexpedient to grant a copy when he shall refuse to do so'."

Mr. T. V. Seshagiri Ayyar: May I ask for a ruling from you, Sir, whether this amendment should not be taken to have been vetoed when it was not moved on the last occasion? It was on the paper but it was not moved.

Dr. H. S. Gour: The amendment now proposed to be moved will be inconsistent with the amendment already carried by the House.

Mr. President: The amendment was handed at the table in manuscript, and as far as I know it was never on the amendment paper.

Mr. T. V. Seshagiri Ayyar: If I remember aright, the Honourable Member had handed it over to the Chair. He says he handed it to the Secretary of the Assembly who must have handed it over to the Chair, and I take it from the fact that he did not move it or press it that it was given up.

Mr. President: It was never moved. It was certainly not put from the Chair and the question could not come before the House until it was put from the Chair on a motion moved.

Mr. T. V. Seshagiri Ayyar: If I understand aright, the position was this. Mr. Hussanally had not sent in his amendment in proper time. He had brought it later on and objection was taken on the Government side that it was not in proper time and therefore it should not be allowed to be moved. That is what, if I am right, took place. In those circumstances it was not pressed. Therefore, not having been allowed to move it as it was not in proper time, is it now open to the Honourable Member to move it again? A number of amendments in that way were rejected.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): My own recollection of the case is this. In the course of a speech my Honourable friend, Mr. Hussanally, made a suggestion that if an amendment of this kind were embodied the amended clause might be acceptable to the Government, but no such amendment was moved by him, until at the end he said, "I am prepared to move," and then the Government I think said, "Well, it can be left to another occasion."

Mr. W. M. Hussanally: I think Mr. Jamnadas Dwarkadas has correctly pointed out what happened on the last occasion.

Mr. President: The Official Report gives no indication whatsoever that the Honourable Member from Karachi moved any motion at all. The words with which he brought his speech to a close were:

"I would, therefore, Sir, with your permission suggest a sort of compromise between the two parties."

That is a long way from moving an amendment. Again it says:

"A compromise of this kind would suit both sides, and ought to be accepted by the Government as well as by my friends on this side."

Presumably, he threw out the idea in order to see whether it would catch on, and apparently it did not catch on. The Honourable Member is perfectly entitled to move the amendment now.

Mr. T. V. Seshagiri Ayyar: We have had no notice of this amendment and I take objection to its being moved now. If you allow it, it is another matter.

Mr. President: As the Honourable Member has just been pointing out, though formal notice has not been given, he has known the substance of the amendment since the 31st of January. The amendment is now before the House for consideration.

Mr. W. M. Hussanally: So far as I am concerned, I have nothing more to add to what I have already said.

Sir Montagu Webb (Bombay: European): May I ask that the amendment may be read out again as we have not got copies of it?

Mr. President: "In the proviso in clause 33 insert after the words 'Indian Evidence Act, 1872' the words 'unless for special reasons to be recorded the Magistrate deems it inexpedient to grant a copy when he shall refuse to do so'."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I wish to refer to the speech just made on the general clause 33 by Mr. Rangachariar. I fear, Sir, that on this occasion in the opening part of his speech Mr. Rangachariar has departed from his usual fairness. He asked with indignation and scorn why the Government found fault with the Honourable Members sitting round Mr. Rangachariar because they had opposed clause 33 which was drafted by Government. Sir, I think we may complain that that is a merely debating point. Clause 33, if Honourable Members will refer to page 21, includes the whole of section 162, that is printed in italics.

Rao Bahadur T. Rangachariar: I said 162 (1) in clause 33. My wording was very exact.

Mr. P. B. Haigh: What difference does that make? Mr. Rangachariar spoke scornfully of Government because they complained that Honourable Members had passed clause 162 (1). 162 (1) contains a proviso. I ask the House to direct its attention to the exact wording. "No statement made by any person to a police officer, etc., shall be used for any purpose *save as hereinafter provided*." Then follows the proviso: "Provided that it may be used in particular circumstances therein detailed." That proviso has been cut out entirely by the amendment.

Rao Bahadur T. Rangachariar: The proviso is there.

Mr. P. B. Haigh: That proviso has been entirely changed in character by the amendment passed the other day and the first part of section 162 (1) is therefore rendered entirely meaningless. That is why Government justly object to having the clause passed as it has now been amended.

I wish to pass on to Mr. Rangachariar's general review of the position that has now been created by the amendment that was passed the other day. I would ask the House to remember that if a police officer is making a careful investigation of a case, then, in order to aid his own memory, in order that he may know exactly what every witness has said, he must if he is to do his work thoroughly in a difficult case take down the statements of important witnesses, and these statements cannot at that stage of investigation be expected to contain only matters that are strictly relevant to the inquiry and to the case as it will appear against the accused who is perhaps at this moment unknown. If the clause is passed, those statements must now be placed *in toto* in the hands of an accused person as soon as a witness who made them goes into the box. They will fall into the hands of the accused and he will thereby be possessed of all the information that was given by that witness to the police officer in the course of the inquiry whether it refers to the particular accused present, who is now in the box, or to other persons who have perhaps no connection with the crime or to persons who may be supposed to have had connection with the crime and are not yet detected or apprehended. All these things are to go into the hands of the accused. But Mr. Rangachariar says this can be easily cured. Why do not the superior officers of police and executive officers give instructions to their investigating officers, inspectors and sub-inspectors, only to take down the statements in a proper manner? Now, Sir, I am surprised that a lawyer of experience like the Honourable Member should make such a suggestion. It seems to me that he is practically inviting the subordinate investigating officers of police to cook the statements that are going to appear as the statements of the accused. Those statements are not signed by witnesses making the depositions.

[Mr. P. B. Haigh.]

They are not recorded solemnly on oath or in an office with people standing about. They are taken down on bits of paper in village chavadis, under trees, anywhere; and any sort of paper could be produced in those circumstances by the police officer and he could say "This is what the witness said to me and it fits in perfectly with his deposition in Court." A suggestion that instructions of this kind should be issued amounts to inviting subordinate police officers to prepare false statements in order to assist their case. Then there was another suggestion. There is no need, says the Honourable Member, for Government to be alarmed. Surely, he says, the Courts have power to prevent any mischief being done. The court can advise the pleader for the accused that grave public interests are involved, that he must not refer in the course of his speech to certain portions of the statements which he has just been allowed to see, that the matter must be kept entirely concealed. The pleader for the accused is, we are told, an officer of the court. He is subject to discipline. But I ask, what about the *accused*? The *accused* is not an officer of the court. The *accused* is the person who is to see these statements. There is nothing in section 162 about the statements being merely shown to the counsel or pleader for the accused or to an officer of the court. The *accused* is to see them. It is he who will find out exactly what witnesses have deposed against him or his associates. It is he who will be in a position to know what things have been suggested to the police about persons perhaps not connected with the case at all. Does the Honourable Member seriously suggest that no mischief can be done, that the court has full power, by merely instructing a pleader, to keep the matter confidential, to prevent any mischief being done. The Honourable Member knows perfectly well that if these statements are shown in their entirety to the accused person, there may on occasions be grave risk of injury to innocent persons and injury to the interests of the State. And yet he thinks that all this can be set aside by the mere suggestion that the court has full power to prevent any harm being done. I trust that the House containing as it does so many members of practical judicial experience will not accept an argument of this kind from the Honourable Member.

Finally the suggestion came from the Honourable Member that the court can always get over the matter by holding the case *in camera*. Sir, I am astounded that such a suggestion should come from the Honourable Member opposite. Even if the case is held *in camera* what difference does it make. The accused will see all these papers. The accused will be able to disclose the information. The accused will have every power to bring about injury to those who have spoken to the police against him and against his friends. Sir, this is really a serious matter which will gravely hamper the administration of justice and I submit that Government are perfectly justified in stating that as they have failed to persuade this House to reject that amendment, if they cannot persuade the House to reject the whole clause as it stands and restore the old clause, they will take the matter up in another House and safeguard the proper administration of public justice in the manner provided for by the constitution of this country. I trust that the House will reject this clause.

Dr. H. S. Gour: I am afraid the Honourable Sir Henry Moncrieff Smith has unnecessarily added a tone in the course of this discussion which I strongly deprecate and I do not think my Honourable friend, Mr. Haigh, was even entitled to refer to the powers of another House and to the veiled

threat that if this House is not amenable to reason, an appeal will be made to another House to correct its errors. As to this part of the constitution, it was quite unnecessary to remind this House about it. This House must decide this question fearlessly, and undismayed by any threat of correction by any other House or in any other place. I pass on, Sir, to reply to the more material objections raised by the Honourable Members. The Honourable Mr. Haigh saw daggers in the air, he told us that it will be a monstrous thing if statements recorded by the police officer in the course of an investigation were revealed to the accused, because those statements may contain other statements highly prejudicial to the interests of the State and which it would be therefore prejudicial to disclose to the accused. I am perfectly certain that the Honourable speaker was not unaware of the provisions of the Act of 1882, the old Criminal Procedure Code, which preceded the present enactment of 1898. What was the practice then? And how far was the safety of the State imperilled by the statements which were then available to the accused, and copies of which were delivered to him? Can my friends on the other side cite a single example that during these long years the statements taken by the police officer and made available to the accused ran the risk of which the Treasury Benches complain and of which their supporters, including the Honourable Member from Bombay, complain? That, I submit, is a short answer to the fears and apprehensions on the part of the Government Benches. I go further and say—you try the accused, the police officer has made an investigation into his case, the first statements of the witnesses have been taken down by him, these are the statements upon which the accused has been brought up on his trial. These statements have been subsequently improved upon or added to. The accused sees the statements made before the Court, and demands that contradictory statements made by the witnesses before the police should be made available to him so that his previous statements to the police be used to contradict him. Such a procedure is not only allowable by law but is directly contemplated in certain sections of the Indian Evidence Act which lays down that a witness may be contradicted with reference to his previous statements. His previous statements are there. The law allows that a witness may be contradicted with reference to his previous statements. What is the answer of the Government when they refuse the accused the permission to refer to statements which the law allows and which is a legitimate subject for cross-examination? It cannot be denied that witnesses in the course of the trial, as the case develops, keep on changing their statements. I do not say it is an invariable practice, but I do say that in many cases the true test and sometimes the sole test available to the accused is that the witness has gone back upon his previous statement which he made to the police and which he has since exaggerated for purposes best known to himself. If the Treasury Benches refuse to give copies of these statements, I ask them how is the accused to challenge the credibility of witnesses tendered by the prosecution? We are told that the Magistrate will look into it. I am sure, Sir, my friend, the Honourable Mr. Haigh, was present in the House when I pointed out, and it was also pointed out by the Honourable Sir Henry Stanyon, that the Magistrate cannot be, and is not, the proper person to act as the accused's cross-examining counsel. The Magistrate's duty is to hold the balance even, and to leave the prosecution and accused to conduct their case in the best way they can. To say that the Magistrate or the Court is entitled to refer to these statements, as is embodied in the provision now before the House, but not bound to give a copy of these statements to the accused, is to say that the Court has to find out what is in the mind of the accused and to do

[Dr. H. S. Gour.]

work which is the legitimate work of the accused's counsel. How is the Court to know upon what points the counsel for the accused is going to cross-examine these witnesses? What is his defence, and for what purposes he wishes to use the statements of these witnesses made to the police in the course of the investigation? These are all matters of very serious importance, and those who have practised at the bar or presided on the Bench know too well that the provision, the existing provision, namely, that the Court shall refer to the statement, is wholly inadequate, and in many cases wholly illusory to protect the accused. I submit, therefore, that on the last occasion this House by a very large majority (*A Voice*: "Only by two")—then at any rate by a much larger majority on this occasion, should decide that it would be in the interests of justice as also in the interests of the accused, and it would be, as Mr. Rangachariar rightly pointed out, in consonance with consistency, that these statements should be made available to the accused. After all, we are making no innovation. We are after all treading upon the old beaten ground; we are going back to the old practice; the innovation introduced by the Amending Act of 1898 has been found to be inadequate and insufficient in practice. Consequently we are going back to the old law, and I do not think that there need be any apprehension on the part of the Members of the Government or anybody speaking on behalf of the Government that there is likely to be any danger to the State, or that the prosecution would fail in cases where they do not deserve to fail. I therefore submit, Sir, that the amendment which we accepted on the last occasion and which was endorsed by the vote of this House ought to be reaffirmed on this occasion.

Mr. H. Tonkinson: Sir, I desire to object to the statements which have been made by two Honourable Members of this House to the effect that my Honourable friend Sir Henry Moncrieff Smith used a threat. My Honourable friend merely said, what is a fact, that Government propose to use all their constitutional powers in putting this clause straight. That, Sir, is by no means a threat and I think it was quite a misnomer to say it was a threat. (*Dr. H. S. Gour*: "Was it intimidation?") My Honourable friend Dr. Gour refers once again to the Code of 1882. I stated on January 31st and I repeat now that we are not going back to the Code of 1882 by the proposal in the Bill. We are going to an entirely different position. The Code of 1882 did not, as my Honourable friend says, allow inspection of the whole of these statements to the accused person. I read out the provisions of section 162 on that occasion and there is not the least doubt about it that my Honourable friend's statement is in this respect incorrect. We are dealing, Sir, with a proposal to allow inspection of the whole of these statements to the accused. That, Sir, my Honourable friend Mr. Rangachariar thinks may be harmful in a few isolated cases. I say, Sir, that it will be harmful in almost all the cases which are under investigation in this country. There is practically no case, Sir, in which these statements do not include information as to the sources of police information, and it is quite impossible, Sir, for any Government without grave anxiety to allow such a clause as this to be enacted. I would now merely remind the House that they are proposing to do something which is not done in any country in the world.

Mr. W. M. Hussanally: Sir, may I ask the Honourable Member to read the provisions of section 162 in the Code of 1882: we have not got that Code before us

Mr. H. Tonkinson: Section 162 of the Code of 1882 runs as follows:

"No statement other than a dying declaration made by any person to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it or be used as evidence against the accused."

My Honourable friend Dr. Gour says we are going back to the law as embodied in that clause. He knows quite well that we are doing nothing of the sort.

Dr. H. S. Gour: If my Honourable friend is prepared to reproduce that section 162 we are prepared to accept it now.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadian Rural): Sir, the point in dispute seems to me to be very simple and I am afraid a good many things have been said which do not pertain to the matter in dispute. We are all agreed that statements made by a witness to a police officer relating to an accused person who is under trial before the Court ought to be shown to that accused person. Up to this point there is not much dispute. (*A Voice*: "A lot of dispute.") We have reached that stage. The danger which is now pointed out is that in the statement recorded by a police officer there may be matters relating to other persons who are not before the court. That is to say, a witness may give information to the police about matters in connection with people other than those before the court, and the objection is taken that matters relating to such persons ought not to be shown to the accused. A simple remedy for that is that a police officer should take care not to jumble up together matters connected with different people in one statement. Mr. Haigh said how is it possible for him not to mix up things; when a man makes a statement he may refer to several people. He added that it might end in police officers dressing up their statements or something like that. What I say is that a police officer before he takes down a witness's statement in writing naturally finds out orally what that witness can testify to. A policeman does not begin to write at once as soon as a witness begins to speak. He finds out the whole story first and then decides whether it is worth recording. That, I suppose, is admitted. A policeman is not a writing machine or a recording machine. He first examines a witness, finds out from him all the matters that he can speak of and then begins to write out his statement. Well, then, accepting the clause as passed by the Assembly, what the police officer has to do is to write out under separate heads the information which he knows he is going to get from witnesses. It will not be difficult to separate the details relating to one accused from those relating to another or to a person who is not involved in his inquiry. As I have said on another occasion, this will only make the policeman more careful and systematic in taking down these statements. And after all, statements which deal with a number of people are not of frequent occurrence. The cases about which so much anxiety is displayed by the Government Benches are not of frequent occurrence. It is only in rare cases, as those relating to a dacoit gang or in which a large number of people have conspired to commit an offence, in which there may be a witness who has been acquainted with the secrets of the gang or of the conspiracy—it is only in such cases that statements of an involved and complex character will be made. And these are very rare cases. In order to give a sort of protection in these rare cases, I do not think that the law should be altered so as to put in the hands of Magistrates the power to refuse or to exercise their discretion and then

[Rao Bahadur C. S. Subrahmanayam.]

refuse inspection or a copy of statements of witnesses in ordinary cases. There is no use in the Government magnifying the dangers and difficulties. I am afraid for some reason or another, they have not taken a right perspective of this amendment. They have unnecessarily worked themselves up into a feeling that the whole administration of justice will crumble up and the State will be in grave danger if the accused are allowed inspection of these statements. What has been irregularly done, what has been done at great cost and what has been able to be done by wealthy people at the expenditure of a considerable sum of money, we ask now let it be the right of the poorest man as well to know what has been said by a witness. The importance of these previous statements has been referred to and I wish also to refer to it. A man says a certain rambling statement, almost amounting to hearsay, almost amounting to what he has heard, almost amounting to rumour, which is down in the record made by the policeman. But when he comes to Court to give evidence before a Magistrate some days afterwards, he gives a cut and dried, neat story, omitting all those things which would make it amount to hearsay or rumour and makes it straight and definite, in which case it is of great importance to the accused person to show up that witness and make the Court understand that this man has substantially improved his story and therefore he is not a reliable witness. And I am afraid any opposition to that course would simply make us believe that the Government is interested, as is the common repute, in getting persons accused of offences by hook or by crook, and, therefore, I deprecate very much the unnecessary anxiety and what has been styled to be a threat or the exposition of constitution under which we are working, that this section is the section on which the Government has pinned its faith and has staked its reputation.

Colonel Sir Henry Stanyon: Sir, we the non-official Members on this side of the House expect, and constantly receive—perhaps not as often as we should like, but still frequently—consideration from the Government of propositions which we submit for the opinion of this House, and I feel sure that I voice the sentiments on this side of the House when I say that we regard ourselves bound to give reasonable consideration and re-consideration to propositions put forward on behalf of Government against views which we may entertain. We have, on a former occasion, adopted an amendment of clause 33 which the Government claim to be unworkable. I have already said that though more than one speaker has denounced this Resolution as unworkable, we have not yet had any detailed description of how it would be unworkable. Nevertheless, speaking for myself, I accept the absolute good faith of the objection put forward to our Resolution by Government. It seems to me—and I think in this matter I voice the sentiments of those with whom I have agreed on this clause—that the object of both parties in this controversy is the same, namely, the securing of a fair trial. We do not want on this side to give undue favour and advantage over the prosecution to the accused; and I think—indeed it is my own conviction—that Government do not wish to give undue advantage over the accused to the prosecution. The object of both parties to the controversy being the same, it does seem to be anomalous that we should not be able to arrive at an agreement on this particular clause. We claim that the statements made to the Police by persons who afterwards come up as witnesses in support of a prosecution should be made known to the accused. It has been said, though not directly from the Treasury Benches, that one difficulty of the proposal which was accepted in this

House with regard to this proviso will be to give accused persons access to everything, relevant to the case or irrelevant, and matter which it may be of great interest in the administration of justice to keep unpublished. Some suggestions have been put forward as to how an accused can be prevented from obtaining information of anything except that which is relevant to the accusation against him. But these are matters of detail. They require very careful working out. I quite accept what the Honourable Mr. Haigh said, namely, that the record made by an investigating officer should be complete and not abridged, or I think he used the word "cooked". But it does seem possible, if the proviso so far accepted by the House goes too far and creates difficulties in the way, not of the prosecution but of the administration of justice generally,—the public interest,—for some modified form of that proviso, acceptable to both parties, to be devised. I am not prepared with any amendment. The subject is too difficult and I think beyond my capacity. But so long as we are given this principle (in accordance with, as Dr. Gour pointed out, the principles underlying our law of evidence) that whatever a witness states immediately after an offence is committed should be open to comparison with what he may say when he comes into Court, so long as that principle is ensured and the relevant part of his statement is made public for treatment and comparison, we on this side will be satisfied. This is urged not merely in the interests of the accused. In the present law we allow the court to aid itself with these statements. How many a prosecution has broken down because a witness is found by the Judge to have said at the investigation something different from what he said at the trial, and the Judge has not got before him any explanation from the witness, which, if he had been able to obtain it, might have entirely altered his view of the man's credibility. It is fair to the witness, it is fair to the prosecution, it is fair to the accused, it is fair to the Magistrate, that the true cause underlying the discrepancies in statements, *e.g.*, either the original falsehood of the witness due to his desire to screen the accused or avoid trouble, or the subsequent falsehood of the witness, due to his desire to aid the prosecution,—should be laid open to the light of day in order that truth and justice may prevail. The suggestion that I have to make is that if any amendment of this proviso can be made which will do away with the difficulties and dangers which the Government apprehend and still leave this one principle available, namely, that conflicting and contradictory statements shall be open to comparison and explanation, then it will be possible to reach an agreement on a matter that most certainly should be settled, if possible, in this House.

Mr. Harchandrai Vishindas: Sir, at the very outset, I must say that we accept the statement from the Government Benches that the remarks of Sir Henry Moncrieff Smith were not intended to be a threat. We may also accept the statement made by Mr. Tonkinson that the old Criminal Procedure Code of 1892 in its provisions in section 162 did not go to the length stated by Dr. Gour. But what we are concerned with is, not what the old law was, or what the law of 1898 was, but whether the law as it is now going to be proposed should be acceptable and is in the interests of justice or not. Therefore we should strip the controversy of all the verbiage with which it has been surrounded and confine our attention to the merits or demerits of the provision now under discussion. It will be sheer waste of time on my part to repeat the arguments that have been from time to time advanced in favour of accused having access to the statements made before the police, and also what has been said against it. But I would

[Mr. Harchandrai Vishindas.]
 remind the House to be practical men and to confine themselves to the facts and truth of the case and not to be taken off their feet or dragged by their heels by somebody conjuring up visions of horror, or declaring that Government would become impossible, justice would be impossible and so on. They might as well state there might be a revolution or an earthquake. They must show that and not merely give their *ipse dixit*. Much stress has been laid by speaker after speaker on the Government side on the statement that there is a good deal in the police records which it would be entirely unnecessary for the accused to know and dangerous for the accused to know. Now I have been wondering in my own mind as to why this should be so, and speaking personally, after having 37 years' experience as a practitioner, I certainly have never come across a case in which the police statement contained anything which was irrelevant to the inquiry, nor have I heard from any other practitioners in my own part of the country, or in any other part of the country that police statements contain so many other things. And why should they? A policeman can be credited with at least as much sense as to know whether what the witness is saying is relevant to the inquiry and to the persons who are accused of the offence. If he is not sensible enough to know that, then he does not deserve to be appointed to his post. He must be chucked out at once. If he can be credited with doing his duty properly, he should confine the record only to what is relevant to the case. As Sir Henry Stanyon said, we have great faith in the *bona fides* of the Government but we want to point out to them that their fears and apprehensions are greatly exaggerated, and that in fact they will not exist. Mr. Haigh said, Oh, Mr. Rangachariar's proposal to give instructions to police officers who are recording statements would be impracticable and would lead to the cooking up of statements by the police officers. Why? I do not see the force of that argument at all. Policemen already have instructions from higher authority as to how they are to record their statements. Is it not now the practice that the police have certain *challans* and other forms in which they receive instructions from their superior officers as to how to record evidence, statements and so on, and how to keep their diaries? Well, there is nothing wrong and improper in the policeman being instructed to confine the record entirely to statements that are relevant to the inquiry. Now, no speaker from the Government side has challenged the propriety of the argument that if the statements recorded by the police are confined to relevant matter, in justice the accused person is entitled to have a copy of those statements. The objection that has come from the side of the Government is to matters that go beyond the case coming to the notice of the accused to the prejudice of the State and to the prejudice of other persons. As I have said, that is a very small matter, and with due deference to the Honourable Mr. Tonkinson, who says these things happen very frequently, I would say that his fears are imaginary, and such contingencies will not occur frequently. They would occur perhaps in one in a thousand cases. And you are not going to take account of exceptions; you are going to see what would lead to doing justice to the accused person as well as to the prosecution. As Sir Henry Stanyon has pointed out, in some cases the production of these statements might be very beneficial to the prosecution itself because it may appear that the witness whose statement is impeached by the defence pleader in the court, has said the same thing before the police, and the prosecution would receive help from that. They would point out that this man said the same thing before the police as he is saying now. So it is not in the interests of the accused person only but of

the prosecution also to retain the clause. I said before that we should not conjure up visions of horror because of statements made by some speakers, but we should closely examine the merits and demerits and the facts of the situation. Therefore I submit, Sir, that there is not the slightest change of harm arising from the retention of this clause 33. I also said that the Government were perfectly justified in stating that they would adopt all the constitutional means in their power by going to the next Chamber. There was no threat in that; nothing improper in that, because they had to instruct their supporters that they should strongly vote on their side. But at the same time, I say that, whatever the Government may do constitutionally, so far as we Members of this Assembly are concerned, we find that the Government position in this particular matter is not sound but that our position is sound and that clause 33 should stand and should not be rejected.

Mr. B. C. Allen (Assam : Nominated Official): Sir, I am very reluctant to take up the time of the House even for two minutes in further discussing this much disputed clause. But Mr. Vishindas has asked a question to which I think an answer should be given. He has asked: Why do Government object to the clause as now amended? What objection is there to it? The answer is a very simple one. A police officer, when he goes into the interior to investigate a theft case, a dacoity case, a burglary case, records the evidence that is brought before him and frequently he finds that the statements of a witness give valuable evidence not only with regard to the case which he is investigating but also with regard to a number of cognate cases. For we all of us here know that in this country crime is frequently committed by gangs of criminals and that the detection of one crime leads to the detection of many. Now, if the clause as amended is passed into law, it would mean that the police officer, if he was compelled to prosecute the man he was originally pursuing before the detection of the other cases was completed, would be required, as soon as the accused was placed in the dock and as soon as he brought forward his witness, to make over to him a statement containing valuable information not only with regard to the case then under the consideration of the Magistrate but also the information culled to completely wreck his prospects of success in the various other linked and cognate cases. I hope, Sir, that the House will agree that this is so grave an objection that Government is justified in protesting against its being passed into law.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, much as I should have liked that some amicable settlement should have been arrived at with regard to this clause, I find that it is not possible. I suggested in the course of the discussion at an earlier stage that the word "may" might be used for "shall" so that the matter might be left to the discretion of the Court. Sir, my experience of Judges differs from the experience of some of my friends on my right who have a different experience of mofussil Magistrates. They say that Magistrates would interpret "may" absolutely arbitrarily. But, I believe, Judges with a judicial turn of mind would interpret "may" as almost "shall." Judges who have a keen sense of justice and responsibility interpret the discretion given to them as a discretion to be exercised in the interests of justice. That is the proper judicial temperament. But, as my friends say that Magistrates in the mofussil do not exercise their discretion in that way, of course, I cannot persuade them to accept what I suggested at that time. I do not, however, share the apprehensions

[Mr. J. Chaudhuri.]

that the Government Members do in this respect. Of course, I do not practise now, but from whatever limited practice I had in the courts, of old, I found that the police papers always came up with instructions. The defence got it somehow. So, what is now provided for in the section will only deprive the police of their illicit gain. But, in other respects, I wish to point out to the Government Benches that there are two diaries kept—one a general diary; in this the police Inspector, i.e., the Inspector in charge of the case, records the minutes of his visits to different places, his investigations and inquiries. Then there is another diary kept which is called the case diary or a special diary. In this he puts down the statements of persons he examines in that particular case. So I suggest that my Honourable friends in charge of the Bill need not go to the other Chamber to have this section amended and create any conflict with us—that would be very undesirable—when there is a more reasonable course open to them. What they need to do is that the executive should give instructions to the police officers to keep their diaries properly. That is, in the case diary they may enter the persons examined and in the general diary enter all miscellaneous matters with regard to their investigations, with regard to their suspicions, with regard to the persons suspected in this and other cognate cases. Thus if proper instructions are given, which it is the legitimate function of the Executive to give, to the police officers through the Inspectors General of Police in the provinces, they will avoid any failure of justice, or any prejudices so far as either the prosecution is concerned or the defence or third parties concerned. I, therefore, submit that there is no occasion for generating so much heat over this discussion, if the matter may be so easily settled by means of official and executive instructions to the police to keep their diaries properly.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, I am not a lawyer and I have not tried a case for the last ten years. I had nothing whatever to do with the framing of this Bill. And I confess that I had not taken much interest in the debates on this clause until this morning. But, Sir, I had a fairly large amount to do in the way of trying criminal cases during the first fifteen years of my service in districts which were considered fairly criminal and I have been very seriously impressed, after what I have listened to this morning, with the difficulties that Magistrates and the police in districts in the country will encounter if this clause as it has now been passed becomes law. My Honourable friend, Mr. Chaudhuri, has suggested that the difficulties will not be at all serious, that Government can give instructions to police officers to prepare their special diaries with special reference to this clause. I think, Sir, any such course would be fraught with the most serious dangers. My Honourable friend, Mr. Haigh, has already referred to these dangers. I do not know whether Honourable Members here have as much acquaintance with the ordinary sub-inspector of police as I have. As I have said, for fifteen years I was a Magistrate, either a District Magistrate or a subordinate Magistrate. For another five or six years I went about the villages in an entirely different capacity and I saw a good deal of the Magisterial and the police officers' work as an outsider. And I think, Sir, it would be most dangerous to give any instructions to the police to have these special diaries prepared in the way that the Honourable Mr. Chaudhuri and my friend, Mr. Harchandrai Vishindas, have suggested. I think it would be extremely unfair to the accused themselves if the police prepare their special diaries according to definite instructions given by the superior officers so as to

exclude all matters which are not connected in a direct manner with the case in question. I think, Sir, that the Magistrate then will be prevented from having a true perspective of the entire investigation.

1 P.M. I think the Magistrate will be placed in an extremely difficult position. He will not be able to arrive at a correct conclusion as to whether the investigation was conducted in a proper and *bonâ fide* manner. The whole investigation, the whole proceedings as they will come before the Magistrate, will really be in a cooked form. In the interests of the accused themselves, Sir, I deprecate the amendment that has already been passed. I hope, Sir, that this appeal that I am making to the Members of this House will have some effect. I am not doing so as a member of Government. I am doing so as one who has always been interested in protecting the interests of the accused and in seeing that justice is done.

Mr. Jamnadas Dwarkadas (and some Honourable Members at the same time): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

The Assembly then divided as follows:

AYES—41.

Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiz Khan, Mr. M.
Gajjan Singh, Sardar Bahadur.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. R. S.

Lakshmi Narayan Lal, Mr.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. C. C.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—32.

Abdul Rahim Khan, Mr.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bijlikhan, Sardar G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. E. W.
Faridoonji, Mr. R.

Graham, Mr. L.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Tonkinson, Mr. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I move that the clauses and sub-clauses of the Bill be re-numbered in consecutive order.

Mr. President: The question is that the clauses of the Bill be re-numbered in consecutive order.

The motion was adopted.

The Title was added to the Bill.

The Preamble was added to the Bill.

THE INDIAN OFFICIAL SECRETS BILL.

Mr. L. Graham (Legislative Department: Nominated Official): Sir, I rise to move:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom, be taken into consideration."

Sir, I have many reasons for craving the indulgence of this House, but I shall not trouble the House with many of those reasons. My first reason, Sir, is that I claim to be a new Member—may I say a very new Member—for I think it is unusual for a new Member to be entrusted with work of this importance in his first attendance in this House. The reason for this is, as you all know, the most regrettable illness of my Honourable Leader, Sir Malcolm Hailey.

Now, Sir, the Bill was, as you know, introduced some time ago in this House, and went, I may say, to a very representative Select Committee. That Select Committee performed its labours most conscientiously. I am in the happy position of testifying to the labours of the Select Committee because I was not a member of that Select Committee. The Report has been before the House for the last fourteen days or so, and certain amendments have been received. I do not propose to refer to those amendments in detail now. The Report I think is a full Report and there is no reason why I should make any lengthy speech now in moving that the Bill be taken into consideration.

Members probably would like to be reminded of the state of our law in this country at present. It is at present contained most inconveniently in the Indian Official Secrets Act, 1889, as subsequently amended by the Act of 1904. It is also contained in the English Official Secrets Act of 1911, and there is a provision in that Act which I think it would not be altogether superfluous if I should read it to the Members. That section runs as follows. (This was enacted in 1911, I may mention):

"If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer."

Now, Sir, possibly Members of this House may desire to have some reason why an English enactment should apply to India, an enactment relating to a matter in which we ourselves have legislated. The reason is

this. Our Act of 1889 followed very closely the English Act of the same year or a year before. That Act was found insufficient in England and it was replaced by the Official Secrets Act, 1911. The secrets with which we are concerned are not only secrets affecting India or part of India; they are imperial secrets to a very large extent, and that is the reason, Sir, why legislation on this subject should either be contained within the four corners of one Act applicable throughout the Empire, or that legislation very closely approximating to that legislation should be in force. The Act of 1911 gives the option, "You take this Act or you frame a similar Act." You may ask why we have not remained content with the English Act. With the substance of this Act of 1911 we are content, but certain practical difficulties have arisen in the interpretation—not of the substance of this Act but in applying it to the Courts of this country. Our Courts have different names, our police officers have different names, and it would be convenient if the whole of our law should be expressed in what I may call an Indian form. To be added to that is the fact that the Official Secrets Act, 1911, was amended by the Official Secrets Act of 1920 in England, but the amending Act of 1920 does not apply *proprio vigore* in this country. The need of applying those provisions has been examined very carefully. They were introduced into the law in England as the direct result of experience gained during the Great War. As I have said, the need for reproducing the provisions of that Act in this country was examined. It was found that some provisions were not necessary; on the other hand it was held that some other provisions were necessary. This Bill, then, represents a combination of the laws in force in this country and in England and it has been, as I have said, very carefully examined by the Select Committee and I now move that the Bill, as amended by the Select Committee, be taken into consideration.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): I have no doubt that the House will generally agree with me when I say that we all regret that the Honourable Sir Malcolm Hailey, the Leader of the House, is absent to-day and was therefore unable to move the motion which has fallen to the lot of the Honourable Mr. Graham to move before this House. As regards his motion, Sir, we all recognise the desirability of having an enactment of the kind contemplated in this country. But I think it was said by the Honourable Mr. Innes on another occasion with regard to one of his Bills that it was not a slavish imitation of the English statute. May I borrow those words in this connection and say, why is this enactment a slavish imitation of the English statute? I should have expected, Sir, that an enactment of this importance would be taken up by the Indian Legislature by dividing it into two parts, or indeed into two Acts. Honourable Members know that military secrets stand on a different footing from civil secrets and it would have been much more desirable if an Indian Act dealing purely with military secrets were enacted and another Act dealing with civil secrets were introduced. The admixture of military and civil offences in the same Act is apt to cause confusion. It has caused confusion in my mind and I have no doubt that that confusion will be shared by others.

Now, Sir, passing on to the specific provisions of this Act, Honourable Members will find that the real mischief which this enactment is intended to check is that no act should be done which might prove prejudicial to the safety or interests of the State. When this clause was debated in Parliament, Honourable Members there questioned Government as to what the meaning of the words 'interests of the State' is and how that

[Dr. H. S. Gour.]

question is to be decided in each case. It may be that an act is perfectly innocent and not prejudicial to the interests of the State but became afterwards so prejudicial to it and who is to be the judge, whether the act was prejudicial to the safety or interests of the State. Honourable Members will find that very loose expressions of the English statute have been reproduced in the Indian Act. It was a complaint judging from the debates in the two Houses of Parliament that these loose expressions were apt to be misunderstood. In England where all trials are held with the aid of the jury, the jurors as men of commonsense understand these sections as men in the street commonly do. They do not go into the technicalities of the question but decide from the broad standpoint of commonsense, but in this country where trials at present are held without the help of jurors, Magistrates and Judges are apt to examine too narrowly the provisions of the section and apply to them their legal mind, and say that if an offence comes within the purview of a section the accused cannot escape punishment. This is a point of view which I present to the House, especially in view of the fact that while all offences under the English statute are exclusively triable in a Court of Sessions, the offences not punishable with 14 years' imprisonment and mainly those punishable with two years' imprisonment are here made triable by a Magistrate of the first class. I understand, Sir, that in response to my amendment on the subject asking the Government that all offences under this Act should be triable by the Court of Sessions, at any rate in cases in which the accused so desires, members of the Treasury Benches are willing to accept the amendment and concede that offences under this Act might be tried by the Court of Sessions if the accused so desires. I congratulate the Government upon accepting this amendment which would effect a great improvement upon the Bill as presented to the House. There are two or three other matters upon which I invite the attention of the Honourable occupants of the Treasury Benches and ask them to examine the provisions of the Bill and see if improvements cannot be made. If Honourable Members will turn to section 3, they will find that while in clause 1 the offence of spying is generally defined, clause 2 of that section lays down a special rule of evidence at variance with the existing law. Those of my learned friends who have studied the Indian Evidence Act will bear me out that evidence about character is wholly inadmissible in a criminal case, and I therefore invite the attention of the House to the fact that section 3 provides that if on a prosecution for an offence under this section, it is proved from his known character that his purpose was prejudicial to the safety or interests of the State he will be deemed to have committed an offence under this section. I suggest, Sir, that the Government might re-classify these offences, sub-divide the Act into Part I—Military, and Part II—Civil, and re-define the offences in less vague and more popular terms so that the people may know what they are to avoid and for which they are liable to be made punishable. The very general and loose expressions of the Parliament statute which have been reproduced in this Bill are not likely to be understood by the public at large to whom this statute is addressed, and I suggest, Sir, that it would certainly be in keeping with the policy of the Indian Legislature if expressions commonly understood and popularly known are used in preference to the expressions common in Parliamentary statutes. The various improvements which Honourable Members of this House have suggested will no doubt come up for consideration *seriatim* and I therefore do not wish to anticipate the authors of the amendments. I rest content by saying that I am not

enamoured either with the draft or with the arrangement of the Bill and I can only regret that this Bill is a slavish copy of the Parliamentary Statute.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. President was in the Chair.

MESSAGES FROM THE COUNCIL OF STATE.

Mr. President: Secretary will read two Messages from the Council of State.

Secretary of the Assembly: The first Message runs as follows:

"I am directed to inform you that the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments, which was passed by the Legislative Assembly at its meeting of the 30th January, 1923, was passed by the Council of State at its meeting of the 14th February, with the following amendment:

'In sub-clause (2) of clause 24 of the Bill, after the words 'District Magistrate', the words 'on requisition in writing signed by the Chairman of the Committee' were inserted.'

'The Council of State requests the concurrence of the Legislative Assembly in the amendment'."

The second Message runs as follows:

"I am directed to inform you that the Council of State has, at its meeting of the 14th February, 1923, agreed without any amendments to the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, which was passed by the Legislative Assembly at its meeting held on the 30th January, 1923."

THE INDIAN OFFICIAL SECRETS BILL.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move that the Bill be re-committed to the Select Committee.

Sir, there is no one in the House who is not at one with the Government in their desire to suppress spying in this country. Spying even in its minor form is objected to even in private conversations between private individuals, and it is much more necessary that, where the interests of the State are concerned, where national defence is concerned, where spying would cause a real danger and disaster to the country, spying should be suppressed with a very strong hand; and I would have given my full support to the Bill if proper safeguards had been provided to save the innocent from being brought into the clutches of the law as laid down in this Bill. The language of the Bill is very wide and capable of much abuse in its interpretation. The phraseology is very peculiar and complex, so much so that, just as Dr. Gour observed a few minutes ago, in the House of Lords Lord Birkenhead had to say that he was not enamoured of the phraseology of the Bill. I will just give certain instances in the Bill which will show how dangerous and how capable of wide interpretation certain clauses in

[Mr. K. B. L. Agnihotri.]

this Bill are. This Bill, as drafted, has a peculiar construction in this way, that it does not define at one place all the definitions that should have been defined at the beginning of the Code. Many definitions that are embodied in the Bill involve the definitions of the particular words used therein, and it would be very difficult for a lay man and a man of ordinary intelligence not versed in law, to interpret the terms properly. Sir, if I take you through the definition of spying, through the definition of a work of defence, you will find a word 'mine' used therein. I realize that the word 'mine' used in this connection is meant for the receptacle containing the explosives, etc., to protect the coasts from intrusion of foreign ships or men-of-war. But the word is also capable of interpretation in another way. Honourable Members who have read the papers of the last few days may have realized that even editors of papers have fallen into the common error of interpreting the word "mine" to mean excavations for digging out metals or minerals. I wish that the members of the Committee had cleared the meaning of the word as it was meant in this Bill. Going further ahead, Sir, Honourable Members will find 'spying' defined in section 3 as an offence. It is:

"Any person for any purpose prejudicial to the safety or interests of the State approaches or enters—and so forth—any prohibited place;"

or

"Any person for any purpose prejudicial to the safety or interests of the State makes any sketch, plan, model or note."

of what? It has been stated. This clause (b) is not governed by the words "prohibited place" which appear in clause (a). Clause (b) goes on further to say:

"makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy."

Now what does this come to—"any person who makes any note which might be indirectly useful to an enemy"—this does not say at what time it is likely to be useful. It may be useful 20 years later, who knows.

Mr. President: The Honourable Member is arguing a question of detail which will necessarily arise when we come to discuss clause 3. He must offer more general and substantial reasons for a motion to re-commit. He will understand that clause 3 will be open for amendment in order to satisfy the criticisms which he is now bringing forward, but it is a violation of the spirit of the Standing Orders to use the motion for re-committal merely for matters of detail. If he brings forward arguments such as those adduced by Dr. Gour they will be valid.

Mr. K. B. L. Agnihotri: I simply wanted to point out that there are certain matters in the Bill which are not capable of any improvement on the floor of the House, and with that object I am giving illustrations to show that they could not be improved on the floor of the House. I was simply showing how various expressions are capable of several interpretations in the hands of lay persons. That was my object, Sir.

As I have said, a note made by any person which might be such as to be useful to an enemy some years after might be regarded as spying. Consider the difficulties that will arise. There are census reports of places, there are Government statistics, historical records and maps of many places like Asoka's pillar, the Diwan-i-Khas, the Diwan-i-Am in Delhi and the

Fort in Agra. Any person having these things in his possession or publishing these things might at some time or other when a foreign power was evilly-minded enough to make war against our Government be utilized by that foreign power for its own purposes. And if we allow such interpretations to be put on these phrases I think many innocent persons are likely to be hauled up under this Act. Similarly, Sir, what is meant by the safety or the interests of the State? It has not been defined anywhere as to what will be the interests of the State. If you take the dictionary meaning, that will come to anything that is beneficial to the State. Supposing a thing is done and it does not agree with the opinions, or say with the political opinions, of certain parties, that may be regarded as not being beneficial to the State. The question of taking away any political powers from the Government even though in a constitutional way may also be regarded at some time or other as not beneficial to the State. I do not mean to say that this would be the exact interpretation of this expression in the Bill, but I am simply pointing out the interpretation that might be put on this clause. This would lead to much difficulty and much abuse and harassment to innocent persons. I wish the authors of the Bill had given the definition of these clauses at the very beginning of the Bill in clause 2 just as they have done with respect to some expressions. Further they have introduced a novel procedure of presumptions. Any person if he is suspected, mind you suspected, of having a communication with a foreign agent, if he happens to give an impression of his dealing with a foreign agent even unknown, it will be considered as spying. How dangerous will that be, Sir? It is quite all right in theory and in the book. But if you were to take the interpretations that have been given to "communication with foreign agent," you will find that the provisions are very wide and dangerous. What is the communication to a foreign agent? Communication to a foreign agent as defined may be when any person has visited the place of a person suspected to be a foreign agent. Suspected by whom? Not by the man who visits him. His knowledge is made quite immaterial but suspected by the Court; so far it is quite all right; but how is a man to know that the address that he is visiting, is that of a foreign agent? Not only that, Sir. If this man happens to possess any paper or any address of an agent or of any person who is suspected to be a foreign agent, this man is done for. If he has got any historical records or historical statistics or any other railway map that might be of some use at some future time, that man is liable to be hauled up. He will be deemed to have communicated with that man. Now, Sir, even if a foreign agent or a suspected foreign agent has a place of business in British India and if any other man whose known character as proved may cause a suspicion, in the minds of the judges, even innocently happens to go to the place of business of the former to deal in business only such a man will also be presumed to have communicated with a foreign agent. Such are the provisions in this Bill. Further, there is also a provision in this Bill as it has come from the Select Committee that if any person were to publish any information relating to anything used or relating to anything in a place, which is declared to be a prohibited place, that man will be deemed to have committed an offence under this Act; and forts at Agra, Delhi and other places may be declared to be prohibited places and the Frontier Province may be. But, to be a prohibited place. If I were to draw the attention to more serious speaking in this Chamber, that it is not desirable to make the State. Sup-

Mr. President: The Honourable Member's argument about a sketch or communication for his arrest and for

[Mr. President.]

I must point out to the Assembly, however, that supposing this motion were passed, there would be no indication whatever to the Select Committee what this Assembly expected them to do. The words in Standing Order 43 are "that the Bill as reported by the Select Committee be re-committed either:

- (i) without limitation, or
- (ii) with respect to particular clauses," and so on.

The words "without limitation" must be held to presume that this House is dissatisfied with the manner in which the Select Committee has treated the measure which was referred to it. A proposal to re-commit without limitation must necessarily refer either to the work of the Select Committee as a whole, or to some matter of principle on which the Assembly desires an opinion from the Select Committee and on which the Committee did not pronounce. If the Honourable Member is dissatisfied with the proposals made by the Select Committee on particular points—provided they are points of real importance in the sense of raising a principle—then he ought to move a motion under Standing Order 44 (b) (ii) or (iii), and not move, as he has done, to re-commit without limitation. If we were to pass this motion, the Select Committee would meet again and say: "We are satisfied that we did give reasonable consideration to the proposals of the Bill and we are of opinion that no further consideration on our part would lead us to alter the report before the Assembly." We should then be no further on.

Mr. K. B. L. Agnihotri: Sir, it is exactly with this object that I am pointing out these things because I want the Select Committee to know what is the point we want them to clear up. We want them to know that the wording used in this Bill is not proper

Mr. President: That is not what the Honourable Member has done. The Honourable Member simply moves that the Bill be re-committed, and invites the Select Committee to re-examine the whole Bill without reference to any particular clause or any particular amendment. The Select Committee, with a mere general instruction before them, will sit down and they will say: "We are satisfied that we carried out the original intention of the Assembly; we examined the Bill in detail; the report we have submitted is a satisfactory report and represents our opinion."

Mr. K. B. L. Agnihotri: All right, Sir, I bow to your ruling. I will simply say the wording used is very general and will cover even innocent dealings of innocent persons, and the substantive law and law of evidence have been jumbled up in the clauses and therefore it is necessary that the wordings be changed. It may be said, Sir, that the wording in this Act has been taken from the English Acts of 1911 and 1920, and been considerably improved by the Select Committee. My submission to that would be, Sir, that as they found that an improvement in certain directions on the part of the English Acts was necessary, it may further be regarded as showing how far to improve the wording of this Bill to include certain the hands of it might be said, just as it was said in the English Houses of

As I have said, the Act will not be used in ordinary cases; that it will be useful to an extraordinary circumstances of spying and when a gross Consider the difficulties committed. But one cannot be sure if it will be like there are Government statutes of 1818 was enacted for a different purpose like Asoka's pillar, the date, or rather to last year; it remained as a

dead Act in the Statute Book but some of its provisions were used in 1906 or 1909. We do not want, therefore, that an Act should remain on the Statute Book and hang like a sword of Damocles over our heads to be utilised at any future time, and it is necessary that the Select Committee should change the wording, clear up the expressions and bring it to a line where it may be acceptable to all of us. The language should be simple and easily understood even by "the man in the street." With these words, Sir, I commend my motion to the House for the re-committal of this Bill to the Select Committee.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I oppose this motion. I shall for the present only answer very briefly the objection taken by my Honourable friend, Dr. Gour, and Mr. Agnihotri. Dr. Gour takes the objection that we have slavishly followed the English Act. We have done nothing of the kind. We have reduced the maximum sentence, which in the English Act ranges from minimum 3 to 14 years. For non-military offences we have fixed the maximum at 3, in some cases 2 years and fixed no limit to minimum and given the option of fine. We have classified offences into two classes—minor and major offences, what are called civil offences and offences of a military character. And we have introduced the nomenclature of the Criminal Procedure Code and described them as cognizable and non-cognizable and bailable and non-bailable offences. We have also introduced the nomenclature of our Evidence Act, such as relevant facts, presumption and provided for their rebuttal by evidence. So, as far as these go, I hope Dr. Gour will be satisfied that we have not slavishly followed the Parliamentary Statute but have recast that Statute on the lines of our law of Criminal Procedure and the Law of Evidence.

Now, something has been said about our using the words "safety and interest of the State." I do not wish to go into the details. We shall have every opportunity, when we discuss the clause, to go into the details, but I shall generally point out that we have classified offences into two classes—offences in the nature of spying military secrets and with regard to these we have used the words "safety or interest of the State." I suppose my friend would not contend that we should wait till the spy has done the mischief. It is when he is trying to pry into military secrets, is it not to the interests of the State to arrest him and put him on his trial before a Magistrate or a Judge? But here I shall just draw attention to where we use the word "safety" alone. We may refer to clause 5 (b) which reads: "Use the information in his possession for the benefit of any foreign power or any other manner prejudicial to the safety of the State." This in clause 5 relates to officers communicating information to foreign powers. If they so communicate it and if such communication endangers the safety of the State, then we proceed against him. The persons who are interested are the officers of the State who are in charge of these secrets. If they communicate to others and that endangers the safety of the State, no body will contend that they should not be found guilty of a breach of duty. Here the criterion we put down is rather high and that is that if this communication of the secrets is such as is likely to endanger the safety of the State, then they will be prosecuted and punished. But, with regard to military secrets and secrets palpably of a much more serious nature, we have used the words "safety or interest of the State." Supposing our military defences, mine-fields or mines are being noted or made sketches of by a spy. Before he has noted, obtained a sketch or communicated, ought not we to provide for his detection, for his arrest and for

[Mr. J. Chaudhuri.]

safeguarding the "interests of the State"? If he has taken these away, then he has completed the mischief. But it would, surely, be to the "interest of the State" that we should make provision for safeguarding its interests before it is too late. Even my friend Mr. Agnihotri used the word "interest" in his speech. He said that spies should be put down. He said that he is not in sympathy with them and that spies should be put down "in the interests of the State." So, when he was putting his own case before this House, he himself used the same expression and thus gave away his own case. I do not wish to detain the House any longer, but when we examine the amendments clause by clause, the House will be satisfied that we have made this Bill absolutely innocuous with regard to persons who may act *bona fide*. As regards the serious offences of persons who try to abstract military secrets or secrets relating to defence which are prejudicial to the "safety or interest of the State," nobody in this House will have the hardihood to say that they deserve any sympathy. For these reasons, Sir, I say that my friend Mr. Agnihotri has made out no case for re-commitment of this Bill to the Committee. We have done our best and as you have very rightly observed, Sir, if the Bill is re-committed to us without any definite directions, we shall not know what to do with it. We would prefer to wait and see if there is any substance in the amendments proposed. I therefore suggest that the discussion of the Bill be proceeded with.

Mr. L. Graham: Sir, I apologise for making what may seem a perfectly superfluous speech, but I think there are one or two points to be made yet. The first is that the Select Committee did examine all the material which was put before it. It may be in the recollection of Members that this Bill was circulated. We examined all the opinions we received. We also took the proceedings in this House. I say, Sir, that we examined very carefully all the material which was put before us. If Mr. Agnihotri wants to take a particular attitude towards the Bill, I fail to understand why he did not express himself at an earlier stage of the proceedings. It is therefore not necessary to take up the points of detail which Mr. Agnihotri has mentioned. One more point, Sir, as to what Dr. Gour has said. He has accused us of slavishly following British drafting. Well, my Honourable friend, Mr. Rangachariar, was in the Chair, and I do not think it is likely that he would slavishly follow anybody.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I am not ashamed of slavishly following the English of Englishmen.

Mr. L. Graham: That again is a point which I should like to take. The drafting of this Bill is important. Dr. Gour—whether he intended it or not—I trust he did intend it—paid a compliment to the work of the Legislative Department in saying that he would prefer this Bill drafted on the lines generally followed by the Legislative Department. He said it would have been clearer and more intelligible. Well, Sir, we acknowledge the compliment. But there is this difficulty. We intentionally followed the English form because of the provisions of section 11 of the Act of 1911. We felt that if we broke away from the form of the English Act and put up an Act which looked entirely different—and after all, the Act which Dr. Gour sketched for us would look entirely different—we should not be at all sure that His Majesty in Council would be prepared to suspend the English Act in favour of ours. Other points mentioned by

Mr. Agnihotri, as you said, Sir, will be appropriately dealt with when he moves his amendments.

Mr. President: The original question was:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom be taken into consideration."

Since which an amendment has been moved:

"That the Bill as reported by the Select Committee be re-committed to the Select Committee."

The question is that the Bill be so re-committed.

The motion was negatived.

Mr. President: The question is:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom be taken into consideration."

The motion was adopted.

Mr. President: It is suggested that it may be advisable to leave clause 1 for later consideration.

Mr. President: Clause 2.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, the amendment which I move is this:

"In clause 2 (7) after the word 'plate' insert the following:

'Provided these undeveloped plates on being developed are found to be the negatives of plates of prohibited places as defined under this Act.'"

Here photograph includes an undeveloped film or plate, and in (9) we have:

"'sketch' includes any photograph or other mode of representing any place or thing."

Under clause 3 the making of a sketch useful to an enemy is punishable. So, a man who has got photographs which include an undeveloped film can also be held up. Undeveloped films are plates in which the impression of the thing photographed is not visible. I am not a photographer, but I can say this much that unless an undeveloped plate is put in a solution the impression of that plate is not visible. For instance, take a man who stands in front of a place and takes a photograph and goes away. Then he is arrested, and found in possession of that undeveloped film. Unless that film corresponds with the negative, I do not think he should be held up at all. So, in order to make it clear I provide this safeguard. It would be very unsafe to catch hold of the man or make him responsible when he is in possession of undeveloped films. In these circumstances, I beg to move my amendment.

The motion was negatived.

Mr. K. B. L. Agnihotri: I move:

"In sub-clause (8) (a) of clause 2, the word 'mine' be omitted."

I would not have moved this amendment if the meaning of the word 'mine' had been made clear in sub-clause (a). I am afraid that it is

[Mr. K. B. L. Agnihotri.]

liable to misinterpretation and may be applied to the excavations wherefrom metals or minerals are taken out, though I think that "mine" means explosives used in time of war for defending the coast. If Honourable Members will see the last sentence of the sub-clause they will find the words "for the purpose of getting any metals or minerals". (*A Voice*: "In time of war".) I do not know whether the words "in time of war" govern all these sentences above. If they do, then the law would be perfect on that point. But if they do not, then it is liable to misinterpretation; and even taking for granted that it is to be prohibited in times of war, what will happen to the records, to the statistics and to the other papers and documents in the public libraries and other places in the bookstalls, and book-seller's places relating to a mine which be declared a prohibited place some years after the publication. If we go deep into the clauses we find that any person publishing any information relating to anything used in a prohibited place is liable to be brought under the clutches of this law and that would create difficulties and therefore I propose that the word "mine" should be deleted.

Mr. L. Graham: When this Act of 1920 was in the Bill stage before the House of Commons, a certain keen Parliamentary, Commander Kenworthy, moved that the word "mine" be omitted. His reason for doing so was that he was afraid that it might be misinterpreted. The Chairman of the Committee said "I really do not believe that anybody else besides the Honourable and Gallant Member would have understood that". Commander Kenworthy has his imitators. The Learned Attorney General was sympathetic and I should also like to be sympathetic to Mr. Agnihotri. What happened was this. The Attorney General said "there was no possibility of misunderstanding but, to meet your case, after the word 'mine' I propose to insert the word 'minefield'; with these words so associated there is no possibility of misunderstanding." The House accepted the Attorney General's view and inserted the word "minefield." In our Bill, we have the word "minefield" after the word "mine". I submit it is impossible that there should be any misunderstanding at all. I would object to the removal of the word "mine" because it might be argued in court that one mine does not make a minefield. I therefore oppose the amendment.

Mr. President: The question is:

"That in sub-clause (8) (a) of clause 2, the word 'mine' be omitted."

The motion was negatived.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): I beg to move:

"That for the words 'an enemy' wherever they occur in clauses 2, 3 and 4, the words 'a foreign power' be substituted."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Is every power an enemy?

Mr. K. C. Neogy: Every power is a potential enemy, and my Honourable friend, Mr. Bray, will bear me out when I say that. If Honourable Members will look into the provisions of clause 2, sub-clauses 8 (c) and (d), they will find that by the use of this expression it is intended to indicate the importance of the information which Government are anxious to safeguard. It will be seen that in sub-clause (c) of sub-clause (8) the information must be useful to an enemy, and a place may be declared to be a

prohibited place when Government think that information with respect thereto will be useful to an enemy. So also in sub-clause (d). When we come to clause 3, we find that in sub-clause (b) likewise, any sketch, plan, model, etc., must be useful to an enemy. So also in sub-clause (c) any document, information, etc., must be useful to an enemy. The House ought to be quite clear on this point. We are not going to penalise the enemy, when we use this term in these clauses. We are merely setting a standard of importance of the secrets which Government must safeguard. That is the position. Now, it is well known that the expression 'enemy' in international law bears a particular significance; there is no room for any doubt as to what the word 'enemy' in international law would mean,—a State actually at war with the Crown. And we find that while the Act of 1911 was being considered in the House of Lords, a noble Lord raised the question as to whether when there was no war, that is to say, in times of peace, if a prosecution was sought to be launched under this Act, anybody could raise a defence saying that as there was no war, the State could have no enemy. Later on, we find that a case actually came up in 1913 in which this very point was taken. Honourable Members will find a reference to this case in Roscoe's Criminal Evidence, and there it was held that the term 'an enemy' as used in the Official Secrets Act was not confined to a State actually at war with the Crown. It does not say to what extent this term might be stretched for the purposes of this Act. So this leaves things rather in an uncertain state. Now, Sir, we find that the term 'enemy' has been variously used in certain special enactments where it has been given various meanings; for instance, take the Trading with the Enemy Act and other war enactments. Then again take the Army Act. In the Army Act this term is defined as including all armed mutineers, armed rebels, armed rioters and pirates. This matter is further complicated by reason of the use of this term 'enemy' in certain Treaties of the British Government with some Native States. I may remind the House that a reference to this particular question, namely, the terms of the treaties, was made not long ago in the Council of State in connection with the Princes' Protection Bill. I find that in at least 20 treaties which the British Government have entered into with the Native States

Mr. Denys Bray (Foreign Secretary): I rise to a point of order. Is the Honourable Member referring to Indian States?

Mr. K. C. Neogy: Yes, Sir, my intention was to refer to the possible difficulties that might arise. If the Honourable Members will turn to those Treaties, they will find that it is laid down, in at least twenty of them, that "the friends and enemies of one shall be the friends and enemies of both." Now, Sir, as is well known, the Indian States have no international relations at all. Therefore, it cannot be said that this expression in the Treaties can be given the same meaning as it bears in international law. Men like myself, who are uninitiated in the mysteries of diplomacy and diplomatic language, used to think that this clause of the Treaties constitute an offensive and defensive alliance between the British Government and the Native States for military purposes. But, Sir, in connection with the Princes' Protection Bill it was made clear that it was not so; and the Honourable Mr. Thompson read into this clause of the Treaties an obligation on the part of the Government of India to provide a measure for the purpose of protecting the Princes from hostile criticisms in the Press. And that interpretation has been accepted by the high legal authority of

[Mr. K. C. Neogy.]

the present Governor General. Now, Sir, that being the case, I am apprehensive as to what interpretation this term may be given in the future. Will this term "enemy" include the enemies of the Native States, because it is said the enemies of the Native States will be considered the enemies of the British Government? But in that case enemies would include private individuals, and it would not be interpreted in the sense in which it is used in international law and in the sense in which it is used in the English law from which we have taken this term. Therefore, Sir, in order to be on the safe side I have proposed the substitution of the words "a foreign power" for the words "an enemy" in this clause. The reason why I have chosen the expression "foreign power" is that, though the expression used in the Act of 1911 was "enemy," in the Act of 1920 the expression used is "a foreign power." Honourable Members will find that in two places in clause 5 of the Bill the expression used is "any foreign power" and not "enemy." Therefore, Sir, I think that in every sense the Bill will be improved if we accept this amendment. That would give us a uniform phraseology, and the term will not be liable to misinterpretation in the way I have pointed out. I beg to move my amendment.

Mr. President: Amendment moved is:

"For the words 'an enemy' wherever they occur in clause 2 the words 'a foreign power' be substituted."

Mr. L. Graham: Sir, while admiring the erudition and labour which my Honourable friend, Mr. Neogy, has expended on this subject, I regret very much that I am unable to accept his amendment. I too have searched the Law Reports and have found a ruling as to the meaning of the word "enemy" as used in the Official Secrets Act of 1911. The word, Sir, means a potential enemy. Now, Sir, I think that, that on the whole helps to clear the ground. There can be no misunderstanding. An enemy of the State, when you come to examine the matter. . . . I take it, Sir, that we are dealing with clauses 3 and 4 as well as clause 2?

Mr. President: The Honourable Member actually moved his amendment to clauses 2, 3 and 4, but I have only been able to put the amendment to clause 2, because clauses 3 and 4 have not yet been reached. I do not object to the Honourable Member arguing his case with reference to all three clauses.

Mr. K. C. Neogy: Sir, I formally moved this amendment in regard to clause 2.

Mr. President: Yes. I put it in regard to clause 2 assuming that when we reach clauses 3 and 4, the Honourable Member's amendments will be treated as formal motions.

Mr. L. Graham: The reason why I asked that question, Sir, is because it is really impossible to separate the arguments and I had no wish to be pulled up in the middle of my stride.

With regard to clause 2 (8), sub-clauses (c) and (d), the position is that actually these notifications will not issue except in time of war. Works which are to be prohibited places at all times are those which are specified in sub-clause (a). Now war, Sir, is war whether it is civil war or war with a foreign power. In time of war it is equally necessary to protect the State from being spied upon, whether by a foreigner or by the enemy

within our gates. If you accept the amendment proposed by Mr. Neogy its effect will be that an enemy of our own nationality will be able to enter into these prohibited places because to him they will not be prohibited. The only person who will be barred will be the foreigner. The consequence, I take it, will be that the foreigner will employ a traitor—I am afraid I must say a traitor—to enter the prohibited place because he will be able to do it with immunity. Now, Sir, as I say, it is really part of my argument, and I therefore gratefully accept your offer to allow me to speak and to show how the change in the words would affect clause 3. There are, as my friend, Mr. Neogy, said, foreign powers and foreign powers. There are foreign powers which are great and there are foreign powers which are small. May I mention one very small power, namely, the Principality of Monaco and another, the republic of San Marino. Again, there are various little States in South America. Would it not be placing an impossible burden on a Court of Justice to have to come to a conclusion whether certain information, certain sketches, are calculated to be directly or indirectly or might be or are intended to be useful to a foreign power when there is no common standard of foreign power? It might be said: "This will be of no real advantage to Monaco; you have got only half a dozen soldiers there." The position, therefore, is that the Courts would be placed in an impossible position and the operation of the Act would be paralysed. The same remark, Sir, applies to clause 4. I, therefore, in this connection, ask that the amendment to clause 2 be rejected.

Mr. President: Amendment moved:

"For the words 'an enemy' wherever they occur in clause 2, the words 'a foreign power' be substituted."

The question is that that amendment be made.

The motion was negatived.

Clause 2 was added to the Bill.

Mr. President: Amendment moved:

"For the words 'an enemy' wherever they occur in clause 3, the words 'a foreign power' be substituted."

The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move:

"In sub-clause (1) of clause 3 omit the words 'or interests'."

Sir, I admit it to be my misfortune that I could not be satisfied by the very illuminating arguments adduced by my friend from Bengal relating to the definition of the words "or interests". Sir, in this country the interests of the public cannot always be identical with the interests of the State in all matters. They may be identical in certain matters but they may not be identical in many matters. It may also happen, Sir, that even the interests of the public and the interests of the State may clash. There may be certain matters that may be prejudicial to the interests of the State, while they may be beneficial to the public. The meaning of the words 'the interests of the State' are vague. Take, for instance, the last Gaya Congress. It passed a Resolution, a very undesirable Resolution and I may call it a senseless Resolution to do away with their liabilities for international debts, or public debts that the Government of India might incur in future.

[Mr. K. B. L. Agnihotri.]

Now, this Resolution on the part of those people will certainly not be for the benefit of the State or in the interests of the State. If any person were to make a report of that proceedings and publish it, he might be liable under sub-clause (c) of clause 1. He may be liable for this, because other nations that may be inimically inclined towards our Government *might infer* that the Indian subjects are not satisfied with their Government, and have repudiated the public debts, that there is a dissension between the subjects themselves and probably the Government may be a weak one; and if they enter into a war on that inference it will certainly come within the definition of the interests of the State. I do not mean to say that the interests of the State really includes such a case as I have just given and it may not have been meant to include such cases, but there is nothing to prevent interpretation in that way. Then, for instance, social disorders, religious dissensions between different parties, they are surely always prejudicial to the interests of the State. If anybody were to publish this information, and if that information might be useful to some foreign powers at some unknown time, the person who gives or publishes such information would be covered by this definition in clause 3 (1); I do not think that the Select Committee meant that this clause should cover such cases. Therefore, Sir, I think, that it would be better that "the interests" should be defined, but as that is not possible now it is better that the words should be omitted. On going further into the Bill we find that in certain clauses the words "or interests" before "the State" have been deleted. I do not know what led the Honourable Members of the Select Committee to include those words "or interests" in these clauses while at the same time they deleted them in other clauses that referred to civil affairs. If the meaning of the words "or interests" was clear in the case of civil affairs, it should equally be clear in military matters. If you drop it in one place, there does not seem to be any necessity to keep it in another. It only creates ambiguity and vagueness. Therefore I submit that these words "or interests" be omitted.

Mr. President: The amendment moved is:

"That in sub clause (1) of clause 3, omit the words 'or interests'."

Mr. L. Graham: Sir, my learned friend, Mr. Chaudhuri, has referred to this question already. The point is this. These words were not included, as Mr. Agnihotri suggested, by the Select Committee in this clause. They were excluded in another clause, clause 6, for reasons which I will deal with later. Clause 3 deals with all the most important offences under the Act and it is not a new idea. It has been the law of this land since 1911, and you may possibly like to be told what occurred in Parliament when my Honourable friend's exemplar Commander Kenworthy moved a precisely similar amendment to omit the words "or interests." On that occasion Sir G. Hewart said:

"As to the objection raised to the words 'or interests', the answer is that they are taken from the Act of 1911, which says, 'purpose prejudicial to the safety or interests of the State'. It is obvious that certain matters cannot be said without exaggeration to imperil the safety of the State, but they go sufficiently far in that direction to be prejudicial to the interests of the State. Therefore those who were responsible for the Act of 1911 put in 'safety or interests'. We did not invent that phrase. We are simply carrying on the vocabulary of the 1911 Act, and if we were to leave out the words 'or interests' in the amending Bill, it would make it possible to found a legal argument upon the fact that the phrase was in the principal Act but not in the amending Bill, and it might be said that while the mischief that was aimed at by the principal Act included purposes prejudicial to the safety or interests of the State, yet, in order to come within the amending Bill, you would have to find something prejudicial to the actual safety of the State."

Well, Sir, as I said, we are dealing with the very gravest offences in this clause. In the other clause, clause 6, with which I will deal later, we deal with comparatively minor offences many of which are already covered by the existing penal law. The position is this. If you restrict the words and only use the word "safety" it is a very difficult thing to say about any particular act that it imperils the safety of the State but, if you let pass a number of such acts, the aggregate of these acts, not each one of which imperils the safety of the State, will imperil the safety of the State, and I ask you, Sir, is it right that the Empire should crash before we can get a conviction under this Act?

Rao Bahadur T. Rangachariar: Sir, I may perhaps explain to my Honourable friend, Mr. Agnihotri, why we retained the words "interest of the State" here and omitted them in clause 6 and elsewhere. If Congress volunteers wore uniform and went about, it might be argued that they were doing a thing against the interest of the State. That is the thing which I had in mind when I advocated the dropping of the words "interest of the State" there. Nobody can argue it is against the safety of the State that Congress volunteers should go about dressed like ordinary volunteers. It is to avoid such a case that we dropped the words "interest of the State" in this and other sections. But here, in section 3, we are concerned with spies. In the case of spies it will be very difficult to draw the line between safety of the State and interest of the State. And "interest of the State" is not such an unknown term that my Honourable friends should have any apprehension about the use of that term. Why, we are familiar with that term in the Indian Evidence Act. If you turn to section 125 and other sections, you find "public interest". A man may claim that he cannot disclose a secret, it is in the public interest that he should not disclose it. Has anybody ever felt any doubt as to what is meant by "public interest"? It is no doubt easy to conjure up doubts when you are here but you must credit the Court with some common sense and having regard to the facts of the case, there really will be no difficulty in coming to a conclusion as to what will be in the interest of the State and what will not be in the interest of the State. Therefore, in cases like these, where you have to deal with the real enemies of the country, I don't see any distinction between the enemies of the country and the enemies of the State, because if he is an enemy of the State, he is also an enemy of the people. (*An Honourable Member!* "Not necessarily.") Well, that is a point of view. I did not say enemy of the Bureaucracy, I said enemy of the Government. No people can exist without a Government. Government and the people make the State. So that, in such cases, where you have to deal with spies, I don't think we should show any leniency at all, for, if we are to get on at all in this country, we must safeguard our safety in the first place against foreign aggression or internal aggression which might overthrow the Government. I think we are all anxious to preserve a Government so that we may develop in it. I think, Sir, the words are necessary there.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I do not know that I altogether followed the argument of the Honourable Mover of this amendment. He drew an illustration, or what I thought to be an illustration; then he passed a sponge over it and said it was not an illustration. So far, at all events, I am sure, that he contemplated some sort of difference between the interests of the State and the interests of the people who form that State, which he called the public

[Colonel Sir Henry Stanyon.]

interest. Apparently he read the word "State" as if it is synonymous with the word "Government". I do not think that in an enactment of this kind that would be a correct interpretation of the word "State". I think the word "State" here must be read to cover widely all the community—its Government, its institutions, its public and everybody concerned who go to make up what we call the State. It will be impossible for us to legislate upon any supposed antagonism between the State and the people constituting that State; and upon that ground alone I think that this amendment does not deserve the support of the House.

The amendment was negatived.

Khan Bahadur Sarfaraz Hussain Khan: Sir, the amendment which I move is as follows:

"In clause 3 (1) before the words 'imprisonment for' insert the word 'simple' and make consequential amendments in other clauses."

Sir, it is not that I wish to make a provision making rigorous imprisonment simple. My point is simply this. The real object of sending people to jail in these cases is to keep them out of the way and not to let them have any communication with the enemy, and in these cases simple imprisonment will be quite sufficient. There seems to be no reason why simple imprisonment should not be sufficient. The words used in the clause are "he shall be punishable with imprisonment". It does not say whether it is simple or rigorous imprisonment. My object is to make it simple imprisonment. This object is served by putting the man in jail and thereby not letting him have any communication with the outside world. With these words, Sir, I move my amendment.

The amendment was negatived.

Khan Bahadur Sarfaraz Hussain Khan: There is another amendment. Sir, I put my view of the case. My amendment runs:

"In clause 3 (1) omit all words after the words 'to any secret official code, to' in the last but one line and in their place substitute the following:

'a maximum period of 14 years according to the gravity of the offence proved in the Court'."

The clause simply says "and in other cases to three years". I wish to simplify the whole matter and put it in black and white that the matter should be left to the discretion of the Magistrate trying the case and that the punishment should be according to the gravity of the offence.

The amendment was negatived.

Dr. H. S. Gour: Sir, the amendment I desire to move deals with clause (3). Honourable Members will find that this clause lays down a special rule of evidence taken from the English Statute. When this clause was under discussion in the Lords, Lord Alverstone, the late Lord Chief Justice of England, animadverted upon it in the following terms. He said:

"I would call his attention first to the words 'known character as proved' in sub-section (2) of clause (1). It is opening the door of criminal law for which some justification will be required. It is quite true that when people are found in certain circumstances, their previous record as actually proved can, under the Prevention of Offences Act, be given in evidence; but I have never known any Act to go so far as saying that a man's known character may be proved, and I am afraid that in the Bill this will create difficulties. I think the words will be found too

Honourable Members will observe these are weighty words, coming as they do from the occupant of the highest judicial bench in England barring only one. Now, if you read clause 3 as it is drafted and is proposed to be enacted—I leave out the unnecessary words—I shall only coin an illustration to show how it leads to a *reductio ad absurdum*. If Honourable Members will follow the words which I have underlined, they will at once come to the illustration which I am about to give them. The section says in clause (2) "any information relating to any prohibited place communicated by any person shall be presumed to have been made or communicated for a purpose prejudicial to the safety or interests of the State. Any information relating to a prohibited place, communicated, shall be presumed to have been communicated for a purpose prejudicial to the safety or interests of the State." Let me translate this into a concrete illustration. A says to B, "Look at this. Avoid going to this place. It is a prohibited place." That is an information relating to a prohibited place. It shall be presumed under this Act to have been communicated "for a purpose prejudicial to the safety or interests of the State". (A Voice: "No, no.") My illustration arouses the hilarity of the learned occupants of the Treasury Benches. That is my best vindication for the argument that I am addressing to this House. The whole thing, the whole language of section 3 is so diffuse, loose and verbose that it might include any act, however innocent, within the purview of that section. Now, Sir, I do not wish to weary this House by dealing with the general aspect of this question. I shall rest content if the House will support my short amendment which I am perfectly certain he who runs can understand. It is this. I wish to delete from the provisions of this section these most obnoxious words "or his known character as proved."

The Honourable Mr. A. C. Chatterjee (Education Member): May I rise to a point of order? Is Dr. Gour moving the first part of his amendment or the second part?

Mr. President: I understand the Honourable Member is not moving the first part.

Dr. H. S. Gour: I think you understood me rightly and my Honourable friend, Mr. Chatterjee, understood me wrongly. What is the meaning of the words, "his known character as proved"? I pointed out that in England, the words "his known character as proved" were pronounced by the late Chief Justice of England to be a loose expression and too wide. This special rule of evidence provided in England has the least justification in this country. Honourable Members will observe that in England they have no codified law of evidence. Such rules of evidence as exist are culled out of decided cases, but in this country we have a codified law of evidence and it contains the definition of such a phrase—"when a fact may be deemed to have been proved"—and it lays down that a fact may be deemed to be proved when taking all circumstances into consideration the court regards it as proved and the ensuing sections of the Evidence Act lay down certain rules of relevancy and admission and other rules for the exclusion of evidence, and one of these is that in criminal cases the character of a man is not relevant. Now, this special provision made in a highly technical but nevertheless heinous offence of including a man's character as a piece of evidence upon which he might be convicted is, I submit, opposed to the law of evidence and is otherwise opposed to the ordinary principles of natural justice. What is a man's character? After all, if Honourable Members will pause for a moment and reflect, they will find that character means nothing more

[Dr. H. S. Gour.]

and nothing less than the opinion which one man has about another. Is a man to be convicted upon the opinions of people? And as this character is to be proved by the prosecutor I presume the evidence will be the evidence of the police and of a few witnesses whom they call for the purpose of establishing a man's character. Do Honourable Members in this House sanction such a procedure? I am perfectly certain they will do nothing of the kind. Prove your case by all means. The Evidence Act provides the mode and the manner of such proof. I am prepared also to allow the proof to be completed by the special rule of evidence which you propose to enact in this clause, but I certainly think that these words 'known character as proved' must be deleted from this clause. It is likely, I submit, to lead to miscarriage of justice. If there is evidence of a man's bad character, we have also to give evidence of a man's good character. There will be a conflict of opinions. A few witnesses come up and say "This man is a *budmash*". A few men come up on the other side and say "We have never known a man of a more saintly character". Apart from the proof which this section requires and for which, I submit, the provisions of the Indian Evidence Act are amply sufficient, if they are not sufficient you have enlarged those provisions in this clause to the extent which I am prepared to accept, but I submit the House will not accept if coupled with the phrase "known character as proved" and if they are not sufficient, you may enlarge those provisions in this clause to an extent which I am prepared to accept, but I submit the House should not accept if they are coupled with this phrase 'his known character as proved'. Sir, I move that these words be deleted from the clause.

Mr. President: Amendment moved:

"In sub-clause (2) of clause 3, the words 'or his known character as proved' wherever they occur be omitted."

Mr. L. Graham: Sir, my learned friend, Dr. Gour, took for his text in the first instance certain remarks of Lord Alverstone. Now before dealing with those remarks in particular, I would like to put it to the House that we have in the Select Committee very much reduced the scope of this clause. Previously that clause could have been used in the trial of any person for any offence under clause 3. We have, as has been noted before, re-drafted clause 3 so as to give a maximum penalty of 14 years for certain offences and a maximum penalty of 3 years for other offences. We only propose to rely on this special provision in the case of those very serious offences which are punishable with imprisonment for 14 years, that is to say, Sir, we shall be dealing with spies, an elusive and slippery race about whom the police have information, know a great deal, but that information would be summed up as information about pursuits and character generally. Now, Sir, what happens is this. I do not propose to be an expert in the ways of spying, and therefore I may be allowed, I trust, to quote the words of no less a jurist than Lord Haldane. Before I do so, however, I should like to remind the House that these words first appeared in the Act of 1911, that is to say, they were passed by a Liberal Government. Lord Haldane in introducing the Bill in the House of Lords, or rather in moving the second reading, stated as follows:

"The main change which the Bill makes is a change of procedure. In order to convict any one under the Official Secrets Act, 1899, it is necessary to prove the purpose of wrongfully obtaining information. If the man is found in the middle of

fortifications, he may have strayed there by accident by night. You have to prove that he was there for the purpose of wrongfully obtaining information, and that has to be proved. This Bill adopts a method for which there is a precedent and which is much more effective."

That is, in certain cases persons are liable to conviction under that Act unless they can give a satisfactory account of themselves when they are found in certain places. Now to illustrate the difficulties with which we have to cope, let me again quote Lord Haldane:

"I will give one or two instances showing what the difficulties have been. Not many months ago we found in the middle of the fortifications of Dover an intelligent stranger who explained his presence by saying that he was there to hear the singing of birds. He gave the explanation rather hastily as it was midwinter. Then there was another case in which somebody was looking at the emplacement of guns in a battery at Lough Foyle and he declared that he was there for the purpose of calling on somebody."

There was another case in which a man was found sketching a fortification. The details are not worth reporting, but they could not get a conviction. Now, Sir, as I have said, we are dealing with people who are committing most serious offences, and in order to prove their purpose it is essential that we should be able to give evidence of their character. It has got to be a sort of badness that would make the man likely to do something which was prejudicial to the safety or interest of the State. It would not be enough to prove that he was a very unpleasant fellow or that he beat his wife or anything of that sort, but it must be proved that he is the sort of person likely to do something dangerous, something prejudicial to the safety or interests of the State. He is not going to be tried or convicted unless he is found in extremely suspicious circumstances doing something which he ought not to be doing; and this Act provides that certain inferences may be drawn from the circumstances in which he was found and anything known about him before. I submit, Sir, that in these particular cases, where the necessity for the protection of the interests of the State arises and in which its safety is concerned, this is a justifiable provision. As I have said before, it was inserted by a Liberal Government and it was continued and applied to another set of offences by the Act of 1920 in England. I have quoted already no less an authority than Lord Haldane and I should like to conclude by quoting no less an authority than a late Attorney General, then Sir Rufus Isaacs, who said that it was a very difficult thing to administer the old Act and it is essential to have this provision, the whole provision.

Mr. K. C. Neogy: Sir, I will be very brief in referring to this amendment because Dr. Gour has said almost all that could possibly be said on this question. I would draw the attention of the House to the seriousness of the offence that clause 3 seeks to create. It will be seen that this offence is made punishable with imprisonment up to 14 years. What are the elements of this offence? A man does something. That is the first element, as enumerated in clauses (a), (b) and (c); and then his purpose in doing that particular thing must be prejudicial to the safety or interests of the State. Now, Sir, let us look at sub-clause (a). What is the act that he commits? He approaches, inspects, passes over or is in the vicinity of or enters any prohibited place. And what is a prohibited place? A prohibited place includes not only works of defence but any dockyard, factory or ship belonging to His Majesty. So, it is quite obvious that it is possible for a man quite innocently to either approach or to be found in the vicinity of any such factory or dockyard belonging to the State. Therefore, the essence

[Mr. K. C. Neogy.]

of the offence is his purpose, which must be found to be prejudicial to the safety or interests of the State. This being the most important element of the offence, let us see what procedure is going to be adopted to prove it. It will be enough if you adduce evidence of his known character for the purpose of establishing this important element in the offence. That is a serious danger to which I draw the attention of the House. This danger was as a matter of fact admitted by the Select Committee in so far as it made a distinction between a military and a non-military offence. I must admit that that distinction has improved the Bill; but Sir, so long as Government is unable to justify this distinction in principle I am unable to be a party to the passing of sub-clause (2). It will be said that sub-clause (2) finds a place in the Act of 1911 which already applies to India.

That does not affect my opinion in the least. We are here to pass legislation which we consider to be in the best interests of the country. If Parliament has passed an obnoxious measure of legislation which we consider to be unsuited to the conditions in India, we must, while we are considering a measure seeking to re-enact that provision, establish by our vote here that we do not approve of such a provision. Now, Sir, my principal objection is that the chances of misinterpretation of this clause are much greater in India than in England. My Honourable friend, Mr. Graham, has said "Oh, there are circumstances in which people may be found in very suspicious surroundings and then you cannot really establish with reference to specific acts on his part that his purpose was really prejudicial to the safety or interests of the State." That is exactly the danger which I am very much afraid of. Who knows that this provision may not give temptation to the authorities at one time or other to run in political suspects, or those who are in the opinion of Government political suspects, or non-co-operators for the matter of that, who may be found in the vicinity of a prohibited place? (A Voice 'No.') . . . Who says no? Is my Honourable friend, Mr. Chaudhuri in a position to assure me that it will not be so? Is the Honourable gentleman in a position to give me that assurance on behalf of Government? Now, Sir, unless there is a specific guarantee that Government are not going to abuse this provision for the purpose of harassing their political opponents, I cannot be a party to this measure at all.

Mr. President: Amendment moved:

" Clause 3. In sub-clause (2) omit the words ' or his known character as proved '."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—26.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Basu, Mr. J. N.
Das, Babu B. S.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gopal Singh, Sardar.
Gopal Narayan Lal, Mr.

Latthe, Mr. A. B.
Misra, Mr. B. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Ramji, Mr. Manmohandas.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Tulshan, Mr. Sheopershad.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—38.

Abul Kasem, Maulvi.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Asad Ali, Mir.
Bijlikhan, Sardar G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Graham, Mr. L.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Janes, the Honourable Mr. C. A.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.

The motion was negatived.

Clause 3 was added to the Bill.

Mr. President: Clause 4. Amendment moved:

" For the words ' an enemy ' wherever they occur, the words ' a foreign power ' be substituted."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

" That clause 4 be omitted."

Sir, my reason for the omission is this: We have just provided in clause 3, by throwing out the amendment of Dr. Gour that a man may be convicted notwithstanding that he may not have committed any act, if from his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State. Now, under this clause 4, you are providing that the fact of any person communicating or attempting to communicate with a foreign agent shall be a relevant evidence for conviction under clause 3. If we retain this clause, the result will be that this evidence, in addition to the evidence of a bad character as proved, will make a man liable to be convicted under the Act. Now, communication with a foreign agent certainly is a very serious thing. Communication with a foreign agent has been defined in this clause. What is it? " A person shall be deemed to have communicated with a foreign agent if he visited the address of the foreign agent or consorted or associated with the foreign agent." That is, if he visits a foreign agent, it shall be deemed that he had a communication with a foreign agent. Further, if he has been found in possession of any address of a foreign agent, whether it is in this country or outside this country, he shall be deemed to have communicated with a foreign agent. Now, it may just happen that the man visiting a place may not know that the place was the address of a foreign agent. If a man visits the address of a foreign agent he is deemed to have communicated with a foreign agent. Now, what is the meaning of address? " Address " in this clause has been defined to be " a place where he carries on business." A suspected foreign agent, if he carries on business at a particular place and any person who is a political internee or a non-co-operator, whose characters these days are believed to be prejudicial to the interests of the State, were to go to the place of business of a person suspected of being

[Mr. K. B. L. Agnihotri.]

foreign agent, then this non-co-operator or political internee shall be liable to be convicted under clause 3, and this will be very dangerous, because that political internee or non-co-operator may himself be innocent. Unless we have any proof of any overt act on his part, it will be rather dangerous and unjustifiable to convict that man simply because he happened to be a non-co-operator or a political convict or internee, and visited a place which happens to be a place of business of any person who is suspected to be a foreign agent. He may be an innocent person and, as such, he will be put to unnecessary hardship. Therefore, Sir, I propose that the whole clause 4 which makes the evidence relevant for conviction, where it is coupled with the proof of bad character, of a man, should be deleted.

Mr. L. Graham: Sir, I am somewhat surprised at the attitude of Mr. Agnihotri. He agreed that to communicate with a foreign agent is a thoroughly bad thing to do, the sort of thing a spy would do, and yet he proposes to omit this clause altogether.

The fact, Sir, is that this clause was inserted in the Act of 1920 as a result of our experiences at Home during the war. It was found that England was, I might almost say, honeycombed with foreign agents. Possibly the position is not yet so bad in India, but it might become so, and in fact, I think there is reason to suppose that it is likely to become so from a certain quarter. Now, in a case like this, it is absolutely necessary to be fore-armed. The reasons which impelled the Home Government to put in this provision were expressed by the present Lord Chief Justice, then Attorney-General, as follows: "After first drawing attention to the fact that nobody is going to prosecute a person for going to have tea with a foreign agent or even for sending him a postcard, he says that if he is found doing any of the extremely dangerous things which constitute the offence for which he is to be tried, then these facts may be used in evidence against him." I think the House which passed the second sub-clause of clause (3) will agree with me that they should pass clause (4) which is really on the same lines and is intended to meet the same necessity. I do not wish to deal with the matter in detail, but I would only like to read what Sir Gordon Hewart said:

"I hoped that what I said when I last spoke with reference to the opening and governing words of the second Clause of this Bill would have met in advance any such criticism as that which has just fallen from my Honourable friend the Member for Consett. I am sure he sees that it is very important that this clause begins with words which limit its effect to proceedings in which a particular kind of offence is charged."

As I said, there is no prosecution under this section. It is simply an evidence section:

"In other words, the clause provides that where, for example, a man is found in Woolwich Arsenal and there is evidence to show that he is there for the purpose of spying, the further fact, if fact it be, that he has also been in communication with a German agent will be evidence that he has, for a purpose prejudicial to this country, obtained, or sought to obtain information calculated to be useful to an enemy."

Now, Sir, a foreign agent, it may be said, is to a spy what a jemmy is to a burglar; and as we have in our own criminal law a presumption about a man who is found in possession of house-breaking implements, so in respect of spies it is reasonable to expect that writing to foreign agents or communicating with them is a fact which he ought to be called on to explain and if he cannot explain it, it ought to count against him as proving that

the act with which he has actually been charged was done with a purpose prejudicial to the safety or interests of the State.

Mr. K. C. Neogy: Sir, I have got one question to put to the Honourable Member who has just sat down; and that is, whether this provision has been incorporated in any legislation that the Colonies may have undertaken. The House will remember that this clause is taken, not from the Act of 1911 which applies to all British Possessions, but from the Act of 1920 which does not apply either to Canada, Australia, New Zealand, South Africa, Newfoundland or India. So far as I have been able to see, the Colonies have not brought in this provision by any legislation of their own. (If I am wrong, the Honourable Mr. Graham will correct me.) If that be so, what is the special urgency of this provision being incorporated in the Statute Book in India? I want to be satisfied on that point before I vote on this clause.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): May I ask another question, Sir, suppose there is a "Miladsharif" going on in the House of the Consul-General of Afghanistan or probably there is a general prayer, and as a Muhammadan, every Muhammadan must go there and say his prayers in the house of the Consular-General of Persia. Will that be a communication? Or suppose out of friendship the Consul-General pays a visit to a Member of the Legislative Assembly and he drops his visiting card and the Member of the Assembly returns the visit by dropping a visiting card of his, or probably in his diary he enters an entry that he dined with him on a certain day. Will that Member of this Assembly come under this section? If so, this would be an immoral law, it is a law which is illegal, I feel is an extraordinary thing that the people living in India will have to obey it, it is a law which is not only of a harsh nature but a law which a civilized nation should not have. Therefore, I expect my Honourable friend, Mr. Graham to satisfy the House how far its inclusion in sections 3 and 4 of this Bill is justified and how far it comes within the spirit of the law of this country.

Mr. L. Graham: May I say, Sir, that if a reply were permissible on an amendment, I would be able to satisfy Mr. Kabeer-ud-din.

Mr. K. C. Neogy: What about my question?

Mr. L. Graham: That will be dealt with in another quarter.

Rao Bahadur T. Rangachariar: There is a lot of misapprehension as regards the scope of the section. This section by itself does not create any offence. This section merely says what facts are relevant in a trial for an offence under section 3; it merely lays down the rules of evidence. Having regard to the peculiar nature of the case, the peculiar nature of the offence,—incidents which do not occur in ordinary human life do occur in such cases, insidious and underhand methods, and that is why a special legislation has to provide what special facts shall be relevant. If Honourable Members will notice, all that section 4 (1) says is, "shall be relevant" for the purpose of proving a particular fact; not that the Court is bound to draw the inference, not that it is conclusively proved, not even "shall be presumed"; it is merely relevant, it is a piece of evidence which the Court can admit in order to come to a conclusion whether the man has committed the crime or not. Honourable Members will remember that under section 3 it is essential for the prosecution to prove one or other of the three acts specified therein, that is, a person in order to be

[Rao Bahadur T. Rangachariar.]

convicted, (a) must either have approached, inspected, etc., etc., any prohibited place; (b) he must have made a sketch, plan, model, etc., etc., which will be useful to an enemy; and (c) he must have obtained, collected, recorded, etc., etc., information which would be useful to an enemy (A Voice: "Might be"), might be, intended to be, or calculated to be (Mr. K. C. Neogy: "Directly or indirectly.") You have got to catch all sorts of cases so that the language should not be too narrow. Therefore these facts must be proved in the first place. In order to prove that fact, this will be one of the relevant facts taken into consideration. In order to find out whether this man has really communicated with an enemy, has really communicated an information to a foreign enemy, it would be relevant to know whether he is on visiting terms. If he is on visiting terms, that will be one of the facts proved. All that section 4 (1) says:

"In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent whether within or without British India, shall be relevant for the purpose of proving"

the commission of the offence. Therefore, it is merely a piece of evidence to which the Court may give such weight as it thinks fit taking into consideration the other circumstances which may be proved in the case. Then the latter portion is:

"For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(a) a person shall be presumed to have been in communication with a foreign agent if—

he has done all those things mentioned thereunder. That is, in order to prove that he has been in communication, the law lays down a presumption—a presumption which is rebuttable. That, my Honourable friend who has spoken against this section has forgotten. It is not a conclusive presumption. If you go merely and innocently for tea or if you merely go for the purpose of doing business in the business premises of a foreign agent, why it is the easiest thing to prove that you had a transaction to buy a horse or to buy some Persian carpet or do some other thing. It merely says 'shall be presumed.' In a case like this, in order to avoid difficulty, having regard to the delicate and serious nature of the offence, the law has to take care. It cannot be too careful and too cautious in such matters. Remember we are dealing with enemies of the State. When once you have that in mind, all these difficulties now help up which no doubt may appeal to unthinking people but to those of us who are here such argument is not convincing, it is very easy to catch popular or newspaper applause by holding forth and pointing out the dangers and pitfalls, but we as legislators have to be careful in dealing with legislation which deals with enemies of the State. You should not leave loopholes through which these fellows can escape. I have no mercy for them. I have no sympathy with them, however patriotic I may be and you must never be kind and leave a loophole for an enemy of the State to escape. Therefore you must catch them by all means even if you err. It does not matter if you err because prevention is better than cure in such a case. While I am at one with my Honourable friends that we should not encroach upon ordinary methods of proof, I recognize these are peculiar cases and peculiar cases have to be dealt with in a peculiar way and after all the Legislature is not committing any enormity. We are trying to follow the British people in all their political institutions and rights. If it is

good for an Englishman, why should it not be good for us. True we have not got our own Government. That is the real secret of all this opposition. I quite admit that, but this is not the way to get rid of the foreign Government and establish our Government. In order to keep the State going you must have these measures in your armoury so as to deal with enemies of the State, not enemies of forms of Government. Now, I am an enemy of the present system of Government. I want to get rid of it and substitute Government by my countrymen. But this does not apply to me. It applies to the enemies of the State. My Honourable friend says he is not quite so sure, but I daresay that if he was on the Bench and I were appearing as Counsel for an accused person I would be able to satisfy him in no time that this is the intention of the Statute. After all, you must remember what the intention of the Statute is in a case like this. The courts are not there merely to go upon the literal meaning of the words. They will construe in a liberal spirit in favour of the accused and after all this is merely laying down what facts may be relevant and will carry weight, so that it is not conclusive proof at all and I therefore think that there is really no harm in retaining this section.

Dr. H. S. Gour: Sir, my friend on the right has accused the House and the Members thereof from suffering from a lot of misapprehension. Whatever may be the case with other Members, I have not the slightest doubt that my learned friend on the right has taken a lion's share of that misapprehension. He opened his speech and wound it up by saying 'We want to deal with the enemies of the State.' But, Sir, this section is not dealing with the enemies of the State. It is dealing with a piece of evidence and we are yet to find the enemies of the State. The question my friend has assumed, that we are dealing with enemies of the State, is mere claptrap: the whole question is, who are the enemies of the State. My friend told us, and he has repeated that statement, that we are dealing here with the enemies of the State, by which I presume he means that we are here dealing with foreign subjects. Let me warn the House that this Bill, if passed into law, shall equally apply to all British subjects, Indians, Europeans or foreigners. It applies to everybody, and it is not the case, as my Honourable friend has assumed, that it is intended to lay the enemies of the State by the heels. Even if it were so, are not the enemies of the State entitled to justice? Are they not entitled to fair trial? Are they to be convicted without any judicial evidence, without any formulated pleas set out and proved against them? Are special chambers of horror to be devised for the purpose of impaling and pulverising foreign people? Surely, Sir, no Member in the House will endorse the pseudo-patriotic appeal which my Honourable friend on my right addressed to us. Let us, I say, be free from this cant, and address ourselves to the main question. Is the evidence, is the special rule of evidence which this section creates, is it warranted by the natural principles of equity and justice? That is a short question which I submit should engage the attention of this House. Let us be clear of those extremely vivid but at the same time misconceived notions of protection of the State and laying by the heel its enemies. We have neither the enemies of the State nor the protection of the State in view; in this section we have nothing but pure justice in view. Is it, I submit, consonant with the natural justice that with regard to a man who is found with a visiting card containing the address of a person or the person with whom he resided, that it should be a relevant factor? Turn to the section and you will find, Sir, another *reductio ad absurdum*: a person shall be presumed to have been in

[Dr. H. S. Gour.]

communication with a foreign agent—and I now leave out other words and select the words which suit my purpose, and it will show to you the absurdity of it, such a case is conceivable, and because the section lays down a large number of circumstances, and I am going to present you with one of them. If he has visited the address of a foreign agent, namely, any address—clause (c)—used for the receipt of communications,—(a person is charged with the offence under section 3); the evidence against him is given that he is presumed to have visited a foreign agent; the evidence given is that the foreign agent has an address. But 'address' is defined in clause (c) as a place where letters intended for that agent are received. Such a place might be a popular hotel or a large bank. As a matter of fact, Honourable Members know that when they tour about the country they generally have their letters addressed to a bank or a hotel. If therefore in such a place of common resort the foreign agent has left his address, a person shall be presumed to have been in communication—the accused shall be presumed to have been in communication with him if he has an address. If you have the address of that hotel or bank you shall be presumed to be in communication with a foreign agent. It is absolutely unnecessary to labour the point. These special rules of evidence were defended in the House of Commons by our present Viceroy, then the Attorney General . . . (A Voice: "No, you are mistaken.") . . . by Sir Gordon Hewart . . . (Mr. L. Graham: "I may say that you are again mistaken.") . . . Yes, by Lord Hewart—then the Attorney General, but not upon the grounds to which my learned friend has adverted to in this House. I say, Sir, look at the section: look at its extreme danger: address yourself to its complete artificiality and its divorce from the ordinary rules of the law of evidence to which this country is subject, and I have no hesitation that you will discard this clause as wholly unnecessary and as calculated to do injustice in the trial of offences. I wish to warn Honourable Members that this clause might be used against any one of them. It is not a clause which is reserved, as my Honourable friend from the right has pointed out, only for the enemies of the State. It may be used against the most loyal citizen; it may be used for manufacturing enemies, as my friend, Mr. Seshagiri Ayyar, aptly points out. It is therefore, I submit, open to be used as an engine of oppression, and it is on that ground that I ask the House to support this amendment.

Colonel Sir Henry Stanyon: Sir, with regard to the proposal to omit clause 4 of the Bill, in all humility I venture to support, with the strongest language at my command, the views put forward by my friend, Mr. Rangachariar; and, in the most friendly way, but again with the strongest language at my command, to refute the warning given to this House by my old friend, Dr. Gour. I would venture once more to draw the attention of the House to the fact that this is a legislation of a special kind. We are dealing in this legislation with an evil which is insidious beyond perhaps our imaginings: which works in the dark; and which can only be met with its own weapons. We are by this legislation giving powers to our judicial and executive authorities not to be misused, not to be abused, not to be applied as an engine of oppression, but to be kept in hand, just as we keep in hand all other defensive apparatus, to meet an evil which can only be met by special legislation of this kind. I do not suppose that any of us knows, or that we shall ever know, the extent to which the safety or the interests of the State were endangered and honeycombed with the evil of hostile spies and foreign agents during the last ten years. One

argument raised against this clause is that it comes not from the Statute of 1911 but from the Statute of 1920. To my mind that is one of its strongest recommendations. It has behind it the experience gained during the late war—which broke out in 1914. As the Honourable Mr. Rangachariar has pointed out, this clause contains special rules of evidence. Take it away and you deprive this enactment of a very large part of its usefulness.

(At this stage Mr. President left the Chair, which was occupied by Sir Campbell Rhodes.)

Dr. Gour is quite right in saying that it does not apply only to one set or class or race of people, but that it applies impartially to everybody; that is so. It applies to everybody; but it operates only against those who, be they English or be they Indian, guilty of the offence of spying, are enemies of the State. The whole of this clause rests upon the foundation given in sub-clause (b), namely, the definition of a foreign agent. That is the first thing you have to get. You must have a foreign agent. If he is not there, then it does not matter what is done by any gentleman, whatever his political opinions may be for the time being; but when you have got a foreign agent, then you have a snake: and if the poison of this snake is not to be disseminated, as it always is, secretly, clandestinely, with every ruse and stratagem that the brain of man can devise, you must have some provision like this to prevent it from spreading. We must trust our Courts. Later on we shall come to the question of the standard of Courts which are to try cases under this enactment, and it will be seen at once that as a Legislature we are not going to entrust these powers to irresponsible or inexperienced or weak or stupid Magistrates, but to Courts which can be trusted to use them only in those very special circumstances, to meet which this enactment is devised. I would like, speaking for myself, to see this House not divided against itself, but strong in laying down, for the information of all concerned, that spying in India,—spying that is in a way prejudicial to the interests and safety of the State,—is going to have a very poor chance of success in this country.

Mr. T. E. Moir (Madras: Nominated Official): I move that the question be now put.

The motion was adopted.

Mr. Chairman: The question is to omit clause 4.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move part (b) of my amendment No. 12. I do not wish to move part (a):

"In clause 4, in sub-clause (2) (a) (i), after the words 'with a foreign agent,' insert the words 'having reasonable grounds for believing him to be a foreign agent'."

Sir, we have heard from the Honourable Mr. Rangachariar and the Honourable Sir Henry Stanyon that these laws are meant for offences of a special kind. Nobody ever doubted it and nobody ever questioned it. But the apprehensions and the fears we have are that the law as embodied in this Bill may be abused or misused and innocent persons may suffer, and it is with the object of safeguarding the innocent persons that this amendment is put forward. It was also said that the law to suppress spying should be as strict as possible. Nobody denies it. It was also said that the trial of such cases will not be entrusted to any weak or stupid Magistrates. Where is the guarantee for that? If the Government find that such and such a Magistrate is a weak Magistrate and such and such a Magistrate is a stupid Magistrate, they will not retain his services any longer. So long as the

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Magistrates are occupying the Bench, we are to assure that they are intelligent and strong Magistrates,—though they might commit errors of judgment, which might give us cause to infer their weakness or stupidity at certain times. And, if they could be guilty of such an error of judgment at one time, they could be no guarantee that they will not indulge in similar error at some other time. Here we provide, Sir, that, if a man were to visit the address of a foreign agent and if that man happens to be a person whose character as proved is such as to lead to a presumption that the act which he committed is prejudicial to the interests of the State, then that man will be liable for conviction under this Act. What would be the case? Take the case of the political internee. What further evidence—for many of our Magistrates will there be necessary to prove that the man is not a bad character? If such a man were to visit a place which is suspected to be the address of a foreign agent and if such a person at the same time or thereafter goes or approaches any military station, or any military telegraph or telephone station that may be confined within a fort, he will surely be liable to be prosecuted under this Act. Take the case of Sitabardi Fort of Nagpur. The telephone or the wireless station in Sitabardi Fort of Nagpur may be considered to be a military station. If a political internee or convict or a non-co-operator or seditionist happens to go near that fort, which happens to be close to the railway station

Mr. L. Graham: On a point of order, Sir. Is not the Honourable Member speaking on clause 3?

Mr. K. B. L. Agnihotri: On clause 4, Sir, coupled with clause 3 and the definition of the 'prohibited place' as given in clause 2 (a), which combined, make a man liable for conviction under this Act. Now, Sir, if the place is a military station, or if it has a military telephone and telegraph, and if it happens to be near the railway station where passengers have to go and if it enters into the head of the Executive that a particularly undesirable man should be prosecuted, or should be locked up, then what is there to prevent such an executive from prosecuting that man and getting him punished under this Act? My Honourable friend said that these laws are special laws, they may not be abused, they are not capable of being abused. Have the Honourable Members of this House forgotten the instances given by my Honourable and learned friend, Mr. Rangachariar, himself, of the abuse of section 107 of the Criminal Procedure Code? Have my friends here forgotten the excesses committed by the police as given on the floor of this House? Have my friends forgotten the instances and the judicial experiences given by my Honourable friend, Sir Henry Stanyon

The Honourable Mr. A. C. Chatterjee: May I rise to a point of order, Sir? I understand that the Honourable Member is moving the amendment relating to sub-clause (b) under clause 4, and, so far, I have not heard the use of the word "foreign agent" in his speech. He is referring to the question of convictions which has already been dealt with in clause 3.

Mr. K. B. L. Agnihotri: I was just pointing out that the visit of a man to a foreign agent's address by itself may not be sufficient for conviction but that when it is coupled with certain other facts, there will be sufficient evidence for his conviction. I am pointing out

Dr. H. S. Gour: What is relevant may be sufficient for conviction.

Mr. K. B. L. Agnihotri: Sir, what is relevant is often sufficient for conviction.

Dr. H. S. Gour: May be sufficient.

Mr. K. B. L. Agnihotri: But in practice we see that it is more than sufficient and we will find that it is quite sufficient. We know that in theory it may be only relevant. Sir, I was pointing out, that when the simple provisions of the criminal law have been abused in the past, there could be no guarantee that such a drastic provision as is provided in this Bill may not work harshly against innocent persons. If we were to allow this sub-clause 2 (a) (1) of clause 4 to stand as it is, we make innocent persons unnecessarily liable under this Act in certain circumstances. Therefore as it is likely that innocent persons might suffer, I beg to propose that some safeguard should be provided to protect innocent persons from being made liable under this Act. Only those persons who have knowledge or have reason to believe that the person is a foreign agent, and knowing this if they happen to go to his place, then only should they be made liable under this Act. Therefore, Sir, I move my amendment. At the same time I would also like to say, that often when an amendment is put forward,—and there be some mistake in the amendment or when it does not fit in properly, Honourable Members on the Government Benches get up and say that the amendment has not been properly drafted, and take exception to the wording of the amendment which I think is not justified

Mr. L. Graham: I might allay the apprehensions of the Honourable Member by saying that I think his amendment is admirably drafted.

Mr. K. B. L. Agnihotri: It may be. But supposing there was any mistake, in that case I should certainly have been happy to accept "knowingly," or "intentionally" or any other words that the Government may like to put in, in order to safeguard the interests of innocent persons. That is my chief object. If a person were innocently to go and visit the place of a foreign agent, he should not be made liable, and that evidence should not be used as relevant evidence against him.

Mr. Chairman: Amendment moved:

"In sub-clause 2 (a) (i) after the words 'with a foreign agent' insert the words 'having reasonable grounds for believing him to be a foreign agent'."

Mr. L. Graham: Sir, it is rather difficult to reply to Mr. Agnihotri in defence of the clause as it stands now, because what he has done is not to attack the clause as it stands now but to attack clause 3 which has already been passed by this House. I do not propose to start defending clause 3 which the House has already passed, but what I wish to point out is this. If you accept this amendment you will make it practically impossible for the evidence which is contemplated by this clause to be led at all. I take the position to be as follows: The man who is accused of an offence not under this clause but under clause 3 as you will remember, has been associating with a foreign agent. If Mr. Agnihotri's amendment is accepted, you will not be able to adduce that evidence that he has been associating with a foreign agent unless you can first satisfy the Court that the accused ought to have known that the person with whom he has associated was a foreign agent. I put it, Sir, that this is an impossible burden to throw upon the prosecution. Foreign agents do not display name boards in front

[Mr. L. Graham.]

of their residences with the words "foreign agent" inscribed in golden letters on it, and there is really no possible chance of satisfying the Court, that a foreign agent, being an unobserved and somewhat obscure person working in serpentine manners, is a person whom the accused ought to have known to be a foreign agent. It might be reasonable to require the prosecution to prove that an accused should have known anything which a person of reasonable intelligence would have known, but it is not fair to put on the prosecution the burden which this amendment would put on it. Therefore, Sir, I oppose this amendment.

The amendment was negatived.

Mr. K. B. L. Agnihotri: I move:

"In sub-clause (2) omit sub-clause (a) (ii)."

I need not say anything in defence of the omission of this sub-clause. Much has been said by Dr. Gour while moving the amendment about the omission of the whole clause 4. This sub-clause (ii) makes a man liable if he were to have only the address of any person who in the words of Mr. Graham does not declare himself to be a foreign agent and who is not expected to proclaim himself as a foreign agent as Mr. Graham has been pleased to say—still you want that innocent person to be made liable for this offence. He may be equally unaware that the man is a foreign agent, but if he happens to have his address either in a foreign country or in this country you make him liable. Therefore I move this amendment for omission of that sub-clause.

Mr. L. Graham: I think this is a forlorn hope of Mr. Agnihotri's. The House without a division has accepted the whole clause, and the small portion that Mr. Agnihotri wishes to take out is really a vital portion of this clause. I submit that any one who has voted against the omission of this clause as a whole must vote for retaining this portion of it. I would therefore oppose the amendment.

The amendment was negatived.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): May I interpose by suggesting that the House should adjourn now?

Dr. H. S. Gour: May I point out, Sir, that we have a very important Committee which is to meet immediately after the Assembly rises and of which I presume you are a Member. That Committee has been once adjourned and I do not think that it will be wise that that Committee should adjourn again. We have to transact a very important business and I would therefore request in view of the hour which is ten minutes past five, you might adjourn the House.

The Honourable Mr. A. C. Chatterjee: Sir, you and the House are aware of the congestion of public business in the House. Government are quite prepared to go on with this Bill. If we do not finish the Bill to-day or do not make satisfactory progress, our business will be put out of order. As you know, Sir, there is a lot of important work, in which the Members of the House are interested during the next few days and Government are quite prepared to go on. But if there is any strong feeling on the part, generally, of all Members of the House, we do not wish to press the question. We are prepared to leave it entirely to you. We should like to finish clause 4 if possible. We leave the decision to you.

Mr. T. V. Seshagiri Ayyar: May I point out to you, Sir, that we have been sitting during these two days until 6 o'clock and even after 6 o'clock, and it upsets a great many arrangements which we have already made. The hours fixed are between 11 and 4, and I think it is in consonance with the general practice in these matters that if it has to sit later it should be only in exceptional cases and that care should be taken to see that the Members of the House are not inconvenienced. If you say that you are going to sit till 6 o'clock, proclaim it once for all so that we may know where we are. The announcement is that we are expected to sit between 11 and 4 and if you are going to sit after 5, it necessarily upsets all arrangements which Members of this House may have entered into previously. To-day happens to be one of those occasions when we are required in some other place and I therefore suggest to you,—of course you have the right to adjourn or not and the matter is entirely in your hands,—that we do adjourn as soon as this amendment is disposed of. (*Voices:* "The amendment has been disposed of.") Then we had better adjourn now.

Mr. L. Graham: Do I understand Mr. Seshagiri Ayyar to refer to the amendments to clause 4?

Mr. T. V. Seshagiri Ayyar: No.

Dr. H. S. Gour: We will require some time to consider it.

Mr. L. Graham: I should not like to say that Dr. Gour's amendments are not important. My point is this. We have defeated an amendment to omit the whole of clause 4 and we are now dealing with clause 4 piecemeal. I think it would be more satisfactory to finish clause 4.

Mr. Chairman: The only argument that has been advanced is Dr. Gour's—that there is important business for some Members which follows this sitting. I therefore adjourn the House till 11 o'clock to-morrow.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 15th February, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 15th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

Mr. President: Members desiring to take their seats will advance to the table to take the oath or to affirm in the manner prescribed.

MEMBER SWORN:

Mr. Hubert Arthur Sams, C.I.E., M.L.A. (Director General of Posts and Telegraphs).

QUESTIONS AND ANSWERS.

DUTIES OF INCOME-TAX COMMISSIONERS.

347. ***Beohar Raghubir Sinha:** Will the Government be pleased to state the duties of Income-tax Commissioners and Assistant Commissioners?

The Honourable Sir Basil Blackett: The Honourable Member is referred to paragraph 22 of the Income-tax Manual.

REPRESENTATION *re* STRINGENCY IN MONEY MARKET.

348. ***Mr. W. M. Hussanally:** (a) Have the Government received any representation from the Bombay Indian Merchants' Chamber in regard to the stringency in the money market, and suggesting remedies as announced by the Associated Press in a telegram dated 27th January? If so, will the Government be pleased to place the same on the table?

(b) Will the Government be pleased to state what action they propose to take in the matter?

The Honourable Sir Basil Blackett: (a) The representation referred to appeared in the Press; a copy is however laid on the table.

(b) Government are of course closely watching the money market. They are not prepared to make any statement at present on this subject which in any case does not lend itself to treatment by way of question and answer in this House.

Telegram, dated Bombay, the 27th January, 1923.

From—The Secretary, Indian Merchants' Chamber, Bombay,

To—The Secretary to the Government of India, Finance Department, Delhi.

Committee Indian Merchants' Chamber beg to draw attention of Government to the prevailing acute stringency in the money market and to the serious and chaotic condition of the present currency arrangements of the country and urge on them the necessity of immediately repealing the hasty legislation of 1920 in order to enable natural forces to operate freely on our exchange position.

Mr. Jamnadas Dwarkadas: May I ask a supplementary question. Is Government prepared to give out whether it is their intention to make the sale of Council Bills more frequent than once in a week, or do Government think that they will keep the rate of exchange steady?

The Honourable Sir Basil Blackett: The Government will be prepared to give the matter consideration, though I am not sure that it will provide a remedy.

INDIANS IN EUROPEAN COSTUME ON RAILWAYS.

349. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Will the Government be pleased to state whether Indians in European costumes can travel in Intermediate and Third class compartments reserved for Europeans or Anglo-Indians?

(b) If not, why not?

Mr. C. D. M. Hindley: The Honourable Member is referred to the answer given on the 8th February, 1923, in this Assembly to question No. 334, asked by him in a similar connection.

RAILWAY REVENUE EXPENDITURE.

350. ***Rai Bahadur G. C. Nag:** Have any orders been issued to railway administrations to curtail programme revenue expenditure? If not, what steps have Government taken to assure themselves that the full amount of renewals as represented by the amounts of money shewn in the answer given on 17th January 1923 to starred question No. 164 as having been sanctioned for the East Indian and the Great Indian Peninsula Railways, shall be worked up to?

Mr. C. D. M. Hindley: The answer to the first part of the question is in the negative. The two railway administrations have been asked to push on with the renewals as much as possible.

RE-ORGANISATION OF RAILWAY DEPARTMENT.

351. ***Rai Bahadur G. C. Nag:** With reference to item 6 of the statement at page 993 of the Legislative Assembly Debates, Volume III, do Government propose to give the Assembly an opportunity to discuss the proposed reorganisation of the Railway Department before the proposals are embodied in the Budget?

Mr. C. D. M. Hindley: The reply is in the negative.

UNSTARRED QUESTIONS AND ANSWERS.

ARRESTS IN N.-W. F. PROVINCE OF PERSONS CONNECTED WITH CONGRESS AND KHILAFAT AGITATION.

167. **Mr. Ahmed Baksh:** (1) Will the Government please state as to how many persons, if any, in the North-West Frontier Province have been arrested up to date in connection with the Congress and Khilafat agitation?

(2) How many persons have been after full trials sentenced to imprisonment and to what terms? And how many have been released?

(3) Will the Government be pleased to inform the House as to how many prisoners are serving in the jails for failure to give the security under section 40, Frontier Crimes Regulation, and how many under section 17 of the Criminal Law Amendment Act?

(4) Whether the convicts under section 40, Frontier Crimes Regulation, have invariably been sentenced to rigorous imprisonment or any of them have been sentenced to simple imprisonment also? Will the Government please also explain as to why this distinction was made, and if it was made on any particular principle, what is that principle?

(5) Are all or any of these above referred to convicts treated as political prisoners, and if not, why not?

KHILAFAT PRISONERS IN PESHAWAR JAIL.

168. **Mr. Ahmed Baksh:** (1) What was the number of Khilafat prisoners detained under section 40, Frontier Crimes Regulation, in Peshawar jail in May, 1922, and what is the number now? If there is any decrease, how has the same been caused?

(2) Whether or not it has been brought to notice of the Government that the authorities of Peshawar jail had forcibly snatched away the caps of a number of prisoners sentenced to simple imprisonment in connection with the Khilafat agitation, on account of there being crescents fixed on the same, if so, whether such action was justified under the Jail Manual or ordered by the executive Government of the North-West Frontier Province?

(3) Is it a fact that the other batch of Khilafat prisoners serving rigorous imprisonment were kept in solitary confinement for over one month at a time and fetters were put on them, if so, why?

CONVICT GHULAM RASUL KHAN OF SAFEDA.

169. **Mr. Ahmed Baksh:** Will the Government please state as to whether there is a convict of the name of Ghulam Rasul Khan, of Safeda, Mansehra tehsil in the Hazara district, now serving his term in the Peshawar jail for failure to deposit security under section 40, Frontier Crimes Regulation?

(a) If so, when and where was the security demanded from him?

(b) Where was he sentenced?

(c) What security was demanded?

(d) Is it a fact that Rs. 5,000 cash and Rs. 5,000 personal security was demanded from him, if so, why such heavy security demanded?

(e) Is it a fact that he was already under security at the time of his arrest?

(f) If so, whether the previous security was forfeited, and if not, whether there was any justification for the demand of fresh security?

MARTIAL LAW IN MANSEHRA TEHSIL.

170. **Mr. Ahmed Baksh:** Do the Government know that Martial law was proclaimed in the Mansehra Tehsil in the year 1921? If so, whether His Excellency the Governor General accorded sanction to it, if not, under what authority was such step taken?

CONGRESS AND KHILAFAT AGITATION PRISONERS.

171. **Mr. Ahmed Baksh:** Is it intended at all to treat prisoners convicted in connection with the Congress and Khilafat agitation as political prisoners? If not, why not?

IMPRISONMENT OF ABDUL QAIYUM KHAN SWATHI AND MALIK KHUDA BAKSH.

172. **Mr. Ahmed Baksh:** Will the Government please state as to how many times since their conviction have Abdul Qaiyum Khan Swathi, B.A., of Hazara, and Malik Khuda Baksh, B.A., LL.B., late of the Bannu Bar, been sent to solitary and separate confinement and for what length of time were they respectively kept in any such confinement at a time?

The Honourable Sir Malcolm Hailey: The information is being collected and will be supplied to the Honourable Member on receipt.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Secretary of the Assembly: Sir, I beg to lay on the table the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments as passed by the Legislative Assembly and amended by the Council of State.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move:

"That the Report of the Select Committee on the Bill further to amend the Married Women's Property Act, 1874, be taken into consideration."

On a former occasion, Sir, I explained the object of my Bill. For the information of some new Members I wish to recall what I said on the previous occasion. The object of this Bill is to remove certain doubts created by certain conflicting decisions of the three High Courts—Madras, Bombay and Calcutta. The Madras High Court has held that the Married Women's Property Act applies to Hindus, Muhammadans, Jains, etc. The other two High Courts, Bombay and Calcutta, have held that this Act does not apply to Hindus, Muhammadans, etc., with reference to policies of insurance taken out by husbands for the benefit of wives. My object is to remove this conflict of decisions with a view to give the benefit of section 6 of the Married Women's Property Act to the two communities which I have mentioned. Section 6 of the Married Women's Property Act says that a policy of insurance effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife or of his wife and children or any of them shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or of his creditors or form part of his estate. If this section does not apply to Hindus, the disadvantage is that even in a case where the husband insures for the benefit of his wife, either his creditors or members of a

joint Hindu family practically claim an interest in the insurance money, and the benefit of that insurance is taken away, so far as the wife is concerned. If, therefore, section 6 of the Married Women's Property Act is applied to insurance policies effected by Hindu husbands or Muhammadan husbands, I believe it would be to the benefit of the wife inasmuch as creditors or other members of a Hindu joint family will not be able to take away the benefit of the policy. That is the object I have in view. I am glad the Select Committee have reported in a way so as to support my object. The changes effected by the Select Committee are only two. As regards the first, I originally proposed to apply this section to Buddhists. The Select Committee has reported that it is not desirable in enacting this particular measure to include the Buddhists, as there are very few Buddhists in India, and, supposing the benefit of this is to be extended to Buddhists, the Government of Burma have said that they are willing in case of necessity to pass a measure of this kind in their local Council.

The second important change effected by the Select Committee is with reference to the question whether retrospective effect should be given by this Bill to policies of insurance already effected by certain people either in Madras or elsewhere. It was thought that it would not be desirable to give any retrospective effect inasmuch as people may have taken out policies on the understanding that they would be able to borrow money against the policies. Therefore the recommendation of the Select Committee now is that if at all this change in the law is to be made it should come into effect after April, 1923.

During the discussions of the Select Committee we have given careful consideration to the views and representations of Insurance Companies so far as the aspect of insurance is concerned. It was thought that the change in the law as proposed now might make certain classes of policies unpopular. After careful consideration the Select Committee came to the conclusion that if Insurance Companies properly explained the objects of this Bill to the proposers there would be no hardship and therefore there would be no disadvantage even from the insurance point of view in making the change. On the whole the Select Committee has supported this Bill; all the Local Governments are in favour of it; I believe that the Government of India are not against it, and I trust this House will support it. If it is carried I am sure it will be a great benefit and a great advantage so far as the Hindu, Muhammadan and Jain communities are concerned. I trust therefore that I shall get every support from this House for this Bill. Further, if it passes this House and if it passes also in another place, which I hope it will, I believe that this will be the first non-official Bill to go on the Statute Book under the new regime.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, under Standing Order 44, I beg to move that the Bill be re-committed to the Select Committee.

I am one, Sir, who is in agreement with the principle of the Bill, but to my mind there are certain very weighty considerations which seem to have been overlooked by the Select Committee. There is no doubt that the Married Women's Property Act, as appears from the Preamble and the opening sections of the Act itself, was intended for a certain class of persons who are not affected by the special doctrines of Hindu or Muhammadan law, or the general law, for the matter of that. The House will see that the Act now in force contemplates principally the persons in India who come under the operation of the Indian Succession Act. What the Married Women's

[Mr. J. N. Mukherjee.]

Property Act seems to secure for the benefit of a man's wife and children by way of insurance has been laid down by section 6 of the Act. It is to some extent something in lieu of a marriage settlement, a consideration as it were for the marriage, in many cases governed by the Indian Succession Act. Such cases have concern with the contractual forms of marriage, to a great extent. We are now trying by direct legislation to extend the principle of the existing Act to Hindus, Muhammadans and Jains. The intention of the Bill is no doubt a very good one, but at the same time we have to consider certain aspects of the matter which affect Hindus, Muhammadans and Jains in a special sense. Now, so far as Bengal is concerned, there may not be much difficulty; but as regards other parts of India very often the communities concerned are governed by the Mitakshara school of Hindu law. Under that school, very often the *karta* or manager of the joint family has dominion over the entire joint family property. Further, according to the Hindu law of the Mitakshara school, the sons are coparceners by birth with their fathers as well as with the other members of the joint family; they have a vested interest in the coparcenary property as soon as they are born and the property becomes the property not only of the father and the *karta* of the family, and of his sons, but of them and the other coparceners as well. So that any special provision for the sons by way of insurance, by the father will have to be effected with joint family property. That is to say, a *karta* or the head of Hindu coparcenary property can by heavily insuring his life in favour of his wife and children very often do away with or segregate a portion of the joint family property for the special benefit of his wife and children. That is an aspect of the case, Sir, which seems to have been overlooked by the Select Committee. The Honourable Mover of this Bill placed before the House the points which were really taken into consideration by the Select Committee and the report also refers to them. He did not mention, nor does the report itself mention, that these points were considered by the Select Committee. To my mind, Sir, they are questions of great importance. If a policy is effected by means of joint family property, the people affected have the right to know what the exact position should be of the benefits which are to arise out of that policy in relation to the claims of creditors and others. Then, Sir, it has been pointed out in some of the opinions elicited on the Bill that a Hindu—when insuring his life very often insures it with the idea that the policy is negotiable, so that during his life time he may have the benefit of the policy himself by being able to deposit it with the insurance office and raising money on it, and by otherwise assigning it. Whether upon the passing of the Bill the policy will still remain negotiable or it will have full effect as the Bill intends, that is to say, by imposing a sort of trust for the benefit of the wife and children is another question which requires careful consideration. At any rate, if the effect of this Bill, if passed into law, be that persons of this class will be deterred from insuring their lives for the benefit of wife and children and that they will thereby be deprived of their right of negotiating on the policy, it will perhaps have an effect opposite to what it aims at securing. That is to say, the object of the Bill being to benefit the wife and children of the person insuring his life, it will perhaps by that process have a deterrent effect, and the Bill will fail to achieve its own purpose. These are considerations, Sir, which lead me to think that more careful attention should be given to the Bill itself and these different aspects of the question should be considered in greater detail. The insurance companies have also raised certain objections and the House

may also take into consideration whether we should insist upon a trustee being always named in such cases so far as Hindus, Muhammadans and Jains are concerned. I find, Sir, that Mr. Darcy Lindsay who represents the insurance interests in the question, has not signed the Select Committee's report and I regret I do not find him present here to-day. He would have been able to throw more light on this question, if he had been present here to-day, from the insurance point of view, that is to say, he could have stated, whether the Bill will have a discouraging effect on insurance business, if passed in the form in which it is now presented to the House. If greater facilities for insurance had been offered by the Bill and more detailed consideration been accorded to the subject, it would, instead of defeating its own purpose, perhaps help to secure the end it has in view. All these points, I submit, Sir, the House may be pleased to take into consideration, and to re-commit the Bill to the Select Committee, specially because there is no haste in the matter. The country has done without the Bill so long. It does often suffer to my mind from hasty legislation; and the House should stop and consider whether it should now pass this Bill in its present form, which is foreign to the social organization of the classes contemplated by it, without more detailed consideration of the points indicated. We should not take away the existing system simply by considerations of haste and speedy legislation. With these observations, Sir, I move that the Bill be re-committed to the Select Committee.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I cannot help saying, with all deference, that the Honourable Member who has just spoken has not understood the scope of this Bill. Sir, the object of this Bill is to place Hindu widows in the same position as widows belonging to the Christian community. Under the Married Women's Property Act, section 6, if an insurance is effected in favour of wife and children, a trust is created and the insurer is thereby debarred from dealing with the insurance as if it were his own property, and his creditors after his death cannot attach it as if there has been no trust. That is the object of section 6 of the Married Women's Property Act. That benefit has been secured to Christian women and we want to secure it for Hindu women. That is the object of this Bill. That would not affect the questions which my Honourable friend has raised in the debate just now. My friend Mr. Subrahmanayam, for example, has some doubts of an analogous character and those doubts also will not in any way be solved or made worse by the provisions of this Bill. For example, Sir, supposing an individual out of joint family property pays premia and at the same time declares that the amount of the policy should go to the wife and children. Undoubtedly, if this Bill becomes law a trust will be created in favour of the wife and children. He himself cannot deal with it; his creditors cannot deal with it. It would not defeat the rights of the joint family if the members of the joint family choose to claim it, because a man cannot be creating a trust of somebody else's property, defeat the rights of the true owner. Those rights will always remain intact. They will not in the least be affected by anything that he has done. Those rights will remain and continue to remain, notwithstanding anything that he may say or do. The object of this Act is to prevent the man himself from again borrowing a loan upon the insurance, to prevent his creditors after his death from attaching the property as if there has been no trust. These benefits are given to women of other communities and these benefits are intended to be secured by this Act to Hindu women. That is the only object of this Bill and I do not see how the considerations which have been put forward so elaborately by my

[Mr. T. V. Seshagiri Ayyar.]

Honourable friend arise at all in connection with this Bill. This is a simple Bill. I had intended, Sir, to bring in a Bill which was somewhat more ambitious, and if my Honourable friend had in mind the provisions of my Bill, probably he would be justified in making the remarks; but that Bill is not before the House. The short Bill before the House is to give Hindu women the same rights which are possessed by Christian women under the Married Women's Property Act. That is all, and without understanding that object of this Bill if criticism is directed towards showing that Hindu families will suffer, I think that would prolong the discussion and would result in no good whatsoever.

There is one point which I want to put before you, Sir, and it is this. Undoubtedly the ruling would be from you, Sir, but I want to mention the point. Very often motions are made for re-committing a Bill to the Select Committee. If I may say so, it is only for acts of omission and commission by the Select Committee that you can ask that the Bill do go back to the Select Committee. If you object to the principle of the Bill, if you say that the Bill itself should be defeated, it must be on the floor of this House. All these points must be debated and you must vote against the Bill. What has the Select Committee done in this particular case? What are the acts of commission and omission which can be charged against the Select Committee and why should a motion for taking back the Bill to the Select Committee be made in the manner in which it has been made. Sir, I make these general observations, because very often we find that without adverting properly to the meaning of the motion of sending a Bill back to the Select Committee, these motions are made in this House; and my remarks, Sir, are intended generally for all motions of this kind. On this particular matter, Sir, my submission is, the remarks of the Honourable gentleman who spoke just now are beside the point altogether.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I would be very unwilling to say anything that would retard the progress of what Mr. Kamat has rightly called the first non-official Bill ready for the consideration of this House. At the same time I do feel the difficulties that Mr. Mukherjee has raised. I am afraid, like him, I shall be charged with not understanding the scope of the Bill. Well, if Mr. Mukherjee and I did not sufficiently appreciate the scope of the Bill, Mr. Seshagiri Ayyar has made the position quite clear. The Bill aims at placing the Hindu widow in the same position as her Muhammadan and Christian sister with regard to certain matters. So far it is undoubtedly a liberalising measure, and we should welcome all liberalising measures if they are a part of a well-considered organic whole. Fortunately or unfortunately it is difficult for us now to understand why the Hindu law-givers, with whom Dr. Gour, Mr. Seshagiri Ayyar and many more would have no patience at this long distance of time did not choose to put the Hindu widow under same schools of Hindu law in the same position as her more fortunate sisters under other systems. Times are undoubtedly changing. Insurance policies are a thing which have come from the West, like the Law of Trust.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Not known in Mr. Manu's time.

Sir Deva Prasad Sarvadhikary: Not known in Mr. Manu's time as Mr. Chaudhuri informs me. Mr. Manu was not a longheaded man. Any

way it is there and we must reckon with it. Anyhow intricate questions arise if the insurance has been at the expense of the family, as it may well be, and often is. Mr. Seshagiri Ayyar would go so far as to say, better far, (Dr. Nand Lal will no doubt assert) better far pamper the already pampered profession of the law, augment the chance of family litigation; let the family fight out whether the trust is maintainable or not, let the creditor be kept at arm's length, but give the widow rights which according to some High Court she does not enjoy—Would this be right and desirable? Sir, in my early days, the Law of Trust used to be explained by some in a very short fashion as the Law of Distrust. It was supposed to be invented only to keep some people at arm's length. The King then was acting in a very untrustworthy fashion, and the lawyers of Great Britain evolved the Law of Trust. Supposing the creditor has to be kept at arm's length, which I understand from Mr. Seshagiri Ayyar is, not the sole, but one of the objects of the Bill, he would and could be so kept if the debt had not been incurred under terms sanctioned and contemplated by the particular school of law. If these terms were satisfied the property may be available for the satisfaction of that debt. There are complications which we cannot, however much we may desire, fail to take note of. The Hindu law of succession has its difficulties, judged by modern standards. We are not discussing that big question on its merits or demerits. And we cannot ignore these difficulties. There are sections of the community that think that what is proposed is a method of circumventing the wise or unwise provisions of the Hindu law that cannot appeal to the general body of people. It seems to me therefore that there is room for a little more careful consideration of the situation as a whole than has been bestowed on this Bill particularly when premia have been paid out of this Joint Estate. I for myself am not prepared to endorse the whole of Mr. Mukherjee's objections to the Bill because I do feel that in a proper manner and as a part of a well-considered organic whole, liberalising influences have to come into play. But whether we can take big questions piecemeal like this is what I am unable to understand. Mr. Seshagiri Ayyar has drawn your attention to the desirability or otherwise of moving for the Bill being sent back to the Select Committee as a blocking measure, if I may put it shortly for him. Well that is a constitutional method open to Members and I do not see, if necessity arises and if a case is made out why the method should not be resorted to. For my purposes however there is in Mr. Mukherjee's proposal more than that. I would not consent to the Buddhist being excluded from the purview of the Bill for any of the reasons that have been put forward in the Report of the Select Committee. One reason is that there is no Buddhist Member present in this House. Well, Sir, communal representation is in the air; but it is carrying matters a great deal too far to say that because for the time being there does not happen to be a representative of a particular community present in the Assembly, is a reason why what is otherwise right and proper should not be done. The Government must have consulted Buddhist representatives, and their opinion must be before the Government. That is not all; the Burma Government, we are told, is prepared to have local laws with regard to the matter, but Burma has by no means the monopoly of Buddhist subjects of His Britannic Majesty. I come from a Province where there is a large Buddhist population who could not get the benefit, if it is a benefit, of the Burma Act. And therefore, if the principle of the Bill is to be made applicable to Indians, I do not see why the Bengal Buddhists should be excluded. And there are Buddhists in other provinces, not to the same extent as in Bengal, that is one of the reasons

[Sir Deva Prasad Sarvadhikary.]

why this matter should be reconsidered. I shall probably be told that, as was attempted in another matter not many days ago in this House, to effect a remedy in this direction by an amendment to bring the Buddhist within the purview of the law. Possibly that course was open; but the point of view that has been put forward by the Select Committee would be better considered even from the Burmese point of view, if the Bill went back to the Select Committee. For all these reasons, Sir, I think the motion for re-committal of the Bill is not as ill-conceived as Mr. Seshagiri Ayyar would suggest, and I support Mr. Mukherjee.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I support this Bill in its entirety. The position is simply this. There is a section of the Married Women's Property Act of 1897 which I shall read, for it is necessary to understand what it is because many a Member here may not have had the opportunity to know its contents:

"A policy of insurance effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife or of his wife and children or any of them, shall endure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate."

That is the law as laid down by the Legislature. The question arises whether Hindus could take the benefit of this section. The High Courts have differed in their opinions of the Act. The High Courts differed in their opinion. The cause of difference was this. Section 2 says: "Nothing herein contained applies to any married woman who at the time of her marriage professes the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband at the time of such marriage professes any of those religions." This section has been the subject of controversy between the various and even among Judges of the same High Court. It is unnecessary for me to enter into the particulars of that controversy, but the result of this doubt has led to considerable hardship to widows and orphans, for whose benefit the husband or the father had effected an insurance. I will instance to you a case which came within my own professional experience. A schoolmaster on not a very large salary insured his life for a sum of Rs. 10,000 in one of the Indian companies. He died prematurely. His wife and children applied to the insurance company for the money. The brother of this schoolmaster, almost a scamp, if I may put it so shortly, put in a caveat and wrote a letter to the insurance company saying "Do not pay that money. My brother is a Hindu and I am a Hindu, and I have got some claim to the amount." What did the insurance company do? When two people claim the same amount, the company has to protect itself. It cannot hand over the money to one of them, even though it believes that person to be the rightful claimant. What it did was to say to the two parties "Go and settle your quarrel in Court, we will pay later on." The result was they had to go to Court and there was a delay of nearly two years before the widow and the sons, who were minors, could get that money. Now, that hardship is a hardship which, apart from being a Hindu, apart from being a member of any other community, I suppose Members of this House will recognize to be a hardship which ought to be removed. Now, Sir, it is that hardship which is sought to be removed by this Bill, namely, to make the insurance companies safe, to protect the insurance companies, and, at the same time, to protect the widows and

orphans who require protection and who cannot, under the circumstances in which they live, carry on a war against adult male relations of the deceased. Well, I had another case in regard to a foreign insurance company. The companies were already dealing with the matter very correctly, but there were difficulties when claims of this sort, Hindu joint family claims, Hindu Mitakshara family claims, Hindu Dayabhaga family claims, and all kinds of family claims are put forward. Now, the Bill seeks to do away with, or, at least, to minimise, such troubles, and it is not a new provision. It is a provision which exists in an Act of the Legislature and, owing to this clause which is in the earlier section of this Act, and the difference between two High Courts, this Bill is introduced. After all, this Bill does not affect any vested interests of people in the property of the deceased. Now, what does this section say? It says that this policy shall not form part of his estate. Hindu lawyers may rest assured that, if there is a joint family estate, it will not affect that, that claim will subsist; if there are other claims, those claims will not be defeated.

Now, there is another aspect of this insurance business. A man insures his life immediately after marriage or before marriage, and that means a provision for his wife and children. That is a well-understood method at any rate among Europeans and those who have learnt that method of provision for their families from Europeans. Now, take the case of a Hindu who is in service and earning his living. He insures his life for the benefit of his wife. The man dies suddenly. The opponents of this measure say: "No, that money should not be given to his widow." The policy, as expressed on the face of it, is for the benefit of his wife, or his wife and children. If a man pays month after month a certain share of his earnings and has said in express terms that it is for the benefit of his wife and children, what injustice is there to prevent his wife and children receiving that money. It is a pure act of justice which this Bill wants to provide for, because, owing to the interpretation of Judges, some difficulty has been felt upon this matter. Therefore, Sir, I would say that, so far as this Bill is concerned, it is a very simple measure and it only touches one part of it; it does not affect any vested interests and any persons connected with the deceased. Therefore, it ought to receive the acceptance of the House.

Mr. P. P. Ginzwa (Burma: Non-European): Sir, I had not the slightest desire to intervene in this debate, because, I frankly confess, that this is a department of law in which I am very little interested under my peculiar circumstances in Burma and I am not at all concerned with what "Mr. Manu" and other legislators in India have said about the rights of married women; but certain remarks were made by my Honourable friend from Bengal (Sir Deva Prasad Sarvadhikary) which I cannot allow to pass unchallenged. I am aware, that an all-powerful and an all-knowing Legislative Assembly is entitled to legislate for the whole of India, but there are conditions under which I think it would be perilous for this Assembly to meddle with the interests of a province about which it knows little or nothing. (Sir Deva Prasad Sarvadhikary: "Though it was well represented.") The two objections that have been taken to any legislation being passed by this Assembly are, I submit with great respect to this House, valid, first of all, that there is no Buddhist in this Assembly. There is no doubt there is no Buddhist in this Assembly though there are some Burmans—we like to call ourselves Burmans. I see an Honourable Member (Mr. H. Tonkinson) opposite me who is also a Burman. The Buddhist law is, I submit, a law about which the ablest practitioners in India are expected to have very little

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[Mr. P. P. Ginwala.]

knowledge because it is entirely different from the law that is prevalent in India. I do not think that we claim too much when we say "For Heaven's sake do not legislate for us because we do not wish to trouble you: you have got to make a special study of our law and it is quite possible that you may go wrong." I do not see any justification whatsoever for my Honourable friend from Bengal wishing to impose his law upon my province. Then he said that he objected to the Local Government saying that they wanted to legislate for Burma. What objection does he see to it? Why does not he ask the Government of Bengal to legislate for his province; we will not raise any objection whatsoever. It is an admitted fact, I think, it has been recorded in constitutional documents and elsewhere, that the conditions of Burma are so different from those of India that Burma ought to be allowed to work out its own salvation in its own way as far as possible. And I see every justification to the Local Government's claim that this legislation, if it is required in the Province, must be undertaken by the Local Council. But I may point out to the House generally that there is a gentleman corresponding to "Mr. Manu" in Burma whom we call Manugye.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I am sorry, Sir, to interrupt on a point of order, but I must protest against a name which is sacred and held in the utmost respect by Hindus being spoken of in this manner. I hope my Honourable friend will have some regard for the feelings of Hindus in this matter.

Mr. P. P. Ginwala: I know, Sir, that my Honourable friend from Bombay has the utmost reverence for everybody, legislators and others, in the past, and I am very glad, Sir, he has drawn my attention to this merit of his. But this did not originate on this side of the House. However, I may point out that Manugye is one of those legislators for whom we have the highest respect and his writings are considered to be of the utmost authority in the Province of Burma at the present moment. And according to him,—he has devised a very simple form of law applicable to widows and husbands too,—whatever property is jointly acquired during the lifetime of the two partners to a marriage goes over to the survivor, subject to the rights of the eldest child; and therefore whatever difficulties you may have in the rest of India, we have no such difficulties in our Province. That is an additional reason why this Assembly should not try to impose its will upon a Province which has no desire to interfere with the affairs of India. And I beg Honourable Members, in this House not to misunderstand me. There is a very strong feeling in Burma that her affairs are not understood by India and that on other occasions, when the least interference is required, much interference is made by India in the affairs of Burma; I do not think that there is any occasion for allowing Burma to feel that that is the way in which her affairs are to be managed in India both by this Assembly and the Government of India. It is for these reasons that I thought it necessary to intervene in this debate. I do not wish that this Assembly should in any way be misunderstood by the people of Burma who have only recently embarked on their new and independent political career.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I should like very briefly to refer to the criticisms of my learned friends Sir Deva Prasad Sarvadhikary and Mr. Mukherjee.

The whole trend of Sir Deva Prasad's argument, I submit, is too late at this time of the day. He objects to the principle of the Bill which was

accepted by the House when it committed it to the Select Committee. It has now come out of the Select Committee and all my friend can object to now is not the principle but the details of the Bill. Sir Deva Prasad has appealed to the authority of Manu. My learned friend is aware that in the days of Manu not only wives but children had no property. They were all classed with slaves (Some Honourable Members: "No, no.") as chattels. Those of my learned friends who shout "No" have not read Manu. They were all classed with slaves as chattels. (Some Honourable Members: "No, no.") In course of time they emerged from that servile condition. Surely my friend does not want to relegate his wife and children to the status assigned to them in the Manu Smriti which was composed 3,000 years ago. I am perfectly certain that that is not my friend's object.

My friend, the Honourable Mr. Mukherjee, while directing no direct attack on Mr. Kamat's Bill

Mr. J. N. Mukherjee: I did not object to the principle of the Bill.

Dr. H. S. Gour: He now assures me and the House that he does not object to the principle of the Bill. He nevertheless follows the Fabian policy of recommittal to the Select Committee. But surely yesterday you, Sir, indicated very clearly that if a Member desires that a Bill should be re-committed to the Select Committee he should indicate the lines upon which the Select Committee are to set to work. But my Honourable friend has not done so.

Mr. J. N. Mukherjee: I did. You were sleeping perhaps.

Dr. H. S. Gour: No, I was very much awake. What is the good of the Bill being re-committed to the Select Committee? The two grounds upon which my learned friend would like the Select Committee to re-cogitate on this Bill are that there are such husbands who are members of a joint family, and if they have used joint family funds for the purpose of insuring their lives for the benefit of their wives, it is the joint family under Hindu law that should participate in the benefit. And further my friend pointed out that if the husband happens to be the manager a further complicated question would arise under Hindu law. That, I venture to submit with due deference to the Honourable Mr. Mukherjee, again raises a question of principle and not one of detail. But I am prepared to answer his queries.

Mr. J. N. Mukherjee: In Bengal no such difficulties arise.

Dr. H. S. Gour: My friend interjects the remark that in Bengal no such difficulties arise. Now take the ordinary Mitakshara law. What is the position? Assume that the husband is a member of a joint family and assume, for the sake of argument, that he is its manager. Assume further that he has drawn upon the joint family funds for the purpose of insuring his own life for the benefit of his wife and children. So far as his sons are concerned, they are co-partners in the estate, and they present no difficulty under Hindu law. So far as his unmarried daughters are concerned, they are entitled to the daughters' portion. They present no difficulty. I am prepared for the sake of argument to assume that this manager has drawn upon joint funds for the purpose of insuring his own life for the benefit of his wife and children. Now what is the position under Hindu law? It is a well known principle that if a member of the coparcenary does an act inconsistent with its continuance, it causes a disruption. If the other members of the coparcenary feel aggrieved by the conduct of the manager in insuring his wife and children's lives at the family cost, they are entitled to call for

[Dr. H. S. Gour.]

a partnership. That is the first principle which the great law giver Manu has laid down. And by the way in one of his *slokas* he points out that partition is a very righteous thing to do and he strongly commends it, because the Brahmins profit by the partition. Two families are born out of one, and two independent sacred rites have to be performed and the Brahmins benefit thereby.

Consequently, partition is held commendable in law. My submission, therefore, is that my friend Mr. Mukherjee's objections do not in any way touch the point. They create no practical difficulties so far as a joint orthodox Mitakshara family is concerned. Under the Bengal school subject to the Dayabhaga law, there is no difficulty. Where is this difficulty? That, I submit, is the plain question. The Madras High Court in I. L. R. 37 Mad. 483 have laid down that a husband has a right of insuring his wife and children or his own life for the benefit of his wife and children so as to create a trust in their favour. My friend the Honourable Sir Deva Prasad Sarvadhikary pointed out and referred to Mr. Seshagiri Ayyar's speech on the Bill and said "will it have the effect of keeping the creditors of the family out?" I venture to draw his attention to the proviso to section 6 of the Married Women's Property Act which lays down: "Nothing herein contained shall operate to destroy or impede the rights of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud the creditors." It is a well-known principle laid down in section 53 of the Transfer of Property Act, and apart from the Transfer of Property Act, it is part of the general law that no policy in favour of a wife and children could be used to the detriment of the claims of creditors, and section 6 which Mr. Kamat's Bill is intended to extend by a legal expression to Hindus, Muhammadans and the rest safeguards the rights of creditors against any attempt at fraud upon them. So I submit that difficulty does not confront us. What is then the Select Committee to do? Surely, Sir, neither my friend, Mr. Mukherjee, nor Sir Deva Prasad Sarvadhikary have indicated any lines upon which the Select Committee is to further examine the details of this Bill. I therefore submit that a recommittal would merely delay the further progress of this Bill and would not be conducive to its further progress.

Now, Sir, a few words on the merits of the Bill. I suggest that section 6 was intended, as has been laid down by the Madras High Court, to extend equally to Hindus and Muhammadans. The Bombay and Calcutta Courts have taken a different view. If this Bill is not passed into law, this conflict of authorities will still remain, but is it not the business of this House and of the Indian Legislature to set at rest conflicting decisions of the High Courts which would certainly lead to litigation and delay in the settlement of claims? On these grounds, Sir, I think that this Bill should now be passed by this House without its recommittal to Select Committee.

(Several Honourable Members: "I move that the question be now put.")

The motion was adopted.

The motion to recommit the Bill to Select Committee was negatived.

The motion to take the Bill into consideration was adopted.

Clauses 1 and 2 were added to the Bill.

The Title and Preamble were added to the Bill.

Mr. B. S. Kamat: Sir, I beg to move that the Bill, as amended, be passed.

The motion was adopted.

THE EXCLUSION FROM INHERITANCE BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I move:

"That the Bill to amend the Hindu law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts, be referred to a Select Committee consisting of Mr. J. Chaudhuri, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur T. Rangachariar, Mr. B. Venkatapatiraju, Dr. H. S. Gour, Lala Girdharilal Agarwala, Mr. Harchandrai Vishindas, Sir Deva Prasad Sarvadhikary, Mr. K. B. L. Agnihotri, Rai Bahadur J. N. Mazumdar and myself."

Sir, the rumbling noise which the House heard just now is only the prelude to the thunder which is coming down upon my head in regard to this matter. They began, Sir, by referring to Hindu law and Hindu sacrament only for the purpose of showing that I am attempting something which is irreligious and which is opposed to the sacramental law of the country. At this time I do not propose to go very minutely into the details of the Bill. I have spoken about it on more than one occasion. On the last occasion when this matter came up in Simla for consideration I explained very fully the reasons which led me to bring this Bill before the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, may I ask whether this is not an adjourned debate? I understand that my Honourable friend has already moved his motion for referring this Bill to a Select Committee; he made a speech on the Bill on that occasion and it was followed by another speech. As far as I know my Honourable friend only proposes to add two names to the Select Committee which he then proposed. Is that not so?

Mr. T. V. Seshagiri Ayyar: I am very willing, Sir, to be ruled out of order because I do not want to make a speech. As a matter of fact I was only prefacing my remarks with a view to lead up to this. It is unnecessary to make a speech now and if you agree with the objection taken I shall be very glad to be told that it is not necessary to make a speech. I do not want to repeat what I said on the last occasion, and if there are any remarks made by others I shall have time enough to consider the whole matter and give my reply later. On this particular occasion I ask, Sir, that the Bill be referred to a Select Committee consisting of the Honourable the Home Member (the name is not in the printed list), Messrs. Chaudhuri, Subrahmanayam, Rangachariar, Venkatapatiraju, Dr. Gour, Lala Girdharilal Agarwala, Mr. Harchandrai Vishindas, Sir Deva Prasad Sarvadhikary, Mr. K. B. L. Agnihotri, and, instead of Rai Bahadur J. N. Mazumdar I would put in the name of Mr. Allen, and the Mover. As suggested by Mr. Tonkinson, for the reasons given in Simla I move that the Bill be referred to a Select Committee.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, it is rather with some regret, which is personal, that I rise to oppose this motion. The personal regret, Sir, is due to the fact that I have a great esteem for the author of this measure. He is one of those persons who has taken us into his confidence about the pilgrimage which he has made to Delhi at an early part of our career on this new Legislative Assembly. He told us, Sir, that he was yearning for improving the Hindu law, and that if his mission failed he thought that he was serving no useful

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purpose by being in this Assembly. Sir, we have lived two years after that statement made by my Honourable friend to my left and we have found him useful in many other directions. He took rather a modest view of his capacity. I venture to say his capacity in other directions has been more useful than his activities in this direction. Sir, as a student of law when in the eighties I began to learn Hindu law, I was struck with a famous passage in Mayne's Hindu Law,—the preface to his first edition which still rings in my ears and which I believe is still true. In the preface which he wrote to his famous book on Hindu Law this is what he said:

"A third class of opinion is that of the common-sense Englishman, whose views are very ably represented by Mr. Cunningham,—now Judge of the Bengal High Court—in the preface to his recent 'Digest of Hindu law.' He appears to look upon the entire law with a mixture of wonder and pity. He is amused at the absurdity of the rule which forbids an orphan to be adopted. He is shocked at finding that a man's great grand-son is his immediate heir, while the son of that great grand-son is a very remote heir, and his own sister is hardly an heir at all. He thinks that everything would be set right by a short and simple Code which would please everybody and upon the meaning of which the Judges are not expected to differ."

Proceeding he points out:

"The age of miracles has passed, and I hardly expect to see a Code of Hindu Law which shall satisfy the trader and the agriculturist, the Punjabee and the Bengalee, the Pundits of Benares and of Rameswaram, of Amritsar and of Poona, but I can easily imagine a Code very beautiful and specious Code which should produce much more dissatisfaction and expense than the law as at present administered."

Sir, when I read my learned friend's Bill, I was struck with the truth of that remark. Sir, it is not an easy matter to draft a Code. It is an art in itself. I was more forcibly struck with the difficulty of drawing up a Code even when the draftsman tore up to shreds small amendments to the Code of Criminal Procedure, and I truly felt that the draftsmen of the Legislative Department have developed it as an art, and it is true, Sir, it is not that every hand that can attempt successfully to draft a Code. Sir, my Honourable friend's Bill is based on wrong assumptions, hastily drawn up in his enthusiasm to modify the Hindu Law and which, if I may say so, is fraught with difficulties and traps which will benefit the lawyer. It is a simple Bill and consists of only one section. But still, Sir, when we compare it with the law as it is, I rather prefer the law as it is to his Bill. My Honourable friend's object, as he states in his Statement of Objects and Reasons, is to repeal the Hindu law or so much of the Hindu Law which excludes certain persons from inheritance. Sir, what is his title of the Bill? The title is: "This may be called the exclusion from the Inheritance Act," whereas he wants to repeal the law which excludes people from inheritance. He is enacting a law, he tells us, for the exclusion from inheritances of certain classes of heirs. Then, Sir, he wants to repeal a rule of Hindu law which he thinks or assumes exists. Where he gets that rule from I find it difficult to gather. I ransacked all the sources, but I cannot find the rule of Hindu law which he seeks to repeal. It is non-existent. What my Honourable friend says is, "Notwithstanding any rule of the Hindu law or custom to the contrary no person shall be excluded from inheritance or from a share in the joint family property by reason only of any disease." There is no such rule in the Hindu law that a person should be excluded by reason of any disease, or any physical or mental defect. It is not stated in any rule of Hindu law. The rule of Hindu law is contained in Manu and added to by Yajnavalkya which, if Honourable Members will permit me to read, will see how different it is from what

my Honourable and learned friend has assumed it to be. Sir, this is the rule as stated by Manu. "Eunuchs," I omit the outcaste, "eunuchs,"—surely nobody ever contends that to be a eunuch is a disease,—"eunuchs, persons born blind and deaf"—that is not a disease, it is incapacity,—"the deaf and the dumb,"—that is not a disease, and "Nirindriya" such as the loss of the use of a limb are excluded from heredity. Sir, I fail to see where the rule is that a person afflicted with a disease is excluded from inheritance. Persons born deaf and dumb or blind, that is congenital, such as the loss of the use of a limb are excluded from inheritance, to which Yajnavalkya adds "and persons afflicted with an incurable disease" which is quite different from disease. Sir, if you want to state a rule of law and you want to repeal that rule of law, state it correctly. And then there is no rule of law which causes inclusion by reason of any physical or mental defect. It is exposing Hindu law to ridicule in the way in which my Honourable friend has stated it. Sir, the Hindu law is not so idiotic, as my Honourable friend would suppose it to be. It is based on reason, it is based on justice, it is based on well-conceived notions, so that if you want to repeal a rule of law, state it correctly, and repeal it. But do not mis-state it and try to ridicule a thing which does not exist. Sir, let us see what is it my Honourable friend has stated in his Statement of Objects and Reasons, and which he reiterated in his speech introducing the Bill. He says, certain persons, classes of persons, have been excluded from inheritance presumably on the ground that their present condition is due to sins in the former birth and are therefore not entitled to share in the family patrimony. Without questioning the soundness of this reason I am of opinion that in the times that we live in,—are we living in godless times, is that the idea? Does he mean that in these progressive times such grounds of exclusion should not be allowed to deprive a man of temporal rights? Why is it opposed to a sense of natural justice and equity? Is that my learned friend's contention? And is he right in assuming, in presuming rather, that the cause of exclusion is that the present condition is due to sins in the former birth? I do not know if my learned friend believes in a former birth. (An Honourable Member: "Very much.") I am glad to hear that he very much believes in it, so that, it is not intended to ridicule our faith in these matters. If it is intended to catch votes from other people who do not believe in it, I must take exception to such a thing. What is the object of making that statement? A gentleman who is I know thoroughly religious in these matters, who has strong faith in a previous birth and subsequent re-births, could use it as a reason here,—I do not understand that,—and what is the reference to present day times,—present day times, unless he means we are all living in godless times when we have no faith and no religion. I can understand that, but I do not see where the trouble comes in at all. In the first place, it is wrong to presume that it is founded on any such rule of law,—except in the case of incurable diseases which Yajnavalkya has added, the other cases are cases of exclusion from inheritance based on well known principles. One well known principle on which the Hindu law of inheritance is based is this,—the capacity to offer oblations. Does my Honourable friend believe in that or not? Will you kindly read it? Does my Honourable friend believe in the efficacy of oblations? Has he to-day performed his *Amavasya Tarpana* in honour of his ancestors, in memory of his ancestors? He says, yes. We believe in it, Sir. Our theory of the law of inheritance is based upon that. It is all very well for men like Dr. Gour who scorn at religious and orthodox persons, to indulge in such talk, but for my

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Honourable friend to my left who believes in and acts up to it, he should know that the theory of inheritance is based upon the capacity to offer oblations, upon the capacity to take part in religious worship, upon the capacity to contribute to the spiritual welfare of the family, so that it is based on that, and by this measure you want to destroy the very foundation on which the law of inheritance is based according to the Hindu law. And these people are incapable of performing it,—what can deaf and dumb people do? (*An Honourable Member*: "They can offer prayers.") It is not a question of prayers, it is a question of performing the *Shradhas*. Well, at any rate the Hindu law believes they are incapable of doing it, at any rate they are disqualified, and if they do it, it is no good; we believe in it. It is all very well for persons who have no faith in religion, that is the real secret of it, who have no faith in religion, to proceed to criticise it. Once you have faith in religion, then you feel the efficacy of it. As Mayne points out, the theory of inheritance is that it descends upon the heir—talking on this very Chapter—to enable him to rescue his ancestor from eternal misery. Consequently one who is unable or unwilling to perform the necessary sacrifices is incapable of inheritance; that is the foundation of the rule, because they are incapable of performing the ceremonies that are ordained for a householder, that they are incapable of inheriting; and look at it also not exactly from the religious point of view, but look at it from the point of view of natural justice and equity. Is it opposed to natural justice and equity to exclude persons from inheritance when they are incapable, when they would be incapable, of taking charge of and managing the property? For whose benefit are they to take charge? The Hindu law is not oppressive in that respect; it is purely a personal disability; the children of the excluded person are let in; provided they are not disqualified, they are let in, and they take the place of the excluded persons in the family. It is a pure personal disability attaching to this unfortunate individual no doubt, but as he is unable to take care of the property, it will get into the hands of scheming people if persons who are born deaf and dumb, or who are idiots, if this property is entrusted to them, it will merely get into the hands of scheming people, agents and others; and, on the other hand, the law provides that they shall be provided with maintenance. They will not be thrown into the streets,—in the shape of maintenance they get their share; their children get the property in their places; and if, by God's grace, they are cured—of course in these cases it is very difficult to expect a cure—but if really they are cured, they are put back in their position. Once they have got the property, it is not liable to forfeiture. Property vested is not taken away, and if the disability is removed, they get back the property, they get back to their position, and it is only during the continuance of the disability that they are not given a share in the property, but they are maintained out of the family fund. Now, Sir, what is the injustice in that law? For whose benefit are you giving them a share in the family property? And coming to the needs of the family, what is the object in giving him a share in the property? Is it your object to give the property to his heirs? But his heirs get it; therefore, it is not a disability which applies for ever, therefore it is only a temporary disability, a personal disability attaching to the man who is unfortunately afflicted with this incapacity. I won't call it a disease. It is a pure incapacity, a disability which attaches to the man. Therefore, Sir, I do not think that this Bill is at all necessary in so far as it attempts to remove, or repeal the law as it exists.

Then, Sir, as regards this clause about "Nirindriya" persons who have lost the use of a limb, there has been some doubt. If my learned friend had attempted to remove the doubt created by a conflict of decisions in regard to whether insanity should be congenital in order to exclude a person from inheritance, he would have done some good; because on that matter there is some doubt though the consensus of opinion is that unless insanity is congenital it does not exclude from inheritance. The law has also settled it now that unless the man is from birth deprived of the use of essential limbs, that is a disability which make him a useless person, then also he is not excluded from inheritance. These points may be made certain.

Now, as regards leprosy, that is the only thing where this question of *karma* comes in, that is, the sins of a former birth, which my Honourable friend referred to and believes in. So far as this is concerned also, it has been settled that it is now limited to the worst possible form of leprosy. That is what Mayne says at page 870—the worst form of leprosy. If he has already inherited and subsequently becomes a leper, he is not deprived of the property. If at the time the inheritance opens he is suffering from the worst and incurable form of leprosy, what can be said in such a case? His children are not disinherited. If he has a son already that son takes his place. Therefore it is only the unfortunate individual himself who is excluded and he will be maintained out of the family funds. I do not see anything opposed to a sense of natural justice or equity in a case like that. What is it that these people who are thirsting to reform the Hindu law see in it? Do they know the principles on which these rules are based? It is a mere anxiety on their part to pose as codifiers of the law and to take the place of "Mr. Manu" as he was called this morning.

I really do not think, Sir, that we are doing any good by this piecemeal legislation. The Hindu law is not so inelastic. Customs have grown gradually; the enormities which at one time grew upon the Hindu law have been removed by judicial decisions and the growth of custom. We would have welcomed the removal of doubts on account of a conflict of decisions between various High Courts. And then there are only two points on which there is a conflict of decisions between Calcutta, Bombay and Madras, and the doubt on those two points my friend has not attempted to remove, although he calls his Bill a Bill to remove certain doubts. He has not said what the doubts are or how he proposes to remove those doubts. He simply wants, Sir, to remove root and branch this chapter on exclusion from inheritance. That is the object of this Bill. Are we going to endorse it? I will join hands with him if he seeks to remove any doubts on account of judicial decisions. But when he seeks to remove root and branch one portion of the law relating to inheritance, then I say he is doing a thing which is quite unnecessary, quite uncalled for and in utter disregard of the principle on which the Hindu law of inheritance is based.

One more word, Sir. My Honourable friend, Dr. Gour, has set a very vicious example to this House, and my Honourable friend, Mr. Seshagiri Ayyar, has followed that example. Directly one community takes up its cudgels against them they drop their own cudgels. Dr. Gour told the House when he was moving the Civil Marriage Bill: "the Muhammadans are opposed to it; very well, I will drop the Muhammadans. The Parsis are opposed to it; I will drop the Parsis also." What remains? There is only the one poor community whom he can go for, the disorganized,

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disintegrated and divided Hindu community which is an easy prey. Similarly my Honourable friend, Mr. Seshagiri Ayyar, quietly gives up Bengal. Why so? That rule of exclusion, Sir, is opposed to natural justice, opposed to equity and good conscience. He wishes to repeal it. What is good for Madras must be good for my friend, Sir Deva Prasad Sarvadhikary, and my friend, Mr. Mukherjee. But why does he drop Bengal? They are also governed by the same rule; but, Sir, he is afraid of their votes, of their opposition. Is that the way of dealing with root principles of Hindu law? Just as Dr. Gour was afraid of the Muhammadans and dropped them, so also my friend is afraid of Bengal opposition and he says so in his Objects and Reasons and he wants to drop Bengal. I can see through it. But I hope this House will not endorse any such view. I oppose this Bill.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban):

Sir, I do not know whether it is a happy or an unhappy position, but in this instance at any rate I am opposed to the motion made by my Honourable friend, Mr. Seshagiri Ayyar. I do not for a moment wish to be misunderstood. I do not subscribe to all the views expressed by my Honourable friend, Mr. Rangachariar, that no Hindu reformer has a right to suggest modifications in the law of Manu. Nor do I agree with him that my Honourable friend, Dr. Gour, has, as it were, done a disservice to the community by introducing his Civil Marriage Bill. I am one of the staunchest advocates of that reform introduced by Dr. Gour. But I want to say that in dealing with questions of Hindu law one has got to understand clearly the principle on which the whole of the Hindu law is based. Not being a lawyer I am not able to define in legal terms what I believe is the principle on which the whole of the Hindu law is based. But I can express it as I understand it from what I should call, if I may be pardoned for doing so, the common sense point of view. The whole of the Hindu law is based on the principle that it does not recognize an individual as the individual is recognized in the western civilization. Its definition of the individual consists not merely of an individual but along with him his family, his wife and child. And wherever questions of the holding of property or questions of a similar character are concerned, they are not looked at from the point of view of an individual as understood in the West but from the point of view of an individual as understood here, an individual consisting of himself, his wife and his child. Now, the other thing to be taken into consideration is that in certain instances this subordination of the individual has been carried too far to a point where it affects the fundamental rights of every individual. Wherever that takes place, I think you would be justified, as my Honourable friend, Dr. Gour, has always attempted to introduce, you would be justified in introducing reform which might preserve the right of the individual against being merged too much in the rights of the family. But there is a danger of carrying this theory of the individual right so far as to subordinate altogether the fundamental principle on which the Hindu Law, I believe, is based; and it is because I believe that the proposal aims at the absolute subordination of the principle on which the Hindu Law is based that I venture most respectfully to oppose his motion. Now, why is a man, under the Hindu Law, entitled to inherit the property of his ancestor? Not because he wants to enjoy through the possession of that property. He has no right—in Hinduism—he has no right to inherit property in order only to have for himself all the worldly pleasures that are at his command which he can

purchase by means of holding property. (A Voice: "Is that your view?"). My view of the Hindu Law is this, that a Hindu has a right to possess the property of his ancestor only if he has the capacity to perform the five sacrifices that he is called upon to perform because of his being a Hindu. Now, wherever you find an instance where the son of a Hindu is incapable of performing those sacrifices which is the only justification of his holding the property of his ancestor, you take away from him the right of holding that property. You withhold from him that right, but you do not take away that right from his children; and so far as that principle is concerned, it appears to me that it is a very wholesome principle. The difficulty would arise where this principle would be exploited by scheming members of a family, by hook or crook, to settle upon a person who is not insane nor otherwise has any deformity, insanity or some other incurable disease which deprives him of the right of holding property. At the same time one has to remember that there is a greater danger if this was removed from the Hindu Law of scheming persons, as was pointed out by my Honourable friend Mr. Rangachariar, of scheming persons, of lawyers, taking advantage of the deformity of a man by making him a puppet in their hands and enjoying the fruit of his possession of property. But I want again to emphasise this fact that the Hindu Law does not recognise the individual right of holding property unless the holder of such property is capable of efficiently performing the sacrifices which by the reason of his being a Hindu he is called upon to perform. And in so far as that is concerned, I am opposed to the motion of my Honourable friend, Mr. Seshagiri Ayyar. I repeat that I do not think that the Laws of Manu should not be modified in accordance with the needs of the times. I believe that if the laws of Manu can be so modified as to bring about a reconciliation between the rights of the family which they insist on, and the right of the individual as understood in the West, if they can be modified so as to bring about that reconciliation, that modification ought to be welcome to everyone who loves this country and its civilization. But wherever there is a danger of either of the ideal being carried too far so as to bring about the subordination of the other ideal absolutely, there we should stand out to oppose such a modification. It is on these grounds, Sir, that I oppose the Resolution.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I have as high regard for Hindu Law as my Honourable friend, Mr. Rangachariar, but I have no blind faith in it. The history of the Hindu Law shows that it has changed and it has progressively changed and at the present moment when Hindu Law is being administered by European Judges this growth has been arrested. Now, with regard to what my learned friend Mr. Rangachariar said about the offering of oblations and succession, that is one of the things in which I do not believe. I myself offer oblations; I do that as moral duty to my ancestors. But I believe that the theory that succession depends on the offering of oblations, is a legal fiction which was introduced into Hindu Law and which is now discredited. I have got high authorities to support my view that this theory has done more harm than otherwise. I am not arguing a case before a Law Court and I need not cite those authorities. I only mention this to show that my friend, Mr. Rangachariar, is not right in his view. I say that not only Hindu Law, but Hindu civilisation, Hindu literature, have been very progressive and they have even a scientific foundation. For instance, I do not entirely sympathise with my friend, Mr. Seshagiri Ayyar, with

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regard to his object, but I have agreed to act on this Select Committee, because I feel that in certain respects the law might be modified. For instance, these disqualifications are based on what some would call, in scientific language, rules of eugenics. It seems reasonable that a leper should not inherit and insane persons should not inherit. Modern science tells us and modern lawyers too are also trying to legislate that such persons should be excluded from inheritance in the interest of society and our Hindu Law anticipated that. But I see no reason why a man who became blind early or even late in life and was in possession of all his intellectual faculties should not inherit. He is disqualified under Manu's Code. But the judge-made-law that we have now has departed from that in many respects. Take the case of other incurable diseases, they have been held to be no bar to inheritance or succession. So, I say these matters are the subject-matters for inquiry in connection with this Bill.

Now, something has been said about excluding Bengal. But Bengal has been rightly excluded as she is not affected in any way. I maintain that we are more progressive in regard to Hindu Law than other parts of India. We can hold individual property and we can dispose of our property just like an Englishman or any other civilized and progressive people in the world. We can give it to anybody we like. That is the reason why my Honourable friend, Mr. Seshagiri Ayyar, has excluded us. If we find sons, heirs or other members of the family to be insane, we have the absolute right to settle or dispose of the property in any way we like. We would leave it to other persons, male or female, and we would not leave it to an insane person. It is not through any fear of our fighting or desperate character that the Mover has excluded us from the scope of this law. I do not wish to detain the House, but I will only say that, although I do not agree with the scope of the Bill in all its details, I have agreed to serve on the Committee because in certain cases I feel that some of these disqualifications might be inquired into, and if possible, modified, and conflicts of decision removed. So I do not think that either my friend, Mr. Rangachariar, or others who are opposing it have made out any case for not referring this Bill to a Select Committee.

Mr. S. O. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, I feel obliged to you for permitting me to give expression to my views on this question. I am a Hindu hailing from Sind, and I have listened therefore with interest to what has been said by previous speakers from other parts of India with regard to the question under consideration. I am going to say something with regard to myself. My uncle's family will probably come to an end so far as the male issue of that family goes, and according to the Hindu law, I will be entitled to inherit some of the property that belongs to my uncle. But it is a fact that it does not even enter my mind, or the mind of any member of my family, to seek to secure the property which is really due to the daughters of my uncle's line. Just now we have been told that the essential principle on which the devolution of Hindu property depends is capacity to offer oblations. No female can offer oblations to the *manes* of her ancestors under the Mitakshara law.

Mr. Jamnadas Dwarkadas: May I rise to point of order? The point of order is this that we are at present not discussing that principle of the law which incapacitates females; it is only a question of deformed and otherwise incapacitated individuals.

Mr. President: I do not see the relevance of the Honourable Member's point of order.

Mr. Jamnadas Dwarkadas: I thought the point was not relevant to the issue before us.

Mr. S. O. Shahani: Sir, I want to point out that this doctrine that is being held out for acceptance by my friend, Mr. Rangachariar, is an exploded doctrine with some of the Hindus at least. I am a Hindu. Of course Mr. Rangachariar is a very orthodox Hindu, and I have listened with very great interests to what he had to say with regard to this question. I have nothing but admiration to offer for the imaginative manner in which he has handled his untenable point, a point which cannot be maintained, according to me, by any reasonable Hindu in the present day. He has run down the present times and he thinks that those who hold contrary views are uncivilized; but I want to point out to him that I am as great, if not as orthodox, a Hindu as he imagines himself to be. . . . (An Honourable Member: "If not greater.") Yes, if not greater. I am not a slavish observer of ritual. I believe less in the credal part of religion, and more in the cultural part of it. Such a belief alone will enable me to unify myself to others who profess different world-religions here in India. It is therefore that I make bold to come forward and say that in my own family I think it would be unimaginable that anyone should on the ground of capacity to offer oblations seek to secure for himself the property which ought to devolve upon the daughters of his uncle's line. I have another instance to give, and that is this. Two brothers lived in a joint family. One brother died leaving an only daughter, who has lost her mind now. Are the surviving brother and his sons to be deemed entitled to the property that has been left by the father of this maniac girl who needs protection so badly? According to the Hindus of the class to which I belong the purposes of the property are quite different to the purposes which have been enumerated by my Honourable friend, Mr. Rangachariar. I have got to point out that it was Mr. Rangachariar who had the courage on a former occasion here on the floor of this House to get up and justify the institution of *deva dasis* in the temples that exist in Madras. Of course he is true to his own faith, but such a faith to be recommended to others who belong to communities which can think rightly and consistently with regard to men and things in life, is, I think, at least a wrong procedure. That this sensible Bill which has been proposed by my Honourable friend, Mr. Seshagiri Ayyar, should be run down on these grounds is a pity; and it will be indeed a greater pity if this Bill comes to be rejected on these grounds. One real defect in the Bill has however been referred to by my Honourable friend, Mr. Rangachariar, namely, that our Honourable friend, Mr. Seshagiri Ayyar, has omitted Bengal from the purview of his Bill. I really do not understand the reasons for this omission. I do not impute motives, and I do not think that it is the desire to capture votes that has led to this omission. The omission to my mind has yet to be accounted for. If the Bill is good for all, it must be good for the Bengalees too. Bengalees are said to be a progressive people who can help themselves in the matter of inheritance. Quite true. Precisely on that ground it would not matter if the Bengalees were deliberately included amongst those who would be affected by the new Bill.

The Bill under consideration is a wholesome Bill from every point of view. So far as I see, on grounds of truth, justice and expediency this Bill ought to find favour with all of us here in this House.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): On this Bill the Government have, after careful consideration of the opinions received from the various Provinces, decided to adopt a neutral attitude, leaving it to Honourable Members, including official Members, but excepting Members of the Executive Council who in accordance with past practice will not take part in the voting to vote on the motion as they like. (*An Honourable Member*: "Why not leave it to the Hindus?") That being the position of Government, it is hardly necessary for me to make a speech on this motion. But there is one point to which I think I might be permitted to invite the attention of the House. It has been said by more than one speaker that the real basis of the right of inheritance in Hindu law is the capacity to perform oblations. Well, until the passing of a certain enactment, apostasy or conversion to a religion other than Hinduism was a disqualification for inheritance, because the converted person, having ceased to be a Hindu, was thereafter incapacitated from performing oblations. Nevertheless, the Indian Legislature passed an Act (*Dr. H. S. Gour*: "The Lex Loci Act of 1850." *Dr. Nand Lal*: "Act XXI of 1850.") known as the Freedom of Religion Act, XXI of 1850, whereby apostasy or conversion from Hinduism to another religion no longer deprives a person from inheriting to his Hindu relations.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, my friend, Mr. Rangachariar, has made a gratuitous reference to me in connection with his very orthodox views on Mr. Seshagiri Ayyar's Bill. I can only reciprocate the compliment by correcting a misstatement into which he has undoubtedly fallen in giving a historical basis for the rule enunciated by, not only by Manu, but also by the author of the Mitakshara, Vidyaneshwar, whom I shall presently cite, disqualifying from inheritance persons who are suffering from any disease. (*A Voice*: "Incurable disease.") Not incurable disease. Now, my friend's argument—and I hope the House will recall his argument—was that the whole doctrine of the Hindu law of inheritance is based upon the doctrine of spiritual efficacy. That, no doubt, is true, but it is a later doctrine. If you go far back into antiquity, you will find that the very same doctrine pervaded the archaic laws of Greece, Rome, Egypt and China, and the foundation for all these ancient laws was that in the nomadic life which our ancestors led the fighting man was the only man who was entitled to share the spoils of war and, consequently, a man who was impotent and devoid of sense or limb was incapable of fighting, and was therefore held to be incompetent to inherit. A spiritual form was in later days given to this extremely utilitarian doctrine which was the common doctrine of all ancient societies; but in later days when the disability survived the occasion which gave birth to it, it was said that, as the disabled people were incapable of performing sacrifices and of offering oblations to the deceased, they were incompetent to inherit. Unfortunately, the very narrow doctrine enunciated by the earliest law-givers was enlarged upon by the later Smritikars, Yajnavalkya, and his commentator Vidyaneshwar in his Mitakshara, expanded the doctrine beyond all reasonable limits. If Honourable Members will turn to the Mitakshara they will find two clauses. He first cites Yajnavalkya who says: "An impotent person, an outcast, and his issue, one lame, a mad man, an idiot, a blind man and a person afflicted with an incurable disease and others similarly disqualified must be maintained excluding them however from the participation," upon which the author of Mitakshara says: "those who have lost a sense." Any person who is deprived of an organ of sense or action by disease or other causes is said to have lost that sense. He

expands the doctrine much beyond the original scope of the law of inheritance. Surely, Sir, the Mitakshara will disqualify from inheritance any of our Hindu brethren who went to France and lost their limbs fighting for their King and country. (*Rao Bahadur T. Rangachariar*: "But not the law as it is.") That is the law of the Mitakshara, that is the orthodox law, that is the law to which my friend appeals. Surely my friend could never expand the doctrine to that extent. The fact is that, in spite of the rigid orthodoxy and unbending and stern conservatism of my friend, the law has been expanding from time to time, and, at the present moment, the original purpose for which the narrow restrictions placed by the doctrine of inheritance were enunciated have been practically swept away. Cases after cases have made an inroad upon this narrow doctrine and my friend himself admits that now nothing but the shell remains, the core has been eaten up by a series of decisions of their Lordships of the Privy Council and of the Indian cases. What is the good of my friend now asking this House to re-iterate an old obsolete doctrine which is not the living law? What is the good of my friend appealing to the orthodox sentiments of my Hindu friends and saying "Please do not make any inroad upon your ancient law?" What is the good of my friend standing up here and saying that our law is based upon that transcendental fact that he who is incapable of performing a sacrifice is incompetent to inherit. My friend, Mr. Jamnadas Dwarkadas, while apologising for not being a lawyer, pointed out that the law we are now administering is the law of Manu. Will my friend be surprised to hear that, if he wishes to bring himself under the law of Manu, he had better vacate the rich possessions which he has inherited from his father, because Manu does not recognize the right of a son or wife to inherit; they are classed as chattels and have no rights of their own. (*Rao Bahadur T. Rangachariar*: "That is not correct.") Read that flagged portion, you will find the statement there. But surely my friend must not labour that point. These are ancient doctrines. The moment you examine them you find they are like geological seams lying imbedded in ancient history, and, as you come up, you see tier after tier of fresh and new growth. Coming to modern times, you find that, while you have the deepest reverence for the ancient law, you follow not the ancient law to its letter, but you revere that ancient law to the extent which is consonant with custom. Manu himself says so. He says in the closing chapter that custom is transcendental law and he points out, and that is a maxim repeated by Gautama, that, whenever people wish to know what is the correct law, let five people, learned in the law, sit together and decide. Surely, Sir, that is an injunction to this House to decide what is right. I shall give to the Honourable Members the *ipsissima verba* of that very ancient and sacred inculcation:

"In cases for which no rule has been given that course must be followed of which at least ten Brahmins who are well instructed, skilled in reasoning and free from covetousness, approve."

Consequently, I submit, Sir, this is the ancient rendering of the modern Reforms Act and what is contained in the sacred law books themselves. There is justification for the doctrine that these matters must be all settled by the consensus of opinion of the wise. When he speaks of the Brahmins he speaks of the learned—he does not speak of people who are ignorant Brahmins. (*Laughter*.) I therefore submit that this House has not only the secular authority of the Government of India Act but the sacred authority of the best law books, for going into this question and deciding it in accordance with what is right and just.

[Dr. H. S. Gour.]

The Honourable the Law Member has pointed out, Sir, that as far back as 1850, the Indian Legislature enacted a rule adopting the unanimous recommendation of the Royal Commission appointed by the Parliament Act of 1832, sweeping away the restriction which existed under Hindu law by which the conversion to another faith was held to deprive a man of all rights to inheritance of property. Now, Sir, Mr. Seshagiri Ayyar's Bill surely does not make such a sweeping change. It is a Bill which is founded on the elementary principle of reason and justice. Two brothers are born, one of them is born blind and the other is born possessed of sight. Is there any reason, I ask, why the brother who is afflicted with blindness should be excluded from inheritance? I say, Sir, that if out of the two our sympathies should go out to any one it should be to that afflicted brother. (Hear, hear.) And yet my friend would perpetuate the cruel wrong excluding those people who suffer from the loss of sight or limb from inheriting their patrimony. What justification is there for such a course? I have already pointed out that there is absolutely no justification, if you examine the question in the light of reason. Sir, I do not wish to labour this point. I can only hope that my friends, my Hindu friends in particular, will rally to the support of a measure which is intended to place Hindu law alongside the other modern laws. As my friend Mr. Chaudhuri unwittingly remarked, under the Bengal law he can dispose of his property like any civilised man. I ask, Sir, shall not our law be in line with the laws of other civilized peoples?

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, this is a very useful measure which has been introduced by my friend Mr. Seshagiri Ayyar. My learned friend, the advocate of orthodoxy, I mean the Honourable Mr. Rangachariar, has told us to look at the soundness of the Hindu law. The soundness which he has suggested is this—"that a man who is suffering from an incurable disease cannot look after himself; therefore he is deprived of the property, so that that property may not go to outsiders. There is a provision in the Hindu law that a man who is born blind, who is a leper, who is dumb, who is deaf—the other members of the family are bound to maintain him." That is the main ground which he has set forth in refuting the arguments which were advanced in favour of this Bill. While recognizing the sanctity and superiority of Hindu law in many respects, other than the aspect before us now, may I ask him, is he not aware of some cases in which maintenance to these unfortunate men was disputed by their litigious relations. Their brothers, their relations, will go to Court and they will say "Such a man is not entitled to maintenance on this ground and that." So my learned friend must admit that, though it stands, and very rightly, intact in some cases, the orthodox stands broken, to a certain extent, in some quarters. Customs have been introduced, and, at some places, even Hindus are not governed by the strict provisions of Hindu law which he has expounded on the floor of this House. Perhaps he is being guided by what happens in his own Presidency of Madras. The fact remains, however, as has been argued by a number of previous speakers, that some of these ancient principles of Hindu law are not adhered to strictly in some parts of India. We cannot deny that fact. After all we are not living 3,000 or 4,000 years back. We should not ignore the circumstances that should guide the Legislature of to-day. My learned friend wishes that these poor Hindus may not, even in some fit cases, be allowed to see the light of day. He wishes that they may be confined to all those old provisions which under the present conditions and in some cases, do not

satisfy the present time. On these grounds, Sir, I support the measure which is, if I mistake not, a very wholesome one and should have the unanimous vote of the House.

Mr. N. M. Joshi (and other Honourable Members): I move that the question be now put.

The motion was adopted.

Mr. President: The question is:

"That the Bill to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts, be referred to a Select Committee consisting of Mr. Chaudhuri, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur T. Rangachariar, Mr. B. Venkatapatiraju, Dr. H. S. Gour, Lala Girdhari Lal Agarwala, Mr. Harchandrai Vishindis, Sir Deva Prasad Sarvadhikary, Mr. K. B. L. Agnihotri, Mr. B. C. Allen and Mr. Seshagiri Ayyar."

The motion was adopted.

THE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I believe that the objections to this Bill were fully set forth by the previous speakers, and I also think the answers to those objections have been given by previous speakers. This Bill is absolutely necessary in order to enable certain female members to inherit before agnates to the seventh degree. This place would be earlier. I find that even my friend, Rao Bahadur Rangachariar, says this is a reasonable Bill, so there is no necessity for me to say any more on the subject. I move:

"That the Bill to amend the Hindu Law of inheritance in certain particulars and to remove certain doubts, be referred to a Select Committee consisting of the Honourable the Home Member, Rao Bahadur T. Rangachariar, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur P. V. Srinivasa Rao, Mr. B. Venkatapatiraju, Munshi Iswar Saran, Rai Bahadur Nishi Kanta Sen, Mr. Harchandrai Vishindas, Mr. B. N. Misra, Mr. K. G. Bagde, Mr. K. C. Neogy, Dr. Gour, Mr. T. P. Mukherjee and myself."

The motion was adopted.

THE MUSSALMAN WAQFS REGISTRATION BILL.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I beg to move:

"That the Bill to provide for the Registration of Waqf estates and the proper rendering of accounts by the Mutawallis of such estates in British India be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Saiyid Muhammad Ismail, Mr. Zahid Ali Subzposh, Mr. W. M. Hussanally, Mir Asad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhri Shahab-ud-Din, Mr. Muhammad Yamin Khan, Khan Bahadur Sarfaraz Hussain Khan, Khan Bahadur Zahiruddin Ahmed, Mr. Abdur Rahim, Haji Wajihuddin, Mr. Kabeer-ud-Din Ahmed, Maulvi Miyan Asjad-ul-lah, Nawab Ibrahim Ali Khan, Lala Girdhari Lal Agarwala, Maulvi Abdul Quadir, and myself."

Sir, this Bill was introduced some time back, and I had to wait taking any further action on it because the Government of India had asked for opinions from the Local Governments and they were awaiting the replies. This is a very simple measure though it might look rather a cumbrous one on the face of it. The object of this Bill and the principle which I want to press before this House is that there should be some sort of control over the

[Maulvi Abul Kasem.]

administration of waqf estates. It is well known not only to my co-religionists in this country but to all my fellow-countrymen and also to members of the Government that trust properties in this country are very much mismanaged, and the mismanagement and misconduct in the administration of these trust properties has become an outstanding scandal in this country. Several attempts were made from time to time by various individuals and public bodies to get a remedy, but unfortunately they have always failed for one reason or another. I have purposely confined myself to Muhammadan trust properties because I wanted to proceed on the line of least resistance. I know for myself and I have been told that the case of the trustees of Hindu charitable endowments are not better than that of the Muhammadan institutions. But, Sir, I thought it better to confine it to the endowments affecting Mussalmans only. It is not intended in any way by this Bill to interfere with the rights, the privileges or the powers of the mutawallis or trustees of these waqf estates, nor is it intended to give anybody a right of interference with their work. The only thing which is wanted essentially is that every mutawalli of a waqf estate should get his waqf properties duly registered in a public office and that the mutawallis should be liable to render accounts of his receipts and expenditure. Unfortunately, Sir, we have found it the case that mutawallis of waqf estates generally and the majority of cases treat trust property as their own personal property. Cases are numerous where these mutawallis have not only used the usufruct of these properties as their own, but have borrowed money by mortgaging those properties and have sometimes even effected a sale of waqf properties. As long as they have some of these properties left they never admit that it is waqf property, but when every inch of land appertaining to that trust is sold and goes into the hands of non-Muhammadans the mutawalli appears before the members of the community in a plaintive mood and says "This is Muhammadan property which has gone into the hands of Hindus." But primarily the mutawalli himself is responsible. In fact a large portion of waqf trust properties in my province has gone into the hands of either non-Muhammadans or to Muhammadans as their personal property. In any case where litigation was started to recover these waqf properties, it was found that the interests of third parties and of *bona fide* purchasers were affected, and in equity and justice our claims could not be pressed further. Therefore, Sir, I want, and I have been asked by my constituents to demand it, that all these waqf properties should be duly registered in public offices so that if anybody advances money on these properties or if anybody wants to purchase those properties he has an opportunity of ascertaining whether it was the personal property of the mutawalli or whether it was trust property in his charge. He will do so with his eyes open and without any misapprehension.

The second point is that there should be some sort of control. This control is to be exercised by a committee consisting of Muhammadans only over the accounts and the work of the mutawallis. I am not a lawyer myself and I do not claim to be at all a good draftsman. I have drafted the Bill to the best of my ability; in fact I have copied the sections from various Bills presented either in the Viceroy's Legislative Council or elsewhere by distinguished lawyers and other people; and I admit that there is much to be improved. The best course to do that would be to refer the Bill to a Select Committee and therefore I have taken particular care to include in the Select Committee distinguished lawyers so that we may have good legal opinion and draftsmanship and a large number of my

Muhammadan friends so that all shades of opinion may be expressed and the matter thoroughly discussed in the Select Committee. I have been told, Sir, that the Local Governments in their opinions are unanimous in saying that this a measure which ought to be left to the provincial Legislatures and that this Assembly should not legislate for the whole country, this being one of the transferred subjects or subjects which should be dealt with provincially. I beg to submit, Sir, as I did when introducing this Bill, and as the then Leader of the House, Sir William Vincent, remarked, that although it may or may not be a question from a technical point of view to be decided by the provincial Governments and by the provincial Legislatures, I think that in such an important question as the administration of waqf estates there should be a uniform law for the whole country and not conflicting Acts, one for Bengal, a second for the Punjab, a third for Madras and a fourth for Bombay. Therefore, Sir, I hope this House will agree with me that the time is ripe now when we should do something about the proper management of trust estates and trust properties.

It does not, fortunately for me, interfere with any personal law, that is to say, Muhammadan law or with any religious institution, and therefore I have no apprehensions of treading on delicate corns. Certainly it will affect the vested interests of the Mutawallis, but here we have to consider not the interests of Mutawallis who are in charge of trust properties but of the beneficiaries who are to be benefited or who have to enjoy the trust properties. Waqf properties were created by pious men for the benefit of humanity and their co-religionists and it will be a great misfortune to the country if the money which was ear-marked for the benefit of humanity and certain classes of people, were to be misappropriated by other people which was never the intention of those who created these Waqf Estates. The Mutawalli of the biggest waqf properties in my province is the Government of Bengal, and even under their management carried by a subordinate I am afraid the waqf is not properly managed and controlled. Therefore, Sir, the necessity was felt, and felt keenly for a long time for such a Bill as this. Mr. Rangachariar said that when my friend Mr. Seshagiri Ayyar came to this Council he did it with the object of introducing certain reforms in the Hindu law. Sir, I came to this House not with that purpose, but with a distinct mandate to press this Bill before this House, because attempts were made previously by myself and my friends in the local Legislature to introduce a legislation of this kind, in fact this very draft was sent to the Bengal Government and they sent it to the Government of India. The Government of India then refused sanction for its introduction in the local Legislature, because at that time they said it was not a matter for the Provincial Council but for the Viceroy's Imperial Legislative Council. But now that my people in Bengal have sent me here with a distinct mandate to press this Bill, I have been told that I have brought it after the reforms and this is a subject which devolves upon the Provincial Governments and it is not for the Members of this House to consider. I submit, Sir, again, that in an important measure like this there should be uniformity of law for the whole country, and the law that prevails in the Punjab should prevail in Bengal and other parts of India as well. Therefore, Sir, I hope that the Government and the House as a whole will support this measure. Of course the Bill will have to be redrafted and reconsidered and minor defects will have to be removed in the Select Committee or when the Bill comes before this House at a later stage. I hope, Sir, that the House will accede to my request and commit this Bill to the Select Committee for its proper consideration.

Mr. President: The motion moved is:

"That the Bill to provide for the Registration of Waqf Estates and the proper rendering of accounts by the Mutawallis of such Estates in British India, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Saiyid Muhammad Ismail, Mr. Zahid Ali Subzposh, Mr. W. M. Hussanally, Mir Asad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhri Shahab-ud-Din, Mr. Muhammad Yamin Khan, Khan Bahadur, Sarfaraz Hussain Khan, Khan Bahadur Zahiruddin Ahmed, Mr. Abdur Rahim Khan, Haji Wajihuddin, Mr. Kabeer-ud-Din Ahmed, Maulvi Mian Asjad-ul-lah, Nawab Ibrahim Ali Khan, Lala Girdharilal Agarwala, Maulvi Abdul Quadir and the Mover."

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, there are certain difficulties which

Mr. President: Is the Honourable Member raising a point of order?

Mr. K. Ahmed: Yes, Sir. You will see, that my friend, Maulvi Abul Kasem, has no justification at this stage to refer this Bill to a Select Committee, because it was first introduced in September, 1921. After that, we have had three Sessions of this Assembly, and my friend's Bill is suffering from that disease which is incurable. I would refer Honourable Members in this connection to page 29 of the Manual of Business and Procedure of this House. Paragraph 80A, page 29, of this Manual reads as follows: "On the termination of a Session, Bills which have been introduced shall be carried over to the pending list of business of the next Session: Provided that, if the Member in charge of a Bill makes no motion in regard to the same during two complete Sessions, the Bill shall lapse."—as it has lapsed, Sir, "unless the Assembly, on a motion by that Member in the next Session, makes a special order for the continuance of the Bill." Sir, my Honourable friend in his opening speech to-day said that he was not quite sure of his drafting. At the same time he said that we shall try again to sit together to re-draft the Bill. Sir, it is not a question of re-drafting only nor is it a question of putting additional Members on the Select Committee, but he is afraid, Sir, because I am sure he has been sleeping over this Bill not only at the last Session but at the Session previous to it also

Mr. President: I would like the Honourable Member to state his point of order.

Mr. K. Ahmed: Sir, then I take the objection that my friend cannot refer his Bill to a Committee at this stage after the expiry of two Sessions, because it infringes the rules laid down in our Manual of Procedure and Business, and, I submit, Sir, that this Bill should be thrown out

Mr. President: I do not quite appreciate the Honourable Member's point.

Mr. K. Ahmed: Sir, if you will kindly read section 80A, at page 29, of the Manual of Business, you will see

Mr. President: Quite so, I have referred to the section. Will the Honourable Member show me how that applies to the motion made by Maulvi Abul Kasem?

Mr. K. Ahmed: Maulvi Abul Kasem introduced the Bill on the 26th of September, 1921. That is clear, I suppose, Sir. If that is so, then after the September Session, 1921, at which he introduced this Bill, we had two Sessions last year and then again this year

Mr. President: Does the Honourable Member suggest that Maulvi Abul Kasem has not made the necessary motion within these two Sessions?

Mr. K. Ahmed: Yes, Sir, he has not.

Mr. President: Then the Honourable Member is wrong, because he has made the motion

Mr. K. Ahmed: I do not find it, Sir. If he has, I shall be very thankful if that will be pointed out to me, Sir.

Mr. President: I would recommend the Honourable Member to exercise his intelligence in finding out why Maulvi Abul Kasem is in order.

Haji Wajihuddin (Cities of the United Provinces: Muhammadan Urban): Sir, I heartily support the motion brought forward by my Honourable friend, Mr. Abul Kasem. I only wish to say that the name of Sayad Rajan Baksh should be added to the Select Committee.

Mr. President: The amendment moved:

"That the name of Sayad Rajan Baksh be added to the Select Committee."

The motion was adopted.

Mr. K. Ahmed: Sir, I oppose the Bill, because it cannot be moved at such a late stage. I have shown you the rule. I do not understand how in the last three Sessions

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, the Chair has given a ruling, and Mr. Kabeer-ud-Din Ahmed is not right in again speaking on this question

Mr. President: The Honourable Member can leave the Chair to take care of itself. I recommended the Honourable Member (Mr. Ahmed) to exercise his intelligence in understanding the Standing Order, but apparently he does not propose to do so.

Mr. W. M. Hussanally: Is it right for Mr. Kabeer-ud-Din Ahmed to speak again when the Chair has given a ruling once?

Mr. President: It was not a ruling—merely a recommendation to the Honourable Member from Bengal.

Mr. K. Ahmed: Sir, now I shall have to oppose the Bill. The principle of this Bill stated by him in the Statement of Objects and Reasons is already contained in our existing law. We have got section 92 of the Civil Procedure Code, 1908, and under this section we can file a suit for rendering a proper account or for a declaration invalidating candidature of certain Mutawallis if they have misappropriated any thing out of the waqf property. Besides this, Sir, my friend admitted that this Bill was pressed in the Bengal Council, and they said that it was the look-out of the Imperial Council and hence it was referred to this Assembly to move this Bill. Thereafter, Sir, in 1920, there was an enactment in regard to this; it is Act XIV of 1920, called the Charitable and Religious Trust Act, framed with the same object, Sir, with which probably my friend has been induced to bring in this Bill before this Assembly. Therefore, Sir, we have got sufficient protection under the present law, as it is,—it is Act XIV of 1920, which has simplified the whole matter with regard to charitable and religious trusts in this country, and section 8 of this Act applies also equally to waqf property and Mutawallis in this country.

[Mr. K. Ahmed.]

Therefore, Sir, it is not only unnecessary but it is really contrary to the principle and object for which Government has already provided enough law, sufficient safeguard, for the people of this country.

Mr. W. M. Hussanally: Is that a Provincial or a Government of India Act?

Mr. K. Ahmed: I cannot follow my friend.

Mr. W. M. Hussanally: Is the Act you are quoting a Provincial or a Government of India Act?

Mr. K. Ahmed: It is an Act called Act XIV of 1920, passed here only two years ago, Sir. I suppose my friend now will find that it is a Government of India Act. If that is so, he will find also that it was only a few months before this Bill was introduced into this Assembly that Government brought out safeguards for meeting my friend's difficulties and, therefore, this part of the Bill is unnecessary. Further, Sir, my friend has been saying in this Assembly this morning that the Government of Bengal now is afraid because the Bill has been introduced here and they do not like that this portion of the law should be passed everywhere, but every provincial Government has got a right to pass its own law. The Government of Bengal has given its opinion and it says this: "The proposed Bill, however, appears to be badly designed and proposes a scheme which will interfere with the legal rights of the Mutawallis and bring itself into conflict with the Muhammadan law. Having regard to the general trend of Muhammadan opinion which is opposed to the Bill, the Governor in Council is unable to lend its support to it. The times, too, are not propitious for this legislation." That being so, my friend's questions with regard to it probably will be swept away from the opinion that has been read. Then, Sir, we find other difficulties because in the Charitable Endowment Act, in respect of the Muhammadan religion the Government has always followed the policy of non-interference. The Mutawallis have to do certain acts, as far as their Mutwalliship is concerned, and then they will have to follow certain guidance or direction of the donor that has been set out in the trust deed: in the Waqfnama the Mutawallis are empowered to perform some functions set out there, as for instance to say their prayer, ask persons engaged or appoint persons to offer certain things in the prayer house, and so forth. And the proposed Committee under sections 2 and 3 of this Bill, I think, will have the power of appointing even agents or naib Mutawallis; which will be interference with the Mutwalli's power at least, and that sort of interference is not allowed by the Muhammadan Law. And since, the Muhammadan Law interferes with the principle of my friend's Bill the Muhammadans of India would not approve of it. There is something which has been mentioned in regard to legislation of these Waqf properties. My friend proposes to simplify matters, so that the money-lender may not be misled. Well, Sir, he may be the benefactor of the money-lenders who are very much fond of lending money to the Mutawallis and taking mortgage of their property. But for this purpose if they go to the Registrar in the Registration Office, they will find who the Mutawallis are and where the properties are situated; so the names of the Mutawallis and the description of the property are available there. In every district there is also a Collectorate where there is a Record Office which will furnish the required particulars.

Mr. W. M. Hussanally: I rise to a point of order. I believe my Honourable friend, Mr. K. Ahmed, is now criticising the details of the Bill, which I believe at the present moment he has no right to do. The question before us is whether the Bill should be committed to a Select Committee or not, and I think he ought to confine his speech to that.

Mr. K. Ahmed: If my Honourable friend will kindly confine his attention to follow the principle which is exactly against the points that I am describing, I suppose the whole matter will be simplified. We see, Sir, the principal object of my friend who introduces the Bill is that there must be a Registrar, and if there are already registers kept by the Government officers which will be of great benefit to the people who want to lend money, what is the necessity, Sir, for this Bill? What is the principle and object set out in the Statement of Objects and Reasons of the Bill? Their position is not in any way better off, but as it is stated therein that it is difficult under the present law to find out the names of Mutwallis and the description of the properties. If they are, Sir, already safeguarded by the present law, and since 1920 at least when Act XIV was passed in this House there is enough provision of law, what is the necessity for introducing this Bill? I say there is no necessity for bringing this Bill at all. Then, Sir, since the principal objects of this Bill is contrary to our tenets of the Muhammadan religion, because it interferes with the functions of the Mutwalli, and because it will interfere with the donors' intentions in settling a property and saying that the income should be spent for certain purposes and it should be managed by certain persons—as a matter of fact we find from generation to generation, from son to grandson, people of the family manage the property,—why should there be this law, Sir, to interfere with that poor Mutwalli and to establish a District Committee? Sir, the District Committee or the District Magistrate or the Collector has not got any money, he has not got the money to defray the expenditure that is necessary. Then section 3 of the Bill contemplates a Central Committee, that is to say, in every province there will be a Central Committee, whose duty will be to go to the district and supervise the activity of the branches of the District Committee over which the District Magistrate will sit, and preside. The District Magistrate will preside over it as ex-officio member. Therefore my friend in the way he has put it is not accurate. Here he has certain rules of law of the waqf estate, but how is that to be put in practice without sufficient money in hand. Government is not going to help in the matter unless they can show sufficient funds in hand. Where is that money coming from? Is there anything in the Bill to provide for the maintenance of those branch district committees and the central committee? The Chief Justice of the Bengal High Court and of the majority of the other Judges of the same Court have in fact opposed this Bill on this particular ground. The Calcutta High Court says:

"The Chief Justice and Judges do not think that a case has been made out for amending the procedure under section 92 of the Code of Civil Procedure, 1908. The provision as to damages would, in their Lordships' opinion, probably encourage fraudulent claims."

So there will be multifarious cases instituted against the Mutwallis and the object for which the endowment has been made will be defeated. Any person having a grudge against a Mutwalli or his rival relatives will bring a suit against him and that will interfere greatly with the discharge of his duties and the donor's object will be frustrated. That being so, Sir, I

[Mr. K. Ahmed.]

vehemently object to the Bill. There is behind this Bill Sir, a sinister motive: A person bringing a false suit against a Mutwalli may have that suit dismissed with costs, but there is nothing in the whole Bill which provides for the recovery of that money from the person bringing the suit. With regard to the balance which may be outstanding in the hands of the Mutwalli, there is no provision as to how it is to be spent, and that point the central committee or the branch district committee will have to determine. I understand that Dr. Gour has the intention of supporting this Bill. I shall be glad if he will enlighten us as to the principle of the Bill and I shall wait to hear him with great pleasure.

But since, Sir, there are so many difficulties and my friend, who has introduced the Bill, has kindly selected me and others to sit together and to redraft the Bill, we will have to recast the whole thing. That duty must be undertaken by the Honourable Member who introduces the Bill. He must know what the Bill is. If there are mistakes and additional alterations are necessary here and there, it can be carried out, but I do not think there is any practice in this House for the Honourable Members to redraft the whole thing and recast it altogether. In that case matters will be simplified if my friend will withdraw his Bill to-day, and take our help and introduce another Bill probably before the expiry of the Session. With these few words I oppose the Bill.

The Assembly then adjourned for Lunch till Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock. Rao Bahadur T. Rangachariar was in the Chair.

Mr. W. M. Hussanally: I rise, Sir, to support my friend Mr. Abul Kasem in his proposal to refer this Bill to a Select Committee.

Mr. C. A. H. Townsend (Punjab: Nominated Official): On a point of order, may I ask if there is a quorum present?

Mr. Chairman: Yes.

Mr. W. M. Hussanally: Sir, this Bill has now been before the public for a considerable length of time and opinions in almost every part of the country have been expressed in regard to it. The state of Muhammadan Waqfs all over the country, from one end to the other, has been such as to call for remedial measures urgently to protect them in almost every province, and the misappropriations that have been committed by Mutwallis have run into almost a proverb. In my own part of the country there have been several cases of that kind in which mutwallis have actually sold mosques or lands attached to mosques or graveyards. (Mr. K. Ahmed: "Please speak up.") I thought my friend Mr. Kabeer-ud-din Ahmed had better ears. At the present moment there is a case of the kind pending in the Judicial Commissioner's Court in Sind in which some Saiyids, who are mutwallis of a very important graveyard in Karachi, have sold large plots of land for a large amount of money. So far as enlightened Muhammadan opinion is concerned, Mr. Abul Kasem cannot

be too much thanked for having brought this measure forward before this House. I am sorry, Sir, that I could not follow my friend Mr. Kabeer-ud-din Ahmed. (Mr. K. Ahmed: "Nor can I follow you.") I am sorry, Sir, I could not follow my friend Mr. Kabeer-ud-din Ahmed in his attack upon this Bill. No doubt he made a very coherent speech, but to me, unfortunately, it was almost Greek. So far as I remember, Sir, he quoted the opinion of the Bengal Government as being against this measure, but, if he had turned over the pages of the Blue-Book, which is now before me, he would have found that almost all intelligent and enlightened Muhammadan opinion in all provinces is in favour of this Bill, and several Local Governments have also pronounced their opinion in favour of the principle of the Bill, though some do not agree with the details.

I will begin, Sir, by quoting the Madras Government. Here is what 3 P.M. they say:

"The Honourable the Minister in charge of the Religious and Charitable Endowments has had the advantage of discussing the main principles of the Bill with the leading Muhammadan representatives in the Legislative Council, and the views expressed and the observations made in the following paragraphs have their full support.

Enlightened Muhammadan opinion in this, as in other Presidencies, is practically unanimous that a very large number of endowments made by pious Muhammadans in the past have been wasted or converted to the private benefit of individuals contrary to the wishes of the original founder, that their administration in many cases has come to rest in the hands of inefficient and unscrupulous mutwallis and that effective measures should be adopted at an early date for preventing waste and mismanagement of Muhammadan public trusts and to ensure that the endowments are appropriated to the purposes for which they were founded. The need for suitable legislation is therefore obvious.

The law governing Muhammadan religious endowments in this province is Act XX of 1863 and a few Muhammadan committees exist in certain districts. They have not been successful in preventing misappropriation and mismanagement."

Sir, I shall proceed further. Let us come to Bombay and see what the Bombay Government say. It is this:

"It will be observed that the Anjuman-i-Islam, Bombay, while approving the proposal for the registration of waqfs, is opposed to the complicated and detailed interference in their management which the provisions of the Bill would entail. * * *

There is, however, a very considerable body of opinion in favour of some measure for compulsory registration of waqf estates and for the maintenance and publication of accounts. If a practical measure of this nature can be devised, the Government of Bombay would favour it. It would be necessary to prescribe that all expenditure should be met from fees prescribed for the purpose or otherwise and that no part should fall on Provincial Revenues."

The Honourable Mr. Justice Aston says:

"I approve of the provisions of the Bill."

In Bengal, again, I find Maulvi Shams-ul-Rahman, Secretary, District Muhammadan Association, Khulna, says:

"I have the honour to inform you that the Registration of Waqf Estate Bill was discussed at a meeting of my Association and am of opinion that the Bill is a necessity in order to prevent misuse of waqf estates by their mutwallis, but with these following modifications in the Bill itself."

Then he goes on to suggest certain modifications with which for the time being we are not concerned.

[Mr. W. M. Hussanally.]

I could go on quoting, Sir, from several opinions, both of European and Muhammadan officers, as well as public men; but I do not wish to waste the time of the House. The United Provinces Government say:

"It will be observed that the majority of those consulted are emphatically of opinion that some machinery for improving the administration of waqfs is eminently desirable, since there are undoubtedly many cases of mal-administration, though possibly the case is stated somewhat too strongly in the preamble to the Bill."

The Punjab Government say:

"I am to point out that the opinions of none of the large holders of shrines, who in the Punjab are fairly numerous and very influential, have been received, but it is anticipated that these men's influence would be thrown against the Bill, as undermining their prestige and requiring a stricter system of accounts than most of them have been in the habit of keeping..... His Excellency in Council suggests that the Bill should confine itself to the compulsory registration of waqfs and the publication of accounts and these processes should be carried out not by the Collector, but (as with companies) by the Inspector-General of Registration."

Then, Sir, I would quote the opinion of the Honourable Khan Bahadur Mian Fazl-i-Husain, Minister for Education, Punjab:

"The Muhammadan public opinion is in favour of a Bill providing for registration of waqf estates and the proper rendering of accounts by the mutwallis of such estates."

The Burma Government say:

"So far as the Bill simplifies the procedure by which dishonest mutwallis may be brought to book, it seems to meet with general approval."

Bihar and Orissa say:

"Muhammadan opinion in Bihar and Orissa generally welcomes the Bill in principle, and the Governor in Council accepts the need for some better regulation of the administration of waqfs than the existing law provides."

Sir, it will thus be observed that perhaps with the exception of the Bengal Government almost all the other Governments are in favour of the principle of the Bill. My friend, Mr. Kabeer-ud-Din Ahmed referred us to Act XIV of 1920; in his opinion that Act is quite sufficient for the purpose for which this Bill is intended. But if he had read that Act a little more carefully he would have found that that Act does not affect the question that is in issue at the present moment. The Bill as brought forward by my friend, Mr. Abul Kasem, is a sort of preventive measure and has for its object the compelling of mutwallis to register their estates and keep regular accounts; whereas Act XIV of 1920 applies only when a breach has been committed by these mutwallis. Until a breach has been committed I do not think that that Act can apply. Moreover so far as that Act is concerned, only a man having an interest in the property can move the Court, and I am not sure whether any Muhammadan can move the Court, because the word 'interest' is a very wide one, and I do not know if Courts would hold that any Muhammadan has got sufficient interest to move them.

Then again, Sir, what is the eventual remedy under this Act XIV of 1920? We must go once more to section 92 of the Civil Procedure Code, that is to say, we must go again and file a suit for the mismanagement of the estate. The only difference, if one proceeds under this Act XIV of 1920, would be that whereas under section 92 of the Civil Procedure Code, the sanction of the Advocate General is required, under this Act no such sanction would be necessary when a District Judge has decided that a

breach has been committed. Therefore, I believe, that this Act XIV of 1920 has absolutely no application to cases which would be covered by this Bill if it passes into law. I wish, Sir, my friend Maulvi Abul Kasem had made his Bill more general so as to apply to all kinds of trusts, whether Hindu or Muhammadan. In that case, perhaps all my friends here would have helped him all the more readily. But all the same, I would beg of my Hindu friends to support this Bill, because if they do so and if this Bill is passed into law, their turn will come next, and so far as the Hindu endowments are concerned, I have not the slightest doubt that in every part of the country there are very large endowments, perhaps larger than even Muhammadan endowments, which require protection as much or perhaps more than what Muhammadan endowments require. So far as the Government in this matter are concerned, I am sorry to say that it is my impression that they are going to oppose the Bill, not because that they do not like the principle of the Bill, but because they consider that times are not propitious. That would be, I believe, their principal objection that they will take to the Bill. I am not sure, Sir, that times are not propitious for a Bill of this kind. On the contrary, I am strongly of opinion that times are more propitious now than what they would be any time hence. The feeling of the Muhammadans all over the country, more especially of enlightened Muhammadans, barring those who have got vested interests in these endowments, is generally in favour of a measure of this kind, and the feeling of the Muhammadan public generally is changing from day to day with regard to the management of these estates. I am not sure, Sir, if this Bill is thrown out, that we will not be having another Akali movement in India so far as the Muhammadans are concerned, because the Muhammadan public feel keenly that their endowments should be managed well and regular accounts should be kept and should not be misappropriated. I therefore warn the Government that if they do not allow this Bill to pass into law, they will have very considerable difficulty with the Muhammadans of the country in a very short time. Sir, I support the Bill and also the motion that it be referred to a Select Committee.

Maulvi Miyan Asjad-ul-lah (Bhagalpore Division: Muhammadan): (The Honourable Member spoke in the Vernacular*.)

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I rise to a point of order. The Honourable Member is commenting on the details of the Bill. Will the Honourable Chairman decide whether it is relevant?

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): The Honourable Member has long since dealt with the principle of the Bill. Now he is going on clause by clause analysing its purpose and commenting upon it and what it should contain. At this stage I submit this discussion is a little out of order.

Mr. Chairman: The Honourable Member is bringing his remarks to a close.

(Maulvi Mian Asjad-ul-lah intimated that he had finished.)

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I wish in the first place to express the sincere sympathy of Government with

* The original speech together with an English translation will be printed in a later issue of these Debates.

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the object of the mover of the present motion. He desires to ensure that the religious endowments which have been made by pious Muhammadans in the past shall not be wasted. That, Sir, is an object which I think must commend itself to all Members of this House. The Bill, Sir, was introduced on the 26th September, 1921 and was circulated by order of Government. My Honourable friend Mr. Hussanally has referred to some of the opinions of Local Governments. I think that it is of the utmost importance in connection with this Bill that we should carefully consider those opinions, and accordingly I do not propose to apologize for again reading out some of the opinions. We will take the Government of Madras. My Honourable friend read paragraph 4 of their letter; he omitted paragraph 5. Paragraph 5 says:

"I am however to point out that such legislation is more appropriately left to the local Legislatures, and though the latter may not, without the previous sanction of the Governor General, modify or repeal any of the provisions of the Charitable and Religious Trusts Act of 1920, they have still ample scope for legislation in this direction. The case for all-India legislation on a matter of this kind is therefore in the opinion of this Government extremely weak."

A deeper analysis of existing conditions, however, indicates that for many years to come it will be the part of wisdom to continue this policy. Muhammadan feeling is very sensitive to outside interference with their religion and particularly so under the present political conditions. This Government are therefore emphatically of opinion that it is from a political and administrative point of view unsafe to cast on the Collector of a District, as Mr. Abul Kasem's Bill proposes to do, duties which are bound to bring him into frequent and serious conflict with Muhammadan religious feelings of the orthodox type."

I submit, Sir, that the whole principle of this Bill is involved in the control given to the Collector. We will turn to the Government of Bombay. The Government of Bombay commence their remarks as follows:

"The Government of Bombay are of the opinion that the adoption of the Bill would involve a decided reversal of the long-established policy of non-interference in religious matters. The opinions elicited indicate a wide divergence of opinion both as to the principles of and as to the practical expedients proposed in the Bill. Though endeavours were made to ascertain the views of the Muhammadan community, very little interest has been evinced, and many of the local officers report that they have not succeeded in eliciting any reply from the Muhammadan Anjumans and Associations consulted."

Then follows the passage that was read by my Honourable friend:

"In addition to this,"

the Local Government go on to say:

"the burden of labour and responsibility which would be entailed on the executive officers of Government would be excessive. On these grounds, the Government of Bombay consider that the Bill should be opposed."

My Honourable friend read the next paragraph, which I submit is a paragraph not applying to the present Bill. He then referred to the remarks of Mr. Aston, the Additional Judicial Commissioner in Sind. He read the first six words or so which were to the effect "I approve of the provisions in the Bill", he omitted the following words "*except those in Chapter III (which should in my opinion be omitted)*"—those, Sir, are all the provisions in the Bill relating to Committees—"and the subsequent provisions relating to central and district committees". If all the machinery goes, Sir, then there is nothing left in this Bill.

I do not think my Honourable friend referred to the opinion of the Government of Bengal. They say:

"In reply, I am to say that there is a general consensus of opinion that something should be done in order to prevent the misappropriation of charitable and religious

endowments by dishonest mutwallis, and to recover charitable funds which have fallen into the hands of private parties as there can be little doubt that there are many and valuable *waqf* estates throughout India, including Bengal which are grievously mismanaged and misapplied by their mutwallis or trustees. . . .

The Governor in Council would therefore welcome a well designed Bill to deal with such endowments."

"3. The proposed Bill however appears to be badly designed and proposes a scheme which will interfere with the legal rights of the mutwallis and bring itself into conflict with the Muhammadan Law. Having regard to the general trend of Muhammadan opinion which is opposed to this Bill, the Governor in Council is unable to lend his support to it. The times too are not propitious for such legislation."

We then go on to the United Provinces. The first sentence was read by my Honourable friend; the next sentence was not. It runs:

"On the other hand, those who have been consulted are almost unanimous in condemning the provision of the Bill which proposes to throw upon Collectors the onerous and invidious duty of improving the administration of *waqfs*,"

and so on, Sir. We can go through all the opinions of the Local Governments who have really summarised the opinions of the different authorities—official and Muhammadan—consulted by them. While it might be said that there is very general opinion that endowments made by pious Muhammadans in the past are being wasted, there is practically an unanimous opinion, Sir, from all the authorities consulted against the Bill. One of the great objections taken is to the work to be thrown upon the Collectors. My Honourable friend, Mr. Hussanally, objects to references to detail, but, Sir, under the Standing Orders of this House I think details must be referred to in so far as they are necessary to explain the principle of the Bill. Under section 4 of the Act the Mutwalli is bound to submit information to the Collector within whose jurisdiction the *waqf* property is. Under section 5 the Collector has to call for further information, and so on. Accounts have to be submitted to the Collector. Then the Collector is *ex-officio* President of the District Committee. This District Committee, presided over by the Collector, under clause 18, has to obtain full information from the public records or by inquiries respecting all *waqfs*, and so on. Sir, this Bill does not distinguish at all between *waqfs* of large value and *waqfs* of small value, and the labours which will be thrown upon the Collector by its provisions would be intolerable. Sir, I ask the Assembly to recognise that this Bill deals with a transferred subject, the subject of charitable and religious endowments. How, Sir, can we properly and rightly in this Central Legislature throw upon the Ministers who are responsible for the administration of that subject, the burden which it is proposed by this Bill to throw upon them notwithstanding their opinions, as expressed in these letters from the Local Governments. I do not wish, Sir, to refer to the long discussion which took place in the sixties of the last century which led to the Act of 1863 by which Government executive officers were dissociated from the exercise of authority over religious trusts. Nor do I wish to refer at length to the very lengthy discussion which eventually resulted in the Act of 1920, which in my opinion was very relevantly referred to by my Honourable friend, Mr. Kabeer-ud-Din Ahmed. The main principle of that Act I may say was that any general all-India enactment should not authorise or sanction any system of control over these endowments by the executive authority, but should recognise the agency of the civil court only and through them afford further facilities for obtaining information regarding the working of these endowments and controlling the action of dishonest trustees. The scope of this provision may in time be extended by local or general enactment, but this Bill is fundamentally opposed to the principle adopted in the Act of 1920. The Indian Legislature may pass this

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Bill, but if the Bill is passed, I think there is little doubt that the Muhammadan public will not accept this as evidence that the Bill was really needed. I think there is no doubt that the conservative section of Muhammadans will undoubtedly be hostile to the operation of this Act. I believe I am merely stating a fact, and I do so with no intention to cast any discredit upon them, but is it not true that the Muhammadan masses are singularly ignorant, gullible and fanatical? Would not the persons entrusted now with religious endowments organise opposition to this Bill if it ever becomes law, and would they not quite easily be able to excite fanatical feeling in connection with this subject? The Executive Government of India is responsible for law and order, but we do not wish to have to meet all the odium which will arise from the administration of such an Act as this. That odium, Sir, will fall on the Executive Government and not on the Legislature. And is the Legislature prepared to accept responsibility for the manner in which this Bill will be administered? Government frankly admit the needs for effective control, but the present measure is, in our opinion, unsuitable. We are not opposed to the principle of better supervision over these religious endowments, but we think, that any legislation going widely beyond the lines of the Act of 1920 should generally be local legislation. Machinery for control must be machinery designed or accepted by the responsible Ministers. It must also not associate the executive authorities of Government with the detailed control. You, Sir, are well aware of the Bill now before the Madras Council. I believe that that Bill has met with a good deal of opposition. It possibly goes too far, but, so does the present Bill. I may add, Sir, that, if any Local Government desires to pass legislation dealing with the subject, and does pass such legislation in their local Councils, then the Government of India are prepared to take all steps required to supplement such legislation as may be necessary. We, Sir, cannot, however, accept the principle of this Bill, and, therefore, I must regretfully oppose it.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, after hearing my friend, Mr. Hussanally, I thought that the Bill was supported generally by Government, but I fear that his not having read lower down would mislead the House. I wish to be fair, and, after listening to these two gentlemen, Mr. Tonkinson and Mr. Hussanally, I thought that, unless I dealt with these two paragraphs, I would be misleading the House. The Madras Government says:

"I am, however, to point out that such legislation is more appropriately left to local Legislatures; and, though the latter may not, without the previous sanction of the Governor General, modify or repeal any of the provisions of the Charitable and Religious Trusts Act, 1920, they have still ample scope for legislation in this direction. I am to add that this should not be understood as a mere technical argument based on the letter of the Devolution Rules. The conditions of the different provinces vary considerably. Muhammadan public opinion in religious matters in this province, for instance, is far less advanced than in certain other provinces of India, and is not prepared to accept legislative inroads into custom and usage with the same readiness that those other provinces appear to be. The case for all-India legislation on a matter of this kind, is, therefore, in the opinion of this Government, extremely weak."

I have also seen the opinions of other Local Governments and, in my opinion, they are generally opposed to the Bill. Now, with regard to the opinion of Muhammadans, I have been trying to read these opinions. Baluchistan is a Muhammadan country and with regard to that province it is stated:

"The matter has been referred to the Anjuman-i-Islam at Quetta which represents the organised Muhammadan opinion of Baluchistan. That body has presented a

unanimous opinion against the introduction of the measure in this province. Its members view with suspicion any official interference with the management of what is purely private religious property and would strongly resent any attempt to hamper the unfettered administration of these pious trusts by members of the community for whose use they were ordained. The ordinary law should in their opinion be able adequately to provide for differentiation between fraudulent dispensations and genuine charitable provisions."

After reading these opinions one cannot help saying that the Government generally are opposed to the Bill, not to speak of the people also. The organised opinion of the Muhammadans in Baluchistan is opposed to the Bill.

Mr. J. Ohaudhuri: Are the Indian Muhammadans opposed?

Khan Bahadur Sarfaraz Hussain Khan: Yes.

Now you have to look to the condition of the country also. In paragraph 7 the Madras Government say:

"Proceeding to the principles of Mr. Abul Kasem's Bill, I am to refer first to the main point raised in your reference, viz., whether a departure should now be made from the principle which Government have followed since 1863 that the executive officers of Government should be entirely free from any connection with religious trusts. It is quite possible to argue that, with the introduction in the provinces of an executive responsible, though partially, to a representative Legislature based upon a wide electorate, this policy of non-interference need not continue to be sacrosanct. A deeper analysis of existing conditions, however, indicates that for many years to come it will be the part of wisdom to continue this policy. Muhammadan feeling is very sensitive to outside interference with religion and particularly so under the present political conditions."

Then I wish to place one more point before the House and it is this—We have got Ministers now and these Trusts are under those Ministers. Is this all-India Legislature entitled to pass this legislation and force it upon them unless they want it? That is a point for the whole House to consider. If they consider that this all-India Legislature is entitled to force legislation upon them without their consent and without having consulted them, then I have nothing more to say and will not oppose the measure. But I want to place these different points before the House: Firstly, that the Government, almost all the Governments are opposed to it; secondly, that Muhammadan opinion, though divided as I have said, yet reasonable and sound Muhammadan opinion is also opposed to it. This is a very important piece of legislation. It affects not merely the interests of one or two men, but the whole of India. Looking at the Khilafat movement, if you go deeply enough into the matter you will see there is something very deep in it. Please look at every side of the question. Do not merely think of the mismanagement of certain Waqfs, pass over such things, brush them aside. You must go more deeply into the matter and see what the effect of this legislation on Indian Muhammadan public opinion and especially on the religious minded section of it will be. I have placed all these facts before you and I do not think that an all-India legislation would be very desirable. It should be left to the Provincial Governments. But if the House considers that the Bill should be referred to a Select Committee, I shall do what I can for it there; only I must take exception with regard to this point, whether it is not a matter which should be left to the local Councils.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I must first apologise to my friend, Mr. Abul Kasem. To tell you the truth, up to the last moment I agreed with him and promised to support the Bill; but after listening to the different speeches, I

[Khan Bahadur Abdur Rahim Khan.]

do not think I can keep my promise. It is in the interests of Muhammadans that I wish to appeal to him. I have got some observations to lay before him in particular and before this Honourable Assembly in general. The first thing is that we know that unfortunately the Muhammadans are not so much educated as other communities. I am coming to that point. That would mean open war with our religious heads and it will also be a great discouragement to our political propaganda, because the educated people who are few in number will go against the religious heads who are worshipped by the masses, and the masses will go against the educated classes. That would mean that there will be no co-operation between the educated and the uneducated masses, and so I think it is in the interests of the Muhammadans in particular that this Bill should be dropped at once.

I will now come to the other point; an Honourable Member said that this will lead to an Akali movement. If we were all educated it would not have mattered—I think in fact it would have been the best thing for us that could happen. But unfortunately we are not all educated. In the case of the Akalis they were all of one mind and one voice. But unfortunately there is a difference of voice and a difference of mind here. Moreover there is another point which I wish to make out. The Assembly will excuse me if I say it, but I do wish to say, what is the opinion of local Governments? I speak as a Muhammadan and I think that should have more weight than the opinion of the Government. Government has to look at it from its own point of view and we have to look at it from our point of view. I am certainly one with the Government in thinking that it will have a lot of troubles if it will interfere in this matter. I think that Government will be ungrateful to a good many religious heads who have been helping it in many ways. At such a time as this if the Government interferes I think it will create a lot of troubles of no end for itself. I think Government should not interfere on this point and I would appeal to my Honourable friend, Mr. Abul Kasem, that he should drop the Bill because he has gained his point; the Akali movement has awakened every religious head and they know how they stand; I do not think they will misuse the trust properties in their hands; if they do misuse I think they have had enough warning and in future we can take care against such misuse. At present I think they will be careful and will not give us an opportunity to move this Bill again. So I appeal to my friend to drop the Bill and I appeal to my Muhammadan friends to look at it from a broad point of view. I think we are few in number and the masses outnumber us and they are not educated; these religious heads, these *Pirs* have got great influence over them and I think we will be ruining our political propaganda if we go against them at such a time.

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, I make no apology either to the Mover of the Bill or to any other Member of this House for the remarks which I propose to make. The Honourable the Government Member began by an expression of sympathy with the principle of the Bill and ended in certain fears which he entertained about the actual operation of the Bill if it was passed into law. I have heard diverse opinions of Members from the farthest town in British India on the North-West Frontier and from the most southern town where Muhammadan voice appears yet to exist and I regret to find that they hold diametrically opposite views. I belong to a province which claims the

largest percentage of Mussalman population. (*Cries of 'No, no', Bengal.*) Please listen. In the Punjab the Mussalmans are 55 per cent. and in the five districts of the Frontier they are 93 per cent. In Bengal the Mussalman population is not 55 per cent. I say this without any fear of contradiction. (*A Voice: "You mean percentage."*) Yes, that is what I said and meant. Therefore, I think, Sir, that so far as my own province is concerned, and so far as my capacity as a representative of the Muslim community allows, I am in a position to voice its views better than those gentlemen who come from provinces where the Mussalman population is only 2, 3 or 4 per cent. Sir, this is a very important question and has been exercising the minds of the Muslim public, at least in my province, for the last 25 years. One of our recognised leaders, the late lamented Mr. Justice Shahdin, took considerable interest in this question. He collected information and he even corresponded with all the leading Mussalmans of India, and he was determined to see the Muslim Waqfs managed properly, but circumstances did not permit him to do so. Sir, whatever may be the views of the Honourable Mian Sir Muhammad Shafi as a Member of this Government, I hope he will stand up as a member of his community to say whether I am right in saying that that is the feeling of the Mussalmans of the Punjab. Years ago they formed an association in the Punjab called the Anjuman Auqaf-al-Muslimin. They have been trying to protect certain Waqfs from being wasted or misused, but as there is no legal sanction to back them up they have not succeeded in their efforts. I think, Sir, it is the duty of the Government to put a stop to misappropriation of Waqf income or Mutwallis committing criminal breach of trust. That is what is needed. We do not want more. Can the Government say that it is not its duty to stop criminal breach of trust in the country? I think it is the first duty of a State to protect the Waqf property from being criminally misappropriated or criminal breach of trust being committed with regard to it. We do not want the Government to interfere with our religion, and by putting a stop to the criminal breach of trust by Mutwallis they will not be interfering with our religion in any way. If our religion allows the managers of endowments to commit criminal breach of trust, then, of course, the Government may refuse to interfere because they will not interfere with our religion. But I fail to see how interference with religion can come in. Our religion expressly enjoins that every Muslim should discharge his trust most faithfully and honestly. Therefore if the managers of religious endowments act dishonestly, they deviate from the path of rectitude, righteousness and honesty, and it is the duty of the Government to protect the public money from being wasted. If Government is afraid of doing that, I think they are afraid of performing a duty which is the first function of every Government to perform.

With regard to some of the dangers to which reference was made by the Honourable Mr. Tonkinson, I must say that I realise them. There are difficulties indeed and our path is not so smooth as some may imagine it to be. There are rocks and shoals, and we must take care that we steer clear of all difficulties. But that is not a reason for throwing out the Bill. Let us accept its principle; let it be committed to the Select Committee; let the Select Committee modify it, let its language be improved and embellished and let all objectionable clauses be omitted or modified. And then, if necessary, we can again send the Bill in its improved form to Local Governments for opinion. Section 74, clause (c) of our ~~Business~~ Bye-Laws says: "After the presentation of the final

[Chaudhri Shahab-ud-Din.]

Report of the Select Committee of a Bill, the Member in charge may move that the Bill as reported by the Select Committee be re-circulated for the purpose of framing further opinion thereon". So if necessary, when the Bill comes up again before this House, it may be re-circulated. But there is reason to throw out the Bill at this stage while expressing sympathy with it. In the words of Sir Walter Scott "Should the path be a dangerous one"—"The danger's self is lure alone"—I think a strong Government, as the Government of India is, should not be afraid of doing its duty. It must do it and do it manfully. I must point out that unless the Government is prepared to catch the bull by its horns, it is possible, I don't say it is probable, that the Akali movement to which reference has been made by certain speakers, might be repeated in certain provinces; at any rate in certain districts of my province. I think in saying this I am doing my duty towards the Government as well as towards the community which I represent. We should gauge public opinion now and try to satisfy its legitimate demand so far as we can. As regards the opinions of Local Governments, we can very easily meet them by inserting in the Bill a little clause to the effect that a Local Government may when it deems expedient or necessary introduce the Act in the whole or part of its Province. That is to say, it may be provided in the Bill itself, that it may be introduced by a Local Government with the sanction of the Governor General in Council, when the Local Government deems it expedient or necessary to do so. But we should not shirk our duty and responsibility, we must do it, and do it well. No one can deny that the income of religious endowments is being wasted, misappropriated, and mis-spent, and yet no one can raise his voice. We must see that every trustee performs his duty as a trustee. Government is perhaps the biggest and strongest trustee, and I expect it to perform its own duty as a trustee. With these remarks, I support the principle of the Bill, and not, of course, its provisions, nor its language. The principle must be kept in view, and the whole Bill may be re-drafted by the Select Committee; and if necessary opinions will be re-invited by re-circulation of the improved Bill, I have to make one remark about the personnel of the Select Committee. I do not know what reasons actuated the Honourable the Mover in recommending the personnel of the Committee, but I think that the personnel is not what it ought to be: I would suggest, if the President will allow me to do so that the names of the Honourable Mr. Tonkinson and the Honourable Dr. Gour should be added on so that they might help us with their experience and knowledge.

Maulvi Abul Kasem: Sir, in offering a few words of reply, I have in the first place to congratulate the opponents of the Bill for having secured the services of my distinguished friend, Mr. Kabeer-ud-Din Ahmed, to lead the opposition. He made an excellent speech, but from what I did understand of that speech, I could only gather that he said that the present law was quite sufficient to meet the occasion and to control the trustees of these religious endowments. I may remind him that in the province from which he and I come, there are various endowments, big and small, but in the course of the last fifty years of which I have got information, there were only two cases instituted in the Civil Courts under the provisions of the law as it stands, and one was by the Maharaja of Giddhaur against the Mahant of Deoghar, and the other by the Government of Bengal against the Mutwalli of a Waqf estate. But, Sir, where can we get wealthy territorial

magnates to come forward to take upon themselves the responsibility, the expense and burden of carrying on litigation on behalf of poor people who are deprived of their rights in religious institutions? And where can we get a strong Muhammadan Member of Government to agitate and to convince the Government of the necessity in these hard days of spending Rs. 65,000 simply to remove a mutwalli? The provision lays down that any two Muhammadans or any two persons interested can go to a Court. But why should anybody go and take upon himself all the worries, the troubles of litigation in a Civil Court and bear the expense and risk chances of paying the expenses of the other side as well? We in this country have enough of litigation for our own private reasons: and we want to avoid litigation as far as possible. And sometimes peace is purchased at a sacrifice. Will anybody venture to come up and at least invite litigation, and invite it without any personal gain? I do not believe it.

Now, Sir, Mr. Tonkinson on behalf of the Government began by saying and the same thing was said by other members of the Government, that he was full of sympathy with the principle of the Bill. What I ask to-day, Sir

Mr. H. Tonkinson: Sir, I never said that I was full of sympathy with the principle of the Bill. I said that I wished to express the sincere sympathy of Government with the object of the Mover of the Bill, not with the principle of the Bill at all, Sir.

Mr. Abul Kasem: That was a technical mistake on my part. The sympathy was for the object I had in view. I am grateful for that. But they admit that Muhammadan waqf estates are mismanaged. They admit that the situation is such as to call for some remedy, for some action. What do they propose to do? We in this country, Sir, have been accused times out of number of being destructive critics; we are known only as hostile critics; we have no constructive programme to offer. I find, Sir, that in this instance the Government comes forward with sympathy with the object of a motion, recognizes the necessity for some action, but at the same time only offers the destructive motion that it should be thrown out; they have brought forward no constructive suggestion in this connection. This is not the first time that this question of Muhammadan endowments and all endowments has engaged the attention of the Government. Greater men than myself, distinguished men, have brought it to the notice of Government. Committees have been formed: meetings have been held: conferences have been held: but all have ended in smoke. Sir, my Honourable and gallant friend from the North-West Frontier Province and the Members of the Government have both made much of the masses who, they say, will rise in arms if a measure like this is brought forward. Unfortunately, Sir, the illiterate masses of India are made use of by everybody in this country for his own purposes. Whenever the Government has to defend or stick to a reactionary measure, or to oppose a liberal movement, they come forward on behalf of the masses of this country and they say that the illiterate masses do not want it, it is the infinitesimal minority of the educated classes who do. Whenever any public man, if you like to call him a public agitator, wants to throw his programme on the Government, he just gets up on the platform and says that the masses are behind him. But the masses never speak. Unfortunately they do not. I think if they could and did speak out, they would be emphatic in their support of the measure which is now engaging the attention of this House.

[Mr. Abul Kasem.]

Sir, a good deal of the opposition of the Local Governments is based upon the fact that the Collector of the District has been made responsible in many cases and because a good deal of the burden and responsibility will fall on his shoulders. And my Muhammadan friends Mian Asjad-ul-lah and Khan Bahadur Sarfaraz Hussain Khan have also expressed apprehensions on that head. Sir, I have repeatedly said when introducing this Bill and when making this motion this morning that I am myself not enamoured of the provisions of this Bill, and I have admitted that, not being a lawyer and not being a qualified draftsman, I have only copied out the provisions from various Bills and proposals submitted before the public from time to time, and that the question whether the District Collector should be the Chairman of the Committee, or whether it should be elected by an electorate or appointed by Government is a matter purely of detail with which we are at the present moment certainly not concerned. Sir, the principle lays down that endowed properties are to be duly registered in a public office, naturally the revenue office. And the second point is that there should be committees supervising and controlling, at any rate supervising and exercising a sort of control over the trustees of these waqf estates both in the districts and at headquarters of the province. These are the two main principles. If you are opposed to these two principles, you are welcome to throw it out. As I said at the outset, so I say again that I have a mandate from my constituents, who unfortunately happen to be Muhammadans, to press this Bill before this House and my duty is finished. I will have to press it to the last and if it is thrown out, the responsibility for it will lie on the Members of the Government and the Members of this House and not on my shoulders.

Then, Sir, it has been said that it is a matter entirely for provincial legislation, because it is a transferred subject and that Government does not want to interfere with religious usages and religious institutions. Whoever asked the Government to interfere with these institutions or to control them? The only thing is that we want authority from the Legislature to constitute a body which could exercise some sort of control over these trustees, who are, as my distinguished friend Chaudhri Sahab-ud-Din said, criminally misappropriating public funds. What would have been the state of these trust properties if we had a Muhammadan Government in this country? There would have been a Department of Waqf in the Cabinet itself, a portfolio dealing with Waqf estates, such as there are in all Muhammadan countries. Do those Governments interfere with the religious institutions of those countries? Somebody has said, Sir, I believe Mr. K. Ahmed, that the intention of the waqif will be destroyed. He ought not to forget (Mr. K. Ahmed: 'I said intention of the donor.')—donor, well, you will find that waqif merely means donor. He ought to remember that the object of this Bill is that the waqfnama in which the intentions of the donor (if he understands it better) are detailed should be registered, so that people may find out what the intentions and instructions of the donor were. I have been told, Sir, that my sympathies are with the money-lender. However much I may admire the business capacity of these money-lenders, I am not one of them. My interest is for the protection of trust properties, and why I referred to these money-lenders was that Mutwallis have their names registered as owners in the Collector's register, with the result that they mortgage the property and sell them to money-lenders and others and after they are sold the Muhammadan community cannot regain

them, because the Courts will not allow a third party and a *bonâ fide* purchaser to be cheated out of his money. To protect that I intended the registration of these properties. It will protect the estates and if any money-lender hereafter went and gave money to a Mutwalli on his waqf property, he will do so with his eyes open and will have no defence when he is called upon to give back that property. That was my object, and, Sir, I happen to be Mutwalli of a small waqf estate. I would challenge anybody to go to the Collector of Burdwan and find out anywhere that I am the Mutwalli, that I am not the real owner of the property. My name is registered as the owner of the property in the register. My father's name was similarly registered, and if I choose to call myself the owner, there is nobody who can prevent it. To give you one instance about the seriousness of the situation, a big waqf property was left by a pious Mussalman to another gentleman, not a member of his family, who became the Mutwalli. After his death, there was a dispute in the city of Burdwan among the various relatives of the dead Mutwalli as to who should be the Mutwalli and the members, and the leading members of the Muhammadan community, if I may so call them, by which I mean the Muhammadan pleaders, Muhammadan Mukhtears and one or two merchants, sat there to settle up this dispute among the family members of the Mutwalli and to make the award. And what decision did they come to?

They said the best course would be to divide the property according to the Mussalman law of inheritance and have their names registered separately, and it has been done, and it has been done after the introduction of this Bill. It is not a question of private trust for waqf is a charitable endowment unless it is *waqf al il aulad*. Therefore, Sir, I do not want to detain the House, but I extremely regret, and reciprocate the regret of my friend, Mr. Abdur Rahim Khan, that I cannot accede to his request and withdraw the motion, because I have a duty to discharge to the people who have sent me here, and I will feel I have done it if I press the motion, and if the House rejects it, the responsibility will rest with the House.

(An Honourable Member: "I move that the question be now put.")

Mr. H. Tonkinson: I wish to offer just a few remarks on the course which this debate has taken. I would like, first of all, to invite the attention of the House to the fact that this Bill is not in principle simply a Bill providing for the registration of waqfs and the waqf accounts. It goes far beyond that. The whole principle of the Bill is in the control, control in clause after clause, which is given to the Collector.

Maulvi Abul Kasem: Those clauses may be deleted.

Mr. H. Tonkinson: Sir, we are asked to approve the principle of a Bill which gives this control in one clause after another to executive authorities, control over religious endowments, a thing, Sir, which the Government of India, so long ago as 1863, definitely decided that their executive officers should be disassociated from . . .

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): How did Government assent to its introduction?

Chaudhri Shahab-ud-Din: Cannot those clauses be omitted if the Bill is put to the House?

Mr. Chairman: The Honourable Mr. Tonkinson will proceed.

Mr. H. Tonkinson: Sir, much play has been made of the fact that we on the Government side have merely given destructive criticism to this Bill, but, Sir, under the present constitution the whole of this subject is a Provincial matter. What responsibility have we, I would like to ask my Honourable friend, Chaudhri Shahab-ud-Din, over the control of charitable and religious endowments here? I have said, Sir, that Government are quite prepared to supplement, so far as may be necessary, any legislation which any Minister may introduce in any local Council. That, Sir, is, as I said, absolutely as much as we can undertake to do. To judge from the letters received from Local Governments, we have practically all the Ministers who will be responsible for the administration of this Bill opposed to it. I therefore, Sir, oppose the motion.

Chaudhri Shahab-ud-Din: Sir, with your permission, may I just say a word?

Mr. Chairman: No, I cannot permit the Honourable Member to speak now.

The motion before the House is—

“That the Bill to provide for the registration of Waqf Estates and the proper rendering of accounts by the Mutwallis of such Estates in British India, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Saiyid Muhammad Ismail, Mr. Zahid Ali Subzposh, Mr. W. M. Hussanally, Mir Assad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhri Shahab-ud-Din, Mr. Muhammad Yamin Khan, Haji Wajih-ud-Din, Khan Bahadur Sarfaraz Hussain Khan, Mr. Abdul Rahim Khan, Khan Bahadur Zahiruddin Ahmed, Maulvi Mian Asjadullah, Mr. K. Ahmed, Nawab Ibrahim Ali Khan, Lala Girdharilal Agarwala, Maulvi Abdul Quadir, Mukhdum Sayyid Rajan Buksh and the Mover.”

Chaudhri Shahab-ud-Din: May I suggest, Sir, the addition of two names for the Select Committee, and, if the House commits the Bill to the Committee, those two names may be included. They are the names of Mr. H. Tonkinson and Dr. H. S. Gour.

Mr. Chairman: The Honourable Member can move that with the leave of the House. Has the Honourable Member the leave of the House? (Cries of “Yes, yes.”)

The names were added.

The Assembly then divided as follows:

AYES—41.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Asjad-ullah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bijlikhan, Sardar G.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Gajjan Singh, Sardar Bahadur.
Gour, Dr. H. S.
Gulab Singh, Sardar.

Hussanally, Mr. W. M.
Jamnadas Dwarakadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Latthe, Mr. A. B.
Misra, Mr. B. N.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Shahab-ud-Din, Chaudhri.
Shahani, Mr. S. C.
Singh, Babu B. P.
Subrahmanayam, Mr. C. S.
Venkatapattiraju, Mr. B.
Vishindas, Mr. H.
Wajihuddin, Haji.

NOES—30.

Abdul Rahim Khan, Mr.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Ibrahim Ali Khan, Col. Nawab Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Percival, Mr. P. E.
Rajan Baksh Shah, Mukhdum S.
Reddi, Mr. M. K.
Sams, Mr. H. A.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.

The motion was adopted.

THE LAND ACQUISITION (AMENDMENT) BILL.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I move:

“That the Bill further to amend the Land Acquisition Act, 1894, be referred to a Select Committee consisting of Mr. N. M. Samarth, Mr. J. N. Mukherjee, Sardar Bahadur Gajjan Singh, Mr. Hussanally, Mr. B. Venkatapattiraju, Mr. Jamnadas Dwarakadas, Rao Bahadur T. Rangachariar, Rai T. P. Mukherjee Bahadur, and myself.”

I find some difficulty in providing for the representation of the official Members on the Committee, since neither the Law Member nor the Revenue Member to whose department the subject matter of this Bill relates is a Member of this House. If the Government proposes to add any official Members to the Committee, Sir, I shall be quite agreeable to that. Now, Sir, the House will remember that I introduced this Bill in the Delhi Session last year. It was subsequently circulated for opinion and a large body of opinion, both official and non-official, has been collected. I proposed to move this Resolution last September, but the Government then said that they were contemplating the introduction of a larger and more comprehensive measure to amend the Land Acquisition Act and suggested that I might await the result of that. I find, Sir, that the Government has put forth no measure of their own so far, and I do not know whether they have got materials ready for framing a Bill even now. This House is coming very near to its close and I do not wish, therefore, to put off this matter any further and I therefore make this motion for referring this Bill to Select Committee.

Sir, the object of the Bill is threefold. One is to provide a statutory remedy against unlawful or vexatious acquisition of land. Another is to prevent the officer responsible for selecting the site and making the preliminary inquiry in regard to it, being appointed Collector for the purpose of making the award; and the third object is to prohibit the Collector from enforcing his own order. Of these three, the first is the most important and I shall devote the greater part of my remarks to that object.

In all civilised countries, Sir, the right of private property is recognised. Every individual has a right to hold and keep his property not only as against every other individual but also against the Government. But Government is in all civilised countries given power to compulsorily acquire

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private property when that course is necessary in the public interest, and therefore we see the Government in India also is empowered to compulsorily acquire land for public purposes. That power is conferred by Act I of 1894 on the Government. The power to acquire land compulsorily is given by an Act of the Legislature and therefore it follows, Sir, that the provisions of the Act should be strictly followed and it also follows that there must be some safeguard provided against excessive or improper use of the power given by the Legislature. There is no such safeguard provided now under Act I of 1894. Section 4 of the Act provides that "When it appears to a Local Government that land in any locality is needed for a public purpose a notification to that effect shall be published in the official Gazette, and the substance of that notification made known at convenient places in the said locality." Thereupon it shall be lawful for an officer authorised by Government to enter upon the land and take measurements, fix boundaries and do all necessary acts preliminary to the acquisition of the land. This is called the preliminary investigation. When this is over, and it is decided to acquire the land, section 6 of the Act provides that a declaration to the effect that the land is needed for a public purpose or for a company be published in the official Gazette, and "the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, and after making such a declaration the Local Government may acquire the land in the manner hereinafter appearing." Section 11 which deals with inquiry and award by the Collector gives power to the landholder to raise objections only in regard to three matters, namely, in regard to the measurements of the land, the value thereof and the respective interests of the several persons claiming compensation. If the landholder does not accept the award of the Collector, he can, under section 18, ask the Collector to refer the matter to the Civil Court. It will thus be seen, Sir, that the landholder has no opportunity to object to the acquisition itself on the ground that the purpose for which it is proposed to acquire the land is not a public purpose or that the acquisition is improper. As soon as a notification stating that the land is required for a public purpose is published, the notification by its very publication becomes conclusive evidence that the land is required for a public purpose and the question cannot be re-opened. Thus you will see, Sir, that under the law as it is, the owner of the land which is proposed to be acquired has no opportunity to raise any objection to the acquisition itself. I do not mean to deny that in certain provinces there are some departmental rules requiring some sort of notice to be given to the landholder before the notification is published in the Gazette, but that is not a statutory remedy, and it can be changed at any time by the Local Government. Moreover, Sir, from my experience of the working of that rule in the Madras Presidency, it affords very little protection to the landholder against improper acquisition. He puts in a petition objecting to the acquisition, and does not know what has become of it. No inquiry is held. He is given no opportunity of showing how the acquisition would be improper. He knows in fact nothing about his petition, and the only thing he knows of the whole matter is when he gets a notice from the Collector informing him that he proposes to make an award. The Collector says to him in his notice "I am holding an inquiry as to the amount of compensation that is payable to you on such and such a day, so you can come and make your representation." That is the only notice the landholder gets about the matter. Till then he knows nothing, because

no inquiry is held, and he is not given an opportunity to adduce any evidence to show how the acquisition will be improper. Therefore, I say, Sir, that although there are departmental rules in some provinces, they do not afford the protection to which the landholders are entitled. I shall now show, Sir, that there is ample ground for supposing that the existing law does not contain any effective remedy against improper acquisition of land. I shall first quote, Sir, some of the official opinions that have been received on the Bill itself. I shall take the Government of Bombay first. The Bombay Government admit, "That the present procedure for the acquisition of land causes occasional hardship and gives rise to complaints which are not always without foundation." I am quoting their opinion. "And it is in view of the compulsory nature of the action taken that it is desirable that opportunities should be given to the owner of the land which is sought to be acquired to state his objections to the acquisition." Here is the opinion of the Consulting Surveyor to the Government of Bombay. "I am thoroughly in sympathy with the proposal to allow persons interested in the land which it is proposed to acquire, the fullest opportunity of registering their objections before acquisition. Dealing with the acquisition of property all over the Presidency including Sind, as I have to, I have been impressed over and over again with the real grievances of the owners of properties who have never had the slightest opportunity of objecting to the acquisition of their properties. It must be definitely recognized that Government is to be the final arbiter to decide as to whether the land should be acquired or not, and if this statement is accepted, I strongly urge the desirability of the abandonment of the policy which has been in vogue hitherto of exercising over the owners of landed property such vast powers as are possessed by Government. It is of the utmost importance that the public should feel that they will be given every opportunity of a full and unbiassed hearing of the other side of the case. I am fully convinced that if the public were given such opportunity, many of the objections which come to my notice of compulsory acquisition of properties would be reduced to almost vanishing point." Sir, what can be more convincing than such an opinion coming from such a source? Then, Sir, this is what the Chairman of the Bombay Trust says on the subject: "The present procedure for the acquisition of land causes occasional hardship and gives rise to complaints for which there is considerable foundation. It is, in view of the compulsory nature of the action taken, desirable that an opportunity should be given to the owner of the land which is sought to be acquired to state his objections to the acquisition, but these objections should be limited to the grounds that the acquisition is not for *bond fide* public purposes, or that the land has been selected for some private reason." The Judges of the High Court of Bombay have "no doubt that considerable dissatisfaction has been caused in recent years by Government acquiring land under the Act for private Companies." The Government of the United Provinces says that, after consulting certain officers who have much experience of land acquisition work, it "is of opinion that there is some justification for allowing the owner of the land sought to be acquired the right of objecting on the ground that the land is not required for a public purpose, or that more is being acquired than is really necessary." The District Judge of Ahmedabad, in the Bombay Presidency, says that "there have been cases in which it has been argued with considerable force that the proposed acquisition was being made not because it was absolutely necessary for the purposes of the Company but because it was a cheaper alternative to another course which the Company was bound to take," and then he proceeds to give a concrete case which came before

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him, which illustrates the present method in a very striking manner. This is, Sir, what he says about a matter which came before him in Compensation case No. 10 of 1919:

"Four *gunthas* out of a plot of land belonging to one Manicklal Motilal by which stood a Bungalow, a well and several outhouses and abutting on the Kaira Trunk Road, which provided the most convenient passage to the bungalow and its surroundings were acquired for the Nadiad Kapadvanaj Railway; compensation was allowed for the same, the owner being assured at the same time that another passage would be provided. This passage was not promptly provided, and a long correspondence ensued between the owner on one side and the Collector of Kaira and the Railway authorities on the other. Subsequently a plan of the proposed road was sent to the owner and he was informed that arrangements were being made for providing him with an outlet. The Collector, however, refused to recommend the acquisition of a plot of land for the purpose of providing the outlet, and informed the claimant that since the Railway Company were arranging to acquire the bungalow and its compound there would be no necessity for constructing a road. He wrote again to the claimant informing him that the Railway Company had preferred acquiring his bungalow and outhouses to providing him with a metalled approach road. After this, a Government notification was published declaring that the claimant's plot, with the superstructure thereon was required for a public purpose, namely for the Railway Company. It was eventually acquired and on the case coming up before me, the claimant's pleader argued that this notification was illegal and *ultra vires* and that any acquisition of the claimant's bungalow and compound on the ground that it was more costly in the eye of the company to provide an access thereto in place of one removed by their own act was neither an honest nor a legal exercise of the powers conferred by the Land Acquisition Act. I had, with great regret, to disallow this argument, in view of the clear provisions of section 6 of the Act, though I felt no doubt after reading the correspondence between the claimant and the Railway Company that the acquisition of the bungalow was decided upon because it was considered preferable and cheaper to providing an access to which the Railway were bound under the terms of the first award."

This is what the officials themselves have to say upon the subject. Now I propose, Sir, to take you to the Madras Presidency and show you what is being done in certain parts of that Presidency in the matter of assigning house-sites. The power of acquiring land to be assigned as house-sites was introduced for the first time in the Act of 1894 after a good deal of opposition and discussion, and it was only by a narrow majority that that point was carried. Recently the Madras Government issued orders that land should, whenever necessary, be compulsorily acquired to be granted as house-sites to the members of the depressed classes who generally possess no houses of their own. The cost of the acquisition is to be borne by the Government in the first instance and to be recovered from the assignees in easy annual instalments—15 or 20 I suppose. This is done in pursuance of the policy of Government of ameliorating the condition of these unfortunate people. So far no objection can be properly taken to this policy. But see how it is worked in practice. I have got with me printed copies of memorials presented to the Government and the Legislative Council of Madras by Mr. T. Somasundaram Mudaliar—a landlord in the Tanjore district and a Member of the Madras Legislative Council, concerning the doings of the Labour Department in that district. The memorial states that the Assistant Labour Commissioner is overzealous and, contrary to the orders of Government, acquires land for assignment as house-sites to persons other than those of the labouring classes—i.e., to money-lenders, Government employees, mirasidars, merchants, persons who already own houses and even to persons who are not residents of the village in which the land is acquired. This allegation is supported by several annexures giving particulars of individual cases. One of these annexures states that one Maruthamuthu Naickar to whom a house-site is given in a certain

village was not a resident of that village at all and that he owns a tiled house and wet and dry land in another village. The memorial further states that the principles laid down by Government that where Government land is available it should be utilized, and that the cheapest land available should be taken, are ignored. "Kandaswami Pillai of Ammanadapuram offered to give land at Re. 1 and this was not accepted and more costly lands the acquisition of which caused great hardship has been taken and the reason for such action is not apparent and the motive does not seem to be praiseworthy." I am quoting from the memorial. I know that some of the statements were controverted by the Labour Commissioner in the course of a debate in the Legislative Council, but the very fact that such a memorial is presented not by an irresponsible private person, but by a Member of the Legislative Council itself is very significant. Sir, the doings of the Labour Department in the Tanjore District have a family likeness to what they are doing in my own district of Godavari. Here also the Labour Department started with the idea of acquiring house-sites for the depressed classes only, but subsequently they extended it to other classes, chiefly to the community of toddy drawers locally known as *Idigas*. This class is by no means a depressed class. There are some very rich men among them in my own taluq of Amalapuram. My Honourable friend can support me in that respect.

Mr. T. E. Moir: (Madras: Nominated Official): I demur to being asked to support any of the Honourable Member's statements.

Mr. J. Ramayya Pantulu: Several of them own lands of their own and very many of them cultivate others' lands as tenants. As a rule these people live in their own houses and are certainly able to buy more land if required. Nevertheless, the Labour Department (for which my Honourable friend was responsible for some time) compulsorily acquire lands to be given to these people on the same terms as to the Panchamas. I have got with me a list of not less than 65 cases in which lands were assigned to people who already own houses, in my own village and the bulk of these lands are covered with valuable cocoanut topes and are worth a thousand rupees or more per acre. I am sure that few or none of these people to whom houses are granted would have applied for those lands if they had to pay the value of the lands in lump sum. They applied for the sites because they thought or they knew that they would get them almost for the asking. It would occur to most people to inquire why these people who are able to buy their own house-sites should be given sites acquired by Government compulsorily. Well, it is difficult, Sir, to answer that question by anything that I can adduce to the satisfaction of the House.

There is another aspect of this question, which I must bring to the notice of this House, and that is one of the principles on which the Labour Department seems to be acting in my district. In that part of the country we have got field servants, and generally every landholder gets one or more of his field servants to live on his own land in huts erected by the landholders at their cost. It is for the purpose of watching those lands. It is especially so in the case of cocoanut topes which require to be watched and guarded. It is usual to build huts in those topes and get one or more servants to live in them. They live in the huts for a number of years. Now, under the system of acquiring house-sites for the depressed classes, the Labour Department has, it appears, made it a rule to acquire the very sites on which these people are living. See how much hardship this must

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cause to the landlords. This must be a source of friction between the landholder and the man. I do not object if all these people are given sites in one locality, if you are forming a new village where all the people could live. But you employ a man on your own land as your servant and the Government says "We will acquire that piece of land and give it to him." See how inconvenient that is to the landholder.

Mr. Chairman: Does the Honourable Member not think he is travelling too far into details and unless they bear upon the principle he may omit them?

Mr. J. Ramayya Pantulu: I want to say that the present law affords no safeguards, no relief to the landholder in the matter of acquiring land. That is my point. I believe I have said enough on the subject that the law as it stands does not afford a satisfactory remedy against the improper acquisition of land. I shall then proceed with what I propose should be done to remedy that evil. Before that I propose to refer to the law of England on the matter of land acquisition. According to Halsbury's Laws of England there are three ways of acquiring compulsory powers over land:

- (1) by the passing of a public general Act;
- (2) by promoting a private Bill which, when passed, becomes a local and personal Act; and
- (3) by proceeding under existing Acts to obtain an order which is commonly referred to as a Provisional Order.

The last method approximates most to our law and it has been described thus:

"In order to save the expense and trouble of proceeding by private Bill to obtain compulsory powers to acquire land, Parliament has, in a number of public general Acts, provided simple methods of procedure. This procedure varies somewhat in the different Acts, but its principal characteristic is that an order conferring the powers is made by some person or body mentioned in the particular statute, which order however, is not operative until it has been confirmed in a manner provided in the general Act. Until that has taken place it is said to be provisional only; hence this method of obtaining compulsory powers is known as procedure by Provisional Order. The main features are alike in the different statutes. The first requisite is that the person or the body seeking the power should give ample notice of their intentions. This is done by advertisement in the local newspapers, in which full particulars are given, and by the service of notices on every owner, lessee or occupier, or reputed owner, lessee or occupier of the lands proposed to be taken. The next step is to petition the authorities who have the power to make the orders. This authority is usually one of the Government departments. The petition must give full particulars and be supported with evidence to show compliance with the provisions of the Act. If the authority are satisfied with that evidence, they will consider the petition, and if, in their view the matter should proceed, they direct that a local inquiry shall be held, at which all persons affected have an opportunity of being heard. The making of the Provisional Order empowering the petitioner to acquire the land follows if the authority are satisfied on the report of the person making the inquiry. It has next to be confirmed, and in the majority of cases, confirmation is obtained by the passing by Parliament of a Confirming Act, the Bill for which is usually submitted by the department making the order. In its passage through Parliament it is treated as a private Bill and owners of the land proposed to be taken or injuriously affected may oppose its passage before the Select Committee of both Houses."

Thus, you will see, Sir, that, under the English law, the owners of land which is proposed to be compulsorily acquired, have got ample opportunities of making their objections and having their objections inquired into and disposed of, whereas under our law there is no opportunity given to

them at all for making any objection. What we have to consider, Sir, is how this defect can be removed. The procedure that I have proposed is that the owner of the land should be allowed to raise this point along with any other objection before the Collector during the inquiry that he makes prior to the making of the award, and that, failing to get satisfaction there, he must, as in the case of other objections, be allowed to ask the Collector to refer the matter to the Civil Court. I am aware that there is a great difference of opinion on this point, but non-official opinion is, as a rule . . .

Mr. Chairman: The Honourable Member must bring his remarks to a close.

Mr. J. Ramayya Pantulu: I find that non-official opinion is, as a rule, in favour of that procedure. I admit that official opinion is rather against it, and the opinion of the Judges, which I have carefully examined, is divided on that point; some of the Judges of the High Courts, who were consulted, are in favour of it and some are against it, but I admit, Sir, that the official opinion is against the making of any reference to the Civil Courts. This objection is based on three reasons. One is that the Government cannot possibly do anything wrong.

Mr. Chairman: I have allowed the Honourable Member sufficient latitude. I do not think he need go into so many details.

Mr. J. Ramayya Pantulu: Very well, I will not go into details. I recognise, Sir, that there is a good deal of official opposition to the matter going before a Civil Court, but the chief ground on which that objection is based is that it causes delay. Well, on reading all these opinions and also by virtue of my experience as an executive officer. I do admit that there is some force, Sir, in the argument that, if every case in which an objection is made should go before a Civil Court, there might be much delay. So, I, personally, Sir, am inclined to reconsider that point. I will remove that, subject to some other method of inquiry, but this is a matter which could be considered by the Select Committee. I, for one, would not raise any objection to that provision being taken away and some more speedy procedure being adopted. That, however, is a matter of detail. The principle underlying my Bill is that the owner of the land must be given an opportunity to raise an objection. That is the principle underlying my Bill. If the Government admit that principle, as they ought to admit, because there is such a strong official opinion in support of it, they ought not to oppose my motion which is only to refer the Bill to the Select Committee where the agency by which the objection should be heard can be determined. I therefore move my motion.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, it is clear from the speech of the Honourable Mover of this Bill that, having gone carefully through all the opinions which have been received, he sees that the main principle for which he has been fighting, namely, that there should be a remedy to a Civil Court open to the aggrieved party, is one that cannot be accepted, and he is therefore prepared to drop it for himself.

Mr. J. Ramayya Pantulu: Oh, no.

The Honourable Mr. B. N. Sarma: To drop that portion of the Bill. Honourable Members have had these opinions circulated and it is clear that all the Local Governments who have been consulted are clearly of

[Mr. B. N. Sarma.]

opinion that the Bill is neither necessary nor desirable. The Government, it is true, have stated, and do state even now, that they have under consideration the question of amending the Land Acquisition Act, especially with regard to the recommendations made by the Industrial Commission. As to whether the Land Acquisition Act has to be amended or not is a subject on which the Government of India has been in correspondence with the Local Governments, whose replies have been received and the whole matter is being considered by the Government. We recognise that it may be, as has been pointed out by some of the Local Governments, that an opportunity may by means of a Statutory provision be given to the landholders or other persons whose lands may be acquired, to state their objections which at present they can state under various departmental rules. Such rules have been formulated by Bengal, Madras and other Provinces so that the Local Governments may have them always before them and consider them before they come to any decision in the matter. But that is entirely different from accepting the various principles for which my Honourable friend has been contending. It is clear from his statement that he has been largely influenced by the unhappy controversy which has been raging in some parts of the Madras Presidency during the last 2 years. It may be that some landholders feel aggrieved by the proceedings which have been taken for the acquisition of land to better the condition of the depressed classes. It may be that in individual cases the procedure has not been correct. I am not for a moment saying that it has not been correct; but to argue from a position due to temporary causes, where the Government, according to the Honourable Member himself, have been striving their level best to improve the depressed classes, and to say that the whole Act has to be revised in view of the experience which has been his unhappy lot to notice during the last few years, I think, is going too far. The Local Governments emphatically say that it would be absolutely unsafe to prolong these inquiries in the manner suggested in this Bill. Honourable Members who are lawyers will also remember that the Privy Council, in their latest judgment on the subject, have approved quite clearly and emphatically of the procedure under which the Government decide as to whether land acquisition is desirable in any particular instance or not. It is absolutely impossible to lay down categorically what is a public purpose. Nor does this Bill lay down what is a public purpose. If it is impossible to define what is a public purpose, what is the criterion which the Civil Court would have before it in coming to a decision as to whether the proceedings which have been taken are legal or illegal? The problem bristles with difficulties. The Act has been working fairly smoothly for the last 30 or 40 years (Honourable Members: "No, no.") excepting in one or two recent cases which have come into prominence in Bombay.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Most glaring instances.

The Honourable Mr. B. N. Sarma: It may be, and it is in respect of those acquisitions for public companies and for industrial concerns as I have said already that the Government has legislation in contemplation; and Honourable Members may rest assured that it is the desire of Government to set this matter at rest so that a satisfactory solution may be

reached from the public as well as the governmental point of view. The Government have no desire to acquire land for public companies and industrial concerns which would act as a hardship to the public at all. Therefore they do mean to provide a remedy and the necessary procedure is being evolved. But the Honourable Mr. Ramayya Pantulu asks us to agree to a measure under which all acquisition for a railway company, for a local board, for a municipality or for a proper Government purpose has to be brought before a civil court or any other tribunal and that the whole matter should be adjudicated upon before the proceedings are concluded. It would be impossible, I think, and it would be extremely costly to undertake any such inquiry whatsoever or to refer these matters to a civil court, and I think the Local Governments are perfectly right in stating that the procedure is one which cannot be acceptable to any Member of this Legislature. I venture to suggest that the remedy that is sought to be provided by this Bill is one which would lead to infinite difficulties, delays and excess cost, and is one which has not been accepted even in the United Kingdom. Even in the United Kingdom it is not the civil courts that adjudicate as regards the purpose. Here as I have already said the Industrial Commission has made certain recommendations as to whether acquisition for private companies and for industrial concerns could not be placed on a more satisfactory footing and that is a matter which is being considered; but this Bill does not confine its operation to merely industrial companies, but extends its purview to every act of acquisition for any public purpose, whether it be governmental, municipal, local or otherwise. Take the case of a railway company. Land has to be acquired in several districts; thousands of pieces of land have to be acquired. Well, are we to be told that a detailed inquiry of the sort adumbrated in this Bill would be possible or that any railway project would be feasible if all persons who object to particular patches of land being acquired are going to be given the liberty of going before a tribunal and questioning the legality and the equity of land acquisition? If A says that the railway need not run through his land and points out to B's land as the more appropriate one, notice will have to be given to B; the whole alignment will have to be changed. It would be impossible to do anything whatsoever if questions of that description are to be left to the determination of any court whatsoever or any tribunal which may be constituted for the purpose. So far as I am aware the only objections that have been raised in the past are with regard to the acquisitions for these industrial companies. I am not aware that the Government have been abusing their power in arbitrarily acquiring land for railway companies or for legitimate public purposes or local and municipal purposes. The whole of the machinery would come to a standstill, no project would be possible of completion if the elaborate machinery that is sought to be provided by this Bill is going to be accepted by this House. It would be extremely difficult, and we shall not know where we shall be. I therefore would suggest, Sir, that it would be impossible for Government to agree to the principle of this measure in so far as it asks that every question of this description should be arbitrated by a tribunal before the acquisition proceedings are concluded. But that does not mean that the Government do not realise the difficulties that have been pointed out. As has been observed by the Honourable Mover, some of the Local Governments themselves have suggested a slight modification whereby opportunities ought to be given to the public who may be affected by the proceedings under the Land Acquisition Act to state their case before the Government determines as to what has to be done. I think it is but fair that the persons

[Mr. B. N. Sarma.]

who are affected should be allowed to have their say and that the Government should have all the proceedings before them before they come to any final decision: but once the Government come to a decision, I submit to the House that that decision should be final. It is not likely that they would tolerate any vexatious or malicious proceedings or that they would acquire land unnecessarily especially in these days when every grievance can be ventilated in a Council. I may further point out, Sir, that every project has to be brought before the Councils for financial sanction, and therefore there is a definite amount of control now exercised both by the Central Government as well as by the Provincial Governments in the matter of acquisition. It is not that there is no remedy whatsoever. I have already said that the Government, when they bring in a Bill to modify the provisions of the Land Acquisition Act for the purpose of acquiring land for industrial concerns or for private companies, and not merely for governmental purposes, would certainly sympathetically view the position that has been placed before the House to provide a machinery whereby individuals who may feel aggrieved should be able to state their case fully and inquiries made before the Government comes to a decision. I would therefore suggest to the Honourable Mover that he has achieved his purpose in bringing this grievance to the notice of Government and that he might withdraw his motion. It is impossible to proceed with the Bill as it is. The wording is imperfect; it is impossible to define what "public purpose" is. If it is impossible to define what "public purpose" is, it is impossible also for a civil or judicial tribunal which cannot exercise its discretion arbitrarily but must proceed upon well defined lines, to come to a proper decision. I therefore think, Sir, that this Bill has been misconceived and that the motion should be withdrawn by the Honourable Mover. If he does not, I must oppose it.

Mr. Jamnadas Dwarkadas: I believe, Sir, that I shall not be doing justice to the wishes of my constituency if I do not speak on this question of the Land Acquisition Act while it is being discussed by this House. My Honourable friend, Mr. Sarma, has just pointed out that the Government themselves are considering the matter and probably in course of time they will themselves introduce a measure to amend the present Land Acquisition Act. I am very glad that the Government are going to do that, but I only hope that this desire on their part will soon materialise into action. If I am not mistaken, I think on one occasion, about a year ago it was perhaps, when a similar measure was introduced, the Government stated that they themselves desired to introduce legislation to amend this Act

The Honourable Mr. B. N. Sarma: May I make a personal explanation, Sir? I have already said that on a distinct reference, apart from this Bill, which has been made by Government, all the Local Governments have now replied, that the matter is being examined by the various departments and would be ripe for an early decision. We hope to be able, therefore, to proceed with such measures as may be ultimately decided upon by the Government at an early date.

Mr. Jamnadas Dwarkadas: Sir, I wish to emphasise the urgency of taking measures to amend the Land Acquisition Act at a very early date. I emphasise this fact particularly because this House I think is soon going to launch upon a policy of rapid industrialization so far as this country is

concerned, and however anxious I am—and there can hardly be anyone who is more anxious than myself—that this country should adopt a policy that will encourage rapid industrialization, no one is more anxious than myself to avoid the dangers that will come into existence with the adoption of that policy. One of the dangers will be that the necessity of acquiring land will come into the forefront. We have had an instance in Bombay where a good deal of agitation has been created, and a righteous indignation was caused at the acquisition of land under the present Land Acquisition Act. I want to point out to the Government that if they are going to introduce a Bill to amend the Land Acquisition Act, they must see to it that as far as possible the Land Acquisition Act that will be introduced now will be in conformity with the Act such as obtains in England. My Honourable friend, Mr. Sarma, pointed out the difficulty of determining as to what

Mr. Chairman: I can only allow the Honourable Member an opportunity, if he desires, to discuss the principle of the present Bill, not the details of an intended Bill about which he has already made ample reference.

Mr. Jamnadas Dwarkadas: I bow to your ruling, Sir. I am now discussing the principle. I only wish to say that there are safeguards in the English Act which do not exist under the present Land Acquisition Act here, and it is necessary that those safeguards should also be introduced into the Land Acquisition Act here, specially to determine the public purpose; the Legislatures of the country in the various provinces must be given a voice, a predominant voice in determining what is a public purpose and what is not a public purpose and the matter should not be left to the discretion of the executive. With regard to the other question as to who should determine the compensation and what should be the compensation, there, too, there are safeguards provided in the English Act which do not obtain here. Here, the man who notifies that a particular portion of land will be acquired, and the man who determines the amount of compensation, happens to be the same man. (Voices: "No, the Court.") Well, the Court comes in only when the matter is taken to the Court, but otherwise I think the Collector himself determines both. Well, my only point is this, that Government should try their best to bring the Act here in conformity with the English Act. That alone will be acceptable, I believe, to this country.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadian Urban): Sir, as I have given some thought to this matter, I should like to detain the House with one or two observations with the object of removing certain impressions from the mind of the Government Benches. The first thing is that the Government is under the impression that it is only the industrial undertakings which necessitate some change in the view point of Government as regards acquisition. The case of the public is,—“No, when land is acquired by Government itself even for big undertakings, such as those for railway purposes, or canal purposes, as well as for other purposes, Government does so without taking into consideration the difficulties caused by its procedure as to compulsory acquisition, and often makes up its mind to acquire land even when it is not prepared with the money and means necessary for carrying out its project.” I would detain the House for a longer time than I thought it necessary to do, at this late hour, if I were to cite instances of large acquisitions which have been lying unquod for 10, 12 or

[Mr. J. N. Mukherjee.]

even 15 years, without Government being able to put them to any use whatever. On top of that what Government does is this; if plots are acquired on which there are some machinery and structures, costing say about five lakhs of rupees, the Deputy Collector of his own accord goes into some sort of arrangement and says to the owner of the plot, "I will acquire some other land and give this land to you, so that Government will not have to pay compensation." That is what is in my mind. So that if the Government wishes to improve the Act the improvement cannot be effected within these narrow limits indicated by the Honourable Member for Revenue and Agriculture.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): I rise to a point of order. Is the promise of the Government under discussion by this House or the Bill moved by the Honourable Mr. Pantulu?

Mr. J. N. Mukherjee: The Bill is, Sir. It is proposed that the whole Bill should be rejected because there are two principles involved: one is the determination of the necessity for the acquisition and the reality of the purpose, and the other is the mode in which that purpose of the acquisition is to be achieved. As regards the last point I think Honourable Members of the House will agree that the civil court is not the proper place for these questions to be discussed and determined, and some other speedy method is required. What the public think is that it should not be left in the hands of one individual. There should be a Board in which the public have confidence for determining these questions as speedily as possible. The executive members of the Board may be officials and non-officials. (A Voice: "Educationists?") No, not educationists. They can be selected and various other questions which are incidental may be considered when the Bill is being considered. There is therefore not one point but several, but I will not detain the House by saying anything more. With these observations, Sir, I will resume my seat.

Mr. T. E. Moir: Sir, I greatly regret that I should have been drawn into the discussion on this Bill at all; and, strictly speaking, I suppose that the remarks I am going to make are irrelevant and if it is the ruling of the Chair that they are irrelevant, I am quite ready to submit to that ruling. But whatever view the House may take of this Bill, of the principles it contains, I do wish to protest against the manner in which Mr. Ramayya has brought in the Labour Department of Madras. I wish to protest against that being taken as relevant to his Bill or supporting it. His speech was presumably directed, or should have been directed, to the principle of the Bill, not to making an attack on the Labour Department of the Madras Presidency. I should perhaps not have felt it necessary to intervene even on that score, but he further proceeded to point me out to the House as having been personally responsible for those enormities of which he stated that the Labour Department had been guilty. He not only did that, but he asked me to support him in bringing these charges against that Department of which after all the administration is the concern of the provincial Government; he asked me to support him in the allegations which he made against that Department. Now, the contributions of my Honourable friend to the debates in this House are generally marked by experience and knowledge and a freedom from prejudice. But I am afraid I cannot say that they have been marked by those attributes in this case, and I at any rate must refuse, in order to support his Bill, to blacken my own face and to sit on a stool of repentance.

I would turn now to what he has placed before the House as evidence in support of his Bill. He referred to the action which has been taken in respect of the depressed classes in Madras, and he said that that action had led to all sorts of irregularities, oppression and so on, which presumably his Bill, if it had been in existence, would have prevented. But he did not say why that policy to which he referred had been adopted by the Madras Government. Most Members of this House are aware that one of the greatest problems with which we are faced in the Madras Presidency is the position of the depressed classes, and may I say that it is not merely, as possibly members who come from the North of India may suppose, a social question. It is not a social stigma or social or religious disabilities. It is very largely an economic question—a question of economic disabilities. And the position in reference to the depressed classes in the districts to which my Honourable friend referred is that they are mainly agricultural labourers. Further, that for generations untold they have been practically bound to the soil.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I must rise to a point of order. This speech justifies the action of the Labour Commissioner of Madras, with which we have nothing to do. I am afraid my Honourable friend is not speaking on the Bill. Whatever the arguments of Mr. Pantulu may have been, the question before us is whether the Bill is to be referred to a Select Committee or not. We have nothing to do with the actions of the Madras Government or the Labour Commissioner.

Dr. H. S. Gour: Sir, I also think that a side remark made by the Honourable Mover of this Bill cannot be made the pivot for a long discourse on that subject.

Mr. Chairman: I allowed the Honourable Mr. Moir to make a short reference to it, and I think, having done it, he will confine his remarks to the Bill. Now, I think he has sufficiently refuted the charge against the Labour Department.

Mr. T. E. Moir: Sir, I would merely say that my remarks are strictly relevant possibly not to the principles of the Bill but to remarks which were allowed and to arguments which were allowed to be adduced by the Honourable Mover of the Bill. But I of course bow to your decision, Sir, and I say nothing more. I should have liked, if I had been permitted, to explain how entirely wrong an idea the Honourable Member . . .

Dr. H. S. Gour: I rise to a point of order. If one Honourable Member makes some irrelevant remarks, does it justify another member making an irrelevant reply?

Mr. T. E. Moir: If I might rise to a point of order, Sir; if a Member of this House, who happens to be an official Member, is attacked in respect of his administration of a department in this House, is he to be attacked without a right to defend himself?

Mr. Chairman: Mr. Moir will resume his seat. I have already permitted Mr. Moir, having reference to the remarks made by Mr. Pantulu, to travel outside the régime of strict relevancy in order to give him an opportunity to refute the remarks. Having done that, I must call upon him to speak on the Bill.

Mr. T. E. Moir: Sir, I only rose in order to point out to the House that the so-called evidence adduced by the Honourable Member was not relevant

Mr. Chairman: The Honourable Member is still repeating the same remarks. If he is not going to speak on the Bill, he must close his speech.

Mr. T. E. Moir: And I have no desire, under the circumstances, to say anything further.

Mr. J. Ramayya Pantulu: In the first place, Sir, I must say that I never meant to attack my Honourable friend, Mr. Moir. I never meant to ask him, Sir, to support all that I said. All that I wanted his support for was

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammādan): Is that relevant, Sir?

Mr. Chairman: The Honourable Member will proceed to reply to any remarks made on the Bill.

Mr. J. Ramayya Pantulu: The Honourable the Revenue Member said there was no necessity for this Bill, as the present Act was working smoothly. Well, Sir, it is not working at all smoothly. Several instances of hardship under the Act have recently come to the notice of the public, but the fact that more instances have not come to our notice is because of section 6 of the Act, which acts as a guillotine and does not allow these objections to be raised before the Court. If that was not the case there would be hundreds of cases of hardship brought before the Courts and reported in the newspapers and in the law reports. It is because this section acts as a closure that the world does not hear much more of these cases.

The Honourable the Revenue Member also said that the Government proposes to do something in regard to the acquisition of land for companies. But is it only in the case of the acquisition of land on behalf of companies that hardship is caused? You will find it is caused not only in connection with acquisition on behalf of companies, but also by Government. I have quoted the remarks of the Consulting Surveyor to the Government of Bombay, who says that wherever he travels he hears objections on all sides to the acquisition of land made by Government. If the remedy that Government is going to provide is to be confined to cases of acquisitions on behalf of companies, it will be a most inadequate provision. There ought to be provision made in regard to the acquisitions of land on behalf of the Government, the Local Board or the Municipality or companies.

The Honourable Mr. B. N. Sarma: I have said that the question whether the public ought to be given an opportunity, when they are aggrieved, to state their case so that the Local Government may have all the materials before them, will not be confined to industrial companies but will include all acquisitions. With that assurance, I ask the Honourable Member to withdraw.

Mr. J. Ramayya Pantulu: The Honourable the Revenue Member said that the Legislative Councils have even now control in the matter of acquisition. What control have they? They may have control in regard to sanctioning a certain sum of money for a certain object, that is all they have. They have absolutely no control in regard to the acquisition of land.

That does not come before the Councils, it is all done by the officers of Government.

The bulk of the Honourable the Revenue Member's speech was devoted to showing that, if every one of the cases where there was an objection were referred to a civil court, there would be an enormous delay. I quite understand that references to court are likely to cause delay, but that is a point which can be remedied. It is quite open to the Select Committee to remove that portion of the Bill and substitute a less costly and more expeditious method of hearing and disposing of petitions. That is a matter which I think can be gone into by the Select Committee. Therefore there is no merit in dwelling too much upon a point of detail which could be remedied in the Select Committee. I, therefore, think that the Bill ought to go to the Select Committee where it can be altered into a form which will be suitable for all purposes.

Mr. Chairman: The question is:

"That the Bill further to amend the Land Acquisition Act, 1894, be referred to a Select Committee consisting of Mr. N. M. Samarth, Mr. J. N. Mukherjee, Mr. W. M. Hussanally, Sardar Bahadur Gajjan Singh, Mr. B. Venkatapatiraju, Mr. Jamnadas Dwarkadas, Rao Bahadur T. Rangachariar, Rai T. P. Mukherjee Bahadur, Mr. J. Hullah and the Mover."

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Friday, the 16th February, 1923.

LEGISLATIVE ASSEMBLY.

Friday, 16th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN:

Mr. A. V. V. Aiyar, C.I.E., M.L.A. (Finance Department: Nominated Official).

QUESTIONS AND ANSWERS.

PETROL CHARGES.

852. ***Mr. R. A. Spence:** Are Government aware that there is widespread discontent at the high charge for petrol levied by the Companies controlling the oil fields of India and Burma and that India is not receiving any benefit as she ought to do from what may be termed a local industry of her own products?

The Honourable Mr. C. A. Innes: The attention of Government has been drawn to statements to this effect in the public press.

BURMA OIL COMPANIES' CHARGES FOR PETROL.

853. ***Mr. R. A. Spence:** Are Government aware that the retail sale price of Burma petrol in England is only two shillings per gallon, equal to 24 annas currency, whereas in Bombay the price is 32 annas and in Calcutta 30 annas per gallon and that, even allowing for the special War tax of six annas, the Oil Companies in Burma obtain more for their petrol from the India public than from foreign export in spite of heavy freight charges to Europe?

The Honourable Mr. C. A. Innes: The prices are believed to be as stated.

Sir Montagu Webb: Arising out of that answer, Sir, may I ask if Government contemplate taking any steps to secure to consumers in India the full benefits which may be expected reasonably to arise from the existence of local oil-fields?

The Honourable Mr. C. A. Innes: May I ask what steps the Honourable Member contemplates?

RETAIL PRICE OF PETROL.

854. ***Mr. R. A. Spence:** Will Government state the approximate retail price of petrol to the public in India and Burma for each year from 1916

to 1922, and what reduction, if any, has been allowed on Government purchases?

The Honourable Mr. C. A. Innes: The present retail price of petrol is 1-14 per gallon in Calcutta and from 1-10 to 1-12 in Rangoon. Information as to prices in preceding years is not available. Petrol supplied direct to the military authorities is exempt from the usual excise duty, but no reduction in price is allowed by oil companies on such purchases.

Dr. H. S. Gour: May I ask the Honourable Member what is the cost price of petrol in India?

The Honourable Mr. C. A. Innes: I have no information on that point.

Mr. K. B. L. Agnihotri: What is the price of petrol per gallon in Delhi?

The Honourable Mr. C. A. Innes: I do not know, Sir.

IMPORT OF BURMA PETROL INTO INDIA.

355. ***Mr. R. A. Spence:** What has been the import in gallons of Burma petrol into India during the first 9 months of the fiscal year 1922-23, and the export to other countries over a like period?

The Honourable Mr. C. A. Innes: Returns of coastal trade are not published monthly and therefore figures showing the quantity of petrol imported from Burma into India during the first 9 months of the current fiscal year are not readily available. The export from Burma to other countries during the same period amounted to 12,872 thousand gallons.

PETROL IMPORTATION.

356. ***Mr. R. A. Spence:** Is any petrol other than from Burma imported into British India and if so, what was the quantity in gallons for the year 1921-22?

The Honourable Mr. C. A. Innes: Small quantities of petrol are imported into British India from foreign countries such as the United Kingdom, Ceylon, Straits Settlements and the United States of America. Such imports amounted to 1,348 gallons in 1921-22.

Sir Montagu Webb: Does Government recognise, in view of this reply, that there obviously exists a combination to maintain prices in India at an artificially high level?

The Honourable Mr. C. A. Innes: No, Sir.

WAR TAX ON PETROL.

357. ***Mr. R. A. Spence:** (1) What was the amount of revenue realized from the War tax of six annas per gallon on petrol during the fiscal year 1921-22 and the quantity in gallons exported to other countries?

(2) Now that the War has been officially declared to have ended, has Government considered the expediency of removing this special War tax and in place thereof levying a reduced excise duty on all petrol produced in India and Burma both for export and local consumption which, while

not necessarily reducing the revenue, should have the effect of reducing the sale price in India and Burma and thereby assisting the expansion of motor transport?

The Honourable Mr. C. A. Innes: (1) The excise duty levied on petrol during the fiscal year 1921-22, amounted to Rs. 69½ lakhs. The quantity of petrol exported to other countries during the same period amounted to a little over 20 million gallons.

(2) The Government of India thank the Honourable Member for his suggestion but he will realise that it is quite impossible for me to anticipate in any way the Budget speech of my Honourable colleague, the Finance Member.

Sir Montagu Webb: May I take it from the Honourable Member's replies that Government feel that there are no means at their disposal by which these artificially high prices can be controlled?

The Honourable Mr. C. A. Innes: The Honourable Member must give me notice of questions of that kind.

UNSTARRED QUESTIONS AND ANSWERS.

SALARIES PAID ON RAILWAYS.

173. **Mukhdum Sayad Rajan Baksh Shah:** Will the Government be pleased to state the total amount paid as salaries to the staff (superior and inferior) of the Indian Railways as below:

- (1) Amount paid to Europeans and Anglo-Indians and Indian Christians.
- (2) Amount paid to Mohammadans, Hindus, Sikhs and others respectively?

Mr. C. D. M. Hindley: The information in the detail asked for is not available. It can be collected only by special compilations by the different railways and the Government are reluctant to put Railway Administrations to this trouble.

EXPENDITURE ON PERSONS UNABLE TO EARN THEIR LIVELIHOOD.

174. **Mukhdum Sayad Rajan Baksh Shah:** (a) According to the last census of India what is the total number of persons in each province who on account of being blind, lame, dumb and crippled are unable to earn their livelihood?

(b) Whether such persons are given any aid from Imperial Revenue and if so, what is the total amount spent on this account. The information may please be given separately for Christians and non-Christians and under non-Christians, figures for Hindus and Mohammadans and Sikhs should be given separately?

The Honourable Mr. A. C. Chatterjee: (a) The number of persons returned at the last census of India as blind or deaf-mute is given in the attached statement. No statistics regarding lame or crippled persons are available.

(b) No special contribution is made by the Government of India to Local Governments but the latter no doubt make provision themselves.

In the case of areas directly under the administrative control of the Government of India allotments are made annually, but it is left entirely to the discretion of the heads of minor administrations to spend the money in the most suitable and useful manner. The budget provision on this account for the current financial year amounts to Rs. 28,380 in all. It is impossible to give information separately for Christians and non-Christians or for Hindus, Muhammadans and Sikhs.

Province, State or Agency.	Deaf mutes.	Blind.
	Persons.	Persons.
India	189,644	479,637
Provinces	155,426	367,165
1. Ajmer-Merwara	138	1,308
2. Andamans and Nicobars	2	5
3. Assam	5,870	7,206
4. Baluchistan (Districts and Administered Territories)	249	819
5. Bengal	81,264	83,468
6. Bihar and Orissa	18,647	23,466
Bihar	14,912	20,542
Orissa	1,705	3,312
Chota Nagpur	2,030	4,312
7. Bombay (Presidency)	10,732	35,058
Bombay	8,850	27,696
Sind	1,852	7,311
Aden	80	51
8. Burma	11,877	24,523
9. Central Provinces and Berar	12,807	37,496
Central Provinces	9,226	28,329
Berar	3,581	9,167
10. Coorg	20	93
11. Delhi	156	659
12. Madras	21,284	36,697
13. North-West Frontier Province (Districts and Administered Territories).	1,897	2,980
14. Punjab	18,305	53,315
15. United Provinces of Agra and Oudh	22,878	106,072
Agra	15,665	72,063
Oudh	7,113	33,009
States and Agencies	84,218	112,472
16. Assam State (Manipur)	187	522
17. Baluchistan States	433	1,274
18. Baroda State	598	6,794
19. Bengal States	764	747
20. Bihar and Orissa States	1,389	2,926
21. Bombay States	3,960	14,699
22. Central India (Agency)	1,749	10,637
23. Central Provinces States	1,275	3,340
24. Gwalior State	1,415	6,134
25. Hyderabad State	3,410	19,138
26. Kashmir State	4,518	4,649
27. Madras States	3,078	3,395
Cochin State	504	1,250
Travancore State	2,169	1,680
Other Madras States	403	465
28. Mysore State	3,609	5,188
29. Punjab States	4,453	11,436
30. Rajputana (Agency)	2,577	19,709
31. Sikkim State	144	27
32. United Provinces States	666	1,357

EXPENDITURE ON RELIGIOUS BUILDINGS.

175. **Mukhdum Sayad Rajan Baksh Shah:** Will the Government please state whether:

- (i) Government grants are given for building of churches of all Christian sects (Roman Catholic, Protestant and others) and their Bishops are paid anything as a stipend from Government, if so, please state what is the total amount spent on this account;
- (ii) Whether any similar building grants are paid for erection of mosques, temples and Gurdwaras and whether the Imams of mosques and Pandits and Mahants of Gurdwaras are paid some stipends from Government, if so, what is the total amount spent on this account?

The Honourable Mr. C. A. Innes: (i) Under certain conditions Government provides for or makes contributions towards the construction of Protestant and Roman Catholic Churches. The Anglican Bishops of Calcutta, Madras and Bombay alone receive full stipends from Government while the Anglican Bishops of Lucknow, Lahore, Rangoon and Nagpur receive from Government revenues the pay of senior chaplains. The total amount spent on Ecclesiastical buildings including churches, cemeteries and parsonages during 1920-21 (the latest year for which figures are available) was Rs. 2,50,769. About Rs. 1,22,371 are at present expended by Government on the salaries of the Bishops of Calcutta, Madras, Bombay, Lucknow, Lahore, Rangoon and Nagpur.

(ii) The Honourable Member is referred to the reply given to his question on the same subject No. 330 on the 5th September 1921. As then stated non-Christian places of worship have been and are financially assisted by the State through grants of land and alienations of land revenue made for religious purposes and to some extent through expenditure for archaeological purposes. The amount so spent cannot be stated but is undoubtedly very large.

EXPENDITURE ON FAMILIES OF SOLDIERS KILLED DURING THE WAR.

176. **Mukhdum Sayad Rajan Baksh Shah:** What was the total number of Indian soldiers and others who were killed during the last great war? The information may please be given separately for Hindus, Mohammdans, Sikhs and Christians and it may be stated how much is spent annually from Imperial Revenues towards the maintenance of the bereaved families of deceased persons of each class?

Mr. E. Burdon: The total number of Indian soldiers and other military ranks who lost their lives during the Great War, from all causes, is 58,946. The Government of India regret it is not possible to state how many of this number were Hindus, Mohammadans, etc.

To collect the information desired by the Honourable Member in the second half of his question, it would be necessary to require all Controllers of Military Accounts to undertake a special and most laborious compilation which, in the opinion of Government, would not be justified by the result. The information cannot for this reason be furnished.

DEATHS OF BRITISH AND INDIAN SOLDIERS IN GERMAN EAST AFRICA.

177. **Mukhdum Sayad Rajan Baksh Shah:** Will the Government be pleased to state what was the total number in British forces who conquered

German East Africa from Germans during the Great War, and how many of them were Indians; what was the total number of men who were killed in the German East Africa war and how many of them were Indians?

Mr. E. Burdon: The total strength of the British forces which were engaged in German East Africa during the Great War is not known to Government. A statement giving the number of Indian personnel, combatant and non-combatant, despatched to East Africa during the years 1914-1918 is laid on the table.

To the second part of the question, the answer is that the total number of men killed amongst the troops sent from India was 1,654, of whom 1,497 were Indians. The Government of India have no information as to the total number killed amongst all the troops that were engaged in East Africa.

Statement showing the number of Indian personnel, combatant and non-combatant despatched to East Africa during the years 1914-1918.

Combatants—

Indian officers and warrant officers	826
Indian other ranks	38,638
Non-combatants	12,447
Total	46,906

LEGAL RIGHTS OF INDIANS IN KENYA.

178. Mukhdum Sayad Rajan Baksh Shah: Will the Government please say whether in connection with the present disputes in Kenya (East Africa), the Government has had some correspondence with Nairobi and the Imperial Government, about the legal rights of the Indians? If so, will the Government kindly lay that correspondence on the table?

Mr. J. Hullah: The reply to the first part of the question is in the affirmative. Government do not think it advisable to lay the correspondence on the table.

The Honourable Member is, however, referred to the answers given by me on the 15th and 20th January 1923 to questions asked by Messrs. Jamnadas Dwarkadas and Seshagiri Ayyar, and also to the announcement made by me on the 30th January 1923 relating to the postponement of the general election in Kenya.

HAJ PILGRIMAGE.

179. Mukhdum Sayad Rajan Baksh Shah: Will the Government be pleased to lay on the table the following information:

- (a) Number of Haj pilgrims who left India for Haj during the years 1910 to 1918 and 1919 to 1922.
- (b) In case of fall in the number of such pilgrims during the years 1919 to 1922, the reasons for the decrease may please be stated?

The Honourable Mr. A. C. Chatterjee: (a) The numbers were 78,378 and 57,614, respectively.

(b) The number of pilgrims has always been liable to marked fluctuations. Government have no special information as to the reasons for the decrease.

INDIANS IN MARINE AND AIR FORCES.

180. Mukhdum Sayad Rajan Baksh Shah: Will the Government please say whether efforts are being made to recruit Indians in the commissioned ranks of the Marine and Air forces, so that the Indians should have opportunity to qualify themselves for the marine and air militia similarly as fixed number of commissioned posts have been reserved in the inland military forces?

Mr. E. Burdon: The question of rendering Indians eligible for commissions in the Royal Air Force is under consideration. Indians are not eligible for such commissions at present.

Indians are already eligible for commissions in the Royal Indian Marine. A committee to examine, amongst other things, the question of recruiting Indians as officers in the Royal Indian Marine has been appointed under the Resolution moved on the 12th January 1922 by Sir P. S. Sivaswamy Aiyer in the Legislative Assembly and accepted by Government, and the Committee is about to commence its inquiries.

INDIAN MILITARY COLLEGES.

181. Mukhdum Sayad Rajan Baksh Shah: Will the Government please quote the number and localities of colleges for military training in British India worked on the lines of such colleges in England, and state how many Indian students are reading in these colleges?

Mr. E. Burdon: The only college of the kind at present in existence in India is the Prince of Wales's Royal Indian Military College, Dehra Dun. The number of students now at this College is 50.

MOSQUES IN DELHI.

182. Mukhdum Sayad Rajan Baksh Shah: (a) Has the letter published on page 7 of the *Muslim Outlook*, Lahore, dated 28th January 1923, describing the pitiable condition of the mosques at Delhi, been brought to the notice of the Government?

(b) If so, whether any action has been taken to redress the Muslim grievances; if not,

(c) Will the Government kindly take necessary steps to secure that the mosques mentioned in the letter receive the same attention as the places of worship of other communities referred to therein?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) and (c) The Honourable Member's attention is invited to the statement I made in the House on 6th instant in reply to Mr. Seshagiri Ayyar.

ARMS RULE COMMITTEE'S REPORT.

183. Mr. Ahmad Baksh: (a) When is the Government going to give effect to the report of the Arms Rule Committee?

(b) Has the Government agreed on any point of the minute of dissent to the Report? If so, on what points?

The Honourable Sir Malcolm Hailey: I hope very shortly to be in a position to make a statement on the subject.

SALARY AND PENSION OF HIGH COMMISSIONER FOR INDIA.

The Honourable Mr. O. A. Innes: May I take this opportunity, Sir, of correcting a misstatement which I inadvertently made in replying to a question by Mr. Seshagiri Ayyar the other day. Mr. Ayyar asked me whether Sir William Meyer, the late High Commissioner, drew his pension in addition to his salary as High Commissioner. Acting on the information supplied to me, I replied in the negative; but being not quite satisfied I cabled Home to the High Commissioner for information and I find Sir William Meyer did draw his pension in addition to his pay as High Commissioner.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, a Message has been received from the Secretary of the Council of State, which runs as follows:

"I am directed to inform you that the Council of State has, at its meeting held on the 15th February, agreed without any amendment to the following Bills which have been passed by the Legislative Assembly:

1. *A Bill to supplement the Malabar Completion of Trials Act, 1922.*
2. *A Bill to amend and consolidate the law relating to the regulation and inspection of Mines.*
3. *A Bill to consolidate and amend the law relating to steam boilers."*

RESOLUTION RE ADOPTION OF A POLICY OF PROTECTION.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I rise to move the Resolution that stands in my name on the agenda paper. It runs thus:

"This Assembly recommends to the Governor General in Council that a policy of Protection be adopted as the one best suited to the interests of India, its application being regulated from time to time by such discrimination as may be considered necessary by the Government of India with the consent and approval of the Indian Legislature."

I need scarcely say, Sir, that this is one of the most momentous questions that have come before this House for obtaining the decision of the House upon. The decision that the House will give on this most vital question will, I need scarcely say, affect the future of India. This question has been before the Indian public ever since the advent of British rule in India and the House is also aware that respected Indian publicists, most of whom have now passed away and some of whom are still with us, have spoken in clear and unmistakable terms as to the policy that India should adopt on this question. Unfortunately, situated as we were in those days, neither the opinion of Indian leaders or the Indian public, nor the opinion of the Government of India, even as it was then constituted, were paid attention to by those who were in authority in England. The fiscal policy for this country was dictated not by the Government of India in this country nor by the people of this country as represented in the Legislatures of this country but by the Secretary of State, and that, not even in the interests of this country but in other

interests. Ever since the inception of British rule in this country leader after leader has spoken unmistakably on the question of India having the right to decide its own fiscal policy and most of the Indian leaders have condemned the policy of free trade forced on this country, a policy which was dictated by interests other than our own. You find, for instance, Mr. Gokhale calling the fiscal policy that was forced on this country "the darkest spot in the administration of India." You find men like Romesh Chunder Dutt condemning the policy which was largely in the interests of other countries than India. You find men like Ranade condemning the policy of forcing free trade on this country which brought about the economic poverty and the misery of the masses of this country. Time after time, not only outside the Legislatures, but even in the Legislatures the question was brought forward by Indian Members of the Councils asking for a voice on the part of the Government of India and the Indian Legislature in the determination of the policy that was best suited to this country. Unfortunately for this country the cry of the Indian leaders—and if I may add also, of the Government of India—was a cry in the wilderness. You will remember, Sir, and I am sure this House will remember that even in the earlier periods when the struggle between this country and Lancashire was going on in the Legislature itself, Members of the Government of India openly declared that the policy which was being forced on this country was not at all in the interests of this country and we were unfortunate enough to be compelled to continue a policy which was not of our seeking, which was not in our interest, but which was forced on us by other interests. Finally the cry of the Indian Legislatures and of the people of India culminated in the appointment of the Industrial Commission to find out whether or not there were possibilities in the country for industrial development. Even then, as the power to dictate the policy was in the hands of the Secretary of State and not with the Government of India, the question of the fiscal policy best suited to this country was precluded from the deliberations of the Industrial Commission. Mr. Montagu and Lord Chelmsford then instituted an inquiry into the political problem in India and we find in their Report that it is clearly stated that they believed that one of the greatest grievances of India was that they had no voice in determining their fiscal policy and that they were forced to adopt a policy which was not in their interests. As a result of the inquiry instituted by the late Secretary of State and Lord Chelmsford and as a result of their deliberations the Joint Parliamentary Committee made a recommendation in which it clearly stated that in future, after the introduction of the Reform Act of 1919, all questions of fiscal policy should be determined by the Government of India in consultation with the Indian Legislature; and in cases where the Government of India and the Indian Legislature were in agreement the Secretary should cease to interfere. It was in accordance with this recommendation that the demand for an inquiry into the best policy suitable for this country was renewed here and ultimately a Commission was appointed to conduct that inquiry. We are here to-day to discuss the recommendations made by that Commission and to decide as to whether we should adopt the recommendations made unanimously by the Commission or whether we should continue to bless the policy which has brought about serious consequences in this country, which has brought about a state of economic dependence incomparable in the annals of the history of the world. India had once the reputation of being one of the richest countries in the world. To-day, as the House knows, it has the reputation of being one of the poorest countries in the world. Its dependence to-day is almost entirely on land, and in years of famine especially, one feels in the words of Lord Curzon

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"the resisting power of the people is practically nil." The Fiscal Commission has made recommendations. I do not want to go for the moment into the differences that exist between the Report that is signed by all the members of the Commission and the views laid down in the note of dissent that has been recorded by the minority. Because, although one feels that there are some points on which a difference exists it cannot be denied and I am sure my Honourable colleagues on the Fiscal Commission here will bear me out when I say that so far as the fundamental question is concerned the Commission has come to a unanimous conclusion. I may also be permitted to say that in my opinion a few of my colleagues started with a bias in favour of a policy of free trade and after the examination of witnesses, after a perusal of the written evidence that was submitted to us, and after the deliberations that were carried on in our meetings, they came to the conclusion that, all said and done, the policy of protection was best suited to the interests of this country. It is to the credit, I think, of the Members of this House that even on this Commission, where members of both the Indian community and the European community worked together, not much difficulty was felt in deliberating this question of vital importance, round which so many controversies have raged in the past and that so far as the fundamental conclusion is concerned we were practically unanimous. The Commission has recommended that the policy of protection is best suited for this country and that this policy of protection should be applied with discrimination. The Commission examined the economic situation that exists in this country. The Commission found that the dependence of the mass of the people was too much on land. The Commission found also that the argument that if India went in for industrial development, it would be at the cost of agriculture, had no force in it, because the population that could be drawn for the purpose of industrial development assuming even that industrialisation went on at a very rapid pace, would not be so large as to affect the work of the agricultural population in any way, that considering that more men were now engaged in agriculture than it was necessary or wise for them to do, it would be a help to the agricultural population if members of their families devoted themselves to the work of industrial development in this country. Not only that. But the Commission also found that if a policy of protection were adopted, and if as a result of it the wealth that is now drawn away from the country would remain in the country, the country would be the richer for that, the country would then have better resources at its disposal to be used towards the furtherance of the irrigation policy which would ultimately go to increase the prosperity of the agricultural population. Incidentally the Commission found also that, apart from being a hindrance to the agricultural population, a policy of industrialisation would go a great way in placing at the disposal of the country resources which could be used for the furtherance of the agricultural policy of this country; for, the object of the policy of protection and thereby encouraging industries in this country is mainly to keep the wealth of the country in the country itself. The wealth that is now being drawn away from the country by the necessity of importing from foreign countries manufactured articles and exporting from here raw materials which could be very well used for producing manufactured articles at much cheaper rates if a policy of industrialisation was adopted will remain in the country which would be the richer for that. At present what happens is that most of our manufactured articles are imported from foreign countries. Many of these articles are produced out of the raw materials that are exported from this country. The raw materials are the real wealth of the

country, but the use of this real wealth of the country is made not by this country but by other countries, for these raw materials are sent back to this country in another shape; only the country has to pay a much larger price for these articles than the price the country received for the raw materials out of which these articles were manufactured and sent here. If we could by adopting a policy of reasoned protection encourage the industrial development of this country, we could make use of these raw materials here so as to save us all extra cost that we pay for the manufactured articles that are imported. We found that the only remedy for solving the economic problem of this country was to go in for a bold policy of industrialisation so as to keep the wealth of the country in the country itself and not to allow foreign countries to take the benefit of the abundance of raw materials and other conditions that are favourable to industrialisation which exist in this country. It is a fact, Sir, that India possesses a natural genius for industrial development, for, all those who have studied the ancient history of this country know full well that this country had never depended entirely on agriculture, that there were times when the industries of this country prospered, that there were times when the articles manufactured in this country were not only used by this country itself but were even exported outside this country. I admit that the invention of machinery was probably the first reason that hurt our trade outside this country, but to say that this country does not possess an industrial genius, which is the *sine qua non* of industrial development, is to show a complete ignorance of the facts of history. That this country possesses a natural industrial genius, and that it is rich in raw materials and other natural resources cannot be denied by any one who has studied even the Report of the Industrial Commission. That the country has also a large labour supply is a fact which is beyond question. As a matter of fact, I feel that it contains such a large labour supply that even if the attention of a fraction of our population was diverted by a policy of industrialisation to work in factories, it would bring about very good results indeed.

Another argument that has very often been used is that the capital of this country is shy. Now I admit that to a certain extent that argument does hold water. But why has the capital of this country been shy? Honourable Members will realise that the capital of this country has been shy not because that the people were not willing to invest in industrial enterprises, but because they had no confidence in the policy of the powers that be, because the policy that they dictated was not in the best interests of this country but it was in the interests of other countries. Just consider for a moment what the situation was when a natural protection was afforded during the war. Was the capital of the country then shy? Has it not been the experience of all of us that in those days when an opportunity was offered by a natural protection given to this country by the war that capital could easily flow wherever there was need for starting industrial concerns? And if a stable policy and a more steady policy in the interests of this country were decided upon by the Government of this country, then I have not the slightest doubt in my mind, and I am sure Honourable Members will have no doubt whatsoever, that it will not be a difficult proposition to induce the people of this country to allow their capital to flow for the purpose of promoting industrial concerns. But apart from that, I am not one of those who shut out the possibilities of allowing foreign capital in this country for the purpose of helping the industries of this country. Under certain limitations imposed as a consequence of concessions made in their favour by a tariff protection and other

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protection, I should certainly welcome foreign capital to flow into this country for the purpose of building up the industries of this country. But I repeat that I would allow it only under certain limitations imposed by Government. So far as the question of concessions, licences, monopolies, contracts is concerned, the Government themselves have declared the policy of imposing certain limitations on foreign capital. I shall go a step further and impose those limitations even in the case of industries which are started and which are given tariff protection. But that is a matter of detail. My point is that every possible advantage that a country can possess for the purpose of industrial development exists in this country. All that is needed is to give an impetus by means of a policy of protection which will stimulate the people of this country to go in more and more for industry to the ultimate advantage of this country itself. Now, we have, therefore, recommended a policy of protection to be adopted by this country. But we were not blind to the dangers that necessarily accompany the adoption of such a policy. We had the opportunity to see that no country that can boast to-day of having industrially advanced has reached its present stage without at one time or another of its industrial development adopting a policy of protection. Look at Germany, look at America. We do not want to copy the example of the United States of America. The tariffs are too high there, I admit. But look at Germany. Look at England itself, which has risen from a policy of protection to be a free trade country when it was able to stand on its own legs and hold its own against other countries. But, even to-day, those of us that have read the discussions in the House of Commons on the safeguarding of Industries Act and the debate on the dye-stuff question, know full well that the policy of protection is still being resorted to by England where its interests conflict with the interests of other nations. Take the example of Japan. Mr. Montagu and Lord Chelmsford pointed out in their report that India always holds up the example of Japan, which, in our own times and having started on its industrial development long after we established our factories here, has reached a stage of industrial development by which it holds its own against other nations of the world. What is that due to? A policy of protection. A policy in which the Government and the people combine for the furtherance of the interests of their country. We have then the example of other countries none of which has reached its present stage of industrial development without having resorted to the policy of protection at one time or another of its industrial development. But, as I said, we were alive to the dangers that would naturally accompany the adoption of such a policy and therefore we have provided safeguards in our recommendations which would minimise those dangers. For one has got to remember this, that, if this country after a period of continuance of the policy of free trade which has rendered it helpless and incomparably poor and miserable, if it adopted a policy of protection with a view to rapid industrialisation, although the ultimate gain to the country would be certain, the period of transition would be fraught with great dangers to this country, if proper safeguards were not provided in the recommendations of the Fiscal Commission. What would be the danger? The danger would be that it would unnecessarily raise the prices of articles of the necessities of life which ought to be made available to our poor countrymen at as cheap a rate as possible. Now, I admit that there is great force in this argument, and it is because I admit that, that I think the Fiscal Commission has provided safeguards against it. Take our present

revenue tariff. No one who knows anything about the present revenue tariff can deny that the tariff rates are not quite low, that the necessity of larger revenues for meeting the heavy military expenditure of the country has forced the hands of the Government to resort to high revenue tariffs which do tell, I admit, on the pockets of the poor people of the country. But what an unscientific and arbitrary system of revenue tariff you have at the present moment. If you can adopt a policy of protection and replace this present arbitrary unscientific system by a scientific tariff system which would bring into the coffers of Government the revenues that they require for their legitimate purposes and at the same time go a great way in helping the industries of this country, then, it seems to me that it would be futile to deny that that policy should be acceptable to the Government and the people of this country. I hold that, if proper discrimination in the selection of industries were exercised, if proper discrimination was exercised in considering the claims of each industry by means of establishing a Tariff Board, as recommended unanimously by the Fiscal Commission, it would not be difficult to evolve a policy of protection with discrimination which would bring about prosperous results for this country, reducing to the minimum the burden that in the transitional period the people might have to bear as a result of the adoption of that policy. No one denies that in order to rise from the position of helpless dependence on other countries for manufactured articles to a position of self-containedness, one must pay a price. We do wish that that price should be as small as possible, that it should be reduced to the minimum that it is possible for us to reduce it to, and it is for that purpose that we have recommended that that policy should be applied with discrimination. There is a small difference here between the majority and the minority. Both recommend that the policy should be applied with discrimination. Both recommend that a Tariff Board should be constituted with a view to investigating the claims of various industries as they come before us. Both say that due regard should be paid to the conditions that are indicated in paragraph 97 of the Fiscal Commission's Report. But, while the majority in my opinion, insists that those conditions should be rigidly and for all time applied, the minority dissents there and says while these conditions may go on for the moment, it is not wise nor right to tie down the hands of the Tariff Board or of the Indian Legislature and the Government of India to a rigid and permanent application of these conditions. In the light of experience that we might gain in the course of a few years, it might be possible for us to say whether those conditions should be made more stringent; or as the minority think that the conditions should be less stringent when the people are prepared to bear a greater burden than they are at the present moment in a position to bear. It is no use, therefore, says the minority, to tie down the hands of the Government of India, the Tariff Board and the Indian Legislature to a rigid and permanent application of these conditions. But that is a matter of detail again. But so far as the policy of protection with discrimination is concerned, the Commission is unanimous on the point that that policy should be adopted by this country. There were other differences also between the majority and the minority. For instance, on the question of foreign capital, about which I have already spoken. The minority is anxious that the object with which protection is being adopted in this country should not be frustrated.

As a result of the recommendation made by the Joint Committee the Secretary of State has no longer that power, but the Government of India and the Indian Legislature now enjoy that power. The House

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remember that in those old days Mr. Gokhale pointed out that he would have no hesitation in recommending a bold policy of protection if the application of that policy was in the hands of the Government of India itself. But, he said, as the situation stood then, it was entirely within the purview of the Secretary of State to direct the application of a policy of protection. In that case, he said, the danger would be that influential interests in the foreign countries would persuade the Secretary of State to give them all the benefit of the adoption of a policy of protection, thus perpetuating the grievance that we have, that the wealth of the country is driven in one form or other from this country to other countries. That danger no longer exists. As a result of the recommendation made by the Joint Committee the Secretary of State has no longer that power, but the Government of India and the Indian Legislature now enjoy that power.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Not yet entirely so.

Mr. Jamnadas Dwarkadas: It was established by convention by the late Secretary of State when he refused to interfere at the request of the Manchester deputation with a conclusion that was reached by the Government of India and the Indian Legislature. I am sure the present Secretary of State will also respect that convention and respect the recommendation made by the Joint Committee. If it is not done, then I am afraid the policy laid down in the reforms will be futile and will create a good deal of suspicion in this country. I am not prepared for a moment to doubt the *bona fides* of the Secretary of State or of the Government of India so far as that policy is concerned. Now, the Government of India and the Indian Legislature will direct the application of that policy, and the danger that Mr. Gokhale thought existed then, no longer exists. But even then, if without imposing any limitations or any conditions we gave the benefit of a policy of protection to foreign capital, we might probably be running into some danger of the wealth of this country being driven away into other countries as a result of the adoption of that policy. That is why on this question the minority would like to extend the application of those conditions which are accepted by the Government in certain instances also in the case of industries which are under tariff protection. Then there is another question dealt with by the Commission with which, for the present at any rate, we are not concerned, and that is the question of Imperial Preference. I am informed that a discussion on this subject, if at all it is raised, will be raised on a subsequent date. I am not concerned with that question for the moment at any rate. Then there is the question of excise. I don't think I need go into the question now.

Mr. President: No, I cannot allow the Honourable Member to go into that question.

Mr. Jamnadas Dwarkadas: I am sorry, Sir, if I have exceeded the time limit. I shall try to bring my remarks to a close. With regard to export duties the Commission has laid down that export duties should not be encouraged and that the policy of having any export duties should not be adopted by Government and the Indian Legislature, for that policy hurts the interests of the growers. We were anxious to see if we could get further benefit of a policy of protection by imposing export duties but we have unanimously come to the conclusion after deliberation that that policy

cannot but hurt the interests of the growers in this country and therefore, except in the case of a monopoly like jute, we have excluded from our recommendations the question of export duty, altogether. I have in the brief space of half an hour tried to place the case for protection

(An Honourable Member: "Three-quarters of an hour".)

Mr. President: Order, order.

Mr. Jamnadas Dwarkadas: I do not think so. I have tried to place the case for protection before the Honourable Members of this House. I have tried to be as fair as I possibly could. I have avoided all references to controversial questions because no useful purpose can be served by raking up memoirs of the past. I have only dealt with what the future is concerned and I believe that if we bury the dead past and decide to launch to-day upon a policy of reasoned protection which will help rapid industrialisation in this country, we shall have done a great service to the permanent interests of this country. Not only that. But having launched upon a policy of encouraging the growth of those industries which are considered the key and basic industries of this country as recommended by the Fiscal Commission, we shall have established in this country itself those resources which will be our real wealth for all time to come, and not only our wealth, but they will be of the greatest advantage to the Commonwealth in times of emergency. In the time of war the resources that exist will be of the greatest advantage to the Empire. So, a policy of reasoned protection applied with discrimination will not only further the interests of this country but will enable India to be a tower of strength to the British Commonwealth in times of difficulty. It is for the House to choose which policy it will adopt. The country has for years past demanded that a policy of protection alone could give rise to industrial concerns in this country and would help the establishment of industries in this country. It is for the House, as I say, now to decide. I should only like to remind the Government of India that the fear that the Secretary of State is likely to interfere must be allayed by them unmistakably and in clear language. Whatever be the policy, let that policy be decided not by any one who is not in this country but by those who are competent to decide it, namely, the Government of India and the Indian Legislature. I am convinced that this policy is in the interests of the masses of the country. I am not here to plead for the interests of a particular class or of a particular province. I am here to plead for the interests of the country as a whole and I want Honourable Members to remember that nothing should be more dear to them than the interests of the country, that the country is greater than the classes or the masses, and that every policy that is in the interests of the country should be resorted to without any reference to any class. Let me concentrate on one result that will be achieved by the adoption of a policy of protection. The result is that your country as a whole will be enriched, that the wealth of is now drawn away from your country will ever remain in this who that your people will be prosperous, that your people will be happy, your people will be happy and they will be more serviceable not only to the country but to the rest of the world by attaining to that position. I will now bring it to the House again as I say to adopt any policy that they as a Commission never wanted industrialisation to be built on the shoulders of the poverty of the poor and the tremendous wealth of the rich. The Commission wanted that industries in this country should be built on the solid foundation of the simultaneous growth of the prosperous

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classes as well as of the mass of the agricultural population and the labour population. It is because of that that the Commission has provided all those safeguards that are necessary in the adoption of the policy of protection. I commend this Resolution to your vote. If the House decides that the policy of protection should be accepted, then I think it will be a red letter day in the history of this House; it will be a red letter day in the history of this country for, from a period of helpless poverty, we shall have taken a step which will ultimately enable us to reach a position of equality with other nations, of prosperity and happiness within our own country. Sir, I move the Resolution.

The Honourable Mr. C. A. Innes (Commerce and Industries Member):

Sir, I beg to move that for the original Resolution the following be substituted:

"That this Assembly recommends to the Governor General in Council:

- (a) that he accepts in principle the proposition that the fiscal policy of the Government of India may legitimately be directed towards fostering the development of industries in India;
- (b) that in the application of the above principle of protection, regard must be had to the financial needs of the country and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue;
- (c) that the principle should be applied with discrimination, with due regard to the well being of the community and subject to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission;
- (d) that in order that effect may be given to these recommendations, a Tariff Board should be constituted for a period not exceeding one year in the first instance, that such Tariff Board should be purely an investigating and advising body and should consist of not more than three members, one of whom should be a Government official, but with power, subject to the approval of the Government of India, to co-opt other members for particular inquiries."

Sir, may I begin with one preliminary remark? I do not propose to follow the example of Mr. Jamnadas Dwarkadas in his speech on the original Resolution. I do not propose in any way to go into the controversial history of the past. If this amendment means anything at all, I am sure that the House will see that it means the wiping of the slate, that it rests for us to decide what the new writing on that slate should be. I entirely agree with the remarks of Mr. Jamnadas Dwarkadas made at the end of his speech that instead of occupying ourselves with the dead past we should concentrate on the future. And let me add one more remark. I do not propose again to follow Mr. Jamnadas Dwarkadas's example and I do not propose in any way to range at large over the field of the Fiscal Commission's recommendations. My purpose here is to put two practical questions to the Assembly. I want first to get a principle accepted, and secondly, to concert with the House measures to make that principle effective, and that, Sir, is the whole purpose of my amendment.

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ving that amendment, the Government feel, as I am sure this realises, a heavy sense of responsibility. I will discuss later the implications of the terms in which my amendment is couched. For the point I wish to emphasise is that this amendment is an epoch in the fiscal history of India. Hitherto, traditionally, our policy has been a revenue tariff. I am free to admit that in recent years the policy of the tariff has undergone a change. In the last year or

two, under the stress of our financial needs we have travelled far from our old policy of a light uniform duty on almost every class of import. Our general rate of duty is no longer light, and there have been breaches in the principle of uniformity. The general rate of duty is 15 per cent. ad-valorem. On some classes of import the rate of duty is as high as 30 per cent. On other classes it is as low as 2½ per cent., and yet on other classes, there is no import duty at all. It is perfectly true that, as the Fiscal Commission has pointed out, in the framing of a tariff which contains such high rates of duty and such a wide variety of rates considerations other than those of pure revenue must have entered and I do not deny that they have entered, but the fact remains that the Government of India have never yet consciously adhered to the principle of protection as an integral part of its tariff policy. That is why I say that this amendment of mine marks a fundamental change of policy. For the first time, the Government of India ask the Legislature to agree to the proposition that their tariff policy may legitimately be directed towards fostering the development of industries in India. Some people in this House may think that we have hedged round the principle with too many reservations and too many safeguards. I will come to that point later. But what I say now is that in a matter of this kind, the all important thing is the admission of the principle. It is the first step that counts. As I said, the Government feel a very heavy sense of responsibility in asking the Legislature to take this step. We owe it to ourselves and to the country that I should give a brief explanation of the main considerations which have weighed with us in coming to so momentous a conclusion. But it is not my purpose to enter into any elaborate, any lengthy or any abstruse economic argument. That part of the case has been fully dealt with in the Fiscal Commission's report and I am content to leave it at that. My feeling is that this debate in the Assembly to-day will lose half its value if we attempt to deal with this vast and complex subject except on the broadest and most general lines.

Now, Sir, let me be quite frank. Some of us, Members of Government, have not come to the conclusion embodied in this amendment without deep searchings of heart and without forebodings. However authoritative the report of the Fiscal Commission may be, that report cannot and does not relieve the Government of its responsibility in the matter, and some of us cannot help feeling that there is cause for anxiety. If the result of our policy is that development of industries which we all have so much at heart, that is all to the good. But let us look at the other side of the shield. I am not concerned at present with the more obscure dangers which seem to be inherent in a policy of protection. I refer to the danger of political corruption and the danger of the formation of trusts. Nor am I concerned with the danger that the only result of our policy may be the fostering up in India of inefficient industries. But what I am concerned with is this. Whatever may be the merits of a policy of protection, I do not think that there is any one in this Assembly who can stand up and say that the moment is entirely propitious for the inception of that policy. It is no use blinking facts. We have to take into account the state of affairs as it exists in the world around us and outside us. Half that world has tumbled into ruin. It no longer exists as a customer, and that means that the remaining countries, especially those countries whose prosperity is bound up with their export trade, must fight more desperately than ever for the markets which still remain open to them. Moreover, in these countries, the potential productive industrial

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capacity has increased enormously owing to intensive reorganisation and extension during the War. Now those countries are faced with the spectre of unemployment. The manufacturers are fighting with their backs to the wall merely to keep their works open and their men employed. The workmen are accepting reductions in wages. Owners are foregoing profits. Shareholders are going without dividends, and vast reserves of inherited skill, aptitude and efficiency are being mobilised all to one end, namely, the bringing down of the cost of production. That is one side of the picture. It shows the sort of competition that India has got to meet,—better directed, more intense, more efficient,—economically than ever before. On the other side there is India. India has still to organise most of her industries; she is in most of her industries confronted with that most difficult and most protracted of all tasks, the training up of a force of skilled efficient operatives. While that task is in progress the cost of production must be high, and that means that however carefully we may discriminate, the measure of protection necessary to ensure the end in view cannot be small. And that again means that *pro tanto* our

12 Noon. policy of protection must increase the level of prices for the consumer generally and particularly for the agricultural and middle classes. There is no getting away from this fact. By discrimination we may mitigate the rise. But the fact remains, and it is so certain that I do not propose to argue it, that a policy of protection must mean an increase in prices in India. Now, I am well aware that many countries, most countries in fact, have gone in boldly for a policy of protection in spite of this disadvantage. But we are not considering the case of other countries. We are considering the case of India. We are not considering the case of countries with rich natural resources, with sparse or comparatively sparse populations and with a high standard of living like the United States of America and like Dominions such as Canada and Australia. People of countries like that can no doubt pay the inevitable price that protection demands. They can no doubt stand up to a high level of prices and a high level of taxation. But in India we have a country of 300 millions. Two-thirds of that population are agriculturists. Most of them are poor and the standard of comfort is low. One thing, I think, is certain. If the agricultural classes which form the bulk of the population in India were able fully to grasp the issues involved in this question of free trade *versus* protection, and if they were able fully to bring their influence to bear upon this Assembly, I doubt very much whether this Assembly to-day would accept my amendment. I doubt indeed whether I should be putting that amendment forward. The agricultural classes in every country in the world, I think I may say this with confidence, stand to gain the least and lose the most by a policy of protection. But even if we leave the agricultural classes out of consideration is there anyone in this House who can view without alarm, having regard to the conditions of India, the prospect of a substantial rise of prices following upon the development of a policy of protection. It is easy to speak of measuring prospective gain against immediate loss. It is easy to say that India must be prepared for a sacrifice. But surely the experience of the last few years has demonstrated even to the most unobservant the effect of high prices not only upon the public finances of India but also upon political, social and economic conditions throughout the country. Let this House remember that high prices have added to the wages bill for the Public Services in the last few years, 9 crores of

rupees. Let this House remember that high prices created a period of industrial unrest with all the vast economic loss that a period of industrial unrest involves, from which period we are only just emerging. I am aware that Chapter V of the Fiscal Commission's Report deals with this point, but naturally it weighs with peculiar gravity upon us, who are responsible for the Government of India.

Nevertheless we are prepared to accept the considered conclusion of the Fiscal Commission that on the whole the right policy to adopt is a policy of discriminating protection. The first point I have to make is this. I do not suppose that there is any country in the world where this question of free trade or protection has been decided on purely economic grounds. Some of you may have read Mr. Percy Ashley's book "Modern Tariff History." In that book he points out that even Lists' great work in which he developed the theory of infant industries and argued the need for protection to enable a country to pass from a purely agricultural state to a mixed agricultural and industrial state owed the widespread approval it received in Germany less to its economic argument than to the great political appeal it made to the necessity of maintaining, completing and strengthening German nationality. There is the same sentiment at work in India. On the one hand India aspires to Dominion status, that is to say, she aspires to political independence within the Empire. On the other hand she aspires to economic independence. She hopes that within the Empire she may be economically independent. And behind this national feeling there is the pressure of a real economic grievance. Every impartial observer views with sympathy, I think, the difficulty which confronts every middle class parent in India in finding a career for his son. The Indian parent hopes that industrial development will increase the avenues of employment open to the educated Indian boy, and will open up more and more avenues which will bring that boy into contact with the hard practical realities of business life. Again the Government of India in the last few years has been doing its best to encourage industrial development, and we have long recognised that the introduction of the Reforms would mean a change in the fiscal policy of India. Lord Curzon gave public expression to this feeling in his speech in the debate in the House of Lords on the Government of India Bill, and it was with full knowledge of the trend of feeling in India that in 1921 we appointed the Indian Fiscal Commission. That Commission contained not only distinguished Indians but also distinguished Europeans. It contained three Presidents or past Presidents of important European Chambers of Commerce. It is quite true that there was a difference of opinion. There was a minority report as well as a majority report. But I am not concerned at present with the differences in the Commission. What I am concerned with is the fact that the Commission was unanimous in recommending that a policy of protection was the right policy for India. That, Sir, is a very remarkable fact and naturally it is a fact which has weighed very greatly with the Government of India. And finally as Mr. Jamnadas Dwarkadas has pointed out the issue to-day is not a clear cut issue between a policy of protection and a policy of free trade. The stress of events has forced our revenue tariff to a point where it is no longer a pure revenue tariff, and the choice that lies before us to-day is the choice between a tariff with arbitrary protective effects, irregular in its action and with no certainty of continuity, and an attempt to regularise the position by remodelling that tariff, in part at any rate, on frankly protectionist lines. That is to say the logic of events has reinforced the pressure of public opinion, and that is why we

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have acquiesced in the policy which this amendment seeks to get accepted to-day.

I come now to my amendment. I am free to admit that it differs little in form from Mr. Jamnadas' Resolution. But I have thought it only right and only honest that I should explain clearly what is in the minds of the Government of India. Briefly our position is this. We agree in principle to protection. We make it clear that the principle must be applied cautiously and with discrimination, and we accept the unanimous recommendation of the Commission that before the principle is applied in concrete cases there must be a previous preliminary investigation by an authoritative impartial advisory board.

I will now take the clauses of the amendment in detail. Clause (a) needs no remark on my part. It accepts the principle of protection. Clause (b) makes it clear that in the application of this principle of protection regard must be had to the financial needs of the country and to our present dependence on import, export and excise duties for a large part of our revenue. Partly this clause is intended to make it clear that we must take our financial situation into account in considering certain specific recommendations of the Fiscal Commission in regard to export duties, certain classes of import duties, cotton excise and the like. The House will remember that the Fiscal Commission has recommended that two export duties, the export duties on hides and tea, should be taken off altogether; it has recommended that the cotton excise duty should go and it has recommended also that no import duty at all should be collected on machinery and on certain classes of imports, such as raw materials for Indian industries, copra and sulphur being cases in point. And it has recommended also that in certain classes of industries the most suitable form of assistance is bounties. These recommendations involve either a direct sacrifice of revenue or direct expenditure on the part of the Government of India, and I think that it will be clear to every one that, in considering recommendations of this kind, we must take careful note of the state of our finances. Partly again, the clause is intended to mark the need for caution in whatever advances we make. The House knows the importance of customs receipts in our Central revenues. Certain figures have been given in paragraph 25 of the Fiscal Commission's report; they are not quite correct, but I will give only the salient figures. In 1913-14 Customs revenues accounted for 13.7 of the total receipts of the Government of India; in the current year we have budgeted for a net Customs revenue of 45.41 crores of rupees, that is, 34 per cent. of our total revenues. Moreover, our basis of taxation is narrow, and I think that most people here will agree that we are perilously near the limit. It is true that retrenchment may enable us to reduce our expenditure at a price; on the other hand, we have over 9 crores of provincial contributions which we are pledged to reduce and ultimately to abolish. I do not wish to make too much of this point. After all, one of the main advantages claimed for a policy of protection is that industrial development will add ultimately to the wealth, and, therefore, to the taxable capacity, of the people. My point is that the transition period must be difficult, and that we must always keep in view the danger of disorganising the public finances by too rapid and too violent action. Sir, it would have been easy for me to omit all reference to the financial situation. After all, we are concerned to-day only with the principle of protection, and it would have been easy for

me to omit all reference to the fact that the financial situation may operate as a brake on the application of that policy. But, Sir, the fact stares us in the face, and would it be honest for a responsible Government and for a responsible Legislature to shut its eyes to that fact?

I now come to the third clause, Sir, and, here again, I do not propose to say much. After what I have said, every one in the House will, I think, agree in the unanimous recommendation of the Commission that the principle of protection must be applied with discrimination, and, if we admit that discrimination must be exercised, I cannot think of any better criterion than a criterion based upon the well-known economic doctrine of comparative advantage. After all, what does it mean? It merely means this that we should concentrate our efforts on those directions where effort is most likely to prove fruitful of good to India.

In some ways the last clause of my amendment is the most important of all. The House will have noticed that I have made little mention of the difference between the majority and the minority reports. I have done so deliberately. I have not occupied myself with the question, as it was put to me, whether our protection should be protection with a big P or protection with a little p. The point to fasten on is that the Commission unanimously agreed in the recommendation that a policy of protection should be adopted and, whether we agree with the majority or whether we agree with the minority, it must be clear to all of us that the operative part of both reports is the Tariff Board. From the nature of the case both the reports deal mainly with generalities, and the one main, concrete, proposal made is that a Tariff Board should be appointed. Now, if I have carried the House with me so far, I think they will agree with me that, having accepted the principle of protection, the next step must be to decide what industries need and deserve protection and what kind or measure of protection they should get. There is, of course, a third question. There is the question whether we can afford to give the measure of protection recommended. That will ultimately need the decision of the Government and the Assembly, though even in the preliminary investigation it must be borne in mind. For the investigation of these first two questions, we agree with the Commission that what it calls a Tariff Board must be appointed. We feel that in questions of this kind a more detailed investigation is necessary than a Government Department can undertake, and, moreover, an investigation of a different kind. In many cases the interests of more than one industry will be affected; in many cases again there will be what the Fiscal Commission calls a conflict of interests. Each and every industry affected must be given a hearing, and that is why we think some kind of Board is necessary. It is quite clear, I think, that the duties of this Board must be purely of an investigating and advisory nature, as indeed the Fiscal Commission recommends. So far the matter seems clear enough, but there are many difficulties. The first question is whether the Board should be a permanent Board or a temporary Board. Now, I am quite prepared to admit that, if our policy is successful, we may require, if not a permanent Board, at any rate a Board for a long period of years. For industries tend to beget industries; but there are obvious dangers in a permanent Board. It may become an incubus rather than a help. Even in the United States of America the Tariff Commission at one time tended to become merely a sort of glorified Commercial Intelligence Department, very useful no doubt, but entirely beyond the resources of the Legislature. We think that the wisest course is to create a Board

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for one year in the first instance on an experimental basis. At the end of that year we can take stock of the position. We can see how the Board has worked; whether it needs alteration; we can decide whether to expand it or modify it, or whether to abolish it altogether and try some other expedient. That is to say, we follow the Australian precedent rather than the American precedent. Australia began by appointing its Board for two years in the first instance. We are in favour of this course for another reason. It assists in the solution of two other difficult questions, one the constitution of the Board and the other the exact relationship of the Board *vis-à-vis* the Government of India. I take the constitution first. I am aware that the minority report recommends that of the three Members of the Board two should be elected by the Indian Legislature, but I hope the House will agree with me that it is quite impossible for the Government to accept this suggestion. If we accept responsibility for a policy of protection, and, if we appoint a Tariff Board in order to help us in working out that policy, we must also accept responsibility for the constitution of the Board. What is the main essential of the Board which shall play such an important part in the working out of our policy? It is this. We must be able to rely on the Board for a perfectly impartial investigation of all relevant facts before it makes its recommendations. That is the first essential. The Board must be entirely impartial. No extraneous considerations of any kind must enter into its composition; and that is why I hope the House will not think that I am casting any reflection upon the Indian Legislature if I say that the Government feel that they must retain in their own hands the duty, or rather the responsibility, of appointing this Board. They cannot delegate that duty to anyone. They cannot trust to election even by the Indian Legislature.

Then again we have had some difficulty as regards the exact relationship of the Board to Government. If the House agrees that we should adhere to a policy of protection, then I am sure that it will also agree that we should take steps at once to make that policy effective and make it effective as rapidly as we can. That is to say—and I have particular reasons for this—I should like to set up the Tariff Board at once, and I should like to make such arrangements as will enable us to get quick decisions upon the recommendations of the Board. That is why, again following the Australian precedent, we have proposed that one member of the Board should be an official of Government. He is not intended to represent the interests of Government as if those interests were in any way divergent from the interests of the country. I hope I have made it clear to-day, in this speech of mine, that in this matter our interests and the interests of the country are, we hope, entirely identical. (Hear, hear.) The Board will be empowered to investigate the question which industries deserve protection, and what measure and kind of protection is needed. In framing its recommendations it will of course have to bear practical considerations in mind. It will have to try to frame such recommendations as can be accepted and as are practicable. Now that is why we think it advisable to have one of the members an officer of Government. He will act as a Liaison Officer between the Board and the Government. He will assist not only in keeping in touch with the officers of Government but he will assist in formulating recommendations. If we have a Board which is entirely independent of Government, what will be the result? We shall get its recommendations. There will be three departments of the Government of India which will be concerned—the

Department of Commerce, the Department of Industries and the Department of Finance. The usual lengthy noting, which is a feature of the Government of India system, will go on. There may be disputes. The cases will then have to go to Council, and there will be inevitable delay. That is the reason for our proposal. We hope that in this way, by this device, we shall be able to get a quicker and an earlier decision upon the recommendations of the Board.

Sir, I am afraid that I have detained the House for a very long time; and even so I fear that I have been able to touch only the fringe of a very big and a very difficult subject. In our view the first essential in dealing with the recommendations of this very important Report is to get a decision on the question whether the policy of protection should be accepted, and if so, whether or not immediate steps should be taken to get that policy made effective. It is for these reasons that I have concentrated on these two main points. I quite admit that there are other important recommendations in the Fiscal Committee's Report and those recommendations will receive full consideration in due course. But it seemed to us to be useless to proceed to the consideration of those recommendations until we had got a decision on the main question of principle. Some people in this House may think that even on the main question of policy we have made only a grudging advance in the direction in which the House wants us to go. But I am sure on reflection the House will not endorse that opinion. We are dealing with a matter of vital importance. Our decision must have the most momentous consequences for the people of this country. In deference to what we know to be the strong feeling in this country, and for other reasons which I have explained, we are prepared to adopt a policy of protection. We accept the unanimous view of the Fiscal Commission that the principle must be applied with discrimination, and we are ready at once to set up the machinery which is necessary for the application of the principle. I hope the House will realise that we have done our best to identify ourselves with the aspirations which we know to be common in this country. (Hear, hear.) But I am also confident that the House will recognise that a Government, placed as we are, are entitled, in dealing with this important question, to lay it down that the only safe and prudent course is to proceed with a proper measure of caution.

Sir, I commend my amendment to the House. (Hear, hear.)

Mr. Jamnadas Dwarkadas: Sir, there is only one difficulty with regard to (c). I thought the Honourable Mr. Innes read: "with due regard to the well-being of the community and to the safeguards suggested," not "subject to the safeguards suggested" as printed on the paper.

Mr. President: Does the Honourable Member accept that?

The Honourable Mr. C. A. Innes: Yes, Sir, I am prepared to accept that in clause (c) of my amendment the words "subject" be omitted.

The proposed amendment was adopted.

Mr. J. P. Gotingam (Nominated: Indian Christians): Sir, with your permission I would ask the Honourable Member if he would accept a slight amendment also in clause (d), namely, the omission of the word 'may'.

Mr. President: No, I cannot permit it. That is a substantial amendment which ought to be on the paper.

Sir Campbell Rhodes (Bengal: European): Sir, as representing what may be called the other wing of the Fiscal Commission, I have very much pleasure in supporting the general conclusions at which my Honourable friend and colleague, Mr. Jamnadas Dwarkadas, has arrived in his Resolution. It is quite true we arrived by different paths. He chose the pleasant field path of national idealism which lies, I am afraid, sometimes very close to the quagmires of political and racial hatred. (Mr. Jamnadas Dwarkadas (and other Honourable Members): "No, no.") Whilst I travelled along the hard, dusty high road of plain economic truth, and therefore, Sir, I must be forgiven if perhaps I raise a little dust. I think one thing can be said of our Report, that it was an honest report; that we started with no preconceived ideas. We did not try to make out a case. Whenever we found a difficulty, whenever we found an argument against the conclusions at which we eventually arrived, we frankly put it down and therefore in our report, I think, are contained all the pros and cons of the question. I am in a little difficulty, Sir, as to whether I should support the proposal of my Honourable friend, or the amendment which has been put forward. At their annual meeting in January, the Associated Chambers of Commerce in Calcutta, over which I had the honour to preside, passed a Resolution, which has not yet been published, by an overwhelming majority—I think one Chamber only dissenting—very much on the lines of the amendment moved by the Honourable Mr. Innes, and therefore it is best perhaps that I should incline to the amendment. Well, Sir, what are the reasons which caused this wonderful unanimity in our general conclusions? We have been criticised both here and in other countries; but one criticism has never been directed against us, that we were a happy family playing at follow-my-leader. Mr. Jamnadas has referred to the cloud of witnesses. Well, some of those witnesses, Sir, were not helpful. National aspirations for self-determination and for self-development are admirable; but many of our witnesses seemed to think that because a thing was right for England it must therefore be wrong for India, and some of them seemed to think that in order to benefit India you must injure England. I do not think those arguments impressed us. A somewhat similar class of argument exists in England also. England has always laboured honestly under the impression that if a thing was right for England it must therefore be right for India; and in that, I think, lies a great fallacy. Mr. Innes has put his finger on the spot in this matter of unanimity. We did not find a clean slate. Had we done so, those who had preconceived notions of free trade might have tried to elaborate a free trade policy for India. We have not got that at the present time. We have a haphazard protection masquerading in the form of free trade. In all the criticisms by what I may call the whole-hog free trader since that report was published, I have seen no constructive criticism as to how we should have proceeded to produce a real free trade system for India as it exists, and I think rightly exists, for England. England depends for its revenue chiefly on direct taxation. Direct taxation in India can take two forms, one from the limited number of the wealthy from which sufficient revenue could not possibly be got; and the other by an increase in some of the existing direct taxation; for, obviously you cannot collect direct taxation of four annas or eight annas per head from the masses of the people. That means land taxes, and I think the Commission were convinced, whatever the rights or wrongs of increasing land taxation might be, that it was a physical impossibility to do so. In regard to import duties England is careful to keep her import duties confined to a few commodities which not only are not produced in

England but cannot be. If we look through the import list of goods coming into India, I think we could claim that, theoretically at least, practically everything that comes in could be manufactured in this country and therefore a logical free trader would have to put excise duties not only on all local manufactures but threaten to put excise duties equivalent to our import duties on everything that came into the country so as to warn local manufacturers that they must not start industries under the protection of these revenue duties. We have thus not had the advantage of free trade to which I shall refer in one moment. We have not had the advantages of protection. As was pointed out by two very able witnesses, Mr. Shakespeare of Cawnpore and our Honourable friend, Captain Sassoon of Bombay, these high revenue duties were of no advantage as long as there was no security. They were sufficiently high to protect but there was no security and therefore the whole of the advantage that might be derived from these duties was lost. I consider these duties at present are high enough for the class of protection with which India should experiment. Mr. Jamnadas advocates a self-contained India. I know it is a popular ideal. He says it would be a great stand-by in time of famine. Has Mr. Jamnadas ever heard of that happy island in the Pacific where the people gain a precarious living by taking in each other's washing? What will happen in a famine year if we are self-contained? The food supplies will fall off; you have a big industrial population to feed; the industrial population depend for their custom on the agriculturists and so by the process of taking in each other's washing Mr. Jamnadas hopes the country will thrive. I must warn Mr. Jamnadas' colleagues from Bombay that if that is the vision before you your mills will immediately stop working, for the demand for clothing will be satisfied not by Bombay but by Bengal. The country will then need to clothe itself only in sack cloth and ashes. I am not one of those who are so very pessimistic of the progress so far made. Industrial progress hitherto, in large factories at least, has been confined mainly to the temperate zones; we call them temperate but the real fact is that the rigours of the climate drive people to choose indoor occupations. Now, India stands alone; it is not only the foremost industrial country in the tropics, but is the only industrial country in the tropics. I admit the pace has not been fast enough, but I think it is wrong to overstate our case and say that there has been no progress whatsoever. I think that would be a reflection not only on the Scotchmen in Calcutta but on my Indian friends in Bombay and elsewhere. The Honourable Mr. Innes has drawn attention to the fact that this is an inopportune time to start a protectionist policy. I agree in a certain measure, but every business man knows that it is in times of dull trade that you put your house in order so as to be ready when good trade comes; and in that sense I think this is the most opportune time to make a start. Mr. Jamnadas has mentioned the controversy between India and Lancashire or, as I would rather say, between Bombay and Lancashire, because the Punjab, Bihar and Bengal have never had any quarrel with Lancashire. (A Voice: "They are beginning to have.") I do hope that after this debate to-day one fact will emerge, that we agree to bury, and that our Resolution will bury, this old animosity. (Hear, hear.) (A Voice: "Let Lancashire follow suit.") I have put my signature in this Report to that Chapter which recounts that regrettable history, let us be frank of the interference of Lancashire with India's self-determination. But we must also remember that Lancashire has always been in the forefront of all political efforts of nations all over the world, including India, to develop self-government and it is pathetic that, owing to the fact that she supported the Reform

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Scheme in India, she is the first in a measure to suffer. At the same time, I am not prepared to believe that there is any real conflict between the two. Bengal requires double the amount of cloth than she uses now. She has a limited amount of money to spend on cloth, and as has been pointed out in the Dissenting Minute, in a quotation from a speech which I made in this House, 10 yards per annum per body is not sufficient. We therefore require all that Bombay and Lancashire can give us, and we also, I think, have a right of speaking for the people of Bengal, to buy what clothes suit us best. Therefore, when we get that Tariff Board at work, we shall find the conflict is not between Bombay and Lancashire, for I would draw Honourable Member's attention to that very illuminating sentence in our Report which says that "if we get rid of this conflict between Bombay and Lancashire, the Tariff Board will then be in a position to decide the real point at issue, and it will no longer be a matter between Bombay and Lancashire but between the Indian producer and the Indian consumer". There will, therefore, be conflict. There will be, if we establish protection, a desire on the part of the manufacturer to consider his interests perhaps before those of the consumer. That has been so in all countries, and it will be no greater in this country; it may even be less. My Honourable friend, Mr. Townsend, will remember when he and I some years ago went down to Bombay to arrange standard cloth for the poor of Punjab, Bihar and Bengal, that we met with a most sympathetic response from the Bombay Millowners, and I am still grateful for what happened in the budget debate last year when they supported my amendment for the reduction of the import duty. I do not know what secrets are locked up in the breast of the Honourable the Finance Member, but I can let out one secret that, if he proposes to put up the duty this year, there will be at least one vote in the lobby against him. It is this possible conflict of interest between province and province, between industry and agriculture, between industry and industry, which has caused us to recommend in the best interests of India that the adoption of a policy of protection should be applied with discrimination along the lines of our Report. We do not recommend a rash and reckless plan of protection, for we believe that that way leads to disaster. We do not recommend the present haphazard system of protection masquerading under the guise of free trade. We do not recommend that our policy should be settled for us by any one outside this country. (Hear, hear.) We recommend protection not only of the interests of our industries but of the interests of the agriculturist. We recommend protection, by the exercise of wise discrimination, of the consumer. If I may misquote in conclusion a famous democrat, I would say that we have recommended protection of the interests of the people in this land, by the people in this land, and for the people in this land.

Mr. C. A. H. Townsend (Punjab: Nominated Official): I regret, Sir, to have to turn this debate to a provincial aspect, despite what the Honourable Mr. Innes said, but I come from the Punjab and the views which I am about to put forward represent, I think, not only the views of a great number of people in that province but perhaps also those of other agriculturists in other parts of India. Now, Sir, the Punjab is and must continue for very many years, so far as I can see, even under protection, to be an agricultural and not an industrial province, and to put it briefly, many of us think that under a policy of even discriminating protection, however much you may discriminate it, we will certainly suffer, at any rate, for very many years to come. The great majority of our Punjab people are agriculturists, pure and simple. We have but few minerals,

no cheap waterways to help our transport, and practically no coal: practically all the coal we use has to be brought many hundreds of miles by rail from the Bengal coal-fields, and costs at least Rs. 5 per ton more in Lahore than in Cawnpore owing to the longer railway journey.

The Punjab generally exports raw materials and imports manufactured articles. On the average of the last five years I find that no less than 84 per cent. of Punjab exports—not all to foreign countries—consisted of raw materials, and 66 per cent. of our imports was manufactured articles. Of the balance much was food for our cattle. And, Sir, despite what the Honourable Mover said on the subject, labour in the province, both skilled and unskilled, is both scarce and dear, and costs more than in the neighbouring United Provinces, thereby placing us at an additional disadvantage compared with it from the industrial point of view. Nor will our difficulties in this matter get less, when the large tracts of the country which will be irrigated by the Sutlej Canals, now under construction, come under cultivation. Whatever degree of protection, Sir, may be introduced, I can never visualise the sandy tracts of Mianwali or Multan or the arid country lying to the south of the Sutlej as industrialised. Again, Sir, as Mr. Calvert, the Registrar of Co-operative Societies in the Punjab, points out in his book "The Wealth and Welfare of the Punjab," to which I am indebted for much of what I say this morning,—we are handicapped in this matter by our geographical position. Assume industries to become successfully established in the province, where are we to find a market for our manufactures? The Punjab is bounded on three sides by countries which offer no market for its products. Kashmir, Ladakh and Tibet lie on the north, on the west Afghanistan and Baluchistan, on the south Rajputana, sparsely populated and undeveloped. None of these regions have sufficient population to make them satisfactory markets for our manufactured goods. It is often said that an ounce of fact is worth a ton of theory. Well, here is an ounce of fact. During the war, one of the few Cotton Weaving and Spinning Mills in the Punjab came into the market. It was purchased dock, stock and barrel, by a firm in Bombay. Instead of using the factory, as it was, in the Punjab, the purchasers found it to their advantage to remove all the machinery of the mill at very considerable expense to Bombay, where it was, I understand, used in a new mill, and the shell of the building is still standing, a sad monument to Punjab industries, decaying and unused. Briefly, Sir, many people in the Punjab fear that a policy of protection for India will only impoverish the agriculturists who form the great majority of our people at the expense of those parts of India which are already manufacturing centres, as Bombay and Calcutta. During the war, Sir, the industries situated at those places had in effect, as Mr. Jamnadas Dwarkadas said, protection. I hold in my hand a well-known commercial paper and, glancing down the dividends paid by the Bombay Cotton Mills for the years 1918—1921, I see the figures of 50, 60 and even 100 per cent. Now, in the Punjab, Sir, during those years, cotton cloth and yarn, much of which came from Bombay, went up nearly 100 per cent. in price. Mr. Jamnadas Dwarkadas did not mention, I notice, this point when he discussed the effect of the war on Indian industries.

In this connection, I might criticise incidentally the personnel of the Fiscal Commission. I do not know if I am in order in doing so. It was composed of eminent men, but the eminence of, at any rate, the majority of them was that of either successful business men or

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of economics. No one of them, I think, had attained any great eminence as a "consumer," though I readily admit it is not easy to find a "consumer" such as I would like to find in this connection. Punjab agriculture, and agriculture generally in India, asks for free trade, whatever industries ask for. The great majority of our people wish to import what they require free of duty and also they ask that no restrictions should be placed on the export of their products, which are, as I have said, generally raw materials, though of course we would not object to a very small cess designed to help our agriculture as the proposed cotton cess. It is true, Sir, that the Commission decisively pronounced itself against any policy of export duties on food grains. For this relief much thanks. But experience in all protected countries of the world shows that a policy of high protection on imported goods eventually has the effect of reducing the prices that other countries are willing to pay for the exports of protected countries, and it is possible that in the long run our Punjab exports of raw materials may suffer in this way.

Before I conclude, Sir, I wish to say a few words on the question of protection for India as a whole. The example of America as a country which has successfully adopted protection is often quoted in India. Well, Sir, let us see what Professor Taussig, an American Professor of Economics, whom the Commission itself calls distinguished, has to say on the subject. After discussing in detail the pros and cons of the relative advantages and disadvantages of protection to the United States, he comes to the considered conclusion—I quote his own words—"that there probably remains a heavy debit balance against protection."

Mr. Jamnadas has quoted, approvingly, the example of Japan in this matter and has urged India to follow the example of that country. Well, Sir, let me give him an extract from Mr. Calvert's book to show how Japanese industries have been faring recently:

"The expansion of industries in Japan in recent years was abnormal and unhealthy. In 1919, for example, there were erected 2,700 factories, involving a capital of 522 million yen, but depression set in and a great slump in business followed, and many failures ensued. The unbridled speculation and wild company promotion led inevitably to severe reaction. In the single month of June 1920 no less than 134 Joint Stock Companies went into liquidation."

There is, Sir, all through India a wide belief that the mere introduction of protection in India will, *ipso facto*, cause industries to spring up, on a large scale all over the country: that there is in the mere word a charm, as in Abracadabra. Believe me, Sir, never was a greater mistake made, so far at any rate as the agricultural provinces of India are concerned. Of the three tests laid down by the Tariff Commission which industries claiming protection must face, the third test is infinitely the most important. It is that the industry to be protected must be one which will eventually be able to face world competition without protection. The last few words are all important. The intention is that the protection given should in no case last for ever. Professor Taussig calls this test the decisive test. Well, Sir, experience all over the world shows how difficult it is, once protected duties are imposed, to take them off; each protected industry, when a proposal is made to remove protection from it, sets up a howl. Professor Taussig says:

Particularly from this point of view, but indeed generally, I do not envy the proposed Tariff Board in the discharge of its duties. What is said on the subject by another distinguished American Economist is in point. He says:

"Protection involves political corruption on a gigantic scale. One has but to witness the scenes in and about the Committee room when a tariff is being framed in the United States to realise that there exists no more potent engine of political demoralisation: section is pitted against section, interest against interest, and business against business; and the final decisions arrived at are only the results of log-rolling and a series of unholy alliances."

I direct these remarks to the attention of the House. I am only too well aware, Sir, that vocal Indian public opinion and sentiment is very strongly in favour of protection, and sentiment will largely influence the decision which will be come to in this matter by the House to-day. I would ask it, however, not to let sentiment in this matter be entirely separated from economic considerations, and also to remember that the decision they will arrive at, as was well said by Mr. Jamnadas Dwarkadas, as to the future fiscal policy of India is a matter of the very greatest importance to the welfare of the people of every part of India and that that decision may have effects in future years which are not now anticipated or even considered. Still, Sir, we must realise that the Punjab cannot cut itself off from the rest of India, much though we might like to do so, not only on this matter but also perhaps on another matter that is coming under discussion in this House next week. Nor, of course, can the financial difficulties of the Government of India, which are brought out in Mr. Innes's amendment, be overlooked. So, Sir, I am unwillingly forced to support this amendment, lest a worse thing befall us.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, as I propose to maintain a critical attitude towards both the original Resolution as well as the amendment proposed by the Honourable Mr. Innes, I think it is my duty at the outset to make my position clear on one fundamental principle. Sir, I am not against the development of industry. I fully appreciate the difficulty of the country dependent for its livelihood upon mere agriculture. I am fully alive also to the dangers of famine, but, Sir, Mr. Jamnadas Dwarkadas has not proved how famine would be averted by industrial development. But, although famines cannot be averted, I admit this much, that it is necessary to give varied occupations to the people of this country in order that the pressure on the land should be relieved at least to some extent. Sir, I also want to make my position on another question clear. As long as the nations of the world have not ceased fighting with each other, I admit it is necessary that every nation should try, as far as possible, to be self-contained. There are disadvantages of this attempt, and those were pointed out by my Honourable friend, Sir Campbell Rhodes.

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method of protecting and developing industry and that is by the State undertaking to manage the industry. (*Some Honourable Members*: "No, no.") Some people say "No, no." I am not much concerned with them. Let me first refer to the advantages and disadvantages of the first method of protecting the industry, namely, a high tariff wall. The reason why this method is preferred is, in the first place, that the burden which is thrown on the people is indirect. The poor people, especially the illiterate people, cannot see that they are contributing towards the building up of the industry. The Industrial Commission knew very well that if they had proposed that the industries in this country should be developed not by indirect taxation but by direct taxation, the Legislative Assembly would not have accepted that principle. The industrialists want that the people on whom the burden falls should not know that they are bearing the burden.

Mr. Jamnadas Dwarkadas : Has the Commission claimed that?

Mr. N. M. Joshi : Sir, I am asked whether the Commission has claimed that or not. I am explaining what people, when they advocate protection, have in their minds, and I feel that this is in their minds whenever they advocate high import duties instead of advocating direct contribution to the industry. Sir, there is a second advantage to the industrialist in having protection by means of a high tariff wall, and that is that he is free of all Government intervention. If an industry wants protection or is given protection by direct method, Government will insist upon intervening in its affairs. Take the case of Railways. Government guaranteed interest to the Railway Companies, but then when Government guaranteed interest, they kept to themselves the right of intervening in the affairs of the Companies. Therefore the industrialists do not generally like that the assistance to be given to them should be direct. They generally prefer assistance which takes an indirect form, which leaves them free to do what they like. The third argument that may be urged in favour of a tariff wall instead of direct assistance to the industry is that the collection charges of indirect taxes are not so large as the collection charges of direct taxes. Sir, this is a matter of proof. My Honourable friend, Mr. Innes, will tell the House how we stand in the matter. But even admitting that the collection charges of direct taxes are a little higher, is it right that we should throw away all the advantages of direct taxation and accept a method of assisting industries which contains several dangers which have been admitted by every speaker who has spoken up to this time? We have seen the advantages. They are not many. But there are great disadvantages in the method of protecting industries by means of a high tariff wall. Let us suppose for the sake of argument that a high tariff wall is necessary. A large amount of money will be thrown into the pockets of the industrialists by a high tariff wall. But what is the guarantee that the money thrown into the pockets of the industrialists by that means will be spent for the development of the industries? Sir, it will not be very uncharitable if I say that at least some part of that money will be spent on the luxuries of the industrialists themselves. Will they not spend part of the money for their motor cars, for hiring half a dozen palaces and for purchasing race horses? Sir, the money for all their luxuries will come out of the money which will be placed in their hands by means of protection. Therefore, let the House be sure that when you put money into the pockets of the industrialists with the intention that the industries should be developed, at least all that money will not be

spent for the development of the industries, but a great part of it will be spent for the luxuries of the industrialists. There is another disadvantage in giving protection to the industry by means of a high tariff wall, and it is this. If you give help to an industry by means of a high tariff wall, you cannot discriminate between a good industrialist and a bad industrialist. A good industrialist may spend all the money that he gets in developing the industry but a bad industrialist will not so spend that money. This is a great disadvantage. But we can discriminate between a deserving industrialist and an undeserving one by giving direct help to the industries. But, Sir, the main disadvantage of a high tariff wall, which has been mentioned both by the Honourable Mr. Innes and the Honourable Mr. Rhodes is high prices. Sir, the high prices have to be borne by the poor people in larger proportion to their income than the richer classes. Nobody will say here that if you have got a tariff wall on articles such as cloth, the poor man will not suffer more in proportion to his income than the rich man. The poor man pays on cloth more in proportion to his income than the rich man pays. This fact is absolutely clear. Therefore, a high tariff wall on necessities of life can never be just. It falls unjustly on the poor man. I am not saying that the poor man should not pay at all. But nobody will also say that the poor man should pay more in proportion to his capacity to pay than the rich man. This is the greatest disadvantage of the method of protecting an industry by means of a high tariff wall. Sir, I know there are people—I do not know whether they are here or not, but I have met them several times—who say "where is the harm? Is it not the duty of the people of this country to support the industry? Is it not our duty to support Bombay as against Lancashire?" Sir, I can appreciate the sentiment of patriotism, and I also know that the poor people of this country have got some patriotism. But should your patriotism be only confined to the poorer class? If industry is to be developed at the cost of the poor people, can it not be developed at the cost of the wealthy? Sir, I have read through the report (of the Fiscal Commission). I have read through the majority's recommendations as well as every line of the recommendations of the minority—the patriotic minority. But I have not found one sentence there appealing to the wealthier class to spend their wealth not in luxury but in developing industries. Sir, I have not seen one appeal to the richer class there asking them to develop the industries, even if it were necessary for them to suffer loss for the developing of industries. On the contrary, it has been said that our capital is shy, capital requires encouragement. It is, therefore, clear that the Indian capitalist is not sufficiently patriotic. If the Indian capitalist is patriotic he will not be shy to invest his capital in a national industry, the capital will come forth even if there are losses. Therefore, when people talk of patriotism, what they mean is that that patriotism should be shown by the poorer classes and not by the richer classes. The richer classes require temptation, encouragement in order that they should put their money into industries. But, Sir, some people say "Do you not want industries?" Suppose we cannot develop industries without putting even an unjustifiable burden upon the poorer people. Sir, I do not wish to answer that question. I only say that these are not the only two alternatives. If these are the only two alternatives, namely, either not to develop industries at all, or to develop industries by putting a burden, an unjustifiable burden upon the poorer classes, then I do not know what would be my answer. I shall think then. But I believe there is a third alternative. You can protect your industries without putting an unjustifiable burden, at least without putting a disproportionately

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high burden upon the poorer classes, and that method is to assist the industries by means of direct assistance. Give any kind of direct assistance, I shall not object. If there is direct assistance, naturally in the first place, that assistance could be given only to those industries that are deserving. It will be given only to those industrialists who deserve, who do not spend their money in luxuries and whose industries do not suffer losses on account of mismanagement. Sir, it may be said, "If you give direct assistance to the industries, how are the taxes to be collected, how is the money to come? That money will be collected by indirect taxation." Sir, it is true that the amount of direct contribution may have been obtained by indirect taxation. I do not approve of indirect taxation, but even if the taxation is indirect if you give direct help there is the pressure of public opinion. The public will know what person is being helped with the public money, and the public will exact that that industrialist is careful in managing the industry. That is the great advantage. The whole industry will be under the criticism of the public of this country who pay towards that industry.

Then, Sir, as regards the State management of industry, this is one of the methods which has been recommended not by me alone but by the Industrial Commission itself. The Industrial Commission has said that under certain circumstances it is necessary for Government to pioneer a new industry.

Mr. President: Order, order. That is not strictly in order under this Resolution.

Mr. N. M. Joshi: I do not wish to speak on this subject alone. As a matter of fact, it is not necessary for me to dilate on the advantages of State management.

Mr. President: Not necessary! It is not possible.

Mr. N. M. Joshi: I only content myself by saying that a high tariff wall is not the only method of protecting an industry. An industry can be protected by the State managing the industry. This has been done not only in this country but outside, and as a matter of fact the advantages of that method will be explained to this House not by a theoretical man like myself, but by experienced industrialists like my Honourable friends Mr. Jamnadas Dwarkadas, and Mr. Kamat, when the question of the management of State railways comes before this House. Therefore, I do not propose to speak about the advantages of that method.

But, Sir, there is one more point on which I should like to speak and it is this. My Honourable friend, Mr. Jamnadas Dwarkadas, said that there are dangers in protection. He admitted that. Unfortunately he did not mention them, but I propose to mention them only in a few words. Those people who want to know the dangers of industrialism should visit the slums of Bombay. That beautiful island given by Nature to this country has been turned into a hell by the industrialists. (A Voice: "Are you against industrialism?") Is it not necessary if we want to develop our industries to take precautions that more such hells are not created in this country? Then again take the question of people who leave their villages and go into cities. People in villages have got the joint family

system. If any one of them is ill, he is looked after by his relatives, by his neighbours. If he is old, his son, his grandson . . .

Mr. President: That does not arise on this Resolution.

Mr. N. M. Joshi: I am only pointing out the dangers of protection.

Mr. President: That danger may happen even where there is no protection. It is not relevant to the subject under consideration.

Mr. N. M. Joshi: It is true that these dangers may take place where there is no protection, but here we are advocating protection in order that industries should develop very fast, and there is the greater danger of these evils arising when you are developing industries very fast. As a matter of fact, all the slums in Bombay are due to the fact that the industries developed very fast without giving sufficient time for people to build houses.

Mr. President: The Honourable Member must address his remarks to the policy of protection. I may point out to him that the clock tells me that he has already spoken for more than fifteen minutes.

Mr. N. M. Joshi: I do not wish to take up the time of the House, but I wish to refer to only one other evil of protection, and it is a direct evil of protection. When a country undertakes a policy of protection, it means high prices. High prices mean discontent and when poor working classes become discontented the only method possible for them of getting redress is to organise themselves and getting their grievances redressed by means of strikes. But at this stage what happens? The industrialist who wants to develop his industries very quickly by means of protection wants to restrain those organisations as much as possible. That has been the experience of the world.

Mr. President: I cannot allow the Honourable Member to discuss trade union legislation on a motion asking for the establishment of protection.

Mr. N. M. Joshi: I have felt that if a policy of protection is followed there will necessarily be discontent among the working classes, and if there will be discontent among the working classes they will have to organise themselves, and in order that the organisation should grow strong it is necessary that freedom of organisation and freedom of strike should be allowed.

Mr. President: If I had not been in the Chair I would have been very glad to discuss this matter with the Honourable Member. But I have to tell him that his argument is entirely out of order.

Mr. N. M. Joshi: I shall content myself now by making an appeal to the Honourable Members of the Assembly. My Honourable friend, Mr. Innes, has already referred to the fact that the masses on whom the burden of protection will fall are not represented here. After all, whom does this Legislative Assembly represent? It represents the electors whose number is a very small fraction of the population. It may be one per cent. I assure the House that it is after all a very small percentage of the population. I do not mention this point to belittle the importance and dignity of this House. As a matter of fact, I admit that for practical purposes we could not have got a more representative Legislative Assembly than this. But, Sir, that should not blind us to the fact that the masses

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of the people are not represented here and when we are considering the question of putting a burden on the masses more in proportion to their income than the burden falling upon the richer classes, it is our duty to put greater restraint upon ourselves, to be more cautious in pressing burdens upon the poor people than it was necessary for us if the burden had to fall more upon us and more upon our electors. With these words I move the amendment which stands in my name to the amendment moved by the Honourable Mr. Innes.

Mr. President: The Honourable Member will realise that during the conversation which I had with him I informed him that the last half of his amendment is out of order, seeing that it attempts to bring in the question of trade union legislation before adopting a policy of protection. That is not within the scope of the Resolution.

Mr. N. M. Joshi: If the second part is out of order, I propose the first part:

"Provided that measures adopted with that end in view be so framed that the financial burden resulting therefrom will fall upon the people in proportion to their capacity to bear it."

I hope the House will accept my amendment.

Mr. President: If I had known that the Honourable Member was moving his amendment, I should probably have called somebody else, because I think it is desirable to have the proposition put by the Government debated against the proposition put forward by Mr. Jamnadas Dwarkadas. At the same time, the first part of the Honourable Member's amendment is in order.

Mr. N. M. Joshi: I shall move my amendment later on.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Does the Honourable Member move his amendment as an additional amendment to the original Resolution or as an amendment to Mr. Innes' amendment.

Mr. N. M. Joshi: As a matter of fact it can be made an amendment to anyone of the two.

Mr. President: I must inform the Honourable Member that his amendment was originally put down as an amendment to Mr. Jamnadas Dwarkadas' Resolution. He did not know then that Mr. Innes' Resolution is going to contain the words "with due regard to the well being of the community." I should imagine that these words would have satisfied the point raised by the Honourable Member, though, as I have told him, he is perfectly in order in moving it.

Mr. N. M. Joshi: I do not know what will suit the House. If it suits the House that my amendment should be an amendment to the original Resolution, I do not object. If it suits the House, I have no objection to its being treated as an amendment to the Honourable Mr. Innes' amendment.

Dr. H. S. Gour: On a point of order. It is for the Honourable Mover of the amendment to say as to whether it is an amendment to the original motion or any particular amendment. It is not left to the decision of the House to accept that amendment as either an amendment to the motion or an amendment to an amendment.

Mr. President: I think it will simplify the position if I treat this as an amendment to Mr. Innes' amendment.

The question is:

"That at the end of the amendment as proposed by Mr. Innes, add the following:

'Provided that measures adopted with that end in view be so framed that the financial burden resulting therefrom will fall upon the people in proportion to their capacity to bear it.'"

The motion was negatived.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadian Rural): I believe what is germane and also important to the discussion of this morning is a criticism of the amendment standing in the name of my friend, the Honourable Mr. Innes, and not a general discussion ranging over a wide field over the advantages and disadvantages of free trade or protection, a discussion like the one indulged in by my friend, Mr. Joshi, or even by Mr. Townsend, from the Punjab; because it is only half an hour ago that the Government announced and committed themselves to the principle that they are prepared to accept protection. All that concerns us therefore this morning is to discuss whether the amendment standing in the name of Mr. Innes requires any criticism at all. I shall direct my remarks only to this aspect of the question. In the first place let me congratulate the Government on coming to a satisfactory decision on such a momentous issue. The question was hanging fire for decades, for almost half a century and I believe the Government have done well in coming to a favourable decision, however tardily it might be, on so important a point; further, it is indeed a matter of gratification, Sir, for the country that Government are prepared to accept protection with discrimination as unanimously recommended by the Fiscal Commission. Having said that and offered my congratulations to Government on this decision, it remains for me to meet certain criticisms and remarks made by Mr. Innes in his opening speech. Mr. Innes pointed out that although Government are accepting this policy of protection they are accepting it with a great deal of anxiety and a great deal of caution. I realise the anxiety of the Government at the present moment. I also realise that a certain amount of caution in the application of this policy is necessary but I venture to think, Sir, that Government are in one or two respects at any rate labouring under an excess of caution as I shall presently show. I agree that there is a certain amount of anxiety involved in undertaking this policy at the present moment when we are passing through financial depression and deficits in the Budget. On the other hand, Sir, it is precisely at this particular period of transition in India when existing industries are threatened that this question has to be boldly tackled by Government, especially owing to the world facts to which Mr. Innes has referred; it is precisely at this moment that protection is necessary, either to keep alive certain industries which are struggling in the country or to withstand the low prices which foreign manufacturers are announcing in order to keep their own industries alive. Therefore if there was any time which was urgent for protection, it was, I believe, this time. Government, I say, need not, therefore, be very much uneasy that the time is inauspicious. Now with reference to certain observations of Mr. Innes regarding factors within India relating to the internal situation which compelled caution, he mentioned two or three things. He referred to the effect of this policy on the agricultural classes. He referred also to what the effect

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of this policy would be on the middle classes. He also referred to the effect of this policy on the finances of the Government, that is to say, the sources of revenue. With reference to the effect of this policy on the agricultural conditions in India, those who have studied economics, those also who have read the Report of the Fiscal Commission will be able to see that after all it is a question of balance of advantages. It is perfectly true that the rise of prices has a certain adverse effect on the agricultural community but, on the other hand, take a long view of the whole thing and just see the effect of this policy of protection, say at the end of 15 or 30 years. Take the example of other countries like Germany and America which were at one time agricultural countries. The policy of protection has made those countries now more or less manufacturing countries with the result that the wealth of those countries is immensely better than what it would have been if they had remained agricultural countries. The question is, do you want wealth for agriculturists or not? Now we know there are 72 per cent. of agriculturists in the country out of the total population, but out of those 72 the real workers in the field are, let me point out, 46 per cent. only. The rest are workers of a casual character either in industries or even in agricultural labour. The point therefore is, if owing to a system of industrialism the wages go up, will it not profit those workers who come to factories or those workers who are also in agricultural industries. There, therefore, remains only a residue of 46 per cent. of the population who are directly concerned with the sowing and ploughing of their own fields who will be no doubt for some time adversely hit. The other agricultural workers who are more or less labourers will profit to some degree by the automatic rise in the prices and also in wages. Then again, even if there is a little bit of temporary evil in this policy of protection for the agriculturist, I think Government has provided safeguards to minimise the burden. We know that the Tariff Board will see that the burden will not be too heavy for the agriculturist. The machinery provided to fix the rate of protection is a very sound safeguard; I therefore think judging by the analogy of the other countries and considering the proportion of burden that will fall upon the agriculturist population and also the safeguards, namely, the creation of an impartial and thoroughly investigating body, namely, the Tariff Board, we can, in spite of some disadvantages which I have dilated upon, go ahead and accept protection. I need not refer to what fell from Mr. Joshi about the capitalist and his luxuries. I believe that luxuries do give a benefit to the capitalist no doubt, but the benefit is not confined to the capitalist. If a capitalist buys a motor car, he has to employ a chauffeur and a portion of the money of the capitalist goes into the pocket of the chauffeur, also into the pocket of the man who sells petrol and also into the pocket of the cleaner. And, perhaps, if there is a manufacturing industry of motor cars in India some day or other in accordance with this policy of protection, possibly that factory will be able to employ hundreds of labourers into whose pockets also the money of the capitalist will go. We need not therefore fear that a manufacturing country will benefit only the capitalist. England was at one time an agriculturist country. At the present moment 56 per cent. of the population of England is a manufacturing population and every man who goes into some factory draws more wages and leads a better life, has a higher standard of living, has far better clothes to wear and far better houses to live in than perhaps the agriculturist in India who

merely because he remains an agriculturist, lives in a wretched hut and draws only the bare means of subsistence. I know that the agriculturist could be a richer man and live a better life if he goes into a manufacturing factory. That is, so far as the aspect of the agriculturists' disadvantages is concerned. Now about the amendment, there is one aspect of what fell from the Honourable Mr. Innes to-day to which I wish to address my remarks, that is, with reference to this Tariff Board. If you read clauses (a), (b), (c) and (d) of the Honourable Mr. Innes' amendment, in clauses (a) and (b) probably we shall find nothing very seriously objectionable. He has admitted the word "protection" in clause (b). He has put in a safeguard that regard must be had to the financial needs of the country. We admit that that must be our policy as well and a Tariff Board which will fix the rate of protection will see to it that the financial needs and the financial exigencies of Government are not sacrificed to the hobby of protection. But, Sir, let us discuss the safeguards introduced in paragraph 97 of the Fiscal Commission's Report on which the whole of the amendment of the Honourable Mr. Innes is based. I had hoped that Mr. Jamnadas Dwarkadas, while making his speech, would refer to the points of difference between the majority and minority on this specific question. The position is this, Government accept protection; Government accept discrimination, but Government say they are willing to accept discrimination as laid down and subject to the three conditions in paragraph 97. The only question which is very important is, do we, on the non-official side, subscribe to these three conditions which Government are prepared to accept? That is the question at issue. Now, the first condition is that the industry to be protected must have certain natural advantages. I admit this is a condition which is not very seriously objectionable. The second condition is that the industry must be one which without the help of some protection is not likely to develop or will develop only at a very slow speed. That, again, probably may be a condition which is unobjectionable from a certain point of view. But, Sir, look at the third condition to which Mr. Townsend referred, namely, that the industry must be able eventually to face world competition. If that is the condition to which Mr. Innes refers in accepting the policy of protection with discrimination I have my own misgivings. In a country, situated as India is at the present moment, with immense handicaps owing to poverty, untrained men and inexperienced capital, with world competition from all the different countries to face with I am afraid, if you rigidly follow this condition and this safeguard, as the majority of the Fiscal Commission recommend, it will be difficult for any Tariff Board to give protection, subject to this condition, if rigidly followed. My criticisms, therefore, against Mr. Innes' amendment is that, even supposing they accept discrimination and refer the question to the Tariff Board, the instructions to the Tariff Board should not be to stand upon each and every letter of the third test laid down in paragraph 97. I contend that if, really speaking, the Tariff Board is to do good to India, and at an early date, a certain amount of latitude must be given to that Tariff Board. That is so far as clause (c) of Mr. Innes' amendment is concerned.

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for any corporate body is too small a period for a trial. It is an experiment, as I have said, made with an excess of caution and is not likely to benefit India. If you accept protection, if there is no escape from protection, there is no escape from a permanent Tariff Board. I do not like that Government should show this suspicion and a certain amount of hesitation in stating to this House that we should subscribe to the view that the Tariff Board should be appointed only for twelve months. I submit that it will take twelve months for the Tariff Board simply to think out its ideas to fix their preliminaries and to know where they are before they investigate a single industry. I therefore think that this should be a permanent Tariff Board, or at least one constituted for a longer period, say five years.

And now I come to the composition of this Tariff Board. Government want that the Chairman of this Tariff Board should be a Government official on the analogy of Australia where the Controller of Customs is the Chairman of the Tariff Board. I do not object to that, namely, that one member out of the three should be a Government official. The other two are to be members not necessarily chosen by the Legislature according to the amendment of Mr. Innes. The minority report of the Fiscal Commission suggested that the two members, if there are to be three in all, should be elected by the Legislature. Now, between these two methods of appointment we have to compare where the greater advantage lies. After giving my close consideration to this matter, I am inclined to think that the amendment of Mr. Innes is reasonable and right. It would be difficult I believe at the present time for the two Houses of the Indian Legislature to elect persons of the right type we want to serve on the Tariff Board. In the first place, the conflict of interests either between capitalist and agriculturist, or between industry and industry, or between Bengal and Bombay, would be so great, that it would be far better that the Tariff Board should be above any sort of suspicion by the public at large. Even, speaking from the point of view of the Members of this House, I think it would be far better for the Members of this House to be away from the Tariff Board and, therefore, to be away from the criticisms and the suspicion that they have succumbed to any kind of political corruption, as my friend, Mr. Townsend, put it. Sir, at the present stage of India, we want to be above any reproach that what we do in that Tariff Board is one way or other against the agriculturist or in the interests of the capitalist. From this point of view, I certainly think that it would be far better that the two other members of the Tariff Board should be outsiders chosen by Government but confirmed on the Tariff Board with the approval and with the consent of this House, that is to say, that the two other members of the Board selected or suggested by Government should have their names placed for approval or consent before this House, so that we should also have a means of knowing that the selection of Government was right and proper. Our approval also should be given to the appointment either of the co-opted members, or the two permanent members forming the Tariff Board. This would be in the spirit of the recommendations of the minority who have cited the example of the Senate of the American Tariff Board. These are the few criticisms which I had to make. I do not think I shall enter into the merits of the long speech of my friend, Mr. Joshi, although he went for capitalists and made certain remarks which were not quite relevant to the question at issue. We can discuss those questions on some other occasion. What is now necessary is to

discuss, as I said, the Honourable Mr. Innes' amendment and I have ventured to offer these suggestions and these criticisms in the hope that when the Tariff Board comes to be appointed Government will see that the Board will enjoy the confidence of this Legislature and of the country at large and will be a properly constituted body.

Sardar Bahadur Gajjan Singh (Punjab: Nominated Non-Official): Sir, I rise to address this Honourable House in the interests of agriculture. There is not a single Member of this House who, I venture to think, is not anxious to see the development of the industries of the soil, but at the same time it should be borne in mind that in making provision for the development of our future industries we are not damaging our existing industries. As is well known, agriculture is the industry of the largest number of people in India. As has been pointed out by the Honourable Mr. Innes, more than 66 per cent. live upon it; they make their living out of it. Now it is admitted on behalf of Government as well as on behalf of my friend on the right that the imposition of protection is likely—in fact, not only likely but certain—to be more harmful in so far as agriculturists, or those who are busy in agriculture, will have to pay high prices for the things which they require for their industry. Now, Sir, as we all know, agriculturists are very very poor. My province is mainly a province of small holdings. This, I think, is also true to some extent or perhaps to a greater extent of the United Provinces, Bihar and Orissa, and in fact all other Provinces with the exception perhaps of Bengal, and the United Provinces in so far as they have very big taluqdars. At present their position is very deplorable. They cannot make both ends meet and their produce as we all know is from time to time subjected to various unnatural restrictions in the way of restrictions on the export of wheat and so on. So if that will be the result on agriculture of protection, then I am afraid I must warn the Government against the introduction of this policy. At any rate, they have to be more cautious. There should be more discrimination—of course, we are assured there will be,—so that the interests of agriculturists and of the middle-classes may not suffer. As has been pointed out by my Honourable friend, Mr. Joshi, some other means may be adopted for the development of industries in India other than protection, and if that cannot be done I am afraid we must go without it, because it is not advisable—it will, in fact, be unwise for us to injure the present agricultural industry which, of course, is the life and soul of India. Other industries will manufacture things which perhaps may be necessary or may not be necessary and in certain cases probably will be luxuries, but agriculture gives us our food; the agriculturists are the food givers of India. If by protection, which, of course, obviously means that the local markets of India are meant for local manufacturers, we are at the mercy of these industrialists and we have to pay high prices, then agriculture in this country is sure to suffer. On account of high prices cultivation might go low; perhaps it may not be worth while to cultivate land and produce the necessary food for the consumption of the consumer. I am afraid therefore I cannot give my support to the Resolution of my Honourable friend, Mr. Jamnadas Dwarkadas. I think those who have studied the question may perhaps be able to throw more light on it, but my apprehension is that if there is a protective tariff against the import of articles from other countries, as for instance, piece-goods and cloth, the agriculturist will get a very low price for his produce. Take cotton for instance. It is no doubt a raw material and every one should wish that it should be manufactured and then sent abroad; but as long as those conditions do

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not exist in India the producer will surely look forward to getting a higher price for his cotton. If the men in Bombay, Calcutta or Madras will pay say Rs. 10 a maund only, we shall indeed be very sorry and we shall be very glad if Japan or Lancashire comes into the field and gives Rs. 25 or Rs. 35 per maund. I mean to say that as long as the industries of India are not in a position to offer the same prices as the foreign consumer, agriculture will be hit very hard. The same can be said about other forms of produce. Possibly it will have a very prejudicial and injurious effect upon the export from India of other agricultural produce. To start with, it will only benefit a very few capitalists situated in suitable localities such as Bombay, Calcutta and Madras. Therefore I submit, Sir, that it will be unwise to make a move which will benefit only a very very small number of people and will be harmful to a very large majority of the people. My friend, Mr. Kamat, has pointed out, I think quite inadvertently—that 56 per cent. of the people of India live upon industry

Mr. B. S. Kamat: I never said 56 per cent. in India; I said in England.

Sardar Bahadur Gajjan Singh: Here as far as is known from the Fiscal Commission's Report 1 per cent. live by industries; the rest of the labour lives by agriculture. So judging from that point of view I think Government will not be well advised in launching this policy of protection. It is admitted on behalf of the Government that the people, especially the middle class people, will have to pay high prices and that the cost of living will be high. India is a poor country, and for that reason I am afraid she will not be able to pay high prices. There is no evidence to show that industries in India have suffered to any very great extent as a result of foreign competition. Indian industries are doing very well indeed, and especially during the war, as was pointed out by the Honourable Mover himself, they have a natural protection, and the profit derived by the industrialists was cent per cent. or perhaps even more. Therefore, I think, Sir, that in the interests of Indian industries, which are doing very well indeed, it is not desirable that another industry, which is already poor and which I am afraid, Government have chosen to neglect, I mean agriculture, another blow should be given to it by the introduction of this policy. Therefore, Sir, I associate with all the remarks that fell from my Honourable friend, Mr. Townsend. I also submit a note of warning to all my Honourable colleagues in this House, that by voting in their zeal in favour of this Resolution, they will be doing incalculable harm to the only industry which is the mainstay of our population, I mean the agricultural industry. Sir, while maintaining on the one hand that industries should be developed, I am not at all in favour of agriculture being in any way prejudicially affected by the introduction of this policy. One thing I should like to make clear before I resume my seat. I should submit a suggestion for the consideration of my friends who live in towns. They must remember that all their trade, all their welfare and all their wealth depends upon agriculture. If they do anything which will go against the interests of agriculture, they will be doing considerable harm to themselves and to the country as a whole. This is a point to which, I am afraid, men of the towns are very seldom alive. (A Voice: "With so much agriculture, the country is still poor.") You cannot help it. You make the country poor by your own action, for instance, in September last, by refusing to remove the embargo on wheat. Of course, there was

the stringency of the money market, but that scarcity was simply due to the fact that we could not get that money from foreign pockets. Punjab alone got 9 crores of rupees, and so you neglected all these things. As my friend, Mr. Jamnadas, said, the wealth of the country will increase as a whole. Possibly the wealth of Bombay will increase, no doubt, perhaps a hundred times or a thousand times by the introduction of this policy, but the Punjab will starve. In the United Provinces also probably agriculturists will starve, and poor people will die. Therefore, on these grounds, Sir, I think the Government of India will be well advised in not adopting the policy of protection, at least for a great number of years to come. It is unfortunate, but I must bring it to the notice of the Government of India, that they care more for the Press, they care more for those who speak loudly, and they neglect the interests of those whose interests are really at stake, those who cannot speak loudly and who have not such able representatives as other interests have. I therefore strongly oppose the Resolution of my Honourable friend, Mr. Jamnadas, and I have great hesitation in supporting the amendment.

STATEMENT OF BUSINESS.

The Honourable Mr. O. A. Innes: Sir, I just want to make a statement about the business of the House. We propose to have a rather large order paper for Monday. We propose to keep on the order paper on Monday the Racial Distinctions Bill and we propose to take that up, if the Honourable the Home Member is able to attend to his duties in the House that day. If he is not able to attend to his duties in the House that day, we propose to take up the following business:

- (1) To introduce a small Bill to amend the Post Office Savings Banks Act, 1873, and any other small Bill which may be ready.
- (2) To dispose of a Message from the Council of State regarding the Cantonments House-Accommodation (Amendment) Bill.
- (3) To consider and, if the Assembly agrees, to pass the Repealing and Amending Bill and the Currency Consolidation Bill.
- (4) To complete the consideration of the Official Secrets Bill, and, if possible, pass it.
- (5) To take into consideration and pass, if the Assembly agrees, the Bill to amend the Indian Penal Code, commonly known as the White Slave Traffic Bill, the Report of the Select Committee on which was presented to the Assembly on the 8th.
- (6) To take into consideration the Report of the Joint Committee on the Cotton Cess Bill which was presented to the Assembly the other day and to pass the Bill, if the Assembly agrees.

If the Honourable the Home Member is able to attend on Monday, we shall proceed, as I have said, with the Racial Distinctions Bill. We shall again take it up on Wednesday and also on Saturday next week. On Saturday also next week we shall take up the Official Secrets Bill and we hope to be able to finish it, and in that event the other business which I

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have read out as coming on on Monday will be taken up probably on the following Monday—Monday the 26th.

The Assembly then adjourned for Lunch till Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock. Mr. President was in the Chair.

RESOLUTION RE ADOPTION OF A POLICY OF PROTECTION.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, before I speak on the Resolution and the amendment, I should like to say how cordially we worked with the European Members of the Fiscal Commission, and how willingly they sacrificed some of their scruples in order that there might be unanimity on the major points, on which we were asked to give our decision; and I want to tender to them my cordial acknowledgments for the way in which they treated us during the discussions in the Fiscal Commission. I wish also to express our satisfaction in that the Government on this occasion have shown their appreciation of the desire of the people that there should be a change in the fiscal policy; Sir, the speech which was delivered by the Honourable Mr. Innes shows that,—his Resolution is not half as good as his speech,—his heart is with the people on this question. Sir, on behalf of the Assembly I think I may congratulate the Honourable Mr. Innes on the exceedingly able speech which he has delivered and on the very conciliatory language he has used in his Resolution, although I am of opinion it leaves a great many things unsaid which I should like it to have said. I may point out that the manner in which this Resolution has been brought forward is not very satisfactory. A costly Commission was appointed, it toured round the country and examined a large number of witnesses. A number of issues were submitted for its consideration and it gave its decision on them. The country expects that the Government should make a pronouncement upon all those issues. Instead of that, although my Honourable friend, Mr. Jamnadas Dwarkadas, gave notice of a number of Resolutions dealing with every one of the subjects which were submitted for our consideration, the Government has chosen to take up only one of these Resolutions. The result is that we are not in a position to discuss the other problems, problems intimately connected with, problems absolutely necessary for carrying out, the policy which has been recommended by the majority and the minority members of the Fiscal Commission. Sir, I must express my regret that the Government has not seen its way to bring forward a Resolution which would have covered all the issues submitted to us.

Sir, before dealing with the amendment of the Honourable Mr. Innes
 3 P.M. I should like to say a word about one of the bogeys which has been raised in this House, namely, that relating to agriculture. I do not know whether my Honourable friend, Mr. Joshi or Sardar Gajjan Singh, know, that I was appointed to represent agriculture. I am not an agricultural labourer. (A Voice: "That makes all the difference.") My friend behind me says that it makes all the difference. But I should like to know whether any agricultural labourer would have been able to follow the

evidence—I am speaking of a labourer—whether any agricultural labourer would have been able to follow the discussions and give an impartial decision upon the evidence placed before the Commission.

I tried my best as representing agriculture,—although as I said I am only an employer of labour and not a labourer myself,—to take up the cause of the agriculturist; and I do say that the decision come to by the Fiscal Commission is in no way injurious to the interests of agriculture. I think there is a great deal of misapprehension as regards the position of agriculture. If my Honourable friends had studied the Fiscal Commission's Report they would have found that about 96 millions are actual workers in the field, whereas in industry the number of labourers employed is 13,67,000. Even if there is very extensive industrialisation, ten times as much as we have to-day, the number of people who would be absorbed in industrial pursuits would be about a million or so. Still there will be for agricultural pursuits about 95 millions of people. Do my friends seriously believe that 95 millions of people in this country are not enough for working in the fields? The Honourable Mr. Innes remarked that if the agricultural labourer had been fully represented in this House, it is doubtful whether he would have accepted even the very modest and watered down Resolution which he has put before the House. I demur to what he says on this point. I do not think that the agriculturists, if they have a voice, would in the least object to the report of either the majority or the minority of the Fiscal Commission, and they would certainly not object to the Honourable Mr. Innes' Resolution. On the other hand they would be delighted to find that he has shown such great sympathy and great concern for the welfare of the agriculturists. As I pointed out, there are enough people in this country who can be taken away from agricultural pursuits to be employed in industries; and agricultural pursuits would in no way suffer by these people leaving that class of work. There is another consideration which people do not take note of; and that is this. There have been frequent famines in this country. When the rain fails and the crops fail, the agriculturists find themselves out of employment. If there are a large number of industries, what would be the result? Some member of a working family would find employment in these industrial pursuits, and his earnings would be able to supply the other members with their daily livelihood, whereas if all of them entirely depended upon agriculture and there is a famine, they will find that they will have to look to famine camps for their livelihood. And therefore if there are a number of industries and some members of the family find employment in industries and some members in agricultural pursuits, when there is a failure of crops, the person who is employed in the industries will be able to supply the means of livelihood for the persons who have been thrown out of employment; therefore starting industries would be a help to agriculturists and would not be a hindrance. I said before there are enough people, some of them can well be spared for industrial pursuits. On these grounds I consider people are unnecessarily worrying themselves about agriculture being jeopardised. Upon that point I wish my Honourable friends had the whole of the evidence before them and they would then have seen that even agriculturists gave evidence to the effect that by persons being employed in industries agriculture would not suffer in the least.

I turn to the amendment of which the Honourable Mr. Innes has given notice. I must at the outset say that I am very much dissatisfied with the propositions which he, on behalf of the Government, has put

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forward. Take for example the first of these. He says that he accepts in principle the proposition that the fiscal policy of the Government of India may legitimately be directed towards fostering the development of industries in India, when he, in the next clause says that in the application of the above principle, of protection, regard must be had, etc., the Honourable the Commerce Member apparently believes that the first clause enunciates the principle of protection. I say with respect that there is a mistake in this. Because according to certain economists, industries can be fostered and developed even under free trade, industries can be fostered by State aid, and industries can be developed by Government pioneering; therefore clause (a) does not necessarily imply that the Government has given its adhesion to the policy of protection. It would have been better and more graceful on the part of Government if they had stated in the forefront of their Resolution that they are whole-heartedly in favour of protection, instead of in a left-handed manner and in a grudging spirit bringing in the word "protection" in the second clause.

Sir, if I am in order I should like to move in the first clause the deletion of certain words and the insertion of certain other words. I would suggest that the words "may legitimately" coming after the words "Government of India" be deleted, and after the words "Government of India" these words be inserted: "should be based on protection." The whole clause would then read thus:

"(a) That he accepts in principle the proposition that the fiscal policy of the Government of India should be based on protection and should be directed towards fostering and developing of industries in India."

I have no doubt after listening to the speech of the Honourable Mr. Innes that that is really his idea, and I do not see why clear expression should not be given to that idea, why this idea should not be placed in the forefront of the Resolution. If he accepts my amendment there will be no difficulty in carrying out this proposition, and I think the whole House will be with him so far as the first clause is concerned.

Sir, as regards the second clause; here again I find there is some defect. (Clause (b) reads:

"That in the application of the above principle, regard must be had to the financial needs of the country"

and then it goes on to say:

"and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue."

Sir, both Sir Campbell Rhodes and the Honourable Mr. Innes have very rightly drawn attention to the need that the past should be buried in oblivion, and that we should not rake it up for the purpose of showing up the differences between Lancashire and India. At the same time, if we allow this clause about excise to remain, what will be the inference? The inference will be that the Government of India's revenue is dependent upon excise, that they can never think of a time when the excise duties can be abolished. If that is the idea, and I think the idea is likely to be generated by the Resolution standing in the terms in which it has been worded, it would lead to considerable heart-burning. I take it, Sir, that everybody is agreed that this chapter in the financial history of this country should be closed; that the excise duty which has been forced on

us at the dictate of Lancashire should go. It may be, Sir, that under the present circumstances, having regard to the financial condition of the Government, it is not possible to abolish it. Nonetheless if you allow this clause to remain, it would indicate that the Government for all time to come is dependent upon excise duties and that they do not contemplate that the day will come when the excise duty can be removed.

The Honourable Mr. C. A. Innes: What about the word "present" — "to the present dependence of the Government of India on import, etc."

Mr. T. V. Seshagiri Ayyar: But you do not say that there will ever be a time when the excise duty can go. I think therefore, Sir, that the introduction of the word "excise" in this clause is likely to lead the people of this country into the belief that the Government do not contemplate its removal. At any rate, I did not in listening to the speech of the Honourable Mr. Innes, find any passage in which he foreshadowed a time when the excise duty can be removed.

Then, Sir, I come to the third clause:

"that the principle should be applied with discrimination, with due regard to the well-being of the community and to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission."

Sir, my point is that this clause which relates to paragraph 97 should not be allowed to remain in this Resolution. Those of my Honourable friends who have read paragraph 97 will remember that certain conditions are mentioned there. Then, in paragraph 101, in elaborating the reasons which have led to the mentioning of the various conditions, the majority point out that in the case of new industries there should be no protection. Therefore, Sir, if you leave paragraph 97 in the third clause it would lead to the inference that the Government accept the further elaboration by the majority of that paragraph, namely, in paragraph 101 where they hint at the impossibility at any time of protection being given to new industries. If they omit this clause it would still carry out the intention which the Honourable Mr. Innes has in view. It would read that the principle should be applied with discrimination, with due regard to the well-being of the community. Why spoil this Resolution by a reference to paragraph 97, which when read with paragraph 101 suggests that there should be no protection for new industries. Therefore, Sir, I object to those words:

"and to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission;"

and I hope that the Honourable Mr. Innes will agree to their deletion. Sir, although I think that the words I have objected to are likely to be misunderstood and will be regarded as showing a very grudging spirit on the part of the Government towards the legitimate aspirations of the people of this country who want that their industries should be developed, I must say that a great advance has been made by the Government in assuring us, through their spokesman in this Assembly, that they are prepared to accept a policy of protection for this country. That is a great advance. But I say, Sir, that in order that that pronouncement may be regarded as fully satisfactory and as meeting the wishes of the people, it is desirable that the objections that I have taken to the Resolution should be considered by the Honourable Mr. Innes, and that he should give his consent

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to the deletion of the words which I have suggested should be deleted. If he agrees to that, he will carry the whole House with him, and that would be a great advantage. Instead of having half-hearted support for his Resolution he will find that the entire House is with him. (*An Honourable Member*: "It is not enough.") My friend says it is not enough; but from my point of view I would advise my friend to accept the Resolution of the Honourable Mr. Innes, if he would be good enough to accept the various suggestions I have made with regard to this matter. If he does not, he is likely to find the House divided. But having regard to the fact that we are getting from the Government as much as the Government think they can give us,—I would suggest to all my Honourable friends on this side of the House that they should, even though it is found that the Honourable Mr. Innes is not willing to go as far as I want him to go, give their support to his Resolution.

Mr. President: Further amendment moved:

"In the Honourable Mr. Innes' amendment, in clause (a), omit the words 'may legitimately' in order to insert the words 'should be based on protection and should'."

The Honourable Sir Basil Blackett (Finance Member): Sir, I should like to ask whether in dealing with this amendment one must confine oneself strictly to the matter of this particular amendment or whether one could traverse rather wider ground.

Mr. President: The Honourable Member has actually moved three separate amendments, but, for the convenience of the House I will put all three together.

Further amendment moved:

"In sub-section (b) of the amendment to omit the words 'and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue.'"

Further amendment moved:

"In sub-section (c) to omit the words 'and subject to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission.'"

The Honourable Sir Basil Blackett: Sir, I very much hope that the Honourable Member will not find it necessary to press these particular amendments. The Government has, in the words of the last speaker, made a very considerable advance, and it will be a pity to cloud the issue by getting into a discussion of the details of the particular phraseology in which that advance is made. I would draw the attention of Honourable Members in the first instance to the word 'present' which already finds a place in clause (b)—that in the application of the above principle regard must be had to the financial needs of the country and to the *present* dependence of the Government of India on import, export and excise duties for a large part of its revenue." The fact that the Government at present depends on import, export and excise duties does not in the least mean that the Government will necessarily depend so, shall we say, three years hence. Do it now, an Honourable Member says; but if that is impossible, there is nothing whatever in the phraseology of that clause which implies that any of those particular duties are perpetuated. Now, with regard to

the next clause, clause (c), Government has already agreed to eliminate the words 'subject to' and that really makes a very considerable difference. The words 'subject to' made it an instruction to the Tariff Board that it was to introduce a new policy of protection with discrimination *subject to* those safeguards. Now, it is required to have due regard to those safeguards and I ask any reasonable person who reads clause 97 to say whether any Tariff Board would be so foolish as to start introducing a policy of protection without due regard to those safeguards. I really feel that in the position which we have reached there is nothing in these small amendments which have been suggested.

I would like now with the permission of the House to turn to more general points and continue the debate as a whole. It has been an unexpected debate to one coming from England where the subject of protection and free trade has for some time raised an almost mystical enthusiasm in the adherents of one side or another, an enthusiasm only comparable to the zeal with which people in the Greco-Roman world used to quarrel about the exact nature of the persons of the Trinity. To-day we have had no such discussion. It has been simply a question of the extent and methods of a policy of protection, on which, subject to due regard being had to the interests of agriculture, we all seem to be agreed.

I may perhaps be allowed to make a personal observation at this point. A Member of the Government of India when he speaks on behalf of the Government of India has only a very limited power of expressing personal views. He is an eighth part, or rather less than an eighth part, of a unity known as the Governor General in Council, and he is expressing the views of the Government of India subject to the general instructions of the Secretary of State. There is not much room for very personal views. Some of us, as Mr. Innes has said, have felt considerable doubt as to whether or not the present is a wise moment to introduce protection. I am not one of those who believe that one must be either a protectionist or a free trader; I can never understand why one should be either an Arian or an Athanasian on the question. It has always seemed to me to be a question of time, place and opportunity. I have been able to agree with the free trader that if there were no differences of race, religion, language, nationality, climate or geography between the peoples of the world free trade would be undoubtedly the right policy. But I have never been able quite to subscribe to the doctrine as I saw it stated only yesterday that free trade is the only policy which is consistent with true international morality. At the same time I have never been able to agree with the protectionist when he tells me that it is necessary that everything that comes into the country should be taxed highly, or that it is very bad for a country that it should take payment for its exports by taking imports in return. There is a famous picture in Addison's *Spectator* of a Tory squire who waxes violently indignant over the new fangled importations that are coming in from every part of the world, and drinks death and damnation to them in a glass of cognac from France!! The question is really one of time, place and opportunity, and I think the House must have been much struck with some observations that fell from the Honourable Mr. Innes about the difficulties of introducing protection into India in the present state of world commerce and industry. I do not want to be ruled out of order by you, Mr. President, by getting lost in questions of exchange and currency, but they really have a considerable connection with the question. It has happened more

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than once in the history of the world that a nation has gone in for protective duties and has found in quite a short time that somehow or other in some curious way the exchanges have nullified the effects of protection. At a time when all the exchanges of the world are in a state of chaos, at any rate some consideration ought, I think, to be paid to that matter. There is a paragraph, I think it is paragraph 92, in the Commission's Report which makes a passing reference to that, but if I may be permitted to say so, not a very satisfactory reference. However, as I said, a Member of the Government of India has only a limited right to speak his personal views and my object in expressing a doubt as to whether the present is altogether an opportune moment for introducing protection into India was merely to draw attention to the need for caution. I accept whole-heartedly the doctrine that it is India's right to decide what fiscal policy she shall have, and so long as I remain a Member of the Government of India I shall whole-heartedly attempt to assist in the introduction of the policy which India has chosen. That being the position, the House has, I think, the duty to remember that the Government of India must have the responsibility of doing the administrative work of introduction and must be content to go perhaps a little slower than the fastest sailing vessels of the fleet might wish. After all, we are embarking upon a sea, which is known to be subject to cyclones and which has many sunken reefs. May it not be wise to steer slowly at first and set a course among the islands near the coast? Of these we have already some knowledge in our existing revenue tariff which it will be foolish to pretend was not already a protective tariff without being either consistently or discriminately protective. I suggest, therefore, that it is clearly right that the House and the Government working together should proceed cautiously in this matter.

Now, Sir, some criticism has been made as to the constitution of the Tariff Board. I think it was Mr. Kamat who suggested that he would prefer to see on the Tariff Board two Members elected by this Assembly, but he was willing . . . (A Voice: "No, it was the other way.") If everybody is agreed on that matter, I need not further defend the view that Government has taken about the nature of the Tariff Board. It is, of course, quite natural, it is a natural function of every Parliament to be critical of its executive. It is quite right that it should be so. An executive that is not really responsible and responsive to the will of the people constitutionally expressed is a bad executive. It is even more natural that the Assembly should be jealous in the present state of affairs of this executive, which is only in part responsible to the present Assembly. I do not wish to enter into its constitution at this stage, but it is at any rate responsive to the views expressed in this Assembly. I would suggest that the House, in considering this question of a Tariff Board, should throw its mind forward to the day when the executive will not only be responsive but will be responsible to this House. Let us keep faith with the future. It will be a great mistake if at the present moment, during the present transition period we should allow accidents belonging entirely to the transition period to lead us astray. My strong personal belief is that the two main desiderata in a constitution with an executive responsible to a Parliament are that the executive should be thoroughly responsible to Parliament, and that Parliament should not usurp any of the functions of the executive. I would suggest, therefore, that in dealing with the question of a Tariff Board, we should throw our minds forward

and consider whether, supposing we had an executive which was entirely responsible to this Parliament, we should not be making a mistake by trying to usurp their function of appointing a Tariff Board which would take from them the responsibility, which after all they cannot shift from themselves, of bringing this policy into execution.

Mr. S. C. Shahani (Sind Jagirdars and Zemindars: Landholders): Sir, I rise to point out that it will be a very great mistake on the part of the House to accept the amendment of the Honourable Mr. Innes in the form in which it stands at present. It has been pointed out by my Honourable friend Mr. Seshagiri Ayyar that the first clause of this amendment is not properly worded, and he has accordingly suggested some amendment to it. I would read the clause and consider the amendment that has been suggested. Mr. Seshagiri accepts the principle that the fiscal policy of the Government shall legitimately be directed towards fostering the development of industries in India. But his suggestion is that it should be based on protection and directed towards fostering the development of industries in India. I thought the industries of a country were fostered either directly or indirectly. They were fostered indirectly by tariffs, and directly by bounties, cash credits, railway rates and in the great variety of other ways indicated in the Report of the Industrial Commission. I therefore suggest that the first clause should be worded thus: "That the fiscal policy of the Government of India shall legitimately be directed towards fostering the development of industries in India by protection and by direct aids". That would be more exact, and that would convey the idea which is intended to be embodied in the first clause.

In the second clause as my Honourable friend, Mr. Seshagiri Ayyar, has rightly pointed out, the existence of the word 'excise' will no doubt lead to considerable misunderstanding in the country. Misunderstandings on vital questions should be avoided with special care. So far as I see, if the intention of the Government is to give up excise duty at any future time, it is best not to indicate in this clause that regard must be had to the finances of India depending largely on the collections from imports, exports and excise. Cotton excise duty ought to be done away with at once. It has been said by some that it exists in other countries. I have to point out that such a tax exists in very few countries, and that wherever it exists it exists only for revenue purposes. Japan has been often instanced, but we have to remember that Japan not only refunds the excise duty but also pays freight to destination on her manufactured goods which are sent abroad.

Then, Sir, I come to the third part of the amendment, which is really the most important part. With all deference to the Honourable Mr. Seshagiri Ayyar and to my Honourable friend, Mr. Jamnadas Dwarkadas, I must point out that, while they have felt that there is something wrong about the recommendations of the Fiscal Commission, they have never been able to localise it. The chief defect in the Report of the Fiscal Commission consists in this, that while they recommend a policy of protection, they try to render that policy as ineffectual as possible by loading it with unworkable conditions. They do come forward rightly to answer all the objections that have been raised to the policy of protection being adopted in India—and on this point I feel greatly disposed to congratulate the members of the Commission, particularly the European members, on their having risen above petty considerations—and to give

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 it as their deliberate opinion that the policy best suited to the interests of India is a policy of protection. But while they have done that, we have got to remember that they have sought to neutralise the effect of this policy which they have recommended for adoption to the Government of India. Now how have they neutralised it? I would refer Honourable Members to paragraph 97 on page 54 of the Fiscal Commission's Report that has been read out but by no means duly pondered. Now what is the main recommendation of the Fiscal Commission's Report? Their main recommendation is this. Adopt the policy of protection because it is best suited to the interests of India. But since this will involve sacrifice on the part of the consumer and the interests of the consumer should be protected you must be discriminating, and in order that you should exercise discrimination with regard to industries that may apply for protection, what should you do? You should appoint a Tariff Board which is undoubtedly a very good step suggested by the Fiscal Commission. Probably this recommendation of the Fiscal Commission's Report may be usefully followed elsewhere too, say, in settling the question of State *versus* Company management. State management finds favour with the people, and I have no doubt that for that the appointment of Boards should be insisted on in order that the State management may be efficiently conducted. A Tariff Board is undoubtedly necessary, but what further do the Fiscal Commissioners do? They lay down that the Tariff Board in fixing the rate of protection must necessarily respect three conditions. And what are these three conditions? I shall read the three conditions. The first is "That the industry must be one possessing natural advantages such as an abundant supply of raw material, cheap power, a sufficient supply of labour or a large home market." That is a valuable condition, though here too I feel disposed to omit the consideration of "labour" and "market" as well. It is a mistaken idea that India suffers from insufficiency of labour. We have plenty of labour, but it is unorganised. And it is for that reason that the foreign capitalist is able to exploit Indian labour. I entered into conversation in regard to this new fiscal policy with the Honourable Member from Champaran only last night, and he told me that the foreigners who have established their plantations there allowed sometimes no more than two pias a day to the labourers that they employed. The question of labour may not therefore be worried about. I would also omit the word "market" because India is a continent and it has, I think, wrongly depended upon a vagarious foreign market disturbed by fluctuating exchanges. It can be self-contained and it is no exaggeration to say that India can find a secure home market quite sufficient for the purposes of all its important industries. I would retain the words "raw material" and "power" only. But yet comparatively that is a small thing and, if my other friends in the House do not go with me, I would be prepared to drop it. Then, I come to the second condition which says: "That the Tariff Board shall afford aid only when an industry claiming protection is able to show that it is not likely to develop at all or not likely to develop so rapidly as is desirable." Now this is a hard condition. I at once state that what is given with one hand is sought to be taken away with the other. Alien interests could easily put up experts to swear that an industry cannot develop at all or so rapidly as is desirable. According to me all that an industry should be required to show is that, although it has possessed natural advantages, it cannot carry on without protection. And this should be quite enough for the Tariff Board. No

other consideration should intervene. The third condition is absurd. And that is that an industry should be able to show that eventually it will be able to face world competition without protection. I have known magical results produced in these days. Some time ago it was deemed impossible for a man to fly—he can fly now. But, if we have scientifically developed so far, if to-day our Chemistry can become alchemy in certain respects, I am very doubtful if in the domain of free will we should be able to secure the same results, if we should be able to say beforehand as to what the conditions of world competition will be after thirty or forty years. But even if we are able to divine, do the Fiscal Commission propose that an astrologer or a theosophical clairvoyant should be put on their Tariff Board? It is no use providing these stringent and unworkable conditions, and I draw the attention of my friends here in the House to these three conditions and ask them to carefully consider them. They are represented by Mr. Jamnadas Dwarkadas as being a detail but with all respect I beg to point out that the dissenting Commissioners have not taken into consideration the import of these three conditions and have missed the meaning that underlies them, and I therefore beg to propose that here we should adopt the amendment that I have suggested, namely:

1. (a) That for the purpose of rapid intensive industrialization of the country the Government of India adopt a policy of protection to be applied with discrimination along the following general lines:

- (i) Every industry to which protection is given must possess natural advantages in abundant supply of raw material and adequate sources of power.
- (ii) The fact that, although there exist natural advantages for an industry, it has not been started or has not made rapid progress under the existing regime, should be considered sufficient proof that protection is needed in its case to inspire capital with confidence and to make the progress of the industry rapid."

It is said that my amendment is a long one, furnishes the basis for a Bill, is a speech or an essay. My reply is that those who raise that objection have not studied the subject. (Laughter.) I would not mind stimulating laughter by being so positive here. It is true that very probably the force of the amendment that I have proposed will not be realised by my friends and the amendment that has been proposed by the Honourable Mr. Innes will be carried, but let it be remembered that there is at any rate one man to point out that this amendment in its unmodified form is dangerous and that the House would be committing a serious mistake in adopting it. I am not concerned with the issue at all. It is not given to man to command success; he can do more, he can deserve it. I must point the great flaw which I notice in the amendment that has been put forward by the Honourable Mr. Innes. The whole forenoon I have been getting up, and I thank my stars that I have at last had an opportunity of saying my say now. I want also to point out that there is a very great omission in the proposed amendment in that no reference has been made to the employment of foreign capital. Now, kindly consider the context. To restrict the consumer's sacrifice to the necessary minimum a policy of protection should be applied with discrimination; and foreign capital is to be freely employed, say the Fiscal Commission. Discriminating protection on the one hand and what is more free employment of foreign capital: what will these two things do? They will minimise the burden that is to fall on the consumer. And therefore you should be very particular about the employment of foreign capital. I wish to point out that the employment of foreign capital is altogether undesirable, that that has caused the economic

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enslavement of the country, that places like Champaran and Assam have become plantations in consequence of the free employment of foreign capital.

Mr. President: I would point out to the Honourable Member that the discussion of foreign capital is not in order.

Mr. S. C. Shahani: Sir, if it is not in order, I desist, and hope there will be some other opportunity of discussing it. I would also give up on this occasion the consideration of one other question, namely, the question of Imperial preferences. It has been probably deferred for consideration to some other time, and I willingly abide by the arrangement that seems to have been made. I therefore consider one other point, namely, the point of the Tariff Board. If any part of the dissenting Minute is most satisfactory it is that which is devoted to the appointment of a Tariff Board. The dissenting Commissioners have in general rightly pointed out that the Tariff Board should consist of three members of general attainments and two assessors representing the different interests of trade, commerce, and industry. (*An Honourable Member:* "Not agriculture.") Yes, agriculture too. I say that the minority Commissioners have rightly suggested that the Tariff Board should consist of three members—one Chairman and two ordinary members, and that, whenever further investigation becomes necessary, the Board should call in the aid of two assessors elected by the different Chambers and mercantile associations in the country and that their help should be requisitioned for the purpose of investigating the claims that are advanced by different industries to protection. I say this is an improvement upon the position that has been assumed by the Fiscal Commission and by the Honourable Mr. Innes in this House. I am suggesting a further improvement. The Chairman as suggested by the minority Commissioners should be a lawyer of the status of a High Court Judge for impartial judicial decisions amongst conflicting interests. It is also right that two members of broad views should be elected by the non-official Members of the Assembly who should have a voice in the constitution of the Board. But the representatives of the different mercantile associations should be regular members and not mere assessors. Those who are specialists, businessmen conversant with special industries, will not on that account be necessarily disposed to protect the interests of the industries which are very near to their heart. I would suggest that all the four members should be appointed by the non-official Members of the Indian Legislature. I therefore slightly modify the useful suggestion made by the dissenting Fiscal Commissioners and propose that the amendment which has been proposed in clause (d) by the Honourable Mr. Innes be superseded by the amendment which I have proposed. The amendment which I have proposed is:

"That a permanent Tariff Board, consisting of a trained Indian lawyer of the status of a High Court Judge for its Chairman, two members elected by the Non-Official members of the Central Legislature and two members representing trade, commerce and industry elected by recognised chambers and mercantile associations in India, be created whose duties will be, *inter alia*, to recommend the rate of protective duty or any alternative measures of assistance, to watch the operation of the Tariff, and generally to advise Government and the Legislature in carrying out the policy indicated above."

I have only one other remark to make, and it is this. The Honourable Sir Campbell Rhodes has emphasised the conflict that would arise between the interests of the consumer and the producer, if the policy recommended

by the Fiscal Commission be adopted. He went the length of saying that there was really no conflict of interest between Lancashire and India, but that in India there will be a conflict between the consumer and the producer. I have heard this point made by some others also. I take this opportunity of stating what has been conceived by my own mind as being an answer to such an objection. The consumer must naturally make some sort of sacrifice in order to gain culture, skill and powers of united production. My Honourable friend Mr. Gajjan Singh came forward to say that agriculture would suffer from protective policy. My Honourable friend Mr. Seshagiri Ayyar has given a reply to that. If time were allowed me, I would read a paragraph from the Fiscal Commission's report; but as it may not be allowed me, I merely refer to what has been said by the Fiscal Commission's report on this point. Agriculture, say they, will not suffer. Agriculture will gain, and distinctly too, by the adoption of the policy of protection. I am an agriculturist, and do agricultural labour. You may look at my dress and imagine that I cannot handle a plough, but that is not so. Few cultivators can distinguish between one kind of soil and another better than I do, or select seasons for different cultivations or settle different rotations or

Mr. President: I must ask the Honourable Member to bring his remarks to a close. He is getting irrelevant.

Mr. S. C. Shahani: Sir, if that is not allowable, I make no further reference to it. I only say that I feel convinced that agriculture will gain by the adoption of the policy of protection. Most of the agriculturists are mere middlemen and it is only few that participate in agricultural labour. Agricultural labourers are not employed throughout the year on agriculture. It is only in very few places that you have perennial canals and it is therefore most common in India that for nearly six months the cultivator has got to do nothing. If industries are created, the agriculturists would benefit, and very largely too. The cultivator is starving. It is a fact that he does not get even the two meals a day to which he is entitled. And if that is so, the sooner India came to be industrialised, the better would it be for the country. It has been said—I do not recollect by whom, I think it was by my Honourable friend, Mr. Joshi, I am not sure, it may have been by Sir Campbell Rhodes; so I won't say by whom—that India suffers from famines. Famines never affect all parts of India at once.

Mr. President: I must ask the Honourable Member to resume his seat. I gave him a warning three minutes ago and he did not bring his remarks to a close.

Mr. S. C. Shahani: I would only take a minute or two more, Sir.

Mr. President: The Honourable Member is perhaps not aware that I have already given him 9 minutes over his time.

Mr. S. C. Shahani: There are others who were given more time.

Mr. President: What did the Honourable Member say?

Mr. S. C. Shahani: Sir,

Mr. President: I ask the Honourable Member to repeat his remarks.

Mr. S. C. Shahani: I thought that others had got more than 20 minutes.

Mr. President: May I ask the Honourable Member what he implies by that?

Mr. S. C. Shahani: I imply nothing. I only refer to the fact.

Mr. President: May I ask the Honourable Member why he refers to that fact?

Mr. S. C. Shahani: In order that my request for further time may be considered.

Mr. President: I pointed out to the Honourable Member that I had already given him 9 minutes over his time, and I warn him now that I shall not again pass over in silence remarks which imply any reflection on the conduct of the Chair.

Mr. S. C. Shahani: I will be as brief as I can, Sir. I will take only a minute or two more.

Mr. President: I ask the Honourable Member to resume his seat. I understand the Honourable Member desired to move his amendment as an amendment of the Honourable Mr. Innes' amendment. If he will show where the amendment should come in the Honourable Mr. Innes' amendment I should be prepared to accept it.

Mr. S. C. Shahani: Sir, I am omitting that part of my amendment which relates to Imperial Preference, that is to say, part (3). I am also omitting that which relates to the Sea Customs Act, that is, part (5).

Mr. President: I am not asking what the Honourable Member is omitting. I am asking where the amendment comes in the amendment of the Honourable Mr. Innes.

Mr. S. C. Shahani: I seek then to suggest that clauses (a) and (c) of the amendments of the Honourable Mr. Innes be replaced by my clause (a). Then

Mr. President: I will allow the discussion to proceed on the amendment moved by Mr. Seshagiri Ayyar in that case.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, in the first instance, I think the House would like to express its appreciation of the handsome manner in which the Honourable the Finance Member has recognized—as a matter of agreeable surprise—that in this House at all events we are not all irresponsible fire-eaters but are occasionally prepared to take a reasonable view of things. I hope others outside this House whether in the press or elsewhere will share those opinions. Government is prepared to go as far as it may in the present circumstances and we in both the parts of the House, I believe, are agreed that no obstructive tactics should be adopted by which what the Government is prepared to concede may be nullified. At the same time one does feel and one is bound to press that the amendments, more than verbal, that have been moved by Mr. Seshagiri Ayyar are necessary in the interests of the situation. Recognizing that Government cannot afford to be more than general in its acceptance of the principle of protection and following up that desire, I think these amendments are more than necessary. Reading the Honourable Mr. Innes' amendment, one thought that Mr. Seshagiri

Ayyar and his friends in the minority of the Fiscal Commission had scored a point, because when Government accepted the principle of "protection with discrimination" and omitted the words "along the lines of the Report" about which there was a great deal of understandable dispute between the majority and the minority—I say, one thought that Mr. Seshagiri Ayyar and his friends had scored so far. The moment, however, any details are gone into, even in the way that Mr. Innes' amendment attempts the Government's object is, to some extent, nullified. As Mr. Shahani has pointed out, by accepting the principles laid down (they are more than principles, for they are details) in paragraph 97 of the Report, you will be really handicapping the Tariff Board that is to come and not giving them the free hand which they should have if they are to direct our deliberations in the way that they ought to. For these reasons, and without going further into details and confusing issues that have been gratuitously imported into the consideration of this circumscribed Resolution and the amendment of the Honourable Mr. Innes, I should press the Government to reconsider the position and agree to the suggestions of Mr. Seshagiri Ayyar.

Sir, the issues have been confused. One of them is the so-called agricultural issue which is looming somewhat large in our deliberations. I come from an essentially agricultural province, more agricultural I believe than any other in India. Bengal has its own problems. Bengal is however fairly "protected" in economic and industrial matters or shall I say a great deal of "free trade" is there. Its interests on the Fiscal Commission were entrusted to the care of an European merchant, no doubt a prince among them, a Marwari merchant, a very successful merchant, and also a Parsi Professor of Economics. Whoever was responsible for the framing of the personnel of the Fiscal Commission never thought that Bengal might have its own point of view to be put forward by its own representatives. Be that as it may, Bengal has its point of view essentially agricultural as it is. The lower middle classes of Bengal have been and are largely agricultural in the villages. I am one of them, sometimes a labourer of the stamp of my friend, Mr. Shahani. But agriculture has not solved her problems and Bengal wants to be and must be increasingly industrial. It has no other salvation in the near future. Whatever the reasons may be, the lower middle class in Bengal will not take with that zeal to agriculture that will ensure anything like success in life. Unlike in the past it is taking gradually more, however, to industrial and mechanical life. We have more than a promise of that in my Province in the same way as I think they have in the Punjab in spite of what Sardar Sahib Gajjan Singh and Mr. Townshend have told us. I had been recently to the Punjab and I found quite appreciable industrial awakening there along with commendable educational progress all round. Industrial consciousness is coming over the whole of that province which will soon enable its inhabitants to take their place in the industrial life. With its Hydro-electric and other schemes and promising water power the Punjab will take care of itself. I believe that there can be no gainsaying the fact that even in the Punjab the agricultural interests will not be inconsistent with industrial interests. Certainly, in Bengal that is not going to be the case, and that is not the case. Even with regard to agriculture itself, if what is called scientific agriculture is to come, is not that another form of industry. How can agriculture and industry be dissociated like that? We want cheap clothes no doubt—to talk of one only of the many narrow issues raised. We want here protection not only against Lancashire and

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Bombay and Nagpur, but I am afraid sometimes against Clive Street also. We have a representative of it in the House—he is not here, but he is listening to me quietly from a distance in the corridor. We want protection against some of our own so-called swadeshi workers who are piling up the prices of cloth above their intrinsic value. We want protection against all these, and who knows that the Tariff Board is going to give the cloth industry any protection of the kind that cloth dealers are hoping to have? It may give protection to yarn, or to some other branch of the cloth industry, but the finished cloth industry is not likely to have much consideration. Therefore, by raising these false issues let us not get away from the real point. An important advance has been made. We have to be thankful for the smallest of small mercies, and if a man from Mars came to-day and found that we were congratulating ourselves and the Government upon the fact that after near upon two centuries of British rule here we are in a very patronising way told that the fiscal policy of Government “may legitimately be directed towards the fostering and the development of industries in India”, he would be more than astonished. Why, that is a common-place, that is, obvious in any country. But we have to accept that small mercy and be thankful. I am not therefore prepared to risk that mercy by moving amendments that may not be acceptable to the Government. For fifty years, certainly for 37 years since the Indian National Congress came into existence, the better mind of India has been asking for protection in some shape or other. Are we now going back upon that? Government is prepared to concede it in some shape, and to concede, in Sir Basil Blackett’s language, that we are now to be masters in our own house so far as fiscal policy is concerned. This is another reason for thankfulness. And there is a third. The Honourable Mr. Innes made a statement which must not be lost sight of, namely, that we are perilously near to taxation limits, we have been urging this long and anything that will get rid of further direct taxation is welcome. The way in which Mr. Innes’ amendment has been framed, even when amended by Mr. Seshagiri Ayyar, will not bar those other aids to industrial development that many of my friends have referred to. But protection should be placed in the forefront of our programme, and that is why I believe Mr. Seshagiri Ayyar is wanting to move the amendment in a pointed manner and that is why I believe the Government ought to accept it. I do not want to labour points that have already been dilated upon, but I want to make it quite clear that whatever class *versus* class differences may be, whatever province *versus* province differences may be, whatever other differences may be, the country is fairly united that some protection of the kind that has been indicated is necessary, not alone in the interests of industry but also in the interests of agriculture which must go hand in hand together. If protection is really bad for agriculture I should not have it at any price. These considerations commend the amendment of the Honourable Mr. Innes, subject to the further amendment of Mr. Seshagiri Ayyar, to most of us. If Government saw its way to accept Mr. Jamnadas’s original motion and added clause (d) of the Honourable Mr. Innes’s amendment to it, the object of the Government and ourselves would have been better attained. Mr. Jamnadas’s Resolution is fairly general. It covers nearly all the ground covered by clauses (a), (b) and (c) of the Honourable Mr. Innes’s amendment. If it is permissible to do so, I should recommend that Mr. Jamnadas’s Resolution shall stand and be amended by addition of the Honourable Mr. Innes’s amendment, clause (d).

so that the whole object aimed at by Mr. Jamnadas and the Honourable Mr. Innes which is also our object, so far, may be achieved.

The Honourable Mr. O. A. Innes: It will be convenient if at this stage I explain the view of the Government in regard to Mr. Seshagiri Ayyar’s amendment. I do not propose to refer to Mr. Shahani’s speech except to say that that speech illustrated a danger which I think is a real one. If every one here to-night worded the Resolution so as to embody his own particular brand of protection, every one of us in this Assembly would have his own Resolution, and we should never come to a finish at all. In this very difficult matter I say that there must be a reasonable spirit of give and take and that being so I hope Mr. Seshagiri Ayyar will withdraw his amendments. I must confess that I listened to Mr. Seshagiri Ayyar’s speech with a certain amount of disappointment. He said that the Government had made only a grudging advance. He said that we had so worded our Resolution that it was open to misconstruction and misunderstanding. Sir, on my part, I may say that I do not think that any reasonable man reading my Resolution can misunderstand it at all and I say that if there is any misunderstanding it must be a wilful misunderstanding. The first clause of my Resolution has been attacked on the ground that it does not bring in the word protection. It has been suggested by Mr. Seshagiri Ayyar that under cover of this clause I am probably referring only to other methods of giving assistance. Sir, Mr. Seshagiri Ayyar, when he made those remarks, entirely overlooked the word ‘fiscal.’ I say that the fiscal policy of the Government of India may legitimately be directed towards the development of industries in India. Sir Deva Prasad Sarvadhikary accuses that as being a patronising reference to India. It is nothing of the sort. What is the point of that clause. Surely this House will give us credit for the fact that every line of this Resolution has been most carefully thought out and the reason why clause (a) of the Resolution has been worded like that is to mark the transition, the profound transition from a purely revenue tariff to a tariff which is directed to other objects and that is why the Resolution has been worded in that way. I come to clause (b). Here again Mr. Seshagiri Ayyar says that clause (b) has been so worded so as to give people the idea that we propose for ever to keep on the cotton excise duty. Nothing of the sort. I explained at the very greatest length in my last speech why we had put in this reference to the financial position. I explained that it would not be honest for us to pretend that in the present state of our finances we could pledge ourselves to take off the duties referred to by the Fiscal Commission and that is why I put in particularly the words ‘the present dependence.’ We are not discussing the question of cotton excise duties at all in this Resolution. It has nothing to do with this Resolution. All we are discussing is whether or not this House is to admit the principle of protection. That is the whole point. Again we come to clause (d). Mr. Shahani has found all sorts of dangers, all sorts of dishonesties on the part of the Government of India in this reference to the safeguards in paragraph 97 of the Indian Fiscal Commission’s Report. Mr. Seshagiri Ayyar suggested that because I made a reference to paragraph 97 I must have had in my mind a reference to paragraph 101. I had no idea of the sort. Any one will see, as Sir Basil Blackett has pointed out, that this suggestion that the Tariff Board must have regard to these safeguards is a perfectly reasonable suggestion. No Tariff Board considering questions of this kind could avoid paying regard to the considerations mentioned in paragraph 97 of the Fiscal Commission’s Report. As I pointed out in

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my last speech, all that paragraph refers to is the doctrine of comparative advantage. Can Mr. Shahani or any one in this House suggest any better criterion than that? I do not think I need say more. We have on this side made a fair and even generous advance in order to meet the wishes of this House and the wishes of the people of India. I do not think that it is generous on the part of the House that it should make small and niggling amendments in the wording of my Resolution. As I have said, every line of this Resolution has been most carefully thought out and I must ask the House to accept that Resolution as it stands. I am afraid that if Mr. Seshagiri Ayyar presses his amendments then I must oppose them and the responsibility will not be mine. Sir, I oppose the amendments.

Dr. H. S. Gour: I move that the question be now put.

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

"That in the amendment moved by Mr. Innes in clause (a) the words 'may legitimately' be omitted and that the words 'should be based on protection and should' be inserted in their place."

The motion was negatived.

Mr. President: Further amendment moved:

"That the words in clause (b):

'and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue' be omitted."

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Having regard to the fate of these amendments I do not press the other amendment.

Mr. President: Further amendment moved:

"That in clause (c) the words 'and to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission' be omitted."

The motion was negatived.

Mr. P. P. Ginwala (Burma: Non-European): Sir, somehow to-day I do not feel the least enthusiasm over the subject which is being debated, for by what I can see there is very little ground on which there is really much controversy. The points that are under debate are really two as the Honourable Mr. Innes has more than once pointed out. Is India committing itself to the principle of protection? That is one point; and the second point is—if it is going to commit itself to the principle of protection—does she wish that part of the machinery to give effect to that principle shall be the constitution of a Tariff Board?

Now it was said this morning,—and I think it is believed by most Honourable Members,—that to-day we are burying the policy of free trade, and that we are giving it a decent burial with the Honourable Mr. Innes as one of the principal pall bearers. But the question that I should like answered is this. If free trade is dead to-day, and it is going to be buried in a few minutes, has protection really come to stay? Now I am not very sure that the way we are proceeding about it to-day leads me to think that protection, even if a Resolution approving of it is passed by this

august Assembly, is going to stay for ever. I see no indication of any element of permanence in the proposition that has been made either by my friend, Mr. Jamnadas Dwarkadas, or the amendment moved by the Honourable the Member for Commerce and Industries. For what does it amount to? We pass a Resolution that the future fiscal policy of India shall be on the lines of protection. We then say that we should constitute a Tariff Board to give effect to it. But what is there which gives any sanction either to the first Resolution or to the second Resolution? What is there to prevent this policy being set aside by a subsequent Resolution of this House, and what is there to prevent this Board being also wiped out by a subsequent Resolution of this House? Now, Sir, the point that concerns me most is this,—if we are going to embark upon a policy which is going to break with the past wholly and which is going to inaugurate a new era, the House must safeguard itself against fluctuations of political views in this Assembly and outside. I am not in a position to suggest how this House is going to accomplish that; but I venture to think that the mere passing of these two Resolutions will not ensure that permanence which is essential to the growth of this fiscal policy on which this House is about to embark. It is also necessary that some legislative provision be made by this House by which this House pledges itself, so far as itself is concerned, to adhere to this policy. Unless this is done I do not consider that we should be wise in venturing upon this policy, for there are no precautions taken against its reversal at any time. I put the question in this way. Take the Tariff Board. The Honourable Mr. Innes says, the Board shall come into existence and shall remain in existence for a year.

The Honourable Mr. C. A. Innes: In the first instance.

Mr. P. P. Ginwala: Of course in the first instance for a year. But we do not know what is going to happen to that Board at the end of the year. Many of us may not be here at all to hear the fate of that Tariff Board. It is not merely a bogey I am raising; it is a real fact that you have got to reckon with. If our friends outside the Council who have kept out of it change their minds, as they are about to change, we hope, you may be certain that this would be one of the election cries—and it must be an election cry—as to whether the Honourable Mr. Innes with his Tariff Board and we with our support should be allowed to come back to this House or not. I venture to submit, Sir, that before any violent changes are made in the policy of the country, sufficient provision must be made to ensure its permanence, and I submit, that this is not the way to do it. I have said before in this House, and I have not changed my opinion since, that I am a protectionist to the core; but I do not wish to be a protectionist to-day and be changed into a free-trader by the sheer brutal force of votes next year. That is the thing we have got to guard against. (*An Honourable Member:* "There is no danger of that.") There are gentlemen here who are so sanguine as to suppose that there is no danger of that. Well, I foresee the danger myself, though it is not that I wish that the House should not embark upon this policy of protection. That is not my wish. My wish is that something more tangible than a mere Resolution should come from the Government, so that at least for a reasonable period we are committed to this policy of protection.

Then, Sir, with regard to the constitution of the Board. Now I am not a great believer in any bureaucratic form of Government.

The Honourable Mr. A. O. Chatterjee (Education Member): Nor do you believe in a democratic form of Government.

Mr. P. P. Ginwala: My Honourable friend says, that I am not sufficiently a democrat. But there is this to distinguish real bureaucracy from real democracy, that the bureaucracy will not improve nor is willing to improve upon somebody else's ideas. Democracy has this affliction about it, that it wants to improve everybody and it wants to improve upon everybody else's ideas. This being so, let us consider whom we should prefer. What would happen if democracy prevails and this principle of election is adopted in the constitution of the Board? Those Members who are elected by the House will be subject to the influence of the House. We cannot get away from that fact; we need not disguise it. They must come under the influence of the House. Again the House itself, in its turn is bound to come under the influence of the outside world. This will not be so in the case of the bureaucracy and I submit, that in the conflict between these two principles and under the peculiar circumstances of this case, I would prefer the bureaucracy and confer on it the power of determining the constitution of the Board. But, Sir, I would go further. I am not impressed by the fact that the mere passing of a Resolution constituting this Tariff Board is sufficient. If this Board is to be constituted it should be a statutory body, constituted by an Act of this Legislature, and that its duties as far as possible should be defined. I object to treating the Board merely as an advisory body. For in the end it may come to this, that it may advise as much as it likes the protection or otherwise of a particular industry, but if its advice is to be submitted to the opinion of the whole House, I venture to submit, without meaning any offence to this House, that that advice will not more often than not be examined on its own merits. There are always political forces at play, under whose influence the advice is bound to come. If their advice is to be subjected to the scrutiny of the House on each occasion, it would be better that the advice had better not be tendered. We have seen, and it is a legitimate exercise of our powers—we have seen on many occasions how much we have got a tendency to doubt to scrutinize and amend the reports of all Select Committees. That I say is legitimate in legislation, but when one comes to the examination of an important department of business, the examination should be from a business, and not from a political point of view as would be the case, if it was undertaken by this Assembly. I maintain that is a thing to be avoided, and if the Honourable Member for Commerce is desirous that this Tariff Board should be a really live Board with possibilities in itself of doing good, it should be a statutory Board exercising statutory authority, by which this House and the outside world may be bound for a reasonable period of time. There is another point. In the elements of permanence to which I referred there is the attitude of one gentleman, the gentleman who sits in Whitehall with a big stick in his hand over the heads of my Honourable friends on the Treasury Benches; we have heard nothing at all as to what his ideas and intentions are and what he means to do. (*Mr. Jamnadas Dwarkadas:* "He has no voice.") We think he has got no voice, but I should like to have an official statement made that he is going to give up this big stick in his hand so far as this aspect of administration is concerned. I have heard nothing about it. I should like to hear from the Honourable the Commerce Member what is the position of this gentleman going to be with regard to any Resolution that this Assembly may pass to-day. We have been just told by the Honourable the Finance Member, that Members

of the Government have got very little scope for the expression of personal opinion; we know it and we feel it pretty often; but we want really to know what is the official information on this question. Is this gentleman going to take his legitimate position in the machinery of the Government of the country, or is he going still to persist in interfering with our affairs when his interference is not required? I put a plain question to the Honourable Member for Commerce and I shall expect a plain answer.

Sir, these are some of the few matters which have rather made me feel some anxiety about the future fate of the policy we are adopting by the Resolution which is before the House. It may be that I do not understand economics in the way in which my Honourable friend to my right (*Mr. S. C. Shahani*) claims to do, but I think I am entitled as much as anyone else to know from the commonsense point of view what our position is going to be hereafter; whether if free trade is dead protection has come to stay?

Mr. Jamnadas Dwarkadas: Sir, we have now before the House my own Resolution and as against that the amendment of my Honourable friend, Mr. Innes. We have heard speeches from many Honourable Members, some supporting the Resolution, others supporting the amendment, and others criticising both; and I am called upon now to exercise my right of replying to the debate that has followed my moving this Resolution. I shall try and take my Honourable friends one by one. I shall deal with Government last. I shall first take my Honourable friend, Sir Campbell Rhodes, one of my esteemed colleagues on the Fiscal Commission. I must at once say that with the exception of one point that it seemed to me he made, my Honourable friend, in spite of differences of opinion—and I still maintain that they are small differences—has treated me more or less fairly; but I must insist on telling him something about one point that it seemed to me he made, and that was to the effect that considerations of racial hatred had shown themselves in the conclusions at which we arrived. Now I at once deny the charge. I deny it

Sir Campbell Rhodes: On a point of explanation, Sir, may I assure the Honourable Member that those were not my remarks? I referred to evidence given before us, but to any action in the Commission itself.

Mr. Jamnadas Dwarkadas: I am glad, Sir, that my Honourable friend has explained his position. But even on behalf of the witnesses themselves I am not prepared to admit the fact that they were moved by racial considerations in dealing with this question on which the voice of India had spoken long, long before this House ever ventured to take the matter into consideration. It is a question that has been discussed on its own merits by every one who has discussed it, and I refuse to believe that any one of all the witnesses that came to give evidence before the Commission introduced the element of race in putting forward his views before the Commission. Then my Honourable friend made another point and said that I maintained the position that when India became self-contained famines would disappear. I was surprised to hear that from my Honourable friend. I never for a moment maintained that. In a limited sense, so far as the necessities of life are concerned, I do believe that India can reach a position of being self-contained, and it will reach that stage if proper encouragement is given to industrial development in this country. So far as famines are concerned, I maintain that if pressure on land is diminished by a portion of the people who now belong to the agricultural class diverting their energies to industrial labour, then it is likely that the

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resisting power of the people will increase and they will be able to bear famines more than they have hitherto done. With regard to the other points referred to by my Honourable friend, I have nothing to say. He has presented his own point of view, but fundamentally I find that there is an agreement between us so far as the general conclusion with regard to protection is concerned. Now, I must come to my Honourable friend, Mr. Joshi. Believe me, Sir, I never expected that my friend, Mr. Joshi, who is supposed here to represent the interests of labour of the poorer classes of the community, not by election but by nomination of the Government, would ever put forward views that would be most detrimental to the interests of the poor classes. I was wondering what it was that had influenced Mr. Joshi's views so as to enable him to present a case, pretending of course that it was a case for the poorer classes, but which was most detrimental to the interests of the poorer classes. I was wondering what it was that had influenced him. (Mr. N. M. Joshi: "Have you found out?") And it then dawned on me that perhaps his going to Washington and Geneva nominated as he was by the Government of India to represent the cause of labour had perhaps removed him to a large extent from touch with the poorer population here and had brought him in the midst of the surroundings of those pleasant labour gentlemen of other foreign countries whose views on the question as to whether India should have a policy of protection or free trade would not be acceptable to any portion, to any class of people belonging to this country. We know that the people who would most resent the adoption of a policy of protection would be perhaps the class which seems to have influenced my Honourable friend, Mr. Joshi's views. I want to assure Mr. Joshi this, that if I had not known him I would have for a moment thought that he was here representing the views either of Lancashire labour or of Lancashire merchants and that he was not in any way advocating the cause of our country. (A Voice: "No, no.") I am entitled to my view. I find fault with his judgment, not with his motives; but believe me, Sir, that it has really pained me to feel that Mr. Joshi's prejudice against capitalists goes so far as to make him use this momentous occasion for emptying himself of the hatred that, it seems to me, he has generated in his breast against these "wretched classes". I hope Mr. Joshi will realise that the country is much greater than any of the classes that constitute this country. I hope Mr. Joshi will take a leaf from the book of his own late leader Mr. Gokhale, and make up his mind to study the speeches and writings of that great respected leader and try to give something of his views both to the people and to the Government which of course will be to the advantage of this country.

Then, Sir, I come to my Honourable friends from the Punjab. Both my friends from the Punjab, Messrs. Townsend and Sardar Bahadur Gajjan Singh seem to imagine that an adoption of the policy of protection will hurt the interests of the agriculturists. Now I do not want to go into the details of their arguments, but it seemed to me when my Honourable friend, Sardar Bahadur Gajjan Singh was arguing, that he was arguing against himself. He maintained that if industries were set up in this country and if a demand for raw materials increased in this country, then the agricultural interests would suffer. I could understand my Honourable friend bringing that argument forward if the Fiscal Commission had recommended that an embargo should be placed on export or even that an export duty should be resorted to, but the Fiscal Commission, as I pointed out in my opening remarks, has deliberately excluded

export duties from their recommendations. Now what will be the result of the establishment of industries here? The demand for raw materials would increase in this country. Not only that, but a competition would be set up for securing those raw materials between this country and the foreign countries. I ask my Honourable friend whether the agriculturists are going to gain or lose by the existence of that competition? When the demand is greater and the supply remains the same, do the prices go up or do they go down? Will it stimulate the agriculturists to pay greater attention to their crops and increase their production or will it dishearten them and compel them to give up growing their crops? I personally believe that the policy of protection, if adopted will not compel the agriculturists to suffer in any way, but it will bring greater prosperity to them. But apart from that, even to-day we realise that the pressure on land is so great and so many more men than necessary are engaged in agriculture that there is an insistent demand to provide for them in their spare moments facilities for resorting to cottage industries like handloom, and so on. If we draw a certain number of people, a very small fraction of the population for industrial labour, even then, I submit, there will be a large number of people left who will be required to pay attention to the carrying on of cottage industries in the villages.

Then lastly, I come to my Honourable friend, Mr. Shahani. Mr. Shahani, I think, has attempted to give views which he thinks are beneficial to the interests of this country. He referred to the question of the constitution of a Tariff Board and said that the constitution of a Tariff Board, as suggested by my Honourable friend, Mr. Innes, would not be desirable and is opposed to the recommendation made by the Minority Report. I admit that that is so, but I will, when dealing with the speeches of my Honourable friend, Mr. Innes and my Honourable friend, Sir Basil Blackett, deal with this aspect of the question of the constitution of a Tariff Board. Let me now come to the amendment of my Honourable friend, Mr. Innes. I agree with my Honourable friend, Mr. Seshagiri Ayyar, that the Government have shown a great deal of wisdom in approaching this question in the spirit in which they have done. I agree with my Honourable friend, Mr. Ginwala, that in addition to the remarks made in his personal capacity by the Honourable the Finance Member, a more definite statement ought to have been made by the Government to the effect that hereafter the Secretary of State will never interfere in the fiscal policy of the country when the Government of India and the Indian Legislature are in agreement. I hope my Honourable friend will take the opportunity of making that statement before this debate is closed to-day. Then, I said that my Honourable friend had approached the subject in a good spirit. I maintain that, because I believe, and I think Honourable Members will do well to keep this in mind, that the present transitional constitution of the Government of India provides that in all matters in which there is an agreement between the Government of India and the Indian Legislature, in those matters alone, so far as the fiscal policy is concerned, the Secretary of State will not interfere. An obstructive attitude on the part of my Honourable friend, the Commerce Member would have perhaps made it difficult for us to get the policy of protection in some form or another adopted in this House. He has made our course easier, and I have reason to believe that the Government have been able to do so, perhaps because the present Secretary of State has respected the convention established by the late Secretary of State and not interfered with the decision of the Government of India. Now, I wish my Honourable friend on behalf of

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Government had gone far enough as suggested by my Honourable friend, Mr. Seshagiri Ayyar. I believe, for instance, he should not have shirked to introduce a more definite language in his Resolution boldly proclaiming the adoption of a policy of protection for this country. I know that he has done so in spirit. I know that in his Resolution,—whoever reads it—he cannot conceal that,—he accepts the policy of protection as recommended by the Fiscal Commission. I know also that in the speech that he has made he has given expression fully to the view that Government to all intents and purposes have accepted the policy of protection. But I wish that nothing should have persuaded him to keep back that boldness which ought to be the characteristic of every Resolution, either when it is framed by Government or by any Member of this House. However, as I look more to the substance than to the shadow, I have no hesitation, as a practical man, in accepting the wording as suggested by him, especially because he has accepted certain changes which were suggested to him. Now, coming to clause (b), I labour under the same difficulty under which my Honourable friend, Mr. Seshagiri Ayyar, laboured. His amendment is lost and I have no right to refer to it. But I want to make it clear that by accepting the clause—"the present dependence of the Government of India on import, export and excise duty for a large part of its revenue," we should not be taken to mean that we have for all time to come blessed the present method of taxation which is resorted to by Government. With that reservation, I have no hesitation in accepting that clause. With regard to the third clause, the omission of the words "subject to" alters the character of that clause and I feel that the Tariff Board will be called upon only to pay due regard to those conditions and it will not be insisted that they should rigidly apply those conditions for all time and in all cases. If this is the meaning, I have no hesitation in accepting that. And now, lastly, I come to the question of the constitution of the Board. I must explain the reasons which led the minority to make the recommendation which we made. We again were faced with the difficulty of making some arrangement for the transitional period. Until we reached self-Government, so long as we have an Executive which is not responsible to the people, it is very difficult for us to accept a Board which is nominated by a Government not responsible to the Legislature. We were faced with that difficulty. We know that there is no constitutional precedent for such a Board being elected by Members of Parliament or the Members of a popular House. But no other country is faced with the difficulty of going through a transitional period, as we are faced. We have here an irresponsible Executive controlled, as it were, obnoxiously very often, by the Secretary of State and we have an elected majority in the House. How are we going to compel the hands of Government to make an appointment which is acceptable to us? Well, it is that which led us to make a recommendation that the Board should be elected. However, I think we should not insist on that being carried out, especially after the remarks that have been made by my Honourable friend, Sir Basil Blackett. For I am free to admit that, in cases where that gentleman from Whitehall, of whom my Honourable friend, Mr. Ginwala, has so eloquently spoken, in cases where he has not continuously interfered with Honourable Members of the Government, may have behaved much better with us. And, as I believe in the dictum that "trust begets trust," I feel that we shall be acting wisely in showing our trust and confidence in the Members of the Government and hope that they will use this trust well and see to it that the appointment that they make

on this Tariff Board would be such as would be acceptable to the Members of this House. And in doing so, I beg of them not to allow "foreign" influence to bear upon them. (*An Honourable Member*: "Outside influence.") By "foreign" I mean the influence of the gentleman from Whitehall who does not know much about India and who continuously thrusts his finger in everything that is being done by the Government of India. We had a very sad experience in the appointment of the Royal Commission. I wish I were free to admit, like my Honourable friend, Sir Basil Blackett, that Government has always been responsive, if not responsible, to the wishes of the Legislature. Our experience in the

case of the Royal Commission has been too recent and too sad 5 P.M. to cheer us up with that kind of statement. But we hope, at any rate, so far as fiscal matters are concerned, we shall have no interference from that gentleman from Whitehall and that we shall be masters in our own house and that we shall be left to decide matters as we like ourselves. But I may also warn the Government that, if they do not use the trust well in this matter, they will find it difficult to deal with this House in other matters, because they have got to deal with this House on every question and, once it is shown that the trust is misplaced, which I hope it will never be, then this House knows how to deal with the Government in questions that will come up to us for discussion in future. So, to all intents and purposes, I am prepared to accept the amendment of my Honourable friend, Mr. Innes.

And, last but not the least, I want to touch one of the arguments that has been advanced.

Mr. President: I cannot let the Honourable Member advance a new proposition.

Mr. Jamnadas Dwarkadas: This is not a new proposition. I will bring my remarks to a close, Sir. Mr. Ginwala complained that, while we were busy burying free trade, he did not know whether the new House would not bury protection. I do not think that the new House will do that. I do not think that any new House is going to bury protection for a long time to come. But, if it does so, none of us is bureaucratic enough to question the power of the Legislature in this country to bury any policy that this House is launching upon.

Sir, before I sit down, I want again to express my gratitude to the Government that, although not quite fully, at least in spirit they have largely met in this instance the desire of the Legislature. I feel as if I could say to my Honourable friend, Mr. Innes, that the long-lost brother has after all come back to the fold, that the policy which India has insisted on for a long number of years in the interests of this country, to which Government at the dictation of Whitehall turned a deaf ear, is accepted by Government, and I agree with Mr. Innes that it is an epoch-making proposition and that we are starting a new era in this country. I repeat that it seems to me that, if this Resolution is accepted, it will be a red letter day in the history of this country and I may take, if I may be permitted to do so, legitimate pride in the fact that I had the honour to initiate this discussion.

The Honourable Mr. C. A. Innes: Sir, I think that Mr. Jamnadas has exhausted my time as well as his own and therefore I will not detain the House for more than a moment. Mr. Ginwala appeared before the House in his usual impersonation of a doubting Thomas. He wanted to know what is the good of our passing a Resolution of this kind? He pointed

[Mr. C. A. Innes.]

but that that policy, even though we approved it to-day, might be upset by the Assembly of this time next year. Well, Sir, I can give him one answer to his question. The use of passing this Resolution which I have put to the House is this, that it pins down at any rate the Government of India to that policy. Mr. Ginwala also stated that he was a democrat. I must confess that, when I heard his views about the Tariff Board I felt very much inclined to doubt that statement. He apparently contemplates a Tariff Board with Statutory powers over and above the Indian Legislature, a Tariff Board which is empowered to fix rates, a Tariff Board which is beyond criticism by this Assembly. Well, Sir, that may be a very efficient Board but it is not democracy, nor, Sir, is it the sort of Board that I should agree to appoint. One more point and I have done with the Honourable Member from Burma. He challenged me to say what action His Majesty's Secretary of State for India would take in regard to my Resolution, if it is passed by the House to-day. Sir, the only answer that I can give to that question is this, to refer the Honourable Member from Burma and other Members of this House to paragraph 33 of the Joint Select Committee's Report, and to the Despatch of the 30th June 1921, in which Mr. Montagu, on behalf of His Majesty's Government at Home, accepted the principle recommended by the Joint Committee. Sir, Mr. Jamnadas's speech ended in a note of harmony. Mr. Jamnadas ended up his speech by saying that he was prepared to accept my amendment. I hope, Sir, that the whole House will adopt the same attitude in regard to this amendment. Only time can show, Sir, whether we are wise or not in the decision we are taking to-day, but I have one thing to say. We have adopted this policy and, as far as the Government of India are concerned, we are determined to carry it out in earnest.

Mr. President: The original question was that:

"This Assembly recommends to the Governor General in Council that a policy of protection be adopted as the one best suited to the interests of India, its application being regulated from time to time by such discrimination as may be considered necessary by the Government of India with the consent and approval of the Indian Legislature."

Since which an amendment has been moved to substitute the following after the words "Governor General in Council":

"(a) that he accepts in principle the proposition that the fiscal policy of the Government of India may legitimately be directed towards fostering the development of industries in India;

(b) that in the application of the above principle of protection regard must be had to the financial needs of the country and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue;

(c) that the principle should be applied with discrimination, with due regard to the well-being of the community and to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission;

(d) that in order that effect may be given to these recommendations, a Tariff Board should be constituted for a period not exceeding one year in the first instance, that such Tariff Board should be purely an investigating and advisory body and should consist of not more than three members, one of whom should be a Government official, but with power, subject to the approval of the Government of India, to co-opt other members for particular inquiries."

The question is that that amendment be made.

The motion was adopted.

ADOPTION OF A POLICY OF PROTECTION.

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Mr. President: The question is that the Resolution, as amended, be adopted.

Sir Montagu Webb: May I, at this stage, make a slight verbal amplification, namely, the addition of the word "Indian" before the words "Fiscal Commission?" The Report of the Fiscal Commission, I have been told, is going to mark an epoch in the great Free Trade controversy, and I should like the name of India to be associated with it.

The Honourable Mr. C. A. Innes: I have no objection, Sir.

Mr. President: Further amendment moved:

"That before the words 'Fiscal Commission' in sub-section (c), the word 'Indian' be inserted."

The motion was adopted.

Mr. President: The question is that the Resolution, as amended, be adopted.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 17th February, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 17th February, 1933.

The Assembly met at the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

STATEMENT OF "NEW INDIA" ON RESOLUTION RELATING TO INDIAN AUTONOMY.

358. ***Mr. Jamnadas Dwarkadas:** (1) Has the attention of the Government been drawn to the following paragraph headed "Which is true" in *New India* of the 29th January?

"Sir Malcolm Hailey told the Legislative Assembly that no despatch was sent by the Government of India to the Secretary of State along with the Resolution of the Assembly demanding the curtailment of the ten-year limit. But the *Bengalee's* Special Correspondent at Delhi is responsible for the statement that the wishes of the Government of India, and particularly of Lord Reading, have been overridden by Lord Peel not only in connection with the appointment of the Services Commission, but also in the matter of the proposed revision of the Reforms Act. The *Bengalee* understands that the Viceroy submitted "a reasoned despatch" to the Secretary of State "urging a further extension of the Reforms," and our contemporary is disposed to accept this statement as likely to be accurate. If it is a fact that Lord Reading's Government was in favour of an extension of the Reforms Act, it would only place the Government right with the people of India, and we are entitled to know who is our enemy and whom we have to attack. The people of India would like to know whether the statement of the *Bengalee* correspondent is accurate."

(2) Is the statement made by the Special Correspondent of the *Bengalee* true? If not, will the Government of India be pleased to state the true facts?

Mr. H. Tonkinson: The statement of the special correspondent of the *Bengalee* is not correct. The Resolution was sent to the Secretary of State with a forwarding letter only.

INCHOAPE COMMITTEE.

359. ***Mr. K. C. Neogy:** Will Government be pleased to state the probable date of the termination of the work of the Inchoape Committee?

The Honourable Sir Basil Blackett: I understand that the Committee hope to finish their inquiry by the end of this month.

Mr. K. C. Neogy: Is it a fact that a part of the Report has been accepted by Government?

The Honourable Sir Basil Blackett: Yes, Sir.

Mr. K. C. Neogy: When is it going to be published?

The Honourable Sir Basil Blackett: About the time of the Budget it is hoped to publish it.

WITNESSES EXAMINED BY INCHCAPE COMMITTEE.

360. ***Mr. K. C. Neogy:** (a) Will Government be pleased to state the names of witnesses examined by the Inchcape Committee?

(b) Was there any non-official among the witnesses?

(c) Will Government publish the evidence given by these witnesses?

The Honourable Sir Basil Blackett: I am informed that no record has been kept of the witnesses. In some cases when the reports given by departments to the Committee required to be supplemented, the Heads of departments were informally examined.

The answer to the second and third parts of the question is in the negative. No complete record has been kept of the informal discussions above mentioned.

Sir Deva Prasad Sarvadhikary: Is it a fact that it was first given out that the Committee would not examine any witnesses, but would receive only written statements of those who desire to give evidence?

The Honourable Sir Basil Blackett: I am afraid I am not in a position to answer that question; I do not know.

Mr. K. Ahmed: Were the witnesses who were examined named by the Government of India specifically or was the matter referred to the Local Governments to send in witnesses to be examined by this Committee?

The Honourable Sir Basil Blackett: I do not think the Local Governments had anything to do with the question.

Mr. K. Ahmed: The Honourable Member did not understand the first part of my question, Sir. Did the Government of India name those persons who were examined, and if so what was the principle that was adopted in selecting persons to be examined *in camera*?

The Honourable Sir Basil Blackett: The answer to the first part of the question is in the negative, and the second part, therefore, does not arise.

Mr. K. Ahmed: Then, how did these people come here and how were they examined? Did any unknown person whisper in the ears of those persons who were examined as witnesses to come and give evidence here?

The Honourable Sir Basil Blackett: The Honourable Member has asked so many questions that I do not know which one to answer. But the Inchcape Committee examined such witnesses as it desired to examine.

Mr. K. Ahmed: Who decided the point? Was it the Committee which selected the witnesses or was it the Government? If it was done by the Committee, under what principle, and if it was done by the Government, how did Government select the persons?

The Honourable Sir Basil Blackett: The Inchcape Committee, on the principle of examining those people who they thought would be useful, examined those people.

Mr. K. Ahmed: Do I understand that Government was not a party and that the Chairman and the Members of the Committee selected the persons?

The Honourable Sir Basil Blackett: The Government gave the Committee free scope to make such inquiries as the Committee thought desirable.

Mr. K. Ahmed: That is not the answer. The Government should have given the names.

STAFF OF INCHCAPE COMMITTEE.

361. ***Mr. K. C. Neogy:** (a) How many Secretaries, and Assistant Secretaries have the Inchcape Committee got?

(b) Is there any Indian in any responsible position in connection with the Inchcape Committee, excepting as Members thereof?

(c) What are the positions of Messrs. Mant and Brayne respectively in connection with the Inchcape Committee, and what are their respective salaries?

The Honourable Sir Basil Blackett: (a) There is one Secretary (Mr. Howard) and an attached officer (Mr. Milne).

(b) No Indian officer has been formally attached to the Committee, but amongst other Indian officers who have been connected with the investigations I may specially mention Mr. Mitra, Financial Adviser, Military Finance, who has been closely associated with the Committee in their enquiry into military expenditure.

(c) Mr. Mant was Secretary to Government in the Retrenchment Office during the preliminary enquiry and since the Committee has been sitting, he has discharged the duties of liaison officer between the Departments of Government and the Committee. His pay is Rs. 4,000 a month, as Secretary to Government. Mr. Brayne is an officer of the Finance Department deputed to afford the Committee such assistance as they may require. His pay is that of his regular appointment as Deputy Secretary, i.e., Rs. 2,350 a month.

CALCUTTA PORT TRUST.

362. ***Mr. K. C. Neogy:** (a) Have Government received any proposal from the Government of Bengal for the amendment of the constitution of the Calcutta Port Trust, specially with a view to increase Indian representation thereon?

(b) If so, are Government in a position to make any statement indicating the views of Government in this matter?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) No. The legislation necessary to give effect to any changes in the constitution of the Calcutta Port Trust is a matter for the Government of Bengal.

MOTOR HAULAGE AND ALLOWANCE IN DELHI.

363. ***Rai Bahadur G. C. Nag:** Is it a fact that Members living in Lystoeffe House are allowed motor haulage and motor allowances of Rs. 75 per mensem? Is it a fact that Members living in Delhi city are allowed no conveyance allowance of any kind? On what ground is the discrimination justified? Who made the rule, and when was it made?

Sir Henry Moncrieff Smith: Members living in Metcalfe House are entitled to draw motor haulage but not the conveyance allowance of Rs. 75 per mensem. If the Honourable Member will refer to Legislative Department Circular No. LXV, dated the 18th May, 1921, he will notice that the conveyance allowance of Rs. 75 per mensem is admissible to those who live at Raisina. It is a fact that Members living in Delhi City are not entitled to conveyance allowance. As Members living in Metcalfe House are not entitled to conveyance allowance there is no discrimination.

Mr. K. Ahmed: Is there any allowance given for haulage, Sir, to people living in Delhi but neither at Raisina nor at Metcalfe House?

Sir Henry Moncrieff Smith: I must ask for notice of that question.

Mr. K. Ahmed: If that is so, is there any sense, Sir, in not paying conveyance allowance to people living anywhere in the town?

Mr. President: That is a matter for argument.

Mr. N. M. Joshi: I should like to know, Sir, the reason why people living in Metcalfe House should be given motor haulage, if it is not a conveyance allowance. I should also like to know from Government whether they remember that during the last Budget discussion, the Honourable the Law Member at that time promised to inquire into the question as to why a Delhi Member should not get conveyance allowance.

Sir Henry Moncrieff Smith: The Honourable Member's question seems to mix up two separate things. Motor haulage is given to a Member to enable the Member to bring his motor to Delhi. The conveyance allowance is given to a Member to enable him to run his motor about Delhi. With regard to the Delhi Member, I have not got the papers, and I should like to have notice of that question.

Mr. K. Ahmed: Is it the principle followed here that Members coming here and living in Metcalfe House will get motor haulage and not the people living in the town?

Mr. S. O. Shahan: Will a Member coming from the mofussil to Delhi and residing in the city of Delhi be entitled to motor haulage?

Sir Henry Moncrieff Smith: Certainly.

CANCELLATION OF MANGALORE MAIL.

364. ***Mr. K. Muppil Nayar:** 1. Is the Government aware that by cancelling the Mangalore Mail, the South Indian Railway has done a great disservice to the travelling public of the West Coast of India.

2. In view of the great trouble and worry to and consequent dissatisfaction of the public, do the Government propose to advise the restoration of the Mangalore Mail as soon as possible?

Mr. C. D. M. Hindley: 1 and 2. The attention of Government has been drawn to a letter in a newspaper indicating that the changes in the time table have not met with public approval but beyond this they have no information. The matter is one which is within the competence of the South Indian Railway Administration, but has been taken up with the Agent.

Mr. K. Muppil Nayar: Do I understand, Sir, that we have no control in the matter? Has the Assembly no jurisdiction in the matter?

Mr. C. D. M. Hindley: I have already stated that this is a matter which is within the competence of the South Indian Railway Administration.

SIND MOHAMMADAN CONSTITUENCY FOR COUNCIL OF STATE.

365. ***Mr. Ahmed Baksh:** Will the Government be pleased to state the following:

- (a) The date on which the nomination papers for the Sind Mohammadan Constituency for the Council of State were put in during the last bye-election;
- (b) The date of scrutiny and polling;
- (c) The date on which the result was announced;
- (d) The date on which Mr. Ali Buksh Mohammed Husain, M.L.A., put in his resignation and also the date on which it was accepted;
- (e) Is it fact that under the Council of State Electoral Rule 5 (c) a person is not eligible for election if he is a Member of any legislative body; if the answer is in the affirmative will the Government be pleased to state how Mr. Ali Buksh Mohammed Husain was elected to the Council of State?

Sir Henry Moncrieff Smith: (a) 21st November, 1922.

(b) 23rd November, 1922, and 20th December, 1922.

(c) 21st December, 1922.

(d) 25th December, 1922, and 10th January, 1923.

(e) Yes. The Bombay Electoral Regulations do not allow the returning officer to reject a nomination on the ground that the candidate is barred under rule 5 (1) of the Electoral Rules.

Mr. K. Ahmed: Is not that, Sir, a violation of the rule under which, if a candidate stands for election, his seat should be left vacant?

Mr. President: If the Honourable Member expects an answer, he must make his question intelligible.

Mr. K. Ahmed: A violation of the rules under which a candidate is to be returned to this Assembly; that is that, unless he vacates his seat in the Legislative Assembly, he cannot be a candidate for the Council of State.

Sir Henry Moncrieff Smith: What is not a violation of what rule?

Mr. K. Ahmed: A violation of the electoral rules of the Council of State.

Mr. Ahmed Baksh: Does this rule apply only to Bombay or to other Provinces as well?

Sir Henry Moncrieff Smith: I believe the position is the same under all the electoral regulations. I may as well admit that this recent case has revealed a defect in the rules, and the matter is receiving attention.

Mr. K. Ahmed: Is it not a fact that the Commissioner of Sind referred this matter by a telegraphic message to the Government of India asking whether nominations cannot stand according to the rules of the election of the Council of State.

Sir Henry Moncrieff Smith: So far as I am aware, Sir, that is not a fact.

Mr. Muhammad Yamin Khan: What will be the position of the present Member who has been elected to the Council of State? Will it be considered to be a valid election or not?

Sir Henry Moncrieff Smith: If no election petition has been presented against his return within the period allowed his election is presumably valid.

Mr. Muhammad Yamin Khan: What will the Government consider it without an election petition? Will the Government consider it to be valid or not?

Sir Henry Moncrieff Smith: The Government is not concerned in the matter; it is the electors of the constituency who are concerned.

Mr. Ahmed Baksh: Under the electoral rules a person who is already a member of another body cannot stand for election, also a female cannot. Supposing a female has been elected, if there is no election petition what would be the situation then?

Sir Henry Moncrieff Smith: As regards the female it would be a matter of opinion. As regards the case of a Member who is already a member of a Legislative body, I have already said there is a defect. In fact the electoral rule which says that a Member who is already a Member of a Legislative body shall not be eligible for election to another Legislative body is possibly inconsistent with a section of the Government of India Act which distinctly contemplates that a sitting Member of one House of the Indian Legislature may stand for election for the other House. That is section 69E (2).

UNSTARRED QUESTIONS AND ANSWERS.

ARMY MARRIAGE ALLOWANCES.

184. **Rai Bahadur G. C. Nag:** (a) In the Army Budget what are marriage allowances to families in England, of British personnel serving in India? Since when have these allowances been granted, and why?

(b) Will Government kindly furnish a statement showing the marriage allowances paid to families of British personnel during the past 10 years?

(c) Are any such allowances paid to Indians? If not, why not?

(d) Are amounts paid as marriage allowances recoverable?

Mr. E. Burdon: (a) and (b). Marriage allowance forms part of the remuneration of the married British soldier, wherever serving. The allowance was introduced from the 4th October, 1920, and has its origin in certain allowances which had to be paid to the British soldier during the Great War in order to secure the personnel required. The conditions on which marriage allowance is granted are stated in an Army Order a copy of which I will give to the Honourable Member separately.

A statement showing the rates of marriage allowance paid to the families of British troops serving in India when the families are respectively (a) in the United Kingdom and (b) in India, is laid on the table.

(c) No. Marriage allowance is merely a part of remuneration and the terms of service at present in force for the Indian soldier are sufficient to secure efficient recruits in adequate numbers.

(d) No. It is only the family allotments which are recoverable, i.e., the amount which the soldier himself is required to contribute in order to qualify for marriage allowance.

Statement showing the rates of marriage allowance paid to the families of British troops serving in India when the families are respectively (a) in the United Kingdom and (b) in India.

	(a) In the United Kingdom.			(b) In India.		
	When not in public quarters.	When in occupation of public quarters. (Rent is charged at 7s. a week.)		Government quarters or tent always provided. Rent payable by certain U. L. ranks only.		
	Rs. A. P.	Rs. A. P.		Rs. A. P.		
Wife only	22 12 0	Nil		30 0 0		
Wife and 1 child	45 8 0	22 12 0		40 0 0		
Wife and 2 children	81 12 0	89 0 0		50 0 0		
" 3 "	68 4 0	45 8 0		60 0 0		
" 4 "	74 12 0	52 0 0		65 0 0		
" 5 "	81 4 0	58 8 0		70 0 0		
" 6 "	87 12 0	65 0 0		75 0 0		
" 7 "	92 12 0	70 0 0		80 0 0		
Each additional child	4 14 0	4 14 0		5 0 0		
Where no issue is made to the wife and for motherless children.						
1st child	22 12 0	Nil		10 0 0		
2nd "	16 4 0	16 4 0		10 0 0		
3rd "	6 8 0	6 8 0		10 0 0		
4th "	6 8 0	6 8 0		5 0 0		
5th "	6 8 0	6 8 0		5 0 0		
6th "	6 8 0	6 8 0		5 0 0		
7th "	6 8 0	6 8 0		5 0 0		
Each additional child	4 14 0	4 14 0		5 0 0		

RAISINA HOSTELS.

185. **Rai Bahadur G. C. Nag:** Is it true that both Eastern and Western Hostels are proposed to be given over to the Postal and Telegraph Departments? If the answer is in the affirmative, will Government kindly state the reasons for the decision?

Colonel Sir Sydney Crookshank: The Honourable Member is referred to paragraph 22 of the Report of the New Capital Enquiry Committee, 1922, copies of which have been placed in the library for the information of Members. The recommendations of the Committee are under consideration.

LONGWOOD HOTEL, SIMLA.

186. **Rai Bahadur G. C. Nag:** Is it a fact that the Longwood Hotel at Simla was originally purchased for accommodation of the Members? If the answer is in the affirmative, will Government kindly state how many rooms there are in the Hotel, and how many of them were given to the Members and how many to outsiders during the past two Simla Sessions?

Colonel Sir Sydney Crookshank: "Longwood" was originally purchased for the accommodation of Members of the Indian Legislature. There are 54 quarters in all, 3 of which are reserved for management and superintendence. Of the remaining quarters in 1921 the whole were placed at the disposal of the Members, but only 31 were occupied. In order to reduce the annual loss to Government on these quarters, 15 have been made available for occupation by Government officials throughout the year and certain other quarters during non-session periods. Of the 36 quarters available for Members of the Legislature, 31 quarters were in occupation during the autumn of 1922.

LOSSES ON ASSAM-BENGAL RAILWAY.

187. **Rai Bahadur G. C. Nag:** (a) Is it a fact that the Assam-Bengal Railway has been working at a loss since it was opened in 1895 to date, and under terms of contract with the Company, the Government have been bearing the losses which amounted to Rs. 30 to 40 lakhs annually in addition to paying interest in sterling at 3 to 3½ per cent. on the Company's share-capital of £1,500,000? If the figures are incorrect, will Government kindly state what the correct figures are?

(b) Will Government kindly state what was the amount paid in interests and losses separately to this Company during the past 5 years, and under what head of budget the payment appears?

Mr. C. D. M. Hindley: (a) The Assam-Bengal Railway has been working at a loss since it was opened in 1895, the annual losses being in respect of interest charges; except that in 1895 there was a small loss in working. Attention is invited to the figures given in the History of Indian Railways, copies of which are available in the Library of the Legislature.

(b) The amount paid to the Company annually for interest is £45,000 being the guaranteed interest at 3 per cent. on the Company's share capital of £1,500,000. There have been no losses payable to the Company during the last five years. The payment of guaranteed interest appears under the head "Interest on Capital contributed by Companies" and is included in the figure for interest charges shown in the Demand Statement presented to the Assembly.

IMPORT OF MOTOR CARS, BICYCLES AND TRICYCLES.

188. **Mr. Darcy Lindsay:** 1. Will Government state if it is a fact that during the first 9 months of the present fiscal year whilst the number has increased the value of imports of motor cars has considerably decreased in comparison with the same period of 1921-22 and is nearly four crores less than in 1920-21 and that the import of the British car has become reduced to only 10 per cent. of the total.

2. Is it a fact that during the same period the value of imports of bicycles and tricycles is in round figures 12,57,000 as against 3,89,000 in 1921-22 and 25 per cent. of the 1920-21 imports.

3. Do Government propose to re-examine the position with a view to re-adjusting the import duty on motor cars on a more equitable basis.

The Honourable Mr. C. A. Innes: 1 and 2. The figures given by the Honourable Member are substantially correct.

3. The effect of the present rates of customs duties has been fully considered by the Government of India in connection with the forthcoming budget, but the Honourable Member will not, I am sure, expect me to anticipate my Honourable colleague, the Finance Member's budget speech.

RESOLUTION RE KING'S COMMISSIONS FOR INDIANS AND INDIANISATION OF THE ARMY.

Mr. President: The Assembly will now resume the discussion of the Resolution moved by Mr. Muhammad Yamin Khan, which is as follows:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commissions for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

To which an amendment has been moved:

"That for the word 'and' the word 'or' be substituted, and that the word 'all' before 'vacancies' be omitted, the word 'only' after the words 'Indian Officers' be omitted, and the word 'wholly' before the word 'Indianised' be omitted."

The question is that that amendment be made.

His Excellency the Commander-in-Chief: Sir, with your permission I desire to make a statement to the House. Speaking in this Assembly on the 24th of January last, I expressed the hope that it would be possible to announce at no very distant date what measures are to be adopted in regard to the Indianisation of the Indian Army. In the short interval that has elapsed the correspondence which I then said was proceeding has been concluded, and I am able to announce to the House the following decision. The Government consider that a start should be made at once so as to give Indians a fair opportunity of proving that units officered by Indians will be efficient in every way. Accordingly it has been decided that eight units of cavalry or infantry be selected to be officered by Indians. This scheme will be put into force immediately. The eight units to be wholly Indianised will be mainly infantry units, but there will be a proportion of cavalry. They will be chosen judiciously so as to include as many representative types as possible of Indian battalions and cavalry regiments of the Indian Army. Indian Officers holding commissions in the Indian Army will be gradually transferred to Indianising units so as to fill up the appointments for which they are qualified by their rank and by their length of service, and the process of Indianising these units will then continue uninterruptedly as the officers gain seniority and fitness in other respects, which will qualify them for the senior posts. I have given the House these few details because I think they will be of interest as revealing some of the practical aspects of the change. There is one other point, however, which it is necessary for me to explain. It is that, simultaneously with the Indianisation of these selected eight units, Indians

[H. E. the Commander-in-Chief.]

who qualify for the King's Commission will continue as at present to be posted to the other units of the Indian Army. The number of Indian cadets now sent to Sandhurst each year, if all pass out successfully, is more than sufficient to replace the normal wastage in the eight units alone. I draw attention to this matter as it is of significance which the House I am sure will not fail to appreciate. Once more, before sitting down, I wish to express my gratification that this great step forward has been made. I hope that the people of India will appreciate the importance of this step and will realise also that it now rests with them to justify the decision of the Government. I hope that no effort will be spared to make the measure which has been approved a solid and a conspicuous success. The responsibility which lies before these young men who will officer the Indianised regiments, is no light one. They will have in their hands not only the lives of their men, but also the task of maintaining untarnished the high and ancient traditions of the regiments to which they are appointed. I can assure them that in the new and in the wider career which will now lie open to them, they will have the active and the generous support of the Government of India and of their British comrades in the Army. Their success or their failure will mean much to India. The initiation of this scheme constitutes an entirely new departure which, though limited in its scope, is one which may have far-reaching results. I trust that the Members of this Legislature and that the people of India as a whole will support the Indian officers of these Indianised regiments with living and with practical encouragement, for by this means only can Indianisation hope to deserve and to command success.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): May I ask His Excellency one question? How many units are there out of which these eight units are to be Indianised?

His Excellency the Commander-in-Chief: I thought I made it clear that there would be eight units.

Mr. Muhammad Yamin Khan: I wish to know how many units there are in the Indian Army out of which these eight units are to be Indianised?

His Excellency the Commander-in-Chief: The total number of units in the Indian Army are 120 infantry and pioneers and 21 cavalry.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, the information which His Excellency has given this morning and the speech which he delivered on the last occasion render it absolutely necessary that I should press the amendment of which I have given notice. Sir, His Excellency has just now told us that the correspondence between the Government of India and the Secretary of State on this subject has been concluded; and, therefore, there ought to be no difficulty in placing that correspondence on the table of this House. Sir, more than a year ago I asked a question in this Assembly of the Government as to whether they would be prepared to publish the correspondence relating to this subject.

Mr. President: Is the Honourable Member moving his amendment?

Mr. T. V. Seshagiri Ayyar: Yes.

Mr. President: I think I must dispose of Sir Deva Prasad Sarvadhikary's amendments before we come to that. I understood he was rising to meet the new situation which has been created by the statement of His Excellency the Commander-in-Chief.

The question is that for the word "and" in the second line of the Resolution the word "or" be substituted.

The motion was negatived.

Mr. President: The question is that the word "all" before the word "vacancies" be omitted.

The motion was negatived.

Mr. President: The question is that the word "only" after the words "Indian Officers" be omitted.

The motion was negatived.

Mr. President: The question is that the word "wholly" before the word "Indianised" be omitted.

The motion was negatived.

(Mr. Seshagiri Ayyar rose to continue his speech.)

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, I have been authorised by Munshi Iswar Saran . . .

Mr. President: Order, order. Mr. Seshagiri Ayyar.

Mr. T. V. Seshagiri Ayyar: I will resume my remarks. Sir, as I said, the information given this morning renders it necessary that this House should have before it all the correspondence that passed between the Government of India and the Secretary of State. His Excellency has told us that out of 141 units in the Indian Army the Government of India have selected 8 units for being officered by Indians. That gives a proportion of 1 to 17. Sir, it is not doles of this kind that this House and the country would value. What we want to know is what is Government's definite programme which they and the Secretary of State have agreed upon, and whether that programme should not be laid on the table of this House for our criticisms and our suggestions. Unless they give us the details of the scheme sent by them to the Home Government, and, unless they tell us what their considered opinions were, and how far they have been either accepted or rejected by, what Mr. Jannadas Dwarkadas would have called "the gentleman at Whitehall," until we know something of the nature of the correspondence that was carried on between the two departments of the same Government, we will not be in a position to give our adhesion to the scheme that may be outlined. Sir, this is a matter of great constitutional importance. I take it, Sir, that this Legislature, the Government of India and the Secretary of State are the three component parts of a united administration. If that is so, I do not see what necessity there is for one branch of the administration being kept in ignorance of what is going on between the other two branches of the administration. The Government will recognise in what a false position they are placing this Assembly by not placing before it all that passes between themselves and the Secretary of State. We have often been told by those who are not friends of the Government, by others who consider that we are not being treated properly, that we are not really representing the people and that the Government has no confidence in us. That accusation

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receives strength from the fact that the Government do not take us into their confidence. We have been asking times without number to be informed of what is passing between them and the Secretary of State. Every time they return the answer that it is in the correspondence stage and that they are not prepared to publish the correspondence. Why should not the correspondence which passes between the Secretary of State and the Government be laid on the table of the House, so that we may be in a position to know whether they represent the wishes of the people, whether they voice the considered opinion of the people; we want to be in a position to offer them such suggestions as may enable them to make further representations to the Secretary of State. If they do not do that, what is the position? We are considered as of no value by a certain section of our countrymen and the Government are regarded as irresponsible; it is believed that it is the Secretary of State who is ruling the whole country and that it is he and he alone can determine what our fate should be. Sir, the other day the Leader of the House made a statement which has enabled many a newspaper to have it as the headline of an article, namely, that this House is often not proceeding on facts but on suspicions. I wish, Sir, that the Leader of the House may soon be here and that his illness may soon be cured, because nobody feels his absence more than Members on this side of the House. Sir, who is responsible for the Assembly and the country basing their conclusions upon suspicions and not upon facts? Do the Government give us any facts? Do they ever place before us any data? Do they ever admit us into their confidence? Naturally, the result is that we are groping in the dark. We get some information from newspapers occasionally. The newspapers seem to have their confidence more than the Members of this House. We take our facts from these newspapers and we begin to spin out a theory which we believe is the one which has commended itself to Government. Under these circumstances, is it any use twitting us with proceeding upon suspicions and not upon facts, when we are not enabled to have the facts before us? I say this is a matter of grave constitutional importance and I ask Government how long are they going to keep the Assembly in ignorance, and how long are they going to keep everything that passes between them and the Secretary of State from us? If they continue in this mood, we shall regard it that they have no faith or trust in us; that feeling will be reciprocated; we cannot trust them if they do not trust us. Sir, that is the reason why I have added to the Resolution which was moved by my Honourable friend an amendment in these terms. There is, by the way, a printer's error in it. Instead of the word "substituted" the word should be "added."

That for the Resolution as it stands the following be added:

"This Assembly recommends to the Governor General in Council that he may be pleased to lay on the table of the House the scheme, if any, for the Indianisation of the Indian Army and the correspondence, if any, that has passed between the Government of India and the Secretary of State for India on the subject."

Sir, it is no news to His Excellency the Commander-in-Chief, nor is it news to the Government of India, that the whole of Asia is waking up. You will find in Japan, in China and everywhere there are National Armies officered by men belonging to the nation. It is only in India that we do not find the same thing; and unless Government enable us to officer our Army, unless they Indianise the Army itself, it will be impossible for us to be able to resist any invasion that may come to India from those quarters;

and I think it is in the best interests of the Government that they should take the people of India into their confidence and enable us to assist them in giving our own views as to the best means of Indianising the Army. Until they do that, there will be no feeling of trust or confidence in them. Sir, His Excellency the Commander-in-Chief on the last occasion said that he was exceedingly pleased with the conduct of the Indian Army, exceedingly pleased with their discipline; and he paid a glowing tribute to their general conduct. May I add to the testimony borne by His Excellency the testimony of one of his predecessors, Sir Charles Monro, in regard to the Indian soldier? There is no doubt there is good material in this country which can be developed and from which officers can be drawn who will be able to command the various units. This is what Sir Charles Monro stated in one of his despatches:

"The character of the terrain combined with arduous and trying climatic conditions alone presented difficulties before which the most hardened troops might well have desisted. The resistance of the enemy has been broken and the difficulties successfully overcome by a force composed almost entirely of Indian troops. No British troops, except for the Royal Air Force and a British Battery of Mountain Artillery was employed."

This fact has without doubt considerably raised the prestige of the Indian Army on the Frontier and increased the *esprit de corps* of the troops engaged. Sir, as I said, His Excellency the Commander-in-Chief has paid a similar tribute to the Indian Army.

Now if you find that the rank and file of the Army are so well equipped and so well able to withstand the enemy and in a position to render a good account of themselves, what is the difficulty in finding men from the ranks, what is the difficulty in promoting men from the ranks, to be officers in the Indian Army? His Excellency the Commander-in-Chief seems to think that it is almost impossible. We used to hear the saying in our schooldays that in France every soldier carries with him the possibility of becoming a Marshal, and if it was possible in France to get superior officers from the ranks, it should be equally possible in India to promote men of acknowledged ability from the ranks to be officers. I read sometime ago that in England there is a scheme for promoting from the ranks persons to the position of Captains and so on. If that is to be done in England, why should you not make the same attempt in India? The answer is "It is an uncertain factor and we do not know whether it will prove successful or not." My reply to that is this: If you do not try, if you never make the attempt, you will always be labouring under this difficulty. You must make an attempt, you must honestly endeavour to give Indians a chance of proving their mettle, a chance of showing that they can be not only good fighting men, but also good leaders of men. Government have not given them the least chance of doing that, hitherto, and that is the reason we do not find them holding important positions. I ask Government, Sir, to remove these suspicions from their mind and by their confidence in our soldiers, and by promoting them to responsible positions take the country with them. Sir, His Excellency the Commander-in-Chief on the last occasion used this language, namely:

"Do not try to run before you have begun to walk."

Sir, I agree with that maxim; but I would say: "Please give us an opportunity of standing up." If you do not help us to stand up, how can we walk at all? Government do not give us any chance, any opportunity of showing that we can stand up and walk a foot or two. If they do not enable us to do that, there is no use in telling us that we are trying to

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run before we can walk. When you give us the chance, if you find us stumbling in walking, you can then say "Do not walk so fast." But when you do not enable us even to get up, then you have no right to say that we are trying to run before we can walk.

Sir, I will conclude as I began. There is no use in giving us a few dribblets as was promised this morning. What we want to know is, what is Government's considered scheme? What is it they are going to do with the Army, and in what period of time do they expect that the whole Army will be Indianised? What is the suggestion, the advice, given by His Excellency the Commander-in-Chief? How has it been received by the whole Council of the Government of India, including the Indian Members who have been in the Executive Council? What has been the advice that they have given? Has that advice been accepted by the Secretary of State or has it been turned down? That is what we want to know. His Excellency the Commander-in-Chief just now turned his pencil towards my friend the Honourable Mr. Sarma, and I think he might as well point to the Honourable Mr. Chatterjee. They are no doubt there in the Executive Council. But, Sir, you will find that when Indians are in such responsible positions, it is almost impossible to get the slightest information from them. I can get some information from you, from His Excellency the Commander-in-Chief. I can occasionally go to the Honourable the Finance Member, and also to the Honourable the Commerce Member for some information. But if I go to Mr. Chatterjee or Mr. Sarma, all that they tell me is "Don't jeopardise the position of Government, don't embarrass the Government." Those are pet expressions of theirs. You cannot get any thing out of them. Under these circumstances, I say it is impossible to ask any of my countrymen in the Council of the Government of India to give us any information as to what has happened. They will not; and if the Government of India come to the conclusion that no correspondence is to be placed on the table, the whole country will be in the dark, and nothing about the steps which have been taken will ever come out from the Indian Members of the Council. I ask Government seriously and in all earnestness to place the whole correspondence on the table so that they may not allow us to remain in this unfortunate position of being told by our countrymen that we are not in the confidence of Government. Sir, it is necessary to enable us to win Dominion Self-Government in future that we should have all the information available to the Government and the Secretary of State. Sir, I move the amendment which is standing in my name.

Mr. President: Before I put the motion, I must draw the Honourable Member's attention to the fact that his motion is in the form of a Resolution which he himself sent in and which is, so to speak, meant to stand on its own feet. Now as an addition to the Honourable Member's Resolution it does not fit very well. I do not rule it out, but I think it will require some change to make it a reasonable amendment. I do not think the Honourable Member has quite taken into account the fact that it is not a good practice to use a substantive Resolution as an amendment to another Resolution.

Mr. T. V. Seshagiri Ayyar: May I say, Sir, that the only word which it will be necessary to add is the word "further"?—That this Assembly further recommends, etc., etc.—If you would allow me to add that word there, it will make matters clear.

Mr. President: Even with the addition of that word, what the Honourable Member appears to contemplate is the laying on the table of the scheme and subsequent discussion of that scheme, whereas the Resolution asks, not for laying on the table or for discussion, but for instant action. If one is really an amendment of the other, I would assume that the word "substituted" was the correct word.

Mr. T. V. Seshagiri Ayyar: May I explain, Sir, even before the original Resolution came up for discussion I informed the Secretary of the House that I did not want to substitute mine for the original Resolution, but that I wanted it to be an addendum to the original Resolution. I gave that information long ago; it was not yesterday or the day before yesterday; I did this about a fortnight ago. My object in putting this amendment forward is this: it is not only the Indianisation of the Army we want; we also want to know the exact programme, the scheme of Indianisation which the Government of India and the Secretary of State have resolved upon. It is for that purpose that I want that the correspondence should be placed on the table, so that we may be in a position to know not only how far Indianisation has proceeded, but also what were the concrete proposals made by the Government of India which were either accepted or rejected by the Secretary of State. That is why I wanted to have the correspondence laid on the table. Under these circumstances I think, Sir, that my Resolution may be regarded as an amendment in the sense that it is an addition to the existing Resolution. And it does not contravene the main Resolution; it only adds to the requisition contained in the original Resolution.

Mr. President: Then it is the Honourable Member's intention that the scheme should be laid on the table for discussion and that at the same time, the Governor General should be recommended to take instant action in the direction recommended in Mr. Yamin Khan's Resolution?

Mr. T. V. Seshagiri Ayyar: Yes, Sir. The language is perhaps not quite clear, but that is my idea.

Mr. President: Amendment moved:

"That to the Resolution the following be added:

"This Assembly further recommends to the Governor General in Council that he may be pleased to lay on the table of the House the scheme, if any, for the Indianisation of the Indian Army and the correspondence, if any, that has passed between the Government of India and the Secretary of State for India on the subject."

Mr. Muhammad Yamin Khan: May I ask, Sir, if the Honourable Member, who has moved the amendment in addition to my Resolution, is willing to number my Resolution as (a) and his amendment as (b)?

The Honourable Mr. O. A. Innes (Commerce and Industries Member): Sir, my Honourable friend, Mr. Seshagiri Ayyar, expressed his regret at the absence of the Leader of the House to-day. I can assure him and this House that his regret is nothing as compared to mine. If Sir Malcolm Hailey were here, I should be sitting in my seat and watching Sir Malcolm Hailey intervening in this debate with that debonair unconcern which marks all his interventions. As for me, I feel just like a man who is about to stick his head into the proverbial hornet's nest. Fortunately, Sir, my amendment, though it may not be a very palatable one to this House, is not a very unpalatable one to me. I propose to confine myself entirely to Mr. Seshagiri Ayyar's amendment. Mr. Seshagiri Ayyar asks that all the correspondence

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relating to this subject may be placed on the table of the House. He has complained that unless we do this, the constitution under which we are working is bound to breed only suspicion in the Members of the House. Sir, it is not my purpose to discuss that constitution. I see no useful purpose in discussing that constitution. Whatever the defects of that constitution may be, the constitution is there, and we have to work it and we have to make the best of it. There is only one answer to this amendment of Mr. Seshagiri Ayyar. Even if the Government of India wished and were prepared to meet Mr. Seshagiri Ayyar and to lay this correspondence on the table, we could not do so. We cannot lay that correspondence on the table without the express and previous concurrence of His Majesty's Secretary of State for India. We have not got that concurrence and that is the only answer I can give to Mr. Seshagiri Ayyar. If the House passes this amendment, naturally it will be communicated to the Secretary of State, but I can give no indication of any sort or kind as to what the Secretary of State's answer may be. I am afraid, Sir, I can give no other answer to Mr. Seshagiri Ayyar's amendment.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I shall venture to offer a few remarks with reference to the action which Government have been good enough to announce that they are prepared to take, and I shall also venture to indicate the lines on which the aspirations of the people are at present running. In the first place it is my duty, I think, to thank His Excellency the Commander-in-Chief for the announcement he has made and for the small mercies which Government have decided to show to this country. I do not wish to go into general propositions, but shall go into a few details, chiefly with a view to elicit more information from His Excellency the Commander-in-Chief. In order to do so I think I shall have to take stock of what this House decided two years ago, what Government did during the interval and whether what Government are prepared to do at the present moment meets with our satisfaction. This House two years ago in 1921 on a Resolution of Sir Sivaswamy Aiyer decided, and Government also accepted, that His Majesty's Government should admit Indians to all the different arms of His Majesty's forces. Now that means that Indians should be admitted to the Air Force and to the artillery among other branches. In the announcement which His Excellency the Commander-in-Chief has been pleased to make this morning, I find he has not told us whether, as a result of the correspondence which Government had with His Majesty's Government, they have come to any decision on those two points. If I understand Indianisation of the Army aright, Indians must be trained to defend the country in all its branches. They must be trained to use their intelligence in the Air Force and in the artillery and to command in these arms. I wish to know whether any decision has been arrived at on these two points. During the last two years I recognise that Government have done something; a Military college has been opened at Dehra Dun; a few military schools in connection with that college are contemplated and Government have also framed certain regulations for admission to the Dehra Dun college which is a preparatory and preliminary college for cadets being sent up to the Sandhurst College at Home. Now, when the Proposer of the Resolution and the Mover of the amendment opened up the principle that the vacancies in the Indian Army should be all filled up by Indian officers, I do not know whether they threw any light, or sufficient light, on what we wanted, or what they meant by Indianisation on the principle of filling up vacancies.

KING'S COMMISSIONS FOR INDIANS AND INDIANISATION OF THE ARMY.

As far as I can find out the figures, Sir, the present British officers in the Indian Army are as follows: In the cavalry they are 548, and in the infantry they are 2,688, making a total of something like 3,200 British officers in the Indian Army. So far as the artillery is concerned the whole of that arm of the forces is officered by British service men. It is not open to officers of the Indian Army, if I am correct. Taking therefore this figure 3,200 as the total of officers which eventually according to the goal we have in view we have to replace by Indians, I am not quite able to follow His Excellency the Commander-in-Chief when he announces that 8 units will be thrown open to Indians. I want to know in terms of so many officers what proportion it bears, not to the total number of units or regiments but to the total number of posts of British officers, because after all what we want to do is to replace eventually all these British officers in the Indian regiments by Indians; what we are more anxious to know, therefore, is how soon this total of 3,200 officers, or at what reasonable date this total number of 3,200 officers will be capable of being replaced by Indians according to the present process of intake at the Sandhurst College, or the intake and the flow at the Dehra Dun College. That is precisely the position. Now, in order to understand that and in order to find out whether our process of Indianisation by training at Sandhurst is adequate, whether the pace is rapid or slow, we must know how many cadets have been turned out, how many have passed out of the Sandhurst College during recent years. Now, I do not know whether it would be perfectly relevant to go into the figures before the year 1919. But I believe for the purpose of comparison it is germane and pertinent to know how many cadets are being turned out from the Sandhurst College and whether the flow is adequate enough to replace the 3,200 officers in a reasonably short period of time. Now, the number who passed out of the Sandhurst College in 1919 were 2 in the spring term and 4 in the autumn term, in all 6. Those who passed out in 1920 were only 2. Those who passed out in 1921 nil. And I believe in the spring of 1922, 2 people were under training there. So that at the present moment only 18, or to take the most up-to-date figures perhaps 23 people are under training in Sandhurst. Now, if my figures are correct, I should like to know whether you can replace 3,200 people, by the process of filling vacancies occurring amongst them; I doubt if this process will Indianise the Army at a reasonably early period. Now, I do not know what the percentage of vacancies per annum is to the total number of officers. I am not aware whether it is taken on the actuarial basis or on some other basis, but, even taking the ordinary actuarial basis of the percentage of vacancies to be say 8 or 4 per cent, the vacancies after all will be very few; I think it is no use attempting to Indianise the Army by filling in only the vacancies as and when they occur. In other words, the process of Indianisation by filling in vacancies is rather a very very slow process indeed. What, therefore, is necessary is to withdraw British officers from the Indian regiments and replace them, irrespective of vacancies, if you really want to Indianise the Army very quick. Now I am glad to hear this morning that a principle like this, namely, to replace, irrespective of vacancies occurring, some British officers by Indian officers, has been accepted and that 8 units will be replaced by this process of entirely withdrawing British officers and putting in Indians in their place. Sir, grateful as I am for these small mercies, even so I think that the process will be a very slow one indeed, taking into consideration the fact that you have to replace sooner or later no less than 3,200 officers. Now, having shown that the percentage of passes and people admitted into Sandhurst College is very small

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and therefore the intake would be very small, I would now like to deal with the second question, namely, whether the regulations which are framed by Government with reference to admission to the Dehra Dun College are likely to satisfy the requirements of the country. Because, the Dehra Dun College is after all a College for preliminary training for the ultimate training to be given to Indians at Sandhurst. Now, I fully recognise, Sir, that the education for a military career ought to be very sound; it ought not only to look to educational attainments of the candidate; a man destined for a military career must have character, an instinct for leadership and other qualities as well, and, if possible, must be trained in the environment of Sandhurst where he can rub shoulders with his British comrades. But, taking all these facts into consideration, there still remains the question whether the present rules are in the circumstances of India fair enough to attract a large number of people. Now, looking into these regulations, I find that the age of the boys who will be admitted under the regulations in the first year class in Dehra Dun College is 12 to 13. Boys over 13 are not to be admitted. Now, I consider, Sir, that, considering the habits and customs of the people of this country, this is rather too tender an age for Government to lay down. I recognise that the military career, if it is to be successful, ought to be begun at a very early age. But to imitate the public school regulations in England and to transplant them here and to lay down that boys in so vast a country as India should be admitted to a place like Dehra Dun at the tender age of 12 or 12½ years is I think a very hard condition. Now, I want to say a word about the allotments in the admissions. The total number of people to be admitted into the Dehra Dun College is at present about 40 and eventually, finances permitting, Government hope that it may be raised to 70. I want the House to realise whether the present number 40 is adequate for the needs of the country. If we have to Indianise the Army very quick, the total minimum number of 40 laid down or even 70 for next year or the year after, that is, I believe, a very small number to fix, if at all we are to go on with the process of Indianisation fairly quick. Now, even with this number of 40, which is the utmost number allotted for admission at the Dehra Dun College, we have to remember the sources over which this number of 40 is distributed. The sources are three. These 40 students to be admitted into the Dehra Dun College are distributed firstly between the different provinces of British India, (2) the Indian States, and (3) the sons of Indian officers of good service in the Indian Army. Now, my point is that, if 40 is to be distributed over these three sources, the number that will eventually be allotted for the sons of the middle classes or the other classes in the different provinces of British India, the share that will go to them will be very small indeed and, therefore, in order that the 9 different provinces in British India should get an opportunity to send a larger number of boys for a military career, I think the number to be admitted into the Dehra Dun College and to be eventually sent up to Sandhurst ought to be increased, whether the finances at the present moment strictly allow it or not; for the simple reason that we are spending on the military side of our Budget no less than 82 crores of rupees and I think it is but just and fair that, if the country is spending so vast an amount, the Military Department ought to spend for the training of cadets much more than the Dehra Dun College is doing at present.

To sum up, then, Sir, in the first place, I want to know whether Government have arrived at any decision whether Indians will be admitted and

Since which an amendment has been moved:

"To add to the Resolution the following:

"This Assembly further recommends to the Governor General in Council that he may be pleased to lay on the table of the House the scheme, if any, for the Indianisation of the Indian Army and the correspondence, if any, that has passed between the Government of India and the Secretary of State for India on the subject."

The question I have to put is that those words be there added.

The Assembly divided:

AYES—28.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Ghulam Sarwar Khan, Chaudhuri.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.

Gour, Dr. H. S.
Gulab Singh, Sardar.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Rajan Baksh Shah, Mukhdum S.
Rangachariar, Mr. T.
Shahani, Mr. S. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—54.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abdul Rahman, Munshi.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Asad Ali, Mir.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bijlikhan, Sardar G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullab, Mr. J.
Innes, the Honourable Mr. C. A.
Jannadas Dwarkadas, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.

Moir, Mr. T. E.
Moncrieff Smith, Sir Henr
Muhammad Hussain, Mr. J.
Mukherjee, Mr. J. gratitud
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Nabi Hadi, M. units of
Nayar, Mr.
Percival, Mr. P. for
Ramayya Pantulu, Mr. J.
Reddi, Mr. M. K.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sarfaraz Hussain Khan,
Sarvadhikary, Sir Dey
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Singh, Rana U. B.
Sinha, Babu L. P.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Ujagar Singh, Baba Bedi.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

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LEGISLATIVE ASSEMBLY.

[17TH FEB. 1928.]

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. President was in the Chair.

Colonel Sir Sydney Crookshank (Public Works Department Secretary): Sir, it seems to me, if I have the indulgence of the House to say so, that this debate has so far proceeded on what I would term somewhat ragged lines, and the amendments which I see tabled to this Resolution also indicate that the question which we have before us is very likely to become further involved. Now, Sir, there is considerable weight in the valuable remarks which fell from my Honourable friend from Madras. At the same time I think many Members of this Honourable Assembly will probably agree with me in considering that we do not want to approach this question from the melodramatic side. Proceeding to the remarks which have fallen from my Honourable friend from Burma, I can only say I regret I cannot subscribe to those remarks in so far as they apply to the education of Indians to take their place in the ranks of the Indian Army. However, that may be a matter of opinion, but I base my opinion largely on the fact that circumstances from the military point of view have changed very extensively of late, and that the enemies we are on the Frontier are now well trained and organized, and very well equipped, and they are no longer just ordinary hordes of invaders. I would note that it seems to me that he also transgressed what I might call the first canon of military propriety in not respecting that discipline which is exacted from all ranks of the Army, a discipline of exact obedience to the authority which requires them to carry out the orders which are given to them whether they agree with them or whether they do not. This question of training Indians for service as officers in the Indian Army is one which depends very largely on social and economic conditions. When I refer to climatic conditions what I mean is that the climatic conditions of India, down in the plains during the summer months, are not such as to retain the vitality of the youth who enter the Dehra Dun, say, the age of about 35 to the standard which is required in military service, and the advantage which the British officer in this respect is that he takes leave to European climatic conditions and returns in vigour, and possibly thereby retains his physical youth longer than would his brother officer who happens to be an Indian who stays in India without having those advantages. However, I do not dwell on that particular point. The House will no doubt agree with me that the points I have mentioned have a considerable bearing on the question we have to deal with.

Sir, I venture to speak on this subject because it may be that I am the only member of this Honourable Assembly who has been on service on the Frontier and in France with British units and with Indian units and under fire with them as comrades in arms. I have been with British units and Indian units in action, in advancing, in holding a position, and also in falling back from one, but I am not going to dwell on that fact in order to analyse the qualities of British officers and Indian officers. Both have their merits and probably also in certain respects their demerits, but I have only mentioned the fact in order to put it to the House that I speak from a practical point of view; I do not merely speak from a theoretical point of view. As such, it seems to me that the pronouncement which His Excellency the Commander-in-Chief gave to this House this morning should have given an assurance to this Assembly that the Government

proposed to set about the problem of the Indianisation of the Indian Army in regular ordered steps and to base its further Indianisation in the course of time entirely on the results so attained. His Excellency has announced that 8 units will be officered by Indian officers. Well, that itself goes a very great distance. On that basis, he, in his highly responsible position as the military adviser of the Government of India and responsible military expert before this Assembly, would be in a position to judge what further stages of Indianisation of units could be effected and when. I therefore think, Sir, that this House, instead of proceeding to go into the details of all the amendments which now stand tabled on the agenda, which may confuse the issue before us, would perhaps do well to consider the advance which has already been made, and to let these further stages of the development of the Indianisation of the Indian units of the Army be considered in due course, from time to time, according to the results which are seen from this measure of Indianisation of 8 units to make a start with. With that to go on, it seems to me that the field is perfectly clear, and it may be left to the military authorities to advise the Government of India as to what further can be done. I do not think I need detain this House any more in the matter, because we have here an accomplished fact that 8 units are going to be Indianised, and also that an Indian Military College for the training of Indian cadets for the officering of the Army has been established at Dehra Dun. The progress will be watched, and no doubt the House will be advised from time to time. In the meanwhile, it will perhaps, suffice to abide by the assurance, which His Excellency has given us, and in the future, when the opportunity arises, to consider what are the further stages of Indianisation that the circumstances may permit.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, moving my amendment, I should like to make a few formal changes. The House has no doubt received with feelings of gratitude the announcement made this morning by His Excellency the Commander-in-Chief promising the immediate Indianisation of 8 units of the Indian Army. That, I submit, is a distinct step in advance, and for that the House should tender its gratitude and thanks to His Majesty's Government. I wish therefore, Sir, to prelude my amendment with the following words:

"That, while gratefully acknowledging the announcement made for the Indianisation of 8 Indian units, this Assembly recommends to His Excellency the Commander-in-Chief to be so pleased as to formulate a scheme for the Indianisation of Indians in the commissioned ranks of the army with a view to ensuring the efficiency of all Indian regiments by Indian Officers with a minimum of British Officers as at present be necessary to ensure their efficiency."

Mr. W. M. Hussanally: Sir, I suggest the addition of the words "within a reasonable time".

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. President was in the Chair.

Colonel Sir Sydney Crookshank (Public Works Department Secretary): Sir, it seems to me, if I have the indulgence of the House to say so, that this debate has so far proceeded on what I would term somewhat ragged lines, and the amendments which I see tabled to this Resolution also indicate that the question which we have before us is very likely to become further involved. Now, Sir, there is considerable weight in the valuable remarks which fell from my Honourable friend from Madras. At the same time I think many Members of this Honourable Assembly will probably agree with me in considering that we do not want to approach this question from the melodramatic side. Proceeding to the remarks which have fallen from my Honourable friend from Burma, I can only say I regret I cannot subscribe to those remarks in so far as they apply to the education of Indians to take their place in the ranks of the Indian Army. However, that may be a matter of opinion, but I base my opinion largely on the fact that circumstances from the military point of view have changed very extensively of late, and that the enemies we have on the Frontier are now well trained and organized, and very well equipped, and they are no longer just ordinary hordes of invaders. I would note that it seems to me that he also transgressed what I might call the canon of military propriety in not respecting that discipline which is required from all ranks of the Army, a discipline of exact obedience to the authority which requires them to carry out the orders which are given, whether they agree with them or whether they do not.

That is a question of training Indians for service as officers in the Indian Army, and my opinion is one which depends very largely on social and economic conditions. When I refer to climatic conditions what I mean is that the climatic conditions of India, down in the plains during the hot months, are not such as to retain the vitality of the youth of the Dehra Dun, say, the age of about 35 to the standard which is required in military service, and the advantage which the British officer in this respect is that he takes leave to European climatic conditions and returns in vigour, and possibly thereby retains his physical youth longer than would his brother officer who happens to be an Indian, who stays in India without having those advantages. However, I will not dwell on that particular point. The House will no doubt agree with me that the points I have mentioned have a considerable bearing on the question we have to deal with.

Sir, I venture to speak on this subject because it may be that I am the only member of this Honourable Assembly who has been on service on the Frontier and in France with British units and with Indian units and under fire with them as comrades in arms. I have been with British units and Indian units in action, in advancing, in holding a position, and also in falling back from one, but I am not going to dwell on that fact in order to analyse the qualities of British officers and Indian officers. Both have their merits and probably also in certain respects their demerits, but I have only mentioned the fact in order to put it to the House that I speak from a practical point of view; I do not merely theorise, and as such, it seems to me that the pronouncement which His Excellency the Commander-in-Chief gave to this House this morning should have given an assurance to the Assembly that the Government

proposed to set about the problem of the Indianisation of the Indian Army in regular ordered steps and to base its further Indianisation in the course of time entirely on the results so attained. His Excellency has announced that 8 units will be officered by Indian officers. Well, that itself goes a very great distance. On that basis, he, in his highly responsible position as the military adviser of the Government of India and responsible military expert before this Assembly, would be in a position to judge what further stages of Indianisation of units could be effected and when. I therefore think, Sir, that this House, instead of proceeding to go into the details of all the amendments which now stand tabled on the agenda, which may confuse the issue before us, would perhaps do well to consider the advance which has already been made, and to let these further stages of the development of the Indianisation of the Indian units of the Army be considered in due course, from time to time, according to the results which are seen from this measure of Indianisation of 8 units to make a start with. With that to go on, it seems to me that the field is perfectly clear, and it may be left to the military authorities to advise the Government of India as to what further can be done. I do not think I need detain this House any more in the matter, because we have here an accomplished fact that 8 units are going to be Indianised, and also that an Indian Military College for the training of Indian cadets for the officering of the Army has been established at Dehra Dun. The progress will be watched, and no doubt the House will be advised from time to time. In the meanwhile, it perhaps, suffice to abide by the assurance, which His Excellency has given us, and in the future, when the opportunity arises, to consider what are the further stages of Indianisation that the circumstances may permit.

Dr. H. S. Gour (Nagpur Division: Non-Muhammedan): Sir, moving my amendment, I should like to make a few formal changes. The House has no doubt received with feelings of gratitude the announcement made this morning by His Excellency the Commander-in-Chief promising the immediate Indianisation of 8 units of the Indian Army. That, I submit, is a distinct step in advance, and for the House should tender its gratitude and thanks to His Majesty's Government. I wish therefore, Sir, to prelude my amendment with the following words:

"That, while gratefully acknowledging the announcement made for the Indianisation of 8 Indian units, this Assembly recommends to His Excellency the Commander-in-Chief to be so pleased as to formulate a scheme for the steady increase of Indians in the commissioned ranks of the army with a view to ensuring the officering of all Indian regiments by Indian Officers with a minimum of British Officers as may at present be necessary to ensure their efficiency."

Mr. W. M. Hussanally: Sir, I suggest the addition of the words "within a reasonable time".

[Dr. H. S. Gour.]

the educated middle classes, subject to the prescribed standards of fitness, to enter the commissioned ranks of the army, and that in nominating candidates for the entrance examination unofficial Indians should be associated with the nominating authority and that not less than 25 per cent. of the King's Commissions granted every year should be given to His Majesty's Indian subjects to start with."

Two years have since elapsed and we have been pressing upon the Government the desirability of taking a practical step in the direction of Indianizing the military forces of this country. Only the other day when my Honourable friend the Mover of this Resolution spoke on the subject, His Excellency the Commander-in-Chief in his speech did not anticipate the immediate possibility of Indianizing any unit of the Indian Army. His speech was a speech of caution; his speech was a speech in which I am perfectly certain His Excellency the Commander-in-Chief has infused his confidence in the Indian Army with the necessary caution born of a practised British Commander. This morning the situation has completely changed and I am afraid very few of us have realized the great change which that announcement foreshadows. It is the very suddenness of the announcement that has taken this House by surprise. But at the same time, Sir, if the House realises that 8 units of the Indian Army are to be immediately Indianized and on the result of that experiment further progress would be dependent, I am afraid this House will say that that is a contingency which it cannot accept. And so far as this House is concerned, it should ask the Government of formulate a policy, namely, that the minimum of British officers, subject only to one condition, namely, that the minimum of British officers as may at present be necessary be laid down to continue to ensure its efficiency. I submit, Sir, the only difference between my amendment and the announcement made by His Excellency the Commander-in-Chief and the explanation given by the Honourable and gallant Colonel Sir Sydney Brookshank is that, while they are prepared to Indianize 8 units, they are not prepared to formulate a scheme or to promise further Indianization in the steady manner which I suggest. That is the only difference between my amendment and their pronouncement and our demand; and, I submit, Sir, so far as this part of the House is concerned, it is unanimous in its desire that a policy should be enunciated and a scheme formulated for the steady Indianization of the Indian Army. That will not only satisfy the growing rational aspirations of the people of this country but will be an incentive to the very Indian officers who are to be employed in the first eight units. They will feel that they are not the first and the last to Indianize the Indian units and that upon the success, further steady progress has been promised and will be made; and this, I submit, would be for the greater efficiency of the Indian Army and the contentment of the people of this country.

Now, Sir, I turn for a moment to my friend, Mr. Yamin Khan's Resolution and I shall give my reasons why I am not prepared to endorse it. My friend says:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such manner that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

Now, Sir, as patriots and politicians, this Resolution commends itself to us. But as men of practical commonsense, as men who have to face hard facts, I am afraid we are not in a position to say that all future

vacancies in the Indian Army be filled by the employment of Indian Officers. Honourable Members need not be reminded that the first duty—indeed the only duty—for which the Indian, or indeed any Army, is kept is its efficiency. The object of the Army is to secure peace. The object of the Army is to ward off foreign aggression. How can that be ensured if we were to Indianise the Indian Army *per saltum*? Up to now there is no doubt that the Commissions that have been given to the Indian Army have justified themselves, fulfilled the hopes that the Military Officers and Commanders felt in them and in their efficiency. But how can we ask the Government that all future entrants to the commissioned ranks of the Indian Army shall be Indians regardless of other considerations. That is a proposition which I fear I am not in a position to subscribe to, and I do not think my friends on this side of the House are prepared to subscribe to that sweeping doctrine. I therefore suggest, Sir, that we should deal with this question as practical men. We should not forget the primary, and as I have said the only, object of maintaining an army, and that purpose can only be served if we gradually but steadily advance in the direction of Indianisation. Some of my friends have asked for the recognition of communal rights. Amongst them I class my friend the Honourable Colonel Gidney. May I point out to him that he and members of all communities will have their place in the Indian Army subject only to one condition, that its efficiency is not impaired. The Army, Sir, is not a representative institution: it is kept for a definite purpose, and that purpose, I submit, cannot be lost sight of in recruiting people merely because they belong to certain communities and not because they possess the necessary grit, strength, stamina, power of endurance, valour for which, I submit, the Indian Army, as indeed all national armies, exist. But as I have said before, Sir, these are questions of detail which need not detain us. We are at present concerned here with the initiation of a good principle. That principle has been conceded by His Excellency the Commander-in-Chief, and all that we can do now is to thank His Excellency the Commander-in-Chief for his announcement and ask him to accept my amendment in which I want that a scheme for the steady growth of the Indian element in the Indian Army be formulated. With these words, Sir, I move my amendment.

Mr. President: Amendment moved:

"Substitute the following for the Resolution:

"While gratefully acknowledging the announcement made for the Indianization of the Indian units, this Assembly recommends to the Governor General in Council that he may be pleased to formulate a scheme for the steady increase of Indians in the commissioned ranks of the Army with a view to ensure the officering of all Indian regiments by Indian officers with the minimum of British officers as may at present be necessary to ensure their efficiency."

Mr. E. Burdon (Army Secretary): Sir, the essential purpose of the debate initiated by my friend, Mr. Yamin Khan's Resolution was, if I may be permitted to say so, very well put in the words used by my Honourable friend, Sir Deva Prasad Sarvadhikary. Speaking on the 24th of January in this House, he said, "We are anxious to place before the Government and before the public some substantive and substantial form in which we make our demand for Indianization." This is the real and the central object of the discussion while the Resolution itself and the amendments on the paper represent different conceptions of what that substantive and substantial form can be, or it might be said attempts to define the claim which this House should now combine in making. Well,

[Mr. E. Burdon.]

Sir, it must be clear to the House that of these conceptions that which has been framed by my Honourable friend, Dr. Gour, must commend itself most to the Government. It obviously approximates most nearly to the course of action in regard to the Indianization of the Army which the Government, for the reasons which have been stated very fully by His Excellency the Commander-in-Chief, consider to be wise, and consider to be in the best interests of India. It therefore appears, I am afraid, a little ungracious if I have to say that Government cannot accept even Dr. Gour's proposal. I think the reason—and it is very largely a formal reason—is one which will appeal to this House. The amendment, apart from the initial words which have been added to-day, was framed in circumstances which, as my Honourable friend has said, have been entirely changed. The situation in which this debate commenced has been altered wholly by the announcement which His Excellency the Commander-in-Chief has made to-day. Indianization of the Indian Army was asked for and Indianisation in some measure has been conceded. Now, in the face of this accomplished fact, it seems to me that the amendment must necessarily fall to the ground. It is, at any rate, impossible for Government to accept the amendment, although what has transpired in the course of the debate shows that the real desire of the House is in harmony more or less with the intentions of Government as now declared. But even so, I feel sure that the House would not expect Government to accept a proposal even of the kind which has been made by my Honourable friend, Dr. Gour, immediately after the Government have announced their decision to adopt a particular programme of Indianisation. To do so would be incongruous and would only render Government liable to misinterpretation. It would be believed that Government intend to take some further step at once, either in advance of, or varying from, the measure which has been adopted, at which has yet to be put into operation and has yet to prove its success.

There is only one other point—I propose to confine myself strictly to the amendment—to which I should like to draw attention; it is another in which the intentions of Government square very largely with the intention of which is inherent in my Honourable friend's proposal. His Excellency the Commander-in-Chief, speaking this morning, said:

"There is one other point which it is necessary for me to explain. It is that simultaneously with the Indianisation of these selected eight units, Indians who qualify for the King's Commission will continue, as at present, to be posted to other units of the Indian Army,"

where, of course, they will, for the time being, serve side by side with the British officers who remain. The point of this fact, to which His Excellency the Commander-in-Chief drew special attention, is that the scheme of Indianisation which has been announced to-day contains in itself the germ of growth, that is to say, there is inherent in it the possibility of increase, because the Indian officers, with the King's Commission who join other units of the Indian Army, apart from those which are being specifically Indianised, will be available if and when a further stage is decided upon as a result of success having been achieved in the first stage.

Sir, I hope that my Honourable friend, Dr. Gour, and the rest of the House will appreciate the position of Government in this matter. It is, I think, largely based on the formal reason that, having announced one scheme, they cannot ten minutes later appear to commit themselves to something else.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, it is with some hesitation that I rise to speak on a subject to deal with which I feel myself very imperfectly equipped. I give way to no one in my desire for the advance of India towards responsible self-government in every branch. India is the land of my birth, and it is the land in which most of my life has been spent; and those conditions produce an attachment to the country which must necessarily guide my opinion with regard to its future. I have a good deal of sympathy for the moderate wording of this amendment or proposal put forward by my friend, Dr. Gour, but I seek to deal with the subject in that detached and open-minded way towards which a certain amount of judicial experience helps me. I think I need hardly assure this House that there is not one scrap of racial prejudice animating the remarks which I am now making. I speak from the point of view of the citizen of India whose interest in the Indian Army lies in having at hand a force which protects him from external aggression and from internal disorder; and the main force which guides my opinion on this point is a desire for efficiency and nothing else that is worth mentioning. An Army is a fighting machine. Dr. Gour has rightly described it as something quite different from a representative body, a political body, a civil or administrative body. It is a machine kept for a particular purpose, and its first requisite is efficiency. Sir, if I were convinced that the Indian Army, wholly officered and led by Indians only, would be more efficient than the Indian Army as constituted to-day, I should vote that to-morrow the whole of the 3,000 odd European officers should be sent away and that Indians should replace them. But I am not to be convinced by optimism or by hopes or even by that great regard and admiration which I have for Indians—sincere, honest, hopeful regard and admiration. We have at present an Indian Army that has justified itself on a hundred fields of honour and glory, and proved absolutely to the conviction of every mind that is not overborne by prejudice that the Indian non-commissioned ranks led by Europeans are as good a fighting machine as can be found in the world. But India is advancing, and I have the greatest sympathy for, and regard as most natural the desire of Indians generally to be allowed to try their hand in this field of leading their own men. Speaking for myself I have every reason to believe that if the ranks of Indians are put in as officers they will lead those men with the same success that their European predecessors and comrades and some of them have done. But, Sir, when we want to substitute a new machine for an old and well tried machine which is still working effectively, we should something like an experimental test before making the change. I propose now before the House Government is asked to accept the amendment. My understanding is that the Government have announced a scheme. They have started the process of training Indians to possess those remarkable characteristics, those peculiar characteristics, with which alone they can succeed as officers in Indian regiments. They have introduced by the grant of King's Commissions Indians into regiments where, side by side with British officers, they can learn those habits of life and thought and leadership which are essential to success. And now we have this greatest part of that scheme of gradual Indianisation, namely, an actual trial of no less than 8 regiments under completely Indian control. Sir, let the House think what this means. To begin with you have to have 8 Colonels, 8 Seconds-in-Command and 8 Adjutants. I do not profess to know very much about regimental organisation, though I have had the privilege to command Volunteers for 15 years; but I do know this much that upon the character of the Commandant, and upon—what shall

[Colonel Sir Henry Stanyon.]

I call it?—the tact and adaptability of the Adjutant, a great deal of regimental administrative success must depend. The European officer in an Indian regiment has a much easier position than an Indian officer will have. The difference will be understood by European officers if they will try and imagine what their position would be; suppose in the four double companies constituting a regiment one company—or even half a company—consisted of European Christians. They are at present in a detached position, able to act with complete impartiality among all the different people who go to constitute an Indian regimental unit. The Indian officers' position will be very much more difficult for reasons upon which I need not enlarge, but which, I am sure, will be obvious to every Member of this House. We have two amendments proposed on this paper to-day which themselves point to these difficulties. These are all difficulties that we have to consider. Dr. Gour's proposal is: "Don't wait and see what is the result of the experiment. Let that go on as best it may, but, despite that, without opening your eyes by the experience gained in connection with these 8 units, formulate a scheme—formulate a scheme." I submit that this Resolution is premature for that reason, and that this House must possess its soul in patience. It has achieved a tremendous amount of success in pushing forward this matter—success which perhaps a very short time ago even the most sanguine of the Members of the House would scarcely have hoped to realise. Now let us wait. If these 8 units prove, as I have every hope myself they will prove, to maintain their efficiency under Indian command at the same level which they have attained under European command, then our position will be a very strong one, and we may be able to ask that, in place of 8, we should have 80 units of that kind.

Khan Bahadur Zahiruddin Ahmed (Dacca Division: Muhammadan Rural): Sir, before I move my amendments, and before I go on to speak on the merit or demerit of this Resolution, I respectfully ask the Honourable Non-Official Members of this House, in whose hands the Honourable Mover is, to ask him to withdraw this Resolution. I will give my reasons for this novel request. The reply given to the Resolution by His Excellency the Commander-in-Chief, Lord Rawlinson, is very sympathetic and very very hopeful and I am certain that His Excellency will give us as much indulgence as possible, as he has already commenced to help us, compatible with the efficiency of the army, for the furtherance of the desires of our rising hopes. By forcing this Resolution on His Excellency we will simply convert a friend into a foe, as in the interest of the Army he cannot but oppose it. I say we should know better. I must frankly confess that the Resolution as worded cannot be accepted as it is. When I first read in the Resolution that all vacancies (I lay stress on the word "all") in the Indian regiments in future be filled by the Indian officers, etc., I thought my Honourable young friend wanted to be amusing and humorous. A certain Persian saying which I reproduce here came to my mind at once:

"Gorba miskin gur pur dastai tumkh kunjush aj jahan bur dastai"

"Had the innocent cat got wings, there would have been no sparrow left on the face of the earth."

But, when I found that His Excellency, a grim soldier and a far-sighted statesman—two very distinct qualities very seldom found in one man—has taken it seriously, I immediately changed my views and came to the conclusion that I was not right.

If this rash and embarrassing Resolution is accepted by this Honourable House as it is (I lay stress on the words "as it is"), it will simply alarm those from whom we expect more help, more reforms and more good. It will meet the same fate as the immediate Swaraj Resolution of Simla. No Military Board worth its name can accept such a drastic change and that too within 24 hours. Hence, when we are certain of failure, why should we do it? We are a responsible body and not a schoolboys' association, why should we do a thing which will damage our cause?

"Agar akeli ek eshara bus ast".

"If you have any sense in you, one nod, one sign, is enough."

Such an impudent Resolution is sure to be rejected by the authorities at Home as they cannot accept a thing which will be so derimental to the efficiency of the Army and hence to the interests of the country as a whole, and then some of my Honourable friends will commence to whimper and whine that such a well cut, well dried, well groomed and well lobbied motion failed to act. I say it is better to remove the face before the slap has fallen on it. If we get slapped none but we, the Honourable ourselves, shall have to be thanked for it. No use to be wise after the event. No use to advance the face to be slapped. "Chera Kare Kunad Akel ke bar arak pashemani." Why should a wise man do a thing which will bring remorse afterwards? I admit we wanted a long sword but we have been given a pen knife. If we make well use of this pen knife, a better and a longer one will follow. It looks to me that we have commenced to use knife at the throat of the giver thereby creating our own obstinate my own way. What we did before is already known, now we are determined to drive away all the British officers in the Indian Regiments in India. A creeping conviction is coming on me that we are here voicing the of the outside non-co-operators and the extremists. It looks to the outside, the Honourable non-co-operators, and the inside the able non-officials are one and the same or at least they are "Brothers", brothers by contracted relationship which, when translated into common Hindustani means "Salas" and "Buhnois."

Sir, we have heard from His Excellency that in the list of the Vacancies Commissioned Officers there are no fit persons to be given immediately King's Commission. Such officers are not in existence but shall have to be given birth to. My young friends may be up and doing but till then will all the vacancies remain unfilled up? In the meantime they can be filled up by the young non-official Members of this Honourable House. I am giving this piece of advice to His Excellency.

I asked the opinion of one of my constituents who had some military experience in Mesopotamia and he replied as follows: "Kare bojina nist rajjari" meaning surgery is not the business of the monkey. If any of my Honourable friends will argue that the surgeon is simply to hand over his knife to the monkey and the monkey will at once turn out to be a good expert surgeon, I must say that the argument is very forceful and to that I have no reply. There is a vast difference between civil and military matters. A civil officer may commit a mistake which can be easily rectified by his superior without much harm being done. Such is not the case with the military officer. A mistake made by a military officer in the battle-field may end in a great catastrophe, may end even in losing a battle. It has been known in history that the loss of a battle ended the existence of

[17TH FEB. 1923.]

[Khan Bahadur Zahiruddin Ahmed.]

Empires. This nation is in its infancy and I am not prepared to experiment with its life and death by this unworkable, absurd Resolution.

I say there is no magical force in adopting a Resolution. If my Honourable friends the non-officials do believe that a magical virtue is imparted to a Resolution by its acceptance by this Honourable House, I may point out with hundred and one apologies, that such magic will not appeal to the British nation, the British public, the British rate-payers and the British Parliaments. Then what will appeal to them? I submit, it is logic or logical force. Has my Honourable friend the Mover any logic to his side? If he has, I failed to see any. If any of my Honourable friends here will tell me if he has found any, I shall then be delighted.

In the first part of his speech he spoke volumes in praise about the present British officers. He fully admits that they are doing their duties admirably well. He agrees also that they never failed on any occasion. People want a change when the existing order of things is not working well. The Mover admits that the present system is working excellently well. Still he wants a change. He says the change may be equally suitable. But where is the proof?

"Seeing an eagle soar on the high,

The baby in the cradle wishes to fly"

Members wait. The baby which is still in the care of wet nurses. That I prove, to can fly I can see and I must have proof that the baby will be which fly equally well before I will hoist up the baby high in the air. will be my Honourable friends told me if I were to support this Resolution we should get the "Bah", "Bah" of the revolutionary irreconcilables of my country, my countrymen of that class will say excellent, 1) Sir, Revolution in political matters is very risky. The roads of the are full of zig-zags, full of ups and downs like hilly roads. No he merits should ride on such roads at break neck speed. The riders ble Non-Officials not only break the necks of their horses but will break their own necks in the bargain. I say the revolution in the Army is still more dangerous, dangerous and I am not prepared to support such a drastic revolution simply to win the applause of the outside extremists and non-officials. I have a conscience which I cannot sacrifice. I ask the Honourable non-official friends in this House to let us be true patriots, not discard genuine gold for an alloy, though the outside of it may shine. One must not pretend to know a thing of which one knows nothing. Pretended knowledge is very, very dangerous. I ask again from the Honourable non-officials what is their military knowledge. I will answer the question for them.

My Honourable young friend expresses a pious hope that the newcomers will turn out to be as good as old experienced officers whom he wants to replace. He does not instance a single regiment where it was tried and found successful; on the contrary, he says that a similar thing was tried in Company Bahadur's time and it brought about the Mutiny in 1857, which every one deploras. Here my Honourable friend falsifies his own assertion and again he is impudent enough to suggest the same thing which ended in a great catastrophe. I only wish to say, once cheated, twice shy and no more.

I asked a man belonging to the rank and file of the Indian army about these British officers whom my Honourable young friend wants to hang. The Indian soldier replied that these officers are feared by some, liked by others but respected by all and hated by none. I asked him how it will work if they are replaced at once by Indian officers. He said the Indian officers in their place will lean on their remaining British subordinates which will be detrimental to the discipline of the army. He further said discipline in the army is most essential. This want of discipline or the slackening of it under Indian officers brought about the Mutiny in 1857 about which the less said the better. The Indian soldier furthermore said raw levies can be trusted to an experienced officer but a regiment of war veterans cannot be put under the charge of raw officers as in the latter case it will be suicidal. We should try to carry the whole thing to its logical conclusion. I must say in conclusion that my Honourable young friend should now see his way to withdraw the Resolution as it is not on a mature but unworkable. To the Resolution as it is I can offer my sympathetic neutrality but not full support. As to my two amendments after what I have heard from His Excellency the Commander-in-Chief this morning, I do not desire to move them.

(Cries of "Let the question be now put.")

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: The original Resolution was:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

Since which an amendment has been moved to substitute the following for the Resolution moved:

"That while gratefully acknowledging the announcement made for the Indianisation of 8 Indian units, this Assembly recommends to His Excellency the Governor General in Council to be so pleased as to formulate a scheme for the steady increase of Indians in the commissioned ranks of the Army with a view to ensure the officering of all Indian regiments by Indian officers with the minimum of British officers as may at present be necessary to ensure their efficiency."

The question is that that amendment be made.

[17TH FEB. 1928.]

The Assembly divided:

AYES—40.

Abdul Majid, Sheikh.
 Abdulla, Mr. S. M.
 Abul Kasem, Maulvi.
 Agarwala, Lala Girdharilal.
 Agnihotri, Mr. K. B. L.
 Ahmed, Mr. K.
 Ahmed Baksh, Mr.
 Asad Ali, Mr.
 Ayyar, Mr. T. V. Seshagiri.
 Bagde, Mr. K. G.
 Bajpai, Mr. S. P.
 Basu, Mr. J. N.
 Bhargava, Pandit J. L.
 Bijlikhan, Sardar G.
 Chaudhuri, Mr. J.
 Cotelingam, Mr. J. P.
 Das, Babu B. S.
 Gidney, Lieut.-Col. H. A. J.
 Ginwala, Mr. P. P.
 Gour, Dr. H. S.

Gulab Singh, Sardar.
 Hussanally, Mr. W. M.
 Jamnadas Dwarkadas, Mr.
 Joshi, Mr. N. M.
 Misra, Mr. B. N.
 Nag, Mr. G. C.
 Neogy, Mr. K. C.
 Ramayya Pantulu, Mr. J.
 Rangachariar, Mr. T.
 Reddi, Mr. M. K.
 Samarth, Mr. N. M.
 Sarvadhikary Sir Deva Prasad.
 Shahani, Mr. S. C.
 Singh, Babu B. P.
 Sinha, Babu L. P.
 Sohan Lal, Mr. Bakshi.
 Subrahmanayam, Mr. C. S.
 Ujagar Singh, Baba Bedi.
 Venkatapatiraju, Mr. B.
 Yamin Khan, Mr. M.

NOES—42.

Abdul Quadir, Maulvi.
 Abdul Rahim Khan, Mr.
 Abdul Rahman, Munshi.
 Aiyar, Mr. A. V. V.
 Ali, Mr. Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Barua, Mr. D. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Crookshank, Sir Sydney.
 Faridoonji, Mr. R.
 Gajjar Singh, Sardar Bahadur.
 Ha, Mr. P. P.
 Hin, Mr. C. D. M.
 H. C. O. Mr. H. E.
 H. C. O. Mr. J.
 H. C. O. the Honourable Mr. C. A.
 Ley, Mr. A. H.

Mitter, Mr. K. N.
 Moir, Mr. T. E.
 Moncrieff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Mukherjee, Mr. J. N.
 Mukherjee, Mr. T. P.
 Nabi Hadi, Mr. S. M.
 Nayar, Mr. K. M.
 Percival, Mr. P. E.
 Rajan Baksh Shah, Mukhdum S.
 Rhodes, Sir Campbell.
 Sams, Mr. H. A.
 Sarfaraz Hussain Khan, Mr.
 Singh, Mr. S. N.
 Stanyon, Col. Sir Henry.
 Tonkinson, Mr. H.
 Townsend, Mr. C. A. H.
 Tulshan, Mr. Sheoperahad.
 Webb, Sir Montagu.
 Wilson, Mr. W. S. J.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

NOES—43.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abdul Rahman, Munshi.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bijlikhan, Sardar G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Rajan Baksh Shah, Mukhdum S.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Monday, the 19th February, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 19th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock
Mr. President was in the Chair.

MEMBER SWORN:

Mr. George Sampson Clark, M.L.A. (Burma: European).

STATEMENT LAID ON THE TABLE.

Mr. A. H. Ley (Industries Secretary): I beg to lay on the table a statement furnished by the High Commissioner for India in the United Kingdom of cases in which tenders other than the lowest in respect of stores purchased for India have been accepted by him during the half year ending 31st December, 1922.

ABSTRACT OF CASES in which Tenders, not the lowest complying with the requirements of the Stores Department of the Indenting Officer, were accepted on the grounds of superior quality, superior trustworthiness of the firm tendering, greater facility of inspection, quicker delivery, etc.

HALF YEAR ENDING 31st DECEMBER 1922.

PART A.—Cases in which lower foreign tenders, including British tenders for foreign made goods, have been set aside wholly or partially in favour of British tenders.

Stores ordered.	Contract Number.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Insulators	B. 2608-1602, 10th July 1922.	Jas. MacInyre & Coy., Ltd.	£ s. d. 545 10 0	£ s. d. 479 10 0 (German Manufacture).	Better delivery. The difference in cost would be further reduced by extra cost of inspection in Germany.
Wire Insulated	B. 2640-2602, 12th July 1922.	Hackbridge Cable Coy., Ltd.	485 5 9 (Item 7)	430 15 0 (Item 7) (Belgium manufacturer).	Quicker delivery. The small difference in cost would probably be absorbed by the extra expense of inspection abroad.
Ferro-Silicon.	B. 2608-2630, 2nd August 1922.	J. Hinkley & Son	348 15 0 P. O. B. (Llanningham).	341 5 0 (P. O. B. Porsgrund, Norway).	Lowest suitable having regard to shipping facilities.
Cable	B. 3163-3153, 16th August 1922. B. 3164 B. 3165 B. 3166	Western Electric Coy. W. T. Hinkley's Telegraph Works. Johnson & Phillips, Ltd. Callender's Cable Coy.	3,574 3 8 3,104 12 8 3,318 6 11 3,112 9 4 13,109 12 7	12,949 6 3 (Austrian manufacturer). Extra cost of inspection say £100.	The order was shared between the British firms on account of their greater reliability, the conditions prevailing in Austria being uncertain. The additional cost, after allowing for the extra cost of inspection abroad, is inconsiderable.

LEGISLATIVE ASSEMBLY.

[10TH FEB. 1923.]

PART A.—Cases in which lower foreign tenders, including British tenders for foreign made goods, have been set aside wholly or partially in favour of British tenders—contd.

Stores ordered.	Contract Number.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Wires, Armled	B. 3307-3358, 2nd September 1922.	T. Bolton and Sons, Ltd.	£ s. d. 280 14 10	£ s. d. 224 0 6 (German Manufacture).	Quicker delivery. The small difference in price would be further reduced by extra cost of inspection in Germany.
Dog Spikes	B. 3307-3377, 28th September 1922.	W. Kelway Bamber	265 2 6	249 2 4 (made in Belgium).	Quicker delivery offered. There was also much delay in shipping from Antwerp.
Iron Wire	B. 4035-4062, 2nd October 1922.	Dorman Long & Coy.	1,968 15 0	1,959 7 6 (German).	Small difference in cost and the extra expense that would be incurred by inspection in Germany. The British firm also offered much better delivery.
Cement	B. 4074-4064, 4th October 1922.	Ship Canal Portland Cement Manufacturers, Ltd.	811 5 0 (11s. 1d. a Cask). (1,500 Casks)	637 10 0 (8s. 6d. a Cask). (Belgian Cement).	Quicker delivery. It was also not considered advisable to accept the Belgian Cement offered by the lowest tender until a report has been obtained on supplies being made on a Contract now running with this firm.
Copper Plates	B. 4000-4274, 24th November 1922.	Linky & Coy.	13,163 16 0	12,123 0 0	Superior trustworthiness. The lowest tender was from an English firm of locomotive makers for foreign plates flanged by themselves. This is not considered nearly so satisfactory as obtaining plates flanged by the copper makers.
Tyres for Locomotives	B. 5166-5352, 15th December 1922.	Steel Coy. of Scotland, Ltd.	3,837 13 3	2,898 12 6 (German).	The correct supply of Locomotive Tyres is of the utmost importance and it was not considered advisable to place a further order with the German firm until they have established their reliability by completion of two other contracts which they already hold. The delivery offered by the English firm was also much quicker.

STATEMENT LAID ON THE TABLE.

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PART B.—Cases in which the grounds of superior quality, fitness or between foreign firms.

LEGISLATIVE ASSEMBLY.

[19TH FEB. 1923.]

Stores ordered.	Contract No.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Wire Copper	B. 2706-2900, 17th July 1922.	London Electric Wire Co. and Smiths.	£ 121 11 3	131 0 10	Quicker delivery.
Wires	B. 2767-4130, 19th July 1922.	Pirelli, Limited.	988 10 0	944 5 0	Superior quality.
Milliamperemeters	B. 2781-3259, 20th July 1922.	Crompton & Co., Ltd.	27 10 0	24 16 3	Ditto.
Lamp bulbs.	B. 2789-3756, 21st July 1922.	C. A. Vandervell & Co.	45 18 11	38 12 0	Ditto.
Ground sheets	B. 2819-3778, 28th July 1922.	G. Macintosh & Co., Ltd.	3,687 10 0 (9s. 10d. each). 3,687 10 0 (9s. 10d. each). (7,500 sheets to each).	The loco Rubber Co., at 9s. 9d. each.	The stores were urgently required and the order was accordingly shared between the three lowest suitable firms to secure the best delivery. The loco Company quoted lowest and were given an order for 15,000 sheets.
Hinges	B. 3053-3085, 9th August 1922.	Pryke and Palmer, Ltd.	121 1 6	116 18 0	The lowest tender was less reliable and also not on the King's Roll.
Lynol	B. 3045-4433, 9th August 1922.	Burgoyne Burdidges & Co., Ltd.	553 15 0	531 5 0	Quicker delivery.
Nuts, hexagon	B. 3100-5189, 15th August 1922.	Charles Richards & Sons, Ltd.	45 10 6	45 5 8	Ditto.
Expanders	B. 3306-3018, 22nd August 1922.	Charles Whitstead & Co., Ltd.	34 17 0	19 0 8	On account of the superior type of expanders offered.
Tubes, Matocchi's	B. 3397-4371, 7th September 1922.	J. Powell & Son, Ltd.	75 8 9	74 8 9	Quicker delivery.
Engine turntables	B. 3678-4550, 11th September 1922.	Metropolitan Carriage, Wagon & Finance Co., Ltd.	2,888 0 0	2,880 0 0	Ditto.
Gloves	B. 3656-4480, 11th September 1922.	A. E. Braid & Co.	154 3 10	136 9 7	Better quality.
Paint	B. 3692-3105, 12th September 1922.	The London Varnish and Enamel Co., Ltd.	65 0 0	57 10 0	Ditto.

STATEMENT LAID ON THE TABLE.

PART B.—Cases in which the discrimination is between British or between foreign firms—contd.

Stores ordered.	Contract No.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Switches	B. 3723-5128, 12th September 1922.	Erskine Hesp & Co.	£ 15 7 6	2 s. d. 14 0 0	Better quality.
Flannel	B. 3775-5271, 15th September 1922.	J. Schofield & Sons	10,533 6 8 (with 100,000 at 2s. 2d.)	9,791 13 4	In view of the urgency the order was shared between the two lowest firms to secure the best delivery. The lowest firm was given 150,000 yards at 1s. 11½d. per yard.
Screws	B. 3820-4384, 18th September 1922.	G. Richards & Sons, Ltd.	75 4 0	71 8 0	The lowest tender did not comply with the conditions of contract.
Theodolites	B. 3883-5308, 22nd September 1922.	T. Cooke & Sons, Ltd.	251 5 0	176 10 0	In view of special urgency and the much quicker delivery offered. A superior type of instrument was also obtained for the higher payment.
Field Glasses	B. 3950-4165, 22nd September 1922.	Boss, Ltd.	25 4 6	26 3 6	Better value.
Clip Belts	B. 3950-5121, 24th September 1922.	W. Kelsey Bamber	2,439 6 0	2,494 14 9	In view of urgency and the quicker delivery offered.
Safes	B. 3954-5183, 24th September 1922.	J. & E. Bates & Son, Ltd.	98 5 0	92 10 0	Better value.
Cranes	B. 3970-4265, 27th September 1922.	Grafton & Coy.	1,840 0 0	1,710 0 0	The cranes offered were of better design and considered better value.
Wagons	B. 4079-4801, 2nd October 1922.	Euston & Hornsby, Ltd.	872 0 0	840 0 0	Better value.
Ford Spares	B. 4082-5007, 5th October 1922.	Ford Motor Coy. (England), Ltd.	35 8 9	35 8 5	Quicker delivery.
Saw-Blades	B. 4122-5129, 24th October 1922.	Sanderson Bros. & Newbold, Ltd.	2,120 0 0	2,600 0 0	Superior reliability of firm and better quality of stores offered.

PART B.—Cases in which the discrimination is between British or between foreign firms—contd.

Stores ordered.	Contract No.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Chalk	B. 4148-5386, 10th October 1922.	Reeves & Sons	£ 48 6	£ s. d. 47 2 6	Better value.
Rubber connections for Pumps.	B. 4155-5425, 10th October 1922.	E. H. Hill, Ltd.	40 4	36 18 4	Ditto.
Tape, compression	B. 4156-5436, 10th October 1922.	Beet & Lloyd, Ltd.	54 10	41 5 10	Ditto.
Theodolites	B. 4240-5127, 14th October 1922.	T. Cooke & Sons, Ltd.	98 0	90 15 0	Ditto.
Anhydrous Ammonia	B. 4282-577, 17th October 1922.	J. & E. Hall, Ltd.	36 12	34 6 0	More convenient as J. & E. Hall hold the contract for the plant. Lower firm was also not on the King's Roll.
Clothes, towel	B. 4285-5945, 18th October 1922.	Dowd Bros., Ltd.	49 19 0	46 11 6	Quicker delivery.
Flags, copper	B. 4290-6207, 24th October 1922.	Combination Metallic Pig. Co. (1921), Ltd.	73 10 5	68 15 0	Quicker delivery. The lower firm was also not on the King's Roll.
Tyres, M. S.	B. 4402-6091, 24th October 1922.	F. Braby & Co., Ltd.	383 14 0	36 0	Superior quality.
Pipes	B. 4401-6083, 1st November 1922.	Cochrane & Coy., Ltd.	1,409 18 2	1,381 1 1	Quicker delivery.
Bearings, ball	B. 4653-6304, 8th November 1922.	The Hoffmann Manufacturing Co., Ltd.	178 2 2	177 14 1	Better value.
Refr. cotton	B. 4680-7466, 9th November 1922.	E. Spinner & Co.	1,083 19 0	1,017 2 6	Immediate delivery offered. Supply urgently required.
Telephone	B. 4703-6467, 17th November 1922.	Peel-Gomer Telephone Works	220 0 0	191 12 6	Better value.
Magneto parts	B. 4832-7468, 1st December 1922.	The British Lighting & Ignition Co., Ltd.	73 16 7	68 0 3	Better quality.

PART B.—Cases in which the discrimination is between British or between foreign firms—contd.

Stores ordered.	Contract No.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Masties	B. 5105-6677, 24th December 1922.	On Lighting, Ltd.	£ 1,210 18 4	£ s. d. 1,180 11 0	Better value.
Drilling Machine	B. 5118-6793, 4th December 1922.	A. Herbert, Ltd.	297 16 0	270 0 0	Ditto.
Cutters	B. 5128-6585, 4th December 1922.	Henry Rossell & Coy., Ltd.	563 4 6	503 4 5	Ditto.
Wheels	B. 5294-7192, 8th December 1922.	A. Hall & Coy., Ltd.	1,178 6 1	1,140 4 0	Greater reliability. The lowest tender was also subject to an extra charge for packing.
Wire rope	B. 5347-6467, 8th December 1922.	J. & E. Wright	170 19 0	163 7 4	On account of the firm's special reliability for the rope required.
Wire rope	B. 5376-6576, 15th December 1922.	Allen Whyte & Co.	24 11 0	22 15 10	Superior reliability. The price quoted by the lowest firm was also not firm.
Netting, Mosquito	B. 5384-7433, 15th December 1922.	Hy. Mallet & Sons	7,318 15 0	7,000 0 0	Lowest suitable in view of the urgency of the requirements. The lowest firm also received an order for 350,000 yards at 1s. per yard.
Blower	B. 5416-7992, 18th December 1922.	Sanicson & Coy.	67 0 0	66 0 0	Better value.
Belted Cotton	B. 5419-7025, 18th December 1922.	Lewis & Taylor, Ltd.	20 4 12	18 15 0	Ditto.
Machine Shaping	B. 5420-7035, 21st December 1922.	Selcom Engineering Coy., Ltd.	173 15 1	153 15 0	Ditto.
Helmets	B. 5431-7575, 21st December 1922.	Perry & Sons & Coy.	10,908 6 3	9,800 0 0	Lowest suitable having regard to urgency of the requirements. The lowest firm, who are in arrears in delivery on a current contract, were given an order for 7,500 helmets to be taken into stock.
Paper	B. 5432-7575, 21st December 1922.	W. Nash, Ltd.	75 5 0	74 7 6	Better value.

QUESTIONS AND ANSWERS.

IMPORT DUTY ON PAPER.

366. *Sir Montagu Webb: (1) Are Government aware:

(a) That under the Finance Act, 1922, passed by the Legislature in March last, an import duty of fifteen per cent. *ad valorem* was imposed on paper? (Item 94 in Schedule II, Import Tariff); yet

(b) That by a Notification "Customs Duties, No. 6705 of 23rd December, 1922, new items have been introduced into Schedule II, of the Import Tariff under the heading Paper, namely, news printing paper, printing paper flints, real art, imitation art, etc., to which Tariff Valuations have been given in some cases more than twice the current market values of the papers mentioned, with the result that the present Import Duty on paper instead of being fifteen per cent. as laid down by the Finance Act, 1922, is now twenty to thirty-seven per cent.?

(2) Will Government be pleased to say what steps they propose to take to correct this deviation from the scale of duties authorised by the Legislature, so as to ensure that the duty on paper shall not be suddenly doubled or more by mere executive order?

The Honourable Mr. C. A. Innes: (1) (a) Yes.

(1) (b) and (2). These valuations were based on the prices of the various years and were fixed in consultation with the principal Chambers of Commerce, and were not criticised at the time as being excessive. The Government of India have, however, further examined the matter in light of information subsequently supplied and have ascertained that valuations then fixed are somewhat above actual market prices, partly account of the considerable fall which has taken place in the prices of paper during the last 4½ months, i.e., since the collection of the quotations on which the valuations were based. They have therefore revised the tariff valuations for this article, and a notification to this effect appeared in the Gazette of India of the 17th instant.

Sir Montagu Webb: Having regard to the fact that prices generally are now falling, will Government undertake from time to time to re-examine other tariff valuations so that the scale of duties authorised by the Legislature shall not be greatly exceeded?

The Honourable Mr. C. A. Innes: That, Sir, raises a big question. In exceptional cases we do reduce the valuations but not often. It would be against the whole object of tariff valuation to do so as a matter of course and the Honourable Member will see that if we reduce the valuation when prices fall we must also increase it when prices rise.

ARMS RULES COMMITTEE'S REPORT.

367. *Baba Ujagar Singh Bedi: (a) Will Government be pleased to state if they have accepted the recommendations of the Arms Rules Committee?

(2474)

(b) What points of the Report they have accepted?
(c) Have the Government given any legal shape to those recommendations yet, if not, when are they going to be enforced as Law?
(d) Have they given any consideration to the Notes of Dissent, on the said Report, and if so, to what points?

The Honourable Sir Malcolm Hailey: We hope very shortly to be in a position to make a statement on the subject.

WORKING OF CHIT ASSOCIATIONS AND NIDHIS IN MADRAS.

368. *Mr. Narayandas Girdhardas: Will the Government be pleased to state whether they will call for a report from the Government of Madras as to whether in view of the inapplicability of several of the fundamental provisions of the Indian Companies Act, to Chit Associations and Nidhis, it is desirable to modify the Act to suit the constitution and working of these institutions?

The Honourable Mr. C. A. Innes: A letter on this subject has just been received within the last few days from the Southern Indian Chamber of Commerce and is under examination. This covers also the next question, No. 369.

WITHDRAWALS AND LOANS IN CONNECTION WITH NIDHIS AND CHIT ASSOCIATIONS.

369. *Mr. Narayandas Girdhardas: Will the Government be pleased to state whether in the case of Nidhis and Chit Associations, withdrawal from, and loans on share capital are allowed against the provisions of the Indian Companies Act?

AUDITORS IN MADRAS.

370. *Mr. Narayandas Girdhardas: Will the Government be pleased to state the number of Auditors certified as qualified to audit accounts for purposes of Income-tax in the Madras Presidency?

The Honourable Sir Basil Blackett: The information is being collected and will be supplied to the Honourable Member. This answer I am afraid I must ask him to accept to all the questions up to No. 375 inclusive.

INCOME-TAX ASSESSEES, MADRAS.

371. *Mr. Narayandas Girdhardas: Will the Government be pleased to state the number of assesseees to Income-tax in the Madras Presidency on 31st March, 1922?

INCOME-TAX AUDITORS.

372. *Mr. Narayandas Girdhardas: Will the Government be pleased to state whether it is a fact that since the passing of the Indian Income-tax Act of 1922, no additions to the list of qualified Auditors for Income-tax purposes have been made?

COMMITTEE ON INCOME-TAX AUDITORS.

373. *Mr. Narayandas Girdhardas: (a) Will the Government be pleased to state under what provision of the Indian Income-tax Act of 1922, or the

rules thereunder, the Commissioner of Income-tax for the Madras Presidency has constituted a Committee for the selection of Auditors for Income-tax purposes?

(b) Will the Government be pleased to state whether Commissioners of Income-tax in other Presidencies have constituted similar committees for the selection of Auditors for Income-tax purposes?

ENLISTMENT OF INCOME-TAX AUDITORS.

874. *Mr. Narayandas Girdhardas: Will the Government be pleased to state whether any rules have been framed by the Commissioner of Income-tax for the Madras Presidency to regulate the enlistment of Auditors for Income-tax purposes? If so, will the Government be pleased to lay a copy on the table?

INCOME-TAX ASSESSEES.

875. *Mr. Narayandas Girdhardas: Will the Government be pleased to lay on the table a statement of the number of Income-tax assesses in each of the major Provinces on the last day of the last official year, and also the latest number of qualified Auditors for Income-tax purposes in each of those major Provinces?

RAILWAY ADVISORY COUNCILS.

876. *Mr. B. S. Kamat: (i) Will Government be pleased to state in which of the Railway Administrations Local Advisory Councils have been established so far in terms of the recommendation of the Railway Committee, 1920-21?

(ii) In this connection, will Government also be pleased to give the constitution, the method of selection of the Members, the scope of duties, remuneration, if any, to Members, and the nature of proceedings of these Advisory Councils as fixed at present?

(iii) If Local Advisory Councils have been appointed for the G. I. P. and the B. B. C. I. Administrations, will Government be pleased to give the names of the Members?

The Honourable Mr. C. A. Innes: (i) and (iii) Apart from the two committees on Eastern Bengal and East Indian Railways which have been for some years in existence no new Local Advisory Committees have yet been established in accordance with the revised principles referred to. Orders have however been issued for the formation of committees on the three State lines, and these will very shortly be constituted. The principles which are being followed on State-worked railways have been recommended to all Companies for adoption, and in most cases preliminary measures are believed to be now well advanced for the formation of similar committees on all the principal lines.

(ii) Government have confined themselves to formulating certain general principles in consultation with the Central Advisory Council, and detailed arrangements such as those referred to will necessarily be settled on each individual line to suit local circumstances. A copy of the memorandum of general principles prescribed is laid on the table.

Memorandum regarding Local Railway Advisory Committees.

I. Title.—The new bodies to be known on each line as "Railway Advisory Committee".

II. Constitution.—A separate main Committee to be constituted for each administration, the number of members being decided by circumstances subject to a maximum of 12. The Agent to be *ex-officio* Chairman. The remaining members to consist of:

two Local Government members nominated by the Local Government in whose jurisdiction the headquarters of the railway in question is situated;

three representatives of the Legislative Council of the Government in whose jurisdiction the headquarters of the railway in question is situated. These members should be selected to represent rural interests and the travelling public;

one member from the local municipality or corporation at the railway headquarters;

five members representing industries, commerce and trade.

The heads of departments of railways may be called in merely to advise on subjects under discussion which may affect their department and on which their technical expert advice would be useful to the committee.

The method of selection of the non-official members to be left largely to local discretion. The representatives of the Legislative Council need not necessarily be members of the Council. Members of the Central Advisory Council are not debarred from membership of Local Advisory Committees. The five members representing industries, commerce and trade would ordinarily be drawn from important local bodies representing predominant trade interests; the actual selection of such bodies should be made in consultation with the Local Government, and the committee is made it should be left to them to nominate or elect their representatives. The tenure of office of the members to be left to the electing or nominating body to decide.

Agents will consider whether it is desirable to form separate branch local committees at large centres, and in case of doubt they may consult their main committee in this matter.

III. Scope of duties.—The functions of the committee to be purely advisory. The sort of subjects which might suitably be placed before the Committees are:

- alterations in time tables and passenger services;
- alterations of rates and fares and changes of goods classifications;
- proposals in regard to new projects and extensions;
- proposal in regard to new rolling stock;
- any matters affecting the general public interest or convenience.

Questions of personnel, discipline and appointments will not be brought before the committee; subject to this condition any member may suggest a subject for discussion, but the Agent may rule out any subject for reasons which should be explained at the first meeting after the ruling has been given.

IV. Remuneration.—Non-railway members may be paid Rs. 32 for each meeting attended.

V. Proceedings.—The committee to meet once a month if there are matters to be discussed. A copy of the minutes of meetings to be furnished to each member and to the Railway Board. If in any case the Agent decides that he is unable to follow the advice given by the majority of the committee, he must bring the matter to the notice of the Railway Board in forwarding the minutes of the meeting for their perusal.

Sir Datta Prasad Sarvadhiary: Would the Honourable Member please state how Members of this House can obtain information regarding the proceedings of these Committees?

The Honourable Mr. C. A. Innes: I am afraid I must ask for notice of that question.

RECOMMENDATIONS OF DECK PASSENGER COMMITTEE.

377. *Mr. B. S. Kamat: (i) Will Government be pleased to state what action has been taken in the matter of the recommendations of the Deck Passenger Committee, 1921, so far as any amending legislation to amend the Indian Passenger Ships Act is concerned to improve space allowance?

(ii) Will Government also please state what steps, if any, have been taken to improve existing conditions in general and particularly in respect of the following recommendations of the said Committee, viz.:

- (a) Paragraph 68A, (iv) Shelter accommodation at ports;
- (b) Paragraph 68A, (v) better arrangements for Surf boats;
- (c) Paragraph 68A, (vi) embarking and disembarking;
- (d) Paragraph 68A, (viii) telegraphic communications between ports;
- (e) Paragraph 68A, (ix) night signalling between shore and adjacent villages;
- (f) Paragraph 68A, (xxiii) non-official visitors at important ports.

The Honourable Mr. C. A. Innes: The Government of India informed Maritime Local Governments in November, 1921, of the provisional conclusions of the Deck Passengers Committee's Report and asked them to consult Steamship Companies and public bodies on these questions and to furnish the Government of India with their views. A reply is still due from one important Local Government who have been asked to expedite the matter. Until this reply is received, it is impossible for Government to formulate final conclusions.

QUARTERS AT WINDSOR PLACE, RAISINA.

378. *Rai Bahadur Lachmi Prasad Sinha: Will the Government be pleased to state—(a) How many quarters are still lying unoccupied at Windsor Place?

(b) Whether the rent of those quarters will be charged from the Honourable Members, for the whole Season, to whom they have been allotted or from the date of their occupation?

(c) If from the date of occupation, then who will be liable for rent of those unoccupied quarters, either for the unoccupied period or for the rest of the Session—in case the Members to whom they have been allotted do not owing to certain reasons come to Delhi or occupy them?

Sir Henry Moncrieff Smith: (a) Four quarters at Windsor Place were until a few days ago unoccupied.

(b) and (c) Quarters at Windsor Place have all been allotted on the basis of seasonal rents, and rent will be charged for the whole season whether the quarters are occupied or not unless the quarter is definitely relinquished. Where a Member relinquishes his quarter he is liable for the rent till a new tenant has been found.

ALLOTMENT OF QUARTERS AT RAISINA.

379. *Rai Bahadur Lachmi Prasad Sinha: Will the Government be pleased to state if it will be possible for them to re-allot the Windsor Place quarters after allowing a certain reasonable period from the date of commencement of the Session for their occupation instead of keeping them vacant?

Sir Henry Moncrieff Smith: Hitherto the practice has been that when a quarter at Windsor Place has been allotted to a member it is kept at that member's disposal even though he may not be occupying it until he definitely relinquishes it. Government will consider the Honourable Member's suggestion that a re-allotment of the vacant quarters should be made after the lapse of a reasonable period.

Rao Bahadur T. Rangachariar: Having regard to the popularity of these quarters, will the Government be pleased to build more such quarters?

Colonel Sir Sydney Crookshank: We have taken out estimates for the construction of 10 additional quarters of this particular design and when the Finance Department are in a position to provide the funds and they Legislative Assembly vote the funds, the construction of these quarters will be put in hand.

WINDSOR PLACE QUARTERS UNOCCUPIED.

380. *Rai Bahadur Lachmi Prasad Sinha: Will the Government be pleased to state as to how many Windsor Place quarters were unoccupied during the whole of the last Delhi Session?

Sir Henry Moncrieff Smith: None of the quarters at Windsor Place was unoccupied for the whole of the last Delhi Session.

TRAINING OF INDIANS IN ARTILLERY, ENGINEERING, ETC.

381. *Mr. Ahmad Baksh: Will the Government be pleased to state what definite steps have been taken in the matter of training of Indians for Commissions in Artillery, Engineering, Air Force and Royal Air Force in pursuance of the promise given in His Excellency the Viceroy's speech of the 3rd of September 1921 when opening the second session of the Indian Legislature at Simla printed on page 14, Volume II of the Legislative Assembly Debates?

Mr. E. Burdon: The question of the admission of Indians to the commissioned ranks of the Artillery and Engineer services in India, as well as the Royal Air Force in India, is still under consideration.

As regards the Royal Indian Marine, I invite the attention of the Honourable Member to the reply given on the 18th instant to unstarred question No. 180.

Mr. B. S. Kamat: May I ask what has been the decision about the training of Indians for the Air Force?

Mr. E. Burdon: I have stated this in the reply which I have just given. The matter is still under consideration.

MAINTENANCE OF STANDING ARMY IN INDIA.

382. *Mr. P. P. Ginwala: With reference to the answer to my question No. 3, dated the 15th January 1923 (re the Statutory or other authority under which the Governor General in Council maintained a Standing Army in India), will the Government be pleased to state:

- (a) Whether it is not the fact that all the three Statutes therein cited have been repealed by the Government of India Act?
- (b) If the answer to (a) is in the affirmative, whether it is not the fact that there is no express statutory authority for the maintenance of a Standing Army in India?
- (c) If the answer to (b) is in the affirmative, under what other authority is the Standing Army in India maintained?

Mr. E. Burdon: I wish in the first instance to express my regret that the reply which I gave to the question on the same subject asked by my Honourable friend on the 15th January last was incorrect. This was due, I need hardly say, to inadvertence, and the Honourable Member's present question gives me an opportunity of setting the matter right. The answer to his question is as follows:

- (a) Of the three Statutes referred to, the East India Mutiny Act, 1754, was repealed by the Statute Law Revision Act, 1867, while the Government of India Act, 1833, and the Government of India Act, 1858, were repealed by the Government of India Act, 1915.

(b) Yes.

(c) Under the inherent power of the Crown.

amicable decision on the grave issues at stake, but, after a few days, I could see that it was possible; and the ultimate decision, a compromise which we agreed upon was the outcome of a mutual feeling of friendship and a development of trust between both the communities—to such an extent that in a very little while a compromising spirit of give and take pervaded the whole of the atmosphere of our deliberations. Although I subscribed myself to a very minor minute of dissent, yet, Sir, after hearing what other Members, both European and Indian, have said here to-day and the eloquent speech of the Honourable the Leader of the House, Sir Malcolm Hailey, I, for one, representing as I do the domiciled community, am sure, nay, I am convinced, that I have every reason to re-echo what Sir Henry Stanyon has just said, namely, that the time is not far distant when there will be no more need for the existence of a Racial Distinctions Bill,—that both Indians and Europeans and the other communities in this country will work hand in hand as equals,—that justice will be administered and will be accepted in its administration,—as Sir Henry Stanyon put it, irrespective of caste, creed and colour. Sir, the pitfalls and difficulties which confronted us at this Racial Distinctions Committee were multanimous. At times we found that we had come to an impasse, but it was the skilful leadership of Sir Tej Bahadur Sapru and the tact and strategy of Sir William Vincent that turned this position to one of mutual understanding with the result that we have brought before this House this Bill,—a compromise—which I feel sure every community in India will accept with pleasure and satisfaction as a decided advance in equality of status. I compliment the Government on the production of this Bill, I compliment the House on the statesmanlike way in which it is accepting it and I am sure the House will pass it without any dissentient voice whatever. As my Honourable friend, Mr. Rangachariar, said the other day "After all it is the first step that counts" and I am sure we will take this first step with such confidence, that our succeeding steps will guide us towards a better understanding—towards a better and truer realisation of that reciprocal feeling of trust between the various communities which India needs and must possess in her endeavours to develop a nation out of the heterogeneous classes that inhabit this country. With these few remarks, Sir, I associate myself wholeheartedly with all that my friend, Sir Campbell Rhodes, has said.

[Mr. K. B. L. Agnihotri.]

the basis of the compromise arrived at between the representatives of the different communities in this country. We now find that this is a clause which goes even beyond that. In this definition, His Majesty's Government have not accepted that very compromise on which we are asked to accept this Bill. This is the definition on which there has been a sort of veiled threat of disallowance of the whole Bill if the Indian Legislature insisted on doing away with the privilege that is being accorded to the Colonials in this Bill. Sir, I do not know how we should act on that veiled threat. I thought that the moment the rights of legislation had been given to us and along with it the rights of vetoing had been reserved for the higher authorities, there was no need of giving approval or disapproval or any sort of veiled threat before the Bill had been passed by us. As Sir Malcolm Hailey has found from the attitude of this House, they are prepared to accept the compromise, and it was a needless fear on the part of His Majesty's Government to have thought that the Legislature would not act on the compromise, or that the whole Bill would be dangerous or capable of mischief without the inclusion of Colonials in this definition. I think the Secretary of State or His Majesty's Government should have left it to the good sense and as is always apparent the sweet reasonableness of the Indian Legislature to accept the compromise and to allow any definition that may have been put in the Bill. If His Majesty's Government or the Secretary of State thought that there was any danger or that any provision in the Bill was capable of mischief, they were perfectly at liberty under the powers vested in them to disallow subsequently that portion which they thought to be improper. Sir, apart from that, let us see what will be the effect of the inclusion of the Colonials in this definition of European British subject. We are giving certain rights and privileges to this special body of persons and which rights and privileges we disallow to other Europeans and other Members of the civilised nations. We are giving certain rights and privileges to a certain class of Colonials while we deprive other Colonials of those rights and privileges which they had enjoyed before. Sir, we are giving certain rights and privileges to Colonials which will be resented not only by the Members of this House but also by the whole of the Indian community at large, because of the treatment that has been accorded to our fellow brethren living in those Colonies. I do concede, Sir, that so far as rights and privileges and concessions in criminal trials in those countries are concerned, we have the same rights and privileges in their country as they have got in ours, and we are prepared to give the same rights and privileges which we have ourselves got to those gentlemen who come from those Colonies to this country. But I am not prepared to give those gentlemen any rights or privileges superior to those which we ourselves enjoy in this country. For instance, the Indians in this country are subject to the jurisdiction of even second and third class Magistrates. Why should the Colonials be taken away from that jurisdiction? Why should they not submit themselves to the same jurisdiction which we Indians submit ourselves to? Here, if they have to submit to the jurisdiction of second and third class Magistrates, they will be on terms of equality with us, but the moment we put ourselves under the jurisdiction of those Magistrates and take out these Colonials out of this jurisdiction, we give them something more which we ourselves do not enjoy.

I do not believe, Sir, that it would be a reprisal if we give them the same rights which we ourselves enjoy. We give them the same rights that the highest in our country enjoys. We are prepared to give them the same rights which Americans and other European nations enjoy, and I do not think why we should give them superior rights. Sir, as for reprisal, I do not believe that any such will be the case; moreover if we are afraid of any reprisals from the Colonies owing to our taking away certain rights which we give to the European British subjects in this country, we should then also be afraid of reprisals from nations or countries other than the Colonials. For instance, America, or any other country. Further, Sir, it was said when the Bill was introduced and was moved for consideration that there were certain privileges which should not be withdrawn. I do not know why this definition of European British subject is to-day being put on the Statute Book. Under the old definition there were certain other people in the Colonies who enjoyed these rights. Why should they not enjoy it now? For instance, we may give a right to a Ceylonese to-day. But if the Ceylonese were to migrate to any other Colony, say South Africa, then two or three generations afterwards, his issue may not have the same rights which we may extend to him under the present definition in this Bill. For instance, his children or his grandsons or great grandsons or people of his descent in the male line will not have the same privilege as the present day European brother Colonials' issues will enjoy. It is quite incomprehensible to me on what ground this differentiation has been made. Moreover, there is another danger by giving this superior right to Colonials. The Colonials who do not like to give us equal rights in their own country will say "in your own country, by your own legislation, you recognise our superiority. How do you then claim equality in our country in other matters?" That will be giving them a weapon, an excuse, for putting us further down and heaping indignities and humiliations on the shoulders of our fellow-brethren. Sir, I could very well understand that those Colonials who have come to this country under the orders of His Majesty's Government or as servants of the Army and Navy may be given the same rights as the European British subjects and I would have conceded so far because they do not come to this country of their own choice. But why should those persons who have submitted themselves to our jurisdiction of their own choice, who have become permanent residents of this country of their own choice, have these privileges extended to them? With these words, Sir, I move that the words "or any Colony" be deleted from the definition of "European British subject."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, I was at first inclined myself to quarrel with the view taken by the Secretary of State in respect of this position, given to the Colonials but on reflection I thought it would be better that this country, uncivilised as it may be considered to be by these barbarians elsewhere might at least teach them a lesson, teach them a lesson in magnanimity, teach them a lesson that we can rise above passions and prejudices and if not thereby correct those people, at least enlist the sympathy and support of our European friends in this country and in Britain in all our legitimate fights which we are putting up in other directions in the colonies. Sir, if it were for the first time that an attempt was being made in this Legislature to include in the definition of European British subject the Colonial, we should have hesitated twice and thrice before we accepted such an inclusion.

[19TH FEB. 1923.]

[Rao Bahadur T. Rangachariar.]

what we are creating for the first time. That is one of the circumstances which weighed with me in this connection.

In the next place, as I have pointed out in my separate minute, if there is any reason at all for maintaining a distinction in favour of any class of people, that reason applies to the case of all people who are aliens in this country. I should advocate a distinction in favour of the Afghan, in favour of the Chinese, in favour of the Japanese, because there is as much justice in maintaining a distinction in favour of these people as there is in favour of European British subjects, because after all the whole thing turns upon whether they get fair justice or not in our courts, and these people are in a strange land and it must be admitted that as regards us, Indians, we do not distinguish an Englishman from a Colonial. I mean they are all alike to us. They do not associate with us as freely as they ought to do, and I do not know that we are able to make out the nationality of many of the members of the Civil Service present in this Hall itself. It is only for the first time I learn that the first Member of Council in Madras is a Colonial. It was for the first time I learnt on reading the report of the Local Government that the Governor in one of the provinces is a Colonial. I mean that that idea never crosses our minds. They are all whites to us: just as we are blacks to them, they are whites to us. But I daresay we are making a move to-day to abolish this colour distinction and I hope this will be a successful move. (Hear, hear.) Sir, it is quite true that very many people advocate that these strokes of retaliation should take place, but let us remember that our nature and our religion in this country forbid retaliation. We are always required to forgive, and in fact even in the case of the extremist politician in this country, the non-co-operator—what is his weapon? It is not anger, it is love (Laughter); and I have no doubt they will appreciate magnanimity on our part; the non-co-operators in this country, I am sure will appreciate the magnanimous spirit in which we are doing our work to-day, because, as I stated already, it is our main object to teach these people a lesson. Again, there are Colonies which misbehave. There also we have to remember. It is not all Colonies which misbehave. There are some Colonies like Mauritius, where equal rights are accorded. There is no distinction at all either in the political franchise, or the municipal franchise; no disabilities in acquiring land, no disabilities in owning property. But there are Colonies which impose the poll tax. I was pained to hear the other day that Indian labourers in Fiji have to pay a poll tax. Of course they say they do it to all alike, but the Indians come in for the largest share; and I hope, Sir, that when such treatment is brought to the notice of our European colleagues, our European fellow subjects in this country, they will agitate more strongly than we can do in these matters. Their agitation will be more effective. An appeal from our European fellow subjects in this land to their brethren in those Colonies will have a greater effect. Sir, in order to attain that end, with great reluctance I oppose this motion made by my friend, Mr. Agnihotri. I think he will on the whole be acting wisely in accepting this suggestion which has been made by Government. Let us not mar the passage of this measure by insisting upon this matter. I appeal to my Honourable friend, Mr. Agnihotri, to follow the example of the great man of this country, Mr. Gandhi, and exercise forbearance for his part.

Statute Law. (Rao Bahadur T. Rangachariar: "I did not say that I said the Colonial was there already.") He said that the word "Colonial" was there already and that consequently we are not giving them anything more than what exists in the present enactment. That is wrong. Under section 85 of the Government of India Act to which reference was made by the Honourable the Home Member European British subject is defined as any subject of His Majesty born in Europe or the children of such subjects; that is the sole definition which occurs in the Government of India Act. Now, let us turn to the definition in the Indian Code of Criminal Procedure. There we find, not as my friend Mr. Rangachariar has pointed out, a person of European descent or extraction born in any of the colonies. The definition is "any subject of Her Majesty born, naturalised or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian colonies or possessions of Her Majesty or in the colony of New Zealand or in the colony of the Cape of Good Hope or Natal." The colonies are enumerated and as Honourable Members will see these are all self-governing colonies where people of the English race have settled down permanently. The definition now proposed by Government is a wide extension over the definitions contained in the Government of India Act and also in the Code of Criminal Procedure. I shall presently illustrate my meaning. The definition says, "domiciled in the British islands or in any colony." Honourable Members know there is such a thing as a Crown Colony, Ceylon and Kenya for instance. Under the present definition any person of British descent being a subject of His Majesty, born in Ceylon or Kenya would become *ipso facto* a European British subject which he would not have been under the definition in the Code of Criminal Procedure and the Government of India Act. In that sense and to that extent the definition is not a reproduction of the old definition contained in the two Statutes I have mentioned; and as my friend, Mr. Samarth pointed out the law at present is that a person of European descent or of British descent born in Ceylon is amenable to the general law applicable in Ceylon. In passing I may point out that the criminal law of Ceylon is almost a verbatim reproduction of the Indian Penal Code, and the Criminal Procedure Code there more or less follows the lines of the Criminal Procedure Code here. In the trial of cases in that country no distinction is made between a native born subject of Ceylon and a person of British extraction born in Ceylon. Consequently, we introduce this anomaly, that if a person of British origin is born or domiciled in Ceylon he will be tried under the general law in Ceylon itself, whereas if he crosses the Straits and is tried anywhere on the Continent of India he will immediately claim exemption under the proposed definition on the ground that he was born in a colony of England. That is the distinction. As I have said the distinction is a vital one. We are extending the definition of a European British subject. Let us make no mistake about it.

[Dr. H. S. Gour.]

minimum which the British Cabinet or the Home Government insists and upon which the Government are prepared to proceed with this measure of legislation. If we whittle it down, if we alter it or suggest any alterations upon this vital principle, the progress of the Bill will be delayed and possibly the Bill itself defeated. Honourable Members know that we are now almost at the end of our term. Any further delay in the progress of this measure might jeopardise its final enactment during our life. Therefore I suggest that although we do not accept the principle and protest as have protested before against a decision which we consider to be an undue and unnecessary enlargement of the definition which exists at present on the Statute Book. But we have no alternative. We have to bow to the inevitable and say—“If this is all you can give us, we are prepared to take it, but I wish you will recognise that we are doing so under an emphatic protest. We are doing so because we fear that owing to some misapprehension on your part or those who have given you instructions, you have unduly and unnecessarily enlarged the definition of European British subject and brought within its compass people who never could have been brought under the existing definition.” This is the position, Sir, and in view of what I have said I think the House must now decide whether it is in favour of threshing out this question upon its merits or accept what has been offered to us and say “let us hope at least that in the near future wisdom will dawn upon those who are responsible for the introduction of this measure and that they will rectify the errors into which we are being led by force of circumstances.”

It is upon these grounds, Sir, that I have decided not to move the amendment worded in the same terms as those of the Honourable Mover of this amendment, and I request him to do what I have decided to do, namely, to withdraw the amendment.

Sir Deva Prasad Sarvadhikary: Sir, there is no counter-arguing with a downright *sine qua non* argument. At the same time, one must be quite clear with regard to what one is doing and can do in future. Dr. Gour has referred to section 65 (3) as containing a definition of European British subject. Well, my reading of that sub-section is not Dr. Gour's reading. Let us see what section 65 (3) of the Government of India says:

“The Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe or the children of such subjects, of abolishing any High Court.”

I would not have taken up the time of the Assembly by reading that clause merely to combat Dr. Gour's point of view if I had not another object in view. In the Statement of Objects and Reasons, we have this sentence:

“His Majesty's Government are particularly interested in the Imperial aspect of the proposal, and they consider that the proposal of the Committee would raise an invidious and controversial question throughout the Empire. The Secretary of State for India in Council whose specific approval was required under section 65 (3) of the Government of India Act for certain provisions of the Bill has accordingly only accorded his sanction on the understanding that the definition proposed in the Bill will be accepted. On the other hand, it is recognised that the Committee have indicated clear grounds

comes in so far as the question of Colonials on its merits goes. Is the position this, that, under section 65(3) of the Act, the Secretary of State has certain powers of withholding sanction because of the question as to whether a Sessions Judge should have the right of sentencing a European British subject to death or not? That is the whip hand; availing himself of that, he imposes other conditions. We ought to clearly understand the situation, and, if the condition he imposes is a *sine qua non*, we are, as Dr. Gour says, helpless and have to submit. If the condition is on any other ground, matters would stand on a different footing altogether. We are pleased and thankful to learn that His Majesty's Government is particularly interested in the Imperial aspect of the proposal and that they consider that the proposal of the Committee would raise an invidious and controversial question throughout the Empire. When we appeal to the Imperial Government in regard to other matters in the colonies in respect of their Imperial aspect and object to invidious distinction, they say: “The colonies have their own laws: how can the Imperial Government interfere with them?” That is the point where the difficulty comes in. I recognise, Sir, that it is absolutely no good now at all events, going into the matter in the way the Mover of the amendment proposes but we want to have the matter quite cleared up when Sir Malcolm Hailey is replying so that we may know how far this Assembly or its successor would be prepared to go in deleting the word in question or corroborating them later on after the colonies show responsiveness. Now is not the time.

THE CRIMINAL LAW AMENDMENT BILL.

Majesty's Government supporting us in our demand for according better treatment to our own countrymen and countrywomen in the Colonies. As Sir Malcolm Hailey has pointed out, an obstinate attitude on this question might satisfy our pride to a certain extent that we have dealt a blow at the Colonies by retaliating. But it would be a childish and false pride indeed. That blow is bound to be ineffective. The Colonies are not likely to feel that blow, and we might be able perhaps to create more bad blood in the Colonies. If instead of that, if, instead of making an obstinate effort at rendering an ineffective blow on a matter which is not really pertinent to our political position in the Colonies, if we at this moment supported His Majesty's Government, we should then have the right of claiming the support of His Majesty's Government in getting better treatment accorded to our own countrymen and countrywomen in the Colonies. It is because I think our attitude on this question would be a capital, would be an investment for the future, that I support the attitude taken up by His Majesty's Government.

The Honourable Sir Malcolm Hailey: The amendment under discussion involves questions both of detail and of principle; and I may be pardoned if I deal first with the questions of detail that have been raised, for it is necessary to do so, since some of the suggestions made to the House were to my mind misleading. Mr. Agnihotri told us that he saw no reason why when this Legislature had been given its powers, the Secretary of State or the Home Government should not be content to rely on their powers of veto. He suggested that if any clause of the Bill as passed by us was unsatisfactory to the Home Government, they could veto that clause. But as has appeared from the discussions this afternoon, we have to reckon with section 65 of the Government of India Act under which the specific approval of the Secretary of State to certain sections of this Bill would in any case be necessary. It would not therefore have been possible for the Home Government to rely purely on the power of veto. Nor indeed would it have been possible for His Majesty's Government to veto, as Mr. Agnihotri suggested, a single section of the Bill. If the Bill contained sections which they could not accept, they would have been obliged to disallow the whole. Mr. Agnihotri, again, compared his own position in moving this amendment to that of the Committee, which, he said, recommended that the status at present enjoyed by Dominion subjects should be taken away from them. But here he is wrong; his position is not that of the Committee, for it will be realized that while the Committee, both the majority and the minority, considered that some protection should be given to Colonial Members of His Majesty's forces serving in India, Mr. Agnihotri's amendment would withdraw even that amount of protection. Again, he drew a comparison between Colonials and Americans; he suggested that we should give the Colonials the same rights as Americans. Now of course his amendment would not do that. It will be admitted everywhere, I think, that when we have certain Treaties which force us to give to certain nations, six in number, the rights at present enjoyed under section 460, we cannot deny those rights to Americans generally.

[Bhai Man Singh.]

any Court other than the High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe

Mr. President: Order, order. I cannot allow a repetition of the discussion on that point. The Honourable Member must confine himself to the terms of his amendment.

Bhai Man Singh: The point to which I wish to draw the attention of this House is that we should not take the position imposed upon us out of sheer helplessness. The utmost that the Secretary of State can do in the matter is to say, "All right. I do not allow this law to be passed to the extent that the Sessions Judge or any other Court below the status of a High Court can pass the sentence (of death)." I personally, Sir, would prefer not to give a superior status to a Colonial gentleman whose country does not give to our countrymen equal status, and I would prefer to have a law in the country that every European British subject should only be tried for offences

Mr. President: Order, order. The Honourable Member is getting a long way from the subject.

Bhai Man Singh: I am submitting, Sir, that even if the Secretary of State uses his powers under section 65 of the Government of India Act, still it should not mind it and we should carry this amendment. There are two alternatives before us. One is that the Secretary of State would disallow the law we pass to the extent that no Sessions Judge or no Court other than a High Court can pass any sentence of death. I would allow that discrimination in favour of the European British subject to remain to that extent, rather than give a Colonial, whose Government does not give equal status to the Indian, a superior status in my own country. That is my very clear position, Sir.

I think I am perfectly in order when I request the House to accept this alternative that is proposed in section 65 rather than accept this position which is highly incompatible with the self-respect of my countrymen. My Honourable friend Mr. Rangachariar in his speech said that there are colonies and colonies

Mr. President: The Honourable Member from Madras has not spoken on this amendment.

Honourable Dr. Sir Chimanlal Setalvad, Kt., LL.B., LL.D., Members of the Executive Council of the Governor of Bombay, on the proposals to amend the Criminal Procedure Code, 1898, based on the recommendations made by the Racial Distinctions Committee."

"We are of opinion that the subjects of those British Dominions and Colonies in which Indians are denied the rights of British citizens and equality of treatment should not have any privilege accorded to them in India. We desire that our view should be communicated to the Government of India."

Not only that, we have got another opinion of another eminent lawyer, the Additional Judicial Commissioner of Oudh, who says:

"I agree to the proposed change. I note that members of the overseas dominions are deprived of the right of European British subjects. But I consider this is quite fair in view of the attitude assumed towards Indians by these Governments. The question can be settled hereafter by negotiation between the Government of India and the Governments of the dominions."

Sir, it really pained me when I heard my Honourable friend Mr. Rangachariar preach to me this sermon of magnanimity and tells me that it is religion that makes it a duty of mine to be magnanimous. I do know that religion enjoins magnanimity, but at the same time, if Mr. Rangachariar wants to join issue with me, I will tell him from the Scriptures of nearly every religion from his own Gita, from the exact words of Shri Krishna that there are times when we have to retaliate. I really wonder that in the name of magnanimity we should do this. I say in the name of sheer self-respect, we should say "No, my dear Sirs, if the Colonies are not going to give us the status of citizens, for God's sake let us give them a superior status in India." Sir, the great point that has been made at by these Colonials is the Imperial question. My Honourable friend Mr. Jamnadas Dwarkadas very vehemently and strongly laid stress on the point that if we submit to the wishes of the Imperial Government . . .

Mr. Jamnadas Dwarkadas : Not 'submit'; 'support'.

Bhai Man Singh : I think it is 'submit'; you think it is 'support'—if we support the views of the Home Government, we shall have a claim on them to help us in getting equal rights in those Colonies. I would request Mr. Jamnadas Dwarkadas to consider whether we have not already got more than enough claims on the Home Government to support our claims in the Colonies. We have been crying out for years together to the Home Government to support us. What more is needed?

Mr. Jamnadas Dwarkadas : Why not have one more weapon in our armoury?

Bhai Man Singh : I take the other side of the question. The Colonies have been treating us as they have for a long time but they find the Imperial Government still helping them and trying to give them a higher status in India than what the Indians even are given.

Mr. President: Amendment moved:

"After clause 6 add the following clause:

'6A. In section 188 of the said Code for the words 'Native Indian subject' substitute the words 'British Indian subject'."

The Honourable Sir Malcolm Halley: I do not raise the point whether this amendment was out of order, but it will be sufficient to say that it is exactly one of the points that can be dealt with in consolidation. It is a matter of verbiage. The same words are used, of course, in the Government of India Act, but if necessary they can be put right when we prepare our consolidating Bill.

The amendment was negatived.

Clauses 7, 8 and 9 were added to the Bill.

Mr. President: Clause 10. The Honourable Member (Mr. Agnihotri) proposes to raise in amendment No. 22, a question which appears to me to be outside the scope of the Bill. That question ought to be raised on some other measure dealing with general legal procedure and not in a measure of this kind where we are dealing with racial distinctions alone.

Clause 10 was added to the Bill.

Clauses 11 and 12 were added to the Bill.

Rai Bahadur Bakshi Sohan Lal: I move:

"For clause 13 substitute the following clause:

'13. Section 275 of the said Code shall be omitted'."

Section 275 is as follows:

"In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans."

What I want is that there should be no differentiation in trials as regards British Indian subjects and European British subjects. I submit that we ought to have juries chosen by lot and this section is unnecessary. Clause 13 runs as follows:

"(1) In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans, and in the case of an Indian British subject, of Indians.

(2) In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans."

I beg to submit that no such distinction ought to be made and I do not think that mixed juries would do any good except perpetuating the racial differences between the two communities. If there is a mixed jury, the Indian jurors will return a verdict in favour of the Indian accused and the European jurors will return a verdict in favour of the European accused. So, the better thing will be to select the jurors or assessors by lot as is provided in other provisions of the Code.

advice of that Committee and the advice of the Committee was that the Bill should be opposed. The main reason, I think, for that attitude of the Committee was that every step should be taken to raise the standard of legal practitioner in this country and they thought that, if the principle of this Bill were adopted and given effect to, the reverse might possibly be the result. Sir, to come back to the opinions of the Local Governments on which, as I say, Government's attitude must be largely based. In the first place, I think we found that to a large extent the favourable opinions, or those opinions which merely indicated no objection to the Bill, emanated from those areas where, admittedly, there are no Mukhtars. For the most part in the areas where Mukhtars do practise doubts have been expressed as to the wisdom and expediency of this measure. The reasons which have been urged against the measure are all quite simple. I listened very carefully for some definite and positive advantage that Maulvi Abul Kasem expected from the passing of his measure. The one positive advantage was that it would remove a sentimental objection. All his other arguments in favour of his Bill were, I think, of a negative character, that this objection that had been raised in one quarter was over-estimated, that another objection really was not sound, and so on. The real point that the main objectors to the Bill bring out is that the legal profession is already over-stocked, that the public of this country can get their legal advice readily and cheaply, and that the Bill, if it were passed in this form, would have the result of very largely increasing the number of unqualified legal practitioners. There are, it is quite true, many very competent and very excellent Mukhtars. Possibly the majority of the Mukhtars are quite competent to appear in the Magistrate's Court, but it is another thing to say that you should, therefore, give the whole class of Mukhtars the absolute right to appear before a Magistrate and also before a Sessions Court. If, Sir, we remember that the real reason for which the legal profession exists, namely, to assist the courts in this country in the administration of justice, I would put it to the House whether that reason, that object, will be achieved, will be furthered by a measure which will tend to increase the number of practitioners who have not got the best and fullest qualifications. (Mr. K. B. L. Agnihotri: "What about the Honorary Magistrates?") (Mr. Sarfaraz Hussain Khan: "What about the Barristers?") I think, Sir, that those are the main objections to the Bill. The standard of legal attainments among the Mukhtars, as a class, is somewhat low, and if you bring them in with an absolute right to appear before the criminal courts, will it not tend to lower the standard of the legal profession as a whole? Some critics have even suggested, I do not put it forward as my own criticism at all, but it has been suggested, that the inclusion of Mukhtars as a regularly recognised branch of the legal profession might even tend to a deterioration of the very high standard of professional morality which does exist in the Bar in India.

Sir, I have nothing more to say on the subject. Government was rather anxious to hear the views of the House on this subject. Those who have spoken against the measure have taken objections on technical grounds. Sir, I have not followed them into that field of criticism at all, because some of those technical objections might possibly be removed if this Bill were referred to a Select Committee, though I would point out to the House that the Select Committee might find it somewhat difficult, if those objections are valid, to remove them within the ordinary terms of reference to the Select Committee.

On the merits, Sir, as I say, the opinions which guide Government in this matter seem to be slightly weighted against the Bill.

[Dr. H. S. Gour.]

case, Lord Shaw, delivering the judgment of the Privy Council, pointed out that that was not the definition of an antecedent debt and that the term 'antecedent debt' in the case of a Hindu son meant a debt which was wholly unconnected with the security of the family property. This gave rise to a very large conflict between the various High Courts and the Madras High Court in a Full Bench sought to distinguish the judgment of their Lordships of the Privy Council, and pointed out that the Privy Council could not have intended to change the law which they had themselves enunciated in a series of cases ranging for over fifty or sixty years. This Full Bench case of the Madras High Court was followed by another Full Bench case of the Patna High Court. In the United Provinces, however, there has been a great conflict. In some cases the old view of the Privy Council has been reiterated and followed, while in other cases the narrower view understood to have been enunciated by the Privy Council in Sahu Ram's case has been given effect to, and the Lahore High Court has followed also the narrower view of their Lordships of the Privy Council. I wish to point out to the House that there has been a great confusion in all the High Courts because of these cases decided by their Lordships of the Privy Council, and I think it is the accepted policy of the Legislature that whenever the courts are not agreed and there is a conflict of decisions between the various High Courts on a vital point of law, the Legislature should interfere and define and remove the conflict. My Bill is intended to serve that purpose. It will be for the Select Committee to decide as to whether they wish to accept the previous view of their Lordships of the Privy Council or whether they wish to stereotype the narrower view enunciated in Sahu Ram's case; whether in fact they wish to follow the Full Bench decisions of the Madras and Patna High Courts or whether they wish to follow the later decisions of the Patna and Lahore High Courts. Honourable Members will find that this question about the liability of a Hindu coparcener to pay a debt incurred by the father or by any other manager is a question which has been agitating the courts in this country for a very long time past; and the question of what is the burden of proof in a case of mortgage and what is the burden of proof in a case where the alienation is complete and the property has passed out of the family, are questions very closely connected with the question I have just now referred to. This and allied questions are therefore questions which I ask the leave of the House to refer to this Select Committee consisting of the Members I have named. I shall be very glad indeed to add the names of any other Member who may desire to serve on the Select Committee. I feel, Sir, that so far as the opinions are concerned a body of opinion is in favour of the Bill; the Calcutta High Court for instance says that this is a question which is generally concerned with the question of the codification of the Hindu law; and their Lordships point out that this question has the same underlying principle as Mr. Seshagiri Ayyar's Bill. I think that Bill has gone to the Select Committee, and I think it is therefore also necessary that this Bill should go before the Select Committee. I move, Sir, that the Bill be referred to the Select Committee consisting of the Members I have already named, with Sir Henry Stanyon and Mr. Pyari Lal in addition.

Rao Bahadur C. S. Subrahmanyan (Madras ceded districts and Chittoor: Non-Muhammadian Rural): Sir, I oppose this motion. The question of the liability of a Hindu coparcener is a question which if I may say so, of some doubt fifty years ago, but during the last

years the cases have settled the matter and no practitioner of any consequence has any doubt about the liability of a coparcener in a joint Hindu family. An attempt at legislation like this would be justified if there was a demand from the public or from those concerned in the administration of law and justice. Well, there is absolutely no demand. Is there any pressing evil existing which requires removal? Is there any particular hardship which ought to be relieved? Those are the questions which arise when a new piece of legislation is put before the Legislature. There is none. Well, the litigation that has centred round this matter is like other kinds of litigation which arise in certain relationships. Take the case of an agent. The question was whether the acts of an agent bind the principal, and to what extent they bind him. In spite of the fact that there is an Act defining the liability of the agent, in spite of the existence of an Act, such questions do come up before the Courts, because in the variety of transactions which arise in the course of business, there must be disputes and such disputes must necessarily come up before the Courts if the parties do not agree. So also in the case of partnership. What are the particular acts of one partner which will bind the other partners or the firm? There again we have a codified law, and yet we find on record a large number of cases in regard to disputes arising between parties. Therefore, a legislation like the one proposed by the Honourable Mover is not going to cut down litigation or stop disputes between parties in disagreement, and therefore it is unnecessary on these two grounds to undertake the present legislation.

Sir, there is another wider aspect of this matter. Members seem to think that legislation is a game at which they could all play. Legislation has nothing to do with mere legal knowledge or ability to advocate causes in Court. Legislation, I am afraid, seems to be a sphere of activity which, unless the Assembly takes it into its head to put down at an early stage, will grow to inordinate dimensions. It may also be said by an unkind critic that it advertises a particular name all over the country. But I would not charge my friend Dr. Gour with any such desire because by his works he is well known all over the country, and therefore let him not take that remark as applicable to him. But yet it will create in this matter that impression; whatever Dr. Gour's eminence may be as an author or compiler of books, as an advocate and as a legislator, people competent to speak on such matters have not been good enough to approve of this piece of legislation. Well, Mr. Justice Wallace of the Madras High Court says that the drafting seems to be crude and amateurish. Well, that is some thing like what Mr. Seshagiri Ayyar said some time ago 'every one trying to practise his prentice hand at legislation.' Mr. Justice Coutts-Trotter, another Judge of the Madras High Court, who has recently edited a Hindu law work, which is a classical work in India, says "The Bill has a comprehensive title to define the liability of a Hindu coparcener" which is not justified by its contents." Well, its contents I could find in any well known book on Hindu law. It is an analysis of the various circumstances, of the various heads which are generally noted down by every practitioner of standing and by every diligent student when he studies this portion of the Hindu law; that is, he analyses for his purpose the various heads, and the various conditions under which the subject is brought. Now legislation is something different from a text-book, from an analytical statement of the law, and therefore Mr. Justice Coutts-Trotter's commentary about the title of the Bill is quite justified.

Now coming back for a moment to Mr. Justice Wallace's criticism, he says "The definition of 'antecedent debt' is faulty. The phrase

[Rao Bahadur C. S. Subrahmanayam.]

'unconnected therewith' is too vague. In a sense a mortgage executed to discharge a prior debt is 'connected' with it" and so on. Now, Sir, the answer to all these criticisms has often been, "I will put it before the Select Committee; the Select Committee will set the defects right." That is, it seems as if the practice is growing to throw a rubble stone at us, and we are to polish it, give it shape and see whether it has got anything inside it. That seems to be the practice in putting forward Bills before this Legislature. Another Judge of the Madras High Court, Mr. Justice Kumaraswami Sastri, is dead against the Bill. He says "It is not necessary."

Now as to the conflict arising from Sahu Ram's case, well, there is no conflict in any one particular High Court. There is a difference of opinion between one High Court and another. Such differences of opinion have always occurred and do exist, especially in regard to Hindu law. If on that basis you were to legislate on every occasion when there is a difference of opinion between one High Court and another, I think the Legislature would have nothing else to do but go on examining these decisions on Hindu law. Well, as to the particular case on which my Honourable and learned friend has based his legislation, no sooner that case was reported than a number of suits on the basis of that or on the supposed authority of that suit were filed in Madras and they were set at rest by the decision of the Madras High Court, which said that it would prefer to follow its own long course of decisions. Therefore, there is no trouble in Madras where probably the largest number of cases arising out of these joint family liabilities are to be found.

From Bengal the same opinion has come. "The Governor in Council feels very doubtful as to the wisdom of undertaking piece-meal codification of Hindu law with a view to bringing about uniformity of interpretation between the different High Courts." Now in regard to this matter our late Law Member, Dr. Tej Bahadur Sapru, was strongly of opinion that piece-meal legislation in the Hindu Law would be a very dangerous attempt, for it is silly, it is almost inconceivable to think that the Hindu law which we have in regard to our personal rights is a piece of law which any one of us can at once say is wrong, and that it is not founded on justice, equity and good conscience, and that any one of us, because in our individual conceptions we think that something ought to be different, can try and rectify it. I think, Sir, it is too much of a presumption to think that we can really improve upon a piece of law which exists and which has reached its present stage, not by any process of tinkering but by a process of evolution, which evolution has always had regard to the changing circumstances of environment and civilization in life. Now, that an attempt should be made to break off such legislation from the process of evolution it has attained is, I think, an attempt which requires a good deal of hardihood, if not a great deal of juristic and legal knowledge.

As I think on this occasion only the principles of the Bill ought to be discussed, this attempt to legislate on this matter is an attempt which ought not to be encouraged: on the contrary it ought to be discouraged.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, with reference to a Bill of this sweeping character, I feel, Sir, that I should join in the debate as a representative from Bengal. No doubt, cases occurring under the Mitakshara law in Bengal are not so numerous as in

other parts of India, but still Mitakshara law is administered in Bengal as well. I should like, therefore, to place certain points of view before this House with reference to the operation of the Bill. The *prima facie* object, if I may say so, of the Bill is to clear up disputed matter and that is the view point with which we are principally concerned. The next point is the question of piece-meal legislation with reference to Hindu law as detached from the entire system of Hindu law. Now, Sir, as regards the first point, I will at once submit to the House that, so far as I have been able to understand the opinions of the different Judges and other eminent persons who are qualified to speak on the subject, the conclusion, in a remarkable degree seems to be that the Bill itself will add to the difficulties, rather than take away anything from the difficulties. In this connection, Sir, I may place one or two observations before the House coming from the Honourable Sir B. C. Mitter, who was Advocate General in Bengal for some time. He says in his opinion given on the subject:

"If I were convinced that the Bill would serve the purpose which the private Member introducing it has in view, namely, really to remove doubts and difficulties, I would welcome it. The fundamental position of those governed by Mitakshara law is that property is held by the family and not by the individual as in the case of Hindus governed by the Dayabhaga law, Muhammadans or Christians. The property being held by the family, it seems to me that it is not right that the manager should have increased powers of dealing with it."

Then, Sir, analysing the different provisions of the Bill, he comes to the conclusion—"If the plaintiff has to prove that the manager has incurred liability within the scope of his authority, I believe, he will get his decree binding the family property under the present law and from that point of view, clause 9 is not only unnecessary but positively mischievous."

Then he goes on to say:

"What justification is there for a statutory provision that the decree will be enforceable even though the other members who may be adults have not been made parties to the suit."

Then again:

"The whole difficulty at the present moment is to prove that the manager has incurred liability within the scope of his authority and clause 9 as drafted begs the question by making it incumbent on the plaintiff to prove that fact."

Now, Sir, if some time was devoted to the consideration of the question now before the House, it would be evident at once that it is not only the opinion of eminent lawyers who were consulted and who are entitled to speak on the subject that the Bill instead of diminishing them adds to the difficulties of the present situation, but the question in the end will resolve itself into one of fact. That is to say, the fundamental principles of the Mitakshara school being admitted and there being no attempt in Sahu Ram Chandra's case to change the fundamental principles of that school, the thing that will give trouble will generally be a question of fact and not so much of law. Therefore, Sir, apart from the second question, to which I shall presently draw the attention of the House, the main question about the removal of the difficulties relating to the liabilities of a son to pay his father's debts will not only remain, it seems, unsolved by the Bill, but in certain respects, it will add to the difficulties of the situation. If we go to the Madras Judges, the House will find that a similar opinion has been expressed, and, in some cases, in a very pointed form. I will not detain the House with any further discussion of the

[Mr. J. N. Mukherjee.]

question of the expected removal of the difficulties by the present Bill, because anybody who has taken any trouble to go through the opinions which have been expressed on the subject from different parts of India will find that a large body of the opinions expressed, and in fact the major portion of it, tends that way, and I propose to leave the matter there.

The second point is the question of piecemeal legislation. Honourable Members will remember that in the very first year of its existence, the House had to face that question of codification of Hindu Law at the instance of my Honourable friend Mr. Seshagiri Ayyar. That question of codification of Hindu law has engaged the attention of the Government of India, I do not know for how long—it may be quite forty years now. (Mr. T. V. Sheshagiri Ayyar: I never asked for codification.) I beg to correct an error—it was Dr. Gour. (Dr. H. S. Gour: Error No. 2. I never asked for codification either.) It was Mr. Bagde, then. Some Member, Sir, initiated the debate. I am speaking from memory, and the House will forgive me if I have made a mistake. But ultimately the Resolution asking for codification was withdrawn. Sir Tej Bahadur Sapru—Honourable Mr. Sapru as he then was,—went very fully into the question and placed the pros and cons of the subject before the House. The difficulty seems to be this,—in all codification we give a fresh starting point, as it were, to the proposition that is to be enunciated as codified law. This codified form in the present instance is enunciated irrespectively of the context of the Hindu law which may have any bearing or relation to the point under codification. In other words, if the proposition is formulated in a particular way in a Code, we have to refer to the formulation itself and according to the primary laws of interpretation we have to consider the words of the Code itself and not the previous literature on the subject, unless of course, there is some doubt on any point. But, where the wording is clear and the proposition of law is clearly enunciated, we cannot introduce any such mode of interpretation. Now, Sir, I will just refer the House to one or

1 P.M. two observations made by one of the Honourable Judges of the Madras High Court. Mr. Justice Deva Das says in his note on the subject:

“I am not in favour of piecemeal legislation. If the whole of the Hindu law is to be codified it will be a tremendous task and unless the large majority of Hindus are in favour of it, it will be unwise to attempt legislation as regards the personal law of a large community which is supposed to be intimately connected with their religion.”

He then goes on to consider the particular merits of the case of Sahu Ram Chandra:

“In a recent case Mr. Justice Spencer and I had to consider Sahu Ram's case and the two cases decided by the Privy Council following Sahu Ram's case.”

Then he says:

“One of the points decided in Sahu Ram's case was: a mortgage was not an antecedent debt. In the three Privy Council cases, the personal remedy was not outstanding. We were inclined to the view that if the personal remedy against the father was outstanding at the date of the subsequent mortgage, the previous mortgage would be an antecedent debt. The present Bill if passed into law will create more difficulties than those it is intended to remove.” etc.

And then he goes on to consider in detail the provisions of the various sections of the Act.

Now, Sir, as has been pointed out by some of the Honourable Members who have spoken on the subject already, the Hindus as a community have not come forward to have their law on the subject formulated or added to or altered in any particular manner, and specially in the manner in which it is proposed to be formulated by the Bill. And the House will see that in the opinions which have been obtained on the subject it has been pointed out that the formulation of the rights and liabilities in question in the Bill itself is not in accordance with the statement of the law as it is found in the Mitakshara school, and various instances have been given in these opinions of such divergences. So that, the Bill, in the garb of codifying the law, is modifying the law in certain respects. The Bill will really create a new law on the subject to some extent. That is one point which emerges very clearly from the Bill as at present drafted. There is a conflict of rulings if I may say so, on various other points of Hindu law and the courts subordinate to any particular High Court follow the interpretation of the law given by that particular High Court, unless that interpretation is overruled by the Privy Council. Therefore, Sir, the case in point, Sahu Ram Chandra's case so far as this particular point of a coparcener's liability is concerned, will be the law for any particular court which has to follow the interpretation which has been put upon it by its own High Court. (Dr. H. S. Gour: “There is a conflict of the High Courts themselves.”) Yes, but there is separate machinery in the Charter of the High Courts for setting that right. I mean, that in case of conflict between two decisions of the same High Court on any point, there is the full Court, and directly there is a conflict of judicial decisions in any single High Court, it is for the full Bench of that Court, or the Full Court, to set the conflict at rest, and to lay down any particular proposition of law which may be taken by it to be the correct interpretation of law. I have already said that the Judicial Committee of the Privy Council has the power to set aside any incorrect interpretation of the law by any High Court in India. Sir, here I may remind the House of a well-known dictum of Lord Halsbury's which I may say has been reiterated and re-affirmed over and over again—that a case is only authority for what it actually decides, that the *ratio decidendi* in any particular case cannot be extended even by a logical process to other correlated cases, even where you think that you can so extend its operation, by a process of natural inference. Even there you will not be justified in extending its operation in that way as a matter of law. There lies the danger of a sweeping generalization, of codification from the particular to the general. Therefore I submit the House will consider the question now before it with great care, and if the House is satisfied in its innermost heart that the difficulties which are supposed to have been created by a certain Privy Council ruling will be really removed by the provisions of the Bill now before it, then and then only can the House think of committing a Bill of this kind to a Select Committee upon an acceptance of its principles. Now we are getting more and more familiar with the activities of the House in reference to various intended alterations of the Hindu law. I for one, Sir, have never made a secret of the fact that I always look with suspicion upon any such attempt to alter the Hindu law. Yes, it is suspicion because some times it is found that where we want to codify Hindu law, in reality the intention is to modify it. And if my suspicion has been justified whenever I have taken the pains to analyse the propositions as to codification which have been placed before the House now and again, I think, Sir, the fact will afford some justification for the opposition to the Bill, I am now placing before the House. Therefore, Sir, I request the House

[Mr. J. N. Mukherjee.]

in all fairness to go through the opinions of eminent judges and eminent lawyers whose opinions have been elicited on the Bill, and I feel sure the House will think it prudent not to commit a Bill of this kind to a Select Committee and allow it to become law at a later stage.

Mr. Pyari Lal (Meerut Division: Non-Muhammadian Rural): It is no doubt, Sir, a very difficult matter to legislate in regard to Hindu Law. Say what you will, Sir, the fact remains that in the country the Hindu law as it is administered, is according to the decisions of the various High Courts and of the Privy Council. Now, Sir, in the matter of the liability of sons for the antecedent debts of the father, I know as a matter of fact that in districts this question is always in dispute, and a very difficult question it is always for courts to decide because the various High Courts have decided this point differently, and in some case our High Court in one case has decided in one particular manner and at another time in another manner. It is I think fit and proper that the Legislature should come to the assistance of those persons who are governed by the Mitakshara law and put all these points at rest.

As regards the different provisions of the Bill, it may be that they are not very happily drafted. That matter might be considered in the Select Committee. But on principle I think the Select Committee will be only doing its duty if it succeeds in however small a degree in removing the doubts on most important parts of Hindu law which exist at present because of the decisions of the various High Courts. Now, Sir, on this very subject as to the liability of Hindu sons for the antecedent debts of their father I have in my hand the opinions received here, and among them is the opinion of the Marwari Association in Calcutta. The letter of the Secretary of the Association says:

"My Association is of opinion that in view of doubts and difficulties at present existing as to the state of the law on the subject and considering all the circumstances, it is expedient that the Legislature should intervene and lay down clear provisions. My Association represents a class of persons who are subject to the Mitakshara Law and who are vitally concerned in the subject-matter of the proposed legislation."

Sir, it is not quite correct to say that this is a matter, as decided by the various High Courts, which does not cause any difficulties or any troubles on the parties. People in the United Provinces are governed mostly, with the exception of a few Bengalee gentlemen who may be there, by the Mitakshara law and I know how frequently the Courts are used by the parties for the purpose of deciding questions bearing on this branch of the Hindu Law.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, Honourable Members will remember that when this Bill was before the Assembly on the last occasion, my Honourable friend, Dr. Gour, had proposed that it should be referred to a Select Committee. The Assembly then agreed that the Bill should be circulated for the purpose of eliciting opinion. Well, Sir, those opinions are not yet complete. Government were waiting until they were complete to decide the attitude they should adopt as regards the principle of this Bill. When the opinions are complete, they would normally be referred to the Standing Committee of this House attached to the Home Department, and then we should be able to come to some conclusion as to whether the principle of this Bill is sound or otherwise. We are not therefore prepared to say that the principle of

this Bill is sound if, on the other hand, the Assembly considers that the principle is unsound, Government are not prepared to contest that view. But, Sir, we do not think that if, on the other hand, the Assembly are rather inclined to take the view that the Bill should be referred to a Select Committee, before they do that, they should see the complete opinions, and that therefore, instead of accepting the present motion, it should rather be postponed. I think, however, Sir, that out of courtesy to the House, I should cite the opinions of the Bombay Government. They were included in a letter from that Government dated the 17th of February, which was received in the Legislative Department yesterday and was given to me after the Assembly adjourned last night. I propose, therefore, to cite the opinions in that letter and its enclosures somewhat at length, so that Honourable Members may be aware of them. The Bombay Government state:

"In the opinion of the Governor in Council the main arguments against the Bill are that:

- (1) it is piece-meal legislation;
- (2) it strengthens the idea of a son's pious duty to pay his father's debt;
- (3) it unduly favours the creditor;
- (4) it will break up the coparcenary system;
- (5) it is unnecessary; and
- (6) it attaches liability to non-contracting parties. Moreover, the Mitakshara law has been interpreted differently in different provinces and an attempt at All-India legislation will merely create confusion."

The Bombay High Court state:

"I am directed by the Honourable the Chief Justice and Judges to state that they are not in favour of the Bill and some of the Honourable Judges object strongly to such piece-meal legislation relating to Hindu Law."

The Honourable Mr. Justice Fawcett said:

"I am against weakening the safeguards which the Privy Council have laid down as to the doctrine of 'antecedent debt.' A recent case heard by Marten J. and myself has well exemplified the necessity of those safeguards. Otherwise a money-lender will be easily able to avoid the onus of proof, that ordinarily lies upon him of showing 'legal necessity' or family benefit for his loans to a Hindu father, who is a member of a joint family."

The Judicial Commissioner of Sind writes at length against the Bill. (Mr. J. Chaudhuri: 'Is anybody in favour of it?') Practically, I believe, no one from Bombay. That is practically the main line of the Bombay opinion. The opinions of various High Court Judges have been referred to by Mr. Subrahmanayam and Mr. Mukherjee. I would like to cite definitely the opinion of the Madras Government, because I believe the Mitakshara Law is the main law in force in that Presidency. They state:

"His Excellency the Governor in Council does not consider that this measure is likely to be useful unless its intention is to break up the Hindu joint family system and make what hitherto has been understood to be joint family property as between a father and his sons to be the absolute property of the father."

Then, the Honourable the Chief Justice of Madras notes:

"If it is desired to codify Hindu Law this does not seem to be the way to do it. I should imagine that every line of this Bill would result in litigations and conflicting decisions of the court."

Well, Sir, as I have said, if this House is not prepared to endorse the principle of this Bill, then we also are not prepared to contest that view. If, on the other hand, they wish to refer it to a Select Committee, we would suggest rather that the motion should be postponed than that such a

[Mr. H. Tonkinson.]

decision should be arrived at now when the opinions are not complete. The opinion of the United Provinces Government, I would point out, has not yet been received. The leading case, Sahu Ram's case, which, it may be suggested, led up to this Bill, and the later case, Chet Ram's case, which, it may be suggested, rightly or wrongly, has already settled the alleged conflict of opinion, were both cases from the United Provinces, and as I have observed, that Government's opinion has not yet been received.

Dr. H. S. Gour: In view of what has fallen from the Honourable Mr. Tonkinson, I would ask leave of the House to withdraw my motion for reference to the Select Committee. I would particularly point out that the three Governments vitally concerned with this branch of the law are the Governments of the United Provinces, Bihar and Orissa and the Central Provinces (*A Voice: 'And Madras'*), and Madras. Of these, the Central Provinces and the Bihar Governments are unequivocally in favour of the Bill, but at the same time I should like to have the opinion—and very valuable opinion it would be—both of the Government and of the High Court at Allahabad. I ask, Sir, for leave to withdraw this motion. I shall renew it later on.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I think the sense of the House is to throw out the motion altogether. Therefore, I am against withdrawing it. Dr. Gour first of all gave us . . .

Mr. President: The Honourable Member objects to leave being given?

Mr. Harchandrai Vishindas: Yes, Dr. Gour in his opening remarks gave us to understand that the balance of opinion received was in favour of the Bill. But from the passages that have been read out to us I think there is not a single favourable opinion quoted anywhere, perhaps except what Mr. Pyari Lal has quoted. In view of that fact, I think it will be in the interests of saving time that we should not trouble any Select Committee with this Bill or trouble other people about it. Sending this Bill to any Committee is pure waste of time. I think if the House is consulting their best interests, they should throw out this Bill straight off.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I also oppose the motion for giving leave to withdraw this motion. We have considered it at length. We have to see whether really this Bill is needed at all. There was . . .

Mr. President: Is the Honourable Member speaking on the motion for withdrawing the Bill? The only question before the House is that the Bill be referred to a Select Committee. No question has been put from the Chair regarding withdrawal. If a Member asks for leave to withdraw and the Chair says 'Is it your pleasure that leave be given to withdraw the motion?' then, if objection is taken, the debate proceeds. There is no question of leave being given to withdraw before the House now.

Rao Bahadur T. Rangachariar: I speak on the merits of the Bill itself. The only justification urged in support of this measure is the conflict of decisions between the various High Courts following Sahu Ram's case, but it is rather curious that the author of this measure, who introduced it in November 1921 has not taken note, has not cared, to inform the House that subsequent to his Bill in March 1922, after he introduced the Bill, Sahu Ram's case was re-considered by the Privy Council in the light of the

conflict of decisions of the various High Courts. They re-affirmed the decision in Sahu Ram's case, in Chet Ram's case reported in XLIX Indian Appeals, and reported also in 44 Allahabad. So that the only ground urged for this measure to set at rest the alleged conflict of views disappears altogether. So the Privy Council has once for all decided and re-affirmed what they have decided in XXXIX Allahabad. Now there may be another ground. If the Privy Council go wrong, if they affirm a proposition which is opposed to Hindu notions, no doubt the Legislature will intervene and ought to intervene. Now what are the propositions laid down in Sahu Ram's case? Two propositions are affirmed by the Privy Council as regards the definition of antecedent debt, that the debt in respect of which the liability is sought to be imposed on the son must be one incurred independently of the security offered by the joint family property. The second proposition laid down in Sahu Ram's case is that the pious obligation to pay the father's debt does not arise till the father's death. Can it be said that either of these propositions is inconsistent with ancient Hindu law, or Hindu law as understood by the people? If either view is opposed to the Hindu law, or prevailing Hindu notions as regards enforcement of the son's liability, I can understand legislation intervening and legislating in order to set right where the Privy Council have gone wrong. So it is not a case of setting at rest a doubt or conflict between decisions; what my Honourable friend wants to do is to set right the Privy Council . . .

Mr. Harchandrai Vishindas: And create a new law.

Rao Bahadur T. Rangachariar: And create a new law. Now the question is, do the circumstances call for it? Is the decision so opposed to Hindu law that the Legislature should intervene? Now, Sir, what is the obligation? Why should the joint family property be taken away by an extravagant father? You know the liability of a son to pay the father's debt. Unless the debt is illegal or immoral, the son is liable to pay the debt according to Hindu law. Now in enforcement of that pious obligation oftentimes especially minor children are deprived of their property because the father happened to be extravagant, and the protection for the children is taken away by the enforcement of this liability. Therefore, as has been truly pointed out, my Honourable friend is now trying to favour unduly creditors.

Mr. Harchandrai Vishindas: Money-lenders.

Rao Bahadur T. Rangachariar: Money-lenders, and deprive poor people of their interest in ancestral property. Therefore, I say he wants to unsettle what the Privy Council have settled. Nowhere do the Privy Council in their decision say this is a new law; they say this is according to the Hindu texts. In the decision in XXXIX Allahabad the learned Judges took care to say: "We have examined the Hindu texts on the subject and we find the view we take is in accordance with the Hindu texts." And there when the Privy Council have taken the trouble, twice over, to settle what should be the law on the subject, unless we are satisfied that that law is unsound, that that law is opposed to Hindu notions, that that law is opposed by the Hindu community, why should the Legislature intervene? Where is the demand by the Hindu community for legislation of this sort? Where has Dr. Gour allowed time to elapse in order to enable the Hindu community to express dissatisfaction with the decision of the Privy Council in March, 1922? My Honourable friend was himself apparently unaware of that decision, for otherwise I could not justify his not referring to it in his opening remarks to-day. He still called on this House to legislate in order to set at rest conflicting decisions of the High Court which took

[Rao Bahadur T. Rangachariar.]

place before the decision in March, 1922. Either he did not properly lead the House, either he was ignorant of the decision, or he purposely omitted to refer to it. Therefore, Sir, I take it in a case like this where you want to tinker with the existing law, a strong case has to be made out. Honourable Members will agree that when you want to legislate on a matter like this which has been settled by a long course of decisions from Indian appeals, when you want to unsettle it, you must make out a strong case. My Honourable friend has not made out any such case. That is so far as the son's liability is concerned. The Bill deals with another aspect, that is to define the Coparcener's liability. What is the difficulty which has been felt either in the case of a debt contracted by the managing member of a family either for necessity or for the family benefit? The manager can alienate property, he can borrow for either of those purposes, what is the necessity for stating the law? There is no conflict of decisions. No practitioner has felt any difficulty in applying the Hindu law in that respect. Sir, further this Bill is open to another objection. It combines substantive law with adjective law. Sections 2 to 4 of the Bill deal with substantive Hindu law. Sections 5 to 9 deal with questions of evidence and procedure. Even so, Sir, if Honourable Members will take the pains to look at the Bill—I think very few have taken the pains to do that—Honourable Members will realize, for instance, the great difficulty which must exist in this matter of codification. I can sympathise with Dr. Gour. It is not easy to codify Hindu law. Look at the language of clause 9, sub-clause (3): "Where a decree directs sale of the rights, title and interest of the defendant in any property, the question whether the sale so made suffices to pass the entire estate of which the defendant was the manager or only his own interest, is one of construction and intention to be gathered from the proceedings and other circumstances of the case." Do you want a section for that? Is this the way to enact laws? And again take section 3—"Notwithstanding anything otherwise held to the contrary." What is the meaning of that? What does it mean? I do not think I can do any better, but I feel here really is the apprentice hand, and it is not right that we should allow a law like this in a matter already settled by judicial decisions. There are other things. For instance we have family property. My Honourable friend uses three terms to connote the same thing. For instance in clauses 3 and 4 he uses the expressions "family property," "estate" and "coparcenary estate." He uses three terms in the Bill to denote the same thing. Of course these are matters which can be set right in the Select Committee; but I only wish to show what difficulties there are in the way of codifying a matter like this. And has he at least tried to codify completely any particular department of Hindu Law? Now, in Hindu Law, Joint Family is perhaps the longest and largest chapter; it comprises so many things. You have to deal with alienation, alienation of moveables and immoveables, debts, joint family, self-acquisition, partition, survivorship and so many other heads under which you would have to codify the law, if any attempt is made at all for codifying Hindu law. This is an unnecessary measure, an uncalled for measure, and it is open to serious objection; the language is very loose and it does not correctly describe the law, and it attempts to unsettle a decision of the Privy Council without any ground for the same. Therefore, Sir, I oppose this measure.

Dr. H. S. Gour: Sir, it has been very refreshing

Mr. President: Is the Honourable Member going to reply to the whole debate now?

Dr. H. S. Gour: Yes, Sir.

Mr. President: I presume he will take some time.

Dr. H. S. Gour: Yes, Sir.

Mr. President: In that case I think we had better adjourn till Half Past Two.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Abul Kasem was in the Chair.

Dr. H. S. Gour: Sir, I shall very briefly now reply to the various arguments advanced against the committal of my Bill to the Select Committee. Before doing so, I shall certainly be failing in my duty, Sir, if I did not point out that some of the Honourable Members who have criticised my Bill have not paid me the compliment of even reading it, while others like Mr. Harchandrai Vishindas, who got up and made an emphatic statement that not a single person was in favour of the Bill, unfortunately could not have turned the pages of the compilation of opinions which the Government supplies free and gratis to the Honourable Members of the Legislative Assembly. For if he has only casually glanced at that compilation, he would have found that it was not a case where not a single person supported the Bill: but on the other hand a large body of opinion of persons who count in the Provinces affected by my Bill were not only in favour of my Bill but unequivocally and whole-heartedly supported it. I am astounded to hear the statement repeated by Member after Member that this is a Bill which need not even go to the Select Committee; and Mr. Harchandrai Vishindas, whose interest in the Bill is evidenced by his conspicuous absence from his place, was even not prepared to give me the leave which I wanted in response to a suggestion made by my Honourable friend, Mr. Tonkinson, for a further postponement in order to complete the opinions particularly of the Allahabad High Court and of His Excellency the Governor of the United Provinces.

Now, Sir, I will very briefly refer to a volume of opinion of the persons and Judges who are in favour of my Bill. I am under the painful necessity of having to do so, because my friends, Mr. Rangachariar and Mr. Subrahmanayam, seem to have suddenly developed some short-sightedness, for while they quoted from the opinions of Puisne Judges of the High Court of their own Province they forgot the opinion of the Chief Justice.

Rao Bahadur T. Rangachariar: May I say, Sir, I never relied on any opinion. I relied upon my own opinion.

Dr. H. S. Gour: They forgot the opinion of the Chief Justice of Madras who says:

"I have no objection to the object of the Bill or the principle embodied in it."

Mr. H. Tonkinson: Sir, I do not think that is an opinion of the Honourable the Chief Justice of Madras.

Dr. H. S. Gour: I am sorry, Sir. It ought to be Mr. Justice Oldfield. Now, Sir, I shall deal with the most important Provinces affected by this Bill. As I have said, the Provinces primarily interested in this Bill are the orthodox Mitakshara Provinces, Bihar and Orissa, the United Provinces, the Central Provinces, and partially Madras. Now, Sir, look at the Bihar and Orissa Province:

"The Governor in Council considers that the principle underlying the Bill is a question that should be left to be decided by non-official opinion in the central Legislature. I am to add that in the opinion of the Local Government a decision of this much discussed question by means of legislation would be beneficial to the Hindu community by reducing long and expensive litigation. The creditors of the Mitakshara joint family and the debtor family itself would be in a position to know where they stand and the time of the Courts would be saved."

That is an emphatic opinion from the Province of Bihar and Orissa, which is directly affected by my Bill, in its favour.

I turn now to the Central Provinces and Berar, another orthodox Mitakshara country. His Excellency the Governor, writing through the Legal Secretary to the Government, says:

"Though the law, however, is clear, there is a great majority amongst those consulted by the Governor in Council in favour of altering it on the lines of Dr. Gour's Bill, and the Governor in Council agrees with the majority on the ground that the Privy Council decisions are contrary to the current of previous decisions in India, a tendency unduly to restrict the powers of a Hindu father who is manager of a Mitakshara joint family. The Governor in Council therefore approves of the first four clauses. He thinks it advisable that it should be made explicit in the Bill that the change in the law which it is proposed to make will only have prospective effect."

Then, Sir, we have the North-West Frontier Province, Burma, and Delhi supporting my Bill. Last but not least the Marwari Association of Calcutta,—a very important body of orthodox money-lenders as my friend says,—merchants represented here by my friend there, strongly support my Bill, not in the interests of any particular class or community or interest but in the interests of the general administration of justice. My friend, Mr. Pyari Lal, has already read out to the House the opinion of this important body, the Marwari Association of Calcutta. Let me quote one sentence from their communication. "My association is of opinion that in view of the doubts and difficulties at present existing as to that state of law on the subject and considering all the circumstances it is expedient that the Legislature should intervene and lay down clear provisions."

In the face of this phalanx of opinion collected and presented to the Honourable Members of this House I am surprised that a remark should have escaped my friend, who has just now strolled into the House, that nobody was in favour of this Bill and that leave should not be granted to collect further opinions from persons vitally affected and directly interested in it. Sir, I now turn to the individual criticisms hurled against me and my Bill by Honourable Members of this House. First and foremost there is my friend, Mr. Subrahmanayam, who says "What do you want this law for?" In a curiously cynical way he says "The law is quite clear; the Judges do not want any alteration of the law" and then finding that the principle was too strong for him he descended into the details and tore me to pieces clause by clause. Well, Sir, my dismembered remains still remain to reply to him; and I feel that even in my mangled condition I

shall be able to give a good account of myself to my friend's destructive criticisms. I have always understood that detailed criticism of the drafting of a Bill was not the subject of proper discussion at this stage when what we are concerned with here is the central principle, the basic principle. If this House is of opinion that that principle should be accepted, the details are relegated to the Select Committee. My friend gave the go-by to the main principle and attacked the details, the wording of the several clauses in my Bill. I do not think I shall waste the time of this House by defending myself, for the simple reason that if I had any idea that the draft of my Bill was above criticism I should not have come here to ask for leave to refer it to the Select Committee; I should have asked this House then to pass it without amendment and without further consideration. Therefore, I submit that the very fact that I ask this House to allow me to take my Bill to Select Committee shows that I am perfectly prepared that the whole draft should be examined clause by clause and improved upon in the light of the opinions of Members of that Committee and that the official draftsman should improve upon my draft in the way acceptable to him.

Then, Sir, we have the opinion of my friend, Mr. Rangachariar. I have always a very great respect for Mr. Rangachariar when he is not infused by religious enthusiasm, but when a question comes up in which a statement of Hindu law is concerned, Mr. Rangachariar deteriorates into language and thoughts which do not admit of any serious criticism. He asks me, Sir, if I have heard of Chet Ram's case, and if I have done so why did I not inform the House about it? Now, Mr. Rangachariar, if he had turned to the very first page of the opinions given by the Madras Government, would have found reference to Chet Ram's case given in clear black print, which could not have escaped the Argus eye of my learned friend opposite. They have pointed out what Chet Ram's case and what Sahu Ram's case decide. Therefore I submit the observations which my Honourable friend made that Chet Ram's case overruled the Madras High Court Full Bench case and has reiterated and re-affirmed the previous decision in Sahu Ram's case are entirely wide of the mark. If Chet Ram's case has done so, if it has overruled the Madras Full Bench case, then it is all the more reason why this Bill should come before the Select Committee and we should decide once for all whether the Madras Full Bench case was right or wrong or whether Chet Ram's case was right or wrong, because there is a conflict between the Full Bench decision of the Madras High Court and the view of their Lordships of the Privy Council. I submit, therefore, it behoves this House to settle this long thorny question of Hindu Law by either deciding in the manner decided by the Madras High Court or by their Lordships of the Privy Council. Instead of being an argument for making short shrift of my Bill it is an argument for its committal to Select Committee. Then, Sir, finding my position invulnerable on the main ground upon which I have asked this House to give me leave to take my Bill to Select Committee, my friend followed the example of his colleague, Mr. Subrahmanayam, by descending into the petty details of the Bill. He said that these details of the Bill have not been well drafted and that they are very amateurish. Whoever in this House, Sir, ever accused me of being anything more than an amateur draftsman? And I cannot understand why my friend should have wasted his words by criticising the draft of a measure of which the principle, and the principle alone, should have been the subject of discussion. But, Sir, the cat was let out of the bag not by Mr. Rangachariar, but by my friend Mr. Mukherjee. He, at any rate, was

[Dr. H. S. Gour.]

more frank and candid in his confessions than my friend, Mr. Rangachariar. He used no language masked in legal jargon. He said 'I do not like this Bill, because I do not like any encroachment upon Hindu law', and that is perfectly intelligible. I can quite understand and respect my friend Mr. Mukherjee when he meets me face to face and says that being an orthodox Brahmin he does not want any interference with his ancient laws, but I cannot understand my friend Mr. Rangachariar, who masquerades in the guise of the critic and gives his reasons, suppressing and obliterating his real undying prejudice to any reform in Hindu law or Hindu religion. That, I submit, Sir, is a position which is not intelligible to me and it does not do him any credit. Why does he not come straightforwardly and say 'I don't want any reforms. I revolt against all innovations, and I shall not have any reforms of our laws'? That, I submit, is a position which is perfectly intelligible to me and would be intelligible to the House.

Now, Sir, I have shown that this is a measure which has met with a large body of support from the provinces which I have quoted, and they are provinces which count. I have shown, Sir, that the criticisms directed against my Bills do not and should not affect the judgment of this House at this stage. I therefore, Sir, feel confident that the House will give me permission to take this Bill to the Select Committee.

The Assembly divided:

AYES—27.

Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bijlikhan, Sardar G.
Cabell, Mr. W. H. L.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Holme, Mr. H. E.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.
Jatkar, Mr. B. H. R.

Latthe, Mr. A. B.
Man Singh, Bhai.
Nabi Hadi, Mr. S. M.
Neogy, Mr. K. C.
Pyarilal, Mr.
Rajan Baksh Shah, Mukhdum S.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Shahab-ud-Din, Chaudhri.
Sinha, Babu L. P.
Sohan Lal, Mr. Bakshi.
Ujagar Singh, Baba Bedi.
Venkatapatiraju, Mr. B.

NOES—34.

Abdul Rahim, Khan, Mr.
Agnihotri, Mr. K. B. L.
Aiyar, Mr. A. V. V.
Bajpai, Mr. S. P.
Bhargava, Pandit J. L.
Biay, Mr. Denys.
Clark, Mr. G. S.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Girdhardas, Mr. N.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Hullah, Mr. J.
Jamnadas Dwarkadas, Mr.
Kamat, Mr. B. S.
Mitter, Mr. K. N.

Monierieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Singh, Mr. S. N.
Subrahmanayam, Mr. C. S.
Tulshan, Mr. Sheopershad.
Vishindas, Mr. H.

The motion was negatived.

THE LEGAL PRACTITIONERS (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I beg to move:

"That the Bill further to amend the Legal Practitioners Act, 1879, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. Jamnadas Dwarkadas, Mr. P. P. Ginwala, Munshi Iswar Saran, Sir Montagu Webb, Rao Bahadur P. V. Srinivasa Rao, Mr. T. V. Seshagiri Ayyar (in place of Sir Jamsetjee Jejeebhoy, who is not here), Sir Campbell Rhodes, Mr. Pyari Lal and the Mover."

Sir, while introducing this Bill, I briefly stated its genesis. This Bill is intended to legalise the enrolment of women duly qualified to practise at the Bar. Honourable Members will find that in a recent full Bench judgment given by the Patna High Court, a lady graduate, who was otherwise qualified to practise at the Bar, was refused permission on the ground of her sex, though I am informed that permission has been given to a lady law graduate by the Allahabad High Court. The decision of the Patna High Court proceeded mainly upon the interpretation of the word "person." Their Lordships' view was that, when the Legal Practitioners' Act was enacted, the word "person" meant a person of the male sex and that, therefore, it could not mean and include a person of the female sex. My short Bill is intended to make this clear, what I deferentially submit, was already clear in view of the provisions of the General Clauses Act which lays down that the word "person" means a person of either sex. But in order to remove the difficulty created by the decision of the Patna High Court, I crave leave of this House to take this Bill to the Select Committee. I think, Sir, that there could be no two opinions about the propriety of my Bill. In England, by the removal of the Sex Disqualifications Act, the disqualification which previously attached to members of the female sex has been swept away, and I submit that the disqualification which has been held to exist in this country should also be removed by an Act of the Legislature. I do not apprehend that there will be any opposition on the part of the Government. It might, however, be said that the Legal Practitioners Act does not at present extend to the Presidency of Bombay and that, therefore, it would be better to frame an independent Bill on the lines of the English Statute. But, Sir, persons who are qualified to practise at the Bar are daily growing in numbers. Only the other day, we received a message from England that about 10 ladies were called to the Bar and there are a few Indian lady graduates in law. And I, therefore, submit that the amendment I ask this House to make would sufficiently meet our immediate requirements; and, if hereafter the Government think of passing an independent Act removing generally the disqualifications attaching to the female sex, they would be at liberty to do so. And, if in the Select Committee they convince that body that an independent Act would be preferable to an Act *ad hoc* such as my Bill is, I should be quite prepared to allow them to substitute their Bill for mine. I ask, Sir, that the principle of this Bill should be decided here and now and in favour of the female sex.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, my Honourable friend by the Bill before the House proposes to insert a definition in section 3 of the Legal Practitioners' Act to the effect that a person includes a woman. Now, Sir, what will be the effect of this definition? And in this connection I must refer to the details not of the Bill but of the Legal Practitioners' Act. Let us refer to section 4. Section 4, Sir, lays down that a person entered as an advocate or a vakil on

[Mr. H. Tonkinson.]

the roll of any High Court shall be entitled to practise in all Courts subordinate to the Court and so on. Now, Sir, if the word "person," the second word in that section, includes a woman, that will not mean that a woman, because of this Bill will be able to be enrolled as an advocate or a vakil. Advocates or vakils are enrolled, Sir, under the rules made by the High Court under the Letters Patent. And in order to make sure that a woman who fulfils other requirements shall be enrolled as an advocate or a vakil, it would be necessary to amend the Letters Patent. (Cries of "No, no.") I think, Sir, that there is little doubt that that is correct. We go on to section 6. Section 6 deals with pleaders and mukhtears. Here I agree that the question is different. The insertion of the definition proposed by my Honourable friend in the Legal Practitioners' Act will secure that for the area to which the Legal Practitioners' Act extends that women may be enrolled as pleaders and mukhtears. But it will only secure this for the areas to which the Legal Practitioners' Act extends. There are several areas in India to which the Legal Practitioners' Act does not extend, and I will merely cite the case of the Presidency of Bombay as being the most important. I presume, Sir, that the purpose of my Honourable friend is to secure that women shall be as eligible as men for enrolment in all the various grades of legal practitioners. This is not done by this Bill, and I submit, Sir, that the Select Committee appointed on the motion before the House could scarcely amend the Bill so as to secure the object which my Honourable friend has in view. It could not, I think, be amended, in particular, because of the fact that an amendment of the Bombay Act will require the sanction of His Excellency the Governor General under the Government of India Act, and that sanction has not been obtained. Honourable Members will remember the discussion on the Resolution moved, I think by Mr. Joshi, if I remember aright, when Dr. Gour moved as an amendment to the Resolution about the disqualification of women from being electors to the Indian Legislative Assembly to the effect that the sex disqualification as regards legal practitioners should be removed. Sir, we consulted Local Governments upon that question and the opinions have been placed in the Library. I hope that they have been seen by Honourable Members. If I may summarise those opinions, the general opinion is that whilst there is no substantial objection to making women as eligible as men to enter upon a career as a legal practitioner, the question is one which in the present condition of India should be decided by Indian opinion and Government should not attempt to guide that opinion. We referred the question to the Standing Committee attached to the Home Department and they advised that when the next stage of the Bill is reached, Government should point out the defects of the Bill and endeavour to obtain the view of the House as set out above. They advised that Government Members should not vote on this question, but if the House does accept the principle, Government should undertake to bring in a Bill which will secure that the principle is accepted. The Government of India, Sir, have accepted the advice of the Standing Committee. They would like, therefore, to obtain the opinion of this Assembly on the general question, on the general principle. If this Assembly accepts the principle that women should be as eligible as men for enrolment in all grades of legal practitioners, then Government is prepared to draft a Bill, which will really give effect to this Bill. Sir, I suggest that, if my Honourable friend will agree, such an opinion could be obtained upon the motion now before the House. If it is decided on this

motion to refer this Bill to a Select Committee, that Select Committee need not meet, and the acceptance of the motion now before the House could be regarded merely as an acceptance of the principle to which I have referred. Government would then draft a Bill and would introduce it in the Legislature as early as possible. Of course, the fact that Government is neutral means, I need hardly say, that Members of Council will not vote, but that all other official Members may vote as they please.

Dr. H. S. Gour: May I, Sir, interpose at this stage of the debate to explain my position with reference to what has fallen from the Honourable Mr. Tonkinson? The motion before this House is for reference of my Bill to a Select Committee, and under the ruling of you, Sir, this House, if it adopts my motion, will only commit itself to the principle of the Bill, namely, that women should be eligible to practise at the Bar as men. The Bill will then go to the Select Committee. If acting upon that principle, the Government introduce a measure giving effect to the principle accepted by this House, I shall not convene a meeting of the Select Committee, and in that case the Government measure will replace my measure. That was my intention, and it is with that object in view that I made it clear in my opening speech that if the Government feel that the object my Bill has in view can be better served by a larger measure introduced by the Government, I shall not make further progress with the Bill. With these reservations, Sir, I move that my motion that the Bill should go to the Select Committee should be voted on by the House.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I desire to give the principles of this Bill my hearty support. It has been long overdue. We have had Indian lady doctors—and very capable Indian lady doctors for the matter of that—for many years. Before any other University thought about it, my University—it is nearly 40 years now—admitted a lady graduate and she graduated in Medicine later. Women law practitioners are not rare in this country. In solicitors' offices and elsewhere they are doing good work, and the latest report from England really takes away all the conservative objections that were so long held in England, which has been behind hand of Calcutta in admitting ladies as graduates. The particular lady Bachelor of Law, to whom reference has been made by Dr. Gour, is one of the most distinguished graduates that the Calcutta University has turned out. There was another before her whom the Calcutta High Court did not see its way of admitting. We are changing opinions faster in these matters than in the West and I think this Assembly should give its sanction and blessings to the principles of this Bill, and I think also that what Mr. Tonkinson has indicated would be the best way of proceeding, because that would be a comprehensive all-India measure.

Maulvi Miyan Asjad-ul-ulah (Bhagalpur Division: Muhammadan): (The Honourable Member spoke in the *Vernacular.)

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I did not mean to speak on this simple question, but as a Behari Muhammadan friend of mine has spoken in this House, I am compelled to rise to say that the view he has taken cannot be the view of any cultured Muhammadan or of any sensible man, from our part of the country. The view he has expressed is opposed to common sense,

* The original speech together with an English translation will be printed in a later issue of these Debates.

[Khan Bahadur Sarfaraz Hussain Khan.]

humanity, civilization, and everything sensible. Simply because a woman appears before the Court is it possible and reasonable to suppose that the judge would pass an opinion in her favour? That is silly. I need only say this much that a Muhammadan cannot possibly tolerate such an expression of opinion in the House openly as has been put forward by my Honourable colleague and I oppose it, and support Dr. Gour.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I have much pleasure in supporting Dr. Gour. My Honourable friend who has just spoken in Urdu, was prompted to oppose this Bill from a chivalrous spirit because he does not desire that our fair sex should have the duty of appearing before the Court. He did not mean it in another sense. I have much pleasure in supporting this Bill on the following grounds. We know that a good many ladies, especially *purtlah nashin* ladies are very badly handicapped. When they want legal advice, on account of the *purdah* system, they cannot consult any barrister or pleader, so if we have lady barristers or pleaders, or even Mukhtars, I think we will be doing justice to the fair sex. Moreover, Sir, India is now advancing. The old days are gone and our women must come into the field, and even those women who are married. I think they will be a great help by working at the Bar. Though I come from a very backward Province, I must say in regard to the remarks which have fallen from the lips of my Honourable friend to the effect that the courts will be prejudiced, that there is some truth in that, but still I think it will be a great trial for our judges to exercise their impartiality. Another thing which has not been brought to the notice of this Honourable House is that the presence of ladies as barristers in court will make the judges and the barristers behave themselves.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I rise to say a few words in regard to this question as there has been considerable stir about it in Bihar and Orissa. In that Province of Bihar and Orissa, a lady qualified herself for the legal profession after passing the necessary examinations, but when she applied for permission to practise at the Bar, she was told that, as the law stands, she could not obtain that permission. The Patna High Court also took the same view. Now, Sir, we all know that there are ladies in other parts of the world who have qualified themselves for the legal profession, and have been practising at the Bar, and there is no reason why the same treatment should not be accorded to our ladies in India. There is, Sir, a keen feeling in regard to this matter, especially as there is no restriction on ladies qualifying themselves for the legal profession, but it is strange that as soon as they qualify themselves for the legal profession, they should be told that they cannot practise at the Bar. As we all know, there are hundreds and thousands of female litigants in all parts of India, and as things stand at present, they can communicate with their male lawyers only through some men, some of whom are illiterate, and the result is that in so many cases, the cause of justice suffers. For these reasons, Sir, I think the principle of the Bill should be accepted.

(An Honourable Member: "The question may now be put.")

Colonel Sir Henry Stanyon (United Provinces: European): Sir as a Member of the European Bar in this country I give my support to the

principle contained in this Bill. I agree with what the Honourable Mr. Tonkinson has pointed out that the Bill itself, which proposes that the word "person" in the Legal Practitioners' Act should include a woman, will not carry out the purpose which is desired and may lead to embarrassment. I do not at all indorse the apprehensions which were advanced by my Honourable friend who spoke in Urdu. Our Judges and Magistrates are to be subjected to a good deal of trial by legislation which is going to alter the law; and many things have been said about them; but I do not for a moment apprehend that susceptibility to female charms will take them away from justice. My friend was alarmed lest a young female advocate should carry away by her charms the judge, the witness, and even the pleader on the other side. I do not apprehend that. He said that the remedy which the public would find for that state of affairs would be to have ladies on both sides, and that would take away practice from the male practitioners. I do not know what would be the result of having ladies on both sides; I would rather not attempt to speculate; but I think the time has gone by when we can claim disqualification on the ground of sex. Women have proved themselves qualified in every department, particularly in the medical department, as pointed out by my friend Sir Deva Prasad Sarvadhikary; and there is no doubt whatever that in this country women lawyers of ability, experience and trustworthiness will be a great help in dealing with clients who are unable to emerge from the *pardah* to consult male advisers.

For all these reasons, I support the principle of the Bill.

The motion was adopted.

THE CASTE DISABILITIES REMOVAL (AMENDMENT) BILL.

Mr. K. Muppli Nayar (West Coast and Nilgiris: Non-Muhammadan Rural): Mr. President, in asking leave of the House to introduce my Bill to amend the Caste Disabilities Removal Act of 1850, I wish to express my regret for my inability to bring up this matter earlier because of certain personal disabilities and because of the trouble in Malabar—I have very little to add to what is stated in the Statement of Objects and Reasons and I wish only to explain a few points so that Honourable Members may clearly understand the difficulties which it is sought to redress. Act XXI of 1850 provides that any law or usage which inflicts on any person forfeiture of rights or property by reason of his renouncing his religion or being deprived of caste shall cease to be enforced as law. Let me mention at the very outset that the present Bill is necessitated by the peculiarities of the law which govern certain communities that exist in certain portions of two districts on the Malabar Coast. The Marumakathayam and Aliasantana Laws are peculiar to the West Coast and I think nothing like them exist anywhere else in the world. The Aliasantana Law agrees in the main with the Malabar Marumakathayam Law. Under Marumakathayam Law all rights of male members to the tharawad or joint family and the property dies with them, their wives and children having no share as each of them belongs to the tharawad from which the wife comes. The tharawad or family is perpetuated through the female members such as all the sisters and nieces and their daughters and so on. One basic principle on which the law stands is that no partition is allowed except with the consent of every member of the family, and in practice, generally partition is an exception. To take a concrete example a tharawad is composed of X, Y, Z, three sisters and A, and B, two brothers and all the

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children of X, Y, Z, and all the children of the daughters of X, Y, Z and so on, with the eldest member as Karanavan or head man who manages the family property. From this we see that membership of a tharawad runs up even to hundreds. It is therefore not difficult to discern the troubles that will arise when one of the members of such a large family becomes a convert or is deprived of caste, but still insists on his or her civil rights. To say that such a convert is entitled to joint residence, joint mess, participation in the performance of religious ceremonies and in the guardianship over the minor members of the family, etc., is simply outrageous. That a person who becomes a convert or has lost caste can occupy the office of Karanavan and discharge secular and religious duties appertaining to that office is inconceivable. I submit that in my opinion the right to be a Karanavan with powers of management cannot be a right to property which is saved by Act XXI of 1850. I further submit that I consider a right to joint mess or living, and participation in the family ceremonies cannot be such rights. A convert therefore forfeits these and similar rights by his change of religion under the general law and usage, and the Act XXI of 1850 ought not in my opinion to operate to prevent the forfeiture of these rights. But, on the other hand, suppose it is contended that Karanavastanam is a right protected by the Act. This is not merely a hypothetical case, for, before the rebellion—though as a consequence of which I know of no case—I say, before the rebellion, there was a suit pending in a District Munsiff's Court where a Nayar convert was claiming his right to be the Karanavan of the tharawad. Even if it be contended that Karanavastanam is a right protected by the Act, the interests of the family I think require that a convert Karanavan must not be allowed to exercise his sway against the will of the rest of the family. A Karanavan, representing the family, interests himself and participates in several functions all or most of which have their foundation in religion. By change of religion, he is effectually prevented from representing the family in those concerns. He becomes incompetent to participate in the family ceremonies and he cannot organise or supervise them. He cannot enter the family house without polluting. He cannot direct the family discipline. He cannot join the family mess. He is disallowed from being the guardian of the minor members. He becomes disqualified in several other ways. His continuing to deal with the family property, unconnected with the matters noted above, as a manager by birth-right which he cannot fully discharge owing to his change of religion, would result in the curious spectacle of the family having two representatives, one to officiate at functions which the convert cannot attend to, and the other to exercise the residuary powers of management. Such a state of affairs would lead to confusion and complete dislocation of the family management. One example of the absurdity of the existing law, if literally interpreted, may be that it may not be possible to sue to forbid an apostate Hindu from entering the holy precincts of the family temple. The tharawad has no need for a convert who is for all intents and purposes nothing more than a dead branch of it. I may here mention that in some castes all the formalities and ceremonies on death are performed when a member becomes a convert or loses his caste. I am sure the Legislature when it passed Act XXI of 1850 had not considered the peculiarities of the Malabar Law which has not the safety valve of partition. It could hardly have been the intention of the Legislature to cause disruption or to offend the religious feelings and susceptibilities of the other members of the family by continuing in a convert rights, such as already mentioned, which from the

very nature of things could only be exercised by one who continued to be a member of the corporate body.

The Madras High Court has found a difficulty in harmonising the principles of Act XXI of 1850 with the essential characteristics of the law on the West Coast. The recent Full Bench decision of the Madras High Court (*Pathumma versus Raman Nambiar* reported in I. L. R. 44 Madras at page 891) makes extremely desirable that a convert member's rights in a Hindu Marumakathayam or Aliyasantana family ought to be made clear. It was decided by a Division Bench of the Madras High Court in a case (*Kunhichekku versus Sydia Aruncaden* reported in 1912 Madras Weekly Notes, page 286) which went up from Malabar that conversion of a member effected a dissolution of the joint tenancy and created a tenancy-in-common as amongst the coparceners of the family.

This decision enlarged the rights of a convert by giving him a right to partition, though it, at the same time, prevented the anomaly of a convert Karanavan managing the Hindu Marumakathayam family or of a convert member insisting on his right of joint residence, etc. This interpretation of the rights of a convert was not, however, accepted as correct by the Full Bench referred to above who held that change of religion of a member did not work any change in the impartible nature of the coparcenary. Giving the convert a right to partition will adversely affect the interests of the family. I would put a premium on conversion—a result which would be undesirable from the Hindu point of view. It would enlarge the rights of the convert—a result not intended by the Statute. There would be still another danger. The proper method of partition having been held by the Madras High Court to be *per stirpes* (and not *per capita*), a convert member could get a pretty large slice of the family property by his conversion. For example, in a family of one brother, one sister and her half a dozen children, the brother becoming a convert might claim half the family property. In ordinary cases, this kind of thing is rendered impossible as partition can take place only with the consent of all the members, who can therefore arrange their respective shares as they choose. It may also be noted that one of the Judges who constituted the Full Bench, Kumaraswami Sastri, J. observes: "I am of opinion that all that the convert is entitled to is to continue to reside in the house and be maintained as before if the other members are willing or to get separate residence and maintenance allotted to him if the other members refuse". This is however only an *obiter dictum*. The Full Bench further reserves its opinion whether a Karanavan after change of religion could continue to be the Karanavan. Chief Justice Wallis observes in this connection: "The question of the plaintiff's right to succeed to the office of Karanavan is not before us and I express no opinion about it as it may involve other considerations". It is not, however, difficult to foresee the troubles and complications which may arise from a bad precedent due to mis-construction of existing provisions and, therefore, I claim the Legislature must now intervene and make the law clear and unambiguous. I do not wish to go into the law in Indian States, but if we are to judge in a matter of this sort from what exists in Cochin and Travancore, where Marumakathayam prevails, then also an amendment in the present Act here to make it at least clear is necessary. I may add I have made provision for the convert's enjoyment of the individual rights capable of separate enjoyment. What is aimed at is to prevent injury to the family without at the same time jeopardising the rights of the convert. The Courts have very often held that the most important right of the member of a Marumakathayam

[Mr. K. Muppil Nayar.]

or Aliyasantana family consists in the right of being maintained out of the family property. By the present amendment the convert's interests regarding this would be preserved, while at the same time the family would be saved from any danger of disruption and of interference from the convert. It is hardly necessary to add that where a member is readmitted into caste no question at all arises, or where the convert is the sole surviving member his right to the whole property remains uncontested, or that nothing in my Bill prevents any private arrangement that may be arrived at with the consent of all the members of the family. The Legislature owes an amendment of the present Act to the invariably large number of other members of the family who will all become social outcasts if, due to the existing law, they are forced to mix up with the convert. I therefore consider an amendment, in the form suggested in my Bill, is both necessary and expedient. In spite of the discouraging remarks from my Honourable friend Mr. Subrahmanayam, against attempts at legislation, I now beg to move for leave to introduce the Bill.

The motion was adopted.

Mr. K. Muppil Nayar: Sir, I introduce the Bill.

THE MONEY LENDERS BILL.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): Sir, I beg leave of this Honourable House to introduce the Bill which is standing in my name, called a Bill to license and regulate money-lending transactions and to limit the interest charged on loans of various kinds in British India.

I may say, Sir, at the very beginning that some section of my Bill may not be liked by some of my Honourable friends here, and they may be supposed to be impracticable. But that question can be dealt with later on. I would not mind even expunging those sections which might be repugnant or which might not be practicable from any point of view later on. That matter will be considered when I come to the next motion of this Bill, but so long as two main points which I really aim at from the point of view of the constituency which I have the honour to represent—that is, the zamindars and tenants class are provided for, I would not mind if all the sections of my Bill are taken away. But I will try to show, Sir, that each section which I have put down in this Bill has got a certain bearing on the uplift of eighty per cent. of the population of this country.

Primarily, Sir, I deal with the question of granting receipts. What we see, Sir, here is that illiterate people, when they borrow some money from a money-lender and they go to make a payment towards the satisfaction of their old debt, the payment is written at the back of the bond, which is sometimes a registered bond. I think and I hope that those of my Honourable friends here who belong to the legal profession might have come across certain cases, as I have come across them, of hardship caused to these people. I found, Sir, in several cases (in one of them I was myself a little bit concerned) that the stipulation was, as it invariably is, that whatever money is paid towards the satisfaction of the bond, would be entered at the back of the bond. Without that, no excuse will be listened to. A man borrows Rs. 5,000 and goes and

makes a payment of Rs. 4,000, which is entered at the back of the bond. Later on the money-lender if he wants to be dishonest, what does he do? He makes a report at the police-station—"I have lost my bond; such and such a paper, and other valuables have been lost"

Mr. President: Order, order. I must point out to the Honourable Member that he is going into too great detail. This will be appropriate when we come to clauses 8 and 9, but at this stage I cannot allow him to go into the question in such elaborate detail.

Mr. Muhammad Yamin Khan: I was saying, Sir, that this was the principle underlying the Bill; I was not dealing with the clauses. As I was saying, Sir, he puts up an advertisement and offers a reward and then naturally he can prove that his bond is lost; then, later on, he applies for a copy from the Registry Office and he gets it and sues in the civil court for Rs. 5,000 plus interest although Rs. 4,000 has been paid up. The debtor may say that he has paid Rs. 4,000, but the court will not listen in the absence of a receipt

Mr. President: The Honourable Member is still discussing the details of the Bill. If he will consider what he has been doing he will see that his speech is an appropriate speech only to the motion that such and such a clause do stand part of the Bill. He is entitled to say now briefly that certain practices prevail and that this Bill is necessary in order to remedy grievances arising out of those practices; but I cannot allow him to use this stage to discuss the details of those grievances or of the remedies which he has embodied in his Bill.

Mr. Muhammad Yamin Khan: Very well, Sir, this is an argument which I have set down in the Statement of Objects and Reasons.

Mr. President: That justifies him even less in making remarks of this nature at this stage.

Mr. Muhammad Yamin Khan: I shall be very brief, Sir. Another practice prevalent is this, that these *bhai khata*s which are used by these money-lenders are not properly bound. I do not know what happens in other provinces, but in my province in the United Provinces generally this *bhai khata* is a heap of papers tied together with a string and any leaf can be taken out or inserted in at any time; and suits are filed on the basis of these *bhai khata*s. I want to remedy this defect by providing that when a suit is brought on the basis of such a *bhai khata* that *bhai khata* should have been produced before the income-tax officer, or that he can bring a suit on other properly kept account books, as provided in the Indian Evidence Act.

There is another object in my bringing this Bill forward. When a money-lender lends money, he takes all kinds of security. He gets either a registered bond or a simple bond that is witnessed by different people; but when he has received the money he does not grant a receipt, and an illiterate person has to depend upon the good faith of this money-lender. I wish to provide that it should be incumbent on the money-lender to grant a receipt in every case and that it should be made penal if he does not give a receipt. If a money-lender does not keep a proper account book, the only result will be that he cannot sue on the basis of that account book; nothing more than that.

[Mr. Muhammad Yamin Khan.]

But these are secondary sections. The only two sections on which I want to lay stress upon and for the purpose of which I have brought this Bill forward are those relating to the granting of receipts, and providing that the interest should not accumulate to more than the principal sum. That is the old Hindu law, the Damdupat rule. Before 1855 the law as it stood in India was that Muhammadans did not recognise any kind of interest; the Hindus recognised it only to the extent that the interest could not accumulate to more than the principal sum lent. But in 1855 an Act was passed—Act XXVIII of 1855—which gave power to courts to grant a decree for the interest that has been agreed upon; and this has been misinterpreted by certain High Courts to mean that the old Hindu law of Damdupat had been superseded. But certain High Courts like Bombay, Madras and as I have heard from my Honourable friend, Sir Sarvadhikary, the Calcutta High Court also still hold that the Damdupat rule prevails in spite of the Act. In Bombay, I have heard that the Damdupat rule holds good only when both the parties are Hindus but that it is not recognised when the creditor is a Hindu and the debtor belongs to any other caste. My friend, Mr. Samarth, is not here; but my other friends from Bombay can bear testimony to what I say. What I want is that this Damdupat rule should prevail not only as between Hindus and Hindus, but as between Hindus and Muhammadans as well and between any class of the community. In some presidency towns, in the Allahabad High Court and other High Courts this Damdupat rule is not recognised and the court grants decrees for the sums agreed upon and to the extent it accumulates. A recent case that happened only three or four days ago bears testimony to what I say. The whole House will be shocked to hear such a kind of agreement as is reported in the *Pioneer* of the 15th February. A case was decided on the 18th of February and in that case for a principal of Rs. 400 a decree was granted by the Honourable the High Court of Allahabad for Rs. 66,98,731-2-0. Another case in Calcutta which was reported in the *Leader* of the 26th May 1922 was one in which a son-in-law sued his father-in-law for Rs. 7,16,800 while the sum which had been lent originally was Rs. 350 only. It is this kind of case that I want to remedy by providing that the interest shall not exceed the amount lent. That is the chief object. I represent the zemindar and tenant classes and it is a great hardship to them. We find every day in every civil court there is a huge list of properties which are sold by auction, simply because of the accumulation of interest. Several of my friends who belong to the United Provinces might be aware that a big family, a leading family, the premier family in fact in Moradabad was ruined in one day because of the accumulation of interest on an old bond which was originally for a very small sum. That went up accumulating and they were absolutely ruined. It is for the protection of this class of people that I have brought forward this Bill. It is of course in no way disadvantageous to the money-lender. What I am asking in this Bill is that the money-lender should come forward and claim his money as soon as his money is doubled, and he should not sit quiet to take away the property of the zemindar. He should come forward and take the assistance of the Court, as soon as it doubles. This will afford an opportunity to a zemindar to think twice as to whether he should part with his property now and not be under any false shame so as to lose the whole property ultimately. I want that a protection of this nature should be given to persons whom I have the honour to represent. If there is any clause in my Bill which does not affect people of the other provinces, they need not accept this Bill. That is why I have

put down in my Bill "It shall apply to the whole of British India unless any part thereof is exempted by the operation of the Act by the Governor General in Council". So if people from other provinces find that it is not suitable to their province, they can ask the Local Government not to make my Bill applicable to their province. But if the views of the Local Governments are invited, you will find, Sir, that they will admit that the remedy which I have suggested is really needed. I therefore ask this Honourable House to lend their support to my Bill and give me leave simply to introduce this Bill. Of course, at later stage if they find that it is unworkable or that it is not wanted by the country, they may throw it away or take away any of the sections from the Bill, and I won't mind it. But I can assure this House that it is very badly needed for my province. A Bill to remedy this evil was moved, I might inform this House, in the United Provinces Council and there it was rejected on the ground that it was beyond their jurisdiction to consider it. That is the reason why I have brought this Bill here. The whole matter was very ably dealt with by the late Khawajah Ghulam-us-Saqalain in the United Provinces Council, and as I have already pointed out, that Council considered that it was beyond their jurisdiction to consider such a Bill, and so this time several Members have written to me to push this Bill in this Assembly. My request to the Members from other provinces is that, if they do not like this Bill to be made applicable to their province, they should not deprive my province, where this is very badly needed of having such a useful measure. Therefore, I beg that this House may kindly grant me leave to simply introduce this Bill. I also request at the same time that the Government also may be good enough to take a magnanimous attitude towards this Bill, and that they should not oppose it.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I fear that, in spite of the pathetic appeal contained in the closing words of my Honourable friend, the Mover of this motion, I must nevertheless ask the House to refuse leave to introduce this Bill.

Before, Sir, I proceed to deal with the provisions of the Bill as it stands on the paper, I wish to make two preliminary remarks. The first is this. My Honourable friend has quite omitted to call the attention of the House to the fact that this question of usury and dishonest transactions on the part of money-lenders has formed the matter of consideration by the Government. The matter has been considered by the Government of India at great length, and as a result, they passed Act X of 1918, an Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind, and it is the contention of Government that the measures proposed in this Act provide a far more effective remedy than those that have been suggested by the Honourable Member. I think my Honourable friend might have referred to the existing previous legislation while making his motion.

The second point I desire to press upon the House is this. The Honourable Member on two or three occasions in the course of his speech expressed his willingness, even his eagerness, to throw away practically every clause in the Bill if it did not meet with the approval of the House. Now, Sir, I submit that this is not the first time that this thing has happened in the course of this Session. Only a few days ago another Honourable Member brought forward a Bill to provide a specific remedy for certain grievances, and in the course of his speech he suggested that that remedy should be cut out altogether and that the Select Committee should provide another. I submit, Sir, when an Honourable Member wants to bring

[Mr. P. B. Haigh.]

forward a Bill, he ought to give due consideration to the provisions of it, and not invite the House to cut them out at their leisure provided only the Bill is introduced.

Now, Sir, I shall turn to the actual provisions of the Bill. I shall of course bear in mind your warning and I shall not deal with them in detail. The Bill contains three main provisions. First of all, the definition and of registration of money-lenders and the imposition of certain restrictions on their methods of keeping accounts. Secondly, a provision for the restriction of the amount of money that may be advanced to certain persons, and thirdly the clauses that refer to *Damdapat*.

Now, Sir, as regards the first question, the definition of registration of money-lenders. I have no doubt that all Honourable Members have studied the proposed definition in the Bill. I confess, Sir, that it seems to me that we are no nearer the definition than before this Bill was introduced. The question of registration of money-lenders was one of the questions specifically considered by the Government of India prior to the legislation that attended the Bill of 1918. All Local Governments were then consulted on the matter, and with your permission, Sir, I shall read the replies of some of the Local Governments on this subject. They were all unanimous that the definitions of the terms 'money-lender' and the registration of money-lenders were practically unworkable. The Government of Madras reported:

"The registration of money-lenders would be a formidable and almost impossible undertaking and would be so far from complete as to be useless. Nor does the Governor in Council consider that any useful results would be produced by compelling money-lenders to keep accounts or give receipts from counterfoil receipts books."

The Government of Bombay said:

"The problem of dealing with money-lenders in England is totally different from that of dealing with them in this Presidency, and arguments from the success of the Money-lenders Act in England are in the view of the Governor in Council full of danger. In England a small and fairly well defined class of professional lenders catering for a comparatively small class of borrowers has been taken under control without difficulty and without interfering with or unsettling the whole of the credit system of the country. In India practically every one with a little money in hand lends it out, and the agriculturist who has saved a few rupees is often quite as rapacious as any savkar. Registration of money-lenders would represent enormous difficulties in India and in fact may be said at once to be impracticable. Even to arrive at a satisfactory definition of 'money-lender' would be a hopeless task."

The Burma Government,—but I will not read, Sir, any more of the opinions in detail,—was of the same opinion. The Central Provinces Government was of the same opinion. The Lieutenant-Governor of the United Provinces thought that "all ideas of registering money-lenders insisting on their keeping books and the like are quite out of the question."

Well, Sir, with this consensus of opinion I would ask the Assembly whether it is possible for the Government of India to take any other course than to ask the House to reject this Bill. It is impossible for us to suggest that legislation should be carried through which all the Local Governments find practically unworkable.

But, leaving that aside for the moment, suppose that these money-lenders were registered. What would be the immediate effect? It would mean immediately the imposition of great restrictions on the number of persons who could lend money. Two results would follow. First of all, the rate of interest would immediately be raised by those who could lend

money, and secondly all sorts of subterfuges would be adopted by those who are prevented from lending money in order to do it clandestinely. Moreover, the Bill provides, as will be seen, for the punishment of those who lend money without registration. Now, imagine the amount of corruption

Mr. Muhammad Yamin Khan: The Bill provides punishment for not giving receipts, not for not registering.

Mr. P. B. Haigh: I beg the Honourable Member's pardon. The Bill provides penalties for those money-lenders who, having registered themselves, fail to comply with the numerous restrictions which are imposed upon them by this Bill. Now, I ask the House to consider the amount of oppression and extortion that sort of thing might lead to. The whole result would be to interfere to a very great extent with the money-lending system of the country, and I would ask Honourable Members to remember, as no doubt they will remember, that, whatever hard things may be said against money-lenders as a class or individuals in particular, the fact remains that the money-lender is one of the most useful members of society in this country. The Honourable Member says: "Question"! But how is a vast agricultural country, especially in those tracts where the ryotwari system is prevalent, how is it to be carried on at all if money is not available for agriculturists? Agriculture cannot be carried on without borrowed capital. The Honourable Member says: "Co-operative Societies"! How many co-operative societies are there as yet in this country? Does he not realise that co-operative money-lending, in spite of the great strides that it has made, is still in its infancy, and that, if we were to strike a blow at the common system of lending money in this country, the result would be disastrous? Then, Sir, there is another startling section in the Bill as it stands, No. 12. I do not know if this is one of the sections that the Honourable Member proposes to throw out.

"No Court shall take notice of, or pass a decree on a promote or a simple bond which purports to have been executed by an illiterate person for a sum of more than fifty rupees."

Well, now imagine what that means. It would strike a blow immediately at the credit of millions of rayats.

Mr. Muhammad Yamin Khan: May I, Sir, rise to a point of order? My friend is reading section by section, while I was not allowed to deal with the Bill in that way. I would have explained the section.

Mr. President: I must ask the Honourable Member to refrain from these interruptions and to resume his seat.

Mr. P. B. Haigh: Sir, perhaps I may be permitted to point out that I am endeavouring if possible to deal with the principles of the Bill and I pointed out that it contained three main provisions and this is one of the provisions. That is as near as we can get to any principles in the Bill. However, we may take it that that section, which I submit condemns itself, is one of those which the Honourable Member is willing to jettison. And, so, finally, we come to No. 13.

"No person shall be entitled to claim as interest 'an amount exceeding in the aggregate the principal sum originally lent.'"

In other words, he wishes to introduce universally the rule which is known as *Damdapat*. Well, now, Sir, last January, I think, the House

[Mr. P. B. Haigh.]

considered a separate Bill brought forward by an Honourable Member, whose name stands on the paper also to-day, dealing simply and solely with this question of Damdupat. He moved a Bill to amend the Interest Act of 1889, and the House on that occasion refused permission for the Bill to be introduced. A speech was made

Mr. Muhammad Yamin Khan: May I, Sir, point out that that was the amendment of

Mr. President: The Honourable Member was given great latitude in dealing with this subject and it is impertinence on his part to interrupt in this way.

Mr. Muhammad Yamin Khan: On a point of order, Sir. My Honourable friend is referring to a totally different Act which was rejected on different grounds, Sir.

Mr. President: Order, order. If the Honourable Member who is replying (Mr. Haigh) is out of order, the Chair will deal with him. The Honourable Member was given great latitude, and I advise him to remain in his seat.

Mr. P. B. Haigh: Sir, my Honourable friend is quite right in saying that I am referring to a different Bill but the provisions in that Bill amounted to exactly the same thing as that laid down in section 13 of the Bill which we are now considering. It dealt with the question of Damdupat. Now, I have no doubt that most of the Honourable Members present heard the speech of the Honourable the then Home Member on that occasion, and I do not propose, in the very brief time at my disposal, to go through all the arguments at length. The point I wish to make is that Damdupat, though in itself a very well meant rule, is really a very primitive expedient. It lays down no period within which interest may be allowed to accumulate up to an amount equal to the capital. For instance, the rule is this, that the amount of interest claimed at any one time must not exceed an amount equal to the capital. It takes no count of previous payments of interest and if a suit is brought at the end of three years, there is nothing to prevent, as far as the rule goes, the person bringing the suit from recovering interest which amounts to 33 per cent. per annum. On the other hand, if a suit is brought at the end of fifty or 30 years, the rate of interest is enormously reduced. It is in fact a clumsy way of regulating the rate of interest. The question of regulating rates of interest has been gone into frequently. It was investigated by a Parliamentary Committee in England and I think it has been universally condemned by all those experts who are competent to deal with it. Moreover there are several positive dangers about this rule of Damdupat. The first is this. If you have a rule of that sort in force, all payments which are made are immediately credited as interest, never anything against the principal. Secondly, it is a direct temptation to the money-lender at the time when the bond is first made, to cause the debtor to agree to have a much larger sum entered as principal than that actually given to him, in order to enable the creditor to recover a larger sum when he goes into Court. Thirdly, it leads to the practice of nominally winding up a transaction and beginning a new one so that the initial amount shown in the new bond is very much greater than that originally lent. Fourthly, it compels the money-lender to bring his suit at the earliest possible moment, which, with all due respect to my Honourable friend's opinion, is not an

unmixed blessing—even to the debtor. I do not wish to keep the House further on this question of Damdupat, as the matter has already been gone into and as we shall possibly have to go into it at greater length a few minutes later. But I submit, in view of the willingness of my Honourable friend to throw away the greater part of the Bill, and as he lays stress upon the question of Damdupat which has been definitely rejected by the House only a year ago, that leave to introduce this Bill should be refused.

Mr. President: The question is:

"That leave be given to introduce a Bill to license and regulate money-lending transactions, and to limit the interest charged on loans of various kinds in British India."

(A Division was challenged but it appeared to Mr. President that the call of the "Ayes" did not justify it.)

Mr. President: I think I must ask those in favour of the Bill to rise in their places.

Nine Members rose in their places, and according to Mr. President ordered the bells to be rung and the division proceeded:

AYES—16.

Abdul Rahim Khan, Mr.
Abul Kasem, Maulvi.
Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Asjad-ullah, Maulvi Miyan.
Bagde, Mr. K. G.
Bijlikhan, Sardar G.
Jatkar, Mr. B. H. R.

Muhammad Hussain, Mr. T.
Nabi Hadi, Mr. S. M.
Neogy, Mr. K. C.
Rajan Baksh Shah, Mukhdum S.
Reddi, Mr. M. K.
Venkatapatiraju, Mr. B.
Wajihuddin, Haji.
Yamin Khan, Mr. M.

NOES—55.

Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jannadas Dwarkadas, Mr.

Kamat, Mr. B. S.
Ley, Mr. A. H.
Man Singh, Bhai.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Percival, Mr. P. E.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Babu B. P.
Sinha, Babu L. P.
Sohan Lal, Mr. Bakshi.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Tonkinson, Mr. H.
Tulshan, Mr. Sheopershad.
Ujagar Singh, Baba Bedi.
Vishindas, Mr. H.

The motion was negatived.

[Mr. K. C. Neogy.]

had to consider the question of emigration to Ceylon and the Federated Malay States, and Honourable Members who were supplied with some papers on that question, must have found that the Government of India insisted on the Governments of Ceylon, and the Malay States, to abolish all the penal provisions in their labour laws as a condition of allowing emigration of Indian labour to those places, and upon those representations the penal clauses of the labour laws have, as a matter of fact, been abrogated in Ceylon, the Malay States, Mauritius, and in Fiji. I have it on the authority of my Honourable friend, Mr. Venkatapatiraju, who was a member of the Commission sent by the Government of India to Fiji, that when he was there he was actually twitted by the authorities of Fiji on this Act being on the Statute Book of India, when he had a discussion with them about the penal provisions of the labour laws in that Island. Sir, for all these reasons, I consider this Act to be an anachronism and an anomaly, and if we are not to be charged with inconsistency, I think we must repeal this Act, and that without delay.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, this Act has been on the Statute Book of India for 64 years and my Honourable friend, Mr. Neogy, wishes it to be repealed with effect from the 1st April, 1923, that is to say in less than six weeks from to-day

Mr. K. C. Neogy: Extend it if you like.

The Honourable Mr. A. C. Chatterjee: Well, Sir, that is the main provision of his Bill, and I feel bound, on behalf of Government, to oppose the introduction of the Bill. My Honourable friend has given the previous history of the discussions relating to this Act, and I do not wish to traverse the same ground. He has mentioned that my Honourable friend behind (Mr. N. M. Joshi) had moved a Resolution in this House in September 1921 (and not 1920 as he said) on which occasion the then Honourable Home Member had given an undertaking on behalf of Government to sound public opinion in the country on the question of the repeal of this measure. That promise, Sir, has been fully implemented. The Government of India addressed all Local Governments to find out what the present views of the Governments as well as of the people interested in this measure are with regard to the question of repeal or modification of the present law. We have received replies from the Local Governments, but the last reply came only about six weeks ago, and it has not therefore been possible for Government to take any action in this matter as yet. But my Honourable friend, Mr. Neogy, has already asked for the introduction of this Bill which provides for the repeal of the present Act in less than six weeks from to-day, as I have already said. Mr. Neogy stated that Sir William Vincent promised to bring in a Bill in 18 months' time. There was no such definite promise. (Mr. K. C. Neogy: "If so advised; it was not a definite promise.") What he said was that, if there was a consensus of opinion in the country for repeal, Government would probably, within 18 months from the time that he spoke, undertake legislation for repeal. I may remind the Honourable Member that 18 months have not yet expired.

Well, Sir, the general tenour of the replies is against repeal. It is true that the Government of Bengal have suggested that repeal will do no great harm and the Government of Madras have not objected to repeal, but practically every other Local Government have advised the Government of India against repeal. At the same time, the Government of India

LEGISLATIVE ASSEMBLY.

Wednesday, 21st February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN:

Sir Gordon Fraser, Kt., M.L.A. (Madras: European).

STATEMENT LAID ON THE TABLE.

Mr. H. Tenkinson (Home Department: Nominated Official): Sir, on behalf of Sir Henry Moncrieff Smith, I beg to lay on the table the information promised in reply to a question by Dr. H. S. Gour asked on the 16th January 1923, regarding action taken by Government on certain Resolutions of the Legislative Assembly.

Action taken by Government on certain Resolutions of the Legislative Assembly.

Serial No.	Date on which moved.	By whom moved.	Subject of Resolution.	Department concerned.	Action taken by Government.
1	23th March 1921	Mr. K. G. Bagde	Codification of Hindu Law	Home	The Government of India consulted the Local Governments and High Courts on the 15th June 1921, and copies of the opinions received have been placed in the Libraries of two Chambers.
2	24th February 1921.	Munshi Isvar Saran	Creation of an Indian Bar	Home	The Local Governments and High Courts were consulted on the 9th May, 1921, and their replies are under consideration.
3	2nd March 1921	Rai J. N. Majumdar Bahadur.	Equality of status of the two Chambers.	Home	Given effect to with modifications.
4	28th March 1921	Sir P. S. Sivaswamy Aiyer	Resolutions on Esher Committee's Report : 1. Equipment and organisation of the Indian Army. 2. Employment of Army in India for service outside the external frontiers of India. 3. The appointment of a Surveyor-General of Supply.	Army	A copy of the Resolution was communicated to the Secretary of State. Every effort is being made to equip and organise the Indian Army, as far as is practicable, in the same manner as the British Army, but complete assimilation will not take place owing to financial and other reasons. Resolution was communicated to the Secretary of State. Except in the cases of Aden and the Persian Gulf, all Indian troops stationed overseas are paid for by the Imperial Government. The cost of the garrisons at Aden and in the Persian Gulf is defrayed partly by the Imperial and partly by the Indian Government and questions regarding the strength and maintenance of both these garrisons are at present the subject of correspondence between the two Governments. The matter has been referred to the Secretary of State. No further action has been taken in this matter.

4. The appointment of Commander-in-Chief and Senior Staff Officers in India.	Army	The conditions regulating the appointment of these officers have been approved by the Secretary of State for India.
5. Commander-in-Chief's right to correspond with the Chief of the Imperial General Staff.	Army	This has been approved by the Secretary of State.
6. The admission of Indian subjects to all arms of His Majesty's Military, Naval and Air Forces in India.	Army	The matter is still under reference to the Secretary of State.
7. The establishment of a military college in India.	Army	The Secretary of State has sanctioned the establishment of a military college at Dehra Dun which will be shortly opened. The Prince of Wales' Royal Indian Military College, Dehra Dun, for the preliminary training of Indians to fit them to enter the Royal Military College, Sandhurst, was formally opened by His Royal Highness the Prince of Wales on the 13th March 1922. The number of cadets at present in residence is 37. Further entries will take place in the terms commencing in January and April, 1923, bringing the total number of cadets up to the present authorised establishment of 70. An <i>ad interim</i> report by the Commandant of the College on the first term's work has already been published and circulated to the Members of the Legislature.
8. The fixation of pay of all commissioned ranks in all branches of the Army with an overseas allowance.	Army	The rates of rank pay of British officers of the Indian Army have been revised and brought into line with those for British officers of the British Army but no overseas allowance has been sanctioned.
9. Formation of a territorial force, etc.	Army	The Resolution has been given effect to by Government. The Territorial Force is in process of development and recruitment has made good progress.
10. Grant of the rank of Second-Lieutenant, Lieutenant or higher rank to the officers of the Indian Territorial Force.	Army	The matter is under consideration by the Government of India and the Secretary of State. Officers of the Indian Territorial Force now hold a commission which confers British rank.

Action taken by Government on certain Resolutions of the Legislative Assembly—contd.

Serial No.	Date on which moved.	By whom moved.	Subject of Resolution.	Department concerned.	Action taken by Government.
			11. Interchange of officers between British and Indian Services. 12. Reduction of administrative staff at Army Headquarters.	Army Army	The matter is still under reference to the Secretary of State. The Resolution will be given effect to as soon as conditions will permit of it. a five per cent. reduction at Army Headquarters and certain reductions in the staffs of Commands and districts were effected during the spring of 1922. Further reduction at Army Headquarters are now being effected as a result of the recommendations of the Committee presided over by the Hon'ble Mr. C. A. Innes appointed to enquire into the establishments of Army Headquarters, India.
			13. Appointment of a Committee for the purpose of examining and reporting upon the best method of giving effect to the natural rights and aspirations of the people of India for the attainment of full responsible Government.	Army	All the points in the Resolution were discussed by the Military Requirements Committee.
			14. Inclusion of "Anglo-Indians" in the terms of "Indian subjects" or "Indians."	Army	The matter is under consideration.
5	17th February 1921.	Mr. W. M. Hussanally	Increase of listed posts	Home	Local Governments were addressed but the question is being held up pending a decision on the question of Indianisation.
6	28th March 1921	Dr. H. S. Gour	Establishment of a Supreme Court in India.	Home	The Local Governments and High Courts were consulted on the 9th May 1921, and copies of the opinions received have been placed in the libraries of the two Chambers.

STATEMENT LAID ON THE TABLE.

7	15th September 1921.	Mr. N. M. Samarth	Abolition of racial distinctions	Home	The Government of India appointed a committee in December 1921, which submitted their report to the Government in July 1922. It is hoped that orders will issue shortly.
8	29th September 1921.	Rai J. N. Majumdar Bahadur.	Indian Autonomy	Home	The Resolution passed by the Assembly together with the debates thereon was forwarded to the Secretary of State and his despatch on the subject will be laid on the table of this House on the 24th January, 1923.
9	26th January 1922.	Mr. P. P. Ginzwa	Abolition of the distinction between votable and non-votable items in the Budget.	Finance	No action was taken.
10	23rd March 1922	Mr. P. L. Misra	Abolition of the posts of Commissioners.	Home	Local Governments were addressed but replies from all of them have not yet been received.
11	8th February 1922.	Baba Ujagar Singh Bedi	Revision of the Arms Rules	Home	A Committee with a non-official majority was appointed. Their report has been submitted to the Government of India, and was published for general information on the 20th January. The various recommendations made therein are under the consideration of Government.
12	3rd February 1922.	Dr. H. S. Gour	Appointment of a Retrenchment Committee.	Finance	A Committee with Lord Inchcape as President has been appointed and is now considering the whole question of retrenchment in the Central Government's expenditure.
13	9th February 1922.	Mr. K. B. L. Agnihotri	Equality of status for Indians in South Africa.	Revenue and Agriculture	The Resolution was communicated by telegram to the Secretary of State with the observations of the Government of India thereon. The telegram was published in India on the 18th February, 1922, in the form of a Press Communiqué.
14A	11th February 1923.	Mr. Jannadas Dwardas	Indianisation of the services	Home	The Local Governments were addressed but replies from all of them have not yet been received, but it is expected that all replies will soon be complete and Government intend taking up the case without delay.

[21st FEB. 1923.]

Action taken by Government on certain Resolutions of the Legislative Assembly—contd.

Serial No.	Date on which moved.	By whom moved.	Subject of Resolution.	Department concerned.	Action taken by Government.
14B	23rd February 1922.	Mr. N. M. Samarth.	Provision for technical education in India to enable Indians to enter the technical services: 1. Geological Survey of India and Indian Mines Department. 2. Railways.	Industries	The question of making provision for technical education in India to enable Indians to enter the Geological Survey of India and the Indian Mines Department has been considered. With a view to provide facilities in India for high grade instruction in mining and geology and their accessory sciences, the Government of India have already decided with the approval of the Secretary of State for India, to establish a school of Mining and Geology at Dhanbad as a Central institution. A sum of Rs. 1,00,000 was voted by the Legislative Assembly last March for this purpose and this sum is being spent during the current year mainly on the collection of bricks for the building of the school. It is proposed to make a provision of Rs. 3,50,000 exclusive of departmental charges to meet further expenditure on the construction of the school, and the Standing Finance Committee has agreed to this demand being placed before the Assembly. It is not possible to say at present whether this provision will be allowed to stand. Technical schools exist at stations where railway workshops are located, e.g., Lilloah, Jamalpur, Kanchnarpara, Gorakhpur, Lucknow, Lahore, Ajmer, Bombay, etc. At Jamalpur, Lucknow, Lahore and Kanchnarpara, schemes for the erection of new and larger technical schools, at which a higher class of training will be possible, are now being introduced, the Local Government in each case co-operating with the Railway Administration.

STATEMENT LAID ON THE TABLE.

In this connection attention is invited to the reply given by the Honourable Mr. C. A. Innes to question No. 34 put by Mr. P. L. Misra in the Legislative Assembly on the 6th September 1922, in which it was stated that an officer had been placed on special duty to examine and report on the whole question of training of Indians for both superior and subordinate grades of all Departments of Railways. The report referred to has been received and is now in the hands of the printers and will shortly be considered by Government.

So far as the Survey of India and the Indian Forest Service are concerned, the question of providing technical education in India is under consideration. As regards the Indian Agricultural Service, educational facilities have been included in the general scheme for the reorganization of the Agricultural Research Institute and College which was sanctioned by the Secretary of State for India in December, 1921, and is being given effect to as financial conditions admit. In the Indian Civil Veterinary Service six Provincial Service Officers are undergoing post-graduate training at the Muktesar Laboratory, and it is hoped that the Laboratory will, in the very near future, develop into a central training institution not only for Provincial Service Officers desirous of promotion to the Indian Civil Veterinary Service but also for young students desirous of taking up a career in that Service.

Indian Officers and other ranks of the Indian Army continually receive instruction in gunnery and the handling of modern weapons of warfare in schools that have been established for that express purpose. It is not

3. Survey of India, Indian Forest Service, Indian Agricultural Service and Indian Civil Veterinary Service.

4. Training of Indian Officers and other ranks of the Indian Army.

Action taken by Government on certain Resolutions of the Legislative Assembly—concl'd

Serial No.	Date on which moved.	By whom moved.	Subject of Resolution.	Department concerned.	Action taken by Government.
			4. Training of Indian Officers and other ranks of the Indian Army— <i>concl'd.</i>	Industries— <i>cont'd.</i>	considered likely that better results would be obtained by sending these officers and other ranks abroad for their training further. The cost would be out of all proportion to any possible increase in efficiency. In addition, a scheme for the training of apprentices in Ordnance factories has also been worked out, but its further consideration has been held up pending the report of the Incheape Committee.
			5. Engineering and Wireless Telegraphy.	Industries	For imparting engineering education in India there are already 4 Engineering colleges in the country and, in addition, the Government of Burma intend instituting shortly a course of such education in the Rangoon University. The Government of India have also had under consideration the question of specialised engineering training and post-graduate courses, but have decided to defer the further consideration of these questions until financial conditions improve. A departmental school of wireless telegraphy has recently been opened at Karachi in which it is proposed to give a preliminary training in that subject to suitably qualified Indian Electrical Engineers. In due course it is hoped to select some of the most promising candidates and to send them to England for further courses of training in practical and theoretical wireless telegraphy. A sum of Rs. 2,42,000 has been allotted during the current financial year for the construction of a building for the wireless Research and Training Centre at Karachi.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, the following Message has been received from the Secretary of the Council of State:

"I am directed to inform you that the Council of State has, at its meeting held on the 20th February, 1923, agreed without any amendments to the Bill to give effect in British India to the Treaty for the Limitation of Naval Armament, which was passed by the Legislative Assembly at its meeting of the 31st January, 1923."

THE CRIMINAL LAW AMENDMENT BILL.

Mr. President: The House will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings.

Clauses 16 and 17 were added to the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, my amendment runs as follows:

"(ii) In clause 18 (2) in the proviso to the proposed sub-section (3) of section 326 for the words 'any person excluded from the list on the ground of his being exempted under section 320' substitute the words 'the required number of persons from any other district but chosen in the manner prescribed by or under this section'."

Under this proviso it has been laid down that, if the proper number of Europeans or Americans cannot otherwise be obtained for serving as jurymen, then the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list under section 320. Now, under section 320 of the Criminal Procedure Code, there are certain classes of persons who have been exempted from being summoned to serve as jurymen in trials. And here they provide by this proviso that, if the number of Europeans is not sufficient, in that case even such persons could be summoned at the discretion of the Magistrate. I beg to move, Sir, that that exemption be made to subsist and in the case of the difficulties that might arise, European jurors or assessors be summoned from any other district where there be a sufficient number and wherefrom they may be selected in the same way as has been provided here for the selection of jurors. It is desirable that persons already exempted from serving as jurymen should not be made to serve as such because they are the persons who are either in Government employ as Magistrates or Judges or Revenue Officers or Collectors or they are persons connected with the Courts of Law as pleaders or advocates or legal practitioners or persons who are employed in the Posts and Telegraphs or in the Army and Navy. It would be in the interests of justice and rather essential that such persons should be exempted in trials in which European subjects are concerned and the necessary jurors be selected from the neighbouring district where the number is sufficient. With these words, Sir, I move my amendment.

The Honourable Sir Malcolm Halley (Home Member): I would point out to the House that the proviso to which Mr. Agnihotri has objected to is nothing new. In section 462 of the existing Code precisely the same

[Sir Malcolm Hailey.]

proviso finds a place. The effect of this is that if you cannot obtain in your own district a sufficient number of jurors, you can go to the exempted list. Mr. Agnihotri, in spite of that, would have us go to jurors in another district, thereby of course adding to the difficulty and to the expense attending the calling of jurors. Of the two alternatives, I put it to the House that it is preferable to go to the exempted list. Those exemptions have been made largely on the ground of convenience. If one turns to 220 one sees that there is nothing improper or unreasonable in itself in summoning exempted persons, as for instance persons in civil employ, persons officiating as priests or ministers of their respective religions, surgeons and others constantly practising the medical profession or legal practitioners or persons employed in the Post Office and Telegraph Departments. The only reason why they are exempted is on that of public convenience, and I maintain that, on the whole, grounds of public convenience will better be met by drawing on the exempted list than by calling jurors from another district. That is the sole ground on which I oppose Mr. Agnihotri. There is no great question of principle involved. It is purely one of convenience.

The amendment was negatived.

Clauses 18, 19 and 20 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 21, after the words 'Magistrate of the first class' where they occur for the first time insert the words 'or of whipping only'."

Clause 21 refers to section 413 of the Criminal Procedure Code. Section 413 of the Criminal Procedure Code provides:

"Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only or of whipping only."

In this new clause 21 we now provide for appeals against convictions by the District Magistrates or Magistrates of the first class where they pass a sentence of imprisonment even for a period of one month or less but we do not provide any appeal against a sentence of whipping. My object in moving this amendment is to provide such appeal and to lay down that where a sentence of whipping be passed by the Sessions Judge or the District Magistrate or the Magistrate of the first class, the accused shall have a right of appeal against that sentence. It is very hard that such a right to appeal should be left unprovided for in the revised Criminal Procedure Code. It was not made in the past and there is no reason why we should not make it now. Though under the Whipping Act there are provisions that the sentence of whipping could be given only under certain conditions, still there is a likelihood, nay it sometimes happens that the sentence of whipping is given in undesirable cases. Moreover, the sentence of whipping may wrongly be passed or may have been rightly passed, but on appeal the whole order may subsequently be upset! In such cases there is no remedy, because the whipping may have already been administered. Therefore, it is necessary that an appeal should be provided in the case of whipping also, in which case the sentence of whipping would necessarily be postponed till the appeal is decided. In the appeal if the appellate court finds that the lower court was wrong in passing a sentence of whipping or in convicting the accused, that man will escape punishment which

would otherwise have been wrongly inflicted on him. I submit that such a provision should be made in this clause providing an appeal against the sentence of whipping also. With these words, Sir, I move my amendment.

Mr. President: Amendment moved:

"In clause 21, after the words 'Magistrate of the first class' where they occur for the first time insert the words 'and the words 'or of whipping only' '."

There is a mistake in drafting. It is necessary to add those three words to the amendment.

Mr. K. B. L. Agnihotri: All right, Sir.

Rao Bahadur T. Rangachariar: (Madras City: Non-Muhammadan Urban): Sir, I heartily support this amendment. So long as the sentence of whipping is to remain on the Statute Book I think it is a case where an appeal ought to be allowed, because you inflict disgrace upon a man. As the Legislature has now provided for appeals in all cases of imprisonment, however short it may be, I think it is but right in a case like this, where serious disgrace is involved, in a sentence of whipping, that we should provide for an appeal. Sir, I heartily support the amendment and I hope the House will approve of this amendment.

The Honourable Sir Malcolm Hailey: As Mr. Agnihotri has recognised, we are of course not now dealing with a case arising out of racial discrimination. This is an amendment tending to effect what he deems to be an improvement in the general criminal law of the country. He has also himself recognised in addressing the House that his amendment in itself would not effect all that he desires. Under section 390 of the Code it is provided that whipping "shall be executed at such place and time as the Court may direct." That is naturally taken by the Courts as authorising as a matter of practice that whipping should take place as soon as possible. If an appeal is to be allowed, then it is obvious that we must also amend section 390 of the Code; otherwise the appeal provision would be entirely inoperative. That is to say, the person sentenced would only be able to appeal after the sentence of whipping had been carried out, because the Code does not make any provision for the necessary detention of the offender during the period pending an appeal.

Rao Bahadur T. Rangachariar: Will the Honourable Member read 391? That will provide for it.

The Honourable Sir Malcolm Hailey: That only provides for the case in which a sentence of whipping is given in addition to one of imprisonment. We are considering the case here of whipping only. Cases where whipping is given in addition to imprisonment are of course provided for, but not sentences of whipping only. Now when the Committee considered the question of whipping, as we noticed yesterday, some of the Members thought that whipping as a punishment should be abolished. They decided however on the whole not to recommend that as an immediate step. They considered that public opinion should be invited as regards the punishment of whipping:

"in particular on the question whether the punishment should not be confined to persons convicted of any of the offences mentioned in section 4 of the Whipping Act, and also in the way of school discipline to juvenile offenders."

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[21ST FEB. 1923.]

[Sir Malcolm Hailey.]

and they went on to say:

".....if.....the punishment of whipping is retained, it should apply to Europeans and Indians alike; that it should be provided for the same offences; and that the same classes of officers should have power to sentence to the punishment Europeans and Indians alike, subject always to the provisions of a right of appeal, even where the sentence is one of whipping only, and to the further provision that the execution of the sentence should be suspended pending the disposal of the appeal."

Now, I recognise the sentiments that have been put forward by Mr. Rangachariar in this respect, but I put it to the House, as I did yesterday, that it is better that we should deal with this question as a whole. It will need consideration in the light of the views of Local Governments, the High Courts and indeed of the public, and I think it should be treated as a whole, particularly as I have pointed out that other consequential amendments to the existing Code will be necessary if we grant a right of appeal.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, may I just confirm the statement of the Honourable the Home Member, and point out that the existing law goes, if I may say so, even further than he mentioned, because it is laid down in the rulings under section 390 of the Code of Criminal Procedure that a postponement of the execution of the sentence of whipping to a future date is illegal. So that not merely the Magistrate may direct a sentence of whipping should take place at once, but it has been ruled that it is illegal for him to postpone the sentence, when there is a sentence of whipping only and no sentence of imprisonment. Thus, if this amendment is carried, the result would be nugatory; the Magistrate would order the sentence of whipping to take place at once, and the appeal would be nominal only. Consequently an amendment would be absolutely necessary in section 390, and there is no such amendment in our agenda to-day.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): The Honourable the Home Member is not quite right when he says that the question as to whether a sentence of whipping should be appealable does not involve any racial distinction. He read an extract from the report of the Joint Committee on Racial Distinctions and pointed out a passage in which we strongly recommended that a sentence of whipping should be made appealable, and further pointed out that the sentence of whipping should be abolished and that public opinion should be invited to that end. Honourable Members will remember that in the case of European convicts there can be no sentence of whipping except by a Presidency Magistrate as now. I submit that it would certainly not remove the racial distinction but it will minimise the racial distinction if a person sentenced to whipping is given the right of appeal.

Then comes the question raised by the Honourable Mr. Percival and also raised by the Honourable the Home Member, what provision is there in the existing Code of Criminal Procedure to postpone the sentence of whipping pending the disposal of appeal. I venture to submit that there is a general provision embodied in section 344 of the Code which enables the Magistrate to adjourn the case from time to time for a sufficient cause shown, and if the accused intimates that he is going to appeal against the finding of the Magistrate inflicting upon him the sentence of whipping, then I submit it would be a good cause for the adjournment of the case for the execution of the sentence. It is perfectly true that the Court may

record a finding and abstain from carrying out the sentence. I am asked how. By inditing the order, staying proceedings till the order of the appellate Court is obtained. My Honourable friend Mr. Percival pointed out the rulings under section 390 which preclude the Court from postponing a sentence of whipping. But he forgets that those are rulings under the existing law which does not allow an appeal against a sentence of whipping, and if we once admit the principle that whipping should be appealable, then I submit those rulings would no longer be good. I submit that this is a question which is integrally connected with the Bill we are considering here and that it will certainly ameliorate the condition of the Indian convict as compared with the European convict if we allow the former at least a right of appeal. The Honourable the Home Member says that the question of whipping must be considered as a whole. That of course raises the question as to whether a sentence of whipping should not be abolished altogether from the Statute Book, and if it is not abolished, whether it should not be limited to certain specific cases mentioned in section 4 of the Whipping Act. My submission is that that is a large question for which we cannot wait. We have now here a Racial Distinctions Bill and my submission is that while we are considering that Bill we should try and equalise the status of the British and Indian convicts as far as we possibly can, and it is in that view that I support this amendment.

Mr. H. Tonkinson (Home Department: Nominated Official): I merely wish to refer very briefly to the rather astonishing reference made by my Honourable and learned friend, Dr. Gour, to the provisions of section 344. The provisions of section 344 permit of the postponement or adjournment of an inquiry or trial. I do not know whether my Honourable friend desired to suggest that if the Court was about to sentence a person to whipping it should write the order and not sign it and therefore in that case the provisions of section 344 will apply. But in that case there would be no appeal. An appeal only lies from a conviction and there would be no conviction if the judgment was not signed. So soon as the judgment is signed section 344 has no application.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammadan Rural): Sir, I have given notice of a similar amendment. The Honourable Sir Malcolm Hailey stated that there is no racial question involved. With all due deference to him I may state it is adding insult to injury. He has not only allowed whipping to Indians, but he has removed it in the case of Europeans when the Joint Committee reported that they should be dealt with equally. Moreover, they have stated with reference to this very portion which was read out by the Honourable Sir Malcolm Hailey, "subject always"—they have not given any exceptions—"to the provisions of a right of appeal" even where the sentence is one of whipping only. We are reminded more than once that we must not go back on the compromise entered into by both sides and to which my Honourable European colleagues are a party. The unanimous report of the Committee is, "subject always . . . there should be a right of appeal." The only excuse suggested is how to provide for drafting and other matters. Is it a difficult matter to provide for drafting that a Magistrate who passes a sentence of whipping should postpone it till the appeal is disposed of? In section 390 we have:

"When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct."

[Mr. B. Venkatapatiraju.]

Section 391 deals with the execution of a sentence of whipping in addition to imprisonment. Perhaps I may remind the House that when we were considering the Criminal Procedure Bill we have provided section 435 as amended by the Government wherein they say that whenever a petition is put in in the Sessions Court the execution of every sentence might be directed to be stopped till it is disposed of by that authority. I will refer the House to section 435 which we passed only a few days back. Therefore, I urge that if you have to give any weight to the joint recommendations and if the Government wish to stick to the compromise entered into by the Europeans and Indians, they should be more magnanimous as to allow at least an appeal even though they may not remove whipping altogether till the matter is inquired into and what is the danger in allowing a person to prefer an appeal before he receives this degrading punishment. The matter will be judged on its merits by the higher authorities. If the Government has not lost all its confidence in the higher authorities there is absolutely no reason why the whipping should not be delayed for a few days and why the amendment should not be accepted by the Government. Therefore every Indian who feels strongly in this matter should unanimously vote in favour of the amendment even though the Government oppose it.

The Honourable Sir Malcolm Hailey: I wish to say a few words by way of personal explanation. I did not wish to interrupt Mr. Raju, nor Dr. Gour, when they were speaking, but it would almost seem from what Mr. Raju and Dr. Gour have said that they thought that I had given the House an incomplete or distorted view of what the Committee had recommended on this subject. Dr. Gour said that their recommendation was absolute. Mr. Raju said that I had departed from the recommendations of the Committee. Now, it is a charge to which I should be unwilling to plead guilty, that I have attempted to mislead the House in any way as to the purport of its recommendations; and it is therefore purely on a personal matter I rise to remove that impression. The clear and explicit words of the report are these. That citation will cover perfectly both what Dr. Gour and Mr. Raju have said:

"The majority of the Committee consider that if after the proposed inquiry the punishment of whipping is retained it should apply to Europeans and Indians alike, that it should be provided for the same offences, that the same classes of officers should have power to sentence to the punishment Europeans and Indians alike, subject always to the provisions of a right of appeal even where the sentence is one of whipping only, and to the further provision that the execution of the sentence should be suspended pending the disposal of the appeal."

I am sorry to have to read this extract a second time to the House; but it will see that it is a condition of the recommendations of the committee that the public should first be consulted. If after that consultation it is decided that the punishment of whipping should be retained, then their recommendations in regard to appeal and the like would come into force. We are proposing to make that inquiry. The matter will again come before the Legislature and again I say let us deal with the question as a whole and not piecemeal.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I rise to say a few words in connection with this subject. I think there is nothing lost in giving the right of appeal from a sentence of whipping and the difficulties

pointed out by the Honourable the Home Member are by no means insuperable. It seems to me that so far as the second line of defence is concerned the Magistrates should have power to fix the place and time. I take it, it appears from the rulings quoted by the Honourable Mr. Percival, that there is no difficulty in postponing the execution of a sentence of whipping until the appeal is heard, and it must be remembered that even without an appeal by an accused person from a sentence of whipping the Magistrate has of necessity to postpone the execution of the sentence until the appeal is disposed of. Therefore if the principle is accepted by this House, that is, granting the right of appeal, I do not think as pointed out by Dr. Gour, the rulings quoted by Mr. Percival will affect the case at all but if there be any doubt in regard to the matter, whether the Magistrate can postpone the execution of the sentence or not, I would, with the permission of the House, add to the amendment proposed by Mr. Agnihotri the words "In the meantime the execution of the sentence should be postponed." If the House does not object and if the Chair permits, I would add those words.

Colonel Sir Henry Stanyon (United Provinces: European): I venture to offer a few words on the point before the House as far as possible from the point of view of the convict. My remarks will not be very valuable because they depend rather on induction than upon any personal experience but I am guided by such experience as I had at the Bar and on the Bench of the manner in which our magistracy exercise their discretion to award sentences of whipping only and my experience is very much in favour of the magistracy for the good sense with which that discretion has been exercised. When therefore I put forward a word on behalf of the convict, I refer to that particular class of convict to which such sentences are generally awarded. If I have the misfortune to be caught in stealing a pair of shoes or some other valueless article and I belong to a class who have not any very high traditions or feelings of caste and I am put before a Magistrate and sentenced to ten lashes, speaking from the point of view of the convict, I would much sooner have my ten lashes and go home and be done with it than sit in custody for perhaps a month or six weeks or even longer while the Sessions Judge is considering whether or not those ten lashes are to be inflicted upon me. It will quadruple, I say it without hesitation, the punishment from anticipation of what the result of the appeal may be and the detention pending that appeal will quadruple the severity of the punishment which after a brief moment of pain and shame is forgotten and therefore I doubt very much whether we shall be really doing good to the people on whose behalf this amendment is put forward if we support it and carry it. I entirely understand and appreciate the desire of Members of this House to appeal against a sentence which nothing can undo once it is executed but that is the way with most sentences. Fine is the only sentence which you can entirely undo by reversal of the conviction on appeal. It is one of the disadvantages and disabilities of our human institutions. But I think, choosing between the two and having regard to the way in which the discretion of Magistrates is exercised in inflicting sentences of whipping only, the present law is really better for the convict than any right of appeal would be.

Mr. President: Amendment moved:

"In clause 21, after the words 'Magistrate of the first class' where they occur for the first time insert the words 'and the words 'or of whipping only' '." The question is that that amendment be made.

The Assembly divided:

AYES—48.

Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Chulam Sarwar Khan, Chaudhuri.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Mudaliar, Mr. S.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rajan Baksh Shah, Mukhdum S.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu L. P.
Subrahmanayam, Mr. C. S.
Tulshan, Mr. Sheopershad.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Yamin Khan, Mr. M.

NOES—34.

Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Fraser, Sir Gordon.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Innes, the Honourable Mr. C. A.

Jeejeebhoy, Sir Jamsetjee.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Mukherjee, Mr. T. P.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was adopted.

Clause 21, as amended, was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 22, after the words 'three months only or' insert the words 'and or of whipping only'."

Sir, the House has just decided to provide an appeal from the sentence of whipping in cases of ordinary trials. Now this clause refers to summary trials and here also I beg the indulgence of the House to accept the amendment and allow me to provide for an appeal from a sentence of whipping in summary trials as well. I need say nothing further, as the House has already given an indication of its attitude in that respect.

Mr. H. Tonkinson: Sir, it may perhaps appear surprising that after the last vote of this House, one should be speaking in opposition to this amendment, but, Sir, I think it is more surprising that that vote was given, for it is not only one amendment but many amendments of the Code

which will be required if an appeal is to be permissible from sentences of whipping only. My Honourable friend, Mr. Hussanally, suggested, 'why not let the man out on bail.' Under what provision of the Code of Criminal Procedure can a man who has been convicted and sentenced to a sentence of whipping be let out on bail? Again, who is going to give bail in such a case?

Dr. H. S. Gour: I rise to a point of order. Is the Honourable Mr. Tonkinson in order in addressing this House upon an amendment which has already been carried?

Mr. President: The Honourable Member will have observed that the reason why Mr. Agnihotri made no speech was because he said that the arguments were the same as on the previous amendment. Mr. Tonkinson is in order.

Mr. H. Tonkinson: Sir, the recommendation of the Committee, as has been pointed out by the Honourable Leader of this House, was subject to the proposed full inquiry into the question of whipping. Now, what, if I may venture to prophesy, is the probable result of that inquiry? It is, Sir, that there will be no cases in which sentences of whipping only will be inflicted. The probable result will, I think, be that the cases in which sentences of whipping may be imposed will be cases that come under section 4 of the Whipping Act, or cases of juvenile offenders, and so far as section 4 of the Whipping Act is concerned, those are cases in which usually whipping is inflicted in addition to sentences of imprisonment, and for those cases we have of course the present provision of section 391 of the Code. I submit that it is impossible reasonably to give effect to the amendment proposed by the Honourable Member without making many other amendments in the Code of Criminal Procedure.

Mr. W. M. Hussanally: I am surprised, Sir, at the statement made by the Honourable Mr. Tonkinson that a man who has been sentenced to whipping cannot be bailed out. In almost every case when an appeal is lodged in an appellate court an application for bail is made, and very often the appellate court lets out the man on bail pending the decision of his appeal. If that be so, I see no difficulty in an application being lodged for bail in the case of a man sentenced to whipping along with his appeal. And if that is done the appellate court has the power to let him out on bail. Further, Sir, I believe that after the last vote the House will only be stultifying itself if it does not vote for this amendment as well.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I am surprised at the attitude taken up by the Government on this subject. There are only two sections which we are concerned with at present. As regards one of the sections we have provided that in the case of whipping there shall be an appeal. What Mr. Tonkinson now wants us to do is to say that in the other case of whipping there should be no appeal. Is it possible for the House to countenance such an argument? He says we will have to make other amendments in the Code. That we will have to do, and fortunately for us the Criminal Procedure Code amendment Bill has not yet been passed into law and the Government will have time to consider the amendments consequential on this change and to make the Code consistent with what we have done to-day. There are only two sections

[Mr. T. V. Seshagiri Ayyar.]

in this Bill on the subject; as regards one of those sections, we have decided that there shall be an appeal against whipping; and are we going to commit this House to the position that as regards the other section there should not be an appeal? I am astonished at the way the Government has been dealing with this question of whipping. They do not seem to have realized the deep and abiding nature of Indian feeling in regard to this matter. I hope that the House as a whole will accept this amendment.

Dr. H. S. Gour: I desire to say a very few words in reply to Mr. Tonkinson. Honourable Members will remember that when we were discussing the Code of Criminal Procedure several amendments dealing with questions relating to racial distinctions were withdrawn on the ground that they would more appropriately come up under the Racial Distinctions Bill. I therefore submit that when an amendment like the one which has just been passed has been passed by the vote of this House, it is up to the Government to make consequential changes in the Code of Criminal Procedure to give effect to that amendment. I cannot understand the attitude of my friend, the Honourable Mr. Tonkinson, that this amendment should not be passed because, forsooth, some other amendment has been passed and certain consequential changes in the Code of Criminal Procedure would be necessary. Sir, this passage in our report has been read by the Honourable the Home Member and has been referred to by the Honourable Mr. Tonkinson, and if either of those Honourable gentlemen ever suggested that the Joint Committee on Racial Distinctions left the matter in doubt, let them quell that doubt by referring to the last few lines of their recommendation in which they pointed out that whatever may be the public opinion, one fact is clear and upon that they categorically recorded their recommendation in the following words:

"Subject always to the provision of a right of appeal, even when the sentence is one of whipping only, and with the further provision that the execution of the sentence should be suspended pending the disposal of the appeal."

I ask the Honourable the Home Member whether he is prepared to give effect to this part of the recommendation of the Racial Distinctions Committee. If he is then I submit he has to accept the amendment which is before this House.

The Honourable Sir Malcolm Hailey: It is a pity that we should have to return again to the controversy as to the exact meaning of the words of the recommendation of the Racial Distinctions Committee. It is not, I think, of any avail to Dr. Gour to read the last part of the sentence and omit the first. I read the whole to the House. I am quite content that the House should judge on it as a whole; whether in short I am right in maintaining that the whole of the recommendation in that sentence is subject to the condition which finds a place in the beginning of the sentence, namely, that an inquiry should be made and if after the proposed inquiry whipping should be retained then the consequences referred to should follow. I was of the opinion that we were giving effect to the intentions of the Committee when we stated that we would make the proposed inquiry and that the matter would again be laid before the Legislature after that inquiry had taken place. I am afraid I cannot admit that I have in any way offended against the recommendations of the Committee.

The House however has voted on the previous amendment, and I recognize that it would be of little avail for us to take a division on this second amendment. If Mr. Tonkinson pointed out certain defects in the law, it was only to supply a lacuna in the previous discussion. It was necessary to make it clear to the House that the amendment which they had passed would not in itself effect what was desired. I have no desire to waste the time of the House in taking a division on clauses which I might describe as of a consequential nature. I quite realize that if in the other class of sentences you are to have an appeal, then, in spite of the obvious difficulty of arguing an appeal from a summary decision, you must in logic have an appeal there also. I confess I would have preferred infinitely that the House should have exercised a mature judgment on this question, that it should have had, before it came to a decision, that full inquiry which the Committee desiderated. I regret that it has sought to settle this question piecemeal, for I do not think myself that that is the wisest form of legislation. The House would have been well advised if it had given itself the opportunity of taking into consideration what the High Courts, the Local Governments, and the public had to say on the subject.

However, it has not taken this course, and since it has taken a vote on the previous amendment I do not propose to take a division on the present clause.

Mr. P. E. Percival: I do not wish to go into the merits of the case, Sir, but I desire to answer Dr. Gour's remarks. If he will refer to paragraph 34 of the Report, he will find that the unanimous opinion of the Committee was that the existing arrangement should continue pending the result of the proposed inquiry; so that here again the Government have acted exactly in accordance with the opinion of the Committee.

The amendment was adopted.

Clause 22, as amended, was added to the Bill.

Clause 23 was added to the Bill.

Sir Campbell Rhodes (Bengal: European): Sir, the amendment I desire to move is a very small one and I trust that both the Government and the House will regard it as non-controversial. If Honourable Members will turn to page 9 of the Bill, section 30, Chapter XLIVA, they will see laid down in the first paragraph the words "and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true." I wish to insert, by my amendment, in clause 24 in the proposed section 44B (1) after the words "thinks necessary" the words "and after allowing the accused person reasonable time within which to adduce evidence in support of his claim."

In other words, I wish to bring the wording of these two sections into the same form. I think we all desire that there should be as few appeals as possible from the Magistrate and that therefore we should give instructions to the Magistrate to give an accused person time to prove his claim before he comes to a decision as to whether the case is to come on before him or before a higher court. I therefore commend my amendment for the approval of the House.

The amendment was adopted.

Mr. B. Venkatapatiraju: I do not know, Sir, whether I should omit the words 'political or.' If those words are omitted I do not think there is any necessity for moving this amendment.* May I with your permission explain, Sir, why I have retained these words?

Mr. President: I have already ruled the words "political or" out of order. If the amendment hangs on that peg, then it falls.

Mr. K. B. L. Agnihotri: Sir, I beg to move the following amendment:

"In clause 24, omit the proposed section 445."

Now, the proposed section 445 in this clause provides that in the case of a summons trial where the accused happens to be a European British subject or where there are racial considerations and the accused happens to be an Indian British subject, the case should be tried by a bench of two Magistrates one of whom shall be a European. I wish to put before the House the definition of summons cases and warrant cases. Under the Criminal Procedure Code summons cases have been defined to be cases relating to offences punishable with a sentence of six months and less, while cases relating to offences punishable with any other sentence, say with death or transportation for life or for a period exceeding six months are known as warrant cases. I leave out sentences of fine or whipping; they are not included in the definition of these two classes of cases. Here we provide that such offences where the maximum punishment is only six months or less than six months and such cases involving racial considerations should be tried by a bench of two Magistrates of the first class of whom one shall be a European. Sir, apart from the compromise and apart from the Report of the Committee submitted to us, I have to point out that the offences specified in summons cases are not of a serious nature; they are very light and petty offences and it looks rather a travesty of justice that such cases should be entrusted to a bench of whom one shall be a European Magistrate. What will it come to in practice? In the provincial services which form the main part of the magistracy in the provinces, hardly 1 per cent. or 2 per cent. will be European first class Magistrates. The result would be that even such light cases will have to be transferred under this section 445 for trial to the courts of sessions. Therefore, Sir, I propose that it is desirable that such petty cases should not be sent to the courts of session for trial and I do not therefore find the necessity for inclusion of the proposed section 445 in its present form in this amendment of the Code. With these words I move that proposed section 445 be deleted.

The Honourable Sir Malcolm Hailey: If in the last case there was some doubt in the minds of certain Honourable Members whether we were or were not giving full effect to the recommendations of the Committee, there can be no doubt at all events on this point. I think I am correct in saying that perhaps no question was more fully debated in the Committee, and perhaps no item was a more essential part of the compromise than this. Throughout our discussion Mr. Agnihotri's attitude has of course been that the compromise counts nothing; but the House has hitherto held that, having arrived at a settlement by agreement, it is proper to stand

* "In clause 24 in proposed section 443 (1) omit clauses (a) and (b) and in their place substitute the following:

'that there are political or racial considerations and it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter'."

by that agreement. That is my sole argument against the amendment; but I think it is decisive.

Rao Bahadur T. Rangachariar: Sir, when I yielded to this recommendation, I may mention what passed in my mind when I supported it. We have often heard of cases not of European accused but of Indian accused who are taken to European Magistrates, especially in the planting area. The planter complains against an Indian labourer and near at hand is a European Magistrate whom he meets every day in the Club and oftentimes I have heard that European Magistrates have not rendered justice to the Indian accused. It may be summons cases, but summons cases involving imprisonment up to six months. It may be the man who is accused is the agent of a neighbouring zamindar. We have heard of disputes between planters and neighbouring zamindars—land disputes, boundary disputes, criminal trespass and such other complaints. In such cases I feel that there should be a remedy for the Indian accused and that he should have an opportunity to take his case to a tribunal which may not be so partial. Such cases are not of infrequent occurrence and therefore I think my Honourable friend, Mr. Agnihotri, has looked at it only from one point of view, from the point of view of European accused, but I look at it from the point of view of Indian accused in such cases and that is why I supported this recommendation. It gave us a lot of trouble. In fact, at one stage—the Honourable Member can look into my draft minute—I was quite against referring summons cases at all. I thought we could trust first-class Magistrates. But it was this fact which weighed with me that there was a lot of complaint, in planting areas especially, that Indian accused could not get justice at the hands of even first class Magistrates. Therefore, I support this recommendation but, let us hope these things will cease to be in existence some years hence.

The motion was negatived.

Mr. K. B. L. Agnihotri: I move, Sir:

"In clause 24, in the proposed section 445 (1) omit the words 'of whom one shall be an European and the other an Indian.'"

I pointed out, a minute ago, that in the mofussil it is not practicable or probable that we shall find another European first class Magistrate excepting the district Magistrate. I think that the purpose would be equally served if we were to submit summons cases for trial to a Bench consisting of two first class Magistrates, irrespective of the consideration that one of them may be European or Indian. Therefore, Sir, I move to omit the words "of whom one shall be a European and the other an Indian."

The motion was negatived.

Dr. H. S. Gour: Sir, whatever may be the differences of opinion as regards the construction of other parts of the Racial Distinctions Committee's Report, there cannot be two opinions upon the matter which is the subject of my amendment:

"In clause 24, in the proposed section 445 in line 6 after the words 'summons case' insert the words 'punishable with imprisonment'."

The Committee in paragraph 28 pointed out that in summons cases where the offence is punishable with imprisonment the accused and the complainant shall each have the right to apply to the trying Magistrate that the accused be sent to a Bench of two Magistrates of the first class, and so on.

[Dr. H. S. Gour.]

In the Summary, in paragraph 34, sub-clause 6, printed on page 11 of our Report, Honourable Members will find that it is laid down that:

"in a summons case, where racial considerations are involved and where a sentence of imprisonment can be passed, the accused and the complainant will each be entitled to claim that the case shall be tried by a Bench."

It is perfectly clear, therefore, that the recommendation of the Racial Distinctions Committee was that in summons cases punishable with imprisonment and in no other case, where racial considerations were involved, the accused should be tried by a Bench. It was never the intention of the Racial Distinctions Committee that in all summons cases whether punishable with imprisonment or not, this special procedure should be made applicable. (*Rao Bahadur T. Rangachariar*: "Doesn't 443 cover it?") Now, section 443 deals with a warrant case where in the course of trial outside a presidency town of an offence punishable with imprisonment, if the accused at any time before he is committed for trial under section 213, or is asked to show cause under section 242, or enters on his defence under section 256, as the case may be, claims that the accused may be tried under the provisions of this Chapter, the Magistrate shall do certain things. I am not dealing with that section. I am dealing with section 445 where a Magistrate or Sessions Judge decides under section 443 that the case ought to be tried under the provision of this Chapter and the case is a summons case. (*Rao Bahadur T. Rangachariar*: "That is, under section 443.") The Magistrate trying the same shall direct that the case be referred to a Bench. Section 443 provides for a case punishable with imprisonment. Section 445 provides for a case which is a summons case not necessarily punishable with imprisonment. If the intention of section 445 and section 443 is the same and section 445 was intended to deal only with summons cases punishable with imprisonment, I am perfectly prepared to have an assurance from the Government Benches that section 445 was never intended to deal with summons cases not punishable with imprisonment. If that is the intention, I shall be quite glad to have an assurance from the Treasury Benches. But the section, as it reads, leaves me in doubt, and therefore, Sir, I have tabled this amendment.

Mr. Darcy Lindsay (Bengal: European): The question may now be put.

The Honourable Sir Malcolm Hailey: My friend opposite has, I think, anticipated my reply,—a very obvious one,—that the beginning of section 443 (1) regulates the whole procedure of the Chapter. It specifically applies to summons cases, among others; it makes a definite reference to section 242. The words used at the beginning of the section are "where in the course of a trial outside a presidency town of any offence punishable with imprisonment". We hold that those words govern the whole course of the Chapter, and there can be no doubt whatever that section 445 only refers to summons cases which are punishable with imprisonment.

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): I move, Sir:

"In the proposed new section 449, omit the words 'under the provisions of this Chapter or' from the proposed sub-clause (a) and sub-section (3) and omit the next following proposed sub-clauses (b) and (c)."

The object of my amendment, Sir, is to give effect to the recommendations of the Committee as they were understood. If the Honourable Members will look at section 449, they will see that it lays down that:

"(1) Where:

(a) a case is tried by jury in a High Court or Court of Sessions under the provisions of this Chapter, or

(b) a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, etc., etc."

Under those circumstances only a right of appeal has been provided for. This means that if the accused claims that the special provision of this Chapter should be made applicable to his case and that his case should be treated as one in which the racial questions do arise, then and then only shall there be a right of appeal against the judgment of the jury on a matter of fact. The report of the Committee, Sir, on page 6 says:

"We recommend that in all jury trials in which the jury are not unanimous or, in which the jury are unanimous but the Judge does not agree with the verdict of the jury both in the High Court and in Sessions Courts, an appeal should lie on facts as well as on law, both in the case of conviction and of acquittal (the appeal in the case of acquittal being by the Local Government) in respect both of Europeans and Indians. This right should be specially laid down in the Code and should be as free and unrestricted as in the case of any other appeal. The appeal should be heard by three judges in the case of an appeal from a decision in a High Court and by two Judges in the case of an appeal from a decision in a Sessions Court. Sections 418 and 423 too should be amended accordingly."

So, Honourable Members will find that the present Bill, as it stands, does not amend sections 418 and 423. It simply provides for a right of appeal to a limited extent, when a claim has been made under this Chapter. Therefore, it leaves out certain sorts of cases where the trial has been by a mixed jury, when no claim has been preferred under this Chapter. We have passed clause 13 of the Bill and have introduced a new clause 275 providing for a mixed jury in every case where there is a trial by jury. Further, there shall be no appeal against the judgments of the mixed jury in cases where no claim has been made under this Chapter XXXIII, while the real essence of the report of the Committee was that there should be an appeal against every order of a mixed jury, on points of law as well as on points of fact. This was a very important and integral part of the report and of the compromise. I cannot understand why we should not now give full effect to those terms of the compromise. The Committee agreed to the system of mixed jury only on the condition that in all cases and on all points of law as well as of fact, whether there is an order of acquittal or of conviction, there shall be a free right of appeal. That right has not been given and my object in requesting the House to omit the words "under the provisions of this Chapter" is that a free right of appeal may be given to either party whenever there is a trial by a mixed jury. With these remarks, Sir, I recommend this amendment of mine to the House.

The Honourable Sir Malcolm Hailey: Sir, the effect of Bhai Man Singh's amendment of course will be not only that an appeal on fact as well as on law will be given in cases where there is a mixed jury, but in all cases; that is perfectly clear. The Committee's recommendations have been stated by him. When these recommendations were put before Local Governments and High Courts, they represented to us their apprehensions that great additional cost would be involved in this measure. Some of them at all events did not object to the principle. We ourselves were prepared

[Sir Malcolm Hailey.]

to carry out the principle had it been feasible to do so. But the nature of the increase in the judicial establishments which would have followed from giving full effect to the Committee's recommendations will be shown by some of the opinions which we have received. I would refer, for instance, to the minutes reported by Mr. Justice Marten and Mr. Justice Mulla. They said:

"It is the three or four original side judges who have to take Sessions. If therefore there was an appeal to three judges from the trial judge, it would practically involve all the Original Side judges being taken away four times a year from their civil work. And this with nearly 2,600 suits already in arrear is impracticable, unless the staff of judges is increased."

I may remark that that opinion referred of course only to appeals from the High Court itself. The Bengal High Court opinion deals with the question of appeals generally.

The High Court says:

"It will probably be necessary to maintain permanently at least two benches of two Judges—instead of one such bench as at present—for the purpose of dealing with criminal appellate and revisional work from the mufassal. In times of pressure a third bench of two Judges would be necessary, for criminal work cannot wait. The increased work will, therefore, necessitate a large number of Judges to deal with it with a corresponding increase of the clerical staff of the Court. Not only so but it will also be necessary to find additional Courts."

Then the Calcutta High Court went on to point out that if the new rights of appeal were limited to racial cases, the increase of work would of course be very much less. That is precisely the reason why we accepted the suggestion of the Bengal High Court and propose to limit the scope of the Bill to racial cases, namely, cases coming under our new Chapter. On a calculation we made at headquarters we considered that the general right of appeal recommended by the Committee would involve an expenditure of possibly some six lakhs extra. We were not sure whether it would not exceed that sum, but we placed it at what we believed to be the minimum. As I have said, we have not questioned the principle. But it does not seem reasonable at present to place this extra expense on the country in spite of the protests of Local Governments against having to meet the cost. It is of course necessary to maintain the appeal in regard to fact as well as law in these racial consideration cases; because it is by that method that we can make full use of the Government's power of appeal in doubtful cases.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Rao Bahadur T. Rangachariar: The amendment* which I am moving is quite in the reverse direction to my Honourable friend, Bhai Man Singh's motion. I will just briefly state what the law is as to appeals now and what the proposal now made by Government involves. I took a strong line in this direction. If Honourable Members will refer to page 19 of my Minute in the Racial Distinctions Committee's Report they will see what line I took. The Committee's recommendation recommending appeals in all jury trials, I am sorry to say, did not meet with my approval.

* "In clause 24, in the proposed section 449 (1) between the words 'lie' and 'to' in the last but one line insert the words 'against an order of acquittal'."

As the law now stands, in jury cases there will be a trial in the Sessions Court, you can appeal to the High Court only on a matter of law, whether it be by Government against an acquittal or by the accused against a verdict of guilty. Also in the High Court where persons are tried in the Sessions trials there is no appeal at all against the verdict of the jury. In both cases the Sessions Judge, if he disagrees with the verdict of the jury, can refer the case for the orders of the High Court, and in the High Court, if the trying Judge certifies or if the Advocate General certifies, the case can be taken before a full Bench. There is no appeal really, but there is a re-trial or re-hearing before a full Bench of the High Court. That is in consonance with the prevailing idea as to trial by jury. The man is tried by his peers and he is found guilty or not guilty and there is an end of it. That is the law as always understood here relating to jury verdicts. But, Sir, what is the proposal now? The proposal now is we are going to maintain an existing evil, the existing evil having given an accused person the privilege of choosing his own Judges. That is what we are perpetuating in maintaining the mixed jury system. (*A Voice:* "Not perpetuating.") Yes, we are perpetuating the existing system which is an evil in itself as all of us recognise, which we hope will disappear in course of time. But out of respect for the strongly expressed views of our European fellow subjects in this country we propose to retain it, namely, giving a privilege to the accused person to choose his own Judges in order to try him and not merely take the risk of the ballot. We all know what a jury trial means. The jurors are summoned from a list and each name is called, you are given a particular right of challenge up to a certain number, uncontrolled challenge and subject to the control of the Judge, a further right of challenge. Then you take the chances of the jury trial. You do not know who they are; 9 or 12 people as the case may be—your peers—sit in judgment, hear the evidence and give the verdict. That of course is not the case in the case of a mixed jury system. The accused person whether he be an Indian or an European now says "I want five out of 9 to be my countrymen." That is what he says. He does not take the chance of the trial by a court provided for him by Government, he does not use the usual ordinary machinery, but he wants to improvise a new machinery of his choice, namely, this mixed jury system. Therefore, one should expect where a person claims to be so tried that he has more confidence in that tribunal than in the ordinary tribunals, or ordinary ballot. That is why I take it he claims a mixed jury, he has more confidence in that. I think it is but right that as in the case of jury verdicts there should be no appeal, also in this case, that is the ordinary rule should apply. We have also the second ground. Here is a Court or tribunal of his own choice, and therefore when he has taken that choice, when he has taken the choice of a trial by his own tribunal, why should we allow him a right of appeal against a verdict of conviction? I can understand your imposing a penalty or condition when you give him a privilege. This is a privilege outside the ordinary criminal procedure which an accused person gets under the law. By all means attach a condition to that privilege, namely, you prefer a particular tribunal in order to try you because you have more confidence in that tribunal. Therefore it follows that you repose more confidence in the verdict, you are going to be satisfied with the verdict given by that tribunal. But the cry has been in the country, namely, where an accused person is so tried by his own countrymen, there had been miscarriages of justice, miscarriages of justice not in the shape of unjust convictions, but in the shape of unjust acquittals. I have yet to see a case where the Press or any person has complained that because a person was

[Rao Bahadur T. Rangachariar.]

tried by a mixed jury of his own countrymen there has been an unjust conviction. The cry has been the other way, namely, unjust acquittals on account of various factors, because when once it is a racial case people take sides whether it be Indian or European, it gets talked about in clubs. Newspapers give flaring headlines such as "Soldier in trouble." In this country it is the newspapers who are to blame in magnifying these cases. It is they who are responsible and create all this racial bitterness and racial animosity in this country. But for them these cases would not acquire that notoriety which they often acquire. Newspapers give headlines "Soldier in trouble," and in that way the sympathy of the people is raised, the case is talked about in clubs, ladies begin to talk about it and gentlemen sympathise with ladies, and in that way a great deal of sympathy is created in favour of the accused, and that is why people complain there are unjust acquittals in case of trials by this mixed jury system. The whole gravamen of the charge against the mixed jury system is this complaint against perverse verdicts of acquittal by jury and not verdicts of conviction. Therefore, Sir, when you are going to maintain the system, I say, if you are going to continue this privilege, impose a condition upon it, "Beware. If you are acquitted the Government will appeal against the acquittal." If you are going to abide by the ordinary privilege, leave it to the chance of the ballot, by all means have a trial by jury, take the chance of the ballot, then if you happen to be acquitted there will be no appeal against acquittal. But if you insist upon this majority, you take the risk of an appeal against acquittal, and by such means you will be discouraging such claims. Sir, we have been told to-day and also the other day that this system is going to cease to exist. If it is going to cease to exist, this is surely a method to discourage such claims being put forward by the Indian or by the European. I am sure in the case of trials in the High Court Sessions, especially in cases like the Tilak's case, the Indian accused are sure to claim this privilege of having a majority of their own countrymen. In fact, hitherto the complaint has been that in trials before the High Court, in sedition cases oftentimes the majority are composed, because of the special jury system—and there is a provision by which only a certain number are included in the special jury list—often-times the majority in a special jury is composed of Europeans and on account of political considerations the Indian accused, it is said, does not get a fair trial before such juries. Therefore hereafter we are increasing the chances of such claims being put forward. Hitherto the European was claiming it. Now by the proposed measure we are now going to pass, we are now going to encourage Indians to make similar claims in the High Court which hitherto they were not doing and they were not entitled to do. Therefore we are increasing the field of evil and when we are increasing the field of evil, let us impose some restriction upon it, let us impose a condition upon the privilege which a man claims. Now, what does he get? He not only gets his own court in which he says he has confidence but he gets a further right of appeal. Now take the case of the verdict of a jury in a case in the High Court tried by an eminent Judge. Unless the Judge certifies there is no further reference at all. Now what do you do. By this section you give him a right of appeal and the High Court is going to be saddled with extra work because in every conviction by a jury in a case like that he has got a right of appeal. Therefore you encourage him in making the claim. Instead of discouraging him, you are encouraging him to make a claim. Not only he gets his own jury but

he gets a further right of appeal. I say that is not a right thing to do. The right thing to do will be to discourage persons putting forward such claims and my amendment only provides a right of appeal against acquittals and that only by Government and not by private parties. Government alone will have the right of appeal in jury verdicts and the complaint hitherto has been against unjust and perverse acquittals by juries. There is no use of extending this right of appeal further unless you want to maintain this evil for all time to come. I will jump at it if I were an accused person and choose my own Judges and have a further right of appeal, whereas if I did not take the benefit I would have no right of appeal. If I take the ordinary trial I have no right to claim this privilege of a right of appeal against a conviction, but if I claim a mixed jury I get a right of appeal as well. Therefore you are encouraging every man to make this claim. Therefore let us hesitate. Let us not run away with the idea that I provide an appeal against acquittal but not against conviction. The obvious answer to that is "They are Judges of your own choice. You had confidence in them. Why should you have a right of appeal against the sentence of judges of your own choice." Therefore, I ask you in all seriousness to consider this matter. It is a very serious matter in my view. If these racial distinctions are to die, this is the surest method of getting it to die. Otherwise you are encouraging it. You will make it continue for all time. You will perpetuate it and therefore I move the amendment which stands in my name.

Colonel Sir Henry Stanyon: Sir, the whole argument of my friend, the Honourable Mr. Rangachariar, would be a very strong argument if it was not based upon one very material fallacy. The fallacy upon which it is based is that an accused person in a case under this chapter gets his own court. I say it deliberately, Sir, he does not. He gets a court, the constitution of which is the result of a compromise. I do not care which side you take, the European or the Indian, the result is the same. I take the case of the European because perhaps I am better qualified to speak on that point of view. If the European got his own court, he would get a court in which he would be tried by his peers but he does not ask for 5 out of 9. He would ask for 9 out of 9 Europeans and he would insist upon a unanimous verdict before he would feel that he had been found guilty justly by his peers. That is the European claim but by way of compromise under this Bill the European will get in a case under this chapter 5 out of 9 members of the jury who are of his own race. The race of the Judge who has to direct the jury and whose summing up must influence the verdict and who has a right to disagree with its verdict may be his own, may not be his own. He takes the chance of that again as the result of this compromise. Now, I myself am very much in sympathy with the feeling that the right of appeal should be done away with as far as possible in cases tried by jury and I would have been content to accept a law that in every case under this chapter the verdict of the majority shall be final, but that is not a point upon which I consider myself to be at liberty to push forward my own opinion. This chapter is the result of a compromise which we have all decided to accept and in view of that if there is to be any appeal at all, and Mr. Rangachariar would allow the right of appeal in acquittals, then I say the appeal should be equal for both parties and the recommendations of the Committee are absolutely sound and just upon that point. It is only where the jury are divided in opinion or where a Judge differs from the jury that this right of appeal is allowed and a moment's consideration of the matter will, I think, convince the House

[Colonel Sir Henry Stanyon.]

that as matters stand at present this appeal is very necessary. The European is tried for a serious offence, 5 European members of the jury hold him not guilty and four Indian members of the jury of equal intelligence and standing hold him to be guilty. Surely Indian public opinion would expect that some strong dominating opinion should come to a final decision upon a difference of that kind where the majority in favour of acquittal is one only. I think that this clause as we have it now proposed in this Bill is in the present condition of things absolutely necessary and I would suggest to the House which by an overwhelming majority has insisted upon a right of appeal in cases of whipping only not to interfere with the right of appeal in the serious cases with which juries will have to deal.

Mr. T. V. Seshagiri Ayyar: Sir, I have been in the habit of yielding to my learned friend on my right (Mr. Rangachariar) generally on questions of criminal law, because he has had more experience as a criminal lawyer, though I have had longer experience in the bar, but on this particular occasion I cannot in the least support the contention put forward by him. After all the Legislature that passes a law must have regard to the first principles of criminal jurisprudence and must not offend against received notions of criminal law. The right of appeal is everywhere given against a conviction and rightly too. Whoever the accused may be, whether he is an European or Indian, he is entitled to seek the assistance of an appellate court to establish his innocence. That is the first principle of criminal law, and it is that principle of law that we are insisting on all through. To give a right of appeal against an acquittal and to deny a right of appeal against a conviction would be a travesty of criminal law which I, who have had some experience of courts, cannot in the least countenance; and I ask the House not to be led away by passionate eloquence in a matter like this; it is, after all, a question of our law being sound and of our bringing our law into conformity with what is regarded as justice, and in conformity with legal notions everywhere. It may be, Sir, that by providing an appeal against an acquittal certain miscarriages of justice may be remedied. But if a man who has been convicted is not given a right of appeal, and even if one man is improperly convicted, and he has lost a chance of setting the matter right in appeal, I think Government will be charged by the most serious imputation of not giving the man his chance of establishing his innocence: and therefore, Sir, when we give a right of appeal against an acquittal, it follows as a matter of course, as a matter of consequence, that we must give a right of appeal against a conviction as well; and I do not think that anything that has been said in the course of the argument of my Honourable friend would induce the House to turn down a well recognized principle of law and to say that there should be no right of appeal against a conviction.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, after the very able and eloquent speech of my Honourable friend, Mr. Seshagiri Ayyar, hardly anything remains for me to say, but although I am a layman, I have just risen to answer some of the arguments that have been advanced in such eloquent terms by my Honourable friend, Mr. Rangachariar. Mr. Rangachariar in the course of his remarks suggested, 'what right have you to say that a man ought to appeal when he is tried by the men whom he himself has chosen?' I want to give one instance at any rate of which I know where a person was concerned, of

course in a different country, by people whom technically he or she had the right to choose, and yet the verdict was such as to surprise the Judge himself,—and I do not know whether there was any appeal against it, but it was a case of glaring injustice resulting probably from the ignorance of the jury; I refer to the case of Mrs. Besant in Great Britain which occurred only in 1921 when in a Scottish Court her case was before a jury, I mean the case was tried by a jury, and the Judge summed up, and you had persons like the late Viceroy, Lord Chelmsford and the Right Honourable Srinivasa Sastri and Lady Emily Lutyens who were called upon to give evidence and they gave evidence which, after all, said that, whatever be the political propaganda of Mrs. Besant, it was certain that she was not opposed to the British connection, and the Judge led in his summing up to that, and yet you find the ignorance of the jury was such that they gave a verdict against Mrs. Besant. Now you might come across many instances in this country where a man, where a poor Indian in South Africa, for instance, may have to be tried in an Indian Court by his own countrymen and yet the ignorance of our own countrymen may be responsible for forcing on him an absolutely wrong conviction. Well, in such cases to deny to him the right of appeal to eminent Judges who know more how to deal with matters like this than laymen, would, I think, be to take a great risk and probably it would be tantamount to perpetrating an act of injustice. I therefore feel that there is ample justification for providing for appeal against a conviction by a jury, and that therefore Mr. Rangachariar's amendment should be negatived.

Dr. H. S. Gour: Sir, I should like to present to the House a few considerations in connection with my friend Mr. Rangachariar's amendment. He opened his speech by remarking that it is an elementary principle that in all cases of trial by a man's peers the verdict is final and is not open to appeal. Well, I must respectfully differ from him. Has he forgotten the provision of the English law relating to appeals against the verdict of the jury, which now allows appeals against the verdict of the jury? Then my friend's next argument was that the accused in this case has empanelled a special tribunal, a tribunal of his choice. Why not give him this alternative, that if he is to be tried by the ordinary jury, he will have the ordinary right of appeal, but if he claims and obtains a special treatment regarding the nationality of the jurors, then he will have no right of appeal? My friend made no secret of the fact that he used this as an argument for the ultimate disappearance of all racial distinctions. But for the time being he will acknowledge it that it amounts to penalising the accused by telling him that if you have this special jury, then you have no right of appeal. Now, I submit, is it fair to the accused in the dock to say that, if you wish a jury of a particular nationality, then you will have no right of appeal? Lastly, Sir, my friend has forgotten that in this country there are such things as castes and communities. It may be that the jurors are Indians, but it may also be that their verdict is perverse and inspired by considerations other than those justifiable by the evidence on record. If in a case of this kind, they perversely convicted the accused, should the accused be deprived of the right of appeal? These are the considerations which I submit weighed with the Committee, and in spite of the able advocacy of my friend, the Committee decided otherwise. I have no doubt that the House will support the Committee.

The motion was negatived.

Clause 24, as amended, was added to the Bill.

Mr. B. Venkatapatiraju: Sir, I am moving amendment No. 57.

"After clause 24 insert the following clause:

'24A. In section 456 of the said Code the word 'European' wherever it occurs shall be omitted.'

I may premise my remarks by stating that I am only placing before the House

The Honourable Sir Malcolm Hailey: May I interrupt the Honourable Member, Sir? I do not wish to let him remain ignorant of the fact that by clause 24 of the Bill we do away with section 456, there will be no section 456.

Mr. B. Venkatapatiraju: That may be, but that does not prevent my moving it, because that was a matter which was taken into consideration by the Committee. It was discussed there, and I am moving the amendment in order to bring out what I wanted and what was recommended by the Select Committee. But if it is repealed, I have no right to move. Its repeal is exactly what I want.

Mr. President: The point of order taken by the Home Member is quite correct. Clause 24 which we have just added to the Bill reads as follows:

"For Chapter XXXIII including sections 443 to 463 of the said Code the following Chapter and sections shall be substituted."

Therefore the amendment in the Code which the Honourable Member proposes to make, namely, to omit the word 'European' in section 456 falls to the ground, because the new Chapter XXXIII runs from section 443 to section 449 and the old sections drop out.

Mr. B. Venkatapatiraju: I do not understand the Government saying that section 456 is omitted altogether from the Code of Criminal Procedure. If it were the case I have no amendment. But as the sections from 456 to 491 were recommended to the Select Committee and the Select Committee recommended how to modify 456 and 491, I am moving what modification is necessary in 456. I therefore appeal to the Chair, Sir, to reconsider the question whether I am not entitled to move on a matter which was submitted to the Committee and on which the Committee made a recommendation.

Mr. President: The Honourable Member should have thought of that when I put the question that clause 24 stand part of the Bill. His point of order is not strictly relevant, because I was proceeding to put clause 25. But to explain the matter to him once more and in case it is not clear to other Members, I would point out that an entirely new Chapter XXXIII has now been inserted consisting of sections 443 to 449 inclusive. The old Chapter XXXIII consisted of sections 443 to 463 and those all drop out by the decision just made by the House. Since 456 comes between 443 and 463, it drops out as well.

Clauses 25, 26 and 27 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"that clause 28 be omitted."

Sir, under clause 27 we have extended the powers of the High Courts other than the chartered High Courts beyond what they were under the

old Criminal Procedure Code, i.e., under this clause we have extended that power to those High Courts, Chief Courts or Judicial Commissioner's Courts which are not established under the Charter. Under clause 28 we extend the power of the chartered High Courts over certain territories which are beyond British India. Sir, I have not been able to find out what these territories are, whether they are the territories of Indian Princes or Feudatory Chiefs beyond British India, or the ceded territories under British administration. If the reference is to the ceded territories, then I do not understand why this right has been confined only to the chartered High Courts; if, on the other hand they are the territories of Princes and Feudatory Chiefs, then I do not understand the necessity of extending this power over their territories. I am therefore moving my amendment more with a view to find out the exact meaning of the word 'territories' and the reasons for extending the powers of chartered High Courts only to such territories beyond British India. I think that that might lead to a conflict of jurisdictions between the courts in British India and those in the Indian States. I therefore move that this clause 28 be omitted.

The Honourable Sir Malcolm Hailey: The Honourable Member asks for information. I would ask my Honourable friend, Mr. Tonkinson, to supply it. He has the papers here.

Mr. H. Tonkinson: Sir, I would remark in the first place about this clause that it gives effect to the definite recommendation of the Committee. If Honourable Members will refer to paragraph 29 of their report they will see on page 10 that they say:

"In this and other matters we would not interfere with the existing procedure in respect of Indian States."

And now, Sir, in this proposed section 491A we are not introducing any new provision, we are practically repeating the provisions of section 458 of the Criminal Procedure Code as they stand at present, though we have transferred those provisions to the Chapter dealing with the *habeas corpus* provisions. The *habeas corpus* provisions in section 491 will be extended to the whole of British India for all subjects of His Majesty. But as regards European British subjects we have treaty provisions with Indian States which enable us to exercise foreign jurisdiction rights in those Indian States, and those are the rights which we will be able to exercise under section 491A. We have no treaty rights which would enable us to accept an amendment of this provision omitting the word "European".

Mr. J. Chaudhuri: Sir, may I ask the Honourable the Home Member for some information with regard to section 491? The Repressive Laws Committee of which I was a Member, recommended that the Bengal States Regulation, III of 1818, Madras Regulation 2 of 1819, the Bombay and other similar Regulations should be withdrawn. Nothing has been said with regard to them. Section 491, clause 3 of the Code now applies to European and Indian British subjects alike. In the interests of both European and Indian British subjects may I ask whether any definite step has been taken by the Secretary of State with regard to the recommendations of the Repressive Laws Committee which recommended that these Regulations should be repealed. For instance, in the frontier provinces or elsewhere British subjects may be taken into custody detained or deported, but in that case 491 as now amended will apply to European British subjects alike. So in the interests of all, I beg to inquire what action has been taken by Government with regard to our recommendation.

The Honourable Sir Malcolm Hailey: We have, I think, already finished this clause. The Honourable Member is asking for information about a subject somewhat outside the clause. If he will put that question to me afterwards either in the House or privately I shall be glad to answer him.

The amendment was negatived.

Bhai Man Singh: Sir, I move that in clause 28 in the proposed new section 491A before the word "European" insert the word "Indian."

My position with regard to this matter is this, that Indian subjects of His Majesty are as much entitled to the protection of the British Government or by the High Courts of the Crown as European British subjects. Surely, Sir, if a necessity has been felt to make a special provision in the Criminal Procedure Code for the protection of European British subjects . . .

Mr. President: I would like to know what the Honourable Member seeks to effect by his amendment. The amendment makes the section run " . . . Indian European British subjects . . . "

Bhai Man Singh: I mean Indian or European subject. I do not propose to substitute 'Indian' for 'European.' If the Government of India has thought it fit to extend this protection to European British subjects in the Indian States, there is no reason why the same protection should not be given to the Indian subjects of His Majesty, at least to the extent that the treaties with the Indian States allow. Treaties being a sealed book to me I cannot, of course, say how far this is feasible or not. If treaty rights stand in the way, then it is quite a different thing. Honourable Members will see that the section as now framed runs as follows:

"Any High Court established by letters patent may exercise the powers conferred by section 491 in the case of any European British subject within such territories, other than those within the limits of its appellate criminal jurisdiction, as the Governor General in Council may direct."

The section, therefore, is sufficiently elastic to extend the right given under it to any territories that the Governor General in Council thinks proper; and if in the case of any other subjects such protection under treaty rights cannot be afforded to Indians, the Governor General need not direct under this section. But in the case of treaties under which that protection can be given to Indian subjects, there is absolutely no reason why it should not be so extended and if the House adopts this amendment the power will remain with the Governor General in Council not to direct such protection to be given where treaty rights do not permit it.

The Honourable Sir Malcolm Hailey: Mr. Bhai Man Singh has foreseen our difficulty in this respect; we could not make this further extension in view of the nature of our treaties with Indian States. It would be of little avail to confer on the High Courts a power under the Criminal Procedure Code which we could not implement under our treaties.

Rao Bahadur T. Rangachariar: Is it a universal clause in all the treaties, and if so, what are its terms?

The Honourable Sir Malcolm Hailey: There are a very large number of different treaties; if I am correct, the terms differ in almost every case.

Bhai Man Singh: Do not the treaties of any States allow protection to be given?

The Honourable Sir Malcolm Hailey: I should like time to examine the question, but my impression is—and I give it only as an impression—that they do not give us these powers.

The amendment was negatived.

Clause 28 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 29, the proposed sub-section 526A be omitted."

By this clause we provide that where any person subject to the Naval Discipline Act or to the Army Act or to the Air Force Act is accused of any offence such as is referred to in proviso (a) to section 41 of the Army Act, the Advocate General *shall*, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court *shall order* that the case be committed for trial to or to be transferred to itself and *shall thereafter* proceed to try the case by jury. Sir, here we provide that in the case of trials involving members of the navy or army if the competent authority so desires, it shall direct the Advocate General who *shall apply* to the High Court and the High Court *shall transfer* that case to its own file. Under this section we compel a High Court without giving it any discretion to allow or disallow an application for transfer of that case to itself. I think it is against the principles of justice that the highest court of law in the country should be compelled to do a thing in this way and should not have a discretion to do what it thinks proper. The best course would have been to provide that the Advocate General shall apply on the application of competent authority, and the High Court, if it thinks it is in the interests of justice to have such a case transferred to itself, may do it. Here we make it obligatory and compulsory, which I think goes against the spirit of justice and law. I therefore propose, Sir, that this special provision for the benefit of soldiers and sailors should not be allowed to exist in this Bill and that they should be treated on the same level as any other European British subject in this country. With these words, Sir, I commend my amendment for the consideration of the House.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadian Urban): Sir, luckily it is not one of the provisions which has been the subject of compromise between the gentlemen who constituted that committee, because anything that has been touched by their sacred hands cannot be touched by the profane hands of the Members of this Assembly. But luckily, Sir, this is a point about which a mere Member of this Assembly can muster up courage to make a few remarks. I wish to make it clear that I do not propose to deny this right either to a soldier or anybody else in whose favour this provision has been inserted, but I do submit with great confidence that this is a provision which offends against the jurisprudential conceptions of a lawyer. What you have in this provision is this. There is to be constituted a competent authority by the Governor General in Council. That competent authority has to decide that a particular case of a soldier is not to be tried by a particular Court. That being his opinion, he instructs the Advocate General and on that instruction the Advocate General moves the High Court and what is the result? The High Court then orders that that case be either transferred or be committed to its own file. I submit, Sir, that the provision which is contained in this clause really makes the High Court a body which will register the opinion of the competent authority because the Advocate General, Sir, is only a kind of a

[Munshi Iswar Saran.]

post office. He receives the impulse from the competent authority, he transmits that impulse to the High Court, and the High Court like an automaton has to pass the desired order, whether it wills or no. Sir, in the note which has been prepared by the Department it is very naively stated "It is an extension of section 526 of the Code of Criminal Procedure". I submit, Sir, and I say so without the least fear of contradiction that this provision is a negation of section 526 of the Code of Criminal Procedure. Now, if the House will refer to section 526, what it finds is this:

"Whenever it is made to appear to the High Court:

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry or trial of the same, or
- (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
- (e) that such an order is expedient for the ends of justice or is required by any provision of this Code,

it may order"

Under section 526 of the Criminal Procedure Code the High Court retains the power of going into the question, examining the pros and cons, then coming to a decision whether or not the High Court will make an order about the transfer of a particular case. But according to the provision which you have got in front of you what have you got?

"Where any person subject to the Naval Discipline Act or to the Army Act or to the Air Force Act is accused of any offence such as is referred to in proviso (a) to section 41 of the Army Act, the Advocate General shall, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court shall order that the case be committed for trial to or be transferred to itself and shall therefore proceed to try the case by jury."

I submit, Sir, in the face of this provision, the High Court has no option left in the matter. It is deprived of its right of determining the question before it, whether or not it should order the transfer of a particular case. According to this section, it is really the competent authority which will decide it and the competent authority, having decided it, instructs the Advocate General and the Advocate General moves the High Court and the High Court, as a matter of necessity, without any choice or discretion being left to it, is bound to pass the order that the Advocate General wishes it to pass. I ask, Sir, is this a sound provision? I appeal to the Members of Government not to have a provision which will really disfigure the Statute Book. The High Court in the land is being reduced—I shall not use a stronger word—to a position where it is deprived of its power of determining the question of transfer that comes before it but has simply to carry out the behests of the competent authority. I submit, Sir, regard being had to these considerations, the House will do well in pausing before it accepts this clause. And, Sir, there is that perennial and perpetual argument in my favour that this is not a clause which has been agreed to by those distinguished and all-wise men in regard to whose judgment no one dare say a word.

The Honourable Sir Malcolm Hailey: I am sorry that on Munshi Iswar Saran's first re-appearance in this Assembly, where we are all glad to welcome him back, he should have felt obliged to oppose this section.

I do not quarrel with his description of the clause. It is perfectly true, that the effect of this clause is that, if a transfer is applied for, the transfer must be made. But I do not follow him in saying that is a slight on the High Courts. That it deprives the High Court of option, I admit. But I do not think that the High Courts themselves, considering that the Executive has already a power of transferring from one High Court to another, and that here all we seek is to effect a transfer to the High Court's own files, would feel it as a slight on them. Now, Mr. Iswar Saran is aware, as the House is aware, that this is one of the two recommendations of the Committee which we have modified under instructions from His Majesty's Government. (Munshi Iswar Saran: "Is it binding on us?") The fact I have stated is perfectly clear; I stated it in my introductory speech; it has been canvassed in the newspapers; it was alluded to here when we had our motion for consideration, and I heard from the side opposite that it was not a matter of such importance that they need take exception to it.

No, Sir, it is binding on us. We are not obliged to register the instructions of the Home Government. But it is a condition on which the approval of the Home Government has been given. And let us again be perfectly clear about it. I do not think that the Home Government would allow this Bill unless it contained this clause. That is my belief, and that being so, I think it is right that I should put it to the House. But Mr. Iswar Saran has attacked this as an unusual measure and as disparaging to the High Court. He has not in any way gone into the merits of the question. At the risk of taking up some little time of the House, may I do so? The clause, of course, applies to a particular class of persons, those who come under the Army Act or the Air Force Act; in other words, British soldiers or members of the Air Force serving in this country.

I have already made a point of it to the House that these men come out here not of their own option, as I do, for instance, or those who are engaged in commerce. They come out here because they are part of the British Army and are drafted out here in the ordinary course of their duties. Now, compare their status in point of trial procedure in England and in India. In England, there is a perfect concurrent jurisdiction between Courts-martial and civil courts except for what are known as the five major offences classified in section 41 of the Army Act, murder, rape and the like. In spite of this concurrent jurisdiction, in practice, of course, the greater part of minor offences committed by men in the Army are tried in the civil courts, these five major offences must in any case be tried in the civil courts. Now, in England the British soldier, if he comes under trial by Civil Courts, can claim trial by a jury if he is accused of an offence the punishment for which exceeds six months. Therefore, in England, if he is to receive a sentence of above six months, he can claim a trial by jury. That would apply, of course, to all the minor offences. Then take the major offences which the courts-martial cannot try and which must come before the Civil Courts—cases of murder, rape and the like. Where is he tried there? He is tried at the Court of Assize before a Judge of the King's Bench. That is his judicial status in England. If he comes out here, what does he find? In respect of the Army Act his status is this. He is liable to the concurrent jurisdiction of courts-martial except in respect of these five major offences; if one of these major offences is committed within 100 miles of a competent court, (at present, a High Court), then the court-martial has no jurisdiction, and he is to be tried before the said High Court. For minor offences tried

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LEGISLATIVE ASSEMBLY.

[21ST FEB. 1923.]

[Sir Malcolm Hailey.]

before Civil Courts he will find then, that as the law will stand in future, he may be sentenced to two years' imprisonment by a Magistrate; that is, in cases in which racial considerations do not arise. In other words, he can receive—and this is the aspect of the question which will appeal to him—he can receive, in cases in which racial considerations do not arise, two years' imprisonment from a Magistrate without the benefit of a jury. Then we will take the case as it will arise under our new criminal procedure in respect of the major offences—the five excepted offences under section 41 of the Army Act. What will he find here? He will find first that he is triable by a Court of Session, instead of a High Court, as before, and in non-racial cases, the Sessions Court may only have Assessors, not a Jury. But more; he will find another change; for when as under the present procedure he is triable by a Civil Court, and not by a Court-martial, only if the offence is committed within 100 miles of a competent court, namely, a High Court, now he becomes triable by a Civil Court if the offence is committed within 100 miles of a Court of Session, that is, in far more numerous cases. Therefore, not only will it appear to him that his status in regard to minor offences is inferior to what he enjoys in England because he does not get a jury for such offences if non-racial but also because by our new legislation we propose to extend very greatly the sphere of the Civil Court jurisdiction and to lower the class of Court before which he may be tried. You must, in justice, put yourself in the mind as far as possible of the person affected, and I say there is little doubt that the British soldier coming out here will feel that he is, in regard to trial procedure, in a position greatly inferior to that which he would enjoy in England. Once again, I point out that he does not come here of his own free will. But, there is a further aspect of the case. I would like to point out that section 41 of the Indian Army Act under which certain offences are taken away from the cognisance of courts-martial is in itself an exceptional measure. It probably arises out of the history which underlies the maintenance of a Standing Army in England. Thus in India, under the Indian Army Act, there are no such exceptions in regard to persons either European or Indian serving in the Indian Army. That is to say courts-martial and Civil Courts have a perfect concurrent jurisdiction in their case. So, you have this anomaly, that whereas persons under the Indian Army Act find themselves under a perfect concurrent jurisdiction of courts-martial and Civil Courts yet by the chance that British soldiers come under the British Army Act, for certain offences they cannot be tried by courts-martial and must be tried by Civil Courts. That again is another aspect of the question which will seem undoubtedly an anomaly to the British soldier. Finally, of course, we are going to render a verdict of acquittal by a jury appealable on fact as well as law, on the part of Government, in cases involving racial considerations. This will seem to men of this class a new and strange provision. Now, in view of these facts, namely, that in regard to minor offences, and also to some extent in regard to major offences, his status in point of trial will appear to him to be already lower in India than it is in England in view also of the fact that our new procedure greatly extends the scope of civil jurisdiction over persons serving under the Army Act, because the competent court is now the Sessions Court and not the High Court, considering these two facts is it unreasonable that His Majesty's Government should have introduced this proviso in favour of the British soldier? It simply amounts to this, that the Army Commander, and

no lower authority than an Army Commander, may in certain cases exercise the right of requiring transfer from a Sessions Court to a High Court. Remember that this amounts only to a demand for transfer from a lower Civil Court to a higher; whereas under the Indian Army Act, executive authority has power to keep cases from the Civil Court altogether and retain them for Court-martial. Under section 526, if the Civil Magistrate thinks that a man should be tried by a Civil Court, instead of the court-martial, then the military authority refers the matter to the orders of the Governor General and the latter can decide that he should be tried by court-martial. As I say, all that we seek to do in order to overcome any discontent that may be caused among the members of the British Army, owing to the new procedure which we are now introducing, is to give a very high military authority, namely, the Army Commander, the right of moving for the transfer from the Sessions Court to the High Court. That application will be made only in exceptional cases. That is the sole extent of our provision, and I do not feel that in the circumstances the House will regard it as an unreasonable one.

Mr. J. Chaudhuri: (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, after what the Honourable Member has said, I do not wish to press this amendment, but all the same I feel and say on behalf of every Member on this side of the House that we should not assent to this without a protest. We have agreed to the definition of "European British subject" because the Secretary of State gave sanction to this Bill and to the recommendations of the Committee subject to our acceptance of that definition. The Honourable the Home Member has also said that this is the second condition with which the sanction of the Secretary of State was given. But I find His Excellency the Commander-in-Chief present here and I feel that I should take this opportunity of making known to him the feeling of the country with regard to this question. This amendment of the Code places the soldiers in an altogether different position from civilians, be he an Englishman or be he a native of this country. Now with regard to the Englishmen or the European British subjects who pursue civil occupation, we have nothing much to fear from them. They, many of them, carry on business or trade in the mofussil, in Narayan-ganj, Dacca, the Doonars in Bengal and other places and cases of oppression or assault or other graver offences are not common amongst them. But I must draw His Excellency the Commander-in-Chief's attention to the fact that the people of this country have serious grievances against the soldiers. They come out to this country for a short time. They do not understand the customs and habits of the people of this country and they do not share the same fellow-feeling as the Europeans in civil occupation do, and sometimes they do rash, negligent, and reckless things. Some of the gravest cases that I have known in the Calcutta High Court from my earliest days, for instance, the O'Hara case, the Barrackpore murder case, the shooting down of a master tailor in the Fort William and in fact the gravest cases of this type were offences committed by the soldiers. There was only a recent case in Meerut.

I shall take this occasion to protest against the remarks that have been made by my Honourable friend, Mr. Rangachariar, with regard to newspapers. But for the newspapers these offences which are committed inland, in the mofussil, would not have come to light. The newspapers in this country do a distinct service in bringing to the notice of the public and to the notice of the authorities, military and civil, all the offences committed by these newcomers into our country.

[Mr. J. Chaudhuri.]

But, to return to my subject, what was the position of soldiers up to now? The position was this that British soldiers or other British-born subjects were absolutely in the same position; they could apply to the High Court to be tried there. (*A Voice*: "Court-martialled.") I am not concerned with court-martial. With regard to civilians, in a way—whether we regard it as satisfactory or not—they have been put on an equal footing with His Majesty's Indian subjects. But this Bill places the soldiers in a different category altogether. Their status remains what has hitherto been provided for, for Europeans, by the Criminal Procedure Code, that is, they can apply to the High Court and have their cases transferred there. I do not look at it from the point of view that my Honourable friend, Munshi Iswar Saran, does, that it is a slur on the High Court. That is a minor question. If they are tried in the High Court, I have the fullest confidence in the High Court that so far as judges are concerned justice will be done there. But I should draw the attention of His Excellency the Commander-in-Chief to the fact that there is another party to the question. Supposing a soldier, inland, in the mofussil, commits some grave offence against an ordinary poor subject of His Majesty, if these cases are transferred to the High Court, the poor man has to bring the witnesses before the High Court and it means expense and serious inconvenience to him. I have said that I am not going to be obstructive and I am not saying this to support the amendment, but merely to record our protest for the time being. I would not press this House to a division over this question. But at the same time I wish to draw the attention of His Excellency that, since this provision places the practical authority in His Excellency's hands, it enhances his responsibility and those of the commanding officers under him, and, I am sure, he will exercise his judgment and see that the poor people of this country get justice in such cases and that this procedure is not needlessly used against them where it is likely to be oppressive or expensive to them or where by reason of distance or expense they may not be able to stay away from home or to take their witnesses with them to prove their case in a distant Presidency town. We have great regard for His Excellency who is a leader of men and who has risen to this high position because he has always been so kind and courteous, brave and courageous and has treated his men justly and fairly. A General cannot command his army unless he is strict and absolutely fair and just. I would appeal to his soldierly instincts that when he issues instructions to the officers concerned, that he may direct them that whenever a soldier does any wrong to the humblest of His Majesty's subjects, they should exercise their discretion in the interests of justice and see that the man is adequately punished. With these observations I would ask my Honourable friend not to press this amendment. I record this protest, hoping that later on a time may come when these invidious distinctions will be withdrawn. I resume my seat without any further comment.

His Excellency the Commander-in-Chief: I should like to reply to my Honourable friend at once. I think he may have, the House may have, every confidence not only in my own sense of justice, but also in that of what is described in this Bill as the competent military authority. That competent military authority we have restricted to the four Army Commanders who control the various sections of the Army in India, and I might perhaps call the Honourable Member's attention to a paragraph in the Statement of Objects and Reasons of this Bill at the bottom of

page 2, that it will be restricted to those officers "who are already entrusted with very high responsibilities and they are confident that it will be only in exceptional cases that these officers will use the power which it is proposed to vest in them." I can assure the House that I will see that this is carried out.

Rao Bahadur T. Rangachariar: My friend, Mr. Chaudhuri, this morning, in that expansive mood of his, of praise and protest, his included me in the category under protest and my friend, Dr. Gour, with his innate sympathy for such protests directed against me cried 'Hear, hear.' What did I say this morning? I objected to the flaring head lines in the papers about soldiers in trouble and thereby creating prejudice in the minds of the Jury. I do not object to newspapers bringing to light grave cases of assault. On the other hand I welcome it. My friend, Mr. Chaudhuri, has entirely misunderstood my remarks and has directed his protest in a wrong direction.

Dr. H. S. Gour: May I suggest one short amendment which while keeping and preserving the sense of the amendment proposed by the Government will perhaps spare the High Courts their dignity in this matter. That is that the word "may" be substituted for the word "shall". Then the section will read "the High Court may order that the case be committed for trial to or be transferred to itself", etc. The Honourable the Home Member will perceive that he has already pointed out that only very few and exceptional cases are likely to come under the provisions of this clause and I think he will also admit that the supreme court for the trial of such cases and for the decision on matters of this kind is the High Court. We have no doubt that His Excellency the Commander-in-Chief and his Army Commanders will use wise discretion in selecting such cases but the final order must, I submit, rest with the High Court and I think if this small amendment is accepted it will be highly appreciated by the House and I have no doubt that the Honourable Mover of the amendment will then withdraw his amendment. I shall also withdraw mine, which is worded exactly in the same terms.

Mr. President: I cannot put the amendment to substitute the word "may" for the word "shall" as long as the proposal is made to omit the whole clause. I must dispose of the one before I can take up the other.

Dr. H. S. Gour: With the permission of the Mover of the amendment I should like this small change to be made and withdraw the rest, both his amendment and mine.

Mr. K. B. L. Agnihotri: If this is done, I will withdraw.

Mr. President: I cannot satisfy that condition. It is for the Government to say.

Mr. Agnihotri's amendment was, by leave of the Assembly, withdrawn.

The Honourable Sir Malcolm Hailey: I am afraid I shall be under some imputation of misleading the Honourable Member if I do not object at this stage. The Honourable Member must not withdraw his amendment under any impression that I shall be able to accept Dr. Gour's amendment. I regret that I am not able to do so.

Mr. President: Amendment moved:

"To substitute the word 'may' for the word 'shall' in the third last line of new section 526A."

[Mr. President.]

The question is that that amendment be made.

The motion was negatived.

Mr. President: Clause 29 was added to the Bill.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock. Mr. Deputy President was in the Chair.

Mr. K. B. L. Agnihotri: I move that:

"In clause 30 omit the proposed section 528D, sub-section (2)."

Sir, I confess my inability to comprehend the necessity of retaining this sub-section (2) to clause 528D. We have already provided in the body of the Bill that no Magistrate shall give punishment for more than what he is authorised to sentence under this Bill. We have also provided in the body of the Bill, and specifically provided, that second and third class Magistrates shall not have jurisdiction over European British subjects for the trial of offences punishable with fine exceeding Rs. 50. Over and above that, we now further provide here that nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by the Code as to the amount of punishment which may be inflicted on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of European British subjects. This clause becomes superfluous. But this clause has reference to clause (1) above. Clause (1) above puts the European British subjects under the jurisdiction of Magistrates under other enactments made by the Governor General in Council although such persons are not expressly referred to therein. It may be said—and that is the point which also strikes me—that the above clause refers to the punishments that may be prescribed under any other enactments that may be made by the Governor General in Council. If it refers to the punishment that is provided there, then probably this clause may after all be necessary, otherwise when we have already laid down a specific provision in this Bill for a particular class of people, it does not seem necessary that there should be any express provision like clause (2) of this section 528D. Moreover, Sir, some confusion is likely to arise by the insertion of this clause, and that would be by way of contradistinction. We have provided in a previous part of the Bill that under certain circumstances Indian British subjects and European British subjects shall have equal rights but here we specify only one of these classes of people and by this contradistinction it may lead to a supposition that in the case of an Indian British subject a sentence could be passed for a period exceeding the period allowed under this law. These two doubts occur to my mind, so I think it better to put the point before the House and to have it cleared by the Government. With these words, Sir, I move the amendment which stands in my name.

Mr. Deputy President: Amendment moved:

"In clause 30 omit the proposed section 528D, sub-section (2)."

Rao Bahadur T. Rangachariar: Sir, I wish to draw the attention of the Government to the latter portion of this clause (2). It seems to me

to go beyond the agreement arrived at between us. It was not the intention of the Committee at all to deprive second and third class Magistrates of jurisdiction over European British subjects. On the other hand it retained the jurisdiction of second and third class Magistrates, but it only gives the option to the accused person, in case he wants a trial elsewhere, that he may take it to any other tribunal. The jurisdiction is there; it is only an option given to the accused person under certain circumstances. As the clause now stands, in clause (2), if Honourable Members will follow the language of clause (2):

"nothing in this section shall be deemed to confer jurisdiction on any Magistrate of the second or third Class for the trial of such subjects"—

and it is going beyond the object of the provision. Here you deliberately take away the jurisdiction of second and third class Magistrates for the trial of such subjects, whereas we retained it under the law as we proposed, we retained it,—I mean, in this Code, as we proposed to enact it, but this section assumes that we confer no jurisdiction at all, that is to say, we will have to modify the clause by adding some such clause except as provided herein. Some such qualifying phrase is necessary, otherwise it may mean that "under any other law"; that is to say, section 528D, clause (1), refers to other laws by which offences may be created. Second and third class Magistrates will have no jurisdiction at all. That is how I read it.

"Unless there is something repugnant in the context, all enactments made by the Governor General in Council or the Indian Legislature which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein."

Then, the second clause runs:

"Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects."

You take away entirely the jurisdiction from second and third class Magistrates even if the accused do not object. I do not think it is the intention of the Legislature, certainly not the intention underlying the compromise arrived at, and I think some saving phrase is necessary,—"save in the circumstances aforesaid" or something of that kind. Without that, it is absolutely taking away the jurisdiction from such Magistrates,—I want the Government to consider that.

The Honourable Sir Malcolm Hailey: Sir, it will be seen of course that this clause 528D reproduces, in effect, the existing section 459 of the Criminal Procedure Code. I may say at once, that it was not the intention of Government to take any new powers under this clause, or in any way to insert provisions repugnant to what has gone before in the Bill, or to the agreement effected by the Committee. I wish to make this perfectly clear. Indeed I think that if you read the second part of this clause, sub-clause (2), the words, "or to confer jurisdiction on any Magistrate of the second or third class" have not in themselves the effect of depriving Magistrates of the second or third class of any jurisdiction that has previously been conferred on them in this Bill. All they convey is that sub-clause (1) shall not, in itself confer any jurisdiction on such Magistrates. I appreciate, however, the difficulty which my Honourable friends have felt. I do not think that they themselves are striving, certainly not Mr. Rangachariar, for the complete exclusion of this clause,—what they want is that it should be elucidated, so

[Sir Malcolm Hailey.]

that it shall be made clear beyond any possibility of doubt that we are not seeking fresh powers here or doing anything repugnant to the agreement of the Committee. That clause will be very carefully examined. It is indeed possible that in the process of consolidation the whole of it may have to go out. For the present I would ask that it may be allowed to stand. We shall scrutinise it carefully, and if further elucidation is required in order to effect the purpose we have in mind, we shall certainly do so, and I am sure we shall receive the agreement of the House in any necessary drafting amendment.

Mr. K. B. L. Agnihotri: Sir, on the assurance given by the Honourable the Home Member, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Dr. H. S. Gour: Sir, I feel I am leading a forlorn hope in asking this House to accept the amendment* which stands against my name. I have already said two days back what I consider to be my view regarding the conferment of jurisdiction over non-British Europeans and Americans. I can only express a hope that the Honourable the Home Member will remember what I said, and when the process of consolidation is in progress he may see the force and the strength of the conviction, at any rate, of the non-official Members of this House, and remove from the Code of Criminal Procedure the exceptional provisions relating to non-British Europeans and Americans. As regards the Americans I should like to present to the House the latest cable which runs as follows:

"Washington. In case relating to Bhagat Singh who obtained certificate of citizenship in Oregon several years ago the Supreme Court to-day (*that is the 19th of this month*) ruled that high-caste Hindu of full Indian blood was ineligible for American citizenship on ground that he was not free white person within the meaning of the law."

I am afraid, Sir, some such sub-conscious mental attitude has dictated to the Legislatures of the earlier days in introducing the preferential clauses relating to non-British Europeans and Americans. I have protested before and I do so once more in the name of the House. I do not wish to press my amendment but I only ask the Honourable the Home Member that if he will consult the opinions of non-official Members of this House, he will be well advised in reconsidering those provisions relating to non-British Europeans and Americans.

Clauses 30 to 40 were added to the Bill.

The Title and Preamble were added to the Bill.

Clause 1 was added to the Bill.

The Honourable Sir Malcolm Hailey: I move that the Bill, as amended, be now passed.

I would ask the indulgence of the House for a few minutes. A few days ago when I moved for consideration, immersed as we seemed likely to be at short notice in details arising out of the amendments, I did not take the opportunity of thanking the House for some very kindly references to myself. I do so now, and from a very full heart. We frequently hear it said that this is the last year of this Assembly and perhaps its last

session; and whenever we hear that, we on these Benches have I am sure a feeling of regret. My colleagues here have in the last two and a half years made many friends; and certainly I can say myself that I have been treated with a forbearance and with a kindness which is altogether characteristic of India, and which to many of us makes service for India not a duty but a devotion.

And now, as regards our Bill—I use that word advisedly, for I have never regarded it purely as a Government measure; I have regarded it simply as a measure intended to register the agreement between two great communities on a vital subject. If there is any credit due for the passing of it, it is due to those who came to that agreement. I have already paid my tribute to the services of Dr. Sapru. I hope I may be allowed to add here an equal tribute to one who endeared himself to this Assembly, my predecessor the Honourable Sir William Vincent. (Hear, hear.) I should like also, if I may, mention—as they say at the University *honoris causa*—those Members of the Assembly who contributed to that happy result.

I think that the discussions on the amendments have shown that our draftsman and Mr. Tonkinson, the custodian of the inner counsels of the Committee, have well and truly given effect to the intentions of that Committee. We have had but one small difference of opinion on the amendment relating to whipping. The House has taken its own decision on that point, and if, as I fear, the inevitable result will be that persons sentenced to whipping will for the future have a considerable period of anticipation of the pains of whipping before, as well as subsequent experience of those pains, of whipping behind, I will not for the moment cavil at what the House has done. For the rest the Bill does, I think, give effect and give good effect to what the Committee decided.

I do not wish to repeat myself nor to say anything again of the great importance which I have attached and which I know the country has attached to this measure. A short time ago I was writing to one who has been honoured here above all others as promoting the cause of Indian reform, and was trying to sum up what we had achieved so far since the Government of India Bill was passed. I said that I could not do so yet. After all the mere enactments of a Legislature or the concrete instances in which the Legislature forces its will on the executive are not of importance. What is important is the atmosphere in which the Legislature does its work; the spirit which actuates it, the ideals and the objective which it has in view. I said that I could not yet sum up the results, but that an occasion was coming which I hoped would enable me to do so; for if the course of the discussions on this question India showed that she had the temper of true statesmanship, that she was willing to make concessions in order to gain the good will and co-operation of Europeans in the common task of promoting India's political progress, rather than to satisfy her own immediate feelings based on resentment for the past, and if on the other hand Europeans were willing to make sacrifices in order to prove to India that they were prepared not only to recognize the strength of Indian sentiment on this question, but to assist in the solution of India's own difficulties, then there could be no doubt that we shall be able between us to make the reforms a success. For, whatever belief one may have in the future of India, whatever confidence one may have in her future, I have one cardinal article of faith. India may march onwards, but she cannot march alone. If she is to gain responsible Government

* "In clause 30, in the proposed sections 528A, 528B, 528C and 528D, omit the words 'or an American' and 'or American' wherever they occur."

[Sir Malcolm Hailey.]

from Parliament, then she will have no stronger argument than this, that the Europeans resident in India also desire it and are willing to co-operate in its development. If she is anxious to gain an equal position in the Empire, an Empire which is not an agglomeration of States, but is the very embodiment of the British spirit, then all the more will she need the goodwill and assistance of the Europeans resident in India, for if she has their co-operation, then the other component States of the Empire will know that whatever outward form the Government may take, there will be a guarantee that in everything she does, in the spirit of all her enactments and all her actions there will be nothing inconsistent with British standards and ideals. I think, Sir, that by this measure we have gone far to prove that we can gain that consummation. I think that we have shown that Indians on their part realise that they must take Europeans with them in the development of their country in the future—I am not speaking of the past—I am not speaking of what the European services have done for India or what European commerce or industry or engineering or science has done for India in the past—there are abundant proofs of that—I am speaking only of the future. I honestly believe that we can now prove that Indians value the assistance of the Europeans resident in India as partners in the development of their administrative and political problems; that we can equally prove—and this perhaps is equally important—that Europeans on their part realise that it is necessary for them to assure India that they are prepared to take a real interest in the development of purely Indian questions. I think we can prove that; and if we can do so, we are all the happier in the occasion and the time. For it was only one brief year ago when a section of Indian politicians, numerous if mistaken, and persistent if pernicious, were preaching as the cardinal article of their faith racial animosity and racial hatred. We can show to the world that the better India, the India which will count in the future will have none of that, that such feelings do not represent in any sense the real characteristics of the better Indian mind; we can show that the course of India's political progress is not going to be blighted and marred by a persistence of racial animosity.

Mr. T. V. Seshagiri Ayyar: Sir, it is with a sigh of relief that we on this side of the House contemplate the close of this discussion. I do not want to disguise from the House that there have been considerable searchings of heart in regard to this matter. The atmosphere in the country has been tense and some of the Members of the Assembly felt that they have been giving away too much and have been receiving too little. Still, Sir, from the moment that the Bill was introduced there was a feeling that we should go more than half-way, and that we should as far as possible see that the compromise which was contributed to so ably by the Indian and European members should not in the least be jeopardised. With that feeling we have approached this question. We felt, Sir, that the Secretary of State's interference on one or two matters had put an extra strain upon our loyalty to the pact which had been entered into by Europeans and Indians on this matter; and unfortunate also it was that his interference should have been on a matter on which the country feels very deeply and very bitterly. Sir, in response to the appeal made by the Honourable the Home Member we were prepared to overlook even those objectionable features, and we resolved that we shall do nothing which would have the effect of wrecking this Bill. I hope, Sir, that the colonials will recognise that in giving way in the manner we have done we

have shown the true instincts of a race which has a long and glorious civilisation behind it, and which has shown itself to be capable of showing forbearance, tolerance and dignity, and I hope that the colonials will recognise that a race which has shown such tolerance and dignity on the floor of this House should be treated far better than they are treating it in their homes. Sir, before I sit down there is only one matter I should like to refer to. If there has been such smoothness in the steering of this Bill, it is due to the able captain at the helm of affairs. There have been troubled waters and but for the Honourable the Home Member and his conciliatory spirit and the way in which he treated the House, the passage of the Bill would not have been so easy as it has been. Therefore, Sir, every one of us on this side of the House want to pay a tribute to his ability and to his conciliatory spirit and to the tact with which he has steered this Bill through the House. There is another matter also which I should like to mention and that is this: having regard to everything that has been said outside this House and having regard to the feelings of our members, I hope that it will be recognised that the Members who have given notice of amendments have shown rare self-restraint, rare tact and a rare spirit to economise time—a disposition which they have not shown in regard to any other measure to the same extent. I hope the House will recognise how dignified the Members have been and how anxious they have been to see that this Bill becomes law, although they felt that some of the features were objectionable. I hope that spirit of the members will be recognised by everybody in this House and outside.

Mr. Jamnadas Dwarkadas: I rise, Sir, to further support the motion that the Bill as amended be passed, and, in doing so, I wish to make only a few observations. My Honourable friend, the Home Member, has pointed out that this country, if it wants to make an onward march to the goal of responsible Government, which has been set out for it, cannot do so without the co-operation of the European community in this country. I agree entirely with the remarks that have been made by my Honourable friend, the Home Member. But I wish also to say this that, if the members of the European community in this country had any misgiving about the treatment that they might have at the hands of Indians if political freedom was secured to this country, to them the treatment that the House has given to this measure will, I am sure, be a sufficient indication of the spirit in which Indians will always treat them in future.

One more thing has also emerged from the discussions that we have had on this Bill. While this House has been very careful in seeing that its rights are not trampled upon by any outsider, while this House has always been eager to protest against the interference of His Majesty's Government and the Secretary of State in matters which are entirely our own concern, this House has not been slow to appreciate the difficulties of His Majesty's Government and have given their support to the wishes of His Majesty's Government expressed through their Secretary of State in order that the Colonials may be included in the definition of European British subjects. That is a sufficient indication of the sense of responsibility that this country will always have of its obligation to the Empire and to His Majesty's Government. A happy result has undoubtedly come out of the measure that has been introduced, and one may expect after this that both Europeans and Indians in this country will work together hand in hand for the political and other advancement of this country. Sir, I support the motion.

Rao Bahadur T. Rangachariar: Sir, it may seem a work of supererogation that I should speak at all after my Leader has spoken. But I have heard some whispers from my Indian friends that the Bill is not all it should have been. Sir, in the concluding portion of my minute on this subject, there is one sentence which I wish to emphasise and that is that the Indian has also gained substantially by this measure. I wish to emphasise that. It is not purely a one-sided bargain, as some friends of mine are inclined to think. Sir, what has been the cause of all this resentment against Chapter XXXIII of the Criminal Procedure Code? It was the ban of distrust of the Indians which was imposed by our Codes, by our own Codes, on our countrymen. Sir, that ban has been completely removed. Do my Honourable friends realise that? Sir, whether he be a Magistrate of the second or third class or of the first class, the ground of exclusion is not on account of his nationality. The Indian has as much right to object to a European Magistrate as the European has to object to an Indian Magistrate. Hitherto, in fact the very worst part of the compromise of 1884 was that simply because Indians should happen to be District Magistrates, you provided a system by which the European could escape the Indian Magistrate by imposing a jury at his will. If the accused so desired, if he had an Indian District Magistrate before whom he had to appear, he could have a jury of his own. Sir, that also has been removed. Now not only the District Magistrate but Magistrates are empowered to try Europeans. So that it was that inferiority which was stamped on my countrymen which we all felt, and I congratulate myself and the House and my countrymen that that ban, that legislative ban, has been removed.

Another thing, Sir, which is of substance to the Indian should not be overlooked. That is the right of appeal,—against every sentence of imprisonment. We know of the degradation it brings,—a sentence of imprisonment. Hitherto, first class Magistrates and District Magistrates could have imposed unappealable sentences of imprisonment. Sir, even an hour's imprisonment you are now entitled to appeal against and thereby remove this great slur which attaches to a sentence of imprisonment. The whole of the Hindu and Muhammadan community look with horror on an unjust sentence of imprisonment and therefore, Sir, they always demanded that there should be a right of appeal. Whereas the European could have an appeal against any sentence of imprisonment, my countrymen had not that right of appeal, and that has now been arranged for the benefit of my countrymen. To that extent, the Europeans co-operated with us on that Committee, and I am glad that that has been given to us. Therefore, while I admit that still the germ of disease has not been killed, it has been considerably weakened. Its propensities for spreading has been cut short. We have cut this poisonous tree root and branch, but not all the roots. Sir, it depends upon the co-operation of both the communities whether this disease can be killed altogether. Sir, we have given a privilege to the accused person to claim a mixed jury. I do not mean merely the European accused. Both the Indian accused and the European accused are now given the privilege of claiming a mixed jury. Sir, I appeal to them and I appeal to those responsible leaders of both communities to see that this privilege is not often invoked. By inaction alone that should die out. Let there be mutual trust and confidence in each other. Let the Indian consider that he will have justice at the hands of 9 European fellow subjects of his and let the European consider that he will have justice at the hands of 9 Indian fellow subjects of his. Let him

not look at the nationality of the Judge or Jury who is sent to try him. For he must appeal to that Greater Justice which must be in the breast of every man who dares to judge his fellow beings. Put him in that position of responsibility. Sir, whether he be a European or an Indian, I am sure he will not be guided by the passions and prejudices of the moment. Therefore, Sir, I appeal to both the communities that these privileges, though they exist in law, let them exist only in name. Let the aid of those sections not be invoked too often so as to bring to the public eye those distinctions that exist between race and race. I may appeal also to the press not to magnify these incidents which occur now and then and to the politicians also the same. Here, Sir, I do not think I can express it in better words than the Home Member has done to-day about the co-operation that is needed between the two communities hereafter, and that all those who inhabit India should consider India their home, not merely a place of residence as hitherto some people have done. Let it be their home. Let India rank first in their minds, in their desires, and every other country afterwards. Then, in that spirit alone we can bring that good which we all desire should crown our efforts.

There are two matters, as I have already stated in the course of my remarks which require to be removed. The European cannot be whipped whereas the Indian can be whipped. I appeal to my European friends that they will put forth all their efforts in the direction of having that inequality removed. That should be done soon, and as regards also the tribunals which can inflict a heavier sentence. I refer to sections 30 to 34. These sections also should be modified so as to prevent Magistrates having the power in certain areas of inflicting those longer terms of punishment which Sessions Judges and Jury alone should be empowered to inflict. In those two matters we had behaved magnanimously to the European because when we were insisting on equality, we could have insisted also on equality in that respect and imposed this on the European. But we dared not do it, for we felt that would be asking for equality in injustice. When a thing is unjust in itself, let not all suffer from that injustice. Even if we have to suffer, we thought that we should not include others in the category, and therefore, having regard to the spirit which we have displayed, I hope the whole of the European community will join hands with us and see that that blot is removed. Sir, I do not look upon your presence in the Chair to-day at this hour as a mere accident. I, Sir, look upon your presence in the Chair to-day as the guiding hand of Divine Providence, that a House with an Indian majority and with an Indian Chairman has been able to pass this Bill into law.

Mr. P. P. Giwala (Burma: Non-European): Sir, in giving my support to this Bill I am influenced somewhat by different considerations from those which have apparently weighed with many of my Honourable colleagues. In not insisting upon the exclusion of the colonials I am not influenced by such a high and ethical motive as that of magnanimity, for I do not consider that though magnanimity is a very pretty and a very amiable domestic virtue, it ought to be extended to politics. I do not believe that in politics a man is expected to give his right cheek to the man who smites him on the left. In politics the best way to reply to such a man is to smite him on both his cheeks if you can and give an extra one on the chest if possible. If you cannot do that, the less you say about the first slap you received on the face the better. But I admit, Sir, that there are occasions on which expediency is a very good reason for submitting to a

[Mr. P. P. Ginwala.]

state of affairs for which there is no remedy, and speaking for myself, I put my acquiescence merely on the ground of expediency. Retaliation is useful only if it can be effective, and we cannot offer any effective retaliation on this point. It is merely therefore on the ground of expediency that so far as the colonials are concerned, we have not insisted upon their exclusion from the Bill. We would go a long way to conciliate the good-will and the regard of our fellow-European citizens in this country and we are proud to feel, that they have joined hands with us in removing after 40 years of controversy an issue which has disturbed the tranquillity of the country. But that argument we are not prepared to apply to the Colonies. They stand on a different footing. But, as I say, there is no way out of it and we submit to their inclusion. There are other considerations which have emerged from the history of this Bill some of which are in the nature of lessons which we have learnt, and some of them I intend to utilise in future. The most important of them is the attitude of the Secretary of State himself in connection with this clause about the Colonials. Last year we were told by the Honourable the Home Member, who was then Finance Member, when we said that if military expenditure was not made votable we shall refuse him supplies, that he thought we were extending a threat to him which was not proper. Now, what has the Secretary of State himself done in this case? Not only did he give out a threat but he put it into execution. He said that his sanction was necessary to certain clauses of the Bill under section 65 of the Government of India Act and that that sanction was not to be given unless we submitted ourselves to terms which we could not otherwise have imposed upon us. That is the effect of the conditions subject to which he has given his sanction, and I would like the Honourable the Home Member to tell us whether we should not be justified in following such a high example set by no smaller a person than His Majesty's Secretary of State—that if there are certain constitutional powers vested in us, whether we should not be justified in making proper use of them in order to wrest from him or from the Secretary of State something else to which within the letter of the law we would not be entitled? Sir, it has been a splendid precedent for us and for my part I intend to use it and I am going to ask the House to use all its constitutional powers in order to get something from the Government which according to the view of Government we are not ordinarily entitled to. The second lesson that we have learnt is this. What is our position in the eyes of His Majesty's Government if our interests comes into conflict with those of the Colonies? We have on this occasion the very great advantage of having the European section of opinion entirely with us. We have got the Government of India with us on this point. We had the unanimous recommendation of a very representative committee on that point. With all these things at our back we approached His Majesty's Government, and His Majesty's Government said, "You may be agreed as much as you like. It does not suit us to agree where the Colonies are concerned." Now, I venture to ask, is that a good impression to create upon the people of this country that even when everybody in this country is agreed upon a certain position, His Majesty's Government should disregard their opinion and their wishes in order that the Secretary of State for the Colonies may be placated by the Secretary of State for India? Would the Secretary of State for the Colonies have taken a view like the view of the Secretary of State for India if the position had been reversed? I say emphatically, "No". And what is more, His Majesty's Government are afraid more of the Colonies than their own people. I will give you a concrete instance. Take the case of our fiscal policy. It is a well known fact,

that the Manchester school of politics have been free traders for many generations—I would say at least for 3 or 4 generations. They have had that tremendous influence on the policy of England, for their interests were large. They have been able to impose their will practically upon His Majesty's Government. But when the Government of India and this Assembly have agreed on protection, His Majesty's Government throws overboard, so to say, the Manchester interest. On the other hand, where the Colonies are concerned, even before the Colonies have made any complaint they are afraid of displeasing the Colonies, and therefore it is we who have got to surrender in order that the position of His Majesty's Secretary of State for India may not be jeopardised with reference to His Majesty's Government. Another lesson that we have learnt is this. As the Honourable the Home Member has pointed out and we are all agreed, it is to the interests of the Indians to work along with their British fellow subjects in this country and that working together alone they would reach their goal which we have in view and to which the Europeans themselves have committed already and in which we have received at every turn their sympathy and their attention. Again, one thing we have made abundantly clear and that is this, that this House can be depended upon for giving effect to compromises which have been made by representatives of both communities even if the personnel of the particular committee may contain persons who are not Members of this House. I look upon it as a happy augury for the future that compromises arrived at outside should be given effect to by this House if they are in accordance with national views and national ideas. Lastly I will say this, that this House also has distinguished itself. There has been no lack of debating power in the House for it has been proved that the House is capable of debating for two days a hundred and one points about which there is no controversy, and of coming to the very point with which it had started the debate. I am glad to say that after all in only a short space of two days we have been able to get through a measure for which the Government itself had allowed us three days. With these remarks I give my support to this measure which, as I have said before, brings to a happy termination a controversy which has raged for nearly two generations in this country.

The motion that the Bill, as amended, be passed was adopted.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Mr. E. Burdon (Army Secretary): I move:

"That the amendment made by the Council of State in the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments, be taken into consideration."

Sir, the amendment is of an entirely unimportant character. It provides explicitly for what would necessarily take place in practice. The communication to the District Magistrate would, of course, be made in writing.

Mr. Deputy President: The question is:

"That the following amendment made by the Council of State in the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments, be taken into consideration:

'In sub-clause (2) of clause 24 of the Bill, after the words 'District Magistrate' the words 'on requisition in writing signed by the Chairman of the Committee' be inserted.'

The motion was adopted.

Mr. Deputy President: The question is:

"That this Assembly do agree with the Council of State in the following amendment:

'In sub-clause (2) of clause 24 of the Bill, after the words 'District Magistrate', the words 'on requisition in writing signed by the Chairman of the Committee' be inserted.'

The motion was adopted.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): I move, Sir:

"That the Report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India, be taken into consideration."

Our Report reminds me rather of a very little dog wagging a very long tail. I hope the Assembly will not let the tail wag the dog. I allude, of course, to the Minutes of Dissent

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I must take exception to such expressions as wagging the tail with reference to the Minute of Dissent. I do not think it is right or parliamentary.

Mr. J. Hullah: I am sure I never meant any offence. I am sorry if I have given any offence and am willing to withdraw the words.

The only point of importance that came before the Select Committee was the amount of the cess and whether the cess should be imposed on exports. There was some discussion as to whether the tax on exports would fall on the producer. For my own part I do not believe that it will, and even if a part of it does, I hold that there is nothing objectionable in asking the cultivator to pay a tiny cess which in the aggregate will amount to, at most, 9 lakhs of rupees on a crop worth, at a moderate estimate, 90 crores of rupees and covering an area of 20 million acres. It will be seen that we have proposed half the rate of cess that was provided in the Bill, but we have provided that for three years the rate of cess shall be doubled, that is to say, it will be the same as we originally provided in the Bill. Our reason for doing so is that in the beginning a good deal of money will have to be spent on capital expenditure, the chief part of which is for a technological laboratory. One of the Minutes of Dissent says that the writer fails to see the necessity of this laboratory. Its purpose up to the present has not been explained to the Assembly. On the first occasion when I introduced the Bill I confined myself only to a few remarks on the subject, and when I proposed that the Bill be taken into consideration, this particular item was not mentioned in the debate. But I wish now to explain what is the purpose of this technological laboratory, and to show that it is proposed in the interests of the producer and not in the interests of the milling industry. As I said before, the real problem in India has always been to get for the cultivator an adequate price for his cotton, and the Agricultural Department knows by bitter experience how useless are trade valuations of cottons which are tried for the first time. From the cotton producer's point of view nothing but an actual spinning trial will give the information required, and in order that the results of the trial may be of real value it is necessary that they shall be thorough and detailed. It is quite impossible to expect any commercial spinning

mill to carry out all the detailed tests. This would not only necessitate much larger quantities of cotton than can be furnished in the early stages of plant breeding, but the actual cost to the mill of a considerable number of experiments would be quite prohibitive. The plant which the Central Cotton Committee propose to instal will be capable of dealing with small samples of cotton and will afford to the plant breeder an early opportunity of having his new varieties tested. I need hardly point out the great amount of time that will thus be saved. Another function proposed for the Central Cotton Committee was that it should take up the trade classification of cottons with a view to establishing something more reasonable than the system of station names which is at present followed. In the United States of America the final universal standards have been arrived at largely as a result of technological research, and in that country technological work is done by a branch of the bureau of markets which works directly under the Department of Agriculture. Our Directors of Agriculture have placed the establishment of this laboratory in the forefront of their proposals and have insisted upon its necessity, and this request has been confirmed by the Board of Agriculture. This capital expenditure, then, on technology is directly in the interests of the producer and, as I said before the Central Cotton Committee themselves rejected a proposal that part of the work of this branch should be the testing of yarn and cloth for the mills.

In the same Minute of Dissent it is suggested that if the Legislature do decide that money should be raised for the technological laboratory it will be sufficient to put a cess of two annas a bale on cotton consumed in the mills only, putting no cess on exports, and a calculation is made that a two anna cess will just about cover the amount necessary for the technological institute. This, I may point out, leaves nothing whatever for agriculture, the improvement of which, as I have said throughout, is the primary object of this Bill. We need a great deal of money for agriculture. Excluding the cost of the Central Cotton Committee and the technological laboratory, the programme which has been submitted to the Central Cotton Committee and has received their general approval involves in all an expenditure of 29½ lakhs of rupees in the next five years. We have now made an attempt to adjust this programme to the amount of money that we shall have under the cess if the Legislature passes the Bill in the form recommended by the Joint Committee and we find that we shall have only 23½ lakhs. It is rather late and I do not propose to take up time by describing in detail the agricultural schemes that are proposed, but I think I can satisfy the House that we have schemes which would absorb almost as much money as we should have even if the original proposal of a four anna cess on mill consumption and exports were levied. To begin with, the Central Cotton Committee itself is going to cost one lakh a year. The technological laboratory will cost 2½ lakhs to establish and a lakh a year to run. Then we have a long list of agricultural proposals. In the first place, as I mentioned before, we propose to have research studentships which will cost us, we estimate, 15,000 rupees in the first year and 30,000 rupees in each successive year. In the Punjab we have the serious problem of trying to arrest the deterioration of the valuable American crop in that province, which we estimate will cost Rs. 85,000 in the first year and Rs. 40,000 in subsequent years. Investigation of wilt and plant breeding work in Bombay will cost Rs. 25,000 a year. Work in Gujerat will cost us another Rs. 25,000 a year. Plant breeding work on herbaceous cottons in Madras will cost us,

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we think, Rs. 39,000 in the first year and Rs. 12,000 in succeeding years. The biological investigation of disease resistance in Madras will cost us, we believe, Rs. 1,25,000 in the first year in which it is started and Rs. 25,000 in succeeding years. In the Central Provinces, we estimate, we can spend Rs. 60,000 a year on plant breeding work on long staple cotton. There is no end to the amount of money that might be spent in attempting to restore the valuable long staple cotton of Berar. We propose and we hope to institute a Central Agricultural Research Institute for work on cottons and plant physiology under the black soil conditions under which cotton is so generally grown. The most suitable location for such an institute will probably be in the central parts of the country. Now, with the amount of money which we shall have under the Joint Committee's proposals we believe that we can carry on this work for no more than five years. At the end of five years we shall have actually to curtail work because the cess will produce only 4½ lakhs of which a lakh will go to the Central Cotton Committee, a lakh to run the technological institute and only 2½ lakhs will be left for agricultural development. We have left out from our programme a good deal that might be done. In the Punjab and the United Provinces research is needed to test the water requirements of cotton grown under irrigation. Another very important matter for which we ought to find money if we can is a stabilising fund to guarantee the cultivator against loss when at our instance he begins to grow some new kind of cotton. New cottons cannot be sold unless they are produced in reasonable quantities. Nobody is going to buy only one or two bales of new cotton, and the cultivator takes a considerable risk if he begins to grow this new cotton without knowing whether he can sell his produce. It may therefore be necessary to guarantee to the cultivator that we shall pay any losses which up to a certain point he may incur. The Empire Cotton Growing Corporation is giving assistance of this kind in Australia, where they have guaranteed to cotton growers a certain and definite price for their cotton and have agreed to stand a loss, if necessary of £10,000 a year. These are the kinds of work we have to do, and I have given some indication of their volume. There is any amount of agricultural work to do. The Bill is for the purpose of aiding agriculture, and we do not think that we shall have sufficient money unless the cess is imposed not only on mill consumption but also on exports.

Mr. T. V. Seshagiri Ayyar: Sir, I rise not to oppose the Bill being taken into consideration, but to make a few remarks regarding the observations made by the last speaker about the Minutes of Dissent appended to this Bill. All this morning, Sir, we had an atmosphere created by a person who knows how to play upon the feelings of the House and who knows how to lead the House and who had conducted a very controversial measure through the House with good grace, and here is, Sir, a very unimportant measure, not a measure of very great importance, and before we begin to consider it, an atmosphere was created which would certainly re-act upon the Government Benches, and it is not desirable that such a thing as this should happen. After all, we are as anxious as the Government Benches in a matter like this that the Government should be armed with funds which would enable them to conduct the inquiries; and therefore, if we venture to differ upon one or two matters, we should not be dealt with as if we were school-children led by school-masters of a very superior kind.

Mr. J. Hullah: May I rise to a point of explanation? I have already explained that I did not mean in any way to offend the Honourable Member. If I present the Report of the Joint Committee, I surely am permitted to make remarks upon the Report itself and also upon any Minute of Dissent, especially if, as I have attempted to explain, one important point dealt with in one Minute of Dissent has never previously been explained or discussed in the House.

Mr. Deputy President: After the explanation from the Honourable Mr. Hullah, this incident might be regarded as closed, and we might proceed with the consideration of the Report.

Mr. T. V. Seshagiri Ayyar: Thank you very much. If not in response to the observations made by the Honourable Member who has just spoken, in response to your wish I shall not pursue the matter any further. I think, Sir, it is desirable that this Bill should be passed into law, so that it will provide funds which will enable the Government to institute scholarships to enable them to carry on investigations on an elaborate scale. Of course I will speak on the amendments later on, but I do think that it is desirable that we should have this measure passed as early as possible. Therefore, I support the motion for the consideration of the Bill.

Sardar Bahadur Gajjan Singh (Punjab: Nominated Non-Official): Sir, as I have given expression to my feelings on occasions previous to this, I again beg to place before this Honourable House that, generally, the same amount of money is not spent in matters pertaining to agriculture as the importance of the industry requires. Now, for instance, take the case of this measure. I think some measure of this kind was due, I should think overdue, several years ago; and then, Sir, were not the poor agriculturists entitled to assistance to carry out these investigations from the Central funds of the Government of India? In my humble opinion, they were and a contribution should have been made available for these investigations long ago from the Central funds. Anyhow it is our misfortune that our point of view was rarely pressed on the Government of India. If anything in the way of agricultural research is to be done, we, the poor people, have to be taxed again. It is not in any hostile spirit to this measure that I make these remarks, but I have simply made these remarks with a view to impress the necessity of more attention being paid to the most important industry of India. I support the motion.

Mr. Deputy President: The question is:

"That the Report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India be taken into consideration."

The motion was adopted.

Mr. T. V. Seshagiri Ayyar: Sir, will you permit me to move this amendment* after the next because, if my next amendment is passed, then it will be consequential, and if my next amendment is not passed, there is no use in pressing it so far as clause 2 is concerned. The fate of clause 2 will depend upon how far the House is with me on the next amendment; therefore, I ask your permission to allow me to move that amendment after item No. 3 on the Agenda.

* "Omit clause 2(d)."

Mr. J. Hullah: I agree, Sir, that that would be a far more preferable course.

Mr. T. V. Seshagiri Ayyar: Sir, my amendment to clause 3 runs:

"In clause 3 omit all the words beginning with 'produced' and ending with 'British India or'; and make consequential amendments in other clauses."

Those of my friends, those of the Members of the House who have read this Bill and the minute will see with what object this amendment has been put forward. If the omission is made, the clause will read thus:

"There shall be levied and collected on all cotton consumed in any mill in British India a cess at the rate of 2 annas per standard bale of four hundred pounds avoirdupois, or, in the case of unbaled cotton, of six pies per hundred pounds avoirdupois."

The words omitted would render it unnecessary to levy the cess upon cotton which is exported. Sir, I have given my reasons very fully in the minute of dissent which I appended to this Report. My reasons, very shortly, are these. If you allow a universal cess to be levied upon cotton, the result of it will be that the producer of cotton will be affected thereby, whereas if you allow a cess to be levied only upon mill consumption in India, and give the producer liberty to sell his cotton to exporters without paying the cess, the producer would be able to insist upon the mill purchaser paying the same price which he secures from the exporter. The result is the producer of cotton would not in the first instance be in the least affected, and as I pointed out in my minute, it would not sit heavily upon the mill-owner. Some Members of the Committee refer to the fact that if we tax the mill-owner and leave the exporter alone, it would be regarded as an excise duty; that was the objection raised. I do say that to a certain extent there is justification in that, but after all, we have to see which of the two alternatives would be best in the interests of the producer. It was said that if the producer is asked to pay the cess, it would be the purchaser that would pay and not the producer. Sir, those of us who are agriculturists know very well that that is an argument which cannot hold water. Yesterday I might have been paid a particular price; to-day the purchaser would come to me and tell me that the Government has levied a cess upon it and therefore he cannot pay the price; and as I have pointed out, the ordinary producer is an illiterate man and if he hears that a Government cess has been levied, he will think that some misfortune has impelled the Government to levy the cess on his crop and that therefore he must get a price less by the amount of the cess levied. That would be the position which would be forced upon him; persons who are acquainted with the illiterate raiyats of this country would realize how easily they can be imposed upon. Under these circumstances, Sir, I ask that the provision which relates to the imposition of the cess upon cotton to be exported should be deleted. After all the Government should not be anxious to get all the money at once. They must make an experiment; and if they are going to make an experiment they should not tax the producer too much. I was reading only this morning a telegram, and I believe the Honorable Revenue Member must have read it too, regarding a Bill passed in the House of Commons yesterday or the day before. It says that the House of Commons has resolved upon compelling the spinner to pay a particular cess to the Cotton Growers Association. It is the mill-owner, the spinner, that is to be compelled to pay a particular cess in order that

improvement in cotton growing, improvements as regards research, may be effected. There is not very much cotton grown in England, but apparently the Association deals with cotton to be grown elsewhere and not only the cotton grown in England. It has for its object the exploitation of other fields for the purpose of cotton growing, and apparently the millowners are to be compelled to pay a fund to this Association, so that that Association may be enabled to go to foreign countries and select fields for the growing of cotton. That example ought to be followed in India, namely, it must be the spinners and the cotton millowners who should be compelled to pay a cess if we really want to improve cotton growing in this country, if we want more research work; I make a gift of that instance from England to my friend the Honourable the Revenue Member. I say, Sir, that if you allow the exported cotton also to be taxed, the cess must necessarily fall upon the producer, and the producer of this country is already too heavily taxed in the matter of land tax. I hope my Punjab friends, who said when the Fiscal Commission's Report was being discussed that they are likely to suffer, will realize the difficulty in which they would be placed if the Bill as introduced by the Government is passed without my amendment.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, in rising to oppose the amendment I would like in the first place to emphasise the fact that the funds which will be produced by this cess will be entirely spent for the benefit of the cotton grower. Mr. Seshagiri Ayyar has informed us that the House of Commons is proposing to put a tax on the spinners in Lancashire for the encouragement of cotton growing. The reason for that, Sir, is because England itself does not grow any cotton and therefore she is trying to encourage countries like India to grow cotton suitable for her needs. One of the points made by the Central Cotton Committee is that the type of cotton that is exported from India is not of a class which gets the highest price. If India could produce a larger amount of what is known as staple cotton, in other words, cotton suitable for the mills in Lancashire, exports from India would be perhaps diverted more to those countries which are spinning American cotton; and at any rate those exports would secure a larger price and therefore benefit the grower more than is the case to-day with the cotton now exported. Therefore, Sir, the benefit derived from the improvement of our cotton is not for the mills in India to any great extent, because we do produce to-day enough cotton, or at least in ordinary times enough cotton, for our needs of staple. Therefore the benefit by the improvement of our cotton is going to be for the grower and for the Lancashire and foreign mills. For that reason, Sir, I do not think that Mr. Seshagiri Ayyar has made out a case for making the mills in India pay for the development and improvement of cotton in order to allow better export cotton to be grown. It is true that the prosperity of the cotton grower benefits the internal trade of the country, and to that extent the mills would benefit; but that is only an indirect benefit and I quite agree with Sardar Gajjan Singh who has suggested, in fact stated, that this sum should have been provided by the Central Government. But we are not here to discuss that, and I would like to point out to the House that when it was stated that neither the Central nor the Provincial Governments could provide this amount for the advantage of the cotton grower, and it was put up to various Chambers of Commerce and also the body whom I represent, the mill-owners and the Chambers of Commerce voluntarily agreed that this cess

[Captain E. V. Sassoon.]

should be laid on them, the millowners at the mill where the cess is added in with other costs of production and the exporter at the port where the cess is included in handling mucedumage and other charges. Now, I would like to refer to the point Mr. Seshagiri Ayyar has raised as to the tax being paid by the grower if an export duty is charged as well as a cess on the mills. I would like to point out that when the original question came up to the Chambers of Commerce it was stated or suggested that an export tax should be placed on cotton and the question was asked whether it was considered feasible for this to be also placed on mills. The question seems to have been reversed here. I would like to draw the attention of the House to a similar case in jute. My Calcutta friends will no doubt bear me out that at one time it was suggested that an export duty should be placed on jute and a cess on the mills in order to pay for some amelioration, I think, of port facilities. The jute mills protested against this and said that there was no reason why an excise duty should be placed on them, although I would draw the attention of the House to the fact that that raw material is a monopoly of this country and grows at their doors; but because the industry objected the tax was eventually only paid on jute exported from this country. Sir, we have not protested; we have voluntarily said that we are prepared to share part of this burden and that appears to be the only reason that I can see why it has been suggested that we should bear it all. Now, Sir, the point is made that it is the producer who will bear this cost. I would like to go into some detail as to how cotton is marketed to see whether there is any justification for this contention. The proposal is that a cess of two annas per bale of ginned cotton should be levied. Now, Sir, one bale of ginned cotton is produced by sixteen maunds of unginned cotton called kapas. This cotton is bought up-country. On the Joint Committee we had the advantage of the presence and experience of the Honourable Nawab Mahomed Muzammilullah Khan, who is not only a distinguished Member of another place but is also a practical cotton grower. This gentleman informed us that in selling his kapas at prices which would range, depending on the quality of the cotton, from Rs. 13 to Rs. 20 a maund, the fluctuations were in steps of 4 annas per maund of kapas or unginned cotton, or Rs. 4 per bale. Now does this House seriously consider that a cess of 2 annas per bale is going to have any effect on the price to the grower when his fluctuations vary Rs. 4 per bale? It is perfectly obvious that no merchant or buyer up-country can say to the grower "because we have to pay, or rather because the mill or the exporter has to pay 2 annas per bale you must therefore give us your cotton for Rs. 4 per bale less." Yes, Sir, it is maintained that two annas a bale or for the first three years, four annas a bale would affect the quotation. The Honourable Member on the Joint Committee, to whom I have referred, made another very illuminating remark. He said that even if he as a grower had to pay this two annas a bale—which works out to 3 pies per maund for the first three years and 1½ pies per maund afterwards—he would still welcome this Bill as he hoped that the work of the Institute would improve his cotton by two or three rupees a maund. He finds it good business to invest a couple of pies a maund and receive a couple of rupees as dividend. Sir, even the mill profits during the boom pale before. When as I have pointed out that owing to the insignificance of the amount the quotation of the kapas is not affected the cotton grower will be getting this extra advantage, this extra two or three rupees a maund for nothing.

In clause 7 of the Honourable Mr. Purshotamdas Thakurdas' Minority Minute he says that all such imposition should be looked at from the point of view of the legislator, *viz.*, the underlying principle. I entirely agree with Mr. Purshotamdas Thakurdas' views in this respect; I go further; I say that the alteration suggested by the Honourable Mr. Seshagiri Ayyar should also be looked at from the point of view of the underlying principle. Now, what does Mr. Seshagiri Ayyar ask for? He says that the cess should be paid by the mills only. I submit that two most important principles are affected if his views are adopted. A cess paid by the mills and not one paid by the exporters would mean in principle the encouragement of the export of a raw material to a foreign country, say Japan, to be manufactured into yarn and then with the additional help of shipping bounties, to be re-shipped to this country to compete with Indian spun yarn. Sir, we are to-day feeling the competition of Japanese 20s yarn spun out of Indian cotton, and this competition will be accentuated, even if only to a slight extent, if Mr. Seshagiri Ayyar's views are adopted by this House. Now, Sir, we are talking of principles; and in principle, therefore, you will be running contrary to that principle which was passed unanimously in this House only a few days ago, that is, that the fiscal policy of the Government may be legitimately directed towards fostering the industries in India. The House will notice that it is the industries in India that are to be fostered, not in Japan or elsewhere.

Let me now take the point of the principle of an export duty. I am one of those who view such duties with great suspicion. But as Mr. Jamnadas Dwarkadas said on the introduction of the Bill, the fact that the results of this small duty do not go to the general revenues but are definitely allocated to the technical assistance of the cotton-growing industry removes the objection. Further it should not be forgotten that while there is no resolution of the House against export duties of any kind, there is one favouring the fostering and not the hindering of home industries.

The second principle that would be affected by Mr. Seshagiri Ayyar's amendment would be this; the House would be inaugurating the principle of taxing one specific industry for the direct benefit of another industry against its wishes. Sir, I do not think that this House will agree to alter the procedure which it has always taken in this respect, and particularly tax one industry for the benefit of another, except when as in this case the industry has agreed to accept the charge.

Another point, Sir, is this. The three classes directly concerned by this Bill are the cotton grower, the millowner and the exporter. The cotton-grower, as I have said, welcomes it. The millowner is prepared to bear his share of the burden. The exporter is, I think it will be found, also in agreement. I happen to be also an exporter, but I would prefer that the views of an exporter of this House whose operations are very large as an exporter and also as a buyer of kapas up-country should be listened to, as in my opinion his views would be more authoritative than anything I may say; I refer to my Honourable friend, Sir Montagu Webb, who I hope will address the House from that angle of view. But, Sir, I do suggest in conclusion that the millowners shall not be asked to bear the whole tax because in this case they have voluntarily agreed to take on a burden as it would not be a very large burden, though we are sure, for the reasons I have given, that we shall pay it all as the amount is too small to affect the producer and is too small for us to get it from the consumer of our cloth. It will simply have to come in as an extra charge.

[Captain E. V. Sassoon.]

I think, Sir, we show that we have vision in doing this. I think, Sir, we have shown it in the past in our ideas, in our views as in the reports we put in on the Workmen's Compensation Bill, where I think it has been admitted by the Members on the Treasury Benches that they were surprised at the liberality of such views, even when we came before the Fiscal Commission—and I was one of the millowners' delegates—although supporting protection for the country we definitely said that, as matters now stood to-day, we were satisfied with the protection we got from the revenue tariff and asked for no more protection—I think, Sir, that would show that we are not narrow-minded and we are not entirely the selfish purse-proud class that some people would like to pretend that we are. I think, therefore, that, although this matter is only a small matter when it comes down to money, although the burden which we will be bearing is an infinitesimal one and I am not going to pretend that it is anything else, I think it would appear rather ungracious if, because we said: "We will take some of it," people here should say "Oh, you should bear it all." I feel I have felt, Sir, in my short presence in this House, that the millowner certainly those of Bombay,—was not exactly the blue-eyed boy of the Assembly. I did not feel that there was—I do not say we need it—that there was a well of sympathy gushing out to us from every side. But, Sir, may I suggest that, as we do our best to be fair in all matters for the benefit of this country as a country, the Members of this House should not take advantage of us for the one big crime that we have, I admit, committed, and that is to have shown that an Indian industry can be prosperous.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, I may assure the Honourable Mr. Seshagiri Ayyar that Government fully appreciate the spirit in which he has tabled this amendment before the House. He is anxious to protect the interest of the agriculturist and he thinks that his amendment, if carried, would effectuate that object. I hope that, before I close, I shall have convinced him that, far from effectuating the object he has at heart, he would be jeopardising to a great extent that object, namely, the promotion of the prosperity of the cotton producer. I think a few words are necessary as to the position of the Government in this matter. The Cotton Committee recommended a cess of 8 annas on all commercial cotton for the purpose of improving the growth of cotton in this country, growth of long-staple cotton, increase in yield, bettering of the market conditions and the general placing of the Indian industry on a wholesome and satisfactory basis. The Government hesitated and at first declined to impose any cess whatsoever, especially having regard to the reforms. The Central Cotton Committee was appointed by the Government in pursuance of the recommendations of the Commission, on which the interest of the agriculturist, of the manufacturers, and of the exporters, were all represented. It was a large body and they unanimously recommended to the Government the imposition of a small cess for the purpose of placing the Indian industry on a proper basis. And the Government of India in the Revenue and Agriculture Department has undertaken this measure because they have felt that they would be promoting the industry of the cotton grower; it was not their business to promote the interests of the manufacturer or the exporter. It was primarily their interest to safeguard, protect and promote the prosperity of the cotton grower and it was with this object that they have undertaken this legislation. In undertaking this legislation, the Government, of course, had the interests of the consumer

as well as of the manufacturer at heart. If, as a result of the expenditure of the money that we hoped to be able to collect, if this Bill be passed into law, the cotton manufacturing industry be placed on a more satisfactory footing, then no one would grudge it and we should welcome it. And we hoped also that the consumer would also be equally benefited, as I shall show later on how. But I shall proceed to the question as to whether this is likely to promote the interests of the cotton producers and as to whether Mr. Seshagiri Ayyar's amendment, if carried, would not jeopardise that interest. The Government, after the recommendations were received, consulted the provincial Governments who in their turn consulted all the bodies concerned and there was an almost unanimous consensus of opinion that the cess should be imposed on all commercial cotton and not merely on mill-consumed cotton. One or two even suggested that this should be confined only to exports. Bombay, Bengal, Madras, Burma, the Punjab, the Central Provinces and the Agent to the Governor General in Rajputana suggested that the cess should be imposed on all commercial cotton. The United Provinces, with their Ministers, were of opinion that it might be confined to exports alone. The Assam Government recommended that it should be confined to exports only. The Bengal National Chamber of Commerce and the Indian Merchants' Association of Chittagong were in favour of the duty being confined to exports only. On the other hand, the Indian Merchants' Chamber, Bombay, were of opinion that this should be confined to mills only. Bihar and Orissa, which does not grow much cotton and is not very much interested either way, expressed a preference that it should be confined to mill consumption. So that Honourable Members will see the Bombay Millowners' Association, the Upper India Chamber of Commerce, the Bengal Chamber of Commerce, and I believe the Karachi Chamber of Commerce, and a number of Chambers of Commerce who are interested in the matter, upheld the view that it should be imposed on all commercial cotton. Therefore, I may say that the Government were fully justified in thinking and in acting upon the assumption that the Local Governments who may be naturally presumed to protect the interests of the agriculturists, the Directors of Agriculture, the Deputy Director of Agriculture and all the agricultural officers who are more interested in the cotton grower than in the cotton exporter and various other persons who have been consulted thought that this would not hit or hit hard the agricultural producer. And, Sir, I would ask the House to consider as to whether when measures are adopted for the purpose of improving cotton growing they should not be of such a character as are likely to effectuate the object which we all have at heart. It has already been pointed out to the House that this money is going to be expended upon research in cotton growing. And the technological research which is going to be undertaken is only for the purpose of helping the cotton grower to know as to whether and how far the possibilities of the cotton that he actually grows extend, in order that it may enable him to secure a better price. Therefore, when everything that is undertaken for his benefit, when there is a vast field for exploration, I think the House will agree with me that we should not indulge in half-hearted measures and that we should try, if possible, to expend as much as we can, and too much cannot be expended, upon this desirable object. The Government, therefore, have, I think, rightly come to the conclusion that the cotton grower would not be hard hit. A number of reasons have already been advanced for the purpose of showing that in the cotton trade the variations in price so occur as to eliminate the possibility of this small cess of 2 annas making any difference whatsoever in the price which the cotton grower would get for his commodity, and I need not expatiate upon that

[Mr. B. N. Sarma.]

aspect of the question. Well, Sir, after all what is it that we propose to do? In deference to the wishes of my Honourable friend and to others who have expressed a doubt as to whether we are not taking too much, the Government have reluctantly agreed to reduce the cess from 4 annas to 2 annas, and we shall be soon finding ourselves in the position of having very inadequate resources for the purpose of carrying out this great object we have before us, and as has been pointed out, the industry that requires improvement is worth at least Rs. 100 crores a year. Is it too much to ask persons interested directly in industry valued at about Rs. 100 crores a year to agree to a cess of Rs. 5 lakhs—Rs. 2½ lakhs would be paid in any way because of the duty on the mill consumption—Rs. 2½ lakhs more in order to improve their condition and their prospects? I submit that it would not be really any hardship at all. The question was raised as to whether the Central Government ought not to have undertaken this themselves. The Central Government has undertaken a large expenditure on research in general and do not mean to absolve themselves from the responsibility of undertaking further research in all the important industries when and as their finances permit. But the question which faced the Government was, is the Government to veto a proposition which was placed before them by all the persons interested in the industry and say, “No” to the imposition of a cess and do nothing themselves because they found themselves in the hopeless position of having no funds with which they can advance the industry? The Government, I think, will have the sympathy of the House in that they have come to the correct conclusion that they should not veto a proposal—a unanimous proposal that was placed before them by all the interests concerned. I think, therefore, Sir, in the interests of the agriculturists whose interests my learned friend has at heart, he would not further press an amendment which will weaken the Central Cotton Committee—because it is they that will have to expend this fund—which will weaken their hands in promoting the cotton industry. A large number of the provinces which are at the present moment looking forward for help from the Central Research Institute, will, I submit, be deprived of the little help that it may be possible to extend to them if this Bill which has been already reduced in its usefulness by the Committee agreeing to a reduction from 4 annas to 2 annas is still further whittled down in the manner suggested by the Honourable Mr. Seshagiri Ayyar. I hope, therefore, that the proposal would be allowed to stand and my Honourable friend would withdraw his opposition, having regard to the remarks I have made.

Sir Montagu Webb (Bombay: European): Sir, I oppose this amendment. I do so because I think the reasons which have influenced my Honourable friend in putting it forward, are unsound, or are based on conjecture or misunderstanding. I see from his Note of Dissent and also from the remarks of my Honourable friend that his reason is that he takes it that this cess will fall upon the producer. He goes so far as to use in his Note of Dissent such expressions as “the producer will be hit,” “the producer will have to shoulder the burden,” and “the injury must be minimised.” Well, Sir, what is the injury? This injury amounts to about one-twentieth of a pie per lb., or less than half an anna a maund. Now, Sir, if I thought that the producer of this country was going to be asked to bear any tax which would be injurious to him, I should be the first to oppose such a tax. I entirely sympathise with the view which has been expressed by my friend Sardar Gajjan Singh that Government themselves ought long ago to have found very much more money than they

have done for the encouragement of agriculture, and I think the Central funds should produce money for the investigations and improvement of cotton. But still, we all know the present financial position; and if there is a way by which the money can be produced by means of a cess, then, Sir, let us take that way. Now, Sir, as a practical exporter of cotton, I have no hesitation in saying that in my belief this cess will not fall upon the producer. I cannot imagine myself as a seller of cotton outside India or as a buyer of cotton up-country, cancelling my orders, or asking an extra 4 annas a maund for the cotton because, as Mr. Seshagiri Ayyar suggested, Government have put through a law which imposes a cess of less than half an anna a maund. That is to say, I should not ask for my buyer to pay more or the seller to accept 4 annas a maund less—and four annas is the minimum margin upon which prices ordinarily move in this country,—because Government are going to levy a cess of less than half an anna a maund. Why, Sir, speaking as an exporter, I would myself gladly pay the half an anna a maund and say nothing about it. I may say that anybody who is engaged in the practical handling of cotton would very gladly, on every transaction that he puts through, contribute half an anna a maund. I think, Sir, in practice, the charge will very likely fall on the middleman. At any rate, I defy anybody to prove that it will fall on the producer. I notice in the Report of the Indian Fiscal Commission, a document to which I am sure my friend, Mr. Seshagiri Ayyar, will attach the highest respect—that in the case of the export duty on rice, it said that 3 annas a maund “is not felt by the cultivator.” If 3 annas is not felt, how much less will half an anna, or less than half an anna a maund be felt? I think, Sir, therefore, that we need not have any fear that this tax will fall upon the producer. I received yesterday from England an official Report on the Industrial and Economic Situation in China and I notice in that Report that mention is made of “the efforts now being made by the Chinese . . . to promote the growing of cotton in China according to modern methods from specially selected acclimatized seeds, efforts that are being ably supported by valuable experiments at the University of Nankin.” It says that the “progress already made augurs well for the success of the work and cannot but have a marked effect on the future of the industry in that country.” That is in China. Well, Sir, India cannot be behind China in a matter of this kind. I entirely agree with the Honourable Mr. Sarma that we must not be half-hearted in this matter, but that we should collect by way of cess all the money that we require. The cess will not fall upon the producer. It will give us the money we want. It will be easy to collect. It will be collected at the ports from the exporters, or at the baling presses from the exporters and also at the mills. Therefore, I favour the cess being levied on all cotton, and I oppose my Honourable friend’s amendment which I would ask him to withdraw.

Mr. N. M. Joshi (Nominated: Labour Interests): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is that the following amendment be made:

“In clause 3 omit all the words beginning with ‘produced’ and ending with ‘British India or’; and make consequential amendments in other clauses.”

The motion was negatived.

Clauses 2 and 3 were added to the Bill.

[21ST FEB. 1923.]

Mr. T. V. Seshagiri Ayyar: Clause 4 is rather an important matter. May I suggest to you that you should now adjourn the House?

Mr. Deputy President: I should like to know the views of the Government.

The Honourable Mr. B. N. Sarma: We are entirely in the hands of the House.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 22nd February, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 22nd February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

METEOROLOGICAL SERVICE.

389. ***Mr. K. C. Neogy:** Will the Government be pleased to state—

- (i) whether the Indian Meteorological Service has been, or is proposed to be, reorganised?
- (ii) how many new appointments in the Service have been, or are proposed to be, created?
- (iii) how many of these new posts have been filled?

Mr. J. Hullah: (i) Yes, to the extent that a regular time scale has been introduced for officers recruited since 1921 and for future recruits, and that one new appointment has been created to provide a leave and training reserve.

- (ii) Only the one new appointment referred to above has been created.
- (iii) This appointment has been filled.

QUALIFICATIONS FOR METEOROLOGICAL SERVICE.

390. ***Mr. K. C. Neogy:** Will the Government be pleased to state what are the qualifications for a post in the Indian Meteorological Service?

Mr. J. Hullah: There are no prescribed or standard qualifications but high attainments in Physics and Mathematics are required.

PAPERS ON METEOROLOGICAL SUBJECTS.

391. ***Mr. K. C. Neogy:** (a) How many original papers on the conditions of the Indian Upper Air have hitherto been published by the members of the Indian Meteorological Service?

(b) Does the number of Upper Air observations compare favourably with similar data from the European countries, and have they been published?

Mr. J. Hullah: (a) Six original papers have been published on upper-air conditions, two are in the Press, and five more are nearly complete for the Press. One paper, also, on upper-air conditions in Mesopotamia has been published.

(b) Having regard to the size and interests of the country the reply is "No" but in relation to financial resources, "Yes". The question of publication is answered under (a).

NAMES AND QUALIFICATIONS OF METEOROLOGICAL STAFF.

392. ***Mr. K. C. Neogy**: Will the Government be pleased to state—

- the name,
- the academic and other qualifications,
- previous experience in modern Meteorology of each of the persons appointed to the Indian Meteorological Service since Dr. G. C. Simpson, late of the Indian Meteorological Service, left the service of Government?
- whether these persons have had any European training?

Mr. J. Hullah: I lay on the table a statement giving the names, qualifications and previous experience of the four officers appointed. Two of the four have previous experience of modern meteorological research; a third after receiving a Government of India Scholarship from the Allahabad University, was a research student at Cambridge in England.

Name.	Academic and other qualifications.	Previous experience in modern Meteorology.
1. G. Chatterjee	M.Sc. and a Research Scholar; has exceptional qualifications in experimental Physics.	Held a temporary post of Scientific Assistant at the Agra Aerological Observatory for about a year.
2. S. K. Banerji	M.Sc. in Applied Mathematics and D. Sc. of Calcutta; was Professor in the University College of Science, Calcutta.	Research work in Tidal Theory and Hydrodynamics, Seismology and Aerial Movements.
3. V. V. Sohoni	B.A., B.Sc. and a Research student in the Wilson College, Bombay.	
4. B. N. Banerji	M. Sc., held a Government of India Scholarship from the Allahabad University.	Research student, Cavendish Laboratory, Cambridge.

MR. S. N. SEN AND METEOROLOGICAL SERVICE.

393. ***Mr. K. C. Neogy**: (a) Has the attention of Government been drawn to a Reuter's cable dated London, January 29, stating that the University of London have conferred the degree of M.Sc. on Mr. S. N. Sen, who is the only Indian Officer in the Meteorological Office, South Kensington, and that the degree is in recognition of his researches in connection with the upper air?

(b) Is it a fact that the said Mr. S. N. Sen applied for an appointment in the Indian Meteorological Service? If so, with what result?

Mr. J. Hullah: (a) Yes.

(b) Yes. The application was considered along with others but the appointment was offered to and accepted by another Indian Candidate.

EXTRA ASSISTANT COMMISSIONERS AS INCOME-TAX OFFICERS.

394. ***Rai Bahadur D. O. Barua**: (a) Whether it is a fact that Extra Assistant Commissioners in Assam did Income-Tax work as Income-Tax Officers last year?

(b) If so, did they get any allowance on that account?

(c) Is it likely that they will do the same in 1923 as well?

(d) Whether in Assam Government has considered the possibility of managing the Income-Tax Department, without making new appointments, with Extra Assistant Commissioners who will be given an allowance for the additional work and by making only two appointments for the two valleys, of Assistant Commissioners of Income-Tax?

The Honourable Sir Basil Blackett: The income-tax work in Assam has, hitherto, been done by the Provincial revenue staff with the exception of one Sub-Deputy Collector who is on special income-tax work. No allowance has been given to the revenue staff on account of any income-tax work done by them.

It is proposed to make an assignment to the Assam Government for the income-tax work in Assam and it is understood that the Assam Government will appoint one Deputy Collector to be trained in income-tax work and to do the more important assessments in the province. Further additions to any special income-tax staff will be made by the local Government at their discretion and paid for out of the assignment. It is proposed to review this arrangement after a period of three years.

RENT OF GOVERNMENT OFFICIALS.

395. ***Mr. W. M. Hussanally**: With reference to answers to questions Nos. 260 and 272 will the Government please state—

- What is the percentage of rent on their salaries paid by Senior Officers drawing more than Rs. 1,999 per month?
- Why are officers drawing up to Rs. 1,349 paying more than those above them?
- What percentage of salary is paid as rent by employes drawing less than Rs. 900 a month?

Colonel Sir Sydney Crookshank: (a) In the case of officers drawing more than Rs. 1,999 a month, the percentage of rent in respect of buildings on the minimum salary of each class of official works out to:—

Class.	Minimum salary.	Percentage of rent on salary.
	Rs.	Rs.
A	4,000	7.06
B	2,750	8.22
C	2,000	5.10

(b) Officers drawing up to Rs. 1,349 are not paying more than those above them.

(c) The percentage of salary paid as rent in respect of buildings by employees drawing less than Rs. 900 a month works out to 10 per cent. on the minimum salary of each class.

2. I may explain for the Honourable Member's information that the method of assessment of rent and percentages adopted for purposes of calculating rent are the same for all classes. The maximum rent, excluding rent in respect of special services and furniture, which may, under the Fundamental Rules, be recovered from a Government servant occupying a Government residence, is, however, limited to 10 per cent. of the salary of the

occupant. The percentage of rent on salary must vary, for the reason that as the salary of the prospective tenant decreases it becomes increasingly difficult to provide a building the rent of which, assessed in accordance with the rules, will work out to less than 10 per cent. of salary.

“ POOLED ” RENTS AT RAISINA..

396. ***Mr. W. M. Hussanally**: Do pooled rates of rent for Raisina bungalows cover:

- (i) The interest charges of capital borrowed;
- (ii) The maintenance charges of houses, electric installation, water works, construction and maintenance of roads and road lighting;
- (iii) Drainage and maintenance thereof;
- (iv) Any other services;
- (v) Cost of furniture and repairs;
- (vi) Estate offices including superintendence;
- (vii) Horticultural and Arboricultural Departments?

Colonel Sir Sydney Crookshank: (i) to (v) Yes, except that furniture is charged for separately.

It is assumed that the charges referred to under (ii) relate only to installations, etc., within the boundaries of each residence.

(vi) and (vii) No.

GARDENS AT RAISINA.

397. ***Mr. W. M. Hussanally**: Is it a fact that the gardens and green plots attached to bungalows and quarters occupied at Raisina are maintained at State expense?

Colonel Sir Sydney Crookshank: Compounds are laid out, that is to say, shrubs, trees and grass are planted and maintained until properly established. The question of maintenance after establishment is now under consideration.

PROFIT OR LOSS ON RAISINA RENTS.

398. ***Mr. W. M. Hussanally**: Do the rents recovered for bungalows at Raisina leave any margin of profit? Or do they leave a net loss? If the latter, how much?

Colonel Sir Sydney Crookshank: Rents are calculated on an annual basis on which Government neither gains nor loses. In practice, however, full recovery of rent is not always possible because:

- (a) a house may not be occupied throughout the year,
- (b) ordinarily more than 10 per cent. of the occupant's pay cannot be recovered as rent.

The loss incurred thereby varies according to the circumstances, and no exact figure can, therefore, be given showing what the net loss is per month or for any other given period.

RENTS AT RAISINA AND SIMLA.

399. ***Mr. W. M. Hussanally**: How do rents paid for Government bungalows in Raisina and at Simla compare with rents in the city and Civil lines?

Colonel Sir Sydney Crookshank: As it is not possible to give a verbal reply which will clearly show how rents at Raisina compare with those in Simla, Delhi City and Civil Lines, I have had a statement prepared which is laid on the table which gives a comparison as far as possible for officers drawing over Rs. 1,350 per month. Similar information for lower paid officers, clerks, and menials cannot be prepared, as it is not possible to compare in any fair manner the accommodation and the conditions in one place with those in another.

Classification of officers.	AVERAGE MONTHLY RENTS OF HOUSES.				Delhi City.
	Raisina.	Simla.	CIVIL LINES, DELHI.		
			Paid to landlords by Government.	Recovered from tenants.	
1	2	3	4 (a)	4 (b)	5
Class A— Pay Rs. 4,000—5,000	Rs. 282	Rs. 219	Rs. 227	Rs. 282	No information available.
Class B— Pay Rs. 2,750—3,999	226	205	278	226	
Class C— Pay Rs. 2,000—2,749	162	108	220	162	
Class D— Pay Rs. 1,350—1,999	135	123	144	135	

Note.—It is not possible for various reasons to carry the comparison below class D.

Note.—The figures given in both the columns above are average figures. The rents paid by Government to landlords shown in column 4 (a) depend very largely on the date on which the lease was entered into. Bungalows leased a few years ago were obtained on much more favourable terms than those which are now being leased. As it will be unfair to charge occupants in each case the same rent as is paid to the landlord, rents have been pooled and tenants are charged the figures shown in column 4 (b). These are arrived at after taking into consideration (1) the total sum that is paid to landlords, and (2) the accommodation afforded by different classes of bungalows.

ELECTRICITY RATES AT RAISINA.

400. ***Mr. W. M. Hussanally**: Is it a fact that the rates for electric energy consumed in Raisina from Government installation is only a small fraction of the rates charged by the Electric Company in the city? If so, what are the comparative rates?

Colonel Sir Sydney Crookshank: The rate charged by the Electric Company in the City is 8 annas a unit of current for lights and fans less 10 per cent. discount for payment within 7 days. The rates charged by Government for electricity supplied from their installation are 3 annas a unit to Government servants and 6 annas a unit to others. The Government's installation is, however, run primarily for constructional purposes.

SUPPLY OF GOVERNMENT FURNITURE.

401. ***Mr. W. M. Hussanally:** Why has Government undertaken upon itself to supply furniture in Government bungalows? Could that be not done by private firms?

Colonel Sir Sydney Crookshank: For the convenience of Government officials and the Members of the Indian Legislature who are short term tenants. Not without causing considerable hardship and discomfort to tenants.

LEASE OF BUNGALOWS IN CIVIL LINES, DELHI.

402. ***Mr. W. M. Hussanally:** (a) Is it a fact that Government have leased some bungalows in Civil lines and rented them to its officers at rates lower than they pay for them?

(b) If so, (i) how many are they, (ii) what do Government pay for them, (iii) what do Government recover upon them, (iv) to what officers are they rented?

Colonel Sir Sydney Crookshank: A limited number of bungalows in the Civil lines have been leased by Government to provide accommodation for certain officers whose duties require their residence in Old Delhi. These bungalows have been classified according to the accommodation they afford, into the same categories adopted in the case of the bungalows in New Delhi, and the rents have been assimilated also, class for class. In the aggregate the monthly rents charged by Government cover the amount paid to the landlords together with maintenance expenses, and Government incurs no loss on these houses during the period they are occupied.

INCOME OF DELHI MUNICIPALITY.

403. ***Mr. W. M. Hussanally:** (a) With reference to answer to my question No. 273, what is the income of the Imperial New Delhi Municipality from all sources? What is the amount of the grant made by the Government or the Chief Commissioner?

(b) What are the names of the members of the Committee?

(c) Do residents of Raisina pay any wheel, or animal tax, or motor wheel tax?

(d) Is there any arrangement with the Delhi City Municipality whereby they should contribute to the funds of the Imperial Municipal Committee in lieu of octroi and other taxes collected by them directly or indirectly from residents of Raisina?

The Honourable Sir Basil Blackett: (a) The total estimated income of the Imperial Delhi Municipality, for 1922-23, is Rs. 15,795 and the amount of the Government grant Rs. 13,770.

(b) The names of the members of the Committee are—

MR. A. M. ROUSE, C.I.E.,	} President.
MR. H. T. KEELING, C.S.I.,	
MR. J. L. SALE,	} Members.
MAJOR STANGER LEATHES, I.M.S.,	
Health Officer and Secretary.	

The answers to parts (c) and (d) of the question are in the negative.

HOUSING OF MEMBERS AT METCALFE HOUSE AND WINDSOR PLACE.

404. ***Mr. W. M. Hussanally:** With reference to answer to my question No. 276, is it a fact that because there was not sufficient accommodation for Members of the Council of State at Metcalfe House, they were given preference in regard to quarters at Windsor Place, although these latter quarters were not sufficient to accommodate all Members of the Assembly who had applied for them? Is that so? If it is, why? Why did they not share in the ballot and why were such of them as did not draw in the ballot, not accommodated in the Hostels?

Sir Henry Moncrieff Smith: The quarters at Windsor Place are intended for Members of both Houses and on the basis of the number of Indian Members in both Houses it was roughly estimated that Members of the Council of State were entitled to 6 out of the 20 quarters there. Six Members were therefore allotted six quarters without a ballot; the remainder were accommodated in the hostels and elsewhere.

TREATMENT BY CANTONMENT MAGISTRATE, AMBALA, OF A PLEADER.

405. ***Mr. W. M. Hussanally:** (a) With reference to answer to my question No. 278, is the Cantonment Magistrate at Ambala a military officer and as such subordinate to the Army Department?

(b) Do the Government propose to make an enquiry to ascertain the true facts of the case?

(c) Do Government propose to take any action to prevent a repetition of such lapses?

Mr. E. Burdon: (a) The Cantonment Magistrate is a military officer in civil employ. In his purely magisterial capacity he is subordinate to the Local Government, not to the Government of India.

(b) No.

(c) The Government of India have no doubt that the Local Government will take suitable action in the matter.

ALLEGATIONS OF CORRUPTION AGAINST CANTONMENT SUBORDINATES, AMBALA.

406. ***Mr. W. M. Hussanally:** With reference to answer to my question No. 279:

(a) Did the Cantonment Committee assign any reasons for not paying the expenses of the proposed lawyer member?

(b) Will the Government enquire from the local military authorities if it is a fact that the All-India Cantonment Association offered to pay such expenses? And if so, why was not the matter reported to the Government of India for orders?

(c) Is it a fact that the demand for the co-option of a lawyer member, proceeded from the Cantonment Association and was acceded to by Government?

(d) If so, was it left to the option of the investigating officer to have the lawyer member associated with him? If so, why?

(e) Was the Association consulted before the idea of co-option was dropped?

Mr. E. Burdon: (a) No.

(b) and (c) The inquiry is unnecessary. The matter came before the Government on the representation of the local military authorities, and the Government were prepared to agree to the appointment and to bear the cost of it themselves.

(d) Yes, the reason being that the investigating officer was in the best position to judge whether legal assistance was necessary or not.

(e) The Government of India have no information on the point.

. PURCHASE OF MOTOR CARS BY SLOUGH SYNDICATE.

407. ***Captain E. V. Sassoon:** 1. Is the Government aware that the Slough Syndicate (India) has bought a number of motor cars and lorries that were surplus to Government requirements in Iraq?

2. Is it a fact that these motor vehicles are being imported into India and that the import duty being paid on them is based on an all round valuation covering good, bad and indifferent vehicles?

3. If so, will the Government be good enough to state on what basis was this valuation made?

Mr. A. H. Ley: The facts are as follows. The Slough Trading Company, Limited, purchased the whole of the surplus mechanical transport from the Disposals and Liquidation Commission in Mesopotamia. All this material was little more than scrap; but the Government of India were faced with two difficulties in the matter of finding a satisfactory method of assessment under the ordinary tariff. In the first place, it was impossible to determine whether any particular item was assessable as scrap or otherwise until sale had taken place, and secondly it was not possible to ascertain the real value for the purpose of assessment, as there was no regular market rate to go upon and the material was to be sold for what it was worth. It was therefore decided to assess all scrap vehicles imported into India by the Company at the rate leviable on commercial vehicles, on an all round valuation of £15 per deadweight ton, provided that they were covered by certificates from the Deputy Commissioner of Disposals, Mesopotamia, to the effect that they were surplus mechanical transport, and provided also that the Collector of Customs at the port of import was satisfied that they were scrap vehicles. This valuation was fixed on the basis of the information available as to the actual value of the articles in question, as ascertained by the Disposals Commissioner after taking into consideration the results of previous sales of such material.

COUNCIL BILLS.

Mr. Jamnadas Dwarkadas: Sir, have I your permission to put a question to the Honourable the Finance Member of which I have given him private notice? The question is this: Has the amount of Council Bills offered for tender last week and this been reduced from Rs. 75 lakhs to Rs. 50 lakhs? If so, what is the principle underlying these fluctuations in the application of the policy of the sale of Council Bills by Government?

The Honourable Sir Basil Blackett: The answer to the first part of the question is yes. The principle underlying the fixing of the amount of

Council Bills put up for tender each week is that an endeavour is made to follow the course of the market and to put up such an amount as is likely to be sold at satisfactory rates.

Mr. Jamnadas Dwarkadas: One more supplementary question. Why should the business of remitting money to London not be done in India by the Government of India,—why should the Secretary of State and the Bank of England do the business, as they do at present?

The Honourable Sir Basil Blackett: I think the obvious reason is that it has always been done so; on the spur of the moment I have not any other reason to give.

Mr. Jamnadas Dwarkadas: One more supplementary question. Does the Honourable the Finance Member think that that is a good reason that it has been done so? Could he not do the business better himself in India instead of it being done for him in London?

Mr. President: That is a matter of debate, not for question and answer.

UNSTARRED QUESTION AND ANSWER.

N.-W. RAILWAY—EXTENSION OF SERVICES AFTER 55 YEARS OF AGE.

195. **Lieut.-Colonel H. A. J. Gidney:** (a) Will Government be pleased to say whether Government servants employed on the North-Western Railway, who have attained the age of fifty-five years and are given annual extensions of service up to the age of sixty, are compelled in the last year of service to retire at the close of the official year, i.e., on 31st March, although they may not attain the age of sixty until a later date in the year?

(b) If the reply is in the affirmative, is it a fact that only such Government servants as are born in the first three months of the year enjoy full pay and emoluments throughout the last year of their service? Will Government therefore be pleased to state why those who are born in the remaining nine months of the year are not allowed to enjoy a similar privilege?

Mr. C. D. M. Hindley: (a) Extensions of service beyond the age of 55 years are the exception rather than the rule; but when such extensions are granted it has been found to be of administrative convenience to grant them by periods not exceeding one year from the beginning of each official year, so long as it is still desired to retain the services of the employee concerned. The first extension of service is accordingly granted for the period intervening between the 55th birthday of the employee and the 31st March following. An extension for any period beyond the age of 55 carries no pledge that extensions until the age of 60 is reached will automatically follow, nor even that any further extensions will be granted; but so long as it is desired to retain the services of an employee the extensions usually terminate at the end of the official year.

(b) The period of extensions of service is determined by the desire of the administration to retain the services of the employee, and not with reference to his date of birth.

STATEMENT OF BUSINESS.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): May I ask the Honourable the Home Member to make a statement in the course of the day as to the state of business during the next few days?

The Honourable Sir Malcolm Hailey (Home Member): I hope to make a statement immediately after the luncheon interval.

REPORT OF COMMITTEE ON ARMS ACT RULES.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I ask the Leader of the House to make a statement regarding the rules under the Arms Act?

The Honourable Sir Malcolm Hailey (Home Member): I stated in answer to a question a few days ago that I hoped shortly to be able to make a statement regarding the manner in which Government proposed to treat the Report of the Committee which discussed the rules under the Arms Act. It will be realized of course that the administration of these rules lies with Local Governments, and they are, naturally, closely concerned in the detailed manner in which we give effect to the Report. But subject to consulting Local Governments, the Government of India see no reason why the main recommendations of the Committee should not be given effect to. As I say, we shall discuss with Local Governments certain questions of detail, but we hope, in the main, to give effect to the chief recommendations of the Committee.

Dr. H. S. Gour: (Nagpur Division: Non-Muhammadan Rural): May I, Sir, in this connection point out that there is a strong feeling in this House that Members of the Assembly and of the Council of State might be exempted for life, as were their predecessors, the Members of the Imperial Legislative Council?

The Honourable Sir Malcolm Hailey: We shall take note of that fact.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Is it not a fact that Members of the Local Councils and of the Imperial Council were formerly exempt before the Arms Act Rules came into operation? I was one of the persons exempted, and now I have to take out a license.

The Honourable Sir Malcolm Hailey: The Honourable Member may be assured that if Members of the Local Councils feel deeply on the subject, they will not fail to let us know. I recall to his recollection the fact that the Members of the Committee thought that it was unnecessary to make special provision for Members of the local Legislatures.

Mr. J. Chaudhuri: But they were exempted as a matter of fact. I can say that from personal knowledge.

N.-W. FRONTIER COMMITTEE'S REPORT.

Dr. Nand Lal: May I ask the Honourable the Home Member as to when the Report of the North-West Frontier Committee will be published?

Mr. President: Has the Honourable Member given him notice of that question?

DISCUSSION OF RESOLUTIONS RAISING THE SAME QUESTION.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Before the Resolution is moved, I rise to a point of order. I refer, Sir, to section 121 of the Manual of Business which says that when a Resolution has been moved, no Resolution or amendment raising substantially the same question shall be moved within one year. What I wish to know, Sir, is whether the Resolution to be moved now is not, in substance, the same Resolution as was moved in Simla regarding the Provincial Contributions. This Resolution runs:

"This Assembly recommends to the Governor General in Council that steps be taken immediately to set apart some revenues for the purpose of wiping out all contributions from the Provinces in the course of six years."

The question therefore is whether this Resolution is not in substance the same. If, and if so, why should it be allowed to be moved.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I wish to supplement the remarks of the last speaker and raise the same point of order regarding the admissibility of this Resolution with reference to provincial contributions. Under Standing Order 70, sub-clause (1) I wish to know whether a Member can raise substantially the same question within 12 months. The House will remember that in September last we dealt with the question of provincial contributions. The point at issue then was that a sum of two crores of rupees should be reduced from the provincial contributions. The point underlying this Resolution is that the provincial contributions should be wiped out within a certain time, that is to say the question we discussed in September related to a reduction of two crores while the question we are to discuss now relates to a reduction of 9 crores and 83 lakhs. I contend that practically it is the same question and I ask, Sir, whether my contention is correct and whether this Resolution is admissible for discussion?

Mr. President: When the Resolution came before me originally for admission I considered the question carefully. In view of the fact that it invites the Governor General in Council to approach the subject by the raising of new taxation it appeared to me to be reasonable to allow the Resolution to be moved; and therefore I called upon Mr. Reddi to move the Resolution standing in Mr. Zahid Ali Subzposh's name.

Mr. B. S. Kamat: One more point, Sir, and that is as to whether my Honourable friend, Mr. Reddi, has got from Mr. Subzposh his authority in writing as required by Standing Order 61?

Mr. President: I think the Honourable Member might have assumed that I had taken care that he did get that.

RESOLUTION RE HYPOTHECATION OF REVENUES.

EXEMPTION OF PROVINCIAL CONTRIBUTIONS FOR SIX YEARS.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Before, Sir, you call upon Mr. Reddi to move the Resolution that stands here in the name of Mr. Subzposh, I wonder if it is open to me at this stage to move that this debate be postponed till after the Budget has been presented?

Mr. President: It is obvious that the Honourable gentleman cannot move to postpone a debate which has not yet begun.

Dr. H. S. Gour: (Nagpur Division: Non-Muhammadan): Sir, I beg to inquire whether this Resolution implies that there should be any addition to the Imperial taxation for the purpose of wiping out all contributions. The Resolution as it is worded merely says that a portion of the revenues be set apart for the wiping out of contributions, if possible under the existing revenue. If the ruling, Sir, that you have given relating to this Resolution implies the raising of additional taxation, I understand that it will be open to Members to raise points with reference to additional taxation for the purpose of meeting the provincial contributions and the contributions now levied from them.

Mr. President: The Resolution asks the Imperial Government to forfeit a large sum in revenue, and I assume that the underlying meaning of it is that the Imperial Government is held to be better able to raise the revenue to meet the lacuna created by the remission of provincial contributions than the provinces are.

Mr. M. K. Reddi (South Arcot *cum* Chingleput: Non-Muhammadan Rural): I move, Sir:

"That this Assembly recommends to the Governor General in Council that steps be taken immediately to set apart some revenue for the purpose of wiping out all contribution from the Provinces in the course of six years."

Sir, it is with a due sense of responsibility and with a full knowledge of the extent and scope of the subject that I rise to move this Resolution which stands in the name of my Honourable friend, Mr. Zahid Ali Subzposh.

One of the most pressing problems of the day is the problem of finance, both in the Central and Provincial Legislatures; and while critics are not wanting who will belittle the scope of the reforms or the achievements of these Councils, few have bestowed any serious thought on the causes leading to such poor results, or the remedies which ought to be adopted. It is one of the sorest trials of the Provincial Legislatures, that while they practise retrenchment and economy to the fullest extent and even vote fresh taxation, thus bearing the opprobrium and the misrepresentation and calumny of their electorate, those who are not responsible in the full sense of the term, have the right to appropriate to themselves the hard-earned savings of these Provincial Governments. The Provincial Legislatures feel that while they are called upon to cater to the ravenous appetite of the Central Government, they have not the privilege of applying suitable remedies to this diseased appetite, to effect retrenchment and economise expenditure; and with a knowledge of something of the inner working of the administrative machinery of their own Government they not unnaturally feel that unless the Government is directly responsible and responsive to the people, ideas of true economy and real retrenchment are not likely to materialise. They feel that if the Central Government had to bear the odium of fresh taxation and the responsibility of finding ways and means for additional expenditure, instead of the present method of sponging on a few unhappy and uninfluential Provinces, then the angle of vision would change and a more sober aspect of the question would present itself. Then would Members not stand aghast or raise the whites of their eyes in holy horror when any whisper of a curtailment in the Military expenditure was given utterance to; then would they not be shocked at the height of ingratitude when any remark is made about the high salaries of the Imperial Services; then would they not be depressed

with a sense of impending calamity when any demand were made for a speedier process of the Indianisation of the Services with a view to retrenchment.

I am aware, Sir, that there is a Retrenchment Committee at work whose report we all await with anxious care. It may not be possible to effect retrenchment to the extent to which we would like it in a single year. Retrenchment also can be carried out progressively; and naturally the Government of India are not likely to let go their hold on the Provinces as long as an easy way of filling their coffers is open to them. It is for that very reason I suggest that the Provincial Contributions should be wiped out and that it should be done at least in the course of six years with their growing revenue.

Sir, I would earnestly appeal to the Government to face facts as they are. It would be more in the fitness of things that they should face the music and brave the unpalatable features resulting from the abolition of these contributions than let the Provinces rankle with a sense of injustice, breeding bitterness and just resentment against the Central Legislature. The revolt of the Provinces, if such should occur as the result of this blind policy, will be a graver danger for national solidarity and national welfare than a measure of this description. Sir, filial ingratitude was not reserved to King Lear's daughters alone. The mutual jealousies, the not unreasonable suspicions and the introduction of a Provincial caste system are really graver dangers which responsible legislators should take into more serious consideration than the narrow selfish view at times exhibited by this House.

Sir, in my own presidency, for the last year the agitation regarding what has been termed the "impost" has been growing in pace and even Honourable Members of this Council situated as they are, so far from Madras, must have had an idea both as regards its volume and its intensity. I do not wish to refer to the decisions of this House on previous occasions, but I trust I shall not be altogether out of order if I were to refer to the petitions which I had the honour to present to this Assembly signed by thousands of voters of my Presidency, requesting this Government and this House to alleviate the hardship that is created by the levy of a large sum from provincial revenues by the Central Government. On that debate I don't want to offer any criticism at present. Sir, this Resolution raises a very important and a general question. As I understand it, it means an obligation on the Government of India to reduce the provincial contributions and in course of time—6 years—to altogether wipe them out. The method by which this should be done is one more in the cognizance of an administrative body like the Government of India than of a non-official Member of this Council. It is therefore not as an exhaustive method nor as the best method under the circumstances that the suggestion in this Resolution is conveyed to set apart some revenues for the purpose. It is more important to my mind that it should be distinctly understood that these contributions should be wiped out gradually and in any case should not exist after six years. Sir, we are all aware of the award of Lord Meston and we are also aware how several of the presidencies protested against that award. We are in this very happy, or rather unhappy, position that the modification of the award of Lord Meston by the devolution rules has made our position much worse. If I were to refer for a moment to the devolution rules you would see, Sir, that whereas under the Meston award the contributions for 1923 ought to have been less than in 1921, under the devolution rules the contribution

[Mr. M. K. Reddi.]

continued to be the same. I should like to emphasise that this was a situation which was not at all contemplated by the Joint Committee. It was not to make the position worse that the Joint Committee intervened, but rather, as I understand from a reading of that Report, to make our position surely better. But we are now in the position of those frogs in the fable that protested against the award of Jupiter for sending them the King Log.

I trust I shall be pardoned if I were to quote from the Committee's Report:

"The proposals made by Lord Meston's Committee and embodied in these rules have met with a varied reception. They are endorsed by the Government of India, and some Local Governments are content with the contributions proposed for them, while others dislike the ultimate standards; but certain provinces, particularly the three presidencies, are dissatisfied with the treatment of their own claims, and the Government of Bombay contest not only the amount of their contribution but also the allocation of the heads of revenue on which the whole scheme is based. The Committee see no reason to differ from the fundamental features of the proposals, and they are definitely opposed to provincialising taxation of income.....The Committee would be glad, on grounds of policy, to alleviate the disappointment caused by the restraints, which the system of contribution lays on the employment by the provinces of their revenues. The Committee are of opinion that in no case should the initial contribution payable by any province be increased, but that the gradual reduction of the aggregate contribution should be the sole means of attaining the theoretical standards recommended by the Financial Relations Committee. The acceptance of this latter proposal emphasises the intention that the contribution from the provinces to the Central Government should cease at the earliest possible moment. The Committee attach great importance to the fulfilment of this intention and they are convinced that the opposition, which the proposals of the Financial Relations Committee have evoked, would be much diminished if it becomes possible for the Government of India to take steps to ensure the abolition of the contributions within a reasonably short period. They trust that the Government of India and the Secretary of State in Council will, in regard to their financial policy, make it their constant endeavour to render the Central Government independent of provincial assistance at the earliest possible date."

Sir, this is a very clear statement of the intention of the Joint Committee. It was not to prejudice provinces like mine, to make their position worse than what it was under the Meston Award, to keep on the heavy contributions that they have been called to make in the first instance, that that award was modified. The Joint Committee repeatedly say that the alleviation should be by means of wiping out this contribution altogether and they emphasise more than once that this should be done as soon as possible, at the earliest date, and so forth. The next paragraph of the Joint Committee's Report simply says that the Committee desire to add their recognition of the difficulties of Bengal and commend for the consideration of the Government of India that difficulty. The Government of India has been ready enough to recognise this. I do not desire to say anything of the relief granted to that fortunate province; but I should like to point out that the primary consideration of the Joint Committee was to wipe the contribution altogether and that only a casual mention is made of Bengal's difficulties. But yet the Government of India was ready to come to the relief of Bengal.

Now, I ask, Sir, what it has done to respect the wishes of the Joint Committee with regard to the early part of its Report? Two years have now passed since the Reforms have been instituted and three years since the Report of the Joint Committee. What has the Government of India done to carry out the intentions of the Joint Committee? Repeatedly in the

course of that Report they implore the Government to so adjust their finances as to reduce the contributions and wipe them out at the earliest possible stage. When is that earliest stage to come? Has the Government of India any idea of it? Has the Finance Member bestowed any thought on the problem or are we to say that the Government of India is so involved that these questions cannot arise. We know that unless the Government of India, just like any other debtor, is forced to pay up a certain debt, it will be in the complacent attitude of keeping the debt alive as long as possible. That is what we don't want to happen. We want to force the Government to take up these questions seriously and in earnest and we want the Government to wipe out this contribution at the earliest stage possible. The Joint Committee emphasises that for the very successful working of the Reforms this contribution must go. I therefore plead in the interests of provinces which have suffered seriously in the past, that there must be a determined effort made by the Central Government to wipe the contributions out. I therefore heartily commend the Resolution to this House and trust that from the coming financial year some amount at least will be reduced from the contribution of over 9 crores and that within the next 6 years a progressive rate of reduction will find the entire contribution wiped out.

Sir, I move the Resolution.

Sir Gordon Fraser (Madras: European): Sir, I rise to support this Resolution. It would take a very much better speaker than I am to convey adequately to this House the very strong feelings of indignation and resentment in Madras against the very heavy financial burden imposed on Madras. These feelings of injustice are not peculiar to any particular class. They are shared alike by all communities from the highest to the lowest, officials and non-officials, Hindus, Muhammadans and Europeans. It is not a racial question; it is not a party question. It is a question on which all in Madras joined forces. What particularly intensifies the feeling of resentment in Madras is the fact that the main cause leading up to the heavy burden imposed on Madras is the strict economy exercised by the Madras Government in the past,—economy extending over many years. When referring to the United Provinces and the Madras Governments, the Meston Committee Report states:

"Economy has been strictly practised and considerable arrears of administrative progress are now due."

Well, Sir, I think that that is a very mild statement of the case. The administrative progress is not now due; it is many many years overdue. Unfortunately, the economy and the high local taxation of the Madras Government during past years has now resulted in the fact that one-third of the whole of the total contributions payable to the Central Government is called for and demanded from Madras, instead of the standard of 17 per cent. laid down by the Meston Committee as a fair and equitable share to be paid by Madras towards making up the deficit of the Central Government. Sir, this injustice to Madras is not a new one; it is a very old one; it goes back many years; it is not due to Reforms at all. The present arrangement simply perpetuates an old injustice. I have not a record of the many protests that have been put up by Madras, but I would like to refer to two protests that were made by the Madras Chamber of Commerce. The protests really were put up by the constituency which I represent and they were voiced by the Madras Chamber of Commerce. The

[Sir Gordon Fraser.]

first of these was on the occasion—it was as far back as 1900—of the visit of the Right Honourable Lord Curzon, the then Viceroy, to Madras. The words used on that occasion by the Madras Chamber of Commerce with slight modifications to meet the present changes apply equally well to the position as it is to-day.

The words were:

“The Chamber would beg to be allowed to represent to Your Excellency the urgent need for readjustment of these contracts and for a more liberal treatment being extended to this Presidency as regards the proportion of revenue which it is allowed to retain for provincial or local expenditure. The people of the Presidency cheerfully recognise that it is incumbent upon them to contribute their full quota to Imperial expenditure, but the Chamber would respectfully represent that a very strong and general feeling exists throughout the Presidency that this quota is at present unduly high, and that in consequence of this the progress and prosperity of the Presidency are to a serious extent checked through lack of funds to be expended upon local works of great public importance, and in some cases of urgent necessity.”

This fact was recognised in the Financial Relations Committee as I have just shown.

Then again the next protest was 20 years later. The words used in the next protest were practically the same as those used 20 years before. No change had taken place in the meantime and the words of the second protest apply equally well to-day. The extract is a short one and I will just read it:

“The contribution paid by the Madras Presidency is out of all proportion to the contributions of other Presidencies and the Provinces, and the Chamber trusts that Your Excellency's Government will take early action to remove what we regard as a serious injustice to this Presidency.”

You will see, Sir, that the Chamber of Commerce, over the past 20 odd years, has protested against this injustice. The House, Sir, will realise it is not a new complaint. It is an old complaint reiterated by Madras, and it is not as though the inequalities of which we complain were not admitted. They were admitted in the Financial Relations Committee. I will read the extract I refer to:

“We anticipate that the Government of India will construct its financial policy towards reducing these contributions with reasonable rapidity and their ultimate cessation.”

The next extract is:

“The scheme of contribution that we recommend above complies, we believe, with the essential conditions that any immediate dislocation in Provincial budgets must be avoided, and that the admitted inequalities of the proportions in which, in the past, the Provinces have contributed to the purse of the Government of India must be rectified within a reasonable time.”

I contend, Sir, that these extracts fully justify the position taken up, not only by the Government of Madras or the representatives of Madras, but by the people of Madras. Then, Sir, I would point out to the House that unfortunately this question of the provincial contributions has certainly led to a serious loss of confidence between the Central Government and the Provincial Governments. The only way to restore confidence between the Central Government and the Provincial Governments and to restore harmony between the various provinces is for the Government of India

to lay down immediately a definite policy and to give the Provinces a definite assurance that steps will be taken at the earliest date possible to bring the provincial contributions down to the standard fixed by the Meston Committee. And, Sir, to do this, it goes without saying, that the Government of India must first balance its own budget. But it also must go further and it must take steps to provide funds at least to make an immediate start towards the reduction of these contributions. If we refer to the Report of the Financial Relations Committee, we find that the words used in the recommendation to the Government of India are: “reducing these contributions with reasonable rapidity.” It is not a case of reasonable time. They go further and use the extreme word “rapidity.” We all know, Sir, that the Honourable Finance Minister does not exactly repose upon a bed of roses at present. He has a very thorny and difficult time before him, and I think he has the sympathy of all Honourable Members of this House, and speaking for Madras I hope that all representatives from my Province will lend him their very hearty support in any steps that he finds it necessary to take to enable him to overcome those difficulties and balance his receipts and expenditure. He has a very difficult job in front of him and we all recognise it. Sir, in pressing for this Resolution, I want the House to quite realise that we from Madras do not come to this House begging for favours in this case. We come to this House asking for a just demand that has been pressed by Madras for more than 20 years to be acceded to.

I would like to refer to one point in the recent discussion on the fiscal question the other day. It has a slight bearing on the matter before us, or rather I should say it has an important bearing on it. The Resolution passed was recommending that a law should be passed for the protection of Indian industries. Now, Sir, the Indian industries exist almost entirely in Bombay and Bengal, particularly the latter Province, where they have the benefit of the coal-fields. Madras on the other hand and several other Provinces are essentially agricultural. The Honourable Member for Commerce and Industry in introducing the amendment to the Resolution the other day, referred to this point. His remarks were to the effect that the cost of production in India must therefore be high following protection, which means that the measure of protection would not be small and must increase the level of prices for consumers generally, and particularly for the middle classes and agriculturists. Also he said he was sure that if the agriculturists, who form the bulk of the population, could understand the implication of the policy of protection, and if they were able fully to bring their influence to bear on this Assembly, he doubted whether his motion would be accepted. He also added that the agriculturists had the least to gain and the most to lose by a policy of protection. Well, Sir, this means that Madras and the other agricultural Provinces, those Provinces essentially agricultural, will again be called upon to pay the piper without having the option of calling the tune. May I suggest, Sir, that any extra revenue accruing from these duties, duties protecting industries of particular Provinces and enriching those Provinces but paid for by the poorer agricultural Provinces, may I suggest that any revenue accruing should be earmarked if possible—it is impossible perhaps to earmark Imperial receipts, but I ask that the Government of India should bear the position in mind, and that these extra receipts should be utilised for the reduction of the contributions from the various Provinces until such contributions reached the standard which the Financial Relations Committee thought was fair for all the Provinces concerned.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, the matter that the House is about to debate this morning has formed the subject of long and bitter controversy. It was only in the last Session at Simla that a Resolution of a very similar nature was moved in which the whole question of the relations between the provinces and the Central Government in financial matters was raised, and the representatives of various provinces put forward their own views with a good deal of heat and in some cases almost acrimony. And now, Sir, we have another Resolution before the House of a very much the same nature. But, Sir, I propose to try, if possible, to keep clear of inter-provincial recriminations and to confine what I have to say to the actual Resolution on the paper. I fear the two Honourable Members who have already spoken have gone a little too far beyond the Resolution. If I may say so, there has been some danger of their trailing the Madras coat in front of the industrial provinces. Well, Sir, I do not propose to be drawn. It is true, Sir, that we in Bombay have our own position just as Members from Madras have their position. We do not pretend to be content with the present state of things; we have never accepted it and we do not accept it now. We do not think it is fair that we should be deprived for ever of any share in the one important expanding source of revenue that might be at our disposal. We think, Sir, that if a province is to have true provincial autonomy, it ought to have access to all its real assets, and we, in Bombay, consider that the enterprise and resource of our citizens is just as much a provincial asset as the produce of our fields. It is a temptation, Sir, to be drawn into a discussion on the arguments that were put forward by the Honourable the Home Member, who was then Finance Member, in the debate in Simla. He has had the last word and it is a temptation to answer him, to reply to, I cannot say the arguments but to the atmosphere he created. But I do not propose, Sir, to go into that question now. An occasion will arise when we shall press our views again on the Government of India, but I do not think that that general question properly arises out of the Resolution on the paper.

Now, Sir, I would ask Honourable Members to examine that Resolution very carefully. It reads:

"This Assembly recommends to the Governor General in Council that steps be taken immediately to set apart some revenues for the purpose of wiping out all contributions from the Provinces in the course of six years."

The Honourable Member who moved the Resolution was delightfully vague. He did not explain what revenues were going to be set apart or, if revenues were set apart, what was to take their place. I take it, Sir, that the only thing that the Resolution can mean is that the Government of India is to begin at once, when it is framing its Budget, to put down as the first item to be provided a sum of so many crores for remitting contributions from the provinces. The period given is six years, the amount is more than 9 crores, but we will take it as 9 crores. We see, therefore, that the Government of India is asked to begin at once to set apart, say one and a half crores of rupees this year, three the next, $4\frac{1}{2}$ the next, and so on. That means, of course, either that the Government of India is to increase its deficit by one and a half crores or to impose additional taxation, and with that taxation is to make good the amount remitted to the provinces who are contributing.

Now, Sir, I have no doubt that every Member of this House has engraven on his mind the figures contained in the Devolution Rules and

particularly those in paragraph 18. Now Rule 18 contains what is generally referred to as the ideal contributions expressed in terms of ninetieths. In paragraph 17 we find the actual figures of contributions that are being paid at the present moment. Well, I have worked out those actual contributions that are now being paid. I have worked them out in terms of ninetieths and some of the provinces are paying more ninetieths than their ideal contributions; other are not. Now Rule 18 says:

"When for any year the Governor General in Council determines as the total amount of the contribution a smaller sum than that payable for the preceding year, a reduction shall be made in the contributions of those Local Governments only whose last previous annual contribution exceeds the proportion specified, and any reduction so made shall be proportionate to such excess."

Well, if you examine the figures, you will find that the provinces which would be benefited by the first remission of contributions would be Madras, the United Provinces and the Punjab, and, to a smaller extent and a long way behind, the Central Provinces. The other provinces would not be benefited by any initial remission. Now, Sir, I submit that when the Resolution is looked at in that light, it becomes alarmingly like the Resolution to remit two crores of provincial contributions, which this House rejected last September. That is the real meaning of the Resolution. Instead of calling it two crores this time, it has provided for a period of six years; but it

12 Noon. practically means the same thing. At all events, says the Honourable Mover, let us make a beginning; let us get at least $1\frac{1}{2}$ crores, if we cannot get 2 crores. And Honourable Members who do not belong to those fortunate provinces which are going to get the remission under this scheme during the first or second year, those Honourable Members will doubtless bear that fact in mind when the Resolution is put to the vote.

Well, Sir, now why should the House reject this motion? In the first place, it is entirely inopportune. How do we stand at present? We are just on the eve of the Budget announcement. This is not an ordinary budget. We have been passing through a period of great financial stress. An immense effort is being made by enlisting the assistance of the greatest experts we can find—an immense effort is being made to improve our position, and we have in charge of the portfolio a new Finance Member. In a few days we shall hear the result of those investigations and the Honourable the Finance Member will let us know what he is intending to do. And this is the moment that the Honourable Member from Madras selects to come and ask the House to pass a Resolution about the financial policy of the Government of India for the next six years. Well, I submit, Sir, he could not have chosen a more inopportune moment. The Honourable Member might at least have waited until the Budget was over. Is it fair, Sir, to the Honourable the Finance Member to expect him to disclose the arrangements that he is about to make? For all we know, Sir, his actual decision may not have been taken up to the last moment; the matter might still be in debate. It is not fair when the burden of reducing the Budget in these difficult circumstances is imposed on the Honourable the Finance Member that the House should hustle and try to extract some hint from him of what he is going to do before he is actually prepared to tell us what it is.

Leaving aside the question of fairness, I ask the House if they think they are going to draw the Honourable the Finance Member. The Finance Member, Sir, if I may say so, is up to the present somewhat of a dark horse. We have heard him speak on more than one occasion somewhat

[Mr. P. B. Haigh.]

cryptically. Speaking for myself personally, the chief impression I have obtained from his speeches is that he has pursued researches into the debates which took place in the Græco-Roman world on the nature of the Trinity. That is the matter that impressed me most in the last speech made by the Honourable the Finance Member and I do not think the House is going to get anything much out of him. In vain, Sir, is the net spread in the sight of any bird; and when the net is so clumsy and the bird so wary as the Finance Member, I do not think I see him walking into it.

However, leaving aside these considerations—leaving aside the question of fairness, leaving aside the question of whether we are likely to draw him—is the proposition possible or feasible at this moment? Last year we had an enormous deficit. There is no getting away from it. That is the fact that governs the whole position. There was an enormous deficit; and we are asking the Finance Member after he has cut down expenditure in all directions to the minimum, after imposing additional taxation to meet the deficit we are asking him on top of that to provide still more taxation in order to assist certain of the Provinces. Can such a proposition be entertained for a moment? Are the Honourable Members who support this Resolution prepared to vote for that additional taxation, unless they are sure it is not going to fall on them? I seem to remember that not long ago there was a proposal to impose a salt tax, a tax which fell equally on everyone in India. Did Honourable Members from Madras support that salt tax? Sir, I fancy that the Honourable Members who are supporting this motion have a shrewd idea that if taxation is to be imposed somebody else is going to pay. Sir, I would ask this House to approach this question as it stands on the paper in a severely practical spirit. We are not here to discuss from top to bottom the financial relations of the Provinces with the Central Government. We are not here to encourage disputes between Provinces. We are asked to make a definite recommendation to Government that they should take a particular course. We are asked to make that recommendation at a time which is inopportune, and to recommend a course that we know is not practical. Now, I submit, Sir, that the House should not allow its time to be wasted by debating Resolutions of that character, and that it should without delay throw out this inopportune, this futile and this impracticable Resolution. Sir, I trust the House will immediately reject the motion.

Mr. K. Muppli Nayyar (West Coast and Nilgiris: Non-Muhammadan Rural): Mr. President, much has already been said, in the past on this subject. What we really want is some material result. Certainly, we are on no begging mission. How long can the present injustice last? How long are the hungry provinces with watery mouths to allow what is largely and legitimately theirs to let slip through their hands into other mouths? Can the present starvation of the Provinces continue without disastrous effects? Speaking last year in this Assembly the Honourable Sir Malcolm Hailey said, "We, my colleagues on Lord Reading's Government, have stood, are standing and will continue to stand for the steady progress of Reforms . . ." But how can the reforms progress and succeed if we leave the Provinces, especially the transferred subjects in them, without sufficient funds? Can my Honourable friend, the Finance Member, fresh from just and democratic England, be hard-hearted enough to choke the voice of those thousands who signed that monster petition—please don't mistake this one for one of those not uncommon bunkums in some dingy pigeon hole in

the Government of India Secretariat? Lastly, I give a warning that if some happy change in the present system is not urgently introduced we will be driving all our sane newspapers in the Provinces stark mad. I am whole-heartedly for the Resolution.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I had expected the Honourable Mover of this Resolution, who, I see, is only the godfather of this Resolution to have dilated upon the methods as to how to set aside certain revenues for wiping out these contributions. I confess, Sir, his speech has totally disappointed me inasmuch as he has not furnished concrete proposals of how he expects us to vote in favour of setting aside revenues. He leaves the whole of that question and the solution of that question to the Government of India. A man who comes before this House with certain proposals ought to give us concrete ideas. I believe he has failed to place before the House any concrete ideas and my difficulty, therefore, in criticising him is all the greater. However, there were some observations in his speech which I think it is necessary for me to show to be untenable, and also to explode certain fallacies contained in his speech as well as in the remarks which fell from another Honourable Member from Madras, namely, Sir Gordon Fraser. The Honourable Mover pathetically complained that according to the Meston award his Presidency had a heavy contribution to pay and that the effect of that was that many of the Departments in that Presidency were starved and that they were in an extremely tragic and pitiable condition. Now, Sir, I have great sympathy for my Honourable friends from Madras. If they can place their finances in a satisfactory position I should be very glad indeed. My sympathy for them is on the ground that they are an agricultural province and we all wish that they should come into line with the other prosperous provinces if they can possibly do so. But when they wish to readjust the financial relations and the question of contributions, I also expect that they should extend to me, not sympathy, but justice and fairness for other provinces. Now, what is necessary for the present issue to discuss is not whether Madras is in a bad plight, but whether Madras is worse than all the other provinces or any other province in India; the Honourable Mover of the Resolution has failed to demonstrate that Madras is in an exceptionally bad condition. Member after Member during the previous controversy and even this morning have harped upon the fact that according to the Meston award the contribution from them in relation to other provinces is very high; in other words that Madras has to pay Rs. 348 lakhs as compared with, say, Rs. 60 or 63 or 67 lakhs whatever it may be from certain other provinces. That was probably the burden of the song of the Honourable Sir Gordon Fraser. But, Sir, the question has to be judged not in relation to what one province has to pay as compared with some other province, but we have to look into the history of the whole award and see what were the gains and the losses of each Presidency. Judged by this standard, all those who have read the Financial Relations Committee's Report, will see that Lord Meston while making his award gave to Madras in the shape of land revenue no less than Rs. 576 lakhs. That was a windfall which they got from the Government of India owing to the clean cut of the sources of revenue. The whole of their land revenue was given to them and in return for that they were expected to make a certain contribution to the Central Exchequer. The result of this was that, although it is the fact they have to pay Rs. 348 lakhs as their contribution to the Government of India, they are gainers by no less than Rs. 228 lakhs. Therefore, I fail to see

[Mr. B. S. Kamat.]

how Madras is hit the hardest. No Member has proved that Madras is in a worse plight than any other Presidency. Only recently, Sir, in November last the whole of this question was sent up by the Government of India to the Secretary of State and the reply which the Secretary of State has sent back over this question sums up and gives a review of the position of all the provinces in India. I find from that review and the tables given there that Madras in 1922-23 has a deficit of 42 lakhs, but Madras is not the only province in that singular position at all. Bombay at the time of this despatch had also a deficit and that deficit was larger than the deficit of Madras. The deficit of Bombay was Rs. 50 lakhs and so also with the other provinces in India. The only two favourable provinces which had no deficit were Burma and Bengal. The Honourable Mover referred in a tone of derision to Bengal. The fact of the matter is that certain provinces like Bengal and Bombay have seriously considered how to set their houses in order. They have not hesitated to impose fresh taxation. By strictest retrenchment on the one hand and new taxation on the other they are making a valiant effort to improve their finances, and have put their houses in order.

Mr. President: Order, order. It may be reasonable for the Honourable Member to use that as an illustration to his argument, but I cannot allow the debate to turn upon the respective performances of the provinces in this respect. The Resolution asks for action by the Central Government and not for criticism of the provinces.

Mr. B. S. Kamat: I wish to show that Madras has failed to take the necessary steps to set her own house in order, and if she had done so or rather if she had sufficiently done so, probably she would not have come before this House for remission of contribution.

Mr. President: The Honourable Member must see that if I allow the debate to proceed on these lines, it will turn entirely upon the taxation in the provinces. As I have pointed out, the matter is relevant, but only in a minor degree.

Mr. B. S. Kamat: Now, taking the proposal of the Honourable Mover with reference to the setting aside of revenues, let us see what will be the effect of that proposal if we materialise that proposal by taking up definite concrete sources of revenue, let us see what is the effect. Does he mean that we should set aside income-tax? Does he mean that we should set aside some portion of the customs revenue? Whatever may be the proposition at the back of his mind, Sir, I contend it must mean greater deficit and therefore greater taxation. Has he taken into consideration the effect of his proposals on all the different provinces of India. Some of the other provinces are, as we all know, industrial provinces. We have to take into account in their case what they pay both in the shape of direct taxes and in the shape of indirect taxation. The Presidency of Bombay, for instance, has to pay to the Central Exchequer no less than 8 crores of rupees at the present moment. Similarly, the Presidency of Bengal must be also paying a very large amount in the shape of income-tax to the Central Exchequer. I have in my own hands a statement regarding the calculations of the total contributions from the principal major provinces to the Central Exchequer including income-tax. I quote the figures from a recent speech of the Member for Finance of the Bombay Government.

If you include income-tax in all the other contributions to the Central Exchequer the Bombay Presidency is paying 9 crores of rupees to the Government of India. Bengal is paying 7½ crores and Madras is paying only 6 crores. If therefore the proposal to set aside certain Central revenues were to be accepted I contend that the result would be that it would tell very heavily on Bombay and on Bengal. My Honourable friend, Mr. Reddi, has referred to customs. In the case of customs, let us compare the position of the three different Presidencies. I have not got the latest figures with me, but taking the figures of 2 or 3 years back, of say 1919, let us examine what each port paid to the Central Exchequer. Calcutta in the year 1919 gave to the Government of India in the shape of customs revenue in the shape of import duty £300 millions; Bombay gave £300 millions nearly. But Madras gave only half a million. Take again the export duty which Madras has contributed. Calcutta contributed in that year to the Central Exchequer not less than £1,600,000, Bombay contributed as export duty £700,000, whereas Madras has contributed a miserable pittance of £1,300 only in the shape of export duty. That will roughly illustrate, Sir, how if the proposal of my Honourable friend were carried out to its logical conclusion he would be sharing in the good fortune due to the contributions by other Presidencies. My friend comes from the Madras Presidency where the joint Hindu family system is perhaps greatly liked. This proposal sounds to me like the proposal of three sons in a joint family to put together in a common pool their earnings, one brother getting a salary of say Rs. 1,000, another brother getting a salary of something like Rs. 500 and the third brother from Madras getting a salary of Rs. 60 as a school master. It is proposed that all these three salaries should be pooled together and out of that the provincial contribution should be wiped out. I think, Sir, it is not a fair proposal to make. Madras is going to profit by the wealth of other Presidencies. These are the grounds on which I think this proposal ought to be opposed. My friend, Mr. Haigh, has also objected that this proposal is exceedingly inopportune at the present moment. We are unable to see how the budget will stand and unless I know the budget, I think, to support this proposal would be a leap in the dark.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the inference which I draw from this debate is that perhaps Bombay is fighting against Madras and *vice versa*. I may invite the attention of both the provinces to the terms of the Resolution. The terms of the Resolution are not in favour of one province and against the other. The attempt of the Resolution is to see that all these provinces may be relieved of the burden, which is, unduly, thrown upon them and if we shall fight with each other, like this, I am sorry the fate of this Resolution will be very unhappy. Now, the Resolution says that: "This Assembly recommends to the Governor General in Council that steps be taken immediately to set apart some revenues for the purpose of wiping out all contributions from the provinces in the course of six years." The Honourable Mr. Haigh says, "We shall, after some days, discuss the Budget and therefore we should not try to embarrass the Honourable the Finance Member." There is no point in it. This is a simple Resolution. We shall see about it when the budget comes and we wish some reduction may be shown in the Budget. This is simply a recommendation that is going to be made to the Governor General in Council and this may be appreciated now, and if not now, then afterwards. Now, Sir, if I may invite the attention of the House to the debates and discourses which were before the Punjab Legislative Council, then

[Dr. Nand Lal.]

this House, I am sure, will be convinced of the difficulties of that province. That overburdened province has to pay so much. It is impossible for that Government to spare so much. I am not going to say that this province is paying more and that province is paying less. I join the common cry saying that this burden is too much and the Government of India may very kindly find their way to see that we are relieved of it. With these few remarks I whole-heartedly support this Resolution.

Dr. H. S. Gour: As lawyers will say this Resolution is *res judicata*. It comes here masked in a different garb but the Resolution is the Resolution of September of last year and this House has pronounced its verdict upon that Resolution from which I think it could not appropriately recede. My second submission is that this Resolution is premature. We are on the threshold, as has been pointed out by the Honourable Mr. Haigh, of a new financial budget. The Incheape Committee have formulated certain recommendations. We do not know what they are and to what extent they will modify the receipts and expenditure of the Central Government. We had a staggering budget last year and we can only hope that with the changed effect of the financial conditions of the Central Government and the retrenchment advocated by the Committee appointed for that purpose, we shall get some measure of relief, but till that time comes we have no revenue to set aside. The Resolution says you shall immediately set apart some revenue but my friend, the Mover, of the Resolution has not indicated where the revenue is to come from.

Dr. Nand Lal: It rests with the Central Government to see. (A Voice: "Curtail expenditure.")

Dr. H. S. Gour: Then, Sir, we are told by different friends from different parts of the House 'Curtail expenditure.' It is for the Central Government to see. But whether it is for the Central Government to see or whether expenditure is curtailed or not, we shall have our pound of flesh. Is that a rational attitude to adopt. It is for this House to see as to how its revenue is allocated. If the House commits itself to this Resolution it commits itself irrevocably to additional taxation: let there be no mistake about it. If during the next budget we find that the revenue and expenditure are not balanced or are balanced upon last year's figures, the additional taxation which we sanction from year to year will not be abated but will continue. It is the same thing, whether you continue old taxation or have additional taxation but the question whether we shall tax the country at large for the purpose of benefitting several provinces or retain the very high level of taxation already reached in the country is a question which cannot be examined piecemeal and in connection with this Resolution. Then, Sir, when I heard the Honourable Members speak, I almost thought that this Resolution dealing directly with the Madras contribution and reinforced with the same argument, is an old Resolution which comes here in a new garb but whether it is a Resolution directly dealing with the relief of Madras, or the United Provinces or the Punjab, I hope Honourable Members will realise their responsibility and see that they may be voting upon this Resolution in a way which after the budget is introduced they may not be in a position to endorse. Honourable Members will further remember that frequent references have been made to Lord Meston's award. If Honourable Members will turn to the pages of Lord Meston's report they will find one very significant fact which was

the basis of the entire award and that was that the military expenditure was taken at 42 crores of rupees. But what has been the actual expenditure? We have been told that it runs to Rs. 70 crores if not more. What is the difference between Rs. 70 crores and Rs. 42 crores? Rs. 28 crores. Now, Sir, I ask Honourable Members a simple question. If Lord Meston's award is to be revised, who is to pay for this additional burden thrown upon the Central Government, namely, 28 crores of rupees,—and I have no doubt that if the provinces have to contribute, or had to contribute, upon this new basis, their contribution would be larger and certainly not less. The fact is, Sir, that the subsequent events have completely falsified the calculations made at the time of Lord Meston's award. The whole award has to be scrapped, it has to be re-examined, and if that, I submit, was the Resolution to be moved, for the purpose of re-examining the whole question, not of one Provincial contribution or of another Provincial contribution but of the financial relations of the Central Government with the various provinces, then I submit this House would support such a Resolution. But to ask that Madras should get relief, or the United Provinces should get relief, or, in a smaller measure, my own Province should get relief, is to ask for relief oblivious of the fact that we cannot dissociate Provincial revenue from Central revenue. During the course of the last debate in Simla the fact was borne in upon the Members of this Honourable House that one-third of the Army of India is kept for the preservation of internal peace and order, and it was pointed out by some of us that in maintaining one-third of the Army in this country, it is maintained for the purpose of doing what is primarily the function of the police. Now, Sir, if one-third of the Army is kept for the preservation of peace and order in the provinces, can it be denied that it is primarily a provincial charge? And if you were to saddle the provinces with one-third of the cost of the army of India, what would be the result? Would the provincial contribution be greater or less than one-third under Lord Meston's award? I submit, Sir, that these are questions which cannot be ignored in considering the Resolution upon which this House is called upon to vote. Lastly, Sir, I turn to the very terms of the Resolution. It says that 'steps be taken immediately to set apart some revenues.' In what way, Sir, are the steps to be taken? Are they to be taken by retrenchment or the levy of additional taxation (An Honourable Member: "The Government of India will look into it.") And if the Honourable Finance Member has no revenue at all, what support is this House prepared to give to a proposal, let us assume, for the enhancement of a cotton excise duty, or the levying of a salt tax, or the taxation of kerosene, or the enhancement of a duty upon matches? Will this House be prepared to support the Government upon proposals for additional taxation of this character? (Voices: "No, no.") I submit, not. My friends have rightly said 'No, no.' Now, Sir, unless you are prepared to find the money, you cannot ask the Central Government to allocate any portion of money for the relief of the provinces. On these grounds, Sir, I feel constrained to oppose the Resolution, though I should be inclined to support it if my friend, the Honourable Mover of this Resolution, makes it subject to two conditions. The first is that the words 'immediately' and 'six years' should be removed, and in their place the words 'as soon as possible' or 'as far as practicable' be substituted; and the last condition, and a very important condition, is that this readjustment should not involve the Central Government in any additional taxation. If the Honourable Mover of the Resolution is prepared to accept these terms, I have no doubt the House will support him. But unless these qualifications are added to the Resolution, I feel,

[Dr. H. S. Gour.]

Sir, that the House would not be justified in lending its support to the Resolution. The Resolution, as it stands, is, as I have said, unworkable, premature, inexpedient and improper, and I hope the House will throw it out.

Mr. P. P. Ginwala (Burma: Non-European): Sir, I rise to move the amendment which stands against my name; it runs as follows:

"That for the original Resolution the following be substituted:

"This Assembly recommends to the Governor General in Council that with effect from the financial year 1923-24 a commencement be made in the reduction of provincial contributions and that the financial policy of the Government of India be directed to secure their total abolition within a period not exceeding seven years.

This Assembly further recommends to the Governor General in Council that with a view further to give effect to this policy a complete examination be made of all possible sources of Central revenue in order to determine how far, with due regard to the taxable capacity of the people, they admit of being improved and expanded."

The amendment which I am moving meets some of the difficulties which have been raised by some of the Honourable Members who have preceded me. For a moment I shall remind the House of the implications of the Meston award. It is not my purpose to go into its fairness or otherwise, but the Meston award contemplates two things which are obvious to anybody who reads the Report,—first that these Provincial contributions are to continue for a certain number of years, and secondly, it pre-supposes that before the Government of India can do away with these contributions, its own finances must have improved. It contemplates a time when the Government of India will be able to manage its Budget without levying any contributions from the provinces. Now, therefore, it means this, that sometime or other the Government of India will have to look about itself to see whether its budget has balanced, and if the budget has not balanced, it will have to look to see how it can best be balanced. When it has balanced, it will be in a position to give up the Provincial contributions that it takes from the various provinces.

Mr. President: I must draw the Honourable Member's attention to the fact that the question of an enquiry into all possible sources of Central revenue is outside the scope of the Resolution. Therefore, the second part of his amendment necessarily falls to the ground. He can move the first part.

Mr. P. P. Ginwala: May I explain how I may move the second part also? My contention is this: it has been argued first of all that the Meston award cannot be set aside just now or at any rate within a certain period,—secondly, that the Government of India cannot be expected to give up the Provincial contributions until its own finances have improved, and my submission is, that the whole system of taxation is just now such that, unless an examination is made of that, it will never be in a position to give up the contributions.

Mr. President: The Honourable Member is not drawing the necessary distinction between the merits of his own proposal and the technical question of order. The proposal made in the Resolution is to invite the Government of India to set apart some of the revenues for the definite purpose of

wiping out Provincial contributions. No doubt the Government will have, as far as the merits of the question are concerned, to inquire into all sources of revenue, but as far as the purpose of this debate is concerned, the Honourable Member must stick to the specific question raised by the Resolution. The first part of his amendment is in order; the second part is out of order.

Mr. P. P. Ginwala: Well, Sir, in any case I submit that the Government of India is now called upon by this House, if this amendment or the Resolution is accepted, to make a beginning in the abolition of provincial contributions. And my contention is that the Government of India's resources, if full use is made of them, will permit the Government to do so. I maintain that it has not made the best possible use of the resources at its disposal. I shall draw attention for a little while to the present sources of revenue to make my point clear. They have three or four important sources of revenue, the most important being customs, from which according to the Budget it expects to realize 45 crores of rupees. I do not know how far those anticipations are going to be realized, but we shall assume that they will very nearly be realized. And if you look at the manner in which these customs taxes are levied, it will be seen that no principle is followed by the Government in levying them.

Mr. President: I cannot allow the Honourable Member to enter upon an argument as to the manner in which duties are levied.

Mr. P. P. Ginwala: I am not talking of a protected tariff. I am talking about their sources of revenue.

Mr. President: The Honourable gentleman was proceeding to discuss the manner in which those taxes were levied. That has nothing to do with this Resolution.

Mr. P. P. Ginwala: Well, Sir, I am sorry there is this difference of opinion between the Chair and myself but I have no hesitation in accepting the decision given. I shall therefore confine myself more or less to the first part of the amendment and refer incidentally to the second part—(Dr. H. S. Gour: "That has been ruled out of order.")—in so far as it may be necessary to make the first part clear.

The first part of my amendment suggests that a beginning should be made from the next financial year and that the process should continue for a further period of seven years. That is what was contemplated by the Meston Committee's award when it was first made, subject, of course, in the meanwhile to the financial position of the Government of India itself. It has been suggested just now that if the question before the Assembly was the total abolition or the setting aside of the Meston award, my Honourable friend, Dr. Gour, and other Honourable Members from Bombay would have supported this Resolution. But as it is a question of merely giving up these contributions they will not be satisfied. I fail to understand the logic of that argument. They make a certain contribution to the revenues of the Government of India; we propose that those contributions should be discontinued; to that extent, therefore, they must admit that they will be the gainers, whatever contribution they may make to the Central revenues. I cannot understand their reasoning at all specially in

[Mr. P. P. Ginwala.]

the case of my Honourable friends from Bombay. Last year they made a plaintive wail in this House. My Honourable friend, Mr. Jamnadas Dwarkadas, was very eloquent about the miseries of Bombay owing to its resources being curtailed in this way by the Meston award. This year I read that the Bombay Government is budgetting for a surplus; therefore the outlook of my Honourable friends from Bombay has 'totally changed. They despise even the suggestion that they should be relieved of any contribution whatsoever, because they have been able to budget for a surplus. That is what their present position comes to. But I want to know from my Honourable friends from Bombay how they would be prejudiced if the Government of India found it possible to give up all the provincial contributions? To that there has been no reply. Whatever the contribution may be, why should they consider themselves above receiving that benefit from the Government of India if it is in a position to give up the contributions? Because they cannot have the Meston award set aside altogether, they will not have anything whatsoever from the Government of India. My Honourable friend, Dr. Gour, also said, "Oh, if it does not involve any additional taxation, I will be prepared to vote for it." Now there is no question of any additional taxation at all. It is a mere adjustment. (Voices: "No, no.") It is a mere adjustment, I maintain, of the taxation of the Central Government; an adjustment on a more equitable basis, a basis which would compel everybody who ought to pay to pay. It will have regard to the fact that those people who are in a position to pay the most must be made to pay the most, and those who can afford to pay the least will pay the least. I contend that if that system is followed, it is a question not of increasing taxation, but merely of readjusting it according to the capacity of the people. My Honourable friend conjures up before himself some danger that if we embark upon this there is the danger of the taxation being increased. He has not said why it should be increased, nor have my Honourable friends from Bombay suggested that taxation must be increased if the Government of India is to be placed in a position to give up these contributions. No doubt, Sir, if the Government of India persists in taxing the people as they are doing without any reference whatsoever to the taxable capacity of the people, it would mean additional taxation, but not otherwise. I say with some confidence that there has never been any principle in the manner in which the Government of India have levied taxation. That is why my Honourable friend, Dr. Gour, is so nervous about giving his consent to this Resolution. He anticipates that the Government of India will always muddle through their taxation and that this must lead to an increase in taxation instead of a mere adjustment of the existing taxation. If he looks at the whole system he will find that a reasonable and careful examination in their own offices will suggest to the Government of India methods by which, without imposing an iota of additional taxation, they could increase their revenues. Though perhaps it is not necessary for this House to make suggestions to the Government of India, who are expected and claim to know everything about taxation, it may perhaps be suggested that there should be no apprehensions entertained on the score that the acceptance of this amendment would necessarily lead to an increase in taxation. Neither Dr. Gour nor the Government have at any time attempted to explore the possibilities of Indian taxation with a view to relieving the poor tax-payer whilst increasing the total revenues of the Government of India. In a period of 6 or 7 years, if the Government of India really looked

into their own finances, it will be in a position without a penny of additional taxation to meet this demand. Another thing that has been suggested is that it should reduce their expenditure. A very great Committee is now examining this question, but I do not think that even a powerful Committee such as that would be able to abolish all expenditure; if it is able to do so, the millenium would come and there would be no taxation. But in case it is not able to make such a sweeping proposal, but if its proposals merely enable the Government of India, by curtailing expenditure, to get rid of the deficit, then a time must come when the Government of India must look into possible sources of revenue and to see how they can be so expanded as to meet the legitimate demand of the provinces.

I will make one observation before I sit down, namely, that I am not in any way interested, as representing Burma, in the abolition of the provincial contributions, except that if it is abolished we should appreciate it. We make a contribution of about Rs. 64 lakhs a year for which we get a very good return. We are allowed, we have the right to be here in this Assembly and we are sometimes permitted to lend some of our most efficient Secretaries to the Government of India. We think that that is a reasonable return; we make no complaint. But if in addition to these advantages we are relieved also of Rs. 64 lakhs a year, we shall not despise the gift like my Honourable friends from Bombay who are despising the sum of 56 lakhs which is their provincial contribution and of which we are suggesting they should be relieved.

(Mr. Jamnadas Dwarkadas here rose to speak.)

Mr. President: I suggest to the Honourable Member that he ought to finish. It is time.

Mr. P. P. Ginwala: I am very sorry to make my Honourable friend wait for a couple or more minutes, because I know, Sir, that he has come prepared with a very violent speech on the disadvantages of setting aside the Meston award. I think that is the case which he will present, because Bombay does not require the abolition of the contribution by the Government of India. I will make one last observation before I sit down. Though I have said in my amendment that it should be done within a period of not more than seven years, it is unnecessary that a period should be fixed in the amendment at all. The period of seven years is put in because it is more or less in accordance with what the Meston award itself contemplates; but if there is any amendment moved to that effect there I should be perfectly willing to omit it. There is nothing controversial whatsoever in this amendment of mine. It merely lays down a principle upon which, I have no doubt, the Government of India are acting. Though the principle may be good, yet my Honourable friends from Bombay are nervous lest they should be compelled to accept from the Government of India this gift of Rs. 56 lakhs a year, and that, I submit, is no ground whatsoever why this House should reject this amendment. I trust the House will accept my amendment.

Mr. Jamnadas Dwarkadas: Sir, I am afraid I am going to disappoint my Honourable friend, Mr. Ginwala. I am not going to make any violent speech at all. Violence, in the first place, as my Honourable friend ought to know, is not in my nature, nor, so far as dealing with this question is concerned, do I think it is necessary. As a matter of fact, I wanted to

[Mr. Jamnadas Dwarkadas.]

rise at an early stage to move that the question should be postponed to a subsequent date, but I feel, Sir, that it is better that it should be discussed, because although I am neither an astrologer nor a prophet, I have no difficulty in seeing the fate of this Resolution. However, Sir, I am glad that this Resolution should have been brought up for discussion for one additional reason. You know, Sir, that I always value the opinions of my Honourable friend Dr. Gour and I should rather have him with me on any question than against me. Now, my Honourable friend bringing this Resolution here has, I think, brought about a welcome change in the attitude of my Honourable friend Dr. Gour. I was wondering whether it was Dr. Gour who said that if a Resolution asking for a re-examination of the whole basis of the Meston award were brought forward, he would support it. I was wondering whether it was Dr. Gour who said that, because when I moved an amendment to that effect when we were discussing the matter in Simla, I found to my surprise and to my dismay my Honourable friend Dr. Gour levelling his attacks at me and opposing the amendment with all the force that he could possibly command. He even went so far as to say that this suggestion of mine was a death-trap and warned the House not to fall into it. Well, Sir, everyone learns wisdom as days pass by and even at this age in spite of his learning, I am glad to realise that my Honourable friend does not shut out the opportunity of learning; and I am glad, Sir, that to-day my Honourable friend has really supported the view that I placed before the Assembly in Simla.

Now, Sir, coming to the amendment of my Honourable friend Mr. Ginwala, I do not see that there is any difference between the Resolution as moved by my Honourable friend, Mr. Reddi, and the amendment as moved by my Honourable friend, Mr. Ginwala. So far as those of us who are opposing the Resolution of Mr. Reddi are concerned, we need scarcely say that our attitude towards Mr. Ginwala's amendment will be the same. We cannot accept it. But what I cannot understand is the argument that has been advanced by Mr. Ginwala in support of his amendment. He says even if you give back these contributions why will you be dragged to the necessity of having additional taxation. I cannot understand it. It is simple arithmetic; simple common sense. You have here a large sum of money. Madras contributes say 3½ crores to that sum. If you give a portion of that money back to Madras, that money has got to be realised from other provinces in some manner or other. If you have got to bring in that money somehow, how are you going to bring it in except by additional taxation? Suppose, for instance, as is natural in these cases, the Customs duty was raised. Who is going to pay that Customs duty? My Honourable friend Mr. Kamat has just given you figures which are most eloquent. Bombay and Bengal are the two provinces which pay the largest contribution to the Customs. Sir, the immediate effect of giving back to the provinces any portion of their contribution would be that if Customs were raised, Bombay and Bengal at any rate would be the provinces that would suffer most; Bengal more than Bombay. I admit. But if you look at the figures that my Honourable friend, Mr. Kamat, has quoted, you will find that the port of Bombay and the port of Calcutta are paying the largest contributions to the Customs Revenue. Therefore, I cannot understand the argument of my Honourable friend, Mr. Ginwala, that you are going to pay back these contributions from somewhere (I know not where) without resorting to additional taxation or without, as my Honourable

friend, Dr. Gour, rightly put, taking away anything from the additional burden that has been placed on the shoulders of the people of this country during the last two years. If the Government of India can afford to give any money back and if they do not need so much money for the central expenditure, then the first duty that devolves upon them is to remove some of the burden of additional taxation that they have placed on the shoulders of this country, rather than think of paying back the contributions of some of the Provinces at the expense of other provinces. Therefore I am entirely at a loss to understand the force of my Honourable friend Mr. Ginwala's argument on which, although he talked of different things, it seems to me he based his whole amendment. Now I need say nothing more in regard to the Resolution moved by my Honourable friend, Mr. Ginwala. It is now known to us all that although a claim is being made that many Provinces will get relief, the whole case, as presented, is for the benefit of Madras. I do not for a moment want to say anything against the desire of Madras to get back a portion of its 3½ crores. I think Madras wants money for expenses for various departments, and I think Madras is entitled to claim that some more money should be given back to it, but I do feel this, that even Madras has no right to make that claim if the money that they would get back would be at the expense of other Provinces. You have got to give due consideration to the financial situation of the Government of India before you make an arbitrary demand like that, which might do good to you, but which may mean a lot of harm to other Provinces. But my Honourable friend, Mr. Ginwala, says, "Oh Bombay has just managed to start with a surplus budget." Well, that is so. I hope Madras will follow suit. Bombay—if I may say so without assuming any unnecessary pride on behalf of Bombay—will always try to get its grievances redressed, as it did at Simla. It did go into the whole question of the basis of Lord Meston's allocation, but when it found that neither the Government of India nor my Honourable friends themselves who were dissatisfied with Lord Meston's award, were prepared to support the claim of Bombay, which was not made exclusively for itself, but which was made for the benefit of all the Provinces, Bombay could not sit with folded arms and do nothing. Bombay is in the habit, if I may say so, of trying to get its grievances redressed by all kinds of measures, but if it cannot, Bombay does know how to stand on its own feet. Bombay can find out methods by which it can rely on itself and make its two ends meet. Is that, Sir, a reason why other Provinces, who ought to follow the good example of Bombay, and who ought to learn the art of standing on their own feet, is that a good reason why other Provinces should claim more from Bombay and should claim more for themselves when they are not prepared to take the situation of their own Provinces in hand and make an effort to see that their budget is balanced? I am sure if my Honourable friends from Madras devoted half their energies to the improvement of the financial situation in Madras instead of throwing all their force into getting something out of the Government of India, which I do not think they are likely to get, if they devoted half their energies to that problem, they would soon find, within a year or two, that they would also have succeeded in imitating the example of Bombay, and will probably be standing on their own feet, and that will be to their credit. Sir, I do not think I need any further arguments for opposing the Resolution.

Baba Ujagar Singh Bedi (Punjab : Landholders): Sir, I rise to associate myself with the Mover of the Resolution. I have heard some of the

[Baba Ujagar Singh Bedi.]

magnificent speeches both for and against the Resolution, and more especially the cogent and argumentative speeches of my friend, Dr. Gour, prinked with his eloquence and that of the Honourable Mr. Jamnadas Dwarkadas. The former has pointed out, Sir, that there is a great danger if we resort to the recommendations made in this Resolution. The first danger is that we will have to raise fresh taxation, and if we propose fresh taxation it will fall on the consumers

Dr. H. S. Gour: On the people.

Baba Ujagar Singh Bedi: On the people. Well, Sir, I think it only reminds me of the same story which I mentioned at the last Session of the Assembly at Simla. I think it is not justice that one Province should bear the burden of another Province. Let everybody and anybody who lives in India share and pay to the Central Government, whether by fresh taxation or in any other form in which the demand comes. We are all equally citizens of this country and are equally responsible for subscribing to the central exchequer. It is not fair that one Province should pay for another. Then, Sir, my friend, Mr. Jamnadas, has said that, as Bombay is paying a high port duty, therefore Bombay is much ahead in that respect. But, Sir, I must just point out that all these commodities come from different Provinces and they are exported through these ports. It is not only Bombay that pays these duties. To elucidate my meaning may I point out, Sir, that we have just proposed a new assessment on cotton of four annas on each bale. I will just put the question to my Honourable friend. If all these bales are exported from Bombay, would it mean that it is paid from the pocket of Bombay? Certainly not, it is paid from the pockets of the agriculturists. It is not Bombay that is going to pay for it. Then, Sir, I will refer to some of the speeches from the Punjab, which felt this Provincial contribution so heavily. In his speech in the Punjab Council on the 21st February, 1922, Sir John Maynard said:

"The Committee, having taken into account the indirect contribution of each Province, and in particular the incidence of customs duties and income-tax, and having inquired into the taxable capacity with reference to probable developments, concluded that the standard contribution for the Punjab was 9 per cent. of the total, or Rs. 87½ lakhs per annum. But practical considerations made it impossible to levy an even standard contribution at once from each Province and the Committee proposed an intermediate contribution from the Punjab of double the standard."

Then there is another gentleman, Muhammad Hussain, who says as regards the provincial contributions:

"The first is to cut and control the expenditure as much as we can possibly do, to equalise income and expenditure, and the second to ask or approach the Government of India once more to forego or to reduce the contribution which they have imposed upon us."

So, my submission is, Sir, that my province, a poor province, is paying very heavily for the other provinces. For this reason, Sir, I give my whole-hearted support to the Resolution.

Mr. T. E. Moir (Madras: Nominated Official): Sir, it is with some reluctance that I again take part in a debate on this vexed question of the contributions, but there are several points which have been raised by speakers who have taken part in the debate to which I think some answer

is necessary on behalf both of those who moved the Resolution and the amendment and of the province from which I come. My Honourable friend, Mr. Haigh, rather twitted those who have supported this Resolution with the fact that it is inopportune and might better have been moved on another occasion. I would point out that those who have interested themselves in this question are not their own masters in this matter of dates; they are subject to the public business of this House and the luck of the ballot. We certainly would have preferred to have an earlier opportunity for once more pressing this matter on the attention of the Government of India, and it is not our fault if it happens that the debate should take place a week before the presentation of the Budget. My Honourable friend, Mr. Haigh, further attacked us on the ground that we were attempting, in anticipation of that date, to elicit from the Honourable the Finance Member some indication of his intentions. Now nothing was further from our minds and I do not think that he can point to any statement in any of the speeches which have been made on behalf of this Resolution or the amendment which showed any attempt to elicit from the Honourable the Finance Member any such information. If I may say so, it was Mr. Haigh himself who was guilty of such an attempt. His remarks reminded me very much of that form of leading question which generally is referred to as asking some one whether he has left off beating his wife. What he really asked the Honourable the Finance Member was "Have you left off having a deficit," and he apparently expected the Honourable the Finance Member to give some answer to that leading question. I quite agree

Mr. P. B. Haigh: Shall I be in order, Sir, in saying that I never expected the Honourable the Finance Member to say anything at all.

Mr. T. E. Moir: I quite agree with my Honourable friend, Mr. Haigh, in that remark, because I also agree with him that the bird is much too wary.

Now, Sir, Mr. Haigh and several of his colleagues have shown an attitude in this matter which was what we expected. We anticipated opposition from Bombay and we certainly have got it. Now, we in Madras have the greatest admiration for Bombay and in that I feel sure that every Member of this House shares our feelings. We are proud of Bombay, that fair sea queen, who sits by the sea watching her argosies go to and fro. But, regal city as Bombay is, enterprising as its citizens are, they do, I think, display certain qualities which are generally associated with an aquatic animal of a somewhat lower order. In the first place, Bombay is absorbent. It drags into its capacious maw wealth from all quarters of the globe and from all quarters of India. It is also retentive. Else how comes it that, in spite of the protests of every other province in India, in spite of the continued protests from my own province, as my Honourable friend, Sir Gordon Fraser, has pointed out, when the reforms came into being and the new financial relations were introduced, it was found that Bombay had been retaining out of its vast wealth Rs. 2 per head of its population for every rupee that every other province in India could boast of. Further, there is another characteristic which is common, it seems to me, to some of our Bombay friends and that lower organism to which I have referred. Bombay is convinced that all it contains has been its own creation; that those supplies which swell its pores and its fibres are all entirely due to its own efforts. "Alone we did it is their motto." Now, I would

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ask my Honourable friend from Bombay if its hinterland were limited by the borders of its own province, if its hinterland were confined to that strip which runs east of the Western Ghats to the borders of Hyderabad and Northern India, would the city of Bombay be the proud city it is. No, of course not, and I must protest most strongly against this perpetual and recurring assumption on the part of Bombay that its wealth is entirely due to its own efforts, to its own enterprise, and that the rest of India has had no share in creating that wealth.

Mr. President: I must point out to the Honourable Member that, having allowed a certain amount of latitude to the spokesman from Bombay, I have allowed him a similar latitude, but I must now invite him to confine himself to the Resolution.

Mr. T. E. Moir: Sir, I have done with that aspect of the question. I will now turn to a remark of my Honourable friend, Dr. Gour. Now, I wish I could debate two sides of the question with the same fervour as Dr. Gour, but there is at least one remark for which on this occasion I have to thank him. He informed us as an eminent lawyer that this matter is *res judicata*. I agree entirely with him that it is *res judicata*. Our claim is based on the law of the land; it is enshrined in statutory rules, and what we are complaining of is not that it is *res judicata* but that it is impossible for us to get execution of our claims. Sir, I have no desire to go once more over the real issues which underlie this Resolution. The Government of India have been informed more than once of the manner in which the political and the administrative life of the Madras Presidency and of other Provinces, which are hampered under the same disabilities, suffers owing to this question of the contributions. I would to-day urge it more specially on another ground. We have an opportunity to-day of welcoming to this arena a new Finance Member, and I trust that you will realise from what has been stated in debate to-day that this is a serious question, that it is warping the relations between Province and Province and between the Provinces and the Government of India, and that it is most essential in the interests of all concerned that this recurring source of controversy and friction should be removed. I entirely agree that if it had been open to us we would have sought another occasion for pressing this matter upon the Government of India; but, if I may say so, the fact that we have done so now is entirely justified by the speech of my Honourable friend, Mr. Jamnadas Dwarkadas. What he has really told us is that as far as he and his Province are concerned, they will not under any circumstances consent to these Devolution Rules being put into effect so long as they can oppose it and thereby further their own ends. Now, Sir, we in Madras must protest strongly against that attitude. We stand by our rights and we do insist that it is the duty of the Government of India at the earliest possible opportunity to give effect to these Rules, which are Statutory Rules. What we do ask is a further declaration from the Government of India that they do not share the attitude of the Bombay representatives, that they recognise our claims and that they intend to give effect to them. I sincerely trust that the Honourable the Finance Member will find himself in a position to give these assurances to which we are legitimately entitled, and I can assure him that in that case we have no intention of further pressing this question. We shall rest secure in the assurances which we hope he will be in a position to give us and we shall trust that he will give

effect to them and direct his financial policy by all possible means towards that end.

The Honourable Sir Basil Blackett (Finance Member): This subject, Sir, seems to be one which lends itself to metaphors. I understand that Madras is the milch-cow of India. I myself have been compared to so many kinds of animals to-day that I find difficulty in keeping pace with them. Mr. Haigh, I think, said I was a dark horse. I hope that if he is in the habit of betting he will not judge by my form to-day as to what I am going to say next week.

Obviously, as the House is well aware, this is not the most convenient moment for the Government of India to express its views on the subject of the provincial contributions. The Budget is after all only a week ahead. I make no complaint at all that this Resolution has been moved to-day. On the contrary, I had not the honour of being present at Simla last year; so the debate has been extremely interesting and valuable to me and has brought me much knowledge. There has been such a multiplicity of counsellors that I do not know that it has brought me all the wisdom that I should have desired. But none the less I have no complaint to make and I am very glad to have been able to listen to the real grievances and the fancied grievances of the tax-payers of India.

Now it is natural and proper that representatives coming from individual Provinces should voice the views of their Governments in regard to those provincial contributions. But after all, we here to-day represent—we are the Legislative Assembly for India as a whole, and our first duty is to the Budget of the Central Government. Every Federal Government of which I know comes up against this sort of difficulty. Mr. Haigh has an idea of provincial autonomy and the right of a Province to use its own resources which seems to me to imply as a corollary that the Federal Government have no rights at all in Bombay.

Mr. P. B. Haigh: May I say, Sir, that I never made any such suggestion. I deliberately refrained from arguing at length what I called the case of Bombay.

The Honourable Sir Basil Blackett: I apologise to Mr. Haigh if I overstated anything. What I think he said was that Bombay claimed its right to all its resources. I think if Bombay claims its right to all its resources, there is very little room for the Central Government. However, if my inference was incorrect, I apologise at once. We here represent India as a whole. Next week I am going to have the honour of laying before this House an account of the stewardship of the Government of India for the year 1922-23 and of its proposed action during 1923-24. I submit, Sir, that to debate to-day the question whether additional taxation or existing taxation should be set aside for the purpose of an immediate reduction in provincial contributions is an impossibility in the absence of all the material facts which will not be before us till next week. I recognise that every one of the Provinces takes a very deep interest in its contribution. Except perhaps Bombay which desires to manage the matter in its own way, all of them are looking to the Government of India at an early date to reduce their contributions. Now the Government of India is under a very definite pledge in this matter which has been repeated again and again. It is, as

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one member—Dr. Gour—said, *res judicata*. The Government of India has promised—the exact words I think are:

“That they will shape their financial policy towards the reduction and eventual extinction of the provincial contributions.”

That is not merely a promise; it is a statement of fact. The Government of India is and has been steadfastly shaping its policy towards the reduction and eventual extinction of the provincial contributions. I have too much sympathy with my own position in trying to balance the Budget not to have sympathy with the Finance Members in the Provincial Governments. But charity begins at home. Our first duty is to balance our own Budget, and I submit that it is the duty of all of us here as representatives of India in an All-India Assembly to direct our attention first and foremost to what is our primary duty in this matter, which is the balancing of our own Budget, being quite sure that that is essentially the first step towards that reduction and eventual extinction of the provincial contributions to which we are all looking forward. Obviously I cannot say very much that is to the comfort of Bombay to-day. Lord Meston's award, whether it is the best possible or not, is *res judicata*. It obviously holds the field for the time being and for the time being that award must surely be regarded as a closed issue. If you reopen that award it would merely add new elements of uncertainty to the central Budget and to all of the provincial Budgets. A time may come when the contributions have been extinguished when it may be desirable to reopen the question but the time surely is not yet. For those who are in favour, unlike Bombay, of the Government of India keeping its promise and steadfastly directing its policy towards the reduction and eventual extinction of the provincial contributions I do not think I can say more than I have already said. The Government is and has been directing its policy to that end. If I were to say more I should be anticipating what will have to be said next week. There is really a very large measure of agreement I think in this House on this Resolution. The original Resolution recommended that steps be taken immediately to set apart some revenues for the purpose of wiping out all contributions from the Provinces in the course of six years. The amendment dots the i's and substitutes for the word “immediately” the words “with effect from the financial year 1923-24” and it also seeks to do the needful within seven years. Until the Honourable Mover got up I was in doubt as to whether the words “to set apart some revenues” meant to impose additional taxation or whether they meant simply to set apart some of the existing taxation. I am still in a certain amount of doubt on that point, but quite clearly the word “immediately” means in the year 1923-24, and 6 or 7 years fixes a definite time limit. Now, I would like the House to consider this possibility. It does not necessarily follow if there is no reduction in 1923-24 in the provincial contributions that the whole of them may not be wiped out in less than six years. It is not necessary that we should proceed by arithmetically proportionate steps, and I think also Government would quite clearly be mistaken if it were to accept willingly a time limit when it is subject to all the contingencies which in this wicked world of to-day Governments are faced with. But there is a general measure of agreement and it does seem to me a pity that we should go into different lobbies to vote for and against this Resolution or this amendment. Sir, if I may be permitted I should like to suggest that after the very interesting and instructive debate that we have had we should now adjourn the discussion. I should like to move if I may that the discussion be now adjourned.

Mr. President: The question is that this debate be now adjourned.

The Assembly divided:

AYES—53.

Abdul Rahim Khan, Mr.
Abul Kasem, Maulvi.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Aiyar, Mr. A. V. V.
Aiyer, Sir P. S. Sivaswamy.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bijlikhan, Sardar G.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Das, Babu B. S.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.
Jejeebhoy, Sir Jamsetjee.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nabi Hadi, Mr. S. M.
Neogy, Mr. K. C.
Percival, Mr. P. E.
Pyari Lal, Mr.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu L. P.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Wajihuddin, Haji.
Webb, Sir Montagu.

NOES—36.

Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Fraser, Sir Gordon.
Gajjan Singh, Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.

Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Moir, Mr. T. E.
Mudaliar, Mr. S.
Muhammad Hussain, Mr. T.
Nand Lal, Dr.
Nayar, Mr. K. M.
Rajan Baksh Shah, Mukhdum S.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Schamnad, Mr. Mahmood.
Shahab-ud-Din, Chaudhri.
Subrahmanayam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Venkatapatiraju, Mr. B.

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Halley (Home Member): The following is the list of business. It is being circulated now.

Saturday, the 24th.—1. A Bill to amend the Indian Income-tax Act is to be introduced with the leave of the Assembly.

2. The Cotton Cess Bill is to be disposed of, and

3. The Official Secrets Bill is to be disposed of.

[Rai Bahadur G. C. Nag.]

They also had the advantage of the evidence of official witnesses connected with Kenya, and of Sir Benjamin Robertson, who visited the colony on behalf of the Government of India. The Under-Secretaries of State for the Colonies and for India also attended the Committee and explained the present attitude of their respective Departments. Having got all these materials before them, the Committee proceeded to review the proposals made by the Government of India in their Despatch of the 21st October 1920. Now having all these materials before them, having done all this, they simply recommended the acceptance of the general principle which the Government of India had already laid down, namely, that there was no justification in Kenya for assigning to British Indians a status in any way inferior to that of any other class of His Majesty's subjects. But it was only a principle; and nothing but a principle that was affirmed here. Their recommendations did not go beyond this. They said that, sitting in London, they could not estimate with accuracy the depth of feeling which ranged itself behind the widely-divergent views held in the Colony on the several points at issue. They urged that some impartial body should visit Kenya and formulate detailed proposals as regards those points. It was now the turn of the Secretary of State for the Colonies to take the matter up and come to a final decision. He, however, set his foot upon the proposal of sending any Royal Commission to Kenya. A Royal Commission would only accentuate racial ill-feeling and serve no useful purpose. That was probably his view. I may say here in passing that it

3 P.M. was for this identical reason that the appointment of a Royal Commission on the Public Services of India at this juncture is objected to by us. The Secretary of State for the Colonies having vetoed the recommendation regarding sending a Royal Commission thought of bringing about a settlement of the questions at issue by agreement. As a stage in that process on the 16th June 1921, the Government of India issued a Press Communiqué for the information of the public:

"It is announced for general information that intimation has now been received from the Secretary of State for India that His Majesty's Government has decided that, pending its decision on the general question of policy raised in the above despatch, the Kenya Government should adopt in controversial matters a policy of marking time. In order, therefore, that there may be no appearance of pre-judging, while it is under consideration, the question of segregation, it has been decided to re-commit the Public Health Ordinance recently passed by the Kenya Legislative Council with the omission of the segregation clauses to which objection has been taken. In pursuance of the same policy, the notice of the 12th October last creating a European Reservation in Mombasa has been withdrawn, and it has been decided that no other reservations should be proclaimed and that no sales of township plots should be held in Kenya at which Asiatics are excluded from bidding."

And four months later we are told in another Press note issued by the Government of India that the Governor of Kenya had been advised to make an *interim* announcement on 17th October in the following words:

"No hasty action will be taken and in any event no radical changes of the existing constitution will be made until the end of the period of three years when the existing Legislative Council will normally be dissolved. Further, I am prepared to nominate one Indian Member to my Executive Council, and after consulting with the local Indian Association, to nominate four Indians to the Legislative Council in lieu of the two at present provided for; this only as an *interim* measure pending settlement of the main policy."

I would invite the attention of Honourable Members to this significant announcement. If they would read what is transpiring now in Kenya in the light of this announcement, they would at once see that His Majesty's Government, instead of springing upon the parties concerned with the

terms of settlement they had decided upon, thought it expedient to let them trickle down bit by bit. This was in October 1921. There was then a lull in the atmosphere for some little time. It would seem that the Colonial Secretary wanted to see the effect of the *interim* announcement upon the minds of the parties concerned, and to create an atmosphere of calm for announcement of his final decision on the other points at issue. We come then to January 1922,—the date of the East African dinner, at which Mr. Winston Churchill, the then Secretary of State for the Colonies, delivered his ever-memorial speech, and announced that the reservation of the highlands for Europeans was a settled fact, that further immigration of Indians should be limited, and that nothing should be done to prevent the development of Kenya as a "characteristically British Colony." He also laid down that the application of the equal rights theory, emphasised by the Imperial Conference of 1921, should depend upon local circumstances, in other words, a doctrine which was essentially immoral but which the strong ever urge against the weak. The Honourable Members need only recall the pain and indignation caused in India by that speech of the *ex-Secretary* of State for the Colonies. By a strange coincidence, this Kenya question is coming to be a question of perennial concern to us in this House. It was on the 9th February 1922, that the House discussed the situation in Kenya created by that speech of the *ex-Secretary* of State for the Colonies, and adopted a Resolution conveying its protest against his pronouncement,—a Resolution which was accepted by the Honourable Mr. Sarma on behalf of the Government of India. Let me acknowledge here this fresh proof of the Government of India's readiness ever to champion the cause of our countrymen overseas, and of their endeavour to do all that the political self-respect of this country demands.

To continue the thread of my narrative, the period of three years from the election of the existing Legislative Council lapsed on the 20th of this month. His Majesty's Government had, therefore, to announce their decision regarding the status of the Indians in the Colony on the franchise question, and that immediately. Accordingly a Despatch was sent to the Colony early in January last, and it was the announcement conveyed in that Despatch of the terms of settlement which has brought about the present ferment in the Colony. We were told in one of the earliest messages received in this country of the uncontrollable anger of the white planters at the reported satisfaction of the majority of the Indian demands. I shall tell you presently what these demands were, and how far they have been satisfied. In another message we were told that the Governor had met the representatives of both sides behind closed doors (mark these words) when he informed them of the proposed terms of the Indian settlement. These terms were—common voters' roll that would include 10 per cent. of the Indian population. Constituencies were so arranged as to allow for seven or eight Europeans, and four Asiatics. Indians were to get some form of municipal franchise. There was to be no embargo on immigration at present. Highlands were to be reserved for Europeans. This was all. I would remind the House that so far back as January 1922, the *ex-Secretary* of State for the Colonies had already declared that the Highlands were to be reserved for the Europeans, while so far as seats on the Legislative Council go, there too the Indians were allowed nothing new. There were already four Indians as members by nomination, the only change being that what they had got by nomination was now proposed to be secured to them by election. There was, therefore, no net gain at all. The seats likely to be available to Indians under the proposed

[Rai Bahadur G. C. Nag.]

scheme of franchise appear to be only half of the seats enjoyed by the Europeans. As for municipal franchise, nothing is known to us beyond that they are to 'get some form of it.' Thus so far as the actual terms of the proposals under discussion go, they are, judging from the report received, a poor fulfilment of the Imperial Conference Resolution of 1921. It is further reported that Sir Robert Corydon, the Governor of Kenya, has notified the Secretary of State for the Colonies of his "disinclination to give effect to the proposals while the settlers are threatening Indians with violence and blood-shed if the policy of equality is enforced." One message dated the 25th January read as follows:

"The position in the country districts as regards Indian questions is extremely acute. A number of meetings of settlers in various centres have been held at which strongly worded Resolutions were passed to the effect that the granting of the Indian claims would be resisted by any methods which were considered desirable."

There were other messages on similar lines. But I would not dilate upon this sickening story. To borrow an apt expression from the "Leader," the whites are rattling their sabres to exterminate the Indian community root and branch. We are told that the Indian community in marked contrast with the haughty attitude of the Europeans is keeping its head cool, and has been maintaining an attitude of non-violence in the face of this grave provocation. They have abandoned all measures which they intended to launch as a protest to create an atmosphere of calm. This news gave us great relief, although it gave us an insight into the character of the white settlers, who appear to be so unscrupulous as to be prepared to shed innocent blood in order to prevent an act of justice being done. We are further told that they have agreed to accept the terms offered by His Majesty's Government as a compromise. It would appear that in doing so they are making a great sacrifice of their just and reasonable claims for the sake of facilitating an amicable settlement. To show the House what this sacrifice amounts to, I shall read two extracts from the reports to which I have already referred. This is what the Government of India say in paragraph 9 of their Despatch:

"We have no exact figures to show the relative positions of the different communities, but we are informed that the population and the incidence of municipal taxation are roughly as follows:

	Population.	Municipal taxation.
		Rs.
Europeans	2,000	70,000
Indians	5,000	1,20,000

Again, this is what the Joint Committee's report says.

What the Indians ask for is the adoption of a common electoral roll and a common franchise on a property basis with an educational test:

"But it (the claim) was strongly objected to by some of the witnesses on the ground that, as the Indians outnumber the Europeans by more than three to one (about 30,000 to 8,000 or 9,000), a Common Roll, even with a restricted Franchise, would, if not immediately, before long, give a majority to the Indians and create a situation which the Europeans could not accept."

It would appear from the figures quoted that the representation to be given to the Indian Community under the proposed scheme falls far short of their just claims. Yet, it is these terms which have brought about the present critical situation in Kenya. We are told that the Governor of Kenya has turned a non-co-operator and refused to carry into effect the terms of settlement arrived at by the Colonial Office, and the latest report is that the

election which was to take place this month has been postponed *sine die*. It is even suggested that there is a possibility of the Colonial Office being brought to substitute "more moderate proposals." Sir, I cannot vouch for this report. Let us believe that there is no prospect of such a breach of faith so long as Mr. Ormsby Gore is Under-Secretary. But if there was any truth in this report, I need hardly point out the disastrous effect upon Indian opinion which looks upon the case of Kenya as the crucial test of the sincerity of the British Government in matters affecting the welfare and status of Indians overseas, if, under pressure from a Governor amenable to local influences, and European settlers who threaten violence and who are so blinded by selfishness and racial prejudice as to be unable to understand the very elements of Imperial obligations, the Resolution of the Imperial Conference should not be given effect to. Sir, when Indians going to self-governing Colonies are ill-treated and are denied the rights of equality, it is pointed out to us that the British Government are ever anxious to secure for Indians over-seas the same treatment to which other subjects of His Majesty are entitled, but the difficulty is that the people of a self-governing Dominion cannot be coerced into granting equality to Indians and that they are powerless to exert any influence other than moral persuasion in attaining their object. It is a very plausible argument, no doubt, there. But has it any force in the case of a Crown Colony like Kenya? Here His Majesty's Government are not powerless to enforce their will; yet, what do we find them doing at the present juncture? Sir, during the last debate on Kenya in February 1922, two non-official European Members of this House (I regret the absence of Sir Frank Carter, and Mr. Spence from this House to-day) solemnly assured us that the chief obstacle in the way of Indians not getting a status of equality in East Africa was the non-co-operation movement in India. Sir, at the time when this opinion was given expression to, even then it seemed to many of us to be far too fanciful to require any serious refutation. Can any of them honestly say to-day whether the present attitude of their countrymen in Kenya is due to the political troubles in India?

Sir, one word more and I have done. We were told the other day while the Racial Distinctions Bill was being introduced that His Majesty's Government insisted on Colonials being included in the definition of "European British subject" in that Bill, because they believed that thereby they would be in a better position than now to obtain for Indians overseas an equality of treatment. This argument, plausible enough, never appealed to us with any force in view of the present attitude of the Europeans against Indian settlers in Kenya. Nevertheless we have yielded to the persuasion and placed the Colonials upon a privileged position in the matter of criminal trials in India. May we not ask His Majesty's Government now to carry out the pledge given to us in this connection and admit the Indians to the privilege for which they have been fighting in Kenya? If, instead of this, they incline to a settlement in the spirit of Mr. Churchill, such a decision would be considered as a dishonourable repudiation of the solemn pledges made to India and would further complicate the political situation in this country. I am sure it is not too much to say that the civilised world has been watching with close attention the action of the British Government in Kenya as to how far they are prepared to carry out and make effective the pledges subscribed to in the Imperial Conference. However, there the matter stands for the moment. We in this House have a duty to perform at this juncture and that duty is to give expression to our feelings in the matter; and when we have given expression to them

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in no uncertain terms, our duty is done. Sir, I commend my Resolution to the House.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I need not further dilate on the matter after what has been said by the Honourable Mover of the Resolution. I will simply place this fact before the House, namely, that in January 1920, Lord Chelmsford's Government took a stand upon the constitutional principle that in a Crown Colony British Indian subjects should have the same status as any British settler. That is what Lord Chelmsford's Government thought. In September 1920, His Excellency again announced that the Government had strongly pressed the justice of the Indian claim upon the Home Government. Now, I on my part take my stand upon this announcement of the Government of India. The facts have already been as stated by me placed before the House by the Honourable Mover of the Resolution. What I want is that the claims of the Indian settlers in Kenya should not be allowed to be ignored by European settlers there. My amendment is the same in substance. I simply make some changes in the Resolution. The Resolution says that this Assembly "views with indignation the reported threats of violence on the part of the latter." My amendment runs thus:

"That between the word 'convey' and the words 'to His Majesty's Government' the words 'by telegraphic message' be inserted; and for the words 'equality of status' the words 'full and equal rights of citizenship' be substituted."

I consider that the insertion of 'telegraphic message' and the substitution of 'full and equal rights of citizenship' for 'equality of status' will better express our meaning and I move my amendment.

Mr. President: Amendment moved:

"That after the word 'convey' the words 'by telegraphic message' be inserted."

The question is that that amendment be made.

The motion was adopted.

Mr. President: Further amendment moved:

"For the words 'equality of status' the words 'full and equal rights of citizenship' be substituted."

The question is that that amendment be made.

The motion was adopted.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, we shall be doing much less than our duty if we fail to carry this resolution unanimously, if possible. After the very unedifying inter-provincial recriminations this morning, it comes as a welcome change that all provinces and all sections of the Indian community should combine in expressing their indignation with regard to what has been done and is being done to their countrymen in one of the Colonies nearest to India. There is a fitness of things almost in this Resolution coming on soon after our determination at the instance of Members of the Government to be conciliatory to the Colonies. To a certain extent Indian feeling and opinion is being reconciled—I hope not merely temporarily, and irresponsible misdoings are at a discount.

We have been told that if we refrain from retaliation and reprisal, the chances of better understanding between the Colonies and India will be furthered and Government will have a stronger hand in handling the

situation. We agree. And here, Sir, our obligations are due and ought to be expressed fully and freely that so far as the Government of India are concerned, all that it can possibly do, has been done and is being done in order to get our Indian fellow subjects abroad a measure of justice. That it has not yet come is as much our misfortune as that of the Government of India, but if it is further delayed, the Indian people will, with confidence, appeal to the Government of India to stand by them when they propose to take their own measures in the matter. Mr. Nag has described the Kenya question as crucial. So it is in certain matters. Sir, colonization from Europe is of somewhat recent date. In the Asiatic seas, at all events, navigation from India is not a matter of quite recent growth, Indians have been long colonizing islands and continents not far from her coasts. Till only recently the difficulties had not arisen. When a Washington Court declares that none but a free white person, whatever that may mean, and none who happens to be of full Indian blood can enjoy citizenship and when it goes the length of depriving an Indian of such rights after many years of enjoyment, possibly, we cannot ask Government to take steps against what the United States courts or the United States Legislature may be doing though we may expect a representation. With reference to the bigger self-governing dominions and Colonies when measures of justice are demanded on our behalf we shall be told, as we have been told in the past, that Government can do little, for they have their own laws and regulations and Government is powerless. Shall the same thing be said with regard to Kenya, one of the very recent growths, —a Crown Colony—where there are not the same vested interests and long usage claimed by the bigger Dominions and Colonies? We are all waiting, not with impatience, but with great patience, the outcome of the mission of the Right Honourable Mr. Srinivasa Sastri abroad. We are hoping for the best of results; but in Kenya which is differently situated, there is an opportunity for some of the corresponding results being anticipated and some consequences of the semblance of those emanating from the Sastri mission ought to emanate. It does not matter whether the Right Honourable Mr. Srinivasa Sastri was able to visit Kenya or not; the position there is stronger, the principles are the same and the objects of the mission would be applicable to Kenya. It is impossible to shut our eyes with regard to what is going on in Crown Colonies like this. It is not merely agitators and fire-eaters and various other persons who are accustomed to be grouped under nomenclature of a disagreeable kind, like that who are feeling in this manner. Staid, sober bodies have begun to resent—bodies like the Indian Merchants Chamber in Bombay and the Municipal Corporation of Calcutta,—I mean Madras (I wish Calcutta would join soon, the slip of my tongue is almost a sort of prophecy; I am not sure that it will not join). These business people, staid business bodies are being supremely exercised over what is happening, and the people cannot and will not give themselves rest till justice is secured. We cannot appeal to the Government here. It is doing as much as it can. I am sure it will go on doing much more, but we must strengthen the hands of the Government and make it absolutely clear to those in authority abroad that, until this matter of justice is vouchsafed to us, there will be no rest in India, so far. Sir, if for a moment one may go back to what is now becoming ancient history, what was the origin of the feelings of Mr. Gandhi which is now being visualised in untoward results? Let us recall for a moment the treatment to which our fellow countrymen were subjected in South Africa, the results of which we are reaping. Shall we go on reaping results like that, or will statesmanship prevail and put an end to this state of things? Mr. Winston

[Sir Deva Prasad Sarvadhikary.] Churchill has been referred to. He had forgotten his own previous utterances and belied them. Now none so poor as to excite worse commiseration. In Mr. Ormsby Gore our faith is large. He knows India, from a distance no doubt, as a Member of the Joint Parliamentary Committee, he has had knowledge of Indian feeling in regard to the matter. But I am very much afraid, Sir, like the Government of India the Colonial Secretary by himself is more or less powerless. A united demand and a united effort between the Government here and the India Office, as well as His Majesty's Government is necessary to put these things right. It shall not be, it should not be said that in His Majesty's Empire differentiation of a galling kind like this goes on perpetually. Those who are anxious to be within the Empire ought to have their hands strengthened, not the least by measures like those we advocate in this connection. This Resolution wants the sense of our indignation and our protest to be conveyed. That is the least this Assembly can do, and we shall be doing less than our duty if we do not unite in sending, in a constitutional manner, to His Majesty's Government an expression of our feeling in the matter. We have a clear duty and we ought to do it manfully.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, if there is one part of the British Commonwealth where the Indian has an equal right of treatment with the British settlers, it is Kenya. This is a Colony which was legally and formally constituted only in 1920. Honourable Members know, that, so far as the self-governing Colonies are concerned, we have been told, and it is a fact, that they have been granted a Parliamentary constitution under which they are entitled to make their own laws regarding emigration. But so far as Kenya is concerned, it is the youngest of British Colonies, and what is more important, it is a Crown Colony. These two words may not symbolize much to an ordinary man in the street, but any one who is conversant with the elementary principles of constitutional law will recognise what these words imply and import. They mean that the Colony is under the direct rule of the Crown, and the Crown can take no sides nor be guilty of racial or political partiality. The position, therefore, so far as the Indians are concerned, is this. In this Crown Colony is His Majesty and for him His Majesty's Government administering the Colony in the name of the Sovereign and the Crown, entitled to make differential laws regulating one class of the British subjects in contradistinction to the other class of His Majesty's subjects. This is a grave constitutional question which does not affect merely the Indians in Kenya but will shake to its very foundations those fundamental principles upon which the entire fabric of the British Commonwealth is based. Sir, this is a question which cannot be lost sight of. It should be a point of honour with the British Government that the Crown Colony of Kenya shall not be the Achilles heel of the British Commonwealth, that it shall not be the festering sore which will be used by the enemies of the British Commonwealth to impair and destroy it. What will the people at large say? They will say: "Here is a Crown Colony in which the Sovereign administers the laws and regulates the affairs of the people, where he has allowed the people of India the humiliating position of helots of the Empire and as a subject people." That, I submit, is the situation which would be created by giving the Indians the inferior status proposed by the Governor of Kenya.

But, Sir, I do not put the position of Indians in Kenya upon this broad question of constitutional law. I appeal to another sentiment, that of

Imperial policy and international justice. We have been told that India has been admitted into the comity of nations and has been assigned a place in the League of Nations as a partner in the British Empire. Would it be in consonance with the honour of the people of this country and the dignity of this vast Empire, if its people are assigned a position of marked inferiority in this youngest of British Colonies? As I have said, Sir, the question is not merely a question of law or of international justice; it is a question of broad British policy, which, I submit, must be regulated in connection with Kenya on the intrinsic and basic principle of justice. But, Sir, when I shall show to the House that in this case it is easy to combine justice with expediency, I think we shall have made out an unanswerable case. Now, Honourable Members know that on the last occasion when we debated this question we were told that the population of European settlers in Kenya was about 9,000 as compared with 36,000 Indians. But that is not the sole point. As Mr. Winston Churchill in his book "My South African Journey" pointed out, Indians were the pioneers and, in fact, the makers of modern Kenya. In his book he wrote:

"It was the Sikh soldier who bore an honourable part in the conquest and pacification of these East African countries. It is the Indian trader who, penetrating and maintaining himself in all sorts of places to which no white man would go or in which no white man would earn a living, has more than any one else developed the early beginnings of trade and opened up the first slender means of communication. It was by Indian labour that the one vital railway on which everything else depends was constructed. It is the Indian banker who supplies perhaps the largest part of the capital yet available for business and enterprise and to whom the white settlers have not hesitated to have recourse for financial aid. The Indian was here long before the first British officer. He may point to as many generations of useful industry on the coast and island as the white settlers, especially the most recently arrived contingents from South Africa, the loudest against him of all, can count years of residence. Is it possible for any Government with a scrap of respect for honest dealing between man and man to embark on a policy of deliberately squeezing out that native of India from regions in which he has established himself under every security of public faith."

(Sir Deva Prasad Sarvadhikary: "He forgot all that.") Well, Sir, this is a clear announcement of the position and case of Indians in Kenya. We, the people of India, cannot put their case in clearer or stronger terms; and these words were written by the late Colonial Secretary, Mr. Winston Churchill, whose sympathies for India are by no means marked.

Now, Sir, another point in connection with Kenya which is often forgotten is this. Kenya is a vast territory on which certain European settlers had pegged out their claims for future development, immediately after the war, with the war money. A very large number of military officers and men were told that Kenya was a very fine Colony to settle down in, and they went to Kenya and there purchased large pieces of land in the hope that they would be able to colonise it. They very soon discovered that labour was scarce and that the conditions were not such as were favourable to European settlement, and many of them then applied to the Government for the sale of their lands and begged that they should be allowed to clear out of the country by selling their holdings to Indians and other Asiatics. Sir Robert Buchanan, M.P., who visited South Africa, on his return wrote a small brochure in which he faithfully described the condition of Kenya and of its white and brown settlers. There he pointed out that it is a country which was quite suitable for Indian settlement and where European settlers, deprived of the ordinary amenities of life, are not likely to settle down in large numbers in the way in which it was suggested that they should settle down in that colony. I therefore submit that the question of Kenya is one upon which the

[Dr. H. S. Gour.]

Imperial Government must exhibit some degree of firmness. It is a question not merely of political justice but of economic equity. It is a question which does not depend so much upon the placating of old settlers in a self-governing Colony, but of a few straggling exploiters who went to that Colony and would be very happy to get out of it as soon as they can. Now, Sir, what is the position? We are told that a certain English nobleman who is imbued and inspired by Imperial sentiments, or rather Imperialistic sentiments, is anxious to preserve this vast highland of Kenya for the benefit of white settlers, still unborn, and that he is therefore anxious to commit the Colonial Office to the policy which obtains in other self-governing Colonies of the British Empire. The question therefore is, Sir, not of Indians *versus* the present white settlers of Kenya, but a question of Indians *versus* the future would-be settlers in that Colony from England and other white countries: the certainty of Indian settlers who have got vested interests, who have acquired property and who have thriven well on the product of their industry, on the one hand, and on the other a remote, phantom possibility of developing this country as a white colonial settlement: these are the questions and I have no doubt that the British Government should have no hesitation in deciding that Indians shall not be squeezed out of this Colony where they have established an indubitable right to stay and acquire all the rights of a British citizen. Sir, I have great pleasure in supporting this Resolution.

Sardar Gulab Singh (West Punjab: Sikh): Sir, the amendment that stands in my name runs as follows:

"For the words 'it views with indignation' substitute the words 'this Assembly records its indignant protest at'."

Sir, from what I have heard on the subject of the Resolution before the Honourable House both on the platform and in the press I find that there is a strong feeling in the country against the present situation in Kenya, and the wording of my amendment would signify the sense better and improve the expression in question in point of force. I move my amendment.

The motion was adopted.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): So far as I understand the Resolution, it aims at three specific things. The first is that it re-asserts the right of equality of citizenship of the Indian settler in Kenya. Now, I do not think this Assembly wants anything new to be done in re-asserting that claim. That claim has been re-asserted once in this Assembly and this right of equal citizenship has been recognised by the Imperial Conference of 1921, by a Resolution that was passed at that Conference. Any encouragement to the effort of going back on that Resolution would, I think, be detrimental to the interests of the Empire. As a matter of fact the carrying out of that Resolution is the acid test, as it is said, of the being of the Empire and this Assembly does not want anything which already Indians do not possess by right or which has not been recognised by the Imperial Conference in re-asserting this right of equality of citizenship.

The second thing that this Resolution wants is that it wants to protest against—it wants to show its indignation and it wants to protest against the threats of violence of the white settlers in Kenya. Now it is to this point that I wish to confine my remarks. The effort of the Colonial Secretary to give to the Indian settlers their due, namely, the right of equality of

citizenship has met with a protest from the white settlers. It is likely that that threat might have some effect on the Colonial Secretary. Ought it to have any effect? What would be the result if this threat succeeds in having an effect on the Colonial Secretary so as to affect the decision that the Colonial Secretary was going to take with regard to giving the right of equality to Indian settlers? The effect would be the same perhaps as it would have been if the threat of civil disobedience in this country had compelled the hands of Government to give all kinds of reasonable and unreasonable demands to the Indians in this country. Now you will admit, Sir, that even in the claim made by the most extreme section of Indians in this country there was some justice. That claim arose from a natural desire on the part of Indians to manage the affairs of their own country, and the indignation that we saw existed in India was due to the injustice, supposed or really existing, that was done to Indians in certain matters. But even where the claim was just to a certain extent, as soon as the question of a threat came up before the Assembly, and as soon as an attempt was made to bring about the carrying out of that claim by means of a resort to methods that were not constitutional—well, this Assembly stood by the Government of India and said "No." Wherever there is an attempt to resort to unconstitutional measures, there the Assembly will help the Government in putting down those who in season and out of season hold out threats against the Government. A worse situation has arisen in Kenya. There is injustice in the claim that is made by the white settlers. There it is a threat which if carried out would disturb the peace and tranquillity of the whole Colony of Kenya. Not only that, but if the Government yielded to that threat and refrained from doing justice to the claims of the Indian settlers, then the Government would justify the disloyalty to the idea of Empire that ought not to be allowed to grow within the nations that form the Empire. Therefore, although in India there was to a certain extent a justifiable claim, in Kenya there is no justice in the claim that is made by the white settlers and the effect of yielding to the threat held out by the white settlers would be the same as the effect of yielding to the threat of those who wanted to resort to civil disobedience would have been in India. The position here is better inasmuch as the claim was just, the position there is worse inasmuch as the claim of the white settler is not just. I claim therefore that His Majesty's Government will show the strength that is necessary for putting down the white settlers if they resort to violence and for giving them a clear understanding of the fact that no such threat will avail with His Majesty's Government. With these words I support the Resolution.

Dr. Nand Lal (West Punjab: Non-Muhammadan): The genesis and outline of the whole question, that is being debated upon now, has been given by the Honourable Mover and I do not propose to go into those things. I will offer a few observations so far as the question before the House goes. Now, Sir, there are a number of bonds of affection and love between two peoples, and I think one of them is this that they are subjects of one and the same Sovereign. It is regrettable to see that the European settlers in Kenya did not realise the force of this bond of affection. So far as we the Indians are concerned, whenever a fit occasion arises we, so far as we can do so, welcome them to the status of equality. But when we ask for something from the Colonies I am sorry to say that they do not give us a proper response. We are very greatly indebted to the Government of India for what they have been doing for us. But I may tell them that we have not attained that object which we endeavoured to attain to and the

[Dr. Nand Lal.]

treatment which has been meted out to our Indian brethren in Kenya, compels us to move this Resolution before this House. Sir, one of the most important things which has to be seen and appreciated by the Sovereign is this that there should be peace and contentment amongst his various subjects. Now, this threat, which has been given to our Indian brethren in Kenya recently, goes to show that that peace and contentment can never be maintained and therefore it is one of the most important duties of the Crown to see that the Indian's desires and the Indian's wants are attended to adequately. When we are given the status of Membership of the League of Nations, we ask the Empire to give us that status practically and not theoretically. It should not remain on paper, but it should be given a practical shape. That is our desire, and in pursuit of that desire we raise our voice, and I hope that our European friends here, whose speeches were characterised by fairness, on some occasions, will appreciate the soundness of the position taken up in this Resolution and I trust that this House including the Treasury Benches will give their support to this Resolution as I do, wholeheartedly.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): There is very little that the Government have to say with regard to the merits of this Resolution except that they reiterate that their policy with regard to the Indian question in Kenya is the same as has been explained to the House on more than one occasion. They have stood up for the full rights of citizenship and they do stand for the same position now. Negotiations had been in progress between the Colonial and the India Offices on this question and we hope that the agreement which has been reached would be satisfactory to all parties concerned. The Government have noted the indignation which has been roused throughout India by the reported threats of violence on the part of the wilder elements amongst those who are dissatisfied with the settlement which was communicated or which was stated to have been communicated to the Colonials in Kenya. But I hope that this House will not act upon these reported threats or take serious notice of any temporary excitement which might have been caused when hopes which had been entertained in any particular quarter were disappointed. Honourable Members would have noted that it was in the early part of January that we heard so much about these reported acts of violence. We are now towards the end of February and barring one or two telegraphic messages which Reuter has cabled here, we see nothing to justify any real apprehensions being entertained by any reasonable person on this subject of the attitude of the Europeans towards their Indian fellow subjects. It cannot be denied that unfortunately, racial passions run high in certain parts of Africa. But His Majesty's Government's policy has been steadily to set their face against the encouragement of any such differences between the various communities which have settled down in the different parts of His Majesty's Empire. We must recognise that the Europeans who have settled in Kenya rightly or wrongly feel that certain privileges or certain rights were conferred upon them in the matter of settlement in the Highlands at the time those Highlands were assigned to them. I am not now arguing the question on the merits, but we must recognise that when a race which is characterised by vigour, by adherence to what it conceives to be right, feels disappointed in any particular with regard to those rights, it is likely to be upset slightly, and hence those reports that have reached India. No responsible Britisher, no responsible Association could ever have contemplated any acts of violence at all

against the Indian community and we have reason to believe that no Europeans ever entertained any thought of injury to any of his Indian fellow-subjects because he was disappointed or he thought he would be disappointed by any policy that was being pursued by His Majesty's Government. It may be that in the violence of passion a few individuals here and

4 P.M. there expressed themselves in language which was calculated to convey the impression that they would not stand by any decision that might have been reached by His Majesty's Government but we who have been noticing in India the violence of political passions can readily recognise the attitude of some of the elements which might have felt themselves to have been injured or wronged by His Majesty's Government's policy. I therefore suggest to the House that we should treat with contempt any of these alarming reports that may reach here as to the attitude of a few individuals or the threats that may have been impliedly conveyed by a few individuals in the matter, but I may assure the House that from all we hear from East Africa no responsible Europeans ever contemplated or can ever contemplate an act so detrimental to their own interests and to the interests of the Empire and so inconsistent with the traditions of a proud and just race. On the main and essential question the Government of India have been fighting for the assertion of equality of status and full rights of citizenship. I have already said that our attitude is what it has been always—fully sympathetic with the claims of the Indians settled in Kenya. We have not been idle in communicating to His Majesty's Government the feeling of dismay and indignation which has been roused in all quarters in India by Reuter's messages. The Honourable Khan Bahadur Sarfaraz Hussain Khan proposed that we should telegraph this Resolution of the Assembly. He need not have cautioned us in that manner to do our duty, because I may assure the House that we have been spending the tax-payer's money freely in the past in conveying speedily the views of this Assembly and of the Government on matters vitally affecting the interests of our fellow-subjects in Kenya. Dr. Gour has alluded to a supposed statement of the Governor of Kenya that as a matter of compromise Indians might be satisfied with an inferior status, if I have heard him correctly. We have no reason to suppose that His Majesty's Governor in Kenya made any such suggestion and I shall leave it at that. He has also informed the House

Dr. H. S. Gour: May I point out to the Honourable Member, it was in the Reuter's telegrams a few days back that the terms of the settlement were that the Highlands will be reserved for Europeans and that Indians had accepted that position.

The Honourable Mr. B. N. Sarma: The Resolution deals with the question of full rights of citizenship and I was alluding to that particular aspect. On the question of the Highlands the Government of India hold the same views that they held and I may say that no one in this House would deprecate any reasonable compromise that may be arrived at between the different sections of the community settled in Kenya. I think we should all rejoice if the Governor be successful in his persuading both the British and the Indian settlers to come to a reasonable compromise without any sacrifice of principle on the part of the Indian community on the essential questions on which they unhappily differ at the present moment. Therefore, Sir, without abandoning the vital principle of equality and full rights of citizenship I think this House should support the Government in trying to effect a compromise between the various sections settled in Kenya and we are looking forward with hope that as a result of

[Mr. B. N. Sarma.]

the patient policy which has been followed by the Government of India and His Majesty's Government such a desirable result would be achieved in the not distant future. I hope that the information which Dr. Gour has received as to the attitude of the white settlers in being desirous of selling their lands in the Highlands to Indians is accurate. I think nothing would please those who wish to promote peace in that country if that be the real attitude of those who have been occupying the Highlands. But we have no reason to think that the vast majority of the settlers in the Highlands at present entertain the idea of selling their lands to Indians or anybody else or quitting that land and therefore I cannot hold out any encouragement on that particular subject. It is unnecessary for me to allude to the varying claims which have been put forward on behalf of Indians and Europeans. The Government of India have always supported Indian claims and have always pressed upon His Majesty's Government how much of the prosperity of Kenya is due to the Indians who have been pioneers there and who have been struggling amidst difficulties, hardships and privations to better that country but it is unnecessary to deprecate in any manner whatsoever the achievements of the Europeans in that part of the country. It is the capital which has been employed by them also, their achievements in the past, their energy which has helped in making that land what it is. It is unnecessary in these discussions to dwell too prominently upon the achievements of Indians or of Europeans. We must give credit to both the communities for having loyally co-operated in the past in bringing about the desired result and we hope to look forward to equal unanimity and the same brotherly feeling which has characterised them in the past in promoting the prosperity of that country as an integral portion of the British Empire. We, who have watched with some interest the heat of the controversy which raged in India at or about the time when the reforms were about to be inaugurated, have a lesson which we might well apply to the conditions obtaining in Kenya at the present moment. It is the genius of the British race to fight hard, to fight insistently, to fight vigorously for what they conceive to be their rights. It is their genius to accept loyally the decisions which the Central Government may come to after hearing both sides of the question; and I feel quite sure that when the passions of the moment die down the love of justice, love of fair play, disciplined obedience to the central authority which has always characterised our European fellow British subjects, would enable them to rise to the occasion and loyally co-operate with His Majesty's Government in Kenya and the Indian subjects there in promoting the prosperity of the Colony; and I also feel sure that the statesmanship, the tact, the firmness, and the nerve, which have enabled this Empire to be built up and to be maintained at its present level will be equal to suppressing any disorders from any quarters in defiance of the authority of the Central Government. We can afford to despise the troublesome elements, whether such troublesome elements arise in Kenya, India or elsewhere, which are calculated to destroy the integrity and the solidarity of the Empire. We need have no apprehensions on the subject, and I think the House may well omit from the Resolution, if I may suggest so, the latter portion which refers to the feeling of indignation. But if it is the pleasure of the House that their indignation or indignant protest should be conveyed to His Majesty's Government, the Government of India have no objection whatsoever to do so.

Mr. President: The proposal has been made, but no amendment has been moved.

The Honourable Mr. B. N. Sarma: I only suggest to the Mover that he might leave out the latter portion, but I do not propose to move any amendment if the Mover is not agreeable to drop the words.

Rai Bahadur G. C. Nag: I want to let the Resolution go as a whole.

Mr. President: The question is:

"This Assembly recommends to the Governor General in Council to be so pleased as to convey by telegraphic message to His Majesty's Government the view of the Assembly that no settlement regarding the political rights and status of the Indian settlers in the Crown Colony of Kenya would satisfy the people of India unless the Indians in Kenya are granted full and equal rights of citizenship with European settlers; and that this Assembly records its indignant protest at the reported threats of violence on the part of the latter; and it fully trusts that His Majesty's Government will take effective steps to prevent any such outbreak and to afford them the necessary protection."

The motion was adopted.

Dr. H. S. Gour: May I take it, Sir, that this will be recorded in the proceedings as being carried unanimously?

Mr. President: There will be no record of a division in the proceedings, and therefore it will be seen that no one voted against the proposal.

Dr. H. S. Gour: There was an instance, Sir, in connection with Mr. Mohammed Ali and Mr. Shaukat Ali's case. You will remember, Sir, that when Sir William Vincent asked that it might be recorded that it was carried unanimously, I believe you promised to put it down that it was carried unanimously?

Mr. President: There is no objection to that being done in this case too.

The motion was adopted unanimously.

RESOLUTION RE SECRETARY OF STATE'S DESPATCH ON INDIAN AUTONOMY.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I beg to move the following Resolution which stands in my name:

"This Assembly recommends to the Governor General in Council that he will be pleased to convey to the Right Honourable the Secretary of State for India the Assembly's feeling of extreme dissatisfaction at his despatch, dated the 2nd November 1922, regarding the Assembly's Resolution dated the 29th September 1921."

Sir, the Right Honourable the Secretary of State apparently expected this Assembly to take some action on his famous Despatch of the 2nd November 1922, for in the concluding paragraph of that despatch he says: "I shall be glad if Your Excellency's Government will cause copies of this Despatch to be laid on the table of both the Chambers of the Indian Legislature." Sir, he may rest satisfied that not only the Despatch, copies of the despatch, have been laid on the table of the House, they have also been included in the proceedings of the Legislature and printed very prominently in the proceedings of the 24th January 1923. If that is any satisfaction to His Lordship, let him have it. But, if he wants to know how the Assembly views it, it is not a feeling of disappointment, for we never expected anything better from His Lordship; it is one of extreme dissatisfaction, to put it mildly, with which we view his Despatch. Sir,

[Rao Bahadur T. Rangachariar.]

I have no doubt that His Lordship thought he was sending us a nice fruit for consumption. Though, Sir, the Government of India have taken some time to deliver that fruit to us, it requires not a large amount of peeling to expose the rotten nature of the fruit which has been placed before us. That rottenness is not due to the delay in the presentation, but it is due to the inner contents of the fruit itself. Sir, let me examine the Despatch somewhat carefully and with that respect which is due to His Majesty's Secretary of State. On reading it carefully, it appears to me that His Lordship has not even paid us the compliment of reading the debates which took place in the Assembly in connection with this matter. He has merely re-echoed sentiments which Mr. Montagu had to deliver himself of when he was on his defence in the House of Commons on the 14th February 1922. When that celebrated motion of censure on Mr. Montagu was moved in the House of Commons, he had to adopt the line, in order to get out of the scrape, of abusing both sides. That is a trick which most of us adopt in getting out of a situation, and that is the trick he adopted; and His Lordship, the present Secretary of State, has merely taken the trouble to embody those sentiments with which Mr. Montagu made his defence in another place. Sir, His Lordship says: "In the first place, they assume that progress is impossible under the existing constitution". Where did His Lordship get it,—that this Assembly assumed that progress was impossible under the existing constitution? On the other hand, Sir, if he had read the opening paragraph of the debates, he would have seen that in the Resolution as presented to this Assembly by my esteemed and revered friend, Mr. Jadu Nath Mazumdar—whose absence we regret to-day—he opened the first portion of his Resolution with a recommendation that the existing constitution, the full measure under the existing constitution, should be used and availed of for extending the constitution. The Resolution as finally adopted with the consent of the Treasury Bench (*The Honourable Sir Malcolm Hailey*: "No.")—I beg your pardon; it was unanimously adopted; no division on it was taken; there were no cries of "No" and it was adopted in accordance with the suggestion of the Honourable the Home Member. I think, Sir, the debate will bear witness to that statement. I do not think I need assert it. It is there in black and white, and no pen and no tongue can erase it. Sir, the Resolution as finally adopted by this Assembly recorded the impressions which were left on both of us who had to work this new constitution, both of us who had to wear the new constitution's costume presented to us from London. Some people refused to don that costume. But, Sir, we who wanted to co-operate with the Government put on this costume made by the London tailor in order to see whether his fame for making good-fitting clothes could be taken at its full value. Both the Executive and the Legislature put on the garment and it did not require much trial to find out whether the clothes fitted us or not. It does not require many trials to find out whether clothes fit us or not. One trial is enough. There is a vulgar saying, Sir, in the South of India among the agriculturists and the labouring classes, to the effect that one grain of rice from the pot is sufficient for the purpose of finding out whether the rice is boiled or not. One test was enough for us to find out that the new costume did not suit. That is how, after the first session, after trying honestly and earnestly to work the constitution, both the parties who had to wear it, the Executive and the Legislature—and I emphasise this aspect of the case—came to the conclusion, no doubt

early enough, in September 1921, that it was not a costume that fitted us. I say, Sir, that the rules and the regulations contained in the Act and the rules framed under the Government of India Act were not sufficiently broad enough for successfully working the reforms in this country, and that was the opinion we recorded; so His Lordship is in the first place wrong in assuming that we assumed that progress was impossible under the existing constitution. Then His Lordship is generous enough to say that the outstanding feature of the change made by the Act of 1919 was that it provided British India with a progressive constitution in place of an inelastic system of Government, and that consequently there is room within the structure of that constitution for the Legislature to develop for themselves a position in conformity with the spirit of the Act. Nobody denied that; only His Lordship has not cared to go into details as to the respects in which the existing constitution can be developed and as to where the elasticity comes in; and has he with his own hands helped in making it more expansive, more useful? Has His Lordship examined his own position in the matter? If he had looked at certain sections of the Act he could have verified for himself that in his own hands he has powers under which he can act by which he can improve the constitution. Sir, what is the situation of the Central Government? Here is an Assembly with a non-official majority which at times at least can and does defeat Government on various matters; although on account of various considerations which I need not detail here, the majority does not assert itself as often as it ought to do. But at the same time, here is an Executive Government which is responsible to—whom? Responsible to a gentleman who is about 7,000 miles away, who does not come and see the life of this Assembly, who has no real actual vision of the actualities of the situation here, who does not move with the people, who does not see them even, who does not see the conflicting thoughts and conflicting currents which are in operation here, and he has the main string in his hands. He is responsible to—whom? He is responsible to Parliament. I do not know exactly what the exact strength of the House of Commons is since the Irish separation; it used to be about 670. How many of them really know anything about India? How many of them really know anything about the present changed conditions of India? I am sure that the Executive Government here feel it, and feel it every moment of their life, every moment as they transact their great business and great functions which are entrusted to them for the Government of this vast country. I am sure they feel the difficulties of the situation here. They have to face the music of the popular view, the moderate views in this Assembly, outside it is more immoderate; and even in facing the moderate voice of the country in this Assembly they realize the difficulties of the grave and responsible position which they occupy. And does the gentleman in London ever loosen the main string which he holds in his hands? If report is true, he tries to draw it as tight as he can, and latterly he has not allowed that freedom and liberty of movement to the Government of India which is theirs by right. The Central Government of this country ought to be here. I mean that it is impossible to govern this country under modern conditions from London, however eminent the Statesman in charge may be. The real powers ought to be in the hands of the Central Government established in this country. That is the difficulty we feel when we deal with the budget. In the very first year of our existence we realized the impotence of the Government and our own impotence in dealing with it. The voted and the non-voted heads, the touchables and the untouchables, stared us in the face. We can really do no honest work with the budget,

[Rao Bahadur T. Rangachariar.]

Sir, if really we are intent upon doing good to the country. We are here for that purpose and nothing else. We are not here for personal aggrandisement. We are here to act and advise to the best of our lights to see what good can be done to this country. And when I say that, I include the Executive and the Legislature in the same category. Here then, Sir, we have a gentleman who gives the orders for all the fat appointments, all the fat allowances which accompany them, whether they are needed here or not, and we have to find the funds to pay them. They are put aside as untouchables, and here we are to play with a Budget. It is a mere plaything; it is not a serious matter. We do not take any interest. We cannot put our heart into it, and such a state of things could have been rectified by His Lordship the Secretary of State, but, on the other hand, when the question was really raised, what did His Lordship do? Instead of giving a free hand to the Viceroy he took the advice of the Law Officers of the Crown, and took refuge behind that advice and would not allow His Excellency the Viceroy to place the whole Budget before this Assembly. Now, Sir, that is a matter in which His Lordship could well have begun what he suggests should have been done, namely, the outstanding feature of the change made by the Act was its elasticity. Why did he not take advantage of it? Why has he not taken advantage of it even to-day? Therefore, Sir, when he says that we were unaware of it, I am rather led to think that he is himself unaware of his own powers. He could have delegated those powers under section 19 of the Government of India Act which he possesses to the Central Government here instead of trying to keep all the powers in his hands. What are the rules which he has made, under that section in order to part with the powers which he and his Council possess in regard to the Government of this country? Why could he not have parted with those powers to the Government of India, or again in the matter of this Budget, as I have said?

Passing on, "In the second place" His Lordship says "however great the merits shown by the Legislature as a whole and by individual Members—(and I am far from wishing to under-rate them)",—I rather fear that he really wished to under-rate them but that is by the way, we do not care whether he compliments us or not; it is not a question of compliment at all in a case like this—he says "the fact remains that the merits and capabilities of the electorate have not yet been tested by time and experience". Well, who is going to test? When is the time going to come to test? Was this country tested when this constitution was given to us? Who made that test before this constitution was given? The Electors to be tested! I am afraid you will have to wait till doomsday in a continent like this if you are going to test the capacity of electors. Well, Sir, you have to come to some conclusion on a matter like this. Probably His Lordship was unaware of the great difficulty under which we began the work of these Reforms in the year 1921. Those of us who dared to come here and work the Reforms under the new Reform Act had to face a very unpleasant music from our countrymen. Sir, the country was boiling with wrath and indignation. The shadow of Amritsar had spread as His Royal Highness the Duke of Connaught told us. Sir, the country was then clamouring for a new constitution. We tried to put down that clamour by showing that by honest work we can do something with the constitution as it was. Sir, this Assembly collectively showed its responsibility, and not only this Assembly but the country showed its

sense of responsibility when it came to the rescue of Government in putting down disorder which might have shown its ugly head in the year 1921. Sir, everything was ready to burst as my Honourable friend Mr. Jadunath Mazumdar told us in September 1921. It was very nearly on the brink of revolution. Sir, did we hesitate to help the Government on a crisis like this? Was not the voice of this Assembly heard in that connection in putting down this tendency to disorder? Sir, His Lordship of course is not aware of these things. His Lordship is not aware of the difficulties which the Central Government had to face in a situation like that. The Central Government realised it; it saw how the country really was, and when they joined us in September 1921 in sending this message to the Secretary of State they knew full well the situation. Writing 13 months after that date, when the country had quieted down, when this country had accorded, notwithstanding some most objectionable exceptions in places, when the country had accorded a right royal welcome to the heir to the throne of England, His Lordship has penned this Despatch. That was the time for His Lordship to pen this Despatch in November 1921. It was a cruel act on his part. We cannot forgive him. Sir, this country has shown considerable patience and it will continue to show considerable patience with British Statesmen at Home, because they are ignorant really of the true situation in this country. It is in that sense we tried to wait and wait, because we are sure things will right themselves in the end. Therefore, as regards this second fact that the merits and capabilities of the electorate have yet to be decided, if that promised Commission at the end of the 10th year—is it 9th year or 10th year? (A Voice: "10th year")—at the end of the 10th year, I do not think that Commission is going to find the country fit. Even if it comes when my grandson is alive and when probably he is a Member of this Assembly, even then they will say that the merits and capabilities of the electors and the country have to be tested by time and experience. Sir, you have to take these things as they are. Was England fit? Was it decided in the same way when the Reform Act was passed? Was any country tested like that? Is it really a thing which any person who has any knowledge of history, any knowledge of the development of institutions, could easily consume? That is why I say, Sir, the rottenness is exposed by its own innate contents and not by the delay which has taken place. "Thirdly, the new constitutional machinery has to be tested in its working as a whole" and His Lordship naively adds the executive Government have not shown themselves fit. That is what His Lordship says in paragraph 5. Is it really true that the executive Governments of these provinces have not shown their fitness under the new constitution? I never heard that charge laid at the executive Governments. It is a charge which the Government of India, I daresay, and the Local Governments will successfully meet, if they have not already met it. I am sure the delay in the publication of this Despatch from November 1921 to January 1923 is due perhaps to this struggle between the Government of India and the Secretary of State whether His Lordship would not have been pleased to remove that paragraph from the Despatch. His Lordship says that. I do not think I need labour the point. I will leave it to the Government of India and the Local Governments to defend themselves against that charge. (A Voice: "What paragraph is that"?) It is paragraph 5:

"Thirdly, the new constitutional machinery has to be tested in its working as a whole. Changes have been made as the results of the Act of 1919 in the composition, powers and responsibilities not only of the Legislatures but of the executive Governments."

[Rao Bahadur T. Rangachariar.]

Now, the executive Governments have to justify themselves. Leaving it there, I will pass on to the next paragraph:

"I would add that even were these reasons for patience less cogent an opinion based upon six months' experience of its working that a new constitution, in the elaboration of which over 2 years were occupied, stands in need of revision, is hardly likely to commend itself to Parliament since it is clear that sufficient time has not elapsed to enable the new machinery to be adequately tested."

That was quite true at the time when the Assembly passed the Resolution in September 1921, but that was not quite true when His Lordship penned that despatch in November 1922. More than a year had elapsed since then and I do not think, as I have stated already, that it needs much trial in order to find out the defects which exist in the different constitutions. In the Central Government, as I have already pointed out, the main defects are two. Here is an Executive not responsible to the Legislature, here you have a budget which comprises items which you cannot touch. Those are the two main defects which we have to remedy and as regards the local Legislatures let the Ministers speak for themselves. This morning's debate has shown some of the ugly features of the present dyarchical Government which prevails. And I do not think I need repeat here what is well known. The whole question is one for examination, and that is all that we asked for in that Resolution. What is the gross sin we have committed? We ask that the question be examined, that the time has come for examination. We need not wait for the 10 years period which the Act provides. Let the question be examined, let us have an honest, efficient thing to work with. The present system, which you have asked us to work with is not a thing which we can go on with. We can go on trying this thing to all eternity. I promise you if you were to work the present constitution for a hundred years you would never evolve anything. There would be the same struggle, the same conflict. Here every day we pass Resolutions, recommending that His Excellency the Governor General in Council be pleased to take steps, this, that and the other, and His Excellency's pleasure does not rest even with him, but with somebody else. What is the good of this pleasure to us? Let us not have it, let us have something real. It is no use mincing matters in a question like this; the peace and prosperity of millions rests upon good Government; let us devise a system. That is all we ask, let the thing be re-examined. This ten years period is not a statutory bar. Mr. Montagu recognised it in answer to a question on the 14th February 1922. There is no statutory bar to an examination of this question before even the 10 years are out. Therefore we recommend that examination before that. And then, Sir, Mr. Lloyd George, speaking in the House of Commons on the 14th February, following Mr. Montagu's speech, said that democratic institutions are new to Europe and as regards Asiatic countries, they never had any instinct for democracy, and this is a new thing we are trying; we are trying an experiment there, and therefore it must take time before you can give them any further advance. Of course in regard to Mr. Lloyd George we can excuse his ignorance of this country; he was never here. I don't suppose he has read our history. I don't suppose he has heard of a *panchayat*. We had our caste *panchayat*, we had our village *panchayat*, as he would have found if he had cared to investigate the matter. It may be quite true that in uncivilized Europe democratic Government was never known, but in civilized India, with its

ancient civilization, democracy had its origin in village Government. Sir, we never had anything else so far as the actual Government of the country was concerned, so far as the real affairs of the people were concerned. We had the Border Chieftains who merely took something for guarding the frontier, but so far as the internal affairs were concerned, the village *panchayat* held its sway. They collected taxes and they looked after things connected with the village. I wish we could go back to those conditions; they were very happy. But, Sir, Mr. Lloyd George's conclusion that democracy was a new thing in Europe is no argument for denying it. It is only restoring to us what we had for long long years. Therefore we possess that experience, especially in Dravidian South India—I do not know much of Northern India I am sorry to say. But in my own Province, among the Dravidian races, democracy was the rule, and therefore it is nothing new to us. It was born in our blood. It is bone with our bone, and therefore let there be no fear that the thing will be a failure in our country. Sir, in our Resolution we want something which will really be useful to the country. It is not that we are extravagant in our demand, we want only an examination of the existing constitution, and His Lordship has denied it to us. But we are not asking him to reconsider that question; we carefully refrained in framing this Resolution from asking that His Excellency the Governor General in Council be pleased to convey to His Lordship the Secretary of State for India that he be pleased to reconsider. We think it is a hopeless task; we merely express dissatisfaction, extreme dissatisfaction with what he has done. Let him do what he likes. It is not our concern. It is the peoples' concern no doubt, but we cannot help it, as we have to bow to mighty forces. We bow also to the Secretary of State. Sir, in asking for this examination we want to insure liberty, not license, freedom, not anarchy, progress, not stampede, peace and prosperity. I commend this Resolution to the acceptance of the Assembly.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, a friend of mine happened to be in England and he was asked by a young lady, very educated and very cultured, whether Indians built houses in India. This friend of mine, who had a little sense of humour, said "No, we do not build houses, we have some kind of hammocks where we take rest at night." And the only comment she could make was, "Oh, how interesting." The Honourable the Secretary of State for India belongs to a similar category. (An Honourable Member: "Right Honourable.") Right Honourable, I beg pardon. It is a mere matter of chance that His Lordship finds himself installed on the *gadhi* at Whitehall. Political exigencies might have relegated him to some other position in some other office. I do not see why my Honourable friend Mr. Rangachariar should be so gloomy about this Despatch. We very well remember Lord Morley's dictum that the fur coat would never suit a tropical climate like India, but Lord Morley, I am happy to say, lived to see the day when these fur coats were made, though not very beautiful and very artistic, but fur coats all the same, not only for the Provincial Governments, but also for the Government of India. I do feel that all that His Lordship the Secretary of State for India has been pleased to say about the future of India will be as true, or as untrue, as the dictum of Lord Morley about the fur coat being unsuitable for a tropical climate, because I believe, Sir, that any nation which wins liberty, wins it by its own exertions, by its own sacrifice, by its own capacity, and by its own devotion. Sir, I am afraid His Lordship, like so many others, makes the mistake of regarding the whole movement in India as a political movement

[Munshi Iswar Saran.]

There lies the great mistake, Sir. It ought to be looked upon as really a psychological movement and it is only when you will look at it from that point of view that you will be able to appreciate the various bearings of this question which, to-day, is agitating India from the highest to the lowest. This talk of our being in too great a hurry, this appeal to us to be patient, this appeal to us to undergo these periodical examinations, the first after a period of ten years—the rest is unknown, the rest is dark—are based on ignorance of the real living forces that you find at work in India to-day; and I say, Sir, with a full sense of my responsibility that the longer the delay in our reaching the goal, the greater is the danger not only for this country but for the connection between India and England. Those of us, Sir, who advocate the retention of the connection between India and the British Commonwealth, and those of us who feel that it is in the interests of India, of England and of humanity as a whole, that these two countries should live together and work together, not as masters and slaves, not as rulers and ruled but as equals and comrades, are distressed at the delay which some people advocate, daresay with the best of motives. What do you find, Sir, in India to-day? It is imagined as if we are solely basing our claim for further reforms on the excellent work that has been admittedly done in the Indian Legislature as well as in the various Legislative Councils all over the country. I submit with great respect that that is a wrong view to take. You can only appreciate the inwardness of our demand if you do not forget the reception with which these reforms met at the time of their initiation. The vast majority of the people in the country were distinctly, emphatically, of opinion that these reforms were insufficient and there were many who went the length of saying that they would have nothing to do with them. Those who consented to work the reforms for what they were worth did so in the hope that they would not be subjected to these successive examinations, but that they would be regarded as men who were reasonable and were prepared to make a beginning with the reforms as they found them. The attitude of His Lordship the Secretary of State for India towards this most important and vital question has, as my Honourable friend Mr. Rangachariar has said, created a feeling of extreme dissatisfaction throughout the country and that, Sir, is only to put the case very mildly. Perhaps it is impossible for His Lordship, sitting at a distance of thousands of miles from this country, separated from this country by big oceans, knowing little or next to nothing about the past history, the traditions, and what is more, about the actual living forces at work in India to-day, to gauge the depth of feeling that has been aroused by his circular; but, let me tell him with all the respect that is due to His Lordship as the Secretary of State for India that he is very greatly mistaken if he thinks that India is going to accept this despatch as the last word on the subject.

Sir, talking about electorates, to which my Honourable friend has referred, let us think what these electorates were like when full responsible Government was given to these Dominions. Look at English history itself and you will find that the electorates were not in the condition in which you find them to-day. They were in the early stages defective. There were thoughtful politicians who at the time had very serious defects to find with the electorates as they existed then; but that was not held to be any valid reason for withholding from them the reforms for which they were fit.

Sir, let me pause here and say this. It is imagined as if India to-day is emerging out of darkness into light. It is imagined as if there is a clean slate in India on which His Lordship the Secretary of State for India and his colleagues have made some figures for the first time. It is imagined, I am afraid, as if all these reforms have been given to a people who were immersed in darkness and barbarism only a few years ago, and that it was with great effort that they were struggling from darkness into light. But, if His Lordship the Secretary of State and others of his way of thinking will pause and study the history of India, they will find the mistake that they commit in making this assumption. Sir, in one word, the position is this. There is this strong, growing desire amongst the people of India to obtain full responsible Government as an equal member of the British Commonwealth within the shortest possible period and I submit, Sir,—I am offering no threat, I am saying so with all respect—that any unreasonable delay in bringing about that goal will mean disaster to India as well as to England. Wisdom and statesmanship lie in making this period as short as possible, so that England and India united together may march on in the service of humanity as a whole.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):

Sir, when one is obliged to express dissatisfaction with regard to anything, extreme or otherwise, it is not good form to say much or to say that over-vigorously. I therefore congratulate my friend, Munshi Iswar Saran, and the Mover of this Resolution on the marked restraint that has been observed by them. I hope that example will be followed. Munshi Iswar Saran's restraint may also be due to another reason. He has been ill of late; we are glad to have him back here. I am rather suspicious, that his illness had a deeper root than ordinary mortal causes. He had a taste of the fruit of which Mr. Rangachariar has spoken. He had given notice of his intention to move for adjournment of the House on this question. (*Munshi Iswar Saran*: "That did not make me ill.") Not being allowed to move it, may have affected him. Time has since elapsed; I would not have answered for the restraint if Mr. Rangachariar, one of the Panel of Chairmen, who presided on the occasion, had allowed him that liberty when he was wanting to move for the adjournment. I shall not say that Nemesis has been at work, but there is a fitness of things, Sir, in Mr. Rangachariar, among many who had given notice of a similar motion, bringing this motion forward and giving us an opportunity of expressing in a restrained fashion the dissatisfaction that we should have voiced much more vigorously on that day. This changed order of things has another moral. I congratulate you and Mr. Rangachariar on his appointment as a Panel Chairman. The question is not without its bearing on what we are doing to-day. The Legislature is on its trial; we have been told the electorate is on its trial, and the poor Executive Government is also on its trial. The Legislature was on its trial

on the day in question, in the person of Mr. Rangachariar. He exercised restraint and as Panel Chairman he did not allow that notice for adjournment to succeed. He however brings the matter up to-day in another capacity. People who can differentiate like that in their different capacities give more than good promise as to how they are going to behave when they have more responsible powers.

Sir, I do not wish to traverse the ground that Mr. Rangachariar has taken. That could be amplified almost *ad nauseam* if one was inclined to do so. But the one thing I wish to say in connection with this motion is that it was quite on the cards that the ten years' limit that was imposed was not the minimum; it was the maximum. We need not go into the question as to

[Sir Deva Prasad Sarvadhikary.]

how that information or impression was obtained let any one who can, gainsay it—the limit was intended as the maximum and not the minimum, and the only real reason why it was not put down as the maximum in so many words was that some Members of the Joint Committee did not want that there should be any loophole for constant agitation if the limit was provided as a maximum. Has agitation been any the less because of the lack of that provision? Is agitation going to be any less? Sir, when the constitution came we were passing through troublous times. There were many who would have nothing to do with it either in the way of advising or working the constitution, and those who did agree to come forward either with advice or assistance later on were in a very difficult position. The War was on then and there was a natural and very laudable desire not to press for any hard bargain. We all thought that when peace came and some trial had been made the matter would be examined a little more dispassionately and a little more without an eye on the main chance. Well, it has been pointed out that much more than six months elapsed while this despatch was drafted, and the mature consideration for which the Secretary of State pleaded was given. Sir, we are told that the new constitution took 2 years to evolve; if at the end of 10 years a Committee is appointed and that Committee takes another 2 years or less or more to evolve another constitution, what would be the position of affairs? Shall we have another State *versus* Company management debate on the eve of the appointment of that Committee, and is there to be an *interregnum*; or is it not better to be forewarned and begin the examination, the results of which need not be given effect to immediately if there is not good ground?

In justice to the Secretary of State we must recognise that he was not a free agent in the matter. He had to deal with Parliament and the Cabinet. He had to reckon with the state of things in Parliament at the time that he came into power and he had also to bargain for the state of feeling in England with regard to India both in and out of Parliament. If matters were put like that by the Secretary of State it would have been intelligent; but when one talks of electorates not being fit, the other side naturally turns round and asks, what steps are being taken to educate the electorate? Is it for private Members who come here as representatives of those electorates to go back to their constituencies and to do what they can in the way of educating the electorates? That has been suggested. I do recognise that that may be a part of the duty and functions of those who represent those electorates. But it is not enough; what has the Government done? What has the Secretary of State done in the way of help for educating that electorate or the Legislature by expanding convention? When it was urged by some that literacy test should be applied to the electorate, the authorities turned round and said: "We don't want to set up an educated oligarchy." And when the electorate makes mistakes—all electorates make mistakes in all countries—the same authorities turn round and say "The electorates have not proved themselves worthy of the trust." The Legislature and the electorate are not the only ones on their trial. So is the Executive Government. One is not quite sure from the Despatch whether by the Executive Government the Members or the Ministers in the Local Governments is meant. So far as the Government of India are concerned, there can be no doubt that the whole of the front Bench here is on its trial for there are no Ministers; but in the Provinces one would like to know whether it is the

Minister section or the Member section of the Government that is on its trial. And the failure of which section will count?

I began by saying that in expressing one's dissatisfaction one must not say too much, and I do not wish to say more. This expression of dissatisfaction may or may not do good, but it is up to us to give unequivocal expression to it.

Mr. T. E. Moir (Madras: Nominated Official): Sir, when I examined this Resolution moved by the Honourable Mr. Rangachariar, I wondered what purpose it was that he conceived it would serve. I was convinced that it was not merely to give this House an opportunity of recording its dissatisfaction with the particular course of action taken by the Secretary of State. We seem to be getting into the habit of recording our dissatisfaction with the Secretary of State, but I was perfectly certain that that was not his sole object in moving this Resolution, and I took it that his real object was that he considered it would further the object which the original Resolution, which forms the basis of our discussion—the Resolution of September 1921—had in view; that is to say, that in some way this Resolution, if carried, would forward political and constitutional reforms in this country. I was rather surprised when I heard Mr. Rangachariar say that he had not expected any better results from the original Resolution. Now surely that was merely a form of rhetoric. Surely he did not wish to imply that he and the other Members of this House who supported that Resolution in 1921, had voted for it merely in order to try a fall with the Secretary of State.—that they expected that the answer of the Secretary of State would be exactly what it was. I cannot believe that either Mr. Rangachariar or his supporters on that occasion did, as he would suggest, deliberately try to place this House in antagonism to the Secretary of State.

I was also rather disappointed to find how uncomfortable Mr. Rangachariar seemed to be in his new clothes. Another thing which disappointed me in Mr. Rangachariar's speech was his attitude towards the Reforms. It seemed to me in many ways one of the most reactionary speeches I have ever listened to. For, what was he looking for? He is not looking forward to the future. He is looking back on it, to the past history of India, to the days when the Raja was the Raja, when the priest was the priest, and the ryots held the plough. It was not with any confidence in the future that he spoke. It was a regret with the past and I should say that if his supporters of constitutional reform and political advance in this country have no more robust constitution than the Honourable Mr. Rangachariar there would be grave doubt as regards the future of that progress and the possibilities of advance.

Now, Sir, I turn to what I suppose was the real object of Mr. Rangachariar in moving this Resolution. He is dealing with the question of further political advance in this country. What is the object that he, this House, we all have in view? What is it to which we look forward? It is to the raising of India to the position of an equal partner in the British Empire governed by representative democratic institutions. Now, Sir, I think at times we are all apt to take the question of the admission or the retention of India within the British Empire for granted. We assume that that does not involve any postulate. It does involve a postulate and a very big one, and that is that India accepts and works democratic and representative institutions and the people of my country who, after all, are a free people, are entitled to demand assurances that their

[Mr. T. E. Moir.]

future partner does accept democratic and representative institutions. Now, Sir, we are rather apt I think to attack the Secretary of State as an obstructionist, we talk of him as the "gentleman at Whitehall." Possibly we think that by saying so we are belittling him. Is it not possible that we are belittling ourselves? We may regard him as a mere obstructionist, as a mere malignant focus of all that is reactionary. But look to the other side. What is his position in England? He is one of His Majesty's Ministers, he is a Member of the British Cabinet, and he holds a very peculiar position in that Cabinet in that he is entrusted on behalf of the people of Great Britain with the task of watching the most important and possibly the most perilous political, may I use the word, experiment that has ever been undertaken. That is the position which he occupies with reference to the British people. Now, Sir, surely if our desire is to foster, to secure a more rapid advance in the constitutional position of India, surely the last thing we ought to do is in any way to antagonise either the Parliament or the people of Great Britain. And is it not possible that when we complain of the action of the Secretary of State the people of Great Britain may take an entirely different view? They may look upon his action as merely the carrying out of those responsibilities and those functions which were imposed upon him under the constitution which had been granted to this country,—responsibilities and functions which he dare not deny or fail to execute. I am not in the best position to speak as to the opinion of people at Home, but may I say,—I may judge wrongly—from all I hear what their opinion is? They were perfectly prepared for such a Resolution as was proposed in September 1921, that they regard it as an exhibition, perfectly natural, of the enthusiasm of the young Assembly. But I am afraid that the step we are asked to take to-day, the steps that we have occasionally taken since that Resolution strike them in a different line, that it really evinces a desire on the part of this Assembly to deny to the Minister who has been entrusted with the task of watching and guiding the reforms on their behalf the right to do so.

Now, I will turn to the real issue of this original Resolution. It was not a question, as Mr. Rangachariar seems to suggest, merely of whether the Secretary of State or the Government of India within the four corners of the existing Act could extend powers and privileges of this sort. It was a demand for a re-examination and revision of the constitution at an early date. That was what the demand was, not a mere question of what could be done within the scope of the existing constitution. As I suggested at that time, this Assembly was filled with enthusiasm for the new scheme, for the new conditions which would come into being. But are we perfectly certain that, if we are summoned at the present moment before Parliament,—we are perfectly certain in our hearts that we can give them such assurances as they may hold would justify them in granting now a further measure of constitutional advance? Could we assure the House of Commons that our communal differences and difficulties have disappeared? Could we assure the House of Commons that the people of this country as a whole have unreservedly accepted the constitutional powers upon which they have invited us to enter? Could we assure the House of Commons that the electorate of this country and the future electorate is so wedded to democratic and constitutional ideas that it will hold to them steadfastly through good and evil? I give no answer to those questions, but they are questions which this House would have to consider very

deeply if it wished to press for a further advance. Now, Sir, surely we recognise that the next stage of constitutional development must follow the same lines as the last stage and all other previous stages did, that is to say, it must be by Parliamentary action and ratified by the consent of the British people. Now, Sir, I am not in the secret of those who I agree at the present moment are deliberating as to how the demand for a further step in advance should be formulated or put forward. I may make one suggestion here and that is that both the nature of the demands and the time when they are put forward should be so chosen that they may feel confident that they will receive a favourable reception at the hands of the British Parliament and it is because of these considerations I consider that the Secretary of State with his knowledge of the state of public opinion and of Parliamentary opinion at Home did a service to the constitutional progress of this country by refusing to consider a demand which he must have been certain would have been refused. It is because of that I do believe he did the greatest possible service to constitutional advance in this country in refusing to accept the invitation of this Assembly to re-open the question of the constitution and I would entreat the House not to give its assent to this Resolution. I believe that if they do so it will again be a step which would be detrimental to constitutional progress, that it will not help to improve relations between this Assembly and the British Parliament and that it will not help further to link together the people of this country and the people of Great Britain.

Dr. Nand Lal (West Punjab: Non-Muhammadan): I am afraid the Honourable Mr. Moir has misconstrued the speech of my Honourable friend, Mr. Rangachariar. He says that the speech meant to belittle His Lordship the Secretary of State. He is wrong altogether. We have the most sincere respect for the Secretary of State. The speech which has been made by the Honourable Mover is nothing but, more or less, an echo of the voice of the country. At the same time the Honourable Mr. Moir says that people in England will not appreciate it and will not take it in good spirit. I may tell him that he is wrong there too. My opinion of the soundness of the views of people in England induces me to think that they are more broadminded than the Honourable Mr. Moir thinks. I think they will take it in the right spirit, in the spirit in which this Resolution has been moved. They are always in favour of hearing what is the truth, namely, what is the view of the people who England is governing and I think to mince matters is not a proper thing. This Resolution contains a clear statement of the opinion of a large section of Indians here. The facts are that Indians are not quite new to democracy, that at any rate, the ancestors of the present Indians knew of the principles of democracy which are subsisting in other parts of the world. Nine or ten centuries ago, India knew of these principles and they obtained in India. You cannot deny that. If you study Sir Henry Maine you will learn that all these principles of democracy obtained in India. Then the Honourable Mr. Moir says that at the time this Resolution was moved, some of the Members of this Assembly might have anticipated a disappointing answer. I think he is wrong. This Assembly was not idling during that time. We were quite serious when this Resolution was moved and we expected that we would have an encouraging answer; and what was our demand? The character of the demand was modest, very simple—that investigation may be made. That was the real gist which was put forward in the form of a Resolution then. Let me assure you, Sir, that this Despatch has really aroused some sort of sensation in this country and I think the Honourable

[Dr. Nand Lal.]

Mr. Rangachariar has rendered a service both to this country and to England in voicing the opinions held. The Resolution, to my mind, commends itself and I need not go into details or into the history of whole question. I most heartily support it.

Mr. K. Muppil Nayar (West Coast and Nilgiris: Non-Muhammadan Rural): In practical politics of to-day in India, there are some things it is impossible to understand, when one sits to ponder over them calmly—A constant cry of Indianisation and a constant cry for a further instalment of reforms are two of them—To my mind they are all so closely connected and with one idea, that of self-Government. The first important question that therefore arises is, can we in India, for a long time to come, afford to lose the presence of a strong British element? That is the crux of the whole question. It is impossible to expect that element to be present unless the Britishers are given proper facilities, and we in India are prepared to accept their terms. But if it is argued we can do without them, then may I ask what is the cohesive force that we will have in their stead? Was not India, whenever she had not one among her own people to control all the rest, always a prey to some great force from outside? What about our private quarrels? What about the Brahmin and the Non-Brahmin, the Hindu and the Muhammadan, the orthodox and liberal, the clash among the different sects and communities and all such, to say nothing of inter-provincial troubles? Suppose we manage to make up all these, then what about our present British India and a great slice of India which is in the hands of Indian Princes? Will these Princes like or agree to be bossed over by us? If they will not, are we then prepared to conquer and subjugate them all? Is it not more likely that it may be the other way round, for one of them to subjugate the rest of India which will without the cohesive force be like a loose mixture of stone and paddy? It strikes me that this is one of the most important aspects of the matter that has hardly received its due consideration. Personally I was never charmed with the Montagu-Chelmsford reforms. My attempt to do my best for a satisfactory working of them does not at all mean I approve of them, for, I should have done just the same on the grant of any other kind of reforms, tied as my family and I are to our lands. The reforms are, however, in my opinion a great step forward and if we are prepared to accept them as more or less an end in themselves, then things may go on all right. But as a means to something greater, as some people are never tired of making them out to be, they are in my opinion simply hopeless—For, what is the next step? Whatever we do, it is a question of whether we want the British in India or not. We cannot ask them to be here, do any dirty work if occasion arises, and take the responsibilities and at the same time give them no voice in the choice of their action, nor let them have enough of their own men to support it. I cannot really see any *via media*. So, thus we come back to where we started from and the whole difficulty is there again. I view the reforms as a raised place from which we are shown by clever politicians and impatient idealists what appears a beautiful lake on the horizon which they call self-Government. Well, I doubt if there is that lake and if it is not all a mirage. Next, we are told there is a path to it. If there is, then I say that path cannot but have at present uncrossable gaps and unless we think out means of getting over those gaps there is no good leaving our safe position on the hill. I should certainly entreat for patience from my friends whom I ask to wait and watch how we get on.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I was not one of those who were very enthusiastic about the original Resolution as moved by my distinguished friend, Rai Bahadur Jadu Nath Mazumdar, on that memorable occasion, but I was certainly, Sir, a party to the amended Resolution which was passed by this House, and to me and I believe to the other Members of this House I take it as an insult that our united voice should have been so summarily brushed aside. Sir, we have been told times out of number by the British Cabinet and by the Secretary of State that the man on the spot is to be trusted and respected. But unfortunately, Sir, I have found it my experience that when the man on the spot, I mean the Government of India and His Excellency the Viceroy, move in the right path, their opinion is not respected; it is only when they advocate retrograde measures that their experience counts at Whitehall. Sir, here was a Resolution adopted and accepted by the Legislature and the Executive, and the Secretary of State thinks so lightly of it that he does not even consider or consent to examine the merits of it, and that is, Sir, a situation which cannot be accepted by this House. The Honourable Member does neither ask for any examination or for any consideration of it; he only asks the Government to express to the Secretary of State the deep dissatisfaction of this House. Is there anybody in this House, or if I may say so anybody in the country, who would venture to say that the House is not dissatisfied with the action taken by the Right Honourable the Secretary of State? If that is so, I say that there is absolutely no reason why that feeling should not be communicated to the gentleman about whom it is entertained by the Members of this House. I do not like, Sir, to go into the merits or the demerits of the Resolution at large or into constitutional history. This is neither the occasion nor the time for the discussion of that. We are here rather concerned with the action taken by the Secretary of State, and we express our feelings about it, and I think we do it strongly and emphatically and without equivocation. The advocacy of the Honourable Member from Madras to the effect that the Right Honourable the Secretary of State has done the greatest service to India I am sorry I can neither appreciate nor accept. I believe, Sir, with due respect and deference to the Noble Lord, that his action has been a great disservice to the cause of reforms and constitutional agitation in this country. They have in a large measure strengthened the hands of those who I am afraid are not working in the right way, and whom we may fairly call revolutionaries, and therefore the position which we occupy both in this House and in the country is to a very large extent weakened: and to weaken our hands means to strengthen the hands of our enemies. This was a step which was unwise and unstatesmanlike, and we wish and desire that our feelings in this respect should be communicated to the Right Honourable the Secretary of State for India by His Excellency the Governor General in Council.

Mr. B. C. Allen (Assam: Nominated Official): I hope, Sir, that even at this stage of the debate there is room for the still small voice of conciliation. I was greatly moved by what I heard from my friend, Mr. Rangachariar, when he referred to the sacrifices that he and those who have come with him made when they joined the party of constitutional reform and entered this House. But I was not surprised that he did so. In the first place, if he will allow me to say so, if there is one thing which impresses us about our Honourable friend, it is the transparent honesty of his character and the fact that he would never prefer what is expedient to what is right. But it is not only a personal question. I have, during

[Mr. B. C. Allen.]

the many years that I have lived in this country, been enormously impressed by the way in which Indians in the service of Government, and Indians who thought that Government was in the right, had the courage of adhering to their opinions in the face of the bitterest hostility, the bitterest opposition, from their fellow-countrymen.

And now, Sir, I should like to refer to what I imagine to have been the underlying idea, the idea in the Secretary of State's mind when he penned that Despatch. As I visualize these reforms, they are, to use that objectionable word, a great experiment; they are a great trial. There was one system of Government in force in this country, and that system has been radically changed. There are of course opponents outside who have stigmatized these reforms as worthless, and of no account. Those of us who are in Government service know what vast powers are already wielded by these Assemblies which have been constituted, and know how greatly these powers could have been strengthened and enhanced had those who have remained outside of them thought fit to enter. But the future, I submit, Sir, is still obscure. We have been told that the people are clamouring for a reform of the constitution. Now it is difficult for any country to ascertain what the temper and the will of the people really is. We know what the newspapers say, but the newspapers by no means invariably represent the real wishes, the real desires of the population. I understand that in England in many cases elections are swayed by the silent vote, by the great body of steady opinion which takes no particular action, raises no loud cries, but forms its own conclusions and goes to the poll to give effect to them. Now I think that all of us who have carefully watched the proceedings of this House must have realized how difficult it is to know the will even of this House, of this small body of men amongst whom we sit from day to day. We, all of us, even on the Government Benches and those on the opposite Benches, know how difficult it is to tell how a division will go. Occasionally, the result is foreseen. But, continually, one is surprised to find gentlemen in the Government lobby who were only expected to be seen elsewhere, and people in the opposite lobby who might naturally be expected to vote with Government, or rather not to have voted with Government because, apart from Government servants, Members here do not vote either for or against the Government but for or against the particular motion. I would refer to a recent debate. I think that most people who sat in the House were very surprised at the attitude adopted there towards the question of protection and free trade. I came down to the House imagining that the House was wholly Protectionist,—and what did we really find?—that there was a very strong free trade element. So, Sir, I think that we should be very careful before we say that there is a strong popular demand, that the country as a whole has demanded anything. I am perfectly aware that a short time ago the country as a whole did demand something. It demanded that Mr. Gandhi should become the Emperor of India. There was no doubt whatever, so far as I could ascertain, that that was its genuine desire (*Voices*: "Never, never.") and in my own province that demand was based upon two things. It was based upon the statement made without any authority or any responsibility of the person chiefly concerned that Mr. Gandhi was God. Now we all know that if there is one thing which Indians are, it is that they are religious, and that once they have reason to suppose that any person is endowed with divine attributes, they will follow him blindly to the death. The other cause which swayed the people was the fact

that they were told that not only was Mr. Gandhi king, but that as a result of that, he being a *Sanyasi* required no revenue, that land revenue would be either entirely abolished or would be suspended for a term of years, that the forests would be free and that practically no taxation would be imposed. Is it cause for wonder that an illiterate population welcomed such a new-comer with joy? We cannot safely attach much weight to such an expression of the popular will.

I submit, Sir, that the future at the present moment is extraordinarily obscure. We had these reforms introduced; then we had the O'Donnell Circular: I frankly admit that in my opinion the stoppage of recruitment was the logical sequence of the reforms. I come up here; I express that opinion to an esteemed friend sitting in the House, and he tells me that he does not at all like to hear such views from my lips. I feel myself once more at a loss. Take again the whole constitution of India. Is India a country? Is India a nation? India is a continent and a congeries of nations. What have we been seeing only to-day? Has not province been rising up against province? What did we hear only a few short days ago? Did not a Member on the opposite benches get up and warn the House that Burma was likely to secede from the Indian comity of nations? Surely, Sir, we must all feel that when there are such real and genuine risks, such real and genuine dangers ahead of us, it is only right to proceed slowly and cautiously. Speaking for myself, so long as there is a reasonably steady, stable Government in India, I care not a whit whether Mr. Rangachariar or Sir Malcolm Hailey sits on the Treasury Bench. (*The Honourable Sir Malcolm Hailey*: "Nor do I.") But the one thing we all of us ask, and I am perfectly certain that the people of England are with us in that, is that there should be a solid stable Government in India: a Government that can protect its frontiers and that can ensure to every section of the population a reasonable administration of the law, the maintenance of order and the continuance to the people of their inherent right to follow their ordinary avocations in peace and quiet. And to me, Sir, it seems that the Secretary of State in declining to be rushed out of the policy of proceeding slowly has been showing true statesmanship. We are not dealing with machines. We are dealing with living human beings. Our institutions cannot be cast in a factory; they have got to grow. We grow and our institutions must grow with us. That seems to me to be the essence of real statesmanship in dealing with a question of this kind. What did Bismarck say after the first Franco-Prussian war? "We have planted the acorn. It is now for us to watch its growth." And what happened when Bismarck and the Bismarckian policy was thrown aside? The cast-iron German Empire was built up; the fleet was created, not as the British fleet is created working from year to year in accordance with our requirements, but created in accordance with the mandate of a stern and inflexible law. And where does the German fleet lie now? Is India to grow to majesty and dignity, or are we to hurriedly put together a jerrybuilt house which will share the fate that always befalls such buildings?

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I should like the Honourable Members to remember what we are really discussing this afternoon. We are not discussing here the personality of the Secretary of State or the question of the castes and communities in this country, but a very short and narrow Resolution, namely, the Despatch of the Secretary of State on the unanimous Resolution of this House moved and

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passed at the instance of the then Home Member. (*The Honourable Sir Malcolm Hailey*: "Most certainly not.") I am told, Sir, by the present occupant of that seat that this Resolution was most certainly not passed at the instance of the then Home Member. Let me refresh his memory. I find, Sir, at page 1285 of the Indian Hansard, the following discussion:

"*The Honourable Sir William Vincent*: I gave a certain assurance to the House and on that understanding I understood that the Honourable Rai Bahadur Majumdar had withdrawn his Resolution.

Rai Jadunath Majumdar Bahadur: I withdrew my Resolution because I accepted the amendment of the Honourable the Home Member.

The Honourable Sir William Vincent: I have no objection.

Mr. President: I regret that misunderstandings have arisen in regard to this matter. An amendment was handed up to me on the table in the form written out and now the question is that the amended Resolution be adopted. It reads thus—(not read)."

And the Resolution was adopted. Sir William Vincent drafted an amendment, Rai Bahadur Jadunath Majumdar thereupon withdrew his Resolution and the amendment, without objection by Sir William Vincent, was moved and unanimously passed by this House. This is the position. The Government cannot repudiate their responsibility for having endorsed this amendment and having made it virtually their own. And when they sent it on with their imprimatur to the Secretary of State. . . . (*The Honourable Sir Malcolm Hailey*: "What imprimatur?") Their own. The amendment was sent on to the Secretary of State, it must be presumed to be, Sir, with the recommendation of the Government of India, though they may not have recommended it in so many words. But let it pass. When that recommendation was sent to the Secretary of State, what is the reply of the Secretary of State? He tells us that the present constitution is sufficiently elastic and it has not been exploited. That the present constitution is sufficiently expansive admits of no doubt. But has the Secretary of State given his sanction to the expansion possible under the present constitution? I say, Sir, that if the Secretary of State was so inclined, if he was favourably considering the Resolution of this House and was inclined to give, without the intervention of Parliament, what the present constitution allows, he could easily have said, "look at section 19 A: look at the other sections of the Government of India Act: look at section 45 of the Government of India Act which allows of the transfer of all subjects to the Minister; look at section 19A of the Government of India Act which allows of the relaxation of the Secretary of State's control by rules framed thereunder. I am prepared to frame these rules and I authorize you to transfer further subjects to the provinces." That would have been the reply of the Secretary of State. But what does the Secretary of State do? Beyond merely alluding to the possibility of expansion, he takes no further action, nor, for the matter of that, do I find any desire on the part of the Government of India to exploit the present Government of India Act. Now, Sir, I believe this section 19A of the Government of India Act was the subject of some interpellation in this House. Now, under this section, I would like to point out to the Honourable Members of this House, the Secretary of State is entitled to make rules for the purpose of transferring his power of superintendence, direction and control to the Government of India. I have no doubt that if by the rules framed under this section the Secretary of State had transferred his powers to the Government of India we should

have a more autonomous Government of India than we find it to-day. Well, Sir, in this connection my friend Mr. Neogy asked a question whether any rules had been framed under section 19A and a reply was given that some rules had been framed by a notification dated the 14th of December 1920. It seems to me, Sir, that this reply must have been given under some misapprehension. These rules are merely framed in regard to transferred subjects and not for the purpose of relaxing the power of superintendence and control vested in the Secretary of State in favour of the Government of India. Now, Sir, that is the first point. The second point in connection with this Despatch is that it says that sufficient time has not elapsed for a further advance. It was perfectly true that when the Resolution was passed, only six odd months had passed since the inauguration of the Reforms. But when this Despatch was indicted nearly 18 months had elapsed, and what would have been the procedure if the Secretary of State had accepted the recommendation of this House? Surely, Sir, a statutory Commission would have come out to this country and would have made investigation into the question as to whether further reforms should or should not be granted. I ask, Sir, the Home Member how long would such a statutory Committee take to complete its inquiry? I suggest, not less than 2 or 3 years. Then, Sir, assume for the sake of argument that on completion of their inquiry the matter was reported to Parliament and a new draft prepared for submission to Parliament. How long would that take and what time would be necessary for the passage of a Reformed Constitution Bill through both Houses of Parliament? Surely, Sir, two years or three years is none too short for the passage of such a Bill. Consequently, if the Secretary of State starts to-day to make inquiries as directed by the Government of India Act, it will take five, six, or perhaps seven years before we are granted a new constitution, and I submit seven or eight years for the revision of a new constitution is surely as long a time (*A Voice*: "Too long")—we are told it is too long—as would be necessary under ordinary circumstances if the statutory commission were to visit this country on the motion of this House. But assume for the sake of argument that a statutory committee was not to visit for 10 years. I ask you, Sir, is this country to improve in education or are our communal differences, so picturesquely described in the fancy portrait of my Honourable friend Mr. Allen from Assam, to be changed within a period of 18 months or two years? And what is after all ten years in the life of a nation? Surely, Sir, once committed to responsible Government in this country, the English people should be generous enough to see that if it is delayed for 10 years it will make certainly no difference, no substantial difference in any case, either in the education of the electorate or in the improvement of the social conditions which were laid down as the *sine qua non* for further advance. Now, Sir, these are facts which cannot be lost sight of. A few months or a few years will make no difference in the life of a nation. I have turned, Sir, with some grief to the speeches made to-day by two members of the Indian Civil Service. You will remember that on the last occasion when this House had to listen to a Civil Service debate, I read extracts from a Memorandum prepared by their Central Association which contained words of wisdom in which it was pointed out that the transitional stage of this country must be abridged and shortened both in the interest of India and of England, and the Civil Service pointed out that so far as India is concerned no Government will be popular in this country unless that transitional period is put an end to. That is the view, the collected view, of the Civil Service in this country. Then, Sir, we have been told that if we press this Resolution to the vote,

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we shall antagonise the Secretary of State. I am sure neither my friend Mr. Rangachariar nor anybody in this House has the remotest idea of antagonising the Secretary of State. What we desire, what we emphasize is the necessity of a further advance in the direction of Reforms in the Central Government, and whatever the Home Member may say, I feel confident that the Home Member would be the first person to congratulate this House and himself if the Government of India was made more independent of the Secretary of State and the British Cabinet. Surely, Sir, when the Honourable the Home Member said he did not mind if Mr. Rangachariar took his place, he spoke the truth. His bed is not a bed of roses. From the front he has to withstand the attack of the Assembly and from behind he has to bear the brunt of the Secretary of State. He is, Sir, between the devil and the deep sea . . .

The Honourable Sir Malcolm Hailey (Home Member): Which is the devil?

Dr. H. S. Gour: The Honourable the Home Member puts to me a query. I would ask him to answer that query for himself. Now I submit Sir, this is the real situation. We on this side of the House want that the Government of India should be masters in their own home, and that is possible under the present Government of India Act. That is possible under the rules which the Secretary of State can frame, and if the effect of this Resolution would be to compel the framing of rules making the Government of India more autonomous, more independent from extraneous control, our immediate purpose will be served. So far as the main purpose of the Resolution is concerned, we have already indicated that this House merely desires to record its emphatic protest, its respectful but emphatic protest, and the disappointment caused by the Secretary of State's despatch, and records its view that the time has come for a further advance in the constitution of this country. I submit there is nothing to antagonise the Secretary of State or anybody else. Lastly, Sir, it is necessary for me to refer to the ante-deluvian views of my friend, Mr. Allen. He tells us that India is not a country but a continent. We have been hearing this for the last numerous years. We have been told that India is a vast congerie of nations; but I ask my friend, the Honourable Mr. Allen, will India cease to be a continent in 10 years? Will it cease to be a congerie of nations in 10 years? Will the communal differences die a natural death in 10 years? And it is in 10 years time that the constitution of this country has been promised to be revised. All those criticisms of my learned friends on the other side, I submit, are entirely wide of the mark. If they mean anything at all, they mean that there should have been no reform and not that there should be no further advance. But with the Government of India Act on the Statute Book a further reform is inevitable. It is irresistible, and the whole question is whether a forward step should be taken now or after 10 years. My friend, Mr. Iswar Saran, Sir, has rightly felt the pulse of the country. The country is chafing under the present regime and wants a further reform, and I think it will be a wise step if the Government of India strongly advised the authorities at Home that further delay is dangerous. Sir, my friend, Mr. Moir, made some reference to the golden past depicted by my friend Mr. Rangachariar. He wants to recall the past. He refers to the *panchayat* and to the happy days in ancient India which everybody enjoyed. Well, Sir, I must join with Mr. Moir in protesting against the description of that mythical past. I recognise that the democracy of India is the creation of the British and I appeal to the British

nation to advance the cause of that democracy by granting us further reforms.

Sir Campbell Rhodes (Bengal: European): Sir, as it is now six o'clock I beg to suggest to you that we are all tired and that we might adjourn.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): Sir, before you accept the suggestion made by my Honourable friend Sir Campbell Rhodes, I would request you out of fairness, to give some time to non-official Members to enable them to answer the arguments which have been advanced by Mr. Moir and others, otherwise the impression will be created that there was no answer to them.

Mr. President: Honourable Members must be aware that the case in favour of the Resolution has been presented by eight or nine speakers and the case against by two.

Rao Bahadur T. Rangachariar: Sir, I have no objection to the adjournment if that is the right solution of this question. Sir, I expected the Secretary of State would expect the courtesy of the expression of the opinion of this House on his despatch and that is why we tabled this motion. I think he will have plenty of opportunity to see how we view his despatch, and really it is not my object that we should convey any censure or create any antagonism between the Secretary of State and ourselves. But he must know the truth so far as this country is concerned, that the despatch is viewed with dissatisfaction. The whole point, Sir, is, my critics may be divided into two classes. There are some people who will never improve; who will never improve themselves and who think too that others will not improve. They will always be down with the cry, "India is not fit for anything." My Honourable friend, Mr. Muppil Nayar comes under that category. He cried out against the Montagu-Chelmsford Reforms, he cried against the Morley-Minto Reforms, and he will cry to time's end against any reforms. I do not think such people deserve any serious consideration, but I quite appreciate the friendly spirit which actuates my friends, Mr. Allen and Mr. Moir. I am glad, Sir, for one reason, that my Resolution has been the cause of provoking eloquence from my usually silent friends. We listened to their speeches with great pleasure, and to some portion with amusement. When Mr. Allen said that this country wanted Mr. Gandhi as an Emperor of India, he made a huge mistake, and if all the Indian Civil Service people are such judges of Indians, then I am afraid they are poor judges. They do not know the country then even with all this experience which they have. We know the country much better. We know that such a thing was never the wish of the country really. Of course it is very difficult to postulate what is the will of the people in any country. I do not suppose Mr. Lloyd George knew the will of the country when he was dethroned, but he still spoke in the name of the country to all the nations of the world. But we know what the intelligentsia of the country wants, and that is what counts in every country, not the ignorant masses, but the educated people who can think as to what is good for the country. So far as that goes, I do not think we make a mistake when we say (all sections I am now speaking of) that some further examination is necessary in order to see whether a step forward should not be taken. That is all we want to emphasize in this Resolution.

[Rao Bahadur T. Rangachariar.]

Sir, I do not want to withdraw this Resolution and I am not anxious either it should go to a division, and if it should end in the way my Honourable friend, Sir Campbell Rhodes, suggests, I will not object to that course, because I am sure the Right Honourable the Secretary of State will peruse these proceedings and see really that the country is not satisfied with his despatch on this very grave issue.

Mr. President: The question is that the debate be adjourned *sine die*.

The Honourable Sir Malcolm Hailey: I myself have no objection to the adjournment of the debate; though I should like to keep the House for another hour while I explain my own points of view on the subject. If it is adjourned, I must remark that it has been adjourned without my reply on the subject. I wish to keep my right of reply, if it comes up again.

(Voices: "We should like to hear your reply.")

Dr. H. S. Gour: I thought it was Mr. Rangachariar's intention to adjourn the debate *sine die* after hearing Sir Malcolm Hailey.

Mr. President: The Honourable Member from Madras is well able to express his intentions himself.

The question is that the debate be adjourned *sine die*.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 24th February, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 24th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MEMBERS SWORN:

Mr. Ashruff Osman Jamall, M.L.A. (Bengal: Nominated Non-Official.)

Mr. Lancelot Graham, M.L.A. (Legislative Department: Nominated Official.)

QUESTIONS AND ANSWERS.

LATRINES IN AGRA.

408. ***Mr. Pyari Lal:** 1. Will the Government be pleased to state if the construction of latrines in private houses is prohibited in Agra Cantonment?

2. If so, will the Government kindly state the reasons for the prohibition?

3. If not, on what grounds has the cantonment authorities of Agra rejected the application of Mr. G. P. Dube, Head Clerk, Sarda Canal, Pilibhit, and a resident of Agra Cantonment, for the construction of such a latrine in his house in that cantonment?

4. Is it a fact that Mr. Dube's appeal against this prohibition has been rejected by the District Commander?

5. In view of the above, will the Government be pleased to direct that permission be given to Mr. Dube, to construct a latrine of an approved design, as may be required under the Cantonment rules?

Sir Henry Moncrieff Smith: As the Army Secretary is unable to be in his place to-day, I have been asked to give the reply to this and a few other questions.

1—5. The Government of India have no information on the matters referred to in the Honourable Member's question. If Mr. Dube is dissatisfied with any orders passed by the Cantonment authorities or the District Commander, it is open to him to represent his case to higher authority in the usual way.

CONTRACT FOR CARRIAGE OF COAL.

409. ***Rao Bahadur T. Rangachariar:** 1. Whether it is a fact that a contract for the carriage of coal from Calcutta to Rangoon required by the Burma Railways has been entered into with the British India Steam Navigation Company for a period of ten years?

2. Whether it is a fact that the said contract was negotiated and completed through the Mining Engineer to the Railway Board?

3. What is the exact date when the negotiation with the British India Steam Navigation Company began and when was the contract finally settled?

4. Did the Mining Engineer act on his own responsibility in the matter or under the instructions of the Railway Board?

5. Were any tenders called for either in India or elsewhere by open advertisement or otherwise in reference thereto?

6. Whether the Mining Engineer and the Railway Board have instructions to adhere to the declared policy of the Government of India that when the rates of the Indian and Foreign Companies were the same—the Indian Companies should be given preference?

7. What steps did the Mining Engineer take to ascertain the rates of Indian Companies before fixing up the contract and if he took no steps, will the Government be pleased to ascertain and state why he did not do so?

8. Whether it is a fact that from August 1921, the Scindia Steam Navigation Company were asking the Mining Engineer and the Agent, Burma Railways, to give them an opportunity to quote for the said contract?

9. Whether the rate accepted from the British India Steam Navigation Company is lower than that quoted by the Scindia Company?

10. What are the rates originally proposed by the British India Steam Navigation Company and finally accepted or settled?

11. What was the necessity for entering into such long term contracts and will the Government be pleased to define their policy as regards long term contracts?

Mr. A. H. Ley: 1. Yes.

2. The contract was approved by the Board of Directors of the Burma Railways on the recommendation of the Mining Engineer to the Railway Board.

3. The exact date is not known. But the information on record shows that the negotiations were well advanced in March, 1921. The exact date when the contract was settled is not known. It was either at the end of 1921 or in the beginning of 1922.

4. The Mining Engineer acted as adviser to the Board of Directors of the Railway Company. He did not act under the instructions of the Railway Board.

5. Tenders were not called for.

6. The Railway Board were informed that the Government of India had accepted the Resolution adopted by the Council of State on 15th March, 1922, subject to the strict observance of the principle that the lowest satisfactory tender must be accepted and these orders were passed on to the Mining Engineer.

7. No steps. There were special reasons why, with the approval of the Directors of the Company, the Mining Engineer preferred to negotiate a contract with the British India Steam Navigation Company instead of calling for tenders in the open market. One reason was that the coal position was very difficult in 1920-21 and at one time the Burma Railways were reduced to only 10 days' supply. In placing the freight contract, therefore, the primary consideration was proved ability to supply enough tonnage to deal with heavy rushes at uncertain intervals. The Indian Company referred to in the Honourable Member's question did not fulfil this condition since its total fleet comprised 6 steamers.

8. According to the information on record the Company asked to be allowed to quote in August and September, 1921.

9, 10 and 11. The contract was a contract concluded by the Directors of the Burma Railway Company and the Government of India have no information on these points. Government's policy does not arise. The Company no doubt regarded the matter simply as a business proposition.

Rao Bahadur T. Rangachariar: May I ask whether the Government of India do not control the policy of the Railway Companies in this matter?

Mr. A. H. Ley: I think the matter is entirely within the competence of the Railway Company and the Government of India are not concerned.

RAILWAY CLAIMS.

410. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state:

- The number of claims put forward during the years 1920-21 and 1921-22 by consignees or consignors of goods, parcels and luggage despatched either at owner's risk or Railway risk against the East Indian and the Great Indian Peninsula Railway Companies and the North-Western Railway?
- The number of such cases in which compensations have been granted either in part or in full for the same period?
- The sums in each of the cases for which claims were made and the amount of compensations awarded in each of such cases?
- The total sum for which claims were put forward but no compensation granted by the Companies during the years 1920-21 and 1921-22?

Mr. A. H. Ley: (a) The number of claims preferred against each of the railways named was in 1920: East Indian Railway 86,073, Great Indian Peninsula Railway 31,222 and North-Western Railway, 55,608 and in 1921, 113,684, 32,103 and 42,371 respectively. Information regarding 1922 has not yet been received by Government.

(b), (c) and (d). This information is not available and in view of the time and labour that would be involved in its collection Government do not propose to call for it.

REGISTERS OF RAILWAY CLAIMS.

411. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state:

- Whether the claims office of the Railway Companies maintain a register showing all claims made against them for losses of goods, parcels and luggages?
- If so, for what period are Registers available?
- If not, will the Government be pleased to state the reasons?

Mr. A. H. Ley: Government understand that such registers are maintained by railways, but Government are not aware for how long they are preserved.

Rai Bahadur Lachmi Prasad Sinha: Does Government propose to take steps to publish them in the form of statements?

Mr. A. H. Ley: The suggestion will be considered.

SETTLEMENT OF RAILWAY CLAIMS.

412. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Will the Government be pleased to state whether any statement of such claims made by consignees or consignors and compensations awarded to them against such claims are prepared by the Companies and submitted periodically to the Railway Board?

(b) If so, for what period are they available?

(c) If not, will the Government be pleased to state whether the Companies have unrestricted powers to deal with and refuse such claims from the public?

Mr. A. H. Ley: (a) and (b). The reply is in the negative.

(c) The Agents of the railways have full power to deal with claims preferred against their administrations.

I. M. S. OFFICERS IN N.-W. FRONTIER PROVINCE.

413. ***Mr. K. C. Neogy:** Will Government be pleased to state the number of I. M. S. officers in military employ—permanent and temporary—who served in the North-West Frontier Province during the years 1921 and 1922; and how many of them were Indians?

Sir Henry Moncrieff Smith: A statement giving the information asked for by the Honourable Member in this and in the next question No. 414 is laid on the table.

Statement showing the number of I.M.S. officers, permanent and temporary, who served or are still serving, in the N.-W. Frontier and with the Razmak Force.

		Permanent.			Temporary.		
		No.	Europeans.	Indians.	No.	Europeans.	Indians.
1921.							
N. W. F. Province.	Waziristan .	37	25	12	151	7	144
	Kohat .	25	13	12	34	3	31
	Peshawar .	32	21	11	49	2	47
Total		94	59	35	234	12	222
1922.							
N.-W. F. Province.	Waziristan .	30	20	10	63	2	61
	Kohat .	46	24	22	49	2	47
	Peshawar .	25	17	8	30	2	23
Total		101	61	40	142	6	136
Razmak Force .		25	9	16	16	...	16

I. M. S. OFFICERS WITH RAZMAK FIELD FORCE.

414. ***Mr. K. C. Neogy:** What is the total number of I. M. S. officers who served with the Razmak Field Force, and how many of them were Indians?

MILITARY MEDICAL SERVICES.

415. ***Mr. K. C. Neogy:** (a) What is the number of Staff appointments in the Military Medical Services in India; and how many of them are held by Indians?

(b) What steps have been taken upto now to train and appoint Indians to Staff appointments?

Sir Henry Moncrieff Smith: (a) There are altogether 56 administrative appointments in the Medical Services in India. Of these appointments, 20 are at present held by officers of the Indian Medical Service, one of whom is an Indian holding the appointment of Assistant Director, Medical Services.

(b) Indian officers of the Indian Medical Service receive exactly the same training as British officers of that Service and are equally eligible, subject to their possessing the necessary seniority and qualifications for appointment to administrative posts.

NEWSPAPERS SUBSCRIBED FOR BY GOVERNMENT.

416. ***Mr. K. C. Neogy:** (a) Will the Government be pleased to place in the Assembly Library a statement showing the names and number of copies of newspapers and periodicals—Indian and foreign—subscribed for by the different departments of Government, and the annual expenditure entailed thereby?

(b) Is it a fact that the Central Bureau of Information supplies to the different departments cuttings from Indian newspapers on subjects concerning the respective departments? If so, what is the justification for the departments to subscribe for the Indian newspapers independently?

The Honourable Sir Malcolm Hailey: The information asked for is being collected and will be placed in the Assembly library when ready.

STATE OWNED RAILWAYS—FUTURE MANAGEMENT.

417. ***Mr. K. C. Neogy:** (a) Will the Government be pleased to state what recommendation has been made by the Central Railway Advisory Council on the question of the future management of State-owned railways now managed by private companies?

(b) Will Government be pleased to lay on the table a copy of any resolutions or minutes recorded by the said Council in this matter?

(c) Is it a fact that Local Governments and commercial bodies were invited to express their opinion on this question? If so, will Government be pleased to circulate their opinions among members of this House?

Mr. A. H. Ley: The Central Advisory Council by a majority advised in favour of State management. It is regretted that a copy of the minutes cannot be placed on the table. A collection of opinions received from Local Governments and commercial bodies has been placed in the Library.

Mr. T. V. Seshagiri Ayyar: May I ask why it has not been considered advisable to place a copy of the minutes of the Central Advisory Committee appointed by this House on the table?

Mr. A. H. Ley: I should like notice of that question.

Dr. H. S. Gour: What was the majority in the Advisory Committee who favoured State management?

Mr. A. H. Ley: I have no information but will inquire.

Sir Deva Prasad Sarvadhikary: Will the Honourable Member indicate how the Members of the Assembly are to have the information contained in the proceedings of the Advisory Committee if they want to use it?

Mr. A. H. Ley: I will have the suggestion considered.

VOTING AT LANDHOLDERS' CONSTITUENCIES.

418. ***Baba Ujagar Singh Bedi:** (a) Will the Government be pleased to state whether they have given effect to my resolution regarding removing of the restrictions for the voters of the landholders' constituencies to appear in person at the polling stations for the ballot, which was accepted by the Honourable the Law Member on behalf of the Government (*vide* Legislative Assembly Debates, Volume 3, for September, 1922, page 200) and will it be enforced for the ensuing election?

(b) If not, why not?

(c) If it is not to be enforced in the next election, when will it be enforced?

The Honourable Sir Malcolm Hailey: The recommendation in the Resolution referred to was accepted by the Government of India, so far as they were concerned, but as the Honourable Member is aware, it requires an amendment of the electoral rules which cannot be effected by a mere stroke of the pen. Government at present are unable to say more than that they hope that the change in question will have been made before the next General Elections.

TENDERS FOR IMPERIAL DELHI WORKS.

419. ***Mr. Muhammad Faiyaz Khan:** (a) Will Government be pleased to lay on the table a brief statement showing the rates of various tenders called for from the 1st April, 1922, up to date for execution of works in the 6th and 8th Divisions of the Imperial Delhi Works, respectively, together with the name of each tenderer and with an indication of the names of successful tenderers?

(b) Is it a fact that the lowest tenders are not generally accepted in these two Divisions? If so, on what basis is the acceptance of tenders decided upon?

Colonel Sir Sydney Crookshank: (a) The 6th Division of the Imperial Delhi Works deals with Government House, and a certain number of small works; the 8th Division comprises the residential quarters in Raisina, and the number of works large and small, including repairs estimates, for which tenders have to be called during the course of a year is very considerable. The information asked for could not therefore be compressed into a brief statement. Nor is it usual to make public the names of tenderers for contracts, and the rates at which they tender. Such a disclosure would be much resented by the contractors themselves and Government does not therefore propose to lay any such statement on the table.

(b) Government has no reason to suppose that in the two Divisions mentioned the general principle followed in giving out contracts is not

observed. This general principle is that, subject to the sanctioned estimate not being exceeded, the contract is given to the lowest tenderers considered capable of properly carrying out each particular work.

MOSQUES IN DELHI.

420. ***Mr. W. M. Hussanally:** With reference to the answer given by the Honourable the Home Member to the question by Mr. Seshagiri Ayyar on the subject of mosques in Raisina, will Government be pleased to state:

(a) How many mosques are there in the New Imperial town; and how many in Pahargunj?

(b) How many of each are frequented by Muhammadans; and how many of each are in ruins and consequently not frequented?

The Honourable Sir Malcolm Hailey: It would take a considerable time to collect the information in detail asked for, as the number of mosques now in use and of the ruins which may at one time have been mosques in the areas specified is probably very large. Incidentally the greater part of Paharganj is not affected at all by the New Delhi Project. Government does not consider that the expenditure of time and labour in collecting this information would be justified, nor would it be reliable, for many cases have arisen in which mosques or mosque ruins which appeared to be entirely abandoned, are subsequently frequented for a time, and then again abandoned.

Mr. K. Ahmed: Is it a fact that many of the mosques are not mentioned in the Imperial Delhi map available in the Eastern and Western Hostels at Raisina, and that they were left outside that map?

Mr. President: The Honourable Member can state from his own study of the map whether that is a fact or not.

Mr. K. Ahmed: Is it a fact that all the buildings, including mosques and temples are given in the Imperial map?

The Honourable Sir Malcolm Hailey: For the information of the Honourable Member I may say that the best map to go to for information on this subject is, of course, the Survey map. Any map prepared by our Public Works Department and placed in the hostels for the information of Honourable Members as a guide to Raisina and the surroundings is not, of course, prepared primarily with the object of showing every topographical detail in that area. Such a map would show only the protected monuments, as being of chief interest.

Mr. K. Ahmed: Then, Sir, do I understand that the survey map will not contain the buildings that are still standing?

The Honourable Sir Malcolm Hailey: I am afraid, Sir, I do not understand the question. You will find in the Survey Map, which is very complete, a very large number of religious buildings mentioned, both those which are in use and those which are abandoned. If the Honourable Member desires any further information regarding our maps, I shall be quite glad to supply it to him.

Mr. K. Ahmed: Were the mosques and their location surveyed at all? Was the position of any of these buildings surveyed before these maps were prepared?

Mr. President: Order, order.

CUSTODY OF RAISINA MOSQUES.

421. ***Mr. W. M. Hussanally**: 1. Is Government aware in whose custody or trusteeship, are the frequented mosques in Raisina?

2. How many of them have been repaired at the cost of Muhammadans themselves and how many at the cost of Government, if any?

3. Are the Muhammadans required to have permission of Government to enable them to repair these mosques? If so, under what law?

4. (a) Has permission been asked for in any case?

(b) If so, in how many cases has the permission been granted; and in how many cases refused? If the permission has been refused in any case, why?

(c) Will Government place on the table any such applications refused?

The Honourable Sir Malcolm Hailey: The answer to (1) is in the negative.

(2) Government are not aware how many mosques have been repaired by private individuals, but as will be seen from the reply to question No. 426, Government carries out repairs on 9 mosques in the New Delhi area.

(3) The mosques in the New Capital area having been acquired by Government during the land acquisition proceedings in that area, permission to carry out repairs by private individuals is required to be obtained in order that the repairs may conform to the architectural features of the surroundings of the buildings.

(4) (a) Yes, in several cases.

(b) Permission to repair according to sanctioned plans is not refused to persons able to show that they are entitled to exercise rights of user in the buildings.

(c) Does not arise.

Mr. K. Ahmed: Is it not a fact that the Khadims of those mosques and some of the priests asked that those mosques and shrines should be repaired at their cost and that the Government did not allow them to do so? There were petitions to the Chief Commissioner of Delhi regarding that matter.

The Honourable Sir Malcolm Hailey: I can inquire whether any such applications have been made and have been refused. The general rule, as I have already explained to the Honourable Member, is that, where a person shows that he has any right of user in a mosque, he is allowed to repair it.

ACQUISITION OF LAND ATTACHED TO MOSQUES, DELHI.

422. ***Mr. W. M. Hussanally**: (a) While acquiring land for the new town in Raisina, was any land belonging to any mosque also acquired? If so, in how many cases?

(b) From whom was such land acquired?

(c) Was any compensation paid? If so, to whom; and what amount? (Names and addresses may kindly be given.)

The Honourable Sir Malcolm Hailey: No separate record was kept of the acquisition of land surrounding mosques and tombs, or of the payees

to whom the compensation awarded by the Land Acquisition Officer was paid. These proceedings were amicably concluded in the years 1913-14, and Government do not consider that any useful purpose would be served by re-opening such proceedings at this time of day. Suitable plots of public land are being attached to some of the existing mosques where the general lay out permits of this being done.

Mr. K. Ahmed: Is it not a fact that a public notice was issued by the Khadims of the mosques in Delhi saying that they are not allowed to repair the mosques, nor are they allowed to say their prayers

Mr. President: Order, order.

Mr. K. Ahmed: I have not finished yet, Sir, completing the sentence even.

Mr. President: Order, order. The question of the repair of mosques does not arise out of this question.

LAND ATTACHED TO MOSQUES, DELHI.

423. ***Mr. W. M. Hussanally**: Will Government place on the table a statement showing how much land belonged to each mosque in Raisina before the new town was built and how much now?

The Honourable Sir Malcolm Hailey: For the reasons given in answer to the previous question it is doubtful whether any accurate statement of this nature could be prepared. It might be added that most, if not all, of these buildings were small village mosques situated in bazars and narrow lanes and had therefore no land attached to them.

" BUNDARYA WALI " MOSQUE.

424. ***Mr. W. M. Hussanally**: (a) Is it a fact that the yard of " Bundarya Wali " Mosque in Paharganj or any part of it was thrown into a road or thoroughfare?

(b) If so, when was that done and under what circumstances?

(This question to be answered on reference to settlement and survey maps and registers.)

The Honourable Sir Malcolm Hailey: (a) and (b). Neither the yard nor any part of the yard of the " Bundarya Wali " mosque in Paharganj has been thrown into a road or thoroughfare.

Mr. K. Ahmed: May I, Sir, hand over to the Honourable the Home Member a printed circular inviting the attention of the public to this matter? He will find from it that his answer is quite the other way. May I have the honour to hand it over to be placed on the table?

The Honourable Sir Malcolm Hailey: I shall be very glad to receive the statement and make any further investigation that is required.

" CHAHAR BUNJ " MOSQUE.

425. ***Mr. W. M. Hussanally**: (a) Will the Government be pleased to state in whose possession is the mosque known as " Chahar Bunj " Mosque?

(b) Are Mahomedans allowed to say prayers therein? If not, why not?

The Honourable Sir Malcolm Hailey: (a) There are several four-domed mosques round Delhi, and it is not quite clear to which of these the question refers. If the Honourable Member will be more explicit the information required will be obtained.

REPAIRS OF PLACES OF WORSHIP, RAISINA.

426. ***Mr. W. M. Hussanally:** (a) Will the Government be pleased to lay on the table correspondence if any relating to the repairs of all places of worship in Raisina, such as mosques, temples, Gurdwaras and the like?

(b) Have any mosques in Raisina been taken up as archæological monuments and repaired at the cost of Government? If so, which?

The Honourable Sir Malcolm Hailey: (a) Government are not prepared to lay the correspondence referred to on the table.

(b) The following mosques in the New Capital are archæological monuments and are repaired at the cost of Government:

1. Khair-ul-Manzil.
2. Masjid Kila Kohna, that is the mosque in Purana Killa.
3. Mosque near tomb of Sikandar Shah Lodi.
4. Mosque near tomb of Safdarjang.
5. Mosque near tomb of Isa Khan.
6. Afsarwali mosque near Humayun's tomb.
7. Mosque of Mahabat Khan.
8. Mosque of Abdul Nabi.
9. The mosque in Ferozshah Kotla.

MOSQUES IN RAILWAY AREAS.

427. ***Mr. W. M. Hussanally:** 1. (a) How many mosques come within the area of the Imperial Railway; and how many more within the area of the new railway station?

(b) Have any areas attached to these mosques been appropriated? If so, why?

2. (a) Are such mosques allowed to be frequented by Mahomedans? If so, will that permission be continued for always?

(b) Is any part of any such mosque being demolished?

3. Has any passage been left for Mussalmans to use such mosques; and do Government propose to leave such passage?

Mr. A. H. Ley: Inquiries are being made and information will be furnished shortly.

MOSQUES NEAR KOTHI No. 27.

428. ***Mr. W. M. Hussanally:** (a) Is it a fact that a part of a mosque has been appropriated for Kothi No. 27, near the Police Station? If so, under what circumstances and with whose permission?

(b) If it be a fact, do Government propose to consider the question of restoring the same?

Mr. A. H. Ley: Inquiries are being made and information will be furnished shortly.

MILITARY SCHOOLS FOR SONS OF OFFICERS.

429. ***Mr. B. S. Kamat:** (i) Will Government be pleased to state at what places in the Provinces it is contemplated to start Military Schools for giving educational facilities to the sons of Indian Officers and soldiers?

(ii) Are these schools intended to be feeders to H. R. H. the Prince of Wales' Military College at Dehra Dun?

(iii) Have Government considered the desirability of establishing such a Military School in the Cantonment of Poona?

Sir Henry Moncrieff Smith: (1) Three schools of the kind are contemplated, viz., the Kitchener College, and the King George's Royal Indian Military Schools, Jullundur and Aurangabad Serai.

(2) Some if not all of the Schools are intended to be feeders to the Dehra Dun College.

(3) Poona was considered but was not finally selected.

Mr. Sambanda Mudaliar: Will the Government be pleased to consider the advisability of starting one in any of the conspicuous places in Southern India?

Mr. President: I think the Honourable Member had better wait, till the Army Secretary is in his place, to ask that question.

THE WORKMEN'S COMPENSATION BILL.

Secretary of the Assembly: Sir, I lay on the table the Bill to provide for payment by certain classes of employers to their workmen of compensation for injury by accident as passed by the Legislative Assembly and amended by the Council of State.

THE INDIAN INCOME-TAX (AMENDMENT) BILL.

The Honourable Sir Basil Blackett (Finance Member): Sir, I ask for leave to introduce a Bill to amend the Indian Income-tax Act, 1922.

This is a very short Bill the object of which is to give effect to the intention of the Legislature as intended to be expressed in the Income-tax Act of last year but unfortunately not quite so expressed. There are two clauses and there is no doubt in either case what the intention of the Legislature was. But it has been found that the words of the new Act do not quite convey that intention. I do not think it is necessary for me to enter into the details of the two clauses which I can explain when the Bill comes up for discussion. I confine myself to-day therefore to the request for leave to introduce the Bill.

The motion was adopted.

The Honourable Sir Basil Blackett: Sir, I introduce the Bill.

THE INDIAN COTTON CESS BILL.

Mr. President: The Assembly will now resume consideration of the Report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I move that:

"For clause 4 substitute the following:

'4. (a) As soon as may be after the commencement of this Act, the Governor General in Council shall cause to be constituted a Committee consisting of twelve members, to be selected by the Government of India in consultation with the Local Governments.

(b) The said Committee shall have power to co-opt members of Local Committees which may be appointed by the Local Governments in this behalf.

(c) In the selection of the said Committees regard shall be had to commercial, agricultural and other interests affected by the cess to be imposed under this Act."

On the last occasion when this matter came up I think Mr. Hullah rightly complained that the matter of which I had given notice was not discussed in the Committee. The Committee sat, Sir, for a very short time, and I had not given as much attention to the Bill as I have since given it. But immediately afterwards, the day following, I intimated to the Honourable the Agricultural Member that I thought the Committee was too unwieldy and that something should be done to make the Committee smaller. And I also in my minute of dissent informed the Member that I should like to have this matter again discussed, but I was told that as the report had been sent in already, it was too late to summon another meeting of the Committee. That is my explanation for not having fully discussed this matter when the Select Committee was sitting.

Sir, under the constitution as now framed, section 4 would necessitate the appointment of a Committee consisting of about 36 people. The cess to be levied, as I pointed out the other day, is a very objectionable one, but if the whole of the cess is to be utilised for some useful purpose one might feel reconciled to the position created by the Bill. What happens now is this—that these 36 people, who will have to come to Delhi at least twice in a year, will consume a large portion of the fund collected from those cotton growers. It has been said the money will be collected from cotton growers and millowners. It does not matter from whom you collect the money. There can be no doubt—I take it that to the extent of at least Rs. 50,000, the fund will be spent in defraying the travelling and subsistence allowance of the members. The position which I ask the House to consider is this. Is it right to collect money from the cotton-growers or the millowners and spend it in the way in which this Bill suggests, namely, in paying the travelling and the subsistence allowance of members? No doubt there will be enough left for the purpose of carrying on the investigations indicated in the Bill, but I submit, Sir, this Committee should not consume so much. A Committee of 36 can never be a satisfactory Committee; and why is it necessary to bring in such a large number as 36 from various parts of India to Delhi for the consideration of any matter? My suggestion is this. If you have a small Committee, say of 12 members—I for one would be satisfied with a smaller number; however, I have put it at 12—if you have a small Committee, that Committee can go down to Calcutta if it is a question of lightening

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the cess in Calcutta, or to Bombay or Madras, and there co-opt members on the Committee who might be appointed locally; and in that way a great deal of expense to the tax-payer and to the Government will be spared. I do not see the necessity for having such a huge, unwieldy Committee consisting of 36 members.

Sir, if the House will look into section 4, they will find who are the persons who are to be thus invited as the guests of Government to Delhi. You will find the Agricultural Adviser to the Government of India, six persons representing the Agricultural Departments of Madras, Bombay and so on; the Director General of Commercial Intelligence; 9 persons nominated by various departments, 4 persons representing the Cotton ginning industry, one person nominated by the Local Government of Bengal; one person having knowledge of co-operative banking; 10 persons representing the cotton growing industry in Madras, Bombay and so on; 3 persons nominated by His Exalted Highness the Nizam, the Durbar of Gwalior and of Baroda; one gentleman to represent the other Indian States. As if we have not had already enough, there are to be such additional persons as the Governor General in Council may, by notification in the Gazette of India, appoint. I say, Sir, that this is altogether an unnecessary number and it is sure to involve the Government in large expenditure, which is unnecessary for the purpose for which this cess has been created. As I said, it is desirable to have a small committee, and there should be local committees appointed by the Local Governments; they would not cost any money by way of travelling allowances and subsistence allowances. Under these circumstances, Sir, I move that instead of the present clause 4 the one which I have already read be substituted.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I may assure my Honourable friend, Mr. Seshagiri Ayyar, that I have not complained against any amendment on the ground that it was not discussed in the Joint Committee, or that it is brought forward by a member of that committee.

I wish to emphasise that in framing our provisions regarding the Central Cotton Committee we are not writing on a new slate. We have already a Central Cotton Committee which has been in existence for two years, and has not been found to be too large or too unwieldy. The size of the Committee up to the present has been 32; the Joint Committee has raised it to 37 in a way that I shall explain afterwards. But the amendment asks us to substitute for a very useful Committee of which we have already two years' experience a much smaller Committee constituted in a way of which we have no experience at all.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): What has been the cost of this Committee?

Mr. J. Hullah: I shall come to that later. Mr. Seshagiri Ayyar is also under a misapprehension when he speaks of the Committee coming to Delhi for its meetings. The Committee sits only at Bombay and will continue to do so. Owing to the importance of the Bombay Presidency in regard to the cotton industry a very fair number of the members of the Committee belong to that Presidency and therefore, the travelling and subsistence allowances are considerably smaller than they would be if the Committee met at Delhi. Mr. Seshagiri Ayyar estimates that the cost of these travelling and subsistence allowances will be Rs. 50,000. We have experience to go upon; we know almost exactly what the cost will be. The cost on

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this account for a Committee of 32 members is Rs. 9,000 a year, not a very large sum to take out of a total income of Rs. 9 lakhs in the first three years and Rs. 4½ lakhs in subsequent years.

Mr. T. V. Seshagiri Ayyar: How many times did that Committee meet in a year?

Mr. J. Hullah: Ordinarily they have met twice a year. We estimate that the cost of the enlarged Committee will be at the most Rs. 13,000 a year.

Mr. T. V. Seshagiri Ayyar: Are they to meet only twice a year?

Mr. J. Hullah: There is no statutory obligation to that effect, but we expect that ordinarily they will meet twice a year as they do at present.

The Committee is a large one, but it is representative of a very big industry and wide trade representation is required for the complexity of the commercial questions which the Government of India put to the Committee. It has already given us most valuable advice on important questions, such as the Cotton Transport Bill which the House recently passed and on the vexed question of the licensing of gins and presses. At the cost of taking up a little time, I may explain the various parts of its personnel. It is obvious that the Agricultural Adviser to the Government of India should be a member and it is convenient that he should be President. It is equally obvious, I think, that the Directors of Agriculture of the six major cotton-growing provinces should be members. The Director General of Commercial Intelligence is responsible for all Indian statistics and the importance of cotton statistics is a matter on which the trade has laid very great emphasis. The East India Cotton Association is a body which controls the marketing of cotton in Bombay, and Bombay handles three-fourths of the total crop in India. The Bombay Millowners Association and the Ahmedabad Millowners Association together represent practically 70 per cent. of the cotton spinning in India. The Bombay Chamber of Commerce represents the cotton export interests. The Indian Merchants Chamber is largely representative of the merchants concerned with the handling of cotton as middlemen between upcountry markets and the mills or exporters. The Karachi Chamber of Commerce represents the firms concerned with the exports not only of Sind cotton but also of the very valuable cotton crop of the Punjab. The Tuticorin Chamber of Commerce represents the mills in the extreme south of India and exporters and merchants handling what is probably the most valuable long staple crop in India. The Upper India Chamber of Commerce represents the mills of northern India. The Committee also includes a representative of the Empire Cotton Growing Corporation. That is a reciprocal arrangement. India has on the Council of the Empire Cotton Growing Corporation four members and one member on the Executive Committee of that body. Next we have two representatives nominated by the Central Provinces Government, one being a Central Provinces spinner and the other a representative of the ginning industry in Berar. There is a representative of Bengal; for although very little cotton and still less of any value is grown in that province, the local Department of Agriculture has recently taken up the matter and hopes to restore the old cottons of Bengal. It is but fair, we think, that Bengal should have a representative.

Now, Sir, on the different occasions on which I have spoken on this Bill I have laid emphasis almost, I am afraid, to the extent of being wearisome, on the fact that we in framing the Bill have had all along in the forefront of our proposals the interests of the agriculturist, the interests of the grower. The Standing Finance Committee some time ago, when I happened to bring up a proposal for a small item of expenditure, asked that the Central Cotton Committee might have more agricultural representation. We then put on four agricultural representatives. The Joint Committee on the Bill has gone further and said that agricultural representation must be even greater. They have added six new members. That would have brought the number of the Committee from 32 to 38, but by striking out one official representative we have brought the size of the Committee to 37. It is a large Committee, we admit, but we do not think it is too large for the greatness of the industry which it is intended to represent and to foster. It works largely in Sub-Committees. Lastly, I would suggest that a Committee nominated by the Governor General in Council is not as satisfactory as the present Committee or the Committee which we propose, which is drawn, as Honourable Members will see, from a very wide field of representation. I have, therefore, to oppose this amendment.

Sir Montagu Webb (Bombay: European): May I appeal, Sir, to my Honourable friend Mr. Seshagiri Ayyar, in view of the information that has now been placed before the House, to withdraw his amendment?

Mr. T. V. Seshagiri Ayyar: I don't think it will affect the Honourable Member much whether I withdraw the amendment or not. I had all the information before.

Sir Montagu Webb: The ground upon which the amendment has been put forward was the heavy expense which would be involved in the maintenance of this admittedly somewhat large Committee. But inasmuch as this argument is now found to have very little foundation, that is to say, that the additional cost involved is only about Rs. 4,000 and not Rs. 50,000 as Mr. Seshagiri Ayyar anticipated. In these circumstances, and looking to the fact that the existing Committee of 32 is working quite satisfactorily, I would appeal to him to withdraw his amendment.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I beg to oppose the amendment for another reason. Mr. Hullah has been good enough to concede that Bengal, which is trying to have its old cotton industry and cotton-growing capacity, restored, has been allowed a modicum of representation, namely, one. I am informed by my Honourable friend behind me, Mr. Mukherjee, that it was pressed by him in the Select Committee that Bengal should have at least two representatives, one of whom

Mr. T. V. Seshagiri Ayyar: There is no cotton at all there.

Sir Deva Prasad Sarvadhikary: My Honourable friend says that there is no cotton at all there. There is not much when compared to Bombay, but that is not the question.

Mr. T. V. Seshagiri Ayyar: You have no idea.

Sir Deva Prasad Sarvadhikary: The Statement of Objects and Reasons as well as the Preamble make it appear that this Committee is not only to regulate the cess but also to spend money for the improvement, and

[Sir Deva Prasad Sarvadhikary.]

development of the growing—the most important from the point of view of Bengal—and marketing and manufacture of cotton. The last sub-clause, sub-clause (xi) of clause 4, gives the Governor General in Council authority to add some persons. From the Bengal point of view I say this is of importance, because, when Bengal can show better results, it will want more representation.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): There is one consideration which I shall place before Mr. Seshagiri Ayyar to see whether he need press his amendment any further. The Government have proceeded substantially on the lines which have been recommended to them by the Indian Cotton Committee. They have recommended that the Central Cotton Committee should be a large representative Committee consisting of officials as well as non-officials and representatives of Indian States. The Indian States ordinarily produce nearly one-third of the cotton grown in India. The amendment which the Honourable Member has tabled does not make any provision for the representation of Indian States. At present there are 3 or 4 representatives of Indian States and it may be that on further representation being made to us, we shall have to increase that number. One other observation I would like to make and that is this. Throughout the discussion doubts have been impliedly cast on the adequacy of representation of agriculturists as to whether we can accept the recommendation of the Central Cotton Committee inasmuch as the elements composing it were largely official and commercial and that the cotton-growing interests were not so largely represented as might be desirable. In deference to the wishes, therefore, that have been expressed from time to time, both inside the House and outside, we have agreed to an increase in the number of agricultural representatives, and it would be therefore absolutely impossible to reduce the Committee to the size or anything approximating the size which has been suggested by Mr. Seshagiri Ayyar. The Local Governments do at present pay the travelling charges of the official Members and the Government of India pays the travelling charges of their officers and it is only the Non-official Members that are paid for and many of them live in and about Bombay, the Central Provinces, and so on at no considerable distance from Bombay. They meet only twice a year and I think, therefore, that in order that any representations which may be made by this Committee may carry weight with the Government as well as with the people at large, it is absolutely necessary that it should be a large one.

Mr. T. V. Seshagiri Ayyar: May I say a word, Sir? In view of the discussion, I do not think it necessary to press the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is that clause 4 stand part of the Bill.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadian Rural): Sir, may I be permitted to move a very small amendment to clause 4, sub-clause (v)? After my amendment, it will read thus:

"Four persons representing the cotton manufacturing or cotton ginning industry, of whom one shall be nominated by each of the Local Governments of Madras, the Punjab, the United Provinces of Agra and Oudh and the Central Provinces."

Sir, the only change I have made is that instead of two representatives from the Central Provinces, I have divided it into one for the United Provinces and one for the Central Provinces. Now, Sir, this Honourable

House is aware that the United Provinces produces cotton in large quantities. There is a large number of . . .

Mr. J. Hullah: Sir, I think I may fairly object to the moving of this amendment, of which we have had no notice. I know that amendments are sometimes allowed to be moved at short notice or even without notice, but this Bill has been in the hands of Honourable Members for a long time, and I therefore object, Sir, to the moving of this amendment.

Mr. President: The objection is reasonable, especially in view of the fact that the Honourable Member proposes to disturb the equilibrium of the Committee as appointed by the Joint Committee. If the Honourable Member's amendment was the fruit of mature thought, no doubt he would have given due notice.

Lala Girdharilal Agarwala: The objection is quite right but I simply appeal to you to allow me to move it, as the amendment is very small, although the Government are within their rights in objecting.

Mr. President: If the amendment had been very small I should have over-ridden the objection raised by Mr. Hullah.

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): May I, with your permission, make one suggestion? Throughout this long constitution I see that Bihar and Orissa has been altogether neglected. It is not represented at all either by the Local Government or through anybody else. May I make a suggestion that the Central Government be pleased to take at least two Members from the Province of Bihar and Orissa on the Committee? The Province of Bihar and Orissa is altogether neglected whereas even States like Baroda and other small States are represented on this Committee. The Province of Bihar and Orissa grows cotton and I do not know why she has been altogether neglected.

Mr. President: If that is intended to be an amendment I cannot accept it. I may suggest to the Honourable Member that he should use his influence with the Governor General in Council (Laughter) to get him to use sub-clause (xi) in the interests of his own province.

Clauses 4, 5, 6, 7 and 8 were added to the Bill.

Mr. J. Hullah: Sir, I move:

"After clause 9 (1) insert the following, and re-number sub-clause (2) of clause 9 as sub-clause (3) :

"(2) Any owner of a mill who is aggrieved by an assessment made under section 7 may, within three months of service of the notice referred to in sub-section (1) of that section, apply to the Local Government for the cancellation or modification of the assessment and, on such application, the Local Government may cancel or modify the assessment and order the refund to such owner of the whole or part, as the case may be, of any amount paid thereunder."

The reason for this amendment is that the Bill provides no kind of appeal for a mill-owner against an assessment. By virtue of the terms of clause 8 the exporter will have the same right of appeal as he has under the Sea-Customs Act. We do not anticipate that in actual practice there will be any appeals of mill-owners against the assessments made by the Collectors. I believe the usual practice under the Cotton Duties Act is for the Collector to accept without question the returns which they submit. But we think that there should be a right of appeal and we have therefore borrowed from

[Mr. J. Hullah.]

the provision which exists in section 33 of the Cotton Duties Act. I move my amendment.

The motion was adopted.

Clause 9, as amended, and clauses 10 to 17, were added to the Bill.

The Title and the Preamble to the Bill were added to the Bill.

Mr. J. Hullah: I move that the Bill, as amended, be passed.

The motion was adopted.

THE INDIAN OFFICIAL SECRETS BILL.

Mr. President: The Assembly will now proceed to the further consideration of the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move:

"In clause 4 add the following at the end of sub-clause (a) (ii):

'and it appears that the person in possession of such address or information had reasonable grounds to believe that the address was of, or the information related to, a foreign agent'."

Sir, I need not adduce any further arguments in support of my amendment as this point was more or less discussed on the last occasion and the arguments were very well advanced by Dr. Gour and certain other speakers on that occasion. When I had moved an amendment for the deletion of clause 4, the Honourable Mr. Graham was pleased to say in reply:

"It might be reasonable to require the prosecution to prove that an accused should have known anything which a person of reasonable intelligence would have known, but it is not fair to put on the prosecution the burden which this amendment would put on it."

Sir, I would rather like to quote Mr. Graham's arguments in support of my this amendment. I submit that the man should not be presumed to have communicated with a foreign agent if he is in mere possession of an address or information relating to a foreign agent without knowing or without suspecting or without himself having any reasonable belief that such person was a foreign agent. I can very well understand that where a man knows, suspects or has reason to believe any other person to be a foreign agent and if such man is proved to be in possession of such address or information, there could be a presumption that he may have had communication with a foreign agent, but in the case of a man who has no knowledge about it, or who has no reasons to believe that a particular person was suspected to be a foreign agent by the Government or by any other person, such a man should not be deemed to be guilty simply because he happens to have in his possession the address of a foreign agent. I need not in support recapitulate to the House the arguments that were advanced in this connection in the House of Commons by Commander Kenworthy that there may be some unscrupulous man who might for some motive of his own send the address of a foreign agent or a suspected foreign agent to any other person, and that other person might easily be deemed to have communication with a foreign agent. There may be cases in this country where such

a thing might be possible and innocent men might suffer. But apart from all this, it does not stand to reason that a man who happens innocently to go to the place of business of any other person who may have been suspected by the Government or by some other higher authority to be a foreign agent or that a man who visits be absolutely ignorant of the antecedents of such person should still be treated to have had communication with a foreign agent. It will be safeguarding the interests of the poor and innocent people if they could be made liable only in cases where they have reasonable grounds to believe that such a person was a foreign agent. It may be said that a particular man may not believe it, while another having reasonable intelligence would so believe; but what I mean to refer to is a man having reasonable intelligence. If such a man has known him or has believed him to be a foreign agent, it would be quite sufficient. Therefore, it will not be in any way against the interests of justice and it would not afford the spies any loophole to escape in any way. My amendment is only meant to safeguard the interests of poor and innocent people. It is no use glossing over the pitfalls and dangers that actually exist in the wide and elastic wording of the clause, but it is our duty that we as good legislators should also look to the probable effect of the clause in ordinary every day practice and to see that it may so far as possible be not liable to be abused by the executive. With these few words I suggest that a person who merely is in possession of the address of a suspected foreign agent may not be presumed to have had communication with him unless he has reason to believe or reason to suspect that person to be a foreign agent. I therefore move this amendment.

Mr. L. Graham (Legislative Department: Nominated Official): Sir, had this debate been continued on Wednesday, the 14th instant, I do honestly think that my Honourable friend, Mr. Agnihotri, would not have pressed this amendment; in fact he would not have risen to move it. The words which he now proposes to add at the end of clause 4 (a) (ii) are precisely of the same nature as the words which he proposed to add at the end of clause 4 (a) (i). Now, the House will agree with me that had those words been added to clause 4 (a) (i) an impossible burden would have been placed upon the prosecution. This new amendment which has been moved by my Honourable friend, Mr. Agnihotri, is precisely the same as the amendment which the House rejected on that occasion. Therefore I hardly think it necessary to deal with this amendment at any length and really but for the fact that some days have intervened I should certainly have said nothing at all and left the House to exercise its discretion. Now I only wish to remind the House that under this section which according to my friend is going to work such damage on poor and innocent people no offence is constituted at all. There is no prosecution under this section. It must be remembered that before this section can be used a prosecution must be in operation under section 3 of the Act and section 3 of the Act covers some of the gravest offences imaginable against the State. The prosecution is required, in order to get conviction under that section to prove that extremely difficult and abstract thing, a purpose prejudicial to the interests or safety of the State and this section provides that extremely suspicious circumstances may be referred to and may be used in evidence and one of those is that the accused has been in communication with a foreign agent and it is also laid down that in certain circumstances, those circumstances of course must be proved, that he shall be presumed to have been in communication with a foreign agent, that is to say, the burden will be placed upon him to prove that he was not in communication with a foreign agent. That provision my Honourable friend, Mr. Agnihotri, considers to be a poisonous provision

[Mr. L. Graham.]

and he proposes to sterilise it. The House agreed last week that this was not a poisonous provision. It declined to allow that provision to be omitted. I suggest, Sir, that the House will agree with me that to make that provision absolutely inoperative and to render it quite impossible for the prosecution to use it will have precisely the same effect as taking it out altogether and therefore as the House refused to take it out, I think the House will agree that these words should not be added.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): When on the last occasion we discussed another amendment to this clause, Mr. Rangachariar took the unnecessary trouble of reminding the House that this clause did not create any offence but merely laid down a mode of proof. He on that occasion defended the vague and sweeping character of the provisions on the ground that but for these provisions there was no guarantee that the Act would be successfully administered. In his new born statesmanship and sobriety, Mr. Rangachariar also sneered at those who happened to differ with him, and he even went to the length of hinting that they were merely trying to catch popular applause. In reply to Mr. Rangachariar and Mr. Graham I am going to cite to this House the opinion of the highest judicial officer in a province in India on this particular point, an officer belonging to the I. C. S., who is an Englishman to boot. I do not think Mr. Rangachariar will sneer at him or his authority to speak on this matter, because if he has read his papers carefully he must have seen that he is perhaps the only official in India consulted by Government who has any practical experience of the administration of the laws of espionage in England and France. His name is Mr. Pison, Judicial Commissioner of the North-West Frontier Province. He says as follows:

"The presumption arising from the presence in an accused person's note book of the name and address of a person believed to be a spy is one which, if pressed, might result in the conviction of innocent persons, and it seems doubtful whether there is sufficient justification for retaining it in a Statute which applies to peace conditions."

I hope, Sir, that Mr. Rangachariar will revise his judgment in view of this expression of opinion on the part of a High Judicial Authority.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Both my Honourable friends Mr. Neogy and Mr. Agnihotri are lawyers by profession, and as such they ought to know what is exactly meant by the particular provision to which they took exception. The possession of an address does not *per se* constitute an offence. It is merely treated as a relevant fact when all other circumstances in the case are against a man. This fact may be taken into consideration, only when other things are against him.

Mr. K. B. L. Agnihotri: On a point of personal explanation. If my friend has taken the trouble to read clause 8 . . .

Mr. President: That is not a point of personal explanation.

Mr. Pyari Lal: My friend must know that by this law which this House is trying to enact they are going to take note of certain exceptional circumstances and its object is to provide not for the safety or protection of one life or of one man or of one man's life or one man's property only but of the whole country and therefore to meet exceptional cases exceptional laws have to be provided. If my friend will take the trouble to go through the various provisions of this Act, he will find that the Legislature is very

scrupulously anxious that no possible loophole for escape should be allowed to a man who is really guilty, and under those circumstances I strongly deprecate any such petty amendments to the provisions of this Act, as proposed by the Mover of this amendment.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, as an appeal has been made to me by my Honourable friend, Mr. Neogy, I have reconsidered the position. I had the honour of sitting with him on the Select Committee when we discussed the provisions of this Bill. The eagle eye of my Honourable friend did not notice the great enormity which this section contains. He had not then a word to say in the Select Committee against any portion of this clause, nor in the long Minute of Dissent which he has appended. My Honourable friend has not said a word in his minute about amending section 4. If he will refer me to any particular portion of his minute relating to section 4 I shall gladly be corrected. I have read it carefully and I do not find any reference to amendments to section 4 at all. That is the clause we are now concerned with. I do not really know whether he has discovered anything later. He uses section 4 to condemn section 3. In his minute he says:

"Lt.-Commander Kenworthy, while criticising in the House of Commons the corresponding provision in the Statute of 1920 said 'What is to prevent some unscrupulous secret service officer,' etc."

This is all in reference to section 3. We are now concerned only with clause 4. It is a minor matter whether my Honourable friend wished to amend it or not. But I am sure he did not draw the attention of the Committee when we were sitting there to any enormity in this respect . . .

Mr. President: I must remind the Honourable Member that, as we are not seized of what happened in the Committee, we cannot judge of the matter. It is not proper to refer to the proceedings of the Select Committee except in so far as they are referred to in the Report itself.

Rao Bahadur T. Rangachariar: I only refer to the fact that there is no reference to it,—but that is a matter which is beside the question as he is perfectly entitled to raise it now. What is it that exception is taken to in clause 4? The first part of clause 4 says that a certain fact shall be relevant for the purpose of proving a particular fact which is to be proved: it does not prove it one way or the other, it only says that a particular fact shall be relevant, because it may not come exactly under the definition of relevancy in the Evidence Act; so, on account of the experience gained in England, Statutes X and XI, George the 5th, enacted this clause, and that is reproduced here; here we use the language of the Evidence Act—"shall be relevant for the purpose of proving a particular fact,—not that it is proof of that fact, not that it is conclusive proof, not even presumptive proof, but merely 'shall be relevant.'" Now if something is shown it says that the fact shall be relevant that he has been in communication. In order to prove that he has been in communication with a foreign agent, clause (2) enacts that, in order to be relevant, in order to prove that fact, if a connection is shown that he had either within or without British India visited the address of a foreign agent, then it is proof, or it shall be presumptive proof, that he has been in communication with a foreign agent. Does my learned friend object to that? The question to be proved is 'having been in communication with a foreign agent.' You are shown that you visited the address of a foreign agent or

[Rao Bahadur T. Rangachariar.]

consorted or associated with a foreign agent. From that, let us ask, is it wrong to draw the inference that he has been in communication with a foreign agent, in order to make it merely evidence, not to convict him of the offence. Then the second portion is that he has either within or without British India the name or address or that any other information regarding a foreign agent has been found in his possession,—then, it shall be presumptive proof that he has been in communication with a foreign agent. The only difficulty which my Honourable friend, Mr. Agnihotri, pointed out is that the address might have been foisted on him. Well, that is rather an exception, isn't it? My Honourable friend will admit that it will be an exceptional case where an address of another is foisted on him,—and it is an ordinary rule of evidence that the person who relies on an exception has to prove it. Ordinarily, we are in possession of the name or address of another person simply because either we desire to be in communication with him or we are in communication with him already. Ordinarily, does it not follow, if we have the address of someone else in our pocket, that it must be for a purpose,—isn't that so, ordinarily? It is human nature. If I had the address of my friend, Mr. Chaudhuri, in my pocket, I should have it for some purpose,—unless Mr. Neogy puts it into my pocket; then, of course, it will have come there without my knowing it; but that is an exceptional case. Therefore, being an exceptional case, the law makes here this presumption. I do not think there is any enormity in this; if there is, I should be glad to be corrected. What does it say? All that it says is that the person shall be 'presumed.' It means, 'unless the contrary is proved.' What is there to prevent my proving the contrary if I am honestly in possession of the address of a foreign agent? Now take the definition of 'foreign agent.' A 'foreign agent' is a person who does something inimical to the State, and includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power either directly or indirectly, for the purpose of committing an act, either within or without British India, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without British India, committed, or attempted to commit, such an act in the interests of a foreign power.' Therefore, that is a person who is inimical to the State. Now you have his address in your pocket. Now, Sir, are we guilty of any enormity in saying that we will draw the inference that you have been in communication with him? Not to convict you at once, but, if you are in communication with him, it is relevant for the purpose of proving that you had a sinister purpose, merely relevant under clause (1). If Mr. Seshagiri Ayyar will carefully read it, under clause (1), being in communication with a foreign agent is relevant merely for the purpose of proving the intention: not that it is conclusive proof, no, it shall be presumed. What is the objection to that? Do you want to shut it out? Is it not a relevant fact? Is it not a reasonable circumstance to take into consideration in order to come to a conclusion on the question of the innocence or guilt of the accused? Therefore, for the purpose of proving that he has done something for a purpose prejudicial to the safety of the State, it is relevant,—and would any lawyer or would any ordinary human being deny the relevancy of the fact? A person shall be presumed to have been in communication with a foreign agent if he has his address in his pocket. All that I am saying is that there is really nothing

wrong in it. It is not so bad as it is painted; that is all I say. Don't paint it darker than it need be painted. Let us see it as it is, and see whether it is necessary that we should enact that law or not. Let us appeal to reason, not to passion or prejudice, and it is only a rebuttable presumption; it is presumed from a certain fact. You can prove the contrary. Therefore, I do not see why all this fuss is made; and why my Honourable friend Dr. Gour should wax so eloquent, I fail to see. I have dealt with the merits of this question at some length and I hope the House sees, and I hope the public outside will also see and not be led away by such sort of comments as have been made here to think that really this section contains anything unusual or anything that should not be accepted by this Legislature. (Some Honourable Members: "I move that the question be now put.") (Other Honourable Members: "No, no.")

Mr. President: The question is that the question be put.

The Assembly divided:

AYES—46.

Abdul Rahim Khan, Mr.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bijlikhan, Sardar G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Fraser, Sir Gordon.
Graham, Mr. L.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.

Jejeehoy, Sir Jamsetjee.
Kamat, Mr. B. S.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.

NOES—36.

Abdul Rahman, Munshi.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Faiz Khan, Mr. M.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.
Gour, Dr. H. S.

Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rajan Baksh Shah, Mukhdum S.
Reddi, Mr. M. K.
Saravadhikary, Sir Deva Prasad.
Schamnad, Mr. Mahmood.
Singh, Babu B. P.
Sinha, Babu L. P.
Venkatapatriaju, Mr. B.

The motion was adopted:

Mr. President: The question is:

"At the end of sub-clause (2)(a)(ii) of clause 4, add the following:

'and it appears that the person in possession of such address or information had reasonable grounds to believe that the address was of or the information related to a foreign agent'."

The motion was negatived.

Mr. K. B. L. Agnihotri: I move, Sir:

"That in sub-clause (2)(b) of clause 4, for the words 'is reasonably suspected of' substitute the words 'where there is reason to believe of his'."

The last amendment that I moved related to "address;" the amendment which I now put before the House relates to "suspecting a foreign agent." I would not have taken the time of the House by moving this amendment if I had thought that the last amendment was properly discussed. Some of my Honourable friends wanted to give a reply to Mr. Rangachariar but did not get an opportunity to do so, and I have therefore to move this amendment. My Honourable friend, Mr. Rangachariar, did not take the trouble of replying to Mr. Neogy's argument with reference to the opinion of the Judicial Commissioner of the North-West Frontier Province who had had some experience of the working of such laws during the war. My Honourable friend, Mr. Rangachariar, was also pleased to point out that the evidence under this section was only a relevant piece of evidence and that the presumption that might arise is likely to be rebutted. May I ask him how a man who is suspected or accused of having associated with a person who was suspected to be a foreign agent would be able to rebut the presumption which will arise under this clause, particularly when he himself had no knowledge about it or had no reason to believe that man to be a foreign agent. On this point also my friend had not the courage to reply. I think that the clause as it stands is a very hard one. Under the existing law of criminal procedure and of evidence, we do not allow the accused to come forward into the witness-box as a witness to give evidence on oath. How can then the man accused of the offences enumerated in clause 3 come forward in the Courts of Law and prove his innocence? It may be that he had only gone to purchase tea from a tea grocer's shop. He may not have suspected that the tea grocer was suspected of being a foreign agent; he may not have had all the information which the Government had in regard to that person who was known to them as a foreign agent; he would look upon such a man as a grocer and nothing else and for that reason he may have had the address of such a man or go to that man's shop to purchase tea. In such circumstances the executive officers of the Government may think that this is a man who is dangerous to the safety of the State, and if he happens to possess some information or some statistics that might be of some use even indirectly, at some future time to a foreign power this man is likely to be hauled up for being in communication with a foreign agent. How can that man go before a Court of Law and say in his defence that he never knew that the grocer was a foreign agent and it was simply to purchase some tea that he went to him. The omission to provide a suitable safeguard against such probabilities will be terrible in cases where it enters into the head of the executive to abuse the powers given to them or to use them against innocent persons who may not hold the same opinion as Government officials in regard to political matters. Therefore, Sir, I move this amendment of mine which does not provide any loophole to any

spy or foreign agent, but which simply puts a safeguard for the innocent persons against the high-handed and oppressive acts of the executive. I put my amendment before this House for consideration and I hope the House will accept it.

Mr. President: Amendment moved:

"In clause 4, sub-clause (2) (b) for the words 'is reasonably suspected of' substitute the words 'where there is reason to believe of his'."

In spite of the slightly disorderly remarks made by the Mover of the amendment at the beginning, I must draw his attention to the fact that this matter has been debated already more than once and the discussion must now be strictly confined to the terms of this amendment.

Mr. L. Graham: Sir, I understand from my Honourable friend, Mr. Agnihotri, that his primary object in moving his amendment is to enable his friends to make an attack on my Honourable friend, Mr. Rangachariar.

Mr. K. B. L. Agnihotri: Sir, may I be permitted to interrupt on a point of personal explanation? The Chair has been pleased to say "in spite of the disorderly remarks made by the Mover." May I know what remarks of mine were disorderly, so that I may be more careful in future.

Mr. L. Graham: I would not object to this amendment on this account as my Honourable friend, Mr. Rangachariar, is perfectly able to look after himself. But I have certain grounds for objecting to this amendment and they are as follows. In the first place, this amendment No. (iii), on my reading of the clause, is a consequential amendment, which Mr. Agnihotri would move if he had succeeded in persuading the House to accept his first amendment, *viz.*, the proposal to substitute the word "believing" for the word "suspecting" earlier in the same sub-clause. This sub-clause is the definition which runs as follows:

"The expression 'foreign agent' includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power"

My Honourable friend, Mr. Agnihotri, is quite willing to leave the word "suspecting" there, but he wishes to substitute the words "where there is reason to believe of his" for the words "is reasonably suspected of" later on. I object to that, in the first place, because it does not make any sense at all, and in the second place, I say you have retained the word "suspecting" occurring earlier in the sub-clause and that is the place where it matters.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Is it proposed, Sir, to print the names of foreign agents in any publication for the guidance of the public?

The Honourable Sir Malcolm Hailey (Home Member): I am sorry the Honourable Member should think that we are so deficient in humour that we should even answer that question.

Mr. President: The question is that that amendment be made.

The amendment was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"Omit sub-clause (c) in sub-clause (2)."

Sub-clause (c) gives the definition of the word "address" used in clause (4). I should not ordinarily move this amendment also, but I again attempt to convince the House of the elasticity of the words used in this clause. I attempted to re-draft the sub-clause but regret to say that I could not find proper words to amend it and as the Bill is not re-committed to the Select Committee I have no other alternative but to propose the omission of this clause, so that the Government may, subsequently, bring in a properly worded sub-clause defining the word "address". Every argument that I have used in connection with the other amendments of clause 4 will be equally applicable in the case of this amendment; but, I should draw particular attention of the House at least to one sentence in this clause (c), the 5th line from the bottom, "or at which he carries on any business", and to the fact that no safeguard has been provided against the possible harassment of innocent persons. I therefore suggest to the House to please re-consider this sub-clause.

Sir, I very much regret to have to say that I have not been able to know the remarks that the Chair was pleased to remark as disorderly. If, therefore, any of my remarks on this amendment also be disorderly, I would rather claim indulgence from the Chair and would hope to be excused. I am not aware what remarks of mine were disorderly.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, as I happen to be also the author of a similar amendment, I may be allowed to explain my own amendment as well as that of the Honourable Mr. Agnihotri. Honourable Members will see that clause 4 which is sought to be inserted in this Bill was for the first time enacted in England in 1920. Consequently, it is not one of those clauses which have been tested by the experience of time. In the second place, it is one of those clauses which has not been extended so far as we know by any of the British Colonies. A question was put the other day I believe to the Honourable Mr. Graham as to whether this clause had been incorporated by any of the Colonial Legislatures in the measures which they introduced for their own Colonies, and we were told that information on that point was not available. If any of the Colonies have extended the drastic provisions of this clause we shall have at any rate the precedent of one Colony to go upon. Now, Sir, so much for the previous history of this clause and of the friend Mr. Rangachariar who is a foster-father of this clause and of the Bill resents any intrusion on the part of a Member to make any improvement upon that Bill. He will not possess his soul in patience, but up he jumps and defends every clause of this Bill as a clause calculated . . .

Mr. President: Order, order. Which clause is the Honourable Member discussing?

Dr. H. S. Gour: I am afraid I cannot discuss the clause without Mr. Rangachariar.

Mr. President: I asked the Honourable Member to say which clause he is discussing.

Dr. H. S. Gour: Clause 4 (c).

Mr. President: Clause 4 (c) is merely concerned with the question of what an address is. I would remind the Honourable Member that the matter has already been raised in a speech on the question that clause 4 be omitted. He must confine his remarks to the substance of sub-section (c).

Dr. H. S. Gour: Now, Sir, we are therefore concerned here with a particularly novel clause, and I would ask the Honourable Members of this House to canvass it carefully and see whether that clause is necessary for the administration of criminal justice in this country. That is clause (c). There are three expressions of any importance in the whole of this section. One is "an address", the second is "a foreign agent" and the third is "communications with a foreign agent." Now Honourable Members will see that clause (c) does not deal with the exclusive address of a foreign agent. It may be an address which is the address of a hundred or two hundred or a thousand people. As I pointed out the other day, the suspected foreign agent may have taken up his lodgings in a hotel in which there are five hundred or a thousand residents. That address will be treated as the address of the foreign agent. It is not necessary that it should be the sole and exclusive address of that foreign agent. Now that is a point which I hope the Honourable Members will realise when voting upon this clause. The whole of clause 4 deals with evidence, and it says, if a person has the address of a foreign agent, he shall be presumed to be in communication with him. Now reduce this clause to a concrete case. A person is in possession of the address of a hotel called A. It is suspected that a man B lives in that address and that is also his address. You shall be presumed to have been in communication with a foreign agent. A presumption shall be made that the person who had a common address of a particular hotel was in communication with a foreign agent. What is the meaning of the words "shall be presumed?" The Evidence Act, section 4, defines what is the meaning of the words "shall be presumed." It says, whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The meaning of the words "shall be presumed" then comes to this, that the man is liable to be convicted from the mere fact of his being found in possession of that address unless he is able to disprove that fact.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Unless it is disproved.

Dr. H. S. Gour: My friend says, unless it is disproved. How is he going to disprove it? What disproof has he got? The other day when I said that the accused should have a chance of going into the witness box to disprove a fact exclusively in his possession, this House said: 'Oh, no, we shall not place the accused in that unfortunate predicament' and my amendment was rejected. Suppose now, for the sake of argument, that the only person who is able to disprove that fact, as it invariably would be, is the suspected foreign agent himself, how is he to disprove it? On the one hand you would not allow him to go into the witness box to disprove a fact. On the other hand you place upon him the burden of disproving a fact which you have presumed against him. This is the situation in which you place the suspected foreign agent. It is in all conscience a very unenviable position, and, if it happens that my friends who were so ready to vote with the Government with all the haste and hurry they command, if they were one of these days to be laid by their heels under this clause, they will cut a very sorry figure in the dock. Everything will be presumed against them and they will have a forlorn hope by way of defence to go upon. I

[Dr. H. S. Gour.]

suggested, Sir, that the least that the Government might do in connection with this clause is to alter, at any rate, one word, which will make the clause a little more acceptable to this House, if not entirely acceptable to it. For the purpose of improving this clause, if the Government will substitute the word "may" for the word "shall", I submit this clause will become more acceptable to all parts of this House. The clause will then read thus:

"A person may be presumed to have been in communication with a foreign agent if he does."

Mr. President: That amendment is not before the House.

Dr. H. S. Gour: I know that, Sir, I am only suggesting it as a peace-offering to the Government. If they do not accept it, then we shall of course move our amendments of which my friend, Mr. Agnihotri and myself have given notice. (Mr. J. Chaudhuri: "Mark the words 'reasonable grounds'".) I am simply pointing out how easy it is for the Government to accept the suggestion I have made, whereupon we shall all withdraw the amendments of which we have given notice.

Now, Sir, if this is accepted, it will make really no difference in the sense except in one particular. Honourable Members will observe that there are two degrees of presumption. Section 4 of the Evidence Act lays down:

"Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

Now, Sir, by altering the word "shall" into "may" you vest the Court with a certain degree of judicial discretion, and the Court may then regard the fact as proved or may call for proof of it. That is the degree of elasticity that you introduce into this clause, and I submit the court will in that case have to consider all the circumstances of the case and then exercise its judicial discretion. That, I submit, Sir, would considerably improve the clause, it will not neutralise its effect, and the whole clause, as it stands, would then be acceptable to all parts of this House. Otherwise, we shall be under the necessity of having to fight all the amendments including the one moved by my Honourable friend Mr. Agnihotri.

I have pointed out, Sir, the great danger of the very wide terms in which this clause has been couched. I have pointed out that it is practically unworkable. It places the accused entirely at the mercy of the prosecution. Once a prosecution is launched, I think a conviction is certain. Is this a situation in which you should place a man of whom you know nothing, of whom you are not able to believe anything but whom you merely suspect, upon little or no grounds, of being a foreign agent? Further, remember, Sir, who is to be the judge of the reasonable grounds. My friend who interrupts me has not even read the sentences which lie before him. Who is to be the judge of the reasonable grounds for suspecting? I presume the prosecutor. It is the prosecutor who has reasonable grounds for suspecting that this man is a foreign agent; and that closes the doors of justice and the doors of mercy upon the accused. I submit this is a clause which is likely to be used to the detriment of the accused. It is a clause which is an exception to the general law of the land. It is a clause which is too widely worded. It is a clause, which I submit, this House must reject. But if the Government accept my suggestion, I have pointed out that they stand to lose very little, they place the

whole matter in the discretion of the Court and I have no doubt that the Court will exercise its discretion wisely. I submit, Sir, if this is acceptable to the occupants of the Treasury Benches we are prepared to make peace with them by allowing the whole of this clause to pass without further amendment.

The Honourable Sir Malcolm Hailey: I must be forgiven if I begin by deprecating certain suggestions made in connection with this debate. The Bill was submitted to a Select Committee. That Select Committee gave very careful consideration to its clauses. They satisfied themselves that these clauses, as amended by them, contained nothing dangerous to the liberty of the subject. Their report was submitted to this House; but in what position do the members of that Select Committee now find themselves after having done their conscientious duty to the House? They are told that they themselves were the foster-fathers of the Bill, which they certainly were not. They are told that in season and out of season they rise to support the Government. I ask that we should treat this question purely on its merits, and regret that the loyal support given, not to Government, but to the Report of the Committee by certain of its members should have brought on them what are little short of personal attacks.

Now the first advocate of the amendment was unfortunately able to say very little indeed in support of his motion. He merely desired that this sub-clause should be cut out in order that we might put a better one in. But the Select Committee has already done its best with the clause. Taking the original clause as we found it in the English Act, we improved the wording in order to make sure that no one should fall into the particular fallacy which has just been committed by Dr. Gour. He asks "Who is the person who is to be held to have suspected the foreign agent of being such?" He suggests that it is the prosecution. But it was just in order that no mistake of this kind should be committed that we altered the words as follows:

"In respect of which it appears there are reasonable grounds for suspecting"

which of course make it obvious that the suspicion must be in the mind of the Court itself. And if Dr. Gour desires higher authority for that statement, I quote to him the late Chief Justice of England. Precisely that question was raised when the Act was being passed, and precisely that answer was given by that authority. But, what are Dr. Gour's criticisms of this clause? For I may say that though he also proposes to omit the clause, he has not committed himself to any such re-draft as Mr. Agnihotri desired. He says "This has not stood the experience of time." No, it has not. But it was produced as a result of the experience of the war. He says it has not been reproduced by any colony; he states that as a fact; but we are only able to state so far that we have not as yet received the statutes of the colonies. But sometime ago when a question arose as to whether the Act of 1920 was to be extended to the colonies, we were told that it was not being extended to them because they themselves were legislating in a still more rigorous sense. If, however, he attaches that importance to the opinions of the colonies which he has frequently denied in the past, I can only ask him to wait until we do receive the statutes of the colonies.

His main criticism, however, is one of substance. He condemns this sub-clause because it raises a presumption against a man who is found in possession of an address, and the address does not have to be specially and solely the address of a foreign agent. It enables, he says, a post office

[Sir Malcolm Hailey.]

or hotel to be treated as the address of a foreign agent; and if you are found with that address on you, then all these dangerous presumptions arise against you. I quote his actual words. He goes on to argue that the Bill lays down that the Court shall presume that if you have this perfectly general address on you, you are in communication with a foreign agent, and you are, therefore, liable to be convicted unless you can prove the contrary. He asks "How can you prove the contrary?" I answer by the very simplest method. "You do not need to go into the witness box. If the prosecution is so entirely lacking in common sense as to attempt to prove that a man is in communication with a foreign agent merely because he has in his pocket an address of a large hotel in which such foreign agent lives, or of a post office at which he receives his letters, it is merely necessary to point out to the Court the entire absurdity of any such attempt to raise a presumption against the accused. No proof, in other words, is necessary. Indeed, no prosecution would be so foolish as to lead evidence of that kind; but if it did, it would be absolutely unnecessary to bring any proof against it. In truth, you cannot hope to persuade people of the unwisdom of a particular clause or a provision of law by assuming such absurd uses of it as that. You can, if you choose, make equal ridicule of a very large number of clauses of our Indian Penal Code. Take for instance the possession of house-breaking implements. You can, if you choose, say that a spade is a house-breaking implement; it undoubtedly can be used as such. But who would be so foolish as to attempt to get a conviction on the ground that a man is in possession of a spade, and a spade can be used for house-breaking? You can multiply such ridiculous charges against the drafting of our Acts in a dozen ways. Really the only question is, whether this sub-clause is actually required as an additional link in our chain of presumptions or not. I know that it is unnecessary to point out to the House again that the possession of such an address is no kind of offence in itself. The accused must have been found in those highly suspicious circumstances described

1 P.M. in clause 3, and these circumstances will have to be amply proved against him. But in order to get a conviction the prosecution has not only to prove that he has been found in those highly suspicious circumstances described in clause 3, but it has also to prove that he is found there for a purpose prejudicial to the State. No one now questions that if he has been in communication with foreign agents, that ought to be admitted against him as evidence relevant to proving his motive; the House has agreed to that proposition on an earlier clause. But how are we to make it possible to show to the Court that he can reasonably be suspected of having been in communication with a foreign agent? Unless we can prove against him either that he has visited a presumed foreign agent, or that (as in this sub-clause) he was in possession of a presumed address of a foreign agent, then our chain of proof obviously will be incomplete. Nor is it unreasonable in any way that we should seek to establish that as a presumption against him. That point was narrowly examined when the Act was being argued. I have heard it quoted as against us on a previous clause that the Judicial Commissioner of the North-West Frontier Province thought that this part of our presumptive evidence might be misused. But even a higher authority than the Judicial Commissioner of the North-West Frontier Province, I mean the present Lord Chief Justice of England, argued that although this extra presumption that we attempt to set up here was drastic and unusual, yet the experience of the war had shown

that it was in itself essential, and the House of Commons recognised that it was in consequence reasonable to legislate in that sense. Dr. Gour, unable to suggest anything better for our clause, finally suggests to us a compromise. I would note that this compromise of course does not refer to this sub-clause at all but to an earlier part, namely, to the beginning of sub-clause (2).

Dr. H. S. Gour: It affects this clause also.

The Honourable Sir Malcolm Hailey: I agree that it affects this clause also. His compromise is that we should substitute the word "may" for the word "shall," thereby, he says, giving the Court discretion as if the Court already had no discretion in this matter. Of course, the Court has discretion. The mere fact that the man has the address in his pocket does not, as he would almost seem to agree, secure conviction. The Court has to see first of all that the circumstances referred to in clause 3 and which constitute the substance of the complaint, are established. It has, after giving due weight to the evidence for the substantive complaint, to judge whether there is proof that his motive in being found in highly suspicious circumstances was for reasons prejudicial to the State. In judging of this it is allowed to make certain presumptions, of which this is one, but before making the presumption, it has to be satisfied that the address found on the accused was one which could be reasonably suspected of being that of a foreign agent. It is wrong to suggest that the Court has not any discretion in the estimation of the value of those presumptions, and it seems to me unnecessary to legislate to give the Court further discretion in the matter.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, to my mind, there is a real difficulty, if not downright danger, in the closing lines of sub-clause (c) which is the immediate object of the amendment, and I would ask the attention of the House as well as of the Government Benches to this. The closing lines of that sub-clause are to the following effect:

"that an address shall be presumed to be the address of a foreign agent"

There need be no quarrel with regard to that. But it goes on:

"and communications addressed to such an address to be communications with a foreign agent."

Communications to and for whom? It will be said no doubt that the intention is clear—communications for and to the foreign agent no doubt. When questions like this do arise in a trial wording of this kind is a real difficulty, and therefore, even if Government was not prepared to agree to the insertion of the word "may" for the word "shall" in (2) (a) covering the whole of the clause, it is worth while considering whether the language of the last 2 lines of clause (c) should not be changed to make it quite clear that a communication not overtly intended but a communication for or to a foreign agent is intended to be covered by this clause—unless something like that is done, the difficulty will continue. A man wanting to avoid suspicion would necessarily try to have his residence in a place where there are others with whom he may freely mix so that he may successfully avoid suspicion. It has often been the case that an address is given and to that address is addressed a letter not by name to the person for whom it is intended but in some way indicating that it is really intended for him (although the name does not appear on the cover of the communication). That class of cases

[Sir Deva Prasad Sarvadhikary.]

undoubtedly may have to be dealt with. But if you have an absolute blank card as in the terms of the last 2 lines of sub-clause (c) the difficulties to which I referred will continue. On the general question, Sir, I have not heard the Honourable Sir Malcolm Hailey yet as to whether he is prepared to assent to the suggestion of Dr. Gour that the word "may" shall take the place of "shall" in sub-clause (2) (a). He has generally indicated that the Court in these matters does not require any discretion. (*The Honourable Sir Malcolm Hailey*: "any further discretion.") I am afraid that that is not quite meeting the situation. The direction that is suggested here and demanded is not discretion with regard to his finding an accused guilty or not because that would be preposterous. Conviction will depend upon a variety of circumstances, one of which circumstances and factors—and a very important factor and link—is dealt with in clause 4. There can be no doubt about that and I do not think that Dr. Gour seriously suggests that discretion should be given to the Court to convict or not to convict merely upon what is provided in this clause, apart from other ancillary circumstances. Sir, the authors of the Act of 1872 of the Indian Legislature were given a very high compliment. There is hardly a piece of legislation in any country that can touch the Evidence Act of 1872. The author of that Act was invited by England to place its law of evidence on a satisfactory footing which certainly it had not been when our Act of 1872 was passed. Therefore, when we are for passing purposes, for temporary purposes, trying to go back upon what the Indian Evidence Act deliberately did,—and it did a piece of very good work,—we ought to be very careful. When a man is taking his trial under circumstances of grave suspicion all the safeguards that can be provided for him should be there without being positively detrimental to the State. I quite appreciate what the Honourable Sir Malcolm Hailey and others have said in this regard. I do not think there is the slightest sympathy here for enemies of the State or desire to support espionage to the detriment of the Government or the country. Those who feel it their duty to suggest amendments securing some more protection for the accused must not for a moment be thought as having sympathy of that kind or having any desire prejudicial to the State or to the Government. Sir Malcolm Hailey has complained with regard to members who are adversely criticising Members of the Select Committee who had the courage of their convictions both in the Select Committee and here. I do not see that there is much differentiation between either class of criticism. Those who think it their duty to bring to the notice of the Assembly points which may without detriment to the State be provided for in the interest of the accused have not deserved any reflections cast upon them. I desire to associate myself with Dr. Gour in his suggestion for substitution of the word *may* for *shall*. The trial will in no way suffer, the State will in no way be prejudiced if the court is given the discretion, the tendency now-a-days is to take it away. Even the High Court does not sometimes escape the 'shalls' of the Legislature where the High Court ought to be the supreme arbiter in the matter. We have a very elaborate definition clause in this Bill. The "foreign agent" is not defined, "his address" is not defined and these two matters are brought in as an essential and integral part of this substantive clause, thereby differentiating as it were from what might and should have been done in the definition section of the clause. That makes it all the more necessary to examine the matter as closely as possible, and from that point of view I submit again that unless there is some change at all events in the last

two lines and a half of clause (c) the matter will be open to serious objection. Apart from that I do suggest that it will be an improvement on the clause to substitute the word 'may' for the word 'shall'; if Government are prepared to do it, it will be a real improvement and it will in no way jeopardise the interests of the State or the prosecution.

The Honourable Sir Malcolm Hailey: Can the Honourable Member suggest a definite alteration in the last two lines for us to consider?

Sir Deva Prasad Sarvadhikary: The words I would suggest would be "communications to or intended for a foreign agent" or words to that effect. It ought not to be left blank like that. Any communication addressed to that address must not raise the presumption that this clause seeks to raise.

Dr. H. S. Gour: The word 'may' may be substituted for the word 'shall' both in clause (a) and clause (c). That will give the court a certain amount of discretion for which we are struggling here.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): There is a real difficulty in regard to this clause, and I want the Honourable the Home Member once more to explain it fully. As has been pointed out by Sir Deva Prasad Sarvadhikary the position is this. Take clause (c):

"Any address whether within or without British India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent."

That is No. 1. The second is:

"or any address at which a foreign agent resides."

That is No. 2. No. 3 is:

"or any address to which he resorts for the purpose of giving or receiving communications,"

and the 4th is:

"any address at which he carries on business shall be presumed to be the address of the foreign agent."

This is what follows:

"and communications addressed to such an address to be communications with a foreign agent, and in the case of a man carrying on business at a particular place if any communications are addressed to him, they shall be deemed to have been addressed to a foreign agent."

You will find in the earlier portion of clause 4 these words:

"In any proceedings against a person for an offence under section 3, the fact that he has been in communication with or attempted to be communicated with, a foreign agent whether within or without British India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information."

First of all, you address a letter to an agent to a place where he carries on business, and from that you come to the conclusion that the foreign agent has been addressed, and this fact becomes relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information. Now, Sir, if you go back to section 3, clause (2), you will find:

"On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State."

[Mr. T. V. Seshagiri Ayyar.]

So, there is no necessity for proving anything to show a purpose prejudicial to the safety or interests of the State. That you establish by the presumption in clause 4; by the communication being sent to a particular person at a particular place,—you presume that it was addressed to a foreign agent,—and it becomes a relevant fact for the purpose of proving that some act has been done prejudicial to the safety or interests of the State; and when you go back to section 3, it says 'nothing more need be proved'. That is the position so far as I can see; and unless there is some more explanation, I think this is a dangerous provision to put before the country, I tried to work it, but so far as I can see, unless there are some more safeguards introduced, it would be a very dangerous provision.

Rao Bahadur T. Rangachariar: I quite recognize, having regard to the two long sections we are dealing with, sections 3 and 4, my Honourable friends, Sir Deva Prasad Sarvadhikary and Mr. Seshagiri Ayyar, feel the difficulty which they have pointed out. If I try to point out that really they have mistaken the question, I hope they will excuse me. The first question is, what is likely to be the charge against the prisoner or the accused person? The charge, so far as section 4 is concerned, will come under 3 (1) (c), not under 3 (1) (a) or (b). The charge against him will be: 'you have obtained, collected, recorded, published or communicated to a person a secret official code or pass word, or any sketch, plan, model, article or note, etc., etc.' The evidence against him will be that he did a particular act; therefore, that will be first proved against him. Section 4 says what shall be the evidence in order to prove the necessary facts. Now let us confine our attention only to (c), because (a) and (b) won't come in at all—(a) and (b) refer to approaching or entering, etc., a prohibited place or making a sketch, etc.—so (a) and (b) won't apply to section 4 at all. Section 4 would apply to 'communication',—communicating a secret official code or pass word, etc. Now section 4 says that if you are in communication with a foreign agent, it is a relevant fact, in order to show that you have communicated, that is to say, in order to show that you have communicated with a purpose. 'Your intention was to communicate',—it is a relevant fact to prove the purpose you have had, namely, a purpose prejudicial to the safety or interests of the State. But still the prosecution has to prove that you communicated any secret official code, any sketch, plan or model. That has to be proved. My learned friend, Mr. Seshagiri Ayyar, is under a mistake in supposing that that fact need not be proved. The fact to be proved is that he communicated a code or pass word, etc., or a sketch or plan—something of that sort has to be proved.

Dr. H. S. Gour: No, no. Information.

Rao Bahadur T. Rangachariar: Or any information. That is to say, they will have to prove that he communicated "any information". That communication of information is not in itself enough; it must be done with a particular purpose. "If any person for any purpose prejudicial to the safety or interests of the State communicates some information". Those are the words. It is very difficult to argue a point like this in a court of law, and much more difficult to argue in a Legislative body a pure question of law like this. It is still more difficult to argue with gentlemen who can build fairly castles in the air. But in this

matter two things are necessary to be proved, first of all the intention and then the Act. The intention is in 3 (1)—

"If any person for any purpose prejudicial to the safety or interests of the State . . ."

That is the intention; with that intention he does a particular act. These two things are essential. He must do the act and he must have the intention. Now section 4 (1) says that in order to prove the intention alone something is relevant:

"In any proceedings against a person for an offence under section 3, . . . shall be relevant for the purpose of proving that he has for a purpose prejudicial to the safety or interests of the State . . . etc."

So, Honourable Members will see if they read that carefully that it refers to proof of the intention, not proof of the act; the act is a separate thing; he must have done something under clause 3. It is not that without any proof whatever the whole case is presumed against him. The section says "it shall be relevant for the purpose of proving".

Now my Honourable friend, Sir Deva Prasad Sarvadhikary, finds some difficulty in the matters of communications addressed to such an address being deemed to be communications with a foreign agent. But what does that mean? It means that if you are in communication with a foreign agent that fact can be proved in the case; it is not conclusive evidence of your guilt; it is a relevant fact to be taken into consideration along with the rest of the evidence in arriving at a conclusion as to whether a man has committed an offence or not. Suppose I write a letter to a foreign agent, is it wrong to assume that I am in communication with him, and is not that a relevant fact to be proved? Would my Honourable friend object to that fact being proved in the case in order to find out whether I have done something prejudicial to the safety or interests of the State? The whole thing comes back to 4 (1). It is a relevant fact which has to be taken into consideration. It is not as **Dr. Gour** put it because he has the address, say "Maiden's Hotel" in his pocket and because a foreign agent resides there that he will be convicted of an offence. That is not the section at all. I do not think, unless **Dr. Gour** was sitting on the Bench, that any other Judge would give such a conviction and hold that because a fact is relevant, therefore the man has committed a crime. If any court was likely to come to such a conclusion perhaps it would be necessary for us to legislate accordingly. But do Honourable Members really believe that the most stupid Magistrate or the most stupid Sessions Judge is going to come to such a conclusion simply because I may have the written address "Maiden's Hotel" in my pocket book? But if, of course, I have "Maiden's Hotel, Room No. 38" in which **Dr. Gour**, a foreign agent, is living, then that I say would be a relevant fact; but even that is not enough for conviction. That is where Honourable Members who have spoken, make the mistake; it is not enough for conviction; it is merely a relevant fact from which it shall be presumed that I have been in communication with a foreign agent. The whole presumption is he shall be presumed to have been in communication. And that fact is a relevant fact. The whole difference between me and **Dr. Gour** lies in this. Afterwards I will show the hollowness of the objection which he has taken. In fact from his own mouth I am going to convict him what a shadow it is he has been pursuing. I will come to that later on. It is not "shall be convicted". It is merely a relevant fact. That is a piece of evidence to be taken along with the rest of the evidence. "Shall be

[Rao Bahadur T. Rangachariar.]

presumed " is only in order to make it a relevant fact. It does not say 'presumed to have been guilty'. Let us remember that. Now, Sir, my Honourable friend concedes that there is a presumption which may be raised. He says it is a right presumption to draw. It may be naturally presumed. He says the whole injustice, the whole enormity will be removed if you put in the word " may " for " shall ". Therefore he is willing to grant that a presumption may be drawn. He is willing to grant so far, and all that he complains is the difference between the word "shall" and the word " may ". But that is not the amendment. Let us look, Sir, at the Evidence Act. If a Court is to be so stupid as he assumes it to be, namely, to convict me because I have got the address ' Maiden's Hotel ' in my pocket, then he wishes to leave that discretion to that stupid Court; he is willing to trust that stupid Court with that discretion. If we look at the Evidence Act, we find:

" Whenever it is provided by this Act that the Court may presume a fact, it may, either regard such fact as proved unless and until it is disproved,"

that is the very language applying to " shall presume " and it goes on

" or may call for proof of it ".

He is going to entrust this discretion to this stupid Court which is going to convict me on the mere piece of a card in my pocket containing the name of Maiden's Hotel. That shows the hollowness of his contention. I do not think it will make much difference if that change is made. I am also appealing to the Treasury Benches to substitute the word " may " because it will satisfy my Honourable friends and I do not think the law will in any way suffer by substituting the word " may " for the word " shall ".

Colonel Sir Henry Stanyon (United Provinces: European): Sir, the amendment actually before the House is the elimination of sub-clause (2) (c) of clause 4, but the discussion has gone on in connection with the whole of clause 4. Sir, it may be a surprising view that I put forward, but I put it forward in all deliberation, that the whole of this clause 4 will introduce *practically* no change in the law of evidence. Sub-clause (1) declares something to be relevant that would most certainly be relevant under the existing law. In a trial under clause (3) the fact that the accused had been in communication with a spy (the accused being, say, a person who was seen taking a photograph of a prohibited place in the Delhi Fort) is one of the most relevant facts that could possibly be proved under the existing law. Therefore this clause which declares relevancy introduces nothing new. We next come to sub-clause (2) which lays down a rule of presumption, i.e., onus of proof. Sub-clause (a) deals with the onus of proof, not of an offence, but in connection with one relevant fact in the trial. Now, Sir, have the Honourable Members who support these amendments with regard to the words " shall presume," forgotten section 106 of the Indian Evidence Act, which lays down that " when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him " ? That section embodies a principle of the Law of Evidence, which we find in *Best on Evidence* in these words: " A person will not be forced to show a thing which lies not in his knowledge." The illustration given under section 106 is this: " When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him." A short illustration will make the matter clear. We are, I will suppose (God forbid it), at war

with Germany. Mr. Johnson, an American citizen, is found taking a photograph of a prohibited place. He is proceeded against under section 3. In his pocket is found a card with an address, " Herr Von Goldstein, care of the Post Master, Bombay." Thereupon he is presumed to have some communication with the foreign agent. The Honourable Mr. Agnihotri said, ' Why that may be the address of a man from whom he bought some groceries in Bombay.' Well, if it is, the accused has only got to say so, and prove it,—to rebut the presumption—and the matter is over. But who knows how that card came into his pocket so well as he knows? Are the police to go and find out how that card came into his pocket, and prove that Von Goldstein, a German by name, is a foreign agent? Is the Court not to make any presumption from the circumstances above stated? If Dr. Gour were on the Bench trying that case, he would immediately presume that Mr. Johnson was in communication with a foreign agent, until that gentleman disclosed how that card came into his pocket, and who Herr Von Goldstein was. This is what would happen under the present law. The Government seek to make the matter stronger and clearer in the clause under debate. The clause would compel the Court to do what the Court would certainly do under the present law of evidence. It will introduce no novelty; it will introduce no danger. I have said, in a former speech on this Bill, that only particular courts are to be allowed to try these cases; and such courts can be depended upon to use these extensive powers with discretion. I submit that no hardship is cast upon any person proceeded against for committing one of the acts which may be an offence under section 3, if he is asked to prove his connection with an address found in his pocket. If he is innocent, he has no difficulty whatever in proving it; and nobody but he has that special knowledge which will enable him to prove it. Therefore all this fear of the word " shall," and the supposed necessity for substituting the word " may " are absolutely, I submit, without any reasonable foundation. There is no hardship whatever in asking a person found doing an act of which the character and circumstances are such as to suggest a particular intention, to show that there was no such intention. There need be no hardship on the accused and no difficulty whatever. I have no doubt that the case in my illustration would never go beyond an investigation if the accused was able to show that the address found on him was an address which was there for the purpose of having his piano tuned, or of buying a violin or a pound of tea, or anything equally innocent. Therefore I submit that clause 4 (c) as it now stands inflicts no hardship on anybody, that it is a very proper provision as to a rule relating to the onus of proof, and that it should be adopted by the House.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammadan Rural): Sir, I must at the outset state that the Honourable Sir Malcolm Hailey is perfectly right when he says that we should not bring in any personal attacks into the discussion. I endorse every word of that and think also, if every unbecoming word is avoided in this Assembly, it would add to the dignity of the House. Unfortunately, this mistake arose on account of what Mr. Rangachariar said on the last occasion; but let us drop that matter. Sir Henry Stanyon really made a surprising statement when he said that this does not introduce any change in the law. (*Sir Henry Stanyon*: " Any practical change.") Even the Lord Chief Justice of England, quoted by the Honourable Sir Malcolm Hailey, stated that this unusual procedure was admitted into England during the war and that no unforeseen consequences would be forthcoming on account of that

[Mr. B. Venkatapatiraju.]

introduction there. Perhaps it is known to all criminal lawyers and Judges that, ordinarily, a criminal is not asked to open his mouth. It is for the prosecution to establish his guilt. He stays there and sees what evidence is adduced against him; till the guilt is established against him he need not open his mouth. Perhaps that was what Sir Henry Stanyon thinks is unnecessary, because in all criminal cases it may be said to the accused "there are suspicious circumstances against you and, therefore, you are guilty unless you establish your innocence." It is to avoid that that English jurisprudence and the jurisprudence of the world says it is far better that one hundred guilty men should escape than that one innocent person should be convicted.

Well, Mr. Neogy has referred to the Judicial Commissioner's dictum as a high authority; the Honourable Sir Malcolm Hailey has pointed out that the Lord Chief Justice of England has said so and so. Perhaps the Honourable Sir Malcolm Hailey will admit that England is not India. There, in the matter of trials the executive is under responsive control and the judiciary are afraid of public opinion. In India we have not yet got such an organised public opinion to compel both the judicial officer and the executive officer to hear the voice of justice and reason. Till we secure that position, perhaps the dictum of the Lord Chief Justice of England cannot be applicable to India. There is one other circumstance. Not only does the Judicial Commissioner of Sind say so but also the Chief Commissioner of the North-West Frontier Province, in endorsing the statement of the Judicial Commissioner of that province, has stated that it is . . . (The Honourable Sir Malcolm Hailey: "Read the whole sentence.") I will read the whole sentence. He says:

"I agree, in principle, as to the desirability of replacing the existing Acts by a single consolidated Act applicable to Indian conditions. In regard to the specific provisions of the Bill under reference the opinions that have been consulted in this Province are generally favourable. A minority of those consulted, however, are of the opinion that, while the Bill might have been fully justified under war conditions, it is unduly wide and drastic for the ordinary conditions of peace."

(The Honourable Sir Malcolm Hailey: "Go on.")

"and that it contains clauses which may easily become an instrument of oppression in the hands of unscrupulous officers. There is no doubt that such a provision as section 4 (2) (ii) of the Bill, if not carefully and justly treated, might be so utilised. The Judicial Commissioner, who had special experience of the English and French laws on the subject of espionage during the war, has pointed out that the presumption arising from the presence in an accused person's note book of the name and address of a person believed to be a spy is one which, if pressed, might result in the conviction of innocent persons, and it seems doubtful whether there is sufficient justification for retaining it in a Statute which applies to peace conditions. To this extent the fears of the minority are perhaps not entirely unjustified."

This is what the Commissioner states. What Sir Malcolm Hailey wants is that in view of the fact that prosecutions cannot be instituted without reference to the Governor General in Council and Local Governments it may perhaps be considered that the public is sufficiently protected. Now with reference to the last observation which Sir Malcolm Hailey invited the attention of the House to, I may mention, Sir, that generally the Governor General in Council or the Governor in Council . . .

Mr. President: I cannot allow the discussion of the authority which is to institute the proceedings. We are considering the question of what is, or what should be presumed to be, the address of a foreign agent.

Mr. B. Venkatapatiraju: Sir, I am only just doing what Sir Malcolm Hailey wanted me to do; otherwise I should not have entered into that discussion.

The Honourable Sir Malcolm Hailey: I should like to explain, as the Honourable Member says he has yielded to a request of mine, that as he was irrelevant at the beginning he might as well continue to be irrelevant to the end.

Mr. B. Venkatapatiraju: Sir, my irrelevancy only follows on the observations made by Sir Malcolm Hailey, which are equally irrelevant. What is wanted is that instead of leaving it to Executive officers an opportunity may be given to Judicial officers to exercise their discretion by changing 'shall' into 'may.' If the Government think that Judicial officers' discretion cannot be trusted and they prefer to trust the discretion of Executive officers, that is a different matter. It will have this effect. Instead of blindly following in every case, instead of compelling the Judge always to hold that it must be presumed to be correct unless it is proved to the contrary, they have discretion to apply. I think the suggestion made by my friend is most reasonable and the Government should think twice before they reject such advice coming as it does from the Judicial Commissioner himself.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, of course the 'address' relates to the question of evidence. It has nothing to do with the actual commission of the offence, and my view is that in the interests of the safety of the State the law must be stringent. But at the same time I feel bound to say that it should not be too stringent. Fairness of the trial should never be ignored by the Legislature. And the other point which should be always before the mind of the Legislature is "in what way the provisions will be construed, in what way the statutory law will be executed and carried out?" My construction of the provision, under debate now, is that it is very very harsh and hard, and my fear is that the Magistrate, in some cases, will not properly act up to the expectations of the Honourable the Home Member. I am not prepared to say that all Magistrates are stupid. Some of them are very intelligent, and learned men, no doubt. But the Honourable the Home Member cannot deny the fact that there are some who could be branded with this unenviable epithet 'stupid.' On account of there being some such Magistrates this Legislative Assembly entertains a fear; and in order to remove that fear it would be better that the word 'shall' may be substituted by the word 'may.' Now, the Honourable Mr. Stanyon went to the length of saying that it did not make any difference whether the word was "may" or "shall;" at any rate, he said there was no practical difference. I say there is a great difference. If you will be pleased to see the definition in regard to the expression "may presume" given in section 4 of the Evidence Act, you will find that that provision says "Whenever it is provided by this Act that the Court may presume a fact, it may either regard such facts as proved, unless and until it is disproved, or may call for proof of it." Now here, it depends on the Court's discretion. But where the word is "shall," then that Court is bound to presume; there is no other alternative. Whenever an address is found in the possession of an accused, then the Magistrate or the Court has got no other alternative; he shall have to presume it as a relevant fact within the contemplation of clause 4 of this Bill. Then the other difference is that the Court may call for proof of it; namely, the Court may call for the proof itself, that is, the

[Dr. Nand Lal.]

Magistrate himself may call for the proof; though the accused may not be able to disprove it, it rests with the Court or Magistrate to send for the record or send for some sort of proof in order to satisfy itself or himself as the case may be. But when we come to the expression 'shall presume' the definition given is "Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved." It is incumbent upon him to hold that that fact is proved. Of course it is rebuttable, I agree with the Honourable Mr. Rangachariar; it is not conclusive, it is rebuttable no doubt; but the Court is bound to take it as proved unless and until it is disproved. It cannot be denied that this provision which is embodied in sub-clause (c) of clause 4, is harder, without doubt.

Reference has been made to section 106 of the Evidence Act; and after citing that section it has been argued that practically there is no difference. The argument is based on the ground that since the address will be found in the pocket or possession of the accused, therefore it rests with him to prove with what intention he has got that address in his pocket. I think this argument is fallacious altogether. Section 106 of the Evidence Act, to my mind, does not seem to be applicable to the case which is being debated upon before this Assembly. Section 106 says "When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him." As for instance a person is found travelling without a ticket in a first class carriage. Then he is confronted by the railway official who asks him "where is your ticket"? He says "I have got it with me." The railway official says "Show it to me." Unless and until that ticket is shown or it is proved that he has purchased that ticket, he will be considered a passenger travelling without a ticket since the possession or purchase of that ticket is within the special knowledge of that passenger, onus of proving that fact is on him. Section 106 governs cases of that type. It has got no bearing on the question which we are debating now. Therefore, I submit that the present provision, as is incorporated in sub-clause (c), is harder and it will not do great harm if for the word "shall" the word "may" is substituted and I recommend that substitution, namely, the word "may" may be put in instead of the word "shall."

The Honourable Sir Malcolm Hailey: May I be permitted to interrupt the Honourable Member? There are some dangers to the State which must be avoided at all costs. I am prepared to put in the word "may" instead of the word "shall."

Mr. President: Does the Honourable Member wish to withdraw his amendment in order to do that?

(Cries of "Yes.")

The amendment* was, by leave of the Assembly, withdrawn.

Mr. President: Further amendment moved:

That in sub-clause (c)

Dr. H. S. Gour: In clauses (a) and (c) substitute the word "may" for the word "shall."

* "Omit sub-clause (c) in sub-clause (2)."

The Honourable Sir Malcolm Hailey: We are dealing at present, I understand, with the amendment relating to (c).

Mr. President: The amendment relating to sub-clause (c) has been withdrawn.

The Honourable Sir Malcolm Hailey: Then dealing with the clause as a whole, I am prepared to substitute the word "may" for the word "shall" in sub-clauses (2) (a) and (2) (c).

Mr. President: Further amendment moved:

"In clause 4, sub-clause 2 (a), the word 'shall' be omitted in order to insert the word 'may'."

The question is that that amendment be made.

The motion was adopted.

Mr. President: Further amendment moved:

"In clause 4, sub-clause 2 (c), to substitute the word 'may' for the word 'shall' in the fourth line from the bottom."

The question is that that amendment be made.

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in sub-clause (3) of clause (5), omit the words 'or interests'."

Sir, my object in moving this amendment is to show the vagueness of the clause and the elasticity and the likely wide interpretation of the words used therein. Sub-clause (3) of clause 5 says:

"If any person having in his possession or control any sketch, plan, model, article, note, document information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section."

Sir, in the clauses relating to military affairs the House has decided that the words "or interests" should remain and should not be dropped. Now, clause 5 deals with offences relating to civil affairs. This clause

The Honourable Sir Malcolm Hailey: On a point of order, this is the same question which the House has already decided.

Mr. President: I was waiting to see how the Honourable Member differentiated between the two. I can see no difference whatsoever between the words "or interests" in this clause and in the other clauses. The question of the principle involved in the words, in so far as any principle is involved, has already been decided by the vote of the House. I am prepared to hear the Honourable Member on the subject.

Mr. K. B. L. Agnihotri: During the debate on the definitions the Honourable Members who constituted the Select Committee and even the Members on the Government Benches said that the words "or interests" have been dropped in certain clauses which refer to civil affairs, and these words are used in this clause, Sir.

The Honourable Sir Malcolm Hailey: Surely you will find the word "interest" all right in clause 5.

Mr. K. B. L. Agnihotri: As I am much pressed by friends, I beg to withdraw the amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is that clause 5 stand part of the Bill.

The Honourable Sir Malcolm Hailey: May I point out that there is a printing mistake in the third line of clause 5. The word should be "code" instead of "word" where it occurs for the first time in line 3 of clause 5.

Mr. President: The question is:

"That for the word 'word' where it occurs for the first time in line 3 of clause 5 substitute the word 'code'."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Mr. K. B. L. Agnihotri: I move:

"In sub-clause (1) (c) of clause 6 insert the word 'knowingly' between the words 'or' and 'uses'."

Clause 6

The Honourable Sir Malcolm Hailey: We are prepared to accept the amendment.

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Clauses 7, 8, 9 and 10 were added to the Bill.

(Rai Bahadur G. C. Nag rose to move amendment No. 24.)

The Honourable Sir Malcolm Hailey: I accept that amendment.

Mr. President: Amendment moved:

"In sub-clause (3) of clause 11, after the words 'town to' where they occur for the second time the words 'the District or' be inserted."

The question is that that amendment be made.

The motion was adopted.

Clause 11, as amended, was added to the Bill.

Clause 12 was added to the Bill.

Mr. K. C. Neogy: I understand that Government are prepared to accept an amendment which stands in the name of Dr. Gour in regard to this clause 13. If that be so, I do not propose to move my amendment.

Dr. H. S. Gour: I beg to move with the consent of the Government:

"That in clause 13, sub-clauses (2) and (3) shall be re-numbered (3) and (4), respectively, and after sub-clause (1) the following sub-clause be inserted:

"(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court."

The Honourable Sir Malcolm Hailey: In agreeing to this amendment I should like to make it clear that we do so not because we have any desire to underrate or depreciate the capacity of first class Magistrates to try these cases adequately and with justice. We simply admit this provision because we realise that the Bill itself does introduce new

presumptions and a law of evidence which may require to be somewhat carefully administered. I myself believe that our first class Magistrates could do so with absolute fairness and justice, but since apprehensions have been expressed on the subject in many parts of the House and since the cases are likely to be few, we are prepared to accept that if necessary the accused should have the option of demanding committal to the Court of Sessions.

Mr. President: The question is that that amendment be made.

The motion was adopted.

Rai Bahadur G. C. Nag (Surma Valley *cum* Shillong: Non-Muham-madan): I beg to substitute the following for the amendment I have got on the paper:

"In sub-clause (2) of clause 13, insert after the words 'Governor General in Council' where they occur for the first time the word 'or' and in the last two lines of sub-section (2) omit the words 'or some officer empowered by the Governor General in Council in this behalf'."

This amendment is intended to provide that the Governor General in Council or the Local Government should have the sole authority to sanction prosecutions for offences under this Act. The words which we want to be omitted have been put in here for the first time. These words are not in the amended Act of 1904 and if these words are there and if the Governor General in Council has power to delegate authority to any officer it thinks fit to sanction prosecutions under this Act, then the safeguard provided in the earlier part of the clause would be reduced to a nullity, because in that case the Governor General in Council may not have any objection to sanction prosecutions and these words were not in the Act of 1904. So I think these words may be omitted.

The Honourable Sir Malcolm Hailey: I think my Honourable friend was under some misapprehension in believing that Mr. Graham agreed to this amendment. All that Mr. Graham did, I think, was to agree to correct the wording of the amendment, because as worded it appeared to have the consequence of cancelling the proviso, which I understand my Honourable friend did not himself desire. The reason why we have inserted the words which it is now proposed to omit is that they occur in section 196 of the Criminal Procedure Code. Obviously the powers sought herein would be employed in very rare instances. There might be cases where an officer is not exercising the powers of a Local Government should yet be empowered by the Governor General in Council to make a complaint; I take, for instance, the case of a Political Officer; his function would not, of course, be to try the case but to make a complaint. But before he can do so, he will have to be empowered under this section by the Governor General in Council. Such cases will be few.

Mr. President: The question is that that amendment be made.

Mr. K. C. Neogy: Sir, I am perfectly aware that this particular sub-section has been taken bodily from section 196 of the Code of Criminal Procedure. But I draw the attention of the Honourable the Home Member to the fact that this section 196 was in exactly the same terms in the Code of 1882, and the Honourable the Home Member will remember that when the Indian Official Secrets Act, 1889, came to be enacted, they purposely departed from that language, and this is what they laid down in section 7 of the Act—"No Court shall proceed to the trial of any person

[Mr. K. C. Neogy.]

for an offence against this Act except with the consent of the Local Government or the Governor General in Council." Therefore, Sir, the justification which has been made of this particular sub-section by the Honourable the Home Member on the ground that it merely re-enacts section 196, was in existence in 1889 also, but the Legislature deliberately departed from that language, because they did not intend that any officer should have any general authority delegated to him by either the Local Government or the Governor General in Council for the purpose of instituting any prosecution under this very special measure. Sir, if the Honourable the Home Member will refresh his memory, he will find that when the Amending Act of 1904 was under discussion in the Indian Legislative Council, a good deal was made by Government of the fact that no single prosecution under that Act could be undertaken except with the express authority of either the Local Government or the Governor General in Council. I am not very much concerned with the language of the section; what I want to know is whether each particular case will have to be looked into by the Governor General in Council and the Local Government, or not,—or will anybody have the authority, by virtue of any general delegation of powers, to undertake prosecutions under this Act? If that be so, then I think we should all press for the acceptance not of Mr. Nag's amendment but of the amendment which stands in the name of my Honourable friend, Mr. Bagde.

Mr. President: The question is that that amendment be made.
The motion was negatived.

Mr. K. G. Bagde (Bombay Central Division: Non-Muhammadan Rural): Sir, Mr. Neogy has made a speech in support of my amendment, and it is unnecessary for me to make a further speech. I therefore formally move my amendment, which runs as follows:

"In clause 13 (2), omit all the words after the word 'Act' in the second line and in their place substitute the following:

'except with the consent of the Local Government or the Governor General in Council'."

Sir, I recommend the amendment for the acceptance of the House.

Mr. L. Graham: Sir, there is no difference at all in substance; it is the same as that which has just now been rejected.

Mr. President: The question is that that amendment be made.

The Assembly divided:

AYES—26.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Iswar Saran, Munshi.

Jatkar, Mr. B. H. R.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Mudaliar, Mr. S.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Schamnad, Mr. Mahmood.
Singh, Babu B. P.
Venkatapatiraju, Mr. B.

NOES—42.

Abdul Rahim Khan, Mr.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Asad Ali, Mr.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Fraser, Sir Gordon.
Graham, Mr. L.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holmes, Mr. H. E.
Hullah, Mr. J.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Jejeebhoy, Sir Jamssetjee.
Kamat, Mr. B. S.

Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Percival, Mr. P. E.
Pyari Lal, Mr.
Rajan Baksh Shah, Mukhdum S.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Tonkinson, Mr. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.

The motion was negatived.

Clause 13, as amended, and clauses 14, 15 and 16 were added to the Bill.
The Title and the Preamble were added to the Bill.

The Honourable Sir Malcolm Hailey: Sir, I move that the Bill, as amended, be now passed.

Rao Bahadur T. Rangachariar: Sir, I am afraid there has been a great deal of misapprehension created as regards this Bill outside this Chamber and also inside this Chamber. It has been mentioned in a telegram sent to Madras from here that it was a matter of surprise that Mr. Rangachariar gave support to this engine of oppression, to this retrograde measure, notwithstanding the heroic efforts made by Dr. Gour, Mr. Agnihotri and Mr. Neogy. It is forgotten that this measure is not a new measure at all. It is the existing law. If anything, we have liberalised the existing provisions. There is the English Act of 1911, which is the law here and which apparently the public are not aware of, which cannot be got rid of. Section 11 of that Act says:

"If by any law made before or after the passing of this Act by the Legislature of any British Possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British Possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act."

We have not got a clean slate to write on. We had not a new legislation to commence here. Unless we substantially follow the English Act our labours will be in vain. Our law was contained in the English Act and also in the Indian Act. The two measures had to be brought together so that the Magistracy and the Judges and the Government and the public may have guidance in one self-contained Act. Honourable Members will notice we are dealing with an extraordinary piece of human conduct on the part of the persons who are likely to come within the scope of this Act, spies with reference to military matters and spies with reference to civil matters. The Bill as it came to us made no distinction between the two classes of spies.

But in the Select Committee we were able to make that distinction between military and non-military matters. My Honourable friend Mr. Neogy asked what about the Act of 1920? The English Act of 1920 is the

[Rao Bahadur T. Rangachariar.]

result of experience in the working of the Act of 1911, the result of that experience in time of war. After all this Act is intended to be applied to enemies, and mostly in times of war which may arise at any time. We do not know when it will arise. You are not going to pass an enactment then for the time being. You are here putting in your armoury of legislation a piece of legislation to cope with that situation which may arise. Certain portions of the Act of 1920 have been embodied in this Act, that is section 4, the rules relating to evidence about which we have had so much discussion. And as regards the offences which are referred to, I do not think any objection has been taken to those offences by any Honourable Member here, or by the public outside. Section 3 deals with spying, section 5 with the communication of secret entrusted in various ways. Then as regards the other offences, namely, interfering with officers of the police or Members of His Majesty's forces, attempts and incitements, they are already there, and I do not see any new or novel offences which have been created by this Act. Any way Honourable Members will recognise that it is a necessary piece of legislation if any Government is to get on. As I have said already, I do not think we should have sympathy with insidious foes. I think Honourable Members will agree to that proposition, and insidious foes have to be rigorously dealt with. I am not ashamed to confess that I have absolutely no sympathy with such insidious foes

Mr. T. V. Seshagiri Ayyar : No one has.

Rao Bahadur T. Rangachariar : I am glad to hear that. And therefore to say that this is an unnecessary piece of legislation, an oppressive and retrogressive measure to which the Legislature is laying its hand is to exaggerate, is to raise a false cry, is to really catch applause which is undeserved. It is asked who raises the cry? I do not know who it is. Whoever incites it, whoever advocates it, whoever sympathises with it, whoever wants it, it is to him and to them I am addressing these remarks. I am convinced, Sir, it is a necessary piece of legislation and I am glad, by the vote of this Assembly, on the amendments, they have shown that this is a measure which the Legislature considers is not harmful. And as I have pointed out already, you want a stable Government and a steady Government and unless you have this measure, it is very difficult to deal with these people who adopt underhand methods. In order to deal with underhand people you must have a piece of legislation which will be wide enough to cover all cases. It is not a case in which the oft-quoted maxim applies—Let rather a hundred guilty people escape than one innocent man be convicted. When you have to deal with enemies, can you say, let one hundred enemies escape? Can you take such a risk? That is a proposition which I do not think any sensible person can subscribe to. It will be taking an undue risk. If Honourable Members who quote the maxim will reflect, they will see the total inapplicability of such a maxim in a case like this. Where you are dealing with the enemies of the State the law should be wide and not too strict, and I do not think that the Legislature or any of us have committed any sin in putting this on the Statute Book. I congratulate the Legislature on passing this Bill. Let us hope there will be no occasion for using it.

Mr. President: If Honourable Members wish to continue the discussion, I think I must adjourn the House.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): The question may now be put.

Mr. President: I cannot accept a motion for closure. If there is a general agreement that the debate may come to an end now, that is a different matter.

Mr. Jamnadas Dwarkadas: We want to end it.

Mr. President: Honourable Members are aware that there has only been one speech on the motion that the Bill, as amended, be passed. The matter is one of great importance, and I cannot stifle discussion, even though the House is ready to carry the closure by an enormous majority. At the same time, I would appeal to the House to shorten discussion as much as possible because, as has been already pointed out, the principles of the measure have been very largely and generously discussed on almost every clause which has come under discussion to-day. If Honourable Members can give me some reasonable undertaking that they will keep their comments on the passage of the Bill within reasonable limits, we can proceed now without an adjournment.

Dr. H. S. Gour: I do not think, Sir, this House is inclined to inflict too many speeches at this late hour. Speaking for myself, I hope I shall be voicing the sentiments of a great many of my friends who think with me and have stood by me during the progress of this Bill, if I indignantly repudiate, both on my own behalf and on their behalf, the charge that there was any intention to oppose the central principles of this measure. What we have opposed and what we should have continued to oppose are the details, which the occupants of the Treasury Benches have themselves confessed are of an exceptional and drastic character. We, as the representatives of the people, had to see that these provisions were not unduly enlarged so as to let in through their wide meshes accused persons against whom justice and the evidence adduced would not admit of conviction. Mr. Rangachariar, as the unaccredited spokesman, I suppose, of my friends on the other side of the House, pointed out that this is a measure intended only in case of a sudden outbreak of war. Sir, a greater misconception than that was never indulged in by my esteemed and learned friend. This is not a measure which is intended only to be used in the case of an outbreak of hostilities; it is a standing Statute which will be used both at the time of war and during peace, and, what is more, it intermingles within its 16 sections offences of a most heinous character, such as military offences, and of a comparatively trifling character, these being offences of a civil character. I should have expected, Sir, that there would have been some classification of these two classes of offences, and the public at large, who have to deal with this Act and to receive their caution from its provisions, would then have been in a better position to understand as to what they could do and what they were to avoid. Therefore, Sir, let us hope that on a future occasion the Government will be better advised in sorting out the civil and the military provisions of this Act, in relegating them to two independent Acts and providing the necessary punishments as will suit the gravity or lightness of the offences.

Frequent references have been made by the occupants of the Treasury Benches to the precedents furnished by English law. I am not surprised when the Members of Government refer to the English law as their authority for extending similar principles to this country. But I am surprised that my friend, Mr. Rangachariar, should have referred to the authority of English law as justifying the enactment of this measure in this country. Surely, Sir, he who runs can see the radical difference between English society and Indian society. The judiciary in England is vastly better trained, the public is better organised, the jurors

[Dr. H. S. Gour.]

are the final judges of fact; and on top of the jurors you have the Court of Appeal. Have you got the same high standard of judicial efficiency? Have you got the same strength and volume of public opinion? Have you got the same salutary check which trial with the help of a jury affords to an English accused? These are facts which cannot be forgotten, but these are facts which have been forgotten by the champion of this Bill.

Then, Sir, we have been told in the language equally loose and equally obscure that no provision of law can be sufficiently drastic to hunt down spies and to stop espionage. There is not the slightest intention on the part of anybody in this part of the House to decry the provisions relating to spies and espionage. I submit it was a deliberate red-herring intended to divert the attention of this House from the weak provisions of this enactment. What are its weak provisions? Well, Sir, if you read the Bill as it emerged from the Select Committee and the Bill as you see it to-day, you will find therein ample vindication of the opposition rendered by the Members of this House to its drastic provisions; and if we have not been able to do more it is not because our cause was not just but it was because being a highly technical provision bristling with questions of law and obscure expression, Members of this House took it for granted that the Government draft was sufficiently good to admit of no opposition. Well, Sir, there are two provisions, however, to which my friend on this side of the House wants to draw the special attention of the Government. One is the provision relating to sanction. You have the provision that the Local Government or any other officer empowered by the Local Government in this behalf . . .

Mr. L. Graham: No, no; the Governor General in Council.

Dr. H. S. Gour: I beg your pardon;—empowered by the Governor General in Council in this behalf may sanction a prosecution. I hope, Sir, that you will not generally delegate your power to any officer, but examine each case and as far as possible sanction prosecution after you are satisfied as to the guilt of the accused.

There is another fact, Sir, upon which I invite the attention of the Government relating to civil offences. Your provisions are so wide that you will have no difficulty whatever in running in anybody who peeps into an office for the purpose of making some, it may be entirely innocent, enquiry as to when there is going to be the next meeting of the Assembly, or whether a certain report on the Census of India has come out and what is the population of India recorded in that report. I hope, Sir, that you will work the civil side of it in a spirit of charity and that you will not use these provisions in a manner calculated to abridge and thwart popular liberties.

With these observations, Sir, I also concur in the motion made from the Treasury Bench that this Bill be now passed.

The motion, that the Bill as amended be passed, was adopted.

THE EXCLUSION FROM INHERITANCE BILL AND THE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

Mr. T. V. Seshagiri Ayyar: May I, with your permission, Sir, make a motion? I move that Sir Campbell Rhodes and Maulvi Abul Kasem be added as Members of the Select Committees on the Hindu Exclusion from Inheritance Bill and the Hindu Law of Inheritance Bill.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 26th February, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 26th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MEMBER SWORN:

Mr. A. V. V. Aiyar, C.I.E., M.L.A. (Finance Department: Nominated Official).

QUESTIONS AND ANSWERS.

ELLAHAYA, SHEDMAN, N.-W. RAILWAY.

430. ***Dr. H. S. Gour:** (a) Will Government be pleased to state whether it is a fact that while the late Ellahaya, Shedman of the Locomotive shed at Kundian, North-Western Railway, who put in 38 years' service, was given a bonus on his Provident Fund, the gratuity due to him was withheld on the report of the District Locomotive Officer, Kundian, who personally vouched for the bad and disloyal conduct of Ellahaya towards the Railway administration during the Punjab disturbances in 1919?

(b) If the reply is in the affirmative, will Government be pleased to state why the *ex parte* report of a District Officer was allowed to over-rule the decision of a special tribunal composed of Judicial Officers of ripe experience who honourably acquitted Ellahaya of his alleged complicity in the disturbance that took place at the Kundian Railway station in April 1919?

Mr. C. D. M. Hindley: (a) and (b) It is a fact that the late Ellahaya, Shedman, Locomotive Shed, Kundian, North-Western Railway, was allowed Provident Fund bonus, but not gratuity. The rules governing the grant of Provident Fund bonus and gratuity are different. One of the conditions for the grant of a gratuity is faithful service, and it was found that the late Ellahaya's service to the Railway Administration could not be held to have fulfilled this condition.

PURCHASE OF STORES.

431. ***Mr. J. P. Ootelingam:** Will the Government be pleased to state:

(a) What action has been taken on the recommendations of the Stores Purchase Committee?

(b) To what extent has the creation of the Central Stores Department enabled purchases, which were formerly made in England, to be made in India on behalf of indenting departments of the Central and Provincial Governments?

- (c) What reduction, if any, in the establishment (permanent and temporary) of the Stores Department under the High Commissioner has been made possible thereby?
- (d) Whether the operations of the Indian Central Stores Department have resulted in economic purchase and, if so, the approximate amount of savings effected?

Mr. A. H. Ley: (a) The attention of the Honourable Member is invited to the reply given by Mr. Chatterjee on the 6th September, 1922, to a similar question asked by Sir Deva Prasad Sarvadhikary. The report of the Railway Industries Committee, which also considered the revision of the Stores Purchase Rules, is now being published. Apart from this no further developments have taken place pending the report of the Retrenchment Committee.

(b) Owing to financial stringency the development of the Indian Stores Department has been retarded, and the Department has not yet been permitted to recruit the staff necessary to enable it to undertake any purchasing beyond that of Textile stores for the Army. Since the Stores Department came into being, it has made contracts for the purchase in India of a number of items of textile stores which were previously imported from England, notably khaki drill and pugri cloth. Orders have been placed in India for approximately 4½ million yards of these two items at a cost of 28 lakhs of rupees, the price paid being more favourable than the lowest quotation from England. In addition to the above items of textiles, stores to the value of about 65 lakhs of rupees have been bought in India since 1st of April 1922, which, before the war, were imported from England. In some cases the specifications have been modified at the instance of the Textiles Purchase Branch to enable Indian mills to supply.

(c) No reduction in the establishment of the London Store Department has yet been possible pending determination of the policy to be pursued in the matter of the Indian Stores Department.

(d) Government are satisfied that the operations of the Textiles Purchasing Branch, which, as explained in the answer to (b), is the only purchasing branch of the Indian Stores Department at present in existence, have resulted in substantial savings. The Honourable Member will appreciate the difficulty of suggesting even an approximate figure, since it is obviously impossible to gauge what prices would have been paid had the purchases been made under the system previously in force, while owing to the widely fluctuating values which have obtained over the past few years, it is impossible to arrive at an accurate basis for comparison. There is no doubt, however, that the savings effected have been considerable.

Mr. J. P. Cotelingam: In view of the answer given to question (d), I would like to know what proposals Government have with regard to the further expansion of the Indian Stores Department as recommended by the Stores Purchase Committee.

Mr. A. H. Ley: That will have to be considered when the Retrenchment Committee's Report comes under consideration.

Sir Deva Prasad Sarvadhikary: Is it a fact that the Stores Department has now attached to it some inspecting agencies of certain class of articles, purchases in respect of which are not made by the Purchase Department? If so, would the Government consider the desirability of either abolishing those inspecting departments or of arranging that stores with which they are connected should be purchased through the Stores Department?

Mr. A. H. Ley: I think the only inspecting departments at present attached to the Stores Department are the Metallurgical Inspectorate and the Government Test House, Alipur, which do some inspecting work. Stores inspected by them are not always purchased by the Stores Department, as far as I am aware. I do not think the Government have any idea of abolishing either the Metallurgical Inspectorate or the Government Test House.

Sir Deva Prasad Sarvadhikary: Or that in the alternative, the purchases should be made through the Stores Purchase Department?

Mr. A. H. Ley: That also is a matter which will be considered when the Retrenchment Committee's Report is considered.

HINDU TEMPLES AT RAISINA.

432. ***Mr. W. M. Hussanally:** (a) Is it a fact that some Hindu temples have been dismantled in Raisina or are to be dismantled in Raisina in the area now being appropriated for the new railway station?

(b) If so, has the permission of the Hindu Community or of any one on their behalf been obtained?

(c) If so, on what terms and from whom?

Mr. C. D. M. Hindley: (a) No. Apart from consultations with those immediately interested in the temples nothing has been done nor is it proposed to do anything at present.

(b) and (c) Do not arise.

Mr. K. Ahmed: Was there any permission taken in regard to any mosque being dismantled in Raisina from the community of Muhammadans?

Mr. President: This question refers to Hindu temples.

SECOND QUTAB ROAD.

433. ***Mr. W. M. Hussanally:** (a) Is it a fact that a new road is under construction parallel to the Qutab Road, within the area of the new railway premises?

(b) If so, does a part of the road pass through a Mohammadan burial ground?

(c) If so, how has that Wakf estate been encroached upon?

Mr. C. D. M. Hindley: (a) Yes.

(b) No, the road just skirts the graveyard.

(c) Does not arise.

Mr. K. Ahmed: Is it a fact that some mosque land has been enclosed for the building of a compound at Raisina?

Mr. President: This question refers to the making of a road, not to the building of a compound.

Mr. K. Ahmed: In constructing a building or a compound for a building, Sir, which belongs to Government—a new one—there should be a road or path to it.

Is there no answer to my question?

VOTING IN LANDHOLDERS' CONSTITUENCIES.

434. ***Rai Bahadur Bakshi Sohan Lal:** 1. Will Government be pleased to state if they have given any effect to the Resolution (accepted by Government) of Baba Ujagar Singh Bedi given on page 196 of the Legislative Assembly Debates, Volume III, Part I of 1922, regarding the removal of restrictions for the Landholders' constituencies as to their personal attendance at the Polling station?

2. Will Government be pleased to state whether this change in the election rules will be enforced in the ensuing election to be held in the end of this year?

3. If not, why?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to my reply to Baba Ujagar Singh Bedi's question No. 418, dated the 24th February 1923.

LEASES IN CANTONMENTS.

435. ***Mr. Pyari Lal:** 1. Is the Government aware that the Cantonment Reform Committee has declared the enforcing of a lease for a whole site when it is extended by a House-owner in a cantonment to be illegal?

2. Is it a fact that the Committee has recommended that in such cases "lease" be taken only for the extended portion?

3. Is it a fact that in spite of the Reform Committee's recommendation the practice of demanding and enforcing a new lease for the whole site is still prevalent in cantonments?

4. If so, will the Government be pleased to issue orders in the spirit of the recommendation of the Reform Committee?

Mr. E. Burdon: 1, 2 and 4. The attention of the Honourable Member is invited to the reply given on the 11th September last to question No. 285, asked by another Honourable Member of this Assembly. I will furnish him with a copy of the orders therein mentioned, if he so desires.

3. No, not so far as the Government of India are aware. But if the Honourable Member can give me particulars of any case in which he considers an irregularity has taken place, I shall be glad to have it inquired into.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State and amended by the Legislative Assembly, be passed."

As Honourable Members will see there are certain formal amendments to be taken into consideration and I make this motion therefore in the terms of Standing Order 49. The amendments which have been tabled are formal and consequential, consequential partly to the passing of various amendments on the Code of Criminal Procedure itself and consequential also on action taken by us in regard to the Racial Distinctions Bill. As

they are of a formal and consequential nature only, I do not propose to speak further on this particular motion in order that with the permission of the House these amendments may now be put.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I beg to move that for clause 5 the following be substituted, namely:

"5. In sub-section (2) of section 29 of the said Code, after the words 'High Court or' the words 'subject as aforesaid' shall be inserted."

Sir, this proposal is due to the passing of the Racial Distinctions Bill. It is doubtful as to when the present Bill and the Racial Distinctions Bill will come into operation; but we have thought it desirable that all amendments which are consequential on the Racial Distinctions Bill should be included in that Bill. It will be seen of course that the effect of this motion is to restrict the operation of clause 5 of the Bill before Honourable Members to the final portion beginning with the words 'in sub-section (2) of the same section.'

The amendment was adopted.

Mr. H. Tonkinson: I move, Sir:

"That in clause 6:

(a) for the words and figures 'after section 29' the words and figures 'before section 30' be substituted;

(b) for the figures and letter, '29A' the figures and letter '29B' be substituted;

(c) in the proposed new section 29B, as so renumbered, the words 'notwithstanding anything in the last two preceding sections' be omitted."

This amendment, again, is consequential upon the passing of the Racial Distinctions Bill. Honourable Members will remember that by clause 5 of that Bill we have inserted a section 29A in the Code of Criminal Procedure. Clause 6 of the Bill before Honourable Members includes another section 29A. We think that that section should come after the section 29A in the Racial Distinctions Bill; that is the reason for the first two parts of the amendment. As regards the third part it will be seen of course that the words "notwithstanding anything in the last two preceding sections" in the proposed section 29A, when we took this clause into consideration, referred to sections 28 and 29 of the Code. When 29A is inserted in the Code by the Racial Distinctions Bill, sections 28 and 29 will of course not be the last two preceding sections. Further, these words will now no longer be necessary, because both sections 28 and 29 will begin with the words "subject to the other provisions of this Code."

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move that in sub-clause (2) of clause 16 as re-numbered, for the words and figures "section 107 of the said Code" the words "the same section" be substituted. This is a formal amendment, proposed in order to please the draftsman. If Honourable Members will refer to sub-clause (2) of clause 16 it will be seen that in it the words 'of section 107 of the said Code' are repeated, notwithstanding the fact that they are already cited at length in sub-clause (1). In other clauses of the Bill it will be seen that when in the first sub-clause a section of the Code is quoted at length, in the second sub-clause we only say "the same section."

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 29 (2), as renumbered, for the words 'subject-matter in dispute' in both places where they occur, the words 'subject of dispute' be substituted."

This again, Sir, is a formal amendment. Honourable Members may remember that on the 26th of January on the motion of my Honourable friend, Mr. Seshagiri Ayyar, we inserted certain words in sub-section (2) of section 146 of the Code. Those words were "and if no receiver of the property, the subject-matter in dispute, has been appointed by any Civil Court." An examination of those words has indicated what we consider to be a drafting defect in the proviso which Sir George Lowndes' Committee proposed to add to sub-section (2) of section 146. If Honourable Members will look at section 145 of the Code, they will find that throughout the words used are "subject of dispute," and the same applies to section 146, sub-section (1). We therefore wish to bring the words in sub-section (2), as it will be amended, into conformity with the words in the corresponding provisions in sections 145 and 146.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 50, as renumbered, in sub-clause (ii) the words 'for the word "Government" the word "authority" shall be substituted and ' be omitted."

This amendment is consequential upon the amendment moved by my friend, Mr. Agnihotri, to this clause (then clause 49) on the 1st of February. By that amendment of Mr. Agnihotri the words "the Local Government" were substituted in sub-section (1) of section 197 for the words "the authority having power to order or, as the case may be, to sanction the removal from his office of such Judge, Magistrate or public servant." This being so, it is now no longer necessary to substitute the word 'authority' for the word 'Government' in sub-section (2) of section 197. The correct word is Government.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That clause 84, as renumbered, be omitted and the subsequent clauses be renumbered accordingly."

This amendment is due again to the passing of the Racial Distinctions Bill. It will be remembered that clause 17 of that Bill proposes to substitute another section for section 312 of the Code. That section follows exactly the words of the section inserted by this clause with the exception that it also includes a proviso "Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed." In these circumstances, Sir, it is clearly desirable that this clause should be omitted from this Bill.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 90, as renumbered, for the words and figures 'under section 107' the words and figures 'under section 107 or under' be substituted."

Of course, in the amendment I have moved I have referred to clause 90 as in the Bill before Honourable Members and not to clause 89 as it will be after effect has been given to the amendment last accepted. I do not think, Sir, it is necessary for me to explain further as it is merely a drafting amendment.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 113, as renumbered, for the word 'sentenced' the word 'convicted' be substituted."

The clause 113 will be 112 when effect has been given to the last part of the amendment dealing with clause 84. This is a formal amendment intended to give effect to the intention of sub-clause (2) of clause 113. Honourable Members are no doubt aware that, generally speaking, the right of appeal is given to persons convicted and not to persons sentenced. The only case in section 408 in which a right of appeal is given to persons sentenced is in the case of persons sentenced under section 349 which cannot apply to proviso (b) to section 408. Well, the intention of the words which we propose to insert in proviso (b) is to secure that in cases where several persons are tried together the Appellate Court should be the same for all persons. If we do not change the word from 'sentenced' to 'convicted,' there are one or two cases,—for example, a case under section 562 where a person is convicted but not sentenced,—in which the intention of the sub-clause would not be given effect to.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 120, as renumbered, for the words 'To sub-section (2) of the same section the following shall be added, namely: 'And the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement,' the following be substituted, namely:

'and after sub-section (5) of the same section the following sub-section shall be added namely:

'(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction'."

The clause will be 119 of course when effect is given to the latter part of the amendment dealing with clause 84. It is clause 120 in the Bill before Honourable Members. This is really a re-draft of the amendment moved by my Honourable friend, Mr. Rangachariar, and I hope that he will agree that it gives effect to the intention of his amendment, namely, that a convicted person who has been given an opportunity of being heard under sub-section (2) against the enhancement of his sentence shall be able to adduce arguments to show that he should never have been convicted.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, may I draw the attention of Mr. Tonkinson to the phraseology of the concluding portion of the amendment 'also to show cause against his conviction.' I understand, Sir, that in such cases a rule is issued calling upon the person convicted to show cause why his sentence should not be enhanced, and in response to that rule he appears and shews cause. If I understand the object of the amendment rightly, it means that while he is showing cause, he can draw the attention of the Judge concerned to the fact that he is entitled to an acquittal, that is to say, he can show cause against his conviction. But the amendment as worded might go to show that another rule has to be issued, that is to say, there is only one rule against the man and he shows cause why his sentence should not be enhanced. If the wording is allowed to remain however as it is, it may

[Mr. J. N. Mukherjee.]

necessitate the issue of another rule upon him. Evidently that is not what is intended. (Dr. H. S. Gour: "It is not required.") To show cause against his conviction. (Dr. Nand Lal: "One rule will cover them both.") (Rao Bahadur T. Rangachariar: "A rule to show cause against a sentence implies both against the sentence and against the conviction.") (Dr. H. S. Gour: "It is obvious.") Well, if that is the sense I have nothing to say.

Mr. President: The question is that that amendment be made.

The amendment was adopted.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I rise to support the motion that the Criminal Procedure Code as amended be passed. I am sure, Sir, the House will realise that, having regard to the magnitude of the task which lay before it, the number of provisions which had to be amended and accepted, the time taken by the Members cannot be regarded as unnecessarily long. A great deal of learning and a great deal of scrutiny have been brought to bear upon the examination of the Bill, and the Bill, as it emerges, is certainly a far more satisfactory one than the one presented to us. Sir, if I may be permitted to do so, I should like to pay a word of tribute to my friends on this side of the House for the great care and energy displayed by them in making the law conformable to the wishes of the people. It is not possible to mention all the names, and it would be rather impertinent on my part to say much about the two veterans on this side of the House, namely, Mr. Rangachariar and Dr. Gour, who have shown such a remarkable aptitude for looking into this question so ably and so fully. Sir, I may mention, however, some younger friends who have shown great capacity in the matter. I must specially refer to my friend, Mr. Agnihotri, and to Bhai Man Singh, who tabled a large number of amendments and who have shown that they can be trusted to withdraw some of them which they knew would be unacceptable and to press only such amendments as they considered involved a great principle of law. Sir, I may also say that the two official Members who have been assisting the Leader of the House, namely, the Honourable Sir Henry Moncrieff Smith and Mr. Tonkinson, have shown considerable ability; they have shown towards us great consideration in discussing these provisions. Sir, as I said, there has not been too much time taken in considering the Bill. At times, Sir, it looked as if there would be a breeze in the Chamber, at times it looked as if there would be a break-down. It seems to me that these occasional differences were due to not recognising the two standpoints from which this Code was viewed by the Government Bench on the one hand and by the non-official Members on the other. Sir, the point of view of myself and my friends was that we should enlarge the liberties of the people; I hope it will be conceded that it is a natural desire on our part who represent the people, that we should see that the law that is passed does not curtail the liberties of the subjects; naturally we were therefore anxious that our liberties should be enlarged without endangering the safety of Government. From the point of view of the Government, they were most concerned with seeing that the enforcement of law and order was in no way jeopardised. These were the two ordinary standards, one on behalf of the Government and the other on behalf of the non-official Members. It is not possible, Sir, to have in the same persons these two considerations in an equal degree. If that ever existed, there

would be no necessity for a Legislative Assembly, there would be no necessity for law. Naturally one side would look at the question from the point of view of law and order and the other side from the point of view of the liberty of the subject. If this had been recognised, a great many apparent divergencies of opinion could have been tolerated; I believe, ultimately these considerations were recognised and that was the reason why we have in this measure a more liberal Bill than the one we had before—one which will be regarded as satisfactory by the people. Before leaving this part of the subject, I may refer to the assistance which has been very willingly given by a gentleman who has had considerable judicial experience, who has, as he himself said, 37 years' experience in judicial matters—I am referring to Sir Henry Stanyon. His contribution to the discussion of the Criminal Procedure Code has been most valuable both from the point of view of the Government and also from the point of view of our side. As for myself, Sir, I think the Government found me the most vulnerable of all the persons who sent in amendments. They found it very easy to throw out my amendments, they found me so pliable that they easily got me to withdraw any amendment which they did not want me to press, and, so far as I am concerned, I do not think I added much to the discussion. Sir, as I said, this Bill has emerged from the discussion in a form which would be regarded as more satisfactory to the people, and in every way a more liberalised measure than the Criminal Procedure Code which we had before. Sir, when I said that the Government Benches considered the question from the point of view of law and order, I was thinking of what I read only two or three days back, namely the life of Mr. Parnell by Mrs. Parnell. She there points out that Parnell was of opinion if there is anything which is worshipped in England, it is law and order. They regard the worship of law and order as greater than that of religion even; some one else has pointed out that a Scotchman worships his county before his religion; Parnell is reported to have said that it is only an Irishman that really worships God. Sir, in this country, whether he be a Scotchman or an Irishman or an Englishman, when he crosses the seas and comes over here, he gives up his peculiarities and is for crying out—"Order, order order"! That is the position, Sir, in India, and, when we find that such an idol has been set up, before a people who have got a large number of other idols, when we find that this idol is likely to overshadow all the other idols, we begin our little attempts to pull it down. Still, Sir, I think it will be recognised by the House that we have done something to make this Bill acceptable to the country and to advance justice. I must point out one thing. It is not the perfection of the law which comes out of this Assembly that will really matter. It is the spirit in which the Magistracy and those interested in the administration of this law work it that would really matter, and I hope Magistrates all over the country and Judges may recognise the desire on the part of both the Government and the people is that they should work the law in a fair-minded and impartial spirit and solely with a view to mete out justice. And I hope that when this movement for the separation of judicial and executive functions bears fruit a further attempt may be made to make the law more easily accessible to the people and to make justice better administered than it is at present. For at present the law is very costly in consequence of the combination of judicial and executive functions in the same persons. Sir, there is one word more I would like to say and then I will sit down. This child of ours which is emerging from this House is going to what one may call the rich aunt's house, and in that rich aunt's house attempts will be made to clothe it with a great deal of finery; I wish to

[Mr. T. V. Seshagiri Ayyar.]

sound a note of warning. If on the pretext of clothing this child with finery, any attempt is made to mutilate it, we would regard it with very great disfavour. We would disown it, if I may say so. You may do anything as regards grammar, as regards language here and there, but if you are going to mutilate this Bill in the other House, you may take it that we shall not have anything to do with it afterwards. Sir, in this connection I may ask what the Honourable the Home Member means to do with regard to clause 162. It has given the House a deal of trouble. It has taken a great deal of time, and I am inclined to think that the Government is not satisfied with it; I should like to have some indication of the intentions of the Government in regard to that clause. There is one other section also to which I might refer and that is section 526. An amendment to that section was carried at the instance of my friend Mr. Jayanti Ramayya Pantulu Garu when a large number of non-official Members were away taking part in some other matter. Sir, it was not properly discussed. It is a section in which we are much interested and unless the section is restored to what it was when it came out of the Council of State, it would be wholly unacceptable to us; and I should like to ask the Leader of the House what his intentions are regarding it. Subject to these two reservations I give my hearty support to the passing of this Bill. As I said, it has become a more liberal measure, and the country will regard it as fairly satisfactory. With these words, Sir, I support the motion that the Bill be passed.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, when during the last days of Sir William Vincent's association with the Government we felt it our duty to press for postponement of the consideration of this large and important measure we were more than tacitly told that after his departure and that of Dr. (as he was then) Tej Bahadur Sapru, there will be great difficulty in piloting this measure through the Assembly. It does not come upon me as a surprise, agreeable or otherwise, that that apprehension has been falsified and that there are in the Government the makings of good lawyers, though they take all possible and impossible opportunity of disowning anything like association with that reprehensible body. That a lawyer is nothing more than a gentleman with common sense has been amply demonstrated by some Members of the Government Bench and they have given as good fight to the professional lawyer as any professional lawyer might have done. That is an outstanding feature of the way in which the work of this Bill has been done in the Assembly. When the Bill came out of the other House—the more reasonable House as I am told it was described to be during my day's absence from the Assembly—it was supposed to be absolutely the last word and this House was considered to be extremely unreasonable for wanting to look into it more in detail and to try to tinker it, if not to tamper with it. Well, experience has shown otherwise.

The Honourable Sir Malcolm Hailey: Is the Honourable Member quoting from any speech on this Bill?

Sir Deva Prasad Sarvadhikary: I am giving what was left as a matter of general impression upon very impressionable minds like mine.

The Honourable Sir Malcolm Hailey: I am afraid that the Honourable Member is too impressionable.

Sir Deva Prasad Sarvadhikary: Well, I accept that, and without demur. Experience has shown otherwise, and we tremble to think what would have happened if the Act had gone forth to the country without the tinkering that this Assembly has attempted. We were not satisfied with it. One great complaint was that the Racial Distinctions Bill had not yet come. Its appearance was insistently demanded and it came. I should like to express my appreciation, if I may, of the way in which the Racial Distinctions Bill was brought in while this other Bill was in its progress. If some Members had not failed to do their duty, according to some newspapers, and gone away to attend a meeting where they were supposed to have no business to be, the passage of the Bill would probably have been slower, the Racial Distinctions Bill and the Criminal Procedure Code (Amendment) Bill would have been a good tandem to drive. Where that would have been better or not I do not propose to examine. But the Racial Distinctions Bill has come and has been passed and the Criminal Procedure Code (Amendment) Bill in the original shape that was given to it has also come and passed and the two will find a place now in the criminal statute of the country. The work of consolidation will soon have to be taken up after large amendments like those that have been made. This morning we had an illustration of what may have been unavoidably overlooked and what may have to be put right. Probably in the course of the working of the twin measures that will now find a place on the Statute Book, difficulties will be found and a consolidating measure may soon be necessary. Sir, I quite agree with those that have voiced that sentiment that it is a mistake to weaken the Magistracy, and it is a mistake to unduly restrict the police. Because some Magistrates are bad and some policemen are worse, that is no reason why we should legislate down to their level. We must try and bring them up to the level of that which is ideal law having regard to existing exigencies. Separation of judicial and executive functions of the Magistracy will certainly be a step forward in that achievement. But that is not yet wholly to be. Financial or other difficulties will stand in the way and so long as the present system continues, work of administration will have to be made acceptable to the people and helpful to the Government. Sir, often enough have we heard it pleaded in this House in favour of retention of a particular section that it has been in existence for over half a century and that the Select Committee had examined it. Neither acid test has however in many cases prevailed and it shows that the test of time is not always the best. We are progressing. We are marching forward, and liberalising influences in criminal as also in civil law have to be put in operation, slowly it may be, but surely. That has been demonstrated in this case and improvements were possible here though the Bill had been examined and improved elsewhere. Mr. Seshagiri Ayyar has referred to the achievements of many on his side of the House. I, Sir, should like to mention not the achievements, but the silent doings of our friend, Mr. Samarth, who is not here unfortunately owing to domestic reasons. He has been a great staying power throughout, the brake power, which is no less necessary than the motive power. Oftener than not his wise counsel has prevailed and in conjunction with him it was my privilege to appeal to this House as well as privately to Members for concentration of our attention upon the things that matter and to give the go-by to things about which a great deal might be said by one or half a dozen but which would not find acceptance with the House. I think I may fairly congratulate those who are responsible for the amendments that wise counsels ultimately prevailed; and Sir, if I may do so, I should like to thank the Chair for the assistance that it gave in the matter of making a conference possible between those who were

[Sir Deva Prasad Sarvadhikary.]

responsible for the amendments and those who were fighting them. Round table conferences, or square table for the matter of that, are at times apt to be very helpful and it was helpful in this case in cutting down the length of debate and also to a certain extent its acrimony. Nothing like coming face to face with one another across a table and talking things over and that is how your differences ought to be brought to a minimum. That is a lesson that you ought not to forget in the new system of Government that is now coming on. Mutual understanding will often help in removing difficulties that at times may have appeared colossal. I join with my friend in hoping that when the Bill makes its second (or I do not know whether it will be the third) appearance in this House, the threat about the "reasonable Chamber" will not influence it to any appreciable extent, at least to an extent that will make this Assembly stand out for its right. Sir, I give this measure my support and congratulate both the House and the Government on its easy and satisfactory passage.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, this Bill which has just now emerged from this Assembly is a piece of legislation of considerable importance to the country. The one point on which I should like to congratulate ourselves and the country on its passing is not a point connected with individuals who had given time and bestowed their labour on the shape and form which it has now attained, but it is a point of great constitutional importance. It is now nearly 50 years roughly since Sir James Fitz James Stephen said that the Criminal Procedure Code and the Indian Penal Code were two grim presents from one nation to another. He said it with considerable pride—legitimate pride; but I say now to-day that this Bill as passed by this Assembly is not a present in the sense in which Sir James Fitz James Stephen wrote then, but it is a measure which the representatives of the people assembled in this Hall have shaped and given to the country at large. That is the point of view from which I would congratulate everyone here and the country. As for the details which have been modified in this Assembly, I for my part do not consider them to be of any great importance, and I do not think that a Procedure Code like this, technical and to be worked under the safeguards provided by the law by several branches of law, is one which could really and usefully be altered in a large Assembly like this. It must always be the work of experts, men who are acquainted with the theory and practice of law. As for the general ideas people may have in regard to particular aspects of Criminal Law, no doubt that will be taken note of by experts and I may say that certain changes made in the verbiage of some of the sections of the Code remain to be tested in the Courts when they are worked in future. Well, there are three or four points on which there has been a substantial advance or substantial liberalisation of the stringent provisions of the Code as it stands to-day. First is the question of bail. The present provisions work a great deal of hardship. The division of bailable and non-bailable offences is not based as far as I can judge on any logical ground. It is not on the ground that if an offence is heinous it is non-bailable. Some ground which it is difficult to understand has been at the bottom of the distinction. Now, under the changes which we have introduced in this Code, we have made it possible to lessen the hardship which the present law has worked. Another point on which we have altered this Bill is what is called the sanction to prosecute, that is the prosecution of a perjurer and the forger or a man who had put in

false evidence in a Court of Justice. The present procedure is the Court that tries the case gives the permission, which is called the sanction, and then with the sanction on hand the person goes about threatening the other or sometimes levying even blackmail; especially in civil litigation when some Judges grant sanctions more readily these sanctions have been used to blackmail, to coerce the opponent. That has been obliterated and I believe the present law is in line with the English law. The Court itself has to take action in regard to a man who has put before it false evidence. That will minimise the blackmailing and coercing by private individuals. The third point is the much debated one and the point about which reference has already been made, that is about the copies of police diaries. I do not think that there was really any threat, nor is it likely that the alteration which the Assembly has made is so dangerous to the investigations by the police that any unnecessary trouble need be taken about it. In regard to the security sections a few slight changes have been made, but after all the security sections are worked more or less on the executive side of the administration and it is a matter of considerable doubt whether executive action should be really hampered by unnecessary restrictions. The whole trouble has arisen owing to some Magistrates having used these powers under these executive sections in a manner not contemplated by the ordinary man. Except for that, I personally cannot say that that executive action should be very much controlled, because the object is to prevent a sudden disturbance, and there any amount of restriction will not have the desired effect. There is one word, Sir, with which I would conclude. After all in whatever form we may put a law, especially a processual law, it must always depend for its due administration on the character, intelligence and the sense of justice of the men who administer it.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I did not intend to enter into the discussion on this subject to-day, but as my Honourable friend, Mr. Seshagiri Ayyar, has mentioned my name in connection with an amendment which has been made in this Bill, to which he takes objection, I think a word or two is necessary from me. He refers to the amendment which I proposed to section 5 of the Code. One would suppose from what he said that this amendment was carried in a more or less surreptitious way

Mr. T. V. Seshagiri Ayyar: No, I did not say it was carried in a surreptitious way, all I said was there was no opportunity for discussing it, as the amendment was passed when we were all away.

Mr. J. Ramayya Pantulu: This amendment was sent up by me so far back as September last, and my friends might have taken objection to it when it came up for consideration. Probably they would have vetoed it. Then, Sir, coming to the merits of the amendment. What is the amendment? The clause of the Bill, before it was amended at my instance, gave to the accused power to ask the Magistrate to adjourn the case at any time during the trial on the ground that he was going to move the High Court for a transfer of the case. It gives the accused power to compel the court to adjourn the case at any stage before the accused is actually convicted. My amendment was to the effect that this power should be given only up to the moment the accused enters upon his defence. Even as it is, it is a great improvement upon the old law. According to the old law, that is the Code that is now in force, an accused person is

[Mr. J. Ramayya Pantulu.]

entitled to make his application for an adjournment only before the commencement of the hearing and even then, the Court is not bound to stop the proceedings. It can go on with the inquiry, only it must not frame a charge until the accused's application for transfer has been disposed of, or the time given for making the application has expired. According to the section as amended, the Magistrate is bound to stop all proceedings until the application for transfer is disposed of, provided the application is made at any time before the accused enters upon his defence

Mr. President: Order, order, I cannot allow the Honourable Member to go into details of that kind, for the very reason that other Honourable Members may wish to do the same, and we should be here as long as we have taken to discuss the Code already.

Mr. J. Ramayya Pantulu: All I can say in regard to what Mr. Seshagiri Ayyar said so far as this amendment was concerned, is that he views the matter from the point of view of the accused, and I have tried to view it from the point of view of the Court and the administration of justice.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): To-day, Sir, is the day of great rejoicing, since 1916 when the amendment of the criminal law was started. Thereafter, Sir, for the last six years before this Bill was brought to this Assembly, there has been amendment after amendment and they had to change the original Bill of 1916. After that, opinion was invited by the Government of India from the Local Governments and the High Courts of the Provinces in India, and there have been additional alterations. Sir, we congratulated the Government of India from the first day when these amendments were placed before this Assembly. I think it was in 1916, when this crowded Assembly had no existence, but the Reforms were contemplated and the Secretary of State was about to start from England to investigate the matter and to introduce the Reforms. After that, the Government of India placed before the Council of State the amendments which we were considering from the 15th of January this year, as it is stated on the Bill "as passed by the Council of State." The Council of State made very little, or no amendments in the Bill which was presented to them. Those elder politicians did not take any trouble to change or amend the Bill. However the Bill was brought in here for our consideration on the 15th of January. On that day, Sir, I think I was the first to put forward the objection that this Bill could not be considered because the Report of the Racial Distinctions Committee had not been placed before us. In my own Province they were considering how to give effect to the separation of the judicial and executive functions, and I can assure this House that my own Province is still contemplating this separation, and the question of how to give effect to it. Sir, therefore the baby of our Honourable friend, Mr. Seshagiri Ayyar, which now is going to become a Member of the big family, has got to be dismantled. A new tailor will have to cut its cloth to fit its body. It has got to be altered and it has got to be changed.

The second point on which I wish to touch relates to my friend Mr. Pantulu's amendment under section 526 with regard to the transfer of a case from one Magistrate's Court to another Magistrate's Court. I suppose, Sir, it was a very thin House on the afternoon of the 12th or 13th February last when Dr. Annie Besant's Conference of moderate sections was held at the

Eastern Hostel at Raisina. Many of our able and energetic Members of this Assembly including my Honourable friend, Sir Deva Prasad Sarvadhikary (*Cries of "He was not here then."*) He was not here nor was he in the House—Mr. Seshagiri Ayyar and many other friends, whose names have been so eloquently mentioned by himself the President of the Democratic Party, were not in the House at the time and Mr. Pantulu's amendment was brought in and agreed to. Great dissatisfaction was felt on this side of the House that the non-official Benches were all empty. Sir, the transfer of a case from a Magistrate's Court at this stage, that is to say, after the charge has been framed, when the Magistrate comes to the conclusion that a *prima facie* case has been established against a particular accused whom he is going to convict shows the true intention of the Magistrate and his attitude is felt by the accused who does not expect to get fair justice at the hands of the Magistrate.

Mr. President: Order, order. I told the Honourable Member on my left that he had better not go into detail, and I must give the same warning to the Honourable Member himself.

Mr. K. Ahmed: Sir, I quite realise that position. That being so, the poor accused gets no justice and the poor country appreciates very little the baby that is now crawling in the courtyard of India.

Now, Sir, as I have already said, the Criminal Law Amendment Bill has got to come again after a short time before this Assembly, and I do not think the time is far off when the Honourable the Home Member with the great assistance of the Honourable Mr. Tonkinson and the Honourable Sir Henry Moncrieff Smith, the Secretary of the Legislative Department, who piloted the Bill will have to labour under the same old thing, and I am afraid the public, the foster parents and the many uncles, who have assisted in lifting up the baby and introducing it to the country, will find there are many difficulties in it. At all events, Sir, when the birth of a baby takes place, it is really a source of great pleasure to many, and I congratulate from the bottom of my heart the Honourable the Home Member and his lieutenant, the Honourable Mr. Tonkinson, who have taken so much trouble to bring in this Bill to amend the Code of Criminal Procedure.

The Honourable Sir Malcolm Hailey: I see some signs of, I will not say of impatience, but of a desire on the part of the House to see this discussion brought to an end. And I know that there are many Members in the House who feel that, to use a term which I have heard to-day, a series of complimentary speeches occupies unduly the time of a House which has other and urgent business before it. If, therefore, I make a few remarks, they shall be as brief as possible. I should regret if we on the Government Benches had ever really given Sir Deva Prasad Sarvadhikary reason for his impression that we resented any attempt "to tinker or to tamper" with this Bill. In some years to come, Sir Deva Prasad Sarvadhikary will be almost as old as I am and, when he reaches that mature age, he will rejoice to find that he has put behind him the tendency to yield too quickly to impressions. But when we put this Bill forward, we felt that it had a long history of careful and conscientious work behind it. The original framing of the Bill occupied many years of investigation and discussion; then followed the long and pious labour of the Lowndes Committee, succeeded again by long noting in the Secretariat, and finally it must not be forgotten that many important amendments were also made by the Joint Select Committee of this and the other House. We put the Bill before the House on the basis of all that previous work. Many

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of us foresaw that this was exactly the type of measure in which the House was likely to take great interest, not only because the Assembly contained so large an amount of legal talent, but because there is possibly no one measure which is of more general interest throughout the length and breadth of the country. I have been told to-day that in England we make a fetish of law and order. If so, there are good reasons for it; for we know that no State can be stable, we know that it can make no steady progress, political, material, or moral save in an atmosphere of law and order. Those who reflect on the state of India a short hundred years ago, will realize that India should have cause to congratulate itself that it was brought into association with a people which had as its ideal the establishment of order under the sanction of law; and if we have attached great importance to this development in the past, it is because it constituted a primary necessity for the ordered advance of India. I do not say that the people of India are, as compared with other people, of a criminal tendency or nature; but there is no doubt that the spirit of law and order as we understand it does not prevail over very large parts and among very many classes of India; and the consequence is that large classes of people are brought into continual contact with the Criminal Courts. It is essential therefore that our Procedure Code should be in a form which will at once secure justice to the accused person and the preservation of the ordinary standards of order in the community. It is easy to recognize the great importance that this Bill presents to the House, and I do not think that we have ever shown impatience at the time occupied in discussing it or can have given any impression that in our opinion the time devoted to it has been wasted. That the time has been long, the House itself recognises; but whatever one may have thought when sitting here in the course of debate and controversy on the subject, when that controversy is over, we must all admit that the Bill constitutes a measure on which the House was justified in spending long and anxious days. (Hear, hear).

My friends have stated, and with some pride, that the House effected many important amendments. I will not for a minute depreciate the value of the work done by the House, nor the care and industry of those whose names were mentioned by Mr. Seshagiri Ayyar; but I must in justice once again recall to the House that much of the improvement effected in the law has been the work of those who laboured on the Bill before it came to the House. Let me take, for instance, such items as the extension of bail provision; the substitution—I refer to an item which Mr. Subrahmanayam also mentioned—the substitution of complaint for sanction; the enhanced power to release on probation, or again the provisions regarding juvenile courts. If the House finds reason to congratulate itself in regard to its own efforts, I say these are substantive improvements in the Act for which the House must also thank others.

And now I come to the substance of what I have to say. I have been warned that if I attempt to have this Bill mutilated in another House—I did not quite catch the somewhat ornate *alias* which Mr. Seshagiri Ayyar applied to that House, but Sir Deva Prasad spoke of a more reasonable House, or as Mr. Kabeer-ud-din Ahmed said, drawing on a still richer fount of metaphor, if I attempt to dismember . . . (Mr. J. P. Colelingam: "Dismantle.") dismantle this baby, then this House will resent it. I wish to deal with that question with that candour which I have always tried to exhibit in approaching this House. There are clauses in this Bill—few in number but still important—which we feel

to be unsound. Let me take the most important of those—I mean the amendment to section 162. That has been referred to to-day both by Mr. Seshagiri Ayyar and by others. We are not, I think, alone in holding that the clause cannot stand as the House has left it. Indeed I have been shown amendments drafted in the last few days from more than one quarter of the House which demonstrate clearly that there are others besides ourselves who think that some further amendment of the clause as left by the House will be necessary. Let me say at once that if we had not put forward our Criminal Procedure Amendment Bill, and if a Bill had been put forward and passed by this House giving to that section the form in which it has now emerged from this Chamber, I myself should have felt it my duty to advise the Governor General not to assent to that Bill. The reason is simple. Government can be no enemy to placing in the hands of the accused every material which will secure justice; but equally the Executive Government has a primary duty to see that the course of investigation and detection of crime is not impaired. Great as our obligation may be in respect of securing justice to the accused person, one cannot at the same time forget the necessity of protecting the ordinary public from criminal attack on person, life or property. Now we hold, and hold strongly, that in its present form this clause would impair the detection of crime, and to that extent would be a source of real injury to the ordinary public. We hold further that in its present form it will have further undesirable result, in that it might drive the police to adopt methods in recording statements which would in the end make those statements less useful for the Courts and therefore impair the course of justice. Holding those views, I do not think that any Executive Government would be acting within its duty if it recommended to the Governor General that he should assent to a Bill containing the provisions as they have emerged from this Assembly. We must therefore attempt to get some amendment of this clause, for if we do not, and if my representations to the Governor General in regard to the Bill are approved by him, then the whole of the labour which the various Committees have lavished on this Bill, and the time that the House itself has spent on it, the whole of that labour will be wasted, for the Bill will not come into operation at all.

There are other clauses of somewhat less importance. They will be found in clause 47 and clause 110 of this Bill as renumbered in the copy now before the House. Mr. Seshagiri Ayyar has referred to clause 146 (8) of the Bill—I mean Mr. Pantulu's amendment in regard to transfers. Did I hear from Mr. Seshagiri Ayyar or was it from some other Member of the House, that it might perhaps be advisable to amend that section in another place?

Mr. T. V. Seshagiri Ayyar: Yes, I suggested that to the House.

The Honourable Sir Malcolm Hailey: The Honourable Member has suggested it. He will remember, I hope, when I take action in regard to another section that it is possible to improve the wording of the Bill as it leaves this House without in any way impinging on the dignity, or the privileges or the prestige of this House.

Rao Bahadur T. Rangachariar: Without impairing the substance.

The Honourable Sir Malcolm Hailey: Well, Sir, as regards the transfer clause, 146 (8), I have only to say this that if Mr. Seshagiri Ayyar's friends in another place do propose an amendment, we shall deal with that amendment with all the delicacy and circumspection that the case requires.

[Sir Malcolm Hailey.]

I have little more to say. I believe that as the joint result of much labour and much care this Code is a substantial improvement on its predecessor. Our Code is a matter of primary interest to the people of India; I might indeed say it is of primary interest to a large number of people in the Far East, for this present of ours to India (as it has been described to-day) has been copied largely in many other countries, a fact of which I think we may be not a little proud. I can only hope that the final fate of this Bill, when all our discussions on it have closed, will be such as will be equally satisfactory to Government and to this House. Let me repeat that we do not wish to make over much of a fetish of law and order; we must, however, preserve our responsibilities in regard to the maintenance of proper safeguards for the protection of people against crime. The sense of law and order is not created or indeed maintained only by legislation, it is fostered by a growing sense of the necessity of civilised and social methods among the population itself; but if your legislation is satisfactory, then it is a powerful adjunct to the growth of such feelings. Their growth is thwarted unless the population at large has confidence in the power of the administration to protect them from crime: if it has no such confidence, it has a contempt for the law and seeks its own methods to protect its property, its life or its honour. All that we can hope to do here is to hand on as perfect an instrument as possible to our courts and to our investigating agency.

My final word is this. I have heard in the course of these debates much criticism both of our courts and of our investigating and prosecuting agency. I wonder if it is really necessary after all for me to speak a word on their behalf. I wonder if it is really necessary for me to repeat here the tale of the great work that is done by the police, their loyalty to the State and to the public, a loyalty so great that even if you can occasionally point to some untoward incidents, yet the benefit on the whole far outweighs any defect that has brought them under criticism. (Hear, hear.) Again, is it not really necessary to speak here on behalf of our Magistrates? They are no importation into India; nine-tenths of our Magistrates are Indians themselves, officers of our provincial services, men whom we look upon not only as the backbone of our administration, but as the backbone of justice itself. I think it should be far from any of us to speak any word which will go out from here and convey to them the impression that we mistrust either their capacity or their integrity, or that we do not value the enormous work which they do for the country. That is my final word, and in that word, whatever differences we may have about any detail of legislation, I am confident that the House will agree.

The motion, that the Bill, as amended, be passed, was adopted.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

(AMENDMENT OF SECTIONS 362 AND 366.)

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move that the Report of the Select Committee on the Bill to amend sections 362 and 366 of the Indian Penal Code be taken into consideration.

I need not perhaps remind the House of the circumstances in which this piece of legislation came to be placed before it. It was of course necessary in order to implement the Resolution of the House by which it agreed to adhere to the Convention on what is known (inaccurately though I retain the term for the present) as the White Slave traffic. We accepted

an obligation to legislate on two points, first, to make it penal to procure a minor girl for illicit intercourse by any means whatever and not only by force or compulsion or otherwise; and secondly, to make it penal to procure for illicit intercourse a woman of any age by force, compulsion, intimidation or abuse of authority. When the Select Committee came to examine the Bill, it thought that it was capable of amendment in two respects. They considered firstly that one of the clauses went somewhat further than was required, and secondly, that it was possible to comply somewhat more nearly to the terms of the Convention than the original draft had done. We have explained clearly in the Report of the Select Committee the exact points, to which I am referring. We therefore re-drafted the Bill, but the re-draft in itself has made no change in substance. I see from the amendments which we have before us that the only one point of principle in the Bill (which it has been previously debated in the House) will again come for discussion on the floor of the House. I therefore do not refer to it at this stage; we shall have ample opportunity of discussing it subsequently. At this stage I only move that the report of the Select Committee be taken into consideration.

The motion was adopted.

Clause 1 was added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I move that in clause 2 the words "or of abuse of authority" be omitted.

These words are rather vague. There may be authority of many kinds, such as natural authority, official authority and other kinds of authority; natural authority would mean the authority of the parents, of the father or mother or other natural guardian; and if that kind of authority is meant I think it will be very difficult to ascertain where the abuse lies. Take the case of a girl who is reading in a particular school and the school mistress sends the girl to attend some meeting or a tennis party or to some church to attend prayers, and there she meets some young men and somehow or other gets into bad company and is seduced for the purpose mentioned in the Bill. There is this difficulty. It may be said that the girl went to such a place, and having gone to such a place, was seduced. It may be wrongly construed against the school mistress for abuse of authority. Probably it may be said that no body accompanied the girl, and the girl having gone alone, such an occasion arose. It will be very difficult to put a proper interpretation on the words "or abuse of authority". It is liable to be abused in other ways as well. If you put a strict interpretation on these words, you may say that the natural authority did not exercise proper care or caution and so there is an abuse of authority. We know that in some societies girls are allowed to go out, there may be abuse, there may not be abuse of such a system. But it will be very difficult to fix the guilt of a person in authority. I suggest the omission of the words 'or of abuse of authority' in clause 2.

The Honourable Sir Malcolm Hailey: I would explain very briefly why the words 'or abuse of authority' were placed in the Bill. They are necessary in order to meet our obligations under the Convention. Its Article II runs as follows:

"Whoever in order to gratify the passions of another person attempts by fraud, by means of violence, threat, abuse of authority or any other method of compulsion, to procure, entice, etc."

I cannot agree with my Honourable friend that these words constitute any sort of danger. I do not indeed think that the cases put by him are in any

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way relevant to the section as drafted. Abuse of authority could not be argued against any person who had merely been guilty of carelessness or omission to provide proper precautions, for this possibility was evidently at the back of Mr. Misra's apprehension. He will see that it is necessary not only that a person should be guilty of abuse of authority, but that by so doing he should induce any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced, etc.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I have only a very few words to say. I have considered this amendment carefully, and I do not think it can be supported. 'Abuse of authority' might be necessary in this country to cover a case which could not easily be covered by anything else in this section. One illustration is,—I am sorry to take it after all that has been said here about the police,—that a police constable might abuse his authority to induce a woman to go for some such purposes. The only word on which I wish to say anything in connection with this clause is the word 'induces'. When you *cause* a person to move by force or by criminal intimidation you do not *induce* that person to go; because, to my mind, the word 'induces' involves some form of persuasion, and therefore it seems inconsistent with criminal intimidation and compulsion. When you *compel* a person, it seems to me that you do not *induce*. But so far as the amendment before the House goes, I think my friend will be well advised to drop it.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I venture to add a word or two to what has fallen from my Honourable friend on my left (Sir Henry Stanyon). The word 'induces' to which attention has been drawn by him is qualified by what follows 'with intent that she may be, or knowing that it is likely that she will be forced or seduced' etc. Now what was intended to be suppressed by the Convention was that any body should exercise his or her will on the mind of the girl concerned in order that she might be seduced or forced to have illicit intercourse; the words "abuse of authority or any other method of compulsion" supply another qualification to the words "forced or reduced to illicit intercourse, it may be, with another person". Such compulsion when brought about by the abuse of authority, official authority or parental authority or any other kind of authority is within the meaning of the Convention, and has been made punishable by the section, that is to say, if he or she acts in the particular way contemplated by the section. Clause (2) of the Bill suggests a form of criminality which ought to be suppressed, and which it is the intention of the Convention to suppress. My submission to the House is that the word 'induces' when it is coupled with what follows does not imply any innocent act of inducement on the part of the person who induces. As a member of the Select Committee, I venture to say that these words were carefully considered, and from the point of view I now place before the House, there does not seem to be any cause for apprehension with regard to the drafting of this section.

Mr. B. N. Misra: Sir, with your permission, I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I move that in clause 2, in the proposed paragraph of section 366 after the words "method of compulsion" insert the words "direct or indirect".

So the section will read in this way if my amendment is accepted, namely: "And, whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, direct or indirect, induces any woman", etc. To meet certain cases I have proposed the addition of these words 'direct or indirect'. For instance, in a house there is a girl, and a man outside takes a fancy to her. Somehow or other he gets her dismissed from that house by some other man. Then she goes to another place, and there too he does something else of the kind till that girl comes into his clutches out of sheer helplessness. So, to avoid all these things, I think it is necessary that the words 'direct or indirect' should be added.

The Honourable Sir Malcolm Hailey: These words "or any other method of compulsion" seem sufficiently wide, and if they are not in themselves sufficiently wide, we think such cases as Mr. Sarfaraz Hussain Khan has in view could be sufficiently met under the definition of 'abatement'.

The motion was negatived.

Clause 2 was added to the Bill.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment which stands in my name:

"In clause 3, in the proposed section 366A, for the word 'sixteen' substitute the word 'eighteen'."

Sir, as the Honourable the Home Member has said in his speech, the principle of the amendment which I have moved was discussed in this House last year. The Members will remember that, in the Conventions of the League of Nations on this subject, there are two important articles. The first article is intended to prevent traffic in minor girls even though the girl may have consented to sell herself. The second article is intended to prevent traffic in women when there is fraudulent means or violence employed in order to seduce the woman. Now, the difference between the two articles is this. In the case of the first article, even when the girl gives her consent, it is an offence to traffic in such a girl if she is a minor. Therefore, the chief point of importance between the two sections is the consent of the girl. It clearly shows that, in order that the girl should be able to give her consent to sell her body, it is necessary not only that her body or physical functions should have been developed or matured, but it is necessary that her judgment should be also matured in order that she should be able to give her consent for selling her body. Not only that, but it is also necessary that her character is fully developed before she is given the right to consent to sell her body. It is on this ground that I want the House to support my amendment. Now, Sir, when this question was discussed last year, several arguments were brought forward in favour of retaining the age of 16 instead of the 18, or 21 which I proposed at that time and which is also accepted by European countries. The first argument used is that in India girls attain to maturity early. Sir, that may be true or it may not be true as regards physical maturity. It may be true in the case of physical maturity, but what we are considering in this section is not physical maturity, we are considering maturity of judgment and development of character. We are considering here whether a girl of 16 will be able to defend herself against

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fraudulent attempts of other people or not. Whether she is in a position to give her consent to sell her body or not. Therefore, the chief point of importance is not physical maturity at all. The point of importance is maturity of judgment and development of character, and I do not think anyone here will say that in India girls attain maturity of judgment and maturity of character earlier than in Europe. Therefore, I do not know why we should make that difference. Sir, the second argument used was that our social customs differ. Sir, as regards this argument, I know that in India girls and boys marry early. But we have to remember that in this section we are not touching the marital relations between girls and their husbands at all. We are here dealing with the relations of a girl who is being seduced by a person in order that her body may be sold to a third man. Therefore, social customs are not touched here at all. I do not know of any customs here in this country where any people will allow or tolerate the selling of girls on account of social usages. Therefore we need not take into consideration the argument about social customs. We are not violating any social customs even if we increase the age from 16 to 18. Sir, the third argument used at that time by the then Home Member was that in India public opinion may not be in favour of raising that age from 16 to 18. Sir, Government since that time has collected the public opinion in different provinces as expressed by different bodies interested in this question. And, if Government and the Select Committee had given effect to the opinion expressed by the people consulted, Government and the Select Committee would have accepted the amendment which I am proposing. (The Honourable Sir Malcolm Hailey: "No, no.") The Honourable the Home Member says "No, no!" I am prepared to prove that I am quite accurate in my statement. Sir, out of the Governments consulted, the North-West Frontier Province, the Punjab, Bihar and Orissa, Assam, Bombay and the Central Provinces have either proposed the age of 18 or 21. All of these 6 Governments have found that the age of 16 is not the proper age and either the age of 18 or even 21 is the proper age. (Dr. Nand Lal: "Not the Punjab.") Even the Punjab. The only major provinces that have consented to retaining the age at 16 are Bengal, Madras and the United Provinces. Sir, in order to convince the House, the House will excuse me if I read to them a few quotations:

North-West Frontier Province.—"The majority of Indian opinion consulted in this Province would appear to favour an age-limit of 18 years, but in most cases the suggestion is offered with diffidence and I am satisfied that a higher age-limit would receive wide support. I consider that in this matter conformity with the practice of other countries is desirable for many reasons and I recommend therefore that the limit be fixed at 21 years."

Burma.—"Subject to anything which other Local Governments may have to urge, the Lieutenant-Governor would be disposed to support Dr. Gour's proposal to compromise by fixing the age at 18—as a first step, if the Government of India are not prepared to sign the Convention as it stands."

Bihar and Orissa.—"The Governor in Council considers that the age of 18 years is the most suitable limit for India to adopt, in view of the fact that puberty is attained in this country at an earlier age than in Europe or America. Under the India Majority Act, 1875, 18 years is the age of majority, except when a guardian has been appointed by the Court."

Assam.—"His Excellency the Governor in Council feels that the matter is one on which Indian opinion should prevail, and the Indian Members of this Government including the Honourable Minister, consider that the Convention of 1921 may be accepted as it stands and the age fixed at 21."

Central Provinces.—"For these purposes the Judicial Commissioner considers that there is no possibility of objection to the raising of the 'age of consent' to 21 years."

Punjab.—"On the whole, the Governor in Council considers an age-limit of 18 years a reasonable compromise, since it has the advantage of conforming with the age of majority as fixed by the Indian Majority Act, 1875 (Act IX of 1875)."

(The Honourable Sir Malcolm Hailey: "Do they refer to this section?" Mr. N. M. Joshi: "Yes".)

Bombay.—"Opinions elicited indicate strong preponderance in favour of accepting for India age twenty-one adopted by European parties to Convention. Governor in Council concurs and recommends adhesion to Convention without reservation as to a special age-limit for India."

So, these 6 Governments are in favour of the amendment proposed by me and there are only 3 major provinces who are against it. Therefore, on the whole public opinion in India is in favour of raising that age from 16 to 18 and in some cases there is public opinion in favour of raising the age-limit even to 21. Sir, there is moreover an advantage in this. By putting the age at 16 we are only reducing the age of majority by 2. The Act of Majority in India, which is really an Act setting down the age at which the consent of a party becomes valid, lays down the age of 18 and I do not know why in this case we should reduce that age from 18 to 16. I, therefore, hope that, as there is great support for the amendment which I have moved and strong reasons in its favour, the House will accept my amendment.

Mr. J. P. Cotelingam (Nominated: Indian Christians): Sir, I am strongly in favour of the amendment moved by the Honourable Mr. Joshi. It is in conformity with the law as regards the age of majority. As Honourable Members know, at the age of 16, a girl's mind is not mature enough to enable her to form an independent judgment especially in the critical position in which she may find herself. If the age cannot be raised to 21 according to the International Convention I trust that the compromise arrived at by the amendment of Mr. Joshi will be accepted and that instead of 16 being the age-limit the House will agree to its being raised to 18.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, this clause gave considerable trouble to the Select Committee. This question was very carefully considered. There are certain aspects of the question which weighed with the Committee in keeping the age at 16. Honourable Members will notice that this clause runs:

"Whoever, by any means whatsoever, induces any minor girl under the age of sixteen years to go from any place (for the purpose).....shall be guilty of the offence."

It would apply even to the parent making an arrangement for the future happiness of his or her daughter. (Laughter.) Honourable Members may laugh, but they do not realise the unfortunate difficulties which a certain class of people in this country labour under. I mean the *Devadasis*. Daughters of those unfortunate people cannot find suitable marriage. That is, people in caste would not marry those girls. I know, Sir, many a case where suitable alliances have been effected in the case of these unfortunate people in the Southern Presidency, and I am sure it is also common in other parts of the country. (Honourable Members: "No, no.") If it is not, I will confine myself to the case of the South. What happens is, as these girls cannot find wedlock, the mothers of these girls arrange with a certain class of Zemindars—big landlords—that they should

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be taken into alliance with the Zemindar, and they often lead honourable lives. That is to say, they are husband and wife and the issues of such an alliance have been recognised to have heritable rights in property.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadian Urban): Are they non-Brahmans?

Rao Bahadur T. Rangachariar: I said that this is among a large class of landowners in the South. There are reported cases—Ramamani case is one such—where the issues of such an alliance have been given rights of inheritance to property. Although this is not strictly called marriage, it is still a low form of marriage which is recognised in that community and by increasing the age to 18, you will be preventing these alliances taking place. Honourable Members will remember that under the Hindu Law and under the Muhammadan Law, the age of majority is not 18. The age of majority as 18 has been introduced by the Age of Majority Act only for certain purposes. Act IX of 1875 says:

"Whereas, in the case of persons domiciled in British India, it is expedient to prolong the period of non-age"

The period of non-age under the Hindu law is 16. Honourable Members apparently have forgotten their Hindu law. They have forgotten that under their own system of law under which they are living, but for the Majority Act the age of majority would be 16, and therefore, the Legislature thought fit for certain purposes to extend the period of non-age. So the period of non-age is 16 and it is extended by the Age of Majority Act only for certain purposes. That Act also says:

"Nothing herein contained shall affect the capacity of any person to act in the following matters (namely), Marriage, Dower, Divorce, and Adoption."

So that, for purposes of marriage, the age of consent is 16 under the law as it stands, and under the Muhammadan law it is even less. Under the Muhammadan law, as soon as a girl attains puberty, she is considered an adult. (*Mr. Mahmood Schamnad Sahib Bahadur*: "Their age of puberty may be even 18.") That is absolutely rare. The period of non-age is still less. (*An Honourable Member*: "For marriage, not traffic.") For the purpose of marriage, for the purpose of dower, for the purpose of adoption, even now the age of majority is 16. Does my Honourable friend contend that if in the case of adoption you attribute sound judgment to a person of the age of 16, and for the purpose of marriage you attribute sound judgment to a person of 16, and for the purpose of divorce also you attribute sound judgment to a person of 16; that in a case like this, a girl of 16 should not be presumed to be able to take care of herself? I know modern ideas no doubt. But you have to take circumstances as they are in this country. Can you deny that girls of 16 in this country are able to take care of themselves and that they have got judgment? In fact, does not the law as it stands now trust them with judgment?

Mr. N. M. Joshi: For marriage.

Rao Bahadur T. Rangachariar: Very well. Also for divorce. Please remember that. And also for the purpose of adoption.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadian Urban): Not for "alliance."

(*An Honourable Member*: "Not for mis-alliance.")

Rao Bahadur T. Rangachariar: The Act further says:

"Nothing herein contained shall affect the religion or religious rites and usages of any class of Her Majesty's subjects in India, or the capacity of any person who before this Act came into force has attained majority under the law applicable to him."

Therefore, it certainly applies to certain cases. Why should my Honourable friend stick to 18? He might as well have proposed 21. Does he think that there is such a difference between a girl of 16 and a girl of 18 in this matter?

Mr. N. M. Joshi: Oh, yes.

Rao Bahadur T. Rangachariar: Sir, on the other hand, the danger will be, as we all know in this country, that whereas a girl of 16 or after she has attained the age of 16 may be able to find an honourable alliance, she loses all chance of finding that alliance after she has passed a certain age. I need not mention the details here. It is well-known that girls in this country at the age of 16 are mothers oftentimes of two babies. It is a very common factor to be taken into account; and, on the other hand, if you enact the section with the age 18 there, even parents cannot (*Mr. N. M. Joshi*: "Sell.") You are not going to provide their livelihood. You may rest perfectly assured that you are not going to improve society by these ideals. It will all look very well on paper. As a matter of fact, you know the impossibility, the difficulties, the practical difficulties, which poor mothers will experience in keeping their girls in their houses. It will all very well no doubt look nice to the outside world. But it will be a dead letter. If you make it impossible for persons to abide by the law, there is no use in creating a law, which must be disobeyed, which will be disobeyed, human nature being what it is. Joshis will not be available in every household to guard the household. Let us remember that. You have to recognise practical difficulties as they exist; and if you raise the age from 16 to 18, you will be violating your Hindu Law and the Muhammadan Law as to the age of majority. (*Voices*: "No, no.") You may cry "No," "no." I have said what I had to say. If it does not commend itself, by all means do as you please. This is the difficulty which I felt when I yielded not to raising the age from 16 to 18; but if that is your will, you can impose your will on the law and you cannot impose your will on the household. But that is the danger which you have to guard yourself against.

Sir Deva Prasad Sarvadhikary: Sir, I was waiting for Mr. Rangachariar to bring out what, I am told, was in the Select Committee a legal difficulty, and that is the fact that the age of 16 appears in other portions of our penal law and that there would be difficulty in introducing the somewhat unfamiliar figure of 18 only in this particular place. But here again I say, we are attempting to level up things. When Mr. Joshi's amendment is carried—as I sincerely trust it will be—the next time we take up the amendment of our penal law, the same figure 18 will find place where the figure 16 now obtains. Sir, amiable landlords in some parts of the country, I am told, would probably prefer a lower age than 16. Criminal jurisprudence is replete with cases where such desires have been borne

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eloquent testimony to, and I do not know whether because of that there should not be a movement towards lowering the age. If what Mr. Rangachariar has referred to amounts to marriage, let it be declared to be so, and marriage is protected. We are having liberalising influences all along the line and if these "honourable" alliances . . . (Rao Bahadur T. Rangachariar: "Not honourable, but alliance.") I am glad my friend has drawn the distinction now, for I was listening to his speech with care and the word "honourable" does find place there, as the official report will no doubt show. Sir, reference has been made to the Bengal opinion. I am sorry if I cannot support the Government of Bengal there. Without that opinion in my hand, I was almost becoming a little nervous about my Government. But having looked at it again, what do I find there? The Bengal Government says that six bodies were consulted; four never cared to reply and two, I believe, including the Indian Association, with which I happen to be connected, plead for raising the age to 18. I miss my friend, Colonel Gidney, here; he would be interested to know that the Anglo-Indian and Domiciled European Association in supporting the Resolution adopted by the Legislative Assembly on the 7th of February, 1922, suggests the limit of 16 years. What can the Government of Bengal under those circumstances do? They had only to voice public opinion as it appeared to them to be on the papers before them, and that is why "the Government of Bengal consider it important that the Government of India should not appear to be forcing the pace or insisting on a standard age in advance of general opinion; and accordingly they advise that in the legislation the age of sixteen should be taken, and that it should be left to the Legislative Assembly to consider the raising of that age." That is exactly what we are doing now. Therefore, Sir, I am no longer nervous about my Government. As a good Government, it has simply placed before the Government of India what appeared to be the case on the *nathi*. Reference has been made by Mr. Rangachariar to the question of violating the Hindu Law. Not many years ago I heard a Maharaja Kumar in Bengal, taking some interest in public affairs and a very loyal gentleman, saying that it is absolutely disloyal for Hindus not to marry widows. What was the basis for that assertion? He said, "Why, the Widow Re-marriage Act has been passed. Widow marriage is legal and it is illegal not to do that which is legal." In the same way Mr. Rangachariar says the Hindu Law would be violated if we enact 18 as the age for the purposes we are considering because for certain purposes Hindu law declares 16 to be the age of majority. (Dr. H. S. Gour: "It does not do that.") Anyway, British Law for lesser purposes has declared 18 to be the age, for purposes of bartering away property. Does my Honourable friend say that for purposes of bartering away virtues, the Hindu Law declares the legitimate age to be 16 and that we would be violating the Hindu Law by raising the age for these purposes from 16 to 18? I am sure he will not go as far as that. Then, Sir, with regard to age in the case of marriage, that is and has always been a moot point. Hindu society is interested in that question and we have recently agreed to say nothing further about it here for the present. But in the matter of marriage, there are protections which do not exist in the present case; is it not common knowledge all over the country that although people are married young, marital functions are suspended to as late in life as possible? There are cases of abuse. There are infant mothers; and there are other abuses. But anyone who knows society, as we know Bengal society, knows that the Bengal

mother and the Bengal grandmother take care that abuses shall be as few as possible. Well, Sir, where is the mother, the grandmother and the father and the others who form our marital bureau to take care of the daughter whose virtue is being bartered away at a tender age for the purpose of happiness, as Mr. Rangachariar has called it, for the purpose of establishing an alliance that may be too late after sixteen? I am sorry, Sir, the question of *Devadasis* has been at all introduced here. It has been claimed that the *Devadasi* system is a religious institution which shall not be interfered with and if abuses have grown there, those abuses must be got rid of with a ruthless hand. If what we have heard to-day is the concomitant of the *Devadasi* system, I am afraid Dr. Gour will find more support when he moves in the matter again. The *Devadasi* system is there and if alliances of the kind suggested have to be formed, they will have to be formed at 18 and not at 16 unless marital appearance can be given to that sort of alliance. It has been pointed out by Mr. Joshi that when we are dealing with section 366B, the age is 21. For this purpose, I say what is good enough for outside India is good enough for India also. The present motion however is not for raising the age to 21, it is a compromise at 18, and I think we ought to accept that amendment, if possible unanimously, or at any rate by a majority.

The Honourable Sir Malcolm Hailey: As I am not a malign Madras landlord, and as I do not think I have ever in my life seen a *Devadasi*, and am certainly not in any way interested in the class, I hope I may be permitted to give my opinion on this amendment without incurring a charge of interest or partiality. I wish to explain to the House why I, as a member of the Select Committee, thought that we should retain the age of 16 years instead of raising it to 18. I do not wish to use any arguments based on what I may call a high moral plane; I merely wish to put certain common-sense views before the Assembly. The exact offence which is hereby created is procurement. Now, procurement is not necessarily a continuing offence, nor does it necessarily refer to a trade. I call the attention of the House to the fact that one single act is sufficient to bring a man within the scope of this section. That is to say, if a servant, at the request of a master, calls in a woman to a man's house, for illicit intercourse, then if that prostitute turns out to be under 16 or under 18, as the case may be according as you decide the law, he is guilty under this Act. Now it seemed to me, as I think to some others, that where you are giving so wide an extension to your law, you should proceed with some caution. You are creating a new crime. You are bringing thereby a large number of people not only under the criminal law, but under police action, and prudence dictates that when you do this you should exercise the greatest care. You have to deal again, not necessarily with a cultivated society, but with a law which is to apply all over India, to backward people, even to aborigines. That is to say, if I may frame concrete instances, if a man were to act as a go-between between a Bhil girl and a man who wanted her to go and live with him, and if he was successful in persuading that girl to go and live with that man, then, according to Mr. Joshi, if the girl was under 18, he would fall within the clutches of this law.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Quite right.

The Honourable Sir Malcolm Hailey: That girl if under 18 might be a mother, might be a widow, and could by no means be described as not having arrived at years of discretion; nevertheless the go-between, it might be the

[Sir Malcolm Hailey.]

village barber, following the practice in the Punjab, or it might be a woman who was acting as go-between following the practice elsewhere, could be prosecuted under this section if the girl or the widow were under 18 years of age. Then again I was very much influenced by what was said by Burma. Now the Judicial Commissioner of Burma very rightly pointed out that what we were proposing to punish here was not the man who engaged in illicit intercourse with the girl, but the go-between.

Mr. N. M. Joshi: Not if he is innocent.

The Honourable Sir Malcolm Hailey: My Honourable friend may judge between the innocent parties as he likes; I am putting the practical and common-sense view. There are many cases in which a go-between is employed to induce a girl to go away and live with a man whom she may subsequently marry. The immediate purpose, however, is not marriage, and yet that go-between, if the girl is under 18 years of age, will become a criminal and subject to 10 years' imprisonment. This is an immense extension of the possible scope of prosecution and even blackmail. Those instances struck one as indicating a great need of caution in this legislation. Again, when we look at the Indian Penal Code, we find that our law for what seem to be very much graver offences, indicates the age of 16 years as the age of judgment for penal purposes. Take section 372:

"Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Now that is a very much graver offence than what is contemplated here; in this case a man is actually selling a minor for purposes of prostitution. In the case contemplated by our Bill all that the man does is to act as a go-between between a girl of 16 or 18 as the case may be, and the man she is going to live with. Or again, take section 373. There again it is a question of buying a minor for the purposes of prostitution, or for any unlawful or immoral purpose. In all these cases the age of 16 years is laid down as the period at which a girl is assumed to arrive at years of discretion. I say that in view of the existing proscriptions of our Penal Code, it seemed to me illogical for the purpose of this offence only to raise the age to 18 years, and particularly when this offence in itself was being created for the first time with the result that we should be bringing a very large number of persons for the first time under the criminal law and under police action. We in the Select Committee referred, as Mr. Joshi has done, to the opinions of Local Governments in the matter. Now I was rude enough to put to Mr. Joshi a question whether the opinions of Local Governments which he was quoting referred to this section as drafted or not. He thought they did. I think they do not. What we put to the Local Governments was the question of complying with the Convention generally; and I think that the opinions will show that they viewed the Convention generally as intended to prevent a traffic in girls between different countries. Here we are considering a specific offence, namely, acting as a go-between or procurer between a girl and a man. I firmly believe myself that if this section were put to the Local Governments and they were asked whether, for the purpose not of preventing a general traffic in girls, but of penalising isolated acts of procuring, whether for that purpose

the age of 16 or 18 might be taken, then I think their opinion would not be so enthusiastic for the age of 18 or 21 as Mr. Joshi would have us believe. Even as it is, I may point out that in numerous cases, and, particularly I may note in regard to judicial officers, a note of caution has been struck. They obviously felt that the country is not yet ripe for an advance so great as that, and that is my own opinion. I put it that in all social legislation you must make your beginning, but your beginning should be a modest one, because, if legislation is to be effective, you must carry the common feeling of the country with you. Your legislature is nugatory unless you can do so. Your social laws must always be a little in advance of retrograde or uninformed opinion, but do not go so far in advance of it that public opinion generally will not follow you in giving effect to your Code. If you do that you are legislating in vain. Make your beginning; when you have established that beginning, build upon it as the public conscience increases and the public demand grows. That is the true path of social legislation, the one we have followed in Europe, and the one which I commend to this House.

Munshi Iswar Saran: I was rather surprised that the Honourable the Home Member should have uttered a word of caution and warning, because, if we accepted Mr. Joshi's amendment, we would be bringing in a lot of people not only under the criminal law of the land but would also be making them liable to police action. When I found this distrust or mistrust of the police, I wondered to myself if it was the Honourable the Home Member who was making that remark or whether it was some fire-brand who, as usual according to some of my Honourable friends was repeating his attack on the police. Sir, the Honourable the Home Member has been very frank. He has told us that he is looking at the question not from the point of view of high morality but from the point of view of common-sense. May I say, Sir, at once with equal frankness that I shall try to look at it more from the point of view of morality than of common-sense, if there be any conflict between morality and common sense as the Honourable the Home Member implied that there was. Now, the Honourable the Home Member says: "you have to be careful, the country is not ripe." Ripe for what? Where is the evidence that the country is not ripe? Is not the country ripe for the law that a procurer, a go-between, who tries to induce a girl under 18, should be prosecuted and should be severely dealt with? I would like to know the evidence on which this statement is based. The Honourable the Home Member or some other Honourable speaker said, there might be "a widow or a mother" under 18 years of age. Yes, there may be a widow of 15; there may be a mother of 15. Why not reduce the age from 18 to 15? There is no logic, I submit, in support of this view. Then, we are told that in some sections of the Penal Code the age is 16 and it would be illogical to make it 18 here. Might I repeat the observation made by my Honourable friend, Sir Deva Prasad Sarvadhikary, that if we introduce 18 here, it will lead to a change in the other provisions of the Penal Code. Sir, we have been told in very pathetic language, far too pathetic than the occasion demanded, of the unhappiness, of the calamity, that would overtake a particular section in the south of India. Sir, we are not legislating only for that section in the south of India; we have to remember that we are legislating for the whole of India. We are told of alliances that are formed in that particular section of the community. It is, Sir, nothing but concubinage shameful and bare-faced. Are we going to have any sympathy with this so-called alliance? It is said you are violating Hindu law and you are violating Muhammadan law. Sir, the Honourable gentleman is a distinguished lawyer and to that he adds the very

[Munshi Iswar Saran.]

unique qualification of being a Brahmin Pandit. I dare not contradict him on a point of Hindu law, but I shall only complain that he has not enlightened an unenlightened lawyer like myself as to how you would be violating the Hindu law by making procurers and go-betweens liable to be prosecuted if they induced a girl under 18 to cruelties of this kind. (*The Honourable Sir Malcolm Hailey*: "Cruelty?") I call it cruelty advisedly and I hope the House will agree with me when I say that a girl who, either by force or fraud or inducement, is made to live a life of shame, is subjected to cruelty unspeakable and horrible.

The Honourable Sir Malcolm Hailey: As the Honourable Member is referring to an interruption of mine, I may remind him that there is no question of fraud or force in the matter; the clause refers to inducing by any means. The Honourable Member is referring to the wrong clause.

Munshi Iswar Saran: That strengthens my case, Sir. So, I submit, Sir, that taking all these facts into consideration, it is very necessary that the age should be raised from 16 to 18. Anybody who tries to trifle with the virtue and chastity of girls under that age should clearly understand that that person, be he a man or a woman, is making himself or herself liable to be prosecuted under the provisions of this Bill which we are considering. I submit, Sir, that, in spite of my friend's dictum, there is nothing in the Hindu law which will be violated by the acceptance of the amendment which has been moved by my friend Mr. Joshi.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I shall very briefly answer my Honourable friends, Sir Malcolm Hailey and Mr. Rangachariar, and in doing so I shall not appeal to morality or common sense, though I have a very high opinion of both. I shall merely point out the error they have fallen into, from a legal point of view. The case that the Honourable Sir Malcolm Hailey cited before us is that of prostitution. Such cases do not come in under this clause. (*The Honourable Sir Malcolm Hailey*: "Why not?") Because here it is said "a person knowing that she will be forced or seduced to illicit intercourse." When a prostitute is procured she knows for what purpose she is going; therefore, prostitutes are excluded. (*The Honourable Sir Malcolm Hailey*: "Why?") Because a prostitute knows that is her occupation, she is not forced or seduced. Whom are we going to punish? We are going to punish the procurer. With regard to these fallen women, it is their ordinary occupation. With regard to that, the man who procures, no Court will punish him if the prostitute is taken for immoral purposes.

The Honourable Sir Malcolm Hailey: Why not?

Mr. J. Chaudhuri: Not, because, she goes over of her own will and is not forced or seduced to illicit intercourse. That is why clause 3 does not apply to such cases. Here it is where common sense comes in, and I suppose our Judges are not devoid of common sense. Now a woman who has lost all sense of shame and plies that infamous trade, with regard to her no Court will hold that taking such a woman for intercourse will be punishable under this law. With regard to *Devadasis*, the Hindu law recognizes the custom, at least in Southern India—a class who may take to licensed concubinage and who may live with men. Now I need not

remind my Honourable friend, Mr. Rangachariar, that the Hindu law is considerate in that respect. He himself admits that the offspring of concubines are also entitled to maintenance, and that it is not for purposes of common prostitution that these girls are taken. Hindu law, as I have often said is in many respects the most rational law on the face of the earth. Under English law polygamy is prohibited, but some people break that law. Hindu law on the other hand recognizes facts as they are, that people though they have wives sometimes keep concubines, and if a woman has lived with a man then Hindu law recognizes that and provides for the maintenance of their children. It is quite reasonable also that if these cases come under concubinage and if that is the custom in any part of the country, the *Devadasis* should not come under this particular section.

Rao Bahadur T. Rangachariar: Why not?

Mr. J. Chaudhuri: Because that is the custom. There is a custom connected with the temples that exists in Southern India, though so far as Bengal and other parts are concerned there is no such institution. Of course in the neighbouring province of Orissa there is something of the kind. But that Presidency and that Province have that institution peculiar to themselves. We need not be apprehensive with regard to them. But for them the helpless women-kind of the rest of India cannot be left unprotected. The Honourable Sir Malcolm Hailey mentioned the case of widows. It is particularly widows and poor women we wish to protect, and we wish to protect them in this way. We want to punish the procurer. Of course a person who seduces a woman, the Penal Code punishes that. Seduction also the Penal Code punishes, the Penal Code are not considering the provisions of that Act. Such individual acts are punishable under the Penal Code. Adultery is punishable. If a married woman is taken and taken for the purpose of illicit intercourse, then the law will punish the person who breaks the law, who commits the offence. We must keep here in view the fact that these specific acts are punished under the Penal Code irrespective of age; adultery is punishable irrespective of age; these acts are made punishable by the Penal Code. What we want to do by this legislation is only this, that the man who seduces an innocent woman from her house and leads her into a life of prostitution, a life of shame, we want to punish him and in this way we want to give protection to ignorant, indigent, uneducated and helpless women. That is the object of the Bill. We want to discourage the nefarious trade of prostitution. This section provides that and it is in the highest degree to the interests of the State that those men who want to take advantage of poverty, of helplessness, should be punished under this Act. We know there are numerous widows in this country who cannot marry. We would prefer the State to make some provision for them in a home, to provide for their general, industrial or vocational education, by which they can earn an honest living; and when the State is not doing that I think we should adopt by every means the suggestion of Mr. Joshi that up to the age of eighteen we should give them protection in this way against procurers. We should punish the procurer and thereby make the homes of many a poor people safe against these human harpies. I have nothing more to say and I ask the Members of the Assembly to support the amendment.

The Assembly then adjourned for Lunch till Ten Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Ten Minutes to Three of the Clock. Mr. President was in the Chair.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I must confess that Sir Malcolm Hailey's observations have made me a complete convert to his views. The point, Sir, for our consideration is whether the age of the girl ought to be 16 or 18 when the offence is committed. The material point in this connection is her consent—that is, in one case her consent, that is, the consent of the girl, is immaterial, and in the other case her consent after 18 years of age is material. Now, Sir, I appeal to my Honourable friends who belong to this country and who are conversant with the climatic conditions of this country to tell me whether after 13 or 14 years a girl can or cannot consider as to what is right and what is wrong for her. What girl is there in this country who at the age of 14 or 15 is not able to say that she is straying from the path of rectitude when she goes wrong? That being so, it is perfectly immaterial whether the age is 16 or 18. As Sir Malcolm Hailey observed, we are taking our stand here on a very high moral ground, especially those friends of mine who suggest the age of 18. Surely, Sir, nobody in the world has yet succeeded in improving the morals of a society by a stroke of the pen or by a Statute of Parliament. These changes will, of course, come in their due time; but let us not force the pace. Let us face facts as we find them; the personal experience of Honourable Members of this Council may not be enough on this point, but let us see things as we find them in all the big cities in India, as well as all over the world. I have travelled all round the world, and I have seen that, no matter what you will, this immorality is impossible to be stopped as long as human nature is what it is. That being so, Sir, as far as we Indians are concerned, let us take note of the facts as they exist at the present day in the city of Bombay, in the city of Benares, in the city of Calcutta, in the city of Delhi and in all important places. How many of our young men who are rich and in well-to-do circumstances go wrong? Or even men of 30 and 40 years of age? They are in a position to procure girls, and the poor servants or dependants of theirs who have to act as procurers are to suffer, if we are to pass this legislation. What is the reason? It is the established practice that servants everywhere have to obey their masters, and they do not consider it as an offence. This vice will exist as long as people are not educated enough. Under the proposed section you are going to punish the procurers; but the persons for whom the girls are procured will be the abettors. Are you going to punish them also? They are a very large body. Then again the police comes in for a lot of abuse. They are said to be corrupt but by raising the age to 18 we will be throwing temptations in their way. What policeman in the lower grades is there who will not succumb to a bribe of Rs. 100 or Rs. 200 when a big man is involved in the case? And the number of such wealthy men is very large, who will be committing this offence. That will be an additional temptation in the way of the police. It has been observed that this is a piece of social legislation. Let us be very careful that we do not go far in advance of the requirements of the country. Otherwise we will be impractical politicians, impractical legislators; we will make laws only to be evaded. What has happened in America? They went dry and enacted total prohibition. Have they stopped drink in that country? No, Sir. Just read the number of prosecutions that are launched there and the amount of consumption of liquor. In this way you will simply be increasing the amount of crime and nothing

more. Therefore, Sir, I entirely oppose the amendment moved by my friend, Mr. Joshi.

Mr. Jamnadas Dwarkadas: Sir, my Honourable friend, Sir Malcolm Hailey, expressed a doubt that if this question was put directly to the Local Governments, probably none of them would be prepared to express the opinion which they have expressed on the general question of traffic in girls. With all due deference to my Honourable friend, I beg leave to differ from him. I feel certain that if the matter was referred to the Bombay Government, at any rate that Government's opinion would be in favour of Mr. Joshi's amendment. For I do not know whether the House is aware that only recently in Bombay, at the instance of a Member of the Bombay Council, who happens to be my own brother, a committee was appointed, with our Honourable colleague, Sir Jamsetjee Jejeebhoy as Chairman, to go into the whole question of prostitution and other similar questions in Bombay, and that committee has submitted a report which I commend for reading not only to the Honourable Members of this House but also to the Treasury Benches. One thing seems to have prominently come out in that report and it is this. That the people most responsible for these heinous offences are that class of people who are known as procurers or go-betweens, for whom we have heard so much sympathy expressed. If it was sympathy expressed for this reason, that you have among human beings men who do not know what it is to be men and who believe in going wrong and who believe in treading the downward path, if it is sympathy of that kind, then certainly we have our sympathy with the class; but if it is sympathy of the kind which aims at giving protection of one kind or another to that class of beings, then I dare say that that sympathy is misplaced. It is this class that has no claim for sympathy whatsoever from any decent society of human beings. But,

3 P.M.

Sir, I was emphasising the fact that even in the opinion of that Committee, the class of procurers is the class who are the most to blame. One of the Members of the Committee, I know, took upon himself the duty of investigating with the help of the police the question, and he came across many girls of 18, 19 or 20 who complained to him that at the immature age of 16 all kinds of temptations were placed in their way by those who are called procurers, and once having gone into that line, they could not see any way whatever to extricate themselves from the position in which they were placed. If therefore you could raise the age to 18 years you would be saving a large number of girls from falling victims to the devices of those who live on playing up to the vices of that class of zemindars, landlords and wealthy people for whom also we have unfortunately heard sympathy expressed in this House. Well, Sir, this class of procurers deserves absolutely no sympathy at our hands. If the whole purport of my Honourable friend, Sir Malcolm Hailey's arguments was that, after all, the procurer does not do anything wrong, he only does what he is asked to do, then I think I have made out a case against that argument, because here we have the opinion of a Committee which went into the whole question which found that it is this class of procurers which is the most to blame and which ought to be dealt with most severely

The Honourable Sir Malcolm Hailey: I do not wish to interrupt my Honourable friend, but could he quote anything in which either I expressed sympathy with the procurer or suggested that he should be protected because he did only what he was asked to do? I have taxed my memory, and I cannot remember having said anything expressing sympathy with the procurer.

Mr. Jamnadas Dwarkadas: I hope my Honourable friend will not misunderstand me

The Honourable Sir Malcolm Hailey: I don't think I said anything showing the slightest sympathy with the procurer.

Mr. Jamnadas Dwarkadas: Being a young man, I was prepared to hear from my own countrymen who are advanced in age in this House what they said, I was not at all surprised to hear what my Honourable friends, Mr. Rangachariar or Mr. Pyari Lal said, but believe me, Sir, what fell from my Honourable friend, Sir Malcolm Hailey, caused a good deal of surprise to me, because he said that we are going too far and we are taking jumps so far as social legislation is concerned before the country is ready for it. That is an argument which I am not prepared to accept, nor do I hope for the very self-respect of Indians this House will be prepared to accept. Are we taking a jump in the matter of social reform when we are doing a thing which is being effected none too soon? This reform is overdue. That in this country girls below the age of 18 should be seduced for immoral purposes by that hated class of procurers and that we should connive at it, is a thing which seems to me to be absolutely indescribable; I mean we are not legislating too soon in this matter, and we shall be doing only that which is right if we carry Mr. Joshi's amendment. Now though the arguments of Mr. Pyari Lal have not surprised me, they have caused me pain; so also have the arguments of my Honourable friend, Mr. Rangachariar. They said that we shall be placing an obstacle in the way of these zemindars. What an argument to use in a House like this, that by trying to prevent girls of tender age from being seduced by people who live on that kind of thing, you are placing an obstacle in the way of the zemindars. Well, if you are going to place an obstacle by this amendment in the way of zemindars^e, I wish we could have done much more than that, and if the effect of passing this amendment was that some day or other,—I hope it will be very soon indeed,—we shall pass further legislation which would also deal severely with those who are guilty of having intercourse with girls of tender age, I think we shall have taken a great step forward of which the House should feel very proud indeed. But to use the argument that we have not done anything to provide against illicit intercourse and only now we are trying to deal severely with procurers, to use that argument for putting off this legislation seems to me to be an absurd argument. I hope therefore that this House will accept the amendment of Mr. Joshi.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I intended to record my silent vote on this question which is agitating the House, but my friends would not let me do so and they press upon me the necessity of stating my own views on this subject. On the last occasion when this question came up before this House, the question was as to whether we should, in endorsing the International Convention, adhere to the age of 16 or go to 21, as was suggested by my Honourable friend Mr. Joshi. On that occasion I suggested a compromise, and I pointed out that it would be a fairly good compromise if we adopted the age of majority, the age of 18, as a fair working basis for this International Convention. I find that reference has been made by one Local Government, the Government of Burma, to this compromise. Now, Sir, what was passing in my mind on the last occasion when I addressed this House on this subject was this. I then pointed out that the Indian law of majority fixes the age of nonage up to 18, and on the completion of the 18th year, a boy or a girl was assumed to have reached the age of discretion. Consequently, I pointed out that that should

be the age for all purposes including the purpose we have in view at the present moment. I quite appreciate the very weighty objections which the Honourable the Home Member has pointed out to adopting such a course, but, on the other hand, the Honourable the Home Member could not be oblivious of the fact that in embarking upon this piece of legislation we are not merely protecting the girl but also her guardian and parents. In a celebrated English case Earl, Chief Justice, referring to a Statute on which our sections under discussion were modelled, pointed out as follows. He said: "The statute was passed for the protection of parents and for preventing unmarried girls from being taken out of the possession of their parents against their will, and it is clear that no deception or forwardness on the part of the girl in such cases can prevent the person taking her away from being guilty of the offence created by this section-". Consequently, as the Chief Justice of England pointed out, it is not merely the girl herself that we have to protect but we have also to protect the parents who have the lawful custody and guardianship of the girl concerned. Now let me illustrate by way of example a situation that might be created by the case pointed out by the Honourable Mr. Rangachariar. I will not deal with the light side of the picture he has drawn that zemindars in Southern India are in the habit of taking girls into their custody before they are 16 and it will be a very great hardship to the parents if they are not able to dispose of their girls before they attain that age. That is an argument to which I do not wish to invite the serious attention of this House for a single moment. But I will assume for the sake of argument that in Southern India such a practice exists. [*A Voice (from some of the Madras Members): 'No.'*] Well, I am glad to hear that it is not a universal practice. But assume for the sake of argument that in isolated cases parents and guardians are tempted to dispose of their minor girls to rich zemindars with whom they contract alliances. Now, take a very simple example. A girl of 17 is taken out of the lawful guardianship of her father or her mother and is sold to a rich zemindar. He either has illicit intercourse with her or keeps her for the purpose of having such illicit intercourse. Reference has been made to the action of the police and the possible abuse of power of a member thereof. Assume, for the sake of argument, that the parents prosecute the zemindar for wrongful restraint and wrongful confinement, offences both punishable under the Indian Penal Code. The case goes before the Court and the girl is examined and she says she was a consenting party to her own abduction. Now, the age of majority being 18, no person is said to be *sui juris* or capable of giving her consent before she attains that age. Therefore, her consent goes for nothing. A girl of 17, if she is found in possession of a zemindar, would therefore expose the zemindar to the punishment of either wrongful restraint or wrongful confinement, her consent being regarded as absolutely immaterial. Now, then, Sir, if she was considered unable to contract for legal or illegal purposes—the law takes no note of the illegality of the purpose—if she was unable to contract under the statutory law, which is the law of the land, before she attains the age of 18, the zemindar stands to be convicted of either wrongful restraint or wrongful confinement despite her consent, despite the fact that she was sold or disposed of by her guardian. That is the position. Now, my submission therefore was and it still is that we cannot fix arbitrary ages for one purpose when the law of majority in this country has fixed the age at 18. The Honourable the Home Member has pertinently pointed out that in these cases we must not go in advance of the times. That is perfectly true. Under the present statutory law or at any rate under the law which existed when the case I have referred to was decided, the age of

[Dr. H. S. Gour.]

consent for the purpose of illicit intercourse under the English statute was 16 years and the framers of the Indian Penal Code copied the English statute and fixed the age at 16 which is the age beyond which the woman was free to contract. But the International Convention to which reference has been made has fixed the age of minority as the age requiring protection and, in consequence of the English age of majority being 21, it follows that England, as a signatory to this Convention, would very soon raise the age from 16 to 21. Now, so far as we are concerned, we have taken upon ourselves the liberty of modifying that Convention by fixing any age between 16 and 21. On the last occasion, when this question was debated in this House, I refer to the discussions in Council, Sir William Vincent pointed out that, whether it is to be 16 or 18 or any other age must largely depend upon the opinions collected from the Local Governments. These opinions have been collected and the Honourable Mr. Joshi has pointed out that these opinions largely subscribe to the amendment which he has moved before this House. Consequently, the one condition which was laid down on the last occasion when this question was discussed by this House has been fulfilled. All the opinions of Local Governments have been collected. The Calcutta High Court—a very important body—have stated that they abstain from making any comments on the question of age. It is a question of public policy. The other High Courts have more or less expressed themselves on the same lines. The question being then one of public policy we have to consider as to what is in consonance with public policy in fixing the age for consent and inferentially in fixing the age for the protection of minor girls. I think we must not forget the fact that in cases where immorality is concerned, and immorality after all is a thing which we have to guard against, a girl of 16 is too immature to form an independent judgment as to what would be her ultimate fate if she is disposed of, it may be, to a gilded zemindar. When she attains the age of discretion and acquires maturer judgment, she may regret the life of infamy and shame to which she has been consigned by her guardian in a moment of distress or in a moment perhaps of cupidity. I therefore suggest that this House would not be going wrong and would not be unduly forcing the pace of social legislation if it fixed the age at 18. I have no doubt that there are objections to fixing the age at 18 and some of them have been stated very cogently by the Honourable the Home Member in opposing this amendment. I shall very briefly advert to his arguments. The first point was that we must go with a certain degree of caution. But I ask, Sir, what is the measure of caution required for fixing the age at 18 as against 16? After all, it is a matter of 2 years and a girl would not gain very much in judgment and discretion within those 2 years, though there can be no doubt that there would be a material gain if we fixed the age at 18. Then, it has been said that there are certain backward people and an example was given of the Bhils in certain parts of India—who would be very prejudicially affected by it. But we know as a matter of fact that, when the Penal Code prescribes a certain age, it rapidly filters down not merely to the common populace but even to the backward classes. One such case presented in the Courts will immediately set the Bhils and the Gonds to think for themselves that the age of majority which is the age of 18 is the age below which it would not be right to tamper with either the girl or the girl's parents. Then, it has been said that the police in a case of this kind would be exposed to the additional temptation of prosecuting cases which might lead to failure of justice, and which might also lead in some cases to

false prosecutions. Now, Sir, I was not impressed by that argument. If the police are to prosecute cases there is as much danger of their prosecuting cases when we fix the age at 16 as when we fix it at 18. After all, it is a matter, as I have said before, of 2 years and that certainly should not make much difference. We must not forget also in this connection that what was fixed by the Conventions is the age of minority, and it was distinctly then pointed out that the age of majority in all countries differs. My first point therefore is, how can we go back upon the Statute law which has been in existence for a long number of years which fixes the age of majority as 18 and how can we make a distinction between the age of majority in the case of civil consent and reduce that age of majority in the case of consent to do what after all would be a criminal act? Then it has been said by certain speakers including my friend, Mr. Pyari Lal, that we cannot stamp out immorality by legislation. That is perfectly true. We cannot also stamp out crime by legislation. But is that any reason why we should not legislate against immorality any more than we should not legislate against thieves and robbers, dacoits and murderers? The fact that crime will persist in spite of legislation is no reason why we should not legislate against it. All we can hope for is that there will be a reduction in crime and it will be a warning to would-be criminals that if they offend against the majesty of law they stand to be prosecuted and convicted. That is all that this House is called upon to look at. We may in some cases defeat the very purpose we have in view. How often do not criminals escape? How often would not procurers escape under our legislation? But all human institutions are imperfect. The legislation that we propose in this House is not professedly perfect. All we can hope for is that if we fix the standard of age which is proposed in this amendment, we shall be able to purge society of a large number of people who profit by the act of immorality of immature girls and it will tend to social purity and to the levelling up of a condition of things against which Members of this House should certainly raise their voice. Well, Sir, I am not an optimist in this matter. I do not suggest, and let no one ever feel that any Member of this House suggests, that we shall be stamping out prostitution from this land by merely legislating against the procurers. Those who have read ancient history will remember what drastic provisions were then made against the growing immorality of that day and yet immorality has survived all legislation. That it will survive our legislation is a matter upon which I entertain no doubt. All we can hope for is that we shall reduce the chances of seduction of the character we are providing against and that should be our sole reward if we push through this amendment and place it upon the Statute Book. On these grounds, Sir, I support the amendment.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I wish to refer briefly to some of the arguments that have been used by several Honourable Members during the course of this debate. In the first place my Honourable friend, Dr. Gour, suggested that because the age of majority under the Indian law was 18, so if a girl of 17 even with her consent was taken away by a Zemindar, the question of her consent was immaterial. I think, Sir, that my Honourable friend is mistaken in that respect. The offence which he described to us would have come within the provisions of section 366 read with section 361 of the Code, and the age in that case under which the consent of the girl would be immaterial is under the present law 16. Further, my Honourable friend suggested that the age of majority for civil purposes was 18 and he asked

[Mr. H. Tonkinson.]

how can we reduce this for criminal purposes? Sir, 16 is the age throughout all these sections of the Code. It is the age in section 361, it is the age in section 372 and it is also the age in section 373. As was pointed out by the Honourable the Home Member, the offence which we constitute by this proposed section 366A is really, if I may say so, not such a serious offence as these other offences. Take the case of section 372—selling for prostitution and so on. The present section in fact does not refer merely to cases of procuring for becoming a prostitute. It refers to cases of single acts of sexual intercourse. Then my Honourable friend, Mr. Chaudhuri, suggested that in this section we were punishing a man who induces a girl to go to a place where she may be seduced to illicit intercourse with another person, and he went on to say that the person who seduces her can be punished under another section of the Code. I should like to know what that section is.

Mr. J. Chaudhuri: I did not say that.

Mr. H. Tonkinson: That is what I took down.

Mr. J. Chaudhuri: The object of this Bill is to punish the procurer. For the act itself, for seduction, the Penal Code provides punishment. I should like my Honourable friend to note the difference. It is the procurer who induces such crime, whom it is contemplated to punish.

Mr. H. Tonkinson: My Honourable friend, Mr. Chaudhuri, has now supported my impression of what he said. Section 366 does not deal with seduction nor with the seducer. That section deals with the abduction of a woman. Of course, the case of kidnapping from lawful guardianship with these intentions will also come within section 366. But, Sir, there is no section of the Indian Penal Code at present dealing with the simple offence of seduction. (*An Honourable Member:* "There is in the case of married women.") Of course, if it is a married woman, that is a different matter. Further, references have been made to the suggestion of the Leader of the House as regards the undesirability of increasing the scope of police action. Now, Sir, in making his remarks, I do not think there was ever any intention of suggesting that Government distrusted the police. What was meant was that they would prefer not to place them in positions where they would be subject to increased criticism. That would be the case by such an amendment of this clause as is now under consideration. There is one thing which I should like to read to the House and that is an extract from the report of the delegates of India to the Second Assembly of the League of Nations. The Indian representative at the Second Assembly of the League of Nations was the Right Honourable Srinivasa Sastri. In dealing with the discussion upon the particular Convention in connection with which we are now proposing legislation it is said in the report: "In the course of the discussion Mr. Sastri made it clear that India could not accept the age limit of 21 now proposed for the protection of girls. India's internal legislation fixed this age at 16, and having regard to early maturity in tropical countries, that age could not be expediently exceeded, while it would obviously be undesirable to have a special higher limit for the benefit of a very limited number of non-Indians." We are following in the Bill the suggestion which was made in the Assembly of the League of Nations by the Representative of India. My Honourable friend, Mr. Jamnadas Dwarkadas, suggests that we must not have any sympathy at all with the procurer. I hope no one assumes

that the occupants of these Benches have any sympathy with the procurer. (*Mr. Jamnadas Dwarkadas:* "I never assumed that.") This section, Sir, goes a long way beyond procuring for prostitution and that is the main reason why we think that it is undesirable to increase the age from 16 to 18. My Honourable friend, Dr. Gour, said that we cannot stamp out crime by legislation, but, Sir, we can in this House manufacture criminals and that is what we will be doing (*Voices:* 'No,' 'no.') to an extent which, in view of the conditions in India, gives cause, I think, for very grave concern if we increase the age from 16 to 18 for all the acts which are covered by this proposed section.

Mr. K. Muppil Nayar (West Coast and Nilgiris: Non-Muhammadian Rural): Mr. President, it is highly immaterial to me whether the age is fixed as 16 or 18. Even if the House prefers to have it raised to the modest age of 120, that is a matter for the Honourable Members and I do not care. But what I wish to say is to offer a word of protest against the attack on zamindars and landlords. I do not see any reason why they should be singled out to bear this calumny. I admit there may be black sheep in this class, but we find them in all classes, including lawyers.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I had no idea of speaking on this question, but when I heard some of the speakers here and spoke to many of them in the library, I made up my mind to speak on this question. I was surprised to hear learned men like Dr. Gour and other gentlemen say that they have not got protection for the minor boys. All these things are going on. We have got protection for minor girls. We know very well that unscrupulous elderly ladies also stoop to that. The same offence is committed by them as by men. I agree with Dr. Gour that the age should be raised to 18. It is strange that as far as property is concerned the law is very strict in stipulating the age as 18, while as far as her virtue is concerned, as far as her future is concerned, her age should be fixed at 16. Some gentlemen have said that girls in this country attain maturity earlier. I do not agree with them. Though girls become major, what about their education, their surroundings and other things? I think it will be a great slur and a standing blot on our administration if we do not raise the age to 18. We must sympathise with them. On them depends our future. They will be the future mothers of this country, and I deplore that the age is not raised from the political point of view and also from the point of view of the constitution of the future citizens. We know how far people have suffered from that. I do not know for certain what is the real condition in Bombay, but I have read in some paper that the death-rate of infants is very deplorable, and I think it must be due to this, namely, that girls get married very early. As administrators, as representatives of the people, I think it is the sacred duty of everybody to support this amendment that the age should be raised to 18, both from the point of view of politics and morality. As regards the remarks of some of my Honourable friends passed against zamindars, I think they did not mean those remarks against zamindars only; but if they did mean them, I say that the zamindars are not so bad. There are bad people all over the world. Zamindars are not so bad, because they have got much work to do. You will find a good many bad people among wealthy men who have no exercise for themselves. With these remarks, I strongly support Mr. Joshi's amendment that the age should be raised to 18 and I hope that even the official Members will agree to that.

Mr. President: Amendment moved:

"In clause 3 in the proposed section 366A, for the word 'sixteen' substitute the word 'eighteen'."

The question is that that amendment be made.

The Assembly divided:

AYES—43.

Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Ahmed, Mr. K.
Asad Ali, Mir.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bishambhar Nath, Mr.
Bhargava, Pardit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Faiyaz Khan, Mr. M.
Ghulam Sarwar Khan, Chaudhuri.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Jejeebhoy, Sir Jamsetjee.
Joshi, Mr. N. M.
Lakshmi Narayan Lal, Mr.
Lindsay, Mr. Darcy.
Mahadeo Prasad, Munshi.
Mudaliar, Mr. S.
Mukherjee, Mr. T. P.
Nabi Hadi, Mr. S. M.
Nag, Mr. C. C.
Neogy, Mr. K. C.
Ramji, Mr. Manmohandas.
Rhodes, Sir Campbell.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Schamnad, Mr. Mahmood.
Singh, Raja K. P.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Stanyon, Col. Sir Henry.
Venkatapatiraju, Mr. B.
Webb, Sir Montagu.

NOES—40.

Agnihotri, Mr. K. B. L.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Crookshank, Sir Sydney.
Das, Babu B. S.
Faridoonji, Mr. R.
Fraser, Sir Gordon.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Kamat, Mr. B. S.

Latthe, Mr. A. B.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nand Lal, Dr.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sams, Mr. H. A.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu Ambica Prasad.
Subrahmanayam, Mr. C. S.
Tonkinson, Mr. H.
Tulshan, Mr. Sheopershad.

The motion was adopted.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I have got a very difficult task now before me. The amendment I have proposed is:

"In clause 3 in proposed section 366A for the words 'to do' substitute the word 'does' and in the same clause omit the words 'or seduced' wherever they occur in proposed sections 366A and 367B."

I do not move the first part to substitute "does" for "to do." I shall deal with the other part of my amendment, namely, to omit the words

"or seduced." I wish to make it clear to the Honourable House that I do not yield to anybody in this House in my desire to see that the procurer is punished. I do not wish to support such a heinous crime if it really is committed. Well, Sir, we are a body here sitting as legislators, and we should do what is practicable and what is workable, and this must be a reasonable and workable thing. Sir, it is laid down that whoever induces any minor girl to be seduced to illicit intercourse with another person shall be punished, it is also said that the procurer alone is to be punished and not others. Sir, the original object of this Bill was for the suppression of the white slave traffic, which meant that it wanted to stop trafficking in white slaves, i.e., Europeans or white girls from a foreign country. The section as it appears in Penal Code has really lost that object and it applies now to India and becomes a part of the Indian Penal Code. I submit, Sir, if this is allowed, it will be really a hardship in India for reasons that I am going to place before the Honourable House. Sir, if it is taken that seduction is to be punished, or the procurer is to be punished, he is punishable under section 366 of the Indian Penal Code and I think there will be absolutely no necessity for having this amendment. Section 366 says:

"Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse . . ."

If that be the object, such person is convicted under section 366. We have got other sections, regarding enticing away married women and so on. Sir, the object is to punish a procurer so that he may not carry on his nefarious trade and it is for this purpose that this amendment is proposed. I submit really this does not affect India. I do not think in a country like India such actual trafficking in girls exists because Indian society, whether Hindu or Muhammadan, is such that it always takes care to get its girls married. Under the Hindu law it is a religious injunction that the girls must be given in marriage, and you will find in the higher societies such as Kshatrias, Brahmins and others that they get their girls married at a very early age, at an age which would be surprising to Europeans. The ninth year is described by Manu to be the best year when a girl should be given in marriage. Practically before 12, before a girl attains puberty, she must be given in marriage. That is the Hindu idea of marriage. Also we find among our Muhammadan friends, although some of them marry after the girls attain puberty, most of them marry their girls at an earlier age. I am speaking of the picked society of Muhammadans, where the marriage law is so much in vogue that there would be no such fear of any girl being seduced, and there would be no such traffic in girls as to be supplied for immoral purposes. But even assuming that there are societies and people of lower orders living in India, where seduction of girls is possible, I submit, Sir, that really if you do not punish the seduction or the illicit intercourse with a girl, I see no reason why the procurer should be so vehemently condemned in this House. Sir, I would point out that you, Sir, want meat, Honourable Members want meat and the country wants meat. That is why the butcher keeps a stall and sells meat. Sir, we all want meat to buy, we relish it and we never condemn ourselves for eating it. Because the butcher supplies it for our convenience and for our requirements, we want him to be punished, why? Is it not the same in this country with these women, whether you call them dancing girls, or *devadassies* or ordinary *dassies* or prostitutes. It is not an unknown thing. I think all Honourable Members have seen everywhere this kind

[Mr. B. N. Misra.]

of women. (*Cries of "No, no."*) You pass through any street and you will find them, you find them existing in very large numbers. They have existed from time immemorial; they have not come into existence under British rule or under Moghul rule; they have existed perhaps from the times spoken of in the *Puranas*. They are regarded as a necessity for religious sacrament, they are regarded as a necessity even for marriage and other parties and for singing songs in invocation of God. Perhaps every Member of this House might have heard of ceremonies in temples of . . .

Mr. President: The Honourable Member will discuss his amendment now.

Mr. B. N. Misra: I am only pointing out, Sir, that girls have been necessary for the purpose of certain religious ceremonies. (*Cries of "Withdraw, withdraw."*) I come, now, Sir, to (*Cries of "Withdraw, withdraw."*) Mr. Kinney the eminent English lawyer who in his Book on Criminal Law at page 143, says:

"Hence, a voluntary illicit intercourse of the sexes, even though it may take the form of mercenary prostitution or of an adulterous violation of marital legal rights, furnishes no ground for criminal indictment."

That is the state of things in England. Even in cases of divorce, we find that the seducer is not punished; he appears as the co-respondent and is liable civilly and not criminally. Much has been said about girls being disposed of to Zemindars and Rajas. I submit, Sir, it is not a fact. Neither Dr. Gour nor anybody else has really represented the true state of things.

Dr. H. S. Gour: I rise to a point of order. I never made any statement that girls were disposed of either to Zemindars or to Rajas.

Mr. B. N. Misra: Zemindars never get any girls from procurers, as has been said. What happens is this. When Zemindars or Rajas marry, their wives or Ranis bring with them some girls as maid servants; that is how they come to live in Raja's palaces. Such a thing as procuring of girls does not exist and no gentleman, whether he be a Zemindar or a Raja or any ordinary man, would ever adopt such a nefarious means to procure girls. (*Cries of "Withdraw, withdraw."*) I am sorry, Sir, my friends who have been staying in towns do not know what happens in the mufassil and in the country. I will just tell you, Sir. This Penal Code will apply all over India, and, as the Honourable Sir Malcolm Hailey pointed out to you, to many advanced tracts occupied by Bhils and Gonds, etc. I was Public Prosecutor in the Agency Tracts and I know among the Khonds they have a system whereby the grown-up men and women live in their houses and all the grown-up boys and girls from the same village or from three or four villages go to a particular house called *Dhangar* house. The unmarried boys are called *dhangars* and the unmarried girls are called *dhangris*. Supposing a *dhangari* says to a girl friend of hers "Let us go to a certain place and sing songs." Suppose she spends a night there and does what she likes, are you going to punish her because she called her friend to have a dance or sing a song? (*Cries of "Shame, shame."*) Surely you will not say that such a girl who has asked her girl friend to go to a *dhangar* house should be punished for illicit intercourse. Why should we think so much about these people who are able

to take care of themselves? Surely this House is not going to maintain all the people in the street or is not going to make provision for them. (*A Voice: "You wait and see"* and *cries of "Withdraw, withdraw."*)

Then, Sir, we find another point. Under section 366B the age is fixed at 21. I do not think really that girls from foreign countries are so dull or so low in intellect that they do not know what they are about. Why should the seducer be punished in such cases, and where is the element of seduction? The girl is quite intelligent and understands where she is going. Perhaps she goes for her best interests. So why should you protect and why should you punish the seducer of a girl who is, say, 20 years of age? Do you really think that the man has committed any offence when a girl of 20, with full deliberation, comes with him to any place? (*Loud cries of "Withdraw, withdraw."*) (*Sir Jamsetjee Jejeebhoy:* "Now you have made your speech, withdraw.") Sir, this House has not really realised where the shoe pinches. With these words I move my amendment.

The motion was negatived.

Khan Bahadur Sarfaraz Hussain Khan: Sir, the amendment which I move is that in clause 3 in the proposed section 366A for the words "and shall also be liable to fine" substitute the words "or with fine or with both."

It is simply giving an option to the Magistrate. I will give an example, say, of a rich man. He has a young son and, somehow or other, under the influence of some passion or through an act of indiscretion, he commits the act. Now if no option is given to the Magistrate in the case, this young man will be sent to jail. In that case simply for an indiscreet action of his, his whole life will be ruined. That is why I suggest that the punishment should be imprisonment or fine. We all know what India thinks about going to jail. For example, an educated man goes to England and when he comes back he does some indiscreet act of the kind and you send him to jail, his whole career will be ruined. If, on the other hand, you give the option to the Magistrate he may be let off by paying a fine. His father or somebody can pay that for him. So I move that this option may be given to the Magistrate so that one's career may not be ruined simply for an impulsive act of his. Sir, I move my amendment.

The Honourable Sir Malcolm Hailey: The reason why we have adopted this form of words, namely, "and shall also be liable to fine" is because we desired to bring this section into line with all the parallel sections in the Indian Penal Code. If you take all the sections from 363 up to 376, you will find that a similar form of words is used. I think the only exception is section 374. For this reason we thought that the proper punishment for this offence was imprisonment and that the Magistrate should, in addition, have discretion to impose a fine.

As regards Mr. Sarfaraz Hussain's particular case, I would remark that under our revised Code of Criminal Procedure, if there is a young man under twenty-one years of age who falls into an error of this description, he could be placed on probation instead of being sent to prison.

The motion was negatived.

[Sir Campbell Rhodes.]

from making this change. It is not desirable, I think, that we should have Statutes on the book which can be so easily evaded, and therefore I should like to move that the Bill be circulated for public opinion.

The Honourable Mr. C. A. Innes: Sir, these lights into the discussions of the Associated Chambers of Commerce are very interesting, but I do not think that the debate in the Associated Chambers of Commerce on one particular item in this Bill affords this House any reason why we should circulate this Bill. I may point out that in 1922 we circulated very full papers about this proposal to increase the duty on these instruments. We circulated to all Local Governments a letter we had received from the Bengal Government and attached to that letter was a report of the Committee appointed by the Bengal Government to consider the question of revising the duty on these instruments. All Local Governments were specially asked to consult Chambers of Commerce; they were asked to consult them on two points, one, whether the duty on these instruments should be raised, and, two, if so, to what extent. Now practically all Chambers of Commerce said "Oh, no; on general grounds we do not approve of the duty on these instruments being raised." Local Governments reported that they recognised that it was not altogether to the liking of the business community that the duty on these instruments should be raised; yet they pointed out that the financial needs and exigencies were very great and thought this was one of the least objectionable forms of getting the revenue which they required. Now, Sir, the Chambers of Commerce have already had an opportunity of expressing their opinions on these proposals, not in the exact form they are now, but on the proposals generally; and I submit at this stage the Chambers of Commerce have no right to demand that we should again circulate the Bill. Circulation means that the Bill will lapse, because there will not be time for replies to be received in time for the Bill to be passed into law during the life time of this Assembly.

The next point I have to make is that in practically all these proposals with the exception of that relating to demand promissory notes, we have followed the proposals of the Bengal Committee, and I would like to point out that a member of that committee was a very distinguished member of the Bengal business community, namely, Sir Campbell Rhodes' own predecessor in the Presidentship of the Bengal Chamber of Commerce.

The third thing I want to point out is that this Bill is a very small Bill indeed; it consists of only two clauses; it has been before the House for a week or ten days; every Chamber of Commerce has had ample opportunity to send up to its representatives here its criticisms on the Bill, and this is the proper place for considering them; it is proper that this Assembly should decide here and now whether our proposals are proper or not. I submit that there is no reason at all why we should delay the passing of the Bill for a further very unnecessary piece of circulation.

One more point and I have done. I think I am correct in saying that this debate which took place in the Associated Chambers of Commerce was merely a debate whether the duty on demand promissory notes should be raised. I do not think it was a debate on whether the duty should be raised on all the instruments dealt with in this Bill. Sir Campbell himself has given notice of an amendment in regard to demand promissory notes and I think that that is the main point which he has put to the House. Sir, I oppose this motion.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, I support the amendment moved by Sir Campbell Rhodes. It is not a question between the Bengal Chamber of Commerce and this House, or between the Bengal Government and this Assembly. It is a question of altering a piece of law which has been familiar to the people at large and every one even in the remotest corners of the country has come to associate the one anna stamp duty with promissory notes to any amount. Now, if you are going to alter the law without giving the country an opportunity of knowing it, without spreading this idea about the country and making it familiar with the idea that it is going to be raised to two annas, there will be very great danger. Men, who till now believed that one anna was quite enough for affixing on a document which covers the value of thousands of rupees, would not know the alteration; it is not as if every one in this country reads newspapers or knows the progress of the legislature from day to day. Therefore, on that point, without entering into the merits of the case, without entering into the question whether any substantial amount would be secured to the State in the way of additional revenue by virtue of this alteration, I think it is a very fair proposal, which is contained in the amendment, that the Bill should be circulated and by that means the country will come to know of it. I know, if it is sent out for circulation, it may not be possible to get this passed during the life time of this Assembly. It is possible it may not be passed. But if you are prompt and if you want to pass it before the end of the year, I think it can be done; I do not suppose this Assembly is going to die before the end of this year. But whether you are able to pass this during the life of this Assembly or not is not the question. The question is that this is a very substantial change in the every day life of the people, and I deprecate any haste in this matter. I would ask all Honourable Members to think what the villagers in the villages outside, who have relied on this one anna stamp as being able to secure a document of legal validity for thousands of rupees, would think of this suggested alteration.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): I also rise, Sir, to support the amendment moved by Sir Campbell Rhodes. Everywhere in the country it is becoming a growing practice to have promissory notes executed instead of bonds. Under the law as it exists to-day, if the promissory note is not properly stamped, it cannot be validated in future, with the result that people being ignorant of the passing of this law in this House will suffer a lot and there will be much discontent among the commercial communities and the trading people in the country. The Honourable Mr. Innes has pointed out that the Bill has been lying in the House for about ten days and that there has been no condemnation of this Bill or any suggestions to this effect by any Chamber of Commerce.

(At this stage Mr. President left the Chair which was taken by the Deputy President, Sir Jamsetjee Jejeebhoy.)

We are not concerned, as my Honourable friend, Mr. Subrahmanayam, said, with the Chambers of Commerce, but we have also to look to the other people, to the various trading communities in the provinces which have no Chambers of Commerce. For instance, in the Central Provinces there is a vast trading community, but unfortunately they are not represented in any Chamber. Moreover, the period of 10 days cannot be regarded as sufficient for people all over the country to know about the

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nature of such a Bill as this and therefore there will be no harm whatsoever if this Bill were circulated for public opinion.

Now as regards the other argument of the Honourable Mr. Innes that if this Bill were postponed it would not be possible to have it passed in the current Session or during the lifetime of this Assembly, I have not much to say about it, but I do not think it desirable that a Bill of such importance should be passed by this House before the public and the country have had an opportunity to know about it or to criticise it or to offer suggestions on it. With these few words, I have much pleasure in supporting the amendment of my Honourable friend, Sir Campbell Rhodes.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, with regard to the argument that if this Bill is not taken into consideration here and now it runs the risk of lapsing and it is not likely to be passed during the lifetime of this Assembly, I do not feel much impressed. I do not see why the Honourable Mr. Innes is so enamoured of this Assembly. Our successors will be in office next year, and the Assembly will then be in Session and it does not matter what the personnel of the Assembly is. His Bill will be passed by the Assembly if he convinces the Assembly for the time being that it is a measure which must be placed on the Statute Book. Consequently, the question that it should be passed during the lifetime of the present Assembly and that its passage should not be postponed because this Assembly will come to an end is not an argument against its postponement.

The second argument which the Honourable Member for Commerce raised was that the Bill had been before this House for 10 days. Now, Sir, the Honourable Member will sympathise with the labours of the Members of this House which have of late been very arduous. He will at any rate feel that the Members of this House have not been idle during the last 10 days. The arduous work that the Members have been doing from day to day is the best argument why Members could not examine the details of the Bill of which the Honourable Mover now asks this House to go into consideration.

Then it has been said that the Bengal Chamber of Commerce, and the Karachi Chamber of Commerce of which my distinguished friend, Sir Montagu Webb, is a Member, have opposed this measure. I think there is a good deal of argument on the other side of the question. The Honourable Mr. Subrahmanayam, speaking for the public at large, and not for those associated with the various Chambers of Commerce has pointed out that the promissory note is associated with the stamp duty of one anna, and for a very long time past the public have come to regard this instrument as an extremely convenient mode of transacting commercial business. The graduated duty that the Bill seeks to introduce instead of the fixed duty of one anna is one upon which the public at large, as distinguished from the commercial community of Bengal, Bombay and elsewhere, are entitled to be consulted. The Honourable Mover has not vouchsafed any information as to how far the public at large, as distinguished from the various Chambers of Commerce, have been consulted upon this matter, and what is their view on the subject.

Lastly, I am also curious to know as to what would be the net gain by the proposed duty. I do know if it will run into

many millions of pounds; it may perhaps be such as the country may be able to suffer for a few months, and after that if the Honourable Mover moves that the Bill should be passed and has the support of the public at large, I have no doubt that the Assembly will endorse his motion. But as at present circumstanced, the Honourable Sir Campbell Rhodes appears to have made out a particularly strong case for the elucidation of further public opinion thereon, and so I support his motion.

The Honourable Sir Basil Blackett (Finance Member): I hope the House will not allow itself to be seduced by Dr. Gour's spacious pleadings. Dr. Gour got up to support a motion that the discussion of this Bill should be transferred from its natural place in which we ought to discuss it, namely, this House, in order that it might be referred to the Chambers of Commerce who have already been consulted. He very sensibly proceeded to discuss the merits of the Bill in the proper place. The whole matter was last year referred to the Chambers of Commerce and also to the Provincial Governments. As the Honourable Member for Commerce has said, the Chambers of Commerce were not on the whole in favour of it. I am not accustomed to hear that Chambers of Commerce are usually in favour of taxation which is going to fall upon their Members. The Provincial Governments who are the proper bodies to consult in regard to this matter are on the whole strongly in favour of it, if only because it is going to help them in a matter which they rightly regard as important, namely, to balance their budgets. They were consulted and I submit, Sir, that quite apart from the merits of the Bill, this House is the proper place in which a proposal supported by the Provincial Governments for imposing taxation for the benefit of the Provincial Governments as a whole should be discussed. Full opportunity has already been given to the commercial community to express its views, and they are known. I submit, therefore, that the amendment should be rejected and we should proceed to discuss the Bill on its merits.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the measure which is now before the House is of far-reaching importance. It does not affect the interests of the Chambers of Commerce only, but it affects the men living in a village also, and I also feel strongly that this Bill has not been circulated adequately. In defence it has been urged "that the Chambers of Commerce are very much interested that the duty may not be raised, and, therefore, naturally if this Bill is placed before those Chambers they will be against it. But Local Governments have been addressed and their answer is that the duty should be enhanced." Well, may I tell the Honourable the Finance Member that the Local Governments are as much interested in enhancing the duty as the Chambers of Commerce in not enhancing the duty. Therefore, the opinions of the Local Governments can be neutralized by the opinions of the Chambers of Commerce. Now what about the public? This Bill is not of such a nature that this House may content itself with the opinions expressed by only the Local Governments. Supposing a number of men have got promissory notes in their possession, and all of them must have been stamped with one anna stamps, and when those promissory notes are adduced in the Court they will not be considered as admissible in evidence, unless it is clearly provided in the Bill that it will not have retrospective effect. The people at large are required to know that a Bill is going to be introduced which will affect them so materially. On those grounds I very strongly support this amendment which speaks for itself.

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Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, seduction is so much in the "atmosphere" to-day that one does not know whether to allow oneself to be seduced by the arguments of Sir Basil Blackett or Dr. Gour. I think we should be striking a middle note by consenting to the circulation of the measure. We have been told that the Governments have been consulted. Dr. Nand Lal has given the reply that Governments naturally want more money and we know what their reply is bound to be. And the Chambers of Commerce we are further told have been consulted. I have a great estimation for Chambers of Commerce, but they do not represent all the trade and commerce and business in the country. There are other people who are entitled to be consulted and have not been. As has been pointed out, the Bill has not been long enough before the public and they do not realise its possibilities. Dr. Nand Lal was referring to these documents not being admissible in evidence if the Act was passed. But the Government will have a little pile in the shape of penalties. I do not know that this is a reason in favour of the Bill. Sir, the Government of Bengal tried a measure like this in the province and that is the Court Fees Enhancement Act. Has not that recoiled on the situation? Has not the expectation of the Government of Bengal been belied. We are warned by those who understand, by four Chambers of Commerce, that the enhanced payments will be evaded. Probably, we shall have this piece of legislation and yet not know how to enforce it. In a matter like this one always is inclined to support greater publicity. As regards the life of this Assembly, Sir, we are in the position of the condemned in a cell and should know how exactly we stand. Sir Malcolm Hailey, the Leader of the House, told us the other day that this is probably the last Session of the Assembly. Mr. Innes told us to-day that there may not be any time for this Bill being taken up during the life of this Assembly, if the Bill be circulated. Supposing there is a Simla Session I do not see why the Bill can not be taken up there and passed after proper publication.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): Sir, I rise to support Sir Campbell Rhodes' amendment and to say that the opinions which were asked for from the different Chambers of Commerce were in respect of the Report of a Committee which was appointed in Bengal to go into this question. But there was no definite proposal from Government to raise stamp duty. That Government proposed a certain measure for the increase of revenue and therefore it is but right that those who have expressed their opinion should know in definite form what the enhanced proposals are which this Government are making. Another point which is raised by several of my Honourable friends here in this House is that we have only the opinion of the Chambers of Commerce, but it is the public generally that borrows very largely. Of course, the traders have their own transactions but in this country there is money lending transaction going on everywhere, whether there is a Chamber of Commerce or not. Therefore, it is but right that the public should have some opportunity of expressing their views on this important question.

Mr. Darcy Lindsay (Bengal: European): Sir, having listened to the arguments for and against, it appears to me the whole issue rests on this question of promissory notes. On the other clauses of the Bill there seems to be no dispute. And I would suggest to the Honourable Mr. Innes the possibility of withdrawing for the present this proposed alteration as regards promissory notes and allowing the other items to stand.

The alteration No. 2 is to increase the stamp duty on share certificates, letters of allotment of shares, letters of credit and proxies, from one anna to two annas, and I am perfectly certain that the country at large would be with this measure. Nobody has the slightest objection to paying this extra anna. Then the proposed alteration in Article 47 which deals with insurance I can most heartily support. The present position, Sir, is that there is a duty fixed for fire insurance policies.

Mr. Deputy President: I would draw the Honourable Member's attention to the fact that we are at present discussing whether the Bill should be circulated for the purpose of eliciting opinion thereon and ask him to confine his remarks to that.

Mr. Darcy Lindsay: Sir, I was opposing the amendment for circulation, and I was suggesting to the Honourable Mr. Innes to, if possible, withdraw the promissory note section so that the Bill might be gone on with and I was pointing out what were to my mind the advantages of the Bill. That is why I referred to this question of insurance. If I may be permitted to continue, I said the Act provides for fire insurance policies, accident policies and life policies. Now, there are many other forms of insurance that are not covered by fire insurance or life or accident insurance and the Bill makes provision for these other forms of insurance. I can only tell you, Sir, that Insurance Companies in Calcutta, where I come from, are in great difficulty to know what stamp duty they should pay on particular policies and I may say that the stamp office is unable frequently to give us information on the point. Now this Bill that is before us makes it perfectly clear and on these grounds I certainly give it my wholehearted support. (Dr. H. S. Gour: "Your half-hearted support: you don't approve of the promissory note section.") I therefore put it, Sir, to the Honourable Mr. Innes as to whether it would be possible for the present to omit this section dealing with promissory notes and allow the rest of the Bill to be taken up.

Mr. A. V. V. Aiyar (Finance Department: Nominated Official): Sir, I just wish to make a few remarks, which may be of assistance to the House in deciding whether the Bill should now be circulated for opinion. As the House knows, all the Local Governments are now presenting their Budgets to the Legislative Councils and we know for certain that most of them are counting on some increase from these stamp duties for the purposes of their Budget. (Dr. H. S. Gour: "How much? You don't know.") If the Bill is now circulated, and several months elapse before it is taken up for consideration, they will all be put to very serious inconvenience. As regards the question of promissory notes, I suppose the proper time for discussing that will be when we are considering that particular clause.

Munshi Mahadeo Prasad (Benares and Gorakhpur Divisions: Non-Muhammadan Rural): Sir, I associate myself entirely with what has fallen from Sir Campbell Rhodes. When I look to the Stamp Act of 1899, I find that in clause (1) it is said "It shall come into force on the 1st day of July 1899." The present Bill which is being to-day discussed by us, does not make any provision on this point. If we pass it as it is, it will affect all the existing promissory notes and if any person who may be a money-lender wants to sue upon those promissory notes, he will have to pay a penalty of Rupees five and one anna under section 35 of the Stamp

[Munshi Mahadeo Prasad.]

Act of 1899. Still, these are points to be considered in coming to a conclusion. Further, the public ought to know the effect of this amending Bill. Apart from the Chambers of Commerce and the money-lending centres, the whole country will be affected. There are some money-lenders in villages who lend money on promissory notes. It will take months and months to bring to their knowledge the amendments which we are going to pass to-day. It has been said that the Local Governments are busy with their Budgets and they are counting on the income which will be derived from this amendment of the Stamp Act. But, Sir, we do not know what will be the amount of income that will be derived from this. I submit that we should not be hasty in passing this law and that we should circulate the Bill for getting the opinion of all the persons interested and of all the money-lending centres in the country.

Mr. Jaminadas Dwarkadas (Bombay City; Non-Muhammadan Urban): Sir, I just want to remind the House that my Honourable friend, Mr. Darcy Lindsay, has made a very good and important suggestion, which if we carry out, I think we shall be doing what is convenient from the practical point of view of the Government and we shall also be serving the purpose that we have in view. Mr. Aiyar, I think, has rightly pointed out that we may take the Bill into consideration. So far as the clauses relating to promissory notes are concerned, we may either postpone consideration of this or say that it will not be taken into consideration now when the stage of discussion comes. But so far as the other clauses are concerned on which there seems to be no disagreement and about which there seems to be no protest in the House, why should we allow ourselves not to give our consent to those clauses about which there does not seem to be any controversy? Mr. Aiyar has pointed out a difficulty which seems to me to be a very real difficulty. All Local Governments have based their Budgets on the assumption that the Stamp duty will be enhanced. Supposing you don't do it, the whole of the finances of the Local Governments will, I think to a certain extent, be upset and the only advantage that we shall have will be that we shall meet after a number of months to discuss and give our consent to those clauses about which at present even there is not the slightest controversy. Why not, therefore, either take Mr. Darcy Lindsay's suggestion of taking the whole Bill into consideration minus the clauses relating to the promissory notes or carry out Mr. Aiyar's suggestion of taking the whole Bill into consideration and drop out the clauses relating to the promissory notes? To me it seems that this is the best course to adopt and I appeal to the House to adopt that course.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I stand in support of inviting the opinion of the majority of the people of India on this Bill. They, Sir, are the people affected and they have a right to know what law is going to be passed by the Government of India particularly in this Assembly. Ninetyseven persons of India, Sir, out of a 100 do not understand how to read this Bill. They are not persons who can read even newspapers in the English language and realise the situation of the Bill in this Assembly to-day. It is therefore absolutely necessary that the Government of India should take proper steps to see that this Bill is translated word for word in the vernacular and distributed not only through the Provincial Governments and the District Officers but it should

also be forwarded to each and every village through the Panchayats themselves. The Panchayats, Sir, should circulate it to the villagers. Otherwise, this is no law. People are not going to remain as hewers of wood and drawers of water. The Bill concerns them. It touches their pockets. It is not merely a question of the stamp on promissory notes being one anna or two annas. It touches also the question of the purchase of land. The agriculturists also have got a right to know about it. They must know the stamp which is necessary for purchasing lands, and if they have insured their lives, as my friend says, I think that my friend, Sir Campbell Rhodes, has made out a strong case that this Bill should be forwarded again for opinion and people must know and give their opinion on it. What is the use of hurrying an important Bill like this and finishing it in 10 days' time? My friend read an extract from the Court Fees Act and the Stamp Act, 1899. There is a date, Sir, put on the top of the Bill that it should come into operation next year. Here, Sir, my Honourable friend, Mr. Innes, is going to jump in an aeroplane, and get home in the twinkling of an eye. It is therefore necessary that the Bill should be translated into all the vernaculars of the country and distributed. I daresay in Madras there are many languages spoken and there are also many languages spoken in the other parts of India, but that does not matter. Anyhow, the Bill must be further circulated for obtaining the opinion of the country and then probably we shall be in a position to take it up and see how far it can be carried.

Mr. K. G. Bagde (Bombay Central Division: Non-Muhammadan Rural): I move, Sir, that the question be now put.

Mr. Deputy President: Amendment moved:

"That the Bill be circulated for the purpose of eliciting opinion thereon."

The question is that that amendment be made.

The Assembly divided:

AYES—47.

Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asad Ali, Mir.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bhargava, Pandit J. L.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jamall, Mr. A. O.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Mudaliar, Mr. S.

Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ranji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Rhodes, Sir Campbell.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Raja K. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Subrahmanayam, Mr. C. S.
Tulshan, Mr. Sheopershad.
Venkatapatiraju, Mr. B.

* NOES—29.

Abdulla, Mr. S. M.
 Aiyar, Mr. A. V. V.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Crookshank, Sir Sydney.
 Faridoonji, Mr. R.
 Ginwala, Mr. P. P.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Jamnadas Dwarkadas, Mr.
 Lindsay, Mr. Darey.
 Misra, Mr. B. N.
 Mitter, Mr. K. N.
 Moncteff Smith, Sir Henry.
 Mukherjee, Mr. T. P.
 Percival, Mr. P. E.
 Sams, Mr. H. A.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.

The motion was adopted.

THE GOVERNMENT SAVINGS BANKS (AMENDMENT) BILL.

Colonel Sir Sydney Crookshank (Secretary, Public Works Department):

5 P.M. Sir, I beg to move:

"That the Bill further to amend the Government Savings Banks Act, 1873, be taken into consideration."

I have nothing further, in asking the House to take this small Bill into consideration, to add to the remarks which I made when I commended the Bill for introduction. As I pointed out then, the Bill is purely a beneficial measure which aims at expediting the payment of deposits of deceased depositors to persons entitled who may be in distressed and destitute circumstances. Moreover, it aims at facilitating departmental business in order to simplify the procedure which is followed, and it does this without taking any undue risk in so far as Government is concerned. I therefore commend this Bill to this House for consideration.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I desire to give this Bill my entire support. I appreciate the further facility that is going to be accorded to the small investor. If I could, on this occasion, I should plead for more facilities for withdrawal of deposits and for a little more interest being added that would make Post Office deposits very popular with the small investor; but as it is not permitted for me to do so I leave the matters for future consideration. I welcome the facility that is being given now in the small measure.

Mr. Deputy President: The question is:

"That the Bill further to amend the Government Savings Banks Act, 1873, be taken into consideration."

The motion was adopted.

Colonel Sir Sydney Crookshank: Sir, before I move that the Bill be passed. May I be permitted to move the following amendment:

"That in clause 2 in the proposed definition of 'Secretary' in section 3 for the word 'province' substitute the word 'area'."

Sir, I have to point out to Honourable Members that the word "province" used in the drafting of this clause does not correctly satisfy the position. The administrative charge of a Postmaster-General is not confined

to a province, but is really, for departmental purposes, a circle, but for general purposes it will better be known as an area, since in certain cases the Postmasters-General administer areas which extend over more than one province.

Mr. Deputy President: Amendment moved:

"In clause 2 in the proposed definition of 'Secretary' in section 3 for the word 'province' substitute the word 'area'."

The question is that that amendment be made.

The motion was adopted.

The motion that clause 2, as amended, stand part of the Bill was adopted.

Mr. J. P. Cotelingam (Nominated: Indian Christian): I move that:

"In clause 3, proposed section 4(b) for the words 'one hundred' substitute the words 'five hundred'."

Under the Act in force the Secretary, who is the Postmaster General, is empowered to pay the amount standing to the credit of a deceased depositor to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased. The amending Bill provides for persons other than the Postmaster General to make similar payments. The persons other than the Postmaster General empowered to make payments will do so in this behalf by a general or special order of the Governor General in Council, subject also to any general or special orders of the Secretary. While the Postmaster General will make payments up to Rs. 3,000, those others are to make payments to the extent of Rs. 100 only as proposed. I presume, Sir, that those who will be empowered to make payments will be first class Postmasters and Superintendents of Post Offices. They are responsible officers, they have a large amount of administrative work to do, and as they have a good deal of local knowledge, I think they may safely be entrusted to make payments up to Rs. 500. This will, I think, result in a great deal of convenience to the public. It would result also in economy being effected, and as mentioned by Colonel Sir Sydney Crookshank, it will expedite business a great deal and undoubtedly save the time of the Postmaster General, for I think that cases coming within Rs. 500 will be somewhere about 80 per cent. I do not think that by increasing the powers of these first class Postmasters and Superintendents of Post Offices, the Department will undergo any serious risks, for these officers have or are expected to have a great deal of local knowledge. Further the men who are appointed to discharge these onerous duties, as Honourable Members will see in the proposed clause 4 (b), will be empowered in this behalf by a general or special order of the Governor General in Council. Then there are other conditions laid down for their guidance. They will be subject to any general or special orders of the Secretary, that is the Postmaster General. These officers under the existing rules go into the cases that come up before them and send up their recommendations to the Postmaster General. I am sure they will guard against any losses, will take the necessary precautions, including an indemnity bond if necessary, and see to it that their payments are made duly to the party entitled to the amount that stands to the credit of a deceased depositor. I therefore think that, while there will be a great deal of time saved for the Postmaster General and while

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he will be set free to attend to larger administrative work, the public will gain largely by such powers being entrusted to first class Postmasters and Superintendents of Post Offices. In the Statement of Objects and Reasons on page 3 of the Bill, Honourable Members will find that, by virtue of section 3 of the Post Office Cash Certificate Act, 1917, the provisions of the Bill will be applicable also in the case of payments due on 5 year Cash Certificates forming part of the estate of a deceased person. In the Gazette of India for February, 24, 1923, a revised scheme of Cash Certificates has been promulgated. Cash Certificates can be negotiated not only at the issuing post office as heretofore, but in any post office, and if the applicant satisfies the Postmaster or is identified by any clerk in the post office, payment of the money can be made to the applicant. There are two classes specified. Cash Certificates of the value of Rs. 100 and under will be encashable at any post office doing savings bank business, other than the one where they stand registered, up to an aggregate limit of Rs. 250 in each case on the satisfactory identification of the payee either by a member of the clerical staff of the post office of the locality, or by a responsible resident of the locality. The responsibility of payment in this case is taken by the Postmaster on satisfactory guarantee being obtained through any member of the post office clerical staff. So also in the case of Cash Certificates of the value of Rs. 500

Mr. H. A. Sams (Director-General, Posts and Telegraphs): I rise to a point of order. We are discussing the question of deceased's deposits and not of Cash Certificates.

Mr. J. P. Cotelingam: I am mentioning cases of amounts standing to the credit of deceased depositors who may also be holders of Cash Certificates. In the case of these Cash Certificates any person who is entitled to the amount may make a claim according to the conditions laid down, and the Postmaster may make payment on sufficient safeguards being obtained. For these reasons I propose that Rs. 500 be substituted for Rs. 100 in the proposed clause 4 (b).

Rao Bahadur C. S. Subrahmanayam (Madras, ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I oppose this amendment for this reason. Postmasters of the first class and Superintendents of Post Offices are, I know, very capable and very efficient men at their work; but questions connected with the succession to the estate of a deceased person, especially in this country, are not governed by one uniform law. There are Muhammadans; there are Hindus of various divisions and there are other communities. Oftentimes it occurs that on the death of a person, there are rival claimants and it is not easy for one who is not trained as a lawyer and is not familiar with the law to decide *prima facie* who is the best claimant, and such questions you cannot leave to Postmasters and Superintendents of Post Offices. I must once more repeat that I know they are very able and efficient men but to expect of them also to be legal men capable of deciding complicated questions as to who is to succeed to the amount standing to the credit of a deceased is more than we can do. It is also risky and dangerous and it will lead to an unnecessary amount of litigation. The parties would not be satisfied and would resort to the Courts. It is better that a matter like this is taken over and dealt with in the Central Office, because at the Central Office, which is situated in a large city, there will always be an assistant in the office

who is familiar with disposing of such cases and there will also be legal advice available to the officers of Government. Therefore, it will minimise disputes and it will work for greater efficiency. Now, I know that in several cases very strange ideas prevail as to the Hindu law of succession. I know of a case where a man thought that the daughter-in-law of a deceased person should be given the money at his credit. The money was given and a lengthy correspondence took place. The danger is greater in these small cases. These small sums are ordinarily the property of poor people and apparently a wrong decision, though an entirely *bona fide* one, would drive these people to the Courts and would be the means of whittling away what little there is left. It is therefore very essential to put this matter in the hands of one competent authority, who would be above local knowledge, for, as it was said, local knowledge is also local influence, a dangerous thing in most cases. The best thing is to deal with these matters on the legal basis, calling upon the claimants to substantiate their claims, and that can only be done at the Central Office. I have thought over this matter and I have also talked it over with one or two of my friends, and, whether they agree with me or not, I think in these matters this Rs. 100 is quite enough. As for other matters, I quite sympathise with the feelings of my friend, Mr. Cotelingam, who thinks that by spreading all over the country a number of judges as it were to decide in cases of this sort, would help poor people and would put down litigation and disputes. Every such attempt has always failed and our experience is that attempts to mitigate litigation and to lessen troubles and disputes have always ended in increasing them. Therefore, I think the amendment proposed to increase the amount from Rs. 100 to Rs. 500 is not sound.

There is one other point. I would without in any way minimising the sincerity or the *bona fides* of my friend's amendment say that the clause is put before us by the Department, which it may be presumed, in this case at any rate, knows its own business. It is not a penal law about which we can condemn the Government. This is a matter entirely of a special kind and, when the Department itself introduces this Bill and says "Rs. 100 is enough for our officers," it is not for us to say "raise it to Rs. 500" or a larger figure. Therefore, I would request my friend, Mr. Cotelingam, to leave it as it is, and trust the Department in this matter.

Sir Sydney Crookshank: Sir, while fully appreciating the good intentions which underlie the amendment which has been put forward by my Honourable friend, Mr. Cotelingam, I regret that on behalf of Government I must oppose this proposal. As my Honourable friend, Mr. Subrahmanayam, has just now so rightly pointed out, the measure which we have brought forward is really guided by administrative considerations, and we feel that in fixing the limit at Rs. 100 we are able to extend this concession widely and, therefore, to make it more beneficial to the community at large without taking any undue risks which Government would otherwise possibly feel not altogether justified in taking if we were to raise the amount to as much as Rs. 500, as proposed by Mr. Cotelingam.

There is one point in my Honourable friend, Mr. Cotelingam's remarks to which I should like to draw attention, and that is the one in which he referred to the decentralisation being extended to first class Postmasters only. That is not the intention at all. The idea is to extend it far afield to a large number of offices, so that the public should get the greatest possible value out of the concession. If, after the measure has been in the experimental stage for some time, it is found to work satisfactorily

[Sir Sydney Crookshank.]

and is also found not to lead to any loss to Government, it will then be time enough for the administrative department concerned to put forward proposals to raise the amount.

Mr. Deputy President: Amendment moved:

"That in clause 3, proposed section 4(b), for the words 'one hundred' substitute the words 'five hundred'."

The question I have to put is that that amendment be made.

The motion was negatived.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

The Title and Preamble were added to the Bill.

Clause 1, containing the Short Title, was added to the Bill.

Sir Sydney Crookshank: Sir, I move that the Bill, as amended, be passed.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 27th February, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 27th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair

QUESTIONS AND ANSWERS.

AMBALA CORRUPTION INQUIRY.

436. ***Mr. Pyari Lal:** 1. Is it a fact that Khan Bahadur Qazi Sirajuddin Ahmad, Bar-at-law of Rawalpindi, was selected by the Government for legal assistance to Colonel Lawrenson?

2. Is it a fact that the Government asked the Cantonment Committee, Ambala, to meet the travelling and other expenses of Qazi Sirajuddin Ahmad and that the Cantonment Committee refused to do so?

3. Is the Government aware that the Ambala Corruption inquiry was the result of the repeated demands of Ambala public made in three successive public meetings?

4. Will the Government be pleased to state the reasons that led the Ambala Cantonment Committee to refuse the expenses, in face of this repeated public demand?

5. Will the Government be pleased to state why the expenses of the inquiry were not met from the Government Fund?

6. Is it a fact that the All-India Cantonments Association offered to bear these expenses?

7. If so, how did the Government treat this offer?

8. If the offer was rejected, will the Government kindly state the reasons for such rejection?

Sir Henry Moncrieff Smith: 1. The local military authorities recommended the appointment of the barrister mentioned in order to assist Colonel Lawrenson in his inquiry and Government were prepared to agree to his being employed if it was really necessary.

2. Yes.

3. The inquiry was instituted as the result of a number of representations, chiefly local, which reached Government.

4—8. The attention of the Honourable Member is invited to the replies given on the 26th January and the 22nd February to questions Nos. 279 and 406 respectively.

"AMBALA MALPRACTICES." QUESTION OF AMNESTY.

437. ***Mr. Pyari Lal:** 1. Is it a fact that Colonel Lawrenson, after consulting the representatives of the All-India Cantonments Association, Ambala, applied to the Government for a general amnesty?

2. Is it a fact that this general amnesty was not granted by the Government and as a result thereof no one came forward to give oral or written evidence about Ambala malpractices and the Association did not associate with the inquiry?

3. Will the Government be pleased to state the reasons for not granting general amnesty?

4. Will the Government be pleased to state how Colonel Lawrenson conducted the inquiry under the circumstances?

5. Is it a fact that he summoned no witnesses, consulted no non-official?

6. Has the attention of the Government been drawn to the article headed "Ambala Malpractices? The Hollowness of Recent Enquiry", published in the *Cantonment Advocate* of 25th December, 1922?

7. Is it a fact that in the absence of general amnesty, a lot of documentary evidence regarding corruption at Ambala could not come to the notice of Colonel Lawrenson?

8. Will the Government direct general amnesty to be given now to know all this evidence?

Sir Henry Moncrieff Smith: 1 and 2. The attention of the Honourable Member is invited to the reply given on the 26th January, 1923, to question No. 279. The Government of India do not know whether, on the amnesty being refused, the All-India Cantonments Association did or did not associate itself with the inquiry.

3. The Government of India do not know the specific reasons which influenced the Local Government in arriving at their decision.

4. Government understand that the inquiry consisted mainly of an examination of such documentary evidence as was available.

5. Government have no precise information as to what witnesses, if any, were summoned or examined.

6. Yes.

7. Government naturally are not in a position to make any statement as regards documentary evidence which, as appears from the question, did not come to the notice even of the officer conducting the inquiry.

8. The question is one for the Local Government to decide, and the Government of India do not propose to interfere in the matter.

GARHI AND DAKRA VILLAGES IN DEHRA DUN CANTONMENT.

438. ***Mr. Pyari Lal:** 1. Is it a fact that the villages of Garhi and Dakra were included in the Dehra Dun Cantonment area in 1919, without any compensation being paid for the land of the villages?

2. Will the Government be pleased to state the law and procedure under which the inclusion of this area was effected?

3. Will the Government be pleased to state for what military needs this extension was made?

4. Is it a fact that assurances were given by the then military authorities to the people of these villages that no taxes will be levied upon them in consequence of their villages being included in the cantonment area?

5. Is it a fact that several new taxes have been imposed on the people, since the amalgamation of their villages into the cantonment?

6. Is it a fact that in pursuance of the assurances, the people refused to pay taxes and that there was a wholesale attachment of their property in 1914 for a forced realisation of the taxes?

7. Is it a fact that among the people of these villages there are many retired Gurkhas and widows of retired Gurkha soldiers?

8. Is the Government aware that the taxes are weighing heavily upon these retired Gurkha families?

9. Will the Government be pleased to inquire into the matter?

Sir Henry Moncrieff Smith: (1) Garhi and Dakra were included within the limits of the Dehra Dun Cantonment in 1913. No compensation was given.

(2) The inclusion was effected by the application to the area of the provisions of section 3 of the Cantonments Act, 1910.

(3) The area in question was situated between the old cantonment and the newly acquired military areas of Birpur and Gangora, and its insanitary condition was considered to be a grave menace to the health of the troops.

(4) No such assurance was given.

(5) The following taxes were imposed in 1914:

Conservancy tax; trades and professional tax; and hackney carriage tax.

(6) As I have already stated, no assurance was given that the people of these villages would not be taxed. Government are informed that they did refuse to pay taxes and that orders to recover sums due were issued. Recovery was effected in many cases by attachment of property.

(7) Yes.

(8) Petitions have been received from many persons complaining of the heaviness of the taxes. All these petitions were considered by the Cantonment authority who either enforced, reduced, or wholly remitted the tax according to the circumstances of each case.

(9) Government do not consider it necessary to institute any further inquiry into the matter.

LETTER IN CANTONMENT ADVOCATE RE "OFFICIAL AUTOCRACY."

439. ***Mr. Pyari Lal:** 1. Has the attention of the Government been drawn to a letter headed "Official Autocracy" published in the *Cantonment Advocate* of 25th November, 1922?

2. Is it a fact that cantonment latrines have been erected on the land belonging to the people of these villages?

3. Is the Government aware that this has been done without any compensation being paid for the land so occupied?

4. Will Government be pleased to state the reasons why compensation has not been made in this case?

5. Will the Government be pleased to do so now?

Sir Henry Moncrieff Smith: (1) Government have seen the article in question.

(2) Yes.

(3) Government are informed that compensation was paid for some time in two cases

(4) and (5). Government understand that no demand for compensation was made, and, owing possibly to changes of Magistrates, the matter was not brought to notice. The question has, however, now been represented by three persons and their claims are being investigated in consultation with the local civil authorities.

INCOME OF NULLAH NEAR GARHI AND DAKRA.

440. ***Mr. Pyari Lal:** 1. Is it a fact that the income derived from the Nullah near Garhi and Dakra is now credited to the Cantonment Fund?

2. Is the Government aware that this income was formerly shared by the people of Garhi and Dakra?

3. Will the Government be pleased to state its rights to this income when the Government has not taken over the villages of Garhi and Dakra?

4. If the reply to the above question be in the negative, will the Government be pleased to refund the entire receipts of the Nullah since the inclusion of the villages in the cantonment to those who are entitled to them?

Sir Henry Moncrieff Smith: (1) Yes.

(2) and (3). Government have no information on the subject but are making inquiries.

(4) Government are prepared to consider any claims for a refund that may be made.

UNSTARRED QUESTIONS AND ANSWERS.

MEDICAL RESEARCH BY INDIANS.

196. **Lala Girdharilal Agarwala:** 1. What encouragement, if any, have the Government given to Indians in the line of medical research in India during the last 3 years?

2. Has the attention of the Government been invited to a note entitled "Disease and Death—New Theory of Prevention"—printed in the *Englishman*, dated Monday, December 18th, 1922, page 11, column 3 (local edition)?

3. Is it a fact that Mr. Gupta's research in the medical line was put to test at Bhowali Sanatorium, United Provinces, as reported in the *Englishman*, dated 18th December 1922? Has any inquiry been made on the subject from Colonel Cochrane, Inspector-General of Civil Hospitals, United Provinces, on the subject?

4. Have the Government given any opportunity or encouragement to Mr. R. D. Gupta of Rasulabad, Allahabad, to put his researches into practical test in the treatment of leprosy, consumption, and cancer or other so-called incurable diseases before medical experts? If so, with what results? If not, do the Government propose to do anything in the matter?

The Honourable Mr. A. C. Chatterjee: 1. Government have employed an increasingly large number of Indians on medical research work during the last three years. I shall be glad to give the Honourable Member full details if he will call at my office.

2. Government have seen the note referred to.

3. The Government of India have no information on the matter. The answer to the second part is in the negative.

4. So far as I am aware, Mr. Gupta has placed no proposals before Government. The matter is one primarily for the provincial Government.

STATISTICS RELATING TO TELEGRAPHS.

197. **Mr. K. C. Neogy:** Will Government be pleased to state:

(a) the number of Departmental Telegraph Offices and the number of combined offices at the close of the last official year;

(b) the number of signallers engaged to work the Combined offices, and the number of Telegraphists working in Departmental Telegraph offices;

(c) the number and value of telegrams, both inland and foreign, booked for despatch in combined offices for the year 1921-22 and the number and value of telegrams booked in Departmental Telegraph offices; and

(d) the number of telegrams received for delivery in combined offices and the number of telegrams received for delivery in Departmental Telegraph offices during the year 1921-22?

VALUE OF TELEGRAMS ISSUED.

198. **Mr. K. C. Neogy:** (a) Is any return submitted by combined offices showing the number and value of telegrams booked for despatch?

(b) Is a similar return prepared by Departmental Telegraph offices?

(c) If answer to (a) and (b) be in the affirmative, why is the calculation of Telegraph revenue made a guess work based on the traffic and revenue for two particular weeks of the year?

(d) If answer to (a) and (b) be in the negative, will Government be pleased to consider the desirability of prescribing such returns for correctly calculating the Telegraph revenue?

REVENUE AND EXPENDITURE OF TELEGRAPH DEPARTMENT.

199. **Mr. K. C. Neogy:** Will Government place on the table a statement showing the revenue and expenditure of the Telegraph Department from 1911 to 1920?

200. **Mr. K. C. Neogy:** From what year has the cost of working combined offices ceased to be charged to Telegraph revenue and come to be debited to Post Office revenue?

POSTAL EXPENDITURE.

201. **Mr. K. C. Neogy:** Will Government be pleased to state:

(a) if the total expenditure on account of the Post Office establishment, the revision of which was sanctioned on the recommendation of the Postal Committee, amounted to about 368 lakhs of rupees in 1920-21 and to about 265 lakhs in 1919-20?

- (b) Is it not a fact that there was an increase of about 2 per cent. in the working staff in 1920-21 due to increase of work, for which an increased expenditure of about 8 lakhs of rupees was necessary?
- (c) Is it not a fact that in 1920-21, were paid arrears of increment for four months of the year 1919-20, calculated at the revised scales of pay sanctioned on the Postal Committee's recommendations?
- (d) Did not this arrear payment amount to about 24 lakhs of rupees?
- (e) If so, does not the net increase for 1920-21 on account of the Revision sanctioned on the Postal Committee's recommendations amount to about 71 lakhs of rupees?

TELEGRAPHISTS AND POSTAL CLERKS.

202. **Mr. K. C. Neogy:** (a) Is the more skilled nature of work, claimed for telegraphists, recognised in England so as to entitle them to a higher scale of pay than in the case of the Postal Clerk?

(b) If not, why is this difference maintained in India?

Colonel Sir Sydney Crookshank: The necessary information is being collected and will be supplied to the Honourable Member as soon as possible.

HEAD POST OFFICES IN DACCA.

203. **Mr. K. C. Neogy:** 1. Will Government be pleased to state how many Head Post Offices were there in the Dacca District before the year 1898?

2. Is it not a fact:

- (a) that in 1898 only one Head Post Office was retained at Dacca, the other Head Offices being reduced to the status of Sub-Offices;
- (b) that in 1900 Munshiganj was again converted into a Head Post Office, and two Head Post Offices were thus created in the District;
- (c) that in 1910 Munshiganj was again converted into a Sub-Post Office, one Head Office being thereby retained in the Dacca District;
- (d) that in September 1922 Narayanganj Sub-Post Office was raised to a Head Post Office, having now two Head Offices in the District?

Colonel Sir Sydney Crookshank: 1. There were 3 head offices in the Dacca District in 1898, viz., Dacca, Narayanganj and Manikganj.

(2) (a). With effect from the 1st January, 1899, only the Dacca head office was retained in the District of Dacca, the other two head offices being reduced to the status of sub-offices. The change involved a net decrease of Rs. 140 a month in establishment charges.

(b) Munshiganj sub-office was converted into a head office in 1900, involving an increase of Rs. 178 a month in fixed establishment charge. A departure from the general rule that there should be one head office only for a district, was made as a necessary measure of administrative convenience.

(c) Munshiganj was again converted into a sub-office in 1910, involving a net average decrease of Rs. 165-5-4 a month in fixed establishment charges.

(d) Narayanganj sub-office was converted into a head office in 1922, owing to the proposed partition of the Dacca Division into two, viz., Dacca and Narayanganj. The question of partitioning the Civil District of Dacca into two is still under the consideration of the Bengal Government and it is expected that the scheme will take some time to materialise.

The change involved a net increase of Rs. 134 a month in fixed establishment charges.

ABOLITION OF PLURALITY OF HEAD POST OFFICES.

204. **Mr. K. C. Neogy:** (a) Will Government be pleased to state the reasons that determined the abolition of plurality of Head Post Offices in one District in the year 1898?

(b) Why was a departure made from this policy in 1900 by the creation of a Head Post Office at Munshiganj in that year, and why was Munshiganj again converted into a Sub-Post Office in 1910, and why was Narayanganj raised to the position of a Head Post Office in September 1922?

(c) Is it not a fact that such repeated alteration of the status of a Sub-Office into a Head Office and *vice versa* entails a good deal of expenditure?

(d) Will Government be pleased to state the amount of expenditure incurred for such conversions on each occasion?

Colonel Sir Sydney Crookshank: (a) The reasons that led to the abolition of plurality of head offices in one district in 1898 were:

- "(1) The Comptroller (now Accountant-General, Posts and Telegraphs) would deal with one instead of with 3 head offices.
- (2) In the local audit branch the 1st class head office of the District (Dacca), would deal direct with all sub-offices instead of through the 2nd class head offices which only tends to complicate check and defer the detection of mistakes.
- (3) A cheaper, better and safer method of supplying funds to a large number of sub-offices would be rendered practicable.
- (4) There would be two head offices less for the Superintendent and Inspectors to verify. The monthly verification by Inspectors interrupted their tours and interfered seriously with their sub-divisional work."

(b) *Vide* (b) and (d) of paragraph 2 of question No. 203.

(c) Not always. In some cases the changes effected savings.

(d) *Vide* (a), (b), (c) and (d) of paragraph 2 of question No. 203.

NARAYANGANJ SUB-OFFICE.

205. **Mr. K. C. Neogy:** (a) What is the estimated additional expenditure that will be necessary in connection with the conversion of the Narayanganj Sub-Office into a Head Office?

(b) What have been the initial expenses for the measure and what further expenditure is expected to be necessary in the near future?

Colonel Sir Sydney Crookshank: (a) and (b). *Vide* (d) of paragraph 2 of question No. 203.

HEAD OFFICES—ABOLITION OF.

206. **Mr. K. C. Neogy:** (a) Is it not a fact that the difficulty of getting prompt and adequate supply of cash from Sub-Treasuries which occasioned delay in the payment of money orders and in meeting the public demand for withdrawal of money from the Savings Bank, was one of the chief reasons why in 1898 the abolition of the plurality of Head Offices in a district and the retention of only one Head Office at the Treasury Station, were determined upon?

(b) Do not the same reasons that operated in 1898 against the plurality of Head Offices in one district, still exist?

Colonel Sir Sydney Crookshank: (a) Yes—*vide* (a) of question No. 204.

(b) As stated at (d) of paragraph 2 of question No. 203, the Dacca Civil District will sooner or later be divided into Dacca and Narayanganj districts. When this is done, there will be one head office for each district.

INSPECTION OF POST OFFICES.

207. **Mr. K. C. Neogy:** (a) How many Post Offices are now required under the rules to be inspected in one year by the Superintendent of (1) Dacca Division, and (2) Narayanganj Division, and how often?

(b) How many offices and how often were the Superintendents in the Dacca district required to inspect in a year prior to the reduction of the Superintendents' inspection work?

Colonel Sir Sydney Crookshank: (a) Dacca Division 130; Narayanganj 126.

Superintendents are now required to inspect their larger offices ordinarily once a year, and a certain number of the smaller sub-offices and branch offices at their discretion.

(b) Number of offices as in (a).

Before the introduction of the new rule Superintendents were required to inspect head offices and sub-offices with Postmasters on pay above 40 twice a year, sub-offices on 40 once a year, sub-offices on 30 once in 2 years and 10 per cent. of branch offices once a year.

NARAYANGANJ POST OFFICE.

208. **Mr. K. C. Neogy:** (a) Has the attention of the Government been drawn to the letter written to the Director General, Posts and Telegraphs, on the 29th July 1922, by the General Secretary, Provincial Postal and Railway Mail Service Association, Bengal and Assam Circle, published in *Labour* for September 1922, giving reasons why Narayanganj should not be raised to the status of a Head Post Office, and why the post of one Superintendent should be abolished?

(b) Will Government be pleased to state what action was taken on it?

Colonel Sir Sydney Crookshank: (a) and (b). The letter referred to was received by the Director-General, Posts and Telegraphs. The Provincial Postal and Railway Mail Service Association, Bengal, was not officially recognised on that date: no reply therefore was given to the Association. Even if it had been recognised, such a proposal should have been addressed to the Postmaster-General, Bengal and Assam, not to the Director-General. Proposals to modify the postal organisation of a district are made by the Postmaster-General to the Director-General and not *vice versa*.

RAILWAY BOARD EXPENDITURE.

209. **Sir Deva Prasad Sarvadhikary:** Would the Government please lay on the table a statement showing the expenditure on Headquarters establishment of the Railway Board for the last five years, year by year?

Mr. C. D. M. Hindley: A statement giving the information asked for is placed on the table.

Statement showing the expenditure on Headquarters establishment of the Railway Board for the years 1917-18 to 1921-22.

Major Head.	1917-18.	1918-19.	1919-20.	1920-21.	1921-22.	REMARKS.
	Rs.	Rs.	Rs.	Rs.	Rs.	
Pay of Officers	3,20,169	3,74,502	4,08,488	(3,36,507) (4,950)	2,87,430 1,46,150	
Pay of Establishment	1,90,628	2,08,813	2,12,632	3,23,302	3,18,680	
Allowances	60,040	65,517	74,189	71,362	79,000	
Supplies and Services	—227	...	...	...	...	
Special charges	3,993	3,490	2,770	...	...	
Contingencies including clothing of menials.	45,902	60,142	61,015	60,500	63,000	
TOTAL	6,20,510	7,12,164	7,59,094	8,76,621	8,91,260	

N.B.—Figures for 1921-22 are according to "Revised Estimate" for that year.

RAILWAY COMMISSION EXPENDITURE.

210. **Sir Deva Prasad Sarvadhikary:** (a) Would the Government please lay on the table a statement of the expenditure proposed to be incurred in connection with the newly organised Railway Commission and also a statement of the expenditure already incurred in such connection?

(b) Would the Government please state before what Committees such expenditure, whether proposed or incurred, were laid for consideration or sanction?

(c) Would the Government please state before what Committee new items of Railway expenditure are laid for consideration or sanction?

Mr. C. D. M. Hindley: (a) and (b). The proposals of the Chief Commissioner have only recently been submitted and are now under consideration of Government. No information on the subject can therefore be given at present.

(c) Railway expenditure is incurred in accordance with a programme approved by the Legislature, and the individual items are not laid before any Committee except important items of establishment not within sanctioned grants which are examined by the Standing Finance Committee.

RAILWAY AUDIT SYSTEM.

211. **Sir Deva Prasad Sarvadhikary:** 1. Would the Government please state what system of audit obtains in the case of:

- (a) State-managed Railways,
- (b) Company-managed Railways?

2. What is the difference between the two systems and what are the reasons for such differentiation?

3. Is it contemplated to change the system of audit in either case?

4. If so, in what direction is such change to be effected, for what reasons and under what authority?

The Honourable Sir Basil Blackett: 1 and 2. The audit work on the railways worked by the State is conducted entirely by officers of the Indian Audit and Accounts Service. On the lines worked by Companies the audit is carried out by the Companies' officers but an officer of the Indian Audit and Accounts Service with a small office is attached to each Railway to check the audit in certain respects.

The general system of audit is what is technically known as "Pre-audit" i.e., audit before payment is made.

3 and 4. The recommendations contained in paragraphs 129 to 131 of the report of Sir William Acworth's Committee are under consideration.

INDIAN STORES DEPARTMENT.

212. **Sir Deva Prasad Sarvadhikary:** Would the Government please state:

- (a) the number of Gazetted officers appointed in the Indian Stores Department since its creation?
- (b) the number and qualifications of Indians to whom such appointments have been given?

Mr. A. H. Ley: (a) Six gazetted officers have been appointed in the Indian Stores Department since its creation.

(b) Of these, two are Indians, one of whom is a Bachelor of Arts of the Madras University, a Bachelor of Technical Science of the University of Manchester and an Associate of the Manchester College of Technology. Prior to his appointment in the Indian Stores Department, he served in positions of responsibility in various mills and educational institutions and in a provincial Industries Department and by this means acquired a practical experience extending over a period of about 9 years of the Textile Industry in India. The other is a Bachelor of Science of the Glasgow University, who has had 2½ years practical experience in large engineering works in the United Kingdom and had served, previous to his appointment in the Indian Stores Department, for a period of about 16 months as Superintendent of a large water works pumping station in India.

THE WORKMEN'S COMPENSATION BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member):

Sir, I beg to move that the amendments made by the Council of State in the Bill to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, be taken into consideration. I do not think I need say anything about this motion. If there are any Honourable Members who want further information on any particular amendment I shall be happy to give it.

The motion was adopted.

Mr. President: Amendment made by the Council of State:

"That in part (d) of sub-clause (1) of clause 2 of the Bill, after the words 'minor son', the word 'unmarried' was substituted for the word 'minor', and between the word 'daughter' and the words 'minor brother' the words 'married daughter who is a minor' were inserted."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"In part (f) of sub-clause (1) of clause 2 of the Bill, the words 'or body of persons whether incorporated or not' were omitted."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"In sub-clause (3) of clause 11 of the Bill, after the word 'leaves' the words 'without having been so examined' were inserted."

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"Sub-clauses (4) and (5) of clause 11 of the Bill were renumbered (5) and (6), respectively, and after sub-clause (3) the following sub-clause was inserted, namely:

"(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman."

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

Mr. Darcy Lindsay (Bengal: European): Sir, there is a strong feeling in some quarters that this amendment is undesirable in the best interests of all concerned. The Regulation regarding departure from the vicinity should be more adhered to and brought into conformity with another regulation we adopted in this House that no compensation should be given where there was disobedience to orders. If, Sir, a workman leaves the vicinity of his employment without examination it is disobedience, and it does not seem to be logical that compensation should be granted in all

[Mr. Darcy Lindsay.]

such cases where death occurs. I do not wish to oppose this amendment, because I do not want in any way to block the Bill, but I should be very glad of the assurance of the Honourable Member that Provincial Governments will be asked to direct the particular attention of the Commissioners to careful investigation being made before allowing compensation under the powers granted by this sub-section. I can see many possible dangers if very careful investigation is not made. I can point to the possibility of fraud being committed. In ordinary cases, if a workman is so seriously injured that death is likely to occur within a short period, he cannot very well go to his country, but there are other cases which may occur where a man with fraudulent intent gives notice of an accident which may never have happened. In his notice he says 'I have had a fall, and am internally injured'. He can bring forward one or other witnesses, possibly confederates in the same employment, he goes to his country, and in a short time a notification arrives of his death, and from my experiences of life insurance, I can assure the House, and I think many of my lawyer friends will bear with me in this—that evidence, and fairly strong evidence, is on occasions obtainable which would substantiate not only the death of the man but that the death was brought about by the injury he had suffered in his employment. On those grounds, Sir, I think, the utmost caution should be exercised. I quite recognise that the Commissioner would take precautions, but the amendment is somewhat loosely worded. It says 'If he thinks fit' he may grant compensation. It seems to me, Sir, that if the Bill allows of compensation being paid, it should be distinctly stated whether the Commissioner has to grant such compensation or not. If the Bill does not allow of such a compensation being paid on the death of a man who has not carried out one of the requirements of the Bill, then I say that it should not be left to the Commissioner as an act of charity to use other peoples' money to grant such compensation. I ask my Honourable friend, Mr. Innes, if he can give me the assurance that the Provincial Governments will be asked to direct the attention of the Commissioners to take the utmost precaution in every case.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I believe the form in which this amendment has come from the Council of State ought to be acceptable to this House, and I think the apprehensions of my Honourable friend, Mr. Darcy Lindsay, are far-fetched if not entirely misplaced. What this amendment seeks to do is to give a sort of discretion to the Commissioner to give compensation in case of death without medical examination in certain cases, and I do think this sort of discretion to the Commissioner is necessary to cover certain cases of workmen leaving the vicinity of their employment for *bonâ fide* reasons. My friend, Mr. Darcy Lindsay, wanted an assurance from Government that certain instructions to the Commissioners to take certain precautions would be given by the Provincial Governments. I do not see what the difference of that would be from the giving of discretion under the Statute itself to the Commissioners. Mr. Darcy Lindsay wants that the Provincial Governments should write to the Commissioners to exercise certain precautions. What the Bill proposes now to do is also to entrust them with a certain amount of discretion, to make proper investigations and to pay compensation in certain cases *bonâ fide* of death without medical examination. Mr. Darcy Lindsay further pointed out that the Commissioner is apt to use out of pure charity employers' money. Now we are entrusting the Commissioner with vast powers, and we postulate that the Commissioner will be a man

who can use his discretion properly. I do not see why, therefore, in this particular case the Commissioner will not be equally careful in his discretion. I do not think he will give away the money purely out of humanitarian feelings or feelings of charity as Mr. Darcy Lindsay apprehends. I think this amendment ought to be acceptable in its present form, namely, that the Commissioner may, if he thinks fit, give compensation in certain well-deserved cases. I support the amendment.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I am glad that this apprehension which I had when this Bill left the Assembly that, in a case where a man, after leaving the precincts or the vicinity of the scene of the accident, dies, his rights would be altogether lost, the right of his dependents to compensation would be altogether lost, has been removed by the Council of State. Sir, I strongly resent any suggestion that the Local Executive Government should control the judicial discretion which is vested in an officer who is going to be entrusted with the performance of the very duties which this Act confers upon him. Sir, I am surprised to hear my Honourable friend, Mr. Darcy Lindsay, making such a suggestion that the Executive Government must control the discretion of the judicial officer. The law leaving the discretion to a judicial officer like this, I don't think anybody should interfere with this discretion. The apprehensions which my Honourable friend has will be met by the Commissioner when the facts of the case are brought to his notice. The case of fraud which he is afraid of—a man fraudulently proceeding to his home in order to die there, would be very exceptional and persons conspiring with him in order to make him die would equally be a very exceptional case, and in such a case, if the employer is able to make out such a case, he will not award compensation to his dependents. This fear is unfounded. We have hitherto congratulated the employers on the magnanimous spirit which they have displayed in bringing this legislation into effect and I am afraid any such suggestion now made on the employer's side will not be looked upon with favour by the public.

The Honourable Mr. C. A. Innes: Sir, I am aware that this amendment carried in the Council of State has excited some alarm among the employers and I regret that fact very much, for all through this Bill we have managed to carry the employers with us to a very great extent and I regret that at the end there should be any element of discord. At the same time, I do not think myself that there is so much cause for these apprehensions, as has been suggested by the Honourable Mr. Lindsay. We are providing for the case of a man who has been badly injured. It has been put to us very strongly by members on the other side of the House that in that case, the instinct of the Indian is to go to his home, and it was put to us strongly that, owing to that instinct, very hard cases might arise and we endeavoured to provide for these hard cases by giving this kind of discretion to the Commissioner. It has been suggested that this clause will open the door to fraud, that workmen will send in notices of imaginary accidents or very trivial accidents, then will go off home, that a few months later dependents will turn up, will allege that this man has died and that compensation is due. I should like to point out to the House that in that case the onus of proof will be entirely upon the dependents. The dependents will have to prove that the accident took place, that it was an accident arising out of or in the course of employment, and the dependents will also have to show cause why the alleged injured workman voluntarily left the place of employment. On every point, the onus will be on the dependents, and I do not think

[Mr. C. A. Innes.]

that in practice this clause will be found to lead to fraud. But, Sir, as the clause has caused suspicion and alarm among the employers I am quite willing to repeat in this House the assurance that I gave in another place. I am not prepared to ask Local Governments to give the instructions to Commissioners suggested by Mr. Darcy Lindsay, but I am quite prepared to give an assurance that we shall address Local Governments on the subject of this Bill and draw their attention to the fact that these suspicions and apprehensions have been felt in regard to this class. We shall ask them to watch the working of the clause very carefully, and we shall ask them in any annual reports in the working of the Act that may be submitted to let us know whether the clause has in fact given rise to fraud or evasion, and, if we do find that the clause is a loophole for fraud, then I am quite prepared to give an assurance that we shall come before this House with the necessary amending legislation. I hope, Sir, that my friend will accept that assurance.

Mr. Darcy Lindsay: I thank the Honourable Member, Sir, for the assurance that he has given me.

Mr. President: The question is that this Assembly agree to this amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"To sub-clause (2) of clause 19 of the Bill, the words 'or to enforce any liability incurred under this Act' were added."

The question I have to put is that this Assembly agree with the Council of State in that amendment.

The motion was adopted.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadian): Sir, I beg to move:

"In sub-clause (2) of clause 28:

(a) Insert the word 'not' between the word 'shall' and the words 'be enforceable'.

(b) For the word 'notwithstanding' substitute the words 'if the agreement be in contravention of or repugnant to'."

After the amendment which I propose, Sir, the clause will read thus:

"(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall not be enforceable under this Act if the agreement be in contravention of or repugnant to anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force."

Sir, under this Bill we have provided that the agreement for compensation between the employer and the employee shall be registered before the Commissioner and after the registration of such agreement the employer will be liable, only to the extent of the amount agreed between the parties. We have also provided under section 29 that in default of such registration, the employer will not be entitled to get the benefit of any agreements that be entered into by him with his employees. Now, the amendment which has been made by the Council of State is good in so far as it gives the finality to the agreements entered into between the employers and employees. But it also gives a loophole which I wish to have amended if possible by

drawing the attention of the House to it. Under clause 2, we have defined that a minor is a person who is below 15 years of age. Now, if a person below 15 years of age were to enter into an agreement with his employer for compensation for injury that he may sustain in the employment, such an agreement under the ordinary laws of contracts will be void and will not be enforceable in any courts of law. Now, if we allow this sub-clause to be retained as has been done by the Council of State in this section, the effect will be that, even an agreement entered into by a minor below 15 years of age with his employer will be valid if registered before the Commissioner under section 28. No doubt, there is a safeguard provided in sub-clause (d) of clause 28, that the Commissioner shall inquire into and find out about the genuineness of the agreement and see that it has not been entered into under any fraud or any influence, but the intervention of the guardian in such agreements between the minor and the employer has not been provided for in clause 28 as it stands. The result would be that the minor's guardian will have no voice in the agreement for compensation that may be entered into between a boy below 18 and the employer. The minor may be induced to accept the terms of the employer that may not after all be suitable or being under his influence he may accept, in which case it will be very difficult for the Commissioner, even though he be a judicial officer, to find out for himself whether the boy was really pleased with the agreement that has been entered into between him and the employer or whether it was under any inducement or temptation that he entered into that agreement or whether or not it was acceptable to guardians. If we allow the provisions of the Contract Act to remain, we shall make it compulsory for the employer to enter into such agreement with the guardian of the minor and over and above that we shall have a further safeguard in its registration before the Commissioner. So, instead of one safeguard that is provided in clause 28, my amendment will give two safeguards in the case of minors in respect of such agreement. I think it desirable to provide further safeguards in such cases. I realise, Sir, that the amendment which I propose is of a sweeping nature in a way—in such a way that even if the agreement is registered before the Commissioner, it will still be possible that the agreement may be declared invalid in the courts of law, but I beg to suggest that such agreements could not be enforceable in the courts of law under the provisions of this very Act. Therefore, even though the agreement be valid otherwise than under this Act, the man would have no right to go to the courts of law and there will be no fear on that score. With these words, Sir, I commend my amendment for the consideration of the House.

Mr. President: Amendment moved in the amendment made by the Council of State:

"In sub-clause (2) of clause 28, as amended:

(a) Insert the word 'not' between the word 'shall' and the words 'be enforceable'.

(b) For the word 'notwithstanding' substitute the words 'if the agreement be in contravention of or repugnant to'."

Sir Henry Moxcraff Smith (Secretary, Legislative Department): Sir, Mr. Agnihotri has explained to the House that his desire is to provide another safeguard. He admits that there is a safeguard already in clause 28 in the proviso, but he thinks that if he makes the provisions of the Contract Act strictly applicable to these agreements, he will provide another safeguard. Now, I would suggest to the House that a provision

[Sir Henry Moncrieff Smith.]

of this kind proposed by Mr. Agnihotri would render clause 28 to a very large extent useless and inoperative. These agreements will not be entered into. Why should an employer take the trouble to negotiate for an agreement when he knows—he has no acquaintance with the Contract Act and he cannot take advice in every case—when he knows that there is a very good chance of that agreement being set aside by Civil Courts subsequently as being in contravention of some or other provision of the Contract Act? Therefore, Sir, the agreement will fail and the two parties will be just where they were to start with. The injured workman or the minor will then start with his claim for compensation under the provisions of this Bill. The answer to Mr. Agnihotri's amendment has, I think, already been given by Mr. Rangachariar this morning. In speaking in reply to Mr. Darcy Lindsay, Mr. Rangachariar emphasised the fact which has been emphasised in the House already that the Commissioner is going to be an officer of ripe judicial experience and the whole basis of the Act is, Sir, that we must trust the judicial officer who will be the Commissioner under this Act to exercise his discretion wisely and well. If, Sir, the Commissioner has regard to the provisos in sub-clause (1) of clause 28 I do not think there is the slightest risk that any agreement entered into by a minor or on behalf of a minor which is not a fair agreement will be registered by the Commissioner. You must trust the Commissioner, and I think that if my friend, Mr. Agnihotri, will accede to that proposition, he will agree that there is no necessity for him to press his amendment.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, to my mind there is a sufficient safeguard embodied in clause (d) of this very section. There it is clearly provided that if there is inadequacy of the lump sum which has been accepted, then the Commissioner will interfere and will not register that agreement. Again it is mentioned there that if there is a fraud then the Commissioner will step in and will not accept registration of that agreement. I think in the face of this very good safeguard, which is incorporated in section 28, clause (d), there is no necessity for any other safeguard which is contemplated by this amendment. If this amendment were accepted, I am afraid, it will give rise to a number of impediments in the way of deciding this sort of questions between employers and employees.

Mr. K. B. L. Agnihotri: How?

Dr. Nand Lal: Will the Commissioner call upon the employer to show who is the guardian of the minor workman? Supposing that guardian is living in a place which is far away, then it will take time to call him. That guardian may be tempted by some other means not to make an agreement. Then all these agreements will be practically blocked and no agreement will come to be entered into and the consequence would be that this measure which is of a very useful character, will lose its object. On these grounds, Sir, I oppose this amendment.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, not being a lawyer, I am unable to see exactly the effect of Mr. Agnihotri's amendment or the new clause added by the Council of State. But I should like to get some explanation from the Honourable Mr. Innes or from Sir Henry Moncrieff Smith how an agreement entered into by an employer with quite a young child of 9 or 10, engaged in, let us say, a house-building

industry, suffering a small injury, for which there will be not a lump-sum but half-monthly payments, will be registered or will be covered by the proviso to section 28. I do not think that is a desirable state of things. I am told it must be registered. I want to know under what provision there is any necessity to register an agreement with a child of 9 for a small injury for which there will not be a lump-sum payment but there will be half-monthly payments. Sir, if I am satisfied on this point, I have nothing more to say.

The Honourable Mr. C. A. Innes: Sir, Mr. Agnihotri's amendment, I may explain, does not bear in any way on the point raised by Mr. Joshi. We have tried to provide for Mr. Joshi's point by making it clear by the amendment in sections 31 and 19 of the Bill that any agreement can be and is enforceable by the Commissioner. We have made it clear in section 31 that the Commissioner may recover any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise. So, we are giving the Commissioner power to enforce an agreement whether for a half-monthly payment or not, whether registered or not, by the amendment in clause 31.

Mr. President: The question is that that amendment be made in the amendment made by the Council of State.

The motion was negatived.

The Assembly agreed also to the following amendments made by the Council of State in the Workmen's Compensation Bill:

"6. Clause 28 of the Bill was renumbered as sub-clause (1) of clause 28, and to the said clause the following sub-clause was added, namely:—

'(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.'

7. In clause 31 of the Bill after the words 'under this Act' the words 'whether under an agreement for the payment of compensation or otherwise' were inserted.

8. For clause (iii) of Schedule II to the Bill, the following was substituted, namely:—

'(iii) employed within the meaning of clause (d) of section 3 of the Indian Mines Act, 1923, in any mine which is subject to the operation of that Act; or'

9. In part (b) of clause (vi) of Schedule II to the Bill, after the words 'and is' the words 'has been' were inserted.

10. For part (c) of clause (vi) of Schedule II to the Bill, the following was substituted, namely:—

'(c) a bridge which is, has been, or is designed to be more than fifty feet in length; or'

THE INDIAN INCOME-TAX (AMENDMENT) BILL.

The Honourable Sir Basil Blackett (Finance Member): I move that the Bill to amend the Indian Income-tax Act, 1922, be taken into consideration.

The motion was adopted.

Clauses 1 and 2 were added to the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): I gave notice of an amendment to this clause 3, but that draft having not been approved by the Legislative Department, I have been handed over a draft which has my approval and I beg to move my amendment in the form as drafted by the Legislative Department:

"That for sub-clause (1) of clause 3 the following be substituted, namely:—

'(1) In section 68 of the said Act in the second proviso:

(a) for the words and figures 'to all assessments made under that Act in the year ending on the 31st day of March 1922' the following shall be substituted, namely:—

'to income-tax leviable under that Act in respect of the year beginning on the first day of April 1921 and to Super-tax chargeable under the Super-tax Act, 1920, in that year'; and

(b) for the words and figures 'section 19 of the said Act' the words 'that section' shall be substituted."

Sir, under section 68 of the Income-tax Act which we passed last year we have provided for adjustments of the amounts paid under the old Act. There we have provided that if the assessment had been made in the year ending on the 31st March 1922, all those persons whose assessments had been so made shall be entitled to have their adjustments of amounts made in the same manner as used to be done under the old Act of 1918. But, Sir, difficulties have arisen by the wording of the section, and in my division of the Central Provinces they have been specially very great, because though the proceedings of assessment had been started during the year 1921-22, somehow or other be it due to the negligence of the parties, or the cases being contentious, or through the slackness of the assessing officers, the assessment orders in far too many cases were not passed before the 31st day of March 1922. Some were passed on the 1st or 2nd of April 1922, and some even so late as latter part of the year 1922 with the result that the persons to whom we wanted to extend this concession could not get that concession by the peculiar wording of this proviso. It purports to lay down that only such persons can be allowed such adjustments in whose cases the orders of assessment had been passed before the midnight of 31st March 1922, but if my amendment be agreed to, such cases of hardship will disappear and the benefit of the concession will equally be extended to persons who had been assessed for that year, but after 31st of March 1922, they had no control over delayed assessment. There have also been cases in which orders were to be passed by the Assistant Commissioners or the Commissioner of Income-tax and those orders could not be passed even though the assessment reports were made by the Collectors of Income-tax before the 31st March and the same were subsequently sanctioned. Even such persons could not be allowed the adjustment under section 68 of the present Act. By this amendment we shall do away with all such hardships. With these words, Sir, I move my amendment.

Mr. A. V. V. Aiyar (Finance Department: Nominated Official): Sir, we recognise that it is reasonable in certain cases to extend the concession in regard to adjustments allowed by section 68 of the Indian Income-tax Act of 1922 to assessments made after the 31st day of March 1922, especially in cases in which for no fault of the assessee or for reasons beyond

his control there has been delay in assessment. I accept the amendment on behalf of Government.

The motion that that amendment be made was adopted.

Clause 3, as amended, was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Basil Blackett: I move that the Bill, as amended, be passed.

The motion was adopted.

RESOLUTION RE STATE MANAGEMENT OF RAILWAYS IN INDIA.

Mr. President: The Assembly will now resume consideration of the Resolution moved by Maulvi Miyan Asjad-ul-lah on the 7th September, 1922:

"This Assembly recommends to the Governor General in Council that the Indian Railways Act of 1890 be so revised as to give India the full benefit of State ownership of Indian Railways as is done in other countries where the Railways are owned and managed by the State."

In view of the number of amendments on the paper, I think it may assist the discussion if I give the Assembly some indication of the course which I propose to pursue in regard to them. I shall, in the first place, call upon Mr. Neogy to move the amendment standing in his name. I shall then call upon Dr. Gour to move the amendment standing in his name as an amendment to Mr. Neogy's. Then without putting Mr. Neogy's amendment to the vote I shall call upon Sir Campbell Rhodes to move his amendment as a further amendment to Mr. Neogy's. These will place before the Assembly the principal alternatives and the discussion therefore can proceed on wide lines.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): I beg to move:

"That in the Resolution the following be substituted for the words beginning with 'the Indian Railways Act' and up to the end of the Resolution:

'he may be pleased to accept and give effect to the recommendation of the Chairman and four other members of the Indian Railway Committee, 1920-21, that the undertakings of guaranteed Railway Companies, as and when the contracts fall in, should be entrusted to the direct management of the State."

I have heard it said that my amendment merely seeks to raise an academic discussion. I maintain that it does nothing of the kind. Looking through the list of amendments I find that some of my Honourable friends are anxious to shirk the real question that is at issue to-day. They are more in favour of temporising with the question instead of solving it in the way in which we should. Sir, this question came up, I think, about half a dozen times in the old Imperial Legislative Council during the last 10 or 12 years. The question did not come up in connection with the future management of the Great Indian Peninsula and East Indian Railways, but Indian opinion has been insistent during all these years that the future policy of management of all State owned railways should be in accordance with Indian opinion which of course favoured State management. Now, Sir, leaving aside those past discussions, what do we find even when we come to the year 1920-21? We find that the Acworth Committee was appointed not for the purpose of advising the Government of India as to what system of management should be accepted in regard to these two lines,

[Mr. K. C. Neogy.]

but generally to advise the Government of India on the question of the future policy of management of railways as a whole. A reference to the Acworth Committee's terms of reference will bear me out in this particular. Then, Sir, when the Acworth Committee proceeded about their business they took care to collect all shades of opinion in regard to this general question. They did not confine their attention to the question of Great Indian Peninsula and East Indian Railways alone. And when the report of the Acworth Committee was published, Honourable Members will remember that several of my Honourable friends in this House in interpellations insisted on an opportunity, and an opportunity being given for the discussion of the whole Report of the Acworth Committee, and not merely the question of the management of the Great Indian Peninsula or the East Indian Railway. Again, Sir, the Government of India in June 1922 addressed Local Governments and the Chambers of Commerce in the various provinces, inviting their opinions on this question. They specifically raised the question of the management of these two lines, but incidentally they referred to this general question as well. They say this in one of the paragraphs of their letter: "Not all Local Governments and Chambers of Commerce are immediately interested in these two lines, but the general question involved is so important that they will no doubt wish to express their views", so that even in June 1922, Government was considering the whole question of the future policy of railway management. After that the Central Advisory Council was asked to pronounce their views, not merely with regard to the management of these two lines, but on the question of the policy of future management of railways as a whole. Therefore, Sir, I maintain that it is not only open to us, but it is incumbent on us, to discuss this broad question of principle to-day. We will be shirking our duty if we confine our attention to these two lines without deciding the question of principle involved. Shall it be said that the Legislative Assembly with an elected majority was afraid to decide the question in the year 1923, while its predecessor in days gone by insisted on the acceptance of this general principle in regard to all State-owned railways?

Now, Sir, I come to the subject-matter of the Resolution. A well-known English writer on British railways, whose sympathies are not at all in favour of nationalisation, says that the question of State or private management is not a general one. It is not possible to say that all private companies are bad and all State Railways are good or *vice versa*. State system and private system may be good, bad or indifferent according to the varying circumstances of different countries. I, therefore, maintain that the analogies of other countries are quite out of place in the discussion on this question, either in favour of State management or in favour of company management in India. Sir, we are all aware that there is no stronger protagonist of company management among the railway experts of the world than Sir William Acworth himself. We find he says in the Report of the Acworth Committee that he and some of those members of his Committee who agreed with him in recommending State management approached this question with a distinct bias in favour of company management. That is a fact which should be borne in mind, because it endows the recommendation of the majority of the Acworth Committee with a special importance of its own. Sir, what are the considerations that led the majority of the Acworth Committee to come to this decision? The majority of the Committee said that the system of company management in India has not been

successful. They maintain that company management properly so called does not exist in India, that the companies have no real initiative, nor has the Government who owns a very large proportion of the railway lines. Later on they say that freedom of private enterprise is non-existent and the establishment of companies with real independence is impossible and it is in fact not even proposed. Then they refer to the Indian demand for State management. They say that Indian public opinion is practically unanimous in demanding that the owner shall manage directly. They then come to the conclusion that no scheme for the establishment of Indian domiciled railway companies is acceptable and that not until they are relieved from all reasonable loss will shareholders subscribe at all. Even when so relieved they will only subscribe relatively small amounts. Such small amounts would not justify entrusting them with substantially independent management; and unless the management is substantially independent, the justification for the existence of a company disappears. And, therefore, approaching the question not as one of national sentiment but purely from the practical point of view the Committee find themselves in agreement with the almost unanimous opinion of Indian witnesses, and recommend that the undertakings of guaranteed companies, as and when the contracts fall in, be entrusted to the direct management of the State.

Sir, the Acworth Committee referred to the remarkable unanimity of Indian public opinion in this matter. We are glad to find that this unanimous public opinion has been supported by the various Local Governments. As I have already said, the Government of India consulted the Local Governments in regard to this question; and I find that in reply the Madras Government say that they are strongly in favour of the system of State management generally. The Government of Bombay say that they want the management of the East Indian Railway and the Great Indian Peninsular Railway to be taken over by the State. Then the Government of Bihar and Orissa point out that the right and proper solution is to be found in the assumption of direct control by the State. The Government of the Central Provinces are in favour of State management. The Government of the United Provinces are divided on this question, His Excellency the Governor and the European Member of the Executive Council being in favour of Company management, and the Indian Member of the Executive Council, the Honourable the Raja of Mahmudabad, and the two Ministers being in favour of State management. I do not find the opinion of the Government of Bengal or of the Punjab in the collection of opinions that was placed on the Library table in response to a request of mine; but I find that in a written statement which was placed before the Acworth Committee the Government of Bengal pledged themselves in support of State management. When we come to Assam, we find that the Government of Assam recommend Company management for these two lines, and I very gladly make a present of the Assam opinion to my Honourable friend, Sir Deva Prasad Sarvadhikary. (Sir Deva Prasad Sarvadhikary: "I thank the Honourable gentleman for the present.") Sir, a good deal of misapprehension seems to prevail in regard to the question as to whether or not State management of railways is quite as efficient and as economical as Company management. In regard to this matter, I think we have got only expert opinion that we could possibly expect in the circumstances, namely, the opinion of the Railway Board in favour of, or at least not against, State management. We find that in their written statement before the Acworth Committee and in their oral evidence before that Committee, the Railway Board maintained that there

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was absolutely no distinction between State management and Company management so far as efficiency and economy were concerned. We find further that in a Despatch to the Secretary of State in 1917 the Government of India unanimously held this view. I hope that they are not going to resile from that position to-day. Sir, efficiency and economy are very good things indeed, but they must be judged with reference to the immediate aim that we have in view. We must not make a fetish of efficiency and economy. Sir, the main purpose of railways, I maintain, is to develop the resources of the country and to promote the economic well-being of the people. Have the railways, in following the policy that has hitherto been followed, been successful in fulfilling this main condition? (Mr. J. Chaudhuri: "To a great extent.") I do not think I am in the wrong when I say that the railway policy in India has so far been directed not so much in the interests of Indian industries, not so much towards the promotion of the well-being of Indians, as in the interests of British manufacturers and British interests generally. (Sir Montagu Webb and other Honourable Members: "No, no, no, no!") Sir, in the discussions, to which I made reference, which the old Imperial Council had on this subject, our late lamented friend, Sir Vithaldas Thackersay, and another equally great authority on this question, Sir Ibrahim Rahimtoola, referred to many instances in which the railway policy has been instrumental in handicapping Indian industries. And those who care to go through the voluminous evidence before the Indian Industrial Commission that was presided over by Sir Thomas Holland, will find that there is ample evidence in that showing how the railway policy has been directed towards the handicapping, if not killing actually, of certain industries in India; how the rates have been manipulated with a view to give foreign imports preference over indigenous industries; how the rates have been manipulated to favour the export of raw materials from India. Now, Sir, these charges, the Acworth Committee admit, Indian opinion takes to be absolutely established.

Sir, what is the alternative scheme of management that has been suggested? The alternative is, management by Companies domiciled in India. The other alternative systems advocated by different sections of opinion, I think, were rejected by the Acworth Committee and are not before the Government, so far as I know. Now it is useful to remember that so far as the management of Indian railways by Companies domiciled in India is concerned, the Boards of the Companies, the Home Boards, I mean, are unanimously against such a scheme. They say that such a scheme of management in India by Companies domiciled in India combines the disadvantages of both State management and Company management without the advantages of either system. Sir Walter Lawrence, who is a Director of the Madras and Southern Mahratta Railway and of the Assam Bengal Railway, said that if the present policy were to be changed, he would prefer State management. The question was 'would you give preference to the State management?' The answer was, 'In Indian interests, it would be better to do that, because we do not hold enough capital and the predominant partner can always check us.' Then the Chairman put another question: "are we to take it that the development of Indian national sentiment has caused you to change your view expressed 12 years ago?" The answer was: "Yes, my view is this; if you want to switch Indians from politics, you have to give them something to do and here is this spectacle which you see going through these many thousands of miles of

railway. There is not a single Indian who has any direct interest in the railway." Then Mr. Rendell and Colonel Huddleston who are connected with certain Companies as Directors said that the third proposed alternative, that is to say, management through the agency of an Indian Board, appears to combine the faults of both and the merits of neither system. Mr. Rendell says, "I should undoubtedly transfer the management of railways to the State. I should have an honest State railway. You must run railways in India on bureaucratic lines, to my mind, and if the thing is done in India, we had better leave it in the hands of Government." Then Colonel Constable and Sir Donald Robertson, who are also associated with certain Company-managed Lines, said:

"if there is to be a change, the railways should be handed over not to companies in India, but to the State direct. That is what we think. I think all the companies practically think that."

And then it was pointed out that all the companies had discussed this question together and come to the same conclusion.

Sir, reference has been made to the drawbacks of the State system of management by no less an authority than Sir George Godfrey, Agent of the Bengal Nagpur Railway. He thinks that it is only theorists and political socialists who favour State management. Practical men whether in politics or in business favour company management. I would ask the Honourable Members of this House not to be classed among Sir George Godfrey's practical men for this purpose to-day. I suppose that Sir William Acworth and the Directors of the Indian Railway Companies whom I have quoted just now are not political theorists or socialists. Sir, one of the objections against State management which has been magnified beyond all proportion by Sir George Godfrey is that a system of State management will import politics into the administration of the railways. Sir, if we go through the evidence that was given before the Acworth Committee, and also the evidence that was given before the Indian Industrial Commission, we come across numerous instances in which considerations other than of pure business principles determined the policy of the railways. You will find that an Indian gentleman giving evidence before the Acworth Committee referred to certain cases in which it was impossible for Indian owners of collieries to get sidings, because they were Indians; and in one instance particularly it was pointed out that half the share of a colliery had to be sold by an Indian proprietor to an European at a nominal price in order to enable him to obtain a siding. Reference is also made to the fact that it is racial considerations that determine the distribution of wagons among the collieries, and while every European colliery could expect a due supply of wagons the Indians could not. These are certainly not questions of politics! If you ask for redress of these grievances, it is only then that it becomes a question of politics. Now Sir, when the railways pursued a policy that had the result of handicapping Indian Industries to the benefit of the English commercial interests, that is not to be classed as political! If you ask that the Indian interests should be safeguarded in this matter, if you ask that the railway policy should be so directed in future as to assist in the development of Indian industries even at the sacrifice, if necessary, of British interests, then it becomes politics! Sir, if you ask for the redress of grievances of Indian travellers who are often subjected to humiliating treatment at the hands of European and Anglo-Indian officials of the railways, then it becomes a question of politics! So long as you do not complain, it is not politics. Sir, I am convinced that Sir George Godfrey's objection to State management really springs from

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a guilty conscience, from knowledge that the railway policy in the past has been inimical, deliberately inimical, to Indian interests and that they have done deliberate injustice to India. (Sir Montagu Webb "Nonsense.") It is an unpleasant truth. The real secret of the opposition is, that you are afraid that Indian public opinion, as represented in this House, might assert itself and put an end to the policy, the iniquitous policy, followed so long. That is really the secret of this opposition. Sir, I beg to commend my amendment.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, in moving my amendment I shall not be understood to oppose the basic principle which has moved my Honourable friend, Mr. Neogy, in tabling his own amendment. I am entirely at one with him on the abstract question of State *versus* Company management, but I shall presently disclose certain facts and ask the House to decide between his amendment and mine. The Honourable Mover of this amendment has castigated all his opponents as temporizers. He has wound up his speech by saying, "let us not be practical men". Well, Sir, if I have to temporize because I am a practical man, I am not ashamed of temporizing. In dealing with this railway question we must not be pure sentimentalists. We must deal with this question as men of commonsense and as men of business. It is from that point of view that I shall present my amendment for the acceptance of this House. I have said that, generally speaking, I am in entire sympathy with the Mover of the amendment. I entirely agree with him that where the railways are entirely or almost entirely the property of the State, it is the State who should manage its own property. The position of other countries which has often been presented to us by way of illustration affords no parallel. In England we have company management because all the railways are owned by the companies themselves. In Germany and in Japan we have State management because all the railways are capitalized and owned by the State. Consequently the success of Germany or the failure of company management elsewhere affords no parallel to the railway management in this country. The railways in India are almost exclusively the property of the State and yet it happens that these railways are leased out to English domiciled companies who have very little stake in the capital of the company concerned for the purpose of management and upon terms which I cannot but describe as unjust and inequitable, because, while they are entitled to participate in the profits, they are not liable for the resultant losses which are thrown on the tax-payer. That is a position which has given rise to a volume of opinion in this country against company management, and I submit the very strong expression of opinion adverted to in the Acworth Committee's Report and on the platform and in the press is due to this fact, as also to the fact referred to by my Honourable friend, Mr. Neogy, that these railways have become the monopoly of a certain class, of a certain race who are employed in all the highly paid appointments, and the Indians who ought to be employed in the superior service of the railways are relegated to positions of subordination and servility. While a large number of the travelling public are Indians, the guards, drivers, station-masters and ticket collectors and everybody constituting the controlling staff of the stations is either a European or an Anglo-Indian. (Mr. R. A. Spence: "What about the Bombay, Baroda and Central India Railway?") Now, these are things which have impressed themselves upon the people and they have decided that as the railways belong to them,

they and they alone shall manage them in the interests of the people and of the State. When I hear my friend, the Mover of this amendment, speaking eloquently on the subject of State management I have no doubt that the sentiments which have prompted him to advocate State ownership and State management are partially, if not entirely, due to the feeling I have described. I have said at the outset that I am in entire sympathy with his feelings. But if we descend from the general to the particular, what are the facts? We have in this country eight State-owned railways. They are all for the present leased out to companies for the purpose of management. Of these eight railways the contract with the East Indian Railway expired in 1919, and it was extended for a period of five years, which will expire on the 31st December 1924. The contract with the Great Indian Peninsula Railway given in 1900 for 25 years will expire in 1925. These are the two railways covering about 6,000 miles, whose contracts will expire next year and the year after the next.

I now give the periods when the contracts of the other six railways will expire. The next that will fall in will be the Burma Railways in 1928; the contract with the Assam-Bengal Railway will terminate in 1931, with the Madras and Southern Mahratta Railway in 1937, with the Bombay, Baroda and Central India Railway in 1941, with the South Indian Railway in 1945, and lastly with the Bengal-Nagpur Railway in 1950. Therefore of all these State railways, the two trunk lines, the most important lines of which the contract will terminate next year and the year after the next are the East Indian Railway and the Great Indian Peninsula Railway; and it is with reference to these two railways that I have given notice of my amendment in which I ask as follows:

"That all the words from the words 'the Indian Railways Act' to the end of the Resolution be deleted, and the following be substituted in their place:

'on expiry of their leases, both the East Indian Railway and the Great Indian Peninsula Railway be taken over for management by the State'."

I have already pointed out, Sir, that there is very little difference in principle between my friend, Mr. Neogy's amendment and mine. The only difference is that I do not want this House to decide upon a question which will arise for practical consideration in certain cases as late as 1950 and in the majority of cases in the years which I have mentioned. Those are questions which, I submit, must be decided in the light of the experience gained during the interval of State management of the Great Indian Peninsula and East Indian Railway Companies. On this point there cannot be any difference of opinion. The majority, at any rate, five members including the Chairman, of the Acworth Committee, speaking of State management of railways point out that so far as State management of railways is concerned, it is at the present moment and as regards these two railways a matter which admits of no choice. But at the same time the Chairman and his colleagues point out that if it were possible to start a genuine indigenous company to take over not merely the management but also the capital of these two companies this question would assume a different aspect; and with reference to this suggestion the Minority Report says: "We should not decide the question of State management as regards these few railways because it is impossible to foretell what may be the opinion on these matters 15 or 20 years hence in India, Europe, or the world generally," and they say it would be unwise at the present juncture to commit the Government of India to a permanent policy of State operation. Honourable Members will see that the

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financial position of the country at the present moment is not favourable to the flotation of a company that will take over the capital of the Great Indian Peninsula and East Indian Railways. But in the case of the other railways, the Burma Railways and the other railways I have mentioned, years after it may be possible to raise capital in this country and to form independent and indigenous companies not only merely to own but also to take over the management of these railways, and it is upon this ground that I think it would be premature to commit this House to the policy of State management without adverting to the facts which may hereafter induce us to change our views. It is on this ground, Sir, that I have ventured to differ from my Honourable friend, Mr. Neogy. As I have said before, and I repeat it, that if the question was an urgent one, as urgent as it is in the case of the East Indian Railway and the Great Indian Peninsula Railway, I should unhesitatingly vote with my friend in favour of State management. It is a well known fact, a fact which Honourable Members will find stated by witnesses after witnesses and summarised in this Report, that State management would lead to the unification of railways, to the centralisation of control, to the elimination of conflict of interests, to the placing of favourable contracts, and last but not least, to the removal of colour bar. These are all considerations which weigh with me, and I have no doubt that they will weigh also with the House. But the only point upon which I venture to differ from my Honourable friend is that we should not lay down a policy for 25 or more years in advance, when we shall be in a position to examine the situation as it may then present itself, and if the financial condition of the country then permits of the flotation of a company, we might be advised to entrust the management to a company. I understood my friend Mr. Neogy to suggest that State management is always to be preferred to company management. It is a notorious fact, and a fact which could not be denied, that State management can only be had in the last resort. State management is uneconomical, it cannot compete with a properly organized company. But when we advocate State management, it is not because we are enamoured of the State, but because we think that Company management has led to abuses which cannot be prevented, and that out of the two evils we prefer the lesser evil of State management. It is on these grounds, Sir, that I advocate the resumption of management by the State of the Great Indian Peninsula and East Indian Railway Companies. At the same time, I would ask this House to reserve its judgment as to the future management of the other railways when the proper time comes for it. As I have said before, and I repeat it, that other things being equal, Company management would be far more preferable to State management. (Cries of "No, no" from different parts of the House.) We all know my friend, Mr. Neogy, has said so; we know, as a matter of fact, that if the capital of the railways in this country had been subscribed by the people of this country, they would have felt a far greater personal interest in the administration of the railways than they do at the present moment, and let us hope that in the near future such a time may come when the people of this country will start their own companies and take over not only the management but the ownership of their lines. But can any one say what will be the situation 5 years hence, or 10 years hence, or 20 years hence or 25 years hence? And unless Members of this House are prepared to dogmatise and assert that the people of this country will never be able to subscribe to the capital necessary for the purpose of

owning these companies on the termination of their leases and to provide for their management, unless Members of this House are prepared to prophesy that such a state of things is not likely to come during the next quarter of a century, they cannot ask this House to commit itself to an unalterable decision that all railways hereafter shall be managed by the State. (A Voice: 'Yes, in India'.) I was only speaking about India and of no other country. I submit, Sir, that this is the sole point of difference between my friend, Mr. Neogy, and myself, and I leave the decision in the hands of the Honourable Members of this House. Sir, I move my amendment.

Mr. President: In order to make the Honourable Member's amendment more clear, is he prepared to move his amendment as an amendment to Mr. Neogy's?

Dr. H. S. Gour: Yes.

Mr. President: Amendment moved:

"That all words after the word 'pleased' be omitted, and the following be inserted in their place:

'On expiry of their leases to take over both the East Indian Railway and the Great Indian Peninsula Railway for management by the State'."

Sir Campbell Rhodes (Bengal: European): Sir, I beg to move:

"That for the words from 'the Indian Railways Act' to the end of the Resolution the following be substituted:

'before coming to a definite decision as to the best railway policy for India, it is desirable to continue for a further period of five years the principles both of State and Company-management, in order that:

(1) Experience may be gained as to the effect on the working of the existing State-managed lines of the Reform Scheme and of the present re-organisation of the Railway Board.

(2) The Company-managed railways may appoint immediately strong local boards in India consisting of an equal number of Indians and Europeans, such boards to have definite and growing powers on the understanding that within the five years they should abrogate to themselves the functions of the home boards.

(3) It may be ascertained which method of management is calculated to produce the best results in regard to:

- (a) Economical working;
- (b) The comfort of passengers;
- (c) The industrial development of the country;
- (d) The greater association of Indians and Anglo-Indians in the higher administration of the Railways."

Sir, I cannot congratulate the advocates of State management on the speech which has fallen from my Honourable friend, Mr. Neogy. This House has high traditions, and I hardly think it is in accordance with those traditions to use it as a sanctuary for charges against people, with those traditions of criminal misappropriation for which he has given no data and charges of criminal misappropriation for which he has given no data and where he has mentioned no names. I can, however, congratulate the advocates of State management on the advocacy of my friend, Dr. Gour. When there is nothing to be said for a subject, I know of no better advocate for he says it with so much zeal, so much eloquence and convinces us so readily. Mr. Neogy says that the analogies of other countries are out of

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place. Sir, I am going to bore Mr. Neogy. In the Acworth Committee's Report, reference is made to the experiences of other countries:

"268. We will now allude briefly to the conditions in a few important countries where State management exists. The Swiss Federal railways in seven years (1914-20) have shown a loss of 200 million francs, say 8 to 10 million sterling. Before the war they were earning a small profit. Passenger fares have been increased by 40 to 60 per cent. Prior to 1914 and subsequent to the date of nationalisation there was a steady and often large increase in the cost of the staff and in the operating ratio. The Northern Railway of Austria, before it was taken over by the Government in 1906, paid a dividend averaging for the previous five years 12 per cent.; the Government succeeded in turning that profit into a loss. In Italy for a period of eight years from 1905, when Government took over the working of the railways, there has been a steady yearly increase in the operating costs and the return on the capital has declined. The South African railways show a loss of 2,000,000 £, on the last two years' working. The American railways are in such a bad way consequent on the period of Government control, that President Harding in a recent address to Congress, after referring to the 'heedlessness of cost of Government operations', emphatically asserted that there would be a foundation for rebuilding after the past disaster, if it was clearly understood that there would be no State ownership, and that the people would not be taxed to cover railway deficits. This shows the trend of opinion in a democratic country."

Sir, in addressing the Government, the Bengal Chamber of Commerce quoted some other instances of State railway mismanagement:

"The examples of other countries show equally startling results. Probably no more striking indictment of State management has ever been written than that prepared by Mr. E. A. Pratt, the well-known railway economist, in discussing an exhaustive study of the State Railways of Belgium, a system often pointed to by those who favour nationalisation. Amongst the primary evils he emphasises that of excessive centralisation, the higher cost of staff, and the absence of the elements of competition and initiative. He tells how amendments to the railway budget of 1905 would have augmented the payments for salaries and wages by 40 per cent., and of how the Belgian Chamber discussed the railway budget for five weeks. . . . In Germany one of the chief conditions laid down by the German industrial magnates for advancing securities to the German Government is that, as far as possible, State-managed enterprises (including the German State Railways) should revert to private management. But most striking of all, perhaps, is the case of France, where a commission has recently been inquiring into the future management of the railways. The Chamber understand that this Commission have reported in favour of handing over the Western or State Railway system to a company, this proposal being preferred to an alternative proposal that the system should be put under a Board of Management with no direct financial interest in the working results."

And now I come to New Zealand and I should like to quote here a short passage from Lord Bryce's book which probably few of you have read:

"Two questions remain to be considered: the financial position of the Government railways and the service they render. The former is not easy to ascertain, because the form in which accounts are presented, with the habit of sometimes charging to capital what ought to come out of revenue, does not tell the whole story. It seems clear, however, that the lines have been, and are being, worked at a loss, i.e., the receipts do not cover interests on the cost of construction as well as all working expenses, so there is a loss to the general taxpayer. The explanation usually given, besides, of course, an admission of the errors which made the original cost greater than it ought to have been, and which also saddled the Department with unremunerative lines, is that the rates are kept low with a view to the 'development' of the country and the benefit of the travelling public. As regards 'development', this is a term wide enough to cover expenditure on unprofitable lines, and one of the results of 'political' and otherwise extravagant railway construction and management has been to reduce those very railway receipts which might have been used for the building of new lines where they were really wanted. It is alleged that the higher branches of the railway service suffer because it is hard to promote the most capable men without incurring the reproach of favouritism, and it is further asserted that in the lower departments less work is got out of railway employees of all kinds than private employers obtain."

In the face of these extracts, I do not wonder that Mr. Neogy says that analogies of other countries are out of place. The Acworth Committee has given us no lead. Mr. Neogy's arithmetic is as bad as his logic. There was no majority report. The objections to State management mentioned by the five were as follows:

- "(1) constant transfers of senior officials, resulting in lack of continuity of policy;
- (2) the tendency to give promotion on the grounds of seniority alone without sufficient regard to efficiency or local knowledge;
- (3) disregard of public opinion; and
- (4) lack of initiative and flexibility. Further, as regards the co-existence of company-managed railways and State railways, it is urged that improvements in the administration of State railways which have been effected during past years are mainly due to the emulation inspired by company management; in other words, that the initiative lies with the company-managed railways, and that emulation and comparison provide healthy results in the case of State-worked lines."

Well, Sir, now let me take the arguments of the Acworth Committee in favour of State management. They say in paragraph 223:

"Even if we were to assume that State management would not be better, we are quite sure that its failures would be judged more leniently by the Indian public."

This, Sir, is putting in another way what Mr. Neogy has put much more eloquently when he says: "let us not make a fetish of efficiency." I suggest, Sir, that such a sentence in a serious report is to condemn the whole report for prompt consignment to the waste paper basket.

Well, Sir, we now turn to the unanimous conclusions. These are primarily in Nos. 2 and 3:

"2. We recommend that, on the one hand, the reconstituted Railway Department should delegate considerably increased power of day-to-day management to the local railway administrations, and on the other hand should be relieved from control by the India Office and by the Government of India except on large questions of finance and general policy.

3. We recommend that the Finance Department should cease to control the internal finance of the railways"

Sir William Acworth's section of the Committee recommended State management, but they were careful to say, in paragraph 228:

"It is not State management as it has hitherto existed in India, whose functions we recommend to be so greatly extended."

Then, what is it? The Honourable Mr. Innes has put down a Resolution for to-morrow's debate the meaning of which, I understand, is that the financial recommendations of the Acworth Committee are not to be carried out. We have therefore not got the State management which Sir William Acworth recommended. What again, Sir, is the position of the new Chief Commissioner of Railways? Though this is a controversial subject I think the whole House will agree with me that in the selection of Mr. Hindley as Chief Commissioner the Government have found the very best man they could find in India or possibly in any other country. (Hear, hear.) I am glad to hear the House approves of that. But I want to go one step further. I want to go into Mr. Hindley's antecedents. Where did Mr. Hindley come from? Mr. Hindley got his training in one of those inefficient company lines.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): What about the seniority argument then?

Mr. K. C. Neogy: Seniority was not insisted on in this case. What became of Colonel Waghorn?

Sir Campbell Rhodes: What are Mr. Hindley's duties? I understand in front of him he has the Assembly wanting to know—if Dr. Gour will excuse the reference—why a certain shed foreman on the North-Western Railway was not paid his gratuity and also wanting to know why certain trains have been taken off in Southern India, and behind him he has the Government and the Secretary of State. Well, Sir, I do not share Dr. Gour's childlike faith in the Government and His Majesty's Secretary of State. And what is the Assembly's position? It has been admitted by one of the chief advocates of State management that it will cost more money. Mr. Neogy, I gather from his remarks, is of the same opinion.

Mr. K. C. Neogy: No.

Sir Campbell Rhodes: In that case, we shall have to find the money, and we shall have to put up more money and stop the development of the country for this new toy of State management like New Zealand, South Africa and the other places I have mentioned. (*An Honourable Member:* "Is it a new toy?" *Another Honourable Member:* "Is it not old?") Mr. Neogy has made a charge that the lines of the present companies are being run to help the import trade from other countries. Well, Sir, I submit that he wants to go a step further and help them a little more. Sea freights are falling every day. If railway freights go up, obviously the advantage will be in favour, for instance, of Belgium or German steel against Tatanagar, and therefore, if, as so many of us think and as Dr. Gour fears, State management is going to cost us more, we are going to increase those very evils of which Mr. Neogy speaks so eloquently. His advocacy of State management is to find employment for more Indians. The humdrum of employment in State service, promotion by seniority, no promotion by merit, no weeding out of bad men . . .

Mr. K. C. Neogy: What about the official Members of the Executive Council? They are not senior men.

Mr. President: I have allowed the Honourable Member to interrupt several times because a certain measure of interruption is perfectly in order. But I ask him now to desist from further doing so.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Are we not entitled to correct, Sir?

Mr. President: When the Honourable Member is called on to speak he can correct what he likes or dislikes.

Sir Campbell Rhodes: Now, Sir, I turn to State management. I have pointed out that we have not yet had the State management which the Acworth Committee suggested. We have not even got it to-day, and therefore, my amendment is to the effect that we should not transfer all our Railways to State management until we see what that State management is. We have not had the Company management which I visualize in my amendment. We are all agreed that we do not want Home Boards. We want our Boards out here as fast as we can train our Directors and it does take time to train Directors to the efficient management of a Railway Company. We want to harness our business men and in the five years I suggest it ought to be possible to train up our new Directors to their new responsibilities. I would go further than that. If I had my

way, I would immediately send Home to the London Board a liaison officer in the shape of some Indian expert in Railway affairs.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Where are they?

Sir Campbell Rhodes: My amendment, therefore, Sir, is to run both side by side until more experience has been gained. This is not, as Mr. Neogy suggests, a racial question. The Resolution passed in January by the Associated Chambers of Commerce was proposed by his very distinguished fellow-countryman, Sir Rajendra Nath Mookerjee and it read as follows:

"This Association re-affirms the Resolution in this connection passed at the annual meeting of the Association in January 1922; and, in view of the proved disadvantages in almost all countries where it has been adopted, of the system of State Railway Management, and the growing tendency to revert to a company-managed basis, the Association strongly recommends that those railways in India which are now managed by companies should continue to be under Company Management with Boards domiciled in India and should not be transferred to the direct management of the State."

I believe, Sir, that this demand for nationalisation is on altogether false premises. It is based entirely on the idea that nationalisation and nationalism are synonymous terms. I suggest to the House that they are nothing of the sort. One spells bureaucracy and the other democracy, and I will leave it at that.

Mr. President: Further amendment moved:

"Before coming to a definite decision as to the best railway policy for India, it is desirable to continue for a further period of five years the principles both of State and Company management, in order that:

(1) Experience may be gained as to the effect on the working of the existing State-managed lines of the Reforms Scheme and of the present re-organisation of the Railway Board.

(2) The Company-managed railways may appoint immediately strong local boards in India consisting of an equal number of Indians and Europeans, such boards to have definite and growing powers on the understanding that within the five years they should abrogate to themselves the functions of the Home boards.

(3) It may be ascertained which method of management is calculated to produce the best results in regard to:

- (a) Economical working;
- (b) The comfort of passengers;
- (c) The industrial development of the country;
- (d) The greater association of Indians and Anglo-Indians in the higher administration of the Railways."

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, there are now three amendments before the House and I think it will be convenient if at this stage I define the attitude which Government desire the House to take up. I do not propose to deal at any length with the amendment proposed by Mr. Neogy. I entirely agree with Dr. Gour that at this stage it is unwise and unnecessary indeed for this Assembly to attempt to lay down for ever what should be our right policy in regard to Railway management. As Dr. Gour has pointed out, some of our existing contracts with some of our existing Companies do not expire till 1941, 1945

and 1950. Is it any use for us to-day to try to dictate to our successors what view they ought to take when those contracts expire? No responsible man, Mr. Neogy least of all, would suggest that in pursuance of the policy which Mr. Neogy desires to see adopted we should terminate, before their termination is due, the existing contracts. (*Mr. K. C. Neogy:* "I did not say that.") I am sure Mr. Neogy would not say that,

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and that being so, is it not wiser to leave it to our successors to decide that question for themselves? They will not pay the slightest attention to anything that we may say to-day. What they will look at will be the experience they have gained in the period which will intervene before the contracts expire. That being so, I suggest to the House that we should confine ourselves to-day to discussing the real practical issue, namely, the issue raised by Dr. Gour's amendment. That amendment raises the question of what is to be the future management of the East Indian Railway and the Great Indian Peninsula Railway when their contracts expire in 1924 and 1925. It puts in a more concrete form the general question of policy. When we are discussing this concrete question we can discuss also the general question of policy.

Before I go on, I think that I should clear the ground in one material respect. We will all agree I think with the unanimous recommendation of the Ackworth Committee that as the existing contracts of the guaranteed companies expire the management and control of those companies should be transferred to India. Even though Sir Campbell Rhodes' amendment asks that the transference should be gradual, it does not derogate in any way from the principle which I have enunciated, and I am perfectly sure that that principle will secure general acceptance. Before I pass on, I should like to say one thing. Though we arrive at the conclusion that the system of guaranteed companies with Boards located in London are no longer suited to modern conditions in India, let us not forget that these guaranteed companies with their Home Boards have played a very great part in the development of the Indian railway system, and I should be very sorry indeed if anything that I have said to-day might be thought to belittle that part or in any way to belittle the services which have been rendered and are being rendered to-day by the servants of those companies in India. Those services are very often criticised, often I am afraid maligned, and I am glad to be able to take this opportunity of saying that in my opinion there is no more hard-working body of public servants and no body of public servants which deserves better of the State.

As I have said, Sir, this amendment of Dr. Gour's raises in substance, if not in form, the whole question of the State *versus* Company management. There is no question on which public opinion is more sharply divided and there is no question on which feeling runs higher. If we may judge by Mr. Neogy's speech, if we may judge by the evidence tendered before the Ackworth Committee, and if we may judge by the replies which we received to our circular of July last, I think we may take it that Indian opinion generally has ranged itself in favour of State management. European opinion, or at any rate, European business opinion has ranged itself in favour of Company management. (*Rao Bahadur T. Rangachariar*: "Not entirely. Karachi does not.") I will leave Sir Montagu Webb to answer for Karachi. It seems to me essential that the two schools of thought should try and understand one another's point of view and I have been at considerable pains both in the Central Advisory Council and elsewhere to try and ascertain the reasons which each school has for the faith that is in it. I take the Indian view first.

In the first place, I think most Indians and I am prepared to agree that it is the theoretically correct view,—many Indians think that railways perform public services of such immense importance to the public that they ought to be managed by the State in public interest. They ought not to be managed by companies for the benefit of their shareholders. There is the

sort of feeling that Company management connotes exploitation of the public for the benefit of the shareholders and this feeling, as Mr. Neogy's speech has shown, is accentuated in India by the fact that the companies are directed from London. It is believed that the Indian public is exploited for the benefit of the British shareholder. Then it is hoped that by bringing these railways under State management they would be brought more under the influence of public opinion in India as expressed in this Assembly, and that the pressure of this public opinion and the pressure of the Assembly will tend to the removal of certain grievances which the Indian public generally has against the railways. It is believed, as Dr. Gour has said, that the railway services, especially the upper grades and the upper subordinate grades of those services, are the close preserves of the Europeans and the Anglo-Indians and that Indians do not get a fair share of the appointments in those grades. It is also believed that popular control will ensure that railway rates are not manipulated directly against Indian industries—I am merely stating the belief. I do not for a moment admit that railway rates are in any way manipulated either for imported goods or against Indian industries. That is the belief, and it is believed that popular control will prevent the Indian railway rates from being manipulated so as definitely to handicap Indian industries. Again, national sentiment comes into play. It is felt that the Indian railways are essentially India's own concern and the demand is made that India should be allowed to run her railways in her own way. It is believed that a great majority of educated Indians are in favour of State management, and that is in my opinion one reason why the demand for State management is so strong. Finally, of course, those who hold the view in favour of State management have derived great support from the report of the Acworth Committee.

The European business opinion takes a more detached, and I think I may say, a more practical view of this very vexed question. They regard the railway as essentially a method of transport and an instrument of commerce. The watchwords of the management of a railway should be efficiency and economy, that is, in other words, the railways must be so run as to render the best possible services to the public at the lowest possible rates. Now, Sir, there is not a vaster or a bigger commercial undertaking than a railway, flung like the East Indian Railway or the Great Indian Peninsula Railway, across half a continent, carrying millions of tons of goods and millions of passengers a year and coming into contact at every turn with the public. The European business community believes that only a company can successfully run a commercial undertaking of this magnitude. The Directors are themselves financially interested in the concern. The pressure of the shareholders makes for economy. The pressure of public opinion,—and mind you, public opinion is making itself more and more felt in India now,—makes for efficiency. Bureaucratic management, it is said, can never be real business management. It cannot dismiss or promote servants with ease. It is not elastic enough. It is bound by red tape and by meticulous rules. As Sir Campbell Rhodes has pointed out, this view is supported by the experience of practically every democratic country in the world. In practically every democratic country where State management has been tried, it has resulted in inefficient service and multiplication of staff and in the railway becoming a burden upon the tax-payer. Now, Sir, I think what I have said is a fair summary of the views of the two schools of thought. Partly it is a difference of outlook and temperament. Every Englishman has a lurking distrust of his own Government.

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He regards Government as a necessary evil to be kept in its place and he regards with the utmost suspicion the intrusion of Government into the domains of commerce and industry. Possibly for historical reasons the Indian does not seem to have the same distrust of the Government.

I feel that I have skated very superficially over a very difficult and a very big subject. But the point I have to make now is that the issue to-day is not a clear cut issue between State management and real Company management. Had that been the issue we know perfectly well on which side Sir William Acworth would have come down. As Mr. Neogy put it, Sir William Acworth is the great protagonist against State management. He has written a book upon the subject and a more damning indictment of State management was never penned. Yet so far as India is concerned, Sir William Acworth came down in favour of State management. That is a very remarkable fact but the reason is not far to seek. The main burden of that part of Chapter VII of the Acworth Committee's report which was written by the Acworth half of the committee is that guaranteed companies in India are not real companies and that they do not give India the benefits of real Company management. This disability is inherent in the system. Government owns the railways, Government finances the railways, Government cannot divest itself of its responsibility for the railways and therefore Government can and must exercise control—control not only in matters of policy but in matters of details such as scales of pay. The result is that we fall between two stools according to Sir William Acworth. Government ownership, Government finance and Government control deprive the companies of all real initiative. On the other hand by reason of the interposition of the Companies, Government themselves do not feel bound, to take the initiative. If they did, they might be hampered by the measure of power which the companies enjoy. Hence Sir William Acworth arrived at the conclusion that the present system is logically indefensible and that it is unsatisfactory in practice. He and his colleagues saw no prospect of being able to replace that system by real companies and therefore by the logic of his own argument he was driven to come down in favour of State management as on the whole the right form of management for India. His conclusion was that since it was a choice between whole-hearted State management and Company management so controlled, so hampered, and so diluted as hardly to be worth the name of Company management, his conclusion was that he would prefer State management. Well, in the form in which his argument has been put, I do not think that there is any gainsaying it. I am prepared to admit that logically it is difficult to defend the existing system of Company management in India. Whether that system has been so unsatisfactory in practice is a very much more arguable point. In fact the Acworth half of the committee contradict themselves on this point. In paragraph 212 of their Report, they find that Company management has been unsatisfactory in practice. In paragraph 230, they devote themselves to proving that there is no reason to believe that State management in India has proved itself less efficient and less enterprising than Company management. In fact the argument may be stated thus. Logically the Company management cannot be defended in India. In practice it is no more efficient than State management. Indians are hotly in favour of State management. Therefore let us go in for State management. I think it is a fair summary of the argument of the Acworth half of the Committee. But, Sir, I think there is an obvious flaw in that

argument. Personally I am prepared to admit that as things are at present there is not much to choose between State-managed railways and Company-managed railways, and if things were to go on in India in the future as they have gone on in the past I do not think that it would matter so very much whether we embark on a policy of State management or continue the existing guaranteed companies. In that case the main objection to universal State management would be the enormous, I may say, the intolerable burden it would throw upon the railway commission at headquarters. I should like this House to realise that I do not believe that there is any officer in the whole of India on whom a greater burden of responsibility lies even at present than my friend, the Chief Commissioner for Railways and you must always remember that as you extend the system of State-managed railways *pro tanto* you add to that burden. Where you have a Company railway, you have at any rate a Board of Directors and to that extent you take away some of the burden from the Chief Commissioner. But, Sir, though I am prepared to admit that as things are at present there is not much to choose between Company railways and State railways, yet we have to look to the future. India is changing. Her constitution is bound to become more and more democratised. This Assembly is bound to become more and more a popular Assembly and the Railway Commission is bound to become more and more subject to pressure from this Assembly. Now, Sir, Sir Campbell Rhodes has given many instances of the experience gained of State management in other democratic countries. I will content myself with giving only one. As I have said I do not think there is any democratic country in the world where State management has proved anything but a gross failure. Let me read the conclusion of Sir William Acworth himself in his book 'State Railway Ownership.' He writes as follows: 'Professor Hertzell has summed up the conclusions of the Italian Railway Commission based on the railway experience of the world as it existed 45 years ago.'—I hope Mr. Neogy will listen very carefully—'(1) Most of the pleas for State management are based upon the idea that the State would perform services much cheaper than they are performed by private Companies. This is a mistake. The tendency is decidedly the other way. The State is much more likely to attempt to tax industry than to foster it. (2) State management is more costly than private management. (3) The political dangers would be very great. Politics would corrupt Railway management and Railway management would corrupt politics.' Sir William Acworth goes on: 'and the conclusions of the Italian Commission still seem to stand firm. The essential lesson of history may be said to be this. It is impossible to obtain satisfactory results from Government railways in a democratic State unless the management is cut loose from direct political control.' I am aware, Sir, that the Acworth Committee make a passing reference in paragraph 233 of their Report to the experience of other countries. It is said that that experience is irrelevant, that we are concerned now with the future policy of Railway management in India, in India's own conditions. That may be so, Sir, but I cannot see myself any reason why India can afford to neglect or to shut her eyes to the experience of other countries. I have shown that India must become more and more democratized. Sir William Acworth himself has stated that it is impossible to obtain satisfactory results from Government-managed railways in a democratic State unless the management of those railways is entirely divorced from political control. Now, Sir, is this Assembly, unlike any other democratic Assembly in the world, is this Assembly likely to relax its control over the railways? If so, what becomes of those aims and objects on

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which Mr. Neogy has laid such stress: the Indianization of the services, arrangements for rates so as to favour Indian industries, and so on? I ask this House, Sir, is there any reason why the universal experience of State management in other democratic countries should not be repeated in India? The Acworth Committee was on stronger ground when it laid stress on the logical position. It is perfectly true that the State in India does own in whole or part the railway lines. It is perfectly true that our guaranteed Companies are not real Companies: they are rather anæmic Companies. It might well be argued that the whole of our policy in regard to these guaranteed Companies in the past has been definitely directed to one logical conclusion, namely, State management, and it is also perfectly true that it is easy enough to argue against State management; but the real difficulty begins when you try to find an immediate satisfactory alternative to State management.

That, Sir, brings me to the problem which we are discussing to-day,—the problem of the form of management we are to introduce when the existing contract of the East Indian Railway expires in 1924 and when the contract of the Great Indian Peninsula Railway expires in 1925. Are we to take these two railways under direct State management, or are we to entrust them to a Company, and if so, to what type of Company? Sir Campbell Rhodes, Sir, if I may say so, has practically given up the problem in despair. His amendment is merely a plea for delay. (Dr. H. S. Gour: "For only five years' delay!") And perhaps, Sir, it will be convenient if I just state very briefly my objections to this amendment at this stage. Personally, I doubt very much whether clause (2) of the amendment could be carried out in practice. As I understand the amendment, the existing contracts are to be extended for five years. During the course of those five years the Home Boards are, so to speak, to transfer their functions to India; they are gradually to transfer their functions to Subsidiary Boards in India. Well, Sir, these Directors are after all responsible to their shareholders for the proper management of the Company, and I doubt very much myself whether any Board of Directors would be content in this way to transfer their functions to any other Board in India. Again, Sir, personally, I do not like these short-term contracts. Especially in the case of the Great Indian Peninsula Railway, where the shareholders own some £2,575,000 worth of shares. If we are going to have a short-term contract of that kind, obviously the interests of your shareholders are not the interests of the Government; there must be a conflict of interests. In railway management you have to take long views, and if you have a contract extending only for five years, the interest of the shareholders is to get as much revenue as possible. Dr. Gour, Sir, arrived at the conclusion that he had come to favour State management merely because there was no other course open to him. He regards State management as the lesser of two evils; and I see, Sir, from the number of amendments of which notice has been given to-day that the minds of very many Honourable Members of this House have been exercised over this very difficult problem of the alternatives to State management, just as our own minds have been exercised. Government have done their best to find an alternative to State management, and I may as well admit at once that we have failed. The House will no doubt recollect that when we addressed Local Governments in July last on this question, we attached to our letter two tentative schemes of Company management. Scheme No. 2 was, in effect, an attempt

merely to transfer to India the same type of Company as we have now with an English domicile. Nobody could pretend that a scheme of that kind would give us real Company management, and as a matter of fact the Chambers of Commerce throughout the country practically passed over the scheme in silence. The other scheme is a more promising scheme. It suffers from certain disadvantages, but it does represent a real measure of real Company management. But I do not think that even the representatives of the European business community in this House present here to-day would seriously contend that in the present conditions of the finances of India and the money market generally there would be any chance of floating a company on those lines successfully in India now. Accepting, therefore, as we do, the unanimous recommendation of the Acworth Committee that our policy should be, as the existing contracts come to an end, to transfer the domicile of these companies to India, we must admit that we have failed to devise any satisfactory alternative scheme to State management which we can introduce within the period of time which is still left to us. To this extent, therefore, State management seems to be inevitable. There is another reason why Government do not object it—I will not put it higher than that. For some months past, in fact ever since Mr. Bell, then President of the Railway Board, wrote a very valuable note on the subject in June last, our thoughts have been tending in the direction of grouping. We want to group our railways, so far as may be, into larger systems. We think it essential to bring down the cost of the administration, and, generally speaking, the larger the system the less the cost of administration and supervision will be in relation to the work done and the traffic carried. Therefore we have no doubt that we must make grouping a definite part of our policy and that we should take the opportunity offered by the lapse of these two contracts to initiate this policy of grouping. I do not deny that grouping between company railway and company railway is not impossible. At the same time it is obvious that grouping of this kind will be carried out ever so much more easily if you have the railways concerned under direct State management. I do not propose to go fully into detail, but I may say that our idea is that, when we take over the East Indian Railway, we shall probably amalgamate it with the Oudh and Rohilkhand Railway, and we shall probably give the Great Indian Peninsula direct access to Allahabad by transferring to it the Jubbulpore-Naini section of the existing East Indian Railway. Those ideas of course are merely provisional. We have therefore decided that when the contracts of these two railways expire next year we must take them under direct State management. But I do not wish to be misunderstood. I am not making a statement of policy. I do not wish it to be implied that we are adopting this course because we are convinced that State management is the best form of management for India. On the contrary, many of us view the prospect that all our railways should be brought under direct State management with the grave concern. Let me repeat what I have already said before, namely, that experience does show that the State does not and cannot manage railways more efficiently, more economically or with greater comfort to passengers or with quicker despatch of freight than company railways. And though we do not propose that all State railways should immediately be handed over to companies, we think that it will be necessary to maintain a substantial portion of our railway system under company management. We desire to adopt the course I have indicated in regard to the East Indian and the Great Indian Peninsula Railways solely for practical reasons. Let me repeat my syllogism. In the first place we are agreed that we have got to transfer the railways to Indian

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control as the contracts expire; secondly, we have failed to devise a satisfactory alternative to State management which alternative could be introduced within the time which is left to us before these two contracts expire; and thirdly, we believe that by a period of direct State management we shall be able to carry out a really useful measure of grouping. But the Government are opposed to banging and locking the door, so to speak, against a return to company management. In respect of these two railways the moment, it is true, is not propitious for floating a company, which must necessarily be a large company. But market conditions may improve, and I am not without hope that for the East Indian Railway at any rate we may be able to devise a scheme which will give India the benefits of real company management. I am less hopeful about the Great Indian Peninsula. But some of you may have seen the speech delivered by Sir Thomas Catto at the meeting of the Bengal Coal Company in December last. In that speech Sir Thomas Catto suggested that after various measures of grouping had been carried out means could be found whereby a real company might quite conceivably be formed to take over one or other of these groups. We intend to explore that possibility, and there may be other possibilities. I am quite sure that this House will agree with me that all possibilities of this kind must be explored. Let me appeal to the House to clear its mind to-day of all prejudice and preconceived ideas. Let me appeal to the House to clear its mind of those racial animosities of which Mr. Neogy, I was sorry to see, made some use in his speech. We have got to remember that the question we are discussing to-day is a question of vital importance to India. I hope that the House will consider dispassionately the bearing on India of the lessons which other democratic countries have learnt in respect of State management. Let not the House lay the flattering unction to its soul that by some peculiar virtue inherent in India India will be able to escape the common fate. Let me assure the House that as India becomes more and more democratised she will find State management more and more expensive, more and more inefficient, as every other democratic country in the world has found it. Let me remind the House of the experience of France in regard to that Western Railway to which Sir Campbell Rhodes referred. There we have an almost exact parallel. When, in 1909 I think it was, the question of that railway and State management was considered, the argument used was that, the company management was not proper company management; the company had never yet earned its guaranteed dividend and therefore it was a mere caretaker. And so the French Parliament decided to take over that railway. Within a few years the Minister of Public Works stated publicly that the experience of taking over that railway had proved that State management was nothing but "a frightful fraud". Again, not long ago, a Commission had to be appointed to consider the future of this very railway. It rejected all schemes for keeping the railway under State management and entrusting its management to Commissions like Port Trusts. It decided and it recommended to the French Parliament that there was only one way of restoring that railway to efficiency and solvency and that was by leasing it or transferring it in some way to a company. Lessons of this kind stare India in the face. Is India going to shut its eyes to these lessons? I do not ask for very much. All I ask is that the House should not, as I have said, bang the door against any well-considered scheme for company management. It will be a company domiciled in India, an indigenous company. All the ideas, all the hopes and all the aspirations of

India in regard to Indianization of the Railway Services will be fulfilled just as adequately by a company of that kind, an indigenous company, as by the State, and with, I am sure, very much less cost to the country. What I suggest and what I propose to the House and what I would ask Dr. Gour to accept—and mind you I am merely carrying out Dr. Gour's idea which he developed in the course of his speech that real company management would be very much better than any form of State management—Dr. Gour said that State management was merely the lesser of two evils—I suggest that at the end of Dr. Gour's amendment we add the following words:

"but that efforts should be continued to concert measures with the object of handing over one or other of the two railways after such grouping as may be necessary to an indigenous company calculated to give India the benefits of real company management."

The effect of that is that we take over the two railways in the first instance, but that we continue our efforts with the object of handing over one or other of them to a real private indigenous company.

The Assembly then adjourned for Lunch till Fifteen Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes to Three of the Clock. Mr. President was in the Chair.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, the following Message has been received from the Council of State:

"I am directed to inform you that the Council of State has at its meeting held on the 27th February, 1923, agreed without any amendments to the following Bill which were passed by the Legislative Assembly:

A Bill to consolidate the law relating to the Government Paper Currency.

A Bill to amend certain enactments and to repeal certain other enactments.

RESOLUTION RE STATE MANAGEMENT OF RAILWAYS IN INDIA.

Dr. H. S. Gour: Sir, I should like to explain my position with reference to the Honourable Mr. Innes' amendment to my amendment. I should like, Sir, clearly to state as to what is my view with reference to the rider which the Honourable Mr. Innes proposes to add to my amendment. For the reasons I have given against Mr. Neogy's amendment, I submit the same reasons apply with equal if not greater force to Mr. Innes' rider to my amendment. I submit that his proposal is as premature as the proposal of my friend, Mr. Neogy. He wants this House to stand committed to a policy which he has but faintly adumbrated in his amendment. Honourable Members have got the exact words of his amendment. They are these: "But that efforts should be continued to concert measures with the object of handing over one or other of the two railways

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after such grouping as may be necessary to an indigenous company calculated to give India the benefit of real company management". Now, in the first place, if this rider is accepted by the House, the management by the State would be a mere stop-gap management, and the Government will not feel the same responsibility in regard to the management of these two companies by the State which they would feel if this House was to decide that the State was to manage without any limitations or conditions these two Indian Railways. If the efforts are to be continued and an indigenous railway company comes into existence, which we ourselves approve of, it will then be time for the Honourable Mr. Innes to formulate his concrete proposal and bring it before this House and ask its concurrence to a company thus formed. But to ask this House to consent to the formation of a company and ask Government to make efforts in that direction would be giving the Government power to negotiate about a future company about which we at present know nothing. I therefore suggest that the House should not accept the amendment proposed by the Honourable Mr. Innes and adhere to the amendment I have moved.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):

Sir, it is with some hesitation but no misgivings that I venture to offer considerations not fully in accord with the views of many of my colleagues here and many of my countrymen outside. I do so because I strongly feel that the "other point of view" should have full and deliberate consideration. Mr. Hutchinson's new creation "Mr. Sabre" was not singular in his misfortune and in the world of success nothing is more fatal than the weakness of seeing the "other point of view." I am, however, by no means singular in the views that I am going to urge, for they are in some shape or other shared by many of my distinguished countrymen in Bengal and elsewhere, including 9 out of 19 Indian witnesses before the Railway Committee, and by leading and representative journals like the "Bengalee." It has found unexpected and strong support in principle, both from Dr. Gour and the Honourable Mr. Innes. I am really not in serious disagreement with the general opinion that has been voiced either by Dr. Gour or Mr. Neogy. It is from my friend, Sir Campbell Rhodes, that I materially differ, but if he has given up his scheme in despair, I am afraid the scheme of the Honourable Mr. Innes in its halting condition is also a counsel of despair. We start with a notable admission in the Acworth Report. It says: "A Report on Indian Railways is not the place to discuss the general question of State *versus* Company management." It proceeds: "Unless it is fully discussed, isolated details are valueless; for its adequate discussion a volume would hardly suffice." This is no dictum of the dissenting half, but of the other half—it may be the better half or even the greater half—but certainly not the majority, for a majority with a casting vote of the Chairman is in some sense worse than the minority. Sir William's own views, as has been explained here to-day, and as set forth in his monumental volume before he came out to India, are in favour of non-State management, if I can give it a non-committal name. The Honourable Mr. Innes has read out portions from his writings. He was converted to the other view in India, I am afraid, somewhat on the fur-coat line of argument. If there is no company management in the correct sense of the term in India, there is no State management either. Colonel Minshall, Consulting Editor of the "Railway Gazette" in London, states: "State-worked lines in India are not State-worked lines in the same sense as those under democratic Government

directly influenced by the Legislature." This cuts both ways, and shows the fallacy of Shibboleth analogy which Mr. Neogy has rightly discounted; and if this is really the case there is reason to pause and ponder, and the Honourable Mr. Innes has been obliged to do so. But I would urge graver reasons against the present or near future management by the State with its present arrangements. Dr. Gour has already anticipated me. I would remind the House of the dead wall up against which it has always found itself in connection with the development, improvement and Indianization of the staff of our Railways. What was there so long, at least, after the Reforms, to prevent the Government, at least in the State Railways, from taking up the matter in right earnest? Nearly the uniform answer has been that local management is to be left alone even in matters of more than detail. There may be good sense and good reason in this, for proper decentralization sufficiently controlled, if I may so put it, is the essence of success in these affairs. And, Sir, in passing one cannot help noticing that in the recent constitution of the Railway Commission to which, together with Sir Campbell Rhodes—I am glad to welcome an old Bengal friend—the Assembly had no voice or share whatsoever. I do

3 P.M.

not know what happened in the Blue Beard Chamber of the Railway Advisory Committee. Few know what happened. The other day, there was an attempt in the House to ascertain whether opportunity would be given for the consideration of the question of the reconstitution of railway administration. I tried to get the proceedings of the Railway Advisory Committee,—by no violation of official secrets,—and the Department informed me—and I hold the letter in my hand—that *such proceedings as are there* are recorded and are not available to those outside the office. And, when I asked Mr. Innes, here, how one could have them, Mr. Innes insisted upon notice of the question. Mr. Ley the other day in answer to a supplementary question said that the suggestion would receive consideration, whatever that may mean. It is through machinery like this that our friends expect to influence the railway administration when State management is further extended. The new-found love for Government, which Mr. Neogy has been cultivating, somewhat like the new-found statesmanship of Mr. Rangachariar which Mr. Neogy derided the other day, makes him accountably enthusiastic about a machinery like this. Mr. S. C. Ghosh, commenting on the extensive powers given, or shall I say permitted, by the Government to Managers of State Railways, said that these powers were the real reason for greater powers being given by Government to companies and by companies to their agents. It may be the old, old story of the blanket not letting one go, but establishes the point that the State, through its railway administration, has been largely giving away powers to State as well as company managers, that cannot be wholly for the good of the interests concerned. Possibly, company managers, finding it easy to slide into State berths and *vice versa*, may be answerable for such a vicious circle, the circle may sometimes lead to stray good results like the transfer of the Chief Commissioner from a sphere of activities elsewhere. But this does not augment or strengthen the case for State management so called. The Acworth majority has not been helpful. Its own deliberate dictum is that so important a question cannot be exhaustively discussed in the Railway Report. It proceeds all the same to lay down the law for our governance. And I say an *ipse dixit* emanating even from the highest quarters regarding even the most ancient and threadbare of questions, can hardly be accepted, particularly when there is a strong, balanced and reasoned "another point of view." Mr. Innes has told us that State management can succeed only if the Assembly

[Sir Deva Prasad Sarvadhikary.]

will not interfere and if politics is not introduced. That, in effect, as I understood it, was what was stated. Well, political, racial and communal considerations, however strong and tempting, ought certainly not to be allowed to cloud business and economic issues, but, in the changed order of things the Assembly must control what the Government controls. For these reasons and in quite an allied concern, I wholly differ from and strongly deprecate suggestions about the likelihood of corruption and jobbery in the wake of the extension of State management, as shown in some democratic countries. This is a species of red-herring that can be trailed across the path of any progressive movement. I shall assume, nay confidently claim, that high standards of efficiency and purity will be attained and maintained when the Assembly is directly and really influencing the State Railway administration. This, however, will not be, till there is nearly responsible Government and better machinery. Let us examine the machinery at the Executive end, suggested by the Acworth Committee in the formidable genealogical sort of tree in the Acworth report, with which the Assembly must by now be familiar. They suggest a Member for Communication, a Chief Commissioner, four other Commissioners, six Directors and a General Secretary and Statistical Officer and staff, both ordinary and extraordinary. Other experts have since spoken and they would like to see this list added to, though they think it will not permit of any appreciable reduction in the decentralized local bodies. Let us look at the question of cost that remains to be budgetted for. Where, physically speaking, I ask, are the staff and organization to come from that will ensure complete and effective State management of two of the most important lines, even on the terms suggested by Mr. Innes? Philip sober to Philip drunk will not solve the question.

Then there is the financial question. Some of our friends here insist that the question of a separate Railway Budget should stand over till the question of policy is settled. I say that unless and until you settle the question of a separate Railway Budget the question of State management, pure and simple, cannot be adequately dealt with. Nor do I agree with the recommendations of the Mackay Committee, though endorsed by the Dissenters of the Railway Committee, that it should borrow in favourable years and keep up a fairly unemployed railway reserve, against a rainy day. That is not a business proposition, at least now. But I do say that the question of railway finance, particularly in view of the contingencies ahead, has not been adequately considered. I cannot anticipate to-morrow's debate on Mr. Innes' Resolution of which we have just received notice.

Sir, the Railway Committee's estimate of the efficiency of management by the State and by Companies is equipoised. I shall not seek to condemn either for both have done good work. For my purposes, it is not necessary to decry one against the other. There are good and bad points in both and both are capable of improvement, and, in such a process, both are bound to be mutually helpful. About State management, however, it is impossible not to remark upon the notable indecision and want of settled policy on the part of Government and incapacity to provide sufficient capital. In this state of things outside aid and counsel are of great moment, so long as they are not ultimately and really inconsistent with State interests. Nor can it be overlooked that decentralised control is of the essence of administrative success in these

days. Efficiency and cheap transport must not be overtaxed. And nowhere is such an arrangement well managed by the bureaucracy. And, Sir, as a training ground for industrial development, which this country badly needs, it cannot be wholly a Government Department. I do not propose continuance of the present unsatisfactory state of things, even with the improvements foreshadowed by Sir Campbell Rhodes. My amendment, if it came up, of which there seems to be little likelihood, would show that I am in favour of modified and better State management and Mr. Neogy's gratuitous gift of his hobby horse to me might go behind. Frankly speaking, I do not understand Sir Campbell Rhodes' amendment. Even if the East Indian Railway and the Great Indian Peninsula management was to be taken over by the State entirely, Company and State management would continue side by side for many years and Sir Campbell Rhodes would have abundant opportunities for the researches that loom so large in his amendment. I want something more. We must recognize that non-State management cannot for a long time to come be barred out, and so long as company management so called does continue and side by side with it State management, also so called, does continue, we might as well see whether a *tertium quid* cannot be evolved which will be an object lesson to both and by which both might profit. It is up to Government and this Assembly to devise such a compromise and that is what I believe Mr. Innes' amendment suggests by not banging and locking up the door. If it fails, one need not shriek about screwing one's courage to the sticking place for what is proposed on the other side is not ideal. It is a case, at the worst, of 6 on one side and half a dozen on the other. The dissenting half of the Committee could not give a definite scheme, for there is no definite policy yet. Some shadowy policy has been adumbrated to-day, to borrow Dr. Gour's language. It was not the dissenters' fault that the cart could not be placed before the horse, and what Sir Rajendra Nath Mookerjee and his colleagues could not do, it would be foolhardy to attempt here, except in a general way, as a basis for further consideration. That is why I venture to indicate in the amendment standing in my name some general outlines which could be adopted. Sir, the question of absolute nationalisation of railways is always difficult. It is receiving a set-back in Europe and America particularly after the war. In England and America non-State management is being welcomed back, not because of deficits that are a legacy of the war times, but for other and graver reasons. President Harding has declared that the people cannot be taxed to cover railway deficits. What is going to happen here? This morning's papers show that our own State Railway earnings for the year up to 3 weeks ago, was 77.84 crores against a Budget estimate of 99.5 crores and there is already a declared deficit of more than 7 crores. Well, Sir, more than a set-back has begun in France, Italy, Switzerland, Canada, South Africa, New Zealand, and in fact everywhere in Europe and America. Those matters need not be gone into in detail. Our own experience about the Post and Telegraph, and shall I add our recollections of the recent Munitions Board's activities, are not of the cheeriest kind and I would not lay further burdens of direct business management on the Government till the Government is nearly responsible and till the needful machinery is more in order and more amenable to popular control in spite of what the Honourable Mr. Innes says. Mr. Neogy never read my amendment. If he had he would not have insisted that I am against State management proper, good and right. While the dual system of State and Company management obtains in India, as it must obtain for some time, let a third something be evolved

[Sir Deva Prasad Sarvadhikary.] if possible, by which wholesome private enterprise, which, God willing, may soon be largely Indian, may have a chance of development. Railway enterprise and industrial activities cannot be divorced from one another, and revenues out of people's necessities like Post, Railways, Telegraphs and even canals, the so-called productive Public works, can never be the ideal and ought not to be the goal. They should pay their way no doubt, and they should not be a drag on the revenues.

India is advancing and will advance politically, industrially and educationally. Companies may and should come which will undertake much larger railway undertakings than the State can undertake. The State has done much to set the pace. The people also should have their opportunities and chances. If the third something, that I think of, succeeds, it will be a notable object lesson and even on the failure of that we can build. If this finds acceptance in some shape or other, a brighter chapter in industrial development will commence. Even the most politically minded of people should not permit industry, politics and education to be mixed up and confused. It will not be helpful to any.

Sir, finally I say the question cannot be dismissed in the cynical fashion, inexplicably indulged in by the Acworth "majority." Extracts have already been read out by Sir Campbell Rhodes which will bear repetition:

"We do not think that in this fallible world company management can be so good as to escape fierce, often unfair, criticism from Indian opinion. Even if we were to assume that State management would not be better, we are quite sure that its failures would be judged more leniently by the Indian public."

Will it be? I think not, particularly if it means having to pay more, I ask, Sir, in all seriousness, is this the way in which Indian public opinion is to be reconciled in vital nation-building matters. I shall not insult my Colleagues by asking if they assent.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I know your ruling, Sir, as regards the other amendments on the paper, as to whether you will allow Members to move their amendments or whether they should speak on the amendments before the House.

Mr. President: The amendment now under discussion were chosen in view of the fact that they raised separate definite issues and covered practically all the other amendments on the paper. Though in point of phrasing the amendment in the Honourable Member's name, as also that in Mr. Samarth's, are slightly different from Dr. Gour's, Dr. Gour's raised it in a more definite form and therefore I thought it desirable to put the issue as raised by him against the issue raised by Mr. Neogy's original amendment. I think we have reached a point when we might dispose of one or more of the amendments before the House and I therefore now propose to put the amendment moved by Sir Campbell Rhodes against the amendment as originally moved by Dr. Gour.

Dr. H. S. Gour: Yes, Sir.

Mr. President: The question is that for the amendment moved by Dr. Gour the following be substituted, namely:

"That before coming to a definite decision as to the best railway policy for India, it is desirable to continue for a further period of five years the principles both of State and Company management, in order that:

(1) Experience may be gained as to the effect on the working of the existing State-managed lines of the Reforms Scheme and of the present re-organisation of the Railway Board.

(2) The Company-managed railways may appoint immediately strong local boards in India consisting of an equal number of Indians and Europeans, such boards to have definite and growing powers on the understanding that within the five years they should abrogate to themselves the functions of the Home boards.

(3) It may be ascertained which method of management is calculated to produce the best results in regard to:

- (a) Economical working;
- (b) The comfort of passengers;
- (c) The industrial development of the country;
- (d) The greater association of Indians and Anglo-Indians in the higher administration of the Railways."

The amendment was negatived.

Sir Montagu Webb (Bombay: European): Sir, I should like to speak in support of the Honourable Mr. Innes' amendment. First, I must heartily congratulate the Honourable the Commerce Member, on the very great ability with which he put forward the problem which is now engaging the attention of this House. He stated very fully, and I think impartially, the arguments of those who are in favour of State management. Then he detailed the reasons, supplemented with hard facts, against State management; and in the end he was forced to the conclusion that Dr. Gour's amendment was perhaps the most acceptable to Government, because, as he was very careful to explain, no better scheme, no definite, practical, acceptable scheme of Company management, had so far been put forward. He accordingly on behalf of Government accepted Dr. Gour's amendment but with a few words added thereto advocating that efforts should still continue to be made in the direction of Company management. Now, Sir, a reference was made, I think by Mr. Neogy, or by some other speaker, to the Karachi Chamber of Commerce. I should like to draw the attention of the House to the fact that the Karachi Chamber of Commerce gave evidence before the Acworth Committee in the form of a letter dated 31st March, 1921, in which they stated quite clearly and explicitly that whilst they were of opinion that the main lines of railway in this country should be owned by Government, they strongly urged management of those railways by private enterprise on a profit-sharing basis by a company with headquarters,—headquarters be it noted,—and a Directorate in India. It is quite true that on a subsequent date when a proposal was put before the Karachi Chamber of Commerce by the Railway Board setting forth two definite schemes of Company management, the Chamber looking at those two definite schemes and weighing those against the advantages of State management,—the Chamber pronounced against those schemes and in favour of State management. In other words, they did not think that those particular schemes that were put forward, were acceptable. But I can assure this House that on the several matter of principle, I feel certain that a majority of the Members of the Karachi Chamber are still in favour of private enterprise to manage the railways of India rather than the State,—I mean real Company management,—private enterprise backed by rupee capital raised in this country, and managed in this country, by a directorate working in this country. Now, Sir, I should like to say that I am myself strongly opposed to State management and for the reasons which have been very fully and carefully set forth by the Honourable Mr. Innes. In the book on State Railway Ownership by Sir William Acworth from which an extract was read, we find, to use the words I think employed by the Honourable Mr. Innes, the most damning condemnation of State management ever written. I think, however, that further evidence has

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accumulated since that book was published. If we are to believe the news which has come through by cable from Italy, the present Italian Government are about to dispense with the services of some 45,000 superfluous employees of the State railways of Italy; and further, the Italian Government are now contemplating handing the whole of those railways, or at any rate, some portions of those railways, back to private Company management. There we see the very latest action of a Government who have had experience of State management and condemned it. I think if we have any doubt as to the direction in which State management will develop in this country we can derive some information from Mr. Neogy's remarks that he wants our railways managed for the benefit of India's industries, for the development of the resources and industries in this country—a very admirable idea,—but, of course, if the railways are to be developed *not* on business principles as Mr. Neogy suggested,—I think he said he did not wish us to be classed as practical men,—he implored us not to make a "fetish of efficiency,"—if the railways are managed on that principle, it is absolutely certain that the results will be in India precisely and exactly the same as they have been in every other country which has endeavoured to control the railways democratically, that is to say, very shortly they will show heavy losses. The cost of staff and of management will increase; the operating ratio, that is, the ratio of expenses to total income will increase; efficiency in the work generally will be very much lower; inconvenience and loss to the public will occur; and in the end, our railways will become a heavy burden on the State. That is the invariable history of State railway management in every other country. And I would ask Honourable Members of this House not to imagine for a single moment that in this country where the problem of State railway management will be far greater and far more intricate than in any other country, (because our railway mileages are so great and the local conditions so very complicated here), we shall not incur heavier losses by State management than would have been incurred in other countries.

Now, Sir, I have been studying for a long time the arguments of those who condemn Company management. I have collected hundreds of cuttings from the newspapers. I have read I suppose nearly everything that has been written on the subject. What are the complaints that are made of the Company management? As far as I can make out, lack of attention,—lack of facilities for third class passengers comes very much to the fore. Inadequate waiting rooms, no refreshment rooms, insufficient latrines, not sufficient trains, especially at times of fairs,—these things are no doubt deplorable and every effort should be made to remedy them. But I would ask Honourable Members, can they point out in the case of the North-Western State railway or the Oudh and Rohilkhand State Railway, that these conveniences are any better? Is there better accommodation on those railways for third class passengers? Are there better waiting rooms, better refreshment rooms and more trains on these railways? If you lived where I do (in Karachi) you would hear more about the defects of State-managed railways than you would about the Company-managed railways. I can assure the House I have at this minute telegrams in front of me, shouts from Karachi about the inadequacy of the rolling stock ("Steamers undergoing detention in Karachi harbour," and no produce to put into them). I have before me telegrams which show that the Karachi Chamber of Commerce at this particular time is certainly far from pleased with State management. I think we may take it, Sir, that there is little

or no difference between State management and Company management so far as conveniences for third class passengers and adequate supplies of rolling stock are concerned. And if there is no very great difference between the efficiency of the management of the State-managed lines and the Company-managed lines, I would suggest, Sir, the reason is that at the present moment we are happy in India in enjoying the competition of Company-managed lines which prevents our State railways from dropping behind in the general quality of their work. But if all India's railways were managed by the State, I have no doubt that we should not be in the happy condition in which we now find ourselves.

I have endeavoured to summarise the defects which the Indian community consider should be attended to first and foremost in connection with our railways. What is required is an amelioration of the facilities and accommodation afforded to third class passengers; a re-investigation of the problem of goods rates with the object of giving more encouragement to the development of Indian industries and Indian trade; and thirdly, the employment of Indians,—of more Indians that is,—in the higher branches of the rail-services. Now, Sir, these are most admirable aims and there is nobody who has a greater sympathy for those aims than myself. But I would appeal to Honourable Members as business men, that the way to get these things carried out is not to ask Government to take over the direct management of our railways, but to take over the railways yourselves; in other words, I urge that what we ought to do is to encourage in every possible way the creation of companies in this country with rupee capital, Indian shareholders, Indian Directors, and Indian Managers, in order that the changes in the railway administration that we require, can be carried out by them. It is surely a strange paradox that whilst on one hand we see in every direction continuous attacks against the bureaucracy,—whilst we are constantly hearing of the terrible things that the bureaucracy do in India, on the other hand it is now suggested that the best way to get out of our present railway difficulties is to create one million more bureaucrats, and turn our railway administration into a huge State machine, when we should get everything all right! Surely this is entirely unbusinesslike, improbable and impracticable. Surely the way to get the improvements which we all desire,—improved facilities, modifications of the rates so as to encourage the development of Indian industries, and a management of the railways more acceptable to the Indian community, is not to create more officials,—tens of thousands of officials, perhaps millions of officials, (so that we cannot go from one place to another without salaaming to some bureaucrat,—it may be only a porter who carries our luggage), but to form our own Indian companies to manage our properties in a businesslike way. If we are to choose between the amendments which have been put before us, I would appeal to this House to support Dr. Gour's amendment with the additional words proposed by the Honourable Mr. Innes on behalf of Government. It gives us everything that we require. In this way both the East Indian Railway and the Great Indian Peninsula Railway will be taken over by the State. That is precisely what you want. And then we utilise the experience of the whole world by recognising that we shall get the best, the most efficient and the most satisfactory management through Company management, and we shall direct our attention, and the attention of the public to devise some Indian company with Indian capital, Indian managers and Indian directors to carry on this work of ours. No Company can come into existence and nothing can be done in the direction of Company management without the sanction of this House.

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I therefore submit there is not the slightest danger in taking advantage of the experience which has been gained in all parts of the world, and in giving our approval to the amendment now before the House with the additional words suggested by the Honourable Mr. Innes.

Mr. T. V. Seshagiri Ayyar: A great deal has been said about the failure of State management in other countries and it has been argued that the fate of State management in India would be the same; and that consequently we must turn our back upon the suggestion made in that behalf. The instances given do not relate to State management in countries where it has been successful. I have before me an extract from the *Commercial Gazette of Calcutta* which shows that between the years 1906 to 1910, in Germany, the number of new miles of railway was 2,191; whereas in England in the same period the mileage was 94; and also so far as Germany is concerned the gross passenger receipts increased by 55 per cent., whereas in England it was only 13 per cent. Germany reduced the rate as regards passengers by 14 per cent., and no reduction was made in England. That shows that there is another side to the picture which has been painted by Members like Sir Montagu Webb. There are instances in other countries where State railways have been more economically managed and more efficiently managed. I shall now refer to railway management in India itself, take the case of the Eastern Bengal Railway about which some figures will be given by Mr. Chaudhuri and take the case of the North Western Railway. Have they suffered in comparison with company managed railways? It has been pointed out that so far as company management is concerned, during the last two years, the cost of management has risen from 51 per cent. to 76 per cent. As regards the North Western Railway and the Eastern Bengal Railway there has been no corresponding increase in the managing expenses. That shows that economy is not on the side of company management. It is on the side of State management. Therefore, Government cannot by reference to State railways in other countries say that because they have not been economical in those countries, the same thing would happen in India. On the other hand our experience in India has been that company management is worse than State management. It is more ruinous to the people than State management. In comparing India with other countries sufficient attention has not been paid to what the Acworth Committee's report says on the impossibility of making any real comparison. For example, it has been pointed out that whereas the State in India owns railways to the value of 428 crores, companies have interest only to the extent of 75 crores; and is it right, as has been asked by the Acworth Committee that one-sixth of the shareholders should be entrusted with the management of the other five-sixths. Is it a right thing to do? Can you say that this is a businesslike arrangement? I submit to the House that it will be regarded as a gross abuse of the business management, if we allow persons who have got only one-sixth right in the concern to manage the whole concern.

Mr. R. A. Spence (Bombay: European): What about mill agents?

Mr. T. V. Seshagiri Ayyar: I do not know anything about mill agents. I have no figures before me. But if the mill agents who have got only a small share manage the other shares, then they are not acting fairly. One mistake does not justify another mistake. Therefore, Sir, the fact that in this country the Government owns five-sixths of the railways is a good

argument for not accepting the suggestion that we should allow those who hold only one-sixth of the railway to manage the concern. It has been pointed out that in England, Italy and other countries there has been some failure by the management of the railways by the State. As has been pointed out in a well-written communication addressed by the Bombay Merchants Association, it is because of conditions of war the management has not been as efficient as before, but during the time when there was no war State management has been very beneficial; therefore no valid reason has been shown for saying that State management under all circumstances would be a failure. It has been admitted by Mr. Innes that Company management has not been more economical than State management in India. If that is correct why continue management by Company? If Company management has not been more economical, it is desirable that when an opportunity occurs for the people to take up the management, they should do so. Sir, the contracts as regards the two railways will come to an end in 1924 and 1925, and an opportunity should be given to the State to manage these railways, as they have managed other railways well. Now, Sir, as regards the amendment of the Honourable Mr. Innes to the proposition I believe the arguments which he advanced as against Mr. Neogy's amendment stand good as against him also. Why pledge this House to something which should be done in case the Government is able to float a good Company, and indigenous Company with shares subscribed in India? Why commit this House to anything which may be done later on? Why not leave that matter to be decided when you are able to announce the successful formation of a Company? Why not ask them, that as we have got a good Company which would be equal to managing the concern, that permission should be granted to entrust the management to that Company? As a matter of fact if you care to read what the Acworth Committee says, you will find,—the majority report points out,—that if once the State takes up the management, it will be easy for it to divest itself of its powers and to hand over the Railways to a Company for management. All, therefore, that we ask is that the State should take up the lines when the contracts fall in and continue to manage them unless and until it finds that some other arrangement would be more beneficial. If it finds that a Company can manage it, and is able to show that it would manage better than the State, then Government can hand over the management; but why ask at this moment for a message from this House, why ask this House to commit itself to the proposition, that, if Government is able to find a Company, it should be entrusted with the management? It is premature, and for that reason alone the amendment of Mr. Innes should be voted against. Sir, it is not necessary for me, having regard to the fact that my amendment is in exactly the same terms as the amendment of Dr. Gour, to move it. But I may say, Sir, that I support Dr. Gour's amendment not for the reason given by him, namely, that it is a choice of two evils, but for the reason that the people should have an opportunity of managing their own affairs especially, as admitted, it has not been shown that management by the State has proved a failure.

Mr. W. S. J. Willson (Bengal: European): Sir, I am afraid I am not entirely convinced by the amendment of Mr. Innes—the words of which I have not got but the substance of which we know—for the simple reason that, after you have adopted State management, with the “fine” results pictured to-day by Sir Montagu Webb, it will be a far more difficult business to find a decent Company to take it over in a decent manner, and their terms will be a great deal more expensive than we might be

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able to arrange during the 18 months before us before the first of these contracts expires. I, Sir, have travelled round the world, on the railways of England, Ireland, Scotland, Wales, France, Holland, Belgium, Italy, Egypt, India, Burma, Japan, America, and Canada and I have no hesitation in telling the House that my general experience of the lot of them is that whether you have State management or Company management, the difference to the passenger is not very enormous. But, Sir, I have also spent 25 years of my life in this country connected with transport, in that experience, very largely as a carrier by sea but largely as a consignor of goods on Government and other railways. I should like this House to consider very carefully what the difference between the two railways is. I personally am dead against State management. I would have liked an opportunity to have discussed Sir Campbell Rhodes' amendment further and made one or two points in connection therewith, but that opportunity is now deprived. You have, however, the knowledge that Sir William Ackworth was in 1920 very dead against State management. The Honourable Mr. Innes described Sir William Ackworth's arguments as some of the strongest that had ever been written against State management, but there was actually a book published in England some years ago entitled 'The case against the Nationalization of Railways'. Now railway nationalization seems to me to start principally from the point of view of the employee. Nationalization has been for some years a political cry in many countries who have not got it and it is very largely political with a view to more wages for the employee. My own experience is that you cannot get out of a State railway, the same treatment for development that you can get out of a private Company. Now, Sir, I know there are some people who will say that this is not so, but I can tell you as a carrier, and anybody else who has any experience as carriers will bear me out, that the whole essence of a carrier is to earn good-will. He must have the good-will of his constituents and his clients; he must be out to develop his trade, he must throw the sprats to catch the mackerel; he has business sense, but he also has business scents, by which he scents out the different lines where new traffic may be developed,—and he is not, as Mr. Neogy suggested, out to handicap anybody's trade, whether on racial grounds or whatever else it may be. Mr. Neogy said that the Railway Boards at Home exist for the purpose of benefitting certain manufacturers. Now I do not want to develop that point, I am convinced it is not so, but I would like to ask Mr. Neogy three questions:—Has he ever heard of some of the opposing shipping Companies bringing goods to India? Has he ever heard of the Den line, the Well line? Has he ever heard of the firm of Gorman and Smith? I merely mention those three. Well, he has not: yet those three concerns all built up a business directly encouraged by the India Office, London, in shipping out cargoes by steamers opposed to what Mr. Neogy would call the "vested interests."

If we had State management, I am convinced we should also find a great deal more of unprincipled competition against private interests. Now I know that private commercial interests are not very strongly represented in this House. But I do know this, that the Assam-Bengal Railway is a State railway; I do know that their action in carrying goods below cost, at a loss, has provoked an enormous amount of objection on the part of Bengal land-owners—Sir Deva Prasad Sarvadhikary will bear me out.

Mr. K. C. Neogy: The Assam-Bengal Railway is company-managed.

Mr. W. S. J. Willson: But it is run for strategical reasons, and is not a paying proposition at all. The consequence is that these State railways in many cases practically oppose private interests; far more they do so in a more unprincipled and less fair-minded manner than any Company-managed are really likely to do. Business ideas do not permeate the Government offices, for a simple reason—it is not the fault of Government officers themselves, where would you find more amiable gentlemen than the Honourable Members on some of those front Benches? Would you like the railways to be managed by them? But they are too amiable and the consequence would be that you would lose your profits. Now there is an extraordinary feeling against any Government department ever making a profit. If a Government department ever makes a profit, there is immediately an outcry, either that they are over-charging the public, or that they are under-paying their staff, and the public won't have it. However, in the reference I made to London I did not for a minute want this House to think that I am in favour of continuing the London Boards—the sense of this House is, and I agree with it that the London Boards must absolutely go, that we are absolutely able to manage the railways in India and I want it now under what I would call a decentralised scheme. I want the Bengal railways managed in Calcutta; I want the Bombay railways managed in Bombay; I want the Madras railways managed in Madras, and so on. (A Voice: "By the State?") No, not by the State. I do not want even so charming a gentleman as Mr. Hindley, about whom Sir Campbell Rhodes made such nice remarks this morning, or any one man at the head of such an enormous system as are the railways in India.

All the advantages which Mr. Innes pointed out were to be obtained, can be obtained by company management. Take, for example, his reference to Mr. Bell's report as to grouping. Now, surely to goodness, a scheme of grouping could be easily thought out within the next 18 months. That is in no sense a reason why Government should first take over the railways while that is being leisurely thought out; not at all.

I am also afraid, Sir, that if we go to State management we shall aggravate that horrible system of buying of stores abroad, or principally in England. As it is at present, so I am afraid it would go on, but I do think that local Boards would be far more inclined to encourage local enterprise.

Then again, on the question of the separation of railway finances, which is one of the biggest factors in the whole problem of railway management

Mr. President: I cannot allow the Honourable Member to discuss that in anticipation of to-morrow's Resolution.

Mr. W. S. J. Willson: Then that rather disposes of the rest of my remarks.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, I will not detain the House very long. I think, however, that my point of view is probably different to any that has been heard up to the present time. As far as I can see there are three methods in which we can look at this problem. One is management as at present

[Captain E. V. Sassoon.]

by companies domiciled in England and which I think we are all agreed should not continue. The only two points therefore which we have now to consider are whether we should have State management neat, as proposed by the Mover of the amendment, or State management diluted, as suggested by the Honourable Mr. Innes. When I read, as I have been reading here, this work of Sir William Acworth's, the more I look at State management the less I like it. I find, in spite of what Mr. Seshagiri Ayyar has said, that the rates of freight in the United States are half as much as in France and Germany. I find that they are the same as those in India, which apparently seems to be the lowest with the United States; and this will interest Mr. Joshi: in America the workman earns a sovereign whereas in India he earns a shilling. So that shows that the existing system of management from England has not been entirely successful from the point of view of efficiency. But then Mr. Seshagiri Ayyar says, why should we agree with the Honourable Mr. Innes and pledge ourselves or pledge this House to Company management in the future? I ask myself in this House, why should we pledge ourselves to State management. I see that France by State management increased the yearly deficit from £580,000 to £3,000,000. I see that the trains were slowed down in that period, accidents increased, compensation for accidents rose from £80,000 to £400,000, and I ask myself, can this House, which is on the last lap of its existence, pledge the country to State management with these possibilities—I only call them possibilities—in view? It may be that we cannot get what some of us would like to have management by indigenous companies. It may be that the Government have attempted to get such a management, but I for one have not heard of it. I wonder whether the Government has explored that avenue right to its depths. I personally would like this debate to be postponed till the new Assembly. (Voices: "No, no.") I do not know whether every Member of this House is confident of being returned in the next House. I for one have hopes but am not sure, and I therefore would prefer not to pledge the country to a possibility of a very large deficit lasting for several years. Because, if the Honourable Member for Commerce is right, it may not be so easy to find an indigenous company to take on this burden, and I would therefore prefer the new House with fresh support from its constituencies to come and pledge this Government to what is a liability rather than that it should be done by this House. It is very easy for people who may not return here to pledge the Government to a policy which may lead to very heavy losses and then let their successors find the money to pay for those losses. Because, Sir, one thing is certain, if there is a deficit it will not be paid by shareholders, it will be paid by the tax-payer. The very gentlemen who vote for something which may lead to a deficit may not be here to find the money to pay for that deficit. Therefore, with the greatest deference, Sir, I submit that the whole of this question is one that should be decided not by those of us here who have only one budget to consider, a budget which I understand is already in the course of being printed, but by those who will have future budgets to consider, because they are the people who will have to find the money to pay the piper.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): Sir, as my amendment is not coming before the House, I will not take up very much of the time of the House in dealing with the points raised in my amendment. Sir, as the question is confined

between these two railways whose contracts are falling due within a very short time and Mr. Innes' rider, I think that the best course for this House to adopt is to accept Dr. Gour's amendment as it is without the rider proposed by the Honourable Mr. Innes. I might ask the Honourable Mr. Innes, if his rider is accepted by the House, whether the Secretary of State may not arrange with some company for taking over the management of any of these railways, without this House having an opportunity to intervene. Therefore there is some risk in accepting the principle on which the rider is based and I want the House to reject it. Of course, I quite agree that, instead of accepting the Honourable Mr. Neogy's amendment, we should first of all give a trial to these two trunk lines connecting Bombay with Calcutta and other business centres and see what the result is. On that we can base our future policy after gaining experience in these two lines. Of course, the Honourable Mr. Innes

pointed out that there are no schemes forthcoming. But I had 4 P.M. supplied him with a scheme; I do not know whether he has studied it. I was going to put it before this House, but as there is no opportunity of putting it I refrain from doing so. I am not going to put it before the House to-day; but when occasion arises I shall do so; and although that scheme advocates State management, pure and simple, I say it will be much better than Company management which is now out of question. With these few remarks I support Dr. Gour's amendment.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I am not an expert in railway administration; in fact I know nothing about it; I have made no particular study of the subject before the House; I do not even own a share in any railway in the world; but I am a British-Indian tax-payer, I am a British-Indian traveller on the railways in this country, and so are my constituents; I have a little commonsense, and I have had some experience in drawing inferences from evidence. Therefore, I think the House will bear with me while I trouble it with remarks from, as it were, the man in the street. My vision of this subject is that of the on-looker who not infrequently sees most of the game. What are the facts, either admitted or beyond reasonable dispute? First of all, State management has failed wherever it has been tried (*Rao Bahadur T. Ranga-chariar*: "Not in India.")—wherever it has been tried, during the war or during peace; and this House, I think, would be wanting in the sagacity for which it is noted if it cast aside as irrelevant evidence which is almost conclusive. We have had some experience of State management in India. I am surprised to hear some Members suggest—they have not actually said so—that State management has been successful. Fares have gone up, freights have risen, complaints of discomfort from passengers increase daily and hourly, and we have had unpunctual trains, a bureaucratic staff down to the very ticket collector, and hopeless centralisation. That is one fact. The next fact is that India is in a state of transition; her very constitution is at present in the melting pot; we are carrying on towards a very much larger and more responsible state of self-government; and I submit to this House that we ought not to stumble over the rocks and pitfalls at our feet while we stare at a roseate horizon and build dreams of the future.

The third undoubted fact is the awakening of the country to industrial development. Industrial development is one of our immediate problems. In my humble opinion, there is no greater barrier in the way of industrial development than State interference with private enterprise. There was

[Colonel Sir Henry Stanyon.]

a time when this country looked to Government for everything that it wanted, the old policy of "Sircar, Ma-Bap." That day has not entirely gone yet, but its sun is setting. We are learning to make things for ourselves; we are learning to do things for ourselves. Private enterprise does a good deal now that used to be done by the Public Works Department. Jail manufactures and Government workshops are also retiring before private enterprise. It is not consistent, I submit, with the advance of democracy, with our claim to govern ourselves, and with our efforts towards industrial development, to ask that our railways, like our roads, canals, public buildings and forests, should be wholly and permanently given over to State control.

But now comes a fourth fact which also we must take into consideration. We have no proper Company management available at present. We have companies which are not British-Indian companies, managing railways in which they only have fractional interests in partnership with Government. Government uses its control primarily for revenue. The companies in London use their control primarily for their dividends. So the Indian tax-payer and the Indian traveller and trader are, as it were,—I say it with all respect,—between the devil and the deep sea. This state of things is worse than State management. At any rate the State management for which we are all asking to-day will be wholly British-Indian.

Well, from these facts, to my mind, two commonsense inferences arise. First, in the immediate present, we have no alternative except State control to replace Government control *cum* London Board control. State management is an immediate necessity. The second inference is that State management is a constantly growing evil which must be eradicated as soon as possible. Here we have reached the present limit of our vision. As a House it is for us to deal with actualities and not with dreams. Therefore, it seems to me that as a House we are in a position to resolve (a) that the present management of the East Indian Railway and the Great Indian Peninsula Railway, having become obsolete and unsuited to the country, must be changed as soon as possible; (b) that the only alternative which presents itself at the present time is State management; (c) that on the evidence before us, there is reason to apprehend that that change will mean going from the frying pan into the fire; and (d) that we owe it to the country not to commit it irretrievably to stay in that fire. Government,—I say it with all respect again,—has a way of holding on to what it once lays its hands upon. The cases of roads, buildings and forests afford ample evidence in support of that charge. We can foresee the Railways being taken over for the benefit of the travelling and trading public; but soon that public will cease to be the chief beneficiary and revenue will become the first consideration. We do not want Railways to be run chiefly and primarily for Government revenue. We want the public, ourselves, to be the principal beneficiaries. Therefore, it is up to us to let Government understand that though we ask them, for want of any better alternative, to take over these two Railways as soon as the present contracts fall in, we only make them over to Government until we can find some better and more satisfactory management for them. That is all that the amendment of the Honourable Mr. Innes would commit us to. It really commits Government to this that they join with us in a Resolution which binds them to give State control until something better can be

found, while it binds us only to whatever we may think best hereafter. Its heads we win and tails they lose. Sir, I put it to the House, that the acceptance of this amendment will place this House in an extremely strong position, because we will have the Government with us. If we reject the amendment put forward by the Honourable Mr. Innes, the only amendment which will remain, even though it may be supported by a majority, is that of Dr. Gour; but it will be, after all, the opinion of a majority only and not the combined voice of the whole House. I therefore support the amendment of the Honourable Mr. Innes.

Mr. B. S. Kamat: Sir, I shall attempt to draw inferences unlike my friend, Sir Henry Stanyon, not as a lawyer, but purely as a practical layman. I shall confine myself to the amendment of the Honourable Mr. Innes. It is true, Sir, that while summarising the views of the two schools of thought in the Railway Report the Honourable Mr. Innes was exceedingly fair. But in his concluding portion he described to us the evils of State management of railways in Italy, France and other countries. He also told us about the possible inelasticity and bureaucratic management in State-managed Railways. In fact, the effect of his speech this morning, so far as the question of holding the balance even between the two views is concerned, at any rate, the effect left on my mind was, I must say with considerable disappointment, that he as the spokesman of the Government of India condemned State management and that he was in favour of Company management. As a layman, Sir, the inference I should draw from his amendment is this. Either the Government of India should commit itself one way or the other between these two schools of thought, or they should leave the question of Company *versus* State management absolutely alone without showing their bias or their prejudice one way or the other. This amendment does not do anything of that sort. In the first place, the Honourable Mr. Innes in his speech said that he was prepared to accept the taking over of these two railways for State management as a sheer matter of necessity because there was no other solution which was acceptable to him. But he does not stop there; he proceeds to say in his amendment "that efforts should be made continually to concert measures of handing over one or other of the two railways to an indigenous company calculated to give India the benefits of real Company management". Now the wording of this amendment postulates that there are certain benefits of real Company management. I am not prepared to postulate or beg any such question. If Government want to hold themselves aloof from either school of thought and to declare a non-committal policy on the ground that the Government of India should not bind itself and its successors to any policy at all, I think they should not insert in this amendment any wording regarding the benefits of real Company management. On general grounds, therefore, we must have one of the two courses; either decide only about the two railways we are talking about leaving the question of State *versus* Company management alone, or let an open debate take place and let the House decide whether it wants State or Company management, pure and simple, one of the two. That is my general objection to acceptance of the amendment of the Honourable Mr. Innes.

Now I will come to the merits of this amendment. It goes forth to the country with a sort of imprimatur on behalf of the Government of India that their leanings are towards Company management. That is not

[Mr. B. S. Kamat.]

desirable, if the Government of India want to hold a non-committal policy. In the second place, this amendment says that one of the two railways will be handed over to some company. Even there, Sir, if you accept the principle of grouping, I do not think we should accept the idea of handing over either of these railways, because it conflicts with the principle of grouping and I am for grouping. It is one of the greatest advantages for State management. If you go in for State management, one of the advantages is that you can amalgamate a number of railways in the country. If you now record this amendment, it only means that you must hand over one or other of these two railways to some other company thereby militating against the principle of grouping or amalgamation. Therefore, it implies that you are prepared to drop, as it were, from your mouth a hot potato as soon as the first opportunity offers itself. I do not think we should commend this amendment. We should not bind this House to that particular policy. These are my remarks with specific reference to this amendment and its merits.

Now coming to the other part of the debate, the Honourable Mr. Innes tried to throw as much cold water as possible on the question of State management. He quoted Sir William Acworth from his book and said that he was inherently in favour of State management. Well, if that is so, I contend it is the greater reason in favour of our argument that a man who was wedded all his life to a view against the State management was specifically with special reference to India in favour of State management. My friend, Sir Campbell Rhodes, tried to speak something about emulation. I am not going to emulate him, at any rate, in one particular respect when he said that from his point of view the Acworth group and their views were worthy of being thrown in the waste paper basket. To me, Sir, the Acworth view is far more valuable for the simple reason that Sir William Acworth, although he was committed to certain views in other countries, still on merits came to the view that in India State management was unworkable, and not only Sir William Acworth but his colleagues also who had an impartial mind and who had no vested interests whatsoever unlike the other group came to the same conclusion. I am not prepared to say that Sir William Acworth's view and the views of his colleagues are worthy of being thrown into the waste paper basket. Neither can I say that the views of those who talk about State management of railways are something like a toy. On the other hand, I am inclined to think, Sir, that the companies existing in India are nothing but toys, companies which own not more than one-tenth of the capital and are exploiting all the properties of the tax-payers of the State.

A great deal, Sir, has been made of the fact that more economy can be effected under Company management. I do not think that anybody during this debate has proved that Company management is necessarily more economical. If we go into figures, I can show—I have got the whole thing on my table, but there is no time to go into those things,—if we go into figures I can show that Company management is not as economical as it is made out to be. You must not compare unlikes but compare only likes. Well, the comparison is vitiated by the fact that in the case of a particular railway it may be nearer the coal mines or coal fields or in the case of another it may have tunnels to negotiate thereby adding to working expenses. Thus, any inferences drawn regarding the economic working

of Company railways merely from statistics are likely to be vitiated by the special features of each railway concerned. But I can contend, Sir, that in favour of State management there are two distinct advantages which nobody so far has tried to controvert. When you talk about the economic working of Company management, people forget the fact that in the case of Company management they have to take into account the profits which we pay to the Companies as share of surplus profits under their contract. Now, if you go into the statistics, here again it will be seen that we as the tax-payers are losing every year under the contracts with these companies crores of rupees. Now, the last year, for instance, for which I have statistics, shows that the Government of India paid under their contracts over a crore of rupees to certain companies as share of surplus profits. In the previous years also the Government of India had to pay large surplus profits according to the terms of contract. Why are the tax-payers to lose all this money as surplus profits when as a matter of fact the whole of the property and the capital belongs to the taxpayer? You talk of economy about Company-managed railways but you do not take into account the fact that all this is taken from the exchequer of the Government of India.

Mr. President: I really must call upon the Honourable Member not to pursue that further. It is much too near to-morrow's subject.

Mr. B. S. Kamat: The Honourable Mr. Innes also mentioned something about the principles of seniority and transfers, if the whole of the management were given to the State. And I think it was my friend, Sir Campbell Rhodes, who cited the case of Mr. Hindley, an extremely efficient officer borrowed from a Company-managed line. I can give him just as many instances of Government officials borrowed by Company-managed lines, men like Major Hepper, Mr. McLean and various others. Therefore, it is no use drawing an inference either way about efficiency of Railway officials. Then again, Sir, the Honourable Mr. Innes' amendment speaks about an indigenous company. I fail to see, Sir, the exact meaning of that word. If by indigenous he means only a company whose *habitat* is Calcutta, whose domicile is here, I don't think I would recognise that as an indigenous company. When you ask us to commit ourselves to this amendment, when you want us to agree to the principle of transferring the management to indigenous companies, you must define what an indigenous company is. I am not in favour of transferring either of these railways in any case at all, because all the money that has been sunk in these two railways is our property. We have paid practically every penny for the capital of these two railways and there is absolutely no reason whatever why they should be transferred to any company now. But assuming we should seek a company what is the sort of company that Mr. Innes wants. Is it a company which has the whole of its capital raised in India? If the capital were to come here from some syndicate in London and if that is to be the meaning of an indigenous company, certainly I don't want the transference of any of these railways to any indigenous company at all. My own definition of an indigenous company, a real company is that the company must be started in India wholly with Indian capital. Now, is there any possibility in the next few decades that any company can be able to raise capital and take over either of these railways from the hands of Government? I do not see any chance, Sir. The whole question is "Why should we commit ourselves to-day to a policy which, so far as we can see in the distant future is not likely to materialise, when we know definitely

[Mr. B. S. Kamat.]

that, in view of the financial position of the money market no Indian company can be able to raise 80 crores of rupees to buy the East Indian Railway, or 120 crores to buy up the Great Indian Peninsula Railway. The possibility is so remote.

Sir, I oppose the Honourable Mr. Innes' amendment and I think we should not commit ourselves to either view. The only thing we can do is to determine that these two railways should be taken over for State management for the time being, leaving the question of transference to any company absolutely alone.

(Some Honourable Members: I move, Sir, that the question be now put.)

The Honourable Sir Malcolm Hailey (Home Member): Watching the course of the debate in this House, I think, I may say that since lunch time it has taken only one turn, for the House has discussed simply the alternatives between Dr. Gour's amendment and Dr. Gour's amendment *plus* Mr. Innes' rider. In other words, if I am correct, the larger question of the principle of State *versus* Company management has dropped out, and what we are now considering is a choice of two somewhat narrow alternatives, which I would define as follows. If I say I am right in believing that Mr. Neogy's original proposition has dropped out of the minds of the House . . . (Honourable Members: "No, no.") There seem to be five murmurs in favour of Mr. Neogy; I see I was right, and Mr. Neogy's proposition *has* dropped out. Then what are we considering? Dr. Gour's amendment is that the Governor General in Council be advised to take over the East Indian and the Great Indian Peninsula Railways, that is exactly what the Governor General in Council has announced his intention of doing. That proposition then does not carry us very far. As to Mr. Innes' rider, the reason for putting forward this proposition is simply this, in the words that he used himself, that Government does not desire to be debarred from entering into the negotiations which would be necessary if a true Indian company were to be started to take over either of these Railways at a subsequent date, the only real issue is whether you desire definitely to force Government to the conclusion that any action taken on its part to negotiate for an Indian company would be subsequently disowned by this House. I ask the House to consider what substantial grounds it has for objecting to such a proposal. I am not going again into the larger question of State *versus* Company management. One might draw some amazing inference and some amusing conclusions if one did so. For a long time it has been part of my duty to defend the action of Government officials. It is now apparently the firm conviction of this House that the Government official is the only true business man, but I refrain from dwelling on the point. I lay however the greatest stress on this fact, that neither Mr. Kamat, Mr. Seshagiri Ayyar, or other Members who have spoken of the comparative attractions of State and Company management as applied to India—and I speak only of India—have so far been able to prove by any form of fact or figure that there is any advantage in State over Company management. The whole of the arguments used are *a priori* and based purely on theory. Now, there is in the minds of many of us, as in the minds of many speakers this afternoon a profound conviction that Company management offers many attractions. Let me take the first. It should relieve—this is a question which is of peculiar interest to me—it should relieve greatly your difficulty in

financing your capital programme. That is to say, that, if you succeed in raising Indian capital for an Indian company, you will thereby relieve your own capital programme for other works such as Irrigation. In the second place, there is no doubt that it does offer the advantage of providing that incentive which is derived from competition with State working. Thirdly, it prevents the delays and other disadvantages likely to follow from excessive centralization at headquarters. On these grounds alone—and I am going no further than that—it would be unreasonable absolutely to close the door to negotiation for an Indian company. I am asked what we mean by an Indian Company. I think it is only necessary to quote the words of Sir Montagu Webb. An Indian company means obviously a company of which the capital is rupee capital, of which a proportion of the Directors are Indian Directors; if capital comes from Home towards that company, it must come in the form of rupees; you cannot bar the entry of capital from outside India, because when once it is in India in the form of rupees, you cannot identify its origin. As to the constitution of the Directorate, that can either be provided for by the conditions of the lease or left to be decided by the shareholders; but it must be managed in India. We are asked by Captain Sassoon whether we have ever made any attempts to negotiate with such a company. It is one of the objects of Mr. Innes' amendment that we should be in a position to enter into these negotiations which we have hitherto not been able to undertake. Mr. Manmohandas Ramji suggested that the only object of introducing this amendment (which indeed he opposed on his ground) was to enable the Secretary of State to negotiate with some company for taking over these Railways. But this is to be an Indian company, and the negotiations must be undertaken by the Indian Government, which will have to arrange to attract Indian capital in India itself. Mr. Ramji may well relieve his mind of that apprehension. As to the possibilities of finding such a company, Mr. Kamat suggested that it will be quite impossible to look forward to a time when India can provide 80 crores for taking over one of these Railways. But it is not necessary that India should at once provide 80 crores for taking over a Railway of this type. All we need look to is that a company should be started on a sufficient financial basis to enable it to take over such portion of the capital represented as to ensure it the true character of company management. That we should wait until we can find a company which can provide sufficient capital to purchase the full assets of these Railways is quite unnecessary. We are told by Mr. Seshagiri Ayyar that the argument which Mr. Innes applied against Mr. Neogy tells also against Mr. Innes, namely, that Mr. Innes is seeking to tie the Assembly to a definite line of action with regard to the Indian company. And another speaker said that if you pass this amendment, then you are bound to give one of our Railways over to a company. Neither argument is correct. If you pass this amendment, all that follows is that Government would be in a position to undertake the inquiries and negotiations necessary to forming an indigenous company on lines which would be accepted as suitable in India. Nor is it in any way true that the argument which Mr. Innes has applied against Mr. Neogy applies also against Mr. Innes for the reason that it does not bind either Government or the Legislature to any future action.

Mr. T. V. Seshagiri Ayyar: Then why have a legislation?

Dr. H. S. Gour: Show us your company first and we will discuss it afterwards.

The Honourable Sir Malcolm Hailey: Unless, Sir, it is possible to enter into these negotiations, it would not be possible to show you the company, to use Dr. Gour's words. No financial body would enter into negotiations if they thought that the whole of their time would be wasted owing to the inability of Government to implement or complete these negotiations. I repeat that this rider of Mr. Innes does not in any way compel us to any future action; all it does is to leave open the door to Government to negotiate with some effect, since responsible people will not negotiate unless they are convinced that Government can implement any negotiations into which it enters.

Dr. H. S. Gour: Nothing prevents them.

The Honourable Sir Malcolm Hailey: That, Sir, is the simple proposition and I put it to the House that it will be by no means well advised to attempt to close to Government an avenue of negotiation which would be open to it under Mr. Innes' amendment.

(Several Honourable Members: "I move that the question be now put.")

Mr. President: The question is that the question be put.

The motion was adopted.

Mr. President: Amendment moved:

To Dr. Gour's amendment to add the following words at the end:

"but that efforts should be continued to concert measures with the object of handing over one or other of the two Railways after such grouping as may be necessary to an indigenous Company calculated to give India the benefits of real company management."

The question I have to put is that that amendment be made.

The Assembly divided:

AYES—42.

Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Fraser, Sir Gordon.
Ghulam Sarwar Khan, Chaudhuri.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Innes, the Honourable Mr. C. A.
Jamall, Mr. A. O.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

NOES—56.

Abdul Rahman, Munshi.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ashan Khan, Mr. M.
Aiyer, Sir P. S. Sivaswamy.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. T. P.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Schamnad, Mr. Mahmood.
Singh, Babu B. P.
Singh, Raja K. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Wajihuddin. Haji.

The motion was negatived.

Mr. President: Further amendment moved:

"That in Mr. Neogy's amendment all the words after the word 'pleased' be omitted in order to insert the words 'on expiry of their leases, to take over both the East Indian Railway and the Great Indian Peninsula Railway for management by the State.'"

The motion was adopted.

Mr. President: The question is:

"That the following be substituted for the words beginning with 'the Indian Railways Act' and up to the end of the Resolution:

'he may be pleased, on expiry of their leases, to take over both the East Indian Railway and the Great Indian Peninsula Railway for management by the State.'"

The motion was adopted.

Mr. President: The question is that the Resolution, as amended, be adopted.

The motion was adopted.

THE MUSSALMAN WAQFS REGISTRATION BILL.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): I beg to move that:

"Raja Ikramullah Khan, Mr. Muhammad Faiyaz Khan, and Syed Nabi Hadi be added to the Select Committee on the Waqf Registration Bill."

Several Muhammadan Members of this Committee are now out of Delhi, and therefore I want to add these three.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 28th February, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 28th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

THE PRISONERS (AMENDMENT) BILL.

Secretary of the Assembly: Sir, I lay on the table the Bill to amend section 29 of the Prisoners Act, 1900, as passed by the Council of State.

STATEMENT LAID ON THE TABLE.

The Honourable Sir Malcolm Hailey: Sir, I lay on the table the information promised in reply to a question by Mr. B. N. Misra, asked on the 15th January, 1923, regarding the passed and unpassed candidates of the Staff Selection Board.

Information promised by the Honourable Sir Malcolm Hailey on the 15th January 1923, in reply to Mr. B. N. Misra's starred question No. 14 regarding passed and unpassed candidates of the Staff Selection Board.

(a) No promise was made in the answer to question No. 350 on the 28th March 1922.

(b) A statement giving the required information is being placed in the library.

(c) and (d). The information will be found in the answers given to questions Nos. 86 and 148 on the 7th September 1922.

(e) and (f). Indication of the action taken will be found in the statement mentioned above. Departments are taking action to replace unpassed men by passed men, but the process of elimination will inevitably be gradual so as not to disturb the work and organisation of the Departments.

Statement showing the number of men employed in the Upper and Lower Divisions of the Government of India Secretariat and attached offices who have not passed the Staff Selection Board Examination.

UPPER DIVISION.

Names of Departments and attached offices, if any.	Number of men temporarily employed on 1st January, 1923.	Number of men in column 2 who have not passed the Staff Selection Board's Examination.	Number of men in column 3 whose employment has not been approved by the Staff Selection Board.	Steps which have been or are being taken to replace men in column 4.
1	2	3	4	5
Department of Revenue and Agriculture.	4 (These are all men in permanent employ in the Lower Division and are holding officiating appointments in the Upper Division).	1 (This man was holding a permanent post in the Lower Division at the time of the creation of the Staff Selection Board and was officiating in the Upper Division and was on the recommendation of the Department specially exempted by the Board from passing the Upper Division test.	Nil	Nil
Included in the staff of the Department of Revenue and Agriculture.				
Inspector General of Forests	5	Nil	Nil	Nil
Finance Department				

Attached Office—

Inspector General of Forests

Finance Department

Board of Inland Revenue	Nil	Nil	Nil	Nil
Industries Department	1	Nil	Nil	Nil
Public Works Department	4	Nil	Nil	Nil
Foreign and Political Department	20 (including 6 who already held substantive Government appointments before institution of the Staff Selection Board).	5 (holding substantive Government appointments before institution of the Staff Selection Board).	Nil	Nil
Attached Office—				
Military Adviser-in-Chief, Indian State Forces.	Nil	Nil	Nil	Nil
Legislative Department	9	6	Nil	Nil
Attached Office—				
Clearing Office (Emergency Debts)	3	2	1	No steps taken as the office is a temporary one.
Commerce Department	11	Nil	Nil	Nil
Railway Department	4	1	1	This man has been exempted from passing the Staff Selection Board's examination.
Department of Education and Health	1	1	Nil	Nil
Attached Office—				
Office of the Director General, Indian Medical Service.	Nil	Nil	Nil	Nil
Office of the Financial Adviser, Military Finance.	1	1	1	No steps have been taken to replace him but he has been warned of the possibility of his services being dispensed with by the 1st March 1923, if he has not already been discharged before that date in the ordinary course.



UPPER DIVISION—contd.

Names of Departments and attached offices, if any.	Number of men temporarily employed on 1st January, 1923.	Number of men in column 2 who have not passed the Staff Selection Board's Examination.	Number of men in column 3 whose retention in employment has not been approved by the Staff Selection Board.	Steps which have been or are being taken to replace men in column 4.
1	2	3	4	5
Home Department	6	Nil	Nil	Nil
<i>Attached Offices—</i>				
(1) Office of the Director, Intelligence Bureau.	3	Nil	Nil	Nil
(2) Office of the Director, Central Bureau of Information; temporary Office.	8	5	..	Of these 5 men, the Superintendent is a retired servant of Government who has been re-employed and 3 have technical qualifications as Translators and 1 as a Photographer.
Army Department	17 (One of these assistants holds a permanent 1st Division appointment in the Military Secretary's Branch, Army Headquarters. He was promoted to the 1st Division prior to the constitution of the Staff Selection Board).	Nil	Nil	Nil

Attached Offices—

(1) General Staff Branch	1	Nil	Nil	Nil
(2) Adjutant General's Branch (includes the Medical Directorate and the Judge Advocate General's Office).	8	Nil	Nil	Nil
(3) Quartermaster General's Branch (includes the Military Works Directorate).	25	5	2	Being kept on as a special case till their present appointments terminate.
(4) Military Secretary's Branch	1	1	..	His appointment terminated on 28th February, 1923.
(5) Ordnance Branch.	1	1	1	A request that this man be allowed to appear again for examination has been sent to the Staff Selection Board.
(6) Assistant Military Secretary (Personal) to His Excellency the Commander-in-Chief.	Nil	Nil	Nil	Nil

LOWER DIVISION.

Department of Revenue and Agriculture.	5 (includes one man who has passed the Upper Division test of the Staff Selection Board for attached Offices).	Nil	Nil	Nil
<i>Attached Office—</i>				
Inspector General of forests				
Finance Department	6	Nil	Nil	Nil
<i>Attached Office—</i>				
Board of Inland Revenue	Nil	Nil	Nil	Nil

Included in the staff of the Department of Revenue and Agriculture.

LOWER DIVISION—contd.

Names of Departments and attached offices, if any.	Number of men temporarily employed on 1st January, 1923.	Number of men in column 2 who have not passed the Staff Selection Board's Examination.	Number of men in column 3 whose retention in employment has not been approved by the Staff Selection Board.	Steps which have been or are being taken to replace men in column 4.
1	2	3	4	5
Industries Department	13 6	2	...	One of the men in column 3 appeared for the first time at the last examination and failed. The Staff Selection Board has decided to permit him to appear at the next examination. The other has passed the test for typist for Attached Offices but the Staff Selection Board has agreed to his employment in the Secretariat as a typist. These are men on fixed rates of pay. Of these two men who have not passed the Board's examination the retention of one of them in employment has not been approved by the Staff Selection Board. The question of asking the Staff Selection Board to allow him to continue in employment till the next examination is held has been taken up as he has been employed continuously under Government since 1916. The other one is employed as a Librarian and has been exempted from the Staff Selection Board's test so long as he is employed as such.

Public Works Department	17	7	Nil	These seven men appeared at the last examination of the Staff Selection Board the results of which have recently been received. The Board is being addressed in the matter.
Foreign and Political Department		6 (including 5 who held substantive Government appointments before institution of the Staff Selection Board).	Nil	Nil
Attached Office— Military Adviser-in-Chief, Indian States Forces.	2	1	Nil	Staff Selection Board not addressed re retention in employment. Should Government decide to sanction the appointment permanently a qualified man will be engaged.
Legislative Department	8	2	1	Services to be terminated from 31st March 1923.
Attached Office— Local Clearing Office (Enemy Debts).	3	2	2	No steps taken as the office is a temporary one.
Commerce Department	16	Nil	Nil	Nil
Railway Department	24	9	8* 1†	*Exempted from passing the examination. †This man failed to pass at the first attempt and has been kept on pending his appearance at the examination once more which has been permitted.
Department of Education and Health	2	Nil	Nil	Nil

Statement showing the number of men employed in the Upper and Lower Divisions of the Government of India Secretariat and attached offices who have not passed the Staff Selection Board Examination—concl.

LOWER DIVISION—concl.

Names of Departments and attached offices, if any.	Number of men temporarily employed on 1st January, 1923.	Number of men in column 2 who have not passed the Staff Selection Board's Examination.	Number of men in column 3 whose retention in employment has not been approved by the Staff Selection Board.	Steps which have been or are being taken to replace men in column 4.
1	2	3	4	5
<i>Attached Office—</i> Office of the Director General, Indian Medical Service. Office of the Financial Adviser, Military Finance.	3 13	<i>Nil</i> 6	<i>Nil</i> 6	<i>Nil</i> No steps have been taken to replace men in column 4. They have all been warned of the possibility of their services being dispensed with by the 1st March 1923 if they have not already been discharged before that date in the ordinary course. <i>Nil</i>
Home Department	11 (includes 10 Lower Division clerks and 1 stenographer).	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
<i>Attached Offices—</i> (1) Office of the Director, Intelligence Bureau.	3 + 1 stenographer	2 1	2 1	Failed to pass but held by the Board to be eligible to appear at the next examination. Their services have accordingly been temporarily retained subject to their passing.

(2) Director, Central Bureau of Information, Temporary Office.	3	1*	<i>Nil</i>	*This man has technical qualifications.
Army Department	36	7	3	Steps are being taken to replace these men by passed candidates.
<i>Attached Offices—</i> (1) General Staff Branch	19	9	4	One has already been replaced and one is about to be replaced. The remaining two will be displaced shortly.
(2) Adjutant General's Branch (includes the Medical Directorate and the office of the Judge Advocate General).	36	15	13	Ten men are under orders for discharge. The others will go as opportunity offers.
(3) Quartermaster General's Branch (includes the Military Works Directorate).	33	17	7	3 men are being replaced by passed candidates, 4 men will shortly be discharged on termination of their appointments.
(4) Military Secretary's Branch	14	2	1	His appointment in the Military Secretary's Branch has terminated on 28th February 1923 on reduction of establishment.
(5) Ordnance Branch	3	1	<i>Nil</i>	<i>Nil</i>
(6) Assistant Military Secretary (Personal) to His Excellency the Commander-in-Chief.	1	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>

RESOLUTION RE SEPARATION OF THE RAILWAY FROM GENERAL FINANCE.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I am sorry I have to make this application. I ask that this motion standing in the name of the Honourable Mr. Innes be not taken up to-day. The reasons are these. It is true that the papers have been in the hands of the Members for a long time. Still in consequence of the other more important matter which came up yesterday, this has not been attended to as fully as it ought to have been. Moreover we want to know what the Budget for the coming year will be. We also want to know what the Inchcape Committee has to say with regard to the working expenses of the railway. Before we make up our mind as to whether the Standing Finance Committee's report should be adhered to or whether the Acworth Committee's report should be given effect to, it is desirable that we should have a little more information than we have at present. Therefore it is the general desire of Members on this side of the House that the matter should not be hurried through, especially having regard to the fact that the motion which is standing in the name of the Honourable the Commerce Member, only wants the *status quo ante* to be maintained and if the motion is not discussed still the *status quo ante* will be maintained. If we want to make any change then it would be desirable to bring the matter before the House and take the decision of the House and as the motion is only for continuing the existing state of things there is no hurry about it. Under these circumstances I am very reluctantly obliged to ask the House to consent to the matter not being discussed to-day.

The Honourable Sir Malcolm Hailey (Home Member): As Mr. Seshagiri Ayyar says, this matter has been before the House and before the public for a very long time, I think since January, 1922. It is true that we desire no more than to obtain the assent of this House to the conclusions of the Railway Finance Committee on which this and the other House were largely represented; but we should have been glad of a discussion of this question in view of the fact that the matter has been widely discussed in the Press and has been referred to on different occasions since it first arose in this Assembly both in the course of the Budget debates and otherwise. I would remind the House that we were pressed to give a date for the discussion before the Budget and did so at the expense of other Government business. It is only at this moment that a suggestion is made that the discussion could be deferred. If it is now deferred, I cannot undertake to give any other date this Session. That, I think, must be clearly understood. If on that understanding the House generally desires that the matter should be adjourned, then we are not in a position to contest its wish in that respect.

Sir Montagu Webb (Bombay: European): I oppose the proposal to adjourn the discussion of this subject. The Resolution put forward by Government involves a very important matter of principle upon which I think, this House should give its opinion. The Acworth Committee made certain recommendations which on the financial side met with the approval, I think, of the whole country. A Joint Committee of both Houses met together a year ago and in effect threw one of the most important of those recommendations into the waste paper basket and suggested that instead of the Railway finances being separated from the general finances they should be all lumped together as hitherto. This recommendation of

that Committee was disapproved of by, I believe, all the leading commercial bodies in the country. I think, therefore, that now that this subject has come before this House, it should be thoroughly discussed and the House should give its decision as to whether the recommendations of the Acworth Committee should be accepted, or whether the recommendations of the Joint Committee who considered one or two paragraphs of the Acworth Committee's report should be accepted. I urge therefore that this Resolution should be taken to-day.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): As a Member of the Railway Finance Committee I wish to bring to the notice of this House a few points which might have otherwise escaped its notice. As the Honourable Sir Montagu Webb has pointed out, the Acworth Committee have taken a definite line of action as regards the separation of the Railway budget from the general budget of the country. That question was referred to the Railway Finance Committee and the Railway Finance Committee have embodied their recommendations, which Honourable Members will find on pages 3 and 4 of the Indian Railways Administration Report, Volume I. The Railway Finance Committee have modified the recommendations of the Acworth Committee and they have recommended a different line of action to that recommended in the Acworth report. These are the two questions therefore which must be debated in this House. I should have been very willing to accede to the request of my Honourable friend, Mr. Seshagiri Ayyar, if there was any possibility of discussing this matter some time during the present Session but the matter cannot wait and if no other date is possible, as has been very clearly indicated by the Honourable the Home Member, we shall be losing time and whichever way this House decides, whether in favour of the proposals embodied in the Acworth report or in favour of the recommendations made by the Railway Finance Committee, I do not see how we can profitably postpone this discussion. As regards the Budget and the report of the Inchcape Committee, I do not think that they would vitally trench upon the discussion upon which we are to embark to-day. Honourable Members have got the definite instructions or recommendations of the Acworth report. They have also got the definite recommendations of the Railway Finance Committee and it is for the Members to choose either the one or the other or part of one and part of the other. I think that the discussion should proceed and if hereafter a case is made out for the postponement of this discussion in view of the coming Budget, then I think it will be time for my Honourable friend to renew his request, but as at present advised I think we shall be throwing away a day allotted to us for the discussion of this very important question if we do not allow the Honourable Mr. Innes to make his statement and to initiate the discussion.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, the vote on yesterday's debate has made the question of the separation of the Railway from the ordinary Budget an absolute necessity. By that vote this House has swept away any doubts that may have been felt by the Government as to its fitness to run the railways of this country with success. After that vote, this House has given as its considered opinion, its conviction, that the bureaucracy of this country will make a success of what no other bureaucracy in the world has been able to make, and it need not even make any attempt to foster the development of any other system of railway management. I hope that the optimism of this House will be justified. It may be that Members perhaps

[Captain E. V. Sassoon.]

have private knowledge of the capabilities of the Railway Commissioner which will justify them

Mr. President: Order, order. The Honourable Member is not discussing the point before the House, namely, whether this debate should be taken up or not. He is entering into the merits of the question which are not in issue at the moment.

Captain E. V. Sassoon: I am giving my reasons, Sir. Sir, with all deference, I submit that I am entitled to give reasons for submitting that this question is an urgent one and should be decided to-day if possible. I repeat, Sir, that if Honourable Members are correct—and I still have the honour of being a Member of this House—I will be the first publicly to admit the error of my views, but if my pessimism is justified, and if State management proves an increased burden on the people of this country, and it is found necessary to increase the taxes of this country, which it has been said by those very same advocates of State management has reached the limit of taxation, then, Sir, I think this is a proper moment to discuss whether the Government should not be in a position, at least the Honourable the Finance Member in particular should be able, to say,—this increase is due to the policy which was pressed on Government by the Legislative Assembly, a moribund Assembly it is true, but an Assembly the Members of whom, being about to meet their own constituents, could be counted on to express views which in their opinion would find favour in the eyes of their constituents, and the responsibility of any deficit, after the warning words of the Honourable Mr. Innes, will have to be borne by this House, which will then have to agree to the unpleasant necessity of increased taxation; and so, Sir, I think I am right in saying that we should discuss to-day as to whether the question of separating the Budget will enable the Government to say how the deficit has been caused.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I am afraid my Honourable friend, Captain Sassoon, wants to test the soundness of the principle adopted by the Assembly yesterday, rather too soon. It is not even a few hours old, and how the capability of the Honourable Finance Member is going to enable him to give his opinion on the result of the principle adopted yesterday evening by 11 o'clock next morning, I fail to see. I am glad that he has had his opportunity to have a fling on the Resolution that was decided on the vote of the Assembly last night, and having succeeded in that, I hope we will agree in saying that he has not given any reason whatever why this debate should not be adjourned. Really, there is no hurry about this. Our finances are in a fluctuating condition. We are passing through a crisis, and I hope we are going through that crisis successfully. Let us see where we are, let us see whether we are really standing on our feet or not, at least next year. In fact, after all the Railway Finance Committee did not throw the substance of the recommendations of the Acworth Committee into the waste paper basket, as Sir Montagu Webb would have it. We have adopted the substance; we have put aside the form, and we have put aside the form for a temporary period of three years. Therefore, it is not at all right to say that the Railway Finance Committee did not agree with the Acworth Committee. The Railway Finance Committee did agree with the Acworth Committee and have provided for a very steady programme

for five years; and they also recommended the taking of steps to ensure revenue expenditure also, so that all the defects which the Acworth Committee found in the railway finance administration have been removed. (Sir Montagu Webb: "No, no.") The only thing is that the form remains,—whether the Budget should be separated or not. This is not the time to do it,—that is what we felt, and I am sure the House would endorse that view when it has the materials placed before it, as they were placed before the Railway Finance Committee; and I do not see why my Honourable friends are so anxious—I see that the Honourable Members who oppose State management are the persons who oppose the adjournment, except for my friend, Dr. Gour—I do not know why he is very anxious to oppose it, I know he also opposed it, but unfortunately the Leader of my party had not the time to speak to him beforehand, in which case he would have been able to convince him that there is a desirability in postponing the consideration of this question. There is really nothing lost by this; and after all, our time will be very well spent elsewhere in studying and preparing for the Budget which is coming on to-morrow,—of which we know nothing but still we can guess beforehand and look up what we did last year and the year before, where the shoe pinched last year, and prepare ourselves for the onslaught which will be coming on from Monday next, and therefore the time will not be wasted. I do think, Sir, that there is a great deal in the motion made by the Honourable Mr. Seshagiri Ayyar, and I support it.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, Mr. Rangachariar is looking for his type of consistency,—and he thinks that those who found it their duty to oppose State management in some shape or other, are bound to oppose the motion for adjournment to-day. I disagree on this point, for I support the motion for adjournment, for reasons other than those that have been adduced. I was unfortunately a little late in coming, but I gather that the Honourable Mr. Innes has not yet made the Government mind quite clear about the matter, and, what could be gathered from the Honourable the Leader of the House is that he cannot give another day. Sir, we are in the position of one of those unfortunate Hindu families who have a strong brother, sometimes strong in rage and, who, without reason, imposes a partition; and that partition was imposed last night in regard to Railway Finance; and to-day we are wanting the weakling who confesses a state of helplessness, almost abject, so that we may arrange for the security of the strong party. Yesterday morning we practically said that we are going to do something definite in the way of a separate Railway account, in the afternoon we imposed something that had not been bargained for, and to-day we want you to start that separate account. (Mr. J. Chaudhuri: "No, No.") Sir, some people want it,—unless there was a difference of opinion, this motion for adjournment would not have come and the motion of the Honourable Mr. Innes would have been accepted as a matter of course. Sir, I do not want to take the line that Captain Sassoon has taken. I have the loyalty to accept settled facts so far as this House goes, and we must give whatever the House decides on a fair chance. Having regard to what the House decided, is the Government prepared or not that separation of accounts shall take place? What the effect of that financially will be, we do not know. The figures I quoted indicated yesterday what the railway deficit is likely to be this year; whether, as in the case of the Prodigal Son, we shall have to provide for the deficit or not or whether we merely participate in the profits, if and when they come, we do not know yet. All:

[Sir Deva Prasad Sarvadhikary.]
these are considerations that must be carefully looked into and Government will have to decide, having regard to what the vote of the House was yesterday, what line it is going to take. Of course, Government never fails in capacity, and probably if Mr. Innes does move the motion he will tell us that Government has quite made up its mind in spite of what Mr. Rangachariar said, and that he is prepared to take a definite line of action. We are, however, not so very clear in our minds with regard to what ought to be done. There is a distinct cleavage of opinion between the Acworth Committee and the Railway Finance Committee. As has been pointed out a temporary three years programme has been indicated by the latter. But that is not enough for purposes of permanent decision regarding the accounts at all events in outlines. For this reason it strikes me that nothing will be gained by rushing this Resolution and it ought to have more deliberate consideration than less than 24 hours has enabled Members to bestow on it.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, I am afraid Members who ask for the adjournment of to-day's Resolution are labouring under some delusion. The Resolution of which notice has been given by the Honourable Mr. Innes recommends to the Governor General in Council that the proposals of the Railway Finance Committee in regard to the separation of the railway from general finance be accepted. Now, what are those proposals? Those proposals are given at page 3 of the Administration Report, on Indian Railways for 1921-22, where we find the following:

"After full discussion the Committee came to the conclusion that the question of separating railway finance on the lines laid down by the Acworth Committee was outside the domain of practical politics in the existing state of Indian finance. They recommended, however, that the question should be re-examined three years hence when it might be hoped conditions would be more normal and financial equilibrium would be re-established."

(A Voice: "What is the hurry about it now?") The question is whether you are willing or not willing to accept this recommendation of the Railway Finance Committee, namely, that at present the separation is out of the question and that for three years the matter should remain without separation of the railway budget from the general budget? If that is the recommendation which the Railway Finance Committee made and if that is the recommendation which the Government and you are going to accept, I really do not see why you should object to the proposal being brought forward to-day by the Government. If you now adjourn and there is no date forthcoming, what is the result? The result is that next year, it may be, the Government might bring forward a Resolution in direct opposition to the recommendation of the Railway Finance Committee and ask for the separation of the railway budget from the general budget. If you now accept the Government position that these proposals of the Railway Finance Committee be accepted, Government are committed to a policy of not separating for the present the railway budget from the general budget. It is a desirable thing from my point of view and I take it from the point of view of those who have thought over the subject. If, however, you do not accept the Government proposal, you can vote against it. Those who want it will vote for it. I really do not see what is gained by adjourning.

Mr. R. A. Spence (Bombay: European): Sir, yesterday we dealt with the question of railways according to what some of us thought was not a very commonsense point of view. But that is a matter for debate. But

I do, Sir, ask this House to-day to deal with this question on commonsense lines. The Honourable the Leader of the House has told us that if we do not discuss this question to-day we cannot discuss it on any other day this Session. I therefore, Sir, consider that there is no further need of argument and that we should consider this question to-day.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I support the motion for adjournment. With reference to the remarks which fell from my friend, Mr. Samarth, I shall give my own reasons why I want to adjourn. This Resolution asks us to confirm or ratify the conclusions to which the Railway Finance Committee came. Our impression is that, whatever the conclusions of the Members of the Railway Finance Committee may be, they were chiefly influenced by the fact that our general finances do not balance, that we are in a state of deficit and not in equilibrium. Now, we are to-day on the eve of the budget presentation and we hope, Sir, owing to Lord Inchcape's Committee having gone into the question of Railway Finance, to see a better state of things in our Budget. This Resolution asks us to vote for the separation of Railway Finance from general finance in a blind way. (*The Honourable Sir Malcolm Hailey*: "It does not.") Whereas, if we wait and see what Lord Inchcape's Committee has been able to suggest with reference to the securing of equilibrium in our Budget, we shall be able to see whether the conclusions of the Railway Finance Committee are sound or unsound. We want to see first of all the budget, before we ratify the conclusions of the Railway Finance Committee. Nothing will be lost if this adjournment is given. On the other hand, if we get a day later on in March, as is possible, I think we shall be able to see precisely where we stand so far as our general and the railway budget are concerned. I therefore think it would be more advantageous to have the adjournment.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, although at one time I was in favour of the adjournment; after hearing some of the speeches I feel there is no necessity for adjournment at all. After all the proposals about separation are to come into existence after three years. (*The Honourable Sir Malcolm Hailey*: "December, 1924.") What we are asked to do to-day is to accept the principle, and if we accept the principle naturally then the separation may come into existence after some time, and certainly not in this budget. This budget is not going to affect the separation, at all.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I am afraid I am in the same position as my Honourable friend, Mr. Joshi. Mr. Kamat's argument would be forcible if another date was forthcoming. But we have here a statement made by the Honourable the Leader of the House in which he says that he cannot guarantee any date during this Session. Well, if he cannot guarantee any other date during this Session, are you going to postpone *sine die* the discussion of a most important question like this. If another date is not forthcoming then let us discuss the matter to-day and decide one way or the other.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I desire to say a word or two in support of the motion for adjournment. The question stands thus. So far as the view that the present state of things should continue is concerned, it contemplates that there should be no disturbance in the existing arrangement for three years for the present, that is to say, the railway finance should remain amalgamated with the general finance of the country for that period. But the opposite

[Mr. J. N. Mukherjee.]

view suggests that we should at once decide upon the question whether railway finance should be permanently separated from the ordinary general finance of the country, as a separate entity, and that such procedure should introduce the consideration of the larger question whether, in case of good years, the profits derived from the railways should be completely detached from the general exchequer and be devoted entirely to the needs of the railways and to their improvement. It suggests that in case, after meeting all the needs of the railways, there is found to be a surplus that surplus should not be utilized for the purposes of the general administration of the country, and to relieve *pro tanto*, the general exchequer. That is the larger question, Sir, which is involved in this matter, and if in the absence of the necessary facts and figures, if in the absence of the results of the examination made by the Retrenchment Committee, and without due regard to any proposal which may be brought forward, by that Committee a conclusion is arrived at, such a conclusion is likely to prove immature and ill-considered. When introducing this matter in this House on the 27th of March, 1922, the Honourable Mr. Innes, said:

"Lord Meston's Committee proceeded on the assumption that the Central Government would derive a net revenue of Rs. 10½ crores from railways. For the reasons, which I have already explained the whole of this revenue could not possibly be surrendered, but it was considered whether a portion of the loss to general revenues involved by the separation could not be avoided on the basis of a composition with the railways; that is to say, whether a sum could not be arrived at which the railways might fairly be expected to contribute to the general exchequer, whether in the form of a surtax or otherwise."

Then he went on to say:

"This suggestion was examined, but we were at once met by the difficulty that it was not possible to calculate a figure on which any reliance could be placed as a basis of a contribution or a surtax."

I need not detain the House with further observations. He went on to calculate the possible benefits that were to be gained from this source of revenue. Then, Sir, in the end, this is how the debate ended. There were two parts to this question. The first part related to the sum of 150 crores of rupees which was to be spread over 5 years at 30 crores a year, on account of capital expenditure for the railways.

Mr. President: This quotation is relevant to the debate on the Resolution, not to this motion. I must ask the Honourable Member to address himself to the motion.

Mr. J. N. Mukherjee: The debate closed thus. For the reason that the question at issue could not be determined at the time, the first part only was passed in this House and the second part, which is the part now before the House relating to the separation of the railway finance from the general finance, was postponed till September last. But the matter was not put up in September. If it had been put up then, perhaps some result could have been achieved upon the figures then available. Now, we are nearing the completion of an inquiry, the inquiry by the Retrenchment Committee, and also nearing the Budget proposals. We are met at this juncture with the serious question as to how this subject is to be decided. If the present state of things continues there will be no harm if the matter be discussed later on. But if an opposite decision is come to, that decision will have to be arrived at upon imperfect materials and without full and adequate consideration of the whole question. That is what concerns the House for the present, not the question of the

funds remaining united, but the question of one being completely separated from the other and necessarily involving the larger and broader question whether the general exchequer should receive any benefits from any surplus from the railways and whether from that source some benefit should go to the general tax-payer. That is the broader question, Sir, with which the House is now faced. I submit, Sir, the better course would be for the House to take the whole question into consideration, and after having got all the necessary facts, to come to a conclusion instead of deciding the question in the dark.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, the Honourable Mr. Spence has rightly recommended to this House that it should view this proposal to adjourn from the point of commonsense. On the one side, the House is asked not to take a leap in the dark, but to await the light which will be shed by the Budget now impending. The case for the other side is, as I understand it, that a leap in the dark is better than no leap at all. I submit, Sir, it is my humble view that commonsense is on the side of those who say that no leap at all is better than a leap in the dark. I therefore support the motion for adjournment.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I rise to oppose the view that the Resolution be moved and taken into consideration to-day. I emphatically support the adjournment motion, because of the reason stated by my Honourable friend, Sir Henry Stanyon, that we should not take a jump in the dark. Exactly, Sir, that is the point to be considered. Unfortunately, Sir, some Honourable gentlemen have taken the view, that it is better for this House to jump into the dark. To jump into the dark, Sir, is sometimes very reasonable from the point of view of those who cannot distinguish this side of the House from the other, and the consequence is that the Judges of the Court trying offender of the kind have no sympathy for the accused persons who take a leap in the dark and commit offence

Mr. President: Order, order. The Honourable Member will very soon be in the position of an accused person himself if he does not speak on the question before the House.

Mr. K. Ahmed: Sir, there are two parties and that is the position of those who do not want an adjournment but who want to take a leap in the dark. Sir, a very strong case has been made out from this side of the House. This Resolution was not balloted because it is a Government Resolution. It is a Resolution, the particulars of which is not known to this side of the House at all, and my Honourable friend, Mr. Innes, wants us to take a leap in the dark. Without knowing, Sir, all the facts and figures, are we here to give our opinion with regard to the Resolution which is to be considered to-day? It is not at all advisable, Sir, that in an important Resolution like this, the Government should ask us to remain in the dark and say "look here, you have got some important points for the Resolution to be moved to-day and just now and although you may get the full particulars and all the materials for the Resolution later on, you better decide the question on the spur of the moment and accept our views that we have got in support of our Resolution." You want to fetter, you want to tie our hands and compel us to accept your views without giving us an opportunity to understand you. Are you not going to allow us to have our right and liberty? You have got all the materials before you it is true. I daresay you have got everything in your possession. You have been making this preparation in support of your Resolution to defeat

[Mr. K. Ahmed.]

us and contradict our views and arguments. But, certainly, Sir, in all fairness to us, we must be given an opportunity to follow you. You must give us time to study the question. You must give us sufficient notice of the Resolution. I understand, Sir, that the Railway Department is a department that follows the time table properly, and no train starts from any station unless there is some indication at least two or three months previously; and this is, Sir, the principle of the rules that are always followed in the Railway Department. The Railway Department, as far as this morning is concerned, is not acting in accordance with that principle. I hope, Sir, that my Honourable friend, the Home Member, will see his way to allot a day for discussing this question soon after the budget is over. We are not going to disperse before the 26th or 27th March, I understand. Before and after the consideration of the Budget is over, Sir, there will be more than a week's time from now and after the budget and I daresay we will be able to find enough time for a discussion, and I beg to suggest that the proposal for adjournment should be accepted. The other point is that there is no reason why this Resolution should be hurried over and why it should be discussed to-day. I suppose I am quite right in saying that a fair chance should be given to this side of the House to consider a Government Resolution. It is not a Non-Official Resolution for which notice is given and which is admitted by the President within certain time and thereafter there is a ballot, and after that there is sufficient time within which the Governor General or the Viceroy can disallow the Resolution. Sir, you take enough time for a Non-Official Resolution before it comes on for discussion why should not this side of the House get sufficient time to follow a Government Resolution? With these few words I strongly support the motion for adjournment.

Mr. R. A. Spence: The question may now be put.

The motion was adopted.

Mr. President: The question is that the Resolution be not considered to-day.

The Assembly divided:

AYES—44.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. C. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.

Misra, Mr. B. N.
Mudaliar, Mr. S.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sohan Lal, Mr. Bakshi.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—38.

Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Allen, Mr. B. C.
Asad Ali, Mir.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Faridoonji, Mr. R.
Fraser, Sir Gordon.
Gour, Dr. H. S.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.

Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Mukherjee, Mr. T. P.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sassoon, Capt. E. V.
Schammad, Mr. Mahmood.
Singh, Mr. S. N.
Sircar, Mr. N. C.
Spence, Mr. R. A.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was adopted.

CONFERENCE RE REGULATIONS UNDER THE ELECTORAL RULES.

The Honourable Sir Malcolm Hailey (Home Member): Sir, with your permission I have a short statement to make for the information of Honourable Members, namely, that a conference of Provincial representatives has been summoned by the Government of India to consider the regulations made under the electoral rules. The Conference will begin its meetings on the 7th of March. As Honourable Members are aware, the power to make regulations under the rules is vested in Local Governments. Some Honourable Members may, however, be interested in the subject and they may wish to make suggestions for the amendment of the regulations. Any such suggestions may be preferably made in writing and addressed to Mr. Hammond, c/o the Home Department.

MEETINGS OF LEGISLATIVE ASSEMBLY.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): May I ask, Sir, if the Honourable the Leader of the House is able to give us any information as to when this Legislative Assembly is to be dissolved?

The Honourable Sir Malcolm Hailey (Home Member): No, Sir, I have no definite information on the point.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): May I, Sir, in this connection ask, is there going to be a Simla Session of the Central Legislature, and, if so, when?

The Honourable Sir Malcolm Hailey: I have no information on that point either.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 1st March, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 1st March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTION AND ANSWER.

PUBLICITY BUREAU.

441. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (a) Whether the present Director and Assistant Director of the Publicity Bureau were in employment of the Government of India or any Provincial Government before, and if so, in what capacity, and what were their salaries?
- (b) What is the cost of the establishment of the Publicity Bureau?
- (c) What is the amount spent annually on publications including postage and other charges?
- (d) Have the Government any intention of continuing the establishment beyond May, 1923, and if so, whether any proposal for extension has been placed before the Standing Finance Committee? and
- (e) Will an inquiry be instituted into the working of the Department before a further step is taken to extend its life?

The Honourable Sir Malcolm Halley: (a) The Director and Assistant Director of the Central Bureau of Information were not in Government service when they were appointed to their present posts under the Government of India.

(b) The Honourable Member is referred to page 38 of the "Detailed Estimates and Demands for Grants for 1922-23."

(c) The charges of printing, publication, postage and distribution of the publications of the Central Bureau of Information fall, like those for the publications of other offices, upon the Superintendent, Government Printing, India. They are not a part of the expenditure of the Bureau, nor is the Bureau credited with the proceeds of the sale of its publications.

(d) The matter is under the consideration of the Government of India.

(e) This is unnecessary as there is already an Advisory Publicity Committee comprising among its number members of the Legislature.

BUDGET FOR 1923-24.

INTRODUCTORY.

The Honourable Sir Basil Blackett (Finance Member): Mr. President, in rising to-day to present the budget statement for 1923-24, I claim, and I know I shall receive, the privileges of a new-comer and a new Member. It is a great privilege for me thus to be able to fulfil an old dream of returning to the land of my birth to serve India as so many of my ancestors have done. But two months is a very insufficient time for the task of preparing to present a budget to this House. I am, however, in many ways fortunate. First and foremost, I have the devoted services of the Finance Department under the Honourable Mr. Cook. Without their help there would have been no budget. I am the inheritor of the fruits of three years of hard labour of my friend Sir Malcolm Hailey. If there is a gleam of light in the budget which I am about to present, it is his doing. The fruit is the fruit of seed which he had sown, and I am reaping where he has ploughed. I am afraid that he had to put up with much inclement weather, with storms and rumours of storms, but if there is promise of harvest to-day, the credit is to him. For nothing perhaps am I more indebted to him than for his share in the credit of securing the appointment of the strong and able Retrenchment Committee, which has been so well presided over by Lord Inchcape. Possibly the most interesting part of the papers which I am laying on the table to-day and in the next few days in connection with the budget will be the report of the Inchcape Committee. Lord Inchcape shocked my modesty a few days ago by describing himself as my forerunner. He and his colleagues can perhaps be more aptly compared to the burly forwards in the American game of football on whom falls the duty of charging ahead of the man with the ball and beating down, with all permissible violence, any opponent who threatens to check his progress. Whatever views individual Members may take of this or that recommendation for retrenchment made by the Committee,—and I never heard any recommendation for retrenchment anywhere, except the stopping of the salary of the Finance Member, which was really popular,—I know the whole House will be unanimous in joining with me in expressing our heartfelt gratitude to the Committee for their devoted work, and, as I think I may promise, for their remarkable success in what is the most ungrateful of all ungrateful tasks.

2. Mr. President, my first duty to-day is to lay before this House the figures of the outturn, or rather the probable outturn, of the year 1922-23. Since I came to India, I have much envied the position of the British Chancellor of the Exchequer who, in presenting his budget, is always able to give accurate figures for the year which, under the British system, has just closed and not, as under the Indian system, is about to close. He is not confronted, as I am, with the necessity of making what is after all only a second guess on the basis of the first nine or ten months' experience of what the real figures are for the year preceding the year to which the budget which he is presenting relates. When I have laid before the House the figures for 1922-23, I hope to make a short review of the general financial position of India at the close of 1922-23, that is, the position as it presented itself to a new-comer as I am. It will then be my task to proceed with my proper function to-day—the presentation of the budget for 1923-24.

II.—REVIEW OF THE YEAR 1922-23.

3. The budget estimates of the current year as finally passed provided for a deficit of 9·16 crores, the estimated revenue (including new taxation and increased postage and railway rates expected to yield 18½ crores), being 133·23 crores, and the expenditure 142·39 crores. There is a saving of 4·14 crores on expenditure, but revenue will be 12·48 crores less than the estimate, so that as now revised the estimates point to a deficit this year of 17½ crores.

Revenue.

4. Our revenue estimates were not based on a hope of any marked or striking revival in trade, although we certainly expected some slight improvement on the general trade conditions of the previous year. On the whole, this anticipation has been justified. There was considerable stagnation during the earlier part of the summer, but, except perhaps in the cotton mill industry in Bombay, the general feeling prevailing in the business community has for some months been one of mild optimism. Considering the impoverishment of many of our former customers, our exports have undoubtedly shown a promising recovery, and, so far as merchandise alone is concerned, the balance of trade in favour of India during the first ten months of the financial year has been 62 crores which contrasts with an adverse balance of 29½ crores in the corresponding ten months of the preceding year. As against this, there has been a substantial net import of bullion in the current year, but after including the bullion figures there still remains a net balance of 20 crores in favour of India instead of an adverse balance of 33 crores in the first ten months of last year.

5. Under Customs we budgeted for a total net revenue of 45½ crores, of which 9 crores was expected to accrue from the enhancement of duties imposed in the Finance Act of March last. We now expect a Customs revenue which will be some 3 crores short of the figure budgeted for. The most uncertain, and at the same time one of the most important factors affecting our revenue is the import of sugar, which in the previous year had yielded us the unprecedentedly large figure of 6½ crores at the old rate of duty of 15 per cent. For the current year we did not anticipate the continuance of such abnormally large imports, but expected, on the increased duty of 25 per cent., to realise about 6½ crores. The figures of imports vary in a very erratic way from month to month which makes estimating difficult; recently, owing to a large drop in prices, imports were held up in order to get the benefit of the revised tariff valuation which came into force from the 1st January. We expect, therefore, large imports in the last 3 months of the year though the effect of this will be counterbalanced by the duty being calculated on a lower valuation. On the whole, we expect that the revenue from sugar will be less by 1½ crores than the budget figure. The excise duty on cotton manufactures will also bring us in substantially less than we expected; owing to the high price of cotton and a fall in the price of cotton cloth in the internal markets, there has recently been a reduced output from the mills, and we expect to be about 60 lakhs down under this head. As regards the other tariff heads, it is probable that there will be some deficiency in the revenue from liquors,

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matches, machinery, cutlery and other manufactured articles, but any losses here should be nearly counterbalanced by increased revenue from import duties on cotton piece-goods (which may give us 96 lakhs more than our estimated revenue of 5.60 lakhs), iron and steel and other metals, while the new excise duty on kerosene is likely to bring us in 89 lakhs as against 40 lakhs budgeted for.

6. Before leaving the subject of Customs, I must refer briefly to a matter which has attracted some public attention during the year, namely, our revenue from the so-called "luxury" articles, which are assessed to duty at 30 per cent. Honourable Members will have seen from time to time various articles in the press, the object of which was to show that this high rate of duty has very seriously affected the trades concerned, and it was implied, if it was not asserted, that a lower rate of duty would have brought in more revenue. These contentions are scarcely borne out by the facts. In the current year we budgeted for a return of 2.84 lakhs from the 30 per cent. duty; we actually expect to receive only 11 lakhs less in spite of a considerable fall in prices. The principal articles included in the 30 per cent. schedule are motor cars, silk manufactures, glass bangles and beads, and tyres and tubes. Except in the case of silk manufactures, the quantities imported during the first nine months of the current year have been in excess of those imported in the corresponding period of the preceding year. Nearly twice as many motor cars have been imported; and if the value of the cars imported has fallen considerably, this is due partly to the general fall in world prices and partly to the fact that people have been importing the cheaper American car in preference to the more expensive English car. I doubt very much if the duty has had much to do with this substitution. The conclusion is that there is certainly no case at present for any alteration of the schedule.

7. As Honourable Members will have seen from the published returns, our traffic receipts from railways have been disappointing. The increase in passenger fares was expected to add some 6 crores to the receipts. Traffic, both passenger and goods, especially the latter, has, however, fallen off, and as against the estimated gross traffic receipts of 99½ crores, we do not expect to get more than 92, the small improvement over the gross earnings of last year being mainly due to the increased passenger fares. On the other hand, we expect a saving of 2½ crores on that portion of the expenditure on replacements and renewals which is debitable to revenue, counterbalanced by an excess of about 1 crore in ordinary working expenses. Altogether our net railway revenue is likely to be down by 5½ crores. Taking into account interest charges, I am sorry to say that the final result for the general tax-payer will be that there will again be no profit from railways, but a loss of about a crore.

8. The effect of the new postal rates, during the first few months of the financial year, was to reduce correspondence, but there have since been signs of recovery, and the public are now gradually getting used to the higher postal charges. For the present, however, I think we must anticipate a diminution of 1.06 lakhs in our anticipated receipts in 1922-23. There is a small saving in working expenses, and after debiting interest, the department will probably prove to have been running at a profit of about 24 lakhs.

9. We expected large arrear income-tax collections, but after the beginning of the year it became evident, not only that the allowances that we should have to make for bad debts, etc., would be large, but also that our revenue was to be seriously affected by heavy refunds which have had to be made in Calcutta as a result of the adjustment system in force under the former Act; fortunately this will, under the new Act, not disturb our estimates again. I understand that in Calcutta companies have in many cases actually received a cheque from the income-tax authorities instead of paying any tax to Government, and the net receipts in Bengal are not expected to be more than 3½ crores. The collections have been good in the other provinces, particularly in Bombay, though the lower profits which the cotton mills have recently been making will, I fear, affect our revenue from that city in 1923-24. Altogether, we expect a total deterioration of 3½ crores.

10. As regards other heads, I need only say that we expect to get 89 lakhs more from opium than we anticipated, and there will probably be some slight improvement—7 lakhs or so—under salt.

Expenditure.

11. On the expenditure side, there will be a substantial saving of about 1.86 lakhs in our budget provision for interest on debt. Our rupee and sterling borrowings have been larger than we budgeted for, but a full half year's interest in respect of the greater part of these does not fall due till next year; the success of our borrowings has, moreover, enabled us to fund a substantial portion of our floating debt, and the payment of interest made for short periods this year on our new loans is less than that which would have been payable for the replacement of the treasury bills discharged.

The House will recollect that a special provision of 60 lakhs was entered in the Civil estimates as part of the expenditure in Waziristan (under the head "Political"). We now anticipate that there will be a saving of nearly 35 lakhs therein, owing to a part of the expenditure being thrown forward to next year. There will also be a saving of ½ crore in other civil expenditure, mainly as the result of retrenchments carried out during the year.

The average rate of Exchange for which we budgeted was 1s. 4d. We expect no appreciable deviation from the budget under this head.

12. Before dealing with military expenditure, I must explain briefly a change which has been made in the method of showing the figures; it affects all the non-commercial heads but is most marked in the case of the military portion of the accounts. Our practice in the last two years in distributing exchange adjustments has been to show them against the individual heads of account in so far as the commercial services were concerned, and to lump the entries under one head "Exchange" in respect of the remaining heads. This method would answer well enough if the difference between the statutory rate (2 shillings to the rupee) and the actual rate was fairly small; but it gives our figures a misleading appearance when the difference between the two rates is as large as has been the case during the past two years. It was not at all surprising, therefore,

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that serious objection was taken to this procedure in the course of the discussion of the budget in both Houses last year, on the ground that it had the effect, on the surface, of largely understating the actual expenditure incurred on military services. It has now been decided to distribute the exchange adjustments between the individual heads in all future accounts and estimates. The figures of military expenditure which I shall give this morning have accordingly been arrived at after converting sterling into rupees at the rate of 1s. 4d.

13. The Budget provided 65.10 crores for the established charges of the Army, 2.13 crores for Waziristan expenditure and 52 lakhs for demobilisation charges, making a total of 67.75 crores. In regard to the Waziristan expenditure my predecessor stated that the figure could be regarded as tentative only, since it is always difficult to forecast the exact effect of military operations of this nature. His apprehension has unhappily proved correct and Waziristan expenditure in 1922-23 is now estimated at 3.85 crores. Demobilisation charges will amount to 2.8 crores owing to unexpected progress with the discharge of surplus officers and to a claim from the War Office for the cost of demobilisation of British troops which had become surplus on the reduction of Indian establishments. On the other hand, the established charges will now amount to only 60½ crores, owing to a continued shortage of British troops, fall in prices and a variety of other causes. A careful control has been maintained over these charges; and savings in Budget grants have not been allowed to be re-appropriated for new measures involving a permanent liability of any considerable magnitude, though a small portion had to be made available to meet initial expenditure on equipment the purchase of which could not be further postponed. In spite therefore of the excess expenditure of 1.72 lakhs in Waziristan, we have been able to effect a saving of 46 lakhs in the budget grant for Military expenditure.

14. These variations in revenue and expenditure are summarised below:

	(In lakhs of rupees)	
	(+ better,	— worse).
(i) Customs revenue, less	...	3,12
(ii) Income-tax revenue, less	...	3,42
(iii) Opium and salt revenue, more	96	...
(iv) Net revenue from Railways, less	...	5,86
(v) Net revenue from Posts and Telegraphs, less	...	94
(vi) Interest and Currency receipts, more	51	...
(vii) Saving in provision for interest on debt	1,86	...
(viii) Saving in Military expenditure (net)	46	...
(ix) Saving in civil expenditure including Political expenditure in Waziristan) and other items	1,21	...
	5,00	13,84
Deficit as budgeted for	—8,84	
	—9,16	
Deficit according to present estimate	—17,50	

III.—POSITION OF INDIAN FINANCES AT THE CLOSE OF 1922-23.

15. Before I proceed to present the budget for 1923-24, I should like, with the permission of the House, to make a short survey of the financial position of India at the present time, and to attempt to give the House a new-comer's first impressions, or as Mr. Punch would say, first depressions. I am afraid that much of what I say may sound rather superficial, and that I shall be open to the charge of doing what has been done before by more than one globe trotter who, after spending a few weeks in the country, sets to and writes a book about India. One of the many books about India which I brought with me to read on boardship on my way out was a volume entitled "The Moral and Material Progress Report". I was rather shocked by the odd assumption in the title that there had necessarily been progress. When I came to look into the finances of India for the last few years, I was tempted to wonder whether it was not rather a rake's progress. For five years in succession, India has had a deficit. The accumulated total of these deficits amounts to no less than 100 crores, and this in spite of the fact that in the last two budgets additional taxation has been imposed estimated to bring in about 28 crores during the year 1922-23. Even this is not the whole story. Apart from our revenue deficits, we have spent many crores on unproductive purposes, the expenditure on which is classed as capital expenditure. New Delhi is the most obvious example. I can see no justification, other than sheer necessity, for not treating this expenditure as chargeable against revenue, and in any case it ought to be repaid out of revenue at an early date. Moreover, besides the deficit of the Central Government, the recurring deficits of the provincial Governments and of many local bodies throughout India must not be forgotten.

16. I ask the House to pause a moment and consider what these deficits mean. Unfortunately, we are accustomed in these days all over the world to budget deficits, and familiarity breeds contempt in spite of the fact that more than one awful example is before us among the nations of Europe of the chaos which continued budget deficits inevitably induce. The individual who lives beyond his income year by year does not escape the penalty and the same is true of a State. The individual who makes this mistake quickly finds himself compelled to consent to a ruthless cutting down of his expenditure or is driven either to sell or to mortgage a part or the whole of his possessions; or, in the worst event, to cheat his creditors. A State is in the same position, but the position is frequently obscured by the fact that the State's creditors are in another capacity the citizens of the State and its taxpayers. And the State which is driven to cheat its creditors does not always realise what it is doing although its unsound methods are adopted at the expense not only of the wealth and happiness of its own citizens, but also at considerable risk to social order within its borders. Much of the present unrest in the world is due to the way in which States in all parts of the world have cheated their creditors by unsound currency manipulation and the creation of paper money with no real assets behind it.

17. India has not entirely escaped the evils of taxation through inflation, but as compared with many other countries she has come off well. Out of the total deficit of 100 crores during the last five years, it is estimated that 31 crores have been covered by the creation of paper money, representing nothing but the I. O. U.'s of the Government of India. The remainder amounting to 69

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crores has been raised by borrowing. Moreover to the extent of 22 crores the borrowing has thus far taken the form of issues of Treasury Bills to the public. It is true that, owing to special conditions during 1922-23, we were able to reduce our Treasury Bills by 32 crores, in spite of the deficit, out of the proceeds of long term loans. Still, 22 crores of Treasury Bills in a country like India is far too large an amount to have outstanding. A large volume of Treasury Bills is an evil even in England, where the condition of the money market is such that it is always possible to renew maturing bills by offering a competitive rate, but in India conditions might easily arise under which even an impossibly high rate would be insufficient, and in that case the Government of India would be driven back to replacing the Treasury Bills by paper currency, i.e., would be driven to taxation by inflation.

18. In this connection, a word may be said about our early maturing debt. We have to find the means of meeting bonds during the next three or four years to the extent of 5½ crores in 1923, 8½ crores in 1925, and nearly 88 crores in 1926. These amounts, too, have to be competed for against other demands on the market, and may be said, in part at any rate, to be one of the outcomes of the deficits for the last few years.

19. But the deficits of 100 crores can be looked at from another point of view, when again their evil effects are prominent. In the budget for 1923-24, the charge for interest would be at least 5½ crores less had it not been for these accumulated deficits. This extra 5½ crores has to be met either by reducing expenditure, possibly by reducing desirable expenditure, or by raising new taxation, or at best by maintaining existing taxes which could otherwise be reduced.

20. Moreover the continued deficits are threatening to impair India's credit in the market both at home and abroad, and increasing the cost of borrowing whether for covering the deficits or for new capital expenditure. India is a country where, as it seems to me, there is an almost unlimited field for new capital expenditure on new development. At the last Assembly of the League of Nations at Geneva, India established her claim to be one of the eight premier industrial States of the world. Every one admits, however, that India is only at the beginning of her industrial development, and it is out of her capital resources, i.e., out of her accumulated savings and her new savings, that the capital to develop India industrially must be found. We have borrowed all that we could borrow in India and in England during the last few years for capital expenditure purposes, and we have undertaken a minimum programme of 30 crores a year for capital expenditure on Railways. I wish it could be more. So far as I can judge at the present time, the amount which might usefully be spent on profitable development of transportation in India is limited mainly by the possibilities of finding capital resources. Yet we have spent 100 crores out of capital in the last five years in financing deficits, thereby diminishing to a corresponding extent the resources available for developing India. Let us make no mistake about it. If recourse to inflation is ruled out, if it is agreed that the concealed method of taxation by inflation is the worst of all methods, the money to meet the annual expenditure of India, whether on capital or on revenue account, must come out of the savings of the country. The only exception, which is not a real exception, to this statement is that some of the capital may be borrowed abroad, and it has of course been a commonplace of the history

of the last century that capital has been found by the older industrial countries of the world for the development of new-comers in the field, to the great advantage both of the borrower and of the lender. But the amount that India can borrow abroad is limited both by the amount available abroad, which in the present condition of the world may prove a comparatively small amount for some time to come, and by the capacity of the borrower to meet the annual charges for interest. These annual charges for interest are in effect a claim on the future resources of India and ultimately come out of the same pocket as the money required to meet the rest of India's expenditure, i.e., out of the savings of the people. To sum up, the deficits of the last few years have brought in their train a certain amount of taxation by inflation, a heavy annual charge on the present and future budgets of India, a deterioration in India's credit, an increase in the cost of borrowing, and a depletion of the resources available for desirable capital development.

21. Perhaps I may be allowed to digress at this moment to touch on a subject in which I have always taken very great interest. Every one who has studied the subject agrees that a wonderful era of prosperity would be ahead of India if the habit of investment could be stimulated, if investment in India became anything like as general a practice as it is in such countries as England and France. It is true that much has been done in recent years. The rupee loans of the last few years have been unprecedented in amount. But much remains to be done if the Indian people are to form the habit of investing their talents in reproductive enterprises rather than wrapping them up in a napkin, and perhaps I should also add, if some of them could learn to be content with sound and steady returns on the money they invest instead of looking for impossibly high dividends.

22. I have been making some inquiries as to the progress of the Post Office Cash Certificates. I was an original member of the National Savings Committee appointed in England at the beginning of 1916 largely through the efforts of Mr. Montagu and was privileged to take a part in what is widely regarded in England as a most extraordinarily successful movement. The change from thriftlessness to thrifty habits which has taken place among many sections of the English people has been described as a revolution. National Savings Certificates to the value of nearly £360 millions are now held by the small investor in the United Kingdom. When I contrast the sales of the Post Office Cash Certificates, which were not inconsiderable during the war when they were first started but have since declined, I cannot help thinking that there must be great possibilities of development in this system. What a great improvement in our financial outlook would result if by development of the Post Office Cash Certificate system a considerable part, if not the whole, of the money required for provincial capital expenditure could be found out of the proceeds of Cash Certificates! It is my earnest hope that before long means may be found for taking up this subject in earnest. It is a subject in which above all others, if we are to succeed, non-official effort must be enlisted to second governmental action.

23. As the results of the deficits of the last few years and of the war, India's debt has grown from a total of 4.11 crores on the 31st March 1914 to an estimated total of 7.81 crores on the 31st March 1923. This figure includes the floating debt and the early maturing debt of which I have already spoken, but it excludes no less than 63 crores of obligations which it is I find the practice to treat separately from the debt of India, though as far as I can see these obligations are just as much a part of India's

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debt as the rest. Taking, however, the figure of 7.81 crores which I have given of the total debt of India on the 31st March 1923, we find that 5.57 crores is classed as productive and 2.24 crores as ordinary or unproductive debt. The proportion of productive to unproductive debt is one which naturally looks strikingly good to any one who thinks of Great Britain's figure of £7,500 millions of debt, all of which has gone in powder and shot. But this comparison must not blind us to the fact that since the 31st March 1914 the total debt has increased by 3.70 crores and the unproductive debt by 2.27 crores, and we must not forget that the yield on that part of our productive debt which is invested in railways has not been sufficient in the last two years to meet the interest charges.

24. The debt, again, has to be divided between rupee debt and sterling debt. The rupee debt has risen since the 31st March 1914 from 1.46 crores to 4.21 crores and the sterling debt has risen from £177 millions to £240 millions in the same period. The sterling debt of £240 millions represents a claim on India's production of goods and services in the future up to the value of the principal together with a further claim on those goods and services for interest during the interval until the principal is paid off.

25. This question of the sterling debt brings me by a natural transition to a new subject, which is certainly not the last one to be brought to the attention of an incoming Finance Member—I mean the question of currency and exchange. Now, it is no good crying over spilt milk, and I do not think the House will expect me to delve deeply into the history of Indian currency during recent years. It is easy to be wise after the event. There were some wise men, however, even in 1919-20, who held that the right course at that time would have been to adopt a waiting policy, and I am convinced that, for the moment at any rate, a waiting policy is still the right policy. What was it that upset the equilibrium of the rupee-sterling exchange which had been so painfully stabilised at 1s. 4d. at about the end of the 19th century? Primarily of course it was the Great War and the adoption of inflationary methods by all the belligerent countries. Whatever system of currency had been in force in India during the Great War, it would have been profoundly disturbed by the events of 1914-18. In so far as India had a choice and was not swept along in the maelstrom of world events, India's choice was necessarily between an attempt to keep the exchange value of the rupee more or less stable and an attempt to keep rupee prices more or less stable. As a matter of fact, India's first choice was the former, and for some time the rupee remained at or about 1s. 4d., but then the rise in the price of silver, which occurred as the natural consequence of the fall in the purchasing power of gold, introduced a new complication. It is impossible over a long period to keep a coin in circulation which is worth more as bullion than it is as current coin. Once the traditional figure of 1s. 4d. for the rupee was departed from nothing remained stable, though in comparison with the rest of the world Indian prices up till 1920 remained relatively stable in terms of gold. Thus, it was essentially the rise in the price of silver which upset the Indian currency system. I need say no more of the attempt that was made to stabilise the rupee at a new, or rather at the old, fixed rate of 2 shillings gold in 1920 except that it failed. Looking back, we are able to say that the attempt was an almost impossible one with all the exchanges of the world out of gear, with world prices moving up and then down with unexampled rapidity, and with relative prices as between one commodity

and another fluctuating in an unheard-of manner. Can we say that the position to-day is such that an attempt to give the rupee a fixed value, whether at 1s. 4d. or any other rate, in terms of gold, or in terms of some other currency, is much more likely to succeed than it was in 1920? I think not. The French are in the Ruhr; the whole of Continental Europe is faced with the threat of impending chaos; throughout the world prices are unstable; sterling has approached close to par with gold but it is not yet at par; and even if it were at par, it is too soon to say whether political and monetary conditions in the United States may not lead to a fresh cycle of rising prices in terms of dollars which would almost necessarily have to be followed by a rise in sterling prices. For the moment, therefore, I repeat that the time has not yet come for a new attempt to fix the rupee, whether at 1s. 4d., 1s. 6d., or any other figure.

26. Subject, however, to one essential condition, namely, that the era of unbalanced budgets, central, provincial and local, in India, is succeeded by an era of balanced budgets, there is, I think, reason to regard the currency position of India with some satisfaction. We had a good monsoon last year and India's export trade has taken a turn for the better. For internal purposes the metallic reserve of silver seems to be fully ample to maintain the convertibility of the paper currency. In addition to the reserve of silver rupees, there is in the Paper Currency Reserve a sum of £24 millions in gold, and in sterling securities, easily convertible into foreign exchange, a total of £5,800,000 sterling. Over and above and outside these Reserves, we have £40 millions in the Gold Standard Reserve. In spite of the separation between the two Reserves, if we are looking at the resources available for maintaining the rate of exchange of the rupee, the sterling securities in the Paper Currency Reserve and the Gold Standard Reserve all serve the same purpose.

27. The movements of the rupee-sterling exchange during the past year reflect a clear improvement in the position of the rupee. A year ago, in February 1922, the telegraphic transfer rate in Calcutta on London had fallen as low as 1s. 2¹⁵/₁₆d., and it was not till the end of December that it reached 1s. 4d. Since then, after a rather rapid rise to over 1s. 5d., followed by a sharp re-action, it is for the moment fairly steady at between 1s. 4d. and 1s. 4¹/₂d. This improvement in terms of sterling reflects an even greater improvement in terms of gold owing to the rise which has taken place during the year in the value of sterling in terms of gold, and the improvement is reflected also in prices. The Bombay Labour Office figure for Indian wholesale prices for December 1921 was 190. For December 1922 the corresponding figure was 173. There has been a still more striking fall in retail prices of food grains. This fall in Indian prices has been taking place during a period in which there has been an actual rise in dollar prices and sterling prices have remained approximately stationary.

28. I have said that I do not think the time has come for fixing on a new policy in regard to exchange. I do, however, want to make one or two general observations. There is no sanctity in this era of instability about any particular rate of exchange, whether 1s. 4d. or 2s. or anything else; it is simply a question of what rate of exchange best suits India's needs. Ultimately India's payments outside India are, and must be, made in the form of exports of Indian goods and services. But, if we look at the matter

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from the narrow point of view of the budget, the following statistical data are of interest. The Government of India's sterling debt of £240 millions sterling at 1s. 4d. amounts to 360 crores, at 1s. 5d. it amounts to 339 crores, at 1s. 6d. it amounts to 320 crores while at 2s. it amounts to 240 crores. Of the deficit for 1922-23, 5½ crores would have been saved had exchange been at 1s. 6d. and 9½ crores if it had been at 1s. 8d. Statistics proverbially can be made to prove anything. Nevertheless, these figures are striking and it must be remembered that, apart from the sterling indebtedness of the Government of India, there are large sterling debts owed by municipalities, port trusts, and many other Indian borrowers, who would all be individually benefited by a higher exchange so far as their sterling indebtedness is concerned. Then, again, although since 1920 the tendency of rupee prices to remain relatively more stable than world prices, or rather to follow changes in world prices rather slowly, has to a large extent ceased to operate, it is very doubtful, I think, whether internal prices in India have yet adjusted themselves to a level corresponding to a 1s. 4d. exchange, so that were exchange stabilised now at 1s. 4d., internal prices would have to go up, and certainly there are various kinds of Government expenditure which would have to go up considerably in terms of rupees. Finally, we do not want ever again to find the rupee more valuable as bullion than as currency. That is one side of the picture. There is, of course, another side. An attempt to force up exchange violently would at once cause stringency. Severe stringency in the money market is never desirable for its own sake, is always bad for trade for the time being, and is most inconvenient from the point of view of a government which is engaged on a programme of capital expenditure, involving considerable capital borrowings. Any policy which threatened seriously to restrict India's exports is also to be deprecated, and trade above all desires stability of exchange, perhaps even more than stability of prices. I myself had some part in the International Conference at Genoa last April and May, and the first recommendation of that Conference was that "an essential requisite of the economic reconstruction of Europe is the achievement by each country of stability in the value of its currency." If, therefore, the time has not yet come for an attempt finally to stabilise the currency of India, stability is our goal and we mean to achieve it at the first opportunity.

IV.—BUDGET FOR 1923-24.

Expenditure.

29. While drawing attention to the above recommendation of the Genoa Conference, I am naturally led to quote another of its most important recommendations, which reads:

"In each country, the first step towards re-establishing a gold standard would be the balancing of the annual expenditure of the State without the creation of fresh credit unrepresented by new assets. The balancing of the budget is the first consideration."

What then about the budget for 1923-24? Is it going to be balanced? The Members of the Legislature are not the only people in India who are taking an interest in this question. Only a few days ago, I received the following postcard:

"Sir, kindly let us know by wire at our expense whether the customs duty will be decreased or increased on foreign imported wines and spirits. Awaiting your favourable reply by wire."

30. At the outset of my statement of the figures for 1923-24, I must explain what action the Government of India Retrenchment Committee propose to adopt in order to be able to show the results of the report of the Retrenchment Committee in the budget figures. The first part of the report of the Inchcape Committee came into the hands of the Government little more than a fortnight ago, while the second part of the report reached us only on Saturday last and the third part yesterday. The complete and final report has not yet been signed. It has been a difficult problem to decide how to fit the proposals of the Retrenchment Committee into the budget. A report of this importance obviously requires careful and detailed examination by the Government of India in consultation with the Secretary of State, and the House will naturally desire an opportunity of studying the proposals on their merits. There has not been time, therefore, for final conclusions to be arrived at in regard to a great many of the Committee's recommendations. On the other hand, it was obviously necessary to frame a budget in which allowance would be made for the reductions in expenditure which we all expect to result from the Committee's work. In any circumstances, it would, of course, have been impossible, and it is clearly recognised by the Retrenchment Committee itself that it would be impossible, to obtain the full value of the cuts which are to be made in the first year of operation. Some of the retrenchments proposed can only be introduced gradually so that allowance has to be made for what I may call the "lag", while in many cases allowance has to be made for extra expenditure on what I may call the "terminal charges", i.e., special charges which have to be incurred in closing down establishments and getting rid of the staff. Throughout its report, the Committee's recommendations are given in the form of reductions on the budget figures for 1922-23, which are, of course, quite different from the budget figures for 1923-24 as they appear before allowance is made for special cuts based on the Committee's recommendations. A fair proportion of the total reductions recommended by the Committee are either automatic reductions on the 1922-23 figures or actual retrenchments which we ourselves have been able to effect in the budget for 1923-24 in advance of the receipt of the Committee's recommendations. The activities of the Committee cast their shadow before, and estimates prepared in the atmosphere of economy which they created naturally reflected part of that atmosphere.

31. In the Military budget, we have been able to take credit for the reductions, which, subject to final agreement with the authorities in London, we propose to effect as the outcome of the Retrenchment Committee's recommendations. This we were able to do because we had advance knowledge of the reductions which were going to be proposed, and His Excellency the Commander-in-Chief, working in close co-operation with the Retrenchment Committee and with his Colleagues in the Government, had arrived at a general agreement in regard to the total. In the case of the Posts and Telegraphs budget, we have been able to present figures showing the effect for 1923-24 of some though not all of the reductions which we propose to effect in consequence of the recommendations of the Retrenchment Committee. Our preparations could not be so far advanced in regard to the other Civil Departments. It was necessary to prepare, for the purpose of presentation to this House, the estimates for the Demands for Grants before we had sufficient knowledge of the proposals which were going to be made by the Retrenchment Committee. The estimates for the Demands for Grants, which are about to be presented, accordingly show the figures of civil expenditure before allowance is made for

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38. As regards Income Tax, we shall not again have to make the heavy refunds to which I have already referred; on the other hand, there is fairly certain to be a falling off of revenue in Bombay, while the collection of arrears will also be less; these may be expected to balance each other, and we have entered a revenue of 19 crores, which is roughly the same as we expect to raise this year.

39. I come now to the Railway budget. There is no doubt that as soon as any marked revival in internal trade takes place, Railway earnings ought to show a considerable rise; the autumn harvest has been so good and the promises for the spring crop are so favourable that it is not unreasonable to expect a revival before long. The difficulty is to say how soon this revival will occur. Traffic receipts suffered a check in 1922-23, and on the whole I do not think it is safe to budget on the assumption that there will be a very rapid revival in 1923-24. Our estimate for gross traffic receipts is accordingly put at 95½ crores. It is 3½ crores higher than the revised estimate for 1922-23. Two factors account in the main for this increase of 3½ crores. The first is that in the earlier months of 1922-23 there was a considerable loss of revenue due to the strike on the East Indian Railway and the second is that the present increased rates did not come fully into effect on all Railways until about the 1st of July 1922.

Working expenses and interest and other charges, without allowing for the share attributable to this head of the Inchcape Committee's cuts, amount to nearly the same figure, leaving a net profit for the year of 35 lakhs which compares with the net loss on the current year's budget as now revised of ₹92,60,000.

40. In the case of Posts and Telegraphs, we are able to estimate for a net receipt of 147 lakhs as compared with the net receipt of 24 lakhs in the 1922-23 budget as revised. This improvement is due in part to expected recovery in revenue and in part to reductions in working expenses made in anticipation of, or in consequence of, the recommendations of the Retrenchment Committee.

41. We thus arrive at the following budget position on the basis of existing taxation. As against an expenditure of 2,04.37 crores, we have an expected revenue of 1,98.52 crores, leaving a deficit of 5.85 crores. Before I proceed to explain to the House what we propose to do in regard to this deficit, I must turn for a moment to our ways and means position.

V.—WAYS AND MEANS.

42. Public attention is usually concentrated on the annual budget of revenue and expenditure, but the Ways and Means budget is of equal importance, for after all it is the Ways and Means budget which shows the sums which the Government has to pay out under one head or another during the year and the sums which it has to get in from the public. Whether it is a provincial overdraft or an advance on capital account, or whether it is a revenue deficit, the money to meet the outgoing has to be got in before it can go out. The Ways and Means budget is, however, one which it is difficult to present in a clear and easily intelligible form. It is never possible to adhere to a strict programme in regard to Ways and Means operations. In financing the country's various liabilities and in

finding cash for our own and the provinces' day to day disbursements, we have to be guided very largely by the changing conditions of the money market both here and in London.

43. During the current year we expect to meet liabilities, over and above what has been met from revenue, amounting to 106 crores. These will have been financed mainly out of the proceeds of our rupee and sterling loans which have been on an unprecedentedly large scale. Our rupee loan realised nearly 47 crores and ₹31½ millions was borrowed in London during the year. One satisfactory feature of the year, to which I have already referred, is that out of these borrowings we have been able to reduce our floating debt by 40.6 crores, of which 32.4 crores consists of a net discharge of Treasury Bills held by the public and 8.2 crores of a cancellation of Treasury Bills held in the Currency Reserve. We cannot hope to continue the reduction of floating debt on the same scale over a long period, but I feel sure that the House will agree with me that it must be our constant policy to secure the early extinction of the floating debt by its conversion into securities of longer term.

44. Our sterling borrowings have facilitated the provision in London of the sums required to meet our sterling obligations during the year. But advantage has been taken of the strengthening of exchange which occurred at the New Year to effect remittance by the method of selling Council Bills. Weekly sales have been taking place of moderate amounts since the beginning of January, and we have thereby been placing funds in London at a moment which, although somewhat in advance of actual requirements, is nevertheless convenient to the market. We anticipate that our balance in London will be about £8 millions on the 31st March 1923 as against a normal minimum balance of £4 millions, but the surplus will be required early in the new financial year.

45. The following statement summarises the Ways and Means operations for India and England together during 1922-23 and 1923-24:

Summary.

Liabilities.

	(Crores of rupees.)	
	Revised.	Budget.
Railway capital outlay	21.4	38.6
Delhi, Irrigation and Telegraph capital outlay	8.0	2.9
Discharge of funded debts, etc.	12.4	5.2
Discharge of Treasury Bills—		
With the public	32.4	5.5
In the Paper Currency Reserve	8.2	
Loans to Provincial Governments	11.4	18.5
Central Government's revenue deficit	17.8	...
Drawings of Provincial Governments	...	1.8
	1,06.1	67.0

Met as follows:

Central Government's revenue surplus	...	2
Surplus revenue of Provincial Governments	1.0	...
Rupee loans	46.9	25.0
Sterling loans (converted at 1s. 4d.)	47.3	22.7
Net receipts from Savings Bank deposits, etc.	3.1	5.0
Miscellaneous items	2.5	2.2
Reduction of cash balances	5.3	11.0
	1,06.1	67.0

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46. In 1923-24, if the measures which I propose are adopted, we shall not again have to face the necessity of financing a large revenue deficit. Our largest liability will be for Railway Capital outlay. During 1922-23, it has not been possible to spend the full 30 crores allotted under the 5-year programme; there will be a large carry forward. We are adding this to the 30 crores for next year, making a total of 38.6 crores to be provided for capital expenditure on Railways in 1923-24. We have about 5½ crores of maturing bonds to meet, and our other Capital outlay is expected to reach about 3 crores. Loans or overdrafts to the Provincial Governments will absorb 13½ crores, the greater part of which will go to the Bombay Government for expenditure on their Development scheme.

47. We expect to start the year, as I have already said, with a cash balance of £8 millions in London. We are assuming, for the purpose of the Ways and Means estimate, that we shall be able to raise £15 millions by new sterling borrowings. We are assuming for budget purposes also that we shall be able to secure a rupee loan of 25 crores. With these resources, we hope to meet the liabilities I have mentioned, and in addition to effect a further reduction of five or six crores in our floating debt. In addition to the new sterling borrowings of £15 millions we estimate that we shall require to remit £27 millions to London from India during 1923-24. It is unnecessary, I think, for me to discuss at the present moment the various alternative methods of effecting this remittance. In addition to the ordinary method of purchase of exchange, the £5½ millions in the Paper Currency Reserve in London, and after that the Gold Standard Reserve of £40 millions, can be drawn upon against an equivalent earmarking of rupees for those Reserves in India. Which particular combination of the various methods available will be adopted is a matter upon which it is impossible for Government to commit themselves in advance, since much must depend upon exchange conditions during the year.

VI.—PROVINCIAL CONTRIBUTIONS.

48. There is another subject on which I should like to say a word owing to its close connection with the problem of covering our deficit, and that is the vexed question of the provincial contributions. I do not think that any one considering Indian finances at the present time can fail to be impressed by the undesirability of a long continuance of the present unsatisfactory position in regard to the provincial contributions. The Government of India have stated plainly that, as soon as they are able to do so, they intend to reduce, and eventually extinguish, these contributions. I am aware that this is not the solution which finds universal favour, though I think this is what the majority of the Provincial Governments desire. But so long as we have a deficit in the Central budget, it is obviously impossible for us to make a beginning with the reduction of provincial contributions. Meanwhile, every Provincial Government, without exception, is finding very great difficulty in balancing its budget. The majority, I am afraid, did not succeed in doing so in 1922-23, though they are doing better I am glad to see for 1923-24 though we did not help them by our action in regard to the Stamp Duty Bill earlier this week. It has been suggested to me by more than one spokesman for the provinces that there is a feeling in the minds of the Provincial Governments and of their Legislatures that it would be unwise for them to show balanced budgets. — This

are, it is hinted, taking a leaf out of the book of some charitable and religious bodies which make a habit of showing an annual deficit in order to make a striking appeal to their supporters to come to their rescue. The Provincial Governments think, it is said, that they will get more sympathy from the Central Government and get rid of their provincial contributions quicker if they can show a handsome deficit and appeal to the charity of the Central Government. I should like to say for my part that the strongest appeal that the Provincial Governments can make to me in this matter of the Provincial contributions is to show themselves worthy of assistance from the Central Government by strenuous and successful endeavours to make both ends meet for themselves. Much, therefore, as we should have liked to be able to make a beginning of the reduction of the provincial contributions, it is obvious that this year we must confine ourselves to an attempt to deal with our own deficit. I would, however, add this appeal to all who are interested in a reduction in the provincial contributions. Let them give us their full support in any measures we propose for securing a balanced Central budget in the certainty that by so doing they are hastening the day when the contributions can begin to be released.

VII.—PROPOSALS FOR DEALING WITH THE DEFICIT.

49. What then is to be done about the deficit of 5.85 crores? First of all, we propose to make an adjustment which, though little more than a change in methods of book-keeping, has the effect of reducing the apparent figure of the deficit by 1.59 crores. It is proposed to ask the House to continue during 1923-24 the arrangement made a year ago for crediting to revenue the interest on the securities in the Paper Currency Reserve. There is a similar source of income in the interest on the £40,000,000 in the Gold Standard Reserve, which is expected to amount to 1.59 crores in 1923-24. This is, in essence, of the same nature as the interest on the Paper Currency Reserve's investments, and we propose for 1923-24 to treat it in the same way. This change does not really add anything to our available resources or alter our Ways and Means position, but I think it is justified on merits.

50. We are thus left with a deficit of 4.26 crores, and the only way left for meeting it is by additional taxation. If the House will turn its mind back for a moment to what I said about the accrued deficits of the last five years, it will recognise that it cannot leave the deficit of 4½ crores untouched. It will perhaps be asked whether the fact that several crores in the military expenditure and a considerable additional amount in the non-military expenditure represents non-recurrent expenditure due to "lag" and "terminal charges" would not justify the deficit being allowed to continue for one more year. This argument unfortunately does not represent the full facts. If some crores in the military budget represent non-recurrent expenditure, on the other hand over 2 crores of the cuts made in the military budget represent non-recurrent savings, being arrived at simply by a reduction in stores. Similar considerations apply to some of the other cuts both in the military and the non-military budgets, in particular in the railway budget. Moreover, some terminal charges will still have to be met in 1924-25. Whatever our hopes may be, we have no reasonable certainty that the budget for 1924-25 would balance on the basis of present taxation. Moreover we have not yet begun to provide anything towards making good past deficits. If 1924-25 were to turn out much

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better than it is possible to promise at this moment, we can, if we have got through 1923-24 without a deficit, turn our thoughts to reduction of the provincial contributions.

51. Our conclusion, therefore, is that we must ask for some increase in taxation. No one likes new taxation. It is a disappointment to the House, and it was a great disappointment to me, that new taxation is needed at all. If he is wise, a Finance Member dislikes new expenditure and dislikes new taxation even more. But most of all, he loathes and abhors a deficit. I hope the House will agree that I have demonstrated to the full the absolute impossibility of its leaving a sixth year's deficit of 4½ crores to be added to the appalling aggregate of 100 crores of the deficits of the last five years. The House would be false to its trust if it allowed the Government to adopt so pusillanimous and mischievous a course. The credit of India is in jeopardy. It is already under the cloud of the deficits of the last five years. But India's financial record has been so good for decades preceding those five years that hitherto the damage is not irreparable. The world has trust in India's record and has felt sure that the era of deficits could only be a passing phase. It is our duty to-day to justify that trust. We have made drastic cuts in our expenditure, but we have not achieved a balance. New taxation is, therefore, inevitable.

52. What form then is the new taxation to take? We have carefully reviewed the existing taxes. In particular, we have examined those taxes which were proposed last year and not accepted. One after another we have had to reject promising expedients, and finally we have come to the conclusion that the right course is to ask the House to agree to an increase in the salt tax to Rs. 2-8 a maund. In a full year, this increase is estimated to yield 6 crores, but we cannot count on its bringing in more than 4½ crores in 1923-24. The House will see that this additional revenue is just sufficient to cover the deficit of 4½ crores, to give us a balanced budget, and to leave us a small surplus of 24 lakhs. In view of the uncertainties of our estimates of expenditure, this House will agree that this is not an undue margin to leave over for contingencies.

CONCLUSION.

53. My allotted task is finished. I have laid before the House the Government of India's account of their stewardship for the year that is passing and their proposals for the year 1923-24. I am painfully conscious of the responsibility which attaches to the Member introducing the budget. He cannot hope that his proposals will receive universal approbation. I have no doubt that when the details of our proposed expenditure come up for discussion, some Members will criticise this or that retrenchment as iniquitous and the retention of this or that item of expenditure as outrageous. Some other Members will disagree entirely with them on one or other or both of these criticisms. But all will manage to disagree with me on some point or other. I hope none the less that the Government of India will receive the credit which I claim is their due for courageously shouldering their burden and boldly coming forward with a budget which, at one and the same time, effects drastic reductions in expenditure and calls for a further sacrifice in the form of new taxation. I appeal to the House for one last long and strong pull, all of us pulling together, in the confident

assurance that so doing we shall quickly get the boat out of the vicious current which is threatening to drag India down on to the rocks of insolvency. Once back in safe waters, I have every hope that in a surprisingly short time we shall find ourselves on the flood tide of prosperity, and shall be able to turn our minds to pleasant thoughts of reduced provincial contributions, reduced taxation, and increased devotion of our resources to the development of India. I was struck a little more than a week ago by a remark that fell from Sir Deva Prasad Sarvadhikary when, speaking on the Racial Distinctions Bill, he said that the House had had three red letter days in succession. Let us crown our successes by a fourth red letter day, and end our Session with a balanced budget.

THE INDIAN FINANCE BILL.

The Honourable Sir Basil Blackett (Finance Member): Sir, I ask for leave to introduce a Bill to fix the duty on Salt manufactured in, or imported by land into, certain parts of British India; to vary the duty leviable on certain articles under the Indian Tariff Act, 1894; to fix maximum rates of postage under the Indian Post Office Act, 1898; to amend the Indian Paper Currency Act, 1923, and to fix the rates of income-tax.

The motion was adopted.

The Honourable Sir Basil Blackett: Sir, I introduce the Bill.

The Assembly then adjourned till Eleven of the Clock on Monday, the 5th March, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 5th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN:

Rao Bahadur P. T. Srinivasa Achariyar, M.L.A. (Madras: Nominated Official).

The Honourable Sir Malcolm Hailey (Home Member): With reference to the information promised in reply to Rai Bahadur Bakshi Sohan Lal's question regarding the passed and unpassed candidates of the Staff Selection Board, I may state that the information was supplied on the 28th February last.

QUESTIONS AND ANSWERS.

" POOLING OF WAGONS."

442. ***Mr. K. O. Neogy:** (a) Has the attention of Government been drawn to an editorial article appearing in the *Eastern Mail* dated February 18, 1923, under the head " Pooling of Wagons " ?

(b) If so, will Government be pleased to state whether it is a fact that under the wagon pooling arrangement, referred to therein, the two Company-managed lines of Bengal, *vis.*, the B. N. R. and the E. I. R., have profited most, and that the traffic of other Railways in foodstuffs and in general merchandise was restricted in order to enable the said two lines to carry more traffic in the very same commodities?

Mr. C. D. M. Hindley: (a) Yes.

(b) The wagon pool was introduced for the benefit of railways as a whole and the country generally and the traffic of other railways in foodstuffs and general merchandise was not restricted in order to enable the East Indian and Bengal-Nagpur Railways to carry more traffic in these commodities. The fluctuations of traffic to which the article in question refers were not the result of the pooling arrangements.

SEPARATE ESTABLISHMENT FOR COLLECTION OF INCOME-TAX.

443. ***Rai T. P. Mukherjee Bahadur:** (a) Are the Government aware that a separate establishment for the collection of income-tax, headed by an Income-tax Commissioner in each Province, is proposed to be introduced?

(b) If so, will the Government be pleased to state the amount of additional expenditure to be incurred for the proposed separate establishment for each Province?

(c) Will the Government be pleased to state what is the amount of expenditure on that head incurred in the last three years in each Province for the collection of income-tax?

(d) Will the Government be pleased to place on the table a statement showing the number of officers, peons, etc., with their respective pay of each Province?

(e) Will the Government be pleased to state the reasons for introducing this additional expenditure in these days of retrenchment?

The Honourable Sir Basil Blackett: (a) The answer to the first part of the question is 'Yes.'

(b), (c) and (d) Statements giving the information asked for are laid upon the table.

With regard to part (e) the figures given in the statements which are laid in reply to previous portions of this question show merely the expenditure upon the whole-time income-tax staff. They take no account of the cost of the assessment and collection of the tax where the work was or is done by the revenue officers of the Local Governments. The collection and assessment of income-tax is a Central subject and it is no longer possible to arrange for the work being done through the agency of Provincial Governments. Moreover before the introduction of the Reforms the work had become too intricate to be carried out by the ordinary Provincial revenue staff in addition to other duties, and it was necessary to entertain special whole-time officers in increasing numbers. The all-India Income-tax Committee in paragraph 61 of their report placed on record their opinion that "a matter of greater importance than the amendment of the Act is the increase in the number and efficiency of the staff which should consist of officers of the highest training and integrity. The department should include experts of high standing trained in accountancy whose remuneration should be such as to reflect the market value of their professional experience and attainments." The entertainment of the additional staff has not only resulted in greater convenience to assesseees but the cost of the staff has been more than covered by the resultant increase in the receipts.

Statement showing the details of the Income-tax Department in the various Provinces.

MADRAS.

- 1 Commissioner of Income-tax on 2,000—100—2,500.
- 4 Assistant Commissioners of Income-tax on 1,000—100—1,500.
- 33 Income-tax Officers on 300—40—500—50—900.
- 29 Accountants, 21 (100—10—250), 8 (110—10—260).
- 18 Surveyors on 150—5—200—10—300.
- 201 Clerks, typists and stenographers on pay ranging between Rs. 35 and 210.
- 2 Shroffs on Rs. 23—35.
- 154 Peons on pay ranging between Rs. 12 and 25.

BOMBAY.

- 1 Commissioner of Income-tax on 2,000—100—2,500.
- 5 Assistant Commissioners of Income-tax, 1 (1,500—100—2,000) and 4 (1,000—100—1,500).
- 37 Income-tax Officers 1 (1,000—100—1,500) and 36 (300—50/2—900).
- 46 Inspectors and Sub-Inspectors, 22 (200—25/2—500), 6 (150—25/2—325), 9 (150—15—225) and 9 (115—5—150).
- 60 Examiners and Assistant Examiners, 1 (550—25—700), 26 (225—25/2—500); 8 (175—25/2—325), 14 (150—15—225), and 11 (115—5—150).
- 284 Clerks, typists and stenographers on pay ranging between Rs. 30 and 450.
- 33 Bailiffs, 10 (100—5—150), 9 (75—5—100), 10 (50—3—65), 4 (40—2—50).
- 250 Notice servers and peons on Rs. 14—1—50.

BENGAL.

- 1 Commissioner of Income-tax on 2,000—100—2,500.
- 6 Assistant Commissioners of Income-tax, 2 (1,500—100—2,000), and 4 (1,000—100—1,500).
- 67 Income-tax Officers on 300—50/2—900.
- 15 Assessors on 125—5—150—10—300.
- 247 Clerks, stenographers on Rs. 35—300.
- 6 Bailiffs, 1 (60), 3 (40), 2 (25).
- 190 Duffries and peons on Rs. 12—60.

UNITED PROVINCES.

- 1 Commissioner of Income-tax on 2,000—100—2,500.
- 4 Assistant Commissioners on 1,000—100—1,500.
- 50 Income-tax Officers, 36 (350—30—800—25—900), 14 Assistant Income-tax Officers (250—12½—350).
- 216 Clerks and stenographers on Rs. 40—250.
- 131 Peons on Rs. 10/8 to 16.

PUNJAB.

- 1 Commissioner of Income-tax on 2,000—100—2,500.
- 3 Assistant Commissioners of Income-tax on 1,000—50—1,500.
- 26 Income-tax Officers on 300—40—850.
- 6 Accountants on 120—7½—240.
- 50 Inspectors on 120—7½—240.
- 97 Clerks and muharrirs on pay ranging between Rs. 30 and 350.
- 147 Peons on pay ranging between Rs. 14 and 18.

BURMA.

- 1 Commissioner of Income-tax on 2,000—100—2,500.
- 1 Deputy Commissioner on 1,500—50—2,000.
- 2 Assistant Commissioners of Income-tax on 1,000—100—1,500.
- 18 Income-tax Officers on 350—25—750—50—950.
- 10 Accountants, 2 (200—15—500); [1 (250—10—300), 7 (250)]—Temporary.
- 8 Inspectors on 200—10—300—25/4—325.
- 19 Examiners 8 (200—15—500), 11 (100—5—200—6½—250).
- 44 Clerks and stenographers on pay ranging between Rs. 40 and 300.
- 2 Bailiffs, one on Rs. 100 and one on Rs. 100—150.
- 44 Duffries, Process servers and peons on pay ranging between Rs. 12 and 40.

BIHAR AND ORISSA.

- 1 Commissioner of Income-tax on 2,000—100—2,500.
- 1 Assistant Commissioner of Income-tax on 1,000—50—1,500.
- 10 Income-tax Officers on 300—50/2—900.
- 20 Inspectors on 100—5—200.
- 67 Clerks on pay ranging between Rs. 30 and 275.
- 79 Peons and duffries on pay ranging between Rs. 13 and 25.

CENTRAL PROVINCES.

- 1 Commissioner of Income-tax on 2,000—100—2,500.
- 2 Assistant Commissioners of Income-tax on 1,000—50—1,500.
- 13 Income-tax Officers on 300—900.
- 37 Inspectors, 12 (175—25/2—275), and 25 sub-Inspectors on (80—100—10/2—150).
- 6 Examiners on 175—25/2—275.
- 58 Clerks on pay ranging between Rs. 30 and 300.
- 78 Servants on pay ranging between Rs. 10 and 15.

ASSAM.

- 1 Income-tax Officer on 275.
4 Clerks on pay ranging between Rs. 50 and 150.
3 Peons on Rs. 14—17.

NORTH-WEST FRONTIER PROVINCE.

- 3 Income-tax Officers on 300—40—850.
2 Munims temporary on Rs. 100.
6 Inspectors on 120—7½—240.
10 Clerks on pay ranging between Rs. 30 and 125.
12 Peons on Rs. 14.

DELHI.

- 1 Income-tax Officer on 300—40—850.
1 Munim on Rs. 100.
2 Inspectors on 120—7½—240.
7 Clerks on pay ranging between Rs. 30 and 125.
4 Peons on Rs. 14.

Statement showing the expenditure incurred under "2—Taxes on income" in the various Provinces during 1919-20 to 1921-22.

Provinces.	1919-20.	1920-21.	1921-22.
	Rs.	Rs.	Rs.
India, General	48,966	44,855	51,467
Baluchistan	...	...	...
North-West Frontier Province	4,489	18,825	22,511
Madras	1,49,341	3,48,722	4,40,836
Bombay	4,42,885	5,84,630	6,63,927
Bengal	2,66,623	3,11,468	3,81,301
United Provinces	2,64,601	3,72,169	4,84,059
Punjab	1,09,818	2,07,814	3,84,507
Burma	1,21,772	1,46,335	1,75,908
Bihar and Orissa	52,165	64,257	1,04,359
Central Provinces	61,732	82,480	2,04,678
Assam	4,927	5,295	7,108
Total	15,27,269	21,86,850	28,70,656

Statement showing the cost of the income-tax staff in the various Provinces.

	Rs. •
Madras	8,00,000
Bombay	15,50,000
Bengal	10,81,900
United Provinces	7,61,000
Punjab	7,06,000
Burma	5,35,600
Bihar and Orissa	2,71,600
Central Provinces	4,27,600
Assam	13,200
North-West Frontier Province	73,000
Delhi	21,700

EXCLUSION OF MEMBERS OF THE INDIAN LEGISLATURES FROM THE WARRANT OF PRECEDENCE.

444. *Rai T. P. Mukherjee Bahadur: (a) Are the Government aware that in the "Warrant of Precedence" issued last year, no place has been given to the Members of Indian Legislatures which they had before?

(b) Will the Government be pleased to state the reasons for it?

The Honourable Sir Malcolm Hailey: (a) Yes. The Honourable Member however is mistaken in supposing that Members of the Indian Legislature as now constituted had a place in the old warrant. The fact that Members of the old Legislative Council were assigned a specific place was a relic of the position under which such Members were persons added to the Executive Council when it sat for Legislative purposes.

(b) It was desired to treat Members of the Legislature in India in exactly the same way as Members of the House of Commons in England who have no such precedence. The warrant is primarily intended to regulate the position of officials holding appointments in India.

Mr. J. Chaudhuri: I may mention for the information of the Honourable the Home Member that most of the Members of this House are not anxious for any warrants of precedence. My Honourable friend does not represent the sentiments of this House.

INCOME FROM SALE OF POST CARDS.

445. *Rai T. P. Mukherjee Bahadur: (a) Will the Government be pleased to state the amount of sale-proceeds of post cards from 1922 April to the present time and also the amount of sale-proceeds of post cards for the year 1920-21?

(b) Has the Government received the estimated amount budgeted last year by the sale-proceeds of post cards?

(c) If not, how much has it fallen short?

Colonel Sir Sydney Crookshank: (a) Separate information regarding the revenue from the sale of post cards is not available, but it may be stated that the gross amount realised from the sale of ordinary postage stamps and postal stationery of all kinds (excluding the amount attributable to telegraphic traffic) for the period from April to December, 1922, was Rs. 343.56 lakhs as compared with Rs. 280.55 lakhs for the corresponding period of 1921.

(b) and (c) As already stated, separate figures in respect of post cards are not available. The increase in revenue due to the enhancement of the postage rates on letters and post cards will probably fall short of the estimate by between 70 and 80 lakhs of rupees.

FREE RAILWAY PASSES.

446. *Sir Deva Prasad Sarvadhikary: (a) Is it a fact that all classes of officers of the Railway Board are granted free passes as well as Privilege Ticket Orders over all Railways in India?

(b) If so, will the Government be pleased to state why and under what circumstances this special concession is granted to the Railway Board staff? Is this concession allowed to other employees of the Imperial Secretariat in other Departments?

(c) What is the total cost of the passes and P. T. Os. granted to the employees of the Railway Board during the last 12 months and how is this expenditure met? To what accounts are they debited in case of State Railways?

(d) Has the Government taken this factor into consideration in fixing the salary of the Railway Board's employees? If not, will the Government be pleased to state the reason for this preferential treatment?

(e) Will the Government be pleased to consider the question of extending this concession to their confrères in other Departments of the Government of India?

(f) Is Government aware that the staff of the Railway Board avail themselves of railway passes for the journeys of their families to their home and back and at the same time draw separation allowances during the Delhi Season, whereas the staff of the other Departments of the Government of India under similar circumstances do not enjoy this concession?

(g) If the answer to the above is in the affirmative, will the Government please explain the cause of this inequality?

Mr. C. D. M. Hindley: (a) Yes, subject to a limit of 2 passes per annum and at the discretion of Railway Administrations concerned.

(b) This is an ordinary condition of Railway service all over the world. It is not applicable to anyone outside the Railway Department.

(c) No money account is maintained and Government are therefore unable to state the cost.

(d) Yes.

(e) No, in view of what is stated in reply given to Part (a).

(f) Yes, subject to condition referred in reply to Part (a).

(g) As already stated the privilege is a usual incident of Railway service.

EXPENDITURE UNDER "SUPPLY AND SERVICES" AND "CONTINGENCIES."

447. ***Sir Deva Prasad Sarvadhikary:** Will the Government please lay on the table a statement showing:

(1) expenses during the last 3 years under the heading

(a) supply and services,

(b) contingencies.

(2) Is it not a fact that contingency expenditure has considerably increased?

The Honourable Sir Basil Blackett: (1) and (2) Full details of expenditure on supplies and services and contingencies will be found in the demand statements placed before this House.

EXPENDITURE ON LEAVE AND ALLOWANCES.

448. ***Sir Deva Prasad Sarvadhikary:** Would the Government please lay on the table a statement showing the:

(a) budget allotments and actual expenditure on leave and allowances during the last 3 years?

(b) what has been done with the balance under this head in each of the different departments?

The Honourable Sir Basil Blackett: (a) Separate figures of actual expenditure for leave allowances are not available as the expenditure is included under salaries in the accounts.

(b) The unspent balance of the budget grant for leave allowances would lapse unless reappropriated for other expenditure and the rules provide that such reappropriation cannot be made from the head "Salaries" without the sanction of the Finance Department.

EXPENDITURE OF DIFFERENT DEPARTMENTS.

449. ***Sir Deva Prasad Sarvadhikary:** Would the Government please lay on the table a statement for 3 years showing the expenditure for every year out of the budget allotments of the different departments during the last fortnight of March of every year?

The Honourable Sir Basil Blackett: I regret that it is not possible to furnish the information as the Government accounts are only kept month by month.

AUCTION SALE OF WAGONS OF UNCLAIMED COAL.

450. ***Mr. N. M. Joshi:** With reference to the answer given on 20th January, 1923, to starred question No. 204, will Government kindly ascertain and inform the House of the facts of the auction sale of wagons of unclaimed coal?

Mr. C. D. M. Hindley: Inquiry has been made and the result will be communicated to the Honourable Member in due course.

PERCENTAGE OF DEPRECIATION IN A FLOUR MILL.

451. ***Mr. Pyari Lal:** In the Income-tax Manual 1922, the percentage of depreciation given for a flour mill on page 42, is 6½. Will the Government be pleased to say for how many daily working hours is this percentage allowed?

The Honourable Sir Basil Blackett: The percentage is a fixed percentage for the trade and does not vary with the number of working hours.

PROFIT AND LOSS STATEMENT FOR INCOME-TAX PURPOSES.

452. ***Mr. Pyari Lal:** (a) Is the Government aware that the Income-tax Commissioner, Punjab, has approved the following three Firms of Accountants for the preparation of Profit and Loss statement for Income-tax purposes?

(i) Messrs. Nisson Digneese & Co.

(ii) Messrs. Basant Lal & Sons.

(iii) Messrs. Aiyer & Co.

(b) Is the Government aware that the majority of the Indian Firms keep their Accounts in Hindi?

(c) Is it a fact that none of the approved Accountants undertake the audit of Hindi Accounts?

(d) Will the Government be pleased to state why the Firm of Messrs. Sodhbans & Co., Lahore, is excluded from the list of approved accountants?

(e) Will the Government be pleased to specify the considerations on which this approval is extended to practising Firms of certified Accountants?

(f) Is the Government aware that the inability of all the approved Accountants in Punjab, to audit Hindi Accounts has led to great inconvenience to those Firms who keep their Accounts in Hindi?

(g) Will the Government be pleased to reconsider the appointment of approved Accountants for Income-tax purposes in the Punjab with a view to include therein firms capable to audit Hindi Accounts?

The Honourable Sir Basil Blackett: The information is being called for and will be supplied to the Honourable Member as soon as available.

ELECTRIC INSTALLATION AT AMBALA.

453. ***Mr. Pyari Lal:** (a) Has the attention of the Government been drawn to an article in the *Cantonment Advocate* of 10th January, 1923, under the heading "Electric Installation at Ambala"?

(b) Is it a fact that a contribution of Rs. 60,000 has been made to the Ambala Electric Installation from the Cantonment Fund?

(c) Is it a fact that a sub-committee was appointed to suggest the portion of the Sadar Bazar where the Electric power was to be supplied, which submitted its report some six months ago?

(d) Will the Government give reasons why the Electric power has not yet been supplied to Sadar Bazar, whereas it has been supplied to the Mall Road, the Staff Road, etc.?

Mr. E. Burdon: (a) Yes.

(b) No.

(c) Yes.

(d) It has not yet been found practicable to supply electric power either to the Sadar Bazar or to the rest of the cantonment.

PURCHASE OF PETROL BY GOVERNMENT DEPARTMENTS.

454. ***Mr. R. A. Spence:** (1) In reference to the reply to question No. 354 on 16th February, 1923, will Government state the prices paid in Rangoon and Calcutta or Bombay by the Military authorities or the Postal Department for direct petrol supplies in the years 1915 to 1922?

(2) Has any Department of Government including the Military authorities, a direct contract with any of the oil companies for the supply of petrol, and if so, on what terms?

(3) Have Government at any time (a) approached the oil companies in India and Burma for special terms, and (b) invited tenders for the supply of petrol from companies operating in India, Burma and other parts of the world?

(4) Are Government aware that the Asiatic Petroleum Company who have no oil refinery in India or Burma effect large sales of petrol in India approximating it is commonly reported to over 30 per cent. of the total annual consumption?

(5) If the answer is in the affirmative has Government any information as to the source of the supplies and what import duty is collected thereon as it is noted from the reply to question 356, that the imports in 1921-22 only amounted to 1,848 gallons?

(6) Will Government consider making strong representations to the Burma Oil Company Limited, with a view to securing a substantial reduction on present prices?

(7) Have Government any information as to the cost of production of petrol in India and Burma and whether the declared value of Rs. 18,91,246 on the exports for 1921-22 equal to about 1½ annas per gallon is a correct figure?

The Honourable Mr. C. A. Innes: 1 and 2. The military authorities do not think it advisable to disclose the prices at which their contracts have been placed, but I take the opportunity of correcting an error in my answer to the Honourable Member's question of the 16th February. Since that answer was given I have ascertained that apart from the rebate of excise duty the prices paid by the military authorities are slightly below the ordinary market rates for motor transport spirit in Calcutta. A statement is laid on the table showing the prices paid in Calcutta by the postal authorities since 1915.

3. (a) The Controller of Contracts has approached the oil companies.

(b) Tenders have been called for by State Railways and also at different times by the Post and Telegraph Department.

4 and 5. The Government are aware that petrol is sold in India by the Asiatic Petroleum Company and they understand that this petrol is obtained from Burma. No import duty is levied on such petrol.

6. As at present advised the Government doubt whether any useful purpose would be served by adopting this suggestion.

7. Government have no information as to the cost of the production. In respect of the latter part of this question the Honourable Member's attention is invited to the reply given to a similar question on January 15th last.

Mr. R. A. Spence: Is the motor spirit bought by the military what is known as commercial spirit,—is it petrol in tins or petrol supplied in bulk?

The Honourable Mr. C. A. Innes: There are two kinds—the motor transport spirit and the aviation spirit. In what form it is bought or sold, I do not know.

Mr. B. S. Kamat: With reference to sub-clause (2) of this question, is it a fact that the Petrol Companies allow a better discount to trades people than to the military authorities although the spirit supplied to the military authorities is much more in quantity than that taken up by the ordinary trades people?

The Honourable Mr. C. A. Innes: I have no exact information, but I understood the military got the benefit of the reduction in price given to all large bulk purchases.

ACQUISITION OF LAND FOR THE VIZAGAPATAM HARBOUR SCHEME.

455. ***Rai Bahadur G. O. Nag:** With reference to the answer given on 15th January, 1923, to unstarred question No. 40, is it a fact that the amount of Rs. 11,80,175 spent towards acquisition of land for the Vizagapatam Harbour Scheme to the end of 1921-22 has been met from borrowed funds and that interest thereon is and will be accumulating until the Scheme materializes; if so, why was land bought when the project itself is still under consideration?

Mr. O. D. M. Hindley: The answer to the first part of the question is in the affirmative; the object of acquiring the land was to prevent the inflation of the cost of the land by speculation which might lead to such an increase in the cost of the project as to seriously embarrass its further consideration.

RESEARCHES IN WIRELESS TELEGRAPHY AND TELEPHONY.

456. ***Mr. W. M. Hussanally:** (a) Is it a fact that Khan Bahadur Habibur Rahman Khan, M.R.I.; M.I.M.E., has been for sometime past engaged in researches in Wireless Telegraphy and Telephony?

(b) Has he ever applied for Government help in the matter of his researches?

(c) If yes, what help have the Government so far extended to him?

(d) Is there any other gentleman to the knowledge of Government employed in the same direction in India?

Colonel Sir Sydney Crookshank: (a) Khan Bahadur Habibur Rahman Khan, M.R.I., M.I.M.E., has been a licensee of Government for the purpose of research on his own account in radio telegraphy and telephony since March 1922 but no information is available as to the use which has been made of the license.

(b) Yes.

(c) In April and October 1912 and again in May 1918 he was offered facilities to experiment in the Post and Telegraph Storeyard at Calcutta, but no advantage was taken of these offers.

In August 1920 he asked for a license and help in the way of apparatus and loan of staff and other expenses. He was granted "permission" to continue his "research" work but was told that no help of men or money could be guaranteed him.

In October 1920 he again asked for apparatus and expenses and was given the same reply.

In March 1921 he applied for a permit to purchase and import wireless apparatus but apparently was unable to purchase such.

Finally, in March 1922 he was the first person to whom a license was granted.

He recently sought further facilities and financial aid and was informed that such could only be considered if he would demonstrate the possibilities or utility of his alleged discoveries. It is understood that he is unwilling to afford such a demonstration.

(d) The direction of his experiments is unknown. Eleven other licensees of Government are in possession of experimental licenses.

Mr. K. Ahmed: May I hand over a pamphlet by Khan Bahadur Habibur Rahman Khan, whose services have already been recognised, but the importance of whose research work Government is neither fully aware of, nor has at all appreciated?

Colonel Sir Sydney Crookshank: I shall be very pleased to receive this pamphlet.

(Pamphlet was handed over by Mr. Ahmed.)

Mr. K. Ahmed: Will the Government be pleased to consider the desirability of granting any other additional help and monetary assistance to Khan Bahadur Habibur Rahman Khan in connection with the admirable researches which he is conducting?

Colonel Sir Sydney Crookshank: We are already in touch with this gentleman and we have asked him to tell us in what direction we can help him. He has not, so far, shown us how we can help in any way, and he is not prepared to state exactly what he wants. If he were to do so, we should be very pleased to help as far as possible, provided we did not go to any expense unless we saw that his research work was in a direction which was likely to be useful.

Mr. K. Ahmed: Is it not a fact, Sir, that in the correspondence which the Government of India had with him they informed him that he had made these researches and that he was within his rights in asking for monetary help of the Government similar to the research grants made to other people for research work on the same lines?

Colonel Sir Sydney Crookshank: Sir, I am not aware that Government has made any monetary advances to anybody else in this field of research. As I pointed out, every facility has been offered to this gentleman: he has been told that, if he wishes to go down to Karachi, he will be helped down there in the Wireless School. He has taken no advantage whatever of the offers which have been made to him.

Mr. K. Ahmed: Will the Government be pleased to inform this gentleman, Khan Bahadur Habibur Rahman Khan, that, in response to the appeal made to the Government of India, the Government are able to give him assistance in any way he desires?

Captain E. V. Sassoon: Sir, is it not a fact that the Government have offered to allow this gentleman an opportunity of proving his contentions and that he has not taken advantage of the offer of the Government?

Colonel Sir Sydney Crookshank: That is so.

POOLING OF WAGONS.

457. ***Mr. W. M. Hussanally** (a) Is it a fact that after the pooling of wagons was introduced on Indian Railways the East Indian and the Bengal-Nagpur lines have carried more traffic than before, whereas the other broad gauge lines have carried less in consequence of the pooling?

(b) Will Government please give the figures for all broad gauge lines from 1916-17 to 1921-22?

(c) Do these figures show that the first two lines have profited at the expense of the other lines?

Mr. O. D. M. Hindley: (a) The Honourable Member is referred to the answer given to Mr. K. C. Neogy to-day on the same subject.

(b) The figures are given in Volume II of the Railway Administration Reports, copies of which are available in the Library.

(c) No.

COST OF THE POOLING OF WAGONS.

458. ***Mr. W. M. Hussanally:** (a) What is the total cost per year of the pooling of wagons?

(b) Who bears the cost?

(c) Has the gain been commensurate with the cost? If so, how?

Mr. C. D. M. Hindley: (a) The estimated cost of the establishment for the direction of the wagon pool, which is also employed for certain accounting and statistical work, is Rs. 1,20,000 a year, excluding an initial outlay of Rs. 7,000 for the purchase of furniture, registers, etc.

(b) The expenditure is divisible between the railway administrations parties to the wagon pool.

(c) Yes. Because it has enabled Railways to make better use of the rolling stock available and thereby facilitated the movement of traffic.

EXTENSION OF THE DEOLALI CANTONMENT.

459. ***Mr. W. M. Hussanally:** (a) Is it a fact that the Cantonment of Deolali in the Bombay Presidency has been extended to the adjoining village of Bhugar?

(b) If so, when?

(c) Were objections invited from the residents of the village before the extension was sanctioned?

(d) Will Government be pleased to place on the table the correspondence relating to the extension?

2. (a) Is it a fact that on the representation of the people, they were excused payment of taxes levied in the Cantonment?

(b) Is it a fact that these taxes have been re-imposed on the villagers?

(c) If so, why?

(d) Will the Government be pleased to lay on the table the correspondence relating to the matter?

3. Is it a fact that in consequence of the re-levying of the taxes in question there is serious discontent among the people?

4. Is it a fact that they have in consequence observed *Hartal* for 45 days?

5. What do Government propose to do to allay the discontent?

Mr. E. Burdon: 1. (a) Yes.

(b) In November 1918.

(c), (d) and 2-5. The Government are making inquiries on the further points which are raised by these portions of the Honourable Member's question and I will communicate the result to the Honourable Member as soon as possible. When the correspondence has been concluded, I will also inform the Honourable Member whether that part of it to which he has referred can be laid upon the table.

HEDJAZ PILGRIMS AND REPATRIATION OF DESTITUTES.

460. ***Haji Wajihuddin:** Will the Government be pleased to lay on the table a statement showing the numbers of outgoing Hedjaz Pilgrims in each of the last 10 years, also the numbers in each year who were repatriated

at the expense of Government or public bodies with the amounts spent by the Government of India in each year?

The Honourable Mr. A. C. Chatterjee: In 1913-14 and 1914-15 the pilgrims numbered 16,838 and 11,700. From 1915-16 to 1918-19 owing to the war the number of pilgrims was very small. It amounted to 7,764 for the four years period. From 1919-20 to 1922-23 the numbers have been 12,121, 22,689, 10,854 and 12,550 respectively. The Government of India have not full information about the numbers repatriated from year to year. But 500 were so treated in 1921-22 at a cost to Government of Rs. 40,000. In 1922-23 the Central Haj Committee repatriated 1,054 persons at a cost of Rs. 29,664-11 as stated in my reply to a question on the subject put on 16th January 1923.

FIRING OF TIME GUN AT 12 NOON IN THE MEERUT CANTONMENT.

461. ***Haji Wajihuddin:** Will the Government be pleased to state (a) why firing of Gun at 12 noon has been stopped in Meerut Cantonment, (b) In how many other places this scheme has been adopted, (c) What amount is spent in each firing, (d) What amount was budgeted and how much spent during the year, (e) Why it was not stopped in Delhi?

Mr. E. Burdon: (a) So far as the Government of India are aware, no orders have been issued to stop the firing of the time gun in the Meerut Cantonment.

(b) and (e). No orders have been issued stopping the firing of time guns at any of the other stations for which these guns are normally authorised.

(c) Approximately Rs. 1/8 per round of blank ammunition but the cost depends on the nature of the ordnance used.

(d) Figures of the actual cost are not available, but approximately a sum of Rs. 50,000 is budgeted for.

SEPARATION OF SUDDER BAZAR FROM THE MEERUT CANTONMENT.

462. ***Haji Wajihuddin:** What has been decided regarding the separation of Sudder Bazar from the Cantonment of Meerut and whether the introduction of Hydro-Electric system under progress will be extended to Sudder Bazar?

Mr. E. Burdon: No decision has yet been arrived at on the question of the separation of the Sudder Bazar from the cantonment area. As regards the second part of the question, I stated on the 22nd September last in reply to the Honourable Member's question No. 228, that it had been decided that the Cantonment should not participate in the joint hydro-electric scheme. The separate cantonment scheme is still under consideration and it cannot yet be said whether it will be possible to include the Sudder Bazar in it or not.

MUHAMMADANS ON THE S. A. S. OF THE POST AND TELEGRAPH ACCOUNT DEPARTMENT.

463. ***Haji Wajihuddin:** Referring to the reply given to my interpellation on 25th January, 1922, will the Government be pleased to state whether any steps have since been taken to make the adequate representation of the Mohammadans on the Sub-Account Service of the Post and Telegraph Account Department?

The Honourable Sir Basil Blackett: The information is being collected and will be furnished to the Honourable Member as soon as possible.

RUINED MOSQUES AND GRAVEYARDS AROUND THE NEW SECRETARIAT BUILDINGS.

464. ***Haji Wajihuddin:** Will the Government be pleased to lay on the table a detailed statement showing location of all the ruined mosques and graveyards within a radius of 7 miles from New Secretariat Buildings under construction and whether a portion of or any of them has been demolished or sanction of repairs disallowed and if so, why?

The Honourable Sir Malcolm Hailey: The area specified comprises not only the whole of the present city of Delhi and its suburbs to the north, but also the sites of the six previous cities of Delhi beyond the Kutub to the south. In this area there are innumerable ruins of graveyards, mosques and tombs. Government are not prepared to undertake the expense of preparing such a detailed statement as the question indicates.

Mr. K. Ahmed: Is it not a fact, Sir, that the Honourable the Home Member, only last week, I suppose, promised when I handed over to him a vernacular circular printed in Urdu saying that there were demolitions of the mosques and disallowance of sanction by the Chief Commissioner of Delhi with regard to certain mosques?

The Honourable Sir Malcolm Hailey: The circular referred to certain allegations that the mosques were being demolished. The present question relates to the preparation of a survey of a very large area containing very numerous ruins. The two questions are not, I think, connected.

Mr. K. Ahmed: Do I understand, Sir, that the Honourable the Home Member is not keeping up his promise?

The Honourable Sir Malcolm Hailey: No, Sir; the Honourable Member must not understand that.

Mr. K. Ahmed: Is it not a fact, Sir, that the Honourable Member did promise in this Assembly last week when I handed over that circular to him, that he will take proper steps to remove the anomaly?

The Honourable Sir Malcolm Hailey: I promised that I would make inquiry, and the inquiry is not yet complete.

OPENING OF PORT OF CALCUTTA FOR OUTGOING HEDJAZ PILGRIMS.

465. ***Haji Wajihuddin:** What arrangements are being made to have the port of Calcutta opened for the outgoing Hedjaz Pilgrims as was recommended by the Assembly in the last winter Session at Delhi?

The Honourable Mr. A. C. Chatterjee: The question is under consideration in consultation with the Government of Bengal.

Mr. K. Ahmed: Is there any arrangement, Sir, or any scheme set on foot or under contemplation for starting the port of Chittagong in Eastern Bengal?

The Honourable Mr. A. C. Chatterjee: This question does not arise.

DISTRICT HAJ COMMITTEES IN INDIA.

466. ***Haji Wajihuddin:** Will the Government be pleased to lay on the table a list of all District Haj Committees in India showing names of Chairman and Secretaries also the work done by each of them during the last 10 years, also the amount of funds available with them and the amounts of contributions (if any) given by them during the said period to help destitute Indian Pilgrims for return journey from Jeddah?

The Honourable Mr. A. C. Chatterjee: I understand that District Haj Committees have been formed by Local Governments in many provinces. The Government of India do not possess the detailed information required by the Honourable Member.

UNSTARRED QUESTIONS AND ANSWERS.

2ND CLASS WAITING ROOMS AT VICTORIA TERMINUS.

213. **Khan Bahadur Sarfaraz Hussain Khan:** (a) Is it a fact that the station Victoria Terminus on the G. I. P. Railway is not provided with 1st and 2nd class waiting rooms for gentlemen passengers?

(b) If so, why so, and

(c) Will the Government be pleased to state what action they propose to take to remove this grievance of the travelling public?

(d) Will the Government be pleased to state the number of 1st and 2nd class tickets sold at that station during the year 1921-22?

Mr. C. D. M. Hindley: (a), (b) and (c). I would refer the Honourable Member to the reply given on the 15th September, 1921 to Question No. 197 asked by Mr. B. S. Kamat on the same subject.

(d) The number of first and second class tickets sold at the Victoria Terminus station during the year 1921-22 was as follows:

	1st Class.	2nd Class.
Passengers	47,435	180,015
Season tickets	315	4,928

GUARD OVER LANSDOWNE BRIDGE, SUKKUR.

214. **Mr. W. M. Hussanally:** (a) Is it a fact that the Lansdowne Railway bridge at Sukkur is being guarded by the military ever since the war?

(b) If so, is it a fact that there have been complaints against the guard interfering with men and women pedestrians over the bridge?

(c) Why is it necessary to maintain this guard now that the war is over?

(d) Who pays for the guard, the Army Department or the Railway?

(e) If a guard is necessary why cannot a guard of the Railway Police be substituted?

Mr. C. D. M. Hindley: The matter is under enquiry and a reply will be sent to the Honourable Member later.

CLOSING OF LANSDOWNE BRIDGE.

215. **Mr. W. M. Hussanally:** (a) Is it a fact that the Lansdowne Railway Bridge, Sukkur, is closed at 6 P.M. to vehicular and pedestrian traffic?

(b) Is it a fact that the public have made representations for extending the time of closure to 9 or 10 P.M.?

(c) Are the Government aware that the Indus at this point separates the two large and populous towns of Sukkur and Rohri, and that there is a considerable amount of vehicular and pedestrian traffic over the bridge?

(d) What are the objections to keeping the bridge open to such traffic up to 9 or 10 P.M.?

(e) If not, do the Government propose to issue orders that the convenience of the public be respected in this matter?

Mr. O. D. M. Hindley: (a) and (c). The reply is in the affirmative.

(b) No such representations have been received by any of the head offices of the railway.

(d) For the safety of the public no vehicular and pedestrian traffic can be permitted after dark.

(e) The convenience of the public is given every respect consistent with the safe use of the bridge as a means of railway communication.

LINKING OF BOMBAY AND KARACHI BY RAIL.

216. **Mr. W. M. Hussanally:** (a) Is it a fact that there was a proposal before the war to link Bombay and Karachi by a broad gauge of Railway through the Runn of Cutch or passing by the Runn?

(b) Is it a fact that the Rao of Cutch would not allow the railway to pass through his territory?

(c) Is it a fact that the project has been all along held up on that account?

(d) Have any efforts been made since to obtain his consent?

(e) If not, has the project been definitely given up?

(f) If so, which is the next best route proposed?

(g) Is there any likelihood of any such line being constructed within the next few years?

Mr. O. D. M. Hindley: The Honourable Member is referred to the reply given on the 22nd September 1921 to his unstarred question No. 9 on the same subject. The survey of the line has since been resumed and is now in progress.

BROAD GAUGE CONNECTION BETWEEN KARACHI AND DELHI.

217. **Mr. W. M. Hussanally:** (a) Was there any proposal to connect Karachi and Delhi by a broad gauge before the war by converting the J. B. Railway?

(b) Why was the proposal abandoned?

(c) Is there any likelihood of connecting Karachi with upper India within the present generation?

(d) What was the route then proposed and now finally adopted?

Mr. O. D. M. Hindley: (a) to (d). Karachi is already connected with Delhi by a Broad Gauge Railway. The practicability of providing a more direct connection has been the subject of investigations for several years. Two main alternatives have been considered, i.e., (a) the conversion of the metre gauge between Agra and Hyderabad and (b) conversion of the metre gauge between Hyderabad and Balotra in continuation of a new broad gauge line east of Balotra. No final decision as to the best alignment has been arrived at. The cost of either scheme would be very considerable and it is not possible for Government to say when funds will be available.

REFRESHMENT ROOMS ON N.-W. RAILWAY.

218. **Mr. W. M. Hussanally:** (a) How many Refreshment Rooms for Hindus and Mohammadans are there on the N.-W. Railway?

(b) Was there formerly a Refreshment Room at Dadu? Has it been abolished now? If so, why?

(c) Is it proposed to re-open it again?

(d) Is there any Refreshment Room for Hindus or Mohammadans in the Sind Section of N.-W. Railway?

(e) If not, do Government propose to open any at Rohri, Sukkur, Ruk, Shikarpur, Kotri, Hyderabad or Karachi?

Mr. O. D. M. Hindley: (a) There are eleven Hindu and ten Mohammadan refreshment rooms on the North-Western Railway.

For the names of the stations at which these rooms are provided the Honourable Member is referred to the North-Western Railway Time and Fare Table.

(b) and (c). Government have no information but enquiry will be made.

(d) The reply is in the negative.

(e) Government understand that it is proposed to open, in due course, refreshment rooms for Indians at Rohri, Ruk and Hyderabad.

CONTRACT OF REFRESHMENT ROOMS, N.-W. RAILWAY.

219. **Mr. W. M. Hussanally:** (a) Is it a fact that Messrs. Naser Wangee & Co. of Karachi, held the contract of Refreshment Rooms and Dining Cars on the N.-W. Railway for many years?

(b) Is it a fact that one Sheikh Jalalud-Deen had the Kotri Refreshment Room sub-let to him by Messrs. Naser Wangee & Co., and conducted the same for several years?

(c) Is it a fact that the Railway had leased to him the Tea Room at Jungshahi, which he conducted for several years?

(d) Is it a fact that the contract of Messrs. Naser Wangee & Co. was terminated recently? If so, why?

(e) Is it a fact that on termination of contract of the above firm no tenders or applications were invited from the public by advertisement or otherwise but the business was entrusted to a European firm of Madras?

(f) If so, why?

(g) What were the terms of the contract with Messrs. Naser Wangee & Co., and what are the terms of the contract with this new firm (Messrs. Spencer & Co.)?

(h) Was there no European or Anglo-Indian available all over Sind and Punjab, to be entrusted with this business, if a European was necessary?

(i) Is it a fact that when Messrs. Naser Wanjee & Co. were deprived of their business, Sheikh Jalalud-Din was not only deprived of Kotri but also of Jungshahi Tea Room which he held independently?

(j) If yes, what were the reasons?

(k) Is it a fact that he made several applications against the deprivation to the Railway but without effect?

(l) Is it a fact that since Messrs. Spencer & Co. have taken up the business there have been several complaints specially by Indian passengers against incivility and want of attention shown to them by their servants?

Mr. C. D. M. Hindley: (a) Yes.

(b) The Railway Authorities have no knowledge of this. Messrs. Naser Wanjee's contract contained a clause prohibiting subletting under the penalty of termination of contract.

(c) Sheikh Jalaludin worked Jungshahi tea room for some years on the usual arrangement for Khansamah run tea rooms subject to one month's notice.

(d) Yes. Messrs. Naser Wanjee and Company resigned giving 6 months' notice on the 20th May 1922.

(e) Yes.

(f) In the interests of the travelling public it was considered advisable to employ a firm with large resources and of known experience in successful railway catering.

(g) The agreement with Messrs. Naser Wanjee and Company was for an indefinite period subject to termination at 6 months' notice on either side and the agreement with Messrs. Spencer and Company has been drawn up on the same lines.

(h) A number of firms in the Punjab and elsewhere put in applications for the contract but it was given to Messrs. Spencer and Company, for the reasons mentioned in answer to (f) above.

(i) Messrs. Naser Wanjee and Company resigned—vide answer to (d) above. Sheikh Jalaludin was given notice at Jungshahi in October 1922.

(j) His services at Jungshahi were no longer required.

(k) No such applications have been received by the Agent, North-Western Railway. Sheikh Jalaludin, however, asked for a recommendation to Messrs. Spencer and Company, which was given, and it is understood that he is now in Messrs. Spencer's employment as Manager of one of their refreshment rooms.

(l) On the contrary, general satisfaction has been expressed at the marked improvement in the North-Western Railway catering arrangements.

RATES FOR CARRIAGE OF RAILWAY COAL.

220. **Mr. N. M. Joshi:** With reference to the answers given last month to unstarred questions Nos. 80 and 98, is it a fact that the rates for the

carriage of railway coal were reduced from 1st April, 1920, without any calculations having been made as to the net gain or loss to Government from the reduction?

Mr. C. D. M. Hindley: No. The rates for carriage of railway coal were not reduced on 1st April 1920 but the rates for public coal were increased from that date.

DR. GOUR'S MARRIAGE BILL.

221. **Lala Girdharilal Agarwala:** Will Dr. Gour be pleased to state whether his attention has been invited to a note in the *Nation* of Lahore, dated the 15th February, 1923, at page 2, headed "Dr. Gour's Marriage Bill—Delhi Hindus' Protest"?

Dr. H. S. Gour: The answer is in the negative.

INCHCAPE COMMITTEE'S REPORT.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I ask the Leader of the House whether the Government will give us a special opportunity for discussing the Inchcape Committee's Report apart from the opportunities we may have of discussing along with the Budget?

The Honourable Sir Malcolm Hailey (Home Member): As the House is well aware it will be exceedingly difficult to give any time up till about the 25th or 26th of the present month, as all the days are fully engaged for discussions connected with the Budget. If we gave time after that, it would mean prolonging the sittings of the Assembly. I will, however, bear this in mind and see if it is in any way possible to make any arrangement. But I may say that Government thought that the best opportunity for discussion on the Inchcape Committee's Report would be in the course of the general discussions and during the discussions on the Demands for Grants.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, the following Message has been received from the Secretary of the Council of State:

"I am directed to inform you that the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings, which was passed by the Legislative Assembly at its meeting on the 21st February 1923, was passed by the Council of State at its meeting on the 1st March 1923 with the amendments indicated in the attached statement. The Council of State requests the concurrence of the Legislative Assembly in the amendments."

Sir, I lay on the table the Bill as amended by the Council of State.

GENERAL DISCUSSION ON THE BUDGET.

FIRST STAGE.

Mr. President: We shall now proceed to the general discussion of the Budget, and for the purposes of Rule 41, I appoint 15 minutes as the time-limit for speeches.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Is it for to-day, Sir, or for to-day and to-morrow? Do I understand the Chair to appoint 15 minutes as the time-limit for speeches for to-day only or for to-day and to-morrow?

Mr. President: I see the Honourable Member has last year's precedent in his mind. I appoint 15 minutes for to-day.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, in the general discussion of this year's Budget, I must first give expression to my satisfaction with the character of the Budget generally. The budgets of the last five years have shown a deficit of 100 crores—a rake's progress undoubtedly to ruin. This year's Budget shows that the rake has realised his peril and begun the safe policy of balancing his revenue and expenditure. I am not going to content myself with singing the praises of the new budget, however carefully and well it has been squared. It will be my endeavour to-day to draw the attention of the Honourable the Finance Member to what have appeared to me to be the chief defects in the Budget of the present year. The first unsatisfactory feature of the Budget, according to me, is that the rake is squaring his budget by taxing the poorest man. The general position that has been assumed is unexceptionable, namely, that the annual expenditure of India must come out of the savings of the country, whether on capital or revenue account. While no one will dispute this his general position, I think no one in the House will share the belief of the Honourable the Finance Member that the poor man in India has any margin of saving. The Finance Member is a new comer to India, if undoubtedly a very able new comer. I trust that he will take due note of the local conditions and quickly realise that the poor man in this country is indeed very badly off. It ought to be no news to him, for he must have generally acquainted himself by now with the actual condition of things here in India, when I come forward and say that most of the poor men in this country are already living a sub-human life. Judging from the condition of things on my own lands I must state that the poor people have often to go without two meals a day. They have no *pakka* or permanent houses to live in; they have no hospitals to go to when they fall ill; they have no mosque or temples to go to for daily prayers; and they have no schools for their children. This is the condition of things in India. So that when the budget is sought to be balanced by doubling the price of the poor man's salt, I must make bold to say that this is a very bad device. I think the best way to balance the budget would be to cancel the expected deficit of 4½ crores by making further cuts in the expenditure of the country. It is most gratifying to see that the Retrenchment Committee has been able to suggest a saving to the extent of 18 crores. (A Voice: "19½ crores") 19½ crores. But if we take into consideration the actual incorporation in the present budget of the reductions recommended by the Retrenchment Committee, we find that only 6½ crores have been reduced on the civil side and 5½ crores on the

military side, i.e., 7 crores less than the Committee's recommendation. I might here in this connection state that it is a matter for pride for the Honourable the last Finance Member that he was able to so properly constitute the Committee of Retrenchment. Lord Inchcape, the Chairman of the Committee, has been prominent for his persuasive qualities. He has persuaded our Commander-in-Chief, our able Commander-in-Chief who, we are happy, is not merely a soldier but a statesman, to consent to a reduction of numbers in the military forces, both British and Indian. But for this consent I think we would have found it very difficult indeed to get the War Office to accept the reduction. I am not sure that the War Office has yet accepted the reduction; but I do know that the great man who is just now presiding over the military affairs of India has consented to the reduction, and should therefore think that it would be difficult for the War Office to refuse to accept the recommendations that may be said to have been jointly put forward by Lord Inchcape and His Excellency the Commander-in-Chief. While I say it is a matter for gratification to see such a joint effort made for the reduction of military expenditure, I think it my duty to point out that the proposed reduction is yet very inadequate. India has so far gone in for a very wasteful military expenditure. In no other country I think is such a large standing army ready for war maintained; and it has to be recognised that this large standing force with no reserves is maintained for the purposes of safeguarding the imperial interests in Asia, although England does not undertake to share the expense. The system of no reserve forces in India should be discontinued as early as possible. It is a novel system which does not obtain anywhere else in the world. It is also essentially necessary that the territorial forces should be organised from among the citizens of India. The Government of India will be able to materially reduce its military expenditure only then. I mention all this in order to show that the poor man's salt should not be doubled in price, but that further cuts should be gone in for especially on the military side of expenditure. But let us for one moment assume that these further cuts are not possible. If they are not possible, then what should be done? I respectfully submit that the cotton import duty should be raised from 11 to 15 per cent. (Cries of "No, no.") I hear "No, no", but you, Sir, would permit my expressing my views. I know what happened last year in this connection, and I know the impression left then upon the country. In the face of a terrible deficit, a proposal had emanated from Government to raise the cotton import duty, which had been found to be paying, from 11 to 15 per cent. I say in the face of such a deficit this Government proposal was dropped by the House. Nay, the House in discussing it trifled with it. A Member went the length of suggesting that the duty be raised from 11 to 11½ per cent. and so on. The impression on the country generally, I must respectfully point out, is that the interests of India are being subordinated to those of Lancashire and this impression will only receive some kind of confirmation, if even this year the price of the poor man's salt is doubled, and the course left open to the Government of India to supplement its revenue by an enhancement of the cotton import duty is not adopted. I remember very well last year injury to the interests of the consumer in the shape of high prices was urged as being the one great objection to this course being adopted. I know this is the main shaft in the quiver of those having vested interests here to wound protection with. You remember only a few days ago the amendment on the fiscal policy of India of the Honourable Mr. Innes was passed, though it omitted all reference to the policy of protection which has been after such careful consideration recommended for adoption by the Fiscal

[Mr. S. C. Shahani.]

Commission. The Honourable Mr. Innes' ground was the one urged on the occasion of the debate on the enhancement of the cotton import duty by the Honourable Sir Campbell Rhodes, namely, that the interests of the consumer would suffer. I have got to point out that it is not a right view to contemplate a nation as being a body of consumers, rather than as a body of producers, that is to say, entities working in industry which while it supplies their needs also conduces to their growth by exercising their faculties. It is a wrong thing to imagine a nation as being merely a body of consumers. A vigorous national life will be impossible without industries; and for the sake of vigorous life, for the sake of our necessary growth in culture, skill and powers of united production, we ought to secure for ourselves, even at some sacrifice of material prosperity, the adoption of a bold national policy of industrialisation, which will not be possible at this stage if even reasonable import duties are not levied, and not levied on account of considerations which would be extraneous in their nature and which would not be in keeping with the real welfare of the people. This much for my first point. Then I pass on to the consideration of the Currency Exchange of the country, and of the attitude that has been assumed by the Finance Member in regard to this. As I have said, the Finance Member is a shrewd observer. He also has the reputation of being an expert in Currency and Exchange. He has in my opinion given us valid reasons for adopting just at this time a waiting policy. He says it would not be easy just now to stabilise the rupee-sterling exchange by fixing the rupee at 1s. 4d. True, but how about the intrinsic merits of this gold exchange standard. We expected some pronouncement upon it. Has it or has it not succeeded? Is it likely to succeed hereafter? My respectful submission is that our present Currency system of the gold exchange standard is essentially a managed system, that is to say, it is operating in consequence of the interference of the Government by sale of Council Bills and Reverse Councils. The Government seeks to link the rupee to the pound sterling at the rate fixed by itself. It is obvious that so long as this system remains in force, the Secretary of State, if he be so minded, can use his powers of management and control to manipulate the system to serve interests other than our own. The system must therefore be changed. We have all known the stress which devolved upon the system from the rise in the price of silver and other causes and how it broke down under that stress during the war. If this managed system did break down during the war, it should, according to me, be vigorously attacked; and the Honourable the Finance Member should give us the benefit of his opinion whether or not the system which was pronounced by the Chamberlain Commission in 1913 as being a most scientific system is really so. My opinion is that it is high time that we reverted to the system that was recommended by the Fowler Committee in 1898, namely, the gold standard and gold currency with notes based on gold and rupee a token coin and not the gold exchange standard. Even if the Finance Minister comes to the conclusion that at the present time we ought not to revert to the gold standard and gold currency as recommended by the Fowler Committee, I would request a further expression of opinion from him with regard to the interference of the Secretary of State in our present currency system. He has often managed it, by the issue of Council Bills and by other methods of transferring money to England for the payment of Indian liabilities there to the detriment of our commercial and industrial interests. Is it not right then that this power of management and control should be transferred

to the High Commissioner who is now an Indian and who, I trust, will hereafter be an Indian. He is the accredited agent of the Government of India and he should have the power to manage the necessary transferences rather than the Secretary of State who should be shorn of his power of mischief. The proper function of the Secretary of State is the management and control of the administration of India, and surely it is no proper function of his to govern the issue of Council Bills or to direct the adoption of other measures relating to our currency policy. I would now refer to one other subject, namely, the provincial contributions, which have been discussed to a certain extent, in the new Budget. The Honourable the Finance Member has told us that the present is not the time to consider the reduction of the Provincial contributions. He, however, shrewdly refers to a recent pronouncement on this point by the Government of India. He tells us that the Government have very plainly laid it down that these provincial contributions shall be reduced and eventually extinguished. I feel thankful for this his statement. I should have liked it very much if he had added reasons as to why these provincial contributions should be abolished. My idea is that the provincial contributions should not be continued because of our goal which is autonomy or responsible Government, and for which separate finances are a necessity. So long as provincial contributions continue the Government of India will depend upon the Provincial Governments and will become their pensioner and the Provincial Governments on the other hand will suffer from interference from the needy Central Government. The sooner they are done away with the better. No doubt the first consideration is the covering of the deficit in the Budget.

Mr. President: The Honourable Member has exceeded his fifteen minutes.

Mr. S. C. Shahani: I will take only a minute more. It is a pity that no mention has been made of Education in the Finance Member's budget speech. If I refer to the condition of things in my own province, I find that but 20,000 rupees a year are spent on the higher education of my Province, and not more than 5,000 to the technical. This is to say the least a deplorable condition. Taxes raised by the State come back to the tax-payers in the shape of the education of their children. Look to what is being done in England and in other European countries or in America where Governments study the lasting welfare of the people. I would request the Honourable the Finance Member to turn his attention to the education under the control of the Central Government. The Government of India alone of all modern Governments has been unwilling to spend more than a mere pittance on higher education. If the present policy is continued, the consequences will make themselves painfully prominent for a long long time to come in the lowering of the culture and other mental equipment of the Indians.

Mr. R. A. Spence (Bombay: European): I trust that the Honourable the Finance Member will permit me to give him my tribute and to congratulate him on his first Budget speech. I think, Sir, that it is a good omen for the future that once again the burden of the finances of India are placed on the shoulders of one whose family has for generations served India and I trust that the connection of what I may call "service" families will long continue with India for the benefit of India. I also wish to join with him in the note of regret which he sounded that he who

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had sown in lean years, who had ploughed amongst storms and the rumblings of storms is not able to introduce a Budget which showed the results at least of his hard work. He had had the bad time before and when at last the good time came, he was not able to present his budget. Various papers have asked what is the most outstanding feature of this Budget? I think that the outstanding feature of this Budget is the readiness which the Government has shown to act on the wishes of the taxpayer and reduce expenditure, and whilst we feel a debt of gratitude to the Inchcape Committee for what they have done and the way they have shown how we can reduce expenditure, I would ask this House not to forget the debt of gratitude which they owe to that hide-bound bureaucratic Government, the Government of India, who have shown themselves so ready even to anticipate the findings of the Inchcape Committee. Sir, the Finance Member first reviewed the results of the year now drawing to a close, and it was, Sir, satisfactory to know that despite that drain on India—not the same drain as other people think—the drain of the import of bullion, the balance of trade in our favour was no less than 20 crores. But Sir, I must cross swords with him when he gives as his opinion the fact that the heavy duty on so-called luxury articles has not adversely affected the trades concerned. He doubts whether the duty of 30 per cent. is responsible for the practical stoppage of the trade in European motor cars and the substitution therefor of cheap American cars. Well, Sir, if he had been resident in India during the past year, if he had made his inquiries as I am sure he will do in the future, or if he had merely sat still and listened, he would have learnt that unquestionably this duty has affected the importation of cars. Why do the people of this country import cheap American cars? It is because they have to; because the duty compels them to, because the cheaper the car the less duty they have to pay. Motor traffic, Sir, in this country is a necessity and not a luxury. The Honourable the Finance Member in the same speech that he defended this tax of 30 per cent. on motor cars said that there was practically no limit to the amount of money which might be usefully spent on the development of transportation in India. He said it was limited mainly by the amount of capital available, and yet in his speech he defended the tax which is hampering the development of transportation in India. Sir, are we to look to that hoary annual, the migration to Simla, for the reason for classing motor cars as luxuries? Is it because the Government of India live in the clouds and do without motor cars for six months in the year that they look upon them as luxuries? If it is, then, Sir, I look forward to the day when Government will spend the hot weather in the cool Secretariat of Raisina. The Honourable the Finance Member when comparing the imports of motor cars in the past year with the year 1921-22 forgets the reasons for the very small import of cars in 1921-22, namely, that in that year the merchants in India were disposing of the very large accumulations of imports of the previous year, that is, the year 1920-21, when stocks valued at over 12 crores of rupees—compare that with last year—had been imported. And I think if he compares his figures with those of the year before that, 1919-20, the year when exchange was high, he will find that imports were four crores, considerably more than last year. I maintain that you cannot develop transportation in India with a duty of 30 per cent., and I hope that all those Members of this House who are interested in transportation in India will join with me in trying to get a reduction of this duty.

Sir, still sticking to the past, there is another bad tax which has been brought forward from the past and which I would like to see reduced. I refer to the tax of 15 per cent. on imported foodstuffs, by which I mean mainly tinned foodstuffs. These are a necessity to many people in the mofassal and if the importation of these tinned meats were encouraged there would probably be far less slaughter of animals for food in this country—I think that is an argument which ought to appeal to a lot of you—It is a very good argument, Sir, and it ought to appeal to the House. Then let us take another argument, the policy of the free breakfast table. That is a policy which has been adopted at Home, and, judging from the howls of “No, never” which I heard when a duty was proposed on salt, I should say it is a policy which is believed in in this country. It cannot be said, Sir, that a duty of 15 per cent. is put on imported foodstuffs for purposes of protection. There is no indigenous industry to be protected, and therefore, as it is not put on as a protective duty, I hope that all those who are in favour of protection will support me in asking for the reduction of this duty. Similarly, Sir, all those in favour of free trade ought also to support me.

Well, Sir, coming to the budget for this year, the Honourable the Finance Member stated that Government had reviewed the various proposals for new taxation which had been put forward last year and that one by one they had been rejected, and finally the Government had had to come on to the salt tax. Well, Sir, I was one of those who supported the salt tax last year, and despite the tone of this House I support it this year. The burden of taxation over many years has been laid on the shoulders of the middle classes and has been steadily reduced from the poor, the salt tax itself has been lowered. Now, why should not this tax be put on to the shoulders of everybody? It weighs on the poor but as a feather. It is about 12 annas a family. (A Voice: “Three annas a head.”) Well, that is not so very burdensome. Anyhow Sir, this tax was proposed because the Honourable the Finance Member abhors a deficit just as much as nature abhors a vacuum. He is, I am convinced, an able strategist, and he is aware therefore of that fundamental rule that you must not merely plan an attack but also prepare a way of retreat. I hope, Sir, in the presence of the Commander-in-Chief that I have put that rule correctly. Well, Sir, I will give him two avenues of retreat in case his salt tax is thrown out. The first is one which we advocated last year and which I am sorry the Government did not see their way to accept. It is that hoary-headed annual the tax on silver. We are all agreed that India must be a free country as regards the transit of silver and so we propose that there should be a tax only on silver consumed in this country. Well, Sir, I can almost hear the Members of the Finance Department as they hear this old hoary-headed annual being put forward saying, “We do not like it.” Far be it from me, Sir, to compare them to children, but may I remind them of their childish days when they said “I do not like it”. It was nasty stuff, the medicine which they had to take, but it did them good; so also, Sir, will the tax on silver. The other avenue is concerned with petrol. At present there is an excise tax on petrol of six annas a gallon, and I suggest that that excise tax be abolished and that a tax be put on the production of petrol. Now, Sir, if a tax of 6 annas a gallon is put on the production of petrol, the amount of money that Government will get is double what they have at present. But as we are going to have a salt tax, and as we are going to have a silver tax, we do not want quite as much money as that; so I

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suggest that we should have a reduction in taxation for this country, and that this tax on the production of petrol should only be increased by 3 annas, and that would give Government just the same as at present. A tax of 3 annas on production all round would give Government the money that they get at present from the excise tax, that is, on the petrol annually consumed in this country, and people in India would benefit. If, however, Government reversed their present policy and put a tax on production of 6 annas a gallon, and gave a rebate on the petrol consumed in this country, then we should get the same figure. I do think, Sir, that the price of petrol in this country is far too high, and although I do not like slang, and the language of the late Prime Minister has not always appealed to me, I might mention here that Oil Companies are excellent "hen roosts." I hope, Sir, they will take the warning, and that they will reduce this burden which India has been labouring under as to the price of petrol. Sir, finally, I join in the Honourable Finance Member's appeal that we should courageously shoulder this Budget and, with the help of the increase in taxation which he has proposed, and with the help of the change in taxation which I have proposed, we should in this last Session of the first Legislative Assembly under India's reformed constitution make one long strong pull, all together, whatever we may be, Democrats, Moderates, Independents or even Labour, to join with him in squaring this deficit. And then we can go back to our provinces with a very glad message to them. Just think of what we can say to them! We can say, 'we have effected retrenchment, we have done that—, and by wise taxation, we have done away with deficits—well, a good bit of the taxation has been passed by this Assembly, and therefore it must be wise—we have dug deep the foundation for future surpluses, and we bring you the glad tidings that, because of our action, Provincial contributions are going to be reduced and done away with; and, because Provincial contributions are going to be reduced or done away with, Provincial taxation will be reduced, and if we bring to the provinces that message, I think, Sir, I can hear the reply:—'Well done, good and faithful servants, return thou to the next Assembly'.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, in the first place I will join my Honourable friends who have just spoken in offering my congratulations to the Honourable Finance Member for the improved condition of the Budget which he has been able to produce and for the very impressive speech with which he has presented it to us. In the first place, Sir, I must confess that I found this year's Budget less gloomy than I apprehended and more satisfactory than I anticipated; and the main feature of the Budget, if I may say so, Sir, is that an honest effort has been made by the Government to reduce our expenses, to follow the policy of retrenchment for which this House has cried hoarse, and that they have taken the pains to give some effect to the recommendations of the Inchcape Committee so far as they could in this short time at their disposal. While speaking of the Retrenchment Committee, I think I voice the view of this House and of my countrymen when I say that we are grateful to the Members of that Committee. Sir, it has been said, and said with a good deal of reason and justification, that Committees in this country were sometimes appointed by the Government or at the express wish of the people, but the object more or less has been to have a whitewash of the administrative policy, or to silence the people, if not to satisfy them. This much must now be said that

at any rate the Inchcape Committee, for which this House is responsible, was formed with a different purpose altogether and great credit is due to the Honourable Sir Malcolm Hailey for his work in this connection. He ought to be congratulated, Sir, for having secured for that Committee the services of distinguished personages whose opinions will carry weight not only with the Government of India, with the people of India, but with all Governments in the world; and they have also made a very careful examination of our finances and our administrative policy and expenses. This was, I believe, the first examination of our financial circumstances, and they have acquitted themselves very creditably. Now, Sir, as has been said and as is so evident, the one thing in the Budget to which the people will have the greatest objection, as has been said and will be said repeatedly, is the proposed tax on salt. I might take you back a few years and say that, whatever the relative merits from a financial or revenue-producing standpoint may be, the salt tax has a history of its own. It was a tax, when the Government was absolutely bureaucratic, which was imposed upon the people and which was strongly protested against and criticised. My late lamented countryman, Mr. Gokhale, strongly agitated for the removal of this tax; and it must be said to his credit that it was he who got it reduced. Sir, even in those gloomy days of the war when everything was dark, the Government at the first, in the beginning, hesitated to re-impose the salt tax and it was towards the close that Sir William Meyer imposed, and that also I believe hesitatingly and reluctantly, a very small tax. And now, after the war is over, during peace times, when circumstances I believe have improved, to try and attempt to raise that tax by a hundred per cent. will certainly be protested against and will be resented by the people. But at the same time I would submit, Sir, that it will neither be advisable nor desirable to leave an uncovered deficit; and the only way to meet that deficit is either by further attempts at retrenchment or by fresh taxation. I think, Sir, that as long as the present conditions remain, as long as further efforts are not made by Government to raise the tax-paying capacity of the people, and to remove the economic distress under which the country is suffering, it will neither be advisable nor politic to impose any taxation whatever. Retrenchment, then, would be our whole remedy. Sir, the military expenses have been the subject of attack for many years past. We are glad to find, Sir, that the question of military expenses was permitted to be considered by the Inchcape Committee, and we are glad that the Inchcape Committee has made recommendations for some reductions in our military expenses. The Honourable the Finance Member has also gone a good way to accept the recommendations of the Committee in respect of the military expenditure, but, I submit, Sir, there is still room for reduction in that branch, and I believe with the sympathetic attitude of His Excellency the Commander-in-Chief and in consultation with the army authorities, it will still be possible to reduce the military expenditure so as to cover the deficit and to have no deficit at all in our next year's Budget.

Sir, several suggestions have been made by the Honourable Mr. Spence for fresh taxation. He proposes a tax on silver and on the production of petrol. I believe, Sir, there is a general feeling among my countrymen that there ought to be an export duty on petrol sent from this country, because we understand from reports in the press and from other sources that petrol produced in this country is sold at a much cheaper rate in Europe and America than it is sold in this country. Therefore, Sir, that is a source of revenue which will greatly help the Honourable the Finance

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Member, and at the same time such a step will not be resented by the people of this country.

Then, Sir, I might say that there is great room for reduction of military expenditure by carrying out the policy which has been accepted by this House, I mean the Indianization of the Army. His Excellency the Commander-in-Chief has been pleased to say that some units in the Indian Army will be officered by Indians, and that should reduce our military burden to some extent, but I would go further and respectfully submit for his consideration that the experiment may be extended, and if the Indian units cannot be allowed to be completely officered by Indians, some Indian officers should be placed in every regiment both with a view to reduce the expenditure and also to Indianize the army. I would further submit, Sir, that my idea of the Indianization of the army is that gradually as circumstances, the safety of the country and efficiency would permit, Indianization should proceed by changing British units for Indian units. But in order to enable Indians to qualify themselves for offices in the army, I submit, Sir, that it is one of the essentials that we should have a Military College in this country, and I believe this House and my countrymen will gladly pay for the maintenance of that college.

Sir, it has been said that taxation, direct or indirect, is always unwelcome, but if we the people of India protest against fresh taxation, it is not on sentimental grounds, but because we think that we have reached the limit and any further taxation will be the last straw on the camel's back.

Before, I conclude, Sir, I would say that we in this House fully appreciate the endeavours made by the Honourable the Finance Member to produce such a satisfactory Budget, and I can assure him that he will have our support to make his Budget balance evenly so as to meet the revenue and expenditure as long as we can and as far as we can go without offending the country and without neglecting our trust and responsibility which we owe to the people whom we represent here. I trust, Sir, that he will be able, with the assistance of the other Departments of the Government, to further reduce the military expenditure and to make both ends meet. The office of the Finance Member is, I believe, the most arduous in the whole constitution of the Government. Every Department calls upon him to pay funds for its efficiency and for their wants. Some of these wants are no doubt reasonable and legitimate, but he has not sufficient money to meet all their demands, and therefore, Sir, his task is very hard; but I believe, Sir, in the person of the Honourable Sir Basil Blackett we have a man who can undertake the task and carry it out successfully. I hope and trust, Sir, that, if in the morning of his office he has been able to produce an improved Budget, when he lays down the reins of his high office he will be in a position to present a Budget so as to leave the finances of the country in a way which will enable the Government to reduce the economic distress of this country, and that he will leave the land and the people of this country which he was pleased to call his native land, happier, more contented and more satisfied than he found them.

Mr. Sambanda Mudaliar (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Sir, I desire to offer a few remarks on the Budget presented by the Honourable Finance Member. Let me first thank the Honourable Finance Member on his lucidity and candour which characterised his speech. But it is a matter of great regret that the country is

confronted with a serious problem of finding ways and means to meet a deficit of 4½ crores of rupees for 1923-24. One may be inclined to be unduly critical of the Budget which the Finance Member placed before this Assembly but our thoughts should be sobered by wisdom and prudence. It will be remembered that year before last the Home Member who was in charge of finance said that notwithstanding the restrictions in regard to the vote of this House in respect of certain items of expenditure (non-votable), this House is invested with a real power in regard to the control of expenditure inasmuch as this House can give or withhold its assent to proposals of new taxation, where it becomes necessary, in consequence of the insufficiency of revenue. This House co-operated with the Government by acquiescing substantially in all their proposals for taxation in the expectation that revenue and expenditure will be so adjusted as not to leave a deficit. We see, however, that there is a considerable fall in our revenue and abnormal increase in our expenditure especially on the military side. The question for consideration is how best to meet this deficit. There are four ways of meeting the deficit, namely,—(1) cutting down expenditure, (2) borrowing, (3) increased taxation and (4) budgetting for a deficit. The Finance Member has clearly stated that it would be unwise to budget for a deficit and I concur in his view. In regard to borrowing, the Finance Member clearly stated that the Finance Department has been hard put to it in the task of financing the 100 crores of deficit accumulated in the past 5 years and that further borrowing may not be desirable. In dealing with this question, the Finance Member has told us how this deficit of 100 crores has been financed. He said that about 31 crores have been covered by the creation of paper money, representing nothing but the I. O. U.'s of the Government of India. The remainder amounting to 69 crores has been raised by borrowing. Moreover to the extent of 22 crores has thus far taken the form of issues of Treasury Bills to the public.

He has pointed out the dangers of financing further deficits either by the issue of unbacked currency notes or by an increase in the floating debt. He has further told us that the proceeds of Rupee or Sterling Loans should not be availed of for financing deficits but should be left free for financing existing capital liabilities and productive expenditure on our Railways. There is another method of financing a deficit by means of the issue of paper money without cover, but that is not a good expedient to be resorted to as it would lead to the debasing of the currency and consequent rise in prices. There remains the device of meeting the deficit by increase of taxation. The proposal of the Finance Member to increase the salt duty may be examined. In regard to the proposed increase in salt duty I am sure the whole country will protest with one voice. Salt is an article of necessity and no man, however poor, can afford to live without it. Besides, salt is required for feeding cattle. Salt duty is the one tax that is paid equally by the rich and poor in inverse proportion to their ability. The Finance Member wants to raise it by 100 per cent. at a stroke. This is a callous mockery of the poor. I am sure that the House will reject the proposal.

Then the only course left to make both ends meet in the Budget presented is the reduction of expenditure. The possibilities of economy in the civil and military expenditure of the Government have been completely exploited by the Retrenchment Committee, over which Lord Incheape presided, and I am glad they have recommended a reduction of about 19 crores. From their report it will be seen that the field where economy could most be effected is in military expenditure. The provision made in the Budget under this heading is 62 crores as against Rs. 57,75,00,000

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recommended by the Incheape Committee for 1923-24. The country cannot afford to bear this large military expenditure—21 million pounds; now it is 42 million pounds. There must be not only economy but there should be retrenchment also. The army should be Indianised. The army in India was organised for war against a first-class European military power. It is not likely in our time to have to wage war against a first-class European power. The military problem in India at present is totally different from what it was some years back. It is now a question of protecting the Frontier and of assisting the civil in maintaining law and order. The Finance Member has not offered any excuse or justification for the inordinate proportion which the military expenditure bears to the total revenue. About 50 per cent. of the total revenue is absorbed in military expenditure. There is obviously no necessity for maintaining a huge army in the Frontier. The Afghan scare is over. Treaty with the Amir of Afghanistan was concluded. The trouble in Waziristan is almost over. These facts suggest the need for fresh exploration of ways and means to effect a substantial retrenchment in military expenditure. Under ordinary circumstances, an excessively cautious policy may not and should not meet with opposition. But the deplorable financial position of the country, the excessive poverty of the people and their inability to bear further burdens of taxation and the present unrest and discontent in the country render the situation so acute that a revision of the military policy has become imperatively urgent. It cannot be too often repeated that no nation can wisely allow its army to have the ordering of the Budget. According to the practice of every modern State, it is first for the nation to decide through its representatives how much it can afford to spend upon its defence; it is then for its military advisers to do the best they can within the prescribed limits. I devoutly wish that this principle should be accepted and acted upon by the Government.

The position, then, is this. We are presented with a veritable *non possumus*. I feel I shall be failing in my duty to my country if I do not oppose the proposal of additional taxation on salt put forward only to meet a deficit essentially due to an expenditure over which the Assembly has no control. Any additional taxation which would go to impoverish the people or hinder the industrial development of the country has to be strenuously opposed.

Let me have a brief say, before I resume my seat, in regard to the increase in railway fares and postal rates. Sir, you are aware that last year the Government increased the passenger fare on railways by 25 per cent. in spite of considerable opposition by the country and by many of the Honourable Members of this House. The Government in their anxiety to find money overlooked the fact that the increase in railway freight would hit the third class passengers who are generally poor and cannot afford to pay more. I understand that the income from passenger traffic has considerably fallen. Similarly, the increase in the postcard rate to half-anna and the letter rate to one anna was strenuously opposed. Honourable Members will remember that last year it was said on behalf of Government that even with the increase in the postal rates India enjoys the cheapest postal service in the world. But it must be admitted that India is a poor country and cannot be compared favourably with other wealthy countries in the world. I strongly appeal to the Honourable Finance Member to reduce the third class railway fares and the postcard rate, so that the *status quo* may be restored. To make up any

deficit that may occur, I would like to suggest an export duty of 6 annas per gallon on petrol exported from Burma to foreign countries. I hope this suggestion of mine will meet with the approval of the House. The Honourable Mr. Spence has already dwelt on this subject and I entirely agree with the views he expressed.

Lastly, I cannot but express my feeling of grave disappointment at the attitude of the Central Government not coming to the relief of such of the provincial Governments as are hard hit by their contributions to the Central Government. There was widespread expectation, before the budget was presented, that one of its features would be a welcome step towards the extinction of the provincial levies. I thought that there would be a commencement of reduction of the provincial contributions from this year, however small it may be, but my hopes were not realised. In our province, the Madras Presidency, there is a deficit of about 40 lakhs. Sir, our Presidency owes a debt of gratitude to the *Madras Mail* for its organised opposition to the levy of this unjust contribution. The Madras Government did not lag behind in their efforts to have the contribution entirely wiped out. In this fight, both Europeans and Indians joined together. All our combined efforts proved infructuous. Our Ministers are handicapped from carrying reforms in education, industries, irrigation and other vital matters by funds not being available. The sooner this knotty question is solved, the better it will be for the provinces. May I not appeal to the Honourable Finance Member to do something towards the relief of the provinces? I strongly urge for the consideration of Government that the first charge on any savings effected in pursuance of the recommendations of the Incheape Committee should be to afford relief to the provinces actually suffering from the iniquitous results of the notorious Meston Committee. This unholy loot must cease and this can surely be achieved by drastic cuts made from the military side of the Government of India.

Sir, the Honourable Mr. Spence suggested that a tax on cotton fabrics should be resorted to. But I think most of the Honourable Members here will agree with me when I say that this should not be done because it will affect the poor; the interest of the consumer is a matter of paramount importance to us. On the other hand, though perhaps many may not agree with me I would suggest that the excise duty may be increased.

Sir, I venture to place these considerations before the House and I hope they will meet with their acceptance.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I admit that the speech of the Honourable the Finance Member is characterised by straightforwardness and candidness, but I am sorry to say that because it demands more money in the form of increased taxation, I do not welcome it. The Honourable the Finance Member should not repeat that he is a new-comer. I may say that he is a very honourable acquisition to the Government of India. Sir, the country expected that the people will be relieved, to some extent, of the existing taxation. Last year we were confronted with a number of questions from the people who sent us here. They asked, "What have you done for us? You have thrown a greater burden upon our shoulders." Then we held out promises to them that we shall try to see that they are relieved, substantially, of the burden. I am sorry to say that we shall have no favourable answer to give to them. I expected that this year's Budget would show that the people of this country, namely, the tax-payers, were relieved to a certain extent, but that hope has

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not been realised at all. On the top of it we have been asked that an increased duty on salt may be imposed. I beg to differ from that suggestion. Sir, I know that the Government wants money for running the administration, and it is the duty of the people to supply Government with the money which is requisite. But in supplying that money it is the birth right of the people to suggest to the Government to run the administration on certain lines and to see that the Government machinery is worked economically and further that suggestions which are made in a true spirit and in an honest manner to the Government, are duly appreciated. Something should be done effectively to extend a favourable reply to the people to the effect that the Government realises the force of public opinion and that it will do its level best to see that the people's suggestions are accepted. Sir, when I turn my face to the various phases of the administration, I feel constrained to say that the result has not been up to our expectations, and there seems to be disappointment to a great extent. Take, for instance, the case of the Income-tax. Last year and the year before last we suggested that the people who pay Income-tax are feeling the burden very deeply and that they should be given some sort of relief. Our voice was not adequately heard, and an additional burden, in the form of further Income-tax, was imposed upon them. Now, we find that this year there is no reduction at all. We are not here to pay compliments. We are here to convey the views of the people to the Government of India. That is our duty, and I must say to the Treasury Benches, that the people of this country, especially the tax-payers, who are heavily burdened, expected some sort of relief, and they will be sorry to hear that there has been no reduction at all.

Now, Sir, adverting to the question of the North-West Frontier Province, the so-called Waziristan, which is considered to be "a white elephant", money is being spent there lavishly and whenever we raise our voices and say "Why don't you see that all these expenses are cut down? What is the necessity for them?", we are always told—and that is a stock answer—that the money which is spent in the North-West Frontier Province is in pursuance of a policy which is called the Waziristan policy, and is well spent, because, as a matter of fact, the North-West Frontier Province policy acts as a police service and it saves all India from a number of difficulties. That answer is given to us. Now, we ask, who are responsible for that policy? For how long is that policy going to be continued? When will that policy come to an end? You sent out a North-West Frontier Province Committee. They spent some weeks in their deliberations. The report is not out yet, though the country has been very anxiously awaiting the publication of that report. Questions have been put and answers have been given no doubt, but they have proved very discouraging answers. What is the condition of affairs in that country? You know there are raids upon raids, dacoities upon dacoities. I concede, however, that there has been some sort of decrease since last year. Sir, may I ask, what you have done to relieve the country of this standing menace? How can human beings live happily in that part of the country when there is dacoity after dacoity, murder after murder—diabolical acts on the part of certain clans who inhabit the part of the country, which you call Waziristan? You sometimes pay them in the form of an allowance. In some cases, you construct roads and the raiders use these very roads in making raids upon you. When are you going to put an end to that? Why should the tax-payers of India pay you for running that show? I suggest to the Government of India

that they should try to realise the weight of the suggestion which I am very respectfully offering to them.

Now, Sir, last year, on the occasion when there was a debate in connection with the Income-tax Department, it was submitted before this House that this separate Department, which you have created or opened to realise or collect income-tax would prove very expensive, and it had not got the support of the whole country at all. What has been the result? Have you gained anything? Do you know what are the feelings of the people who have been unduly taxed? They say that this separate Department which has been created is not only expensive but that it is also a standing terror to them and some of them have been put to great disgrace. Some Inspectors go round to have valuations of house property made, but in some cases, without making faithful and good inquiries they come back with wrong information and make reports accordingly saying that the value of the house is so much, that it is being used by the owner or occupant of the house, and that the owner or occupant of the house is liable for heavy tax. The most respectable merchants have got Muniyams and agents who are drawing respectable remuneration. They send their accounts to your Assessing Department and they are badly treated. They are disgraced. You ask them to make certain returns. Those returns are honestly and sincerely made and submitted to the Department which is called the Income-tax Assessing Department, but those returns are in some cases wrongly disbelieved, and then, in contravention of those statements which are made in those returns, the assesseees are very heavily assessed.

Now, the assesseees have observed the letter of the law. They have obeyed the provisions which are laid down in the Income-tax Act. They are respectable people,—tax-payers, the backbone of the finances of the Government, so to speak. Now, they are in some cases wrongly disbelieved and heavy taxation is imposed on them, heavier than it ought to have been. What are their feelings? They feel this separate department, which has been brought into being to collect income-tax, has been created to realise money unduly and to put them to difficulties. I have been in receipt of a number of letters from a number of merchants for whom I have the greatest respect. If I read the contents of some of the letters to you it would tax your patience. However, I am sure you will feel the greatest sympathy for the authors of those letters without my reading the contents. So, I throw out the suggestion before the House that they will advise the Government of India that the old machinery, which was in full association with the people of the country, may be brought back and the separate department be abolished, in the first place, because it is more expensive and, in the second place, because it is intolerable to the people.

Then, Sir, last year some of us raised our voices to ask you to be sympathetic towards your customers, the third class passengers. The first class passengers do not pay, on the other hand you spend something for their comforts. I think every Member of this House knows that first class passengers do not contribute any profit to the Railway Department; you incur expenses for them and they do not make any addition to your revenue but on the contrary, they take away money from you. It is the third class passenger who is the best customer. What have you done for him? What active measures have been adopted to see the condition of these poor third class passengers ameliorated? What have you done? You have got first class carriages in thousands. What increase have you made in the number of third class carriages? The answer which will be given is this that we

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are in want of money and that no sooner our financial condition is better than we shall see that that want is first attended to, and that a fresh supply of carriages is requisitioned for. That answer will not do. The Government of India ought to have asked the Railway Department specially to take very effective measures in this direction and to give a proper response to the suggestion of this House, which response would have been considered as a true appreciation of the recommendation made and would have been taken as a sign of real, active sympathy with those dumb people. You have increased the railway fare. What gain have you got? Have you got any gain? Nothing. You have lost and your explanation is that the people were not used to it and by and by they will get used to that sort of payment and then there will be an increase in the revenue. I doubt that very much. Business ethics require that you should try to see what kind of rates will be the most attractive and what sort of business will pay and what will not pay. It is the third class passenger who pays the most, and he is comparatively poor. If there is any increase in the railway fares, naturally some of the third class passengers will discontinue using the railway. In consequence of their poverty, in consequence of their inability to meet your railway fares, they will walk from village to village and from place to place. Then where is your business talent, where is your business intelligence? This country is quite prepared to pay the expenses of the Government if Government will use that money in the right method; if the Government of India will try to safeguard the revenues in the best possible manner. The people of this country do not give you money which you are to spend lavishly and without exercising due discretion and intelligence. Excuse me saying that. I am voicing the feelings of the country. I am not here to flatter you but I am here to do my duty. Personally I have the sincerest respect for every Member who is in charge of the Departments which I have referred to, but here I have got to convey the message of the people. If I allow you to remain in darkness, I shall not only be failing in my duty, but also proving dishonest to you. What are the feelings of the country? What are the views of the people? Sir, I am here to echo them. They say that nothing has been done in the way of ameliorating their condition.

Mr. President: I must tell the Honourable Member that his time is exhausted.

Dr. Nand Lal: And so far as the question of increasing the duty on salt is concerned, the country seems to be averse to it. You must try to see that retrenchment is effected. I wish this budget were put before the House after the report of the Retrenchment Committee was published and something substantial would have been done to satisfy our people. They would have seen that we have done something for them and they would have thanked the Government of India. I hope the Honourable the Finance Member will try to see that the recommendations of the Retrenchment Committee are incorporated in the budget if possible, and given a practical shape, so that the people of this country may be relieved to some degree of the heavy burden which has been placed upon them both by the Government of India and by us. With these few words I close my remarks.

Mr. P. P. Ginwala (Burma: Non-European): The Honourable the Finance Member has told us that he is a new-comer to this country. But I hope, Sir, that he has got all the credulity of a new-comer to this country, and if he has, he will believe me when I tell him a few things about his

Budget—what I may call the few recurrent phases of the Indian budget. Probably he knows them already, but there is no harm in my reminding him of them. First of all, every Indian budget is extremely orthodox in principle, secondly, it is a hand to mouth budget, and thirdly, and generally speaking, it is a rich man's budget on the whole. With regard to the orthodox character of the budget, I want to ask the Honourable the Finance Member whether in the history of taxation in India during the last 20 or 30 years any new principle of taxation suited to the requirements of the country has been introduced? The Indian budget is, on the whole, a servile copy of the principles of the British budget along the lines of least resistance. If England imposes super-tax we impose super-tax. If she has excess profits duty, we have excess profits duty. But I venture to suggest that we do it all apart from the conditions of the country. What takes place in the office of the Honourable the Finance Member every year when he prepares the revenue side of the budget I can well imagine. He sits in his chair. He has got three men generally with him. On his right is perhaps Mr. Cook, on his left is Mr. Ayyar and in front of him Mr. Sim. Then he asks "How much do these people require?" They say, "Oh! this year they want 80 crores of rupees only from taxation." "Is that so? What did they have last year?" "64 crores." "Very well. Give me a copy of the Tariff Act, a copy of the Income-tax Act and a copy of the Opium and the Salt Acts and a blue pencil." He takes the blue pencil in his hands and says, "Here 11 per cent. on this. No. I will put 15 per cent. That will give us 2 crores. Is that not so, Mr. Cook?" "Yes, approximately that." Mr. Sim then says, "Income-tax has been rather sterile these last few years. We will try a little super-tax on something," and he adds on something to the super-tax. Then he goes through the Opium and Salt Acts and the same process goes on until he thinks he has secured the additional sixteen crores. I submit that this is not the way in which any longer the Indian budget ought to be prepared. Every country in the world has at definite periods undertaken an examination of the taxation of the country with reference to the taxable capacity of the people. They have got figures and they study all the conditions with reference to the requirements of the country. I maintain that though the Finance Department claims to know every thing they have got no data upon which they can determine the taxation with reference to the taxable capacity of the people. There I submit is the orthodoxy of the Budget.

Now, as to its being a hand to mouth Budget. This is a more important circumstance and in this respect I think I shall cause some disappointment both to the Government and to my Honourable friend on this side of the House, for I do not propose to lay much stress on the question of retrenchment. I am a great believer in retrenchment to a certain limit but that limit must be sometimes reached and if we transgress that limit, the Government will have the fate of the Irishman's horse. This gentleman, as you may remember, wanted his horse to live on nothing. He gradually reduced his rations but on the day the horse learnt to live on nothing, he unfortunately died. That is what would happen to the Government in course of time if we get obsessed with the idea that nothing remains to be done except retrenchment in order to meet our expenditure. The time has arrived when we should look about for other sources of revenue and to extend the scope of those sources. If you examine the Honourable the Finance Member's Budget and his main heads, you will find that there are already signs of decay, if not of death in some of the items from which he derives his revenue. Take the Customs. Honourable Members on this

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side of the House suggested that the import duty on Customs be raised from 11 to 15 per cent. for protective purposes. My Honourable friend from Bombay suggested 2 annas on silver and various other things. But we forget that we have also adopted a policy of protection. Now, it is a well known principle of taxation that you cannot make those duties have a protective effect from which you wish to derive your revenue also. If we are going to have this protection, you are bound to lose your revenues from those protective duties and that is a factor which I submit has got to be taken into account. It will go a long way towards making your customs a diminishing source of revenue. Then take Opium. That ought to have disappeared long ago as a source of revenue and I hope, Sir, that whatever else the Honourable the Finance Member may do, he will get rid of this disgraceful source of revenue by which you obtain your money through the degradation of a very large number of your fellowmen in other parts of the world. That is a form of taxation which ought to be done away with as soon as possible. Then you have got the provincial contributions. We have been promised that they are dying or about to die. Of course, their death-knell has not yet been sounded but we hope that the Honourable the Finance Member will in course of time be able to get rid of them. Then what do we fall back on—Salt. We have heard from Dr. Nand Lal what the people think about salt and I do not wish to add much to it. Last of all we have to look to our Railways. There also we have adopted a change of policy. I am not in agreement with many of my Honourable colleagues on that aspect of the case and I may state this that however good it may be from the point of view of sentiment and patriotism, State management is, from the business point of view, unprofitable. We have made it a business of our lives, at least many of us on this side of the House, to criticise the bureaucracy, but I think the bureaucracy will admit that we have expiated all our sins by surrendering ourselves to them on this question of railways. They themselves admitted that they were incompetent as a business agency. We said "However incompetent you may be for other purposes, for business purposes you are very competent fellows." We handed over the railways to them. I venture to think that in course of time the railways which might have been a profitable proposition would be a losing concern and that if you do make them a profitable concern you will wring out the profits from the poor and that would be the worst way of indirect taxation that I can imagine. Therefore, Sir, my suggestion to the Honourable the Finance Member is that he should not only find some way by which he can provide by way of makeshift to make both ends meet by retrenchment on this side and a little additional taxation on the other, but he must devise some policy by which the future revenues of this country may be placed on a more satisfactory basis and we cease to live from hand to mouth as we have done for many a long year in the past.

Then about the third point. I said at the beginning that every Indian Budget was essentially the budget of the rich and I stick to that proposition. You examine your sources of taxation. I have already enumerated them. So far I am merely taking the Central Revenues. I am not concerned with the provinces. In the Central Revenues the only direct form of taxation that you have is income-tax. That is paid by 200,000 people I believe roughly speaking out of 330 millions. The rest of it is indirect taxation. Indirect taxation necessarily means the taxation of the poorer classes of the community. You tax their food. You tax their clothing

by increased tariff duties. You tax their matches. You tax their kerosine oil. You tax their salt and you want to increase the tax on that salt. Now the poorest man in the country has got to pay a tax on these commodities I have mentioned. The rich man may pay, less or more on these same commodities but I venture to say that he does not pay more in proportion to his wealth than the poorest man does. Therefore, the time has arrived, when the Honourable the Finance Member should inquire into the whole question and spread his net as wide as possible. You cannot expect to derive all your direct taxation only from 200,000 people. There are heaps of men who derive fortunes from what they call agriculture. Now, it is not my intention that the poorest agriculturist should be taxed. He would come within the limit that is prescribed by the law as the lowest limit. But why should a man who owns a hundred thousand acres of land, who does not pay himself a pie of land revenue out of his pocket, who invests his saving, if he does, in Government paper free from income-tax, escape the payment of Income-tax? I hear whispers in the

House suggesting that they do not get anything out of their land. (A Voice: "I say they do not escape taxation.") I venture to say that they do escape taxation. The man at the top is probably the sixth man from the bottom. The man at the bottom pays land revenues and the other five men who do not do the least bit of work on the soil escape all income-tax. I submit, Sir, that that is a vicious principle. If income is to be taxed at all, it ought to be taxed apart from the source from which it is derived, subject, as I have said to the minimum which is prescribed as not liable to income-tax in all civilized countries which is different from the minimum prescribed by our law. How is your minimum in this country? A man may have four wives and may have four children apiece by them: he pays the same income-tax as the improvident bachelor who has no wife and no children. This is only one of many directions in which the Income-tax Act requires close scrutiny.

Take another source of revenue which has not yet been tapped though it is the intention no doubt to tap it, and that is death duties. I do not see why when I die my son who may inherit Rs. 5,000 has got to pay Rs. 100 or Rs. 150 to the Government, whereas the son of any one of these Honourable gentlemen who may inherit a million escapes entirely, if he is a Hindu or a Muhammadan. (Rao Bahadur T. Rangachariar: "He does not inherit.") He does not inherit but he succeeds to the estate. I submit, Sir, that that is a mere trifling with words. Why should they escape when we are made to pay? There is racial distinction if you like. We are fighting for the removal of racial distinctions; let us fight on this point and remove the grievance of the Hindu or the Muhammadan that he is left out of his share of payment to the exchequer. (Hear, hear.)

Sir, there is one other question I would like to ask the Honourable the Finance Member. It is claimed that we cannot maintain our army just now at least under 50 or 60 per cent. of our total revenues. Who gets the protection from this army? Is it the people from whom you get the largest bulk of your revenues? Or is it the wealthy landowner, the wealthy merchant or the wealthy money-lender? And who in proportion to his means pays so small a share of taxation to the country? If he wants this protection he must be made to pay for it. The proletariat of the country do not require the maintenance of peace and order, for in disorder they find their means of livelihood; in disorder they can loot

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and they can plunder; they have nothing to lose. But the wealthy land-owner, who sits in his castle and looks at his estate, and the wealthy money-lender, who has, like him, the satisfaction of knowing that when he dies whatever happens, the fortune which he has made out of the poorer people, will be left untouched by the Government. Sir, these are the persons for whom you are providing this army, and you must make them pay. First, I say, tax their income; secondly, tax their savings by imposing death duties and thirdly, tax their luxuries. Why should they not pay for their luxuries? I am made to pay. If I buy a hat I have to pay three annas extra in every rupee, but my Honourable friend on my right (Mr. Jamnadas Dwarkadas) who wears a golden turban pays nothing extra for it.

Sir, I appeal to the Honourable the Finance Member to lay the foundations of his future finance deep and broad. He must make every man pay who ought to pay, but no man ought to be made to carry a bigger burden than his shoulders can bear. That ought to be the basis of his future financial policy and if he succeeds in carrying out that policy I have no doubt that when he leaves the country he will be always remembered not only as an honoured statesman but also as a successful financier.

Maulvi Miyan Asjad-ul-lah (Bhagalpore Division: Muhammadan): (The Honourable Member spoke in the Vernacular.*)

Mr. P. E. Percival (Bombay: Nominated Official): Sir, we have, as has already been stated, three alternatives for consideration before us now. The first is a further reduction of expenditure beyond the proposals made in the Budget, the second is to budget for a deficit; and the third is additional taxation, in order to equalize the Budget. Now, Sir, in regard to the first point, we have just had, as everyone knows, a most powerful and independent Committee on Retrenchment, which has gone into the whole question and has proposed most drastic reductions both on the civil and military side of the Budget. Now can it be reasonably said, when this matter is just before Government, and has not yet been considered by Government in consultation with the Secretary of State,—is it advisable or reasonable to suggest a further reduction in expenditure beyond even the reduction proposed by the Incheape Committee? Another point, to which I wish to refer and which has not been mentioned, is this, that it is not the case that Government have refused to make certain reductions; what the Honourable the Finance Member has said is that, owing to 'lag' and 'terminal charges,' it will not be possible to make a reduction till next year to the full extent of the Incheape Committee's proposals.—that is, up to the full extent of those proposals so far as they may be accepted by Government. So it seems to me that it would be futile to propose reductions in this particular Budget, whatever may be the case later on. It cannot be contended that the Budget should be equalized by further reductions in expenditure beyond that proposed by the Government, when these economies, which are to be effected in accordance with the proposals of the Incheape Committee, can only come into effect gradually and, to a large extent, in the following year. A large reduction is proposed this year, but still the whole amount, or the whole amount finally approved by Government, cannot possibly come into effect this year.

* The original speech together with an English translation will be printed in a later issue of these Debates.

The second alternative is that we should budget for a deficit. Now the Honourable the Finance Member, who, if I may be permitted to say so, has a worldwide reputation for knowledge of high finance and international exchanges and who has had the advantage of discussing the whole question with the leading financiers of the world at the League of Nations, has given a solemn warning that the country cannot go on with further deficits, that it will only bring the country into a morass, from which it will be extremely difficult to extract it, when it has once fallen in. Surely it is far better that we should prevent the country from falling into this state of affairs than to let it fall in and try to drag it out afterwards. But it is not merely the case that the Honourable the Finance Member has so warned the Assembly, but the Incheape Committee have also given a solemn warning to this Assembly. I will read their remarks, Sir. The Incheape Committee state that "if India is to remain solvent immediate steps must be taken to balance her budget." Therefore, however much we regret it, whether we like it or not, it seems to me that the only possible, the only logical, position that we can take now, is to balance the budget by increase of taxation. If we do not increase the salt tax, then let us balance the budget by some other taxation, which Honourable Members should not merely propose but should actually vote for and carry through the House. It is no use making proposals that are not going to be carried through the House, or not going to give us the additional $4\frac{1}{2}$ crores required for the Budget. I do suggest that we should really carry proposals to make up this $4\frac{1}{2}$ crores deficit and thereby balance the budget.

Now, Sir, there are one or two other points to which I would like to refer as being one of the Members of the all-India services. There is an opinion in the country, which I hope is not held in this House; you hear people in the country saying that the heavy increase of expenditure that has been incurred in recent years is due to large additions to the pay of the Imperial services. Now, Sir, there are two points which are overlooked here. The first point is that people who say this always overlook the fact that prices had vastly increased during the last 7 or 8 years. (A Voice: "They are falling.") They are falling now, but, according to the Incheape Committee, they are still 56 per cent. above the pre-war level. I entirely agree that, as prices come down, the enhancements of salary should come down; but, if Honourable Members will refer to page 283 of the Incheape Committee's Report, they will find that it is there stated that the average increase, if allowance is made for the abolition of exchange compensation allowance, in the all-India services, did not exceed 20 per cent. The members of the all-India services have got an increase of roughly 20 per cent., while prices as a matter of fact rose from 60 to 80 per cent. Sir Montagu Webb referred to the matter last year, and I think he stated that the increase of prices was not merely 60, the figure recently given by the Labour Bureau Office, Bombay, but was in fact more than that amount. Turning on to the next page of the Report of the Incheape Committee, we find that: "The cost of the subordinate services, i.e., Clerical, Industrial, Technical and menial, has increased by 121 per cent., due partly to additional staff but mainly to increased rates of pay." The point I wish to bring out is this, if we press for retrenchment, it must necessarily come from the lower-paid Indian services. I do not know whether Honourable Members wish this or not, but they have to remember the fact that the people who are going to be reduced and must be reduced are the lower-paid clerks and menials and other low-paid services. Another reason why it is necessary to do that is this fact, which

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some people do not realize, namely, the very small number of Europeans serving in India. On this point I would like to refer to the interesting remarks made by the Honourable Mr. Lawrence, the Finance Member of the Government of Bombay, in his recent Budget speech. He there mentioned that the number of Europeans belonging to the all-India services serving in the Bombay Presidency amounted to 370. Eight years ago the number was 430 but it is steadily decreasing. He also pointed out the very interesting fact that if for the whole of these European officials in the Bombay Presidency Indian officials were substituted at two-thirds of the pay of the former, the result would be that Government would secure a gain of only one-fourth of one per cent. of the annual income of the Bombay Presidency. I do not wish to go into the question of the Indianization of the services, I am in favour of Indianization; I always have been. But the point I wish to make is that the actual financial gain which the country is going to derive from doing away with Europeans and substituting Indians at two-thirds of their pay is a very small amount, when regarded simply from the point of view of the tax-payer. As a matter of fact, it would be impossible to get rid of all the Europeans at once. Suppose, however, for the sake of argument, we were to reduce one-fifth of the Europeans serving in the Bombay Presidency at once; in that case the gain would be only 1/20th or 1 per cent. of the annual income. These figures apply to Bombay, but no doubt similar figures could be obtained for other Provinces and for India as a whole.

The final point to which I should like to refer is that my Honourable friend, Mr. Abul Kasem called this additional taxation the last straw on the camel's back. I think my Honourable friends do not perhaps quite realise that India is very lightly taxed as compared with countries in a similar state of civilization. (Cries of "No, no.") Wait a minute, please, I can substantiate my statement by one or two figures. I do not wish to compare India with the United States, England or any other industrial country in the West; but I should just like to give one or two figures to show that India is lightly taxed when compared with countries which are similarly situated financially and economically. I do not guarantee that the figures I give are quite correct, and, if Honourable Members have better figures, I shall be glad to accept them. These are the figures:—

India.		
Population, excluding Indian States	.	247,000,000
Revenue	.	187,000,000
Average taxation	.	11 sh.
Japan.		
Population	.	56,000,000
Revenue	.	146,000,000
Average taxation	.	£2-12-0
Java.		
Population	.	38,000,000
Revenue	.	61,000,000
Average taxation	.	£1-12-0
Phillipines.		
Population	.	10,000,000
Revenue	.	19,000,000
Average taxation	.	£1-18-0
Egypt.		
Population	.	13,000,000
Revenue	.	23,000,000
Average taxation	.	£2-3-0

So it will be seen that for every rupee taken in taxation from each individual in India, in these other countries they take Rs. 3 or Rs. 4. As I have said, I do not guarantee the correctness of these figures, and let us take for the sake of argument that we are 50 per cent. wrong, even so we have it that individuals in these other countries pay either two or three times as much taxation as people do in India. The point is that India is not heavily taxed as compared with other countries which are in a similar state of financial and economic development. I submit, therefore, for these reasons that the 4 or 5 crores additional taxation proposed for India will not seriously injure the country; whereas, if we have another deficit, then it will do very great damage to the credit of the country.

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, usually every speaker in this House begins or ends his remarks either by complimenting the speech of the Honourable the Finance Member and praising it as unexceptionable or by criticising it severely but I will do neither. I will say simply this much, that his speech elucidates the financial condition of India very thoroughly and clearly. India is a big Empire. People say they are very heavily taxed. I will accept their word for it. But may I ask whether they consider themselves heavily taxed, because their income is too small for the taxes they are paying, or whether they are more highly taxed as compared with the people of other countries? I think, Sir, India on the whole, whatever might be the opinion of the other members in this Hall, is not more heavily taxed than she ought to be. We want a democracy but we expect England or some other country to pay our expenditure. Democracy in all parts of the world is and has always been a very expensive form of Government. I think if India aspires to see its status raised, she must be prepared to pay every year a heavier tax than the previous year. (Cries of "No, no.") Allow me to proceed, I shall explain my meaning.

As regards the paying capacity of Indians, I admit that it is much lower than the paying capacity of the tax-payers of countries. Up till now India is, on the whole, an agricultural country, and as such it cannot bear a very heavy taxation. It is not an industrial country yet, but are we not striving to make it an industrial country? Do we not require capital for productive purposes? Should that capital be our own or should we borrow it and then re-pay it with interest? How shall we pay the principal and interest? By taxing the country or in some other way? No other country will pay for us. I think, considering the population of India, and the taxes people are paying, on the whole the country is not very heavily taxed. And if we want to raise our status, if we want to see ourselves compared favourably and honourably with the other civilized nations and countries, we must be prepared to pay more and more every year. I am aware that railway fares have been raised and probably the increase is pinching the common people, I mean the lower class people, but the passenger traffic has never been paying in any country. It is always the goods traffic which has been paying. (Cries of "No, no.") My position is that passenger traffic is seldom paying, while goods traffic is always paying and I maintain this without any fear of contradiction. Passenger traffic has to be maintained for the sake of maintaining it, but it is always the goods traffic which really pays. Now by all means reduce the railway fares and postage, and also reduce the military expenditure either by Indianizing the army or otherwise, but at the same time find money for maintaining the Government and its machinery. Where is that money to come from? My answer is, it must come from the pocket of the Indian tax-payer who must pay it willingly.

[5TH MARCH 1923.]

[Chaudhri Shahab-ud-Din.]

Now, the salt tax may not be a very desirable tax but it should be unhesitatingly imposed if it is necessary to do so. In my opinion the country should resent having to pay the tax. Some Members in this Hall may differ from me, but with due deference for their opinions, I stick to my own view. It is common knowledge that people are consuming daily cigars and cigarettes worth millions of rupees. Is not that a luxury? (Rao Bahadur T. Rangachariar: "I do not smoke.") I also do not smoke, but I do not resent or object to the salt tax. Possibly it is an undesirable tax and should not be imposed if we can help it. But if it is necessary to impose it, I see no reason why it should not be imposed. What can't be cured must be endured. In villages the agriculturist pays land revenue, and that is a direct form of tax, if it can be called a tax. But the menial, the village servant, and the agricultural labourer, is paying absolutely no direct tax. He is paying, no doubt, indirectly for matches, kerosine oil, etc., but in the shape of a direct tax he is paying absolutely no tax beyond what is called the chowkimenials are much better off to-day than they were 20 or 30 years ago. Well, you may question it. I am speaking for my own province, and I can say without fear of contradiction that they are much better off to-day than they were 20 years back. If you go to their houses, you will find that, while, formerly they had only earthen vessels in which they used to cook and eat, now they have got utensils not of gold or silver, but of metal in all houses without an exception. I am talking of the Punjab and not Sind. In the Punjab, I think the labouring classes in the villages are much better off to-day than they were before and, if the salt tax has to be imposed, I see no reason why it should not be imposed. What will this tax come to? The 4½ crores are to be distributed over a population of 300 millions. It will be about 3 annas per head per annum. Well, I think one pice per head per mensem is not a very heavy tax about which we should grumble. But I do not think that a strong case has been made out for imposing this tax. Of course, a case may be made out and the time may come when it will have to be imposed. (An Honourable Member: "I hope not.") You may not be here to say "I hope not". Probably it will be our successors in this Hall who shall have to impose the tax if it is not imposed this year. Perhaps the time has not yet come for imposing the tax because the small deficit of 4½ crores can be met otherwise. The recommendations made by Lord Incheape's Committee have already suggested a reduction of 19½ crores, which will be effected gradually. It is possible that by a little retrenchment this small deficit may be easily met. I have not gone into the details but I have reason to believe that, if we were to put our heads together, we would be able to effect a retrenchment to the extent of 4½ crores and thus save the country, at least for the present, from any further taxation. In every country and at all times taxes have always been a very irksome thing for the poor. He has never liked to pay, in fact no one has ever liked to pay a tax. Therefore, I would suggest that, if possible, the salt tax should be avoided. One of the speakers made some remarks about income from agriculture being taxed. Well, you may tax the agriculturist if you will, but for what? For protecting the towns people? I accept the principle that the rich people should pay taxes. Let rich people pay taxes. But what rich people? The urban or rural? In villages if we were left to ourselves, we would be able to manage our affairs. We wouldn't require much of the police or army. It is the towns people who require the army and police not only for maintaining peace and order but also for protection from dacoits. Villagers can protect themselves not against Waziris and

The Honourable Mr. C. A. Innes: (a) It is impossible to say.

(b) In view of reply to (a), this question does not arise.

Sir Jamsetjee Jejeebhoy: May I ask what P. T. O. means?

The Honourable Mr. C. A. Innes: I do not know.

GOODS SUPPLIED BY BIRKMYRE BROTHERS.

578. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

- the description, quantity and rate of goods supplied to Government during 1922-23, by Messrs. Birkmyre Brothers, from their own mill, and also, separately, those supplied through them from outside,
- whether Messrs. Birkmyre Brothers were left the choice of supplying from their own mill, or whether Government gave the order to them after comparing the prices outside,
- if the firm were left the choice, before fixing their price for their goods whether the firm had invited tenders; and if so, how their price as finally charged compare with others,
- whether in the case of goods supplied from outside, before purchasing them, Messrs. Birkmyre Brothers invited tenders for those goods,
- whether Government still think of obtaining expert advice from Messrs. Birkmyre Brothers, and
- if the answer to (e) is in affirmative, will Government consider the advisability of fixing commission for expert advice only; and make purchases themselves directly from the open market, thus saving that portion of the purchasing commission now given to Messrs. Birkmyre Brothers?

Mr. A. H. Ley: (a) The statement desired by the Honourable Member involves details of over 400 items. A list of these items has been prepared and is available for inspection by the Honourable Member in my office.

(b) Messrs. Birkmyre Brothers had full discretion to supply the articles required from their own mill, or to obtain them from other suppliers, having due regard to the interests of Government.

(c) Government are unable to say whether in the case of every item to be supplied tenders were first called for by the firm. As they were not required to submit tenders received by them to Government, the information desired by the Honourable Member in the matter of comparative prices is not available.

(d) Messrs. Birkmyre Brothers usually invited tenders for orders entrusted to them as Government agents, but were not obliged to do so. They were at liberty to purchase as they thought best, their responsibility to Government being that of an agent to his principal.

(e) and (f) The Honourable Member is referred to the reply given on the 16th January last to part (c) of his question No. 100. Until the Indian Stores Department has been developed further, it is not proposed again to revise the contract now in force with this firm.

Mr. K. Ahmed: After the expiry of the contract of Messrs. Birkmyre Brothers, will the Government be pleased to try their level best to get a cheaper market through some other firm?

Mr. A. H. Ley: Government will consider the situation when the contract expires.

MR. V. SRINIVASA SASTRI'S WORKS ON COMMITTEES.

579. ***Maulvi Miyan Asjad-ul-lah:** Will the Government be pleased to state:

- On what committees did the Right Honourable Mr. V. Srinivasa Sastri serve since he became a Member of the late Imperial Legislative Council and of the Council of State?
- What total amount by way of travelling and other allowances has he drawn for serving on those committees?
- What amount has the Right Honourable Mr. V. Srinivasa Sastri drawn for his work in connection with (1) the League of Nations, (2) the Washington Conference, (3) his recent Dominion tour?
- Is it a fact that he took some one of his relations in the capacity of an assistant at the cost of the Government in his dominions tour? If so, in what capacity?
- Is it a fact that the Right Honourable Mr. V. Srinivasa Sastri has been appointed to the Royal Commission recently announced?

The Honourable Sir Malcolm Hailey: (a) and (b) The Honourable Member is referred to answer No. 40, which was given by Sir William Vincent to Mr. Reddi Garu's question on the same subject during the September Session, 1921.

(c) Mr. Sastri was not deputed to the League of Nations. For the Washington Conference the following terms were sanctioned:
Honorarium £200 per month.

Hire of Car.

Outfit allowance £40.

Daily allowance 10 shillings a day while on board ship.

First class travelling expenses including Pullmans and subsistence allowance of 10 dollars daily while in the United States plus the cost of rooms.

Entertainment allowance of £100.

The terms sanctioned for the recent Dominion tour were—
Honorarium £200 per month.

Entertainment allowance £100.

All travelling expenses.

Subsistence allowance at £3 per day in Canada and £2 per day elsewhere when not in receipt of Government hospitality plus the actual travelling expenses of a servant who received a subsistence allowance of half a guinea per day.

The accounts have not yet been finally settled but the aggregate amount drawn by Mr. Sastri was approximately Rs. 32,400.

(d) The answer is in the negative. The second part of the question does not therefore arise.

(e) Government have no information. The personnel of the Commission has not yet been settled.

Munshi Iswar Saran: Is Government aware that the Right Honourable Mr. Sastri gets Rs. 125 a month from the Servants of India Society, of which he is the President just now?

Mr. President: I do not think that is a matter "within the special cognisance" of any Member of the Government.

POLITICAL CONFERENCE HELD BY MRS. BESANT.

580. ***Maulvi Miyan Asjad-ul-lah:** Will the Government be pleased to state:

- Whether permission has been granted by the Government to hold the recent Political Conference of Mrs. Besant in the hall of the Eastern Hostel?
- If so, whether any rent has been charged by the Government for the use of the hall under reference?
- If so, what was the rent charged for the hall and the rooms occupied by the delegates who came to attend the Conference?
- How many delegates actually occupied these rooms?

Colonel Sir Sydney Crookshank: (1) Permission was asked for and given to use the hall for the Conference on the understanding that no residents of the hostel objected to the use of the hall for the purpose.

(2) No rent was charged by Government for the use of the hall.

(3) 9 rooms in the Eastern and Western Hostels were occupied by delegates who came to attend the Conference. A sum of Rs. 214-15-0 is the amount of rent charged for the use of these rooms.

(4) It is not known how many delegates occupied these rooms.

Mr. Jamnadas Dwarkadas: Sir, may I correct the question asked by the Honourable Member. He refers to the Conference of Mrs. Besant. My answer to him is that it was not a conference of Mrs. Besant. It was a conference of all those who believe in parliamentary action as against direct action, and it was presided over by Sir Tej Bahadur Sapru, the late Law Member of the Government of India.

RENTS OF OFFICIAL RESIDENCES.

581. ***Mr. W. M. Hussanally:** (a) With reference to answer to question 395, will Government please state why the percentage of rent payable by officers goes on decreasing as the salary goes on increasing?

(b) Do Fundamental Rules leave it to the option of Government to charge as rent any percentage of the salary up to 10 per cent. or do they require that 10 per cent. should be charged?

Colonel Sir Sydney Crookshank: (a) The Honourable Member is referred to the concluding portion of my reply to question 395, to which I may perhaps add in explanation that, although the basic accommodation is more or less the same for senior officers and junior officers alike, the additional or more commodious accommodation required by the former does not as

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a rule bear the same proportion as to cost as does the difference of salary of the former over the latter.

(b) The rules regulating rent are contained in Rule 45 of the Fundamental Rules, copies of which are available to Honourable Members in the Library of the House. Under the Fundamental Rules 10 per cent. is the minimum rent charge which can be levied when a Government residence is supplied both at Simla and Delhi unless the total of the combined rents for the period of occupation of each residence comes to less than 10 per cent. in which case the combined rents will be charged.

When a residence is supplied in one place only Government may fix on any percentage up to 10 per cent. of emoluments to be recovered as rent, or in the alternative charge the actual rent of the house if it happens to be less than 10 per cent. of the officer's emoluments.

INCOME AND EXPENDITURE OF NEW DELHI.

582. *Mr. W. M. Hussanally: (a) With reference to answer to question 396, is it a fact as stated at page 249 of the Inchcape Report that while the total income from Imperial New Delhi is 9 lakhs a year, the upkeep costs about 16½ lakhs a year?

(b) If so, what will be the total income and expenditure when all buildings and other works are completed, and what will be the net loss a year?

(c) Does this loss take account of the interest charges on capital borrowed and sunk?

(d) Do Government propose to revise rents and all other sources of revenue from New Delhi so as not only to make up this heavy annual deficit to the tax-payer but also to make up the interest charges and sinking fund upon the capital invested?

Colonel Sir Sydney Crookshank: (a) and (b). The figures of maintenance charges and receipts given in paragraph 2, page 249, of the Report of the Indian Retrenchment Committee relate to the conditions which will exist after completion of construction of the New Capital.

(c) Partially.

(d) It is not possible to say as the New Capital will not be completed and formally occupied until 1925-26.

RENTS OF QUARTERS IN DELHI.

583. *Mr. W. M. Hussanally: (a) With reference to answer to question 398, if full recovery of rent is not possible, how is it that Government neither gains or loses on these rents?

(b) Will the Government consider the question of altering the Fundamental Rules so as to recover a larger percentage with a view to save the tax-payer the heavy loss?

Colonel Sir Sydney Crookshank: (a) As implied in the reply which I gave to question No. 398, the recovery of rent sufficient to recoup Government from loss can only be effected if the house is in occupation at the full assessed rate throughout the whole year.

(b) Government do not propose to amend the Fundamental Rules in the manner suggested.

ELECTRICITY CHARGES IN DELHI.

584. *Mr. W. M. Hussanally: (a) With reference to answer to question 400, why is it that Government servants are charged only three annas per unit and others only 6 annas when the rate in the city is 8 annas?

(b) What is the cost of production including interest on capital invested, superintendence and all other charges?

Colonel Sir Sydney Crookshank: (a) The three-anna rate is a special provisional rate and is based on averages on which Government gets a reasonable margin of profit in supplying current. Private consumers are few in number at present and are charged at six annas a unit, the rate formerly charged by the local supply company, subject to certain conditions. Government do not wish to encourage those who are not Government servants to obtain their current from Government instead of from the local supply company.

(b) The information is being collected and will be given as soon as it is available.

Mr. W. M. Hussanally: Does the rate of three annas leave any margin of profit to the Government, and, if so, how much?

Colonel Sir Sydney Crookshank: In supplying current at the three-anna rate Government pays its expenses and has a small margin of profit, but I am not in a position to say exactly what profit is made. The cost of production for bulk supply is somewhere in the region of two annas per unit.

FURNITURE DEPARTMENT.

585. *Mr. W. M. Hussanally: With reference to answer to question 401, will Government please state if they propose to consider the question of transferring the Furniture Department to a private firm on certain conditions?

Colonel Sir Sydney Crookshank: No proposals in this direction are before Government and no recommendations to this effect have been made by the "House Committee" of the Legislatures. Enquiries will, however, be made from time to time as to whether any arrangements for private agency which do not cause discomfort or additional expense to tenants are feasible.

RENT OF BUNGALOWS IN DELHI.

586. *Mr. W. M. Hussanally: With reference to answer to question 402, will Government please state:

- the number of bungalows leased;
- what is the aggregate rent per year paid thereon;
- the aggregate rent recovered thereon;
- the total gain or loss;
- the names of officers occupying the same;
- do these officers pay rent for all the year round or only for the period of actual occupation?

Colonel Sir Sydney Crookshank: (a) 16 for migratory Officers.

(b) Rs. 39,492 which includes repair charges.

(c) Rs. 17,050.

(d) Loss per annum, Rs. 22,442 maximum. This is reduced by letting these bungalows in the hot weather when possible.

(e) See list below.*

(f) For period of actual occupation.

Names of occupants.

The Honourable Mian Sir M. Shafi.
The Honourable Sir B. Blackett.
The Honourable Rao Bahadur B. N. Sarma.
The Honourable Mr. C. A. Innes.
The Honourable Mr. A. C. Chatterjee.
The Honourable Sir W. M. Hailey.
Mr. B. N. Mitra.
The Honourable Mr. E. M. Cook.
The Honourable Sir A. Muddiman.
The Honourable Mr. D. Bray.
Mr. A. V. V. Aiyer.
Mr. E. W. Baker.
Mr. S. C. Gupta.
Mr. E. Burdon.
Mr. J. McGregor-Cheers.
Mr. P. P. Hypher.

INCOME OF IMPERIAL DELHI MUNICIPALITY.

587. *Mr. W. M. Hussanally: With reference to answer to question 403 (c) and (d), do Government propose to levy any such taxes; and come to some understanding with the Delhi Municipality?

The Honourable Mr. A. C. Chatterjee: The question of the most suitable form of local taxation to be imposed in the Imperial Delhi Municipal Area will be considered when that area is more fully developed than it is at present and acquires a permanent population for whose benefit the proceeds of such taxation will be expended.

MOSQUES IN DELHI.

588. *Mr. W. M. Hussanally: (a) With reference to question 421 (3), was it a condition of the land acquisition proceedings that the repairs to mosques would be allowed only if the architectural features conformed to those of the surroundings? If not, under what authority is this condition being insisted upon?

(b) Will Government please state what were the grounds of refusal for repairs to Kalali Bagh Mosque, vide Mr. Wazir Dyal, Executive Engineer, I Project Division, No. 5693, dated 22nd October, 1921?

(c) Have any such applications been refused, if so, will Government please place on the table a statement thereof showing the mosques, the names of applicants, the grounds of rejection of the application?

The Honourable Sir Malcolm Hailey: (a) The answer is in the negative. Government as owner of the land has an unquestionable right to lay down conditions for buildings on its property.

(b) The detailed layout of the locality was not ready in October 1921. Since then the details of the layout have been completed, and an estimate has been sanctioned for a compound wall which actually encloses more land for this mosque than was originally attached to it. This will tend to the convenience of the users of the mosque and of the residents in this locality.

(c) The correspondence is so ephemeral in character that Government do not think it would serve any useful purpose to prepare any such statement.

MOSQUE IN RAILWAY AREA, DELHI.

589. *Mr. W. M. Hussanally: With reference to Railway Board's letter No. 155-W.-23, dated the 6th March, 1923, to my address communicating to me answers to questions regarding questions relating to mosques within the new station area:

- (a) Will Government please order the publication of the answers?
- (b) With reference to answer (b) are Government aware that they would be wounding the feelings of an important section of the community by appropriating the court-yard as proposed?
- (c) Will they consider if there is no other way to save the court-yard of the mosque from the station platform?
- (d) With reference to answer 2 (a), what arrangements are to be made to allow ingress and egress to the mosque at all times and at the same time ensure public safety?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) Government recognise that objection would be expressed as to this course and regret that so far it has not been successful in persuading those concerned of the impossibility of adopting any alternative.

(c) Every possible way of doing this has been considered without finding any other solution of the matter.

(d) The arrangements cannot be foreshadowed until the new Railway Station is built.

Mr. K. Ahmed: Will the Government be pleased to state in what way they have tried their level best to come to some understanding with the Muhammadan community and to please them, on the one hand, and, on the other hand, how there is no other alternative that they can take in order to satisfy Muhammadan opinion?

The Honourable Sir Malcolm Hailey: As regards there being no other alternative, I can only say that the engineers who are designing the railway station have done their best to find one and that, if this court-yard were not taken, it would involve a diversion of the line at great additional cost.

As regards the negotiations, I believe that those who are concerned have been approached in the matter and it has been suggested to them that they may receive compensation in a form which would enable them to put up a building elsewhere. Unfortunately, those negotiations have not been successful.

Mr. K. Ahmed: Will the Government be pleased to lay on the table the correspondence that passed between the Engineer, the Chief Engineer, and the Government of India showing why it was impracticable for them to do the needful, as the Honourable Member says?

The Honourable Sir Malcolm Halley: I do not think any correspondence has taken place between the Executive Engineer and the Government of India.

Mr. K. Ahmed: May I ask how and under what circumstances the Government of India was in a position to come to that conclusion, as it has been answered in this Assembly that they could not adopt any other way but to adopt the principle they have adopted in order to save the courtyard of the mosque?

Mr. President: I think that is a little too complicated for a supplementary question.

Mr. K. Ahmed: Is the Honourable the Home Member satisfied that neither the Chief Commissioner nor the Government of India had any other alternative method open to them?

Mr. President: The Honourable Member is already aware that the Home Member is satisfied with the course taken.

VOTING BY NON-OFFICIALS.

590. ***Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state if it issues instructions to the non-official nominated Members of the Legislative Assembly regarding their voting and other matters?

The Honourable Sir Malcolm Halley: The reply is in the negative.

Rai Bahadur Bakshi Sohan Lal: Sir, does the Government issue instructions to official Members of the Assembly to give their votes in a particular manner?

The Honourable Sir Malcolm Halley: Official Members are, of course, under the ordinary obligation of officers of Government to support the Government to the best of their ability at all times and in all places.

Lala Girdharilal Agarwala: Does that apply to social legislation like Dr. Gour's Bill?

Mr. President: That question does not arise. The Honourable Member can study the division lists and satisfy himself?

QUESTION OF FREE VOTING.

591. ***Mr. Mohammad Faiyaz Khan:** (a) Is it true that one or two non-official nominated Members of the Legislative Assembly were brought to task by the heads of their District or Division on their return to their homes, for having given their votes against the Government wishes according to their free will?

(b) If the above statement is true, will the Government consider the question of stopping this practice and allow the non-official elected and nominated Members of the Assembly to vote according to their wishes and conscience?

The Honourable Sir Malcolm Halley: (a) Government have no information.

(b) No restrictions have been imposed by Government on the voting of non-official Members of the Assembly.

I should like to do it.

MILITARY PASSES ON RAILWAYS.

592. ***Mr. Mohammad Faiyaz Khan:** (a) Is it true that British soldiers while on leave are granted second class passes on the Indian Railways?

(b) If it is true, are the Indian soldiers too granted second class Railway passes?

Mr. E. Burdon: (a) No.

(b) The question does not arise.

BOMBING ON FRONTIER TRIBES.

593. ***Mr. Mohammad Faiyaz Khan:** What has been the cost of bombing the Frontier tribes by aeroplanes?

Mr. E. Burdon: The attention of the Honourable Member is invited to part (ii) of the reply given on the 28rd January to Mr. Kamat's question No. 258.

Mr. K. Ahmed: Is there any prospect of getting any profit out of this inhuman work of bombing people on the Frontier?

ARMS ACT EXEMPTIONS.

594. ***Mr. Mohammad Faiyaz Khan:** When is the Government going to allot a day for discussing the non-official Resolution regarding the life exemption from the operation of the Arms Act of the Members of Indian Legislature signed and sent by so many Members?

The Honourable Sir Malcolm Halley: The Government do not propose to allot any official time for the discussion of the Resolution referred to by the Honourable Member; but if the Government can give up any official time during the present Session they are prepared to allot such time for the discussion of one or two non-official Resolutions to be selected by a ballot held in the usual way.

THIRD CLASS BOOKING OFFICE AT SHOLAPUR.

595. ***Mr. B. S. Kamat:** (i) Will Government be pleased to state if it is contemplated by the Great Indian Peninsula Railway administration to abolish their third class passengers Booking office situated in Sholapur city in Bombay Presidency?

STATEMENT LAID ON THE TABLE.

Mr. E. Burdon: Sir, I lay on the table the information promised in reply to a question by Rai Bahadur Lachmi Prasad Sinha asked on the 9th March, 1923, regarding Select Committees on Bills and other Committees summoned during the period between the 7th October, 1922, and 6th January, 1923.

Statement showing the information promised in reply to a question by Rai Bahadur Lachmi Prasad Sinha asked on the 9th March, 1923, regarding Select Committees on Bills and other Committees summoned during the period between the 7th of October, 1922, and 6th January, 1923.

No.	Committee.	Department concerned.	Number of days on which the Committee held its meetings.	Amount spent.	REMARKS.
1	Joint Committee on the Indian Cotton Transport Bill.	I.—Joint or Select Legislative Department.	Committees on Bills. One day (27th November, 1922).	Rs. A. P. 1,843 9 0	
2	Joint Committee on the Indian Mines Bill.	Ditto.	Two days (6th and 8th January, 1923).	3,951 13 0	
3	Joint Committee on the Indian Soilers Bill.	Ditto.	One day (4th January, 1923).		
1	Standing Finance Committee.	II.—Other Finance Department.	Committees. Five days (4th to 8th December, 1922).	4,101 8 0	
2	Depreciation Fund Committee.	Railway Department.	120 days (25th October, 1922 to 28th February, 1923).	11,000 0 0	The Committee had to visit the headquarters and important workshop stations of each State owned railway in India and Burma.
3	Statistics Revision Committee.	Ditto.	123 days (9th October, 1922 to 28th February, 1923).	7,000 0 0 Approximately.	The Committee is still sitting.

UNSTARRED QUESTION AND ANSWER.

RESERVED ACCOMMODATION ON E. I. RAILWAY.

239. Rai Bahadur G. C. Nag: (a) Are the Government aware, (1) that the public experience difficulties in getting reserved accommodation at Howrah, on the Mail trains of the East Indian Railway, and (2) that applicants for reserved accommodation are not usually informed beforehand as to whether their applications will be complied with or not?
(b) Will Government kindly see to the removal of the above inconvenience?

Mr. C. D. M. Hindley: (a) As regards (1) the reply is in the negative. Accommodation on the mail trains is limited and if sufficient notice is not given it may happen that applicants are disappointed. As regards (2) Reserved accommodation by any particular train is not guaranteed, but if not available applicants are at once advised accordingly.

(b) In the circumstances no action is necessary on the part of Government.

Mahsuds, but against their own countrymen. So, if you propose to impose the tax on agriculturists, I welcome the proposal provided that you pay for your own protection and we pay for our own. There is no reason why you should benefit from our tax. Sir, I think it is the urban people who are not sufficiently taxed. Mr. Ginwala's experience in Burma may be otherwise. I am talking of another province. If you want to tax the agriculturists, do so by all means. But let that tax be spent for their benefit and on their protection. We do not want all the luxuries that the people in towns require, and, therefore, we should not be called upon to pay for them. I may inform my Honourable friend from Burma that rural people are doing much more than urban people are doing for the country and the empire. Here, seated on these Benches under fans or before fires, you make laws, and impose taxes. But who gives their blood, when it comes to that? The urban people do not go to the front. In fact, they have never gone yet. You say, tax the agriculturist. They give both money and blood, while you give only money and that too grudgingly and yet seated in this Hall you say "tax them." Is it meant that the poor people, the agriculturists, who are the backbone of the country and the Government, must pay and the urban people must spend on themselves. If this is the case, it is most unfair, and I think any Government in the country, so long as it is strong enough to rule in the country, will see that such an injustice is not done. (Mr. P. P. Ginwala: "Quite right, that is what I want.") Dr. Nand Lal has made a very uncompromising tirade against the expenditure on Waziristan. I think there are better heads than mine in this Assembly who will have their say on this important question, but I think I also may be allowed to say a word on the point. I am expecting another very learned attack from my friend, Mr. Rangachariar, if I can anticipate him aright. (Rao Bahadur T. Rangachariar: "I am not going to make an attack.") Well, I am glad to learn he is not going to make an attack. I may say that in discussing Waziristan and Mahsud territories, and the Afridis and other tribes, all the Honourable Members, seated in this Assembly Room, know very little about the difficulties of the Government in regard to the transborder area and tribes. Go there, live there for some time, and see how difficult the situation is. It is very easy to say: "Oh! what has the Government been able to do?" Does history tell us that any Government at any time was able to do more than the present Government has done? No. Even Nadir Shaw with his army of 40 lakhs had to pay a ransom for a woman who was kidnapped from his camp. (Mr. S. C. Shahani: "6.") I accept your figure. But had he not to pay the Afridis despite that big army? Their geographical position is such, it is so advantageous that they can defy any authority on this or on the other side of their country. Some people say, "Well, why don't you occupy that territory?" Good, occupy it. But, have you got manhood, have you got money to conquer them? India must fight for at least 25 years with all its manhood and with all its resources to occupy that country which is dry like a bone and where there does not grow even a blade of grass. If this is worth trying, do try and occupy that rugged stony country if you can. Then and then alone you will be able to protect effectively the inhabitants of North-West Frontier Province. Otherwise, you can protect them only partially and not completely from the depredations of their trans-frontier neighbours. You cannot defy nature. Their natural position is such, they are so placed geographically that you cannot do more than adopt protective measures to the best of your ability and there can be no denying the fact that the Government is doing its level best. As regards expenditure on

[Chaudhri Shahab-ud-Din.]

the North-West Frontier, some people have always criticised it in this Hall. For the last three years we have been hearing speeches from responsible and irresponsible persons on this subject. Government is accused of wasting money on the frontier. I think the Members of Government are a set of sane people, they have not lost their heads yet. They are doing simply what they are obliged to do and nothing more than that. We must give them credit for that. I do not think they have got any sympathy for the Mahsuds, Waziris and others. There is nothing in common between a barbarous Mahsud and a civilised Englishman. It is by sheer force of necessity and compulsion that they are doing what they are doing on the frontier. As regards tendering advice, sitting here in this Assembly room, we may give any advice, but the best advice can be given only by those who live on the spot or who have got some personal experience. By merely paying flying visit, as some of us did last year in motor cars under the protection of our army, one does not become an authority on frontier matters. You must go and live there on the spot and then, and then alone, you will be in a position to give a sound advice. The English officers, both civilian and military, are there on the spot. They know the position. The position is undoubtedly very difficult and it will be unjust and unfair on our part to criticise Government in season and out of season regarding the expenditure which is being incurred in protecting the five districts of the North-West Frontier Province from the raid of the trans-border marauders. With these remarks, Sir, I will sit down.

The Assembly then adjourned for Lunch till Twenty Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes to Three of the Clock. Mr. President was in the Chair.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, till a few minutes before lunch one thought that this year's budget debate was going to be dull and lifeless for intelligible reasons. The Inchcape cuts have extended far not only to nation building activities but even to the extent of cutting the ground from under our feet. The usual platitudes and stock figures and arguments freely indulged in on the budget field days are all upset this year. They are not available for debate purposes, because of several disturbing factors. We had recently the Railway debate, the Fiscal debate, and last but not least, the Inchcape Report. They are more or less stupefying, and are certainly upsetting worked up ideas. If Government had difficulty in dealing fully with Inchcape Committee's recommendations in 15 days, much more have been our difficulties who are supposed to be able to master this Inchcape Report in less than 72 hours. Therefore, there was a sort of masonic understanding in many parts of the House that instead of indulging in platitudes and generalities now we should let the debate proceed as best as it might and attack the real issues, the practical side of things, when opportunity comes later. I regret my Honourable friend Mr. Ginwala is not now here. He gave a new turn to the course of the debate. His breezy original view of things always set forward when it suits his purpose, was a sort of red-herring which must have been very helpful and will be helpful to the Honourable the Finance Member if the line is taken up by other Members.

I hope that will not be the case. Fairly revolutionary in his ideas, some of his ideals if he was serious would not commend themselves to many. On the question of taxing agricultural income,—(public memory is proverbially short)—we have to remember not only the last year's debate on the subject at which open official voting took place and when almost the last word was supposed to be said on the subject. It was agreed that agricultural incomes would not be interfered with, if it could be helped. That question has a long history behind it. When income-tax first came, it came because it was felt that agriculturists and people interested in land were practically the only people who were paying anything like appreciable tax. Business people, officers and people making income otherwise were fairly exempt. There was a tremendous uproar against the proposal for the tax in the early seventies of the last century, or even earlier. In Lord Northbrooke's time there was practically a pact that agricultural income would not be interfered with. Since then there have been developments. Agricultural produce, if it took the shape of any business proposition, has been taxed and this original understanding has been otherwise circumvented. I do not know whether Mr. Ginwala was airing his views about the necessity of having a Committee for considering taxing capabilities of the country. One could understand that if he did that in a direct fashion; but this is hardly the occasion to raise the question in this fashion. Mr. Ginwala pleaded that he did not believe in retrenchment beyond a certain limit. Quite so. But I do not know whether he is satisfied that that limit or anything like it has been reached. On the other hand, if without impertinence one may say so, the man in the street, because it is he who really counts in these matters, feels that nearly all that could be done has not been done by the Inchcape Committee for reasons that it is unnecessary to go into now. These are matters that one would like to leave over for another occasion in spite of Sir Malcolm Hailey's suggestion this morning that Budget debate would be a suitable occasion for the Inchcape Report. Mr. Ginwala rather forgot that he was responsible for the first step in the matter. It was on his initiative really that a retrenchment committee was resolved upon and came, and that credit is his. (Mr. P. P. Ginwala: "No, I never said so.") Well, I am corrected. It was Dr. Gour's Resolution. Anyway the Retrenchment Committee came and has done its work as well as could be expected under the circumstances, though labouring under restricted cultural outlook. That has been the advantage, and that has, to a certain extent, been the difficulty attendant on the budget preparation this year and consideration of the Budget. Naturally, on account of the Report coming in so late, Government could not give full effect to all that has been recommended and "lags," to give currency to a new budget time coin, have to be reckoned with. But one must not lag behind far too much, lest one should lag for all time.

We do not want to complain, but we cannot help feeling that if immediately after the Resolution was carried a Committee had been appointed and they had gone into work earlier, speedier determination of the whole issues would have been possible. It is undoubtedly a great advance to have military expenditure cut down even by 10 crores if and when they come. One difficulty that I feel with regard to questions of further taxation is this. We have not positive information of the cuts that are going to be accepted as a whole by those who have the last word on the subject. The recommendations of the Esher Committee and the Military Requirements Committee are still awaiting decision in England.

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There is a belief or impression abroad,—I hope it is entirely unfounded—that if this Assembly fails to do what is considered to be its duty either by voting for salt tax or otherwise balancing the budget, an awful catastrophe will follow in the shape of scrapping of some of the most important military recommendations of the Incheape Committee. I refuse to believe such a possibility. If they stand scrapped, why, the rest will naturally and necessarily fall through. From a telegram this morning, according to the *Times* there has been difference of opinion between Whitehall and Delhi regarding the Budget. Probably this has given colour to the belief to which I refer. But I am quite sure that there cannot be lack of vision or imagination to the extent that if the Assembly fails in the direction indicated anything like the apprehended catastrophe will follow. On the other hand our faith is large in statesmanship and also in the capacity of the Government here to make the two ends meet and to meet the purely temporary deficit that has arisen on account of the cuts not being given effect to in time. Possible alternative taxation has been referred to. We need not labour the points of taxation to-day. We shall do that in due time. Various proposals have been made; cotton export duty is one having regard particularly to what is happening in America now, import duty on silver, export duty on petrol, which at this very moment is finding disfavour in another Chamber, more import duty on the coarser counts of yarn, not much favoured as some others. Various other suggestions have been made which Government will have been to examine and may not again reject. They have fallen back on salt tax in connection with which some people would be inclined to raise constitutional questions whether the objections are not so much constitutional as those of expediency; after having done all that we did last year with regard to this tax and ultimately rejected it, is it fair to the Assembly to ask it to go over the whole ground again, particularly in view of the feeling prevailing in the country. The objection to it is not a matter merely of sentiments, nor is it pressed because the elections are ahead. For more solid reasons both sides of the House feel it their duty to oppose it. As was my duty to explain last year in the earlier part of my life I thought that salt duty was ideal, from the point of view of stock arguments that have always been advanced in its favour. I am therefore not troubled with difficulties that are generally attributed to those who oppose salt tax. I go upon the larger issues; now is not the time when further irritation should be caused in the country by what might easily be avoided if the civil and the military authorities will be more helpful. They have been undoubtedly more helpful than in other years. His Excellency the Commander-in-Chief has just come in. I should like to voice the unanimous sense of appreciation of this Assembly that he has assisted the Incheape Committee to an extent that has resulted in saving about 10 crores of rupees. Still one feels that more, even pending the final consideration of the question, may be done by which the immediate temporary difficulty may be tided over.

We have to make up 4½ crores. Supposing we could get between cuts that are on the waiting list, so to call them, an additional two crores and a half, further assistance may be had by disposal of portions of the tremendous amount of accumulated stores, with about 60 crores, I believe indicated by the Incheape Committee. Even if the apprehensions of the Incheape Committee are well founded that immediate sale on good terms cannot be secured, there might be some relief in this direction. Then there

are the large contingencies, allowances, supply and services and other heads under which some cuts would be possible even now. Even the accepted cuts do not happen to be reflected in the detailed statements before us, nor are our Fiscal and Railway Resolutions. Mr. Ginwala is always frank. He has at last spoken out his real mind about railway policy this morning. He was asked by Munshi Iswar Saran on which side he voted. He may have erred in voting. That does not matter. What he has given expression to will be a warning to all who hope that railway revenue will ever come to the rescue of the country. It cannot and I believe it ought not. Be that as it may, our Resolution was passed and steps are probably being taken to carry out the Railway Resolution and the Fiscal Resolution of the Assembly and some of the Incheape Committee's recommendations. Pending this it ought to be possible to defer some of the big railway expenses that have been again budgeted on insufficient materials. Last year either because they had no scheme ready or on account of other reasons Government could not spend the whole allotment for Railway rehabilitation and the balance is to be carried over to this year. Let it not be, for you do not know that you are better prepared this year. Then as Sir Basil Blackett told us, the whole of the interest charges provided last year were not incurred. Between the last year's savings on railway and the interest charges there was some saving. There may be things like that again and up the capacious sleeves of the Department there are possibly means out of which the present small and temporary difficulties of the country may be tided over.

Sir Basil has been complimented, and with that bait appeals have been made to him. I thought the Honourable the Leader of the House had effectively destroyed the microbe of eulogy in this House, earlier in the session. Though no healthy minded Englishman looks out for compliments or eulogiums on occasions of this kind, he is entitled to the consideration and courtesy due to a new comer, and we are prepared to give him more. But we also want him to examine over again this question of salt tax about which his veteran colleagues know what the country feels. We must see whether by further retrenchment and by some less objectionable taxation, (because no taxation can ever be wholly unobjectionable) and by disposing of some of the surplus stores, by selling and not mortgaging property in the sense that the Finance Member indicated, by means far short of cheating apprehended by him the would-be insolvent could get rid of his liabilities. All these different avenues have to be and could be yet exploited. It ought to be possible to find these 4½ crores; official negative cannot be the last word on the subject as we found last year. No one would be more pleased than myself to be associated in the evolution of this fourth red letter day in the short annals of the Assembly for participating in which the Finance Member has done me the honour of inviting the Budget must be balanced if possible. Coming to some of the details, we find that dealing with the military budget, more than general agreement has not been arrived at between the Government of India and the Home Authorities for which reason full effect has not been given with regard to the military units or parts of units that are to be dispensed with. We find also that there has been increases in the Royal Air Force which was probably necessary because on the efficiency of that force would depend the extent to which reduction in the other directions would be possible. Coming to the second item on page 5 of the military demand I notice and notice with regret that a reduction of 10 lakhs in the development of the territorial forces has been made. Well, Sir, when the Auxiliary and the Territorial forces

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question came up before the late Council, we were given definitely to understand that both would be treated alike and all possible efforts will be made to develop the territorial forces. So far as Bengal is concerned, I am afraid I cannot bear testimony to the rapidity of that development or to facilities for that purpose. We have a sorry tale to tell, which I would rather not go into now; but the materials are there. If means and will are forthcoming, much larger development would be possible and I do not think because of seeming failure here and of disappointment for the time being on the part of those who are organising these territorial units, there ought to be any lack of support such as reduction of funds would indicate.

The whole of the subject being still under consideration I do not think we could usefully take up the time of the House by going into details of the military budget beyond expressing the hope that either under the heads of motor transport and stores, or some of the costlier improvements in buildings or soldiers' comforts and such like things temporary and slight relief could not be given to tide over our passing difficulties.

With regard to the civil estimates the same remarks and request would apply. To a certain extent undoubtedly one has to wait for proper fruition of the recommendations in a legitimate way and things cannot be forced on. But here also, as a matter of extreme necessity, could we not appeal to the authorities to find about a crore or so out of the three crores which have to remain on the waiting list? If this is achieved and if the small taxes in the other directions that have been indicated are resorted to it would be possible to tide over the difficulties.

I am sorry that, before I left the military budget, I did not refer to what many of us have felt. In addition to the training colleges and schools that have been suggested, it is worth while considering whether special classes in selected general schools could not be opened, as has been done in England, with a view of providing at a comparatively small cost, at a large number of centres, materials for the special schools and colleges which cannot come to every body's front door. This has been found practicable in England and with very small expenditure and a great deal of capable and sympathetic organization it would be possible to work out a similar scheme here.

These are some of the observations that strike one on a general view of things and without closer study of the Inchcape Report for which there has been no time. For greater and detailed consideration of what really should be done for tiding over the difficulties which the Assembly must entirely set its mind upon, we must wait for another opportunity. In the meantime I think it is our duty to let Government know that in both sides of the House the feeling against the salt tax is strong and it would be as well to think of the second or even the third line of defence so that deficits may be covered.

Rao Bahadur T. Rangachariar: (Madras City: Non-Muhammadian Urban): On an occasion like this it used to be the fashion to review the general administration of the country in all its aspects. But time being so short it is hardly worth while attempting such a huge task, and I therefore, Sir, propose to offer a few remarks on what impressions or depressions have been created in my mind with reference to the budget of this year. Sir, for the last two years it has been our fate to take depressions from the

presentation of the budgets, and it is the good fortune of my Honourable friend, Sir Basil Blackett, to give us more impressions than depressions. He comes at a time when our finances are attempting to steady themselves, thanks to the efforts made by this Assembly, the constant and determined attempt to bring down the expenditure of the country. Sir, there were not wanting those who were ready to tell His Excellency the Viceroy that the Assembly had misbehaved in this matter, that he must restore the grants which had been cut down and that the Government could not afford to follow the advice given by the Assembly. I hope, Sir, that the eminent people who offered that advice to His Excellency the Viceroy are now satisfied that the Assembly were perfectly justified in taking the stand which they did last year. It is a matter for great congratulation, indeed it is a matter for thankfulness on the part of the whole country that we had a strong Committee to sit on the expenditure of India presided over by such a great statesman as Lord Inchcape. He was assisted by eminent persons, both Indians and Europeans, who approached the question with a fresh mind; and the bottom limit which we were told last year had been reached in many a Department proves indeed to have a still deeper bottom to which you can go. Sir, the Honourable the Finance Member, unlike his predecessor who was drafted into this Department from outside the Civil Service, Sir Guy Fleetwood-Wilson, has youth on his side, unimpaired health and an equally well-established reputation for ability. With all that, from his reference to India as his native land, I gather that he is imbued with a love of the country, a love of the heat of this country and a love of the people of this country. Sir, imbued with that love and the times being so propitious, I am sure, with two good monsoons behind and I hope with two good monsoons in front of him, he will have a better tale to unfold at the next budget and the country will be relieved of some portion of the burden of taxation which we unfortunately had to impose upon it during the last two years. Sir, he may also congratulate himself that he has not got in this Assembly—with all respect to the Members present—to meet the incisive eloquence and informed criticism of a Gokhale, or the torrential eloquence of Pandit Madan Mohan Malaviya, or the emphatic utterances of Mr. Vijayaraghavachariar, or the journalistic thunder of Sir Surendra Nath Banerjee, which his predecessor had to face.

Sir, we have the year 1922-23 to review. So far as expectations went, I think they have been pretty fairly realized except in two or three matters which are rather striking. On the income side it is a grievous disappointment that Bengal has behaved so shabbily as it has done in the matter of income-tax. We have been told that we are to pay her $3\frac{1}{2}$ crores in the shape of income-tax and not to collect from her; and I think that $3\frac{1}{2}$ crores does not all represent the refund amount; it was really two crores which actually had to be refunded. Anyway our expectations fall short by $3\frac{1}{2}$ crores in the matter of receipts. In the matter of estimates of expenditure, it is when we come to the Military Department presided over by His Excellency the Commander-in-Chief that we find estimates made which have proved far out of the truth. For instance, in the matter of demobilization charges—I do not know whether His Excellency the Commander-in-Chief is responsible or the Secretary of State—the estimate of 52 lakhs has gone up to 280 lakhs. I do not understand why there should be such wide divergence between the estimate and the actual. So also in the matter of the established military charges; the actual expenditure is Rs. $4\frac{1}{2}$ crores less than the estimated expenditure on the established charges. We were told last year that they had to frame such high estimates

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because of the rise in prices, but as a matter of fact the prices were falling last year, and when they framed such high estimates, the actual expenditure, when they based such estimates on high prices, their actuals have come down by Rs. 4½ crores in the matter of the established charges. Reviewing the condition of the country during the passing year, we cannot congratulate ourselves that trade has very much revived. Wherever you go, if you meet traders they speak of the depressed condition in the trades. Capital is very difficult to get; the rates of interest, both the bank rates and those in the market, continue to be high. General prosperity is very low. Railway earnings and the Postal and Telegraph Department tell their own tale in that direction, and most important items stand neglected; we have not been able to show any achievements in the nation-building Departments. There are sources of wealth which have not been tapped; we have forests and mineral wealth in the country for which Indians have not been educated and trained to work them up and bring out the wealth for the use of the country. The much-talked of school of mines at Dhanbad has still to come into existence, and I see that the Rerenchment Committee have proposed that that scheme should be held in abeyance for another two years; and I do not know that the wealth of the country has increased during the current year. It is true we are eking out a living existence. But we cannot show that any of our scholars have added to the literature of the world. None of our chemists, none of our inventions can be said to have added to the reputation of this country; so also regarding education in every direction, we cannot lay much flattering unction to our souls and say that our country has shown its strength in these matters; and with the deep insight which our Honourable Finance Member must now have got into the finances of this country, I had expected in his speech that he would have dealt with the economic condition of the country what story the figures tell him as to the economic condition of the ryot in this country and of the middle class people in this country; I had expected some criticism on his part, with the aid of the figures which he must have gone through very carefully. I suppose the speech on the Budget is not the occasion for any such revelation or disclosure to this Assembly as to what impressions in that direction they made on his mind. But we would have welcomed any such criticisms on his part as being informing and useful for us to turn our activities in the direction which he may have indicated. Sir, I had thought we had sung the last song in connection with military expenditure last year, but I am sorry to say that the time has not come for us to cease to sing in that direction. My Honourable friends speaking both this morning and this afternoon have been congratulating themselves too soon, I think, on the effects on the military expenditure so far achieved, on the result so far achieved. Sir, we were told last year that the time had not yet come, at any rate last year was not the time for making reductions because there was the Moplah trouble, that there was a doubtful factor in the interior conditions in the country, that the ink of the Afghanistan Treaty was not yet dry, that there was rise in prices, and various other doubtful interior and exterior factors, which induced His Excellency the Commander-in-Chief to take the view that the time was not yet for diminishing the strength of the units or the number of the fighting units in this country, but I hope His Excellency has now satisfied himself that he was rather too pessimistic in his estimation of the situation of the country. The country has behaved magnificently during the year, and the exterior borders have not given as much trouble as they used to, thanks to the efforts, the strenuous efforts

made by the Chief Commissioner of the North-West Frontier Province during the last year. I wish such efforts had been made in previous year; in fact if action had been taken in previous years in the direction in which Sir John Maffey took action, last year, the conditions in the frontier would have been much better. It was due to the neglect of the internal condition of the districts and of the people therein due to the vacillating policy which was adopted, due also to the policy of petting and fondling with the tribes across, that one heard of the unfortunate conditions in the North-West Frontier districts. But things being so much better than they were, I hope His Excellency the Commander-in-Chief will see his way to accepting the recommendations and to strongly recommend the adoption of the recommendations made by the Inchcape Committee with reference to the fighting units in the military forces of this country. I find, Sir, that there is a fatal fascination for No. 62 in the Military Department. We began our career with 62 crores in 1921-22. We were told last year to budget for, or rather to agree to the allotment of 62 crores last year, although it was really 67.75 crores, and this year also we are told that the allotment is 62 crores! It is rather a fatal number, and I hope His Excellency the Commander-in-Chief will see his way to consenting to some other figure than 62, and I hope to be able to satisfy him that it is quite possible to adopt a much lesser figure than 62 (*A Voice: "32."*) Sir, if you compare the military expenditure in this country and either the gross revenue of the whole country or the net receipts or the gross revenue or the net receipts of the Central Government, the burden of expenditure is nothing which can compare favourably with any other country in the world. It was justified last year, as I have stated already, on false grounds. As a matter of fact, far from there having been a rise in prices, there was a fall in prices, so much so that the estimates fell by 190 lakhs,—the actuals fell by 190 lakhs less than the estimates for stores and stocks. Now Waziristan, after all, accounts only 3.85 crores. What about the rest? The rest is concerned in what is known as the established military charges. It is the established military charges that we should seek for further reduction in. Excluding the two uncertain items of the discharge of surplus officers and Waziristan, let us examine the figures. Sir, out of a recommendation for reduction made by the Inchcape Committee of 13.95 crores, I find the military authorities have adopted only 5.75 crores for the next year's Budget. If the civil portion can adopt 6.6 crores out of 8.5 crores recommended, if the non-military portion can adopt 6.6 crores out of 8.5 crores recommended, why should the military not take off more for the coming year? If we examine it more closely, we find that in the matter of established charges there has really been no change effected in the coming year. In 1922-23 the established charges were budgeted for at 65.9 crores, whereas the actual was only 60.59, and for the year 1923-24, for established charges we are budgeting for 59.68—a difference of 90 lakhs. This difference of 90 lakhs is made up of, and in fact is more than made up by reductions in the marine and military works. Marine accounts for 62 lakhs, and the military accounts for 70 lakhs, so that the two together come to 132 lakhs, whereas in the established charges there is only a reduction of 90 lakhs. So that when you come to think of it, there has really been no effort made in reducing the established military charges. It is in that direction that reduction has to be made. Unless substantial reductions are made in the established military charges, the recurring charges are bound to continue. Waziristan is not going to be an eternal burden. The discharge of surplus officers is not going to be an ever-lasting question, but the established military charges are going to

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be an eternal burden, and it is there recuts have to be made; it is there cuts have been recommended, and it is there, I am sorry to see, no effort has been made to reduce the expenditure. That is why I stated that my Honourable friends who have been congratulating His Excellency the Commander-in-Chief have been doing so too soon. Sir, reductions made are due to automatic causes, such as fall in prices, windfalls, namely, large stock of stores on hand due to war and other things. Such reductions are really no reductions for which we can take credit. Reductions due to reduced activities and real economies are the reductions we have to look for. Now let us see if you have done so. Have the number of Units been reduced? Has the strength of the Units been reduced? Has the proportion of officers to men been reduced? Have the command charges and those of the District Commands been reduced? Has there been any economy effected in transport? Has there been any change in the system of contracts by which you really introduce economy in the purchase of things? Has there been the substitution of the Indian agency for the more costly British agency? And has there been any real change of system? It is in these directions that we have to look for real reductions, and when I look for changes in these directions, I fail to trace any change—it may be my ignorance of the figures—but I fail to see any change in any of these directions. The figures do not disclose, nor do the marginal notes, which also I carefully searched, any such tendency. It may be, as I said, my ignorance of the figures, but I tried my best in the last two days in the spare hours I could get to find improvement in these directions, but I regret to say my search has been in vain. Sir, much also depends upon the determination of the policies, both as regards the frontier and as regards the Indianization of the services. These are matters, I know, in which His Excellency the Commander-in-Chief has not a free hand, nor for the matter of fact the Government of India—I am sure these matters will be dictated from elsewhere, but I hope the Government of India and His Excellency the Commander-in-Chief will put their heavy pressure in one direction and see that the country is relieved substantially in these directions.

Now I think the time has come for the Honourable the Finance Member, like the Chancellor of Exchequer in England to say; I will give you only so much, say 40 per cent. of our net revenue. I do not object to it. I daresay it will be admitted as a high percentage, but let it be 40 per cent. of our net revenues which we should give for the military and they must make their budget according to that. (Mr. Jamnadas Dvarkadas: "The Brussels Conference recommended 20 per cent.") I know, but I am prepared to go up to 40 per cent. Let the military be satisfied. I think the time has come for some such thing to be done, not by this Assembly because we are powerless in the matter, but I hope the Government of India will tell the military authorities 'thus far and no further and you must make your budget according to that amount.' That was done by the Geddes Committee.

Mr. President: Will the Honourable Member bring his remarks to a close?

Rao Bahadur T. Rangachariar: I will, Sir, in a moment. There are various other matters of policy which this Assembly has now settled, for instance the Fiscal policy, the railway management and so on. This leads me to another important matter. What are the Indian Members

of the Executive Council doing? Three of them there are. What portfolios are they in charge of? Are they going to be entrusted with the carrying out of any of these broad policies which the Assembly has laid down or is it to be left to be carried out by the conservative section in the Government of India? I wish, Sir, that an ambitious Indian will take charge of one of these important departments and see that the policy laid down by this Assembly is really carried out, so that it may not be said, as was said by Mr. Ginwala 'Oh, the railway management is going to be a failure.' Well, place it in the hands of an ambitious, youthful Member who will really put his heart and soul into it. I promise Mr. Ginwala that it will be a source of profit and the crores and crores which we have sunk in railways will be redeemed for the country. As I said already, Sir, this is a tempting occasion on which you can indulge in all sorts of things, but as I said the time is too short. I would therefore once more point out that we really need have no deficits. In the matter of Railways, the Retrenchment Committee have suggested a reduction of 4.59, and I see that the Railway Budget is taking credit only for 3 crores this year. What about transferring redemption of annuities to the capital amount? That will give you at least a crore to your credit. That may be transferred excluding the interest. Why should it not be added and also various other things such as the Secretary of State's expenditure in England? I see the Retrenchment Committee have advised considerable reduction in the Secretary of State's establishment. Why should it not be carried out this year? So also there are various other ways in which the 4 crores can be got, the military after giving up the figures of 62 can come to 58 or 59 or even 60, so that it will give us another 2 crores. The Railways can give us one crore, and the other civil establishments can give us another crore. I therefore think that we can certainly make up our budget without any deficit, and if really there is a deficit of one crore or more, by all means put an export duty on petrol. Make it that way instead of making the poor people pay, as my friend Mr. Ginwala suggested. I leave the landholders in the hands of my friend, Mr. Seshagiri Ayyar, against Mr. Ginwala. But I will say only this. Does he know that the Madras Government is carried on by the revenue paid by the landholders? Out of the 12 and odd crores they spend, nearly 9 crores come out of the landholders. Does he know that when other people pay 3 or 4 annas, as income-tax, we pay 9 annas in the rupee as tax? Let him take lessons in that direction instead of being envious of landholders. I can advise him to safely entrust his savings to me for investment in lands and I will render a true account to him and he will find that he will get less than 2 per cent.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I congratulate the Honourable Sir Basil Blackett and his staff for production of the insolvency budget for the ensuing year with great lucidity and clearness. Congratulations are no less due to the Honourable Sir Malcolm Hailey for his substantial help and guidance.

Poor India shall ever remain grateful to the Right Honourable Lord Inchcape and every member of His Lordship's Committee for their Herculean labours in the line of retrenchment in her abnormal expenditure especially the military.

They rightly say "the expenditure which has been incurred in the past may have been inevitable, but the question is whether India can afford to maintain military expenditure on the present scale as an insurance against

[Lala Girdharilal Agarwala.]

future eventualities." "In our opinion," they say, "the repeated huge deficits of the last few years in spite of imposition of heavy new taxation have made it abundantly clear that India cannot afford this expenditure. So long as peace conditions obtained the first essential is for India to balance her budget and this can only be secured by a very substantial reduction in the military estimates."

It is surprising to find that in the British Infantry the peace strength of the army is more than the war strength. On comparing the figures we find in 1913-14 British officers 28, British other ranks 1,004, followers 37, total 1,059, while in 1922-23 we find the same number of British officers, 1,012 British other ranks, 45 Indian ranks, 73 followers, total 1,158.

The proposed strength for 1923-24 shows that while only 62 Indian officers with King's Commission in fighting units, cavalry, infantry and pioneers are to be appointed, the number of British officers is 3,324. Out of a total of 6,828 officers holding the King's Commission, not more than 66 places are reserved for Indians. Artillery, engineers, signals, armoured car companies are all barred against Indian commissioned officers.

The commissioned officer of the Royal Air Force 227, military training and education 222, remounts 21, even ordnance and clothing 100, veterinary 38, medical 780, supplies 200, mechanical transport 141, animal transport 63, army headquarters, headquarters of command, district and brigades, embarkation staff and railway transport staff 518 are all Europeans. May I ask why are not any Indians employed for these posts even now?

The reduced budgeted military expenditure still stands at the appalling figure of over 65 crores of which it is said 3 crores might perhaps be realised.

Rs. 4-25 crores have been allowed for special expenditure over Waziristan. India cannot afford the luxury of Waziristan any longer. The Government policy requires complete overhauling. India is groaning under the weight of heavy taxation and while in other countries taxes, duties and railway rates are on the decline, our country has unfortunately to double the duty on salt, what to say of reduction. India is being crushed under the steam hammer of local, provincial and Imperial taxation and instead of any relief being offered, it is proposed to raise a rupee loan of 25 crores, and a sterling loan of 15 million pounds.

His Excellency the Viceroy has taken the lead in economy by retrenching his own body guards and band thus saving Rs. 82,000. Thanks to His Excellency. In my province the Honourable the Ministers and the Deputy President of the Legislative Council, all Indians, have agreed to make substantial reductions in their salaries, and the Indian Member of the Executive Council of my provinces has agreed to forego his salary altogether. Their self-sacrifice is commendable.

The current year's deficit in the Central Government alone in India stands at the appalling figure of 17½ crores as compared with the British finances where revenue exceeds expenditure by 86 million pounds sterling. The bad financial condition of India and the present policy of the Government are the cause of heavy taxation which lead to widespread discontent in the country. I suggest export duty on petrol, instead of doubling the duty on salt, increase of duty on salt will be greatly resented in the country.

Mr. W. S. J. Willson (Bengal: European): Sir, my feeling upon the conclusion of the Honourable the Finance Member's speech was one of

profound satisfaction that the position was no worse. We had known all along that revenue was not coming up to expectation and we had known that expenses had been largely exceeded. We have now piled up the high debt of 100 crores, and I quite agree with the Finance Member that the time has come when we must balance our budget. We all know that money at 5 per cent. interest only doubles itself in 13 years and a fraction and we have been piling up this debt from the beginning for five years out of that time. It was, therefore, a great satisfaction to me to find that he was attempting to balance his budget by genuine retrenchment and had only suggested one extra tax. I am sure he will find the House will support him through thick and thin in all his efforts at retrenchment, and having recently had this very wonderful report of the Inchcape Committee in our hands, the first thing that strikes us all is that we must look to our biggest spending department for our biggest retrenchment. I do not think anybody can read this through without realising that it took to get this retrenchment not what Mr. Rangachariar called a great statesman but one of the finest commercial brains in the British Empire. These retrenchments are suggested by a business Committee and therefore they are entitled in every way to our support. Sir Basil Blackett said that he would like to see the saving habit finding its way into an investment habit. My Honourable colleague, Mr. Darcy Lindsay, in some very good work which he did in propaganda in war time found in selling his post office cash certificates that there was a feeling against them on the part of the public because they were issued in single pieces of paper which were apt to get lost. I therefore make to Sir Basil Blackett a present of the suggestion that, if he can explore that matter and possibly issue cash certificates in the form of either a post office savings bank book which again might be deposited at the post office in exchange for a metal token he might be able to arrive at a higher percentage of investments on the part of the public. I regret very much, Sir, as one always must that he has found no means of reducing the taxation. Now, of course, we know that, when you have to balance the budget, that is the first duty, and until it is done, we cannot come and ask for grants for the nation-building departments. But I feel that I may ask for, as I am directed by my constituents to ask for, some consideration for the taxes on food-stuffs which press very hardly upon the public. That matter was dealt with this morning by Mr. Spence who pointed out very rightly that the public would not buy tinned food-stuffs and bottled food-stuffs imported into this country if fresh equivalents could be got here and I know of no more unpopular tax than the tax on food.

Another point that I am strongly to press for is for some consideration in regard to the motor taxes. That was also dealt with by Mr. Spence and as Sir Basil Blackett used the expression "so-called luxuries"—I think he does not call them luxuries and it is unnecessary to argue that point. But I do wish to point out that we have first of all to pay our income-tax and then to turn round and tax us on the motor cars which are used as a means to go to our offices and business to earn that income is extremely hard. Motors are a necessity, or firms would not, as they do, provide several for their staff to save their time and expedite their affairs. Sir Basil Blackett gave a figure. He said that he found imports last year were double the year before. The figures I have are only for 10 months of the year but they were 3,658 last year against 2,895 the year before.

The point I wish to make there is that the year before, 1921-22, was an extremely bad year and therefore, even if his figures are correct (which

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of course they ought to be), that the import has doubled, it in no sense shows that the taxes are not pressing hardly on the trade. This 30 per cent. tax has had the further effect of reducing the import of British cars down to 10 per cent. of the total, it was 24 per cent. the year before. Now, the Customs House is supposed to be one of our commercial departments but it does not seem to me to be a very sound commercial principle to overcharge the cars which burn the most petrol, which pays you 6 annas a gallon and which used the biggest tyres which also produce most revenue. The tax has, in the opinion of the trade, directly resulted in making a present of the highest percentage of the trade to Canada and America and I am not aware what Canada or America have done for India that we should assist them to acquire the trade at the expense of the United Kingdom. The taxes have also pressed very hardly on the taxi cab industry and have reduced it to an absolutely unpayable proposition. The motor car firms are losing enormously. One firm in Calcutta lost 14 lakhs last year. Another one lost 8 lakhs and another 4 lakhs. They are losing all round and you have not to go very far from this House itself, to find a notable example in Delhi. On the question of petrol taxes, Sir, I am bound to agree with other speakers who have said that we would willingly see a production tax put on if thereby we can get some relief for the petrol tax we have to pay as consumers. On the whole, Sir, there is this one point I did not notice in the new Finance Member any particular sympathy towards this particular trade. But I hope the facts which I have now put before him will elicit his sympathy, and I hope he would give his consideration to those points, because I am convinced that it will not cause him loss of revenue which he is not in a position to face. I firmly believe that with this encouragement given to the trade, the added trade will more than compensate for a loss of percentage of tax.

Mr. K. Muppi Nayar (West Coast and Nilgiris: Non-Muhammadian Rural): Mr. President, I have heard it said that a budget speech resembles, what we call in my part of the country, *aviyil*—a preparation of all kinds of vegetables cooked together. I, however, propose to make only a few general remarks on our position as revealed by the Honourable the Finance Member on the 1st. I listened to his speech with mingled feelings—with feelings of pride, gladness, and some amount of satisfaction, at his courage, frankness, optimism and his endeavours to meet the present situation, and with feelings of disappointment, pain, and regret at his results and conclusions. None in this House, and largely outside it for the matter of that, will grudge him the sympathy that he so richly deserves on the sudden and almost superhuman uphill task with which he has been confronted almost in the very beginning of his present official career. And, if some of us on this side of the House fail to rise up to his expectations or to wholly endorse his conclusions, I am sure we can count on our Honourable colleague's viewing our position with equal sympathy. Sir, I agree there is little use in referring to the irreparable past. One could only wonder how the Government could have been in the past so utterly negligent of the future of this country, how they could have got into such a mire that dragged them deeper and deeper into it as year after year passed by. Only if wisdom had dictated a few years back some of the present reforms, how much happier would have been our position. But, there is no use crying over spilt milk. The fact remains that continuous years of annual deficit, of over-estimating our revenues and under-estimating our expenditure, of neglect in necessary economy and of large borrowings have stranded us on

the verge of insolvency which the Honourable the Finance Member warns us against. Our expenditure has gone up and our national debt has increased in spite of heavy additional taxation and we are now trying to see how we can get back to a place of comparative safety. Our grateful thanks are due to Lord Incheape and his Committee, who have acted as our guides in cutting a path, for their valuable suggestions in the matter of retrenchment, to the departments concerned for realising at least now the absolute necessity of agreeing to cuts and to the Finance Department for so quickly translating into action some of the proposed reforms.

But, in spite of all efforts what is our actual position. All the life of this House we allowed fresh taxation, and we had been a set of Micawbers. This year at least I hoped that we might approach the electorate saying, "We have made no fresh call on your purse." In fact, I hoped we might have shown them something on our credit side, something in the way of reduction in Provincial contributions which must indirectly benefit the people. On this subject, the Honourable the Finance Member first calls on the Provinces to exhaust all their resources; but, so far as Madras is concerned, no one will say that she has failed to do her best, not only now, but all along. He then says that it has been suggested to him that the Provinces are copying certain charitable bodies which make a habit of showing an annual deficit in order to make their supporters come to their rescue. But cannot the same argument be used by the Provinces? Cannot the Central Government be equally strongly accused of taking a leaf out of the book of the institutions referred to, so that the Provincial contributions, or the charities from the Provinces, may be continued? Why, I have heard it suggested that the present taxation proposal is only a false alarm and that the deficit is unreal—one which is made out that we may not cry out for any reduction in taxation or worry the Government with any of our schemes. But to come back to the point, as a matter of fact, not only has my second hope been most regretfully unfulfilled but even the former that of no fresh taxation this year has been shattered. We are actually asked to raise fresh taxation to the extent of 4½ crores and this on salt. Are we not already in darkness? Why then add to it? I say to the Honourable the Finance Member, "Let there be that one last, long and strong pull you demand, but from the heavy expenditure branches." If, even after that, taxation is found necessary, well, then, this House must co-operate with the Government. But do not make the test so hard for us. Let us tax something that is not quite so essential as salt, something which will not tell on man and beast equally, something which will not wound quite so much the popular feeling. Let there be no mistake. The non-co-operators, who are to be our rivals at the ensuing elections, are only doing this, we are told, to thwart the Government's efforts. They wish to come here with no good intentions towards the Government, and, in my opinion, they are not coming here in the best interests of this country. Let us not anyway present them now with a serious and effective weapon to attack our friends. One word more and I have done. If the Honourable the Finance Member and we put our heads together and avoid any fresh taxation and also at the same time manage to give something to the stricken Provinces, that, Sir, will be the fourth red letter day for which he is looking out.

Rai Bahadur Pandit J. L. Bhargava (Ambala Division: Non-Muhammadian): Sir, it would be an act of ungrateful stinginess if the Assembly withholds its acknowledgments to the Finance Member for the able and lucid manner in which he has presented the budget. It would at the same

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time be an act of unpardonable pusillanimity if the Assembly agrees to give the last and the strong pull appealed for, taking all the angularities of the budget rounded off by the pleasant suavity of the Finance Member.

Great hopes were raised in the country that the trident of Lord Inchcape will mutilate the demon of military expenditure and prune out the fungous growth of civil expenditure thereby bringing the financial position of India to a healthy level.

The appointment of such a renowned financial expert as we possess in the person of our distinguished Finance Member to the Finance Portfolio of the Government of India promised to us the solution of the currency and exchange difficulties and the rehabilitation of Indian finances on a sound and firm basis.

It must, however, speaking in the language of plainness itself, be stated that the hopes have received a shock and the rock of military expenditure has proved too adamant and hard to have been sufficiently impressed even by the sharp axe of Lord Inchcape and the firm grasp of our Finance Member.

In fact, the axiomatic truth that the straight line represents the least distance between two given points cannot be circumvented and howsoever clever the doctor you may engage, whatever expedients you may employ to put off the evil day, unless the root causes are removed the disease will grow desperate and desperate and end fatally.

The present exorbitant expenditure in the administration of India is bound to continue as long as the present system of administration continues and full responsible Government is not granted to the country and the services are not fully Indianised. The military expenditure alone absorbs about half the revenues. In the civil expenditure also, on account of the alleged indispensableness of the non-Indian agency the services are very highly paid and despite this the Royal Commission on services is thrust upon India in defiance of the wishes of the Legislature and perhaps of the Government of India.

This costly administration is popularly regarded as the *sine qua non* of bureaucratic rule. When the relations between the Government and the people are strained and both do not see eye to eye the employment of C. I. D. establishment on extensive scales and the engagement of military and police forces on a scale more excessive than a popular and national Government need employ are necessary consequences.

In spite of some superficial cuts at the hands of Lord Inchcape's Committee on the military expenditure the public believes that the military expenditure is much more than a national Government need incur in the interests of India and if the Indian Finances are to return to normal and healthy conditions the military expenditure must be considerably reduced.

It is not at all strange to find in the budget that the revenues from the railways have not come up to the estimates. An abnormal rise in railway fares and freights does not connote corresponding or necessarily much increased income.

The public expected that the fares and freights in railways and the postal and telegraphic charges would be reduced but they have been sorely disappointed.

The present deficit in the budget is very deplorable but the remedy suggested is much more so.

The doubling of the salt tax involves the taxation of the poor people in a commodity of their daily use.

To deprive or lessen the supply to the poor of the only thing other than grain consumed by him, i.e., salt which is all by way of vegetables, condiments, *dal* and meat which he uses with his bread is to inflict an injury more real and substantial than that which those to whom the price of salt in their dietary is a matter of no moment can imagine. It is generally said that this House is not the true representative of the masses because the franchise is so limited. I would ask the House if it will be justified in taxing the poor who are unrepresented in that sense in this Assembly. Will the Assembly by consenting to such taxation not be pleading guilty to the charge that it does not look properly to the interests of the poor masses of the country? I would fain be charged with pusillanimity at not facing the issue in the face rather than be credited with gallantry by injuring my poor countrymen at their back.

If the deficit cannot be met in any way other than fresh taxation, tax the rich or the middle classes.

I am therefore strongly against the doubling of the salt tax.

As regards exchange I would press upon the attention of the Government that half remedies and make-shifts will not do.

We all remember the capricious changes in the exchange last year, how it ruined trade in India and eluded all calculations of the commercial classes doing incalculable injury to Indian finances and credit. If the question is not seriously tackled and solved under the able guidance of our present Finance Member one may have nothing but disappointment for its solution in the near future. I would therefore submit with all the emphasis at my command that this question may not be indefinitely postponed but immediately tried to be solved.

The only other subject which I would touch in the short time at my disposal is Provincial contribution.

Sir, on this subject I speak with some feeling. The Punjab from which province I have the privilege to come, has in spite of increased taxation and retrenchments shown a heavy deficit this year and the uneasy feeling is hard to conceal that the Punjab has not been fairly treated as regards these contributions.

It was expected that the Financial Member shall rise to the occasion and come to the rescue of the Punjab but we have been disappointed.

The Finance Member's prospective assurances will not avail us much and his call for loyal co-operation from all the provinces for hastening the day of release was hardly merited by us who have never spared men or money for the sake of Imperial concerns.

I do not think it is too much to hope that the claims of the Punjab in this connection will receive the due attention they deserve as soon as opportunity offers for the solution of the difficulty.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I shall not indulge in any platitudes and in that respect I hope I shall not disappoint my Honourable friend, Sir Deva Prasad Sarvadhikary. I shall confine myself to the very simple issue that this budget can be balanced without a single pice of additional taxation. I look

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at the Honourable the Finance Member sitting on the opposite bench and I find crores concealed within his sleeves. Not only there, but I also look at His Excellency the Commander-in-Chief, who, in anticipation is shaking his head, he has also many a crore up his sleeves. I do not find my Honourable friend, Mr. Innes, who is hiding his lights somewhere in the corner, but he too has got some crores up his sleeves. But if they are not available just now, I am sure that they will be forthcoming before long. Now, Sir, the Honourable the Finance Member has no reason to take a pessimistic view and I do not believe that he takes a pessimistic view in his budget. He has used certain expressions which might create some alarm in the minds of the Members of the Assembly, but I shall disabuse them of it. As Finance Member, as a responsible Minister, he is bound to err on the side of caution. But my complaint against him is that he is overcautious. Sir, when two years ago the first Budget was placed before this reformed Council, we took a very despondent view, and to-day I see a ray of hope. No, not only that. I have reasons for robust hope, that we are not guiding the bark towards insolvency, but we are on the high road to solvency. I shall refer to a passage in the speech of my Honourable friend the Finance Member where he says:

"We should quickly get the boat out of the vicious current which is threatening to drag India down to the rock of insolvency."

I used a similar expression when the budget was presented in 1921. What was the position then? We had to face a deficit of 34 crores, and what did we suggest? Retrenchment. Not only that. I do not find my Honourable friend, Sir Malcolm Hailey, here. He not only presented us with a deficit of 34 crores, but he gave us a legacy of another 30 crores carried over from pre-reform days. Now, I have asked certain questions in this House, I seldom ask questions, but when I do ask questions I do not ask them without a purpose. Sir, to some questions I asked not long ago, and the Honourable the Finance Member told us in reply that our losses through the reverse Council Bills came up to 28 crores. My Honourable friend, Mr. Burdon told us also, and he gave us an account, that Waziristan had cost us nearly another 28 crores. Further, as I said before, when we came to this

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Council Sir Malcolm Hailey gave us a legacy of another 30 crores. That was chiefly due to the Afghan War. My Honourable friend the Finance Member refers to an increase in our public debts of 100 crores through deficits and says that our credit is in jeopardy. I say nothing of the kind. He puts our unproductive public debts down as 224 crores. From memory I account for 100 crores in this way.

The Honourable Sir Basil Blackett (Finance Member): If the Honourable Member will study the accounts, he will see that the loss of 28 crores which was incurred in Reverse Councils is not included in the 100 crores. I think that will show that the figures he is quoting are incorrect.

Mr. J. Chaudhuri: In the last five years, up to last year, our deficits came up to 121½ crores.

The Honourable Sir Basil Blackett: The Honourable Member is mistaken.

Mr. J. Chaudhuri: First, since 1918 to 1921 our deficit was 56 crores, then in 1921-22 it was 34 crores, then again in 1922-23 it was 31½ crores and thus the deficit amounted to 121½ crores. We also remember that we made

a war contribution of one hundred crores, nay, more, 150 crores. That is what our predecessors did. That accounts for 224 crores, nay, more. The whole of it is due to military expenditure.

But what is the whole of our public debt? The balance of our public debt 557 crores is revenue earning debts. So, if our finances are on the high way to rehabilitate themselves, then this debt does not trouble us. The Finance Member points out that our unproductive public debts come up to 224 crores. He also points out what it is in England. The interest that Great Britain pays on account of debts to-day comes up to her pre-war revenue. So we may put aside the question of our public debts for the present. If we can put our finances on a sound footing, then I see no cause for alarm. We shall get enough time to work off our unproductive public debts by a suitable sinking fund.

I have said, His Excellency the Commander-in-Chief has kept a number of crores up his sleeves. The Budget that my Honourable friend, the Finance Member, has presented comes to this, that his deficit comes up to 4½ crores. I shall read a passage from his speech:

"If these reductions and the others which have been agreed upon could have been fully and effectively in operation on the 1st April 1923, then the military budget for 1923-24 would be 57 crores, 75 lakhs, but a sum of 4 crores, 25 lakhs has to be allowed for special expenditure in Waziristan."

This is exactly the amount he wants to raise by levying a salt-tax. I know, my Honourable friend is fond of humour. I do not know whether he has put down this identical figure for fresh taxation as a practical joke.

The Honourable Sir Basil Blackett: It is rather difficult when the Honourable Member is constantly inventing figures out of his inner sub-consciousness to keep correcting all the time, but if the Honourable Member will read the sentences further on he will see there is nothing like what he said about 4 crores, 25 lakhs being spent in Waziristan. If he will read on he will see that it does not say what he thinks it says.

Mr. J. Chaudhuri: I will read the sentence again and read it through:

"If these reductions and others which have been agreed upon could have been fully and effectively in operation by the 1st April 1923, then the military Budget for 1923-24 would be 57 crores, 75 lakhs, but a sum of 4 crores 25 lakhs has to be allowed for special expenditure in Waziristan and for the fact that the reductions cannot be in full force throughout the year."

That is, for the next year we have to make provision for 4 crores 25 lakhs for Waziristan. I shall show now what amount of money we have sunk in Waziristan and we are sinking at the present moment. I read from Sir Malcolm Hailey's budget speech in the year 1922. He says:

"Under military expenditure, it will be remembered that we allowed 62 crores 20 lakhs of which 3 crores was attributable to Waziristan and one crore expenditure on demobilisation."

Later on he says:

"During the year, however, operations in Waziristan continued, contrary to our expectations on the extended scale set up in the concluding months of 1920-21 and altogether our expenditure on operations in that quarter have cost us 6 crores, 75 lakhs."

I say that now that the Retrenchment Committee has recommended a reduction of 10 crores in our military budget, we are told that recommendation cannot be given effect to till the end of the next year because of our Waziristan policy and further I would draw the Finance Member's attention to the fact that the Inchope Committee also recommend that it is possible to reduce the military expenditure further by 7 crores and bring the

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budget down to 50 crores. With regard to that His Excellency the Commander-in-Chief even before I mentioned the fact began shaking his head, because he believes he has done a lot. But with regard to Waziristan policy I would ask His Excellency to display the same courage in the field of finance as he has done in the field of battle and reduce expenditure to the limit of our revenue. What will the common tax-payer, the man in the street, say after you have raised the price of salt to double its present price. I am sure His Excellency would not like it to be said by the poorest of the poor from every home in India that we owe this to His Excellency the Commander-in-Chief. He will be a great public benefactor if he will co-operate a little further and relieve the Indian tax-payer of $4\frac{1}{2}$ crores.

Then I shall ask my Honourable friend, Mr. Bray, how long are the Government going to pursue this policy in Waziristan? A fortune has been sunk in the gap and what have we got in return? We are told every year that two crores or less will suffice and in a supplementary budget we find crores piled up and this year again the Finance Member says that we have incurred expenditure over and above the budget estimate to the extent of 175 lakhs.

I do not wish to go into the detailed figures. I have given sufficient indication that unless the forward policy in Waziristan, in that no-man's land, in which no improvement has taken place during the last two years and in which nothing has been achieved but the killing of a few sheep and cattle by dropping tons of bombs from aeroplanes—unless this policy is abandoned and if we continue to indulge in this pyrotechnic show, then the whole of India's fortune will be swallowed up in that bleak and barren mountain-country. Sir, I shall now leave His Excellency the Commander-in-Chief and my Honourable friend, Mr. Bray, to initiate a policy which will save the Indian tax-payer.

I shall say one word with regard to the railways. I shall reserve my further comments for the time when the demands are made; but I would draw the attention of the Finance Member to the fact that year before last we paid $9\frac{1}{2}$ crores out of our revenues to the railways. Last year we paid another crore. Were not these $10\frac{1}{2}$ crores paid for charges for renewals, interest and current expenditure? Leaving aside the question of the separation of the railway from the general budget, may I ask, are we not entitled to get back that amount now that the prospects of railway earnings are much improved? You have enhanced the freight and fares and in a year or two you will get an ample return. Would you not get back that $10\frac{1}{2}$ crores? If so, why impose this taxation? Even if we have to wait for another year, what will it mean to the tax-payer? A deficit of $4\frac{1}{2}$ crores uncovered will mean in interest only 25 lakhs or a little more. But pending this re-adjustment of the budget, why enhance your taxation? That is not sound finance. I say, if you cannot balance your budget at once, keep it in abeyance for a little while and you will surely be able to wipe off the deficit, if you are in earnest. With these remarks I will close.

Mr. Denys Bray (Foreign Secretary): Sir, the Honourable Mr. Chaudhuri took credit to himself at the outset of his speech that he was not going to indulge in platitudes. I think the House would have been better served had he done so. For there is at least one admirable element in platitudes, and that is some degree of accuracy and verisimilitude. Take that amazing discovery of which he made so great a play. He discovered that the Honourable Finance Member had said "we are thus left with a deficit of 4.26

crores"; and then he discovered in the Honourable Finance Member's statement further back that "a sum of 4.25 crores has to be allowed for special expenditure in Waziristan and for the fact that the reductions"—namely, the reductions in troops, reductions that have nothing to do with Waziristan—"cannot be in full force throughout the year." Let me say at once that the special military expenditure in Waziristan estimated for the coming year is 1.69 crores, which, if all goes well, will practically disappear from the budget next year. The special political expenditure is estimated at 91 lakhs, of which 52 lakhs is non-recurring expenditure on the building of roads and posts.

Now when he spoke of Waziristan in general, indeed he was indulging in platitudes. He may have thought that he was delivering a trenchant attack on Government policy in Waziristan. Sir, he was doing nothing of the kind. He was arraigning an authority infinitely higher than any earthly Government for allowing the very existence of a scourge like Waziristan on India's borders. He is not the first to have 'troubled deaf Heaven with his bootless cries' over Waziristan; nor assuredly will he be the last.

But let me endeavour to explain to the House what Government policy in Waziristan really is. And, as the matter is somewhat technical, I think I can probably help the House best by giving an outline, as brief as possible, first, of the general frontier problem, and secondly, of those solutions which two famous schools of frontier thought in the past have propounded for it. For although the House of course contains Members like my friend Mr. Abdul Rahim who knows the problem from bitter first-hand knowledge; Members like my friend Mr. Samarth who has made the frontier problem his study; Members like my friend Dr. Nand Lal whose speech apparently implied that neither knowledge nor study was needed for it; and Members like my friend Mr. Chaudhuri, of whose speech I will say nothing more, it doubtless also includes Members like a friend of mine somewhere on my left who said to me that he would be grateful if I would expound to him the very A. B. C. of it. Well, the ingredients in the frontier problem are essentially three.

Dr. Nand Lal: Sir, I rise to make a personal explanation. If my learned friend will advert to the speech which I made last year, then he will have to admit that his view of my knowledge of the Waziristan policy is wrong. I know as much about the North-West Frontier as he does.

Mr. Denys Bray: I have so far made no claims to knowledge for myself.

Dr. Nand Lal: Then you have no right to . . .

Mr. President: Order, order.

Mr. Denys Bray: If I have said anything that offended my Honourable friend in any way, I gladly withdraw it.

I think I had not yet finished with the three ingredients in the frontier problem:—the frontier districts, the neighbouring friendly State of Afghanistan, and the so-called independent territory. Now, if British India and Afghanistan had co-terminous frontiers, we should of course have a frontier problem and a frontier problem of great magnitude; it would be a straightforward frontier problem between two great and friendly powers. But between British India and India there lies this belt of so-called . . . (A Voice: "Between India and Afghanistan.") I am glad of the interruption, but the Honourable Member will find presently that I was correct.

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Between the limits of British India and of India there lies a belt of so-called independent territory, peopled by so-called trans-frontier Pathan tribes, untamed, fierce, truculent, aggressive, who have from time immemorial descended from their mountains to raid and harry, pillage, murder and outrage the inhabitants of the plains.

Now the interruption I received just now makes it advisable for me to pause here and dwell on an elementary and historical fact, a fact often forgotten, its implications more often ignored. British India does not march with Afghanistan. India does. India marches with Afghanistan from the Pamirs in the extreme north to Koh-i-Malik Siah in the extreme west, where Persia, India and Afghanistan meet. That is a great historical fact. I go no further back than 1893, when that fact was placed beyond all cavil and dispute by the agreement entered into on behalf of Afghanistan by His Highness the Amir Abdur Rahman Khan, perhaps the most striking personality in modern Central Asian history, and Sir Mortimer Durand. The Durand line, as it is known to ourselves, is India's frontier. It is demarcated by boundary pillars for the greater part of its length. And it is boundary pillars that mark off Waziristan from Afghanistan; it is boundary pillars that include Waziristan in India. We are apt to call Waziristan independent territory; to call the Wazirs and the Mahsud trans-frontier tribesmen. But it is not in reality independent territory; and it is only from the point of view of our British districts that these tribes are trans-frontier tribes. From the point of view of India, from the international point of view that is, they are cis-frontier tribesmen of India. If Waziristan and her tribes are India's scourge, they are also India's responsibility—and India's alone. That is an international fact that we must never forget.

Now, our responsibility for Waziristan and its tribes was vivid to us long before 1893 of course. And for years there were two great contending schools of frontier thought, struggling one with the other for the adoption of the particular solution they favoured. There was the forward policy and the backward policy, or, as I should prefer to call it myself, the policy of close border defence. Now if I were to run over the long list of names of men who have advocated a forward policy, it would be a list of famous men I should have to recite. But a pound of practice is worth a ton of preaching. And when you turn to the actual exponents of that policy, there are only two who stand out:—that great Afghan ruler, the Amir Abdur Rahman, and that great English administrator, Sir Robert Sandeman. Hardly was the ink dry on the 1893 agreement, when His Highness the Amir inaugurated campaign after campaign against his frontier tribes and subjugated them, and thus made Afghan rule effective—in the Afghan sense of the word—up to the Indian frontier. But Sir Robert Sandeman had been before him in the field. For by 1893 Baluchistan was already effectively administered—in the Sandeman sense of the word—up to the Afghan frontier. Sir, there are many of us who believe that, if Sandeman had been translated from his work in Baluchistan to the north-west frontier, he could have, and would have, succeeded there also. We believe this in spite of the vaster dimensions and the different character of the problem that would have faced him; for the tribes here are made of much sterner and more intractable stuff, and their mountain homes far more inaccessible. Nevertheless a Sandeman, some of us believe, would then have achieved success here also, at no over-great expense in blood and treasure. But what was a practical proposition 20 or 30 years ago is not necessarily so now. The task is infinitely more difficult to-day, chiefly because the tribesmen are

infinitely better armed; their arms have increased at least tenfold during the last 20 years. True, if we had to fight them in the plains, this would matter little. But it is in their mountains that we have to fight them, and it is their mountains, those inaccessible mountains of theirs, that give them their strength. It is one of the striking things in modern warfare that these modern inventions of ours do not give us the advantage in savage warfare in the hills. The hills remain unchanged, and prevent us from using our inventions to the full; and with the improvement of armaments the advantage lies with the tribesmen rather than with us. In short, in these days of acutest financial stringency, the conclusion stares one in the face that a thorough-going forward policy all along the line is a mere counsel of perfection.

Then there is the close border policy. It may seem a waste of time, Sir, to explain what that means, for every one surely can understand a policy that simply bids you defend your own border within your own border. But here again the House will remember that our border does not lie here, it lies ahead along the Afghan frontier; and it will remember also that, if nature abhors a vacuum in the physical world, human nature does not allow a vacuum in the world of high politics. Now, the crudest and most logical form of a close border policy is of course a Chinese wall, a vast wall right along the borders of your districts high enough to keep the trans-frontier tribesmen beyond the pale. A vast wall all along the borders of our districts high enough to keep the trans-frontier tribes out of our districts has indeed been seriously suggested from time to time, regardless apparently of the fact that you would have to build up the wall a foot or two higher year after year, to keep out tribesmen who would be becoming more and more powerful every year and more and more difficult to exclude. A more modern form of course would be a line of barbed wire, of live wire, linking up posts strongly held at intervals, with possibly a gate here and there to let a few well-behaved tribesmen through. Here again one has to remember that all the time the problem in front of us would be going from bad to worse, with the inevitable increase of arms in the trans-border and with that inevitable increase in the economic stringency in this mountainous tract, which would make the tribesmen more and more desperate, more and more thrown back on barbarism. The most modern form of all is of course mechanical transport roads running right along the border, patrolled by constabulary in motor cars, ready to move out at a moment's notice to any point they are required. The great future that mechanical transport has before it in cis-border defence can hardly be exaggerated. Nor can the necessity for cis-border defence itself, but by itself it is not enough. A rigid close-border policy is really a policy of negation and nothing more. It is all very well to say that we should leave the tribesmen to stew in their own juice; but what we should be doing in reality would be to leave them free in their devil's kitchen of mischief to brew incalculable trouble for us. We might gain for our districts a momentary respite from raids, but we would be leaving behind a legacy of infinitely worse trouble for their descendants.

With this introduction, I will expound to the House what the Government policy is. Now we have been for thirty years in occupation of parts of Waziristan. For shortly after the Durand agreement of 1893 we began to drive roads up the great highways of the Tochi and the Gumal, and we have occupied as far forward as Dakka Khel in the North and as far forward as Wana in the South by regulars or irregulars since 1894. But this partial occupation left the real crux in Waziristan untouched. For

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the crux in Waziristan is not the Wazirs whom this occupation directly affected, but the Mahsuds who live in the strategical heart of Waziristan, separated from Afghanistan by the Wazirs and separated from our British districts by the Bhattanis. In their inaccessibility lay their strength, lay also the root-cause of the persistence in utter barbarism which has made the Mahsud a by-word among other Pathans and an Ishmaelite wherever he goes. Hence, when an appalling series of bloody outrages against our fellow-subjects in the frontier districts forced us into a punitive expedition against them, and when after the severest fighting we have ever experienced in a frontier campaign, we found ourselves in military occupation of the heart of their country, it was thought that the time had surely come to bring the Mahsud country finally under military domination and to rid our frontier districts once and for all of this hideous scourge. The task, of course, was not beyond the power of the gallant Indian army, difficult and laborious though the final subjugation and disarmament of these magnificent fighters in their rugged mountains would have been. But it has proved beyond our financial resources at this time of financial stringency. Hence, though Government are determined to bring Mahsud country under control, it is not on the military occupation of Mahsud country that their policy is based. On the contrary, the military occupation of Mahsud country will shortly cease, to be replaced partly by internal control through scouts and Khassadars, and partly by the domination of Mahsud country from two posts on the edge of but outside the Mahsud country itself, held in force and linked together by a connecting road. In the south there is the post of Jandola in Bhattani country which we have occupied for years. And in the north, at the renewed invitation of its Wazir owners, we have just occupied, after a most successfully planned peacemarch, the open plateau of Ramzak, which from a height of 6,000 to 7,000 feet overlooks and dominates northern Mahsud country. We had calculated on being able to withdraw our troops entirely from Mahsud country itself simultaneously with the occupation of Ramzak. But the political situation took an unexpected turn for the worse towards the autumn, and our programme received a serious set-back. In consequence, though a mechanical transport road from the Tochi to Ramzak is almost completed, we have been unable to complete the road linking up with Jandola. For the time being, therefore, a reduced number of troops will remain in Mahsud country. But as soon as the construction of this road is assured, all regulars will evacuate the Mahsud country, and the protection of the road will then be committed to the Mahsud tribe itself, to locally enlisted Khassadars representing the various sections of the tribe, reinforced by irregulars at Sararogha and Kotkai. Now the Mahsud is a natural strategist of no mean calibre, and he will soon feel that, though the regulars have left this country, he lies within a grasp that can be tightened at any moment. The consciousness of this fact will have a sobering effect upon him. Henceforth the Mahsuds will be robbed of much of the inaccessibility in which lay their strength. And if the Mahsuds should again force us by their misdeeds into an expedition against them, then instead of having to force the Mahsud defences at a cost in blood and treasure that would be assuredly far higher than the high cost in the recent campaign, we shall have in Ramzak, above and behind his natural defences, an advance base the possession of which will enormously facilitate our task.

But our policy is not merely designed to provide a preventive menace to the Mahsuds or to serve as an insurance against the abnormal frequency

of expeditions or against their abnormal cost. It is essentially positive and constructive in character, in marked contrast to a negative system of rigid close-border defence. The central feature of it is the tribal levy or Khassadar, providing his own rifle and ammunition, and policing the country for us. This Khassadar system was of course the keystone of Sandeman's policy, perhaps his most potent agency in the grand work of civilization he achieved. In essence, it is a means of giving the tribe a stake in our administration of law and order; of controlling the tribe as far as possible by self-Government; of keeping alive that spirit of tribal responsibility which is the basis of our relations with all trans-frontier people. But tribal levies cannot be expected to function in the trans-frontier if they are left in the air, without some form of external force within reasonable range to keep them up to their work. The most economical form of outside force that we can devise is the irregular. But irregulars, again, cannot be safely employed in the trans-frontier unless they are in effective range of military support in case of emergency. Hence the necessity for roads suitable for occasional mechanical transport use, linking up a minimum number of irregular posts in the trans-frontier with military posts in the rear. These roads are thus an alternative to military occupation, and a very much cheaper alternative. But they are something much more. Like the Khassadar, they are civilisation carriers. And complementary to the arrangements in the trans-frontier itself, our policy includes a cis-border road about 100 miles in length, providing a much needed lateral communication, for the immediate defence of the sorely-harassed inhabitants of the Dera Ismail Khan district. The policy of Government in Waziristan is, therefore, the control of Waziristan—though a road system, of which about 140 miles lie in Waziristan itself and 100 miles along the border of the Derajat, and the maintenance of some 4,600 Khassadars and of some 5,000 irregulars. And this policy Government is resolved to carry through with vigour and determination in the interests of our fellow-subjects in the Zhob and the Derajat, and in the interests of the security of all India.

Now, in so far as a forward policy means a move forward to the Durand Line, the Government policy is not a forward policy at all, for our new post at Ramzak, for instance, is farther from the Durand Line than our old established posts in the Tochi. In this sense of the term, indeed, our policy is in one signal respect a backward policy. For, whereas we have held Wana close to the Afghan border by regulars and irregulars since 1894, we shall now hold it by Khassadars only; and our irregulars on this side will be no further forward than Sarwekai, which we have occupied for years. None the less, the Government policy is a forward policy in a very real sense of the word. It is a policy of progress. It is a big step forward on the long and laborious road towards the pacification through civilisation of the most backward and inaccessible, and therefore the most truculent and aggressive, tribes on our border. Come what may, civilisation *must* be made to penetrate these inaccessible mountains, or we must admit that there is no solution to the Waziristan problem, and we must fold our hands while it grows inevitably worse. It is the inaccessibility of these mountains which breed more than they can feed, that lies at the root of the problem. For from this inaccessibility arise the economic stringency, the gross ignorance, and the wanton insolence and barbaric cruelty that spring from a sense of security. And these are diseases for which civilisation in some shape or form is the only cure. It may be thought visionary to talk of the civilisation of the Mahsud. But

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you must take long views on the frontier. Civilisation, after all, has succeeded often enough with material far more unpromising and intractable than the Mahsud, who, for all his barbarity and ignorance, is a man of magnificent virility and courage and with no small share of natural wit and intelligence.

I have spoken of the forward policy as being, in these latter days, a counsel of perfection. I have spoken of a rigid closed border policy as a policy of negation, degenerating into a counsel of despair. I have expounded the Government policy and have endeavoured to make plain to the House its essentially constructive and progressive character. But of one policy—if policy it can be called—I have said not a word. I had thought that the old cry of “Back to the Indus” had long since been silenced for ever. I was wrong. It has been re-appearing of late in our press; it even found its way into the evidence adduced before us on the Military Requirements Committee. Back to the Indus? Shall we betray our fellow-subjects on the frontier? Shall we hand them over to the tender mercies of the independent tribesmen in the first instance, and thereafter to—who shall say? Back to the Indus? If India ever went back to the Indus, not all the five rivers of the Punjab would set the mark to the erosion of India's soil that would then ensue. Back to the Indus? Let the House say here and now whether India is ever going back to the Indus. (Mr. J. Chaudhuri: “No! Arm your own frontier people!”) In the domain of India's foreign politics, I know of one fixed and immutable rule only: What India has, let India hold. India is large enough to covet not a single square mile of ground that is not already her own. But India is not large enough to allow any invader of India—be he independent tribesman or foreign power, from south or north or east or west,—more of her soil than a plot of ground 7 feet by 2½ and 4 feet deep.

Mr. Marmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): Sir, before I begin to discuss the Budget, I hesitate whether I am to congratulate the Finance Member or to criticise him. I find, that with all the efforts of the Finance Department and after accepting some of the proposals of the Incheape Committee, the Finance Member has failed to present a balanced Budget, without resorting to additional taxation. I think, if he had not included in the Budget the proposals for increases on Demands for Grants, on the figures of last year (the details of which I have in my hand, and shall hand over to him presently), he could have saved nearly 1½ crores of rupees. You will therefore see that while retrenchment is made on the one hand, increase in expenditure is also made on the other hand. Thinking a little deeply, I am at a loss to know why Government proposes such increases in expenditure while there is a general cry for all-round retrenchment.

Again, a Demand for Rs. 91,30,000 is made under the heading North-West Frontier Province, under items, Public Works and Civil Works. That could also wait for some time.

Coming to the proposals of the Incheape Committee, I feel that the Government ought to have allowed a larger amount as ‘retrenchment’ in this Budget, than is indicated by their present proposal.

Turning to another aspect of the Budget, I may point out that in the last year's Budget Estimate (1922-23) under Demand No. 46, a provision was made for refund of more than Rs. 6 crores. This year only a little

more than a crore of rupees is asked. If the Expenditure was maintained at the same level as last year, this difference alone of more than Rs. 5 crores would effect a small saving, instead of the deficit that is now shown. I, therefore, consider that the deficit shown is not a real deficit, and that there is no necessity for increasing the tax on Salt—a duty which is condemned by politicians and statesmen in particular, and by every one, in general.

Speaking of the Exchange question, Sir, the Finance Member said, “I repeat that the time has not yet come for a new attempt to fix the rupee”. I may point out at once that there is a considerable body of commercial men who opine that as sterling has reached its good parity, it is now an opportune time for making a change of the policy pursued by the Government. However, this is not the time to consider that question.

The Finance Member in the course of his speech remarked, that as India had £240 million sterling Debt, it would show a considerable less amount in rupees at a higher Exchange, and he goes to point out that at the rate of 1s 8d. Rs. 9½ crores would have been saved to India. Before admitting that, I should ask him to state what would have been the saving to the country on the total amount of export trade, at the rate of 1s. 4d. instead of at 1s. 8d.

Undoubtedly, it would amount to considerably more than Rs. 9½ crores. What India wants is to get rid of fluctuations in Exchange, and the only way to achieve that object is to adopt a real gold currency with an open mint for coining gold.

I am surprised to find that there is no provision made in the Budget for giving effect to the recommendations of the Fiscal Commission. The Minority of the Members have recommended the total abolition of the excise duty of 3½ per cent. on cotton cloth manufactured in India, a duty which is obnoxious in its character, and which finds no place in any other country in the world. As we all know, it only serves to quieten the Lancashire agitation and to give indirect protection to foreign goods. And, I should have very much liked the Government to have thought it advisable to make a beginning to give effect to this recommendation and made provision in the Budget to give at least partial effect by reducing a portion of the excise duty and ultimately abolish the same,—which action is long overdue. As I intend to move an amendment to this effect, I do not want to take any more time on this subject.

Before I finish, I would like to draw the attention of this House and the Government to one important fact, and that is, that both of us are neglecting a very important item, namely, Irrigation, which is one of the most paying sources of Revenue. Far less attention is at present given to this item, than to the development of Railways, where it is proposed to spend about Rs. 38 crores, on capital works.

Lastly, I would ask the Government not to raise more loans in India than it is absolutely necessary, as it affects adversely the money-market in this country and paralyses in a general way the trade.

When I speak of Loans I am reminded of another subject dealt by the Honourable the Finance Member. There is an unspent balance of Rs. 8,63,95,000 under the Head—Railways—which the Government wants to spend this year; and instead of spending Rs. 30 crores, they propose spending Rs. 38 crores. I venture to ask where is the necessity of including this amount, of nearly Rs. 9 crores, in the Budget at a time of financial

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stringency, and when it was found impossible to spend this amount last year. A provision of Rs. 30 crores for the next year seems to me to be quite sufficient for the present and the spending of Rs. 9 crores may wait for a few years more. Or, if need be, it may be spread over the remaining 4 years. That I am sure will not affect in any considerable degree the working of Railways and I would suggest that the Government should raise only 17 crores of rupee loan. In ordinary business no one would think of spending huge amount on capital works at a time of financial stringency.

In this connection I would suggest that a portion of this grant to Railways should be utilised for opening new lines which could bring in a good revenue and a handsome return for the investment.

Speaking about Provincial contribution the Honourable the Finance Member remarked about the Provincial Governments following the policy of some charitable or religious bodies in showing handsome deficits in order to appeal effectively to the charity of the Central Government. This remark applies with equal force, in my opinion, in his own case. He seems to think, that he can effectively appeal to this House only by showing a deficit, and to cover it, by proposing a tax on Salt. We are as shrewd as he is. I would like to tell him that he should try first to minimise extra expenditure, and then to have full effect given to the recommendations of the Retrenchment Committee to bring about a balanced budget and not to propose additional taxation to cover what I have already called an 'unreal' deficit. I am quite sure, it would have been possible for the Government to have produced a balanced Budget.

Rai T. P. Mukherjee Bahadur (Burdwan Division: Non-Muhammadan Rural): Sir, this is the third year of the reformed era. When the Reform was first introduced it was welcomed by many including myself as the dawn of a happy franchise for the good of our country. But, alas, what a great disappointment! I hoped that this year I would be able to congratulate our new Honourable the Finance Member for his first prosperous budget, but to our utter disappointment, we again find a deficit budget, a budget of despair. However, I congratulate him only for the reason that he is a new-comer and he has taken recourse only to one tax and not more. To crown all, Sir, there is again a proposal for an additional taxation—a tax on salt. Sir, we are on the threshold of a new election and I fully agree with Dr. Nand Lal, our Honourable Member, that we are really ashamed to approach the electorate. What are we to answer when we will be asked to state the good works we have done for our country in the course of the last three years? The answer would be that we have introduced innumerable taxes. Sir, the prospects are very gloomy, the people are all discontented, and the happy vision of those who welcomed the reform is also fast disappearing in thin air and the people are now under the impression that "Reforms" means only successive deficit budgets, of Provincial and Imperial bankruptcy—and endless additions of taxation. Sir, when there is again a proposal for increasing the duty on salt, even after the report of the Retrenchment Committee, I think there is no hope of salvation and this state of things would continue for ever. Sir, the repeated introduction of new taxes by the Government every year induces men to believe as if the Government does not think it their first duty to keep the people satisfied and well-fed. Otherwise, they would have never thought of introducing such endless taxation every year.

Sir, we had a great hope that after the receipt of the report of the

5 P.M. Incheape Committee our Honourable Finance Member would be in a position to introduce a prosperous budget even at a time when our life is about to come to an end. But alas, we are disappointed; we cannot appreciate the report of the Incheape Committee even when we have received it at such an enormous cost. Sir, such a repeated deficit budget could not be tolerated any more. The repeated deficit budgets clearly indicate that there is something very wrong and rotten somewhere in the administration. Mere superficial tinkering with such a difficult problem will not do any good. The root causes lay deeper than they are generally considered to be and the Government is the best person to make a correct diagnosis of this chronic disease.

Though I am a lay man I am inclined to attribute this deplorable condition of our finances to two causes, first to the extravagance of the Government, and secondly to the enormous increase of military expenditure of the country. Sir, the super-structure of the administration is sure to crumble and fall, unless cautious steps be taken now and the material welfare of the country is attended to, so that the people might appreciate the worth of your Reforms. Sir, we were under the impression that the new Finance Member would try to balance his account in any other way instead of imposing an additional duty upon salt which is a poor man's commodity. Sir, it should be clearly understood that the salt duty would be opposed by every non-official Member as they are in duty bound to do it. It is admitted on all hands that military expenditure in India is enormously heavy and is found to be unprecedented in the annals of the history of the world. Sir, this is admitted even by the Incheape Committee which I quote below:

"But the question is whether India can afford to maintain military expenditure on the present scale as an insurance against future eventualities. In our opinion, the repeated huge deficits of the last few years, in spite of the imposition of heavy new taxation, have made it abundantly clear that India cannot afford this expenditure."

Sir, the Incheape Committee with a throbbing heart, after giving the military authorities of India a great credit for their work, has at last recommended the budget estimates for the year 1923-24 to be 51.47 crores, thus making a reduction of about 9 crores. Sir, this reduction is nothing, the proposed estimate is still full of water, and the watery portion is so great that if you make another 9 crores reduction out of it, I think you will not be able to touch the milk. Sir, I therefore propose that the Honourable the Finance Member should try his level best to carry out all the recommendations of the Incheape Committee as early as possible, and drop the proposal of introducing an additional duty on poor man's salt.

The Honourable Sir Basil Blackett: I rise to a point of order. I do not know whether I shall be in order, but so many Members appeal to me to carry out the recommendations of the Incheape Committee as an alternative to the salt tax, that I must, I think, repeat that the two together are necessary. I tried to explain in my speech that we are carrying out the recommendations of the Incheape Committee to the fullest extent possible within the year. Even so, there is a deficit. So many Members keep on asking us to do something that we have done, as an alternative to the salt tax, that I think it is necessary for me to make this intervention at this stage.

Rai T. P. Mukherjee Bahadur: If I remember right, the Honourable the ex-Finance Member, Sir Malcolm Hailey, said last year that the salt-tax works to about three annas per head per annum extra cost, but the

[Rai T. P. Mukherjee Bahadur.]

Honourable Member should not forget that salt is not only used by the people, but it is also largely used for cattle and for agricultural purpose as a manure.

With these few remarks I oppose the Budget.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 6th March, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 6th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

POLICE DUTIES IN LEGISLATURES.

467. *Mr. R. A. Spence: (a) Is it a fact that since the creation over two years ago of:

- (i) The Imperial Legislative Assembly;
- (ii) The Council of State;
- (iii) The Chamber of Princes;

no extra Police have been entertained for duty at these Chambers?

(b) In consequence is it a fact that the local Police both in Simla and Delhi have to perform this extra work at the expense of their sanctioned duties with the result that all have to work long hours overtime throughout the entire Session of 2½ months twice a year?

(c) If the facts are substantially as stated, is Government prepared to take the matter into consideration?

Mr. E. Burdon: (a) No extra police force has been entertained solely on account of the creation of these Chambers, but one of the factors which influenced the Government of India in determining the strength of the Delhi police force has been work in connection with the Sessions of the Legislature and other special duties during the Delhi winter season. Last year the total strength of the force was increased with a view *inier alia* to strengthen the reserve. In Simla also the strength of the police force in the summer is based partly on the ceremonial and other duties required to be performed. A small guard is provided from the local force with the exception of a few sergeants who have been drafted in from outside for the purpose.

(b) During the Delhi Sessions a proportion of the men have to be withdrawn from their normal executive duties, and no doubt some of them are on duty for longer hours than usual but the duty at the Chambers is not continuous or arduous, though responsible, and compensation is afforded by lighter duties in the summer at Delhi and in the winter at Simla.

(c) Government are not aware of any present necessity of changing the existing arrangements but will make further enquiries.

HEDJAZ PILGRIMS.

468. *Haji Wajihuddin: Are the Government aware of the sufferings and hardships that Hedjaz pilgrims generally underwent last Haj season on their journey from Mecca to Medina?

Mr. Denys Bray: Government are not aware that Hedjaz pilgrims generally underwent sufferings and hardships, but have heard with grave concern that in certain cases Indian pilgrims had legitimate cause for complaint.

GOVERNMENT OF INDIA SECRETARIATS.

469. ***Baba Ujagar Singh Bedi:** (a) Is it a fact that all proposals for additional staff required in the various Departments of the Government of India are placed by the Departments concerned before the Finance Department, for scrutiny and sanction, and that similar proposals emanating from the Finance Department are sanctioned by the Department itself?

(b) If so, do the Government propose to lay down that such proposals emanating from the Finance Department, should be scrutinized by the Home Department or some other Department before they are finally sanctioned.

The Honourable Sir Basil Blackett: (a) Yes.

(b) Such proposals are considered in that branch of the Finance Department the business of which is to scrutinize proposals for new expenditure. I have no reason to think that this branch scrutinises proposals emanating from other branches of the Finance Department with any less care than in the case of proposals emanating from other departments. I do not consider that the course suggested by the Honourable Member would be likely to result in any economy.

HIGH COURT JUDGES.

470. ***Khan Bahadur Saiyid Muhammad Ismail:** (a) Will the Government be pleased to state the number of Judges permanent and additional sanctioned in the High Courts of India including Burma?

(b) Will the Government be pleased to specify their names and nationalities with the date of their appointments?

(c) Will the Government be pleased to state in how many High Courts of India there are Muhammadan Judges already appointed with their dates of appointment?

(d) If, in case, there is no Mussalman Judge appointed in any of the High Courts of India to state the reason why none has been appointed since 1921?

Mr. E. Burdon: (a) The total number of Judges in all the High Courts in India, including Burma, is 75.

(b) and (c) The Honourable Member will find all the information he requires in the various civil lists.

(d) The Honourable Member is referred to the answer which will be given to part (a) of his next question.

JUDGES IN PATNA HIGH COURT.

471. ***Khan Bahadur Saiyid Muhammad Ismail:** (a) Will the Government be pleased to state the reason why no Muhammadan Judges was appointed to the Bench of the Patna High Court since the year 1921 permanently, also to state the reason and the circumstances under which that Muhammadan Barrister who was appointed to officiate after Mr. Justice Atkinson's death was not confirmed in 1920-21 and instead of his being confirmed an Englishman was brought from Straits Settlements?

(b) Is the Government aware that in the Patna High Court 2 Additional Judgeships have been created after Puja vacation and that out of the 2 appointments made, the claims of really qualified Muhammadan Members of the Legal Profession have been completely ignored? If the reply be in the affirmative, will the Government be pleased to give full reasons for ignoring the claim of qualified Mussalman from selection?

(c) Is it a fact that one Mr. Abdur Quadir, Bar-at-law, who had already acted as officiating Judge of Punjab High Court for several years had been made to resign? If the facts be true will the Government be pleased to state the real circumstances of such a contingency?

(d) Will the Government be further pleased to state who has been appointed in the vacancy thus caused?

Mr. E. Burdon: (a) Permanent appointments to the High Courts are made by His Majesty under section 101 of the Government of India Act. Courts of Justice are not representative institutions, and the main consideration in filling up vacancies in high judicial appointments must always be that of efficiency: subject to this the claims of Muhammadans no less than those of members of other communities receive due consideration.

(b) The reply to the first part of the question is in the affirmative. As to the second part of his question the Honourable Member is referred to the answer given to (a) above.

(c) No. He left the Court on the termination of his appointment.

(d) Does not arise.

WORKING OF BENGAL AND NORTH-WESTERN RAILWAY.

472. ***Khan Bahadur Saiyid Muhammad Ismail:** (a) Will the Government be pleased to state the control which they exercise over the Company-managed and the Company's own Railway called the Bengal and North-Western Railway?

(b) Will the Government state if they are aware of the circumstances under which this Company is causing serious inconvenience to the passengers, by the unpunctual running of the trains without any arrangement for the foodstuffs over the line between Katihar and Cawnpore and its several other branches?

(c) Do Government propose to take any step to impress upon the Company the necessity, (1) of improving the Rolling Stock, (2) of making suitable arrangements for water supply and foodstuffs at every Railway Station?

(d) Is the Government aware of the very serious inconvenience caused to the passengers when crossing the river between Digba and Pahleza Ghats owing to the absence of a platform and a passenger-shed at the newly constructed station at Digba Ghat which have been shifted from its original position causing a very serious inconvenience to the frequent travellers, crossing the Ganges between Digba and Pahleza Ghats starting from Patna Junction Railway Station?

(e) If the reply to the above be in the affirmative, will the Government be pleased to state why the Railway Station Digba has been shifted from its old situation?

(f) Is the Government aware of the fact that while in Mokamah and Semaria Ghats, Bengal and North-Western Railway ferry stations, sufficient autolux lamps are provided for convenience of passengers, none is

provided at Pahleza Ghat and Digha Ghat although steamers are plying not less than 3 times between the two latter Ghats during the night and that the absence of brilliant light causes serious danger to the passengers in getting in and out of the Steamer?

Mr. C. D. M. Hindley: (a) The Honourable Member's attention is invited to Appendix A of the Administration Report on Indian Railways, 1921-22, Volume I, copies of which are available in the library.

(b) and (c) The working of the Bengal and North-Western Railway was recently the subject of a special enquiry by the Senior Government Inspector of Railways, Circle No. 3, Lucknow, in conjunction with the Agent, Bengal and North-Western Railway, and certain representatives of the Bihar and Orissa and United Provinces Governments. The result of this enquiry showed that the Railway Administration was paying careful attention to the convenience of the public and was willing to meet all reasonable demands. The grievances which exist are chiefly due to the fact that during the war period it was extremely difficult to obtain materials, and Government are satisfied that the Administration is doing its best to bring the line up to a high standard.

(d), (e) and (f). Government have no information but enquiry will be made.

TIRHOOT STATE RAILWAY.

473. ***Khan Bahadur Saiyid Muhammad Ismail:** (a) Will the Government be pleased to state the method and the system under which the Tirhoot State Railway is being managed?

(b) Is the section under the direct management of the Government? If so, what was its income between 1920 and 1922, and the consequent expenditure in the upkeep and maintenance? If the section is not directly managed how is it managed and what guarantee the Government provides?

(c) Will the Government be pleased to state the total number of high-paid employees, with their nationalities, employed over the Tirhoot State Railway; also to state how far and how long the management of the Bengal and North-Western Railway overlaps that of the Tirhoot State Railway Section?

Mr. C. D. M. Hindley: (a) and (b). The Tirhut State Railway is managed and worked by the Bengal and North-Western Railway Company. For the terms of working the Honourable Member is referred to the History of Indian Railways, a copy of which is available in the Library.

(c) The Bengal and North-Western Railway Company employ conjointly the higher paid staff required for this section and their own main line. In regard to the concluding portion of the question the Honourable Member will find full information in the History of Indian Railways already referred to.

ROLLING STOCK ON TIRHOOT STATE RAILWAY.

474. ***Khan Bahadur Saiyid Muhammad Ismail:** Will the Government be pleased to state if the Tirhoot State Railway maintains any independent Rolling stock or the Bengal and North-Western Railway stock is running over the section? If the fact of the Bengal and North-Western Railway stock running over the section is true, will the Government be pleased to state the conditions under which they are utilised.

C. D. M. Hindley: The Bengal and North-Western and the Tirhut State Railways are worked as one system and rolling stock is provided and worked in accordance with the requirements of the whole system. The capital cost of the stock is allocated to the two railways in proportion to their respective average gross earnings.

CONCESSION TICKETS ON RAILWAYS.

475. ***Khan Bahadur Saiyid Muhammad Ismail:** (a) Will the Government be pleased to state the reason and the circumstances under which the concession tickets for the 1st and 2nd classes that used to be issued during Poojah and Christmas vacations have been discontinued by the authorities of the East Indian Railway?

(b) Will the Government state if such discontinuance of practices requires sanction of the Railway Board in case of Company-managed Railways or the Company-managed Railways are themselves competent to exercise such authorities?

(c) If the reply to the first part of (b) is in the affirmative, will the Government be pleased to state the reason as to why such sanction has been accorded?

(d) Do Government propose to take immediate step to direct the East Indian Company to adhere to the old system of issuing return 1st and 2nd class tickets at reduced rates according to the practice that was in vogue a few years before and also to issue concession return tickets during the Poojah and the Christmas holidays?

Mr. C. D. M. Hindley: (a) In consequence of the abnormal conditions caused by the War the concessions allowed during the Poojah and Christmas holidays to 1st and 2nd class passengers had to be withdrawn. The East Indian Railway Administration, however, granted this concession during the last Christmas holidays.

(b) and (c) The grant and withdrawal of concessions of this kind are within the competence of Company-managed railways.

(d) The Honourable Member is referred to the answers given to questions Nos. 145 and 292, on the 17th and 29th January, 1923, respectively.

RESERVED ACCOMMODATION ON EAST INDIAN RAILWAY.

476. ***Khan Bahadur Saiyid Muhammad Ismail:** (a) Will the Government be pleased to state if they are aware that the practice prevalent a few years before in the East Indian Railway of reserving 1st class compartments by paying 3 fares and 2nd class compartments by paying 4 fares respectively has been supplanted by charging actual fares of 4 tickets in case of 1st class and 5 tickets in case of 2nd class compartments, respectively?

(b) If the reply be in the affirmative will the Government be pleased to state the circumstances under which this change in practice has taken place and also whether such a change had been contemplated after taking the approval of the Railway Board?

(c) Do Government propose to issue instructions to the East Indian Railway to continue reserving 1st class compartments by paying 3 fares and

2nd class compartments by paying 4 fares for the period of their contract which will expire in December, 1924?

Mr. C. D. M. Hindley: (a) The reply is in the affirmative.

(b) The change was introduced with the approval of the Railway Board, not only on the East Indian Railway but on all the other important railways, and was one of the measures adopted to increase railway earnings and to ensure the best use of the accommodation available in the interests of the general travelling public.

(c) The reply is in the negative.

ACWORTH COMMITTEE'S RECOMMENDATIONS.

477. ***Khan Bahadur Saiyid Muhammad Ismail:** Will the Government be pleased to state how far effect has been given to the unanimous recommendations of the Acworth Committee contained in Volume 1 of their Report, also to state specifically if their recommendations, *vide* paragraphs 156 to 172 of the Report *re*: the constitution of the Rate Tribunal have been given effect to? If not, why?

Mr. C. D. M. Hindley: It is impossible to give a comprehensive reply to the Honourable Member's question. The Acworth Committee dealt with the whole subject of Railway Administration and management and their suggestions have been systematically considered and given effect to wherever possible at once. A good many of their proposals involved, however, large changes in policy and there are some cases, including the recommendation regarding the constitution of a Rates Tribunal, still under the consideration of Government. This question of establishing a Rates Tribunal involves matters of very great financial and administrative importance and it is not in the general interest should be hurriedly decided.

EMBARKATION PORTS FOR HAJIS.

478. ***Khan Bahadur Saiyid Muhammad Ismail:** Will the Government be pleased to state as to what steps have been taken by them to give effect to the promise made by Sir Henry Sharp last year during the course of the debate over Haji Wajihuddin Saheb's Resolution *re*: making Calcutta the port of embarkation for the Hajis intending to go on pilgrimage to Hejaz? If no steps have been taken as yet in the matter, do Government propose to expedite opening Calcutta as the port of embarkation for the pilgrims going to Erak and to Hejaz?

The Honourable Mr. A. C. Chatterjee: The Honourable Member is referred to the answer given yesterday to a similar question put by Haji Wajihuddin.

Mr. K. Ahmed: Is there any likelihood of opening the Chittagong port for the embarkation of pilgrims and other passengers who want to go to Hedjaz and other places?

The Honourable Mr. A. C. Chatterjee: I said yesterday, Sir, in reply to a similar supplementary question that the supplementary question did not arise.

Mr. K. Ahmed: The question contained, Sir, the wording: "do the Government propose to expedite opening Calcutta as the port of embarkation for the pilgrims going to Erak and to Hedjaz?"

Mr. President: If the Honourable Member wants information regarding the port of Chittagong, he should put his question on the paper and then he will get an answer.

PILGRIMS FOR JEDDA.

479. ***Khan Bahadur Saiyid Muhammad Ismail:** Will the Government be pleased to state if it is a fact that at the port of embarkation at Bombay the pilgrims proceeding to Jedda have been compelled to buy return tickets? If it is so, to explain the reason and the circumstances?

The Honourable Mr. A. C. Chatterjee: So far as the Government of India are aware no such compulsion is being exercised.

INFECTIOUS DISEASES HOSPITAL ON KUTAB ROAD.

480. ***Mr. W. M. Hussanally:** (a) Is it a fact that the building at Delhi on the Kutab Road, now used as Municipal Infectious Diseases Hospital and through the compound of which the new road passes, was originally a mosque?

(b) If so, when, under what circumstances and with whose permission was it handed over to the Municipality to be used as a hospital?

(c) Do Government propose to hand it back to Muhammadans to be used as a mosque?

The Honourable Sir Malcolm Hailey: (a) The building in question has some times been described as a tomb, but is generally believed to be a disused mosque dating from the time of Feroz Shah.

(b) This derelict Nazul building was transferred by Government to the Municipality in 1873, and put into order by that body for use as a Hospital for patients suffering from Infectious Diseases. It has therefore been used for this purpose for the last 50 years.

(c) The Infectious Diseases Hospital can no longer be located on this site because the new alignment of the Kutab road passes through the compound. When the road works are completed it is proposed by the local authorities to hand over this building, as well as another mosque and tomb in the same compound, to a responsible local Muhammadan Association which already administers several mosques, if the Association will accept the charge.

INFECTIOUS DISEASE HOSPITAL, DELHI.

481. ***Khan Bahadur Saiyid Muhammad Ismail:** Is the Government aware that there exists in the town of Delhi on the Pahargunj road a Hospital for the infectious diseases owned by the Municipality which is situated in a building resembling an old mosque, an Imambara or a shrine and is surrounded by a graveyard? Will the Government be pleased to make a statement after necessary enquiry as to the origin of this building and also as to how it was used before its present occupation by the Delhi Municipal Infectious Diseases Hospital?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the answer just given to Mr. Hussanally's question.

UNSTARRED QUESTIONS AND ANSWERS.

ESTABLISHMENT OF OFFICE OF CONTROLLER, MILITARY ACCOUNTS, MEERUT.

222. **Mr. Mohammad Yamin Khan:** Will the Government be pleased to give information as to the following matters—

(a) How many candidates did pass in the departmental examination held on 5th November, 1921, for appointments as clerks in the Controller's Military Account Office, District Meerut?

(b) When and at how much salary was the person who stood first appointed?

(c) When and at how much salary were the persons who stood 2nd, 3rd, 4th and 5th appointed respectively?

2. Is there any difference in pay of European and Indian clerks in the Department mentioned in the preceding question?

3. Up to what time have the clerks to work in the Controller's Military Account Office, District Meerut?

The Honourable Sir Basil Blackett: (a) 186.

(b) On Rs. 50 per mensem from 3rd December 1921.

(c) The individuals who stood 2nd and 5th at the examination were already in Government employ as temporary clerks and were confirmed from 1st March and 1st April 1922 on pay at Rs. 90 and Rs. 70 per mensem respectively. Those who stood 3rd and 4th are employed as temporary clerks on Rs. 50 each per mensem.

2. The reply is in the negative.

3. Working hours have recently been changed from 10-30 A.M. to 6 P.M. to 10-30 A.M. to 5 P.M.

BURMA MEAT TRADE.

223. **Lala Girdharilal Agarwala:** (a) Is the Government aware that the United Provinces Legislative Council and the Central Provinces Legislative Council have passed Resolutions to stop the Burma Meat Trade?

(b) Whether the Government of India have approved of those Resolutions and from what date effect has been or will be given to either of them?

Mr. J. Hullah: (a) Yes.

(b) It is not known what action, if any, was taken by the Government of the United Provinces on the Resolution passed by the United Provinces Legislative Council. The Government of India did not take any action in the matter. As regards the Resolution passed by the Central Provinces Legislative Council, the Government of India suggested to the local Government that action might be taken under the Central Provinces Slaughter of Animals Act, if they considered it desirable or necessary to do so. The Central Provinces Government have taken the requisite action under that Act—vide the Rules published on pages 565 to 568 of the Central Provinces Gazette, Part I, dated the 3rd June 1922. These Rules probably took effect from the date of their publication viz., the 31st May 1922 but the Government of India have no definite information on the subject.

(3026)

INDIAN CATTLE WEALTH.

224. **Lala Girdharilal Agarwala:** Have the Government taken any steps or do they propose to take any in the near future to protect and improve the cattle wealth of India?

Mr. J. Hullah: The matter is primarily one for the local Governments, whose attention has been drawn to the importance of the matter.

IMPROVEMENT OF CATTLE.

225. **Lala Girdharilal Agarwala:** Do the Government propose to undertake any legislation for protection and improvement of cattle in India?

Mr. J. Hullah: The answer is in the negative.

SLAUGHTER OF CATTLE.

226. **Lala Girdharilal Agarwala:** What safeguards if any are at present provided in India by any law or rule against indiscriminate slaughter of cattle, especially pregnant animals, animals in milk, and prime cattle?

Mr. J. Hullah: The Honourable Member is referred to the Central Provinces Government's Notification No. 1236-955-XIII, dated the 31st May 1922, which appeared in the Central Provinces Gazette of the 3rd June 1922. The Government of India have no information of any other regulations on the subject but they shall try to secure all available information in regard to it.

CATTLE IMPROVEMENT BILL.

227. **Lala Girdharilal Agarwala:** Will the Government be pleased to lay on the table for the information of the House my last Cattle Improvement Bill and the letter of the Government as a result of which I was prevented from asking leave of the House for its introduction?

Sir Henry Moncrieff Smith: The Honourable Member is referred to the answer given on the 1st February last to Babu Ambica Prasad Sinha's unstarred question No. 132.

GOVERNOR GENERAL'S ASSENT TO BILLS.

Mr. President: I have to acquaint the Assembly that His Excellency the Governor General has been pleased to give his assent to the following Bills passed by both Chambers of the Indian Legislature:

The Malabar (Completion of Trials) Supplementing Act, 1923.

The Cotton Transport Act, 1923.

The Indian Mines Act, 1923.

The Indian Boilers Act, 1923.

The Indian Factories (Amendment) Act, 1923.

The Indian Naval Armaments Act, 1923.

The Indian Paper Currency Act, 1923.

The Repealing and Amending Act, 1923.

The Cantonments House Accommodation Act, 1923, and

The Workmen's Compensation Act, 1923.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, the following Message has been received from the Secretary of the Council of State:

"I am directed to inform you that the Council of State has at its meeting held on Monday, the 5th March, 1923, agreed without any amendments to the Bill further to amend the Married Women's Property Act, 1874, which was passed by the Legislative Assembly on the 15th of February 1923."

Mr. President: I appoint for the purposes of to-day's debate a period of 15 minutes for each speech.

GENERAL DISCUSSION ON THE BUDGET.

FIRST STAGE—contd.

Sir P. S. Sivaswamy Aiyer (Tanjore *cum* Trichinopoly: Non-Muhamadan Rural): Sir, last year I presumed upon your forbearance and the kindness of the House and wearied the House with some detailed criticism of the Military expenditure. I do not propose to repeat that course this year. I have no intention of occupying the attention of the House for more than a very few minutes, and it is due for two reasons. In the first place, ill-health has prevented me from examining the Budget with any care. In the second place, the Inchcape Committee has done its work so well and so thoroughly that it would be a work of supererogation to go over the same ground. I desire to associate myself with the tribute of praise that has been so deservedly paid to Lord Inchcape and his colleagues for the splendid work they have done on the Retrenchment Committee, for the thoroughness and promptitude with which they have done their work. But whatever the intrinsic merits of their recommendations might have been, they would have lost very greatly in value but for the concurrence of His Excellency the Commander-in-Chief. I congratulate Lord Inchcape and his colleagues and I congratulate the House on the fact that the Committee have been able to secure the whole-hearted co-operation of His Excellency the Commander-in-Chief in the work which they have done on the Retrenchment Committee and in the recommendations which they have made. Sir, last year I did not refer to one or two things to which I might have referred. One is the question of the Indianisation of the auxiliary services as a possible avenue of retrenchment. I did not dwell upon it for the reason that I thought that the fruits of that policy in the way of retrenchment would be rather gradual and slow. But I think it high time that that question should be examined. It is a matter of regret that the question of the admission of Indians to the auxiliary services—a question upon which this House passed a Resolution when considering the report of the Esher Committee—should be still under the consideration of the Imperial Government. I remember reading in the papers an answer given by Mr. Burdon to a question put to him as to what had been done upon the Resolutions passed by this House in 1921 on the Esher Committee's report. The net result of the answer, as I gathered it from the papers, was that upon those Resolutions which did not count, this Government had been able to secure the orders of the Government at Home, but on anything that really did matter, it was said to be still under correspondence. I must express my very great regret at the delay which has taken place in this matter. We all recognise the great difficulty there is in breaking the

ice—I would say the huge ice barrier of War Office conservatism—but I do hope that His Excellency the Commander-in-Chief will use every means in his power to press this question again and again upon the attention of the Imperial Government and not desist until he obtains favourable orders. It is one of those matters—upon which our Resolutions were passed with the entire concurrence of His Excellency the Commander-in-Chief, and with the approval of the Government of India, and it is a matter of great disappointment to me—and I am sure to the whole Assembly—that upon a matter like this there should have occurred this unconscionable delay of over two years in coming to a decision. I hope it may be possible for His Excellency to signalise his term of office by announcing the decision to give effect to these Resolutions and by making an effort to carry them into effect. Some of these recommendations which the Inchcape Committee have made may possibly have caused His Excellency the Commander-in-Chief some searchings of the heart, but I ventured on the last occasion to appeal to His Excellency as a statesman and I am glad to find that His Excellency has not been slow to respond. He has co-operated in a most whole-hearted fashion with the Retrenchment Committee. But even a layman like me cannot reconcile himself to all the proposals for retrenchment which the Inchcape Committee have made. Some of my colleagues on the non-official side will perhaps be surprised to hear this note of disapproval. The question to which I wish to refer is the proposal to effect a retrenchment in the matter of providing improved accommodation for the Indian sepoy. There were proposals under consideration for reconstruction and improvement of the Lines of the Indian sepoys. I have seen several of these barracks and Lines myself on the way to Khyber, at Peshawar, at Rawalpindi and other places, and I may say that some of us take better care of our horses than the Government of India takes of the Indian soldier. They live in miserable quarters, through which the burning rays of the sun or the burning winds or the cold of the winter pierces, in huts with thin walls and thinner roofs open to all the inclemencies of the weather. I know that one of my colleagues here suggested that it was a training in endurance for our troops. Logically it should be carried to the point of having an army of emaciated saints, but I do not think that that is a sound policy. If you want to make good use of your soldiers as fighting men you must keep them in good condition; and it is not the way to get the best value for your money or the best service you can for the country to expose your soldiers to the inclemencies of the weather, hot or cold, or to make them suffer such privations and hardships. The Inchcape Committee proposes that you should revert to the old arrangement of hutting grants, a system which I have no doubt must have been obviously unsatisfactory and must have been given up on that account. It is somewhat like the silledar system in the Indian Cavalry which has been abandoned. The system is bound to result in very unsatisfactory housing conditions. I was rather sorry therefore to read this recommendation but I reconcile myself to it on the ground of hard times, and I do hope that when our finances improve this question of the reconstruction and improvement of the sepoys' lines will be one of the first to engage the attention of the Government and to receive the sympathy and support of this Assembly.

Another matter in which I should like His Excellency to use all his influence and bring it to bear on Headquarters is that of an equitable, if not a lenient, adjustment of the capitation charges which have risen to an amount nearly three times what they were before the War. We are

[Sir P. S. Sivaswamy Aiyer.]

well aware that prices have risen though during the last year or so there has been a tendency to a slight fall. But the rise in the capitation grant even to £25, which I believe is the latest provisional rate adopted is something which goes very much to swell our non-effective charges, if I may perhaps call them so, and goes to swell our military expenditure. It is that which induced my Honourable friend Sir Dinshaw Wacha to move his proposition for the reconsideration of the Army amalgamation scheme in the other House; I do not believe that the annulment of the amalgamation scheme will effect any greater economy in the recruitment of soldiers. While I do not share that view I feel that this question of the capitation charges is one which has to be hammered at and hammered at till we get an equitable, if not a lenient, adjustment of the charges. I hope that in view of the value which England derives from the experience acquired by her soldiers in India under diverse conditions and the improvement in their fighting qualities, if not in view of our financial condition, the Imperial Government will find itself able to take a broader view of the question and effect a more satisfactory settlement, I mean satisfactory to us.

Sir, I now proceed to make a few observations upon the question of the policy of leaving an uncovered deficit. Speaking for myself, I do not like this policy of leaving an uncovered deficit, and I do hope that the House will not be inclined to follow the course which it adopted last year as a rough and ready expedient for bringing pressure to bear on Government for the purpose of enforcing economy and for the purpose of bringing about measures for retrenchment in our expenditure. But there are two ways of avoiding this policy of deficits. The first way is to avoid a deficit altogether or to minimise it. The other way is to cover the deficit. The Finance Minister told us that the recommendations of the Inchcape Committee had not all been received, that the last instalment was to be received only after the presentation of the budget, and that they had not had time to fully consider all the recommendations. I hope that the interval ~~that~~ has intervened since the presentation of the budget and will intervene before the date when the Finance Bill will come on for consideration will be utilized by the Honourable the Finance Minister for the purpose of exploring every possible avenue of retrenchment, every possible direction in which it may be feasible to bring the Inchcape Committee's proposals into effect in the course of 1923-24. This would be the most satisfactory method of avoiding the policy of uncovered deficits. The next thing is that, if there is an unavoidable deficit, it has to be covered somehow. It is unfortunate that the Finance Minister should in his inexperience of public opinion in this country, though I am sure he has been assisted by his colleagues in this matter, have thought of resorting to the enhancement of the tax on salt. I hope that the Government will not persist in pressing for this form of taxation. In theory a tax upon the necessities of life is objectionable; politically it is most unwise. I hope therefore the Government will discover some other expedient. I remember it was said by my friend the Honourable Mr. Innes on another occasion that the salt tax had always been looked upon as an ultimate reserve. But there are many powers which you have in reserve which you can never think of using. Could anybody dream of imposing a salt tax in England, or of reviving the window tax or reviving the hearth tax? Of course the British Parliament is constitutionally omnipotent; it can do anything; there are many things which we can theoretically do but which are not practical politics. Well, fortunately or unfortunately, the salt tax will have to be

looked upon as no longer available for enhancement in the financial scheme of this country. There are many things which it is theoretically possible to do, but which are not practicable. To give an analogous case, though not in the sphere of taxation, it is possible for you to reduce the suffrage, but you can never think of raising it again. The question is not so much whether the salt tax will be such a burden upon the consumer that he cannot bear it. It may be or may not be; it is not necessary for me to say whether this one anna per head per annum is going to be the last straw upon the camel's back or not; but it is one of the accepted axioms of politics in this country that the salt tax is an odious impost, and the result of a resort to this piece of taxation will be that the Government will lend a handle to the agitator, and it is not always the wisest thing to ignore the agitator. We have sometimes to take account of his doings and their probable reactions on the public. I hope therefore that the Government will not persist in proposing this method of covering their deficit. Let them think of something else. It may be said, "well, we have explored other ways, our resources are limited, this is the only thing we can do; can you propose anything constructive?" I confess that in my present state of health it is beyond my effort to think of something else. Perhaps it is a fault, but I am sorry I cannot suggest anything. But I daresay the Finance Minister with all the experience he has acquired in the Treasury, and his colleagues with their large administrative experience will be more fertile in suggesting expedients than it is possible for me to do.

His Excellency the Commander-in-Chief: In the altogether exceptional circumstances under which this year's budget has been presented it is hardly necessary for me to give a detailed exposition of the military estimates for 1923-24. The basis on which these estimates have been framed is already known to Honourable Members of this House from the Report of Lord Inchcape's Retrenchment Committee and from those portions of the Finance Member's speech of the 1st of March which related to military expenditure. I do not propose therefore to deal with various individual criticisms and queries which have been made by previous speakers in this discussion, except to say that the suggestion of one Honourable Member that the Commander-in-Chief still has several crores of rupees in his pocket ready to take the place of the salt tax is a surmise entirely without a shadow of foundation. Another Honourable Member referred to the possibility of reducing the military budget in the future to 50 crores, as was envisaged in one of the paragraphs of the Inchcape Committee's Report. I should like, however, to emphasize the fact, stated in that Report, that the Commander-in-Chief did not subscribe to this recommendation—and I may add that it is unlikely that he will do so. I am sorry that I was not here this morning in sufficient time to hear the commencement of the speech of my Honourable friend sitting on the opposite bench (Honourable Sir P. S. Sivaswamy Aiyer), but I did hear two suggestions made by him, one in reference to the improvement of the barracks for Indian soldiers, of which he has some knowledge, and in which I am in entire agreement with him, the other in which he referred to the capitation grant, and again he has my entire sympathy, and I quite agree that the present temporary arrangement under which the sum has been agreed upon as between the Imperial and the Indian Government is not satisfactory, and I shall use my best endeavours to bring about a final and equitable arrangement. Now I will confine myself in what I have to say to-day to the larger issues of this

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problem, and in the few observations that I propose to make, I will endeavour to explain, for the information of this House, the considerations of general policy, military and otherwise, which have rendered possible the economies which are now contemplated. Speaking broadly, the Army estimates of 1923-24 represent the consolidated work of the past year. That time has been largely devoted to a searching investigation of the possible reductions in military expenditure. This House is aware that last summer the Government appointed a Committee under the presidency of my Honourable colleague Mr. Innes to examine the question of reducing the cost of the staff at Army Headquarters. This Committee was followed by the Braithwaite Committee appointed in the autumn for the purpose of recommending economies in the Quarter Master General's Services, and also for the purpose of preparing material for the more comprehensive inquiry which Lord Inchcape's Committee was about to undertake. The Braithwaite Committee included in its numbers Lieutenant-General Sir Walter Braithwaite, then the Commander-in-Chief of the Western Command, Honourable Members representative of both Houses, both this House and the Council of State, and Lieutenant-General Sir Walter Campbell, who has just been appointed Quarter Master General. The composition of the Committee in itself is evidence of the thoroughness with which the Government were determined to attack the question of retrenchment in the great spending departments of the Army, and I should like to take this opportunity of acknowledging the great value of the work that these important Committees performed with great skill and understanding and in a remarkably short space of time.

Finally, of course, we have had the inquiries of Lord Inchcape's Committee in which the proceedings and recommendations of the two previous Committees have been merged. Now, I must assume that Honourable Members of this House have made themselves acquainted with those portions of the Retrenchment Committee's Report which deal with military expenditure. Those who have done so will realise that the reductions proposed are real and substantial, that the whole field of military expenditure has been thoroughly explored and that a considerable reduction in the number of fighting troops, both British and Indian, stands in the forefront of the Committee's recommendations. I think I have on a previous occasion impressed on this House that no considerable reduction in military expenditure in India could be effected without cutting down the number of fighting troops. Last year I told the House that under the conditions then prevailing I could not agree to a reduction in the fighting strength of the Army and I gave my reasons for holding this view. On the present occasion you will find it stated in the Report of the Retrenchment Committee that the reductions in military expenditure include reductions in troops, and that this has been generally accepted by myself. It may be thought by some that my present attitude is inconsistent with that which I felt bound to adopt last year. I wish, therefore, to make it quite clear that, in giving my general concurrence to the Retrenchment proposals, I have been influenced primarily by the financial considerations which must have an important bearing in determining the general policy of the Government. The Finance Member has described very graphically the perils and the dangers of our financial position, and I have been greatly impressed by the paramount need of balancing our Budget this year. I further realise that conditions, both internal and external, have much improved during the past twelve months

and that we are justified in taking risks which we should have been wrong to incur a year ago. At the same time, I do not, and cannot, admit that the Army is either too strong or too efficient for the needs of India. The equipment of the Army has not yet reached the standard of completeness which this Assembly by a Resolution passed in connection with the Esher Committee's Report itself postulated. Again, I do not admit for one moment that the military expenditure of the recent past has been unnecessarily high, and I should like to refer the House in this connection to the observations which the Retrenchment Committee themselves have made on that point. In paragraph 3 of Lord Inchcape's Report the following remarks will be seen:

"We appreciate the great difficulties with which the military authorities in India have had to contend during the transition period from war to peace conditions, when large armies had to be demobilised concurrently with re-organisations undertaken in the light of the lessons of the war. Hostilities with Afghanistan and operations on the frontier intervened whilst demobilisation was in progress and the growing cost of the Army coupled with the deterioration of the general financial condition of the country have more than once necessitated complete revision of the schemes proposed for the future composition, organisation and distribution of the Army in India."

I recognise, on the other hand, that India's first necessity is to achieve a balanced Budget and that no substantial advance can be made in other departments of the State until the financial position has been stabilised. There are times when risks must be taken. The reductions which have been proposed and to which I have agreed do involve a certain degree of risk from an exclusively military point of view, but they are risks which, in my opinion, the Government are justified in taking when confronted with the financial disaster which an unbalanced Budget would force upon this country. I can confidently say with a full sense of my responsibility, as Commander-in-Chief that the risk is one that, in the circumstances, I am prepared to advise the Government of India to accept. The House will appreciate and is well aware of the marked improvement that has taken place in India during the last twelve months, both in the external and in the internal situation, and I may remind the House of what I impressed upon them last year, namely, that, before I could conscientiously recommend a reduction in our military forces, there must be a definite and a permanent cessation of violent civil disorder. A great change for the better has taken place and we are in a very different position now compared with 1921-22, when the Moplah rebellion had only just been quelled and the Government were faced with possibilities of serious disturbances elsewhere. It will not be necessary for me to detain the House by any technical comment on the details of the retrenchment to which I have given my general agreement. The facts and proposals which will chiefly interest Honourable Members of this Assembly are clearly stated in the Retrenchment Committee's Report, and a further discussion of them on this occasion would serve no useful purpose, more particularly as it is only the reductions in infantry which have received the approval of His Majesty's Government.

The proposed reductions in Cavalry and Artillery are still under consideration, and no definite conclusions have yet been arrived at. There is, however, one point of special interest and importance which I would wish to emphasise strongly. If the reductions contemplated are carried into effect they will leave practically unimpaired the fundamental organization of the Army in India. This organization has been introduced since the War in the light of the lessons learnt during the War. In collaboration with the Retrenchment Committee I have aimed at a reduction

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of a kind which will give the maximum saving of expenditure and do the least possible harm to our military machinery of defence. Obviously the preservation of the fundamental structure of the Army in India is a matter of vital concern both to India as a whole and to the representatives of India in this House. If the structure remains, it is always possible to add to it and to reinforce it in case of emergency.

I should like to take this opportunity of assuring the House that the present organisation of the Army in India is highly efficient and is one of which India may be justly proud. I say this deliberately; and I would add that the system is the result of the devoted efforts of the most efficient body of Staff officers that the Indian Army has probably ever possessed at any period of its history—officers who have been trained during the War, whose capacity was proved in the War and who are imbued with the lessons of the War. The passage I have already quoted from the Retrenchment Committee's Report indicates very clearly the difficulties which they have had to surmount, and the condition of the Army in India to-day redounds very greatly to their credit. I have seen unmistakeable evidence of it myself recently in the inspections of troops both on the parade ground and under training. The standard of efficiency has shown a very marked improvement since I came to India some two years ago, and if further evidence were required it is to be found in the results which British and Indian troops on field service have recently achieved in Waziristan.

In conclusion I would say one further word on Waziristan. Last year I referred to the halo of doubt and uncertainty which obscured the situation in that part of the Frontier. I hazarded the opinion that the solution of that difficult problem lay in the subjugation of the Mahsuds by force of arms and the construction of roads through their country. This policy has been and is being carried into effect, and there are definite indications—I cannot say more at the moment—that as a result the object of our policy will be achieved at no very distant date. If a final settlement can thus be effected, and I have every hope that it may, we shall be able to withdraw our military forces during the coming autumn, leave the control of the country in the hands of our Frontier Political officers and thus effect a very considerable saving in our next year's Budget. But in the meantime we shall have built our roads and thus be in a position rapidly to support the Scouts and Khasadars and assist the friendly section of the tribes in case of trouble. Mr. Bray has already explained to you very fully the details of the situation and the general policy of the Government. I need therefore say no more, except that in my view there is a reasonable hope of peace in this turbulent country and a considerable reduction in our financial commitments. I hope the House will weigh carefully the considerations which I have tried very briefly to place before them and will appreciate the efforts which the Government and their military advisers have made at the first propitious opportunity of reducing the burden of military expenditure. We have effected it without sacrificing the essential requirements of Indian defence; but a limited degree of risk is involved. The improvement in the internal and external conditions of the country is such that in my opinion the Government is justified in accepting that risk in order to attain financial equilibrium. (Cheers.)

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, the Honourable the Finance Member has been congratulated so often that it is not necessary to add to the volume of the praise bestowed on him. My own, Sir, is rather a personal one. I congratulate him upon the anxiety he has shown to grapple with a difficult problem, upon the spirit which has animated him and upon the skill with which he has brushed aside many a difficult problem. Sir, this is not the time for bestowing praises when you have only fifteen minutes to deal with the whole situation; therefore I shall proceed at once to speak on some of the subjects which I intend placing before the House.

Before I proceed further, Sir, I must express the disappointment which is felt on this side of the House regarding the failure of Government to appreciate the endeavours of the non-official Members to set right the finance of the country. Sir, last year, notwithstanding ridicule, notwithstanding contempt poured upon us, some of my friends very valiantly pleaded for retrenchment, pleaded that the time had come when the overburdened offices of the Government should be shorn of some of their officers. It was in consequence of that plea, I take it, that the Inchcape Committee was appointed, and therefore, Sir, it would have been but fair if the Government had recognized the efforts made by us to relieve them from a very embarrassing situation. No doubt, Sir, we find our reward in the Report of the Inchcape Committee; but it would have come very gracefully from the Government, if they had recognized that we had done our best to assist the Government out of a very difficult situation.

Sir, what do we find in reading the Report of the Inchcape Committee? That since the year 1913-14 the expenses of manning the various establishments have gone up over 100 per cent. in almost every department of the State. If you look, Sir, at the military expenditure, you will find that there the expenses have gone up from 1913-14, in 1920-21 by 120 per cent. In the case of Railways, it is over 90 per cent. In the General Administration it is 90 per cent. In the Civil administrative departments it is 100 per cent. Even as regards the Ecclesiastical department the expenditure has gone up by 75 per cent. Sir, if time were given us to discuss the Report of the Inchcape Committee, we are confident that we shall be able to show that the cuts should exceed far beyond the 19½ crores which the Committee have recommended; because the

Report shows that there are many avenues for effecting retrenchment which have not been touched by the Inchcape Committee. Before I take leave of the Inchcape Committee's report, I should like to point out one thing which the Committee has done and with which I do not think the House will find itself in agreement, and that is as regards the recommendation to cut down expenditure in the nation-building departments. As regards education and as regards some of the departments which are absolutely necessary for the progress of the country, there ought to be no attempt made to reduce expenditure; for example I am told that the expenditure relating to the Hardinge Medical College is to be reduced by a lakh of rupees. I think it would be a most serious thing to do, and I do not think the House will tolerate or that the country will tolerate the cutting down of expenditure in that department.

As regards the military, Sir, I would like to say a few words. Yesterday we listened to a very eloquent—I think it was too eloquent for this House—but a very eloquent speech from the Honourable Mr. Bray, and

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to day we have had a well-balanced and a carefully thought out utterance from His Excellency the Commander-in-Chief. If I have followed the utterances of these two responsible officers, and if it is possible for an arm-chair politician to join issue with such great experts, it seems to me, Sir, that they do not realise that there is a possibility of cutting down expenditure beyond those which the Inchcape Committee have recommended. His Excellency the Commander-in-Chief read out to us paragraph 3 of that Report. May I with his permission and with the permission of the House draw attention to the 4th paragraph in the same report? This is what the Committee say there:

"The expenditure which has been incurred in the past may have been inevitable, but the question is whether India can afford to maintain military expenditure on the present scale as an insurance against future eventualities. In our opinion the repeated huge deficits of the last few years in spite of the imposition of heavy new taxation have made it abundantly clear that India cannot afford this expenditure."

Sir, nothing can be more moderate, nothing can be more sober than this condemnation of the huge military expenditure which this country is shouldering. In peace time, when everything is normal, it is not necessary to finance this huge military expenditure; as my friend Mr. Rangachariar put it—an expenditure which costs you 50 per cent. of the income of the country. I think, Sir, that His Excellency the Commander-in-Chief and the Government at Home and the Government here should devise means by which a great deal more of this expenditure can be usefully cut down; I hope His Excellency the Commander-in-Chief will apply his mind to further cutting down the expenditure, so that this country may not continue to groan under this heavy burden which is sure to starve every other department of the State.

Sir, yesterday the Honourable Mr. Bray said that statesmanship abhors a vacuum and, if I followed him rightly, he seemed to suggest that it was the intention of the Government to civilise the Afridis. Now, Sir, if that is the settled policy of the Government, it is desirable that the House and the Government should realise what it would land us in. If you are going to fill up the vacuum, you will have to fill it up by untold sums of money and by the sacrifice of innumerable lives.

Mr. Denys Bray (Foreign Secretary): If I may venture to interrupt, Sir. When I referred to the filling up of the vacuum I did not refer to filling up of the vacuum by a forward policy. I thought I made it perfectly clear.

Mr. T. V. Seshagiri Ayyar: The Honourable Mr. Bray says that it is not a forward policy that he advocated; but if I heard him rightly, he first said that there was one kind of forward policy which would go up to the borders of Afghanistan; he then said there was another kind of forward policy which meant civilising the Afridi. I think he said that, if I remember aright. Now if you are going to civilise the Afridi—I mean the Mahsuds—the result of it will be that this country will have to bleed white to the whitest limit. I think you will find that you will have to starve expenditure in every department of the State, if your scheme of civilising the Mahsud is to be taken in hand, and therefore I hope the Government will realise that it is impossible to proceed further in the path of civilising the Mahsud. I think some attempt ought to be made to cut down military expenditure in that direction.

Sir, there is another matter on which I should like to say only a word, and that is this: the Inchcape Committee has drawn attention to the fact that by bringing in the new Department of Railways, there will have to be a readjustment of the portfolios in the Government of India. I am glad the Inchcape Committee have not recommended the creation of another office, because that would be intolerable. I take it that the object of that Committee's report is that the existing offices should be readjusted. There may be eight Executive Councillors, not nine. If that is going to be undertaken—and I am quite sure it is going to be—I would make a suggestion, namely, that some of my Indian friends who are in the Executive Council may be trusted to discharge the duties of some of the administrative posts under the Government of India. I find sitting here day after day, the Honourable Mr. Innes, the Honourable Sir Malcolm Hailey and the Finance Member who are growing thin by the heavy work they have to do, and I find that my friends, the Honourable Mr. Chatterjee, the Honourable the Law Member and the Honourable Mr. Sarma are growing fat from want of work; and I think it is time that Government so arranges their work that one section may not grow thinner and the other fatter. The thinner men should have more rest than they enjoy. That is a suggestion which this part of the House is anxious should be conveyed to the Government and I am quite sure it will be considered.

There is one other matter which I should like to touch upon and that is railway policy. Sir, I would like to give the House some figures. Since 1858, in consequence of having to pay guaranteed interest, this country up to the year 1900 disbursed from the general exchequer something like Rs. 77 crores. From 1900 onwards there have been surpluses which resulted in giving to the country about Rs. 66 crores—I think my figures are correct—and there is still a deficit of Rs. 11 crores to make up. That is to say, the country has had to pay about Rs. 11 crores from the general exchequer so far as railways are concerned. Since the year 1921 and 1922 the income has again shown a tendency to go down and the result, I believe, is there was a deficit last year and there will also be a deficit this year unless some attempt is made to cut down the expenditure. As I said the expenses have gone up by more than 90 per cent., and it is desirable that a serious attempt should be made to cut down that expenditure. In this connection I may draw the attention of Government to the fact that in other countries some attempt has been made to reduce the rate of third class passenger fares. In England when they found that the income was not up to the mark, what they did was to reduce the fares; and I found the other day that in Mysore when they found that the income was going down they were going to reduce the passenger fares. I hope the Government will do something in the same direction. After all one must remember, although as was recommended by the Inchcape Committee it is desirable that our railways should bring in an income of 5½ per cent. on the capital outlay, that it is a public utility department; we have to manage this department in the best interests of the people who have to travel; that ought not to be forgotten, and I dare say that if we keep this in mind and reduce the passenger fares we will find that our income is larger than it is at present. This is a matter, Sir, to which the Honourable Mr. Innes will have to give his attention. One other subject more, Sir—I am not looking at the clock, but I am looking at the face of the President, and that is an index that my time is almost up—there is one more matter, Sir, on which I should like to say a word, and that is this: When the Honourable Sir Basil Blackett was appointed

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to his responsible post, there was a feeling in this country that on the question of exchange he was going to bring a fresh mind to bear and that he would settle the difficulties with which India had been confronted for a long time as early as possible. But his speech in introducing the Budget has been received with great disappointment all over the country on this subject. We have had what is called a settlement of 2s. exchange for a long time. That has been found to be altogether unworkable. Two years ago, Sir, in Bombay it was said that the merchants were not able to meet their commitments and that they were behaving dishonestly. The truth is that there has been such a fluctuation in the exchange that without being reduced to bankruptcy it was impossible for these merchants to have met the commitments into which they had entered. Commercial morality is suffering, the country is suffering and everything is being dislocated; a serious attempt must be made to stabilise exchange. I think, Sir, the time is very propitious for undertaking that step, and with the ripe experience which Sir Basil Blackett has upon this matter, I hope he would take upon himself at the earliest possible opportunity to settle this difficult question.

Sir, I wish to say a word more generally upon the various recommendations of the Inchcape Committee. As I began by saying if one reads the report, it would be abundantly clear that they have not given attention to all the possible modes of effecting retrenchment in the country. It is felt on this side of the House that if, in carrying out the recommendations of the Inchcape Committee, some attempt is made to associate the Non-Official Members in effecting retrenchment, a great deal more can be done than can be done by the officials themselves. The officials... (At this stage Mr. President rose) Sir, I am sitting down in a minute. The officials, if they are left to themselves, are likely to feel tender towards their own subordinates. But if they are associated with Non-Official Members, they will find that their task is made easier and that they will not be subjected to the same amount of reproach as they would otherwise be.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, about two years back, when first this Assembly assumed office, it was confronted with a deficit Budget, and the Members of the Assembly then pointed out what has since become obvious that the Government's first duty was to balance its Budget. We then pointed out that the military expenditure of the country had far exceeded its paying capacity. Last year, in the second year of our Budget, we once more returned to the charge. We pointed out that the military expenditure was excessive and that the appointment of a Retrenchment Committee was essential for the purpose of restoring equilibrium in the Government of India's Budget. Later on, we followed up this suggestion by tabling a Resolution for the appointment of a Retrenchment Committee and in the teeth of opposition on the part of the Government we carried that Resolution. The result has been the appointment of a Retrenchment Committee. My Honourable friend the Finance Member, when he speaks of the storm and stress through which his colleagues have laboured during the last two years, could not have forgotten that we were ploughing our lonely furrow in the first and in the second year of the Budget, pressing upon the Government the necessity of balancing their Budget and of retrenching their national expenditure. Ours was the voice in the wilderness in the first year and the second year, and it was only after we pressed to the vote and carried by our majority the Resolution on the appointment

of a Retrenchment Committee that Lord Inchcape's Retrenchment Committee was appointed. My friend Mr. Seshagiri Ayyar is perfectly right in saying that my Honourable friend must be suffering from lapse of memory if he has not adverted to what is written large upon the pages of the Indian Hansard. But, Sir, when we look at the question from the standpoint of the tax-payer, what do we find? The military expenditure, which stood in 1913-14 at 29.70 crores, had gone up in 1921-22 to 77.87 and in 1922-23 to 72.29 and in the Budget for the next year, after the reductions proposed, it stands at 62 crores. Last year we pointed out that in the Brussels Financial Conference it was resolved with the full concurrence of the Government of India and the representatives of the India Office that no nation could afford to pay more than 20 per cent. of its gross revenues on the upkeep of the Army, and even 20 per cent. was excessive. Now, Sir, if we apply that test, what is the result? The expenditure on the Indian Army works out at 44 per cent. of the gross revenue even if the recommendations of the Inchcape Committee are fully carried out; and it is more than double what the Brussels Conference regarded as perilous and leading to national bankruptcy. I have not forgotten, Sir, the gross revenues of the Government of India and of the Provinces. If they stand in the neighbourhood of 200 crores, this expenditure would still be far in excess of what was admitted to be the maximum at the Brussels Conference. Now, Sir, His Excellency the Commander-in-Chief has drawn attention to the fact that the Army of India cannot be reduced without due regard to efficiency. May I point out to His Excellency the Commander-in-Chief that immediately after the Mutiny the Army of India was re-organised and fixed at 65,000 British and 140,000 Indians and the Army to-day is 71,702 rank, 902 reserves, a total of 72,622, that is, 7,622 more than what was proposed at the close of the Mutiny, of British troops, and as regards Indians we have 170,968 rank, 15,529 reserves, a total of 186,497, that is, 46,497 more than what was settled as the maximum in the post-Mutiny re-organisation. May I point out, Sir, in this connection that those were the days when we had to take account of what was then characterised as the Russian menace, we had to take account of the frontier tribes, and we had also to take account of a hostile Afghan nation. We have now a treaty with His Majesty the Amir of Afghanistan. Russia is in the military sense no longer able to disturb the peace of this country, and so far as the frontier is concerned, the frontier remains to-day what it was in the post-Mutiny period. What justification, then, is there for the increase of the Army from those days to now? Then, Sir, in those days the principle laid down for the proportion of White and Indian troops was somewhere in the ratio of 1 to 2, and it was adhered to upon the assumption that the Indian troops might again break out into another mutiny, and therefore it was necessary to maintain a number of white troops as a counterblast. But, surely, Sir, after we have heard what His Excellency the Commander-in-Chief has said of the gallantry and loyalty of the Indian troops tried in the arena of war, what justification is there for maintaining that ratio between the white and brown soldier? His Excellency the Commander-in-Chief could not be unaware of the fact that the white soldier is the costliest soldier in the world. The Inchcape Committee have pointed out that he costs more than Rs. 200 a month, and he is therefore at least 5½ times as costly as the Indian soldier. This House therefore demands to know why the British soldier should not be replaced by the Indian soldier, and why the white British officer should not be replaced by the gradual process of elimination be replaced by Indian officers. That I submit is the only means of effecting economy in the military expenditure of this country. Frequent references

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have been made both by His Excellency the Commander-in-Chief and other speakers to passages in Lord Inchcape Committee's report. May I, Sir, read one sentence from the very first page of that report. It says:

"So long as peace conditions obtain, the first essential thing is for India to balance her budget, and this can only be secured by a very substantial reduction in the military estimates."

The question therefore arises—Has there been a very substantial reduction in the military estimates? If Honourable Members will turn to the statistics I have given, they will find that far from there being any substantial reduction in the military estimates, the expenditure is far in excess of what it was a few years back. I have informed the House that in 1913-14 the percentage of expenditure to the total revenue stood at 23.5. In 1917-18 during the War year our expenditure was 43.14 crores, and Lord Meston in his Award fixed 42 crores as the normal military expenditure. But a few years later that expenditure had risen from 42 crores to the neighbourhood of 72 crores. What justification I ask is there for this appalling rise in the military expenditure? Lord Inchcape himself, or rather the Lord Inchcape Committee write with reference to military expenditure in the following terms:

"Since 1913-14 the fighting efficiency of the Army has been enormously increased by the introduction of modern rifles, machine guns, etc., and that a large portion of the Army is maintained for internal safety."

I listened, Sir, to a lecture delivered by His Excellency the Commander-in-Chief and there he pointed out that roughly speaking one-third of the Indian Army was maintained for the internal security, that another third was what are called covering troops and the remaining one-third was for frontier and other defences. Now, Sir, I beg to ask, why should not this internal security force one-third of the Army maintained for the maintenance of internal security be replaced by the police. I ask why should the military be maintained for the purpose of securing internal peace which is primarily the object of the police? Honourable Members will bear me out when I say the mere maintenance of this Army is an incentive to the civil authorities to draw upon the military in time and out of time when it is not necessary for the peace and security of the country that they should be drawn upon. It is the duty of the civilians to maintain peace and order in the country and if they require any extraneous assistance they can have the armed and unarmed police, but it is not the primary function of any army, much less a national army to maintain internal peace and order. That I submit is not the function of any army in the world and it should not certainly be the primary function of the army in India. If this fact is borne in mind, we shall have a very substantial reduction in the military expenditure of this country. I have already pointed out that if the British troops are replaced by Indian troops, and if the Army is reduced by one-third and replaced by police, armed and unarmed, the cost would then approximate to what this country is able to bear. But when I read in the Honourable the Finance Member's speech a reference to the fact that the Army in India must not be altered so as to essentially impair its structure and organisation, I felt some doubt whether the policy of the Government of India is not to perpetuate the policy adumbrated at the close of the Mutiny and since persisted in in spite of the protests of the people's representatives in this country. Turning, Sir, from the military to the civil side what do we find? We find that in almost all the departments the

administration consumes the bulk of the nation's revenue. Let me give Honourable Members some startling figures. I shall only trouble the House with the figures for the last four years. In Posts and Telegraphs in 1920-21 the income was 9.61, expenditure 7.57, profit 2.04, percentage of expenditure 78; in 1921-22 income 9.55, expenditure 8.98, profit diminished to .57. Expenditure rose to 94 per cent. In 1922-23, income 10.23, expenditure 9.53 profit dwindled to .70, expenditure stood at 93 per cent. In 1923-24 the Budget under discussion, income 10.71, expenditure 8.68, profit 2.03, percentage of expenditure 80. Now, in this connection what do the Inchcape Committee recommend? They recommend a reduction of 1.37 out of 9.53 crores; net reduction 50 lakhs. Now take another department—Customs. In 1921-22 income in crores 34.40, expenditure 65.87 lakhs, percentage 19.1. In 1922-23 income 42.30 crores, expenditure 72.74 lakhs, percentage 18. In 1923-24 income 45.09 crores, expenditure 77.19 lakhs, percentage 18. Now take again the Income tax department and the figures here are still more startling. In 1921-22 income 18.74 crores, expenditure in lakhs 20.50, percentage 1.0. In 1922-23 income 18.69 crores, expenditure 47.01, percentage 2.5 and now look at the next year's figures. In 1923-24 income 19.04, expenditure 63.79, ratio 3.3. And now take the railways the last of all.

Mr. President: I must warn the Honourable Member that he has exhausted his time.

Dr. H. S. Gour: I shall finish very soon. I shall give the Honourable Members the figures for railways. I shall only give for 1913-14 and the last year's figures, though I worked them out for the last 15 years. In 1913-14, gross receipts 56.81 crores, expenses 29.35, percentage 52. In 1921-22, gross receipts 81.69, expenses 65.66, percentage 80. In 1922-23 revised receipts 92.7, expenditure 66.33, percentage 72 and next year income 95.57, expenditure 6.51, percentage 69.6. I submit, Sir, that this is an excessive expenditure upon the raising of revenue and upon the management of the commercial departments of the Government of India. Lastly there are the recommendations of the Inchcape Committee. Following the same train of reasoning, Honourable Members will find that while the Retrenchment Committee have left the general administration, audit, Ecclesiastical and Political Departments almost untouched, they have attacked these scientific departments, such as education, medical, public health, industries and the rest. Now the General Administration expenditure in 1921-22 was 128.48.

Mr. President: I must ask the Honourable Member to draw his remarks to a close. He is still embarking on details.

Dr. H. S. Gour: I will take only two or three minutes more.

Mr. President: I have given the Honourable Member more than two or three minutes.

Dr. H. S. Gour: I will just point out that while in the general non-paying administrative departments the Inchcape Committee have made no substantial reductions, they have practically applied their axe to all the nation-building departments and cut out education, medical, public health, industries and the rest. I ask the House whether this is the right method of effecting retrenchment. I have no doubt that the House will unanimously support the proposal made by my Honourable friend Mr. Seshagiri Ayyar, namely, that the cuts should have begun first with the non-paying

[Dr. H. S. Gour.]

departments and not with the nation-building departments such as education, medicine and public health and I hope that the Honourable the Finance Member will bear that fact in mind. Finally Sir, while we have no doubt to congratulate the Honourable the Finance Member upon the lucid presentment of the Budget we cannot disguise the fact that we shall not be in a position to impose any addition to the existing salt tax. To use the expression I used in another connection the salt tax is *res judicata*. It was sought to be imposed last year and we vetoed it.

Mr. A. V. V. Aiyar (Finance Department: Nominated Official): It may be convenient to the House if I at this stage deal with some of the points which have been raised by Honourable Members in the course of the discussion yesterday and this morning. I know, Sir, that the time of the House is very precious to-day and I will make my remarks as brief as possible. If I have followed the discussions correctly, there is a general satisfaction with the amount of retrenchment which Government have found it possible to effect in next year's budget. There is, I believe, also a general agreement, with the possible exception of Mr. Chaudhri, that we should not leave any part of the next year's deficit uncovered. Some of the Honourable Members however hold a belief that this can be effected by further retrenchments beyond those already made and without additional taxation. Speaking on the last point, Sir, several Honourable Members yesterday referred to several hidden crores in the budget here and there, and one Honourable Member went so far as to suggest that the deficit was purposely put in to produce a false alarm. I wish this were the case. If I may say so, and I do so with great respect, I rather think that the comparatively favourable character of the budget has produced in the minds of Honourable Members a false sense of security. I claim some knowledge of the figures in the budget, and I have been at some pains since the discussion yesterday to discover some of these crores. I have not so far succeeded in discovering even lakhs, not to speak of crores of hidden money. I think, Sir, before these crores have been brought to light, it will not be safe for the House to act on the assumption that the crores are there.

Speaking of the Retrenchment Committee's report, I wish to solve two points in regard to which doubts appear to exist in the minds of Honourable Members. The first is that the deficit of 4½ crores inserted in the budget allows for all the retrenchments which the Government of India expect to be able to effect in the course of the next year. These consist of 260 lakhs of reduction in the budget figures for the next year which had already been taken into account in the civil budget. A further reduction of 4 crores which the Government of India entered in lump on the 1st of March pending distribution among the Departments and a further reduction of 5.75 crores in the military budget, a total of 12.35 crores. Therefore the deficit of 4.26 crores assumes that the Government of India will effect during the course of next year all the retrenchment proposed by the Retrenchment Committee except to the extent of the unavoidable delay involved in bringing them into effect. The second point refers, Sir, to the remark which fell from Mr. Seshagiri Ayyar this morning that the Retrenchment Committee have left unexplored several avenues of retrenchment. The Committee, of course, knew their business best, and as my friend knows, they have throughout the report entered certain figures which they think ought to go into the budget for next year; and if they left out any particular item for subsequent investigation it is because

they knew very well that they could not be brought into effect in time for the next year's budget.

Mr. Rangachariar, Sir, made certain specific suggestions which he thought would secure equilibrium in the budget without additional taxation. If I followed him correctly, he suggested a further reduction of military expenditure, a reduction of 1½ crores on the railways, a further reduction of 1 crore in civil expenditure and the removal of the railway annuities from the revenue portion of the accounts. I need not speak about military expenditure, because that has been dealt with by His Excellency the Commander-in-Chief. As regards railways, I am afraid the suggestion is based upon a misapprehension. It is true that the Retrenchment Committee proposed a total reduction of 4½ crores, but that was on the budget figures for the current year. Of that reduction 1.20 crores has already been given effect to in the original budget figures for the next year. So, with the lump reduction of 3 crores which we now propose, it makes a total reduction of 4.20 crores against 4.59 crores proposed by the Committee. The difference is thus 39 lakhs; a very different figure from 1.50 crores which Mr. Rangachariar mentioned.

As regards civil expenditure, Sir, the House will no doubt indicate in the course of the discussion of demands next week the particular directions in which they think further reductions possible. But as I have already said, the figures for which we propose to ask for the vote of the House are those which have been arrived at after taking into account all the reductions which the Retrenchment Committee propose. If therefore a further reduction of 1 crore is to be made it must be made in one of two ways, either by further reductions to the extent of 1 crore beyond those proposed by the Committee, or if the House thinks this possible, by bringing into effect the greater number of the recommendations of the Committee much sooner than Government anticipate it will be possible to do. Speaking frankly, Sir, I think the possibility of any further substantial saving in civil expenditure beyond that which has been put into the budget is very remote.

There remains, Sir, the suggestion about railway annuities. This question was considered last year and since then the House has had an opportunity of studying the correspondence with the Secretary of State on this question. It was placed on the table of this House in reply to a question by Mr. Joshi and it will be found printed in the proceedings of this House of the 6th September, 1922. The simple reason why we cannot accept that suggestion is that these annuities are of the nature of sinking funds and sinking funds are recognised to be a legitimate charge against current revenues. If Honourable Members will kindly read the Despatches printed in the proceedings I have referred to, they will find ample reason why we are not able to accept that suggestion. I may put another consideration in this connection before the House. The House will remember that the year before last in dealing with the budget here we transferred the capital outlay on the Telegraph Department from the revenue to the capital section of the accounts. Again last year we transferred to the credit of revenue the interest on currency reserve investments; and further this year we are putting to the credit of revenue the interest on gold standard reserve investments. The relief to revenue from these three sources totals 5.12 crores and I suggest, Sir, that we have gone sufficiently far already in the direction of securing relief to the revenue account by a mere manipulation of the figures.

[Mr. A. V. V. Aiyar.]

A few words, Sir, about the additional taxation proposed next year and I have finished. Speaking of additional taxation I am reminded of the fact that no less than 47 Honourable Members of this House gave notice of a Resolution early this Session recommending the imposition of additional taxation in order to wipe off the provincial contributions. It would be interesting, Sir, to watch the attitude of those Honourable Members when the Finance Bill comes up for consideration. If that Resolution was meant seriously, the proposal put forward by Government affords the surest way of achieving that object. If that proposal is accepted, it is reasonably certain that the contributions will be wiped off not in six years but in a shorter period. On the other hand, if it is not accepted, the remission of the provincial contributions must, as a corollary, be deferred to a more remote date.

Just two more points, Sir, which I wish to mention. Looking at the question of taxation from the orthodox point of view which Mr. Ginwala attributed to us yesterday, I cannot find, Sir, any other single source of taxation which will give us the money we want, that is 4½ crores. We will have to put together a number of expedients. Some of them are of doubtful expediency. We had instances of this yesterday. One Honourable Member proposed an increase in the cotton excise: it was received with murmurs. There were murmurs again when another Honourable Member proposed an increase in the import duty on cotton goods. Even if satisfactory substitutes are found, I will not be surprised if eventually the House finds that it has gone through the form of passing additional taxation without giving us the money we want.

One small point, Sir. Mr. Seshagiri Ayyar referred to a proposal of the Retrenchment Committee to reduce the contribution to the Hardinge Medical College. I may not have read the Report carefully, but I have not been able to find anything about it in the Report.

Sir Montagu Webb (Bombay: European): Sir, the Honourable Member in presenting his Budget claimed the privilege of a new Member. May I join with other Members of this House in saying that we heartily welcome him in our midst bringing as he does to the study of the problems on which we are engaged, not only a fresh mind to bear upon the Indian situation but one fortified and strengthened by personal familiarity with the far greater and more puzzling complications of money and finance on the Continent of Europe. I must at the outset express my whole-hearted admiration for the courage that he has shown in venturing to come to India at this particular juncture to help us in putting our monetary problems right. Undaunted by a long succession of most appalling deficits and also by a rupee,—a fickle, elusive rupee, capable of doing anything from a shilling to two shillings, he nevertheless has addressed himself to the work of gathering in the harvest of the past.—a harvest, as he truly and fairly said, sown by his predecessors, predecessors not only in India but also, I would add, at the India Office. The results have been very much what we had anticipated,—accounts wherein the revenue expectations have disappointed us, leaving us in a worse position than we were in a year ago, and a Budget containing the same old noxious features with which we have become so familiar in the past, yet another deficit, and yet another proposal for additional taxation! I should be concealing the truth, Sir, if I did not say at once that the Budget gave us rather a chill directly we heard it. But, on going through it, Sir, we find that after all it is not

such a bad Budget. In fact, I am inclined to think that possibly many people may think it a very good Budget. If perhaps it is not as good as all of us may desire, at any rate it has many good features and I hope this House will pass it, if not exactly in its present form, then perhaps modified in some small degree.

I take it, Sir, that nobody in this House would think of holding the Honourable Member personally responsible for the state of affairs in which we now find our finances. (*An Honourable Member*: "Not at all.") He very rightly and fairly protested that the two months in which he has been in this country were hardly sufficient in which to enable him to prepare a Budget. Well, Sir, if two months are not sufficient, what are we to say of the two or three days only in which Honourable Members have had to study the five thick volumes of statistics and material supplied with the Budget, including the large 300 paged volume of the Inchcape Report? I should like, Sir, at this moment to say that I have endeavoured to read through and study the whole of that Report and the first impression left on my mind is that this is the most valuable document that Government have published for many years past. Apart from the many penetrating and illuminating suggestions and comments on the work of the various Departments of Government made by the Committee, the fact that they have recommended a retrenchment of nineteen and a quarter crores in our expenditure is a great thing. If that retrenchment can be carried out without seriously affecting the efficiency of the administration, then indeed, Sir, will the Inchcape axe have fallen with effect. I think, Sir, that everybody in this House and the whole of the public of India should express their gratitude and indebtedness to Lord Inchcape and his Committee, all of them leading business men, who have devoted their time and talents to the solution of this problem and laboured so strenuously to bring about the desired result. And I think we ought not to forget, Sir, to congratulate Dr. Gour of this House, who is responsible for putting forward the motion on which this Retrenchment Committee was appointed.

Now, Sir, the Honourable the Finance Member said in his Budget speech that it was no use crying over spilt milk and that we should not expect him to go back and delve very deeply into the past. That, Sir, is quite true; but I will venture to recall one or two matters in the past in order that we may have a better understanding of the position with which we are now dealing. First of all, I would remind the Honourable Member that for over two and a half years after the outbreak of war, no War Loan was raised in India by the Government of India. Now, what was the effect of that omission? During that period the Government of India were paying out money the whole time on behalf of the British taxpayer without collecting any money in the form of loans to pay for the war. I do not know if it is everywhere realised in this House that the British tax-payer during the war paid this country very nearly two hundred and fifty millions sterling for services and goods supplied for war purposes. Now, the effects of paying out all that money in India without at the same time collecting the money in the form of War Loans were two. First of all, we very nearly at one time ran out of currency altogether. There was one never-to-be-forgotten Saturday in Bombay when the Currency Office very nearly suspended specie payments. That situation was followed by the issue of a large quantity of paper money, and an enormous coinage of silver to restore the currency. The ultimate result was that prices in this country were forced up to higher levels than

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they might otherwise have reached had this particular financial policy not been carried out.

Now this condition of high prices is most important. For it is high prices which are the cause of half our difficulties, probably of 75 per cent. of the difficulties with which we are faced at the present day. I was very glad to notice that the Honourable Member made a reference, in fact more than one reference, to the level of prices in this country, because the purchasing power of the rupee in India is of far greater importance to the great mass of the people of this country than the purchasing power of the rupee out of India; that is to say, in relation to the pound sterling. I consider that it is much more important that the rupee should not lose its purchasing power in India,—that prices should not so rise, that the necessities of life are out of the reach of the great mass of the poor people,—in short, that it is much more important that the rupee should be stabilized in India than that it should be stabilized in relation to currencies out of India; although as a matter of fact, most attention is usually concentrated upon our foreign exchanges. And in this connection, I may say, Sir, that I am fully in accord with the Finance Member with regard to our foreign exchanges. Firstly, I agree with him that there is no sanctity in any particular rate,—2s., 1s. 4d., 1s. 3d., 1s. 2d.—and, further, that I am in accord with him that the time has not yet come to attempt final stability in our foreign exchanges. I think, that if Honourable Members will study the present condition of Europe,—if they will study the dependence of our foreign exchanges upon our exports to Europe and then finally if they will take into consideration our external, sterling debt, they will see very clearly that the moment has not come for attempting to stabilize our foreign exchanges. It is quite possible that we should fail! In this connection I notice that the Honourable Finance Member says that if we were to stabilize exchange at 1s. 4d., internal prices would have to go up. I cannot help thinking that that is a slip of the pen (*The Honourable Sir Basil Blackett*: “No.”), that the Honourable Member intended to say that prices in India would have to go down. The reason is this, that prices are already up; prices in India have been 100 per cent. and more above pre-war levels, and what is taking place now is that prices in India are gradually but steadily going down. If we could fix the rupee at 1s. 4d., then prices in India would have to go down to pre-war levels. The fact that prices are at present over 50 per cent. up, and that the probability is that they will not return to pre-war levels for a long time, if ever, is a good argument for fixing the rupee, or trying to fix the rupee, at 1s. 3d. rather than 1s. 4d.

In this connection I should like to say, as there is a good deal of discussion in the West of India about the foreign exchanges, that the uncertainty, I will not say the danger, which is before us at the present moment is not that Government may not be able to raise the rupee to two shillings; it is not whether 1s. 4d. is the most suitable point at which to attempt to stabilize the rupee; it is whether Government can prevent the rupee from slipping back to substantially below 1s. 4d., possibly to one shilling. That is the problem; that is the uncertainty; that is—some people would say—the danger which is before us.

Now, Sir, I am very glad to see a reference made by the Honourable Member to the desirability of stimulating the investment habit in this country. That is certainly one of the means by which this country can

progress in all directions. I can only hope that, holding the views he does, he will support the Resolution which I have attempted to bring forward more than once in favour of Bonus Bonds. Surely, Sir, it is business-like, to take advantage of the universal desire to win a prize by issuing Bonds in a form whereby some small portion of the interest can be distributed in the form of bonuses thus stimulating the investment habit. (*A Voice*: “That is gambling”).

Now, Sir, I come to the Budget for next year. I should like to make, first of all, a few comments on the form in which the Budget has been presented. I will commence by saying that I think that it is wrong,—radically unsound that the accounts of our business undertakings,—the accounts of our commercial Departments, should be mixed up with the accounts of the general administration. I think, Sir, that they should be entirely separated. Not only are the positions and financial results of our State commercial undertakings greatly obscured by the present way of showing the accounts, but the true cost of administration of this country is magnified out of all proportion to reality. The Honourable Member has on this occasion unwittingly added to the distortion by mentioning figures of gross expenditure instead of net expenditure. I confess that when I heard him say that our expenditure next year was estimated at 204 crores, I received a terrible shock. The expenditure as we have been accustomed to speak of it, is only 130 crores; and if you take out of the Budget the expenditure on the Commercial Departments—Railways, Posts and Telegraphs, Forests, etc.,—then the actual expense of administering this country is only a trifle over one hundred crores, that is to say, about £66 million sterling, per annum,—a decidedly small sum for a country of the size, wealth and population of India.

Now, Sir, what are these Commercial Departments. I mentioned just now that they are the Railways, the Posts and Telegraphs, and the Forests. May I read to you what Lord Inchcape's Committee say in their Report about the Forest Department:—“The Government of India are in possession of a very valuable forest property. We have found it impossible to obtain any satisfactory information either in regard to the working or the financial results of forest operations. We consider it is essential that forests should be managed on commercial lines”; and, lastly, “The accounts of the Department should also be placed on a commercial basis.” Now, Sir, exactly the same remark applies to the accounts of our Posts and Telegraphs and to the accounts of our Railways. I should like to explain, Sir, if I may, what a business man means by putting the accounts on a commercial basis. In the business world, where we are familiar with profit and loss accounts and balance sheets, what we want to see is the income from our commercial Departments placed on one side of a Profit and Loss account, and the expenses of earning that income on the other side; the balance being carried to a Balance Sheet wherein on the liability side we show our debts,—our capital outlay expended in acquiring or building our railways, in developing our forests, in erecting our public buildings, and on the other side of the Balance Sheet, a list of our assets with the present day values of our railways, with their plant, lines, permanent-way, rolling stock, lands, buildings, and so forth, our telephones, our telegraphs, our wireless installations and all public buildings connected therewith, our stocks of saleable timber, etc. I venture to say that if those accounts were separated from the general Budget, and the businesses run properly we should find not only a handsome surplus in the profit and loss account, but we should find a still more handsome surplus of assets over liabilities that

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would add enormously to the credit of this country, not only in India but out of India, thus facilitating the raising of further capital. I commend this suggestion to the consideration of the Honourable Finance Member. Now, Sir

Mr. President: The Honourable Member has exceeded his time.

Sir Montagu Webb: I am sorry; there are two or three very important matters to which I should like to draw attention at length but I will now compress them into two minutes. First of all, with regard to the railways. Lord Inchcape's Committee have advocated a severe cut under the heading of Railways. I think this cut will be regarded with very great apprehension in many business quarters, especially in the case of the North Western Railway, which I am surprised to see has been classed as an "unremunerative" railway. I should like to point out that the North Western Railway includes in its system over 1,500 miles of strategic lines. I should also like to point out that it is equipped for military mobilisation on the North-West Frontier; and further I should like to mention that for the last three years the export of wheat from India has been prohibited for reasons not concerned with the North-Western Railway, but for political and economic reasons which concern all-India. If all those matters be taken into consideration, Sir, I think it will be seen at once that statistics based on the traffic of the last three years and not considering the 1,500 miles of strategic railways are not a reliable or accurate basis on which to decide whether that railway is remunerative or unremunerative.

The other matter to which I would like to refer briefly is Military Expenditure. I said just now that if we took out the commercial accounts from the general Budget, our expenditure was only about 100 crores. Of that 100 crores, 62 crores are to be devoted next year to military expenditure. Now, at first glance that looks like 62 per cent. But I would remind the House that in calculating the proportion of military expenditure to the whole, the expenditure of all Provincial Governments must be taken into consideration. If that expenditure be taken into consideration, then, Sir, our Military Services cost only about—I worked it out at about 33 per cent. Now thirty-three per cent. is certainly higher than we would like to see it, but we must all remember that conditions in this country are very different from what they are in the United Kingdom. Not only have we great numbers of illiterate, ill-informed people to deal with, but also great differences in race, creed and caste that are all liable to develop difficulties, so that great proportions of the population are liable to combustion. Then too, we have the North-West Frontier. I think these outstanding and unquestionable facts have all to be taken into consideration.

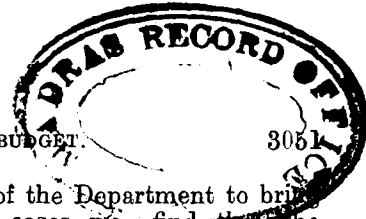
If you will allow me to say so with regard to the deficit on the Budget, Sir, I should urge that Government abandon at least a portion of the proposed Salt tax. I would suggest in place of it, Sir, to be brief, the possibility of a small export tax on petrol. I do not think it would bring in very much, but I am not yet satisfied that it could not be levied to advantage. I would further suggest a four annas duty on silver. I know some of my friends in Bombay do not like the idea of a return to that 4 annas import duty but I would assure them that if they feel that the four annas duty is likely to depress the sterling value of silver, I would urge that the one

rupee note be abolished and that one rupee silver coins be substituted. This will mean an increased demand for silver. The one rupee paper note is quite unsuitable for a tropical country in peace time; I am glad to see in the Inchcape Report that the Controller of Currency says that it is more expensive to maintain one rupee notes in circulation than one rupee silver coins. Those are a few suggestions; the other is that the proposed salt tax be at least halved. ("No, no.") If the silver duty be imposed and a small tax levied on petrol, and savings be made elsewhere, we shall be able to balance the Budget; and I submit to this House that we MUST balance this Budget.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I am afraid the task of dealing with the Budget of this year has been rendered more or less easy by the report of the Inchcape Committee. We do not find, for instance, Member after Member getting up as they got up last year and the year before last asking for cuts in this department and retrenchment in that department and so on. We find that discussion is focussed on whether it is possible to have a further cut to do away with the deficit and on the point whether the salt tax should be accepted by this House or not. We have also the usual criticism on military expenditure rendered less forcible, I think, because of the proposals made by the Retrenchment Committee. And so, one finds that the Retrenchment Committee has certainly carried out an admirable piece of work in submitting this report, and I join with those that have congratulated not only the Inchcape Committee, but this House also for bringing about the state of affairs by which it was possible for the Inchcape Committee to present its report; and, Sir, this "enthusiastic and inexperienced Legislature," as the Under-Secretary was pleased to characterise it the other day, may well congratulate itself that it has helped in the presentation of a document which ought to be an eye-opener not to the Legislature but to the "experienced administrators" of the country; and I may here digress for a moment and say to my Lord Winterton what he said to Colonel Wedgewood when Colonel Wedgewood irrelevantly, I am afraid, attacked Mr. Thompson. I may say to Lord Winterton in his own language that if he had used these words not away in the Parliament of England, but in this House, in the presence of the Members of this House, then, to use his own words, "he would have got something from some of the Members of this House which he would have for a long time remembered."

Passing on, now, Sir, to the proposals made by the Honourable the Finance Member, I join with the other Members of the House in offering him my congratulations. I do not for a moment admit that it is a Budget that in any way ought to make us cheerful, but I do think that he has handled the subject in a most admirable manner, if I may say so. Apart from that, my reason for congratulating him further is that he has made certain admissions in the Budget which endorse the opinion—public opinion—expressed in this country for the last few years in their condemnation of the policy that was adopted by Government. For instance, I find my Honourable friend saying on page 59 of his speech:

"And the State which is driven to cheat its creditors does not always realise what it is doing although its unsound methods are adopted at the expense not only of the wealth and happiness of its own citizens, but also at considerable risk to social order within its borders. Much of the present unrest in the world is due to the way in which States in all parts of the world have cheated their creditors by unsound currency manipulation and the creation of paper money with no real assets behind it."



[Mr. Jamnadas Dwarkadas.]

My Honourable friend Sir Montagu Webb was pleased to say that during the war Great Britain gave to this country in exchange of services and exports made from this country to the other country 250 million sterling. I want to ask my Honourable friend how much that amounted to in rupees. Was it in any way the same that we expected to get at the time when on the credit of England we exported articles from here or was it rendered much less by the currency manipulation adopted at the instance of Government? I am glad to find that in the very first Budget that my Honourable friend the Finance Member has presented he has, although not openly at least in the language that he has adopted made an admission of the danger of adopting a policy of currency manipulation in this country. Then my Honourable friend has also practically admitted the need of stabilising the exchange. I hope the House will not accept the fallacious argument of my Honourable friend Sir Montagu Webb that the time has not come when exchange should be stabilised. The time *has* come, and the country has been demanding it for the last few years that exchange should be stabilised, and unless the exchange is now stabilised, no confidence can be placed in the currency policy of the Government by the people, the result of that being that the trade of the country and the industrial development consequently, will always be in a state of depression. I feel, therefore, that the time has come for stabilising the exchange, and if one reads the arguments presented on each side of the case by the Honourable the Finance Member, one would find no difficulty in believing that at heart my Honourable friend himself would like to stabilise the exchange. He himself was connected with that Committee in Geneva which recommended strongly the stabilising of exchange as the first step to be taken. If he held that view about European countries in spite of the present uncertain state of their currency, I think the case for India is much more hopeful.

And the only argument that the Honourable Finance Member has been able to present against the stabilizing of exchange is that it might be of advantage to you not to stabilize the exchange because a higher exchange may mean a reduction of your debt, and in the payment of your Home charges. Now that argument, I am sure, my Honourable friend could not have meant seriously because what, after all, is the gain that you would make by a reduction in the payment of your debts, and in your Home charges, as compared to the great loss that this country, the community at large, would incur by getting smaller prices and a much smaller sum of money for its exports on which the country depends? You cannot consider this question from the point of view of gains to the Government. The question has to be considered from the point of view of gain or loss to the community, and if there is no doubt whatsoever that it would mean a tremendous loss to the community then the need of stabilizing the exchange under any circumstances becomes absolutely obvious. My friend also has pointed out the need of balancing the budget, and on that I am entirely at one with him. Although the deficit is only 4½ crores, it is necessary that we should not leave it uncovered, and here again is an admission from the Honourable Finance Member for which he deserves congratulation. His predecessors did not realise until the deficit went to the extent of 100 crores of rupees, that it was wrong in the interests of this country to allow this deficit to accumulate. The deficit was not due to the fact always that this House was not prepared to vote the necessary taxation. Last year may be taken as an exception, but

the deficit was in most cases due to the failure of the Department to bring about correct approximate estimates. In all cases we find that the revenue fell short of the approximate estimate that the Department had made, and I am glad that, after five years, when the deficit had reached a figure of 100 crores,—it will now be only 4½ crores. My Honourable friend, who is an able financier, realises the importance of leaving the deficit not uncovered, and I think there is great force in that argument. Our credit is bound to suffer if we leave this deficit uncovered and I emphasize the need of covering this deficit at any cost. But while I agree to that proposition, I may at once tell my Honourable friend that this House will never agree to covering this deficit by raising the tax on salt. That proposition I must assert with all the emphasis that it is in my power to command. Last year I characterised the proposal for the enhancement of the salt tax as a messenger of revolution in every village home. I ask the Government not to repeat the mistakes that they have in other instances made in the past in the teeth of the opposition of the people. I ask this House to reject this proposal and to urge upon the Government, if possible, to make further cuts in order that the deficit may be avoided, and if that is not possible, to suggest, with the help of Government, alternative proposals for covering the deficit. And in this connection I may also state that I am not yet convinced by the argument advanced by my Honourable friend Mr. Aiyar that the annuities should not be taken to the Capital Account. In a year like this, we would be perfectly justified in doing what many other countries have done. If we could take the interest on the Gold Standard Reserve and the Paper Currency Reserve to the Revenue Account, what can prevent us from following the practice which other countries have adopted for the past many years. And talking about the Gold Standard Reserve brings me to the importance of urging upon my Honourable friend the Finance Member the urgency of locating the Gold Standard Reserve here in this country. To-day Honourable Members will find that the interest that the Government is able to get on the Gold Standard Reserve is 2 per cent. from its investments in England, while the Bank rate here goes to 8 per cent., and industrial concerns and agriculturists and traders find it difficult to obtain money, and consequently there is bad trade, and the revenues fall short of the estimate, our own money is being invested in England at 2 per cent. What then can be a better policy than locating the Gold Standard Reserve here and investing it at 5 or 6 per cent., with this advantage to the community, that the Bank rate will not go up, and money will be available to traders and industrial concerns at a much cheaper rate of interest. And I may also point out that the majority of the Babington Smith Committee had, in their recommendation, suggested an alteration of the Paper Currency Act with a view to enable the Government to make 5 crores available to the Imperial Bank at 8 per cent. for advancing to agriculturists when the seasonal demands for moving crops came up. Now I may make a suggestion to my Honourable friend the Finance Minister, that this Paper Currency Act should be further modified and that the amount available to the Imperial Bank should be not merely 5 crores, but 10 to 15 crores, to give substantial relief to agriculturists and also that it should not be lent out at 8 per cent. to the Imperial Bank so as to lend it out at 10 per cent. against *hundies*, but it should be lent out at 5 or 6 per cent. so that the agriculturists may not have to pay more than 7 or 8 per cent. Then, Sir, I support also the proposal made by my Honourable friend Mr. Sahani that the time has come when you should adopt in this country a Gold Standard and a gold currency. Sir, I appeal

[Mr. Jamnadas Dwarkadas.]

to the House not to accept the suggestion to enhance the salt tax; but I may also suggest an alternative if I may. My Honourable friend the Finance Member told us that there was no alternative proposal made by any Member of the House. Sir, we have not got an able staff at our disposal to work out all the figures

Dr. H. S. Gbur: Have we got any staff at all?

Mr. Jamnadas Dwarkadas: But if I may venture to make a suggestion, it seems to me that the proposal to raise an export duty on jute would not be out of place. The Fiscal Commission itself, while it has condemned export duties in general, has pointed out that jute, being a monopoly in this country, can stand an export duty, and in times of stringency we would be justified in resorting to a further export duty on jute. The argument that if we raise the duty further a substitute may be found does not hold water, because the finding of a substitute does not depend on the existence of an export duty, but is a matter of scientific research. Then, Sir, my Honourable friend Mr. Ginwala has made a general suggestion with regard to taxation. In this connection I may also point out that some of us expected that the recommendations made by the Fiscal Commission and accepted by the Government here in this House might find a place in this year's budget. Perhaps the Honourable Finance Member was not to blame; it was too early for him to give effect to these proposals this year at any rate. But I think that when the Tariff Board has been appointed—and I hope it will be appointed at a very early date—and when the Tariff Board has completed its investigations in some cases, we shall have a much better system of tariff than the present haphazard arbitrary system which is adopted by the Government of India. I also agree with my Honourable friend Mr. Ginwala that the time has come to make an examination into the whole question of taxation, for it seems to me that the burden of taxation falls unequally in this country and there are institutions which, although they deserve to be taxed, are being left alone because Government regard certain facts as permanently settled. (*Dr. Nand Lal:* "As, for instance?") The time has come when those institutions should be made to bear their burden of the administration of India.

With these words, Sir, I resume my seat.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. President was in the Chair.

Sir Gordon Fraser (Madras : European): Sir, I listened with great interest to the very interesting speech of the Honourable the Finance Minister and I would like to congratulate him on placing the position before us in so practical and businesslike a manner. We have to accept the fact that we are faced with this deficit of 4½ crores. The Honourable the Finance Minister proposes to square this by raising the Salt Tax by Rs. 1-4. May I suggest with all due deference that the new taxation be spread more

equally over the present existing taxation? I am afraid that one's efforts to assist the Honourable the Finance Minister in making Budgets are very much of an amateurish nature. I personally feel very great diffidence standing up here and making suggestions to him. But I cannot help thinking that it would be more equitable to distribute the amount, especially as in doing so I am quite sure it would not be inflicting any hardship on any particular individuals or communities. Also I think we all hope that the times ahead will be more prosperous and that the bulk of any taxation that may be imposed now will be only temporary. I admit at once that I cannot find any sound or practical reasons for opposing the imposition of this Rs. 1-4 per maund enhanced duty on salt. But we must not forget that the whole sentiment of the country is very strongly against it, and we must admit that in India sentiment looms very large and very often it overshadows hard and material facts.

Dr. Nand Lal: Not always.

Sir Gordon Fraser: I think personally the feeling against the enhancement of the Salt Tax might perhaps not have been so strong amongst Honourable Members if it had not been the only means by which the Honourable the Finance Minister proposed to balance his Budget. As I said before, it would be more equitable to distribute the tax more equally, and it would then give all Honourable Members in this House the satisfaction of contributing their share towards the deficit put before us by the Honourable the Finance Minister.

I suggest therefore as a first step that the enhancement of the Salt Tax might be reduced to 8 annas instead of Rs. 1-4. This would bring the tax to Rs. 1-12 instead of Rs. 2-8—an enhancement of very little more than one anna per maund per head per annum, a very small sum indeed. Then I would retain the export duty on raw hides and skins. I have no figures available to ascertain what amount this would give us, but I put it down at 20 lakhs. I speak subject to correction on this point as there are no figures before me at all. Then I would suggest as a temporary necessity to terminate on the 31st March 1924, just for a period of one year and to terminate automatically at the end of the financial year, that the Honourable the Finance Minister should impose a temporary surcharge of 6 pies in the rupee of tax collected under the headings of Customs and Income-tax. This, with the modified Salt Tax, would give us an amount that would enable the Honourable the Finance Minister practically to meet his deficit.

Dr. Nand Lal: Income-tax is already two annas.

Sir Gordon Fraser: Under Customs the receipts expected are 45 crores. Six pies in the rupee on that will give us Rs. 1,40,00,000. Under taxes on Income, the figure expected is 19 crores. Six pies in the rupee here gives us 60 lakhs. I put the raw hides down at 20 lakhs, and then we have the Salt Tax—8 annas on that would give us Rs. 1,80,00,000. This brings the total to 4 crores against the 4½ crores required. I would leave the Honourable Finance Member to find the extra quarter crore; possibly if 8 annas is considered too low a figure to reduce the salt tax to, we could take it at 12 annas instead of the original Rs. 1-4. That would increase the figure by another 90 lakhs, giving us Rs. 490 lakhs as against Rs. 4½ crores required. Now, it may seem a somewhat retrograde step to take to suggest an increase of the customs duties and income-tax, but this six

[Sir Gordon Fraser.]

pies in the Rupee of tax collected is a very small figure indeed, and I cannot see that it will hurt anybody. If we take goods liable to 5 per cent. duty on importation, those goods with the surcharge added would only pay 5-15 per cent., goods incurring a duty of 10 per cent. would be paying 10-3 per cent., and even when we come to the luxury tax—a tax against which so much has been said—of 30 per cent., it would only come to 30-9 per cent. Then as regards income-tax and super-tax, here again the extra tax would be so small that it would not be felt, and yet at the same time these two items would give us half the amount required by the Honourable Finance Minister. If you take a salary of Rs. 500 per mensem or Rs. 6,000 per annum, under the present schedule it pays a tax of Rs. 190 per annum, and if you add a surcharge of six pies per rupee on the tax collected, it only means an extra Rs. 5-15, or less than eight annas a month. Then again take a salary of Rs. 1,000 a month or Rs. 12,000 per annum, the tax on it under the present Act is Rs. 560 per annum; the surcharge would only be Rs. 17-8, or under Rs. 1-8 per mensem. When we get into the higher incomes liable to super-tax, when we take an income of a lakh of rupees per annum, under the present Act the tax-payer has to pay Rs. 12,500 and the surcharge on that would be Rs. 390—it means only Rs. 32-8 a month. I think I am right in saying that the Honourable the Finance Member has to pay income-tax and super-tax to the extent of about Rs. 10,000 a year; the increase in his case is only Rs. 25 a month. I do not think this is very much; it only amounts to a 3 per cent. increase on our present customs duties and income-tax.

Then again it may be contended that this will upset the present methods of accountancy; but the collection of this tax would be extremely easy; it would not upset the present methods of accountancy in any way at all. Take for instance goods imported into this country on which the import duty payable is say Rs. 125-14; we cut out the odd annas; on Rs. 125 at six pies in the rupee we get 62½ annas or Rs. 3-14-6, to be added to the original amount calculated as duty on those goods. I contend that my suggestion would be fairer and more equitable than the suggestion to raise the whole sum by a tax on salt alone. All would contribute on the basis of the present taxation, and it would not in any way upset the balance of taxation as it exists at present. In putting forward this suggestion it must be distinctly understood that I only make this suggestion as a temporary one, as with the prospects of improved trade in general I am optimistic enough to think and hope that the extra taxation now suggested would not be necessary for more than twelve months.

I think the Honourable the Finance Minister in his speech made a remark that we must cut our coat according to our cloth. The attitude of some Members of this House towards the attempts to provide sufficient wherewithal to meet our requirements rather reminds me of a remark made by a fellow-commissioner of mine on the Madras Corporation some years ago. His remark was that we must cut our coat according to our body. Now, that is a very nice idea indeed. If you are going to do that you will have to provide sufficient cloth to make the coat fit the body. That is what at the present moment Honourable Members of this House are rather shying at. Along with this suggestion of the surcharge on customs duties and income-tax, I propose that we should allow the duty on raw hides and skins to remain as it is at present. I may be wrong in my

estimate of what this will bring in because I have not got the figures. I have just received a telegram from Madras which reads as follows:

“Madras Chamber of Commerce and the South India Skins and Hide Merchants' Association (the latter being entirely an Indian Association) strongly protest against the reduction in export duty on raw hides and skins and at a joint meeting held to-day it was unanimously resolved that no rebate be allowed to Empire countries and that export duty at 15 per cent. should apply to all countries. If proposal now before the Legislative Assembly be adopted, the tanning industry of India which at present is in a very critical condition will be further seriously affected if not crippled.”

Now, in connection with that I would like to refer to a letter from the Government of India, Department of Commerce and Industry, dated the 13th June 1916, dealing with the question of the export of raw hides. The Secretary then wrote:

“As you are aware for several years before the War this lucrative trade had passed, at any rate so far as Calcutta was concerned, almost entirely into German hands. On this side firms consisting of Germans or of naturalised persons of German origin and with German trade connections had formed an effective ring and although one or two English and other firms had on occasions attempted to enter the trade they had been unable to break this ring and had practically in all cases abandoned the attempt. In the case of an Indian firm, it would appear that before the war a determined and partially successful attempt at boycott was carried out by the German ring of hide exporters.”

That was the position before the War, and from figures that I have taken out it seems to me that the trade necessity referred to by the Honourable the Finance Member for the removal of this export duty does not exist. If we take the export figures of raw hides, for the 9 months ending December 1922 and compare them with the figures for 1911, 1912 and 1913, we find that Italy and Spain, two of the largest importers into the Continent of raw hides from India, are practically back to pre-war figures. Taking the case of Germany, in spite of her present disorganised condition, I see that for the nine months ending 1922, the total value of raw hides exported from Calcutta was 72 lakhs. If you take it for twelve months, it is equivalent to 96 lakhs presuming that exports continue on the same scale. Well, the figures before the war, that is the time referred to in this letter from the Government of India, were:

1911	1,19,00,000
1912	1,23,00,000
1913	1,64,00,000

So, in spite of the troubles in Germany, she seems likely to secure at an early date the same monopoly in India in connection with this trade that she had before the war.

Now in putting forward this suggestion regarding the surcharge, as I said before, it may be considered as a retrograde act, but I cannot see myself that it is going to hurt anybody, because the amount is so small. It is not a question of a 3 per cent. increase of the duty, but it is purely a surcharge of 3 per cent., or 6 pies in the rupee, on the amount of tax collected. That is going to give us 2 crores. If you take the salt tax at 12 annas, that gives another 2,70,00,000, plus something from hides. If we stick to the 8 annas only on salt, the total will be reduced by 90 lakhs, and if it is left at this with the Honourable the Finance Member, he may be able, either by retrenchment or by taxation, to find the 20 or 30 lakhs still required to balance his budget.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, at this late stage of the debate, I propose to address myself to only one question, and it is this. Is it a fact that there is really a deficit of 4 crores and 25 lakhs? I submit that if the budget figures are recast in accordance with the well recognised canon of public finance as to what is chargeable to revenue and what is chargeable to capital, the deficit will ultimately result in about 30 lakhs only. The House will remember that in the first year of this Assembly, I was instrumental in reducing the deficit by one crore by pointing out the error of book keeping which the Government of India committed in regard to posts and telegraphs. Well, since then that mistake has been rectified. But I do find still that amounts which really ought not to be charged to revenue have been charged to revenue in the Budget of the Government of India, for March 1923, at pages 10, 11, 12 and 13 under the heading "Statement of the Expenditure charged to the revenue of the Central Government, in India and in England." Now before I substantiate my criticism, I should like to point out that it is not right that money spent on durable public works, whether military or civil irrigation and so on, should be at all chargeable to revenue. A high authority on public finance, Professor Bastable, makes the following observations on the subject:

"Abnormal expenditure", he says, "frequently occurs in a somewhat different way, as in the case of durable public works or other improvements"

The Honourable Sir Basil Blackett (Finance Member): Abnormal?

Mr. N. M. Samarth: Yes, abnormal, because they are not necessarily normal. Military roads made in Waziristan from which posterity also will benefit have been charged to revenue. Now why should the present generation be penalised by this amount being charged to revenue? If the Honourable Member will have patience, he will find that the distinguished author says further:

"It may be a part of State policy to erect extensive public buildings, to carry out a system of fortifications, of railway roads or canals, to drain and plant waste lands to promote colonization or to develop industry that requires the aid of its capital. Outlay of this kind"—he goes on to say—"is in mercantile phraseology chargeable to capital and not to revenue, and is clearly abnormal. The method almost invariably adopted is to meet the abnormal outlay by abnormal receipts, namely, borrowing, or, to put the point in another way, to turn the extraordinary expense of a given year into the ordinary one of interest on debt."

There should be no question about the canon of public finance which he has laid down, and I wish to apply it now. I say rightly capital outlay at New Delhi has not been charged to Revenue. The Honourable the Finance Member has expressed some doubt on the subject. He has said, "Apart from our revenue receipts, we have spent many crores on unproductive purposes, the expenditure on which is classed as capital expenditure. New Delhi is the most obvious example. I can see no justification other than sheer necessity for not treating this expenditure as chargeable against revenue and in any case it ought to be repaid out of revenue at an early date."

With all due deference, I venture to question the correctness of the dictum of the Honourable the Finance Member, and my authority is Professor Bastable. Now, Sir, I shall apply this to three items in the Statement of Expenditure. At pages 12 and 13, Honourable Members will find Item No. 50 "Military Works." The Budget estimate for 1923-24 is given as 4,23,55,000. Now if Honourable Members will turn to the Military Budget, page 199, they will find the entry under the head "Military

Works",—Works, Capital Expenditure 1,96,00,000. I submit there is no justification for charging this sum to revenue. It must go to capital account. Now take another entry, No. 41, Civil Works. The Budget estimate for 1923-24 under this head is 1,87,63,000. If you look at the Demand for Grants, Demand No. 41, at page 121, it will be found that 92,82,000 out of the total amount is for original works. That is what Professor Bastable calls durable public buildings, and which ought not to be charged to revenue. Take again a third item in the Statement of the Expenditure charged to the Revenue of the Central Government, say No. 16, the heading of which is Irrigation, etc. Capital Account (charged to Revenue)—Construction of Irrigation, etc., Works—financed from ordinary revenues, total 2,16,000. There is absolutely no justification for charging it to revenue and swelling thereby the expenditure. I take my stand again on Professor Bastable's principle. Now if these three items are totalled together, the total comes to 2,90,98,000. Calculating interest on it at 6 per cent., it will amount to 17,45,880. I charge that to revenue, and let these 2,90,98,000 be transferred over to capital account. Then,

8 P.M. out of the deficit of 4.26 crores if you deduct this sum of Rs. 2,73,52,120 you get a deficit of Rs. 1,52,46,880. Now, another point upon which there was discussion on the last budget occasion and which has been referred to by previous speakers, especially I believe by Mr. Jannadas, Sir Vithaldas Thackersey raised the question of the railway annuity. The debate will be found at page 2798 of the Legislative Assembly Debates, Volume II, Part 3. He observed:—"The second item I object is that we are debiting to revenue the 586 lakhs which we pay as annuities for the purchase of railways. I can understand debiting to revenue interest charges, but I cannot understand how we can debit to revenue our capital charge, namely, the amount we pay in instalments to the shareholders for the purchase of the railways. It is really not a revenue charge but a capital charge." And if you take an account you will find that out of a total of 5 crores 3 lakhs 62 thousand which is the amount of the annuities for the purchase of railways, the capital portion of that is Rs. 1,21,70,000. There is no reason why the amount should not be sent over to the capital account. Well, if you deduct that then from the amount of Rs. 1,52,47,880, the balance is Rs. 30,77,880, which alone is the real deficit. And surely ways could easily be found in the course of the year to meet this 30 lakhs 77 thousand odd rupees. Therefore, there is no real deficit which we have to provide for and, therefore, there is no need for additional taxation, and consequently all the discussion as to ways and means and the alternatives is in my humble judgment outside the scope really of the present discussion. Of course I saw Mr. Aiyar nodding his head whenever I said that the items should not be charged to revenue but I have given my authority for saying why they should be charged to capital. I say there is no reason why the present generation should be penalised and made to pay for the benefits which posterity will also derive. It is a wrong principle, wrong budget framing, wrong book-keeping to have these charges included in the expenditure with the result that the expenditure is swollen and the deficit is increased. I submit therefore that there is no case made out for any additional taxation. That, Sir, is my point.

Now, Sir, I should have liked to finish, but as reference was made by Mr. Bray to Waziristan, in which I take some interest and to which I referred at the time of the last budget discussion, I may be permitted just to make a few observations. Last year I attacked the policy of Government in regard to Waziristan. I said that, whatever the political reasons

[Mr. N. M. Samarth.]

may be, whatever the military reasons may be, from the financial point of view I oppose it. And throughout my position has been that you cannot go and occupy and administer the country. A downright forward policy is out of the question. That was my position, and therefore I asked Government to abandon that policy. I am glad to say that the enunciation of the policy which I heard from Mr. Bray yesterday means the abandonment of that policy. I am not in favour of a burn and scuttle policy, a policy of sending punitive expeditions and then withdrawing afterwards, with the result that you leave behind a legacy of tribal hatred and cause tribal emboldenment by the weakness of the withdrawing Government. That policy also is out of the question; and a policy of occupation and administration, a downright forward move, is also out of the question. I have been throughout an advocate of what is called the Sandeman policy, or a policy approximating to the Sandeman policy, namely, controlling the tribes without annexing them, and I am glad that that is the policy which I find adumbrated in the speech which Mr. Bray made. I feel gratified that my fight has been ultimately successful. With these words, Sir, I will close my remarks.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, it is not usual for the Commerce Member to intervene in this general discussion, but Sir Basil Blackett has specially asked me to deal with one suggestion which has been made in the course of the debate. It is a suggestion which has been freely canvassed in the public press, a suggestion which was made with engaging simplicity by Mr. Spence of Bombay yesterday and a suggestion which has been repeated by more than one Honourable Member. I refer to the suggestion that we should impose an export tax upon motor spirit or petrol. Now, Sir, let me state the problem. In 1917 we passed an Act by which we imposed an excise duty of 6 annas a gallon on all petrol produced in India and an equivalent surcharge on the import duty of all petrol imported into India. In accordance with our usual practice, we allow a drawback of that excise duty on all petrol exported from India, and that is the cause of the complaint. In India we produce 34 million gallons of petrol. Of those 34 million gallons, 14 million gallons are consumed in the country and the remaining 20 million gallons are exported. Now, two complaints are made. In the first place it is said that we treat the Indian consumer unfairly; we charge him an excise duty of 6 annas a gallon and we let the foreign consumer go free. Secondly, we are accused of sacrificing wantonly a large possible revenue; if we imposed an export duty of 6 annas a gallon on the 20 million gallons of petrol exported from India, it is said that we should make 75 lakhs of rupees per annum provided, that is, there is no decrease in exports. Consequently, two suggestions have been made. One is that we should impose that tax of 6 annas a gallon on all exports of petrol. The other suggestion is that we should lighten the load on the Indian consumer by reducing the excise duty to 3 annas a gallon and charging that excise duty not only upon petrol consumed in the country but also on petrol exported from the country. It sounds exceedingly simple, but perhaps the House will not be surprised when I say that had it been as simple as all that we would have adopted this expedient long ago. I will first deal with the theoretical aspect. I won't take very long with that. Theoretically an excise duty is essentially a duty upon consumption and that is what we intend it to be. We remit that excise duty on petrol exported because we do not wish to place our producers in an unfavourable position

compared with producers in other countries. We cannot be sure that our producers can pass on the duty to the foreign consumer and we are never quite sure that the duty will not recoil upon ourselves and upon our own producers. That is the theoretical reason why we give a drawback of the excise duty on exports. We give that drawback in respect of the cotton excise and we give it in respect of this petrol excise duty. But, Sir, I will take the purely practical question of what is likely to be the probable effect of imposing this export duty, as I may call it, of 6 annas a gallon on exports of petrol. How much revenue are we going to get out of it and what are the other effects going to be? Those are the points to which I shall address myself and I will ask the House to remember three material facts. First, the production of petrol is a mere incident in the manufacture of kerosene oil. In fact before a use was discovered for petrol in connection with motor cars and vehicular transport of that kind, the Burma Oil Company actually used to burn their petrol. They had no use for it. Secondly, only surplus petrol is exported from India. India's demand for petrol is fully met, and it is only the surplus above the requirements of India that is exported; and thirdly, the exports of petrol from India, or rather from Burma, are merely a drop in the world's supply. Most of that petrol, most of those 20 million gallons, go to the United Kingdom. The United Kingdom's imports of petrol are 210 million gallons. This last fact is very important indeed. It means that if we impose this export duty upon petrol, the Indian Oil Companies could not pass on that duty to the foreign consumer; the Indian Oil Companies could not raise their price for the foreign consumer; they would have to sell their petrol at the world's price. Well, what would the effect be? The Oil Companies would have to pay that 6 annas a gallon themselves. They would have to pay 75 lakhs of rupees per annum themselves, and the inevitable effect would be that the Oil Companies would not be able to export petrol from India at all. I do not know what the cost of production of petrol in India is. I do not think anybody knows.

Dr. H. S. Gour: Two annas a gallon.

The Honourable Mr. C. A. Innes: Then Dr. Gour is wiser than I am; all I can tell you is this. We have studied this question with reference to the experience in other countries. The question of an export duty on petrol from Mexico is a very old question, and after long experiments the rate of export duty at Mexico has crystallized down to half an anna a gallon. In the Dutch East Indies the export duty on petrol was fixed in August 1921. There again they fixed it at something like half an anna a gallon, and I believe that the future of that tax is very uncertain. But the most instructive history of all is the history of Roumania. In 1919 Roumania imposed an export tax of 20 per cent *ad valorem* upon mineral oils. What was the effect? The effect was that they crippled their export trade. In the first four months of 1919, 900 tons of kerosene oil represented their exports. There was another result—production in Roumania was seriously affected: and the result of Roumanian experience is that the export duty on petrol from Roumania is now fixed at the equivalent of one farthing per gallon. Now I have given the House the experience of other countries. I have shown that in other countries where they tried this export tax, they have not been able to fix the tax at a higher figure than one-half penny per gallon. I think that it will be clear to the House now that it is entirely out of the question for us to think of imposing an export tax on petrol exported from India at anything approaching either 6 annas, or even the 3 annas a gallon proposed by my Honourable friend Mr. Spence. If we

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go by the experience of other countries, the very most that we can safely impose would be a tax of half an anna a gallon. That would yield us a revenue of just over 6 lakhs of rupees a year. Then, Sir, there is another side to the shield. We cannot take this question of an export tax on petrol apart from the question of kerosene oil. Now, whatever may be the complaints of the consumer in India and in this House against the Burma Oil Companies in respect of the prices they charge for petrol, I do not think that there is any one here who can cavil at the policy adopted by the Burma Oil Company in respect of the price they charge for kerosene oil. They fixed their price for kerosene oil, inferior yellow kerosene oil, as far back as 1905 at the range of prices obtaining then. They fixed it at Rs. 2-14 per unit of 8 gallons *ex* installation at the ports; that was for inferior oil. They maintained that price for many years, they are maintaining it still. But, as inevitably happens, the demand in India gradually overtook the supply with the result that at the present time the demand for kerosene oil is something between 150 to 180 million gallons a year, whereas the amount of kerosene oil produced in Burma is only 100 million. Now the effect of these factors became most evident in the latter days of the war. The Burma Oil Company still supplied the inferior oil at Rs. 2-14 a gallon, but it was unable to meet the whole of India's demand, and petrol had to be imported from abroad in order to supplement the Burma supplies. For a time the price of these imported supplies was governed by the price of the Burma oil. But, as the war dragged on, the importing Companies were unable to import kerosene at that price. Consequently the Burma Oil Company were unable to make their price of Rs. 2-14 a gallon effective. We all remember in 1917 and 1918 what profiteering there went on in kerosene oil; how the Burma Oil Company tried to maintain their price, but how the middlemen, how the profiteers, drove the price up. It would have been perfectly simple for the Burma Oil Company to raise its price to the level of the price of the imported oil. It did not do so. With the full cognizance of Government, though we had no share in it,—they came to an arrangement with the Asiatic Petroleum Company. It was a pooling arrangement. They pooled their supplies, and they pooled their prices. It is a complicated arrangement, and I am not going into it now, but all I will say is that as a result of those pooling arrangements, the price of inferior kerosene oil in India at the present time is estimated to be 3 annas a gallon below the world's market price. It is estimated—I give the figures for what they are worth, I saw them in the report of the annual meeting of the Burma Oil Company recently,—it is estimated that India has scored by that arrangement since 1919, 32 crores of rupees in kerosene oil alone. On the one side you have these Oil Companies maintaining a price of kerosene oil three annas a gallon below the world's price. They have always got a margin up to that. They could raise their price. On the other hand, you have this possible export tax. I have shown that if you put a tax of 6 annas a gallon or even 3 annas a gallon on those exports, you get no revenue at all; you merely kill the trade, and if you put on a small tax, you take this 6½ lakhs out of the Burma Oil Company and other oil companies, but there is nothing in this world to prevent them from recouping themselves by increasing the price of kerosene oil. Now does this House want the price of kerosene oil to be increased in order to get a very small amount of duty out of this export tax on petrol? Sir, Government has been accused throughout the country by propaganda spread by the motoring trade, Government has been accused of deliberately sacrificing this revenue. I have

shown that it is nothing of the kind. The whole matter has been explored, and we have come to the deliberate conclusion that the thing is not worth doing. We should get very little revenue out of it, and we might send up the price of kerosene oil for the poor man in India.

Mr. Ashruff O. Jamall (Bengal: Nominated Non-Official): Sir, at the outset I must congratulate my Honourable friend Sir Basil Blackett for the very able and lucid manner in which he presented the Financial Statement to us last Thursday. The Budget, Sir, though it shows a deficit of Rs. 4½ crores, will, I am sure, be better received than has been the case in recent years. Sir Basil Blackett very rightly remarks that he is the inheritor of the three years' work of my Honourable friend Sir Malcolm Hailey. But he has realised from the last two days' discussion that his position is by no means an enviable one. As a commercial man, Sir, I would be the first to endorse the necessity of balancing the Budget. But the contemplated tax on salt which has been proposed by the Honourable Member to attain that object is going to be a very unpopular one and not well received. This House last year this time discussed at great length this subject and the result of it was that it was rejected. My Honourable friend Mr. Samarth has given some suggestions and I agree with him that some charges have been made to Revenue which should go to Capital account. If those suggestions are taken into account, the Budget, I daresay, will balance itself. This morning before lunch when I was sitting here I admired the eloquent speech of my Honourable friend Mr. Jamnadas Dwarkadas until such time as he touched jute. Sir, I come from Calcutta and I am very closely associated with that industry. I know that at the present moment it is under no healthy conditions. The jute mills are working only 4 days in the week. We are piling up stocks and we are running into large finances. Our buying power all depends on foreign countries and everyone knows distinctly how very much depleted the foreign buying power at the present day is. Under the circumstances, I think if the suggested jute tax is at all levied, it will go to hamper the jute trade of Bengal. According to Mr. Samarth's remarks, as the Budget balances itself, Sir, I venture to advocate that let us close this last year of this Assembly—India's First Parliament—without any fresh taxation and with a real effort to curtail expenditure wherever it may be possible, so that in the next 3 or 4 years we may have surpluses going not only to reduce provincial contributions but to reduce the taxes that have been levied in recent years. In concluding, I would like to associate myself with my Honourable friend Sir Basil Blackett in expressing our grateful thanks to the Incheape Committee for their devoted work which would not only be of great assistance to this House but of invaluable service to the country at large.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, coming as one does at this very late stage of the debate, one has necessarily to run the risk of slithering down the groove of repetition, although I shall attempt as far as possible to avoid it. Now, I do not think I need go over the ground of praising the Finance Member or praising the Incheape Committee, because that ground has already been traversed too much. I rather think that one faces a danger in praising the Finance Member, because if you praise him he might be spoiled. He has been already praised so much that he would not be able to present such a felicitous report and speech as he has done this year. It was a great pleasure to me to read that speech from beginning to end and I do not want to be deprived of that pleasure for the next year, which will be the

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case if he gets puffed up by too much praise. The first thing I have to remark is that the impression which I first formed as to the motive underlying Sir Basil's imposition of salt tax may be described as under. But first I will make a digression. Mr. Manmohandas Ramji told us yesterday that he could easily detect a defect in the Finance Member's Memorandum in that he had allowed 38.6 crores for the railways, whereas only 30 crores that had been originally sanctioned would be enough, so that, this saving, of between 8 and 9 crores he suggested, would be quite enough for doing away with the proposed extra taxation. Then, he went further and said that in finding out that defect we were far shrewder than the Finance Member had thought us to be. But to my mind the Finance Member is far more astute than any of us and for this reason. Here I will come to the motive which according to me has actuated the Finance Member to impose the Salt Tax. I was under the impression that the Finance Member must have read the whole debate of last year including the debate that turned upon the motion of Mr. Joshi on the Finance Bill to substitute Rs. 1-4-0 for Rs. 2-8-0 salt duty as it stood in the Bill which meant that the enhanced duty be not allowed, which motion was carried by a large majority. Having read the whole of that debate, as he must have done as a matter of duty, I could not for the life of me understand how he came forward with that proposal again this year. But one solution suggests itself to me. I thought that he was playing a deep game. He wanted to elude us and to take us off the scent, so that we may not howl for the reduction of any existing taxation. It was a kind of strategic move knowing full well as he did that the salt tax would never be accepted by the Assembly. He said to himself that if he did not propose some kind of fresh burden to cover some fresh deficit, Members would make a hue and cry for cutting down some of the taxation that is already in force. He has succeeded in that. Nobody has come forward and suggested the reduction of the present taxation. Therefore, I think that all those Members of the House who have taken the Finance Member seriously about the proposed taxation on salt are mistaken and they ought to modify their opinion, because the Finance Member is almost certain that this tax will be thrown out by the Assembly. Now, Sir, I quite agree—in fact it would be foolish on my part not to agree—with the main principle of finance laid down by the Honourable the Finance Member that the budget should be balanced and deficits not left uncovered. I do not think there has been a single Member of this House who has had the temerity to challenge that maxim. Only it has been pointed out by Member after Member that there are ways and means of substituting something for the salt tax which will make a great leeway in eliminating the deficit altogether. I need not waste the time of the Assembly by repeating the suggestions which have been made by several Members, by Sir Gordon Fraser, Sir Montagu Webb, Mr. Samarth and other Members, but I can say this much that the House will not meet with the slightest difficulty in substituting some other source for the salt tax. We the Democratic party intend, when the proper time comes, i.e., when the Finance Bill and the Demands for Grants are discussed—to put forward proposals in lieu of the salt tax which will balance the Budget without the least difficulty. Now, Sir, there are one or two points with reference to the Finance Member's speech which I want to emphasise. The Honourable the Finance Member has said that we ought not to be wise after the event so far as the question

of exchange is concerned, and that there is no use crying over spilt milk. He is referring to the fact that the exchange that was originally fixed has turned out to be a delusion and a snare and that we did not look ahead at the proper time. But with due submission, Sir, I inquire who are the culprits responsible for that mishap? Not we, the public, but the Government. We were not wise after the event. We were wise before the event. The public went on clamouring to the Government that they were adopting a suicidal policy by fixing the exchange at the high rate of 2 shillings a rupee while there was a steady tendency of falling exchange. And we were not guilty of crying over spilt milk, but rather we were telling the man who was deliberately spilling milk not to do so. (Laughter.) If there is any blame in the matter, it attaches to the Government. Then, again, Sir Basil Blackett has told us that this is not the time for stabilising the exchange, and Sir Montagu Webb also agreed with him. But the reason that Sir Montagu Webb gave rather goes the other way. He says there is a great danger of exchange going downwards and downwards up to even one rupee a shilling. What does that show? That shows that you have to stabilise it to avoid all kinds of disastrous fluctuations. There should be no fluctuations. As Mr. Jamnadas has pointed out, these fluctuations have been the ruin of the country. As Mr. Seshagiri Ayyar has pointed out, they compromise commercial morality; they create a kind of distrust on the part of European merchants who deal with Indian merchants. It is not the fault of the Indian merchants at all. The Indian merchants have been crying themselves hoarse from time to time that it is this exchange policy of the Government that has been responsible for these unfortunate results. Then I say, Sir, that as the prophecies of the Indian merchants have been true and the Government prophecies have been falsified, the present prophecies which the Indian public are giving to the Government should be accepted, its own prophecy should be rejected, and exchange should be stabilized. That will make for sound finance in the future. Sir, now I will touch only one more subject, although it will be considered to be a very threadbare one. There are some points in it in regard to which I may be excused for resorting to repetition, which I have myself at the outset of my observations condemned. Sir, I refer to the military expenditure of Government, and the long drawn out wail of the public regarding it. I know that at the present juncture, by the very nature of the case, my observations will partake of an academic rather than a practical nature. Still nothing will be lost in pressing the points year after year that strike one to bring to the attention of this House and the Government. His Excellency the Commander-in-Chief, when he came this morning, told us that it was possible for Honourable Members to discover a kind of inconsistency in the assertion he made last year that it was not possible to reduce the British units or Indian units at all, and his concession to the Inchcape Committee in that respect this time. This was a point I had proposed to make, but he forestalled me. He said there is no inconsistency because the state of affairs has considerably altered, the internal as well as the external conditions having both improved. And therefore it was that he agreed to the reduction in forces suggested in the Inchcape Committee's Report. Quite right, but all I say is that the concession is rather a grudging and a narrow one. If the internal conditions of the country and the external conditions have improved as we all know they have, I think a much vaster reduction should have been allowed than His Excellency is prepared to concede. Then, Sir,

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Sir Basil Blackett, the Finance Member, showed some kind of impatience, quite naturally from his point of view, at Member after Member talking of the Inchcape Committee's Report not being acted upon in the Finance Minister's speech, but what I say is this, that not a very valid or adequate justification has been shown in the Finance Member's speech as to why such a very tardy and such a very small and inadequate acceptance of the proposals has been made instead of very liberal reductions. The belief of those who have gone through the Inchcape Report is that many of the suggestions can be immediately given effect to not to the fullest extent that they have been made by the Committee, but to a very liberal extent. Now, Sir, I will briefly refer to certain pages of the Report where these strike me. First of all we come to page 11, paragraph 10, relating to the present Command system:

"Army Headquarters, Staff of Commands, etc.—A considerable portion of the large increase in expenditure under this heading since 1913-14 is due to the introduction of the four-Command system in 1921."

Then an explanation is given as to how this new system came to be introduced and five reasons have been assigned. But I have been informed from other sources that this four-Command system is entirely unnecessary and unnecessarily expensive. If a judicious and economic arrangement were devised, it would be very easy to bring all the four Commands within the compass of two Commands, because you find that so far as my own Province of Sind is concerned, (I think it comes under the Western Command) a great deal of it is merely desert. Likewise you have the Northern and the Eastern Commands. These two could be very easily combined, and the Southern and the Western Commands could be very easily combined, and a great deal of saving effected. My estimate is that that saving would come to between four and five lakhs of rupees. Why that should not be done at once I see no reason. Of course the Inchcape Committee say they would give it a trial, but I think as it has failed, on the very face of it the trial is merely a waste of money.

Then proceeding to page 12, paragraph 12:

"Army Headquarters—

The total expenditure for 1922-23 is more than double that of 1913-14"

a point that has been referred to by Dr. Gour,

"although the number of troops in the fighting services has decreased by 15,517 and provision has been made for decentralising the control of minor matters to the Commands. The establishment of Army Headquarters has increased as follows."

And they add later:

"It is obviously not practicable in the limited time at our disposal to make any very definite detailed recommendations but we consider that the provision for officers at Army Headquarters should be reduced to the full extent recommended by the Innes Committee."

This suggestion should be carried out. Then, Sir, before I proceed further with reference to this Report, I pause for a reflection, and that is this. It strikes me that the soldier, the Army man and the Army officer is imbued with the idea that as he is the saviour of the country, as he gives his life, all the other Civil departments are no good as compared to him and why should these civilians grudge him lavish expenditure? When trouble comes, external or internal, it is he who would be called upon to shed his blood and therefore why should he not be allowed to

spend lavishly? This engenders a sense of indifference, irresponsibility and overlordship in the military department. Of course, the highest officers like the Commander-in-Chief and the Generals and other men with a sense of responsibility are not at all influenced by that idea. I sincerely believe that His Excellency the Commander-in-Chief is always prompted by the desire of carrying out the wishes of this Assembly, and of effecting as many economies as possible. But the lower ranks, the ordinary soldier or man, or small officer has got no sense of frugality at all. He does not want to cultivate that sense; that is not in his nature. Now as an instance of that I was only recently told that in Karachi one motor lorry was employed in carrying a few bottles of beer, etc., from Kamari to Karachi, 5 miles. (Laughter.) I find that the prevalence of this tendency has received corroboration from the following remark in the Inchcape Committee's Report. On page 15, paragraph 20, they say:

"We have examined the position in regard to mechanical transport and attach a statement showing the estimated military requirements and the present stock of vehicles, classified at our request,"

and so on, and they continue:

"We consider there is no justification for providing the stock of vehicles which the military authorities estimate is required, and we recommend that, while the present financial conditions obtain, the authorised establishment of motor vehicles including reserves should not exceed 1,600 vehicles, excluding motor cycles. The holding of large excess stocks must necessarily result in increased costs for maintenance, garage accommodation, interest on capital, depreciation and personnel, and in addition there is a tendency to use the vehicles, if available, for non-essential purposes. In this connection we examined the records maintained by one motor transport company and found they were far from satisfactory; the number of vehicles in use was considerably in excess of the requirements, and in many cases the daily loaded mileage run by individual lorries was only 2 to 4 miles with light loads of about 5 maunds."

His Excellency the Commander-in-Chief: This has already been accepted.

Mr. Harchandrai Vishindas: Then I am thankful to His Excellency.

Mr. President: I must warn the Honourable Member that his time is exhausted.

Mr. E. Burdon (Army Secretary): I wish to reply very briefly to certain observations which have been made in the course of this debate on the subject of the recommendations of Lord Inchcape's Retrenchment Committee in regard to military expenditure and the Army estimates for 1923-24. My object in doing so is not to embark upon any form of contention but really to give the House certain information which I feel sure that Honourable Members would like to have.

I will deal first with certain remarks made by my Honourable friend Mr. Rangachariar. If I remember his speech correctly, he raised two points of special importance. In the first place he referred to a statement in the speech of the Honourable the Finance Member made with reference to the revised Army estimates for 1922-23. The statement was to the effect that the budget for 1922-23 provided 85.10 crores for the established charges of the Army, whereas, according to the revised estimates, the charges will now amount only to 80½ crores; and I think my Honourable friend's point was that it was unjustifiable for Government to frame so high an estimate in the first instance. The explanation of the apparent

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which has actually been considered, and it is one which the Army, if the decision were left to them, would like very much to adopt, as I can assure the House there is nothing the Army hates more than to be called out for the suppression of civil disturbance. There are, however, certain objections to it. The first objection is that it would to a very large extent merely amount to robbing Peter to pay Paul. It is true that armed Police Battalions, according to the calculations which we have made, would probably cost less than a regular Indian Infantry battalion, but there would be no very great difference and the charge would, as the House will understand, merely be transferred from Central to Provincial estimates. There are military reasons of great cogency also against the proposal, but the House will understand that it is impossible for me to discuss seriously on the present occasion a large question of policy of this kind. My Honourable friend Dr. Gour had also something to say in regard to further reductions of British troops. Well, as the House are aware, the Retrenchment Committee, who were in a good position to judge of the matter, and the Commander-in-Chief do not consider that any larger reduction can with safety be made than that which has been proposed. That reduction, as I have shown, is considerable. There is one other distinguished authority whose support I think I may claim for the view that greater reductions should not be embarked upon at this stage. I am referring to my Honourable friend Sir Sivaswamy Aiyer. He told the House this morning that he does not altogether share the opinion of the Honourable Sir Dinshaw Wacha on the subject of the abolition of the amalgamation scheme. I think I may assume that by this he means that India must for the present continue to rely in some measure upon the services of the British Army. My Honourable friend Sir Sivaswamy Aiyer has an intimate acquaintance with the whole matter. I need hardly remind the House that it is not so very long ago that he was a Member of the Committee which dealt with the military requirements of India. My Honourable friend Sir Sivaswamy Aiyer, in the course of his speech this morning, mentioned two matters to which he desired to draw the particular attention of His Excellency the Commander-in-Chief; His Excellency being detained in another place did not hear these particular observations and was therefore unable to reply to them. I feel sure, however, that I can promise my Honourable friend on behalf of His Excellency the Commander-in-Chief, that the question of admitting Indian officers to departments of the Army as distinguished from the combatant formations, will be carefully examined, and also that His Excellency the Commander-in-Chief will do everything in his power to secure a favourable decision on those Resolutions which were passed in this House in connection with the Esher Committee's Report and which are still under consideration either by the Government of India or by the Secretary of State.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, yesterday I must say that I was thankful to this Honourable Assembly that the view of those Honourable gentlemen who used to be authorities on the Frontier question was most favourable; but it is very painful to me to see that my learned friend Dr. Nand Lal, who always speaks with a full voice and from a full heart, is just as obstinate and as far astray as ever. I will appeal to him and I will just offer some observations to him in particular and to other Honourable Members in general to be more charitable towards our Province.

Sir, I will take the situation on the North-West Frontier from three aspects and deal with it. Firstly, from the aspect of the people who are living there; secondly, from the aspect of the Civil officers, and lastly but not least, from the aspect of the Military officers in order to show that we don't deserve his remarks. I must say that we have all been treated very badly and we have all been criticised very disgracefully. My Honourable friend Mr. Bray yesterday and His Excellency the Commander-in-Chief to-day made a full statement concerning the Waziristan question, which prevents me from enlarging on the same. I would like just to describe before this learned Assembly the characteristics of the people with whom we have to deal in order to show that the close border policy is rightly adopted by the Government.

War is at every door and warlike virtues behind every door, under a brute there is a free man and a man with a heart. They abound in courage and ready for sacrifice. Amid their perilous mode of life and the perpetual appeal to arms there exists no sentiment much warmer than friendship nor any virtue stronger than heroism. To him who loses everything vengeance is left and if the conquered can enjoy this, he will find himself happy and will sleep softly even under his chains. Every clan forms a league of which all the members are "brothers of the sword." They are united together by the strong ties of community of race, of language and community of common interest, and consider it their sacred duty to defend one another. They are imbued with the noble spirit to lay down their lives for the sake of their fellow tribesmen. They value neither their own lives nor the lives of others. As a horse kicks instead of speaking, they pull out their knives instead of explanation. Strife for strife's sake such is their pleasure; when caged in by melancholy or violent sensations they are bent on a fighting blood-spilling life. In their eyes the world is warfare and heroism the greatest excellence. It is not strange to see them seek their happiness in battle and their beauty in death. Such is the life of those with whom the Government is engaged in an endless struggle. Their country is barren and yields no produce, so the occupation would have been mere waste of money and loss of valuable lives without any return.

Now, Sir, I will prove to the Honourable gentlemen that since the last few years our duty as citizens of that Province we performed beyond expectation. We have always been ready to co-operate with the Civil officers, and always ready to respond to the call of the Military officers. We have been spending money out of our own pockets for our safety which fund ought to have been provided by the Government as it is the duty of our Government to safeguard the person and property of every citizen. We are entitled to claim that from our Government, and I am assured this Assembly will support me in urging this point. Sir, we buy our own rifles and pay for them; we buy our own ammunition and pay 4 p.m. for them; and you know very well, Sir, that for every rifle we buy a chowkidar must be maintained; and when occasion arises we residents aid the constabulary and the police. In spite of this, my Honourable friend is not satisfied. He will always call out "Murder after murder; dacoity after dacoity." I would request him to go there and settle there and see with his own eyes the state of affairs there . . .

Dr. Nand Lal: I rise to give an explanation, Sir, because my name has been referred to. The Honourable Khan Bahadur Abdur Rahim seems to be imbued with the official view as the Honourable Mr. Bray was . . .

Mr. President: The Honourable Member from the North-West Frontier Province may be left to give his own explanation. I understood the Honourable Member was going to give a personal explanation.

Dr. Nand Lal: I explain that I approached the subject, connected with the North-West Frontier Province, with reference to the standpoint of the tax-payers and in the interest of law and order. I did not attack any individual officer.

Mr. President: I cannot allow the Honourable Member to deliver another speech. If the Honourable Member thinks he has been misrepresented he is entitled to give a personal explanation; he is not entitled to add a long foot-note to his own speech.

Dr. Nand Lal: Sir, I was never obstinate in my views, nor unfair, I was just in my remarks and I may emphasise the soundness and correctness of my remarks. The criticism which has been levelled against me is altogether unfounded.

Khan Bahadur Abdur Rahim Khan: Well, Sir, I am glad that the Honourable gentleman gave vent to his feeling; I think it must have been a great relief to him. What I am saying is the fact, the naked fact, and none can deny it; and it can be corroborated by the statements in official papers. Now, the Honourable gentleman knows very well that last session a statement was made that so many rifles were distributed. What does this show? Those who keep these rifles do so not only for the sake of the safety of their own person and property, but for guarding those passes of which we are the door-keepers, these passes had always been and are and will be a source of trouble to India. I would bring to your notice, Sir, that when disturbances arise our legitimate demands are ignored and no constructive work is done. I would specially refer to the city of Dera Ismail Khan for instance; that city is in danger; I have been approaching each and every official and told him "For God's sake, do attend to it." The people are crying at the top of their voice and sending representations and deputations to the Chief Commissioner and to every available officer everywhere but up to now no practical step is taken to satisfy those people. We have been doing our work and duty as good citizens and co-operating with all officers concerned, still the Honourable gentleman is not satisfied, he can now see what funds are spent on us. I say this for this reason, that the Honourable gentleman should go there and he should see things for himself.

Dr. Nand Lal: Again a personal explanation, Sir. I have been to the frontier province and I have seen with my own eyes a number of places of importance and interest in this direction.

Khan Bahadur Abdur Rahim Khan: That is only for a day.

Dr. Nand Lal: For many days altogether, so far as I can recollect.

Khan Bahadur Abdur Rahim Khan: Well, I am glad that he has been there many days; unfortunately he has not been to that part

Dr. Nand Lal: I have been to that part too.

Khan Bahadur Abdur Rahim Khan: Take the case of my friend, Mr. Samarth; take the case of our Leader, Mr. Rangachariar. They at least have realised the difficulties of the officers there and they have supported their views. I am glad that this close border policy is adopted and settled to the entire satisfaction of the public, the forward policy if followed no constructive work will be done in India for ages and ages to come.

I will draw your attention now, Sir, to the officers working under Sir John Maffey, they are all doing their best. I cannot help mentioning one or two names because they have been doing extraordinarily good work. For instance, I have much pleasure in mentioning Major Parsons, who has just been saved from death; he got wounded while he was flying in an aeroplane, and I have just heard from him that he has got a stiff elbow for which he will have to go to England. We would be lacking in gratitude if we ignore the services and sacrifices of this gentleman. Then again I would mention the Deputy Commissioner of Bannu, Major Garstin, who has been so successful particularly against the outlaws that in the last two months I think he has beaten the record in arresting outlaws and killing them. I would also recall to memory those officers who have been doing good work on the constabulary and sacrificing their lives.

Now, Sir, when these officers are doing such good work and when the residents of that Province are doing their duty, I think it is very undesirable and very bad policy to criticise them. If we had any sense of gratitude I think we should feel the greatest sympathy with them as good citizens. What I would plead here and what I want to do for my fellow-citizens is that each fit man should be provided with a rifle. It should be the duty of Government to give us rifles; it should be the duty of Government to provide us with ammunition; it should be the duty of Government to provide us with these things and our officers with the necessary funds to deal with the border tribes and then you will see what we will do and what the saving will be. The close border policy is the only effective and least expensive policy, which must be followed and stuck to.

Mr. K. Ahmed: That is not a question arising under the Budget.

Khan Bahadur Abdur Rahim Khan: I am sorry; if you do not know these things you need not mention them. I have been watching what sacrifices have been made and what dangers have been braved by these military officers, they require no comment as they speak for themselves. Some gentlemen say that the money spent there is a waste. I was reading some time back that there was a serious complaint that the English people do not take so much interest in Indian affairs as they take in football. I think we are justified in saying that these Honourable gentlemen do not take so much interest in our North-West Frontier Province as is taken in a small boarding house by people playing ping-pong. They simply criticise it and that is all their interest. They should realise what was the condition after the third Afghan War. If you had not got an Army what would have been the condition of the frontier? If you did not have an army, you could not have established this cantonment at Razmak and in other places without great sacrifice and loss of men and money. No doubt the expenditure is there. But if you claim to have the pride of having a big country like India of course you must have an Army. I have been reading some literature some time back, somewhere a philosopher described beauty as Royalty without force but never read anywhere that there can be an Empire without forces. Perhaps my friend, Dr. Gour, wants to have an Empire without forces. I quite agree with him that there should be retrenchment in the Army. But when we see His Excellency the Commander-in-Chief gracefully giving in where he thinks that he should give in, it will not be proper on our part to oppose him and criticise him. He is without doubt an expert in these matters and he always looks at it from the Indian point of view, therefore his opinion should be respected and accepted. I must say that I like that there should be retrenchment, but it

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should be reasonable and essential. In that way, if you want to have a saving, do away with the army altogether. Then there will be a saving. Do not have an army and see what will happen. So I say this; we must criticise these things in a good spirit but not in a way which may not be an honour and credit to our courtesy, intelligence and judgment. With these remarks, Sir, I would appeal to Dr. Nand Lal that he should be more generous towards our province and that he should take an interest in our province with the spirit of doing us good and not with the spirit of always criticising us. With these remarks I will resume my seat and not waste the time of this House any further.

Dr. Nand Lal: I shall be failing in my duty if I shall shirk the responsibility of echoing the voice of the people in general and of doing my duty conscientiously.

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): Sir, I do not think really the congratulations or the curses of Honourable Members on this side affect the Honourable Members on the Treasury Benches. They are doing their duty that appertains to their office; we have to do also a certain duty as representing the people. If we go through the whole budget we find, Sir, that it is practically a budget for the maintenance of the administration. As pointed out by Dr. Gour, the whole money that you find is to be spent upon the administration and administration alone. Sir, when the tax-payer pays his hard-earned money, he expects also some benefit. What benefit does this budget provide for the tax-payer? Sir, the only benefit that the tax-payer can ever get is from the improvement of industries and agriculture or from irrigation and such other works and projects by which the people really get the benefit that they desire. I am sorry if I do not swim with the current and with other Honourable Members in talking about retrenchment, in certain directions especially. Sir, I find really that a very very poor provision has been made in the budget for what are called nation-building Departments. India is an agricultural country, and it is known that most of the Government revenue, about 81 crores, is realized from the land. But what actually are we spending for the improvement of Agriculture? I see from the Budget Demand, No. 32 I think, that a very small sum has been asked for for the improvement of this Department. For Agriculture they have asked for 7 lakhs, and for industry only Rs. 44,000. Sir, every one knows the abject condition of Indian industry. I shall ask you just to turn for a moment and look at the articles on your desk, the ink bottle, the pen, the writing paper, the blotting pad; look at all those things and you will find that they are of foreign manufacture. Can you point out anything of Indian make? Is not such a vast country entitled to provide those things the trade in which is dominated by foreign countries? I will ask the Honourable Members also just to look round at the clothes they wear. Of what make is the cloth? All is foreign, Sir. Everything is of foreign manufacture, the thread with which their clothes are stitched and the needle which has been used for the purpose, all are of foreign make; nothing is made in India. (A Voice: "What about yourself?") I am also one of you, not from outside. I wish to point out really the wretched condition of Indian industry. I think that any amount spent on improving Indian industry will not be objected to by any Member of this House and will not be spent uselessly.

As regards agriculture also we find a very small sum of money budgetted for. I speak subject to correction, but from a Year Book I have ascertained that in a country like Ireland, of which, Sir, you are well aware of the size

and which also from your travels in India you know to be but a fraction of the size of India, I found that in the year 1916-17 the Board of Agriculture in Ireland demanded £76,177 for the improvement of agriculture. They provide there for all kinds of agricultural education; they conduct scientific research in agriculture, and they also provide for lectures on agriculture, horticulture, book-keeping, butter-making, and so forth. But what is being done in India on those lines to improve agricultural conditions or industry? Ireland is perhaps less than one-twentieth the size of British India, yet we only are asked for Rs. 44,000 for industry. I submit, Sir, this expenditure on Indian industry is really farcical. Perhaps some Members may say that it is a provincial subject. Sir, we all know what the condition of provincial finance is. The Ministers are everywhere crying themselves hoarse for money. We take provincial contributions; we take the income-tax; the Central Government takes in many other ways the income of the provinces. They have nothing and those Departments are starving. I submit, Sir, that more money ought to be spent on Indian industry and agriculture.

Sir, I do not wish to travel over the same grounds which other Members have covered in regard to the expenditure, especially on railways and on the military. Strictly speaking, the working expenses of railways have increased abnormally. In the budget of 1913-14 you will find that the expenses amounted to 49.26 crores; the estimate for 1922-23 amounts to 94.72 crores. I do not think that that increase is at all justifiable. Honourable Members will see that the same figures have been used, 4 and 9, but the 4 and 9 have been reversed and 94 makes a vast difference. I find from the replies given to some questions which I put that the railway staffs have been greatly increased. I do not see what the justification is for increasing the staffs by 30 or 40 per cent. on some lines, as far as I have been able to gather. I cannot understand why the staff should be increased when they are working the same length of line and the same number of stations. Probably the reason was to provide employment for war-returned men. That seems to be the only object. An increase might reasonably have been expected on account of the increased price of coal and other commodities but not on account of staff.

As regards the military, there is no doubt that we do not know whether we are living in peace or war. Certainly during the war, in a time of emergency, demands on account of military expenditure have to be met anyhow. But the war ceased in 1918; five years have since nearly passed, but still we are living in war conditions. I fail to see why. Sir, as regards Waziristan and the Mahsud country it is admitted on all hands that it is not at all a productive country; also the Honourable Mr. Bray has said that Government have no intention of occupying it. If so, why should we waste so much of our money upon it? It is described as a rugged, hilly country, but I think so far as our money is concerned, it is a bottomless pit. You can pour in any amount and there will be no result. Before so many of our soldiers were not located there, and the people of the province managed very well for a long time, the people for whom my friend, Mr. Abdur Rahim, has pleaded so vehemently. But now for three or four years the province has been kept filled with troops, because the frontier tribes are coming and making raids and committing dacoities and so forth. Are our brave soldiers to be kept there to arrest those dacoits? That is the duty of chaukidars or of the police. The duty of our soldiers is to fight. Are those people waging war against us? They are not doing anything of the kind, and why should our brave soldiers be wasted there simply to catch dacoits and raiders. I have read in the papers

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that even in the broad streets of Calcutta dacoities are committed, and also in the streets of London; but no soldiers are kept there to catch the dacoits. I believe that the people could very well deal with the situation themselves. It is only the Arms Act, Sir, which brings all this trouble upon those people. If they are exempted from the operation of the Arms Act they can very well defend themselves against the dacoits. What is the good of keeping soldiers if a dacoit comes after midnight and if he will shoot me and carry away my property? What will the soldiers do? Sir, really, if we are exempted from the Arms Act, if we, Indians, are provided with our own arms, I think we can defend ourselves, and, Sir, there will be no need for our soldiers to defend us and there will be no need for so much money being spent. I won't detain the House much longer. I will only say something, Sir, about the taxation. It was my unpleasant duty last year to oppose taxation vehemently, and also I think nothing has been changed, or no case has been made out, why these poor men should be taxed. Sir, of course, some people say, these poor men are smoking cigarettes, also that the rich men are spending money on motors and on petrol. But granting all that, so far as human nature goes, there must be some waste, but that is no reason why there should be this taxation of the poor. There is one thing. If such a Government as this deals in crores and crores of rupees, it will not be respectable for a Government like this to go to these poor people. Sir, if you are in need, perhaps if you are failing in business, you can approach your respectable Banker or you can approach some respectable friend to accommodate you in your difficulties, but, Sir, I ask you, if you go to your own chaulkidar or to your own mehtar and say, 'give me something,' what would be the result? I think it would be against your own sentiment, and what will those people be thinking? They would think that this Government has gone bankrupt, this Government has no prestige, they are asking us for even a pie, what is their worth? Sir, it will create a very bad impression amongst the poorer classes of the people; they will say, "Government is doing nothing; the Honourable Members are only sitting there to get us taxed." That will be the feeling no doubt. With these words, Sir, I oppose the salt tax.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan):

Sir, I would not have risen to make any general remarks to-day at this late hour but for certain observations made by some Honourable Members. My Honourable friend Mr. Jamnadas Dwarkadas, Sir, has indirectly referred to the permanent settlement. Sir, the permanent settlement was made at the time of Lord Cornwallis; and to do away with the permanent settlement or to make any change with regard to that now would be disastrous, and suicidal. The Zamindars have hitherto been loyal to the core, and any attempt to do away with the permanent settlement would be looked upon by them as a breach of faith. Industrialists have no idea whatsoever of the services rendered by Zamindars in this country. A reference was made to these services by His Excellency the Viceroy in his speech the other day—and any attempt on the part of capitalists and industrialists to do away with the permanent settlement is to be deprecated.

Now I have to make some remarks with regard to the military budget. In my opinion it would be most unfair and ungrateful to criticise the military expenditure after the speech of His Excellency the Commander-in-Chief, and after his having graciously accepted the position and reduced

the expenditure, and you will find in the Retrenchment Committee's Report that they come to the conclusion and recommend that 'military expenditure after a few years be brought down to a sum not exceeding Rs. 50 crores.' Situated as India is,—and you cannot compare India to countries in Europe,—it is urgently necessary that the strength and efficiency of the Army is maintained with a view to stop aggression from beyond and to suppress insurrection within; and in these circumstances, if His Excellency the Commander-in-Chief has been able to accept the reductions, we ought to be thankful and grateful to him, and not to criticise him; and I think it would be very ungrateful on the part of the Honourable Members not knowing much about the military affairs to do so. Now, Sir, I come to the present question. The question before the House is whether we are to accept the enhanced tax on salt, or whether we should allow the deficit budget to remain unbalanced. I must say I am against any enhancement of the duty on salt on two grounds, economic as well as political. Politically, I say, Sir, the masses are now adapting themselves to the changed conditions created by the increased taxation of last year, and an increased tax on salt would I am sure spread further discontent amongst the already discontented people. Unrest amongst them is gradually subsiding and further taxation is apt to add fuel to the fire, giving as a matter of course an opportunity to the agitators to exploit the excited feelings of the masses—a contingency which in my opinion should be avoided. Now the question is, whether the Budget should be allowed to remain as it is. But at the same time I must say that I will be the last person to agree to an unbalanced budget, with an uncovered deficit of nearly 4½ crores, and I fully agree with the Honourable the Finance Member that it would be a most unsound financial policy to leave the deficit in a Budget uncovered. How is this deficit to be met? In my opinion the deficit can be met by further cuts from the Demands than have hitherto been made, as well as from an export duty on petrol and an import duty on silver; and I may also suggest that if it would be possible, something may be done in connection with stores. I have seen the Retrenchment Committee's Report, and I find in paragraph 7, page 292, of their Report, the Retrenchment Committee say—and I may add that the adoption of the Committee's recommendation would bring in a decent amount. The quotation is:

"We also desire to draw attention to the magnitude of the stocks of stores held by many departments, as shown in the following statement:"

Department.	Value of stores held on March 31st, 1922, or, nearest date.
	Rs.
Army	20,14,71,000
Marine	75,11,000
Military Works—	
Mobilization stores	87,89,000
Ordinary stores	35,41,000
Telegraphs—	
Mobilization stores	44,09,000
Ordinary stores	1,53,40,000
Post Office	1,77,000
Indo-European Telegraphs	11,00,000
Mathematical Instrument Office	11,72,000
Railways	34,58,00,000
Railway Institute	6,32,000
TOTAL	58,99,22,000

[Khan Bahadur Sarfaraz Hussain Khan.]

The country cannot, in our opinion, afford the lock-up of capital which this huge sum represents, apart from the consequent expenditure on the establishments engaged on the maintenance of the stores, the buildings for their accommodation and the inevitable loss from depreciation. We recommend that an early and progressive reduction be effected in these large holdings."

I cannot say, Sir, as to how much can be deducted from these stores, but taking all these things into consideration, I think that reductions can be made; and I oppose the salt tax and I suggest the other duties.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, as a non-official Member elected by the people of this country I shall have to offer certain criticisms on behalf of the people for the benefit of the country in general. The Honourable the Finance Member in his introductory speech has said many things, but, Sir, if I level any attack on the Honourable the Finance Member and the Government both here and in England, I hope my Honourable friend, the Leader of the House,

(Rao Bahadur T. Rangachariar at this stage took the Chair.)

and the Government Members will kindly pardon me. In dealing with the discussion on the subject of the Budget, Sir, I shall have to begin by saying that I heartily congratulate the Honourable Sir Basil Blackett, the Finance Member, who has been able within the short compass of time to get by heart the full 15 pages of the Gazette of India, dated 1st March, 1923, and I hope he must have digested them in full and realised that he is the inheritor of the fruits of the hard labour of the Honourable Sir Malcolm Hailey. Sir, among all the items of the coming Budget, the military expenditure has again taken the major portion of the whole revenue of the country. The Honourable the Finance Member at the outset expressed the congratulation for securing the appointment of the so-called strong and able Retrenchment Committee presided over by Lord Inchcape who has been described as a fore-runner in the whole show in the matter of retrenchment. On the morning of the 1st March, before the commencement of the business of this House, I was taken in confidence by some of my distinguished colleagues to consider whether it would have been desirable or advisable at that stage, Sir, to move for an adjournment of the introduction of the Budget. The country is aware, Sir, that the Members of the Inchcape Committee were nominated by the Government, neither on the principles of representative character, nor was this House, which is the Parliament of the country, taken into confidence by the Government in the matter of making nominations. I daresay, Sir, that this Assembly is well aware that the number of interpellations and the volley of supplementary questions on my starred questions, have been put and fired at, at the last Session at Simla, but the Government was too slow to move in the matter, and the voice of the people of this country remained a voice in the wilderness. The voluminous report of the Retrenchment Committee has hardly done any good so far as this Budget is concerned. I take this opportunity to congratulate one of the most able and energetic Members of the Committee, the Honourable Mr. Purshotamdas Thakurdas, who has taken great pains in writing supplementary notes on various subjects.

Now, with regard to the military expenditure which has made this country insolvent, the less I talk of the present Government the better, because the country understands and the Government, I believe, realises in full, that there is no other country which has a worse top-heavy administration than India, owing to its extraordinary, all-absorbing, drastic and

blood-sucking military expenditure, it will remain a dark spot in the history of the British Administration of India. One of my Honourable friends, a nominated Member of the Assembly, had said a few days ago—I think it was my Honourable friend the Khan Bahadur of the North-West Frontier Province, who is not in the Assembly now—that India is a God-forsaken country; that is why the people are poor and helpless. But, Sir, I find India cannot be without a God; moreover, the people are religious and devoted to the Gods and Goddesses. The Brussels International Economic Conference, about which my Honourable friend, Dr. Gour, has also made a reference, have also passed a Resolution recommending all nations not to spend more than 20 per cent. of their revenue on the military expenditure. Even in England, Sir, the military expenditure comes to about 16 per cent. and the Dominions and Canada spend much less. Our expenditure comes to about 60 per cent. (*A Voice*: 'Forty per cent.') Make it 58 per cent. at the utmost, Sir. It is surprising, Sir, that out of the total expenditure in India only 4 per cent. is spent on education and only $\frac{1}{2}$ per cent. on sanitation. The Assembly will be horrified to hear that in Bengal there have been more deaths in some districts than births for want of sanitation. After 150 years of British rule the people of India have remained backward for want of education and thousands are dying of starvation every day.

Sir, the Honourable Mr. Denys Bray, the Foreign Secretary, in his impressive speech, attracted the attention of the Honourable Members of the Assembly by the remark that in Waziristan this reckless and would-be insolvent Government has already spent twenty crores of rupees. We have not got a clearly defined policy in respect to Waziristan which has been the sinkpot of the Indian revenue. The Foreign Secretary, while speaking the other day, said that "human nature cannot tolerate a vacuum" when he was describing the Frontier situation by the Durand line which is situated between Afghanistan and British India—not India but British India. Sir, there have been certain comments over this phrase, because it was denied by the Honourable the Foreign Secretary. My Honourable friend, Mr. Ses'agiri Ayyar, quite rightly pointed it out and those were the *ipsissima verba* of my Honourable friend, Dr. Gour, who also commented on them. This reminds me of a story Sir, where a child was crying for the moon in the lap of its mother not realising the immense 'vacuum' that is left between the earth and the moon. Lord Inchcape who has achieved a brilliant success amongst the interested Europeans in India in the sphere of commerce and industry and who has now become the prize-boy of the Government of India has gone to Waziristan, I think on the night before last after the Retrenchment Committee's Report was placed before us, to measure the same 'vacuum.' There started the introduction of the Budget on the 1st of March. May we not say, Sir, that there is thus seen a similar 'vacuum' in the Retrenchment Committee's report as well? Let us accept the close border policy and hold our Frontier secure leaving the tribal country alone. It is a potent fact, Sir, that the services of our Army have been utilised abroad in South Africa and France in the past. I do not think, Sir, that the elected Members of the Assembly will approve of the action. Our poor people, the payers of the revenue, cannot bear the burden of such military expenditure any longer. The sooner the non-votable system is wiped out from the budget the better will it be for the country and the Government. Sir, doubling the tax on salt is a drastic measure adopted by the Government and it will be better if this most outrageous habit of recommending every year a salt tax be

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changed. About 97 per cent. of our population is poor and this measure will take the taste from the food of our people and thereby lead to manifold evils such as malaria, cholera, kala azar, etc., etc. Salt is also a food of the animals that plough the land and it is also used as manure, and by increasing the salt tax, the growth and fertility of our soil will be affected and diminished. I am surprised that the Finance Member, without appreciating the real situation, has taken a leap in the dark by introducing this measure which will hurt and finally kill the major portion of our population. I am sure he will realise nothing from them after they are dead and gone. The present system of taxation will bring the wreck and ruination of the country. He will make the country not only insolvent, but she will be so much bankrupt that the Honourable the Finance Member will not be able to raise any loan from abroad on the payment of any higher rates of interest. The charm of the Government of India Act will no more be able to enforce any payment of high rates of taxes saying that the military expenditure is non-votable. Great chaos and darkness will await the country and the crushing military expenditure will be responsible for it. The Honourable Sir Basil Blackett has referred to our pulling together with the hope of quickly getting the boat out of the vicious circle which is threatening to drag India down on the rock of insolvency, but Sir, as I have pointed out, shall we join the Honourable Finance Member in pulling together the dead bodies and carcasses of our people to take them to the burial ground for their cremation or is there still a ray of hope in the mind of the Finance Member that . . .

Mr. Chairman: Will the Honourable Member bring his remarks to a close?

Mr. K. Ahmed: . . . that he will be able to realise large sums of money to be paid out of the Indian revenue on the non-votable absurd system. With these few words, Sir, I protest very strongly against the military expenditure and the enhancement of taxes on salt. I support, Sir, the budget as far as Posts and Telegraphs are concerned because, Sir, they are the messengers of the poor people of this country and we cannot get on without their help, though my Honourable friend, Dr. Gour, has opposed it very vehemently. I suppose the taxes on petrol . . .

Mr. Chairman: The Honourable Member must bring his remarks to a close.

Mr. K. Ahmed: Sir, only a second. Many Honourable Members of this House have taken part in supporting a proposal to levy a tax on the export of petrol to foreign countries. I fully agree as it is an extraordinary thing that the petrol raised in this country is exported to foreign countries and sold there much cheaper than we get it here in this country . . .

Mr. Chairman: The Honourable Member must stop there.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, at this late stage I shall not take the time of the House at great length. I shall content myself by making a few brief remarks on some of the points of this hope-inspiring budget. Sir, in spite of the explanation given by my Honourable friend, Mr. Ayyar, I am not quite convinced that there is no room for retrenchment in this budget. The Retrenchment Committee have proposed certain figures for retrenchment for the year 1923-24. The Government Members have interviewed the Retrenchment Committee and they

have certainly explained to them in which items retrenchment was not possible this year, and after receiving this explanation of the Government Members, the Retrenchment Committee have recommended that in the civil estimates there should be a reduction of 9 crores of rupees. Government have proposed only a reduction of 6½ crores, so there is still a margin of 2½ crores. Mr. Ayyar asks for the crores which some Members said were hidden in the budget. I will show him some of them. Sir, there are about a dozen departments of the Government of India which altogether show an increased expenditure of about 1 crore and 40 lakhs, whereas in these very departments the Retrenchment Committee ask for a retrenchment of 1,20 lakhs. My Honourable friend, Mr. Ayyar, will say, yes the Government of India is going to make a retrenchment. They may make a retrenchment of 1,40 lakhs and bring down expenditure to the normal level, but that is not retrenchment. You only keep the expenditure of these departments at the level at which it stood last year. Therefore at least 1,40 lakhs are hidden in the figures which Government have presented to this House. Then Sir, if the Government consider that there are some items suggested by the Retrenchment Committee which they cannot accept, so every one of us has got some fault to find with the Retrenchment Committee. I myself do not approve of the recommendation of the Retrenchment Committee recommending the abolition of the Labour Bureau and also the alteration of the leave rules of the workers of the Government Printing Presses. But we all agree on one point, that there should be a total retrenchment of 19½ crores of rupees. Let Government also agree with that proposal; let them show that they have made a retrenchment of that total recommended by the Committee and then the House will be satisfied, but it is necessary for them to satisfy the House on this point.

Then my Honourable friend, Mr. Ayyar, again persisted that the annuities should not be charged to capital and he said the annuities are a sinking fund. But my Honourable friend ought to know that there is a separate item for sinking fund in the railway accounts. Why should there be two items for sinking fund in the railway accounts? Moreover, the House must see that there is a great danger in wiping out capital as is being done by charging the annuities to the revenue. If you wipe out capital, there will be the incentive for the railway management to keep down working expenses. It is not therefore a wise policy to wipe out capital of railways, especially so as the Government is thinking of separating railway accounts from those of general revenues. The railway expenses have grown tremendously, as will be seen clearly from the Retrenchment Committee's Report. Sir, talking of railways, I want to protest against the action of Government in not accepting my suggestion that the establishment roll of the railways should be supplied to the Members of this Assembly. I asked the Government whether they would supply the establishment rolls. They said no; but on what ground? On the ground that the printing of the establishment roll will cost a good deal of money. I was told on the same occasion that Government prints the establishment roll for the use of the office. If they print the establishment roll for the use of the office, the printing of an additional 100 or 200 copies will not cost more than Rs. 100 or Rs. 200. I therefore strongly protest against the action of the Railway Board in not supplying the establishment rolls to the Members of this Assembly. Without having sufficient details we cannot really criticise the railway budget at all.

[Mr. N. M. Joshi.]

Then, Sir, I want to make one additional remark. The Government of India have placed before us certain information about the steps they have taken to improve the lot of the third class railway passengers, but I am not satisfied with the scrappy information which they have given in their memorandum. We want a clear statement from the Government of India as to what they have done to improve the condition of third class railway passengers and we want them to compare the amounts spent on improving the second class and first class railway facilities with the amounts spent on improving the railway facilities for third class railway passengers as well the revenue obtained from these classes of passengers.

Then, Sir, there is still lurking in the budget a tendency which we have been seeing on the part of the Government of India to go on increasing their own expenditure. I have already explained how expenditure is still increasing in certain departments and especially so in the Political Department. Sir, in spite of the eloquent speech of my Honourable friend, Mr. Bray, I am not satisfied that the expenditure on the Political Department should have gone up by 38 lakhs, whereas the Retrenchment Committee has asked for a retrenchment of 45 lakhs.

Sir, I shall only say one word as regards the new taxation, and it is this that if Government consider that the poor people in his country are not sufficiently taxed, let them make an inquiry as my Honourable friend, Mr. Ginwala, has suggested to us. If, after inquiry, it is found that the poor people in this country are not sufficiently taxed, let them be taxed, but let not Government shirk the inquiry. Let them see too what is the incidence of taxation on the poor people and what is that incidence of taxation on the rich people. Sir, I was greatly surprised at the remarks which two of my English friends in this House made about the taxation of imported foodstuffs. While these two English gentlemen oppose the taxes on imported foodstuffs, they have supported the salt tax. They oppose the first tax on the ground that it was a tax on food. Do they not know that salt is an article of food? (A Voice: "Yes.") Why do they support the salt tax then? I was very sorry that these two gentlemen should have shown a racial bias in this matter. With these words, I resume my seat.

Haji Wajihuddin (Cities of the United Provinces: Muhammadan Urban): Sir, nothing but a deep sense of duty compels me on this occasion to stand up and express my opinion on the budget and the new taxation, proposed by my friend, the Honourable Finance Member. It has been a very tedious tale to hear of deficits every year, and we are, of course, sick of it. However, it is our fate, and we must hear it with due resignation. But how to satisfy the people, who are already overburdened with multifarious taxations, and consequently uneasy and dissatisfied, is to be weighed well before a further step is taken to impose a fresh one. India is threatened with insolvency and loss of trust in the eyes of the world, and in order to avoid the appalling humiliations and foreboding disaster, we are told, the new taxation is inevitable, and that new taxation can take no other form than that of an increased duty on salt. I may be pardoned if I remark that my Honourable friend, while referring to the old records of the last two years has overlooked the study of the opinion almost unanimously held by this House, regarding the self-same question of salt taxation. Was not the same proposal made last year? Are the conditions changed since then? Are we ourselves changed in any way? Why! What also should then be expected from us this time? Whatever may be the calamity to be faced,

we must not forget our duty. Loyal to the Crown, as we are, we cannot be less faithful to our own motherland. The aim of every good Government is to seek the welfare of the people governed by it, and it is our duty to guide it to the right path, when it is going astray. We know that the deficit must be met somehow. We realise the necessity of finding means to achieve the end. But we likewise know that there are a hundred and one ways other than to cut the throats of the poor people. Every one of us knows that the proposed taxations will solely fall on the heads of the poor people. For it is they who consume salt mostly. Well-to-do people may indulge in luxuries but the suffering multitude who can hardly earn three annas a day have as their only luxury salt. Salt is the only savoury in their food. If the Government deprives them of this luxury even, it does not favourably acquit itself in the eyes of the people, whose destinies are given in its hands.

Now the question is, if this new tax is to be imposed upon the poor man's luxury, will it serve the purpose of its imposition? I think not. In the days of Lord Curzon this tax was raised to Rs. 2-8 as now proposed, and people began to refrain from consuming salt and its total consumption was reduced to a considerable limit. Will not the same result follow now? Will not then the reduction in the amount of consumption tell upon the income and will not then it become unnecessary to keep it any longer? What will it bring? Nothing but discontent and suspicion. Agitation will again find a foothold in the country and the peace and tranquillity of the people will be disturbed once again. It will be another great shock to the foundations of the Reformed Scheme at a time when the convulsions produced by the speeches of the ex-Premier and the present Secretary of State for India have hardly subsided, and also non-co-operation is not dead but is thinking of joining its forces to wreck the Reformed Councils.

If deficits are to be met with by taxation, let it be imposed upon those who can pay it. Let it fall upon the luxuries of the rich rather than upon the direct necessities of the poor. Let the suffering multitudes be left undisturbed. If taxes are to be levied, let them have some moral force behind them. Let them be supported by some noble considerations other than mere money making. If taxes on liquors and other intoxicants are levied, will they not serve the purpose? Will they not fall on those who can pay? Will they not have the hearty thanks and the support of the nation along with the blessings of Almighty God?

If we raise a tariff wall against the foreign manufactured goods, will it not bring a big income as well as help the Home industries? So, why not do that and why tread under foot the poor who are already below the poverty margin in all the civilized countries of the world and who can afford no other seasoning to their meals other than this devoted salt?

6 P.M. For a long time, salt has been an eyesore to the Government but it is beyond comprehension how it came to be so. Time after time the Government have raised this particular tax and it was found again and again that they had to retrace their steps. Perhaps they had a notion that this tax can be easily collected, falls on all, and so is lightly felt. But alas, past experience tells a different tale. It has proved beyond any doubt that it falls on one class, is keenly felt throughout the country and is strongly opposed by the Press, on the Platform, and in the Councils.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muhammadan Rural): Sir, I rise to congratulate the Honourable the Finance Minister not for his masterly and lucid exposition of the budget, not for

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his grasp of principles, not for his mastery of details but because he has the sturdy independence to call a spade a spade. He has stated, Sir, for the first time in the face of the Government that their progress in the administration of this country during all these years has not been moral or material progress of the land but a rake's progress. When some three years ago I stated that the several departments of the Government of India were suffering from squander-mania, the then Finance Minister, Sir Malcolm Hailey, said "No, every Department is doing its best to economise their expenditure." But fortunately things have happened differently. We have Lord Inchcape's Committee which has now presented its report. Any knowing man who reads that report between the lines cannot help criticising the Government of India for their maladministration of all these years. The figures which they give show the way in which public money, the money of the poor man, has been wasted year in, year out, by the Government who have always used plausible language but without saying anything definite except that the time was not yet come when they could reduce the expenditure. Now, Sir, both the Government of India, and I am grateful to acknowledge, His Excellency the Commander-in-Chief have admitted that they agree with these conclusions to reduce expenditure. Now, I would like to ask, Sir, why there is this necessity to reduce expenditure in the year 1923-1924 which our friends on the Treasury Bench ignored last year when there was a deficit of 27 crores? If anything, the necessity was greater in the previous year. Was there never any necessity from the year 1917-1918 until now? They have failed to discharge their duty in reducing their expenditure and thus saving the poor. Why should they have taxed the country nearly fifty crores extra which they should repent of having done?

Now, Sir, it is not the fault of the Assembly, it is the fault of the Government, if we have failed to balance the Budget. The new Finance Minister, with all his ability and eloquence wanted us to believe that the world would come to an end if we do not cover the balance. May I respectfully tell him, here we have the Commander-in-Chief who has generally accepted the recommendations of the Inchcape Committee, in spite of—I say it with all due respect to Mr. V. V. Iyer who is an authority on accounts,—that he is juggling with words, when he stated that the Government has practically given effect to the recommendations in the Budget. Why should not the Finance Minister prepare the Budget in accordance to the recommendations of Lord Inchcape Committee to avoid all deficit. The Honourable Mr. Burdon has admitted that 14,000 people in the fighting services recommended by the Inchcape Committee for reduction was not given effect to in the Budget, and the Commander-in-Chief stated that he agreed to that proposal. Let alone the removal of the units of cavalry and artillery, with reference to the fighting strength, there was a recommendation for 14,000 people to be reduced. What would be the cost of reducing 14,000 people, and the followers and others? It would have amounted to more than 4 crores and odd. Would not that have been enough to cover the deficit? It is true the Finance Minister has told us they are still corresponding with the Secretary of State on the subject. Then why should we now provide for it in covering this deficit. Let them press it on the Secretary of State and say we cannot get on here. The one excuse the Secretary of State has hitherto had all along is that the man on the spot, the Commander-in-Chief who is responsible for the safety of the country, does not agree to it. Now

His Excellency the Commander-in-Chief has stated on the floor of this House that he has agreed to the proposal. Where is the difficulty now? Why should the Secretary of State not respect the word of the man on the spot. If the Commander-in-Chief now thinks that it is safe to reduce the strength and take the risk then the saving effected thereby may be used in the direction of covering this paltry 4½ crores—paltry when compared to the deficits we have had to face in past years. May I invite the attention of the Finance Minister with his thorough mastery of all these things, to what we have done decade after decade in the matter of expenditure? Several of my friends here have stated the facts with reference to the last decade and I may tell him, though perhaps he is already aware, that we have increased our expenditure in a manner startling and quite in keeping with the policy adopted in the previous years. In the decades to which I refer we spent

	Crores.
In the year 1883-84	41.66
" " 1893-94	51.87
" " 1903-04	73
" " 1913-14	82.80
" " 1923-24	131

And how have we increased the military expenditure during the said five decades that I have mentioned. From 18 to 20 crores and then it jumped to 26, and then 31 and now 62 crores; and that is the figure he suggests we should accept. Now my suggestion is that as has been pointed out by Dr. Gour we have exceeded very much more than 20 per cent. of the whole revenue of India. Is it not then the duty of the Finance Minister to safeguard our interests and to see that under no circumstances we spend more than what is absolutely necessary. Does he not know that every Province is groaning under its burden and every Provincial Budget shows a deficit. The Finance Minister spoke as if he doubted that the deficits in the Provinces may not be real, and he stated that some Member reported to him that the deficits were kept up while they could easily cover their deficit. The same plea may be adopted in our case, and we may also doubt whether the Finance Minister could not cover up the deficit if he had a mind. I shall only refer him to certain figures in other parts of the Budget. You find various recommendations made by the Inchcape Committee were not given effect to in the estimates. I have referred to the reduction on the military estimates, and I may mention, Sir, with reference to the Railways' working expenses, what was recommended by the Inchcape Committee was not taken in the Budget but a very much higher figure was given. I might also mention, Sir, that they have not only mentioned the reduction in the strength of the fighting force, but they have also suggested that 20 per cent. should be reduced from the war strength in order to bring it to peace strength. That was not done. We are still waiting for the reduction in the cavalry and other regiments; we have got an assurance that the capitulation rate could very well be reduced. If that could be reduced, was it not the duty of the Secretary of State, who wanted that we should know our own duty, that he should have recovered this amount not only now, but long before, instead of foregoing income which he ought to have realised on that account? Unfortunately, we have discussed the matter of State and company management of railways, and decided State management not because we were enamoured of State management, but because we found that Company management was worse and therefore we preferred bad to

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worse. I would ask the Finance Member to find out what was the working expense of the railways when the Railway Board was established. Till then our working expenses were limited to 46 or 48 per cent. of gross receipts during the years from 1890 to 1905, then when we got the Railway Board the expenses went up in 1906 to 50 per cent., in 1907 to 57 per cent., in 1908 to 62 per cent., in 1910 to 55 per cent. and in 1911 to 56 per cent. and in 1913-14 to 51.79 per cent. and in 1921-22 to 76.22 per cent. Since these guardians were appointed and expected to watch our interests we find the expenses growing. Perhaps there may be some reason or other and it may be said "Oh, circumstances were beyond our control," but all the same it does not bring any satisfaction to the poor tax-payer. When it was stated that the Railways were being treated as a commercial concern, they ought to remember how much of the poor man's money was invested; we have been spending without acknowledgment 300 crores from the revenues of this country besides the money borrowed. That was not taken account of. I would also invite your attention, Sir, to the growth in this compensation for thefts committed in the railways. Do you know how far it has grown? In 1916 it was 18 lakhs, but in 1921-22 it was 116 lakhs. Are we to tolerate that these thefts should be committed and we should be made to pay 116 lakhs compensation? Is this the good management under the company? Now, whatever may be the contractual relations it looks odd that the person who is the major partner who has paid 9/10th of the capital has to suffer loss of 926 lakhs whereas the surplus profits are paid to the companies to the extent of 106 crores; at a time when this amount was not sufficient to pay the interest on the capital the surplus profits are being paid. They say that we entered into the contracts and we have to fulfil them. The Indian would never say not to do that; he is ready to fulfil all his contracts, but he says "Who are those persons who entered into such one-sided bargains whereby we have to lose crores and the other persons take huge profits?" That, Sir, is what is called Company management.

It is urged in this House that when salt tax was discussed the poor man was not at all taxed. Even Sir Malcolm Hailey last time committed that mistake when he said that the poor man did not contribute towards the central revenues besides salt tax. He is no doubt a great authority, but may I remind him of an equally great authority, Sir Edward Law who stated that out of the whole customs duty 25 per cent. was paid by the poor man and not by the rich millionaires. If our leader, Mr. Seshagiri Ayyar, had had time he would have stated that it is the unanimous opinion of the House that the salt tax is an oppressive tax and will never be tolerated if we have any power to vote for it; and so far as we have the power we shall certainly reject it; and now it is for the Finance Minister to consider how best to retrench or provide otherwise.

A tax on petrol has been suggested, against which Mr. Innes has given certain reasons. It is for you to judge whether those reasons should stand in the way of preventing the imposition of export duty on petrol which will bring in about 75 lakhs of rupees. There are other things also to be considered. But is it not worth while for the House to consider, as we have adopted a policy of protection for our country, should we not prevent $\frac{1}{2}$ or nearly $\frac{1}{3}$ rd of the salt that is imported into the country by imposing some import duty to help the salt industry? Is it impossible for such a vast country like India to produce sufficient salt to provide for the 815 millions

of her people? That aspect might perhaps be taken into consideration, because the Government has got the power of controlling the price. They could as well adopt that import duty without increasing the price of the salt and without restricting the production in India and preventing the minor salt owners to bring in large grounds under salt pans; it might also help the Governments in various provinces to bring in vast lands under cultivation so that it could be done to alleviate the poor people and prevent the unnecessary introduction of foreign salt, because it is imported without any cost; it is loaded as ballast in these ships and they are dumped on our shores and we are unable to compete with it because it comes in without any extra duty. I do not think any other country would have tolerated such an injustice of allowing foreign salt which does not pay any excess duty to come into our land whereas the production of salt in the country was restricted directly or indirectly. I mention one more point, Sir. If an import duty on salt is levied and necessary steps taken not to increase the prices here we would get 159 lakhs because there will be . . .

The Honourable Sir Basil Blackett: I rise to a point of order. The Honourable Member has talked for the last five minutes about imposing an import duty on salt as if it were a new recommendation. There is an import duty on salt and it is proposed to increase it.

Mr. B. Venkatapatiraju: Perhaps the Finance Minister did not understand me. I know perfectly well when I am talking of the salt duty on imported salt to be increased that it is being imposed on imported salt; I am perfectly cognisant of that fact. What I say is "Do not tax what is manufactured in my country to an equal extent with imported salt but tax it in such a manner, not as a measure of providing revenue for the Finance Member, but as a protection to improve the manufacture of salt in this country, so that it would suffice and India need not depend upon foreign imported salt." Now if we refer to . . .

Mr. President: I must tell the Honourable Member that he has exceeded his time.

Mr. B. Venkatapatiraju: Just a minute, Sir; we can realise on jute, if we impose 5 per cent., about 2 crores; on motor spirit we can raise about 75 lakhs and on imported salt 150 lakhs; all this together will cover the deficit; but I might say that it is not the duty of the House to cover the deficit; it is the duty of the Finance Member to reduce the expenditure; and if he had accepted the proposals of the Income Committee he could have done it.

The Honourable Sir Basil Blackett: Sir, before I proceed to deal with the debate as a whole I think it is necessary that I should make a few remarks about the last speech. We have tried very hard to explain to the House that the estimates before the House are based on the assumption that the Retrenchment Committee's recommendations are accepted in full and put into force at the earliest possible date. The idea persists that there are extra crores up our sleeve which we can produce by putting these recommendations into force at an earlier date, or that it is only necessary to antedate them in order to get more out of them. But, of course, that is an impossibility. The suggestion that the budget deficit can be balanced by making use of the recommendations of the Retrenchment Committee to a greater extent than Government has done is an

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impossibility. The deficit is there after making full use of those retrenchments and making allowance only for the fact that it is impossible for us to antedate them or to bring them into force to-day. Perhaps it would be useful if I read one or two remarks made by the Retrenchment Committee themselves on this question of the date on which the recommendations should come into force. On the military services, page 58, they say:

"If our recommendations are accepted, and, if they could all be brought into effect at once, the military budget for 1923-24 could be reduced to Rs. 57½ crores, but we recognise that it will take some time for the whole of these savings to materialise. The Finance Department in framing their estimates will require to make an allowance for terminal charges and for the expenditure which must necessarily be incurred during the period required to give full effect to the changes which we recommend. We are not in possession of the data necessary for framing such an estimate."

We have framed such an estimate and it is on that basis that we presented the military budget of 62 crores. The same applies in regard to the civil expenditure. At the end of their report the Inchcape Committee say:

"We recognise that it will not be possible to secure in the ensuing year the complete reductions proposed, as under the rules notice must be given to surplus establishments, large reorganisations cannot be effected immediately, and large terminal payments will be necessary in some cases. It will also be necessary to make provision for increments to establishments on time-scale salaries. We recognise, also, as stated in paragraph 3 of our general conclusions on the Military Services

(which I have just read)

"..... that some of the reductions proposed represent reductions in stocks of stores and are therefore non-recurring. Even allowing for those factors, however, we believe that our recommendations, if carried out, will go far towards solving the problem of restoring India's finances to a secure basis."

The effect of the recommendations of the Retrenchment Committee, Sir, has been estimated as far as possible by the Government, so far as their effect on the year 1923-24 is concerned, and it is on that basis that we have arrived at the estimates for 1923-24, which show as against the expected revenue a deficit of 4.26 crores. Our problem still remains, how to cover that deficit. The speeches, of which there have been 40, I have listened to in the course of the last two days have all been very interesting and instructive. I have to thank, I think, every Member for a very kind personal reference to myself. Let me at this stage also incidentally make good an omission which has been remarked on in my speech last Thursday. It was, Sir, far from my thought to deny to this House its full share of the credit of securing the appointment of the Retrenchment Committee. If I did not make a specific reference to that in my speech, I must make the same excuse as was made by my friend, Mr. Seshagiri Ayyar, for cutting short his compliments, there was not time; I did not want to spend too much time on other than essential matter. All the speeches have been interesting too from the point of view that almost without exception—and this is a matter upon which I congratulate the House and myself—almost without exception it has been recognised that this deficit cannot be left uncovered. It is an unpleasant necessity which we have to face. Mr. Shahani who opened the discussion recognised that we could not leave the deficit uncovered; Mr. Spence who followed joined in the appeal to cover the deficit. Right through every speech I think it was recognised that the deficit must be covered and more than one Member appealed to me to examine, in consultation with

the House, the possibility of avoiding the salt tax, and the whole of our discussions really come back to that—how we can cover the deficit and avoid the salt tax. As I have already explained, try as hard as we will, we are honestly convinced that there is no possibility of a further reduction in expenditure in 1923-24. I am not prepared to say that all possible reductions for all time have been made, but for 1923-24, I think the House should take it from me that there is going to be very great difficulty in carrying into effect the reductions which we have taken the responsibility of including in the budget figures. There is no possibility in 1923-24 of reducing our estimates of expenditure below the figures we have taken. Again and again in their deep anxiety to avoid the deficit Members have harked back, as the last speaker did, to hopeful expectations that something more may be got out of the Retrenchment Committee's proposals. But they are only doing what the Government of India had done before. I think if you were to wander round the various Departments to-day and ask them what had happened to some favourite project, they would all repeat a couplet which we knew as children, that is, those of us brought up in England:

"The ship went down with a shiver and a shock
'Fore God it is the Inchcape Rock."

I do not think there is any hope of further reductions; they have all gone down; all the extravagances and a great many desirable items have gone down on the Inchcape rock. I ventured to prophesy in my speech last week that all the Members would manage to disagree with me on some point or another, and I think I have been justified. Quite apart from the salt duty, individual retrenchments suggested have been criticised. The most common form which that criticism took, though not the only one, was a criticism that the so-called nation-building departments had suffered most. Now, I do not think that that is really a fair criticism. Under the federal system under which India works to-day, Education, Public Health, Irrigation as well as Land Revenue are provincial subjects. All that the Inchcape Committee has done in regard to these subjects is in one or two cases to recommend a certain amount of reduction in the provision made in the Central Government's estimates, and their justification for doing that is nearly always something in this form. At page 120, the Committee say: "In view of the essential modification of the position of the Central Government *vis-à-vis* the provinces under the Reforms Scheme in respect of education and medical administration, which are now transferred subjects, over which the Government of India exercise a very limited control, we do not consider that there is any justification for the retention of the Educational Commissioner." Indeed any economies that are suggested by the Retrenchment Committee in that direction are small ones, and they scarcely touch the problem of the nation-building expenditure to which reference has been made. I do not think therefore that it is quite fair to make that sort of criticism of the Retrenchment Committee. I would like to add just one other observation. We have not yet effected those reductions. Part of the actual giving of effect to these reductions will take place next week when we are discussing the Demand Grants. Now I refer again to my speech last week; I said that I never heard of any retrenchment except one which was universally popular. I think that it is necessary when we come to that to keep our minds on the Budget as a whole and realize that if one of us dislikes one particular bit of retrenchment very much, another Member probably regards another bit of retrenchment as equally wicked, and we have got to take the good with the bad;

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in order to get the reductions which are essential, some of us have got to accept reductions which rather go to our heart. It is impossible to characterize all reductions as mere cutting down of expenditure; some of them are undoubtedly the cutting down of what may be described as desirable expenditure. But for the time being the position is that we cannot afford it; and I do hope that when we come to the actual discussion of the reductions, we shall keep the broad fact that we cannot afford expenditure, in our minds rather than the more obvious factor in dealing with detail that it is a very desirable bit of expenditure.

There was a very famous cartoon during the war which pictured a soldier who afterwards came to be known as old Bill standing in a shell hole with two others—there were shells falling all around him, and he was looking particularly uncomfortable, and he was saying, 'if you know of a better hole than this, then take me to it.' Now that is the position of the Government in regard to this question of the salt tax. If any of you know a better hole than this, take me to it. But I have listened with great interest to the suggestions that have been made from one quarter or another. Bombay wants an export tax on jute—it has even been suggested by some non-Bombay Member, that we should increase the cotton excise duty. (A Voice: "Not seriously.") One very interesting suggestion was entirely new to me; I think that I may honestly say that it was not the only one that was new to me; the Government of India spent a great deal of time in reaching the unfortunate conclusion that it knew no better hole than this. It was a suggestion made by Sir Gordon Fraser; he only partly escaped the hole because he was going to retain a portion of the salt tax, the rest he was going to cover by an increase of half an anna in the rupee in the revenue from customs and income-tax. That was a novel suggestion, and the Government will be very ready to examine it, but it has obvious difficulties on the face of it. I should not care to be the Customs Collector who was collecting 1/32nd additional on each invoice that he had to make out; it is a very awkward fraction to work, to say the least of it, but it is a suggestion that I should like to have the opportunity of following up a little further. Various other taxes have been suggested which we had already very carefully considered. Mr. Innes has already explained the unfruitful and dangerous character of an export duty on petrol. The tax on silver is a hardy annual. It would bring in something like a crore or a little more; therefore it would not itself cover any large portion of the deficit. But it is a tax to which there are many objections, and I am not sure that the House would desire me to repeat what has been said almost annually as to the theoretical and practical objections to that tax. But it is obviously not anything more than a partial solution, nor do I think it is a desirable solution. The only point I think in which it differs from nearly all the other suggestions of new taxes that have been made is this, that it is the only one which does not cost the poor man more than the salt tax. Now the Government of India when it came to suggesting the salt tax, and I must speak for myself, the new Finance Member was not unaware of the history of this salt duty—they did not propose it lightly; they did not propose it for the fun of proposing it, as was suggested by somebody. They proposed it because it was the expedient which seemed to them to be the one which would do the least damage to the country and would most easily cover the deficit. Now people have been fairly frank in speaking about it. I do not think anybody, beyond saying that it was a tax on the poor man, has spent very much time in showing its

economic ill effects. A great many people have referred to the fact that it is politically objectionable; it is really the sentiment here rather than a fact that has to be combated. I do not deny that it is a very difficult position; but, after all, that is the position. It is a tax which would cost,—what is it, 3 annas a year per head? It cannot be claimed by anybody who just repeats that to himself that it is going seriously to upset the position of even the poorest. Three annas per head per year. (A Voice: "5½ annas.")

Mr. Jamnadas Dwarkadas: 15 annas for a family.

The Honourable Sir Basil Blackett: That is, less than a rupee per family per annum. I venture to say that the suggestion for an increased customs duty on cotton or an increased excise duty on cotton, both of which have been made and neither of which would in themselves bring in such a large revenue as salt, would cost the poorest man more per head than salt. The last speaker mentioned that 25 per cent. of the customs duties are paid by the poor man. It is not for the fun of suggesting a tax which everybody knew in advance would be a very difficult one that this tax has been suggested, but because Government is honestly convinced that from the economic point of view it is the tax which is the least objectionable—all taxes are objectionable taxes—to India economically, socially and in every respect, and that it is nothing but the atmosphere of sentiment, and I may add the real political difficulty in which Members of this House will find themselves that causes the objection which has been nearly unanimously expressed in this House to the salt tax. I felt bound to make that defence of the salt tax, and I do not think that I have said anything that Honourable Members will take objection to. But we are still faced with the position,—if we don't have the salt tax, what other tax can we have? The Government of India's suggestion was, and is, that we should increase the salt tax. We are prepared, as we have been asked to do by more than one Member of the House, to examine in consultation with the House any other expedient that really is available for getting rid of the deficit, but we did and we do put forward as the least objectionable method of raising taxation to cover the deficit, the proposed increase in the salt tax. One other means of covering the deficit has been put forward and that is that we should somehow or other so alter our accounts that either the deficit disappears or is reduced to small proportions. Mr. Samarth misquoted or at any rate misinterpreted Bastable in trying to prove that the Budget as it stands contains items which should not be charged against the annual revenue; and he went further even than that. He took such items as expenditure on Military Works, the greater part of which represents, I believe, repairs (Mr. N. M. Samarth: "No; I did not say that. My amount does not include that.") I apologise then if he did not take that figure; it seemed to me that he did. Now, I do hope that the House will not be led away into by-paths in which deficits will suddenly reappear as surpluses. It is so easy to manipulate accounts. But what is the position at the end of the year supposing you say that this or that building is a capital expenditure, this or that expenditure on irrigation which will not yield any revenue,—most of which indeed involves expenditure in the future years? Once you have got a building, you have got to maintain and repair it. You say it is a capital charge and therefore you are not going to charge it to Revenue. It is not part of the revenue of the year. Supposing 4 crores are spent in that way in the year; at the end of the year your unproductive debt is 4 crores higher, you have got to find interest. You have indeed got an additional asset which may

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possibly be a costly one. There is the cost of keeping it up. This particular question of military works being charged to Capital formed the subject of a long controversy in England in the Nineties up to about 1906, and so far as England is concerned, it was definitely decided that that should be stopped. In 1906, when Mr. Asquith became the Chancellor of the Exchequer his first action was to insist that this method of pretending that your expenditure was not against Revenue but was against Capital should be stopped. It was simply piling up debt. The other suggestion that Mr. Samarth made—and others made—was that that portion of the annuity in the railways budget which represents sinking fund should not be charged against Revenue. Sinking fund—real sinking fund—can only come out of Revenue. You can call it sinking fund; and you can borrow it. But that simply means you borrow in one form in order to pay off in another form. That is not a sinking fund. That is merely movement of Capital. There are arguments certainly when you are in a tight place for temporarily suspending sinking fund. "Raid on the sinking fund" is a common phrase or it was so before the war in England. But it is only a confession of weakness. And anybody who studies the Indian Budget of the present year will come to the conclusion that so far from there being too much provision for reduction of unproductive debt, one of the problems we have got to face when things are a little better is some increase in the provision we make for preventing our unproductive debt in time of peace growing up against us. I have made no suggestion of that sort this year, and although I made a passing reference to the fact that nearly two crores of our expenditure this year and a certain amount in previous years has been spent for purely unproductive purposes,—although it may be an asset, the building of a large new Capital is certainly going to increase the cost. Expenditure will have to be incurred in keeping it up. I made a reference to the fact that this unproductive expenditure was at present being charged to Capital. I did not suggest that we should cover it in this year. But if we are removing such sinking fund as there is inside our present revenue out of it, we ought at the same time undoubtedly to bring into the charges against Revenue the unproductive charges which are at present charged to Capital, and if we did that the deficit would, I am afraid, be increased and not decreased. We come back, therefore, to the position that there is a deficit of 4½ crores, and, with due respect, the suggestion which holds the field for covering that deficit is an increase in the duty on salt.

The House will probably desire me to deal with one or two of the other subjects which were raised by Honourable Members in the course of the discussion. The most important of which I have a note here are questions of railway policy, the general question of the incidence of taxation and the question of exchange. Now, one of the unsatisfactory features undoubtedly of this year's Budget is that the cut of 3 crores which we have made in the railway budget represents a postponement of necessary renewals and repairs. We made the same mistake,—it is again a question of being wise after the event. Most of us would have made it if we had been in charge of the finances of India at the time. During the war when there were large surpluses—apparent surpluses—on the railways, they were used to avoid increases of taxation, although now looking back we can see that these surpluses represented mainly the fact that owing to the war the railways of this country were not being repaired and renewed to the extent that was necessary, because materials could not be obtained for the purpose. The result was that after the war we had to take on a very heavy programme

of renewals and repairs to make good what had been left undone during the previous years. It is possible, and there are some passages in the report of the Retrenchment Committee which suggest it, that some of the expenditure on renewals and repairs was not so well thought out as might have been; but it is undoubtedly undesirable that we should avoid a deficit or show a surplus simply by postponing charges for repairs and renewals which belong to this year to the next year or the year after next. Still the cut we have made this year will probably be justified but it is obviously not a cut which you can repeat, unfortunately. It would be thoroughly unsound finance that we should be inventing surpluses, simply by not spending money on keeping our railways up to the mark.

Mr. Ginwala made a very interesting speech in which he discussed the whole subject of the incidence of taxation and the same subject has come up incidentally in a great many other speeches. Of course, one of the difficulties here is that we are living under a federal system. There is at present a fairly clear demarcation between what are subjects for provincial taxation and what are subjects for Imperial taxation, taxation by the Central Government. The suggestion, for example, of the death duties, which was made by Mr. Ginwala, is a subject which might very usefully be explored for the purposes of improving the position of the provincial Budgets. But it is not going to help us to cover our Budget. The same difficulty of the Provincial *versus* Imperial claims on the taxable subjects of India arises in connection with the suggestion of raising income tax upon receipts from agricultural lands. It is a matter obviously of great interest. But that suggestion was answered by a gentleman sitting behind me this afternoon who claimed that it would be a breach of faith if the permanent settlement was touched. There is therefore the difficulty both of the permanent settlement question and of the claims of the Provincial Governments standing between us and the possibility of making any use in the budget we now have before us of the suggestions which Mr. Ginwala's very interesting speech would lead us towards.

I now come to the question of exchange. There has been a fairly even division of opinion as between those who partly agreed with me that the time had not yet come for the fixation of the exchange, and those who expressed considerable disappointment. The expectations of one Member were so great and he was so flattering to myself that he expected that, on landing at Bombay, I had only to say "let the exchange be fixed" and it was fixed. But that is not the way things happen unfortunately. We can say that we are going to fix exchange, but unless we do the right thing and have sufficient resources and apply them in the right way, exchange won't remain fixed in spite of our statements. Sir Montagu Webb agreed with my general conclusion that the time had not yet come, but he went on to disagree fairly generally with the rest of what I had said on that subject. I think the point that he made was that the level of prices to-day is such that the exchange, if fixed at the moment, ought to be at ½ instead of ¼, and might even have to be lower. That is a reading of the level of prices with which one may not entirely agree. It is a question of very careful study of not very satisfactory data, namely, the index numbers, but my reading of the position was that, comparing the index numbers of wholesale prices here with those in England and America, and making allowance for the fact that you would expect, owing to the large increase in import duties that has been imposed in India between 1918 and the present day, the index number in India to be higher relatively to the English number than if it had not been for those import duties, it seemed to me that, judging by the price

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levels in the two countries, there were a good many prices here which had not yet accommodated themselves to the fall which has taken place in the exchange value of the rupee all the way from 2s. 8d. to 1s. 4d. or lower. Therefore if you were going to fix exchange at 1s. 4d. now you would probably have to look for a further rise in prices. The subject is a difficult one to discuss on the spur of the moment like this. There is a reference which Sir Montagu Webb made about the fall in prices to pre-war levels that I should like to deal with. Prices in England have not fallen to pre-war level; they are something like 160 to 170 as compared with 100 before the war. Now it is quite uncertain whether prices may not be in for a rise rather than a fall. If America finds the large quantity of gold which she has in her federal reserve system too large to deal with in other ways, she may be driven to build new credit upon that reserve of gold, and no one can foretell, but it is quite a possibility that there may be a considerable rise in American prices. When sterling is at par sterling would almost inevitably have to follow suit. Then India would again be faced with the problem whether she wants to keep prices more or less stable or whether she wants to keep the rupee more or less stable; just the same problem that she had in 1914. And considering the social difficulties which changing levels of prices cause in a country like India it is quite possible that it would be much more to India's advantage to let the external value of the rupee alter rather than to let the internal value of the rupee alter and internal prices go up. All this may sound as if the Government of India was very anxious to manipulate the exchange, but it is not really a question of manipulating the exchange, it is a question of dealing with a problem which in the era of instability which has followed after the war has taxed the ingenuity of every country. In a sense the exchange of every country has to be manipulated in these days; you cannot simply go to a gold level. No one knows what would be the consequences in the world if that were rashly attempted by any country. The value of gold is one among the many commodities the price of which in these days is changing rapidly and you do not get stability of prices by simply being on a gold level. However I have wandered rather deeply already into a subject on which I did not want to spend time, and I will return now to a few words as to the budget for 1923-24.

I ventured to make an appeal to the House when I spoke last week for a long, strong pull together. If we balance our budget this year I believe we have very good hopes for next year, but we cannot take any risks. We have had two good monsoons; we cannot be sure that there will be a third good monsoon, and if there is not a third good monsoon, there is not the least doubt that our estimates of revenue in this year's figures are optimistic. We cannot foresee what would be the position a year hence, but we can be quite sure that it will make an enormous difference to our position whether we succeed this year in balancing our budget, restoring our credit thereby possibly enabling ourselves to borrow at lower rates, or whether we go on with one more year of Micawberism, hoping for the best, hoping that something will turn up. The House agreed right through that that was impossibility and I end on the note that I began, the salt tax remains the only suggestion which really holds the field, and in the opinion of the Government of India the best suggestion for dealing with the situation.

Mr. N. M. Samarth: I have just one word to ask. I understand the Honourable Finance Member to say that I misquoted Bastable.

The Honourable Sir Basil Blackett: I tried to withdraw the word "misquoted." I meant misinterpreted.

Mr. N. M. Samarth: You said "misquoted."

The Honourable Sir Basil Blackett: I think I said "misquoted" and "misinterpreted" but I meant the latter.

Mr. N. M. Samarth: As to misinterpretation, Sir, the Honourable the Finance Member may have his interpretation; I have mine. The passage quoted speaks for itself.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 8th March, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 8th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

DRAFT NOTIFICATION *RE* EMIGRATION OF UNSKILLED LABOUR TO MAURITIUS.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I lay on the table in pursuance of the provisions of sub-section (2) of section 10 of the Indian Emigration Act, 1922, a draft notification specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Mauritius.

No.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE AND AGRICULTURE.

EMIGRATION.

Delhi, the March 1923.

NOTIFICATION.

IN exercise of the powers conferred by section 10 of the Indian Emigration Act, 1922 (VII of 1922), hereinafter referred to "as the Act", the Governor General in Council is pleased to issue the following Notification in the form in which it has been approved by both Chambers of the Indian Legislature:—

Emigration to Mauritius for the purpose of unskilled work shall be lawful for a period of one year with effect from a date to be notified in the *Gazette of India* by the Governor General in Council after the matters requiring determination under clause 10 of this notification shall first have been determined subject to the following terms, and conditions, namely:—

- (1) The number of adult male labourers which may be recruited within the period shall be limited to 1,500.
- (2) The emigrant shall
 - (a) have been recruited by a person licensed for that purpose by and responsible to an officer (hereinafter called the Emigration Commissioner) appointed by the Government of Mauritius, or
 - (b) have applied direct to the Emigration Commissioner for an assisted passage and have been accepted by him.
- (3) The emigrant shall not, before leaving British India, have entered into any engagement to labour for a period exceeding one month.
- (4) Engagements to labour entered into by an emigrant in Mauritius for a period exceeding one month shall be void.
- (5) The Government of Mauritius shall, at any time when so desired by the Governor General in Council, admit and give all facilities to an Agent appointed under section 7 of the Act.
- (6) No part of the cost of his recruitment, subsistence during transport or transport, shall be recoverable from any emigrant, and all expenses in this connection shall be defrayed from the fund created by the Government of Mauritius under section 45 of the Labour Ordinance, 1922.
- (7) Any emigrant shall, if he desires to return to India at any time after two years from the date of his introduction to the Colony, be repatriated at the cost of the Government of Mauritius to the place of his recruitment.

(3095)

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- (8) Any emigrant shall, at any time within the period of two years from the date of his introduction to the Colony, be entitled to be repatriated at the cost of the Government of Mauritius to the place of his recruitment if he satisfies the Agent appointed under section 7 of the Act that his return to his home is desirable either on the ground of the state of his health or on the ground that the work which he is required to do is unsuitable to his capacity or that he has been unjustly treated by his employer or for any other sufficient reason.
- (9) If any emigrant at any time within the period of two years from the date of his introduction to the Colony satisfies the Agent appointed under section 7 of the Act that he is unable to obtain a wage which will provide the cost of living for a man with a wife and three children and also a reasonable margin for savings, sickness and old age, he shall be entitled to be repatriated at the cost of the Government of Mauritius to the place of his recruitment.
- (10) The Government of Mauritius, in consultation with the Government of India or the Agent appointed under section 7 of the Act, shall from time to time determine the amount of wage which is sufficient to meet the requirements laid down in clause 9 of this notification.
- (11) If at any time there is no Agent appointed under section 7 of the Act the Government of Mauritius shall appoint a person to perform the duties of the Agent as set forth in clause 8.
- (12) The Government of Mauritius shall furnish such periodical reports and returns as may be required from time to time by the Government of India in respect of the welfare of the persons emigrating to the Colony in accordance with this notification.

QUESTIONS AND ANSWERS.

CONVICTION OF PANDIT KIRPA RAM.

482. *Dr. Nand Lal: (1) Is the Government of India aware that one Pandit Kirpa Ram was convicted, on 27th July, 1916, by a Special Tribunal, constituted under the defence of the Government of India Act, 1915, at Port Dufferin, Mandalay, under sections 121 and 121A, I. P. C.?

(2) Is Government of India aware that the Commissioners constituting the aforesaid Tribunal mentioned in their judgment that the aforesaid Pandit Kirpa Ram was subsequently seduced to join the party in August, 1915?

(3) Is Government of India aware that no overt act of the positive kind was alleged against him and that according to the very prosecution he was more or less a passive member of the conspiracy?

(4) Is Government of India aware that the wife of the aforesaid convict Pandit Kirpa Ram, submitted a memorial to His Excellency the Viceroy and Governor General of India, through the Chief Secretary, Government of Burma?

(5) Will the Government of India be pleased to state as to whether consideration was given to paragraphs four, five, six and seven of the aforesaid memorial, namely, a petition under section 401 of the Criminal Procedure Code?

(6) Will the Government of India be pleased to state whether the Governor General in Council will graciously, in consideration of the aforesaid petition (memorial) for mercy, remit the whole or any part of punishment to which the aforesaid convict was sentenced?

(7) Will the Government of India be pleased to state—

(a) Where the aforesaid convict is now?

(b) Is he in good condition of his health?

The Honourable Sir Malcolm Hailey: (1) Yes.

(2) What the Commissioners actually said was that he was seduced to join the conspiracy by two other conspirators. But as he was in the Military Police, the Honourable Member will recognise the grave nature of his offence.

(3) No. The evidence shows that Kirpa Ram became an active member of the conspiracy, and the Commissioners described his guilt as particularly heinous.

(4) and (5) A memorial from Kirpa Ram's wife was received by the Government of India through the local Government early in the year 1920, and was rejected.

(6) Kirpa Ram's case has been several times considered. The Government of India are not prepared to reconsider it now.

(7) (a) He is in the Andamans.

(b) I will enquire and inform the Honourable Member of the result.

INDIANS AS MINISTERIAL OFFICERS.

483. *Khan Bahadur Saiyid Muhammad Ismail: Will the Government be pleased to state the total number of Indians employed at present as Ministerial Officers in all the Departments directly under the control of the Government of India specifying in particular the total number of Hindus and Muhammadans and also specifying in full the Provinces from which they come?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the statement laid on the table on 15th January 1923. Government are not prepared to obtain the further information now asked for as its collection will entail an amount of work out of all proportion to its utility.

The statement laid on the table was very full in itself.

Mr. K. Ahmed: Is there not a classification list showing the names of those who hold these ministerial posts? From the names is it not possible to say to which class of the people of India the holders of these appointments belong, and the province from which they come? Is that expensive to find out, Sir?

Mr. President: That question has already been answered.

The Honourable Sir Malcolm Hailey: I might ask the Honourable Member if he has seen the statement to which I have just referred, namely, the statement laid on the table on the 15th of January 1923. If he will see that statement, he will be able to ask a more fully informed question on the matter.

RELEASE OF POLITICAL PRISONERS IN THE UNITED PROVINCES.

484. *Khan Bahadur Saiyid Muhammad Ismail: Was the action of the United Provinces Government in withdrawing the operation of the Criminal Law Amendment Act and in releasing all the political prisoners soon after the departure from the province of His Excellency Sir Harcourt Butler, G.C.I.E., K.C.S.I., in concurrence with the policy of the Government of India or were the Local Government entitled to exercise their own discretion in the matter?

The Honourable Sir Malcolm Hailey: The remission of sentences and the application or withdrawal of the Criminal Law Amendment Act, Part II are matters within the competence of the Local Governments, subject, in any case where this question arises, to the general control of policy vested in the Government of India. The Honourable Member is no doubt aware that the measures taken by the Government of the United Provinces were more restricted in their scope than his question would suggest, and the Government of India have no reason to suppose that they were not justified by the circumstances of the case.

Khan Bahadur Sarfaraz Hussain Khan: May I ask the Honourable Member what is the general practice in regard to the release of political prisoners. In such cases, do the Local Governments take the permission of the Imperial Government, or can they act independently?

The Honourable Sir Malcolm Hailey: As the Honourable Member is perhaps aware, there is no rule of procedure laid down. I said where the question arises, they are subject to the general control of the Government of India, and, whether the question arises or not depends, of course, on the circumstances and importance of the case.

Mr. N. M. Joshi: Were the Government of India consulted in this matter?

The Honourable Sir Malcolm Hailey: In which matter?

Mr. N. M. Joshi: In the matter of the release of political prisoners?

The Honourable Sir Malcolm Hailey: No, Sir.

Mr. K. Ahmed: If the matter is of any importance at all, why does it not apply, Sir, in the case of the other provinces, but only in the case of one province?

Mr. President: If the Honourable Member wants information in regard to the other provinces, he can put a question about them. This question refers solely to the United Provinces.

MAINTENANCE OF BUILDINGS IN DELHI.

485. ***Khan Bahadur Saiyid Muhammad Ismail:** Will the Government be pleased (a) to lay on the table the list of all the buildings declared under the Ancient Monument Preservation Act, within the Province of Delhi and the amount which they spend in the upkeep and maintenance of each of the ancient buildings and the agency by which they are spent?

(b) To specify in particular the amount, if any, paid for the maintenance and the upkeep of the Juma Masjid, Delhi?

The Honourable Mr. A. O. Chatterjee: (a) The preparation of a list of the protected monuments in the Delhi Province has recently been undertaken by the Archaeological Department, and will take time to complete. The amount spent on annual repairs in 1920-21 on these monuments was Rs. 31,052. Details are given in the annual report for that year. The repairs are ordinarily executed by the Public Works Department but some minor works are executed direct by the Archaeological Department.

(b) The Juma Masjid, Delhi, is maintained out of the income from its own endowments and investments and from charitable donations. No subvention is given from public funds, but the local Civil and Public Works officers have given in the past and still give advice and assistance regarding important maintenance works when asked to do so by the Managing Committee.

ART COLLEGES AND SCHOOLS IN DELHI.

486. ***Khan Bahadur Saiyid Muhammad Ismail:** Will the Government be pleased to state the names of the Art Colleges and Schools, within the Province of Delhi, with the number of students that appeared in the College and matriculation examinations in the year 1922, also to state the grants, if any, made to the Hindu and the St. Stephen's College in Delhi?

The Honourable Mr. A. O. Chatterjee: A tabular statement giving the information required is laid upon the table.

Statement regarding Arts Colleges and High Schools in the Delhi Province.

Arts Colleges, presenting candidates at the Punjab University Examinations in 1922.	INTERMEDIATE.		B. A. & B. Sc.		M. A. & M. Sc.	
	Candidates.	Passed.	Candidates.	Passed.	Candidates.	Passed.
1. St Stephen's College, Delhi	44	27	59	25	9	8
2. The Hindu College, Delhi	74	49	53	20	...	...
3. The Ramjas College, Delhi	23	19	19	10	...	...

Schools presenting candidates for the Matriculation and School Leaving Certificate Examinations of the University of the Punjab.

	Candidates.	Passed.
<i>A.—Boys' High Schools.</i>		
1. The Government High School, Delhi	74	45
2. The Anglo-Arabic High School, Delhi	104	36
3. The Anglo-Sanskrit High School, Delhi	45	28
4. St. Stephen's High School, Delhi	51	40
5. The D. A. V. High School, Delhi	39	23
6. The Jain High School, Delhi	11	10
7. The Bengali High School, Delhi	4	1
8. The D. B. High School, Mahraulti	14	8
9. The Ramjas High School, No. 1, Delhi	88	50
10. The Ramjas High School, No. 2, Delhi	37	25
<i>B.—Girls' High Schools.</i>		
1. B. M. Girls High School, Delhi	3	2
2. Queen Mary's High School, Delhi	2	2
3. The Indraprastha Girls High School	4	2

2. The following grants were paid in the year 1922 :—

	Rs.
1. St. Stephen's College	37,550
2. The Hindu College	38,476 including Rs. 7,476 on account of furniture and building grant.

DELHI UNIVERSITY.

487. *Khan Bahadur Saiyid Muhammad Ismail: Will the Government be pleased to state the amount which they have sanctioned for the upkeep of the maintenance of the Delhi University with the list of the Members of the Court, the Syndicate and the Executive Council; also to state the total number of the Colleges and the Schools affiliated to it?

The Honourable Mr. A. O. Chatterjee: The Government of India have so far made payments totalling Rs. 30,000 to the Delhi University.

There is no provision for a Syndicate in the constitution of the Delhi University. The lists of members of the Court and the Executive Council as constituted to date will be supplied to the Honourable Member.

The Delhi University has three recognised colleges. The constitution of the University does not provide for the affiliation of schools.

Mr. B. S. Kamat: Has the sanctioned amount for the Delhi University been spent during the year?

The Honourable Mr. A. O. Chatterjee: I have said that Rs. 30,000 have already been paid by Government. I have no further information.

BENARES HINDU AND ALIGARH MUSLIM UNIVERSITIES.

488. *Khan Bahadur Saiyid Muhammad Ismail: Will the Government be pleased to state the control, if any, the Government of India exercise over the Benares Hindu University and the Aligarh Muslim University?

The Honourable Mr. A. O. Chatterjee: The Honourable Member is referred to the Acts incorporating the universities to which he refers and to the orders made thereunder. A copy of these will be placed in the Library.

SANITARY COMMISSIONER WITH THE GOVERNMENT OF INDIA.

489. *Khan Bahadur Saiyid Muhammad Ismail: Will the Government be pleased to state the functions of the Sanitary Commissioner with the Government of India and also as to what authority do they exercise over Provincial Directors of Public Health?

The Honourable Mr. A. O. Chatterjee: The Public Health Commissioner is the Adviser of the Government of India with respect to matters included in items 2, 8, 39 and 41 in Part I, of Schedule I, of the Devolution Rules. He also advises when references are made to the Government of India with regard to items 8, 22, 26 (g), 28 and 45 in Part II of Schedule I, of the Devolution Rules.

2. Provincial Directors of Public Health are subordinate to Local Governments.

DIVISIONAL COMMISSIONER, BIHAR AND ORISSA.

490. *Khan Bahadur Saiyid Muhammad Ismail: Will the Government be pleased to state if they have received any recommendation from the Government of Bihar and Orissa regarding abolition of the post of the Divisional Commissioner in that Province?

The Honourable Sir Malcolm Halley: No.

Mr. K. Ahmed: Have recommendations been received from the Government of Bengal regarding the abolition of the posts of Divisional Commissioners?

The Honourable Sir Malcolm Halley: I was under the impression that the Government of Bihar and Orissa is now separated from Bengal.

Mr. K. Ahmed: I am asking, Sir, with regard to the abolition of the posts of Divisional Commissioners in Bengal and the abolition of them, if already recommended by the Government of Bengal.

MOSQUES IN VICINITY OF LADY HARDINGE HOSPITAL.

491. *Haji Wajihuddin: Is it a fact that (a) at the time of construction of Lady Hardinge Hospital, two old mosques were taken within the boundary wall of the said Hospital, (b) whether one of them is only at a distance of a few yards from the boundary wall on Lady Hardinge Road, (c) whether all the Professor's bungalows have got passages and gates on this road but none has been given for the mosques in question and if so, why? (d) are the muslim public not allowed to enter the said mosque to say prayers, (e) have several representations been made by certain Moslems to the Chief Commissioner, Chief Engineer and the Principal and if so, what fate have they met and what action do the Government propose to take, (f) have the Government any objection to allow repairs of the inner mosque which is badly needed for the use of saying prayers by the Muslim staff of the said Hospital? (g) If the answers are in the affirmative reasons be given?

The Honourable Sir Malcolm Halley: The facts in connection with this are that one old disused mosque has been surrounded with a wall and lies within the boundary wall of the Lady Hardinge Hospital. The other lies on the edge of the compound, and that part of the mosque which has always been in use as such has not been interfered with in any way. The first named mosque had not been in use for many years before the construction of the hospital and it was arranged that it should be enclosed by a wall and saved from further decay. No representations have been received regarding it, and as it lies within the walls of a purdah hospital for women it is not practicable to allow it to be taken again into use by the general public. The question of permitting its use by the Muslim staff of the Hospital will be referred to the Principal.

Several requisitions have been received regarding the mosque on the edge of the compound, which has remained in use continuously. Applications to repair this mosque have been acceded to.

Mr. K. Ahmed: In view of the fact that several representations and memorials have, as admitted by the Honourable the Home Member, been received since last January in this Assembly and as far as we are concerned, Sir, will the Government be pleased to state, what action they have taken and to lay on the table a statement, in regard to any steps that have been taken since January last explaining how they are going to give effect to these grievances?

The Honourable Sir Malcolm Halley: Steps taken in regard to what?

Mr. K. Ahmed: In regard to the removal of the grievances about which the people have submitted memorials to the Government?

The Honourable Sir Malcolm Halley: We have shown ourselves very willing to give all the information in our power regarding definite cases brought up to us. If the Honourable Member has any case in which we have not given information, if he will mention it to me, I will do my best to give it to him.

Mr. K. Ahmed: My case was put before the Government since last January in the form of supplementary questions.

Mr. President: Did the Honourable Member's question refer to the Lady Hardinge Medical College?

Mr. K. Ahmed: No, but there are many.

Mr. President: Others are not in order.

Mr. W. M. Hussanally: Sir, in regard to the mosque which is going to be walled round, may I ask if there is any possibility of a way being given to Mussalmans to use it by walling a passage through the compound of the Lady Hardinge Hospital, because a Muhammadan mosque can be used at any time even if it has been disused for some time?

The Honourable Sir Malcolm Halley: I may point out that there is another mosque in close proximity to this mosque which is used by Muhammadans. I would put it to the Honourable Member with regard to his question whether it would not be more suitable if arrangements could be made that this particular mosque, which is inside a purdah hospital, should be used by the Moslem staff of the hospital, as it is not necessary in the general interests of the Muhammadan population, to make it accessible to the outside public in view of the fact that there is another mosque within a few yards distance.

Mr. W. M. Hussanally: Will any steps be taken to see that this mosque is not allowed to go to rack and ruin in course of time and then demolished?

The Honourable Sir Malcolm Halley: I think my answer stated that steps had been taken to prevent further decay in this mosque. I do not think the Honourable Member need have any fear on the subject and, as I say, we are taking steps to see whether it can be made accessible to the Muhammadans resident within the hospital itself.

Mr. K. Ahmed: Do I understand, Sir, that the mosque was used before the building of the hospital and that recently, since the Government have taken it up, it has got into a dilapidated condition?

The Honourable Sir Malcolm Halley: I am correct, the facts regarding the mosque inside the hospital are as follows. It was originally inside a village which occupied the site on which the hospital is now built. It had for many years, I think, been falling into dilapidation and was not used at the time we took it over. It has not suffered in any way by being enclosed within the walls of the hospital. On the contrary, it has been prevented from falling into further decay.

Mr. K. Ahmed: So it has been forfeited on account of the lapse of time. May I ask for how many generations it had not been taken care of by the Muhammadan population, and the justification for the Government forfeiting it for its own use?

The Honourable Sir Malcolm Halley: It is not correct to say that it has been forfeited for use by the Government.

Mr. K. Ahmed: Anyhow it has been taken.

The Honourable Sir Malcolm Halley: It was part of a number of buildings which were acquired at the same time under the Land Acquisition Act. The land surrounding the site on which it stands was given by Government to the Lady Hardinge Hospital. The mosque has not in any sense been forfeited.

FEROZESHAHI MOSQUES ON QUTAB ROAD.

492. ***Haji Wajihuddin:** Is it a fact that the big four-domed Ferozeshahi mosques on Qutab Road, are being used from sometime past as an Infectious Diseases Hospital, by the Delhi Municipality also three small mosques as sweeper and menial quarters and if so, by what authority and whether the Government will take early steps to have them vacated?

MOSQUE USED AS DISPENSARY.

493. ***Haji Wajihuddin:** Is it a fact that a mosque on Qutab Road has been encroached upon and is used as a Dispensary and whether the new road under construction has passed through one of the mosques on that road, if so, will the Government be pleased to have the mosque vacated immediately and to give the road a curve and to pass it behind the *deori* of the mosque?

The Honourable Sir Malcolm Halley: The Honourable Member is referred to the answer already given on the 6th instant to question No. 490 on the same subject put by Mr. Hussanally.

ENCROACHMENT ON MOSQUES.

494. ***Haji Wajihuddin:** Are the Government aware that two mosques have been encroached within the Bungalows Nos. 27 and 9 on Asoka Road (Imperial Delhi), and that no passages were left for them which is causing great discontent throughout the Muslim community at large and whether the Government are prepared to remove the complaint with least delay?

The Honourable Sir Malcolm Halley: Government are aware that an old praying platform lies partly in the compound of No. 27, Asoka Road, and that a ruin which may have been a mosque lies within the compound of No. 9, Asoka Road. Neither have been used for a number of years and Government sees no reason to deal with these particular remains otherwise than has been done.

ALLEGED DEMOLITION OF MOSQUES.

495. ***Haji Wajihuddin:** Are the Government aware that strong rumours are current among the Muslim public of Delhi that, (a) old mosques, mausoleums and graves near Purana Qila, are being demolished by the Public Works Department contractors and the *chamar* labourers? (b) that sanction to repairs of such old sacred buildings are not granted by the Government? (c) will the Government under the circumstances issue a communique giving general sanction to have such buildings repaired on old grounds, if the Muslims undertake to do so, (d) will the Government be pleased to quote the numbers of applications received to have the mosques

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of Raja Bazar, Kalali Bagh and Sonehri Bagh, repaired and orders passed on them?

The Honourable Sir Malcolm Halley: (a) The question presumably refers to the conservation works in progress at Khair-ul-Manazil, and Sher Shah's gate, opposite the south-west entrance to Purana Kila, which are being carried out at Government expense. It is not correct that demolition is being carried out as suggested.

(b) Government itself repairs many of these buildings.

(c) I should like to have more precise information as to the buildings which are held to need repair.

(d) Government have no knowledge of the actual number of applications made to repair the mosques at Raja Bazar, Kalali Bagh and Sonehri Bagh, but permission has been given to execute repairs which have been effected. Government are themselves engaged in making a small garden round Sonehri Bagh.

STOPPAGE OF REPAIRS OF MOSQUES.

496. ***Haji Wajihuddin:** Is it a fact that the Public Works Department stopped ordinary repairs of certain mosques in New Delhi, known as 'Shah Kamal,' 'Chapar Wali,' 'Raja Bazar' and others and if so, the reference to acts and bye-laws under which this was done may be given and whether Government are prepared to issue necessary instructions and declare its policy regarding the protection of such buildings.

The Honourable Sir Malcolm Halley: The Department has not stopped ordinary repairs on any mosque capable of being used as such. Applications for extensions have been refused, and in at least three cases the applicants have been asked to come and discuss a site for a new mosque, but no answer to the invitation has been received.

The policy of Government has already been fully stated by me in answer to a question put on the 6th February, 1923.

MUSLIM CEMETERY, DELHI.

497. ***Haji Wajihuddin:** (a) Is it a fact that the cemetery allotted to the Muslim community in New Delhi is situated at a distance of 7 miles and do the Government know that it is considered generally an unsuitable site?

(b) Are Government prepared to consider the question of allotting a plot behind Syed Hasan, on Ridge Road, where a large number of graves already exist?

The Honourable Sir Malcolm Halley: The answer to the first part is in the negative. The new cemetery will be within easy distance of residents in the eastern portion of New Delhi, when that is built. Government have always supposed that Muslims living in the New Delhi area would for the most part, use the burial ground lying to the west of the old city, which is at present used by their co-religionists.

CONSTRUCTION OF WALLS AT SHRINES.

498. ***Haji Wajihuddin:** Is it a fact that a new boundary wall of 'Rikabganj Gurdwara' has been constructed and repairs of 'Kadam Sharif' wall was done at the expense of the Government and if so, do the Government propose to make similar treatment in the case of Dargah of Syed Hasan Rasul, Numa on Panch Kuian Road?

The Honourable Sir Malcolm Halley: A new boundary wall is under construction round the Rukab Ganj Gurdwara, partly at the expense of Government and partly at the expense of the Sikh community. Repairs at 'Kadam Sharif' have also been executed by the Archaeological Department. Government proposes to repair suitably the walls round the Dargah alluded to in the last part of the question.

DISCUSSION OF RESOLUTIONS.

499. ***Sardar Gulab Singh:** 1. How many non-official Resolutions have been admitted by the Honourable the President, during the past three Sessions?

2. How many such Resolutions have come up for discussion during each Session before this House and how many have been left over for want of time or otherwise?

3. Will the Government be pleased to take steps to give more days for non-official business than has hitherto been done?

4. Is the Government aware that fixing of days for non-official business so much sparingly is the only cause for so great a number of Resolutions not being discussed in this House each Session?

Mr. E. Burdon: The attention of the Honourable Member is invited to Sir Henry Moncrieff Smith's answers to Mr. B. N. Misra's questions Nos. 33 and 34, printed on pages 978-980, of the Legislative Assembly Debates, of the 15th January, 1923 (Vol. III, No. 16).

Mr. K. Ahmed: Will the Government be pleased to state how many Resolutions were not admitted by the President as well as by His Excellency the Viceroy?

Mr. President: That does not arise.

CONTINGENT EXPENDITURE.

500. ***Babu J. N. Mukherjee:** 1. Will Government be pleased to state the total contingent expenditure incurred by the various departments and offices of the Central Government during the last five years, taking each year separately?

2. Has the attention of Government been drawn to the action taken by the Government of Bengal with a view to a detailed examination of the contingent expenditure by that Government with the help of an experienced accounts officer?

3. Will Government be pleased to state if they are prepared to undertake a similar examination of the contingent expenditure of the Central Government?

The Honourable Sir Basil Blackett: (1) Details of expenditure on Contingencies are given in the demand statements placed before this House.

(2) and (3) Government do not consider such action necessary as this item of expenditure has like all other expenditure been fully investigated by the Retrenchment Committee.

REGISTERED ARTICLES, ETC., DEALT WITH BY POST OFFICE.

501. *Mr. K. O. Neogy: Will Government be pleased to state—

(a) the number of (i) registered articles of the letter mail, (ii) parcel mail articles, (iii) money orders, and (iv) insured articles, that were dealt with by the Post Office in India in the month of January, 1928; and

(b) the number of unregistered articles of the letter mail so dealt with, as ascertained by the enumeration taken in February, 1928?

Mr. H. A. Sams: (a) and (b) It is regretted that the information asked for is not available at present.

POSTAL DELIVERIES.

502. *Mr. K. O. Neogy: (a) Is there any proposal under consideration for curtailing the number of postal deliveries with a view to reduction of postmen staff?

(b) If so, will Government be pleased to state to what extent the deliveries are proposed to be curtailed in the different places, and the percentage of reduction of postmen staff likely to result therefrom?

Mr. H. A. Sams: (a) Yes.

(b) The extent of the proposed curtailment in different places cannot be stated at present, but the general reduction contemplated is one of 8 per cent. of the whole staff of postmen and village postmen, involving 900 men.

CHARGING OF INTEREST ON TELEGRAPH EXPENDITURE.

503. *Mr. K. O. Neogy: (a) On what basis was the interest of 60 lakhs charged in 1921-22, against the telegraph revenue for capital expenditure?

(b) Is it a fact that a very large portion of the capital expenditure of the Telegraph Department, prior to 1921-22, was provided out of revenue? If so, what was the aggregate amount thus provided, and what is the justification for charging interest on the said amount?

The Honourable Sir Basil Blackett: (a) The Honourable Member is presumably referring to the revised estimate for 1921-22.

Pending the determination of the actual capital outlay of the postal and telegraph departments in the past after examination of the recommendations of the chartered accountants with regard to the allocation of expenditure between capital and revenue, it was decided, for the purpose of the revised estimates for 1921-22, and subsequent estimates, to treat the total cost of telegraph lines, telegraph buildings and telegraph apparatus and plant as representing capital outlay. The estimate of 60 lakhs in question was made up of 40½ lakhs, being interest at 3.9252 per cent. per annum on the capital expenditure on these objects incurred up to the end of 1916-17, the balance being interest at 5.1979 per cent. on capital outlay from 1917-18 to 1921-22. The rates of interest are the average rates paid on loans raised in the open market during the periods mentioned.

(b) Prior to 1921-22, capital outlay of the nature referred to above was charged to the revenue account of the Department though a *pro forma* account of such outlay was separately maintained.

The aggregate amount of such capital outlay met out of revenue to the end of 1920-21 was 14.42 lakhs.

The practice of charging interest on the total capital outlay on the Telegraph Department up to date irrespective of the source from which the outlay has been met follows that obtaining in the case of other commercial departments, viz., railways and irrigation works, and is necessary if the tax-payer is to be secured against loss on the running of such commercial undertakings.

I may add that the Government are endeavouring to put the accounts of these Commercial Departments on a proper commercial basis at the earliest possible moment.

QUARTERS FOR POSTAL STAFF.

504. *Mr. K. O. Neogy: (a) With reference to the statement made by Mr. G. R. Clarke, in this House on the 22nd March, 1922 (at page 357C of the Assembly Debates), about the necessity for providing the staff of the Post Offices with suitable quarters, and the "big building programme" in connection therewith, will Government be pleased to indicate the details of the programme showing particularly how far the Postal staff in the interior will be benefited thereby?

(b) When is the said programme proposed to be undertaken?

Mr. H. A. Sams: (a) The proposal referred to by the Honourable Member is under the consideration of Government and no details can be given at present.

(b) In view of the existing financial stringency, it is not possible to say when the programme will be undertaken.

POST OFFICES IN CALCUTTA.

505. *Rai Bahadur G. O. Nag: 1. Are the Government aware (i) that there is a proposal of Government to amalgamate the Simla and Beadon Street Post Offices in the city of Calcutta, and remove the combined office to a building on the Central Avenue Road, and (ii) that this proposal has evoked strong adverse comments in the public Press of the city?

2. Do the Government anticipate any large savings out of the proposed amalgamation, if so, what will be the possible savings, and under what heads the savings will be effected?

3. Is it a fact that the rents paid for the buildings in which the Simla and Beadon Street offices are located together cost Government Rs. 375 only per mensem, while the rent of the building to which the proposed combined office is to be removed will be about Rs. 1,800?

4. If the facts are as stated, do the Government propose to reconsider the proposal of amalgamation and abandon it in interest both of public convenience and economy?

Colonel Sir Sydney Crookshank: 1. (i) Yes.

(ii) Yes, the proposal appears to have been criticised in one or two local papers.

2. It is anticipated that some savings will be effected by the proposed amalgamation, but it is not possible to state at present what the amount will be nor the particular heads under which the savings will be effected.

3. The rent at present paid for the two post offices is Rs. 375 a month. The Simla post office building was, however, considered insanitary and unsuitable, and the matter had also been taken up by the local papers. The District Health Officer and the Corporation of Calcutta were then approached but nothing could be done to improve matters. As for the Beadon Square post office building, apart from its unsuitability for use as such, the landlord was determined to eject the post office. Endeavours were made to secure two separate buildings for the two offices, but nothing suitable could be secured even on a total monthly rental of Rs. 1,000. The rent of the proposed building is Rs. 1,500 and not Rs. 1,800.

4. The new building is under construction and the proposal could not be abandoned even if this course were desirable, which is not the case.

Mr. K. Ahmed: Have the Government realised the question of economy and the difference of amount that it costs to Government?

Mr. H. A. Sams: Sir, I am not aware whether the Government have realised it or not.

THE PRISONERS (AMENDMENT) BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

"That the Bill to amend section 29 of the Prisoners Act, 1900, as passed by the Council of State, be taken into consideration."

This is a Bill that is required merely to amend a deficiency in the existing law. Section 29 of the Prisoners Act empowers the Governor General in Council to move any prisoner confined in any prison to any other prison in British India, and sub-section (2) of the same section confers the same powers on the local Government to make transfers within their own jurisdiction. There has been inconvenience experienced in the jails in Berar, which are under the administrative control of the Government of the Central Provinces, because they do not come strictly within the terms of section 29. The situation now is that some of the jails in Berar are partially unoccupied, whereas many of the jails in the Central Provinces proper are unduly congested. We therefore propose to give powers under this amendment to the Government of the Central Provinces to move prisoners freely as between Berar and the Central Provinces, and also to give to the Governor General the same power of moving prisoners to Berar as he would to other provinces in India. As the matter is a formal one I do not delay the House with any further reference to the details of the Bill.

The motion was adopted.

Clauses 1 and 2 were added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Malcolm Hailey: I beg to move, Sir, that the Bill as passed by the Council of State be passed.

The motion was adopted.

ION OF MEMBERS TO PUBLIC ACCOUNTS COMMITTEE.

The Honourable Sir Basil Blackett (Finance Member): Sir, I beg to move:

"That this Assembly do proceed to elect 8 Members to be Members of the Committee on Public Accounts."

The motion was adopted.

Mr. President: For the purpose of this election, the office will be open to receive nominations for membership to the Public Accounts Committee up to 4 O'clock in the afternoon of the 12th March 1923, and the procedure for this election will be that laid down by the Chair in the year 1921.

DEMANDS FOR SUPPLEMENTARY GRANTS.

The Honourable Sir Basil Blackett (Finance Member): Sir, I beg to move:

"That for the amounts against each head of demand shown in column 3 of the Statement entitled 'Statement comparing the expenditure included in each grant for the current year as modified by the Assembly in September 1922 with that indicated in the revised estimates, 1922-23', be substituted, the amounts shown in column 6 of the same Statement, the savings indicated in column 9 being transferred to the extent necessary to meet excess expenditure shown in the same column."

This is to a large extent a formal motion, and I think the Note which is printed on the outside of the Statement to which I have referred gives sufficient information on the purpose of the motion. The net result is, as explained in my Budget speech last week, a certain saving on expenditure for the whole year.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): What is the total due to loss in Exchange?

Mr. A. V. V. Aiyar (Finance Department: Nominated Official): The total adjustment for exchange is Rs. 15,62,00,000.

Mr. T. V. Seshagiri Ayyar: Is that the saving?

Mr. A. V. V. Aiyar: That is the total debit for Exchange.

Mr. T. V. Seshagiri Ayyar: Has there been any saving as compared with last year?

Mr. A. V. V. Aiyar: There has been a saving.

Mr. T. V. Seshagiri Ayyar: Can you give us the figure?

Mr. A. V. V. Aiyar: I think roughly it is something like half a crore.

Mr. T. V. Seshagiri Ayyar: Is it in consequence of the sale of Council Bills?

Mr. A. V. V. Aiyar: It is in consequence of the expenditure in England being less than what we anticipated. The actual expenditure in England has fallen short of the amount which was anticipated in the Budget, and therefore there is a saving in the debit for exchange.

Mr. T. V. Seshagiri Ayyar: Has there been no saving in cost of the sale of Council Bills?

Mr. A. V. V. Aiyar: The average rate has been slightly lower than 1s. 4d.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): There is an entry on page 13 "Credit for transfer of the Eastern Hostel, Raising, to the Telegraph Department". May I know what it means?

Mr. H. A. Sams (Director General, Posts and Telegraphs): The idea was that when the Telegraph Department took over the Eastern Hostel, it transferred as much of the expenditure as possible to the charges for this year. I understood from the Secretary, Public Works Department, that lapses this year will be utilised to that extent for the purchase of the Eastern Hostel.

Rao Bahadur T. Rangachariar: Does it mean that the Eastern Hostel is going to be abandoned as residential quarters?

Mr. H. A. Sams: That, I understand, is the case, because we have already taken it or about to take it to use as the Telegraph Office for New Delhi.

Mr. President: The question is that that motion be adopted.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 9th March, 1923.

LEGISLATIVE ASSEMBLY.

Friday, 9th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MEMBER SWORN:

Mr. Albert Frederick Lucas Brayne, M.L.A. (Finance Department: Nominated Official).

QUESTIONS AND ANSWERS.

PILGRIMAGE TO HEJAZ AND ERAK.

506. ***Khan Bahadur Saliyd Muhammad Ismail:** (a) Will the Government be pleased to give the total number of pilgrims who went to Hejaz and to Erak, respectively during the years 1921 and 1922 and also to state how many out of them have been stranded for want of sufficient money on their return journey?

(b) Do Government contemplate directing the High Commissioner at Basrah and the Consul at Jeddah to afford every facility to every intending Indian pilgrim to the shrines in Mesopotamia and Arabia and to afford them every opportunity of returning back to their respective residences in case they are stranded on account of any unforeseen circumstances?

The Honourable Mr. A. O. Chatterjee: (a) As regards the Hedjaz reference is invited to the reply given to Haji Wajihuddin's question on the same subject on the 5th instant. As regards Iraq information is being obtained and will be communicated to the Honourable Member in due course.

(b) The High Commissioner in Iraq and the British Consul at Jeddah do everything they can to help Indian pilgrims.

Mr. K. Ahmed: Will the Government of India be pleased to give the total number of pilgrims who went to Hejaz or to Iraq and who died, settled down, disappeared or otherwise whose whereabouts are not known at all?

The Honourable Mr. A. O. Chatterjee: I think the Honourable Member will realise that it is impossible for me to give information about people whose whereabouts are not known at all.

Mr. K. Ahmed: Can you give us at least the number of those who have come back to India?

LADY HARDINGE MEDICAL COLLEGE.

507. ***Mr. T. V. Seshagiri Ayyar**: 1. Will the Government be pleased to state:

(a) whether it is true that the Lady Hardinge Medical College was founded in 1916 on the initiative of Her Excellency Lady Hardinge with the active co-operation of the Director-General, Indian Medical Service, Sir Pardey Lukis,

(b) and whether with the exception of two members of the Women's Medical Service for India, all the other members of the Governing Body are officials of the Government of India?

2. Will the Government be pleased to state whether it is a fact that the Patron is the Vicerine for the time being and the President of the Governing Body, the Honorary Secretaries and the Honorary Treasurer are all officials either belonging to the Household of His Excellency the Viceroy or are holding responsible positions in the Secretariat?

The Honourable Mr. A. C. Chatterjee: (a) Yes.

(b) With the exception of two ladies the other members of the Governing Body at present happen to be Government officials.

2. The reply is in the affirmative as regards the Patron and the Honorary Secretaries. The President is the Director General, Indian Medical Service, and the Honorary Treasurer the Deputy Accountant General, Central Revenues.

Mr. K. Ahmed: I suppose these are all credits due to the Government officials who, without any help of the Delhi public and in spite of want of local patronage and the patriotic sympathy like that of the questioner's Indian public of Delhi, and others, had to undertake such a huge duty and discharge them to their credit for which India ought to be thankful?

LADY HARDINGE MEDICAL COLLEGE AND HOSPITAL BUILDINGS.

508. ***Mr. T. V. Seshagiri Ayyar**: Will the Government be pleased to state:

(a) What sum have the College authorities allotted, in the current year, for the repair of the buildings attached to the Lady Hardinge Medical College and Hospital?

(b) Is it true that these buildings constructed by public subscriptions are in a state of disrepair?

(c) How much do the Government of India contribute annually for the maintenance of buildings erected at their own cost?

The Honourable Mr. A. C. Chatterjee: (a) Rs. 12,568.

(b) No.

(c) No college buildings have been erected at the cost of the Government of India. The Government of India make an annual recurring grant of Rs. 2,00,000 towards the maintenance of the Institution in addition to contributions (amounting in 1921-22 to Rs. 51,675) made through the Countess of Dufferin Fund.

Rao Bahadur T. Rangachariar: May I know when these two lakhs were fixed?

The Honourable Mr. A. C. Chatterjee: I think the two lakhs have been given since 1920-21. I was coming to that in answer to a subsequent question.

GRANT TO LADY HARDINGE MEDICAL COLLEGE.

509. ***Mr. T. V. Seshagiri Ayyar**: Will the Government be pleased to state:

(a) Whether Government proposes to consider the necessity of giving a grant to the Lady Hardinge Medical College in order that it may not depend upon voluntary contributions?

(b) In what stage does the proposal to affiliate the College with the Punjab University stand?

The Honourable Mr. A. C. Chatterjee: (a) The Government of India already contribute Rs. 2,00,000 out of a total budgeted income of Rs. 2,91,600. Also as stated in answer to the previous question they provide staff through the Countess of Dufferin Fund at an expenditure (in 1921-22), of Rs. 51,675.

(b) The college is affiliated to the Punjab University for the F. Sc. examination and for the M.B., B.S. degree.

Dr. H. S. Gour: May I ask, Sir, what is the number of students in the Medical College and what is the incidence of cost per student?

The Honourable Mr. A. C. Chatterjee: I should like notice of that question.

Mr. T. V. Seshagiri Ayyar: In regard to the first part of the question, as regards the grant made, will the Honourable Member state whether the grant is found sufficient for the maintenance of the institution and whether there has been any complaint that the grant is not sufficient for its maintenance.

The Honourable Mr. A. C. Chatterjee: I think it will be more convenient to answer that supplementary question when we come to 512.

Mr. W. M. Hussanally: Why can't the College be affiliated to the Delhi University now?

The Honourable Mr. A. C. Chatterjee: I don't think the Delhi University has got a Medical Faculty at present.

Dr. H. S. Gour: Hasn't the Delhi University got an Intermediate Science Faculty? Is the Honourable Member unaware of the fact that a proposal was made to affiliate the Science class to the Science Faculty of the Delhi University and that the offer was refused, entailing an additional cost for the maintenance of a separate establishment in the Medical College?

The Honourable Mr. A. C. Chatterjee: Who made the offer?

Dr. H. S. Gour: The Delhi University.

The Honourable Mr. A. C. Chatterjee: I think the Honourable Member's question should be addressed to the authorities of the College, Sir, and not to Government.

Dr. H. S. Gour: Well, the authorities of the College are empowered to manage the College and the Government has to pay the money for it.

The Honourable Sir Malcolm Halley: Not necessarily.

SCIENCE DEPARTMENT, LADY HARDINGE MEDICAL COLLEGE.

510. ***Mr. T. V. Seshagiri Ayyar:** Will the Government be pleased to state:

- (a) Whether it is a fact that the Government of India informed the Lady Hardinge Medical College authorities that they were unable to provide funds for starting in Delhi an intermediate science College for women?
- (b) Have the Government refused to give sufficient funds to the College authorities to maintain even an efficient preparatory science department for women?
- (c) Would Government be pleased to reconsider their decision on both these points?

The Honourable Mr. A. C. Chatterjee: (a) Yes, in view of the replies from local Governments and the financial stringency.

(b) The annual contributions made by the Government of India have been stated in the reply to a previous question.

(c) In view of the existing financial conditions the Government of India are unable to give further financial assistance.

Sir Deva Prasad Sarvadhikary: Does the Government consider that the College fulfils an all-India want?

The Honourable Mr. A. C. Chatterjee: Yes, so far as women are concerned.

Dr. H. S. Gour: Can the Honourable Member state as to how many women students from the whole of India attend the College?

The Honourable Mr. A. C. Chatterjee: I have already said, Sir, that I should like notice of that question.

MAINTENANCE GRANT TO LADY HARDINGE MEDICAL COLLEGE.

511. ***Mr. T. V. Seshagiri Ayyar:** Will the Government be pleased to state:

- (a) Whether it is a fact that the Government promised in 1915 to give a maintenance grant, rising by degrees to a maximum of two lakhs per annum to the Lady Hardinge Medical College?
- (b) Has that promise been kept?

The Honourable Mr. A. C. Chatterjee: (a) and (b) The Government of India have raised their annual recurring grant for the maintenance of the college from Rs. 1,00,000 in 1916-17 to Rs. 2,00,000 since 1920-21, and have given the further help, already stated, through the Countess of Dufferin Fund.

Mr. T. V. Seshagiri Ayyar: Might I put a supplementary question, Sir, of which I gave notice a few minutes ago, as to whether the college authorities consider that the contribution made by the Government would be sufficient to maintain the College in an efficient manner?

The Honourable Mr. A. C. Chatterjee: Would the Honourable Member ask the question after 512?

CURTAILMENT OF EXPENDITURE IN LADY HARDINGE MEDICAL COLLEGE.

512. ***Mr. T. V. Seshagiri Ayyar:** Will the Government be pleased to state:

- (a) Whether any attempt has been made by the Lady Hardinge Medical College authorities—
 - (i) to cut down expenses,
 - (ii) to increase the income of the College from internal sources, and
 - (iii) to secure grants from provincial Governments and Indian States?
- (b) Is it true that there has been a deficit in the finances of the College during the last year and that a further deficit is expected during the current year?

The Honourable Mr. A. C. Chatterjee: (a) and (b) The Government of India are informed that the reply is in the affirmative.

Mr. T. V. Seshagiri Ayyar: I put the question now, Sir. I do not think it is necessary to repeat it again.

The Honourable Mr. A. C. Chatterjee: I think it is quite clear from the reply I have given that there is a deficit.

Dr. H. S. Gour: Will the Honourable Member inquire whether the incidence of cost in this College is out of all proportion to the number of students trained in the College and out of all proportion to the number of students trained in the other Medical Colleges of India where women are admitted?

Rao Bahadur T. Rangachariar: May I ask my Honourable friend Dr. Gour if there is not a great deal of difference between women's colleges and men's colleges?

The Honourable Mr. A. C. Chatterjee: I do not think, Sir, that the Government of India are called upon to make any special inquiries of the nature referred to by the Honourable Dr. Gour.

Dr. H. S. Gour: What guides the Government in making grants to Medical Colleges?

The Honourable Mr. A. C. Chatterjee: I do not think the Government of India make any grants to any Medical College except this College.

Dr. H. S. Gour: Yes, but what guided the Government in making the grant to the Lady Hardinge Medical College?

The Honourable Mr. A. C. Chatterjee: The requirements of the College, Sir.

Dr. H. S. Gour: Irrespective of its efficiency?

The Honourable Mr. A. C. Chatterjee: The College is supposed to be efficient and the Government consider that it is efficient.

Dr. H. S. Gour: If the students were reduced to half their number would that be regarded as a sufficient test of efficiency?

The Honourable Mr. A. C. Chatterjee: I do not think I am required to answer a hypothetical question of that nature.

Mr. J. Chaudhuri: Is it not a fact that the Government of India and the Local Governments spend much more money in this country for the education of males than for the education of females?

Mr. President: I do not think that question arises.

Rao Bahadur T. Rangachariar: As regards the efficiency of the College is the Honourable Member aware that it has got a great reputation not only in India but also with the people from abroad who have visited the College?

The Honourable Mr. A. C. Chatterjee: I believe that is the case, Sir.

Mr. T. V. Seshagiri Ayyar: May I ask a question, Sir. Is it not a fact that although there is an efficient medical institution in Madras, it does not attract more than 2 per cent. of the female students, whereas this College has attracted as many as 14 women from Madras for its students.

Mr. President: The Honourable Member is giving information.

Dr. H. S. Gour: Does the Honourable Member regard the visitors' opinions as the true test of efficiency?

The Honourable Mr. A. C. Chatterjee: I do not know to whom the Honourable Member refers as the visitors.

Rao Bahadur T. Rangachariar: May I ask whether the Honourable Member is aware that Dr. Gour is the Vice-Chancellor of the University of Delhi which probably made the offer to the Lady Hardinge Medical College and which offer was not accepted?

The Honourable Mr. A. C. Chatterjee: I have said, Sir, that I am not aware of the circumstances regarding the offer which was mentioned by the Honourable Member from Nagpur.

Sir Deva Prasad Sarvadhikary: Is it not a fact that the costs of the College are to a certain extent increased by reason of the absence of an independent capable medical profession in Delhi and the absence of a medical atmosphere?

Mr. K. Ahmed: That is a matter of opinion, Sir.

The Honourable Mr. A. C. Chatterjee: I do not think this question arises, Sir.

SELECT AND OTHER COMMITTEES.

513. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state:

- (a) The number of Select Committees on bills or other Committees summoned during the period intervening between the 7th of October, 1922, to the 6th of January, 1923?

(b) The number of days each of such Committees held their meetings to finish the deliberations on matters for which they were summoned?

(c) The amount spent on each of such Committees in the shape of payment of halting and travelling allowances for members?

(d) The number of days with dates on which each of such Committees met for the purpose for which they were summoned?

Mr. E. Burdon: The information is being collected and will be laid on the table when complete.

APPRAISERS AND EXAMINERS, KARACHI CUSTOMS HOUSE.

514. ***Mr. Harchandrai Vishindas:** (a) Will Government be pleased to state if it is a fact that the Government of India had authorized the Bombay Government to give promotion of 50 per cent. maximum to the Appraisers and Examiners of the Karachi Customs House?

(b) Will Government be pleased to state what percentage of promotion has been actually given to Examiners and Appraisers of the Karachi Customs House?

Mr. A. H. Ley: I have been asked by the Honourable Member for Commerce to answer these questions, Sir.

I would refer the Honourable Member to the reply given to the question by Mr. S. C. Shuhani, No. 158, dated the 7th September 1922.

FOOD-STUFFS AND PAY OF CUSTOMS DEPARTMENT.

515. ***Mr. Harchandrai Vishindas:** (a) Will Government be pleased to state by what percentage the prices of necessities of life especially food-stuffs have risen in Karachi and Bombay respectively since the war?

(b) Will Government be pleased to state if it is a fact that Appraisers and Examiners in Bombay get more pay than their compeers in Karachi?

(c) If the reply is in the affirmative will Government be pleased to state the reason why there is difference of pay between the officers of the same grade in the two parts?

(d) Is there any difference of pay between the Assistant Collectors and Collectors at the two ports?

Mr. A. H. Ley: (a) The rise in the retail prices of food-stuffs at Bombay and Karachi, during the month of December, 1922, is estimated in the Bombay Labour Gazette issued in January last to amount to 77 and 56 per cent. respectively over those prevailing in July, 1914.

(b) Yes;

(c) The difference is explained partly by the greater expensiveness of living at Bombay and partly by the fact that the pay of the staff at each port is fixed independently with reference to local conditions of service which are not the same at all the ports;

(d) The Assistant Collectors stationed at Bombay are entitled to a local allowance of Rs. 75 a month.

ASSESSMENT WORKS ON PARCELS FROM ENGLAND.

516. ***Mr. Harchandrai Vishindas:** (a) Will Government be pleased to state if they have received any representation from the Chief Collector of Customs, Karachi, regarding increase in assessment work of parcels received from the United Kingdom?

(b) If so, what action have the Government taken on the matter?

Mr. A. H. Ley: (a) The reply is in the negative.

(b) Does not arise.

BOMBAY INCOME-TAX OFFICES.

517. ***Mr. Harchandrai Vishindas:** Will Government be pleased to state what was the pay of (1) Income-tax Officers, (2) Inspectors, (3) Examiners, (4) clerks of the Bombay Income-tax offices, before their pay was revised?

The Honourable Sir Basil Blackett: A statement giving the information asked for is laid upon the table.

Statement showing the pay of Income-tax Officers, Inspectors, Examiners and clerks of the Bombay Income-tax Office before re-organisation.

	Designation.	Pay.
Bombay City	1st Income-tax officer	1,500-2,000
	2nd Income-tax officer	1,000-1,500
	Other Income-tax officers	Varying pay according to grade in Provincial service cadre.
	Inspectors	16 on 150-225 4 on 250-350 2 on 375-475
	Examiners	2 on 250-350 6 on 150-225
	Clerks, 1st Grade	80-100
	2nd Grade	60-75
	3rd Grade	40-55
	Examiners' Clerks	80-100

PAY OF INCOME-TAX OFFICERS.

518. ***Mr. Harchandrai Vishindas:** (a) Is it a fact that the pay of the Income-tax Officers, Inspectors and Examiners in Bombay city has been fixed at Rs. 300-50/2-900, 200-25/2-500, 225-25/2-500?

(b) Is it a fact that the pay of the Income-tax Officers, Inspectors and Examiners in Sind, has been proposed as under in the new organization—

300-50/2-900, 150-25/2-350, 175-25/2-350 against 390 to 1,000, 150 to 250, 150 to 250 of their present salary?

If not, what are the facts?

(c) Will Government be pleased to state why the pay of Examiners and Inspectors in Sind has been fixed at such a low figure as compared to

Bombay while no difference in pay has been made between the Income-tax Officers in Bombay and in Sind?

The Honourable Sir Basil Blackett: (a) Yes.

(b) A statement giving the actual figures is laid upon the table.

(c) The work of Income-tax Officers throughout the Presidency is identical. A higher pay has been fixed for the Inspectors and Examiners in Bombay City than in the rest of the Bombay Presidency owing to the more intricate and responsible nature of their duty. The pay fixed both for Inspectors and Examiners in Sind is higher than that fixed for Inspectors and Examiners in the rest of the Bombay Presidency excluding Bombay City. Examiners in Sind receive a pay of 175-325, while the other Examiners receive only 150-225. Inspectors in Sind receive 150-325; Inspectors in other areas outside Bombay City, 150-225.

Statement showing the previous pay and the proposed pay of the income-tax officers, Inspectors and Examiners in Sind.

Designation.	Previous pay.	Proposed pay.
	Rs.	Rs.
Income-tax officers	1 on 1,000-50-1,250 2 on 500-50-750 1 on 300-30-450	Sanctioned temporarily for three years only. 300-50-2-900
Inspectors	1 on 175-10-2-225 2 on 150-10-2-200 1 on 150 1 on 125	150-25-2-825
Examiners	1 on 150 1 on 125 1 on 175-225 3 on 200	175-25-2-825

HOUSE RENT OF OFFICIALS IN KARACHI.

519. ***Mr. Harchandrai Vishindas:** (a) Will Government be pleased to state what house rent allowance officers of the same grade as Inspectors and Examiners get at Karachi?

(b) What house rent do Government propose to give to Examiners and Inspectors at Karachi, and what house rent is given to men in the Telegraph and Railway Departments at Karachi?

The Honourable Sir Basil Blackett: (a) If the Honourable Member refers to allowances granted to officers serving under the Provincial Government, I suggest that he obtain the information from the Provincial Government.

(b) It is proposed to give a local allowance of Rs. 30 per mensem to Inspectors and Examiners posted to Karachi, in the Income-tax Department. As regards the employees of the Telegraph and Railway Departments, I refer the Honourable Member to the statement laid upon the table in the proceedings of the Legislative Assembly for the 25th September, 1922, in reply to question No. 167, asked on the 7th September, 1922.

. MUHAMMADANS ON SERVICES COMMISSION.

520. ***Mir Asad Ali Khan Bahadur:** (a) Is there any Muhammadan Member in the Royal Commission on Services to safeguard the interests of the Muhammadans?

(b) If not, do the Government propose adding a Muslim Member or two to the Commission?

The Honourable Sir Malcolm Hailey: (a) The personnel of the Royal Commission has not yet been settled.

(b) The Members of a Royal Commission are appointed by His Majesty the King-Emperor and not by the Government of India.

Munshi Iswar Saran: Will Government suggest the appointment of a Kayastha member to represent the interests of the Kayastha community?

Dr. H. S. Gour: Will Government appoint a member of the Kshatriya community?

Mr. S. O. Shahani: Will Government appoint a Sikh?

Khan Bahadur Abdur Rahim Khan: Will there be an objection to a Muhammadan being appointed?

Mr. K. Ahmed: Will that be confined to the class of pious Brahmins or to the class of people of his way of thinking?

Mr. President: It has been said already that the appointments do not lie with the Government of India.

Mr. Jamnadas Dwarkadas: Will Government take note of the fact that in spite of the demands made by the various communities to have representation on the Royal Commission the opinion of this Assembly does remain confirmed that there is no need for a Royal Commission.

EXPRESS MADRAS TO DELHI.

521. ***Mir Asad Ali Khan Bahadur:** (a) Is it a fact that Railway authorities are thinking of running a through express from Madras to Delhi, as was the case before the war?

(b) If not, will the Government influence the Railway authorities to start a through express from Madras to Delhi, *via* Wadi, Dhond and Manmad?

Mr. C. D. M. Hindley: (a) Government have no information.

(b) It is very doubtful whether the number of passengers travelling would warrant the running of such a train but the matter will be brought to the notice of the Railways concerned.

RETURN TICKETS.

522. ***Mir Asad Ali Khan Bahadur:** (a) Will the system of return tickets in railways be re-introduced in near future?

(b) If not, do the Government propose introducing the system to facilitate saving and convenience?

Mr. C. D. M. Hindley: (a) and (b). As promised in the reply to the supplementary question asked by Sir Deva Prasad Sarvadhikary in connection with question No. 145, dated the 17th January, 1923, Government have brought the matter to the notice of railways in order that they may consider whether now or at some later date they may be in a position to restore these concessions.

LALA GULZARI LALL.

523. ***Mr. Pyari Lal:** 1. With reference to the Government reply to my question, contained in the letter of the Army Secretary, No. 331-S., dated 20th February, 1923, will the Government be pleased to state if the period for which Lala Gulzari Lall was appointed as a member of the Committee was specified in his letter of appointment?

2. If so, what was the period?

3. Will the Government be pleased to state what is the ordinary term of a non-official member of a Cantonment Committee appointed under section 4 of the Cantonment Code?

4. Is there a uniform practice in all cantonments about such term of appointment?

5. If not, what is the determining factor of such a term?

Mr. E. Burdon: (1) Yes.

(2) One year.

(3) There is no statutory limit to the period of appointment of a non-official member of a cantonment committee. The period is usually stated in the order of appointment issued under section 4 of the Cantonment Code, 1912.

(4) No.

(5) Under section 4 of the Cantonment Code, the matter is left to the discretion of the nominating officer.

QAZI SIRAJUDDIN AHMED AND AMBALA CORRUPTION ENQUIRY.

524. ***Mr. Pyari Lal:** 1. With reference to the Government reply to my question regarding the engagement of Qazi Sirajuddin Ahmed, Bar-at-law, for assistance in Ambala Corruption Enquiry, has the attention of the Government been drawn to an article headed "Is the Government anxious to suppress Corruption"? published in the *Cantonment Advocate* of 10th December, 1922?

2. Is the Government aware that the All-India Cantonments Association in its telegram dated 27th November, 1922, to the Northern Command, made a clear offer to bear the expenses of Qazi Sirajuddin Ahmed's appointment?

3. If so, will the Government be pleased to state why this offer was not accepted?

Mr. E. Burdon: (1) Yes.

(2) Yes.

(8) Chiefly because at the time it had been found that the legal assistance previously contemplated was not required, and because it had been ascertained that if it should be required at a later stage, Government themselves were prepared to bear the cost.

TRANSFER OF LAND TO SOMDATT RAMLALL, AMBALA.

525. ***Mr. Pyari Lal:** 1. With reference to the Government reply regarding the transfer of a piece of land to Messrs. Somdatt Ramlall, given on 15th January, 1923, is the Government aware that the All-India Cantonments Association wrote to the Cantonment Magistrate, Ambala, and to the G. O. C., Ambala, about their readiness to substantiate the relationship between Somdatt Ramlall and Pandit Shugan Chand, head clerk of the Cantonment office?

2. Has the attention of the Government been drawn to a letter of the All-India Cantonments Association to the Cantonment Magistrate bearing on the subject published in the *Cantonment Advocate* of 10th November, 1922?

3. Will the Government be pleased to state how this letter was dealt with?

4. Will the Government now direct the Ambala Local Authorities to give the All-India Cantonments Association chance to substantiate this relationship now?

Mr. E. Burdon: 1, 2 and 3 Government have no information on the subject apart from the passage in the *Cantonment Advocate* mentioned in the second part of the Honourable Member's question, which the Government have seen.

4. The matter to which the Honourable Member refers is one of the matters dealt with by Colonel Lawrenson in the inquiry which he recently conducted in the Ambala Cantonment. Colonel Lawrenson's report is at present under the consideration of Government, and Government are not at present in a position to say what action will be taken in regard to it.

Mr. W. M. Hussanally: May I ask, Sir, if the Honourable Member will obtain the information and place it before the House?

Mr. E. Burdon: What information?

Mr. W. M. Hussanally: The information called for by Mr. Pyari Lal. The Honourable Member said just now that the Government had no information.

(No answer.)

GOVERNMENT GOLD AND STERLING OBLIGATIONS.

526. ***Mr. Harchandrai Vishindas:** Will Government be pleased to state:

- (i) what steps have the Government of India and the Secretary of State taken to limit, reduce or alter the extent of their large gold or sterling obligations, since the demonetisation of silver by European States in the seventies of the last century?

- (ii) what was the extent of such gold or sterling obligations (a) total, (b) in India, (c) in England in the years 1872-73, in 1900, in 1914, i.e., before the war, and in the year 1920-21?
- (iii) leaving aside borrowings on account of war expenses, what factors have operated in increasing our gold or sterling obligations?
- (iv) whether "charges" due to Exchange variations from time to time and Exchange Compensation Allowances have anything to do with this increase?

The Honourable Sir Basil Blackett: (i), (iii) and (iv). I am afraid this is too large a matter to be dealt with by way of answer to a question.

(ii) The obligations referred to are entirely in England. The direct sterling obligations amounted at the end of—

1872-73	to	£39 Millions.
1899-1900	to	£124 „
1913-14	to	£177 „
1920-21	to	£191 „

Mr. W. M. Hussanally: May I, Sir, know if I cannot get any answer from the Army Secretary with reference to my supplementary question on No. 525?

Mr. E. Burdon: I was studying the first three parts of the question which were answered together.

Mr. President: The Honourable Member can raise the point again at the end of the questions.

REMITTANCES TO ENGLAND.

527. ***Mr. Harchandrai Vishindas:** Will Government be pleased to lay on the table figures for each year from the year 1872-73 up to date with regard to following:

- (i) total Remittance to England to cover Home charges and all other kinds of charges including interest, annuities, etc.
- (ii) charges or net loss due to Exchange variations on these remittances?
- (iii) charges due to Exchange Compensation Allowances?

The Honourable Sir Basil Blackett: (i) The Honourable Member is referred to supplementary account No. 1-A, on pages 370 to 374, of the "Statistics compiled from the Finance and Revenue Accounts of the Government of India from 1st April, 1912, to 31st March, 1920." These give the net expenditure in England for each year from 1814-15 to 1919-20. The corresponding figures for 1920-21 and 1921-22 are £28,200,250 and £27,747,795, respectively.

(ii) The figures required for the 8 years 1912-13 to 1919-20 will be found in accounts Nos. 51 and 51-A on pages 236 and 237 of the above volume. Figures for previous years will be found in the earlier issues of the same publication.

(iii) A statement is laid on the table giving the figures from 1912-13 to 1920-21. Figures for earlier years will be found in the Finance and Revenue Accounts.

Statement showing the charges for exchange compensation allowance.

Year.	Imperial.	Provincial.	Total.
	Rs.	Rs.	Rs.
1912-13	33,45,737	16,76,262	50,21,999
1913-14	33,43,223	16,91,747	50,34,970
1914-15	33,07,317	17,38,177	50,45,494
1915-16	33,84,993	16,64,659	50,49,652
1916-17	33,91,610	15,86,672	49,78,282
1917-18	30,71,628	13,03,882	43,75,510
1918-19	5,97,547	2,23,435	8,21,982
1919-20	...	...	...
1920-21	26,291	35,731	62,022

PAYMENT OF SALARIES OF GOVERNMENT EMPLOYEES.

528. ***Mr. Harchandrai Vishindas:** Will the Government be pleased to state:

- (i) whether it is a fact that under terms of contract, the Government pay salaries and emoluments of all their employees in rupees or sterling only?
- (ii) whether the terms of contract of persons recruited in England contain provision for Exchange Compensation Allowances?
- (iii) if not, the reasons why Government award such compensations on remittances made by their servants employed in India but resident in England?
- (iv) what is the extreme variation in points in the last thirty years, (a) in the value of gold, (b) in the value of silver?
- (v) maximum fall in pound sterling (or gold value) of the salaries of public servants resident in England?
- (vi) when were the salaries, emoluments, etc., last improved: (a) of members of the Imperial Services; (b) of members of Provincial and non-gazetted services?

The Honourable Sir Basil Blackett: I am afraid I cannot deal adequately with this matter in a reply to a question. Moreover, the collection of the information asked for would involve an amount of labour quite incommensurate with the results.

PAY OF BRITISH AND INDIAN SOLDIERS.

529. ***Mr. Harchandrai Vishindas:** Will the Government be pleased to state:

- (i) (a) why is it that the pay of the British soldier while he is in India is paid in terms of sterling, and that of the Indian soldier, even while he is taken abroad outside India is fixed in rupees?

(b) whether the Exchange Compensation Allowance paid to the British soldier and other British employees on account of Exchange fluctuations has ever been paid to the Indian soldier and employees when they have been affected by these variations?

- (ii) when was it originally undertaken that the payments of retired servants of the Government resident in England should be paid in sterling?
- (iii) have the Government considered or do they propose to consider the desirability of modifying the above arrangements?

Mr. E. Burdon: (i) (a) The pay of the British soldier in India is based on a sterling rate and is disbursed in rupees, at a rate of conversion which does not vary with the fluctuations of exchange. The pay of the Indian soldier, which is fixed in rupees, is disbursed to him in the currency of the country in which he is serving.

(b) No exchange compensation allowance is paid to the British soldier. Compensation on account of fluctuations of exchange has, at various times, been paid to Indian soldiers when serving outside India in countries which do not have a rupee currency.

(ii) In June 1863.

(iii) In the opinion of the Government of India the arrangements described above are equitable and it is not proposed to alter them.

POWERS OF SANCTION OF SECRETARY OF STATE AND INDIA OFFICE.

530. ***Mr. Harchandrai Vishindas:** Will the Government be pleased to state:

- (i) whether it is a fact that the Secretary of State and the India Office enjoy absolute power and unchecked authority to initiate, control or sanction additional expenditure of almost every kind, over and above the budgetted one?
- (ii) how many times during the last thirty years has this authority been exercised by them?
- (iii) whether they would be pleased to lay a statement on the table recounting the nature of each item on which extra expenditure has been made by the Secretary of State or the India Office in the above manner?

The Honourable Sir Basil Blackett: I presume the Honourable Member means to refer to the powers of the Secretary of State in Council.

(i) The Honourable Member will find the financial powers of the Secretary of State in Council defined in section 21 of the Government of India Act.

(ii) and (iii) It is not possible to furnish the information desired by the Honourable Member without an elaborate investigation.

RAILWAY BOARD PASSES.

531. ***Maulvi Miyan Asjad-ul-lah:** (a) Will Government be pleased to lay on the table a statement showing separately the number of family and single passes as well as privilege ticket orders granted to each officer of the first, second and third class belonging to the Railway Board and the

Office of the Accountant-General, Railways, over the Company and the State-managed Railways respectively during the year 1922.

(b) What average additional emoluments does each class of officer get per month in the shape of passes and P. T. O.'s?

(c) How does this rate compare with the rates of pay drawn by similar class of officers in other departments of the Government of India?

(d) What is the total annual cost of these passes and P. T. O.'s and to what accounts is this expenditure debited?

(e) What is the aggregate loss of profit to Government on account of the grant of these free passes?

(f) Do the conditions of service in these offices provide for the grant of these concessions or they are granted merely as a matter of convention?

(g) Who is the sanctioning authority and what is the criterion for eligibility for these concessions?

(h) Is it a fact that the pass holders are allowed to travel by the mail trains and this often causes inconvenience to passengers who travel on payment particularly during the X'mas and other holidays?

Mr. C. D. M. Hindley: (a) A statement showing the number of passes and privilege ticket orders issued is laid on the table.

(b), (c), (d), (e), (f) and (g). The Honourable Member is referred to parts (a), (c) and (g) of the reply given to question No. 446 on 5th March, 1923.

(h) Not always but in all cases ticket holders have preference for accommodation.

Statement showing the number of single passes and P. T. Os. issued to Railway Board's staff and Accountant General, Railways, during the year 1922.

Class.	Over State Railways.	Over Company-managed Railways.	Combined State and Company Lines.
First Class passes	95	95	87
Second Class passes	351	98	179
Inter Class passes	134	21	46
Third Class passes	185	8	25
Second Class P. T. Os.	24	14	2
Inter " "	69	54	19
Third " "	15	126	25

MEMORIAL FROM COORG.

532. ***Rao Bahadur C. S. Subrahmanayam:** 1. Will the Government be pleased to state whether a memorial dated September, 1918, addressed to His Excellency the Viceroy and Governor General by the leading inhabitants of Coorg, was received and were any orders passed thereon?

2. Will the Government be pleased to lay on the table a copy of the memorial and the orders thereon?

3. Have the Government under consideration the amalgamation of the Province of Coorg with the Presidency of Madras and thereby save a considerable sum now spent under separate Supervising and Controlling establishments?

4. Is not the area of the province of Coorg just about that of a Madras district?

The Honourable Sir Malcolm Hailey: (1) and (2). A copy of the memorial referred to was received by the Government of India from the Chief Commissioner in 1919, but no orders have been passed on it. Government think that no useful purpose would be served by laying a copy of it on the table, but such a copy will be supplied to the Honourable Member, if he so desires.

(3) No.

(4) The area of the Coorg Province is 1,582 square miles, which is much smaller than the area of most districts in the Madras Presidency.

IMPORTATION OF SLEEPERS.

533. ***Mr. K. C. Neogy:** (a) Has the attention of Government been drawn to a statement dated Delhi, January 17 last, from the Associated Press of India, in which it is stated that "sleepers are only imported from outside India to make good the shortage of supplies in India"?

(b) Was the said statement issued under official authority?

Mr. C. D. M. Hindley: The answer to (a) is in the affirmative.

(b) The sentence quoted forms part of information furnished by the Railway Board to the Press which represented the position as known to them at that time.

Mr. K. Ahmed: May I enquire, Sir, the names and particulars of those who are the suppliers of these sleepers from outside India?

Mr. President: The question that arises is the authenticity of the statement made regarding the importation of sleepers from outside, not whence those sleepers come.

SLEEPERS AVAILABLE IN INDIA.

534. ***Mr. K. C. Neogy:** Are Government aware that there are several lakhs of deodar and other sleepers available in India at present?

Mr. C. D. M. Hindley: Yes. But the relative price has also to be taken into consideration.

Dr. H. S. Gour: What is the relative price which has to be taken into consideration? What is the difference between a country-made sleeper and an imported sleeper?

Mr. C. D. M. Hindley: I am afraid I am not able to give exact figures in reply to that question, but, obviously, in purchasing sleepers we have to take into consideration the price at the point at which they are landed.

JARRAH SLEEPERS FOR G. I. P. RAILWAY.

535. ***Mr. K. C. Neogy:** (a) Are Government aware that the Great Indian Peninsula Railway has recently called for tenders for one lakh of Jarrah sleepers?

(b) Is it a fact that the Great Indian Peninsula Railway has called for these tenders in spite of the fact that it was offered deodar and other sleepers available in India?

Mr. O. D. M. Hindley: The answer to (a) and (b) is in the affirmative.

Mr. S. C. Shahani: Are Government prepared to forbid the importation of sleepers from outside India?

Mr. President: That question does not arise.

Mr. Jamnadas Dwarkadas: Will Government kindly state whether they have tried to obtain sleepers from the Canara forests?

Mr. O. D. M. Hindley: I am afraid I have no information. I should like notice of that question.

Dr. H. S. Gour: What were the tenders for the deodar sleepers referred to in clause (b), and what was the price of the jarrah sleepers ordered by the Great Indian Peninsula Railway?

Mr. O. D. M. Hindley: I should like to have notice of that question.

Mr. R. A. Spence: Would Government be pleased to give the reasons for the decision of the Great Indian Peninsula Railway in this case?

Mr. O. D. M. Hindley: The Great Indian Peninsula Railway, like all Companies' Railways, are exercising their own competence in the matter.

Dr. H. S. Gour: Is it not a fact that the Great Indian Peninsula Railway, being a subsidized railway, acts under the direction and control of the Railway Board?

Mr. O. D. M. Hindley: Not in the matter of making contracts for sleepers, Sir.

Dr. H. S. Gour: Could the Great Indian Peninsula Railway pay more than the current rate for sleepers, and the Railway Board be powerless to check them?

Mr. President: That is a hypothetical question.

THIRUMALVASAL PORT.

536. ***Mr. Narayandas Girdhardas:** (a) Has the attention of the Government been drawn to the written memorandum submitted to the Acworth Committee (Railways) by Lieutenant-Colonel E. Barnardiston, regarding the agreement between the South Indian Railway and the British India Steam Navigation Company, about Thirumalvasal Port, in Tanjore district, and to the annexure to the oral evidence of Messrs. Ross Logan and C. S. Rowbotham, relating to the same subject?

(b) Are the Government prepared to consider the question of getting the said agreement cancelled or of taking any action in the matter?

Mr. O. D. M. Hindley: (a) The reply is in the affirmative.

(b) Government already have the matter under consideration in communication with the South Indian Railway.

INDIAN COMPANIES AND PROVINCIAL REGISTRATION DEPARTMENTS, MADRAS.

537. ***Mr. Narayandas Girdhardas:** 1. Will the Government be pleased to state whether a representation was made to the Honourable the Commerce Member when he visited Madras in December last, by the Southern

India Chamber of Commerce, urging the separation of the Indian Companies Department in the Presidency from the Provincial Registration Department on the score of—

- (a) Economy to the Central Government,
- (b) Greater efficiency in the administration of the Companies Department, and
- (c) The desirability of dispensing with a number of Assistant Registrars in the districts?

2. Will the Government of India consider the desirability of placing the Indian Companies Department in the Madras Presidency on an independent footing as is the case in Bombay and Calcutta?

Mr. A. H. Ley: 1. Yes.

2. The question raised by the Honourable Member was fully considered in 1913, and again only last year in consultation with the Local Government and it was decided that the existing arrangements were the most economical. An establishment of the nature of that retained in Calcutta and Bombay would be more costly than the present separate establishment now entrusted with this work in Madras City. The existence in the mofussil of Madras of a large number of nidhis or mutual loan associations necessitates a district staff which can only be economically supplied by utilizing the services of some of the officers of the Local Government. In Bengal and Bombay such conditions do not exist and there is no need for any officers in the districts. The Government of India do not therefore propose to disturb the existing arrangements.

Sir Deva Prasad Sarvadhikary: May we have your indulgence, Sir, in getting from the Honourable the Finance Member some . . .

Mr. W. M. Hussanally: Sir, I wanted to know from the Honourable the Army Secretary if he would call for the information which I asked for and place it before the House—the information which he said the Government of India had not got.

Mr. E. Burdon: Parts, 1, 2 and 3 of Mr. Pyari Lal's question No. 525 deal with certain not very important details of a matter, which as I have said in reply to part 4, of same question was one of the matters dealt with by Colonel Lawrenson in an inquiry which he recently conducted in the Ambala Cantonment. I explained also that Colonel Lawrenson's report is under the consideration of Government, and it is only when consideration of the report has advanced further that Government would be able to say whether it is necessary to call for further information in regard to the details dealt with in the first three parts of the question and any other details which may be thought relevant.

Mr. President: I have allowed the Honourable Member from Sind to re-open a question after we passed the substantive question. It would be improper to allow reference back to questions after we pass the answers unless, as in this case, the supplementary question had already been put and the answer was not ready. Solely because the answer was not yet ready, I allowed the Honourable Member to go back, which otherwise would not be proper.

UNSTARRED QUESTION AND ANSWER.

INDIANIZATION OF EIGHT INFANTRY UNITS.

228. **Rai Sahib Lakshmi Narayan Lal:** 1. (a) Will the Government be pleased to state whether any scheme or programme has been prepared for the Indianization of the eight infantry units of the Indian Army for which His Excellency the Commander-in-Chief announced steps would be taken immediately?

(b) If so, will the Government be pleased to lay the same on the table?

(c) If not, will the Government be pleased to state when the scheme or the programme is likely to be ready?

(d) In what time do the Government propose to complete the Indianization of the said units?

2. Do the Government propose not to undertake the Indianization of any other unit before the completion of the Indianization of the said eight units?

Mr. E. Burdon: A statement will be laid upon the table of this House to-morrow, which will deal fully with all the points to which the Honourable Member's question is directed.

PARTICULARS RE LUMP RETRENCHMENT FIGURES.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, we ask for your indulgence in getting some very necessary information from the Honourable the Finance Member. The lump retrenchment figures distributed under the various budget items are not yet available and without those figures, anything like reasoned and reasonable proposals in connection with the Demands for Grants would not be possible. Therefore, the first thing that I should like to know is as to when those figures will be available, and the second thing is whether the two days rigid limitation about proposals will be insisted on, having regard to the fact that the figures are not yet available. After we get the figures, they will have to be studied in connection with the Inchcape Report as well as the original Demands for Grants, and then and then alone can we frame anything like proposals that will be helpful to the department, if they ever can be.

The Honourable Sir Basil Blackett (Finance Member): Sir, I recognise that the House has been put to a considerable amount of difficulty owing to the way in which it has been necessary first of all to circulate the detailed estimates for the Demand for Grants without the special cuts and then to follow that up by a new paper showing the special cuts. I hope to be in a position to distribute either this evening or early to-morrow morning the further paper promised showing the distribution over the various heads of the special cut of 4 crores. I hope very much that that will be in the hands of Honourable Members first thing to-morrow morning. We are doing our best. We, like them, have been in a certain amount of difficulty over that matter.

As regards the second point raised, speaking for myself, I should certainly not desire to raise a formal objection, because an amendment has been put in regard to which the notice required under the rules has not been given, such notice not having been given because of the absence of the paper showing the detailed reduction.

MESSAGES FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, two Messages have been received from the Secretary to the Council of State. The first one is as follows:

" Sir, I am directed to inform you that the Council of State has, at its meeting held on the 8th March, 1923, agreed without any amendments to the following Bills which were passed by the Legislative Assembly:

- (i) A Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India.
- (ii) A Bill to amend the Indian Income-tax Act, 1922.
- (iii) A Bill further to amend the Government Savings Banks Act, 1873."

The second Message runs as follows:

" Sir, I am directed to inform you that the Bill to consolidate and amend the law in British India relating to official secrets, which was passed by the Legislative Assembly at its meeting of the 24th February, 1923, was passed by the Council of State at its meeting on the 8th March, 1923, with the amendments indicated in the attached statement.

The Council of State requests the concurrence of the Legislative Assembly in the amendments."

Sir, I lay on the table the Official Secrets Bill as passed by the Council of State.

Statement showing the amendments made in the Indian Official Secrets Bill by the Council of State.

" 1. In part (c) of sub-clause (1) of clause 6 of the Bill, for the words 'or uses' the words 'or knowingly uses' were substituted.

2. In part (b) of sub-clause (2) of clause 6 of the Bill, for the words 'neglects or' the word 'wilfully' was substituted."

THE CRIMINAL LAW AMENDMENT BILL.

The Honourable Sir Malcolm Hailey: I beg to move:

" That the amendments made by the Council of State in the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings be taken into consideration."

The amendments made by the Council of State are before the House. They will be found to be few in number, and with one exception, formal in nature. The exception to which I refer is the amendment which we introduced in order to give effect to the vote in this House on the subject of appeals in cases where sentence of whipping was given without a sentence of imprisonment. I shall not refer further to that matter now as an opportunity for discussion will arise, if discussion is necessary, when you place that amendment before the House.

The motion was adopted.

Mr. President: Amendment made by the Council of State:

"That clause 1 be re-numbered as sub-clause (1) of clause 1 and to that clause the following sub-clause be added, namely:

'(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"For sub-clause (2) of clause 2 the following be substituted, namely:

'(2) In clause (j) of the same sub-section, after the word 'Rangoon' the words 'and the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind' shall be inserted'."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"After clause 4 the following clause be inserted, namely:

'4A. In sub-section (1) of section 29 of the said Code, for the words and figures 'provisions of section 447' the words 'other provisions of this Code' shall be substituted'."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"In clause 5, in the proposed new section 29A, the words 'Notwithstanding anything contained in section 28 or section 29' be omitted."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made that:

"For clause 11 the following clause be substituted, namely:

'11. In section 266 of the said Code, after the word 'includes' the following words shall be inserted, namely:
'the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind, and'."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made:

"After clause 19 the following clause be inserted, namely:

'19A. In section 390 of the said Code, after the word 'shall' the words 'subject to the provisions of section 391' shall be inserted'."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made:

"After clause 19 the following clause be inserted, namely:

'19-B. In sub-section (1) of section 391 of the said Code, for the words 'is sentenced to whipping in addition to imprisonment in a case which is subject to appeal' the following shall be substituted, namely:

'(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(b) is sentenced to whipping in addition to imprisonment'."

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Might I suggest in this connection a slight improvement in order to bring the provisions of clause (a) into conformity with the general Code of Criminal Procedure. I suggest that the words "or executes recognizances" be added after the word "bail". The sentence, as amended, would then read:

"is sentenced to whipping only and furnishes bail or executes recognizances to the satisfaction of the Court for his appearance at such time and place as the Court may direct."

Mr. President: Amendment moved:

"After the word 'bail' insert the words 'or executes recognizances'."

The Honourable Sir Malcolm Hailey: I think the House will agree with me that, when an offender has been sentenced and it is proposed to release him pending appeal against that sentence, the right form is bail. The House will remember that we considered that point, when we discussed the question relating to an appeal against whipping, and the suggestion made to us in this House was bail. That is the suggestion we have accepted and to which we have given effect.

The motion was negatived.

Mr. President: The question is that this Assembly do agree with the Council of State in the said amendment.

The motion was adopted.

Mr. President: The question is that this Assembly do agree with the Council of State in the re-numbering of the said clauses.

The motion was adopted.

THE INDIAN PENAL CODE (AMENDMENT) BILL

The Honourable Sir Malcolm Hailey (Home Member): Sir, I move:

"That the Bill to amend sections 362 and 366 of the Indian Penal Code, as amended, be passed."

The House will remember that when we dealt here with this Bill, which was known as the White Slave Traffic Bill, I did not at the time put the final motion for passing, as we wished to have an opportunity to consider the effect of the amendment which was made in this House, namely, the amendment which raised the age from 16 to 18. I now propose to ask the House to pass the Bill. At the same time I think the change made is one which will require consideration. As will be remembered, we pointed out on a previous occasion that the age in other parallel sections of the Indian Penal Code was 16, sections which in themselves involve what seem to be more serious offences. We desire to have an opportunity of considering

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with the Local Governments whether it will be possible to allow these two differing ages to stand side by side in the Penal Code. What I propose to do, therefore, is to ask that the Bill be passed, but subsequently to take an opportunity of suggesting elsewhere the provision of a commencement clause which will give us time to consider the effect of the change that has been made. The House will, I think, appreciate my point in this matter. It is inconsistent in itself to have two different ages in the Indian Penal Code applied to offences which may be described as more or less parallel, and it is advisable that we should have an opportunity of discussing with Local Governments whether any other changes may be advisable in the Indian Penal Code before we proceed further in the matter. It is for that reason that I shall propose elsewhere the introduction of a commencement clause. That is a very usual feature in these Bills. We have had to introduce a commencement clause, for instance, in the Bill which the House has just passed. Subject to this understanding, I now ask that the Bill be passed.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I do not quite follow the Honourable the Home Member when he says that a commencement section will be introduced later on. I take it that those sections which are in the Indian Penal Code already are now amended and that they will stand part of the Code. Is it intended that before these provisions are given effect to, a commencement clause will be introduced later on and that meanwhile these clauses will not be operative. If the meaning is that it is not to be operative until the commencement clause comes in, I do not see the object of passing the Bill now, and then trying to introduce a commencement clause later on. Is it intended that the commencement clause should be introduced in another place?

The Honourable Sir Malcolm Hailey: Yes.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): I do not quite agree with Mr. Seshagiri Ayyar that there is no object in passing the Bill now. On the other hand I think this is quite a good opportunity. When we parted on the day that the Bill was considered clause by clause, we parted under a sense—I do not mind calling it so—a sense of disappointment. The usual thing on these occasions is for the Honourable Member in charge of the Bill to ask that the Bill be passed, and when the motion was not made some of us got the impression that there was a rift in the lute that did not quite conduce to the usual procedure being adopted. It has been explained to-day that the Government wanted to consider how the passing of such a measure as raising the age limit for the limited purpose in view was likely to affect the other sections in the criminal law of the land. Much does not seem to have been done in the meantime and we are about where we were when we parted on that occasion. The Honourable the Home Member is at liberty to take any steps he desires or thinks necessary, elsewhere; but I should like to press again a point of view that some of us tried to press the other day, this particular measure stands on a footing all its own. The other sections are more or less different and can be differentiated. This section deals with the creation of a new offence as it was put, in whatever sense that might have been intended; we were recognising that a crime that had so long escaped was being dealt with now and in the light of advancing knowledge and facts the Assembly thought that the age limit should be higher. Even if it takes some time

to bring the other sections into line—and we suggest again that that is the remedy that should be invoked in the case of the other sections—there is no reason why effect should not be given to the provisions of this measure pending the remedying of the other sections. From that point of view the Assembly would, I think, be of the same mind as it was when the clauses were considered one by one, viz., that as soon as possible effect should be given to what has been enacted. That would be somewhat in line with the undertaking that we have practically given in Europe, following up which lead we have taken up this matter. One does not know how long it may take to get the other sections into line with the present section; but in the meantime there seems to be not much reason why the matter should be held up in the way that is suggested. In giving our accord to the passing of the measure, I am sure we should like to put that point of view before the Honourable the Home Member so that he may see that the enforcement of this measure may not be unduly delayed. On the other hand the other sections should be brought into line as soon as possible.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, there is another aspect of the question upon which I should like to address the House. It is this: supposing this House passes this Bill with the clauses inserted in another place for postponing its commencement to such date as the Governor General in Council may notify. In the meantime the Government of India consult the local Governments and public opinion on the subject of the other cognate sections of the Indian Penal Code being brought into line with the amendment made in this section; and suppose the local Governments and public opinion oppose any changes in those sections. What will then be the attitude of the Government of India regarding the commencement of this solitary section? Will they then never bring it into force at all? If so, the result would be a measure passed by both the Houses and ripe for enforcement immediately might be indefinitely deferred by the executive action of the Government of India. Now, that is a contingency which we in this House should certainly deprecate and we want an assurance from the Honourable the Home Member that suppose public opinion and the local Governments do not support the enhancement of age in the other sections of the Indian Penal Code, what would be the attitude of the Government regarding the measure which is to pass into law with the vote of this House and of the other House? The Honourable the Home Member is no doubt aware that the Government opposed the raising of the age limit and supported its attitude by a reference to the opinions of the local Governments and certain public bodies. The local Governments and public bodies who have opposed the enhancement of age under this section are not likely to change their views regarding the enhancement of age under the two or three other sections to which the Honourable the Home Member made reference on the last occasion, and therefore I submit the contingency I have pointed out is by no means a remote one, namely, that it may be that the local Governments and public opinion may not support the raising of age in respect of the other cognate sections. In that case I should like to have a definite assurance from the Honourable the Home Member that it would not jeopardise the enactment of the measure which we are about to pass.

Colonel Sir Henry Stanyon (United Provinces; European): Sir, I strongly support the proposal to introduce a commencement clause. I think it is necessary from every point of view, and chiefly from the point of view of legislative consistency in this House. In a number of sections

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relating to offences against minor girls, the Indian Penal Code fixes the maximum age at 16 years. In the case of this one particular section which we are now engaged in passing into law, this House has decided the limit of age to be 18 years. That is to say, this House has in a sensible and correct way decided that a minor girl under this law shall be in accordance with the law of majority in India. (Sir Deva Prasad Sarvadhikary: "And for this purpose"). Now, I do not at all share the apprehensions of my learned friend Dr. Gour. He thinks that if this Bill is held up, public opinion in India may insist on retaining 16 as the proper limit of age. I am not for one moment prepared to admit that the decision of this House, fixing the limit at 18 years, is not in accordance with the public opinion in India. If, in fact, on further reference it is found to be against the general body of public opinion in India, then this House will have to recognise that it has come to a decision which is contrary to the public opinion which it is supposed to represent; but I have no such fear. I think that, without any delay, while this Bill is held up so as to secure consistency, a measure should be introduced officially,—and if not officially, then non-officially,—to bring the limit of age up to 18 years in all the cognate sections of the Indian Penal Code; and I feel sure that public opinion, and any future Assembly which may represent us who are here to-day, will sustain a measure of that kind; but it certainly would be confusing and undesirable that one of the same class of acts should be an offence when committed against a girl who has not yet attained 18 years, while in all other cognate offences the age limit should be 16 years. That would be legislative inconsistency. I therefore think that on these grounds the House will be well advised to accept the proposal that a commencement clause should for the present be introduced.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I also wish to add a word or two in support of the Government position, and in doing so I venture to point out the position in which the House finds itself at the present moment. As has been explained by the Honourable the Home Member out of a group of cases of a similar nature those of a less serious character with which we are at present concerned in connection with the present Bill, this House has fixed the age limit at 18 years, in constituting an offence under the Bill. Therefore, the position is something like this. Where a person deals in the traffic of sale or hire of girls for immoral purposes, the age limit at present is 16 years under the Penal Code. Whereas in the present Bill where single cases of behaviour may be contemplated, where say, by an abuse of authority, a person induces a woman just on one occasion, to go from any place with a certain intent, the age is fixed by the Bill at 18 years. That is, a larger class of cases of a less heinous character but punishable with the same punishment as in the more heinous offences say, for example, under section 372, Indian Penal Code, have been brought within the operation of this Bill. Therefore, as has been pointed out by my Honourable friend, Sir Henry Stanyon, there will be a real inconsistency in the Indian Penal Code, as soon as the Bill is passed and that is the position in which we are placed by the passing of the present Bill. The House is not at present concerned with the means by which it can get rid of this inconsistency because, after consideration of the whole situation, and of the opinions of local Governments, etc., some means may be devised by which this inconsistency can be got rid of. We are not concerned with that. The question, at the present moment, is whether time should be

taken in the manner proposed to consider the situation and to obtain the opinion of the local Governments on the point. The present Bill is a Bill to give effect to the International Convention held at Paris and in that view it has become necessary to pass legislation in this country. The initiation of the Bill did not commence in this country but it was from outside, and therefore the country can wait in a matter of this kind and, as has been pointed out, it may be necessary in order to avoid the inconsistency to raise the age limit of 16 years, in section 372 and the next section of the Indian Penal Code where the sale or hire of girls for immoral purposes and so forth, are dealt with to 18 years. So that, that is the broader question with which the House is faced, not the exact way in which this Bill is to be dealt with in future. There are means, no doubt, in the Government of India Act itself by which situations like the present, in which the House now stands, can be dealt with. Therefore, I submit, Sir, that the House need not now worry to consider in anticipation the measures it may have need to take after opinion of the Local Governments shall have been taken on the matter, and after considering the situation further. I therefore, Sir, support the observations which have been made by the Honourable the Home Member in connection with the passing of this Bill.

The Honourable Sir Malcolm Hailey: I should like to make clear the attitude of Government on this subject. It is necessary that I should do so, because Dr. Gour has asked me a definite question on the matter and asked for a categorical undertaking. He asks whether, if as a result of our inquiries from Local Governments and the public it appears that the latter is opposed to any change in other sections of the Indian Penal Code, that in itself will cause us to delay the application of the Bill which is now before the House. I think Sir Henry Stanyon has already given him the answer. It would be impossible for me to give that categorical undertaking for which he asks. If it really appears that the country at large, when the definite issue in its net form is before it (as it never has been put before it yet) is opposed to raising the age from 16 to 18 in those other sections, 373 and the like, then I think Government would be justified in considering that the House had made an error in raising the age from 16 to 18 in regard to the procurement offences and would be justified in reconsidering the question whether it should give effect to the Bill which is before the House. I may point out that the fact that a Bill has been passed in both Houses of the Legislature, even the fact that it has been passed by an overwhelming majority, which would certainly not be the case in this particular Bill, cannot deprive the Executive Government of a certain responsibility in regard to it. If it were made abundantly clear from subsequent inquiries, that the matter needed reconsideration, and that the public voice of the country itself demanded delay and reconsideration, then it would be the duty of the Governor General to refuse his assent to the Act in order that such reconsideration might take place. That position is a perfectly constitutional one; but is of course one with which I have not desired to confront the House in the past and do not desire to confront the House with now. I have suggested a more reasonable remedy, one which, I think, has been approved by speakers this morning, namely, that we should ask the Council of State to put in a commencement clause in this Bill, as we sometimes do in regard to other Bills; that would give us the opportunity of putting the whole matter before Local Governments and the public in a clear and definite form. I claim that so far, the problem never really has been before them. What was before them was

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a somewhat mixed problem connected with the ratification of the convention to which the representatives of India had agreed to adhere. But we have now a definite Bill, which shows exactly how the matter will stand under the criminal law and enables the public to make a comparison with other sections of the Code. If it appears that there is a general consensus of opinion that the age generally should be raised to 18, then of course we shall take it that the public agrees with the view expressed by a majority of this Assembly. If it appears, on the other hand, that there is a general consensus of opinion throughout the country that the age throughout should remain at 16, then we have very good ground for reconsidering the whole matter. I have stated the case to the House frankly in order that it might be under no misapprehension as to our attitude on this subject. But I can only claim that I think that attitude is a reasonable one in itself.

Mr. President: The question is that the Bill, as amended, be passed. The motion was adopted.

RESOLUTION RE EMIGRATION OF UNSKILLED LABOUR TO MAURITIUS.

Mr. J. Hullah (Revenue and Agriculture Secretary): I move, Sir:

"That this Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Mauritius, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

I am sorry, Sir, that we have to ask the House to discuss this Resolution at such short notice, especially at a time when they have many other important matters to consider. But our negotiations with the Mauritius Government continued until a few days ago, so that we could not put the Resolution before the House sooner. On the other hand the state of business before the House for the rest of the month is, I understand, so congested that it would have been perhaps impossible to put the Resolution before the House later in the month. We have however done our best and have supplied Honourable Members with a full copy of the papers.

I come now to the subject of the Resolution. So far as the composition of its population is concerned, Mauritius may fairly be described as an Indian Colony. No less than 70 per cent. of the population of the island consists of Indians who have either emigrated from India or are the descendants of persons who have done so. And we may dismiss completely and immediately from our minds the troublesome question of equality of status. Indians in Mauritius have complete equality of status in every particular with all classes and communities in the island. Mauritius is a small place, but has a revenue, I understand, of not less than 2 crores of rupees. In area it is good deal smaller than many a tahsil or taluka in India, and I doubt whether anywhere in the world you could find an area of similar size, and dependent on a single agricultural industry, so rich or so prosperous. The cause of this prosperity is the sugar industry, almost the sole industry of the island, and one that is carried on certainly with very great success and, I believe, with very great efficiency. But the industry is now threatened seriously by a shortage of labour. There are two causes

of this shortage. Although the area under cane has increased by 26,000 acres in the last few years from 146,000 to 172,000 acres, the increase of the population has been very slow. The causes of this are firstly that Mauritius suffered very severely from the epidemic of influenza three or four years ago and secondly that the capital and chief sea-port, Port Louis, is very insanitary and has a high rate of mortality. The number of able bodied labourers is less by 9,000 than it was 10 or 12 years ago. But there is another and a more important cause of the shortage of labour. When I spoke about a month ago on the question of emigration to Ceylon, I was chaffed for having been so enthusiastic that I might have been speaking as a planter. If I am accused to-day of speaking with the voice of a planter, I can at least claim that 46 per cent. of my voice is Indian. The Indians who went out to Mauritius many years ago as poor labourers have now by thrift and consequent prosperity acquired no less than 46 per cent. of the sugar area in Mauritius and hold this area, not as tenants of the bigger estates but in full proprietary right, to dispose of as they please and to do whatever they like with it. But, as Honourable Members will have seen from the papers before them, it is not merely for the planting industry that labour is needed. Even more it is needed, and in the forefront of the Governor's proposals is a demand for labour, for large Government works, sanitary works and water-works, to improve the admittedly unsatisfactory health of the island and particularly of Port Louis. No less than one crore and 40 lakhs of rupees are lying in the treasury in Mauritius because they cannot be spent, owing to the want of labour, on a programme of works which will above all benefit the town of Port Louis, which is very largely, I believe mostly, populated by Indians.

Emigration from India to Mauritius has a very long history, but we need not go back very far. I go back to 1910 when a Committee, known as the Sanderson Committee, appointed to inquire into the question of emigration from India to the Protectorates and Crown Colonies, recommended that there should be no further emigration. It was said that the population was already dense; it was said that the supply of agricultural labour at the time was sufficient and there would come a time when the Indian labouring population, then unwilling to work, would be forced by dire stress of circumstances to do so. That prophecy has not been fulfilled. It was also said that pauperism was growing in the island. After this on several occasions, chiefly before the war, the Mauritius Government re-opened the question and asked the Government of India to resume emigration from this country. But those negotiations came to nothing, until in 1921, the Governor of Mauritius again opened the question and asked us to let him have 1,000 Indian labourers for public works and 200 artisans. We told him that a change had come over our emigration law and that the Government of India had no power to allow emigration without the consent of both Houses. We also told him the points on which the Legislature would no doubt want to be satisfied and the conditions that the Legislature would probably demand if Emigration was to be allowed. In every respect the wishes of the Government of India have been readily acceded to by the Government of Mauritius. And this has not been done as part of a bargain. They have not said to us "If we do this will you allow emigration?" They have acted first and have left it to us and to the Assembly to allow emigration if we please. Of the conditions which are before the Assembly in the Draft Notification, several have already been incorporated in the law of Mauritius. They are numbers 2, 4, 6, 7, 8 and 11. The rest either do not require to be incorporated in the law or

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are the result of our most recent negotiations. Finally, at our invitation a deputation came from Mauritius to Delhi, and here I should like to acknowledge on behalf of the Government of India and, I feel sure, on behalf of the Standing Emigration Committee, the fullness, the clearness and the frankness with which they stated their case and supplied us with all the information that we desired.

The Standing Committee was exercised over only one point,—as in the case of Ceylon, the question of wages, but for a very different reason. Whereas it was thought that in Ceylon wages were certainly too low, there was no question but that in Mauritius wages were high, very high indeed. But it was feared by some members of the Committee that to allow an influx of Indian labour into Mauritius would depress the high rates of wages already prevalent there. It was pointed out, on the other hand, that we proposed, as we do in the Notification, to allow only 1,500 labourers to go, and that this small number could have no appreciable effect in depressing wages.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): What is the total number of labourers there already?

Mr. J. Hullah: The number of labourers, I think, is about 40,000. (Mr. J. Chaudhri: "59,000.") The agricultural population is very much bigger, and my point is that the agricultural population has grown at the expense of the labour population. It was also pointed out that the planters would certainly not import more labour than they needed on account of the very great expense of importing; it will cost about Rs. 800 to import a single labourer; if he takes his wife and children with him, it will cost of course very much more. Moreover, under the new Emigration Act and Rules, the Government of Mauritius will have to maintain an Emigration Commissioner in India and an emigration staff at very considerable expense, all of which goes to swell the cost of the labourer. Thirdly, we were reminded of the very large scheme of improvement which I have mentioned and which the Government has in hand—that works that are going to cost a crore and 40 lakhs can obviously provide labour for 1,500 persons and indeed a very great deal more. Nevertheless we negotiated in order to get and to secure a really sufficient wage. We had been shown a schedule of the cost of living, based on prices in 1921, which showed that the cost of living for a labourer, his wife and three children amounted to about Rs. 38. At the same time we were left under the impression that the present rate of wages for day labourers was Rs. 2 a day for a month of 26 days,—Rs. 52 a month. We were confirmed in this, we thought, by a telegram from the Government of Mauritius which was sent to us in June last year in which they stated:

"The normal rate for day labourers on estates does not now exceed Rs. 50. This Government is fully prepared to engage for labour at local market rates and to consider payment of such wages and under such conditions as the Government of India may suggest, subject to this being comparable with those now paid and afforded locally."

The meaning and intention of that telegram is not very clear to us, but at first we proposed to the Mauritius Government that they should pay wages which would be roughly equivalent to Rs. 50 per month, and we therefore asked that they should guarantee a wage which would provide the cost of living according to the schedule, which was then put at Rs. 38, plus a margin of Rs. 12 a month, in all Rs. 50, with free housing and medical attendance. Failure to obtain this wage was to be a condition of repatriation.

Any labourer who within two years could show to the Protector of Emigrants, or to our agent when appointed, that he could not obtain this wage including this margin was to be entitled to repatriation immediately. The Mauritius Government could not accept this proposal as it stood and replied "that they consider the fixed margin of 12 rupees to be excessive."

"This", they said,

"would bring wages with the cost of living calculated on a liberal scale, above the actual market rates, and such wages paid to newly landed immigrants would have a disturbing effect on all classes of labour in the island. With regard to the rate of Rs. 50 referred to in my telegram of the 20th of June, this referred to day labourers on estates not getting housing or medical attendance and is the rate paid during the crop season when wages are at their highest owing to the demand for labour. Even at that date lower rates were being paid for labour engaged on roads, etc. It should be realised that rates vary considerably in and out of the crop season. On estates at present a labourer with family receives besides free housing and medical attendance 28 to 30 rupees in cash and rations."

So we had another meeting of the Standing Emigration Committee and it was admitted by the majority that it was hardly reasonable to demand from the Mauritius Government a fixed wage irrespective of the cost of living at the time and one stated to have been in force last year at the very height of the busy season of the sugarcane crop. So our final proposal to the Government of Mauritius was that as the condition of repatriation there should be a wage equivalent to the cost of living for a man, his wife and 3 children, plus a reasonable margin to be determined in consultation between the Government of India and the Government of Mauritius. That proposal has been accepted by the Mauritius Government and it appears in the conditions that we have placed before the House. It is very liberal, I think; if a man goes all by himself and does not take his wife or any children, he will, nevertheless, get a wage equivalent to the cost of living for a man, a woman and three children plus a margin to be determined by discussion between the two Governments. The notification further provides that emigration to Mauritius shall be lawful with effect only from a date to be notified in the "Gazette of India" by the Governor General in Council after the matters requiring determination under clause 10 of the notification shall first have been determined, so that if the Assembly passes the notification to-day, it does not mean that emigration begins forthwith. This Government and the Government of Mauritius have to discuss and settle what shall be the wage and what shall be the margin, and we ask the Assembly to leave this matter in our hands.

I have now shown, Sir, I hope to the satisfaction of the Assembly, that Mauritius is a country to which we can confidently allow Indian labourers to go. When they get there they will find themselves among thousands and thousands of their brethren who speak the same language as themselves. They will find that they are equal in status with every section of the community. They will find themselves getting wages equal to what is required for the subsistence of a family of five. They will receive free housing and free medical attendance. They will not be able to make contracts of service for a period exceeding one month, so that nothing like the indenture system can arise. They will have extraordinarily liberal conditions of repatriation. Up to two years a man can secure repatriation for any reasonable cause, including the very liberal condition that he shall be repatriated if he cannot obtain work suitable to his capacity, and after two years he has an absolute right to repatriation without assigning any reason whatsoever. I have also told the

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Assembly of the readiness with which the Mauritius Government have accepted all the terms which we put before them during the course of the earlier negotiations and how without bargaining they have gone ahead and actually embodied these conditions in their law. I think there is no real fear that the addition of this small number of 1,500 persons to the labouring population of Mauritius can possibly operate to depress wages, for there will be sufficient work for them on the large sanitary works of improvement, which will benefit the whole island and especially the present Indian population. And I believe that if we allow this small body of labourers to go to Mauritius, they will find themselves in a country where the conditions of life for them are happier and more prosperous than anything that they know in their own. Sir, I commend my Resolution to the Assembly.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, I beg to move an amendment which stands in my name to the Resolution moved by the Honourable Mr. Hullah:

"That for the original Resolution the following be substituted:

"This Assembly recommends to the Governor General in Council that the consideration of the draft notification specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Mauritius be postponed pending investigation on the spot by an officer of the Government of India of the probable effects of emigration of fresh labour into the colony on the Indian labour population already settled there."

Sir, the Honourable Mr. Hullah, in moving this Resolution, has given a pretty accurate account of the conditions prevailing in Mauritius. In fact, speaking once or twice before in this Assembly, I referred to Mauritius as a colony where conditions were quite favourable for the people who were already settled there. There are one or two aspects of the question which require careful consideration at the hands of the Assembly. In the first place we have already got there, settled in this very small colony, which as has been described to us, is no bigger than a taluka or frika even in many parts of the country, only about 520 square miles, has a population and a very large population indeed of Indians, who went there as indentured immigrants and of whom now about 40 per cent. have become peasant proprietors of small quantities of land. I may mention for the information of the House that there is no land available for purchase for new goers there, unless it be that the owners of big estates parcel out pieces and sell them. In fact the Indian settlers acquired property only in this way from owners of big estates parcelling out their estates and selling them at various prices. There is no land available to the Government which can be placed at the disposal of these new settlers there. That is one aspect of the question which has to be remembered.

Another aspect of the question which has to be remembered is that there are about 50,000 Indian labourers who have to depend upon the market conditions of labour prevailing there. An influx, therefore, of Indian labour to compete with Indians already settled there is a matter which requires very careful consideration at the hands of the Assembly. We have not to look at it from the point of view merely of the new goers there. If you look at it only from that point of view, I have no doubt myself that these people will lead a better life than they do in their own homes. On that subject I have not the least doubt, because the wages in Mauritius are better than the wages prevailing in rural areas and

slightly better than the wages prevailing in urban areas; but the question of emigration to Mauritius stands on a new footing in view of the past history of emigration to that Colony. The matter was thoroughly investigated by a Committee appointed by the Government of India in 1909 and in 1910 it was resolved on the report of that Committee, as Honourable Members will see, that emigration should not be permitted to Mauritius on the grounds, as Honourable Members will find on page 3, "that the Indian population there was large enough to supply all the necessary demands and that a state of things was approaching in which the pressure of existence would compel them to do so. They also considered that, as the Indian population increased, and the amount of undeveloped land diminished by the steady growth of peasant proprietorship, the openings for the immigrants whose term of indenture had expired would constantly diminish, with the result that the free labour market would become overstocked."

That was in 1910. Immediately afterwards, in 1912, within two years, the Governor of that Colony tried to re-open the question more or less on the same grounds as are now urged for re-opening that question, namely, that there is a dearth of labour, that there is not so much congestion, and in fact the Committee were misinformed and came to wrong conclusions. Almost the identical grounds which are urged now in support of allowing emigration were urged within two years of that Committee. It is not that the conditions are alleged to have changed after 10 or 12 years; it was alleged even within two years that the conditions were changed and in fact that the Committee came to wrong conclusions. That was the ground on which the Governor tried to re-open the question, but both the Government of India and the Secretary of State were satisfied that they could not allow emigration. Again, in 1915, the Governor tried to re-open the question and then he wanted only 200 or 300 labourers at that time. The Government of India however stood firm and said they would not allow emigration because the effect on the Indian population there would be mischievous by the introduction of fresh Indian labour. In fact, the Government of India have persistently refused to grant the request for the following reasons which Honourable Members will find at page 6. I emphasise grounds 3, 4 and 5:

"(3) If additional labour is introduced, the congestion in the country will not be removed by the opening out of waste land.

(4) Indian opinion in Mauritius is opposed to the introduction of additional labour.

(5) The gain to prospective emigrants is negligible, as high wages can be earned in the principal towns of India."

These are the grounds on which the Government of India strenuously refused to re-open that question. Now the Government of the Colony in 1921 renewed the request by making an appeal to the Government of Madras which was transmitted to this Government. At that time we were considering the Emigration Act. Honourable Members are aware of the policy which underlies our Emigration Acts, that assisted emigration should not be permitted unless we are satisfied that the conditions in the place where we send our labour population are satisfactory, and that is why we took the control of emigration into our hands. Now Honourable Members will find that in May 1922 the Government of this Colony made an offer, or rather proposed to this Government, that we should allow emigration for Government works, and they were prepared, as Honourable

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Members will see from the telegram just read to us this morning which appears at page 21,—which is dated the 20th June 1922, they state:

"The normal rate for day labourers on estates does not now exceed Rs. 50. The Government is fully prepared to engage day labour at local market rates and to consider the payment of such wages and under such conditions as the Government of India may suggest, subject to these being comparable with those now paid and afforded locally."

So that they were prepared to pay a little over Rs. 50, which was then the prevailing normal rate. This was confirmed in their letter, dated 14th August 1922:

"As stated in my telegram of 20th June, this Government is fully prepared to engage labourers at local market rates and to consider the payment of such wages and under such conditions as the Government of India may suggest, subject to those wages and conditions being comparable with those obtaining locally."

That was in August 1922. The deputation left the Colony about the end of December 1922 and arrived here in the middle of January. The deputation met us about the last week of January, and at the first meeting of the Committee, as Honourable Members will see at page 32, the deputation informed this Committee; speaking in January 1923, the deputation stated—that is the non-Indian portion of the deputation stated:

"Current wages for day labour are approximately Rs. 2 per head for 26 working days."

Therefore that comes to Rs. 52 a month. Current wages, Honourable Members will note the language. Therefore in January, 1923, the Committee were informed that the current wages were Rs. 2 a day:

"The Estate supplies quarters for married people, etc., and Government are prepared to pay the market rate for labour, which is at present Rs. 2 per head for efficient labour but are unable to offer a guarantee."

The two Indian members of the deputation, who are now big planters, stated, as Honourable Members will find at page 33:

"All daily labourers can get Rs. 2, Rs. 2/8 and Rs. 3 at the present daily rates, the higher rate being paid at harvest time."

So that the lowest rate was Rs. 2

Dr. H. S. Gour: No, the lowest was Rs. 1/8.

Rao Bahadur T. Rangachariar: The lowest for road-making was Rs. 1/8. Then the secondman, the Sardar says that he had to pay labourers Rs. 3, Rs. 4 and even Rs. 5. On this information the Committee acted; I think it was in the second meeting, with due regard to the cost of living as given to this committee—which Honourable Members will find at page 53—*viz.*, Rs. 38 which includes Rs. 3 as rent for the quarters which these people allow—the rent of these quarters which is now Rs. 3 was only one rupee in 1914 for the same accommodation—a calculation was made. Now we argued: well, the cost of living is Rs. 38 and people have to perform a journey of twenty days from Calcutta as Honourable Members will remember. And having to go such a long distance and having regard to the wages in the presidency towns like Bombay, Calcutta and other places and having regard to the cost of living in the locality, we thought that a margin of Rs. 12 for saving in this distant place was only proper, also having regard to the wages prevailing there,

which was admitted, *viz.*, that in January 1923 the current wages were not less than Rs. 2 per diem; therefore, taking 25 days' work in a month or Rs. 50 per month a safe margin had to be allowed for the people who go there to make a decent living and saving. Although Honourable Members may be struck with the fact that these people get nearly Rs. 2 a day, they have to remember also the cost of living in that place which is Rs. 38, so that only Rs. 12 is left as a margin for their festivities and for old age and sickness and other things; so that the Committee thought that if they fixed this condition, that is, if any labour is unable to get this wage then he should be repatriated, that is how we resolved unanimously on the 30th January as Honourable Members will find on page 37, it would be the proper course; the permission should be subject to the condition that if any labourer now imported is unable for a period of two years after landing to obtain a wage of Rs. 2 a day which shall not include medical relief or quarters and satisfies our agent of this and wishes to return to India, he shall be entitled to repatriation free of charge. That was a very reasonable proposal we thought. Honourable Members will remember that at about that time the Ceylon and Malay States question came up for consideration in this Assembly and I am afraid that the attitude of this Assembly in reference to those colonies has influenced a slight backing away or back-sliding of this colony and going back upon the terms which they were prepared to offer at that time. Now, what has happened? Those who formed the deputation told us in January 1923, the Government told us in August 1922 and also in June 1922 that the current normal rate was Rs. 2 a day; we did not want to interfere with the market conditions in that place by putting in 1,500 families there. Honourable Members will notice the proposition is to send 1,500 adults; adults includes dependants and therefore you are sending 1,500 families which means nearly 3,000 or at least 2,500 labourers; so that you are introducing in a place where there is an Indian labour population an additional labour population of 2,500. Therefore it will have its economic effect on the law of supply and demand. Honourable Members will remember that in 1921 the average rate of wages was Rs. 82; in 1922 it fell to Rs. 50; so that the wages have already shown a tendency to fall and we do not want to introduce another factor to put pressure in the labour market and make the wages go further down. Therefore we thought it was a very good condition to impose, so that the people who go there will have something to save and it will not adversely affect the labour market there. That is what they say themselves; they say "If you fix this condition it will have a tendency to keep the wages at that level." I quite admit it. But you yourself admitted that that is the normal rate and therefore we are not introducing any new rate. You yourself having admitted that is the normal rate and that is the rate which you were prepared to offer, we do not want to reduce it. Then we met a second time; and although I was for taking a different course the majority of the members resolved, as Honourable Members will find at page 39:—"The remaining members considered that the criterion for repatriation should be the cost of living, calculated in the manner, and on the scale shown by Mr. Walter, *plus* Rs. 12". Very well, I did not object to that very much, although I was for fixing Rs. 50 per mensem. Now this was about the 3rd of February. On the 10th of February we passed our Resolution about the Ceylon and Malay Settlements. Of course, they went on pressing and we went on yielding. So it was a question of bargain; it depends upon who is able to stand firm. So the deputation perhaps thought that this Assembly was quite prepared to agree to whatever people from other

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Committee, were unable to see their way to sending labourers to Mauritius. But the Government of India as well as the Committee have fully examined again the question as to what the existing conditions are in order to see whether there is any demand for new labour or whether this demand is put forward only to depress the labour conditions in Mauritius and they have come to the conclusion that more labourers are needed for the purposes of that Colony. It has been proved to us—and Honourable Members will see that—that the area under sugarcane cultivation has gone up between the years 1911 and 1922 and that the number of labourers who are available for the sugarcane cultivation has been reduced. It has been said that at least one labourer would be required for 3 acres. There are at present 162,000 acres under cultivation. 54,000 labourers are therefore said to be the proper requisite for getting the best out of those 162,000 acres—for getting the proper yield and for proper cultivation, whereas the number of labourers has been reduced by about 9,000 as between 1911 and 1922. That is, there were more labourers available in 1911 for the cultivation of a smaller area and the Committee was satisfied therefore that a larger number is required to carry on efficiently the sugarcane cultivation which is the main staple crop of that Colony. Honourable Members might ask why the number of male labourers should have been reduced as between 1911 and 1922. The reason is simple. A number of the old indentured labourers have in the ordinary course of nature disappeared from the scene of their labours. The number of adult labourers therefore has been reduced considerably. Some of them have also taken to other occupations and the net result is that the number of labourers between the ages of 20 and 49 is at present only 30,907 and the members in charge of the agricultural department from Mauritius have told us that about 54,000 would be the proper number for the adequate cultivation of that area, but I shall not labour this point further. There were one or two reasons which induced the Government of India and the committee to consider that there was a real need for labour. Large irrigation works have to be undertaken. A sum of 1 crore 40 lakhs which is available for public works including irrigation works has to be spent, and it is proposed to be spent over a period of ten years, it has been proved that the existing labour population is inadequate to carry on efficiently even the present area under sugarcane cultivation. Therefore if another additional 50 thousand acres of waste land are to be brought under cultivation and if these public works are to be undertaken, the existing labour population would certainly be inadequate, inadequate as it is considered even for present purposes. The main point that was urged was that the new labourers might take out of the mouth of the existing labour population their bread, may compete with them and consequently depress the labour market. We feel that there will be no such danger whatsoever because the men that are to go from here would not be engaged on the same work, except that they would be free to do so if they liked, but have got new work allotted for them and consequently for the same quantity of work an additional number would not compete and we therefore felt that there was no danger whatever in allowing a small number to go from India. What would be the result of our refusing to grant assistance that is so sorely needed by the colony. I think the effects would be disastrous from the point of view of the Indians themselves who are settled there. It may be that the ignorant labour population may grumble. It may be so. I am not stating that it is so. Let us take a long view of things and consider as to whether it would not be to the advantage of the

existing Mauritius Indian population to enable them to live under healthier conditions, to enable public works to be built when the money is there, to bring new land under cultivation which would be shared by them and possibly by the new emigrants from India and consequently the Government have felt and the committee have felt in the earlier stages that they would be doing the right thing to assist the colony by the supply of a small labour force and that they would be jeopardising the true interests of the existing population itself by refusing the assistance that has been asked for. Now, Sir, I come to the question as to whether Government should really ask and this House can ask for different terms than those proposed in this notification. Honourable Members will remember that we are no longer dealing with an indenture system. If we could guarantee the labourers that go from here to the Government then a different set of considerations would arise. The Government could say, we will pay the 45, or 50 or 60 rupees per labourer and we can fix him by means of a contract. But we have deliberately set our face against the continuance of the indenture system. The labourer is now a free man. When he lands there he can work under the Government or under a planter or earn his living in any way he likes. There is nothing to tie him down to Government work or to work for a planter. Consequently, it will not be possible for this House or for the Government of India to fix any rate of wage which must be guaranteed over a period of years. Honourable Members will see the difficulty under which we have to work the new system. That being so, we have to satisfy ourselves whether when these 1,500 men go there they will really be confronted with a situation in which they would not only be unable to seek their living on proper lines but would be compelled to accept such a low wage as would really handicap them. The only way out was to stipulate with the Mauritius Government that they would repatriate unconditionally any labourer whenever such a state of things obtains in that colony as would compel a labourer to work without getting a living wage with some reasonable margin. The only way out therefore was to provide a repatriation clause under which this would be guaranteed to the labourer who goes from here, and such a repatriation clause has been provided for. At the end of two years a labourer will be entitled to demand repatriation, whether he can earn a living wage plus a reasonable margin or not. And further, before the end of the two years if he can satisfy our agent whom we hope to employ there that he cannot earn a living wage plus a reasonable margin, then also he would be entitled to be repatriated at the expense of the Colony. I suggest to the House that that is a very reasonable position, while the fixation of a definite sum, such as Rs. 12, would not be quite the best thing to do, especially since we have to deal in this Assembly with broad principles and not details. Honourable Members will understand that we have to determine the principles here and leave the working out of the details to the Executive Government. And any principle which we may apply to this case would ordinarily be applicable to the other Colonies also. We cannot fix as a Legislature Rs. 12 in the case of Mauritius, Rs. 5 in the case of Ceylon, Rs. 3 in the case of the Straits Settlements and Rs. 4 in the case of Fiji—I am only giving hypothetical figures. What we can insist on is a living wage plus a reasonable margin and here I think the Committee have done as much as they could in asking for a living wage not only for the man himself but sufficient for a wife and three children besides. That is a new principle and a principle I think which would help the labourer considerably in his struggle in this as well as in other Colonies, and I would draw the attention of the House to the supreme importance of the acceptance of this

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principle as a line of policy which we are initiating for the first time in dealing with Mauritius.

Now, coming to the question whether the negotiations which have been taking place here have not really depressed the labour market there and are not calculated to depress the market further, and whether the reason for the Colonial Government stating that they would not be able to agree to Rs. 12 wage is the one suggested by the Honourable Mr. Rangachariar, we shall have to take two or three points into consideration.

We have been told by Mr. Walter and the other Members as well as by the Indians who came here that the wages fluctuate remarkably in that colony in the busy season and in the busier season. The fluctuation is between Rs. 1½ and Rs. 3½ and even Rs. 4. At the time when the Colonial Government addressed us, it was about Rs. 50, and we were told that the cost of living as then computed in 1921, was Rs. 38-8. We have asked the Colonial Government as to what this means as to what the state of prices is at the present moment, and we have got information to show that during this period there has been a fall in prices to the extent of about Rs. 10—that between 1921, when it was stated that it was Rs. 38-8 and the period we are now thinking of, that is at the present moment, the cost of living of a man, woman and three children, we are told now, has fallen from Rs. 38-8 to Rs. 28-8. That accounts really

Rao Bahadur T. Rangachariar: May I draw the Honourable Member's attention to page 51, the fact is, the note is added on the 20th February, 1923, to the table,—page 51, at the bottom, the note added on the 20th February? This explanation is only added after the meetings were over.

The Honourable Mr. B. N. Sarma: I was anxious to know as to what these fluctuations mean, and before I came to this House I wanted the Colonial Government to supply me with figures showing what the actual cost of living is at the present moment because I wanted to be satisfied as to why it was that they stated that the wages obtaining in the market at that time were about Rs. 30 or Rs. 32, and in answer to my query the Mauritius Government has kindly supplied us with information which would show that this fall in prices has been due to . . . (An Honourable Member: "Since when"?). The papers were put up to me yesterday; I think Mr. Hullah obtained the information only very recently, it must have been two or three days ago. I think it was after those papers were printed off,—that is the reason I had this information given to me last evening; and I am mentioning them to show that the Colonial Government have not assumed an unreasonable attitude in the matter and that the effect of the discussions on the Ceylon question were not really the factor which influenced or could have influenced the attitude of the Colonial Government in this respect. Honourable Members will find at page 53, that there is a fall of nearly Rs. 5 in the price of rice—it is no wonder—what Mr. Walter gave us was the prices in 1921, and Honourable Members will realize that there has been a considerable fall in the price of rice since 1921; so then we were proceeding on the basis of the 1921 prices, and we are now proceeding on the basis of the 1923 prices; there has been a fall of Rs. 5 there, a fall in the price of dhal of about Rs. 1½; I need not go into all the details, the total works out at

Rs. 10 less, so the cost of living for a family is Rs. 28-8 as against Rs. 38-8. That accounts really for the Colonial Government being cautious in their attitude as regards the fixation of a specific sum which must be guaranteed as a condition of repatriation. They are willing to accept the principle, and we can proceed only on general principles, so long as we are satisfied that the acceptance of the principle, if translated into action, is not likely to prejudice either the existing labour population in Mauritius or the man that goes from here. There is one point, Sir, I would ask the attention of the House to, and that is this. What we are now dealing with is the question of minimum and not the question of maximum or the question of the wage which would be earned by the labourer hereafter in Mauritius. The minimum was Rs. 1½ as Honourable Members will notice. The maximum was Rs. 3½ or Rs. 4. That is, when there is the stress, when there is demand for labour, labour is able to dictate a higher wage and it gets it. It will be able to do so exactly in the same way hereafter also, because there is nothing to prevent the labourers, either now there or those who will be going there hereafter, from dictating the wage on which alone they would work, provided we do not over-stock the labour market. But we have already tried to show that we are not likely to over-stock the labour market, because if the Mauritius Government are going to undertake the new works costing Rs. 140 lakhs, if they are going, by means of irrigation works, to bring in another 50,000 acres of waste under sugarcane cultivation, surely it follows necessarily that these men, small as they are, only 1,500, would not be able to do even the new work that lies before them. Therefore, the labour market would be exactly in the same position, it will perhaps be in a better position, by reason of the new works which are contemplated by the Colonial Government. I would therefore put it to the House that the conditions that are adumbrated are likely to improve the condition of the existing labourers and the labourers that are going from here, and that what we have to see is that the labour market is not over-stocked. Then, if we cannot fix a wage because we cannot guarantee that these labourers would work only for the Government or would work for the planters, what is the other course open to this House and to the Government? The provision of a minimum, the non-receipt of which would entitle them to repatriation. The only point, then, before the House is whether it ought to be Rs. 12, or Rs. 10 or some indefinite sum which is to be fixed by the Government; it may be in excess of 12, it may be smaller than 12, but it will be some sum which ought to be determined in relation to some accepted principles. If the Government of India find that it should be more than Rs. 12 and the Mauritius Government are not going to accept it, then no emigrants will go from here. I am not suggesting that there is that possibility or probability. All that I am saying is that we shall have to accept the margin as a margin for what?—for sickness and for old age and such other things. We shall, therefore, have to proceed upon some data, some scientific data, which would give us on an insurance basis the amount that would be required in the case of these labourers as a provision for sickness, old age and other contingencies. The Government of Mauritius or the agent of the Government of India, should communicate to us, what the margin ought to be, and it would be for Mauritius. It is impossible for us as a House to determine what the margin should be. Honourable Members will also see that this has a very great bearing upon the determination of the margin with reference to such earlier colonies also. What is the ground upon which this Rs. 12 has been fixed for two years, I

[Mr. B. N. Sarma.]

for? This Rs. 12 has been asked for because Rs. 38 was the living wage and Rs. 50 was the wage of the labourer at that particular moment. Therefore, Honourable Members said that Rs. 12 shall be the reasonable margin. But it may not be a reasonable wage, reasonable margin, supposing insurance money for sickness and old age happens to be a larger sum having regard to the fall in the living wage.

My position really is that the question of a margin should be determined by some scientific principles. I will not say there is anything very scientific in this matter, but I mean some basic principles of action which would be applicable to all colonies alike, and that the House would be doing the right thing if on a matter of that kind they left the margin to the Government to settle. It is always open to this House if the Executive do not exercise their discretion correctly, to take the necessary measures for the purpose of preventing any evil which may be growing up. After all I would suggest that the cost to the Government of Mauritius of employing an agency and of taking these 1,500 men will be a very large sum. They are not likely to pay as much as 150 or 200 rupees per labourer unless they are really wanted there. That is a point I would like to press upon the House. The Mauritius Government is not likely to spend Rs. 200 or 250 per labourer at the risk of having to repatriate them at their own cost within two years, and certainly after two years, unless there is real work which has to be given to them the moment they go there. And if there is new work to be given to them, I would suggest to the House that there is no danger whatsoever of the labour market being depressed by this small number being allowed to go there. What is the Government Officer going to report on at the present moment? It is only experience that will tell us whether our expectations are going to be realised or not. If the fluctuations in the market price of labour are as wide as a rupee and a half and three and a half rupees, a few months' stay in the island would not enable him to tell us what it is going to be. Therefore the Committee fixed on the small number of 1,500 and that only for one year in order to watch the effect of the new immigration upon the existing local market. They have deliberately given to the Mauritius Government only a small number with a view to watching the effect on the labour market there before a larger number is sent of the 7,000 men that were asked for. Government are as anxious as any Member in this House to see that the Indian population there is not prejudiced. We do not want to get rid of labourers from here. That is not in the slightest degree the wish of the Government or of any Member of this House. We want to safeguard the interests of the existing population of Mauritius, which may be truly said to be an Indian colony, and we feel that it would be prejudicing the interests of that colony if we did not supply the small number which that Government has been asking for continuously for the last many years. 1,500 is not a large number. The effect thereof will be watched with care by the Government and, as already stated, we are not going to agree to a worker leaving the shores of India until we are satisfied that he would be able to get a fair wage. All that we are asking the House should accept the principle and leave the working out of the 1921 principles to the Executive Government, and having regard to the prices that have been made in this House, the Government would endeavour about Rs. 12 to ascertain the conditions in Mauritius before they took

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): How?

The Honourable Mr. B. N. Sarma: How? By means of such inquiries as may be possible. It may be that if on further inquiry we feel it is necessary, we may have to send an officer. I am not going to say that the Government will not find on further examination that it is necessary that they should know the exact state of things. All that I am asking is that we should not be bound down to a particular policy. We have got the interests of the labouring population at heart and if we are not satisfied with these wide fluctuations, we shall ourselves embark upon an examination of the question by sending such officers as we desire to see that neither the new immigrants nor the existing labouring force is prejudiced by any action that this House may leave it to the Government to decide. The reason why we have been obliged to place this question before this House at such short notice is that we may not have an opportunity in the near future of asking the House to agree to this notification, and it may be a very long time before we might be able to do so. It is undesirable, especially having regard to the fact that we shall have to postpone indefinitely the execution of public works in Mauritius, which would be very helpful to the Colony, to delay, if delay can be avoided; but Honourable Members may rest assured that we will not hurry in this matter so as to prejudice the interests of Indians already in that Colony.

Mr. President: If Honourable Members wish to continue the debate, I think we had better adjourn now till Twenty Minutes to Three.

The Assembly then adjourned for Lunch till Twenty Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes to Three of the Clock. Mr. President was in the Chair.

Mr. B. S. Kamat: Sir, with reference to Mr. Rangachariar's amendment, I am sorry I cannot agree with him either in his motion or his arguments and inferences. What he wants is that this question should be postponed pending an investigation on the spot by an officer of Government with an idea of finding the probable effects of immigration of fresh labour into the Colony of Mauritius. He bases his argument for postponement chiefly on the ground that he apprehends an influx of labourers that is affording from India to Mauritius.

That raises, Sir, two or three distinct issues: in the first place, whether there would be really an influx; in the second place, whether this stage of the negotiations is an opportune moment—whether it is not too late at this stage, I mean, to open up that point; and thirdly, whether we have to look at the whole question from the point of view of the inconvenience to the settlers in Mauritius or whether we have also to look to the prospects and the interests of the labourers who will go from India to Mauritius.

Now, taking one of these points first, namely, about the propriety of starting this issue at this stage, I for one, Sir, think that Mr. Rangachariar, who was a Member of the Emigration Committee, should have raised this point about the influx and its probable effects much earlier. These negotiations have been going on for something like two years, I

[Mr. B. S. Kamat.]

believe. From the correspondence it would appear that the Government of Mauritius re-opened negotiations about fresh labour from India so far back as April, 1921, and the matter has been pushed backwards and forwards—telegrams, cables, correspondence, etc., passing between the two countries for nearly two years. They also called out a deputation to meet this Emigration Committee, and it seems to me, if at all, Mr. Rangachariar wanted to raise this question of whether 1,500 labourers would flood the country to the detriment of the settlers there, he should have started this point as a preliminary point in the Emigration Committee before calling a deputation to come all the way here. If for any reason, either political or general, he thought it was undesirable to send even 1,500 people from here to Mauritius, well, he should have said it was undesirable to do so at the very beginning, and by a stroke of the pen it is open to us to say we shall send no more labourers to that country. It is too late in the day in my opinion for this Government or for this Assembly to open up that point now after all these negotiations and after practically coming to a definite conclusion with the Government of Mauritius now to say that we wish to hold another inquiry into that subject is, I believe, to make the position of this Assembly and even of the Government of India rather—well, if not ridiculous, at least unfavourable in the eyes of the world.

Rao Bahadur T. Rangachariar: Sir, will you permit me to make a correction. If my Honourable friend will refer to page 37, he will find that even at the very first meeting we raised this question and that we were very apprehensive of the influx of this labour and that is why clause 4 was added at page 37.

Mr. B. S. Kamat: If that question was raised, still, as further negotiations were carried on I take it that the question of the result of this influx was waived, and that these 8 or 9 conditions were acceptable to the Committee. The Committee cannot now go back to the first preliminary issue and raise that point again here.

Now, secondly, he wants to find out the probable effects of this influx into Mauritius. I wonder how that is practicable at all. Even if a Committee goes there, or a Government officer goes there, how can they in a week, in a month or even in two months find the probable effects of the influx of 1,500 people on the market rates of labour there? If such a Committee or a Government officer examines the labourers there they will probably give him one view; they will naturally say "we do not want any more labour to come in at all" and if the Committee examines on the other hand the capitalists, the employers of labour there, they would desire as many more as is possible. In fact, it would be very difficult for any man or any committee to gauge approximately and forecast the result of 1,500 people going there, whether it would be adverse or favourable. In fact any opinion formed would be so vague, so indefinite, and without any practical value that I do not think it is possible to gauge the probable effects of it even supposing we decide to have a committee of inquiry into Mauritius conditions. Therefore I do not think it is necessary to press for an inquiry at this stage. The results of such inquiry would be impracticable and of no earthly use whatever for the determination of the question we have in view. Mr. Rangachariar further told us that he looked at this question from the point of view of those who have settled in Mauritius. I beg to differ from him. The Government of India and

the Legislative Assembly must not take only a one-sided view about what would be the effect on the settlers there; we have also to look to the interests and the prospects of the people who will go from here. We must keep an open mind on this question. Mr. Rangachariar thought that there would be a depression of rates there and probably these 1,500 labourers who would go to Mauritius would find themselves in a very bad plight. I for one think that the position of the settlers in Mauritius at the present moment—at least looking at this report—so strong that there will hardly be any effect by the addition of only 1,500 labourers. Mr. Rangachariar has only to look at one or two figures in this report to see in what strong position the settlers are at the present moment in Mauritius. We are told here that the real property which changed hands, that is which was purchased by the Indian population there during 1921 was no less than a crore of rupees in value. Now if a population of say 260,000 can really buy property worth a crore of rupees in one year they must be in a very strong position indeed; I doubt, Sir, whether even in South India or Madras Presidency one district or two districts or even three or four districts put together can show such a good result and such a very strong position of the coolies there. If that is the state of things,—why even further on there is another statement in this report that during the last five years ending 1920 the settlers in Mauritius have bought land which is worth Rs. 29½ millions, or nearly Rs. 3 crores. I doubt I say whether in Southern India you can show such a strong position among the labouring classes, that they can purchase in five years Rs. 8 crores worth of land. If that were to be so, I am sure many of the representatives from Madras would not come here, moaning and beseeching this Assembly for a reduction in the provincial contributions.

That being the strong position in which labourers settled in Mauritius are, I doubt whether 1,500 more people would ever affect their position at all; they would be a drop in the ocean; and therefore the fears of my friend, Mr. Rangachariar, are rather misplaced.

He further went on to show that he has a shrewd suspicion that there was the change of front or change of attitude either on the part of the deputation or on the part of the Government of Mauritius with reference to the fixing of a standard minimum wage. I do not know what basis he has for drawing that inference or having that suspicion. I do not know any of the Members of that deputation here, neither was I on the Emigration Committee; but reading this report carefully I find no such ground for believing that there was any backsliding or anything to draw a definite inference that there has been a change of front. Mr. Rangachariar laid stress on the fact that a telegram from the Government of Mauritius came to the Government of India dated the 12th February, and that probably this being after the debate in this House on the 10th of February there was some sort of hidden connection between the event which occurred on the floor of this House on the 10th February and the receipt of that telegram dated the 12th. If Mr. Rangachariar sees that the Government of India had sent a telegram to the Mauritius Government on the 6th February and that this telegram of the 12th is in reply to that telegram of the 6th, I do think that it is not possible to draw any inference from those dates adversely to the Government of Mauritius. Indeed, I doubt whether the deputation could send a telegram after the debate here on the 10th which would be on 11th, and the Government of India could get a reply from the Government of Mauritius on the 12th. Therefore, too much stress cannot be laid on the two dates of 10th and 12th February.

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Then my friend Mr. Rangachariar went on to show that the deputation at one time told the Committee here that the minimum amount of wages which labourers earned in Mauritius was Rs. 82, subsequently they came down to Rs. 50, and that at present they are not prepared even to accept Rs. 50 and therefore he seems to think that there was some mysterious sort of attitude on the part of the deputation here. In reference to this, Sir, I find on page 33 that the deputation had distinctly told the Emigration Committee that all adult labourers can get Rs. 2, Rs. 2-8-0 and Rs. 3 at present as daily wage, the higher rate being in harvest time. They went on however to make it clear and to say further that the lowest rate was Rs. 1-8.

Rao Bahadur T. Rangachariar: For road making.

Mr. B. S. Kamat: At any rate, they had not concealed that the rate was Rs. 1-8, and if this is a fact, and if the deputation had distinctly given the Committee to understand that the lowest rate in one particular trade at least was Rs. 1-8, I do not think it is fair to accuse the deputation that they did not give us proper information.

Then Mr. Rangachariar quoted another paragraph about the current wages. There again the deputation had distinctly said that Rs. 2 was approximately the current wages per day for 26 working days in the month for daily labour and Rs. 32 per month for engaged labour. Here also they had told the Committee that Rs. 32 was the current wage in Mauritius under certain circumstances. Taking all these things into consideration, I do not think there is room to say that there has been back-sliding on their part at the present moment.

I now come to the question what is the desirable thing to do. Mr. Rangachariar says that he is in favour of a fixed scale. He wants the Mauritius Government to be committed to Rs. 50 as the minimum standard, Rs. 38 to cover the cost of living and Rs. 12 to be the margin of saving. I put it to the House which is the better course? Should we insist on a minimum wage and arbitrarily fix the sum of Rs. 50 under the idea that the present cost of living being Rs. 38 a man will be able to save Rs. 12, or should we go in for elasticity? The question to be decided is whether it should be a fixed scale or elasticity, which is the better principle? I for one think that elasticity is a better principle. If we arbitrarily fix that Rs. 50 should be the minimum wage, it will depend entirely on the cost of living for the moment. The cost of living may go up or go down, so also the margin of savings. After all, whatever one's expenses per month may be, what I look to is how much one has saved. If I get Rs. 500 per month, and if I spend Rs. 450, I consider that my net gain is Rs. 50. If in the next month I earn Rs. 600 and if I have to spend Rs. 550, the net gain is still Rs. 50.

Rao Bahadur T. Rangachariar: There again I must correct my friend. The proposal is not to fix Rs. 50. It must be the cost of living plus Rs. 12.

Mr. B. S. Kamat: Whatever it is, the principle remains. The Government of Mauritius are prepared to commit themselves to fixing the basic wage plus a reasonable margin for saving. Mr. Rangachariar wants a definite figure—which might be Rs. 50 or anything—he wants a definite figure to be laid down for all time to come as a limit.

Rao Bahadur T. Rangachariar: No, no. That Rs. 12 is the margin of saving.

Mr. B. S. Kamat: I don't think there is any advantage in committing oneself to any set figures in respect of the cost of living and a particular margin of saving. We should leave it elastic. Supposing a Government officer who is to be sent to Mauritius says that the margin of saving should be one-fourth of monthly earnings and if at any particular time the man is able to earn, say Rs. 60, if one-fourth is fixed as the margin of saving, he will be able to lay by Rs. 15 instead of Rs. 12. Why fix Rs. 12? In any case, therefore, I am for elasticity rather than fixity even in the matter of the margin of savings for these people. And then again, as the Honourable Mr. Sarma put it, when we are sending these people for Government work, we must remember that, after all, those settlers for whom Mr. Rangachariar is speaking will be benefited by the labour of these 1,500 additional men, in the shape of the sanitary works and other things for the development of Mauritius in which they will participate. After all, what Mr. Rangachariar now wants to do is to keep the standard of living of the settlers there in precisely the same position as they now have without improving them whatever. What the Government of Mauritius want to do is to have large development works with the assistance of 1,500 men from here so as to give a better standard of living for all those settlers already there. I think we ought to send these 1,500 men not only in their own interests but also in the interests of the settlers because they will be able to develop the country, so that the standard of living of the settlers will be much higher than it is at the present moment. For these reasons I think we ought to accept this Draft Convention as proposed by Government in the precise form in which it is put forward.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadian): Sir, I gave notice of an amendment more or less similar to that of the Honourable Mr. Rangachariar, but with this difference that Mr. Rangachariar proposes to send out a Government officer to inquire into the condition of Indians in Mauritius, while I propose a Committee of inquiry consisting of two or three or such number of persons that the Government may think proper. Therefore, Sir, with your permission, I would rather like to amend the amendment of Mr. Rangachariar than to amend the Resolution as I gave notice. I move the amendment in this form:

"In Mr. Rangachariar's amendment omit the words 'an officer of the Government of India' and insert the words 'a committee into the conditions of the existing Indian labourers in Mauritius and'."

The Honourable Mr. Sarma, while defending the attitude of the Government in permitting emigration of 1,500 people to Mauritius, said that the number of labourers we propose to send was not so large as to affect the labour conditions of Indians already settled in Mauritius. But I venture to submit that he seems to have forgotten the economic principle of supply and demand. May be that this emigration may not affect their condition to such an extent as to be described as disastrous to the interests of the Indians there, but I cannot believe that the emigration of these 1,500 or even a thousand persons would not affect their condition at all. The Honourable Mr. Sarma went on to say that in Mauritius there was a very great need for the labour from this country. I may take the liberty to inform him that, even in this country, the Assam Tea Garden and other plantations who require labour for their work are always in constant need of labourers, so much so that they also have to pay very large sums for recruitment of labour for their plantations. This would not mean that

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India had not sufficient labour to supply to the Assam Tea Gardens or the planters in Bihar or other places in India. It is thus fallacious to argue that because there was a demand for Indian labourers from this country or that there was need for labourers there. The conclusion should necessarily be that there are not enough men in Mauritius to do the work of Government or in the sugar factories.

Sir, the Honourable Mr. Sarma as well as the Honourable Mr. Kamat have based their opinion as to the need and desirability of sending labourers from this country on reports and evidence supplied to us by the Honourable gentlemen who came down from Mauritius as well as on the Despatches of the Governor of Mauritius, but we seem to forget that the Government of Mauritius as well as these gentlemen who came to this country to give evidence were all interested persons and none of them represented any independent body of Indians in Mauritius. Mr. Kamat also said that "How would it be possible for the Committee or any Government officer to find out the actual condition of Indians in Mauritius within a short space of a week or 10 days or a month's stay". I would only reply to Mr. Kamat by a counter question as "How could it be possible for us to form any opinion on the mere evidence and reports of interested persons as to the actual condition of people who have gone over from this country to that country?" We should not be led away by the evidence of interested persons and the papers that have been put before us. It is desirable that some further inquiry be made before we can allow any emigration from this country. As to the need for an inquiry the Honourable Mr. Rangachariar has also spoken at very great length and made out a case which has not been successfully refuted by the Honourable Mr. Sarma. How do we lose if we allow an inquiry to be held in that country by a deputation or by a Government Officer, it may not take more than, say, 2, 3 or 4 months? If these people in Mauritius could wait for so many years from 1915 to 1923, they can very well afford to wait for about four months more and moreover the inquiry will give us a more satisfactory idea of the condition of Indians in Mauritius and we shall not be committing a mistake if thereafter we were to send our people to work for the benefit of the Government or the settlers in that country. I am of opinion that an inquiry is absolutely essential before we go against the principle which we adopted so far back as 1909 of stopping all emigration from this country to that country. Sir, it is common knowledge that Indians in general deprecate the idea of emigration from this country to any place whether they find that Indian labourers will not have better wages and better conditions than what they are getting in this country. It has been pointed out by some gentlemen that Indian labourers would be better off in that country because there was a possibility of their getting wages of Rs. 2, 3 or even Rs. 4 a day. But I am afraid those gentlemen forget to compare the difference in the cost of living in this country and in that country. It may also be said, as was said on the last occasion when we permitted emigration to Malay and Ceylon, that people would not migrate to that country if they thought that the conditions there were not favourable to them or that they would only migrate when they were satisfied that the conditions were much better and superior to those prevailing in this country. But I think that this is not a proper thing to rely on, because, we have seen from our experience in the past that the people from this country went to that country on similar considerations that they would be better off there, but what was the result? We found their conditions actually much worse, than what it was here or that the further

emigration would make it worse and we had to stop emigration. There was a very strong opinion in this country against emigration to countries like Fiji, Mauritius and so on.

On the other hand it may equally be said that persons who want the labour to migrate to their country, be it Fiji, be it British Guiana, be it Canada or be it any other place, are sure to paint very bright pictures of the condition of the people settled there and it is not only the poor and illiterate persons that are carried away by such bright prospects and conditions but even the educated people are sometimes duped by the propaganda work done by a interested group of persons. It may just as well be possible that the evidence before us be only a one-sided and a garbled version and be quite different from the actual state of things in that country. It will do no harm to anyone if we were to ask for a deputation to be sent to that country to find out the actual conditions there. Sir, I would be satisfied if even one Government officer or a non-official Indian were to go to that country to find out the conditions of Indians and the possible effect of emigration, but I think that the country in general will not be satisfied with the deputation of a Government official alone. I do not mean to say that the Government officials who were deputed in the past to inquire into the conditions of labour and Indian settlers overseas have done in any way any harm to the Indian interests or have not done so well as an Indian would have done while on the other hand we are deeply grateful to those Government officers like Sir Benjamin Robertson or Mr. Corbett who went in the past from this country to South Africa and other places and who have done their best to better the conditions of Indians, they had as much interest of Indians at heart in all their inquiries as any Indian could have, but in order to pacify the strong public opinion against emigration and also as a sort of propaganda work and to remove the prejudice against emigration which exists in the minds of people in this country, it is more desirable that a deputation consisting of an official and non-officials be sent to make the necessary inquiries. There is also some principle involved in it. We find in the courts of law that a judgment of a Bench or even the judgment of opinions of two or more persons is generally considered more weighty and in many respects is more acceptable than the judgment or opinion of a single person however good and sound that opinion may be. It is therefore desirable and necessary, that a deputation of two or more persons should go instead of only one Government officer as proposed by Mr. Rangachariar.

It may be said that in the case of Ceylon and Malaya we did not insist on sending out any officer or deputation to inquire into conditions of Indians there, but the case of Ceylon and Malaya is different from Mauritius. Ceylon and Malaya are close to India. Everyone here more or less knows the conditions of Indians in those places whereas in the case of Mauritius it is far away from India and it is very difficult to find out the actual conditions from here. The Honourable Mr. Kamat asked how can an officer or deputation find out such conditions simply by examining the representatives of labour or the representatives of capital? I would reply that it is more possible that by closer contact with the persons there they would be better able to find the actual state of affairs in that country as to how the labourers will benefit by emigration and how the Indians already settled will be affected. It is necessary therefore that a deputation should go. I just remarked a few minutes ago that I would rather prefer an Indian to an European for such inquiry. I do not thereby mean to imply that an European officer would not look to our interests better than an Indian but I

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think that the Indian labourers will be more confiding and will have more confidence in an Indian officer or an Indian deputation consisting of Indians than in Europeans. They would not have the courage to approach the European officer and will hesitate to speak out their grievances freely to him. Moreover the Indian going there and knowing as he does the customs and habits and manner prevailing in this country will be in a better position to understand the conditions there than the European. I therefore submit that it is desirable that a Committee of inquiry be sent to Mauritius rather than an individual to inquire into the conditions of people and the effect of any fresh emigration before we permit the emigration of persons from this country to that country. With these words, Sir, I move my amendment.

Mr. President: The question is that the following amendment be made:

"In Mr. Rangachariar's amendment omit the words 'an officer of the Government of India' and insert the words 'a committee into the conditions of the existing Indian labourers in Mauritius and'."

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I have heard with interest and attention the speech of my Honourable friend, Mr. Agnihotri, and I do not at the present moment propose to take the House into the details of the various letters and telegrams that have passed between the Government of India and the Mauritius Government. That I leave in better hands. I will only draw the attention of the House to certain broad facts which are admitted on all hands. The facts are that the terms under which it is proposed in the Government Notification to permit the emigration of 1,500 adult labourers to Mauritius are that the Government of Mauritius undertake to provide the food and clothing of the labourer, his wife and three children, *plus* some margin of profit or saving if you like to call it. This much is admitted. The bone of contention is whether we should fix the margin at Rs. 12 more or less or leave it to the Government of India to decide the point. I would like to ask my Honourable friend, Mr. Rangachariar and Mr. Agnihotri, if they can say whether in their opinion or in their experience they have found any unskilled labourer in this country earning sufficient wages even to maintain himself, his wife and one child, not to speak of three or four. The question we are to consider is not what will be the effect of this emigration on the people who are settled in Mauritius, but what will be the effect on the people whom we are sending from this country to that. There is another question, Sir. From the speech of Mr. Agnihotri I understood that the question before the House was the condition of labour and capital in Mauritius itself and not whether we are to send 1,500 men or not. If conditions are bad in Mauritius that is not our business. So far as this House and this question is concerned, that is not under consideration . . .

Mr. President: I would draw the Honourable Member's attention to the fact that that is the proposal in the amendment moved, and that the issue before the House now is the method by which that inquiry is to be conducted. So long as Mr. Rangachariar's motion and the original Resolution were alone before the House, the whole question was open for discussion. But once the additional amendment by Mr. Agnihotri was moved and put from the Chair, then the issue was narrowed down to the method by which the inquiry is to be conducted. If the House does not wish to discuss that issue I had better put the question.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, I do not understand what this inquiry would elicit and what light it would throw on the matter. Now . . .

Mr. President: The Honourable Member has not quite understood. We must assume for the purposes of the discussion as restricted by Mr. Agnihotri's amendment that there is going to be an inquiry. That is only assumed for the purpose of debate. The question is whether it would be better carried out by an officer of the Government of India or by a Committee. I think I had better put that question. Does the Honourable Member wish to discuss it?

Rao Bahadur C. S. Subrahmanayam: Yes, Sir. The question is what is going to be the constitution of the Committee? How many are to go from here? What is to be the cost of the Committee? Have we not in the Retrenchment Committee's report the remark that too many Committees have been appointed and something like 60 lakhs spent on them, and with what results? Is not that a fair question? Besides, suppose a Committee, that is, a number of men go from here to Mauritius, what are they to do? Go and examine the coolie lines and ascertain the wages drawn there? Can we not get all that information through a single individual going there? Why do we want a Committee to sit on this matter? I think time was when we were very fond of Committees, but now it appears that we are not very much in favour of Committees. A good many people are not satisfied with the labours and the results of Committees or the fruits of those labours. Therefore, Sir, from that point of view I do not think this question of a Committee should be pressed. As that is the only narrow point on which I am now allowed to speak . . .

Dr. H. S. Gour: May I rise to a point of order? I understood the Chair to rule that only the narrowed question as to whether it is going to be an official inquiry or a non-official inquiry is now before the House. May I point out to you, Sir, that if the House decides on Mr. Rangachariar's main amendment, that there should be no inquiry at all, it will be supererogatory to go into this further question raised by Mr. Agnihotri, and I therefore suggest that the main question should now be debated and decided upon, and if it is decided by this House that there should be an inquiry, then it will be open to the House to discuss the further question as to the form of that inquiry. I therefore suggest, Sir, that it would be convenient to the House that we should discuss the broad question whether there should be an inquiry or not, and then go into the further question if necessary.

Mr. President: There can be no decision as to whether there shall be an inquiry or not until I put the issue raised by Mr. Rangachariar's amendment against Mr. Hullah's original Resolution. After that is once decided, no further debate can arise, and therefore, as I said, we must assume that there will be an inquiry for the purposes of the debate on Mr. Agnihotri's amendment; as to whether that inquiry should be conducted in one form or another, the Honourable Member will understand that the debate will be closed if I put Mr. Rangachariar's amendment against the Resolution.

Dr. H. S. Gour: That is exactly, Sir, what I suggest should be done, and under the Standing Orders . . .

Mr. President: If the Honourable Member's meaning is that, he had better move that the main question be now put, and the debate will come to an end.

Rao Bahadur C. S. Subrahmanayam: So I understand, after the decision of this simple matter, there will be a further discussion of the question whether there shall be an inquiry by a Committee or not, but so far as this point of inquiry is concerned, I think many of my friends will agree that there is no magic in a Committee of inquiry into this matter; we can get all the information by one single officer going there and giving us the fruits of his labours.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): May I move that the main question be put.

Dr. H. S. Gour: I move that Mr. Agnihotri's amendment be put.

Mr. President: The question is that the question be now put—the question refers to Mr. Agnihotri's amendment. Amendment moved:

"Omit the words 'an officer of the Government of India' and insert in their place the words 'a Committee into the conditions of the existing Indian labourers in Mauritius, and'."

The question I have to put is that that amendment be made.

The motion was negatived.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, some innocent-looking things have at times such an aptitude of sprouting into unexpected dimensions that in dealing with them one does not know where one is. Quite gratuitously have we heard of people coming here, moaning and beseeching for reduction in their Provincial contribution. I am sorry I am one of them, and I or my successor in this seat in the Assembly will have to go on moaning and beseeching till justice is obtained and right done. Mine happens to be also. Sir, a province where the emigration question, inland emigration was at one time very acute and one should have thought that to-day on the floor of this House we were in all seriousness discussing the old Assam slavery laws and trying to get rid of it and of all they stood for. There is however a change and a considerable change, and emigrant labour is now able more or less to lay down the law where it can. Sir, I should not like the proceedings of this House to go forth to the world, and if you had power of keeping them confidential and secret, I should have appealed to you to exercise that power. I should not like these proceedings to get into the hands of unsuitable people—say in Canada or in Australia or other places where the Right Honourable Mr. Sastri would have a warmer reception in another sense, when he goes next and when he will be confronted with what some of us have been trying to lay down here to-day. What is it we are trying to do? There are some people comfortably settled down in the land of Paul and Virginia, the land of honey and everything nice and good. We do not want to have them upset or unsettled. They are our own people and are able to dictate the law there, they are able to get good terms and other things which they think they ought to have. Why send another 1,500 men and say they bring in questions of rate-cutting, wage-cutting and other uncomfortable things that unsympathetic people in other parts of the Empire try to press against us when we go to them. I should not like to envy the Right Honourable Mr. Sastri during his next world tour, when these proceedings are hurled at him. He will in pleading again for justice for his countrymen, in other parts of the Empire, have the ethics now advocated, relentlessly quoted against him?

Sir, Mr. Rangachariar has reminded us that the Assembly must not vote away our people to other parts of the world, and he has told us that because of some things that this Assembly was guilty of not many weeks ago, in connection with Malaya and Ceylon emigration question, the Mauritius Government has taken advantage. In reply to a telegram of the 6th of February and relying on what had happened here on a later date between the 6th and the 12th of February, they changed their mind and resorted to other tactics and tried to beat us down. That may or may not be so. My reading of the correspondence is not that. On the other hand, I should have thought that a trained and practised special pleader like Mr. Rangachariar would have laid some stress on or tried to get rid of the closing sentence of the letter of the Mauritius Government of the 12th of February which I find translated in term No. 10 of the Notification before us. What do they say there? Mr. Kamat has very rightly reminded the House that in these matters it is better to have something elastic to go upon than to have a rigid, hard and fast hide-bound limit of Rs. 12. Who knows that Rs. 12 may not be insufficient later on? Mr. Rangachariar interrupting him said "Oh, this Rs. 12 is *plus* the food, medical treatment, housing and everything else." But Rs. 12 as savings may not be quite enough for all time. The sugar industry may be doing much better than it has been doing of late, and Government probably may be able to induce employees to give more. The Government of India has accepted, as far as the draft notification goes, what the Government of Mauritius state in its letter of the 12th February. It says:

"As stated in telegram of June 20th, this Government fully prepared to pay for imported labour at prevailing local rates."

That is supposed to be where the mischief of the situation comes in. They go on:

"Government suggest that figure for margin should be determined by your Agent or in his absence Protector of Immigrants. Government further undertake to agree to pay a wage to be determined in relation to cost of living and satisfying such authority" (that is our agents) "and to repatriate if such wage cannot be obtained."

That is what I find translated in term No. 10, as follows:

"The Government of Mauritius, in consultation with the Government of India or the Agent appointed under section 7 of the Act, shall from time to time determine the amount of wage which is sufficient to meet the requirements laid down in clause 9 of this notification."

Here, perhaps, Mr. Agnihotri's amendment, if it does come on, will be useful, that is fixation of wages shall not only be determined, but also reported to the Government of India, so that the Assembly may from time to time itself determine as to whether the right thing is being done or not and whether anything further is needed. Sir, on this occasion, we ought to congratulate the Government on achieving the reverse of what it did on a recent occasion—unlike on the previous occasion they have been good enough to circulate papers. They had also the advantage of a deputation which met the permanent Committee, of which Mr. Rangachariar himself is a member. We have made considerable advance in this direction we have had the question examined not only by the Government, but by the permanent Committee, which by a majority has passed in substance the terms of this notification, and it is to be in force for not more than a year. Supposing we are not quite satisfied with the state of things in Mauritius because of the factors Mr. Agnihotri has referred to affecting Ceylon and Malaya, further information can be necessary only from the point of view of future action.

[Sir Deva Prasad Sarvadhikary.]

From that point of view I quite see the necessity and reasonableness of inquiry of the kind adumbrated by Mr. Rangachariar. It has been abundantly made clear that no inquiry can be usefully held while the materials upon which the inquiry should proceed are wanting. How this fresh labour emigration is going to affect the labour situation there cannot be determined either by an individual or a Committee unless progress has been made to a certain extent and materials are available upon which a reasoned opinion could be given. Therefore if I have your leave, I should like to move a rider to Mr. Hullah's Resolution somewhat in the following terms:

"That the Assembly further recommends to the Governor General in Council that a competent person be immediately deputed to inquire and report within six months the effect of importation of further labour on the labouring population already settled in Mauritius."

This should have the advantage of leaving things open to the Government either to send one of its officers or such other person as the Government might think fit; after six months' trial of the present measure it would be possible for that person or persons to report to the Government of India; and when later on, after a year, if there was an indent for further labour, we might go into the question upon some basis that would be intelligible and upon which we could base any further action. I do not think that upon the materials that the Government have placed in our hands, or upon which the debate has proceeded so far, there is a case for throwing out Mr. Hullah's Resolution. Well, I am not concerned with what Mr. Hullah has said about there being no Assembly sitting when the result of the inquiry comes in later and giving sanction. It is the look out of the Government whether the Assembly will be sitting or not. It is not a matter in our hands . . .

Mr. J. Hullah: I really have never made any remark of the kind.

Sir Deva Prasad Sarvadhikary: I beg Mr. Hullah's pardon. The Honourable Mr. Sarma's remarks were to this effect. I do not agree with people who are saying that we are possessed with a megalomania. I am not going to characterise our present discussion in that fashion. It is quite right that we should do what we can for our people leaving India; they are not quite free agents. About this assisted emigration, people apply a stronger name, which I do not wish to use on the present occasion. But it is up to this Assembly now that it has opportunities, to use all possible circumspection and at the same time not to be guilty of endlessly blocking where no real danger exists. I do not want to ask myself or any one in this connection the question as to how much India pays its own labourers. Those are somewhat awkward questions and questions difficult to answer. We have had elaborate inquiries into prices by Mr. K. L. Datta and Mr. Shirras, who went into the thing. We never knew however where we were. It is impossible without proper appreciation of all difficulties to fix down these things by hard-and-fast rigid rules. If the notification errs at all, it errs on the side of caution and in the interests of the labourers themselves. It leaves the whole thing open. The Government of India will have its own agent and, added to that, if my rider is accepted as an addition to Mr. Hullah's motion, the Government of India representative will investigate the question on the spot and then we can have further materials on which later action can be taken.

Mr. President: I understand the purpose of the Honourable Member's amendment is to accept the publication of this draft notification, but to

add an inquiry thereafter. In that case, the amendment must come after we have disposed of Mr. Rangachariar.

Dr. H. S. Gour: Sir, we have been reminded this afternoon of a very salutary principle that we must be guided by in the determination of this principle, namely, the economic principle of supply and demand. Now, do Honourable Members and particularly the Member who used that expression realise the full effect of that expression. If we are to be guided by that principle of supply and demand, we have no business to interfere and should let the labourers go out as they choose and come back when they so desire and if they can. The principle which underlies the notification is a Socialistic principle, in which the State guides and controls the emigration of labour. The question, therefore, is how far will the State be justified in interfering with the free emigration of labourers from this country. Now, Sir, it is a well-known principle that, when the State does interfere, its interference must be limited to the very minimum, and for that purpose it must pay due regard not only to the welfare of the out-going labourers but to the general condition of the labouring population in this country and the country to which the labourers emigrate. Now, if I ask the House to advert for a moment to the condition of labour in Mauritius, what will they find? The Census Commissioner at page 42 of this compilation tells us that there were in 1921 only 39,185 labourers available against a demand for 57,185. We thus find that in 1921 Mauritius wanted 18,000 more labourers than were available in the country, added to which we have been told that, due to the expansion of further works and the initiation of irrigation and other projects taken on hand or about to be taken on hand by the Mauritius Government, the labour market would require more labourers than it is able to obtain in the Island. Consequently, the first question raised by my friend the Mover of this amendment that we might dump Indian labourers on to Mauritius and depress the local labour market is, I submit, entirely unjustifiable, so far as the facts and figures given in this compilation disclose, and there is ample room not merely for the emigration of 1,500 labourers but I think two or three times as many as 1,500.

Then comes the next question—the question of wages. It has been pointed out by the Honourable Mover of this Resolution that the wages in the island of Mauritius fluctuate according to the season, and I find from this book that they fluctuate between Rs. 82 and Rs. 30. Now, that is a fact we cannot ignore. The labourer who goes out from this country stands to make as much as Rs. 82, and he equally is exposed to the chance of making as little as Rs. 30. Now, I ask Honourable Members of this House, if one of their labourers was to ask them and say "I want to go out to Mauritius: I stand to gain as much as Rs. 82, though there is a risk of my making as little as Rs. 30," what would be their answer? I am perfectly certain, Sir, there is not one Member in this House who would, if one of his men were going out on these conditions, dissuade him from doing so. The contingencies of the labour market are such as exist everywhere. During the busy season labourers make more; during the slack season they make less; and I do not think that we can fix a rule, such as has been suggested, that we must fix Rs. 12 and the cost of living as the irreducible minimum to entitle a labourer to go out of this country.

Then, Sir, we pass on to the third question. My Honourable friend, Mr. Rangachariar, could not have forgotten the fact that a very large number of people who have settled down in the island of Mauritius and

[Dr. H. S. Gour.]

acquired fortunes were originally labourers, and that there is a prospect before the labourers of this country going out to Mauritius to get plots of land and become proprietors. The Honourable Mr. Sarma has pointed out that about 50,000 acres of virgin soil will be shortly irrigated and brought under the plough, and that I submit is a hopeful prospect for the would-be emigrant; and I think we should not lose this opportunity of endorsing the Government Resolution in view of the fact that the Government undertake to institute an inquiry as time and convenience may permit in the interests of the labourers; and we know for a certainty that the Government will keep an eye upon the condition of the labourers who go out from India. That, I submit, is as much as this House should ask and expect the Government to do.

Then, Sir, it has been said, and said with a certain degree of force, that 1,500 people going out from this country would not affect the labour market in Mauritius. We know that about 57,000 odd labourers are there, and as I have pointed out, the demand for labour in Mauritius is expanding every day and I do not think that there is the slightest possibility of these labourers getting stranded upon landing at Mauritius. If they did, the Government of India have provided that they would be entitled to repatriation for any reasonable cause, and the fact that they are not able to make a sufficient living in that colony would be regarded as a sufficient cause. I therefore submit that on every ground, due regard being had to what has been said by the Honourable Mover of this amendment, we should not be justified in delaying the emigration of these labourers to Mauritius which would be only possible if we supported the Government Resolution. My friend, Mr. Rangachariar, no doubt moved by humanitarian motives wants that an inquiry should precede the emigration. Now, Sir, if such an inquiry were to be taken in hand there can be no doubt that it will be a matter of six or eight months, or perhaps even a year. The result would be that this notification would be delayed for another twelve months or perhaps more. Has a sufficient case been made out to the House for delaying publication of this notification for twelve or more months? There is an underlying suspicion in the mind of the Honourable Mover of the amendment, reiterated by my friend, Mr. Agnihotri, that all that is written here is by the people who are interested in emigration and consequently we cannot trust all we read in their report . . .

Mr. K. B. L. Agnihotri: No, I never meant it.

Rao Bahadur T. Rangachariar: Speaking for myself I did not have that suspicion underlying my remarks.

Dr. H. S. Gour: I am extremely glad to hear that there was no suspicion in anybody's mind—overt or suppressed. Consequently, the only ground upon which this Resolution could be resisted does not exist and I therefore submit that this House should support the Government Resolution.

The Honourable Mr. B. N. Sarma: May I make an explanation, Sir? The Government do propose to send an Agent at as early a date as practicable and get reports from time to time as to the working of this emigration, and I think there is no necessity for Dr. Deva Prasad Sarvadhikary to propose a rider at all, because the Government do contemplate to get a report and the substance of it will be communicated to the House . . .

Mr. T. V. Seshagiri Ayyar: As early as possible?

The Honourable Mr. B. N. Sarma: As early as practicable. We have taken power under section 7 and I therefore do suggest that Mr. Rangachariar might in view of that assurance withdraw his amendment.

Sir Deva Prasad Sarvadhikary: Having regard to the assurance given by the Honourable Mr. Sarma which really is what I wanted to elicit, I do not propose to press my rider.

Rao Bahadur T. Rangachariar: I think, Sir, having regard to the turn the debate has taken I will place more faith in the Government and therefore I shall withdraw my amendment with the leave of the House.

The amendment (of Mr. Rangachariar) was, by leave of the Assembly, withdrawn.

Mr. W. S. J. Willson (Bengal: European): Sir, I would like, if I may, to make one point in connection with the amendment—to correct a statement . . .

Mr. President: The amendment has now been withdrawn. The discussion must turn on the main proposal contained in Mr. Hullah's Resolution.

Mr. R. A. Spence: I move, Sir, that in view of the Government statement, the question be now put.

Mr. W. S. J. Willson: May I have the permission of the House, Sir, to mention one point before the question is put? Being a Member of the Emigration Committee, I would not like the statement which was made this morning to go out of this House that the deputation from Mauritius had been guilty of back-sliding. I do not like the impression to get abroad from the statement made that a responsible deputation from a Colonial Government has been accused of back-sliding, and that it had not been challenged in the House.

Sir Deva Prasad Sarvadhikary: It was the Mauritius Government that was so spoken of and not the deputation.

Mr. W. S. J. Willson: A statement was made that the deputation went back on their promise that they would pay a wage of Rs. 50, and with the permission of the House I would like to call the attention of Members to page 21 of the Note prepared by the Revenue and Agriculture Department on Indian Emigration to Mauritius in which the telegram from Mauritius quotes "Normal rate for day-labourers on estates *does not exceed now* Rs. 50." At page 23 Honourable Members will find the letter from the Mauritius Government confirming their telegram which says "As stated in my telegram of the 20th June, this Government is fully prepared to engage labourers at local market rates." I think, therefore, there should be no question about back-sliding, I would like to associate myself, on the other hand, with all Mr. Hullah has said about the extremely nice way in which the Mauritius deputation have met us in every way after the heavy expense they had incurred, and I think it is only fair to admit and not to dispute any statement they have made.

Mr. K. B. L. Agnihotri: I do not wish to say anything more, Sir.

(Several Honourable Members: "The question be now put.")

Sir Montagu Webb (Bombay: European): Sir, I should like to mention one little matter for the information of the House which I find in the

[Sir Montagu Webb.]

Mauritius Year Book,—the last issue of the "Mauritius Almanac, 1922" to which no reference has so far been made; and it is this (on page A. 5). In the year 1920 the whole of the Mauritius sugar crop was purchased by the British Government for twenty-five crores of rupees. At the suggestion of the Governor of Mauritius a portion of this sum was utilised to create a fund for the carrying out of the much-needed improvements in sanitation, dock accommodation, etc. Therefore, it is that the Government there require the labour for this new work of improving the harbour, for carrying out irrigation developments, and other matters of which Members have heard. Here is this enormous sum of money in the hands of the people and Government of Mauritius; and as nearly one half of the land in Mauritius belongs to Indians, I presume that a substantial portion of this enormous sum is in the hands of Indians. Some of it is now about to be spent in improvements and extensions. Therefore it is, Sir, that I have heard with amazement to-day the proposal that we should prevent Indian labourers from going over to Mauritius and sharing in the great prosperity there.

(Several Honourable Members: "The question be now put.")

Mr. President: The question is:

"This Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Mauritius and recommends to the Governor General in Council that the notification be published in the Gazette of India."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 10th March, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 10th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

DACOITY IN GURDIT SINGH'S HOUSE, TIMARPUR.

538. *Khan Bahadur Sarfaraz Husain Khan: 1. Is it a fact that a daring dacoity with sharp weapons has been committed recently in the house of one Gurdit Singh at Timarpur in Delhi?

2. Has the attention of Government been drawn to the news as published in the last week's *Eastern Mail*?

3. Is it a fact that it has created a panic in the hearts of the residents of the Indian quarters at Timarpur?

The Honourable Sir Malcolm Hailey: 1. No dacoity has been committed, but a case of house breaking by night was reported on 15th February 1923, and is under investigation.

2. Yes. This is probably however an exaggerated reference to the case just mentioned.

3. A petition to this effect has been received from the clerks residing at Timarpur.

PATROL PARTIES AT TIMARPUR.

539. *Khan Bahadur Sarfaraz Husain Khan: (a) Is it a fact that the residents of the Timarpur quarters have formed themselves into parties for patrolling there at night?

(b) If so, will the Government be pleased to state what steps the Government have taken or are proposing to take to help such parties in their honorary work?

The Honourable Sir Malcolm Hailey: (a) The petition mentioned in the previous answer stated that this was the case, but Government has no official information.

(b) The Superintendent of Police will welcome the assistance of such honorary helpers if they will put themselves into communication with him.

PROTECTION AGAINST DACOITIES AT RAISINA.

540. *Khan Bahadur Sarfaraz Husain Khan: (a) Is it a fact that some dacoities took place in the quarters at Raisina, last year and year before last?

(b) Is it a fact that a Member of the then Executive Council inspected the quarters?

(c) If so, will the Government be pleased to state whether the Honourable Member in question suggested any safeguards for preventing the recurrence of such dacoities in future; and if the answer is in the affirmative, will the Government be pleased to state what suggestions were made?

The Honourable Sir Malcolm Hailey (a) No dacoities took place in the clerks' quarters at Raisina in 1921-22, but in 1920 four cases of house-breaking by night were reported. The strength of the Raisina Police was strengthened in the cold weather of 1919-20.

(b) and (c) The question presumably refers to a visit of inspection by the late Member in charge of Commerce and Industries Department (Sir Thomas Holland). Various suggestions for increasing the height of compound walls and putting broken glass on them, and providing bars for windows, etc., were examined, and any practicable remedies were adopted.

PROVISION OF DOORS AND WINDOWS TO QUARTERS AT RAISINA.

541. ***Khan Bahadur Sarfaraz Husain Khan:** Is it a fact that the Indian quarters on the Cantonment Road, Raisina, are not provided with any windows or doors on the road side; if so, will the Government be pleased to take steps to provide them with doors and windows on the road side?

Mr. H. A. Sams: The main entrance door is on the Cantonment Road side of the quarters. The quarters are provided with clerestory windows on the same side. Windows at a lower level were not provided for the reason that, were they provided, *purdah* would not be complete.

POLICE PATROL, RAISINA.

542. ***Khan Bahadur Sarfaraz Husain Khan:** Have arrangements for police patrol been made at Raisina, for the Indian clerks quarters?

The Honourable Sir Malcolm Hailey: Yes—patrols of 1 head constable and 10 constables are deputed for watch and ward in these quarters. The sanctioned grant for the Delhi Police force will not admit of the placing of an officer above the rank of head constable on this patrol duty.

REPEAL OF FRONTIER CROSSING REGULATION IN UPPER BURMA.

543. ***Mr. J. N. Basu:** Will the Government be pleased to state whether it intends to repeal so much of the Frontier Crossing Regulation of Upper Burma, as affects the areas falling within the jurisdiction of the High Court at Rangoon?

Mr. Denys Bray: Government propose to leave the matter to the Government of Burma in the first instance.

PRODUCTION OF SALT IN BURMA.

544. ***Mr. J. N. Basu:** (a) Whether salt is manufactured or produced at any place in Burma? If so, what is the value of the annual output and expenditure?

(b) Whether the Government is aware that in Shwebo District in Upper Burma, there are salt-wells? If so, whether the cultivators have been prevented from working them?

Mr. A. H. Ley: (a) Yes. The Honourable Member is referred to the figures given on pages 170 and 171 of "Statistics of British India, Volume II (Financial Statistics)." These figures show the quantity and value of salt produced in Burma from the years 1915-16 to 1919-20. Later figures of value are not yet available, but the total output in maunds for the years

1920-21 and 1921-22 was 15½ lakhs and 11½ lakhs, respectively. Government have no information regarding the expenditure incurred in manufacture, the salt not being manufactured by Government.

(b) The information has been called for from the Burma Government and will be supplied to the Honourable Member on receipt.

INTERMEDIATE CLASS CARRIAGES IN BURMA.

545. ***Mr. J. N. Basu:** Will the Government be pleased to state why the Burma Railways Company do not provide inter class carriages for the travelling public? Will the Government be pleased to direct them to do so at an early date?

Mr. C. D. M. Hindley: Government understand that intermediate class carriages are not provided on the Burma Railways as there has been no demand for this class of accommodation. In the circumstances Government do not propose to take any action.

ELECTION EXPENSES.

546. ***Mr. J. N. Basu:** Will the Government be pleased to state—

(a) whether any scale of election expenses have been sanctioned or notified?

(b) whether the candidates returned to the Legislative Assembly or Council of State are entitled to a refund of all or any portion of expenditure incurred by them?

Mr. E. Burdon: (a) The Government of India have not yet fixed any maximum scales of election expenses under rule 18 of the Electoral Rules. The question of fixing such scales will however be considered.

(b) The answer is in the negative.

Mr. K. Ahmed: Sir, is it not a fact that candidates for election for the House of Commons are permitted to circulate pamphlets free of postage amongst the electors?

The Honourable Sir Malcolm Hailey: I understand that there are certain concessions in regard to postage in England; but the Honourable Member will, I think, realise that the question referred to laying down a scale of election expenses. I may say as supplementing the reply which my Honourable friend has just given that we do not think that we have had sufficient experience of elections in India to justify us in attempting to lay down any scale of election expenses. We may possibly be able to do so when we have had further experience of the expenditure actually incurred by candidates.

MILITARY COLLEGE IN BURMA.

547. ***Mr. J. N. Basu:** Will the Government be pleased to state whether a military college or feeder school is to be established in Burma?

Mr. E. Burdon: The answer is in the negative.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I will put the question later on, if you will permit me, Sir.

The Honourable Sir Malcolm Hailey: (a) No dacoities took place in the clerks' quarters at Raisina in 1921-22, but in 1920 four cases of house-breaking by night were reported. The strength of the Raisina Police was strengthened in the cold weather of 1919-20.

(b) and (c) The question presumably refers to a visit of inspection by the late Member in charge of Commerce and Industries Department (Sir Thomas Holland). Various suggestions for increasing the height of compound walls and putting broken glass on them, and providing bars for windows, etc., were examined, and any practicable remedies were adopted.

PROVISION OF DOORS AND WINDOWS TO QUARTERS AT RAISINA.

541. ***Khan Bahadur Sarfaraz Husain Khan:** Is it a fact that the Indian quarters on the Cantonment Road, Raisina, are not provided with any windows or doors on the road side; if so, will the Government be pleased to take steps to provide them with doors and windows on the road side?

Mr. H. A. Sams: The main entrance door is on the Cantonment Road side of the quarters. The quarters are provided with clerestory windows on the same side. Windows at a lower level were not provided for the reason that, were they provided, *purdah* would not be complete.

POLICE PATROL, RAISINA.

542. ***Khan Bahadur Sarfaraz Husain Khan:** Have arrangements for police patrol been made at Raisina, for the Indian clerks quarters?

The Honourable Sir Malcolm Hailey: Yes—patrols of 1 head constable and 10 constables are deputed for watch and ward in these quarters. The sanctioned grant for the Delhi Police force will not admit of the placing of an officer above the rank of head constable on this patrol duty.

REPEAL OF FRONTIER CROSSING REGULATION IN UPPER BURMA.

543. ***Mr. J. N. Basu:** Will the Government be pleased to state whether it intends to repeal so much of the Frontier Crossing Regulation of Upper Burma, as affects the areas falling within the jurisdiction of the High Court at Rangoon?

Mr. Denys Bray: Government propose to leave the matter to the Government of Burma in the first instance.

PRODUCTION OF SALT IN BURMA.

544. ***Mr. J. N. Basu:** (a) Whether salt is manufactured or produced at any place in Burma? If so, what is the value of the annual output and expenditure?

(b) Whether the Government is aware that in Shwebo District in Upper Burma, there are salt-wells? If so, whether the cultivators have been prevented from working them?

Mr. A. H. Ley: (a) Yes. The Honourable Member is referred to the figures given on pages 170 and 171 of "Statistics of British India, Volume II (Financial Statistics)." These figures show the quantity and value of salt produced in Burma from the years 1915-16 to 1919-20. Later figures of value are not yet available, but the total output in maunds for the years

1920-21 and 1921-22 was 15½ lakhs and 11½ lakhs, respectively. Government have no information regarding the expenditure incurred in manufacture, the salt not being manufactured by Government.

(b) The information has been called for from the Burma Government and will be supplied to the Honourable Member on receipt.

INTERMEDIATE CLASS CARRIAGES IN BURMA.

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Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I will put the question later on, if you will permit me, Sir.

UNSTARRED QUESTIONS AND ANSWERS.

ONE HUNDRED RUPEE CURRENCY NOTES.

229. **Lala Girdharilal Agarwala:** 1. Are Government currency notes of rupees one and one hundred allowed to change hands without any signatures?

2. How are the prices of such notes repaid to their holders in case their numbers are destroyed by fire, water or whiteants and when no record of their numbers is kept?

3. How do the Government propose to prevent loss being caused to possessors of such notes as compared with possessors of gold and silver coins, so as not to put possessors of notes at a disadvantage?

The Honourable Sir Basil Blackett: 1. All currency notes are payable to bearer on demand and the question of signatures on transfer does not arise.

2 and 3. The Honourable Member's attention is invited to the Government of India, Finance Department, Notification, No. 3201-F., dated the 24th November, 1921, which contains the rules on the subject.

ESTATES HELD UNDER REGULATION 3 OF 1818.

230. **Lala Girdharilal Agarwala:** What estates are at present held by the Government under Regulation 3 of 1818?

The Honourable Sir Malcolm Hailey: The only estates held under the Regulation are those of Kunwar Mahendra Pratap Singh.

CONFISCATION OF PROPERTY UNDER REGULATION III OF 1818, AND OTHER LAWS.

231. **Lala Girdharilal Agarwala:** Have the Government carried out the proposals mentioned in answer to my question No. 118, printed at pages 116-117 of the Legislative Assembly Debates, dated the 6th September, 1922? If not, when do the Government propose to do so?

The Honourable Sir Malcolm Hailey: It is hoped to introduce a Bill in the Indian Legislature whereby the interests in the estates of Kunwar Mahendra Partap Singh will be conveyed to his minor son. The estates and lands of Ghulam Qasim Khan, ex-Nawab of Tank have been released from attachment.

HINDU OPINION ON DR. GOUR'S AND MR. SESHAGIRI AYYAR'S BILLS.

232. **Babu J. N. Mukherjee:** Will Government be pleased to state what Hindu associations, religious heads of institutions, representative Hindus of the orthodox communities, and other prominent persons and associations outside the Hindu community were consulted by them with a view to obtain their opinion of the following bills—

(a) Dr. Gour's Civil Marriage (Amendment) Bill.

(b) Mr. Seshagiri Ayyar's Bill regarding exclusion from inheritance of certain Hindus.

(c) Mr. Seshagiri Ayyar's Bill for alteration of the Hindu Law of inheritance.

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The Honourable Sir Malcolm Hailey: The Honourable Member is no doubt aware that no motions were made in this Chamber for the circulation of these Bills for opinions. In order, however, to enable Government to come to a conclusion as to the attitude to be adopted by them towards the Bills, the Government of India circulated them inviting the opinions of Local Governments and Administrations, the High Courts, Chief Courts and Judicial Commissioner's Courts, the Bar Associations and such other authorities as the Local Governments thought fit to consult. The opinions received from the Local Governments have been made papers to the Bills and have already been distributed to the Honourable Members.

RESOLUTION RE RESERVED RAILWAY COMPARTMENTS.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I beg to propose the following Resolution which stands in my name:

"This Assembly recommends to the Governor General in Council that he will do away with reserved compartments for particular communities on all Indian Railways by all passenger trains unless fully paid for."

My object, Sir, is to ask the Governor General to remove compartments reserved now for Europeans and Anglo-Indians on the different Railways in India. Sir, in September, 1921, at the Simla Session, I moved a somewhat similar Resolution and on the day fixed for the discussion of that Resolution Colonel (now Sir Danvers) Waghorn, then President of the Railway Board, approached me for a compromise. I understood him to say that first and second class reserved compartments for Europeans and Anglo-Indians on all Railways had been abolished; and in the course of a little conversation that we had then he agreed to instruct all the Railway Administrations to do away with intermediate and third class compartments as well, on all trains except the mail trains. To this arrangement I agreed because I thought that the chief point was to break the ice, and if the Government agreed to the principle, I thought that it would be time enough for removing these latter compartments altogether on all Railways later on. I wish, Sir, with your permission, to quote a passage from Colonel Waghorn's speech on that occasion:

"A possible solution, which I will put before this Assembly for their consideration, is that the reservation be eliminated gradually, that is to say, that the reservation of a third class compartment for Europeans and Anglo-Indians should be done away with on all slow trains and only retained for the present on mail or fast passenger trains."

I would ask Honourable Members to mark this word "or" as this is important as I shall show a little later on.

"If the Honourable Member is prepared to accept this modification of his Resolution I shall be glad to consult Railways accordingly with a view to the introduction of this measure, and with this undertaking he will perhaps be prepared to withdraw his Resolution."

This passage, Sir, did not appear to me to have been correctly reported. As a matter of fact, Colonel Waghorn then also mentioned the word "intermediate," but in this passage the word "intermediate" does not appear. I therefore had correspondence with him upon the subject and with your permission, Sir, I shall read that correspondence of which I have

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obtained a copy from the Railway Board. I wrote to him on the 25th October, 1921, as follows:

"I beg to call your attention to Volume II, No. 10, page 1215 *et seq.* of the proceedings of the Legislative Assembly on 28th September last.

If you remember, when you came over to me and made an offer for a compromise in regard to my proposition regarding Reserved Compartments, I agreed to it only on condition that the reservation of Interclass Compartments would also be done away with along with third classes, on all but Mail trains,—mark the words 'on all but Mail trains'—and you consented.

This is clear also from my reply to you, page 1218. In your speech as delivered you also mentioned inter class carriages. I have a vivid recollection. And I withdrew the proposition on that understanding as will appear from my reply.

In your speech as published the words 'and intermediate' are omitted after the word 'third' in line 5, page 1218. Probably this is due to the fact that you forgot to add these words to your typed speech which you might have passed on to the reporter for printing.

I shall feel obliged by your kindly informing me if you have advised the Railway Administrations to do away with the inter class reservation also or not; inasmuch as I have been getting a number of inquiries on the subject."

To this I got the following reply:

"I write in reply to your demi-official, dated the 26th October last, in regard to the subject of the removal of reservation of Inter and 3rd class compartments for Europeans and Anglo-Indians on all but mail and fast passenger trains—please mark the words 'and fast passenger trains'.

You are quite correct—I did use the words 'intermediate and 3rd class', but for some reason the word 'intermediate' has been omitted in the printed copy of the Legislative Assembly Debates.

However, you may rest assured that action has been taken on the lines indicated in my reply to your Resolution, and Agents of all Railways have been consulted with a view to removing this restriction on all slow trains; and furthermore, we have suggested that the accommodation reserved in third class compartments on mail and fast passenger trains should be reduced to a small compartment. It is quite possible we may find exceptional cases in local traffic or on certain sections where there may be good grounds for continuing the reservation.

As a matter of fact, the Railway Administrations had already been addressed some three weeks previously on the lines indicated in the reply which I gave you, and their answers are now coming in."

Then I wrote to him again on the 13th November, as follows:

"Many thanks for your demi-official of November 8th. I am glad you have issued instructions in regard to Inter class also. But you say you have confined your instructions to slow trains only and have excluded not only the Mail trains but also fast passenger trains as well, I need hardly point out that no reservation is at all necessary on the latter kind of trains considering the fact that the European and Anglo-Indian passengers by inter and 3rd class are infinitesimal. As such they should travel by Mail trains only if they wish to have reserved compartments to themselves. This is all the more necessary inasmuch as rolling stock on almost all lines is inadequate and the complaint of shortness of accommodation for Indian passengers is universal; and you did not exclude such trains in your reply.

There have been so many inquiries from me in regard to this matter from people who wish all distinction between class and class removed that I would strongly urge that you should exclude only the Mail trains at present and no other.

I hope you have no objection to my publishing this correspondence."

The reply to this is dated the 19th November, and runs as follows:

"I am in receipt of your demi-official dated the 13th November. You will find on reference to page 1218 of Volume II No. 10 of the official report of the Legislative Assembly Debates on the 28th September 1921 that I used the following words in replying to your Resolution:—

"That the reservation for Europeans and Anglo-Indians should be done away with on all slow trains and only retained for the present on mail and fast passenger trains."

Then he says:

"As I mentioned in my previous demi-official the question has been referred to Railway Administrations and is still under consideration.

"I should prefer therefore that this correspondence should not be published at the present stage."

Now, Sir, what I would ask the House to look to is that in the quotation from Colonel Waghorn's speech which I have just read the word "or" is used, whereas in his reply to my letter, dated 13th November, he uses the word "and," which makes all the difference in the world. He in the first instance said that the reservation would be restricted to mail "or" fast passenger trains: whereas in his reply to me he uses the word "and," which means mail and fast passenger trains. He also admits, Sir, in the correspondence that the word "intermediate" does not appear in his speech although he did use the word and he was going to do away with the reservation of intermediate class compartments as well. Then what happened is that some time after, my friend, Mr. Sinha, put a question to Colonel Waghorn, on the 6th of September, 1922. The question ran as follows:

"(a) In view of the assurance given by Colonel Waghorn in connection with the Resolution moved by Mr. W. M. Hussanally asking for the abolition of the reservation of compartments on railways for Europeans and Anglo-Indians, will the Government please state what action have the different Railway Companies taken in the matter and how far they have acceded to the recommendations underlying the Resolution?

(b) Is it a fact that so far only the Great Indian Peninsula Railway has taken action in the matter on the representation made by the Railway Board?

(c) Do the Government propose to correspond with the Railway Companies who have not yet taken action in order that prompt action is taken by them?"

The reply that he then gave is as follows:

"(a) and (b) In April last the Railway Board issued instructions Please mark the word "instructions."

"... to railways to the effect that the reservation of an inter or third class compartment for Europeans and Anglo-Indians should be restricted to through mail and fast passenger trains"

Here again he uses the word "and"

"... the accommodation in such cases being limited to one compartment designed to seat about 10 passengers only. Reports received from the principal railways show that the instructions have been carried out generally, in order to suit local conditions, a few railways still retain reserved third-class compartments for Europeans and Anglo-Indians on certain slow passenger trains."

Now this is also important, as this last part was not in accordance with the undertaking which he gave in the discussion and I think is a subsequent addition. Then again, he proceeds further:

"In the circumstances mentioned above, Government do not propose to take further action in the matter at present."

Now, Sir, what I complain of in this answer is that it is indefinite and evasive, and therefore I hold that Colonel Waghorn did not keep to his undertaking which he gave me at that time. My information, Sir, is that so far as the large lines of Railway are concerned, the reservation of intermediate and third class compartments on almost all trains is still being made. I can speak from my personal knowledge of the North Western Railway and the East Indian Railway, but I have also received information

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from several friends that that is the case on almost every other line. It may be perhaps that some line or other has taken off these reserved compartments from some trains, but my information is that it is not the case that these compartments have been taken off generally, as Colonel Waghorn said in his reply to Mr. Sinha. It is for the House, therefore, to decide whether Colonel Waghorn kept to his promise or not. Then again, Sir, quite recently another question was put to the present Honourable Railway Member whether it was a fact that Indians travelling in European costume were allowed to travel by these reserved compartments, and the reply was that the Railway Board believe that in practice no objection is taken to Indians who have adopted European dress travelling in compartments reserved for Europeans on the different railways. Government do not propose to call for further information on this point from Railway Administrations at present. Now, Sir, this reply adds insult to injury, and puts a premium upon Indians who choose to ape Christians in this respect. What does this reply mean? My son, if he puts on a hat, can travel by these reserved compartments, but unfortunately I, who do not put on a hat but choose to appear in my Fez, cannot do so, and I can be kicked off from the reserved compartment, but my son is allowed to travel. (Dr. H. S. Gour: "What about your tie and collar and your waistcoat?") I preserve my nationality. But, Sir, is it a fact that Railway Administrations do not take objection to Indians travelling in European costume by these reserved compartments? I say it is not so, and I heard only the other day from a friend that a few months ago a party of Indian gentlemen who were travelling by one of these reserved compartments from Howrah to Delhi travelled as far as Tundla; up to that point nobody objected, but at Tundla they were forcibly ejected to make room for some European or Anglo-Indian or whatever else he is called. But even supposing this objection will not be taken in the future, I say that it does not satisfy me in the least; what I say is that all these reserved compartments must go, and there is no reason now to have any reserved compartment for any particular class or community. We must all be treated alike. The next question, Sir, that I have to consider is whether it is in the interests of these Europeans or Anglo-Indians to travel by these reserved compartments, for their own sake. I say, Sir, that chiefly by reason of the fact that very often only a solitary individual or a family travel by these reserved compartments. And the result is that on occasions even murders have been committed in these compartments. I would draw your attention to the unfortunate murders that took place quite recently on the Oudh and Rohilkhand Railway somewhere near Lakhsar station when a lady and a gentleman travelling by one of these compartments were ruthlessly murdered. I say, therefore, that in their own interests it is not right that they should travel by such compartments which are not full. Then, again, Sir, there is another point to which I would beg to draw the attention of the House. These compartments are reserved for Europeans and Anglo-Indians. Now, who are Anglo-Indians? My friend Colonel Gidney is there. He distinctly told us only a few days ago that the community to which he had the honour to belong is Indian and he took pride only a few days ago in calling them Indians. I hope the Anglo-Indians call themselves Indians to all intents and purposes; and not merely when it suits their purposes to share the loaves and fishes, or I may say, the crumbs that fall to our lot. If that is so, that is to say if Anglo-Indians are Indians and wish to sail in the same boat as ourselves, they should travel in

the same compartments with us and not claim any preference of this kind. Well, if that is conceded then the only other class of people for whom these compartments are to be reserved are the Europeans. Let us then come to the Europeans. Colonel Waghorn told us that there were no reserved compartments for first and second class passengers. What class of Europeans then travel by intermediate and third class? It is rarely, if ever, you find a non-official European travelling by intermediate or third class. Probably the bulk of the Europeans who travel by intermediate and third class are European soldiers. Well if they travel in large numbers, a compartment can be reserved for them under the ordinary rules. But if they are not, then I do not see why they should have the privilege of travelling by a compartment entirely to themselves. They ought to share with us. Colonel Waghorn in his speech on that occasion said as follows. I would like to quote his words:

"It is true that this demand was made 18 years ago which is a long time, but prejudices and dislikes do not necessarily disappear; and Government have felt hitherto that while recognising the desirability of eliminating all racial distinctions, the continuance of this reservation was on the whole desirable in order to avoid the possibility of the unpleasantness and ill-feeling which may readily be created by some trifling incident and which may possibly lead to much greater friction than is likely to arise under the existing arrangements. It will be noted that there is no idea of any racial discrimination."

If there is no idea of any racial discrimination, I do not see any reason why the European soldier should have a compartment reserved to himself. And as regards any ill-feeling that may be created by them while travelling by railway with Indian passengers, it would bespeak nothing else than want of discipline, for which the Military Department would be responsible and not the soldiers. If they are properly disciplined, I do not see any reason why there should be any ill-feeling or any breach of the peace in a railway compartment when they are travelling with their Indian fellow passengers.

For a number of years past Sir, accommodation on railways for Indian passengers has been very limited and frequent complaints have been made that the accommodation supplied for Indian passengers particularly Intermediate and Third Class passengers, has been very insufficient, and I have myself seen, especially on the North Western Railway, that whereas an adjoining compartment goes vacant, the next compartment, reserved for Indian ladies, is so over-crowded that there is hardly any room even to stand, much less to sit. Our ladies generally travel with their children, so if there are 8 or 10 ladies and about 10 or 12 children in the compartment, the compartment is over-full; and even then the railway authorities will not allow the adjoining compartment, which goes vacant altogether, to be occupied by these ladies and children. That being the case, I think there is all the more reason that these reserved compartments should go. And we have been recently doing away with racial distinctions as far as we could. That would be another reason for me to urge to the House to pass this Resolution so that this restriction also should go. A Conference held in Lucknow in 1903 has been referred to, at which some Indians also attended. I do not know who they were and what representative character they had, but it seems that it was with their consent that these compartments were reserved on Indian railways. That might have been so, but times have changed since and are changing very fast, and I think what then looked to be quite innocent is not the case now. The political consciousness in the country since then has been attained so much that it is high time that any distinctions of the kind should now be abolished. I can assure

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the House, Sir, that there is a considerable feeling in the country with regard to this matter, and during recent years there have been several cases, both civil and criminal, in the various courts. It will serve no useful purpose that I should quote these cases *in extenso*, but I may refer to some cases the references to which I have got. One is reported in XLV I. L. R. Bombay, page 1324, another is in XLV I. L. R. Madras, page 215, another XLII I. L. R. Allahabad, page 327, and the last case on the subject is reported in XXV Bombay Law Reporter, page 26. As I said, some of these cases have been civil and others have been criminal. In some of these cases people who were forcibly ejected from these compartments brought suits for damages and in other cases they were prosecuted under the Railway Act for riding in a compartment which was reserved for somebody else. I would refer to only two cases. One in 45 Madras, in which Mr. Justice Krishnan disagreed with his colleague—I believe it was Mr. Justice Oldfield and this is what Mr. Justice Krishnan says:

"With all respect to my learned brother I regret I am unable to concur with him in this case; for I have come to the conclusion that the accused are entitled to be acquitted on the short ground that the third class compartment in question is not proved to have been properly reserved for Europeans and Anglo-Indians as the prosecution alleged."

The case was referred to a third Judge, Mr. Justice Ayling, and it was decided of course that this compartment was properly reserved under section 42 of the Railway Act, and, therefore, the accused were guilty. In all these cases, Sir

Mr. T. E. Mcir (Madras: Nominated Official): I rise to a point of order. The Honourable Member said "it was decided of course that this compartment was properly reserved." I wish to know whether the Honourable Member is entitled to use the words "of course" which seem to be an imputation on the Honourable Judge.

Mr. W. M. Hussanally: That was very far from my intention. I have the highest respect for the Judges of the High Courts and that was not my intention. What I was referring to was that the decision was arrived at on an interpretation of section 42 of the Railway Act. I was just going to read a portion of that section when I was interrupted. Clause 2 of section 42 of the Railway Act says:

"A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

This is the clause, Sir, upon which these cases have been decided, and nearly all the cases hinged upon the interpretation of the words "undue or unreasonable preference." In almost all these cases it has been held that, while these reserved compartments do constitute a preference they do not constitute an undue preference. That is the distinction that has been drawn, and it is, unfortunately, on these decisions that these persons who were prosecuted were sentenced.

Mr. President: I must ask the Honourable Member to draw his remarks to a close.

Mr. W. M. Hussanally: Well, Sir, I shall only say a few words more. Unfortunately, Sir, I have not got sufficient time to quote from the judgment

of Justice Sir Lalubhai Shah of the Bombay High Court, which would have been very interesting. But suffice it to say, Sir, that he disagreed with his colleague Mr. Justice Crump and the case was referred to Mr. Justice Marten and the eventual decision was that the conviction was good and they upheld the decision of the lower court.

But what I want to draw the attention of the House to is that of late people have been getting into these reserved compartments deliberately in order that they may be prosecuted and in order to take the case up to the High Court for a decision; and what I want to draw the attention of the House to is that there is so much feeling in the country against these reserved compartments that people go deliberately into these compartments for the purpose of drawing attention to this matter and that is also one of the reasons why I would ask this House to vote for the proposition that I have brought in order that these reserved compartments should now be abolished. The only alternative would be to bring in a Bill for amending the Railway Act, but that I think is not necessary at the present moment; and I would therefore ask that this House do pass this motion to ask the Governor General in Council to do away with these reserved compartments.

Mr. K. N. Mitra (Bengal: Nominated Official): Sir, I think that the Resolution moved by my Honourable friend, Mr. Hussanally, is inopportune. The grievance is a real one and the cases to which he has referred only go to show that the state of things in this matter is not what it should be. But, Sir, it was only yesterday that we passed the Racial Distinctions Bill—a Bill which it is universally admitted will go to promote goodwill and fellow-feeling among the two communities, Indian and European, whom destiny has woven into the picturesque mosaic of India's national life. I think, Sir, that it is regrettable that a Resolution of this kind should be brought before the House almost immediately after the passage of the Racial Distinctions Bill. I do not for a moment mean to imply that the enjoyment of this privilege by a particular community is desirable, but probably what the Honourable Mover has in his mind is the wanton feeling of superiority which this reservation of carriages or compartments on railways gives to a particular class of people. But to my mind this sense of superiority is due purely to a narrow and partial outlook on life which is bound to go in the course of time. (Mr. Jamnadas Dwarkadas: "Why encourage it?") I say we should not encourage it, but if it is a matter of mere convenience, then I do not see how we can promote our object by depriving a particular class of our fellow-subjects of a privilege which they have enjoyed for such a length of time. If we consider this question carefully, we will find that this privilege is not extended to 1st and 2nd class passengers, but still there have been cases of rough handling, of insult and even of forcible ejection from railway carriages. After all, what is all this due to? To my mind, it is due, as I have already said, to a partial and narrow outlook on life, and when a broader, larger and more human sympathy and neighbourly feeling prevails, I am sure that this distinction will ultimately go. It is no use forcing the progress of things. So far as the 1st and 2nd class carriages are concerned, the distinction does not exist, because the people who use these two classes have got almost the same habits or can adapt themselves to the same mode of life as those of Europeans or Anglo-Indians, but the habits of life are different in the case of 3rd and inter-class passengers who may roughly be regarded as constituting the middle class people. They are respectable

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LEGISLATIVE ASSEMBLY.

[10TH MARCH 1923.]

[Mr. K. N. Mitra.]

men, but generally they are orthodox in their habits and mode of life. So if you want to have the same type of carriages for Europeans or Anglo-Indians as well as for Indians it will not be convenient to either; because neither the Indians nor the Europeans or Anglo-Indians will feel comfortable, and the result will be that those Anglo-Indians who travel in Inter and 3rd class compartments will be obliged to travel in a higher class, which they can ill afford to do. My contention is that we have no right to do it, we have no right to force them to travel in a higher class of carriage which will cost them more money and it will not be profitable to the railway authorities themselves to have all the inter and third class carriages fitted up with the same conveniences. So I think the whole question resolves itself to one of expediency and comfort, and when there is mutual understanding between the two communities, I hope that we will not grudge any community any special privilege which they may enjoy, for they will also come to respect our feelings better. It also seems to me, Sir, that it is not fair for a legislative body like ours to pass a Resolution of this character because in this Assembly, as Honourable Members will see, there is a very inadequate representation of the community whom we are going to deprive of this particular advantage. Even if we could carry this Resolution by the sheer weight of numbers, still it will not make for the establishment of that good feeling and sympathy for which we so much care.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I regret very much that the vagaries of the ballot box has brought forward this Resolution and given it a place for discussion in to-day's agenda. I am sorry, Sir, that my Honourable and esteemed friend—I may go further and say—my patriotic friend, Mr. Wali Muhammad Hussanally, should have spent so much powder and shot on such an insignificant question as this. I am sorry, Sir, that he should have burnt his candle and spent hours of the night on studying this question, hunting out Law Reports and previous proceedings of this House, to prepare his speech on this Resolution. I think, Sir, the time he has spent over this would have been better spent in studying the Budget and in showering bomb shells on the Honourable the Finance Member. Sir, speaking as an Indian I might say that our grievances against the administration are numerous and there are many more questions of greater importance in which we have to ventilate those grievances and the question referred to in the Resolution unfortunately does not come up to that standard. We can very easily overlook it. But, examining the question on its merits, Sir, my friend in the course of his speech said that a third class compartment in a fast train or a mail train or it may be a very slow train is reserved for Europeans and Anglo-Indians and what is the result? The other compartments which are occupied by my countrymen are crammed full and we were given some vivid descriptions of these compartments. But may I ask the Honourable Member to say: suppose in a fast train or a mail train, where there are numerous compartments, sometimes 100 compartments, if one more is added for the third-class passengers, will it in any way improve the position of the passengers travelling in these compartments? (*An Honourable Member*: "It will.") An addition of 10 to 200 or 300 does not make much difference, and at the same time what are the conditions of reserving this compartment? It has been said: Why should there be any friction? But it goes without saying that if an Anglo-Indian travels in a third class compartment with Indians, there will be friction every fifty miles if not every

ten miles. We have been told, if the soldiers do anything wrong, it is for the military authorities to control them. I might remind this House and my Honourable friend that human nature can never be controlled either by military or civil authorities. The people who travel in third or inter class compartments do not belong to that class either of Europeans or Anglo-Indians who have got a high education or at any rate who have got broad political views or who can understand the political situation. They are people who would not like to travel with Indians; their habits are different and naturally there is every danger of their picking a quarrel with their fellow passengers which may lead sometimes to disturbances. Our difficulties are always very great. Why add to them by removing this distinction?

The second question is that the definition of "European" in the railway administration is not the one which this House or, at least, this side of the House would like to be put on it, nor the one which the other side of the House has put upon it under orders from Whitehall. But they have got a wider definition. Just as my friend has said they define a European or an Anglo-Indian in a way that people who wear a European costume generally come under it, and I believe the railway administrations do not insist upon a fez being substituted for a hat. Therefore, Sir, I think that this Resolution is not only inopportune, as my friend behind us said, but I think it is absolutely unnecessary. Speaking for myself, I think that I would much prefer to have as my fellow traveller in a railway compartment an Indian than a European and sometimes, when coming to this city or going to Simla or elsewhere, I have taken pains to go to the Inquiry Office at the Howrah Station to see that I was booked with an Indian fellow passenger and not with Sir Alexander Murray. But I might tell my Honourable friend, Mr. Wali Muhammad Hussanally that, not only as regards Europeans and Indians, but it will be even more convenient for me to travel if my other Indian fellow companion in the carriage was a Muhammadan and not an orthodox Hindu. Mr. Jogendra Nath Mukherjee and I happen to be very great friends and friends of long standing but he and I would be both inconvenienced if we were locked up in the same compartment. Not for this reason, but because he has got his religious objections that I should not touch his food, and I may have—although I particularly at present have not—an objection to my food or anything eatable being touched by a non-Mussalman. But it is not practicable to reserve any compartments in a country like India for Hindus or Muhammadans. But I think it will save trouble and inconvenience if we reserve a third and intermediate compartment for, as you call them, the Europeans and Anglo-Indians who cannot afford to pay higher. Sir, if I may say so, these Europeans and Anglo-Indians are more extravagant than the Indian population in this country, and if he could afford he would rather travel first than third. But it is sheer necessity which makes him travel third class or intermediate class. Therefore I think it will be a sheer injustice, it will be impolitic and undesirable to pack him in the same compartment with Indians, remembering, as we must do, the class of Indians who travel also in those compartments. It has been said that they will not create any friction, but in spite of the progress we have made, in spite of the fact that we are looking much ahead and that we have got a great sense of nationality in ourselves, it must be remembered that the class of Indians who travel third and inter-class even at the present day have got a certain amount of terror of these Anglo-Indian citizens, and . . .

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): No, no.

Maulvi Abul Kasem: They will be to a large extent inconvenienced by being in the same compartment with them. My friend there says "No." I believe he is thinking of the educated section of his countrymen.

Mr. Jamnadas Dwarkadas: Even the uneducated men have self-respect now. You may rest assured of that.

Maulvi Abul Kasem: I am glad to hear him say so. If he has self-respect I think he would prefer to travel with his own countrymen and not mix up with others.

Mr. Jamnadas Dwarkadas: He does not want to be treated as his inferior.

Dr. Nand Lal (West Punjab: Non-Muhammadan): We are all brothers.

Maulvi Abul Kasem: Therefore, Sir, I would advise my friend to withdraw the Resolution which he has moved and not press it before this House. As regards the inconsistencies and back-sliding that has been attributed to Colonel Waghorn, in spite of large extracts read by my friend I do not think that Colonel Waghorn has been guilty of any of those charges that have been brought against him. He laid down a broad principle and I believe he has honestly and steadily followed that principle and whatever he has done, I think he has carried out the wishes of my Honourable friend and he has done what he has thought as the head of the Railway Administration to be desirable and necessary in the circumstances.

The Honourable Mr. C. A. Innes (Commerce and Industry Member): Sir, I would just like to take up the point taken by my friend, Maulvi Abul Kasem. I think that Mr. Hussanally has moved this Resolution under a sense of grievance. He had a sort of feeling that Colonel Waghorn did not carry out the pledge given in the House in September, 1921, on the strength of which Mr. Hussanally withdrew his former Resolution. I should like to correct that misapprehension at once. The misapprehension has risen entirely out of the fact of the word "or" being used in the printed record instead of the word "and." I have taken the trouble to look at the printed notes which preceded the moving of that Resolution and I find it clearly stated there that Colonel Waghorn suggested to His Excellency whose orders he took that a solution should be arrived at on the understanding that the reservation should be retained only in the case of mail and fast passenger trains. That shows that that was

always the intention of Colonel Waghorn and in accordance with that pledge, within ten days Colonel Waghorn addressed all Railway Administrations. He addressed them not only in respect of third class carriages but also in respect of intermediate class carriages. I have got the replies of all the Railway Administrations here. On some Railways this distinction does not exist at all, and on other Railways it has been restricted to mail and fast passenger trains only. On still other Railways owing to local conditions the reservation still exists on other trains. But we have reduced the practice to the narrowest possible limits. Mr. Hussanally has suggested that by this small reservation we are making the congestion of third class carriages worse. Maulvi Abul Kasem has dealt

with that objection. On these trains we reserve one or at most two,—I find in one or two Railways they reserve two compartments—one or at the most two compartments,—that is, seating accommodation for 10 or at the most 20 passengers, and that in a train which carries two hundred or three hundred passengers. That can make no impression upon the congestion and I do deprecate this attempt to treat this thing as a racial discrimination or a racial question. I do deprecate this attempt to show that these carriages are reserved in order to mark some distinction between a poor European and the Indian third class passenger, so as to show that the one is inferior to the other. Let me tell the House that there is absolutely no such idea at all. I would ask the House to remember that the Railway administrations regard this question, as their replies show, purely as a question relating to the convenience of their passengers. Those Railway Administrations which retain this discrimination say that they do it merely because of the difference in the habits between the European passengers and the Indian passengers and they think that by retaining this reservation they are consulting the convenience of their clients and that is the reason why this reservation is continued. It seems to me wrong especially at this time to try and make a racial question out of a small thing of this kind. As I say we have addressed the Railway Administrations, we have taken up the question with the Agents. The practice has been restricted to the narrowest possible limits and I think that the wisest course is not to make too much of a question of this kind but to let time correct it. I think myself that possibly we could do more with regard to the intermediate class compartments. I do not see any reason myself—why intermediate compartments should be reserved and I am quite prepared to suggest to the Railway Administrations that they should consider very seriously whether there is any necessity to continue this distinction in respect of intermediate class compartments. I consulted some of the Administrations by wire and I have already had a wire from one Administration saying that it does not think it necessary to continue the distinction at least in respect of intermediate class compartments but it wishes to continue the reservation of third class compartments. I think that will show that the Railway Administrations themselves are tackling the subject in a reasonable way and I suggest that the House should leave it at that. I hope Mr. Hussanally will take it from me that there is no desire on the part of the Railway Board or Colonel Waghorn or anybody else anywhere to evade a promise or pledge and I hope that in view of what he has said himself that a question of this kind must be tackled gradually and slowly and in view of what I have said he will withdraw the Resolution.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, my Honourable friend, Mr. Hussanally, has practically asked me to take part in this debate. He may call me an Anglo-Indian or whatever he likes. The only thing I ask him not to do is to call me too early in the morning. Judging from the speeches of the two previous Honourable Members Mr. Mukherjee and Maulvi Abul Kasem, who have opposed this Resolution in strong terms it appears as if any intervention on my part is not necessary but representing the Domiciled Community in this Honourable House I feel I am called upon to say a few words on this Resolution, because the aim of this Resolution is to deprive a few of the poorer members of the European and Anglo-Indian communities of a railway travelling reservation that has existed for a very long time. It is not my desire, Sir, to claim on behalf of my community any special privilege or any racial distinction

[Lieut.-Colonel H. A. J. Gidney.]

whilst travelling on Indian railways. The Indian pays the same fare as I do and it would be absurd for either of us to claim preferential treatment in the same way as it would be out of the question for either of us to submit to any differential treatment. But the Mover of this Resolution seems to be singular in the tenacious way in which he has put it forward for this is the second time that he has brought this Resolution before this House. I would bring it to the notice of this Honourable House that on 1st March, 1921, my Honourable friend, Mr. Haji Wajihuddin, asked a question from the Member in charge of the Railway Department as to whether Government would be willing to reserve special accommodation in the first and second classes for Indians. Government said that it was not desirable. The same Member asked another question on 28th March, 1921, to the effect that, since Government did not consider it desirable to reserve these special compartments in the first and second classes for Indians, would they now discontinue the reservation of third and intermediate class compartments for the European and Anglo-Indian communities. Now, Sir, the necessity for some racial reservation must have been apparent to the Honourable Member when he put those questions otherwise he would never have asked them. The Honourable Member was again told by Government that it was not desirable to discontinue this reservation. Then later on on 10th September, 1921, my Honourable friend Mr. Reddi Garu, in a series of questions drew the attention of Government to Resolution II of the Madras Legislative Council, which purported to provide for the entire disappearance of all racial distinctions both in Railway accommodation and in retiring rooms, etc., and asked Government what action they were prepared to take on the matter. Government stated that there was no distinction whatever in the first and second class carriages between Europeans and Indians but that a slight distinction did exist in the shape of a reservation of 6 or 8 seats for the poorer members of the European and Anglo-Indian communities in the third and intermediate classes. My Honourable friend, Colonel Sir Danvers Waghorn, also told the Honourable Member that the reason for continuing this reservation was a matter of policy and the desire was to study more the interests of the Indian passengers, than the comforts of the few Europeans and Anglo-Indians who travelled in these reserved compartments. Mr. Hussanally was apparently not satisfied with this for I find that he moved a Resolution on the 28th September, 1921, identical with the one which he now moves with this difference: that ladies are not included or considered in it. In this Resolution Mr. Hussanally asks us to withdraw this reservation of 6 to 8 seats in third and intermediate classes for Europeans and Anglo-Indians. But, Sir, previous to this Resolution it may interest this Honourable House to know that it was the Indian members themselves who asked Government for similar special reservation whilst travelling. Mr. Hussanally, severe as he was on this doubtful privilege and extra comfort which these few poorer Europeans and Anglo-Indians enjoyed, was severer still on those Indians and Indian Christians who pretended to be Europeans by the clothes they wore and so managed to travel in these compartments and enjoy this extra comfort. To support this Resolution, he has unfortunately introduced the racial question and commented on other aspects of this matter which to me have appeared not only undesirable but unnecessary. He also referred to certain criminal cases which resulted through the action of certain Indians who took the law into their own hands and transgressed the Railway Act, by trying to forcibly enter these reserved

compartments. Now, Sir, as I said before I ask for no special privileges even for the poorer members of my community. But I do believe in the truth of the adage that 'prevention is better than cure.' But let us look more carefully into this Resolution, Sir, and ascertain whether these 6 or 8 seats that are reserved for Europeans and Anglo-Indians is the only special or particular communal or caste privilege enjoyed by the travelling public in India, and when I make this comparison, I do not do so with a desire to be odious, bitter or complaining. This House knows that there are many caste privileges and reservations given to Hindus and Muhammadans when they travel and which are denied to Europeans and Anglo-Indians. To mention a few of these, there are special water-carriers, there are special water-supplies, there are special carriages reserved for Indian ladies, there are special waiting rooms, and to-day there are special refreshment rooms for the supply of food. I do not look upon these as privileges, I look upon them as necessities, because your caste principles, and your customs, demand such protection.

Mr. Jamnadas Dwarkadas: What is the quality of special arrangements made?

Lieut.-Colonel H. A. J. Gidney: The Honourable Member must I fear put that question to the Railway Member and not to me. Well, Sir, these are a few of the special privileges the Indian passengers enjoy. Against these, put this small, doubtful, meagre privilege of reservation that my community enjoys to-day. Then, Sir, who was it that resolved on this reservation? 18 years ago a conference was held at Lucknow in which many Indian members were also present, and it was they who, realizing that unless they had this reservation which they said was to be restricted to Europeans and Anglo-Indians, there would be trouble; it was these very Indians who consented and who saw that, unless this reservation was made, it was likely to lead to petty squabbles and disturbances which I am sure everyone in this House wishes to see avoided. But, Sir, since then times have changed. But communal peculiarities, prejudices, customs and caste necessities change very slowly,—some of them do not and cannot change. I am aware, Sir, that there have been a few criminal cases, and recently there have been important criminal cases in which very serious issues have been involved, but, Sir, I believe, judging from what I have heard to-day, that the opposition against this privilege is not universal, and I have to thank those Members who have just spoken for the support they have given to what I have said. I believe, Sir, this reservation is not objected to in this Honourable House. In my opinion it amounts to a sort of dog-in-the-manger policy. The Honourable Mr. Innes has told us that any lingering idea in the minds of Honourable Members that this reservation is based on political motives or on any racial superiority is not true. It is a matter of policy; it is not a matter of racial distinction, but one of necessity, so as to avoid any unpleasant sequelae arising from mixed travelling of Indians and those of other communities who do not have the same customs. I have tried to show to this House that even if it did feel disposed to view this reservation as a racial matter surely I am entitled to ask, "why have you claimed, and why are you given, such a number of special privileges? Why should I whose customs are different to yours be denied these 8 seats in a few trains? Why cavil at the small privilege that my community has? You have your customs, I respect them. Equally in common with you, my community, both Europeans and Anglo-Indians, have their customs. If you do not respect

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them, surely I am not asking too much when I ask you to respect them." Sir, let me visualise or portray what might be an any day occurrence. Let us assume that this reservation is discontinued. We have one or two Europeans or Anglo-Indians travelling in an intermediate or third class carriage. Into this same carriage arrive say two orthodox Muhammadans and two Brahmins as passengers. The meal time comes as it must. These poor Anglo-Indians or Europeans have not got the money to have a meal at the dining car or the refreshment room. There is indeed no third class refreshment rooms as are provided to-day for Indians. This class of passengers usually carry their own food with them. The food, Sir, consists of food which is certainly objectionable to such fellow-passenger, what is the result? Objections—a heated argument and a disturbance.

These are the unfortunate incidents which are likely to happen any day and it is to avoid these unpleasantnesses that this reservation is necessary and was arranged 18 long years ago. My Indian friends in this Honourable House know, that I claim no privileges for my community but I do ask of them to respect my customs just in the same way as I am willing to respect theirs. My Indian friends in this House know that I lose no opportunity in impressing upon my community, especially those employed on Railways that they must treat their Indian brethren with the same respect which they expect to be treated by them but I am confident, Sir, that if this reservation is removed, it will only lead to trouble. It will open the path to quarrels which Indians, Europeans and Anglo-Indians are equally desirous of avoiding. I, therefore, request my Honourable friend Mr. Hussanally to withdraw his Resolution and even if it is pressed and accepted, the resulting gain to him and Indian travellers will not be commensurate with the trouble that is likely to arise in consequence, and it is to avoid this eventuality that I ask for the withdrawal of the Resolution and I ask Mr. Hussanally to be satisfied with what the Honourable the Railway Member promised him in September 1921. We have only to look at the trains to-day, with enhanced railway fares, to realise that hundreds of Anglo-Indians and Europeans, who a few years ago, could afford to travel in second class carriages find it impossible to do so to-day. I, therefore, challenge the Honourable Mover of the Resolution to prove that to-day these reserved compartments go empty. They go over-crowded. (Voices: 'No, no.') This is my personal experience, and I say, Sir, that overcrowding and not emptiness does exist to-day in these reserved compartments for Europeans and Anglo-Indians. This emptiness may have existed a few years ago but certainly not to-day. I therefore again ask my Honourable friend Mr. Hussanally to withdraw this Resolution, and I am sure the Honourable House will support me in what I ask.

Mr. C. D. M. Hindley (Chief Commissioner, Railways): I think, Sir, I may perhaps be able to clear away one or two misapprehensions which may have arisen since the Honourable Mr. Innes spoke a few minutes ago. With all deference to Colonel Gidney, I think perhaps he has introduced some, what I may call, irrelevancies into this discussion. I look upon this primarily as a practical question of railway working, where the railway administrations must make the best arrangements they can for the different classes of passengers which they have to deal with. I think perhaps I can sum up all that has been said by Colonel Gidney and others

when they referred to this matter on racial lines by putting a little formula forward in this way. I think the difficulties which arise on railway journeys when passengers are cooped up together for long distances may be best described as mutual irritation. We cannot hope to define these things any further, and I think it is inadvisable to do so. We all know that mutual irritation does occur between passengers of all classes and creeds and races wherever they travel and I believe this small reservation which we have now brought about, the limitation which we have placed on this reservation on the trains, is going to assist in removing those slight causes of mutual irritation between fellow-passengers. I should like to repeat what the Honourable Mr. Innes has said we in the Railway Department are prepared to do in this matter. We are prepared to suggest to Railway Administrations that the reservation of Intermediate Class carriages should be done away with, though it must be left to the Railway Administrations to decide whether this can be carried out practically in all cases. Then I would like to refer again to an answer which I gave recently to a question put in the House in regard to Indians wearing European dress. It is understood to be the practice not to object to Indians wearing European dress travelling in these reserved carriages. We will, however, address the Railway Administrations and suggest to them that if this is not the practice in any case, it should be made the practice in the future. With these words I think, Sir, I may suggest again to Mr. Hussanally that he would be well advised to withdraw the Resolution.

Mr. Jamnadas Dwarkadas: Sir, I must confess to a feeling of amazement at the speeches made by my Honourable friend, Mr. Khagendra Nath Mitra and by my Honourable friend, Mr. Abul Kasem. I cannot understand, in the first place, why only a one-sided view should be taken of this question. My friend Mr. Abul Kasem has come forward, I do not know whether of his own accord or whether because he has been requested by some one, to defend the action of Colonel Waghorn. If there is one thing clear in Mr. Hussanally's indictment of the Railway Administration, it is this, that for some reason or another Colonel Waghorn has not been able to carry out the pledge that he had given to the Assembly. I am not here to find fault with him. I quite appreciate the difficulties that he may have to encounter. But there is no reason to defend Colonel Waghorn on the part of my Honourable friend, Mr. Abul Kasem. Now we have a philosophy preached by my Honourable friend, Mr. Khagendra Nath Mitra and my Honourable friend, Mr. Abul Kasem. We have just passed the Racial Distinctions Bill, why, they ask, do you want these racial distinctions by doing away with the reservation of compartments for Anglo-Indians and Europeans? I cannot understand the logic of this philosophy. After all what are we doing when we ask that this distinction should be done away with? We are only carrying out in practice what we have passed here. I do not know whether Honourable Members realise, or even Government realise, that a good deal of discontent in this country is due to the treatment that we receive because of the Railway Administration in this country. I can recollect, Sir, that one of the first things that I said to one of the highest officials on his arrival in India was that a good deal of discontent in this country prevailed because of the scenes that were repeated every day during the railway journey or on railway platforms: and any step taken to do away with any injustice that is being done to Indians by the present Railway Administration will be not a disservice, but will be a great service to the country. We are asked to believe that we have "privileges," why should Europeans or Anglo-Indians

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not have "privileges?" My friend, Mr. Joshi, last year gave us a picture of what our "privileges" were. If such are the privileges that the European or Anglo-Indian demands, well, in fairness to them, we shall not have the hardihood to give them those privileges that are extended to our own countrymen. It is not a racial question. I want Honourable Members to believe me, and I want Government to believe me when I say that I am absolutely free from racial bias or racial consideration. Government will pardon my saying so, but if they perpetuate this distinction in cases like these of reserving compartments for Anglo-Indians and Europeans, we shall not be held guilty of perpetuating racial distinctions; those who advocate that policy will be held guilty.

Now, we were asked a question here, "is this going to help congestion if one more compartment is thrown open to you." It is not a question of whether it is going to help or not; as a matter of fact, it is bound to help. I will give you an instance from my own experience, that happened last year. We came here, leaving the work of the Fiscal Commission, to be present for the visit of His Royal Highness the Prince of Wales to Delhi. When I was going back the train was overcrowded with the result that my servants could not get into the servants' compartment; the Indian Princes' servants and the *sahibs'* servants were there. So my servants got into the compartment anyhow for the time being and stood for a station or two and then they found that there was a third class compartment available reserved for Europeans and Anglo-Indians, which they got into. There was no other way; it was an empty compartment and they got into it. Well, after midnight, the guard at a railway station went and asked them to clear out. There was a carriage and there were three compartments in that carriage absolutely unoccupied. The servants refused to get out. They said they could not get into the servants' compartment; there was no other room available in the whole train and so they had got into that compartment. The servants refused to get out and the guard threw them out bag and baggage. The servants came and woke me up. I went and asked the guard why he wanted to clear these people out. He said "this compartment is reserved for Europeans." I said "this is unoccupied, the train is full, why will you not let them get in." He said "there is one Anglo-Indian who wishes to occupy one of these three compartments and he objects to these people being there." I call it unconscionable and inhuman conduct not to allow these people, when there was no room in the train, to stay in other two compartments which were absolutely unoccupied. Sir, these things happen every day. Fortunately for myself, I had an eminent English lady travelling with us, my wife and myself. I do not mind mentioning her name, I have her authority for doing so. She was Lady Emily Lutyens, the sister of the present Governor of Bengal, and she characterised this conduct on the part of the railway authorities as appalling, and said that if these things happened in this country every day certainly there was some justification for the discontent and for the prejudice that prevailed.

Sir, all that is asked for is that we should do away with distinctions in railway carriages. The talk that we have had of the different habits and customs and my Honourable friend, Maulvi Abul Kasem's eloquent appeal that he did not want to travel with Mr. Mukerjee and Sir Alexander Murray but wanted to be left alone, all this is absolutely out of the question. Here is a bar placed against Indians, a badge of inferiority, I call

it, in spite of what my Honourable friends have said. What often happens, as I described last year, is that you find an Anglo-Indian stretching out his legs and smoking a cigarette comfortably in one compartment while in the other third-class compartments you find Indians huddled together and kicked by the guard. It is a thing which happens every day on every railway platform and, when the subject is brought forward, we find four or five speeches made even by my Honourable friends, Mr. Khagendra Nath Mitter and Maulvi Abul Kasem with a view to attacking my Honourable friend who has brought forward this Resolution. He demands nothing more than that fair treatment should be meted out to us, that this injustice should be removed and that a grave cause, which perpetuates the discontent among the poor masses, should be removed.

Sir, with all the power that I can command, I support this Resolution.

Maulvi Abul Kasem: I want to make a personal explanation, Sir. My name was mentioned by Mr. Jamnadas Dwarkadas. I did not like to interrupt his eloquence but the insinuation made by him that I was set up by any one is incorrect, unfounded and unjustifiable.

Mr. Jamnadas Dwarkadas: Sir, I am sorry I gave that impression. Nothing was further from my thoughts. If I have done so, I apologise.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, after the heat generated by the last speaker, who worked himself up into a good deal of emotion over the hard case, the undoubtedly hard case, of his servants, my endeavour will be to try and get this Honourable House to look at this matter in its proper proportion.

British India is full of social difficulties and social anomalies. Education and a spirit of compromise are at work and are steadily overcoming a good many of these difficulties and anomalies. In education and the spirit of compromise to which I have referred is to be found the real remedy for them. The hard and fast cleavage and distinction between class and class, and race and race, is being steadily and gradually eliminated. The question is whether this Central Legislature is going to allow itself to be used as a social reform club, and to exercise its great powers and responsibilities for the purpose of wasting time over pinpricks of this kind. Distinctions do exist. Call them racial if you like. I myself think that many which are so-called are not really racial distinctions in the proper sense of the term. But they do exist, and for a long time to come they must continue to exist, and we must try, working together, to make the best of them.

Sir, I see railway stations with refreshment rooms reserved for Hindus and with refreshment rooms reserved for Muhammadans. I do not see at any station a refreshment room reserved for Europeans; and I am very glad not to see it. I am glad, however, to see that there are reservations of that kind made for Hindus and Muhammadans, because I have the highest respect for the conservative feelings which those communities entertain with regard to their food, their habits and so forth. I would no more dream of trying to force my way into one of those refreshment rooms, as one of the public having a right to go everywhere, than I would try to fly. There is no question among third class passengers now, whatever it may have been in the past, of racial superiority. It is a question,

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not have "privileges?" My friend, Mr. Joshi, last year gave us a picture of what our "privileges" were. If such are the privileges that the European or Anglo-Indian demands, well, in fairness to them, we shall not have the hardihood to give them those privileges that are extended to our own countrymen. It is not a racial question. I want Honourable Members to believe me, and I want Government to believe me when I say that I am absolutely free from racial bias or racial consideration. Government will pardon my saying so, but if they perpetuate this distinction in cases like these of reserving compartments for Anglo-Indians and Europeans, we shall not be held guilty of perpetuating racial distinctions; those who advocate that policy will be held guilty.

Now, we were asked a question here, "is this going to help congestion if one more compartment is thrown open to you." It is not a question of whether it is going to help or not; as a matter of fact, it is bound to help. I will give you an instance from my own experience, that happened last year. We came here, leaving the work of the Fiscal Commission, to be present for the visit of His Royal Highness the Prince of Wales to Delhi. When I was going back the train was overcrowded with the result that my servants could not get into the servants' compartment; the Indian Princes' servants and the *sahibs'* servants were there. So my servants got into the compartment anyhow for the time being and stood for a station or two and then they found that there was a third class compartment available reserved for Europeans and Anglo-Indians, which they got into. There was no other way; it was an empty compartment and they got into it. Well, after midnight, the guard at a railway station went and asked them to clear out. There was a carriage and there were three compartments in that carriage absolutely unoccupied. The servants refused to get out. They said they could not get into the servants' compartment; there was no other room available in the whole train and so they had got into that compartment. The servants refused to get out and the guard threw them out bag and baggage. The servants came and woke me up. I went and asked the guard why he wanted to clear these people out. He said "this compartment is reserved for Europeans." I said "this is unoccupied, the train is full, why will you not let them get in." He said "there is one Anglo-Indian who wishes to occupy one of these three compartments and he objects to these people being there." I call it unconscionable and inhuman conduct not to allow these people, when there was no room in the train, to stay in other two compartments which were absolutely unoccupied. Sir, these things happen every day. Fortunately for myself, I had an eminent English lady travelling with us, my wife and myself. I do not mind mentioning her name, I have her authority for doing so. She was Lady Emily Lutyens, the sister of the present Governor of Bengal, and she characterised this conduct on the part of the railway authorities as appalling, and said that if these things happened in this country every day certainly there was some justification for the discontent and for the prejudice that prevailed.

Sir, all that is asked for is that we should do away with distinctions in railway carriages. The talk that we have had of the different habits and customs and my Honourable friend, Maulvi Abul Kasem's eloquent appeal that he did not want to travel with Mr. Mukerjee and Sir Alexander Murray but wanted to be left alone, all this is absolutely out of the question. Here is a bar placed against Indians, a badge of inferiority, I call

it, in spite of what my Honourable friends have said. What often happens, as I described last year, is that you find an Anglo-Indian stretching out his legs and smoking a cigarette comfortably in one compartment while in the other third-class compartments you find Indians huddled together and kicked by the guard. It is a thing which happens every day on every railway platform and, when the subject is brought forward, we find four or five speeches made even by my Honourable friends, Mr. Khagendra Nath Mitter and Maulvi Abul Kasem with a view to attacking my Honourable friend who has brought forward this Resolution. He demands nothing more than that fair treatment should be meted out to us, that this injustice should be removed and that a grave cause, which perpetuates the discontent among the poor masses, should be removed.

Sir, with all the power that I can command, I support this Resolution.

Maulvi Abul Kasem: I want to make a personal explanation, Sir. My name was mentioned by Mr. Jamnadas Dwarkadas. I did not like to interrupt his eloquence but the insinuation made by him that I was set up by any one is incorrect, unfounded and unjustifiable.

Mr. Jamnadas Dwarkadas: Sir, I am sorry I gave that impression. Nothing was further from my thoughts. If I have done so, I apologise.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, after the heat generated by the last speaker, who worked himself up into a good deal of emotion over the hard case, the undoubtedly hard case, of his servants, my endeavour will be to try and get this Honourable House to look at this matter in its proper proportion.

British India is full of social difficulties and social anomalies. Education and a spirit of compromise are at work and are steadily overcoming a good many of these difficulties and anomalies. In education and the spirit of compromise to which I have referred is to be found the real remedy for them. The hard and fast cleavage and distinction between class and class, and race and race, is being steadily and gradually eliminated. The question is whether this Central Legislature is going to allow itself to be used as a social reform club, and to exercise its great powers and responsibilities for the purpose of wasting time, over pinpricks of this kind. Distinctions do exist. Call them racial if you like. I myself think that many which are so-called are not really racial distinctions in the proper sense of the term. But they do exist, and for a long time to come they must continue to exist, and we must try, working together, to make the best of them.

Sir, I see railway stations with refreshment rooms reserved for Hindus and with refreshment rooms reserved for Muhammadans. I do not see at any station a refreshment room reserved for Europeans; and I am very glad not to see it. I am glad, however, to see that there are reservations of that kind made for Hindus and Muhammadans, because I have the highest respect for the conservative feelings which those communities entertain with regard to their food, their habits and so forth. I would no more dream of trying to force my way into one of those refreshment rooms, as one of the public having a right to go everywhere, than I would try to fly. There is no question among third class passengers now, whatever it may have been in the past, of racial superiority. It is a question,

[Colonel Sir Henry Stanyon.]

as has been rightly pointed out from the Government Benches, of travelling convenience. We have to face the fact, which is beyond our control, that a large number of Indians object to travel with Europeans, and a large number of Europeans object to travel with Indians. We are not concerned with whether there is any justice in these feelings. The feelings are there, and the Railway Administration have to deal with them. Now Indians travel in thousands, while Europeans travel in tens. If there are a hundred third class compartments in a train, surely, in order to serve this desire of the communities to travel apart, the natural thing for a Railway Administration to do is to reserve one compartment for the 10 Europeans rather than attempt to reserve 99 compartments for the thousand Indians. That is really, I think, very largely at the bottom of this reservation in third class carriages. I have had many journeys, and most interesting journeys, on railways in company with Indian passengers whom I had never seen in my life before, and I have always found them helpful, courteous and accommodating in every possible way. But I must confess that I myself have felt uncomfortable many times, not because I thought I was superior, but because I was afraid I might say or do something hurtful to the habits or feelings of my fellow-passengers. I recently travelled in the company of a pious Muhammadan who had liked to say his prayers in the carriage while the train was in motion. I was glad to see that he did not give up his habits, but I was uncomfortable. Similarly, if I were to travel with a high caste Brahmin, I should be most uncomfortable, lest I with my calf-skin boots and my European habits, should jar him at any moment. Sir, these differences are found even where there is no reservation. I daresay my friends have heard of and some of them may even have been to, such a place as a Cinema, where, in the one-rupee seats, you see both Europeans and Indians, you can see the same instinctive segregation there. You see the Europeans sitting together in one place and the Indians together in another; unless they happen to be Europeans who know Indians, and Indians who know Europeans and like to mix with them. The whole thing is so difficult to define that all that the railway people seem now to do is merely to look to the convenience of the different classes of passengers. I do not think for a moment that to-day there can be any talk in third class carriages of racial superiority. In 1st and 2nd class carriages reservation has been done away with, and we have the undertaking from the Government Benches given to-day that the same rule of non-difference is to be brought into effect in the intermediate class carriages. No blame attaches to a guard, who is bound by orders, for not allowing a compartment to be occupied which is reserved for a particular purpose. Such exclusion is not the act of the guard, and there should be no irritation against him; that man is merely doing his duty. I have been evicted over and over again for getting into a ladies' compartment which I found for the time being unoccupied by any lady; and I am very careful now. Sometimes I have found myself there to my surprise and horror; but I have never thought that the guard who turned me out was in any way abusing his powers. I think, on the whole, Sir, that the matter has been thoroughly ventilated. I see that there is a broad-minded view on the Indian side. I hope it will be believed that there is an equally broad-minded view on the European side, and that nothing will be done by a Resolution of this House to give room for any impression that the House uses its majority for the purpose of furthering what, in one or two of the speeches, has been

rather treated as if it was a racial question. I am jealous, as a privileged Member of this House, of the reputation that it holds, not before a small electorate, but before the world, as a Central Legislative Assembly; and for this House to pass hours in speaking of and arriving at a Resolution on the little question whether in one out of the 20 or 30 third class compartments the Railway Administration shall put people who want to travel by themselves and who are not wanted by the rest of the travellers, is, I think, a procedure that is far beneath the dignity of this Honourable House. The only matter that I would refer to is one other question that was raised of soldiers being given compartments to themselves. Sir, I say it with a considerable knowledge of this country that the average rustic who travels by the third class carriage would consider himself very badly treated if he was forced to travel with a lot of men who do not know one word of his language, whose habits are entirely foreign and who are brought up more or less to think of no one except themselves, apparently. (Mr. W. M. Hussanally: "They need not be in that compartment: they could go to another.") Moreover, this segregation of the soldier is a matter of discipline. Would my friend say that, when a regiment marches through a town, that they are occupying a reserved part of the street in going up together, and that they should indiscriminately march up with the rest of the population walking along the street out of order? Therefore, I say it is a very wise provision that soldiers should be put into separate compartments and travel by themselves. It is fair to them and it is fair to the Indian community also, and absolutely just. And I put it again to the Honourable Mover of this Resolution, as has been put by others, that the matter has now been thoroughly ventilated and that he will not try to drive this House to any Resolution on the question.

(Several Honourable Members: "I move, Sir, that the question be now put.")

The motion was adopted.

Mr. W. M. Hussanally: Sir, I should like to say a few words.

Mr. President: I will give the Honourable Member his reply but, as the closure has been carried unanimously, that ought to show that the debate has been exhausted.

Mr. W. M. Hussanally: I wish to say a few words if you will permit me. Since I have been pressed to withdraw this Resolution, I will do so, though I am not very pleased in doing so. I wanted, Sir, to reply to all the criticisms that were offered to my speech, but even that I will forego. I shall only say that I take up the challenge from Colonel Gidney when he said that these compartments go full. I still maintain and very emphatically too that in 9 cases out of 10 these compartments go empty or only with a solitary individual. But, Sir, Mr. Innes has given us an assurance that he will persuade the railway administrations to do away with the reserved intermediate compartments, though Mr. Hindley qualified that offer by a condition. I hope they will see their way to persuade all these Railway Administrations to do away with these intermediate class compartments for the present, and, in withdrawing the Resolution, I reserve to myself the right to bring it forward once more if I find that adequate steps have not been taken.

The Resolution was, by leave of the Assembly, withdrawn.

RESOLUTION *RE* SELECTION TO APPOINTMENTS UNDER GOVERNMENT OF INDIA.

Mr. K. Muppil Nayar (West Coast and Nilgiris: Non-Muhammadan Rural): Mr. President, the Resolution that stands in my name reads as follows:

"This Assembly recommends to the Governor General in Council that the Government of India in making appointments to offices under its direct control shall ordinarily, where the qualifications of candidates are adequate to discharge the duties efficiently, by their education, ability, and integrity, give preference to those that belong to classes or communities which are not well represented in the service, due regard being had to provincial considerations."

I wish an abler advocate than me had moved this Resolution. But the fortunes of the ballot are such and I shall content myself mainly with an introduction. I shall not detain the House long especially in view of the short time before us, but I shall leave the expert handling of the present important and delicate Resolution to its abler—I almost said natural—guardians. There are, however, some plain truths and the most important among them in my opinion is, Sir, that it is not enough if only the man who has passed an examination or who wants an employment to keep his body and soul together is represented in the Government services of a country. The executive of the Government has not only to carry out the Government's policy but has also much to do in the shaping of it, inasmuch as the officials form the Government's advisers and possess all practical experience in most matters. Viewed from this aspect, it will be seen how essential it is that every class and community must be properly represented in the services. It is also plain that the more the stake in the country, the more ought to be the representation. I am sure my friends will speak for their communities and I wish to supplement that with only emphatically urging the necessity of encouraging recruitment from my class, the landed interests. I am sorry their claims have not been adequately appreciated in the past. Then again, in a vast continent like India with her millions of people of various religions and languages, classes and castes, I believe it will be impossible to maintain general satisfaction without some such means as suggested in the Resolution for a long time to come—a time when we may find something more in common among her different communities. The Resolution is a very modest and moderate one. It is couched in such terms as to offend none. So, in commending my Resolution, I hope it will have the universal support of this House.

Mr. President: Resolution moved:

"This Assembly recommends to the Governor General in Council that the Government of India in making appointments to offices under its direct control shall ordinarily, where the qualifications of candidates are adequate to discharge the duties efficiently by their education, ability, and integrity, give preference to those that belong to classes or communities which are not well represented in the service, due regard being had to Provincial considerations."

I may inform the House that, of the four amendments on the paper, the amendment standing in the name of Mr. M. K. Reddi Garu appears to me to raise much the same question as that raised by the original Resolution. The amendment standing in Mr. Mukundaraja Ayyangar's name is out of order in so far as it invites Government to enumerate the population of India. It is in order in so far as it proposes to add a minimum educational qualification, and as far as the last six lines of it are concerned, they are a mere repetition of the original Resolution. Khan Bahadur

(3192)

Zahiruddin Ahmed's amendments are not in order because they propose to deal with matter which properly ought to be raised only in the Legislative Council of a Province. The amendment of substance which is in order stands in the name of Mr. Jayanti Ramayya Pantulu whom I now call.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I beg to propose:

"That in the Resolution which has just been moved by my friend Mr. Nayar, for all the words after the words 'shall ordinarily' the following be substituted:

'be guided by considerations of capacity, efficiency and character irrespective of caste or creed'."

Sir, the object of my amendment is to ask the Government not to accept the Resolution moved by my Honourable friend, Mr. Muppil Nayar, but to continue to follow the practice which they have been following hitherto. My objections to the Resolution are fourfold. The first is impracticability. The Resolution wants Government to give preference to communities that are not at present properly represented in the services "with due regard" also "to provincial consideration." I think that if this contention is pushed to its logical extent we shall have to consider not only provincial considerations but also religious considerations, communal considerations, caste considerations and so many other considerations. Let us take the provincial considerations. We have a fairly large number of provinces in India, but if you combine linguistic and provincial considerations, how many linguistic areas have you got in India? According to our old books there used to be 56 countries making up the whole Indian Empire. Probably their number is larger now. Let us take it at 56. Then you will have to take 56 areas into consideration, that is so far as provincial and linguistic areas are concerned. Then you will have to take castes and communities into consideration—Muhammadans, Hindus, Jains, Sikhs, Buddhists (*A Voice*: "They are all Hindus.")—I do not think our Jain friends will admit that. In each community there are sub-communities. Take the Hindus. Do the Hindus form one community? There are at least four castes, and each caste has many sub-castes, and in each sub-caste there are many subdivisions, and if statistics are to be compiled on the lines suggested by my Honourable friend, Mr. Mukundaraja Ayyangar, you will have a very big book. How is the Government to apportion the appointments among all these communities? First by provinces, then by languages, then by religion, then by castes, by sub-castes—how is it to apportion these appointments among all these different communities? This communal constitution if it is to be properly constructed will be a labyrinth and one would lose himself in it. Therefore, I say that it will be simply impracticable. Then take the case of the Panchamas, the lowest class, the outcastes. Where will they be in a system of communal representation in the services? The Panchamas—are they to be represented in the services or not? If you are going to give representation to each community, here is a community which forms by far the largest community in the whole of India. The Panchamas, in numbers, exceed any other community, I think, and where will they be? If you want to have regard to efficiency or competency, not one Panchama in a thousand or even in ten thousands will be found fit to occupy any of the appointments. Practically, then, all of them will have to go unrepresented. Then, where is your communal representation? What is the great grievance that those communities which are not well represented in public service at present have? Why is it that they are not so well represented? Let me take the case of a few communities in my own

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part of the country. Take the case of the community to which my Honourable friend the Mover of this Resolution himself belongs. The Nairs, Sir, are one of the most intellectual communities in the Madras Presidency; not only the males, but the Nair ladies are among the best educated ladies in the whole of India. They are educated not only in Malayalam but also in Sanskrit. I am told that there are very good Sanskrit scholars among the Nair ladies. The Nair community is the community to which Sir Sankaran Nair belongs and to which the late Dr. Nair, the founder of the non-Brahman movement belonged. I am surprised, Sir, that a member of that community should come forward to move this Resolution as if his community has any grievance. So far as the Nairs are concerned, they are already at the top.

Then take the case of the Vaisiyas or Banias who are non-Brahmans. You do not find them well represented in the services, and why is that? The entire trade of the country is in their hands; and being tradesmen they are naturally very shrewd people. You do not find them wanting in intelligence; the wealth of the country is in their hands and yet you do not find them represented in the services and that is because they do not think it worth their while to get into the services and give up the more lucrative business of traders and merchants. And that could be the only reason why they have not entered the services, for nobody could have prevented them if they had wanted to enter. Why they are not found in the services is simply due to the fact that they have not found it worth their while to enter them.

Then again, Sir, take the case of another community to which my Honourable friend, Mr. Reddi belongs. The Reddis of the Nellore district are well known to be a very intelligent and highly educated class. Here again I would say that the ladies of this community are traditionally known to be highly educated and intelligent. In this community you will find several Telugu and Sanskrit scholars. They are very rich people, some of them are zamindars and they have a virtual monopoly of the agriculture of the country. The reason why they are not represented in the services is that they do not find it worth their while to enter service; it does not pay them, and they are much better off as they are. But in any case, at least under the British Government, has there ever been anything in the nature of a restriction upon any class or community trying to better its position? All that is aimed at even in the most democratic country is equality of opportunity for all people. Can anyone say that under the British administration, any community has been deprived of opportunities of improving and distinguishing itself equally with any other community? I do not think, Sir, that anybody can say that. The British Government has always proceeded on the policy of governing the country in the equal interests of all people without any distinction of caste, creed or colour, and I believe they have on the whole acted up to that principle; although in my own part of the country we sometimes come across advertisements of appointments with a *nota bene*—“No Brahmin need apply.”

1 P.M. Bureaucracy, whatever sins it may have to atone for, can undoubtedly be credited with having filled up the public offices only with a view to efficiency and the proper discharge of the duties appertaining to the offices. Favouritism there has been certainly, but it has not been in favour of the intellectual classes; favouritism whenever it has been exercised, has been exercised to the detriment of the intellectual classes.

Nevertheless, they have had always an eye on the efficient discharge of the duties attached to the offices. I, therefore deny, Sir, that any community has been deprived of any opportunity of entering the public service by availing itself of the educational facilities which have been offered by the Government, and if certain communities have not availed themselves of those facilities, it is because they have found that it does not pay, it is not worth their while to do so, that it pays them better to do something else. Let us go to Bombay. What do you find there? The trade and commerce of the country is entirely in the hands of Parsis,—or in the hands of Parsis and Guzeratis. Are we going to say that these people have had a monopoly of these things and therefore, hereafter, there should be communal representation in commerce, that you must distribute this trade and commerce among the different communities according to their numbers? I suppose, Sir, this has only to be stated to be condemned. Each community or each individual chooses whatever course of life seems to him to be good for him, and whatever course of life it or he is fitted for; it is a case of free choice and free competition, and, if, as a result of that free competition, some people have more of one thing than others, I do not think you can attribute it to any favouritism or nepotism or jobbery, and I do not see how you can improve things by simply insisting upon everyone of these professions being apportioned among the different communities on simply a numerical basis. What would be the effect of any such communal representation on the administration of the country? What does a private employer do? The private employer wants to employ the best men that he can get for his money because he finds that it pays him best. Take the case of an architect, of an industrial man, a mill-owner, he will employ the best labour that he can get for his money, he will not look to communal representation in it. Himself may belong to a community which is not well represented in the services in his own mill; I do not think any mill-owner who is a business man, who does business on business lines, would be so foolish as to insist upon a certain number of people in his mill belonging to his own community. Such a man will not be able to keep his business going, I think, for a month. Well, if that is the case with the private employer, who should ask Government, which is the largest employer in the country, why should it follow any other principle? Is not the tax-payer entitled to get the best value for his money? You want a certain type of man for doing a certain piece of work; you attach a certain salary to the job to attract a really useful, capable man. Having done that, is it not your duty to try to get the best man that you can possibly get for your money for discharging the duties of that appointment? Is it not reasonable that the only consideration with you in filling that appointment must be efficiency, which out of all the applicants can be trusted to discharge the duties of that post most efficiently and intelligently? What do you do if you have got a case in a Court of Law in which you are to be defended or you want to prosecute or you are to be represented in a civil suit? You naturally go to the best Pleader that you can get for the fee that you can afford to pay. There, you do not think of communal representation. You do not necessarily go to the Vakil who belongs to your sect or race or creed, you go to the best man that is available. Then, take the case of doctors. If you are in bad health, you naturally go to the doctor who you think will be most useful to you, the only limit being the limit of the money that you can pay him; and I do not see why you should adopt another procedure in the case of the public service. Then, take the case of military service. Our Indian Army is monopolised by two classes, the Pathans and the Sikhs (A Voice: “No.”) largely. At any rate you

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do not maintain that all the communities in India are represented in it. You do not, on that account, ask the Government to disband all these regiments and re-fill them on a communal basis, consisting of so many Hindus, so many Muhammadans, so many Brahmins, etc.; and will an army constituted like that be able to defend India? Will it be of any use? The rule which ought to be followed in this as in all other cases is to put a man in the place for which he is best fitted. That is the only rule. Once you depart from that rule, you do not know where you will go. It will be impossible to depart from that course and give any weight to the considerations of communal representation without demoralising the whole service.

Mr. President: I must ask the Honourable Member to draw his remarks to a close.

Mr. J. Ramayya Pantulu: There is only one other consideration which I want to put before the House, namely, the political consideration. What will be the effect of communal representation in the services on the political future of the country? We all want self-Government and immediate self Government also we want. Self-Government presupposes a nation, consolidated nation, and we want to build up a nation as fast as we can. Now, is not communal representation not only in the Legislative Councils but also in the services calculated to emphasise and perpetuate the communal differences which already exist in matters of religion and *quasi-religious* customs? Is it not calculated to emphasise those differences also in the public life of the people? Does it conduce to this nation-building, or help the growth of the nation, this perpetuation of the differences not merely in matters which are purely religious, or *quasi-religious*, but also in the public life of the country? I think, Sir, it will be impossible to ask for self-Government if you insist upon having communal representation in the services. Communal representation is entirely opposed to the spirit of self-Government and it lays the axe at the very root of your demand for self-Government. The answer which this Assembly gives to the question raised in this Resolution will indicate the measure of the depth of the desire which this House has for our self-Government, and I want the House to bear this in mind in deciding this question. Sir, I oppose the Resolution.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I this morning regretted the Resolution brought forward by my Honourable friend, Mr. Wali Muhammad Hussanally, and I consider that the Resolution which has followed is really unfortunate; but as it has cropped up and as it is being discussed, I will be failing in my duty to my constituency if I do give only a passive support to the Resolution moved by my friend, Mr. Muppil Nayar. Whatever my friends may think of it, I would draw their attention to the amendment which has just been moved by my friend from Madras. I would tell him that what he states in that amendment has been clearly and more solemnly and definitely stated in the great Proclamation of the Great Queen Victoria. That Proclamation exists; it has been re-affirmed by the successors of Her late Majesty and the Government of India. Where was then the necessity for our friends on this side of the House to come forward with Resolutions in season and out of season for the Indianisation of the services and the Indianisation of the Indian Army? The reason was that there was some defect on the part of the Government in giving effect to that Proclamation, not only in its letter, but in its spirit.

Sir, my friend over there says that the Government, in making these appointments, should be guided by character, integrity and efficiency. I believe, Sir, he will agree with me when I say that these qualifications are not the monopoly of a particular community or a particular sect. The Resolution as placed before the House is very wide and elastic. It does not ask for the sacrifice of efficiency or in any way the utility of the office by putting into it unqualified men, simply because they happen to belong to a particular community. But I submit for the consideration of this House that there is ample justification for demanding that where the necessary qualifications, whatever they may be, are available, communities and classes which are not represented, should be represented in the public service. May I have the indulgence of the House to say, Sir, that a community in a country derives its importance, its influence and its powers on various grounds, on population, on wealth, on education, and I may add, on the share it has in the administration of the country. How are you going to give that share in the administration of the country if you do not get those communities adequately and properly represented in the services? A reference has been made, Sir, to self-Government which is looming large before us and to nation-building. Now-a-days it has become a custom with some of my countrymen and friends to build constitutions and to draft them, but I believe that an attempt at nation-building was made—that the first attempt that we made to build a nation and to lay the foundations of self-government was that in the historic sitting at Lucknow when we entered into a compact. I am sorry, Sir, that in this House I find very few members of that compact. My friend, Mr. Iswar Saran, myself, Mr. J. Chaudhuri and Nawab Sarfaraz Hussain Khan are the only people left, and I believe Mr. Jamnadas Dwarkadas was one of them. We entered into that compact, and I claim, Sir, on behalf of that body, which sat in the tent at Lucknow, that we made self-government possible in this country by entering into that compact, and that greatly helped in the Montagu-Chelmsford Report which would have been quite impracticable but for that compact. I draw attention especially to that compact, because in that compact it has been laid down that a certain proportion of the seats in the legislative bodies—and the proportion was defined therein—should be held by Muhammadans and Hindus. And what was the reason that guided us in that compact? It was because we found that, as long as the minority or the Muhammadans were not given sufficient strength and sufficient representation on these legislative bodies, it would be impossible to take the country with you. You want to build the nation. And what does the nation consist of? It consists of individuals and individuals are grouped together in various communities and classes. If you want to build a nation, it will be by raising each community and each class and not by suppressing others at the expense of one particular class or community. That is not the real nation-building spirit. Sir, yesterday morning a question was asked, and I think asked very injudiciously, whether a Muhammadan was to be appointed on the Royal Commission that is coming out to this country. That was beyond jurisdiction, but I was pained and shocked when some of my most distinguished friends in this House, for whom I have the greatest respect, came forward with supplementary questions ridiculing the idea. (*Cries of "Shame"*.) That was a thing I regretted very much. This policy of pin-pricks does not go a long way towards nation-building. If we want to build a nation, we have to consolidate it and in consolidating it we have to help to raise all those various factors which make up the nation, and the real way to get self-government and build the nation would be to raise your younger brother or those who are not in such fortunate circumstances as you are placed.

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Reference has been made, Sir, to commercial houses and millowners, but I should like to submit for the consideration of my Honourable friend over there that commercial houses and the State do not occupy the same positions. In a commercial house or in a mill it is the owner who has to decide which way his interest is to be best served; in the State it is the public money, the money subscribed and paid by the public at large that is spent, and the State exercises a dominating influence over the people and the various communities have a right, and a justifiable right, to demand that they shall have a finger in the administration of the country. If we do not recognise the principle of communal representation in the services, we have no business to demand the Indianisation of the services. Leave it to the discretion of the Government and have the best man for the Army and for the Civil Service, whether he is an Englishman, an Australian or an Indian; and, if you admit it in one case, you must admit it in the other.

With these words I oppose the amendment that has been moved and support the Resolution as it stands.

Sardar Bahadur Gajjan Singh (Punjab: Nominated Non-Official): Sir, I rise to support the original Resolution. I know that in so doing I shall be incurring the displeasure of many eminent and distinguished Members of this House, but I recognise that, as long as the question of minorities with which the important question of communal representation is primarily concerned is not solved in a statesmanlike manner or I should think in a generous and liberal manner by those who are in a majority, it is idle to have any idea of Swaraj or self-government. We, Sir, here representing minorities are not at all prepared to commit suicide and bring down on ourselves self-annihilation. I represent a minority in the Punjab, not of Hindus or of Muhammadans but of the Sikhs, who were not at all a party to the so-called compact of Lucknow. In fact, this is one of the main objections on behalf of my community that that compact was not just and right in so far as it ignored the Sikh community altogether. Those who know the Punjab, those who know the Sikhs—for them it is impossible to ignore an important community like ours. We in the Punjab, Sir, occupy a unique position. It was only some 70 or 80 years back that we were the rulers of that Province, and I beg to assure the House that we are not at all prepared to accept any humiliating and subordinate position in the Province as well as in the affairs of the Empire. The ideas of past glory are still fresh in our minds. When there was no communal representation, I dare say that during the old Punjab Council days in one election not a single Sikh was elected, because we are scattered here and there and it was rather difficult for us to be in a majority in any single constituency. We brought our grievances to the notice of Sir Michael O'Dwyer, the then Lieutenant-Governor, who agreed that unless communal representation was given to the Sikhs, they would be nowhere. We came here to Delhi in a deputation and called upon the then Secretary of State and the Viceroy.

Mr. J. Ramayya Pantulu: May I rise, Sir, to a point of order? The Honourable Member is speaking of communal representation in the Legislative Councils, while we are now dealing with the question of communal representations in public services.

Sardar Bahadur Gajjan Singh: This constitution was then under consideration. Of course, communal representation to the Sikhs was allowed. Now, I submit, Sir, when the original principle of representation in the

Councils has been recognised by communal representation, I see no reason why the same principle should not be applied to the public services. It is probably true that such communal representation is obstructive in nation-building, but those who desire to build the nation—it is their duty to formulate plans and schemes for safeguarding the interests of minorities. It is impossible for them to ignore us. If they think that they can carry things in this Assembly by sheer force of majority, let me warn them that by so doing they will be taking themselves far from the goal of self-government. As has been pointed out by my Honourable friend, Mr. Abul Kasem, in India the nation would essentially consist of communities, and unless all communities are properly represented in the service of the country, no nation-building is possible. May I ask the House why we should grumble at the domination of the bureaucracy if we, on the other hand, by our own action produce an element who can dominate us in place of the bureaucracy. To make myself more clear, let me ask why we should remove one sort of domination only to replace it by another? We in the Punjab—I am referring, of course, to the Sikhs and the Muhammadans—and I think that the position is the same in the Islamic world,—though we are in the minority, we do not want to sacrifice ourselves altogether. We wish to take our share in the government of the country, and unless a fair share is assured to us, I must say that the work of those whose goal is self-government must be very very difficult if not impossible. I may perhaps freely admit that, to start with, communal representation is an evil in the way of nation-building; I maintain that it is a necessary evil, but it ought to be respected and given effect to. My friend opposite while speaking on the last Resolution pointed out that there are anomalies, and difficulties which have to be overcome by tact, by education and by other legitimate means. Similarly, I appeal to those who are so anxious for nation-building, to try and safeguard the interests of the minorities in the public services. If we get no representation, as has been rightly pointed out by my friend, Maulvi Abul Kasem, our social position will at once dwindle down. Now, Sir, speaking of my own community, as probably many of the Honourable Members of the House are aware, though we are one in 100 in the population of India, yet we supply one-fifth of the Army of the British Indian Empire. We have got historical and political importance in our favour. We feel that what little is conceded to us is not at all sufficient for our purposes. Now take the case of this Assembly. Out of a total number of 140 or thereabouts, there are 2 elected Sikh Members here, namely, Sardar Gulab Singh and Bhai Man Singh—I am by nomination only—while my friend, Baba Ujagar Singh Bedi, does not represent the Sikhs; he is a representative of the big landholders of Hindus, Muhammadans and Sikhs. Anyhow, though we are very few, we are here, and we can place our point of view before the House, and I have no doubt that, if you exercise your sound common sense and impartial judgment, our grievances will be listened by you. I do not claim, Sir, that the various communities should find representation in the services even if they are not qualified. Far from that. The Resolution on that point is very clear. I am not in favour of sacrificing the efficiency of the services, but where efficiency, education and character are the same, then I submit there is absolutely no reason why preference should not be given to those communities who are not adequately and properly represented in the services of the country. The principle of communal representation, as I have said, is a necessary evil, but it has been recognised by the leaders of the most important political bodies of this country—I refer to the Moslem League and the Indian National Congress. Those bodies very wisely

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at Lucknow entered into a pact and met the objections of the minorities. Similarly, I appeal to you, the leaders of majority communities, to deal with this question in a similar statesmanlike and sound manner. Do not throw us out of court by a mere vote of the majority. Deal with us with justice, deal with us even with liberality. We are with you. But if you deny our just rights, I am afraid we will not agree to that course. As I have submitted, we are not prepared to commit suicide. We want Swaraj, local self-government, in which all communities are duly and properly represented. We are certainly against a Swaraj in which one community will dominate all others. I therefore with all the strength that lies at my command beg to oppose the amendment of my friend, Mr. Pantulu. The case of a doctor and engineer is entirely different and therefore I am only sorry that a gentleman of his standing and education should advance such instances. I must remind him, that if it is the case of a doctor, if I am sick and I find that there is a Muhammadan and Sikh, members of the various communities equally qualified, I would no doubt prefer my own man because for the simple reason that he understands me, my customs and habits, my way of eating and drinking. He will be more useful for me. And the same remarks apply to others. The case of the millowners is entirely irrelevant, and has nothing to do with our case. Here the Government of India is in charge of the funds of all the communities and these funds have to be doled out to services. We have kept our funds in that exchequer, therefore it is perfectly clear that we have force in the administration of those funds. And I think his objections are all met by my saying and by the words of the Resolution that efficiency must be the principal thing to be taken into consideration. We do not say, if a graduate is required for the proper discharge of the duties, take an unqualified Sikh or Muhammadan. We say, we have got our graduates and you have got your graduates. But you are strongly represented in the public service. You can give us preference. That is all we say. I have no doubt that the claims of the minority communities will be treated in a generous and liberal way. With these words, Sir, I strongly support the original Resolution and oppose the amendment of Mr. Pantulu.

The Assembly then adjourned for Lunch till Twenty-Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty-Five Minutes to Three of the Clock. Rao Bahadur T. Rangachariar was in the Chair.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, like the present occupant of the Chair, I am I hope a tolerably good Hindu, and I am not likely to benefit much by the sartorial concessions announced this morning by Mr. Hindley, in respect of third class railway compartments reserved for Europeans. I sometimes look up the almanac. To-day's astral influences seem to be adverse so far as racio-communal differences are concerned for we were obsessed by them all the morning. One would have thought that this is the silly season of the Legislature, and we are usefully filling up the gap between the new reduced figures of the Budget being supplied to us in a lump and our attempting to formulate

vapoury proposals about further reduction. We had however an interesting day. It was to have been half a day debate but has been extended. I hope by the extension the adverse astral influences have passed away and it will be possible now to arrive at some sort of a settlement that will prevent further dissipation of energies and be acceptable to all parts of the House, not excluding the Government. We cannot conceal from ourselves that differences exist, and they have to be reckoned with. Naturally, after the reforms came, they have crystallized themselves; when people find that there is substantial gain to be had by participation in public affairs, though some believe or pretend to the contrary naturally, different communities and provinces want their places. It would be wrong, it would be unpatriotic, not to take note of them and to allow for them and to make up differences as best as may be. Sir, speaking for Bengal, I have no hesitation in conceding that the other provinces have claims which should be recognised and given effect to, though my province may suffer thereby, as it has been steadily suffering in the recent past. But Bengal is very glad. Bengal is almost proud that the work that began there and gradually spread to the other provinces and that it is to grow from more to more, that all the provinces and communities are, in the wake of self-consciousness that has followed, realising that they are capable of formulating and enforcing their demands accordingly. Sir, if in the result some communities or provinces that have so far done well have to suffer, I say, it is all in the day's work. That position has been accepted. I do not want to refer in detail to the question of pacts and percentages. If we have to go on and get on, as we must, these are factors that must be taken into consideration and given due effect to. If any one had substantively put forward considerations to the contrary, that like all claims in favour of bare vested interest would have to be brushed aside. But have we any real difference to-day so far as the Resolution and the amendment before us are concerned? Reading closely between the lines of the original Resolution as moved by Mr. Nair and the amendment of Mr. Pantulu, I myself do not see much difference. So long as the test of efficiency is not to be discarded, and it can never be discarded, how can any one object to all the country sharing equitably? Whether in regard to legislative powers or administrative powers there can be no valid objection to their being fairly divided among those that desire and are entitled to them. Neither the Resolution nor the amendment seek as we understand and as we have been assured to do away with the efficiency test. And Government must be left a free hand. It is after all a little difference in wording that has been detaining us all day and if by further clarifying these matters it is possible to arrive at some settlement that will be acceptable to all, I would ask for your leave, Sir, and that of the House to move an amendment somewhat to the following effect:

"That this Assembly recommends to the Governor General in Council that in making new recruitment for the services under the control of the Central Government steps should be taken to secure that the services are not unduly over-weighted with representatives of any community or province."

Mr. W. M. Hussanally (Sind: Muhammadan): May I suggest "any one community"?

Sir Deva Prasad Sarvadhikary: If that makes the position clear I do not mind it, but 'any' is sufficiently expressive

Mr. J. Ramayya Pantulu: May I request you to read it once more?

Sir Deva Prasad Sarvadhikary: "That this Assembly recommends to the Governor General in Council that in making new recruitment for the services under the control of the Central Government steps should be taken to secure that the services are not unduly over-weighted with representatives of any one community or province."

The reason why this is somewhat more restricted than the wording of the Resolution, particularly, with regard to the new recruitment, is that no Government can be asked or expected to upset what is in existence already and whatever may be decided on will, therefore, have to apply to the making of new recruitment. I have not introduced words regarding insistence on efficiency and other tests because that is commonplace and that is common ground. All are agreed that that test can never be given up. (A Voice: "Why not include it?") I do not consider it necessary because it would be as absurd to expect Government to tolerate inefficiency test as to ask it overtly to do the obvious and exercise the efficiency test. What we want to aim at has been freely given expression to. It is that other things being equal there shall be no undue monopoly on the part of any community or province. Provided, the other tests are passed, all the provinces and all the communities must have due consideration of their claims and must have those claims recognised in a practical manner. That is the position that this amendment tries to bring out, and I believe it is in a line both with the essential spirit of the Resolution and the amendment that has so far been moved. The elements of disintegration are already far too great and I do not think that we need accentuate and aggravate them further. A great deal of hurt will follow as our enemies want it to follow—if anyone community or representatives of any community decide to take their own action towards further disintegration. That will be hurtful to the general weal, and we have to close up our ranks, from that point of view, and as a method of settlement, that I believe should be acceptable to all, and if not to all, I hope to the majority of my Honourable friends here, I have ventured to put the further amendment before the House. Sir, I do not want to go into detail or notice the various cross current references that have been made. There have been unfortunate differences in the past. Those differences we are trying to make up in order that enemies of the Reforms and opposers of their expansion may not profit by them. Reference was made to the question of Indianisation of services and it was asked if Mr. Pantulu's argument was to hold the board. Why think of Indianisation at all? There would be some sense in that if our object was mere Indianisation and for the sake of so-called Indianisation at any cost and at the expense of every thing else. That is not so. We are troubled with serious financial difficulties and they will be more soon. We have to economise and economise very largely in every direction. The question naturally arises whether for the money that we are prepared to spend and can spend by anything short of Indianisation, in the sense that we have accepted financial equilibrium will be possible and whether popular aspirations would be met. These are the two points of view from which the question of Indianisation has to be considered. If Indianisation for the sake of mere Indianisation is not the objective of those who press for it, an inefficient Indianisation is not our goal. Either it would be bad economy. We are in this position that we cannot pay the large salaries that would be involved if rigid Indianisation was not insisted upon. Therefore I do not think that that question can arise on the present occasion. Conceding that Indianisation is to follow, all the different elements that make up India will have to be considered. The Resolution need hardly have been brought

forward, certainly not because the Government are not alive to the situation. Government has already made repeated announcements that the claims of the different communities and provinces would be taken into consideration; when Government makes further recruitment this announcement is to be acted upon. I do not think that it can be the object of any one responsible either for the Resolution or any of the amendments, that the existing state of things should be upset or that the principles advocated should be carried so far as to be applicable even to the grading and the promotions and various other details of office procedure stage by stage and from time to time that would be impractical and intolerable. It should not be necessary and obligatory on the part of Government to have these considerations constantly before them and to give effect to them. I think those are considerations that ought to be clearly outside our mind. Once recruitment has taken place the meritorious will succeed and there ought to be no further reason for grievances. Well, Sir, Madras gentlemen have made themselves responsible for this Resolution and the amendments. I do not know whether Madras itself can have any grievances. Those who have been watching the progress of events and going round the offices come across Madrasis in abundance there

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): There are more Bengalees.

Sir Deva Prasad Sarvadhikary: There are more Bengalees in the lower grades but the higher grades are being gradually absorbed by our Madras friends. I never grudge that or envy that. We are Indians first and Bengalees afterwards. I openly and expressly said that Madras by dint of diligence and industry is getting its due and I wish them joy about it. That ought to be so with regard to every province and as I began by saying that Bengal is the last to grudge this, it does not want to make a grievance of the situation. To my Bengalee friends I have had occasions to remark that Madras is now trying to do what Bengal used to do, and if Bengal has had a setback, it is up to it to make up this deficiency and compete with Madras and Bombay and the Punjab and regain its position. It can, if it will, but that is no reason why it should grudge what other provinces, by their industry and diligence, are acquiring. There ought not to be any grievances, so long as the tests of merit and efficiency are rigidly adhered to. Amity that ought to exist between the provinces and the communities should not be artificially interfered with.

(At this stage Mr. President resumed the Chair.)

Having regard to all these considerations, Sir, I beg to move the amendment that I have read out, which I hope will meet the views of all the sides of the House and ought to find acceptance.

Prince A. M. M. Akram Hussain Bahadur (Calcutta and Suburbs: Muhammadan Urban): Sir, I have seldom ventured to open my lips in this House, and if I rise to-day to break that golden silence for which I have almost acquired a reputation in this House, I do so because I feel strongly about the subject and because I have had the honour of representing the views of the community to which I belong in another capacity elsewhere. Sir, I am perfectly aware that the subject which we are discussing this afternoon is a very delicate subject; it is a subject on which many eminent authorities have pronounced their opinions; it is a subject which they look upon with great disfavour, I mean the question of communal representation. There is no doubt, Sir, that this question has

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been stigmatized by them as a pernicious principle which is calculated to destroy and to counteract the influences of patriotic politicians and wise statesmen. With due deference to the views held by eminent authorities, I beg to differ from them. To my mind, whether it be in the matter of franchise, or in the matter of services, it is a principle which is both sound and wholesome, and I say it is essential, wherever Governmental action is concerned. Sir, the transplantation of ideas and systems bodily into this country from the United Kingdom or from any other European country is generally the vogue, although those ideas, may not be suitable to the peculiar conditions of this country. It is so easy to view a thing from your own particular standpoint, and so very difficult to look at the same matter from an opposite point of view. Generalizations and formulations of principles which look very attractive on the surface are a craze in the educated world, although in their application these principles may sometimes act to the detriment of certain classes and certain interests. India, Sir, is a heterogeneous country of diverse communities, not infrequently jarring against one another, where any provision that tends to reduce friction is a positive necessity. The degrees of civilization and culture between men and men are so wide and varied that it is impossible for the different sections of these inhabitants to march abreast. India, Sir, is at present really in a melting pot and Western culture and civilization which the Britisher has introduced into this country have revolutionized the whole aspect of affairs. Our sensibilities and perceptions are at once quickened and we are more than ever anxious to cling tenaciously to the rights and privileges which we possess and to claim others to which we think we are legitimately entitled. No community views with equanimity the superseding of another community in any branch of human advancement. Some are more perturbed than others but none is unconcerned. The task of governing this country will be more and more complex and difficult as years roll on. To attempt, therefore, to ignore the rivalry and competition that exist between one community and another is the height of folly. To treat them as a whole and leave them to the course of nature to sink their differences, to overtake those far ahead of the others and to eventually come up in a line without in the mean time suffering loss of opportunities and without losing hearts is to expect the impossible. They are in this unequal race liable to be side-tracked to avenues of discontent and even bitterness towards a Government that has refused to recognise the unequal start. To advance all sections of the people and to enable them to come up in a line is an essential duty of every good Government, and if Swaraj or Self-Government is to be attained the process lies in holding the balance even until the backward communities have come up in a line with the more advanced ones and have learnt not to think of their little selves but to think of the Indian nationhood as a whole. It is then and then alone that the necessity of communal representation either in franchise or services shall vanish. Until that stage is reached it is the paramount duty of Government, if it has at heart the equal development of the component parts of the country under its rule, to see that every part receives that fair treatment which it has a right to expect and that it is protected against the inroads of stronger rival factions. It is the duty of Government to see that no one section, however large in number and however clever, is allowed to dominate the situation. Every community must know its place and must have its due share of the loaves and fishes of office which are at the disposal of the Government

of India. When I say this I am keeping in view the claims of important minorities and majorities who differ fundamentally from one another and not of lesser sub-divisions and still lesser sub-divisions of castes and classes, where variations in the matter of faith and conduct are not sufficiently great to warrant their recognition as a separate entity. To try to be just to these minute ramifications of classes and creeds is again to attempt the impossible. But there is no reason why the broad divisions which in characteristics are essentially different from one another should not be recognised and should not be represented in the services of the State. It has been said, Sir, with much show of reason that the services are not representative institutions. It is true that they are not. But if India is to travel on the road to self-Government, it is of the utmost importance that she should be prepared for it and that these services whether in the Central or the Provincial Governments should be representative institutions, and the sooner Government show its wisdom in recognising

it, the better for it. No forced attempt to develop India into
3 P.M. nationhood will succeed unless the composite parts of it have been taught to be in their proper places and to respect the just and proper rights of the other parts. It will never do to believe and make believe that India is automatically welding itself into a national unit wherein petty selfishness and mean communal jealousy will never be known. This Utopia can only exist in imagination, unless the parts of this unit are properly adjusted and function in their places sufficiently long to forget the past by force of their acquired habit. Therefore unless and until all the communities of India have attained a uniform standard of education and civilization and unless they have learned to love and respect one another, the much desired and longed for Swaraj and self-Government will be impossible of attainment. I say that most emphatically and deliberately. I feel sure that this particular aspect of the question, namely, the representation in their proper proportion of the important sections of the people of this country is a problem that will have to be tackled by Government sooner or later. If they fail to take note of it when it presents itself in an acute form, which perhaps it does not do at the present moment, I trust I shall not be taken to be an alarmist if I sound a note of warning to Government that, so far as the Muhammadans are concerned, failure to give them an adequate representation in all the services will manifest itself in a discontent second only to the loss of equilibrium which sometimes is evidenced on religious questions. In my humble opinion the terms of the Resolution are such that nobody need have any objection to it. It fairly lays down that the services should be manned by all communities proportionately only if sufficiently qualified men from each can be got. I think Government would be well-advised to accept the Resolution, to which I accord my whole-hearted support.

The Honourable Sir Malcolm Hailey (Home Member): I have almost been tempted to-day to sit in my place, serenely watching what seemed to be something like an internecine warfare develop itself in the House. But I cannot do so. We have here a question in which many Members of the House obviously take an intimate and almost a morbid interest, a closer interest indeed than in many general questions of policy which come before them. I recognize the reason for that feeling and the depth of the sentiment which actuates it; but convenient as it might be to me, I cannot assume the pleasant position of the onlooker described by the poet. "Pleasant," said the great Roman poet, "pleasant it is to sit on the shore and see those who are tossed on the sea in ships." If I

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could watch this question evolve itself on the floor of the House, and if I thought that the House would be likely to come to a decision profitable to Government and profitable to India, I should be glad to do so; but I have a doubt that the result will be so happy. Moreover a Resolution passed by the House in a matter of this kind must, unless there are strong and valid reasons to the contrary, be translated into regulation by Government; and those regulations might have an important effect on our administration. That is my excuse for intervening in a controversy which otherwise might be left to the representatives of communal interests and their opponents in the House. We had last January a debate which covered much of the ground which has been opened to-day; I then took the opportunity of explaining to the House our attitude in the case of the service which was then under discussion, namely, the Indian Civil Service. I can claim that on the whole the explanation I then gave was accepted as sufficient and adequate by the majority of the House. I explained then that we could not and did not seek to represent the claims of each community: nor to protect the interest of minor communities; all we could hope to do was to prevent the preponderance in the Indian Civil Service of the representatives of any one community or any Province; this result we secured by nomination if the examination for the 67 per cent. of Indian vacancies which we opened to competition in India did not give us the desired results. We feel that we have adequate reasons for maintaining that principle. If our administration is overweighted by any one community, then there is an administrative loss. Officers serving in that particular service will feel that their prospects in the service and their claims to recognition are likely to be put aside. But the mischief does not end at discontent in the service; there is discontent among the public, for there is no doubt that if a large community is inadequately represented in our services, it feels itself slighted, it is hurt in its pride, and more it actually feels at a disadvantage which is likely to work to its injury. I can make that statement on purely practical grounds, and I prefer to take those grounds without entering into any of the more controversial aspects of the case which have been discussed here to-day. It is unnecessary for me to discuss whether procedure such as is advocated in the main Resolution before us is really a corollary of the terms of the Queen's Proclamation. It is unnecessary for me to discuss whether the full admission of members of minority communities to our services is an essential factor in building up India as a nation. Those considerations I can for my part put aside. But addressing myself to the terms of the main Resolution, I am bound to discuss the question of its practicability. I have reminded the House that if we are to be called upon in the terms of this Resolution to represent adequately the claims of different communities or to protect minority communities, we must translate those terms into regulations. How are we to do so? The Resolution suggests that, not neglecting the claims of efficiency and the like, we are to give preference to those who belong to classes or communities who are not well represented in the services. But we must have some means of deciding what those classes or communities are, and we must have some standard for deciding if they are adequately represented. Previous references have been made to the extraordinary difficulty which we should find in adequately classifying the communities throughout India and standardizing their requirements. Believe me, I do not want to approach this proposal in any spirit of carping criticism or to raise meticulous points

against it; the sentiments which lie behind it are too strong to allow me to take so unconvincing a course of argument; but I must represent to the House the practical impossibility of carrying out a regulation on anything like these lines. Those who have attempted to study the question in our Census Reports, or who have followed the proceedings of the Franchise Committee, will realize the great difficulty of interpreting requirements of this nature. The main criterions which are taken for determining the existence of a community are of course religion, language or caste and tribe. Now take first religion. For census purposes we classify the Hindus as one community; but the very reason why this Resolution has been brought to-day is because a large number of Hindus in Madras consider that Hindus do not make a community in Madras and that Brahmins should be separated from non-Brahmins. That is, a large section claims representation not because they are Hindus, but because they are not Brahmins. Then again take the difficulty which confronted us when the Franchise Committee visited Bombay. Lingayats are classified as Hindus, but the Lingayats who number, I think, about two and three quarter millions, claimed separate representation from other Hindus; and I remember further that in the Census of 1901 the Lingayats claimed that it was 'offensive and mischievous' to enter the Lingayats themselves under one classification. I will go further and quote the case of a religion which is not subject to the infinite variety of Hinduism—I mean the religion of Islam, a religion almost unique in its religious solidarity. It is by no means sufficient to think that you can satisfy the claims of Muhammadans by merely fixing a proportionate representation for followers of that religion. If you were to ask a Pathan of the Punjab what he was, his first claim would be for representation as a Pathan; it would not satisfy him to be told that you were admitting the claims of Muhammadans generally. There are obviously cases in which the tribal formation would be the basis of demand and the religious basis would not be sufficient. The term tribal is not precise; but my illustration of the Pathan will suffice; and I could enforce it by others. There are some five million Marathas; there are nine and a half million Rajputs; and both of them would reject a discrimination based on religion as insufficient and claim recognition on a tribal or national basis. And the matter is not capable of settlement in advance; the claim may arise at any time that the tribal or national consciousness grows strong and asserts itself. We have seen something like this arising among the Ahirs in Northern India; it might arise among the Gujars (and there are two millions of them) and the Jats of whom there are seven millions. But I will not dwell longer on the difficulty in the way of basing discrimination on the large classification of religion. Let me go to language. That itself is perhaps even less reliable. You have, I think, some 15 main divisions in the Indo-Aryan group, some 14 divisions in the Dravidian group and numerous sub-branches of the Tibeto-Chinese group; but the ordinary man would hardly recognize the division established by the scholar, and attaches more importance to his own dialectical sub-division. In any case, the linguistic divisions are not sufficient either for combination or differentiation; a common language will not unite the Lingayats and Marathas, still less will it unite the Sikhs and Punjab Muhammadans; while on the other hand, just at present at all events, a difference of language does not seem to keep apart the non-Brahmans of Madras. For the moment it seems of political importance mainly in one area, that occupied by the Oriyas; it assumes a momentary importance because those tracts are split up among four provinces and is quoted as a reason for re-uniting them; unite them, and I have no doubt that the linguistic basis will then cease to be of

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importance and other differences will re-assert themselves. I take our last basis of division, somewhat loosely known as caste and tribe. I fully join with those who say that it is unnecessary for us to adopt any meticulous classification on a basis of this kind, the more so when it is realized that there are in India altogether, as shown by the analysis made in 1901, which took reckoning only of groups with an aggregate of over ten thousand persons, some 2,378 main castes and tribes, and 43 races or nationalities. Even so, the classification is uncertain; it is continually under process of change and revision. But I do not desire to place too much stress on this; I know that a large number of these groups could be neglected at once. My point is this. At any particular moment when a group or community begins to feel itself, it is difficult to say whether we should place more emphasis on the caste, designation or on the tribal configuration or on its local distribution. Let me give the House one instance. There are, I think, some fifteen million Brahmins in India. Now the Gour Brahmins, a community of Northern India, have claimed in the Punjab that they stand apart as constituting an agricultural tribe for the purpose of the Agricultural Tribe legislation and when during the War they were recruited in considerable numbers—they did very well in recruitment—they claimed that we should form a separate regiment for the Gour Brahmins of the Punjab and United Provinces. Any particular time we may have to face the fact that the claims of one section of a large caste or community based on local or other special considerations outweigh caste or other communal considerations. I have stated these general difficulties; and I put it to the supporters of the main Resolution that they would make it impossible to frame any regulation on the lines suggested. How, I ask again, are we to tell whether a "class or community" is not adequately represented? How are we to decide which minority community to recognize? Firstly, the distinctions which we are asked to observe are not standardised. They are not mutually exclusive. It is difficult in numerous cases to determine the factor on which a large group of individuals place the most importance. It would not be sufficient, if the Lingayats were claiming larger representation in our Services, to tell them that Hindu interests are already represented; they would claim that the Lingayats must be represented as such. In Madras the claim for separate recognition by a large section is not on the basis that they are Hindus but on the fact that they are not Brahmans. That is a sufficient distinction for immediate purposes; but can hardly be an enduring one, when its present object is attained. Then, secondly, there is no basis for deciding, even after you have managed to get your classification of communities, the proportion in which each should be represented—in other words, their claim to recognition. Obviously, you cannot take the Census enumeration as all sufficient. You have had sufficient proof of that, I think, this morning, in what was advanced on behalf of the Sikh community. The House will remember the facts; the Sikh community had no part in the Lucknow compact, and when we came to arrange the franchise for the Punjab, they represented that any attempt to give the Muhammadans and Hindus the percentage laid down for them in that compact would injure their position; in fact their demand has always been that they should receive a representation exceeding that which their actual numbers would give. I am not going into the merits of that claim; I am only pointing out one of the difficulties of attempting to find an accepted or equitable basis of representation in the Central Services. I must take all India figures; and I am making no

kind of comparison except numerical; but will any one give me a common denominator which will allow me to establish the fractional proportions of representation for the Gajars (two millions), Sikhs (two and a half millions), Mahars (three millions), Marathas (five millions), Rajputs (nine and a half millions), Parsis (one hundred thousand) and Pathans (three and a half millions)? I purposely include classes widely differing in their claims. A third difficulty is that you could not say at what particular point a community, using the word in its larger sense, became so important as to require representation in the services. Everybody realizes that we must pay no regard to sub-castes or such minor divisions. But at what point are we to say a community has shaped itself and assumed a distinct individuality; that it has made itself felt; and that we must begin to represent in the services?

Well, these are the general difficulties. But I would point out that we, the Central Government, have an additional difficulty. It is not impossible perhaps that a province desiring to put into application the principle of this Resolution might do so in regard to its own services, because it works within a confined area; it can assess values with some accuracy; and taking the total population of its area and dividing it up as best it may between various classes and communities, it might possibly arrange, taking its services as a whole, to give something like proportionate representation to the various sections. But that proposition becomes very different for us. Our Central Services are at work all over India. Let me take a case in point—the Customs Service. I have said that there are five million Marathas in India. How are we to secure adequate representation of the Marathas in a service which works only at the ports of India, where practically no Marathas live, or few? Again, how are we to secure adequate representation for Sikhs, a localized community, in our Accounts Service which is at work all over India? It will be seen at once that, when you apply the problem to the Central Government, the difficulties are enormously increased; for you have to take into account factors enormously wider than those which apply in the case of the local Governments. Not only so, but there is another factor. Even if you secured an All-India classification of values, obtained by weighing the claims of different classes or communities, you would have to overhaul it all again on a new requirement—the demand that within each class or community the provinces should be adequately represented. For the local Government, a Muhammadan is perhaps only a Muhammadan; for us, he must be a Muhammadan of Bombay or Bengal or the Punjab.

Now, Sir, I have stated the difficulties which I should feel myself in accepting the Resolution as put forward in its present form. I am under apologies to the House for detaining it on the subject; but it is a question of as great importance to us on our side, though for different reasons, as it is to the Members of the House who have raised this issue. I have given my reason why I should oppose the main Resolution in its present form. They are practical reasons; and purely on practical grounds, I must decline to be a party to any agreement on the part of Government unless we can honestly give effect to it. I have explained to the House on a previous occasion what we have done in regard to the Indian Civil Service. It may interest the House to have in the briefest form a few details as to what we have done in regard to our other All-India Services, which did not then come under discussion. In the Police, we take of course 66 per cent. of our recruits through the open competitive examination in England and of the remaining 33 per cent. which we take

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in this country, we take 11 per cent. by promotion of subordinates and 22 per cent. by competition among nominees. Both these two avenues, the promotion of subordinates and competition among nominees, give the local Governments a certain opportunity, which they have used in some cases to see that their Police service is not over-weighted with any one class of recruit. That is as far, however, as they are able to go. In the Imperial service of Engineers, local Governments select Indian recruits for themselves, but mainly by open competition, and there again, where we have to recruit for a technical service, it is difficult to arrange for anything like adequate representation. I come now to an interesting case, that of our Indian Audit and Accounts Service, which as the House knows, has for many years looked to competition for a greater part of its recruiting. It has a long and distinguished record, and it has maintained that record by open competition in India. There has for the most part been no restriction on the competition. There were for a few years restrictions in this sense, that it was a competition among nominees and that we attempted in accepting nominations to see that one class in particular did not appear in too great numbers at our examination. I mean the Madras Brahmans. But lately, the restriction has been felt to be unnecessary and it has now been removed. The results will interest the House. We have 28 Madras Brahmans and 3 Madras Non-Brahmans, 2 Syrian Christians, 21 Bengali Hindus, 8 United Provinces Hindus, 6 Punjab and Delhi Hindus, 3 Punjab Muhammadans, 3 Bombay Hindus and 1 Sikh. For my part, I should be loath to see the fine record of that service, which has been obtained by open competition, altered to any system of close nomination to secure representation of different communities or minor classes. I admit that when promoting subordinates we can do something to redress the results achieved by open competition, but here again I confess that I should prefer to see merit and good work the predominant consideration. I will not trouble the House with the case of other services; they are largely recruited on a technical basis; though I might mention the great difficulty felt in the last two years in securing anything like adequate representation of provinces among the Indian recruits to our Imperial Forest Service. With the best of us, will in the world the thing proved to be impossible. But the House will desire to know what we do in the case of the subordinate services under the Central Government which are not recruited by competition and do not involve technical qualifications. In the case of our Secretariat, as the result of the Llewellyn Smith Committee we have laid down that the Staff Selection Board should see that as far as possible there is something like an adequate representation of the different provinces and that one community does not unduly outweigh the rest. The difficulties are obvious, for in the case of lower paid posts, the representation must largely depend on the locality in which the Central Government offices are situated. I find that in regard to our post offices, circulars have from time to time issued—I have here one before me—requiring that recruitment should be deliberately arranged to prevent overweighting by any one community. I have not the record of other services such as the Railway before me. But I noticed to-day a curious fact; there was a notable absence of any definite proof in the way of figures or even allegation based on instances, that we have allowed the claims of any community to outweigh the others in our Central Services. There has been much argument on general grounds; many *a priori* reasons have been given why we should adjust recruitment to the requirements of different communities; very little has been said to prove

that our regulations are really defective in denying those communities their opportunity. Am I not perhaps right in thinking that the Honourable Members who have put forward their case to-day were thinking of their own provinces and not of us? If they were referring to Madras, the House, of course, knows the steps which have been taken in Madras to attempt, whether rightly or wrongly, to redress the predominance of one class. That is a provincial question into the merits of which I do not enter; but I have here a circular order of the Madras Government which shows that they are attempting not only so to arrange their recruitment but even, if I am correct, so to arrange their promotions as to secure that end. I am bound to state that when I read that circular I was somewhat puzzled as to the exact methods adopted; the task is obviously not an easy one. I noticed also the fact that even they themselves could not issue orders in the full sense of the terms of the Resolution which we have before us, because at the best they are only able to distinguish between Brahmans and non-Brahmans; they are not able to break up the non-Brahmans into the different communities of which they are permanently composed. But that is by the way. As I have told the House, our own objective in the Central Government has simply been to prevent any one community or the representatives of any one province preponderating over others. As I said on a previous occasion, we ourselves would rejoice if we could avoid altogether any consideration in recruitment other than the test of character, intelligence and efficiency. We certainly do not wish to be led, as the Mover of the main Resolution would lead us, into any system under which we should be under the imputation of favouring one community at the expense of others or neglecting any community for motives which would lay us open to criticism. At the best, or the worst, our present procedure involves a species of negative requirement which is very different indeed from the positive operation which the Honourable Member who put forward the Resolution would impose on us. If you have an objective such as the one which I have just described as that of the Central Government, it is obvious that you can use the word 'community' or the term 'class' in a sufficiently elastic and liberal sense. Turn the operation over, and demand that Government shall pick recruits from different communities or different sections of a community, or engage on an accurate representation of provinces, and it immediately becomes necessary to face all those difficulties of detail which I have placed before the House. Our method of approaching the question, as I say, does not involve us in the attempt to assess values as between different classes or communities, nor does it give rise to those invidious comparisons or antagonistic claims which would be the inevitable result of the procedure advocated in the Resolution. I would ask the House to affirm our policy, and not to seek to go any further; I have deliberately avoided a discussion of principle, and dealt only with the practical issues in the proposition put forward. I chose that ground purposely and in the interests of the House; for the discussion of the principle and the object which lay behind it had already led the House into differences of opinion which do no good outside. It was betrayed into an exhibition of the existence of separatist tendencies which only supply arguments to those who claim that Indians can never combine. I would therefore ask the House to put aside the main proposition, based on the claims of separate classes and minority communities, and to affirm the wide, the simple and the reasonable policy which I have enunciated. It is recognized in the amendment which Sir Deva Prasad Sarvadhikary read out to the House. That amendment has my whole-hearted support; the House can adopt it with safety; and I would urge that it accept it in the cause—I can only put it in this way

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--of its own dignity and its position as a representative of all-India interests. We shall do well to avoid placing before the world at large differences which are not edifying in themselves and the airing of which here can lead to no good result.

Mr. President: The amendment moved by Sir Deva Prasad Sarvadhikary has not been put from the Chair. I put it now:

"Substitute for the original Resolution the following:

'This Assembly recommends to the Governor General in Council that, in making new recruitment for the services under the control of the Central Government, steps be taken to secure that the services are not unduly over-weighted by the representatives of any one community or province.'

That amendment is not, strictly speaking, an amendment to the amendment already before the House, but I will allow the discussion to proceed upon all three propositions. When I come to put the question, I shall have to put it in a form to which I shall invite the close attention of the Assembly.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, before I make any remarks on the subject under discussion, I wish to say that I was sorry to hear that a little innocent question of mine yesterday has caused pain to some of my Honourable friends. I can only say this that I did not mean to cause any offence at all. If I explain the reason why I put it, I am afraid there may be some to whom the explanation may not be quite acceptable; I therefore leave it at that. Sir, after the exhaustive speech of the Honourable the Home Member . . .

The Honourable Sir Malcolm Hailey: Sorry, sorry.

[An Honourable Member (to Munshi Iswar Saran): "You meant 'exhaustive' and not 'exhausting'?"]

Munshi Iswar Saran: And I said 'exhaustive'—it is not necessary to make a long speech. What I wish to say is that Sir Malcolm was perfectly right when he said that this internecine warfare was not dignified. No one believes, and at any rate I am not one of those who believe that India can make real progress if any one of its communities or if any one of its provinces is subjected to any hardship or to any disadvantage. Sir, I always avoid making any personal reference, but on this occasion I shall, if I may, make a reference to my own self; those who have known me in my own province know very well that when this controversy between Hindus and Muhammadans was very acute, when the whole province, as it were, was divided sharply into two camps, I kept aloof. Sir, I deplore this debate and I do not wish to make any secret of my feeling. Why I deplore it is because, as the Honourable the Home Member has said, it is taken advantage of by those of our opponents who wish to prove to the world that India in spite of its tall talk is yet divided between these warring communities, castes and tribes. The position of everyone of us, and I think of every nationalist, is that each and every community must have its share in the services of the Government, provided that efficiency is not impaired by the introduction of this principle; and no Hindu would like any Muhammadan to suffer, and I hope no Brahmin would like any non-Brahmin to suffer. But the non-Brahmins, I am told,—I speak subject to correction—have successfully turned the tables in Madras and I hope the non-Brahmins will not allow the Brahmins to suffer now. (A Voice: "No, no.") If that is not so, I am very glad. (A Voice: "It will take ten years.") It will take ten years according to my friend to

make the Brahmins suffer for their past sins. Sir, I only hope that any remarks which are made by subsequent speakers will not be of a kind which will generate more bitterness or more unpleasantness. As I have made no secret of my own conviction I say that I do deplore these communal questions. I do not approve of either communal representation in the Legislature or communal representation in the services but I do recognise that unfortunately there is this feeling in the country and it has got to be taken note of. A policy may be just, but it is necessary that all those who are affected by it should have the conviction that it is just. It is the business, I submit, of the majorities in this country to so act that the minorities may have no cause to entertain a grievance real or, may I say, even fancied, because if they entertain that feeling, it only retards our progress towards the goal which, I hope, Hindus and Muhammadans, Brahmins and non-Brahmins, all have at heart. (Mr. K. Ahmed: "Example is better than precept.") Example is better than precept. It is perfectly true. I hope my friend will set the example and in future will not by needlessly raising these questions hurt the cause which, I trust, even he has at heart. Sir, I support the amendment of my Honourable friend, Sir Deva Prasad Sarvadhikary, and I do hope my Honourable friend, Mr. Nayar, will withdraw his Resolution in favour of the amendment which has been moved, because, as the Honourable the Home Member has shown, apart from other higher considerations, it is difficult to give effect to the Resolution in the form in which it has been moved. I therefore hope that the amendment of Sir Deva Prasad Sarvadhikary will be accepted. Let us show our dignity and statesmanship by unanimously accepting this proposition and thereby removing all difference of opinion on this question in this House.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, in all humility, in a very few words, I venture to offer this House a little advice as a House. Shortly put, my recommendation is a combination and a suppression of all elements of apparent disintegration. A proposal and two amendments have been put forward. All parties are agreed on two main principles, namely, (1) efficiency as the paramount test, and, subject thereto, (2) a fair treatment to all communities, in the making of appointments under the Government. The proposer of the Resolution and the proposer of at least the second amendment have expressly embodied these principles in the forms advanced by them, while the proposer of the first amendment does not exclude the principle of fair treatment to all communities. But, Sir, whichever of these three proposals is pressed to a division will reveal some in favour and some against. If there was unanimity with regard to any one of them, I would say by all means go ahead and let us have a unanimous decision; but as a unanimous decision does not seem possible on any one of the three, the result of decision will be differences of opinion on mere forms, and this shadow of a split on this side of the House, which has no reality in substance, will go forth and display to a watching world the mirage of a House divided against itself. With the budget deficit before us, what we want is combination into a solid phalanx to contend against the common enemy of State insolvency. I advise, after an opportunity has been given, sufficient in the judgment of the House, for an expression of views from all points with regard to each one of these formulae, that the proposer of the original Resolution and the proposers of the amendments do not drive the House into a division, but, by timely withdrawal, after the subject has been ventilated, as we have had a most important and clear and by no means

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exhausting explanation from the Honourable the Home Member, leave the question unasked. We should be content with that, and should settle our differences by leaving the matter undecided.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I approach this subject without any bias. I am not in favour of one community or another, but I shall express my views as an Indian. Sir, it is regrettable that on the floor of the Central Legislature a Resolution of this type has been moved. At the same time it looks very inconsistent that only a few hours back we were in favour of the removal of a certain distinction which was visible in reserving certain compartments of the railway carriages, and in the same breath we are showing ourselves in favour of communal representation. It is simply regrettable; this inconsistency has got no explanation at all. It makes me believe that perhaps some Members, who are advocates of this Resolution, think that holding an appointment in Government service is of less importance than taking a seat in a railway compartment. I think the whole world will laugh at us, that, being Members of this Central Legislature, representing the whole of India, we are thinking of Muhammadanism, Hinduism, Brahminism, non-Brahminism and not of India as a whole, it is, I may say, simply deplorable.

Sir, those, who are in favour of the purity of administration and of the real political advancement of India, will agree with me that this Resolution is suicidal to our Indian interests and unity.

(An Honourable Member: "Not a bit.")

Dr. Nand Lal: On some occasions I happened to hear from some ill-advised critics that it is due to the policy of Divide and Rule that Government appointments are conferred.

I always held, rightly or wrongly, the view that this was wrong criticism. Now I am confirmed in my opinion that Government is not responsible for this at all, that our own people,—at least some of them,—have forced the hands of Government, and that they have been levelling this wrong criticism against Government without having sufficient knowledge of the true circumstances. Now the 'cat is out of the bag.' Now we know that it is we, at least some of us, who have been troubling the Government and making the administration of the Government a little more difficult than it need be. We are the authors and we ought to be ashamed that being thus the authors, being thus, the cause of the troubles of Government, we have been criticising them for nothing. Sir, the Resolution says that preference should be given to the equally efficient members of certain communities. That is the gist of the whole thing. The Mover has introduced the word "preference" which makes the whole motion simply unacceptable. If the drift of the Resolution were that Government appointments may be conferred in consequence of the result of competitive examinations, I would have endorsed it; Sir, when we employ servants to serve us whether in our mills or in our private offices, we always prefer efficiency to any question of caste or creed. Supposing a merchant, or say, a millowner, were to decide as to whom he should employ, Sir, will he act upon the principle of communal interest? If he did so, his mill would be stopped in no time. Will a Muhammadan merchant think of discrimination and prefer communal interest to efficiency? Will a Sikh millowner say that all appointments in his mill should be given to Sikhs only irrespective of merits? No, not at all. When there is a private

affair, they will prefer ability and respect efficiency, but when the question of Government appointments comes in, they say "Oh, don't think of efficiency." They say "Think of preference." I say there is no justification for it. We should be fair both to the Government and our Indian interest. We should always advocate a non-sectarian cause and general interest of Indian nationalism.

Then, Sir, will communal preference do any good at all to the so-called minorities? Will it do any good to them at all? I say that those, who stand on the legs of others, will never be able to walk without the help of others. That is the fundamental principle. I say the Education Department is open to you. Is it closed to you? Ask your members to join the educational institutions and pass examinations. Let them make themselves efficient. There is the medical line open to every one, and there are also other lines. Let them try and qualify themselves. Let them come forward as men. Don't beg for posts for them on the score of communalism. Let them depend upon their merits and abilities. In the name of nation building, I appeal to the Honourable Members, that we should not raise our voice in favour of sectarianism and we must not ask for preference in these matters. Try to make yourself fit and able to deserve and secure the appointments. If you are capable, Government themselves will invite you. Why are you begging for these posts on the ground of communal representation?

Now what do the advocates of communal representation mean? They say that they are not well represented. In what way? Do they mean to say that their numerical strength is greater and consequently they deserve to secure larger number of appointments? If so, I should venture to say that it won't do. The best thing for them will be to make themselves efficient. If they mean thereby that the number of their highly educated men is smaller as compared with that of other communities, then it amounts to this, that they want that superiority of character and academic achievements, which ought to be the proper criterion for securing Government appointments, should not be respected. I submit it is not just. Now, Sir, I have endeavoured to show that these minorities, who are seeking for help will not eventually be benefited. They will remain as poor as they are now. Unless and until they try to raise themselves morally and intellectually, they cannot, in all fairness, ask for any sort of preference. May I ask the advocates of certain communities that they instead of spending their time in asking for favours (*A Voice*: "It is not a favour, but it is a right.") in the matter of Government appointments, on the ground of communal representation, may advise their constituents to secure those appointments on the ground of efficiency. They ought to impart this lesson to them, that they should elevate themselves morally and intellectually, so that they may try to inspire confidence in the minds of the public, so that this baneful question of communal representation may be removed once and for all. This ought to be done, but I am sorry to say, it is not done. Instead of resorting to proper remedies, they are trying to conceal their defects. Just like a miserable patient, suffering from a malady, instead of trying to see that proper medicine is administered, he likes to become a glutton and takes too much sweets. Don't take sweets. Think of your malady. Your malady is that you are fighting with each other, there is no unity amongst you. Try to cultivate that unity which is so absolutely essential; do away with all these distinctions. Government appointments should not be given on these wrong principles. Government service should be the purest thing, and purity ought to be

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maintained, and that could be maintained only if there is no communal representation. Only merit, ability, efficiency, good character, honesty and sincerity should be the criteria. Not because I am a Sikh, not because I am a Muhammadan, not because I am a Brahmin or non-Brahmin that I should ask for appointments. We must feel ashamed of making these claims on communal representation, and the people of other countries will simply laugh at us. On the one hand, we say that we should be given Swaraj, that we are fit for it and that we have unity; while on the other hand, we are fighting with each other for loaves and fishes. Is there any consistency in it? Do you think our conduct is compatible and consistent with that which we happily evinced in a number of other Resolutions? If Brahmins are capable and efficient men, let them get the posts. Create public opinion and if you find that a Brahmin does not behave well or does not do his duty impartially and in the right manner, let that public opinion against him reach Government and they will, if that complaint were found to be correct, take action. Similar arguments could be adopted in the case of Hindus *versus* Muhammadans and *vice versa*. The Honourable Mr. Abul Kasem has put forward a wonderful advocacy before us. He says the Lucknow compact may be respected if you want to build your nation. If you want to complete your work then try to act up to the behests given by that compact. May I ask my Honourable friend is he really obeying all of the dictates of the Congress? I believe he has made it convenient for himself, on this occasion, to place reliance on that compact.

Maulvi Abul Kasem: I did not say the Congress: I said the Lucknow Pact.

Dr. Nand Lal: If I mistake not, I think that compact was made or adopted by the Congress at Lucknow.

Maulvi Abul Kasem: Which is dead and gone.

Dr. Nand Lal: Well, dead or not, I don't know. But you have taken it as an argument at this juncture. Since my learned friend does not as it appears, seem to adhere to the other principles, the other tenets and conditions laid down by the Congress, he has then no justification for putting forward this plea.

Maulvi Abul Kasem: Sir, I have to offer a personal explanation. The Pact was not made by the Indian National Congress; as my friend was not a part to it, he does not know. It was a Pact between the Indian National Congress and the All-India Moslem League.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Maulvi Abul Kasem is perfectly correct. Dr. Nand Lal does not know.

Dr. Nand Lal: Another Honourable Member says "our community has been serving in the Military Department." Well, it shows the justice you receive at the hands of the Government: the members of your community were considered the fittest persons to serve in the Military Department. Therefore they have got the monopoly of posts there. What grievance have you got? Have you not been drawing salaries and then pensions? Were you not compensated for that service? On that ground, you are going to ask the Government that all responsible appointments should be conferred on your community simply because many of you were in the Military Department? Will the Rajputs not come forward with

that claim? Will Kshatriyas not come forward with that claim? And will not other members of the Hindu community come forward with the same claim? Your claim should be such as may have some sense of justification. We should not make the task of our Government more difficult. We should be just. Then my learned friend says, we were ignored. I say, where were you ignored? You were one of the Hindu communities. Subsequently, you raised your voice that we should be given separate representation. You were given it. Now, you are going to make an encroachment on the right of the whole Hindu community, saying that we should be given Government appointment specially. That is not fair. I quite agree with the expression of opinion made by the Honourable the Home Member, that there are a very large number of divisions and sub-divisions of caste and creed in this India. If the question of giving appointments is to be decided with reference to the numbers in a certain community, then the other sub-divisions thereof will come forward. Take the case of the Muhammadans. One sub-section of Muhammadans may come forward and say, well, Muhammadans have been given this special privilege, but our interests are being jeopardised, because, we belong to a different sect of Muhammadans. What answer will be given to that? What answer will be given by the advocates of this theory which is put forward and which is altogether inconsistent? Similarly, one sub-division of the Hindus will come forward and lay claim to Government appointments. What answer will be given to them? So, therefore, this motion is altogether impracticable.

Mr. President: I must ask the Honourable Member to draw his remarks to a close now.

Dr. Nand Lal: Thank you, Sir, I shall. I oppose this motion which is suicidal to Indian interests and with these words I resume my seat.

Mr. Braja Sundar Das (Orissa Division: Non-Muhammadan): Sir,

4 P.M. I have heard with rapt attention the discussion on this communal question. It has been said from the Government Benches as well as from the opposite Benches that this is a Resolution that tends to disintegrate India and to put it before the eyes of the world that India is not united and can never be united. On the other hand, I would rather say that this Resolution is a unifying one. It is the outcome of the disintegrating policy followed by the Government of India. (*An Honourable Member:* "No.") You say, "No", I say "Yes". Some figures that were supplied to a question put by perhaps Lala Girdharilal Agarwala will show that disintegration is not in the Indian people but in the Government of India itself. It is thus. Of the 1,961 posts in the Government of India 105 are Europeans, 147 Anglo-Indians, and 647 Indians, and of these, Madras claims 35, Bombay 14, Bengal 259, the United Provinces 51, Punjab (to which my Honourable friend, Dr. Nand Lal, belongs) 260, Burma nil, Bihar and Orissa 7, the Central Provinces nil, Assam 1, North-West Frontier Province 4, Coorg nil, Delhi 24, Native States 11. These figures speak for themselves. (*An Honourable Member:* "What appointments are they?") This is a statement showing the number of Europeans, Anglo-Indians and Indians employed in the Government of India Secretariat on the 1st June 1921 on salaries of not less than Rs. 25 per mensem and in the case of Indians the provinces to which they belong. That is the statement, which I put before the Assembly and which clearly proves that the existing things in the Government of India, as they are, tend to disintegrate and disunite the Indians. The Honourable the Home

[Mr. Braja Sundar Das.]

Member has said, it should not be looked upon from the point of view of different languages, castes and creeds and so forth, but I ask the Government as well as the people, that when they think of India, they should think of it as a geographical unit, as one geographical whole. Taking the standard of geography, we find that a certain portion of India has far greater advantages over certain other geographical portions of India. That is the question that counts. It is not the question of communal representation that really counts in this Resolution. It is practically the question of geographical deficiency in matters of appointment that matters. Again I say that when we think of India we should not shut out a certain portion of it from the Indian geography. This will serve as an apt illustration. Sir, I once put a question as following:

"Will the Government be pleased to state if there are any Oriyas in any Department of the Government of India?"

"Will Government be pleased to state if ever any notices regarding recruitment of services into the Government of India Departments were published in any leading papers of Orissa?"

To this the reply was:

"The Honourable Member is referred to page 187 of the Legislative Assembly Debates, Volume II, No. 3, from which he will observe that on the 1st June, 1921, seven appointments on salaries of not less than Rs. 25 per mensem were held by persons belonging to the Province of Bihar and Orissa."

I asked for the Oriyas and the reply was for the province of Bihar and Orissa:

"The communiqués of 1920 and 1922 announcing that the Staff Selection Board intended holding examinations for outside candidates were published in the 'Searchlight' which is issued from Patna."

Well, these replies speak for themselves. I need not go into their merits. From the above illustration it would be clear what the disintegrating force is working there. The Resolution is one that tends to do away with this pernicious principle and to unite India at least in matters of the services under the Government of India. It is again, let me repeat not a disuniting one. It only seeks to unite India in the services of the Government of India. Why should one part of India get preference over the other portions of India? That is the question. My Honourable friend Mr. Jayanti Ramayya Pantulu said that no honest attempt on the part of any community or any class to enter into the service of the Government of India has been shut out. Well, I can say from what I know that for the last 20 years the Oriyas have been trying to enter the higher grades of Postal Service and till now they have not been able to secure even one appointment. So in all other Departments. I can challenge the Honourable the Home Member to say if there is one man from the geographical portion of India—called Orissa—either Hindu, Muhammadan, Brahmin or non-Brahmin, Anglo-Indian, Indian Christian or any man of any creed or community or class or whatever it be? I speak of that geographical portion which is now called Orissa—and not from the Oriya-speaking tracts as a whole for they are scattered under four different Governments, such as under the Madras Government, the Bihar and Orissa Government, Bengal and under the Central Provinces Government—I again ask if from the country which they call Orissa is there one man of any caste, creed or community in the Government of India? One man? This is what creates disunification. In order that India may be united geographically, it is necessary that it must work as one body, and if one

part of the body draws all the blood to itself and gets unusually swollen it is plethoric. So the whole body is not a sound body but it would be something like a body with elephantiasis. Those that care for the growth of Indian nationality should see that one part of India does not grow at the cost of the other parts of India. Unification of India does not mean that all languages should go, all castes should go, all creeds should go. I do not think that those who want the growth of nationality of India would like to do away with all these differences. There they are and must continue to be. We must seek unity amidst this diversity. If the outside world say that India is disunited, I ask, is that world united in itself? Are they united in England? There are different political parties struggling for power and ascendancy; there are the conservatives, the liberals, the labour and so forth and in that respect they are not united there. They may be united as regards their creeds, but they may be disunited in other matters. So are we here in India. We are united in certain matters, we are disunited in other matters. It does not matter. I assert that I am proud to belong to the Indian nationality, and I think, in spite of the differences of language, creed and community, India will grow and is bound to grow as one nationality. What forces are there that can prevent the growth of one Indian nationality? I say there is no power on earth that can check that progress; and at the same time let me reassert that our progress very much depends upon the healthy growth of each part of Indian nationality. And therefore, without making any further comments on the Resolution, I commend it to the Government to consider India as a geographical whole and think of distributing the services with reference to the geographical position of all parts of India and not to any differences in caste, creed, or communities; and if that is accepted, then the whole proposition put forward by my friend, the mover of the amendment, is accepted. With these words, I support the Resolution.

Rai Debi Charan Barua Bahadur (Assam Valley: Non-Muhammadan): Sir, I beg to rise to move an amendment to Sir Deva Prasad Sarvadhi-kary's amendment. My amendment is of a verbal nature. He concludes the Resolution with the words 'any one community or province,' and my amendment seeks to change it to 'any one community or communities or province or provinces'—because if that is not amended, Sir, then two provinces may combine together to the exclusion of another province. Punjab and Bengal may combine to exclude Madras and Bombay. So, Sir, the logical sequence of these words, if left as they are, will be that. If two provinces will combine, if two provinces taken together, are allowed to get into the services, then they may exclude the other provinces; so, Sir, I beg to point out that these words should be changed into what I have suggested, and I hope the House will kindly consider the sequence of those words. Then, Sir, I do not want to dilate at length upon what Mr. Braja Sundar Das has said; I will simply content myself by saying that this is a very plain Resolution; it does not want to appropriate the services for one particular community. The Sikh does not want to get all for himself, nor does the Parsi, nor does the Muhammadan, nor does the Hindu. As my learned friend, Mr. Braja Sundar Das said, it is wanted by everybody to distribute the loaves and fishes of office to everyone of the provinces, so that all parts of the country may unite,—that is the only weapon of unification; and if the services are to be reserved by one particular community or disproportionately by one particular community or particular communities or by two or three provinces, it is not fair.

[Rai Debi Charan Barua Bahadur.]

Now there are nine major provinces, and besides there are similar other minor provinces. The minor provinces also should not be overlooked, neither the major provinces. Now, Sir, that statement given by my friend showed that Assam contained only one member, one man, in the service. And since then, I beg to submit, Sir, even that one has vanished. It is nil now. Take the case of Orissa or Assam. Is it to be supposed that there is not a single person in the sub-province of Orissa or in the province of Assam who can fill even a clerk's post on Rs. 25 or a little more than that in the Indian Secretariat? Then, what is it due to? It is due to the combine of some of those who are in the departments to exclude others from the service. It is the inevitable conclusion. We may be wrong in the conclusion, but it is quite inevitable. So, Sir, I beg to submit that something ought to be done so that all the parts of India may be represented in the services of the Government of India. With these remarks, Sir, I beg to support the amendment as proposed by Sir Deva Prasad Sarvadhikary, subject to the amendment proposed by me.

Mr. President: The amendment proposed by the Honourable Member does not differ enough in substance to justify my putting it. The words he adds make no difference in essential purpose of the amendment moved by Sir Deva Prasad Sarvadhikary.

Mr. N. M. Joshi (Nominated: Labour Interests): The question may now be put.

(Several Honourable Members: "The question may now be put.")

Mr. President: Colonel Gidney.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, . . .

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, many of us have yet to say something. This is a very important question.

(An Honourable Member: "The question is an important one and we all want to speak on it.")

Mr. President: Order, order. I call on Colonel Gidney to speak.

Lieut.-Colonel H. A. J. Gidney: Sir, the part I shall take in the debate at this late stage will consist of a very few remarks. This very Resolution stood against my name on the 24th of last month, but for some unknown reason it was omitted and for it substituted my Resolution on the I. C. S. examination and communal participation in it. The remarks that have been made on this discussion up to now show that there is strength and reason on both sides, both on the Government side and on the side of those who are claiming communal representation. I shall not emulate my friend, Mr. Jamnadas and spectacularly speak of that Nirvana of which he so frequently talks, and which he interprets as Swaraj. That Swaraj is a very dim and distant vision indeed. It is in the transitional stage from now till when that Swaraj is reached that the minor communities are bound to suffer. It is during that transitional stage that I, as a leader of one of the minor communities, even though my friend Mr. Rangachariar calls it a pampered and favoured community, desire to make my voice

heard and my claim of equal rights recognised with those major communities who are to-day endeavouring to swamp us in the various services in India. Now, Sir, we have before us for acceptance the Resolution as proposed by Mr. Nayar and we have two amendments, the last one by my friend on my left Sir Deva Prasad Sarvadhikary. The amendment moved by him seems to be acceptable to us, the leaders of the minor communities in this House with this one objection. We take serious objection to some of the words in it, and an effort was made by me to get him to alter that amendment so as to suit all parties. Unfortunately my efforts failed. The alteration we asked to be made was the omission of the word "one" from his amendment. We feel that the amendment as it stands is so worded as to be of negative value. What we want is to convert this value of negation to one of positive value so far as the practical participation of all communities in all services is concerned. This was objected to by the Party, the leader of which is on my left (Sir Deva Prasad Sarvadhikary: "The leader is ill.") As the amendment stands now, we the minor communities in this House can not accept it, because it places us nowhere and leads us to nothing. We feel—indeed we feel acutely—that in the rush in India as it is changing before our very eyes to-day that we occupy a position of insecurity, that the time is not far distant, when this monopoly which is complained of the Civil Service and other services will be substituted by one or two of the more advanced and educated communities in India.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Which?

Lieut.-Colonel H. A. J. Gidney: The two communities to which I wish to particularly refer (all credit to them) are the Madras Brahmins and the Bengalees. I say it is to their intellectual credit, but at the same time if we in India to-day are objecting to a bureaucratic Government controlled by one community—or mainly by one community, the Englishmen—we are simply lending ourselves, if we do not object to this amendment which has been put forward, to a change of bureaucratic Government from one community, which I hope will not go from this country, that is the Englishmen, to two communities in India, and as the leader of one of the minority communities I strongly object to it. The Honourable the Home Member has shown us real difficulties in the practical application of the Resolution we are discussing to-day. I agree with him that there are serious and insuperable difficulties, but at the same time we ask him to find some *via media* out of this *impasse* and so help us, both major and minority communities alike in our task, the almost impossible task of forming a homogeneous nation out of the heterogeneous masses of castes and creeds which to-day go to constitute India. All minority communities ask to be allowed a fair share in the development of India and its administration. The minorities are determined not to force their rights and we are determined to sink or swim on the vote on this Resolution. As a leader of one of the minority communities myself I cannot give my support to the amendment as moved by my Honourable friend, Sir Deva Prasad Sarvadhikary. I therefore whole-heartedly support the Resolution of my friend, Mr. Nayar.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I have been listening to the different Honourable Members and to my learned friend, Dr. Nand Lal, in particular. I

[Khan Bahadur Abdur Rahim Khan.]

appreciate their views as idealist but not realistic ones. Unfortunately he has been arguing on quite a different line. Our grievances are not this, that there should not be an united India. Our contention is not that we should not feel as one India. The question is that we have to face the real difficulty, we have to deal with the problems which are daily facing us. It is all right to say that we should all aspire to this and that, but when we come to the real facts, and when we come to daily dealings with one another, we are also obliged to feel as men, and we have to study human nature, so we have to look at it from the human point of view. It is all right to utter sentimental words; it is all right to have an ideal, but our object is to give that ideal a practical shape. But what I will say to my learned friend, Dr. Nand Lal, when he says that there should be competition, is that India does not require competition; India requires men of character; India requires men who can defend her; India requires men of whom she can be proud. Book worms are not wanted, they can do India no good. Books are for us and not we for the books. My point is this, that I quite welcome anybody whose mind is developed and character is perfect but will not attach any importance to a person with a developed mind but no character whatsoever. That is the point to be always borne in mind so far as India is concerned.

Dr. Nand Lal: I said merit and character also; my friend was perhaps not attentive.

Khan Bahadur Abdur Rahim Khan: I am sorry that my learned friend is so fond of me that he always tries to interrupt when I am speaking. I am very much obliged to him. I am not saying that we should not have this standard of competition, but the thing is that we have to look at India. India is not unfortunately a country with one religion, one race and one language. India is just like a continent, and I say, Sir, it is just like expecting the Prime Minister of England to be Prime Minister of Europe. I do not want to make insinuations against any one and I feel very sad to have to say these things, in our short experience of one year, how many leaders have we seen coming to the throne and how many have we seen leaving the throne? And that is only within a single year, all this is due to lack of tactfulness on their part. So I say this, Sir, that in the case of India it is the business of our leaders to see how they can best steer the ship of the nation in this stormy weather, and in this stormy sea.

My learned friend (Dr. Nand Lal), in speaking of us Muhammadans, said that we have been serving in the Army and enjoy pensions. My learned friend grudges us those pensions. But he ignores the blood that we have shed. He ignores the fact that we have sacrificed many lives. There are gentlemen here who, for simply uttering words, get more than pensions; they make fortunes—in fact, I would say they mint money: while here is a man who risked his life and only gets a pension of something like ten or fifteen rupees, which is grudged by my learned friend, it is just like adding an insult to an injury. My learned friend, who considers himself as a real leader, grudges him that trifling sum. So I say this is not in the interest of India; and I can say this much that unless the advanced communities will look to and respect the interests of the minor communities, they will never advance. You cannot expect co-operation from the minor communities unless you make some sacrifices on their behalf;

only that would appeal to their hearts. In other words, if you are willing to part with something, you will be respected in return. If, on the other hand, you say I am entitled by competition to this and that and expect people to respect you, you will before long find yourself living in a fool's paradise; those days, I am afraid, now are gone. Everybody now is wide-awake. Everybody can look to his own interests, and unless you draw the people to you, you cannot expect the people to follow you. It is the duty of the leaders to draw the people to them, it is not the duty of the people to follow their leaders blindly. Those who have the real good of India at heart must be very careful, they must be more charitable, they must be more generous. If they do that, then there is a chance for India to advance. Otherwise I must say India will always remain as she is.

I am sorry to say that unfortunately our real statesmen and leaders, those who are leading the political life of the country, do not realise this difficulty and are not facing it bravely, but always shun and avoid it purposely. I say all rights of minorities should be respected. There are my friends who loudly appeal to sentiment and say these should be ignored. But I ask, Sir, how can human nature be ignored? What is the real grievance that the Indians have got against the English? The grievance is that all the higher services are monopolised by them. If we have got a right to claim a fair share in the administration, if you complain against the monopoly which is enjoyed by the English people in the matter of higher appointments, I say that we the minorities have got similar rights and complaints against the other advanced communities that they have a disproportionate share in the appointments open to Indians in general to the exclusion of the minorities, and we expect justice from these advanced communities and want them to stick and adhere to the same principle in their own cases too. I was surprised to hear from the Honourable the Home Member that there are only 3 Muhammadans in the Indian Civil Service

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member will, I am sure, allow me to correct him. I was referring to the Accounts Department, in which I said that 3 Muhammadans had succeeded in the competition; I did not refer to the Indian Civil Service.

Khan Bahadur Abdur Rahim Khan: But I could say for certain that Sikhs and Muhammadans are very poorly represented. That means that we are in the home but not at home. I can say both with regard to my community as well as the Sikh community that they are in the home but not at home. Now I should say to the advanced communities—for instance the Brahmins of Madras—I hope my friends from Madras will not take my views in any other light—the Brahmins of Madras are well advanced in education—and they would naturally rule the country, but they must realise this that there are other communities too to be considered. They should not stick to the principle “what is yours is mine and what is mine is my own”. I was surprised to hear the views of my friend Dr. Nand Lal. I will appeal to him and ask him to think over for a single moment coming as he does from Lahore, from the very heart of the Punjab, what is going on there? Can he say there is no Hindu-Muhammadan question there? I don't want to be personal, but can he ignore the fact that big personalities are dragged in every day and criticised? In spite of that he will neither admit his mistake nor change his views.

Dr. Nand Lal: A personal explanation, Sir. Since I am against that, I have raised my voice against communal representation.

Khan Bahadur Abdur Rahim Khan: Sir, with one small quotation from a newspaper which I read the other day, I will end my speech, and I should like to put those words into the mouth of the community which monopolises these services:

"We are the sweet selected few,
Let all the rest be damned;
There's room enough in hell for you,
We'll not have heaven crammed."

If that is the policy to be pursued, Sir, then I am sure the minorities are done for ever.

Chaudhri Shahab-ud-Din: Sir, at this late hour of the day, I do not propose to make a long speech. I think every aspect of the question has been debated upon and discussed very ably by the previous speakers. Sir, communal representation is an unavoidable evil. We must face the fact. The evil is there and we cannot ignore it. Let us try to overcome the evil if we can, but I think the tide is too high and the water too deep. The Government of India as well as the Provincial Governments have always tried to do justice to every Province and every community. They have been issuing circulars and letters from time to time to all heads of departments to keep in view as far as possible claims of all communities consistently, of course, with efficiency and ability, in the matter of Government appointments. The principle is there and the Government have always recognised and acted upon it. Now as regards the opposition to the principle of communal representation, I think those who are the strongest opponents of the principle are in fact its strongest advocates and supporters. I would like to make myself clear....

Dr. Nand Lal: I am not at least.

Chaudhri Shahab-ud-Din: Well, they say that they are against communal representation, but in reality they are in its favour. If they are against communal representation, it does not lie in their mouth to say that a Sikh, a Parsee, a Muhammadan, a sweeper or a Christian should not try for loaves and fishes. For them it should be immaterial who gets the Government appointments. Why should they say that the claims of minorities should not be recognised and considered in the services? That shows their real object. Those communities and classes which have got the so-called loaves and fishes are the very people who are opposing communal representation. If they are sincere, that is to say, if they sincerely are against communal representation, they should not mind whether a sweeper or an untouchable gets a loaf or a fish. They should not object because they are against communal representation. Logically, their position is indefensible. However, that is a question which I need not pursue further. In my opinion every community must have a fair share in the services, and our Government have happily always recognised that wholesome principle. The object of the Mover of the Resolution is not to harass Government or to place obstacles in the way of the officers of Government. There are very many difficulties in their way. It is not an easy task to adjust the claims of so many rival communities and sub-communities, sects and sub-sects, or castes and sub-castes. That is a very difficult task. In view of these circumstances, I would advise the Mover of the Resolution not to insist upon the wording of his Resolution but to accept the amendment of Sir Deva Prasad Sarvadhikary with the addition which I am going to propose.

Sir Deva Prasad Sarvadhikary's amendment is as follows:

"That this Assembly recommends to the Governor General in Council that in making new recruitment for the Services under the control of the Central Government, steps be taken to secure that the Services are not unduly overweighted with representatives of any one community or province."

I would like to add with the permission of the Honourable the President and the Members of the House the following words at the end of that amendment:

"and that, as far as possible, the claims of all communities and provinces are considered."

I am perfectly satisfied with this addition and I think so are some of my friends who are really responsible for the Resolution in question. I may inform the House that Sir Malcolm Hailey has very kindly assented to this addition being made to Sir Deva Prasad's amendment and I hope now the Honourable Members of this House will accept the amendment with my addition unanimously.

Mr. President: Further amendment moved:

"To add to the amendment proposed by Sir Deva Prasad Sarvadhikary the following:

"and that, as far as possible, the claims of all communities and provinces are considered."

Mr. J. P. Cotelingam (Nominated: Indian Christians): Sir, as the solitary representative of one of the minorities in the Assembly I would like to say a few words on the motion before the House. There is nothing new or startling in the Resolution moved by the Honourable Mr. M. M. Nayar. The principle underlying that Resolution is, as Honourable Members know, the policy pursued by Government from the days of Queen Victoria of gracious memory. All that the Resolution seeks to do is to emphasise or reiterate that policy. Where all qualifications are equal, it asks of the Government of India for consideration in the case of classes or communities not adequately represented in the various services. It asks for a share in the administration as the country is marching on its onward progress towards the goal of self-Government. It asks for equal opportunities for all sections of the community that have the necessary qualifications for such service. The Indian Christian community has stood in the past and stands for a fair field and no favour. I repeat what I have said, namely, that the community that I have the honour to represent in this Assembly stands for a fair field and no favour. I have confidence that the Government will hold its balance even in the midst of the conflicting claims of the various communities and that in the recruitment for the various services, it will see to it that no one community gets the monopoly or is particularly favoured. After the pronouncement made by the Honourable Sir Malcolm Hailey, I venture to think that, taking into consideration the Resolution moved and the amendments for and against, the amendment moved by the Honourable Sir Deva Prasad Sarvadhikary is a happy solution of the problem.

(Several Honourable Members: "I move that the main question be now put.")

Mr. President: The question is that the main question be now put.

The motion was adopted.

Mr. K. Muppil Nayar: Sir, though I am not able to follow the advice of my Honourable friend Dr. Nand Lal, I wish to say a few words in conclusion. Let me assure the Government that I have no intention at all of embarrassing the Government and I quite realise the difficulties mentioned by the Honourable the Home Member. But it is the very existence of these difficulties that has called for a sort of communal representation, and until those difficulties are wiped out, I am sure some sort of communal representation will be essential. I would, however, like to withdraw my Resolution in favour of the amended Resolution as amended by Chaudhri Shahab-ud-Din, and I accept that amendment, of course once more urging the claims of the landed interests.

Mr. President: The original question was:

"This Assembly recommends to the Governor General in Council that the Government of India in making appointments to offices under its direct control shall ordinarily, where the qualifications of candidates are adequate to discharge the duties, be guided by considerations of capacity, efficiency and character irrespective of caste or creed."

Since which an amendment has been moved:

"For all the words after the words 'shall ordinarily' the following be substituted: 'be guided by considerations of capacity, efficiency and character irrespective of caste or creed'."

Further amendment moved:

Substitute the following for the original Resolution:

"This Assembly recommends to the Governor General in Council that in making new appointments for the services under the control of the Central Government, steps be taken to secure that the services are not unduly overweighted with representatives of any one community or province."

Further amendment moved:

To add at the end of that amendment the words 'and that, as far as possible, the claims of all communities and provinces are considered'."

The question I have to put is that those words be added to Sir Deva Prasad Sarvadhikary's amendment.

The motion was adopted.

Mr. President: Now, I want the Assembly to pay particular attention to the way in which I shall put the question now. I propose, first of all, to put the question that all the words after and including the words 'where the qualifications of candidates' down to the end of the Resolution be omitted.

Mr. W. M. Hussanally: As the Resolution has been withdrawn, it need not be put to the House.

Mr. President: If Mr. Muppil Nayar withdraws his Resolution with the consent of the House, there is no decision and all the amendments fall.

I put the question that the words

Mr. K. Muppil Nayar: I have withdrawn my Resolution in favour of Chaudhri Shahab-ud-Din's amendment.

Mr. President: The Honourable Member can vote for it.

The question is:

"That the words 'where the qualifications of candidates are adequate to discharge the duties, etc.' down to the words 'Provincial considerations' be omitted."

(While the question was being put, it became clear to Mr. President that the position was apparently not clear to the House.)

Mr. President: If I am to leave an opportunity for Mr. Jayanti Ramayya's amendment to be carried, I can only do so by omitting those words in the original Resolution and I must still after that leave an opportunity to put Sir Deva Prasad Sarvadhikary's amendment, if possible.

Mr. J. Ramayya Pantulu: I am willing to withdraw my amendment in favour of the amendment proposed by Sir Deva Prasad Sarvadhikary.

Sir Deva Prasad Sarvadhikary: I am willing, Sir, to accept the addition of the words suggested by Chaudhri Shahab-ud-Din.

Mr. President: The position at this moment is that the Honourable Member's amendment has been amended by the addition of the words proposed by Mr. Chaudhri Shahab-ud-Din. Do I understand the Honourable Member from Madras (Mr. Ramayya) to withdraw his original amendment?

Mr. J. Ramayya Pantulu: In favour of the amendment

Mr. President: Do I understand him to withdraw it? He cannot withdraw it in favour of any amendment.

Mr. J. Ramayya Pantulu: I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is that the following be substituted for the original Resolution:

"That this Assembly recommends to the Governor General in Council that in making new recruitment for the services under the control of the Central Government steps be taken to secure that the services are not unduly overweighted with representatives of any one community or province and that as far as possible claims of all communities and provinces are considered."

The motion was adopted.

Mr. President: The question is that the Resolution, as amended, be adopted.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 12th March, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 12th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

MOTION FOR ADJOURNMENT PASSED BY ASSEMBLY ON 26TH JANUARY 1923.

548. ***Mr. Harchandrai Vishindas:** (a) Will Government be pleased to state if they have forwarded to the Secretary of State for India the Motion for Adjournment passed by this Assembly on the 26th January last, under rule 11, of the Indian Legislative Rules?

(b) If so, will the Government be pleased to state whether any official changes or any other action has taken place as a consequence of the passing of that motion?

(c) If not, will Government be pleased to state how effect can be given to the passing of such motions?

(d) Does a Motion for Adjournment in Indian Legislature have the same effect as one passed by the British Houses of Parliament?

(e) If not, in what direction lies the difference?

The Honourable Mr. A. C. Chatterjee: Sir, on behalf of the Honourable the Home Member I shall answer parts (a) and (b) of this question. I understand that parts (c), (d) and (e) are in the competence of the Chair.

“ (a) Yes, on the 8th February.

(b) The Government of India are not aware that any official action has been taken. The appointment of a Royal Commission is made by His Majesty the King Emperor and not by the Government of India.”

Mr. President: Parts (c), (d) and (e) of this question, strictly speaking, are not matters within the special cognisance of any Member of Government; but as they relate closely to the procedure of the Legislative Assembly, I propose to answer them myself.

“ (c) No direct effect can be given to an Adjournment Motion of this House. The rule itself only provides a convenient method by which the ordinary business of the Assembly may be put on one side in order to make way for the discussion of some sudden emergency. The only question put from the Chair on that occasion is “ that this House do now adjourn.” If this motion is carried, the action of the Assembly may be taken (a) as evidence of the serious view which the majority of the House takes regarding the matter, and (b) as possibly a vote of censure on Government. (d) An Adjournment Motion in the Indian Legislature has the same motive and purpose as a similar motion in the House of Commons. It can hardly

he said to have the same effect, however, because in the House of Commons the Government of the day might regard the passage of such a motion as evidence of such a loss of parliamentary confidence that it would have no course but to resign, whereas I may add, as far as am aware, the Government of India does not resign.

The Honourable Member will now perhaps be able to judge for himself how far there is any specific difference between Adjournment Motions in Delhi and Westminster.

Mr. P. P. Ginwala: Supplementary question, Sir. Is there any foundation for the rumour that, in consequence of the vote of censure, implied in the adoption of this Resolution by the House, His Majesty's Secretary of State has tendered his resignation to His Majesty?

The Honourable Mr. A. C. Chatterjee: I have not seen that reported, Sir.

FUTURE COURSE OF NON-OFFICIAL BILLS.

549. ***Mr. Sambanda Mudaliar:** Will Government be pleased to state whether the present Session is the last one of the present Legislative Assembly? If so, what is to become of the various non-official bills either introduced already and circulated for opinion or referred to the Select Committee?

The Honourable Mr. A. C. Chatterjee: I am again answering on behalf of the Honourable the Home Member, Sir. "Government are not in a position to state whether the current session will be the last session of the present Assembly. As the Honourable Member is aware, the dissolution of the Assembly is a matter which is in the discretion of the Governor General. Government are advised that all Bills, whether official or non-official, which are pending in the Assembly at the time of its dissolution, will lapse."

Dr. H. S. Gour: May I ask, Sir, if there is anything in the Standing Orders of the Legislative Assembly to justify the advice or the ruling given just now, namely, that all non-official and official Bills pending at the moment of dissolution will *ipso facto* lapse. So far as I am aware, there is a Standing Order in favour of lapsing in the House of Commons but there is no corresponding rule in the Standing Orders of the Legislative Assembly. And, because there is no rule providing for the lapsing of these Bills, I submit that it cannot be laid down by analogy that all Bills pending on the dissolution of the present Assembly shall *ipso facto* lapse.

The Honourable Mr. A. C. Chatterjee: I don't quite understand, Sir, whether the Honourable gentleman asked me a question or wished to lay down a proposition. He asked me whether there was anything in the Standing Orders. The Standing Orders are as well known to him, Sir, as they are to me.

Dr. H. S. Gour: I wish to ask the Honourable Member whether the opinion of the Government providing for the lapsing of Bills is based upon any explicit direction contained in the Standing Orders of the Legislative Assembly.

The Honourable Mr. A. C. Chatterjee: I should like notice of that question, Sir.

Mr. K. Ahmed: Are the Government aware that there is a rumour afloat that they suspect very much that Government are not holding or giving assurance of holding a session at Simla and that thereby they are going to deprive the country of the benefit of moving these Bills and getting them passed?

Mr. President: The Honourable Member evidently assumes that it is a matter for the Governor General in Council. It is not: it is a matter for the Governor General.

Mr. K. Ahmed: About the rumour, Sir.

Mr. President: The Government has no attitude on this subject.

Mr. K. Ahmed: The danger, Sir, of the rumour?

DATES OF NEXT ELECTIONS.

550. ***Mr. Sambanda Mudaliar:** Will Government be pleased to state whether it is a fact that the elections of some of the local Legislative Councils are to be held in July or August next? If so, will Government be pleased to state whether the elections of Members of the Assembly from those provinces will also be held simultaneously as was done last time?

The Honourable Mr. A. C. Chatterjee: The answer to the first part of the question is "we have no information on the subject" and the answer to the second part is "No date has yet been fixed for the next elections to the Legislative Assembly".

Mr. Sambanda Mudaliar: Will the Honourable Member be pleased to state whether any communication has been received by this Government from the Madras Government in regard to the date of the election being fixed in August or some other date?

The Honourable Mr. A. C. Chatterjee: I am answering this question on behalf of the Honourable the Home Member, Sir, who is unavoidably absent elsewhere, and I regret I cannot give any answer to this question. I think it will be best for the Honourable Member to put down the question on the paper.

Mr. Mahmood Schamnad Sahib Bahadur: Will the Government be pleased to arrange to have the elections for the Legislative Assembly and the Provincial Councils to be held simultaneously as was done last year?

Mr. President: The Honourable Member heard the last answer given by the Member of Government. I think it will be advisable both in the interests of question and of answer that he should wait until the Honourable the Home Member is able to be in his place. If he puts another question he will no doubt get an answer.

ISSUE OF RAILWAY RECEIPTS AT DELHI.

551. ***Mr. R. A. Spence:** (a) Is it a fact that Railway Receipts are not always issued at Delhi Railway Station on the same day as goods are delivered for despatch from that station?

(b) Is it a fact that goods left at the Delhi Railway Station, for which a Railway Receipt has not been issued are often tampered with?

(c) What steps do the Railway Board propose to take to see that Railway Receipts are always issued on the day goods are delivered at the Railway Station?

Mr. C. D. M. Hindley: (a), (b) and (c). Government have no information. The East Indian, Bombay, Baroda and Central India, Great Indian Peninsula and North-Western Railways have separate goods offices in Delhi and if the Honourable Member will indicate the name of the Railway to which his question refers inquiry will be made.

COAL TRAFFIC FREIGHT RATES.

552. ***Mr. N. C. Sircar:** (a) With reference to His Excellency the Viceroy's reply to the address presented by the Indian Mining Federation, Calcutta, on the 16th December last, will the Government be pleased to state if steps are now being taken towards a reduction of the freight rates for the movement of long distance Coal Traffic?

(b) If the reply be in the affirmative, will the Government give an idea as to the extent to which the reduction is likely to be effected and as to the time when the reduced rates are likely to come into operation?

Mr. C. D. M. Hindley: (a) and (b). The feasibility of making a reduction in the rates for long distance coal traffic is under consideration but Government is not at present in a position to make any more definite statement regarding the matter.

ORIAS IN GOVERNMENT SERVICE.

553. ***Mr. B. N. Misra:** Will the Government be pleased to state the number of Oriyas:

- (a) In the Postal and Telegraphic Department;
- (b) In the Income-tax Department;
- (c) In the several Departments of the Secretariat establishments of the Government of India drawing a salary of—
 - (i) Rs. 500 or upwards;
 - (ii) Rs. 100 or upwards?

The Honourable Mr. A. C. Chatterjee: The information is being collected and will be furnished to the Honourable Member in due course.

Mr. K. Ahmed: Will the Government be pleased to enquire with regard to Bengal Muhammadans if there will be any in (a), (b) and (c) Departments drawing a salary of (i) Rs. 500 or upwards and (ii) of Rs. 100 or upwards?

Mr. President: This question has nothing to do with Bengal Muhammadans.

LAC RESEARCH WORK.

554. ***Babu Braja Sundar Dass:** Will the Government be pleased to state:

- (a) The amount realised as the lac-cess after passing of the Bill?
- (b) The amount of unspent balance, if any?
- (c) The conditions on which officers and men have entered service?

(d) The number of men and officers engaged in the lac-research work stating their personal pay, status and qualifications?

(e) Is the department of research in this direction going to be permanent one?

(f) What amount, if any, do the Government contribute for the lac-research work?

The Honourable Mr. C. A. Innes: (a) and (b). As already notified an abstract of the accounts of the Indian Lac Association for Research will be published in the Gazette of India as soon as they are received by the Government of India. The information asked for is not available at present.

(c), (d) and (e). The Lac Association is not a Government body and Government have no information on these points.

(f) A sum of Rs. 43,427-10-1 being the net realizations on the balance of shellac deliverable under the Munitions Shellac Purchase Scheme after the Home Government had ceased to purchase shellac, was made over to the Association as a grant with which to commence its scientific work. The money was derived from the trade generally and was allotted by consent to the benefit of the trade. The Government had no claim to this money and no contribution has been made by Government to the Association.

Sir Deva Prasad Sarvadhikary: Do these receipts and expenditure in any way appear in any Government account and do they at all come up before Government except in the way of report?

The Honourable Mr. C. A. Innes: No, Sir. They come up to Government and are published for general information in the Gazette of India.

DELHI POLICE SERGEANTS.

555. ***Khan Bahadur Sarfaraz Husain Khan:** (a) Is it a fact that the Delhi Police has got a class of officers as Sergeants?

(b) If the answer is in the affirmative, will the Government be pleased to state as to the methods of recruitment of such officers?

(c) If not, will they be pleased to state whether sergeants are placed on deputation to Delhi, from the Punjab Police; and if so, whether such officers on deputation are paid from the Delhi Police grant?

The Honourable Mr. A. C. Chatterjee: (a) Yes; there are 9 Sergeants on the sanctioned strength of the Delhi Police.

(b) Vacancies are filled in accordance with Police Rules by the Senior Superintendent of Police by selection from a list of approved candidates maintained in his office.

(c) Does not arise.

DELHI POLICE SUB-INSPECTOR.

556. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state as to what is the minimum pay of Police Sub-Inspector of Delhi?

The Honourable Mr. A. C. Chatterjee: The minimum pay is Rs. 80 in a time-scale of Rs. 80 rising by quinquennial increments of Rs. 10 to Rs. 130. There are also three selection grades on Rs. 140, 150 and 160.

REFRESHMENT ROOM CONTRACTS.

557. ***Sardar Bomanji A. Dalal**: 1. Will the Government be pleased to state whether it is a fact that Government are taking away Railway Refreshment Room contracts from Indians and that they are giving such contracts to Europeans?

2. Is it a fact that Government intend to give the monopoly of such contracts to Europeans?

3. If so, will Government be pleased to state what led them to take this step?

4. Will Government be pleased to state whether they intend to give Railway Refreshment contracts to Indians of established reputation in future or not?

5. Why do Government not invite tenders from the public for such contracts?

Mr. C. D. M. Hindley: 1 and 2. The reply is in the negative.

3. Does not therefore arise.

4 and 5. Government have no doubt that Railway Administrations will continue, as in the past, to give Refreshment Room Contracts to the most suitable persons available irrespective of their nationality.

Mr. K. Ahmed: Is it not a fact, Sir, that in the case of Messrs. Sorabji and Company who are the contractors for the supply of refreshments on the Eastern Bengal and other Railways there have been complaints against them that their food is not only inferior in quality but insufficient in quantity? Is it not a fact, Sir, that some Railway Companies, as for instance, the Bengal Nagpur Railway Company, have taken over the management of these (refreshment rooms) and the management is going on better than on the Eastern Bengal Railway?

Mr. C. D. M. Hindley: It is a fact Sir, that the Bengal Nagpur Railway Company manage their own catering department.

Mr. K. Ahmed: Do Government propose to adopt the same in regard to all the Railways?

Munshi Iswar Saran: Will Government state if in future it will invite tenders from the public for these contracts?

Mr. C. D. M. Hindley: This matter is one which the Railway Companies deal with within their own competence. So far as State Railways are concerned, I believe it has been the case that tenders have been called for.

Munshi Iswar Saran: Will a suggestion be made to these Companies to follow the excellent example set by the State-managed Railways?

Mr. C. D. M. Hindley: I will make a note of that suggestion, Sir.

B. N. RAILWAY WORKSHOP STAFF.

558. ***Mr. K. B. L. Agnihotri**: (a) With reference to Mr. Joshi's question No. 142, dated 5th February, 1923, will the Government be pleased to state whether they are aware that the termination of services of certain number of daily paid staff, in the Bengal-Nagpur Railway workshops, has created much discontent among the other workers of the Railway?

(b) If not, will the Government be pleased to make an enquiry?

(c) Will the Government be pleased to state, (i) the number of daily paid staff whose services have been terminated; and also (ii) the number of daily paid workers; and (iii) the monthly paid workers at the Kharagpur workshop before the termination of the daily paid workers; and (iv) also the saving in expenditure per month by this termination of services?

(d) Were the persons whose services have been terminated ever punished before this occasion for their bad or negligent work or were they reported against by their superior officers in charge of the Departments concerned and were these punishments noted in their history sheets?

(e) Is it a fact that the Bengal-Nagpur Railway Workmen's (or Labour) Union approached the Agent of the Bengal-Nagpur Railway to receive their deputation to hear their grievances in this connection and the Agent gave a curt refusal to that request?

(f) (i) Will the Government be pleased to state if there was not enough work for these workers at the workshop before their services were terminated? (ii) If the work was enough for such men, then will the Government state the arrangements which the Railway Company intends to make for the speedy and efficient work in the workshop?

Mr. C. D. M. Hindley: In reply to the whole of this question I have to say that the reduction in the daily paid staff on the Bengal Nagpur Railway workshops has been made in the interests of economy in working which all railway administrations are now endeavouring to effect.

The necessity for retrenchment in working expenses has been strongly impressed upon them and the Railway Board must leave it to the discretion of the Agents to effect reductions in the best manner possible. The Railway Board believe that where reductions in staff have to be made the Agents are giving the fullest consideration to the claims of the staff in order to avoid as little hardship as possible. Government do not therefore propose to enquire further into the circumstances of the particular case of retrenchment to which this question refers.

Mr. N. M. Joshi: May I ask, Sir, whether during this period, at the time when these people were dismissed, the number of officers in the Supervising grade was increased actually?

Mr. C. D. M. Hindley: I believe, as far as my knowledge goes, that there was no such increase.

Mr. N. M. Joshi: Has the Honourable Member scrutinised the figures given in the present Budget?

Mr. C. D. M. Hindley: I have scrutinised the figures in the present Budget for the last few days very carefully, but I do not know how that bears on this particular question.

B. N. RAILWAY ASSISTANT DISTRICT TRAFFIC SUPERINTENDENTS.

559. ***Mr. K. B. L. Agnihotri**: a) What was the number of the Assistant District Traffic Superintendents working on the 31st December, 1920, in each of the Railway districts in the Bengal-Nagpur Railway and what was the number of such officers in such districts on 31st December, 1922?

(b) If the number has increased, will the Government be pleased to give the reasons for such increase?

Mr. C. D. M. Hindley: The number of Assistant District Traffic Superintendents sanctioned for the Bengal Nagpur Railway in 1920 was 27. This sanction has not been altered since.

The Company distribute their staff in accordance with the needs of Traffic working and without reference to the Government of India.

N. W. RAILWAY SLEEPER CONTRACT.

560. ***Mr. K. C. Neogy:** 1. Is it a fact that the North-Western Railway placed a contract for cement sleepers for 1921-22, with a certain firm in Calcutta? If so, for how much and at what rate?

2. Is it a fact that the said firm did not supply the full number of cement sleepers required, but was at the same time given another contract for the same at a higher rate later on? If so, what was the number for which the later contract was given, and at what rate?

3. Will Government be pleased to state whether cement sleepers have proved a success on the Railway lines?

Mr. C. D. M. Hindley: 1. The North Western Railway placed a contract in May 1921 for the supply of 50,000 cement concrete sleepers before 31st March 1922 with Messrs. Concrete Products (Bird and Company), Delhi, at Rs. 13 per sleeper, *f. o. r.* Delhi, Kingsway.

2. The firm did not supply the full number of sleepers by the 31st March 1922, but as more of these sleepers were required, a fresh contract for the supply of 100,000 sleepers at Rs. 16-12 per sleeper was entered into, the rate being fixed after a very thorough examination of the case.

3. The concrete sleepers have not been in use for a sufficiently long time to prove whether they will be a complete success but experience so far gives promise that they will be a great success owing to their having much longer life than wooden sleepers.

Mr. W. M. Hussanally: Had any tenders been invited before the rate of Rs. 16 and odd was fixed?

Mr. C. D. M. Hindley: I am not in a position to state whether tenders were called for for these concrete sleepers. I do not think there are any other competing firms.

Sir Montagu Webb: May I ask the reason why the original contract was not carried out?

Mr. C. D. M. Hindley: I am not able to say exactly, but there were various difficulties met with in the manufacture of this particular article and the outturn was not as great as had been anticipated.

Rao Bahadur T. Rangachariar: Were the difficulties which were experienced peculiar to the firm, or were they the general world-wide difficulties?

Mr. C. D. M. Hindley: As far as I know there is no other firm making these concrete sleepers and so I suppose these difficulties were peculiar to the particular firm.

Mr. Jamnadas Dwarkadas: Is the Honourable Member in a position to state what is the relative cost of the teakwood sleeper and cement sleeper?

Mr. R. A. Spence: Can the Honourable Member state how many sleepers of the original contract were not delivered at the rate of Rs. 13?

Mr. C. D. M. Hindley: I am afraid I have not got the figures. I must require notice.

Mr. W. M. Hussanally: Have they since been delivered?

Mr. C. D. M. Hindley: I am not in a position to say that without notice. I wish to have notice.

SURMA VALLEY—INCLUSION IN BENGAL.

561. ***Rai Bahadur G. C. Nag:** Are the Government aware that in 1920 just before the introduction of the Reforms, the people of the Surma Valley in Assam were agitating for inclusion of their districts within Bengal on the ground that unless they were so included they might run the risk of being deprived of the benefits of the permanent settlement of the Calcutta High Court, and of the Calcutta University, and Sir Nicholas Beatson Bell, the then Chief Commissioner of Assam, issued a communiqué in the following words:

“Sir Nicholas Beatson Bell has authority from the Government of India to give an unqualified denial to all the allegations? The permanent settlement will remain for ever inviolate; so also will the connection of Sylhet with the Calcutta High Court and the Calcutta University unless and until the people of the Surma Valley through their elected representatives express a clear desire for a High Court or a University of their own?”

The Honourable Mr. A. C. Chatterjee: The reply is in the affirmative.

Rai Bahadur G. C. Nag: Are the Government aware that there are two Bills now pending before the Bengal Legislative Council for re-modelling the Calcutta University and that neither of these Bills makes any provision for the control and management of the schools and colleges of Assam. If any of the Bills is passed into law what is to become of the pledge given by the then Chief Commissioner of Assam?

The Honourable Mr. A. C. Chatterjee: The Bills to which the Honourable Member refers are before the Legislative Council of Bengal which is competent to legislate with regard to the Calcutta University.

Rai Bahadur G. C. Nag: Are the Bengal Council competent to legislate in respect of the schools and colleges of Assam? That is the point.

The Honourable Mr. A. C. Chatterjee: The Bills do not refer to the schools of Assam at all. As regards the colleges I should like a question put on the paper so that I can give a considered answer.

Mr. J. Chaudhuri: May I ask the Honourable Member whether he has considered the question that under the Devolution Rules the Central Government is to legislate for the Calcutta University and is the Government competent to delegate its powers to the Bengal Legislative Council in that respect?

Mr. President: That is rather a large question to ask as a supplementary question.

Mr. K. Ahmed: How are the Government going to fulfil the pledge about the Calcutta University being always continued so that the people of the districts may not run the risk of being deprived of the benefit of that University.

The Honourable Mr. A. C. Chatterjee: I did not hear the question.

UNSTARRED QUESTIONS AND ANSWERS.

POSSESSION OF AEROPLANES BY UNIVERSITY CORPS.

233. **Mr. Saiyed Muhammed Abdulla:** In reference to the reply given to my question No. 317 of 1922 (page 3397, of the Debates, Vol. 2, Part 3), do the units of the University Corps or any members of it possess any aeroplanes? If so, what is the number and what arrangement is observed for their proper custody and lawful use?

Mr. E. Burdon: The answer to the first part of the question is in the negative and the second part does not arise.

AEROPLANES.

234. **Mr. Saiyed Muhammed Abdulla:** In reference to the reply given to my question No. 315 of 1922 (page 3397 of the Debates, Vol. 2, Part 3), will the Government be pleased to lay on the table the particulars of the 12 aeroplanes registered till 1922, and also of any others registered since then?

Colonel Sir Sydney Crookshank: Particulars of all civil aeroplanes registered up to date under Rule 15 of the Indian Aircraft Rules, 1920, are laid on the table.

Statement showing the number of registered civil aeroplanes with the names of their owners and their stations, up to date.

No.	Type of machine.	Owner's name and address.	Station.	REMARKS.
1	Handley Page	Handley Page Indo-Burmese Transport, Ltd., 16, Chowringhee.	Calcutta	Cancelled.
2	Ditto	Messrs. G. McKenzie & Co., Ltd., 17-3, Chowringhee Road, Calcutta.	Dum Dum	Ditto.
3	Avro	Mr. E. Villiers, Clive Buildings, Calcutta.	Dum Dum aerodrome, Calcutta.	
4	Handley Page	Handley Page Indo-Burmese Transport, Ltd., 6, The Mall, Dum Dum, Calcutta.	Ditto	Cancelled.
5	Avro	Mr. W. P. Wills, Riverside, Egmore, Madras.	Egmore, Madras	Ditto.
6	D. H. 9	Raja N. Muntaz Ali Khan, Raja of Utraula.	Utraula	Ditto.
7	Ditto	Assam Government	Dum Dum	Ditto.
8	Ditto			
9	Ditto			
10	Sopwith	Mr. E. Villiers, Clive Buildings, Clive Street, Calcutta.	Dum Dum aerodrome, Calcutta.	
11	D. H. 9	Mr. L. Murphy	Karachi.	
12	Avro	Mr. E. Villiers	Dum Dum aerodrome, Calcutta.	
13	Ditto	Messrs. G. McKenzie & Co., Ltd.	Ditto.	
14	Ditto	Ditto.	Ditto.	

NOTE:—Excludes one aeroplane registered in an Indian State.

ARTICLE re "NON-CO-OPERATION BY GOVERNMENT AND COMPANY RAILWAYS" re GRIEVANCES.

235. **Rai Sahib Lakshmi Narayan Lal:** 1. Has the attention of the Government and the Railway Board been drawn to the articles headed "Non-co-operation by Government and Company Railways" in the Tribune of 19th December, 1922, and 9th February, 1923?

2. Have the Government or the Railway Board taken any step to remove the grievances of the people referred to therein?

3. If not, will the Government and the Railway Board be pleased to consider the advisability of removing the said grievances or such of them as they think fit?

Mr. C. D. M. Hindley: 1. Yes.

2 and 3. The comfort and convenience of all classes of passengers are matters which are receiving the earnest attention of Government and the railway administrations and endeavour is made to remove grievances wherever practicable.

THE BUDGET—LIST OF DEMANDS.

SECOND STAGE.

Method of Presentation.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I wish to repeat the remark which I made in the first year of our existence as regards the way in which these Demands are placed before the House. Under clause 130 of our Manual of Business at page 43 you will notice that it contemplates that different days shall be allotted for different heads of Demands. Now, fixed days are allotted for all the Demands put together. I do not think it is consistent with the spirit or the intention or the language of that rule that these Demands should be placed lumped together for all the days. On the first occasion when I raised this question on the 7th March 1921 the Honourable the Leader of the House, Sir Malcolm Hailey, pointed out that he wanted to acquire experience of the way in which these Demands were disposed of by the House so that for future years he would note the request and give us separate days for separate heads of Demands. I am sorry he is not here to-day and I am raising the question in his absence, but if his absence causes any inconvenience to the Government Benches I will repeat the question later on when he comes, but it seems to me that it would be more advantageous to the House if different days are allotted for the different heads of Demands so that we may come prepared. Not only that, we may not rush our amendments so as to be within time, that is, the two days' notice. In fact, as the House will notice, Members have given notice of a lot of amendments which they would not have done but for this procedure being adopted, because then they will consider very carefully before they send notice of their amendments.

The Honourable Sir Basil Blackett (Finance Member): No question I think is more difficult than the question of how to place before a Parliament the estimates of the expenditure for the year. I do not understand whether the Honourable Member in moving this desires to complain of

[Sir Basil Blackett.]

the six days being insufficient as a whole, (*Rao Bahadur T. Rangachariar*: "That is one of the points") or of the general procedure. I think that experience, so far as I understand it, of the last two years has not made it appear that on the whole the six days are really insufficient. There is a difficulty always in conducting a debate on estimates which is apt to get diffused in a large Assembly. During the last two years I do not understand that there was any very great complaint as to the sufficiency of the period. But as regards the question of the form in which they are put I may perhaps refer to the procedure in the House of Commons in London. The system there is that a certain number of votes or demands are chosen usually by the leaders of the opposition parties. They take in order whichever votes they desire to have discussed and the debate on most days is confined to a general discussion of the subject on one or two or at most three votes. That enables the House of Commons to devote a full discussion, shall we say, to the Home Department, or Foreign Department, or some other Department, but although there are 20 days allotted under the British system, it is the usual experience that three-fourths of the votes are passed on the last day of the twenty without discussion. (*A Voice*: "As here.") The difficulty is to get away from that system. The Government would be very glad to consider further what method would lead to the convenience of the House in dealing with these matters as a whole and I do not know whether I may possibly suggest that a small committee might be appointed to discuss the subject. It is not an easy one. If that suggestion would commend itself—I would speak to the Leader of the House to consider what action we can take with a view to improving the procedure, but I think it must be for next year.

CUSTOMS.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I beg to move:

"That a sum not exceeding Rs. 66,17,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March 1924 in respect of 'Customs'."

The Demand as shown in the printed* book has been reduced by Rs. 69,000 to correct a misstatement in budgeting made by the Bengal Government in regard to the expenditure on over-time allowances.

The Honourable Sir Basil Blackett: Sir, I do not know whether I shall be in order, but I think it will be for the convenience of the House if I were to give a little explanation in regard to the supplementary sheet which was circulated on Saturday. The original figures as shown in the blue Detailed Estimates and Demands for Grants are altered under various heads by this statement, the total reduction on those being Rs. 4,07,27,000, slightly more than the 4 crores which was the figure used in my Budget statement. That reduction together with reductions already taken account of in the Budget make a total reduction of 7,09,96,000 as compared with the total reductions of 9,04,92,000 recommended under the corresponding heads by the Retrenchment Committee. It will be seen therefore that the Government according to this sheet has given effect in regard to Civil

* Blue Book on Detailed Estimates for Demands for Grants for Expenditure of the Central Government charged to Revenue and Capital and also of Disbursements of Loans and Advances for 1923-24.

Estimates to rather more than 7 crores out of just over 9 crores of the recommendations made by the Retrenchment Committee, the difference of rather less than 2 crores being the amount which we have thought it necessary to allow for the lag for the fact that all these reductions cannot be enforced in full by the 1st April. There are however included in the cuts totalling 4,07,27,000 cuts to a total of 5,78,000, on which the Government of India has not yet been able to come to a final decision as to whether it will or will not be able to accept those particular recommendations. The details of that sum are under the Head of Education a sum of 1,67,000, under the Head of Medical 50,000, provision for Public Health Commissioner 20,000 and two large items—School of Mines 2 lakhs and the provision for the Indian Stores Department 1,41,000. The Government of India is still engaged in considering whether or not it is able to accept the reductions recommended by the Retrenchment Committee under these heads. In regard to the remainder the Government of India after careful consideration of the items has decided that it will do its best to put the recommendations into force. As I explained the other day it is difficult in estimating to say how much the lag may be and it is possible that an insufficient allowance has been made for the difficulty of bringing reductions into force at once but these items totalling 5,78,000 have not reached that stage. The Government of India has not yet decided that it can recommend those reductions.

Rao Bahadur T. Rangachariar: With reference to the statement made by the Finance Member just now, I notice that the 7 crores for which he claims credit includes a sum of 59 lakhs under miscellaneous adjustments, so that the proper sum of retrenchment effected is 6.50 out of 9.04 and not 7.09.

Mr. A. V. V. Aliyar (Finance Department: Nominated Official): That is merely transferred from the head Miscellaneous adjustments to the Head Political. You will find it explained in the explanatory note attached. If you take the two heads together there is an actual reduction.

Rao Bahadur T. Rangachariar: I do not know whether it is to be considered as carrying out the retrenchment recommendation. It requires to be carried out further to the extent of 2.50.

Mr. A. V. V. Aliyar: The reduction of 59 lakhs is set off by an addition under the Head Political. So it does not affect the question of reduction made or to be made.

Rao Bahadur T. Rangachariar: I beg to move:

"That the provision for pay of establishment under the head 'Customs' be reduced by Rs. 103."

I wish to raise a question here of some importance to us as regards the personnel of the establishment in the Customs Department. This is one of the big departments under the control of the Government of India. Honourable Members will notice we voted nearly more than 40 lakhs under this head for establishment charges which consists of both the Imperial Service and the ordinary Indian Civil Service. This is one of those departments where the Indians have found it very difficult to gain admission. The Public Services Commission recommended a modest proportion of 50 per cent. of these services in the Imperial Services to be

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allotted to the Indians. The present proportion in that service is about 23 and as regards the other important services carrying salaries of Rs. 200 and upwards I tried to get the figures but I am sorry to say the figures are not available in the Government of India. The Government of India who control this establishment have not even got the establishment list which will show these figures. They are not able to give me information as to how many Indians there are on this service carrying a salary of Rs. 200 and upwards. This department is administered for the Government of India by the provincial Governments as the agents of the Government of India and early in the history of this Assembly Honourable Members will remember we made a strenuous fight that lump provisions should not be granted. However on the undertaking that the matter will be examined thoroughly by the Finance Committee these lump provisions were allowed to remain and one of the lump provisions was in regard to Customs Service. When the matter came up before the Standing Finance Committee on the 2nd June 1921 and when they discussed these lump provisions for establishments, the Standing Finance Committee pointed out (I am reading from page 7 of the proceedings of the Standing Finance Committee of the 30th and 31st May 1921):

"This gave rise to considerable discussion particularly as to the necessity of employing officers of the class now employed and whether Indian establishment could not be obtained at cheaper rates. Eventually after long discussion the Committee agreed to accept the rates of pay proposed by the Government of India subject to the recommendation that efforts should be made to recruit Indians in large numbers."

This was in May 1921. Sir, we had hoped that the Government of India would take steps to see that Indians are employed in larger numbers in this department but from the way they are neglecting this recommendation of the Standing Finance Committee, because they have not even got the establishment list in their hands, how are they going to safeguard the interests of Indians in this department if they will not even keep a list in order to guide them and to control the Local Governments in the matter of the filling up of these appointments and I fail to see how they are going to discharge the trust which they have undertaken to carry out. I am not able to inform the House whether there has been improvement between March 1921 and to-day. Two years have passed. How many vacancies have arisen in this service; how many of these have been filled up, and how many have been filled up by Indians, are all questions of the deepest interest to us. I do not think, Sir, that we come here merely to raise academic questions, pass pious Resolutions and then walk out. Sir, we expect that when the Standing Finance Committee lays down a recommendation of that sort, that the Government of India will take active steps to see that the recommendation is carried out. I am therefore surprised that the Government of India who are really responsible for this establishment have not even got this information to give us; they are not in a position to give us that information to-day. Sir, how can they be discharging their duty? Sir, we all witnessed that very sad and heavy spectacle the other day when the communal question was discussed; it was one of the saddest days I have passed here in this Assembly. When that question was discussed and when the Resolution was finally carried, the Government of India were placed in a more difficult position than they would have been if merely it had been a question of Indianization. It is not only a question of Indianization; it is a question of—I find it difficult to manufacture a word—shall I call it communalization or

sectification; whatever it may mean, the Government of India cannot afford to neglect this important duty of theirs. Sir, let us have Indianization first, then let us afterwards, when Indianization is complete, find out whether communalization should come in or not. Let us not talk of communalization before Indianization has begun. This is a very important service under the control of the Government of India in which I trust earnest steps will be taken towards Indianization. I know, Sir, that the Honourable Member in charge cannot afford that time which is necessary to attend to these small matters. But surely the Secretary or other officers in the Department should have this information, because how else can they keep an eye on the service; how else can they keep a watch on the way in which the recruitment to this service is made? I therefore, Sir, in order to emphasise the position that this Assembly insists upon this Department being more Indianized, move this motion.

The Honourable Mr. C. A. Innes: Sir, as regards the superior establishment of the Imperial Customs Service Mr. Rangachariar is entirely off the mark. My claim for the Imperial Customs Service is that we are probably doing more in the way of Indianization than in any other service. Out of every three vacancies, two are filled by competitive examination in India; that is to say, 66 per cent. of the vacancies are filled by competitive examination in India. I think that the House will realize that that is a very great advance in the matter of Indianization.

As regards the, what I may call, subordinate services, the only two in which the question arises are the Appraising Department and, particularly, the Preventive Service, and I think that Mr. Rangachariar has probably got the Preventive Service chiefly in his mind. It is perfectly true that the question was raised in March 1921. It was also raised when the question of incurring expenditure out of a lump grant was placed before the Standing Finance Committee, and it is quite correct that the Standing Finance Committee did suggest that efforts should be made to increase the Indian element in the Preventive Service. Well, action was immediately taken on the recommendation of the Standing Finance Committee. All Local Governments were addressed on this point. A copy of the Standing Finance Committee's recommendation was sent to all Local Governments and they were all asked to instruct their Customs Officers, subject to local conditions, to carry out the wishes of the Standing Finance Committee and of the Government of India. It is perfectly true that I have not got information as to what progress has been made since that letter was issued in August 1921. These Customs Houses are under the direct administrative control of Local Governments. We do not have the establishment list, or the establishment roll, with us. Mr. Rangachariar says that I ought to have had this information here ready in order to give it to the House. He complains that I have not got it. Now, Sir, surely the remedy was in Mr. Rangachariar's own hands. If Mr. Rangachariar had so desired, he could have put a question; he could have put a question in any one of the sessions which have intervened since August 1921 and he would have had the information promptly placed upon the table. The fact of the matter is that Mr. Rangachariar forgot all about it till the budget demand came on and then he makes the complaint that I have not got the information ready here. If Mr. Rangachariar likes to put the question now, I will get the information collected as soon as possible and place it on the table. I have inquired into this matter in going round Customs Offices. In Madras I think they have

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made an advance and in Calcutta. Approximately, one-third of all the vacancies to the Preventive Service are now being filled as a matter of course by Indians. In the Customs House in Bombay, all I can say is—I have no exact figures—that a beginning has been made.

That, Sir, is my explanation, and I repeat what I said before, that had Mr. Rangachariar let me know that he required this information the information would have been ready here. But I say he has no right to complain that I have not this information stored ready for budget debates.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I am somewhat surprised at Mr. Innes' explanation that because Mr. Rangachariar did not put questions at some meetings of this House, he has not with him what he certainly ought to have. (*The Honourable Sir Malcolm Hailey*: "Why?") We have heard explanations like that or something like it in regard to railway establishment books, only a few copies of which are said to be printed off for the elect and they have not been made available although question after question has been put for their production by our indefatigable friend Mr. Joshi. I do not know what the result of Mr. Rangachariar's questions would have been, but we do maintain, Sir, that record of expenditure for which the Government of India are responsible, although they may be administered by their agents the Local Government whom they are quite right in trusting as the Government on the spot, ought to be kept here. Without that, no verification is possible, and we have had an illustration of that need only this morning. When I looked at the lump figures circulated on Saturday last showing the reductions under the various budget items, I saw that there was under the heading 'Customs' an explanation at page 6 that the reduction of Rs. 69,000 is on account of contemplated savings in overtime charge. I see Mr. Innes shaking his head, and quite rightly, in the light of the further explanation that we had this morning. What is the difference between those two explanations, the one given on Saturday morning and the other on Monday morning? Those of us who, in the absence of these revised figures, had owing to the exigencies of the moment thought fit to send in motions good, bad and indifferent were misled—my friend to the right says 'mostly bad'; I am not surprised and I am glad they are not worse. Well, Government is no better off. The explanation heartened up some of us who are wanting to attack the overtime provision from their own points of view.

Mr. President: The overtime allowances are not under discussion.

Sir Deva Prasad Sarvadhikary: Sir, I am illustrating, merely illustrating the necessity of having information of this kind with the Central Government, for verification without which, I say, the Budget figures are not fit to be presented to the House for the purposes of voting grants. That figure is incorrect, or that explanation is incorrect, the Government of Bengal made a mistake in calculating the overtime and the mistake has been corrected; it is not a saving at all. I do not know what further mistakes they have made; I do not know what other mistakes other Governments have made and there is no means of checking. Then, Sir, on the general question: I am sure, on both sides of the House with which we are concerned, there will be a feeling of disappointment that much that could have been done in the way of further Indianizing this service, has not been done; where Indianization can proceed without any detriment to the interests

concerned, enough progress has not been made. I am prepared to bear out my Honourable friend that in Bengal a beginning has been made, but I also know, and desire to voice the feeling in Bengal, that nearly all that could be done has not been done. The class of people from which these recruits come, are somewhat sore, very sore I ought to say, that much further has not been done in the matter. The essential matter is to revise the pay from the point of view of suitable Indianization, because the objective, as I explained in another connection not long ago, of Indianization is not merely to keep the non-Indian out—there may be a desire like that in some quarters—but that is not all the object; we want to economize, and from that point of view, what is essential and what should have been begun is what the Incheape Committee says:

"The strength and pay of the staffs of the various Customs Houses should be examined with a view to possible economies."

That has not yet been attempted, and I hope someone on the Government Benches will not say that the Incheape Committee has just made that recommendation and therefore there was not time to go into the question of revising the strength and pay of the staffs. That is the essence of proper Indianization, and without that I do not think successful Indianization or economy would be possible either in this Department or in any other. A great deal will have to be done before we have finished, and the question has been prominently brought forward in connection with this Department in which Indianization could have been most carried out without detriment to the interests concerned.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I rise, Sir, to point out, in defence of the Government, that after this Resolution passed by the Finance Committee, some effort has been made, at least in my province—I am referring to the Karachi Custom House in my part of the province, not to the whole Presidency of Bombay, as my friend on my left corrects me. I am referring only to Sind,—so far as the Karachi Custom House is concerned, there were some few appointments sanctioned in 1921 in the preventive service, and so far as I am aware about 8 or 10 appointments were filled up. Out of these 8 or 10 appointments about 3 or 4 were given to Indians, and therefore I say that the policy of Indianizing these subordinate appointments, so far as the Karachi Custom House is concerned, has been begun; and the Government of India are not blameable so far as my Custom House is concerned. Another point that I was going to refer to is that to expect the Government of India to have establishment returns, and nominal rolls, for all subordinate posts in every Custom House is not possible, and therefore, if the Honourable Commerce Member has not got these nominal rolls for all the Custom Houses in India, I should not wonder. It is for the Local Governments and Departments to have nominal roles for these subordinate posts, and it cannot be expected that the Commerce Department of the Government of India should have them to be placed before the House. Thirdly, I want to say a word with regard to what fell from our revered friend, Sir Deva Prasad Sarvadhikary. He said that the object of Indianization was not only getting in more Indians into this kind of service, but also to revise the pay, by which I think he meant reducing the pay, of these subordinate staffs. I do not think that there is any room at all for reducing the pay of these subordinate posts; in fact the cry all over India has been that the pay and prospects of these subordinate offices is not sufficient even for Indians to live upon decently, and if I tell Sir Deva Prasad Sarvadhikary that the highest pay of a preventive officer is only Rs. 500 or Rs. 600 a month . . .

Sir Deva Prasad Sarvadhikary: I did not use the word "subordinate".

Mr. W. M. Hussanally: Well, by "subordinate" I mean all these preventive Services which are subordinate services. I do not think that Sir Deva Prasad Sarvadhikary thinks that the preventive service is any high service; it is after all a subordinate, non-gazetted service so far as I know, and the highest pay being only Rs. 500 or 600 a month, I do not think he would advocate that that pay should be reduced. The preventive service officers begin on a pay of Rs. 120 a month or so and I do not think he expects Government to reduce this pay for Indians, for if the pay is reduced, I do not think we can get the right kind of men to come and offer themselves for this kind of service. Therefore, so far as reducing the pay of these preventive service officers is concerned, I think it should be out of the question altogether.

Dr. H. S. Gour: (Nagpur Division: Non-Muhammadan): Sir, I am afraid Honourable Members have entirely misunderstood the object and scope of the Honourable Mr. Rangachariar's motion. The point he made was that two years back we passed a Resolution in favour of the Indianization of the Customs Houses. The Public Services Commission recommended that 50 per cent. of the appointments should be thrown open to Indians. The question therefore which Mr. Rangachariar raised was as to how far the recommendations of the Public Services Commission have been given effect to by the Government. We have been told by the Honourable Mr. Innes that Mr. Rangachariar has forgotten all about the question which he raised some months back, and that is the reason why the information which he sought is not available. But is the Honourable Mr. Innes quite sure that he did not forget all about the question himself? Surely, Sir, it was the duty of Government to see that a Resolution passed and a recommendation made was carried out, and for the purpose of ensuring compliance with recommendations and Resolutions of this House and of its Committees, it was the duty of Government vigilantly to inquire into the Indianization question and satisfy themselves that Indianization had been made to the extent demanded by this House. It is not a question of supplying statistics to the Members of this House; it is a question of doing a plain duty following upon the recommendations of this House, and from that point of view I deprecate the reply of the Honourable Mr. Innes. Now, Sir, he says, "we do not know to what extent the recommendation made by this House has been carried out." That is exactly the point upon which I submit the Government should have been prepared. They are not prepared. It is not merely a question as to whether any Member wishes to pursue that inquiry by reminding the Government; it is a question upon which the Government should have asked for no reminders. Then, Sir, we are not here dealing with the details of the subordinate preventive service or of the pay which members of this service should receive. We are dealing here with the broad question of policy. And it is from that standpoint that Mr. Rangachariar views this question, and it is from that standpoint that Members of the House generally view this question.

Lieutenant-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, the remarks that have just fallen from my Honourable friend Mr. Rangachariar in his quest for Indianisation of the Customs Service, seem to have elicited no satisfactory reply from the Honourable Mr. Innes so far as the practical effect of the recommendations of the Committee is concerned.

But if it would please and satisfy Mr. Rangachariar and others who are thirsting for this information, I might tell him that the information at my disposal indicates that Indianisation of the Customs service, to which he has drawn attention is being put to very serious and practical effect, so much so that it is the opinion of various members of my community who are thereby seriously prejudiced that this Indianisation is going on at a very rapid rate indeed. Let there be no doubt. The Government is putting this into very rapid effect—although Mr. Innes is not in a position to give this House the exact figures.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, it is surprising that the Government Member in charge of the Department is not aware of the exact number of officers who are serving in this department. Roughly speaking, taking, I suppose, from the chaprassis and petty clerks, he has stated that 66 per cent. of the people are Indians. Sir, I invite his attention to page 5 of the Demand for Grants, Bengal. We find that the existing strength is set out there as follows:

"247 Preventive officers at varying rates from Rs. 140 to Rs. 675.

310 Clerks at varying rates from Rs. 40 to Rs. 600.

27 Appraisers, 1 on Rs. 800 and rest at varying rates from Rs. 290 to Rs. 725."

The Honourable Mr. C. A. Innes: Sir, on a point of explanation, I think perhaps I will save the time of the House and of Mr. K. Ahmed if I point out that what I said was that 66 per cent. of the recruits to the Imperial Customs Service were now being recruited in India. I did not refer to the subordinate services. I was talking of the Imperial Customs Service.

Mr. K. Ahmed: I am very much obliged, Sir. Even then there is no room for my Honourable friend to discuss the subject, because the other officers of the remaining Customs offices are ignored. There is no justification. I am sorry I did not quite catch my Honourable friend at the time. But, Sir, that is not the argument which we want to deal with. There are 27 appraisers, one on Rs. 800 and the rest at varying rates from Rs. 290 to Rs. 725, 281 servants at varying rates from Rs. 8-8-0 to Rs. 35, temporary establishment and 144, boat establishment. Sir, leaving those officers or servants at varying rates from Rs. 8-8-0 to Rs. 35, and leaving the 144 people in the boat establishment, is my Honourable friend, the Government Member, in a position to give us the names of the other people? Sir, if my Honourable friend takes the trouble to walk through the Calcutta Customs office, he would not find very many higher officers getting that salary as my Honourable friend the Mover pointed out from Rs. 200 and upwards. Government have not met that point at all. The Honourable Member in charge is not in a position to enlighten the House as to how many officers are working there. As far as I am concerned, Sir, I know for certain—I do very often walk through the Customs office—I have hardly seen, in fact I never saw one Muhammadan from Bengal; Sir, although the Muhammadans of Bengal form 56 per cent. (or 60 per cent. according to the last census) of the whole population of Bengal; and still my Honourable friend put the number at one-third. Sir, if these poor Indians are to serve only in the lower ranks and not in other places, I fail to see how my Honourable friend is satisfied with regard to the grant that he asks for. After eleven months he comes with his Budget ignorant of particulars of what he is asking for. Will this House have any sympathy for that sort of grant that he wants? I do not know. Probably later on he will stand up and say it is "non-votable" and we are blindly to

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accept the proposals made. He says, further, Sir, that if my Honourable friend Mr. Rangachariar had put a starred question, the answer would have been given. No doubt about it. But is he not in a position to ask the department to give him the facts and figures at this stage when he asks for the grant? He says, Sir, a good beginning has been made, without knowing how many officers were recruited since 1921. Without giving the particulars and the figures, which this House expects to know, I do not think there is any justification for saying that a good beginning has been made. I, therefore, most emphatically oppose the grant asked for and support the motion for reduction by Rs. 100.

Mr. N. M. Joshi (Nominated: Labour Interests): I move that the question be now put.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I only want to remind the House that the question raised by my Honourable friend Mr. Rangachariar has not yet been answered. Neither the statement made by the Honourable the Commerce Member nor the intervention of my Honourable friend Colonel Gidney, who thought that the pace of Indianisation in the Customs Department was very rapid, has taken away anything from the vagueness of the answer given by the Government. The question that Mr. Rangachariar has definitely raised is this. The Standing Finance Committee made a recommendation and it was when the Committee sanctioned certain grants that came before the Finance Committee, that the Committee made certain recommendations with regard to the conditions on which hereafter further grants of a similar character would be sanctioned. What has the Government done to carry out the recommendations of the Standing Finance Committee? That is the plain question of my Honourable friend Mr. Rangachariar. My Honourable friend Mr. Innes says the recommendation of the Standing Finance Committee has been communicated to the Local Governments, but no further information is available, no figures are available; the Local Governments are probably doing their best. But if the Government of India sent out instructions to the Local Governments is not the Honourable Member in a position to state whether the Local Governments have sent any answers to those instructions or not, namely, whether it is possible for them to carry out the instructions or not, or whether they are going to make efforts to Indianise the services in the Customs Department? After all, to borrow the words of my Honourable friend, Mr. K. Ahmed, we are in absolute darkness, we are taking a leap in the dark, as he always says. We do not know anything about what is happening in the matter of the recommendation that the Standing Finance Committee had made; and that is a pertinent and a definite question raised by my Honourable friend Mr. Rangachariar, and, I think, the Government have not been able to give an answer to that. As for the argument adduced by the Honourable Mr. Innes that if a question had been asked by Mr. Rangachariar, the answer would have been supplied, it has to be remembered that when an important body like the Standing Finance Committee makes a recommendation, it is no longer the duty of the member of the Standing Finance Committee to put a question to the Government, but it becomes the duty of the Government to give practical effect to that recommendation. But, as a matter of fact, if I may remind the Honourable Member, I was myself a member of the Standing Finance Committee which undertook to do all that they possibly could to introduce Indianisation in the services.

It is the duty of the Government themselves to see that every effort is made by them and by all Local Governments concerned to put the recommendation into practice. I feel, therefore, that the answer is not yet given and the House would be justified in carrying the motion.

Mr. R. A. Spence (Bombay: European): I move that the question be now put.

(Several Honourable Members: "The question may now be put.")

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, in connection with the cost of establishments in the Customs Department I have got to point out that the salaries of the Assistant Collectors need to be revised, that the scale which has been fixed for these salaries is a very high one. It is Rs. 350 rising to Rs. 1,500. I have to point to the scale of salaries adopted in the Income Tax Department. Collectors of Income Tax all over India draw Rs. 300 to Rs. 900 only, and so far as I can see very competent people, very competent Indians can be secured for this salary. It goes without saying, according to me this is a field in which retrenchments might very reasonably be effected. I pointed this out last year and I was told by the Honourable Member for Commerce and Industries that the appointments were made by competitive examination and therefore this scale could not be reduced. I think it would be wrong to assume that I ever intended that the present incumbents should come to be affected by this proposal that I am making. I am making this proposal with regard to future entrants, and my submission is, and I trust that due notice will be taken of it, my submission is that the scale of salaries needs to be revised here, and by the revision of this scale a substantial saving will be effected.

The Honourable Mr. C. A. Innes: Sir, I should like to take up the point made by Mr. Shahani, namely, that the scale of salaries in the Imperial Customs Service is too high. The scale of salaries (I am speaking from memory) is Rs. 300 rising to Rs. 1,500, plus the usual overseas allowance

Mr. S. C. Shahani: Rs. 350 to Rs. 1,500.

The Honourable Mr. C. A. Innes: That scale is precisely the same scale as that for the Accounts Service. We hold a joint examination. And I do not think it is too high for the Imperial Customs Service because I should like to point out that all our Customs officers live in the most expensive towns of India, the seaports. Every one knows how exceptionally expensive Calcutta, Bombay and other seaports are. On the general question whether, as Indianisation goes on, we should reduce the scales of pay, there is a great deal to be said, but obviously that is a question which has got to be taken up for all the services and not for a single service like the Customs Service. I think every one will agree with that point. I should like to correct a mistake made by Dr. Gour. Dr. Gour said the Public Services Commission had recommended that 50 per cent. of the Customs Service should be recruited in India, and we had taken no action on that. The Public Services Commission was referring entirely to the Imperial Customs Service, and as I have already explained, we have gone beyond its recommendations because 66 per cent. of our recruits are now recruited in India. Then I am accused of not knowing what has been done regarding the Indianisation of the Preventive Service. As a matter of fact, on looking through this file here, I find I have a bit of information which I did not know I had, namely that, when we issued

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this circular in August 1921, one of our Collectors of Customs, namely, the Collector of Customs for Karachi, wrote back at once and told us that during the last few months he had already taken action in this direction and that he had appointed six Indians to the Preventive Service. I gave another bit of definite information which I do not think my friend Mr. Jamnadas Dwarkadas noticed, namely, that, as a matter of practice, we recruit one-third of the Preventive Service in Calcutta from Indians. Now you have got to remember that ten years ago there were no Indians at all if you exclude Anglo-Indians from that term, in the Preventive Service. It was thought that the Service was not suited to Indians. You have got to remember that it is extremely hard work; the men have to be out at all hours patrolling. In Calcutta they have to go down the river in boats; they have to board ships at all hours of the night, and it was considered that the service was not suitable to the Indians. The Collector of Customs took up the question of Indianisation first and he began recruiting the Indian officer class and he found them quite satisfactory. That is why we had great pleasure in telling the Standing Committee that we would make efforts in this direction. I am sorry, I have not got the actual results of these efforts, but as I have already explained, all our difficulties arise from the fact that these Customs Houses are under the Local Governments. They are under the administrative control of the Local Governments. When we carry out the recommendation of the Inchcape Committee, which as a matter of fact was our own idea, the recommendation that we should appoint a Commissioner of Customs, a Contoller General of Customs, then the Customs Offices will pass under our direct control and we shall be in a very much better position to answer questions of this kind. As it is a question comes up in a budget debate, and I must confess I forgot all about it, as Dr. Gour has suggested. I forgot all about it and so did my friend Mr. Rangachariar. I did not know what this reduction of Rs. 100 in establishment referred to, and it is very difficult for us to answer questions on particular items in establishments which we have not under our control. I am quite prepared to write round to all Collectors of Customs and to find out from them exactly what has been done in this direction, what proportion of vacancies has been filled up, and if necessary, I will then issue further instructions on the matter.

Rao Bahadur T. Rangachariar : I would ask for a quarterly report.

The Honourable Mr. C. A. Innes: I do not think a quarterly report is necessary. I am prepared to ask them to let me have this information before the budget debate. Vacancies do not occur in these services so very frequently and it may be a waste of time to have quarterly reports. Every year I will instruct Collectors of Customs to let me have a statement so that, in the budget debate, we may be prepared in the future. In view of that Mr. Rangachariar might well withdraw his motion.

Rao Bahadur T. Rangachariar: On that assurance I do not press my motion.

The motion was, by leave of the Assembly, withdrawn.

Sir Deva Prasad Sarvadhikary: I beg to move:

"That the provision for Travelling and Tentage Allowance under sub-head 'Madras' be reduced by Rs. 3,600."

Of course the difficulty that I labour under is also the difficulty of the Government as we found earlier in the debate: we have not enough information upon which one could exactly indicate how that Rs. 3,600 is to be cut out of the sum of Rs. 9,600. This item stands on a footing entirely different from that of establishment either permanent or temporary, or even of over-time allowances. One does realise that in doing work of this kind it would be necessary to give some allowances for travelling and for tentage, but there should be further limitation. What is the position to-day? We have to economise and economise all round. I do not mean to say and Government will not take me to mean that a reduction of this Rs. 3,600 will achieve wonders. On the other hand as an earnest of doing all that can possibly be done in the way of getting rid of avoidable expenditure, this small item would be as serviceable as any large item. Sir, scattered over the whole of these Demands is a large provision for allowances of different kinds, and this is one of them. We cannot interfere with establishment straightaway. I have already drawn the attention of the House to the recommendation of the Inchcape Committee on this matter and it has been gone into in the present budget to a certain extent. In the course of the early debate I do not propose to labour that point. The Committee is of opinion, I am sure, the Government are also of opinion that all that can possibly be done to reduce expenditure to which we are not absolutely committed during the course of the year should be done. In connection with charges of this kind the necessity of waiting and exigencies of delay and other considerations of that character cannot be urged. We are met with a peculiar difficulty. Unless we succeed, with the assistance no doubt of Government, in adding out of the "lag" list a crore of rupees to what has been already deducted, we shall be in real difficulty. From that point of view these and various other amendments for which I have made myself responsible will have to be considered. Those of us who have gone into the matter in some detail do believe that another crore of rupees would not be too much for Government to make a present of to us in order that we might meet the situation as we ought to. I don't want, in a small matter like this, to take up much of the time of the House; but it is these small items that can be most easily reduced—items to which we are not absolutely committed, items which can be reduced without any serious detriment to the efficiency of the department. There may be some negligible detriment; retrenchment would mean for the time being, at all events, interference with routine system and probably proportionate inconvenience also. But that is all I should be prepared to admit. But, in regard to a matter like this, and not matters relating to permanent establishment to which we are committed, some assistance may be given to us by the Government.

Mr. N. M. Joshi: Sir, in supporting the motion made by my Honourable friend, Sir Deva Prasad Sarvadhikary, I want to impress upon the Government the necessity of giving their serious consideration to the question of travelling allowances. Sir, not only is the scale of travelling allowances very liberal but it is the common belief that many officers by resorting to unnecessary travelling make certain savings and get an addition to their salary. Sir, as a Member of the Public Accounts Committee, we recently came across a very glaring instance of this kind. An officer of the Archaeological Department

Mr. President: Order, order. We have nothing to do with the Archaeological Department.

Mr. N. M. Joshi: I wanted, Sir, to make out a point that this question of travelling allowances requires the serious consideration of the Government.

Mr. President: The Honourable Member does not seem to be aware that the motion before us is for the reduction of the provision for travelling and tentage allowance in Madras.

Mr. N. M. Joshi: I, therefore, hope that the Government will give their serious consideration to this question.

The Honourable Mr. C. A. Innes: Sir, this particular item of travelling allowance which Sir Deva Prasad Sarvadhikary has suggested for reduction is intended to cover the expense of travelling of the Collector and Assistant Collector when he inspects the out-ports of Madras, and these out-ports are very numerous. However, the Government have already anticipated Sir Deva Prasad in this matter. The Finance Department have made a cut already of 20 per cent. on all travelling allowances in this Budget and I think in other Budgets.

Sir Deva Prasad Sarvadhikary: On these figures?

The Honourable Mr. C. A. Innes: On the figures shown in the Budget estimate of last year. They have all been reduced by 20 per cent.

Sir Deva Prasad Sarvadhikary: On the figures now presented?

The Honourable Mr. C. A. Innes: For last year. What the Government have done is they have reduced the provision made in the Budget of last year by 20 per cent. in the Budget of this year for travelling allowances. They have made a 20 per cent. cut. And, as far as the Customs is concerned, we do not relish that cut very much because it may mean that our Collector in this particular instance will not be able to do as much travelling and as much inspection of the out-ports as ordinarily he would do. But we recognize that in these days of financial stringency it is necessary to sacrifice something, and so that cut has been made. The original provision made by the Commerce Department in our Budget has been cut down by the Finance Department by 20 per cent. and so, as I say, we have anticipated Sir Deva Prasad's objection.

Mr. S. C. Shahani: Sir, I may point out that in the case of Bombay, I find that travelling allowances have been increased from Rs. 9,900 to Rs. 11,440. I also find that in the case of Sind, travelling allowances have increased from Rs. 3,000 to Rs. 3,040. I do not notice these cuts in the case of these two places, and I beg, therefore, to point this out to the Honourable Member for Commerce and Industry.

Mr. President: The question is:

"That the provision for Travelling and Tentage Allowance under sub-head Madras be reduced by Rs. 3,600."

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, I move:

"That the provision for Overtime and Holiday Allowances under the head Customs be reduced by Rs. 2,00,000."

If Honourable Members will turn to page 8 of the Demands for Grants, they will find that there are three classes of overtime dealt with, what are

called (1) Crown overtime, (2) Merchants' overtime, and (3) Sunday and holiday overtime. Crown overtime entirely comes from the revenues of the country. The revenues of the country suffer to the extent of Rs. 1,29,000. It is not recovered from anyone, it comes out of the general revenues. The point is this. We undertake to the public that we will give them 12 hours' service. But we tell our servants, "You work for 9 hours," so that the extra 3 hours have to be found and therefore we pay for the extra three hours by paying this overtime to our own servants whom we employ. Now, in the first place, if really our establishment is not sufficient to carry on the work which we have to do, I do not see why the establishment should not be increased. Look at it from the point of view of the men in the first place, look at it from the point of view of the Government in the next place, and look at it from the point of view of the public in the third place. It was pointed out on the last occasion by my Honourable friend, Mr. Joshi, that, when a man works 9 hours a day, they expect him to do work which is very difficult work, and to induce him, to offer temptations to make him work more is not humanitarian. Looking at it from the point of view of the Government, this more important point impresses me and that is this. Now, supposing, Sir, we were told that we will get an extra allowance of Rs. 50 per day if we stay after 5 p.m. every day, what will be the inducement to us? We will try to shirk as much work as we can during the working hours, pile up our speeches, delay the business and try to stay every day after 5 p.m. Honourable Members may say "No!" I know how many Honourable Members come here, although they are not expected to come here, they come here 7 days beforehand and stay 7 days afterwards because allowances are paid for these days. Human nature being what it is, we always try to make something out of travelling allowances and that sort of thing. Let us not pretend to be above human and therefore, I say when you really place inducements in the way of that man, you say "you work for 9 hours but if you work extra time, I will give you more", the work done during the 9 hours will not be the full work which we are entitled to get out of him. If you want more establishment, get the establishment. What is the meaning of offering this inducement to this man? The public and the Government are likely to suffer by this system continuing. The other thing is that after the 12 hours' work has to go on, and you raise from the public Rs. 4,49,000. That is from the merchants. That is the second item. Add to it this Rs. 1,29,000. That really comes to nearly Rs. 6 lakhs. You pay your establishment Rs. 25 lakhs. I have made a rough calculation. You pay this establishment Rs. 25 lakhs and you pay them over-time Rs. 6 lakhs. If you add to it this Sunday and Holiday fees, which is Rs. 1,29,000, that comes to about Rs. 7,50,000. That is to say, you have an establishment which can do only three-fourths of the work and you are short of establishment to do one-fourth of the work, and to do that one-fourth work, you pay to the same people who have to work for 9 hours a day, and you make them work not only beyond the 9 hours but you make them work on holidays also. We have been preaching so much about labour, about the Geneva Conventions and other Conventions. We have heard that it is inhuman to extract labour like this for more than 54 hours a week and all that. Here are merchants who are apparently prepared to tolerate this system going on. If the Government are really short handed, let them employ more men. There are so many men seeking for employment. We are going to have retrenchment and so many hands are going to be thrown into the streets. Why go on feathering the same nests? In fact, the officers get it. The preventive establishment gets it. I see, Sir, in the distribution

[Rao Bahadur T. Rangachariar.]

scale, that 10 per cent. is given to the superior officers and 40 per cent. goes to the men actually working. That is so, I find, in Calcutta. Whether the officers do extra work, I do not know, or whether it is really an inducement to the officers, because they get a share in the overtime allowances. They get 10 per cent. whereas the actual workers get 40 per cent. and the other 50 per cent. goes somewhere else to charities and other things. Why should we maintain such a system? These are the questions which were raised during the last two years, and the Honourable Mr. Innes undertook to place the whole matter before the Standing Finance Committee. I find, Sir, that in December last the matter was placed before the Standing Finance Committee and the Standing Finance Committee paid this Assembly the compliment of merely recording that note. Did they consider the difficulties which were raised during the debate? These three points were raised distinctly by my Honourable friend Mr. Kamat to my right, by Mr. Joshi and by Mr. Seshagiri Ayyar. Why should charitable institutions, social clubs, be maintained? Why is there this difference in system between port and port? Why this over-time at all? Why offer this temptation in the way of our men? All these questions were raised, and we are no wiser by the matter being placed before the Standing Finance Committee. If the Standing Finance Committee had recorded their decision on each one of these points which had been raised in the debate here, I should not have troubled this Assembly with this vote. As it is, I do not know what the Standing Finance Committee did. They simply recorded the note a copy of which by the courtesy of the Honourable Mr. Innes I happened to look at this morning. I saw the note which was placed before the Standing Finance Committee. But what did the Standing Finance Committee do with reference to these various questions which arise? Is it right that we should collect from the public and maintain charitable institutions—social institutions? Nearly 50 per cent. of the collections on Sunday fees and Holiday fees goes to that, and the Honourable the Finance Member last time (the Honourable Mr. Hailey) told us that he would look into it carefully. What is the result of his looking into I do not know. We have no information on that point. Still, we are told in the note made to the Standing Finance Committee that the Local Governments are looking into the question of these fees. I do think, Sir, that the whole matter must be placed once for all on a satisfactory footing. I daresay there must be some allowance for overtime. I do not deny that there will be necessity for some overtime, but not to this extent of nearly $\frac{1}{2}$ of the work which you put down for over-time. It seems to me that there is something remarkable about it. I think the officers in charge really want to get this overtime and over-payment. They get tentage allowance; they get motor car allowance; they get other allowances; leave allowance, salary allowance, and other things, and in addition to these, they get also overtime. I fail to see why we should not employ more men. If we are short-handed, let us employ more people. There are so many people going about the country in search of employment. I can assure you that. Therefore, if there is money—Rs. 8 lakhs—to spare, why should we not spend at least Rs. 6 lakhs in entertaining more establishment? I am not a merchant myself. I am not unloading or loading. But I look at it from this broad point of view, and I hope, Sir, the matter will be satisfactorily settled. With these words I move my motion:

"That the provision for Overtime and Holiday Allowances under the head Customs be reduced by Rs. 2,00,000."

Mr. R. A. Spence: Sir, I am sorry I am anticipating Sir Campbell Rhodes speaking. We generally listen with great pleasure when Mr. Rangachariar does speak. But on this occasion he told us that he was not a merchant. If he had been, Sir, he would not have spoken as he did and it is because he is speaking of what he really does not know that we have not listened to him with pleasure. As Sir Campbell is more competent to deal with this matter and as I see he is willing to speak, I will leave the rest of the matter to him.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce). Sir, in this connection, I may say that the practice generally is that when a ship is to be emptied in a given time, and some holiday or some Sunday intervenes, they have to complete the discharging of the ship or the filling of the ship. It is a matter of great convenience to the authorities and to the merchants to expedite matters in this direction, and therefore it is that overtime in connection with this work is charged and is willingly paid by merchants connected with the transaction to the staff. It is for the extra work, work which cannot be delayed, that this is charged, and I hope this House will not accept this motion.

Sir Campbell Rhodes (Bengal: European): Sir, I have great sympathy with what Mr. Rangachariar has said about overtime in general. There is a temptation, when a merchant pays overtime, for his employees to slack during the day in order to get overtime at night. I think this House may be sure, as Mr. Rangachariar has pointed out, that when an employee has got the temptation of overtime, he can very often slack during the day. But the position is slightly different as regards the Customs House Preventive Officers, for it is not within his power to decide how long he will work. A steamer comes into port and desires quick discharge. Say it is unloading salt. There must be a Preventive Officer on board and the speed with which that officer works is decided entirely by the speed with which the salt is unloaded. The steamer is there to do all the work it can and therefore the Preventive Officer must keep working at the same pace. As a matter of fact, the work is very light. It is work of supervision and seeing that the salt is properly weighed over the side and there is no hardship on a man working even as long as 12 hours. The scale may be stopped for an hour or two during the day for repairs in which case, though he is there, he has nothing to do. But the point I wish to make to the House is this, that it is not within his control to slacken off. Mr. Rangachariar pointed out that if there is overtime regularly paid, then a larger staff might be employed. I may point out that that would be a very extravagant way of meeting the difficulty from the point of view of the country. Steamers do not come in regularly every day to discharge a fixed number of tons every day and therefore it is desirable that these men should do a little extra work when business presses and then the staff so to speak, can be automatically reduced when times are slack. Under Mr. Rangachariar's scheme we should frequently have periods during which half the number of customs officers would have nothing to do and I suggest that the moral effect of that would be even worse. As regards Sunday and holiday fees, these are fines to discourage work on Sundays and holidays and they are paid by the merchants and shippers and they are quite willing to pay anything they can to what Mr. Rangachariar calls charitable objects. In Calcutta a portion of the Sunday fees has gone to hospitals to pay for the seamen who come out and have to go into hospital, and personally I

[Sir Campbell Rhodes.]

think that is a worthy cause to which the money is devoted. On these grounds I oppose this amendment.

Dr. Nand Lal (West Punjab: Non-Muhammadan): I support this amendment. The Government should, before keeping such a sort of establishment, see whether this kind of system is not creating some sort of temptation in the way of the employees of the Government. Government's attention should always be focussed on this question and Government itself should not give any opportunity to any of its employees to be tempted or to stoop low. Now, I ask the Government Benches, under the present system is it not the strongest possible temptation in the way of these servants to idle away their time? (A Voice: "No, no. Certainly not.") To my mind they will not employ their minds so much on the work as they will anticipate that they will be drawing extra money for their overt-time. I think it cannot be denied. Mr. Spence may say, "No." Other merchants may say, "No," but it is the fact and it ought to be confronted and cannot be denied. These workmen are sure to be tempted as I have stated. The other point which prompts me to be in favour of this amendment is this that if they are made to work on Sundays they will have no time for taking rest at all. During the week days, that is, six days of the week, they will not be able to work so hard as they would be doing otherwise, because it is a fundamental principle which does not require great elaboration and argument that a human being after hard work requires some sort of rest. After having worked for six days it is quite natural that these workmen would like to take rest. Now they are told, "You should not take rest. We shall pay you for Sundays and other holidays even". They will not take rest but they will work on these rest days and pocket the money, and on the working days they will try to idle away their time to a certain extent. Therefore, on these two grounds this system which has been adopted by Government seems to be one which should be condemned. The other point which requires appreciation is why a distinction should be made in favour of this Department alone. This distinction will naturally create an idea in the minds of the employees of the other Departments of the Government that they should also try to avail themselves of such allowances though they have not got work of a similar type, but all the same that very idea will prompt them not to apply themselves to work to that extent to which they would have done if they had not had that idea in their minds. You will kindly see on page 1, we have got overtime and holiday allowance for Madras. On page 2 we have got over-time and holiday allowance for temporary establishment. On page 3 we have got over-time and holiday allowance. On page 4 the same thing and on page 5 the same thing. The aggregate total of this allowance is a very appalling figure which should not be parted with by Government. On this ground also this expenditure should be condemned and especially at this juncture when we are in this financial embarrassment we cannot afford to allow ourselves to spend money in this fashion. (Mr. Jamnadas Dwarkadas: "It is paid by the merchants.") It is not paid by the merchants, it is paid by the Government, Mr. Jamnadas. Kindly see the remarks . . .

Mr. President: The Honourable Member must address the Chair.

Dr. Nand Lal: Mr. Jamnadas Dwarkadas says it is paid by the merchants. May I invite his attention to the remarks on page 8 of this Book:

"These are fees paid to the staff by Government for overtime work and not recoverable from merchants."

(Mr. Jamnadas Dwarkadas: "Am I right or you?") (A Voice: "Address the Chair.") Then the other explanation which is given by the Government is this:

"as the work for which they are earned is performed during the free service hours but is in excess of the prescribed hours, viz., 9 hours a day or 54 hours a week. Such fees are also necessitated by the performance of work outside the free service hours or on holidays and Sundays."

(Mr. R. A. Spence: "May I ask the Honourable Member to read the whole of it?") (Mr. Jamnadas Dwarkadas: "Will you finish all the footnotes?") A certain payment is made by the merchants no doubt, but that is set apart. As Mr. Rangachariar has said, I agree with him that a certain amount is charged, but when it is realised it is set apart, namely, it goes to the income side. It is the Government then that pays it subsequently. I am not discussing the source. I am discussing who is the paymaster. The paymaster is the Government and the merchants are not the paymaster. Mr. Jamnadas Dwarkadas's opinion, I am sorry, does not appear to be correct technically.

In opposition two arguments have been advanced that on some occasions Government requires employees and workmen and at that time there is a great rush and it will be extremely difficult to keep a permanent staff to cope with such sort of work. The other argument which has been advanced on behalf of Government is this—that if you keep a special staff for this purpose and for these hours only, it will prove very expensive. I think these two arguments can very easily be answered. The first argument can be met with this reply. It has been conceded on behalf of Government that these ships do not come every day and that it happens occasionally. This point has been conceded by Government and other speakers. I am availing myself of their arguments. For this purpose other workmen could be employed to do temporary work, so that the Government employees may not be tempted to idle away their time for which they are paid and this system of making allowances on holidays and making extra payments for overtime is not sound in principle. So on all these grounds I support the amendment heartily.

Mr. Darcy Lindsay (Bengal: European): My Honourable friend Mr. Rangachariar has made a reference to the Standing Finance Committee and he has taken them to task for not doing their duty. The Standing Finance Committee had placed before them a very able memorandum prepared by my namesake Mr. H. A. F. Lindsay in reference to the discussion that took place in this House last March and I am quite sure that if this memorandum had been placed in the hands of all the Members of the Assembly this motion for reduction would never have been made. Government in dealing with the matter abbreviated the memorandum as appears in the footnote on page 8 and which has been referred to only in part by my friend Dr. Nand Lal. It seems to me that there is a misunderstanding on the part of some of the Members about these fees. As Mr. Rangachariar has pointed out, there are three types of fees. One is for the extra three hours the men may be kept at work in addition to the regulation nine hours and they receive an allowance of so much per hour for this overtime. It is very much cheaper to keep the same man employed on the steamer than to send down another man to relieve him. A second charge is the merchant's overtime fees. This money is entirely paid by the merchant, the shipowner or agent who wants to get the steamer away by a particular time. Unfortunately, my friend Dr. Nand Lal comes

[Mr. Darcy Lindsay.]

from a part of India where they have only canals and no sea water ways and therefore no experience of tides but the river Hooghly is a tidal river where steamers of heavy draught can only get away at certain tides and it is most essential unless the steamer is to remain for possibly another fortnight, that there should be overtime work at night, on holidays and on Sundays when occasion arises. The men are paid for this special work and the money recovered from the merchants or the owner of the ship. It does not at all follow that the same man who works on a Sunday will be put to work on the Monday which is one of the points made by my Honourable friend Dr. Nand Lal. The Customs authorities have a considerable staff at their disposal who are not working every day—the work being dependant on the number of ships in port and there are always available a certain number for extra work who have to be paid their monthly wage whether or not they are put on to this extra work on Sundays and holidays. Then my Honourable friend Mr. Rangachariar appeared to think that it was at the option of the Preventive Officer to secure the three hours' overtime by possibly neglecting his work during the day. This I think has been very satisfactorily explained by my Honourable friend Sir Campbell Rhodes. I can only tell the House that if this reduction were made it would most seriously interfere with shipping and the general trade of the country. We could not get our ships away in time or load and unload them with expedition. Consequently the expenditure on importing and exporting goods would increase. On these grounds I ask the House to reject this amendment.

(Voices: "The question may be put.")

Mr. President: The question is that the question be put.

The motion was adopted.

Mr. President: The question is:

"That the provision for Overtime and Holiday allowances under the head Customs be reduced by Rs. 2,00,000."

The motion was negatived.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I move:

"That the provision for Bombay under the head Customs be reduced by Rs. 100."

The point I wish to make in this Resolution is one which will interest the House and which I beg to submit for the guidance of the Government in the future. From the very nature of the amendment I have proposed it would appear that I do not really want a regular reduction of Rs. 100 but I have to refer to certain questions of principle and of policy for the Government to take into consideration. I shall be very brief in making my suggestion to the Government departments by pointing out what is the particular question that I wish to refer to. Now I am concerned with the province of Sind. Therefore I shall not take up the time of the

House in any way by referring to the other provinces. The Sind Division appears at page 4 of the Book of Demands and Sind as you are all aware is a part of the Bombay Presidency, so that the main sub-head under which I am speaking begins at page 2. Bombay. What I want to point out is that—and the point was incidentally referred to just now by my friend Mr. Shahani,—and as that was with reference

to remarks upon another point I do not think I am wrong in repeating it as it now comes under a regulation motion. Now, the pay of the Assistant Collectors in Sind appears to be, as at page 4, Rs. 350 rising to Rs. 750. My point is that such a heavy pay is not at all necessary in the case of the Assistant Collectors. By way of analogy I would refer to

Mr. President: The question of the pay of the establishment has already been discussed. If the Honourable Member wished to raise the question he should have raised it on the reduction moved by Mr. Rangachariar, when the House discussed the general question underlying the pay of the establishment.

Mr. Harchandrai Vishindas: I submit that I am referring to a specific item. So far as the general question is concerned that has been dealt with. What I say is that although in regard to the pay the Government has to consider several counter-considerations in fixing it, it need not be more than Rs. 350 to Rs. 900.

The Honourable Mr. C. A. Innes: May I point out that this is an Imperial Service and there is a uniform scale of pay in all Ports for Assistant Collectors and therefore Mr. Harchandrai Vishindas's point is not a good one. This particular point, moreover, has been discussed and has been discussed by Mr. Shahani.

Mr. Harchandrai Vishindas: Yes, that is what I said

Mr. President: If the Honourable Member acknowledges that it was discussed by Mr. Shahani and Mr. Shahani was not stopped by the Chair, then he is out of order.

Mr. Harchandrai Vishindas: Very good, Sir. I won't say anything more on this particular point. My other point is that the Assistant Collectors, Appraisers and Preventive Officers have all been lumped together. It would be much more enlightening if they were separately mentioned. I mean to say, if the pay of each grade was separately mentioned. As it is, I am speaking subject to correction,—in the first place the word "Inspector" is rather a misnomer and should be altered to "Examiner"—the number of Appraisers is 13, including one Head Appraiser, and the number of Examiners is 15. The rest are Preventive Officers. The pay of the Head Appraiser is Rs. 700 a month, that of the other Appraisers is Rs. 200 rising by Rs. 25 annually to Rs. 600; and that of Examiners . . .

Mr. President: Order, order. We have had that interesting information already from the Honourable Member from Bengal. Unless the Honourable Member can bring his remarks into order with special reference to the circumstances of Sind, he is not in order.

Mr. Harchandrai Vishindas: I am referring to that, Sir. I also said that my remarks would not be in order unless they were specific, and these remarks are all applicable to Sind, not to the general question, because the scales of pay in other provinces would be different. But if the Chair disallows me I will sit down. But I submit that my remarks apply especially to Sind. Now, the pays in Bombay are different from those in Sind in so far that in Bombay the Head Appraiser gets Rs. 800, every other Appraiser Rs. 250 rising by Rs. 20 to Rs. 450 and then by Rs. 25 to Rs. 675, Examiners Rs. 150—10—350 and Head Examiner Rs. 450.

[Mr. Harchandrai Vishindas.]

The point I am going to make in this connection is one that has not been previously raised and it is that there is no reason why the Sind establishment should be placed on a different footing from that of the establishment in Bombay when the cost of living and house rent, as appears from various Government reports, is very nearly the same. I refer first to Mr. Findlay Shirras' *Labour Gazette* and also to Mr. Datta's inquiry regarding rent and prices in Karachi. So my point is, with regard to this particular question, that the level of pay in the two places should be the same. Since January 1922 the lower paid men have in most cases been given an increase of 5 to 10 per cent. and some from 20 to 40 per cent., although the Government of India has authorised the Local Government to give these men a maximum promotion of 50 per cent., which has not yet been carried out. That point should be taken into consideration by Government. Government have recognized the principle of one promotion for every year's service in the case of Preventive Officers in the same office, but the present Appraisers and Examiners, the majority of whom began their life as clerks, will not be able to rise to their maximum unless one-third of their services in the ministerial grade is also counted. The majority of the Preventive Officers began life as Preventive Officers and so one promotion for every year's service has resulted in their getting 18 promotions for 18 years' service, while Examiners and Appraisers with even about 30 years' total service are getting Rs. 150 and Rs. 400 respectively. Sir, this point also of the equitable regulation of promotions, both in the interests of economy and in the interests of the men, should be taken into consideration. That is all I have to say.

The Honourable Mr. C. A. Innes: Sir, I understand that the first point raised by Mr. Harchandrai Vishindas was that he would like a little more detailed information under the head "pay of establishment for Sind." Is that so? (Mr. Harchandrai Vishindas: "Yes.") I will certainly see what we can do in that direction.

The other point raised by Mr. Vishindas was that we discriminate unfairly between the Custom House staff in Karachi and the Custom House staff in Bombay. As I have explained already to the House on more than one occasion, these Custom Houses are under the administrative control of the Government of Bombay. They send up their proposals to us and we examine them. In this case, the Bombay Government did not think it necessary to give the same rate of pay, or the same scales of pay in Karachi as they give in Bombay; and as far as the Government of India is concerned, we must accept the view expressed in a matter like that by a responsible Local Government.

As regards the next point, namely, as to how these men were brought on to the new scale of pay, it is rather a complicated matter and, at the request of the Local Government, we left them to deal with the matter. I think that is the only explanation I can give on that point.

Mr. President: The question is:

"That the provision for Bombay under the head Customs be reduced by Rs. 100."

The motion was negatived.

Sir Deva Prasad Sarvadhikary: Sir, I move:

"That the provision for Leave Allowance under Bombay be reduced by Rs. 22,000."

This is another direction in which we seek for retrenchment. Not only here but elsewhere have we spoken about travelling and tentage allowance as being capable of suitable reduction. Contingencies can also be similarly dealt with. The Inchcape Committee has made quite clear what had long been clear to us that our leave rules are—I shall not call them extravagant—but far too generous and some of our avoidable expenditure is due to that. With the Government of India it is not quite like a Bengal household used to be obliged to do not very long ago, *viz.*, to keep up two establishments, one to get ill with malaria and the other to work and wait for an attack of malaria. That is sometimes necessary, but I do not think that with increased facilities for travel for going home and other conveniences the leave rules need be as liberal as they are now—and the Inchcape Committee has drawn pointed attention to that. I do not mean to say that people should work themselves to death and should not have any leave, and generous leave also, but the impression all around is . . .

Mr. President: Order, order. Are these leave allowances paid under rules made by the Customs Department or under general rules made by the Government of India?

The Honourable Mr. C. A. Innes: I understand that the allowances are for leave enjoyed in India, which leave is granted under the general rules of the Government of India.

Mr. President: The question of the amendment of the leave rules cannot very well be brought in here. The Honourable Member must take other opportunity of discussing them.

Sir Deva Prasad Sarvadhikary: I shall not discuss the question of principle; I am now on the question of staff, and I submit that things should be so arranged that with lesser staff the work of the Department can go on, so that the leave allowances to which my motion refers may be minimized.

Sir Montagu Webb: Greater staff?

Mr. President: The question is:

"That the provision for leave allowances under Bombay be reduced by Rs. 22,000."

The Honourable Mr. C. A. Innes: Sir, I feel it rather difficult to deal with a Motion like this, for, obviously, if we are going to reduce leave allowances, it can only be done by altering the rules, by making the rules less liberal. The provision here is the best estimate we can make of the amount we are likely to expend during the year in paying allowances to people on our establishment who are on leave in India. I do not think it is right that, as a method of retrenchment, we should refuse our officers the leave which they have earned and which is due to them under the Fundamental Rules. You have got to remember these allowances for leave are for all our establishments, officers as well as men, when that leave is taken in India; and if the leave is due to them, and if they require it, whether it be for sickness or private reasons, then I think we ought to give it, and I think that our Custom House establishments are already overworked, very greatly overworked: indeed my own opinion is that if Sir Deva Prasad Sarvadhikary's idea is that we should definitely restrict the leave of our establishments during the course of this year on account of financial stringency, well, my own opinion is that that will probably be false economy, it will probably mean that the men will break

[Mr. C. A. Innes.]

down and will have sickness. In these circumstances I hope Sir Deva Prasad Sarvadhikary will see that the question which he has raised is contingent upon the alteration of the rules, and that he will not move this reduction in respect of a particular service like the Customs service.

Mr. W. M. Hussanally: Sir, on a point of order. I should like to know from the Honourable the Commerce Member whether a motion for reduction of this kind does not force the Government to reconsider the rules. I believe that this provision of leave allowances is provided for under each head of expenditure in each Department, and if that be so, a motion for the reduction of one grant will compel Government to consider the amendment of the rules—the leave rules, I mean, and if that be so, the Motion will be perfectly in order?

Mr. President: The Honourable Member is putting the cart before the horse.

Mr. R. A. Spence: May I ask the Honourable Commerce Member for some information, Sir? I see that these leave allowances that we are discussing only occur on page 3 under Bombay. May I ask what happens to the leave allowances in the case of Bengal and Madras and Burma? They must be necessary surely, in which case it seems to be only a matter of detail how they are put, but these leave allowances which figure under Bombay do not figure under any of the other Presidencies, and therefore if we were so unfortunate as to have this motion for a cut carried, it seems to me that Bombay would suffer and the rest of the Presidencies would go scot-free.

Mr. A. V. V. Aiyar: Sir, the explanation is that these estimates are prepared by different officers. The Bengal estimates are prepared by the Accountant General, Bengal, the Bombay ones by the Accountant General, Bombay, and the Madras ones by the Accountant General, Madras, and so on. Some people mix up these leave allowances along with the pay of the ordinary establishments, and some people show it separately and say that it represents leave allowances; that is the simple explanation why there is no definite provision in other provinces.

The Honourable Sir Basil Blackett: I think, Sir, it may be to the convenience of the House if, with your permission, I make the statement that the Government of India have for some time had under consideration the desirability of reconsidering the whole of their leave rules and have been waiting for the Report of the Retrenchment Committee to do so, and intend forthwith to institute an inquiry into that subject.

Mr. J. Chaudhuri: May I ask Mr. Aiyar that in future uniformity should be observed in furnishing similar details under each sub-head in each Presidency with regard to the Customs estimates for facility of comparison?

Mr. A. V. V. Aiyar: We will do our best, Sir; but the Budget is prepared in such a hurry that such small matters I would ask the House to overlook.

Sir Deva Prasad Sarvadhikary: Having regard to what the Honourable the Finance Member and the Honourable Member for Commerce have said, I do not wish to press this motion. What has been explained by Mr. Aiyar shows our difficulties in Budget time. The Government, he

says, had to hurry the Budget which accounts for its imperfections—Government had 365 days, and we had 5 days.

The motion for reduction was, by leave of the Assembly, withdrawn.

Sir Deva Prasad Sarvadhikary: In connection with my motion *No. 30, Sir, dealing with commodities of a very succulent and luscious nature one would like to have some explanation. Mr. Kabeer-ud-din Ahmed will probably be satisfied both as to quantity and quality. When we are obliged to neglect important research of other kinds, I do not know whether research in edible oysters ought to find a place in this Budget. I should like to ask for a word of explanation, and then perhaps I shall see my way to withdraw the motion.

Mr. President: So far as I see, no provision has been made.

The Honourable Mr. C. A. Innes: I think that Sir Deva Prasad Sarvadhikary has omitted to notice that though there does appear an entry of expenditure of Rs. 1,675 on account of improvement of edible oyster culture in Sind, there also appears later on the page a deduct entry—"contribution from contractors on account of edible oyster culture in Sind, Rs. 1,675", and so the two entries cancel each other, which I do not think Sir Deva Prasad Sarvadhikary has noticed. What the entry was I am afraid I cannot explain in a moment; I remember I noticed it last year in the Budget, and I enquired why it appeared in the Customs Budget, and for accounts reasons, they apparently retained it in the budget, but as I explained, they have made a deduct entry which cancels the provision.

Sir Deva Prasad Sarvadhikary: Sir, I should like to withdraw my motion.

Mr. R. A. Spence: Before the motion is withdrawn, might I ask Government that some provision be made in the next Budget, Customs or other budget, with a view to doing something to improve the edible oyster culture in Karachi?

Babu Braja Sundar Das (Orissa Division: Non-Muhammadan): Sir, I am feeling extremely diffident to extend my pruning knife to this very important branch of the financial pagoda tree of the Government of India. The Incheape Committee have not dared to do it. There are certain things which seem to me inexplicable. Therefore, Sir, I venture to bring forward this motion† of mine. With an apology of a Customs Department in my own province, I mean Bihar and Orissa, I do not pretend to claim any knowledge in the travelling, halting, worshipping, talking, eating, drinking and other contingent allowances that have been just talked over. But, Sir, there are other things for which I propose this reduction. I know that any cut that I might propose in this Department will hit my province very hard, because, fortunately or unfortunately, my province has no non-votable or untouchable item to its credit. You will find from the figures that 01 per cent. has been reduced in the case of votable items in the other provinces. My province claims a reduction of 25 per cent. as an effect of the retrenchment that has already been made. But the figures which have been presented to us during the last three years tempt me

* "That the provision for Improvement of Edible Oyster Culture in Sind under Sind Division be omitted."

† "That the demand under the head 'Customs' be reduced by Rs. 11,31,564."

[Babu Braja Sundar Das.]

to ask a few questions of the Government Member in charge of this Department. If we look up the non-voted item in 1921, it was Rs. 42,600 in the Budget, and this year in the proposed Budget it is Rs. 5,51,600. The voted item was Rs. 7,67,400 and this year it is Rs. 7,05,400. It will take a good deal of time to read all the figures. In 1921-22 the non-voted item in Madras was 42,600; Bombay Rs. 1,13,700, Bengal Rs. 69,000, Burma Rs. 28,800, Bihar and Orissa nil, Punjab Rs. 23,000. So the total non-voted item in 1921 was Rs. 4,68,900, and in the present Budget, total item under the head non-voted—

		Rs.
The Government of Madras		5,51,600
"	Bombay	1,13,700
"	Bengal	69,000
"	Burma	28,800
"	Bihar and Orissa	Nil
"	Punjab	23,000
"	Central Provinces	Nil
Total		9,14,600

It is clear that the non-voted item has gone up by about 105 per cent. while the voted item when compared with the figure of 1921, will be seen, has come down by '01 per cent. as an effect of the retrenchment proposals that we made in the Assembly. Here, Sir, the Retrenchment Committee make no recommendation whatsoever excepting one item, that the Commissioner of Customs in Bombay should be cut down. They say that the strength and pay of the staff at the various Customs Houses should be examined with a view to economy. That is their recommendation. But they have not gone further to examine the question on its merits. We see from the figures that I have already quoted that the expenditure under the head "Customs" is going up very much from year to year and particularly on the non-voted side. But proportionately there has not been a rise in the income. We should like to know how, in what proportion and how long this increase will continue, whether it will ever stop, or whether it will be an ever-growing concern that will swell further from year to year just as the non-voted item has doubled and trebled itself in the course of two or three years. We have been asked during the last three years to meet deficits by paying extra taxations. As an ordinary tax-payer, I should like to demand an explanation. Though I may not touch this non-voted item, it is fair that I should demand an explanation from the Government as to why and how the expenditure under this head is going up out of all proportion and particularly I would ask the Member in charge to say as to why in Madras the non-voted item Rs. 42,600 in 1921 has gone up to Rs. 5,51,600 this year. This is unintelligible to me, Sir, and I think it is unintelligible as well to many of my colleagues. We should at least know why this non-voted item goes up every year. Then, Sir, allow me to give the reason for reduction that I propose. The Honourable the Finance Member appealed to us to make sacrifices by consenting to pay an extra tax. I suggest that instead of paying an extra tax, we would rather try to keep the expenditure up to a certain level that was in vogue in 1921. The reduction that I have proposed, namely, Rs. 11,31,564, is the figure, which if deducted, will give us the actual expenditure for 1921-22. So with these few words, I want to be enlightened by the Government as to the reason and nature of the enhancement of the non-voted item from year to year, where it will stop and in what proportion it grows.

and then I ask Government to cut this item to this extent, so that we can arrive at the figure that we had in 1921-22 and be saved from paying an extra tax.

The Honourable Mr. C. A. Innes: Sir, the first question asked by my Honourable friend related to the increase in non-votable expenditure in Madras. The answer to that question is simple. It will be found on page 2. The Honourable Member will see that since 1921-22 our assignments to Travancore and Cochin have increased from Rs. 2,87,000 to a budget provision of Rs. 5 lakhs. That increase is entirely beyond our control. It is due to the increase in the trade at Cochin port and the consequent increase in the receipts at Cochin port; and by the Inter-portal Trade Commission of 1895 a proportion of those customs receipts has to go to the Native States of Cochin and Travancore. Sir, the House will see that this trade increase is entirely beyond our control. As regards the general suggestion that, in view of the financial stringency, we should cut our expenditure on the Customs Department down to a figure which obtained in 1921-22, I can only say that I hope that the House will do no such thing. The Honourable Member complained of our constantly increasing expenditure. Has he looked at the constantly increasing revenue? Does he realise that our revenue under the head Customs since 1921-22 has increased from 34 crores of rupees to an expected revenue of 45 crores in the coming year? This increase of revenue inevitably means a great increase of work of our Customs staff. Merchants tend to criticise appraisements more. It is matter of great importance to them. The Preventive Officers have more smuggling to deal with. Merchants generally are more keen about their rights and there is more correspondence, and where your customs revenue is increasing year after year, as our customs revenue is doing, it inevitably means a considerable increase of staff. After all we are collecting this very large revenue for the Government of India at a cost of 1·7 per cent., and I think the House will agree with me that that is not a very excessive cost. The Inchcape Committee has examined this and no cuts to recommend. It has suggested that we should inquire whether the staff cannot be reduced at the different Customs Houses. Naturally we shall take up that suggestion, but I should not be honest if I were to express any hope that we are likely to be able to reduce that staff. I do not mean to say that we shall begin the inquiry with a prejudice against it, but our experience shows that our customs officers are continually coming up to us pointing out grave breakdowns in their offices owing to increase of work and the inadequacy of staff. We have had more than one breakdown in more than one Customs House entirely owing to the inadequacy of staff. In these circumstances I hope that the House will not accept this reduction.

Mr. S. C. Shahani: Sir, I rise to point out that the figures that are given to us in these demands for grants do not show that our receipts go on increasing from year to year . . .

The Honourable Mr. C. A. Innes: Page 296, Mr. Shahani.

Mr. S. C. Shahani: I see, Sir, that the total revenue in 1921-22 was Rs. 34·40 crores. In the year 1922-23 it was estimated at 45·41 crores, and actually amounted to 42·30 crores, but this is due to the revised schedule. If you will look into the figures for 1923-24 you will find that there has been a slight decrease.

The Honourable Sir Basil Blackett: That is compared with the estimate, not the actual.

Mr. S. C. Shahani: We are dealing now with the estimate. It is not estimated that the receipts will be larger, and yet, if you will look into the expenditure figures, you will find that the expenditure has increased from 70,01,000 to 76,28,000. Deduct from that 69,000 and it comes to Rs. 75,59,000. I find that the expenditure increased by 5,58,000. According to me there is no justification for this increase, especially when we have a deficit of $4\frac{1}{2}$ crores. I would no doubt be inclined to reduce my cut of 8 lakhs to Rs. 5,58,000, but so far as the figure of 5,58,000 goes, I see absolutely no justification for this increase, and I am going to support it by reference to a few figures which have attracted my attention here in Demand No. 1. The Appraisers, Preventive Officers, clerks, etc., were shown at 265, and this number has increased to 269, and I find that quite a new provision has been made in respect to the entertainment of 3 Appraisers, 1 Auditor and 3 clerks in the Presidency of Madras. I find that in Bombay the rewards are estimated to increase from Rs. 36,400 to a lakh. This increase again, according to me, is unjustifiable. Coming to my own Province, I find that the number of Preventive Officers has been increased. I have made inquiries and I find that if we reduce the number by about 5, we would not in any manner suffer so far as our collections go. The Government have provided sergeants for a very careful scrutiny of the Harbour of Karachi and I understand that thefts are prevented by them, and also smuggling to a great extent. If this is so, the increase in the number of Inspectors and Preventive Officers here is also according to me unjustifiable. I have also to draw attention to one other thing, namely, that officers are being imported from the Revenue Department. I suppose that accounts for the deputation allowances from other departments. This custom of importing officers, to whom deputation allowances have to be given, I think ought to be discontinued. I have also to point out that the maximum pay of the Head Appraiser in Calcutta and in Bombay ought to be reduced, and the maximum pay that is allowed to the Appraisers in all Presidencies should be nearly the same. With these remarks, Sir, I resume my seat.

The Honourable Mr. C. A. Innes: Sir, may I ask if Mr. Shahani moved an amendment? Because the motion before the House is a reduction of 11 lakhs. I understood that Mr. Shahani only wished to reduce the figure to last year's figure.

Mr. S. C. Shahani: I want to reduce it to 5 lakhs.

Mr. President: The question is:

"That the demand under the head Customs be reduced by Rs. 11,31,564."

The motion was negatived.

Mr. Manmohandas Ramji: Sir, I see that this demand under the head 'Customs' was passed in last year's budget for Rs. 60,49,000 in the voted portion. In the revised estimates, we find that it has come to Rs. 61,60,000. There is, therefore, an increase of Rs. 86,000 after allowing for exchange of Rs. 25,000, according to the revised estimates. Now, let us take the total, both votable and non-votable. The total, according to the revised estimates, is Rs. 70,01,000 and the total according to the budget estimate for 1922-23 after allowing for exchange at the revised estimate rate comes to Rs. 67,53,000. There is thus an increase of Rs. 2,48,000. Now, as against this, the demand before the House is

Rs. 66,17,000, which is an increase by Rs. 4,57,000 over the voted portion of the revised estimates for 1922-23, and, if we look at the total, which is Rs. 75,59,000, we find that the increase over the total of the revised estimate is Rs. 5,58,000, and that this total expenditure of Rs. 75,59,000 is Rs. 8,09,000 more than what we had originally budgeted for in March last year after allowing for exchange at the rate according to the revised estimate.

With regard, Sir, to a point raised by my friend here, the Honourable Mr. Shahani, that there is a proposal to increase the sum under Rewards. My view on this subject is that that system ought to be abolished and no rewards ought to be paid. That in itself works very hard and therefore it is a system which ought to be deprecated. Let us look at the Revenue, page 296. We find that there is not much difference between the Budget estimates for 1922-23 and 1923-24.

Mr. President: Order, order. I cannot allow this question to be referred to successively on every amendment that is moved. If Honourable Members desired to take part in the debate, they should have discussed it on the motion of Babu Braja Sundar Das.

Mr. Manmohandas Ramji. With these remarks, Sir, I move my amendment:

"That the demand under the head Customs be reduced by Rs. 4,00,000."

The Honourable Mr. C. A. Innes: Sir, the increase in the budget for 1923-24 over the budget for 1922-23 is due to various miscellaneous items. There is an increase of Rs. 4,36,000 under the pay of establishments. Now, partly that is because we have had to make provision for Rs. 80,000 for 3 more Assistant Collectors. The reason why we have had to do that is that, so far, in the Imperial Customs Service, we have had no leave reserve at all. We have merely been allowed 3 probationers. The Public Services Commission recommended a proper leave reserve but for various reasons we postponed creating a leave reserve until we were absolutely compelled to do so. The House will see that a probationer makes a very bad form of leave reserve as, when a man is on probation he is not fitted to take charge of a branch of a Custom House. That has been passed, as all the new items of expenditure—I wish to emphasise that—have been passed by the Standing Finance Committee. Then there has been a certain augmentation of the preventive and ministerial staff in the various Custom Houses. They have been explained in the foot-notes to the demand. Let me take one. We have had to augment the preventive staff in the land customs in Madras, the reason being that we found that very large quantities of gold thread and matches were being smuggled across the land frontier from Pondicherry into Madras. The matter got so bad that people who imported in the ordinary course gold thread found that it no longer paid them to do it. Consequently, we have now increased the staff. Then again, we have made provision in the budget for one lakh for allowances for leave salaries in India. Last year this was not shown.

The next point that has been taken is about Rewards. Mr. Manmohandas Ramji complains that the reward system is a bad system. That may be so or it may not be so, but, especially when you have your customs rates as high as they are now, you do find dishonest merchants trying to evade the customs and you do find in practice that the practice of giving

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rewards does give an incentive to your Preventive Officers properly to discharge their duties. Some very bad cases of smuggling of feathers out of India against prohibition have recently been detected. Fines have been imposed amounting to over a lakh of rupees and there are many other cases of ordinary traffic. Under the Sea Customs Act, we are entitled to and we do give a proportion of these fines as rewards to the men.

I do not think I need go through all the items one by one. I need only say that each separate case of new expenditure has been placed before the Standing Finance Committee and has been passed by it. In addition to that, owing to the incremental system of pay which obtains in our Custom Houses, there must be some increase in the budget and as I said before, we are collecting a very large revenue out of a very small rise. I hope the House will not make this reduction.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Before we vote on this amendment, may I be permitted to ask what is really meant by the figures on page 3 of this revised schedule of demands supplied to us? On that page is given the statement comparing the budget estimates of civil expenditure for 1923-24 as now revised with the budget for 1922-23 and the reductions recommended therein by the Retrenchment Committee. Now, the second and third columns of that statement show that in regard to customs the budget figure for 1922-23 which the Retrenchment Committee took was Rs. 72,74,000 and the reduction recommended by the Retrenchment Committee therein was Rs. 47,000. Therefore, the recommendation of the Retrenchment Committee is that the figure of expenditure on Customs for the year 1923-24—if I am wrong I hope to be corrected—shall be Rs. 72,27,000. Now, take the budget figure for 1923-24 as given in the estimates presented on 1st March, namely, 77,19,000. Therein a further reduction on distribution of lump deduction is made of Rs. 69,000. And, thereafter, in the sixth column you get the figure as revised, namely, Rs. 76,50,000. Now, in the seventh column there is a figure—3,76, which is supposed to be the reduction made in the revised budget for 1923-24. Now, really it means that it is an addition to the figure for 1922-23 assumed by the Retrenchment Committee. I take it that the Retrenchment Committee—if there is any meaning in these figures—took the figures for the Budget of 1922-23 under Customs expenditure as Rs. 72,74,000. You then put in the Retrenchment Committee's reduction; only Rs. 47,000 out of this shall be deducted. Therefore they recommended that the budget expenditure for 1923-24 was to be reduced by Rs. 3,76,000. Instead of which, the real budget expenditure is Rs. 76,50,000 with the result that the expenditure is Rs. 4,23,000 over the figure recommended by the Retrenchment Committee. Am I right or am I not?

Mr. A. F. L. Brayne (Finance Department: Nominated Official): Sir, I may say that the Retrenchment Committee, when working on the figures for 1922-23, did not take into account various new expenditure which may have been given sanction to during the year. They merely worked on the estimate and unless they became aware that some new items had been given sanction to and new expenditure incurred they were not in a position to take these into account in estimating a reduction. For example, on the last page of their report they say that it is necessary to make provision for increments of incumbents of posts on time-scales; they had not got such estimates before them and they only worked on

the figures shown in the budget, but they left it to be understood that had other items been sanctioned or new expenses incurred for such matters as increments of salaries, those should be taken into account. Their intention was not as the Honourable Member supposes.

Rao Bahadur T. Rangachariar: But they were given a provisional budget also for 1923-24. I see there they refer to provisional budget figures being given to them for 1923-24.

The Honourable Sir Basil Blackett: In certain cases only, but not by any means in each case.

Mr. T. V. Seshagiri Ayyar: Why was it not done?

The Honourable Sir Basil Blackett: They were not ready.

Mr. N. M. Samarth: My point is this. Is it or is it not a fact that you have exceeded the recommendations of the Retrenchment Committee? And how many lakhs have you exceeded it by?

The Honourable Sir Basil Blackett: Had the Honourable Member been present at the beginning of the Session he would have heard my explanation of it. We are speaking at the moment of the Customs head alone. If it is the Customs head alone that the Honourable Member is speaking of, then it is perfectly true that as compared with the total budget figure of 72.74 last year, the budget figure for this year is 76½, and the difference, reduction or increase which is shown in the last column, is in this case shown by a minus, that is to say, it is an increase over the figure as it appeared on the figures that were in the Inchcape Committee Report. But as has already been explained by Mr. Brayne, the Inchcape Committee had not and could not have before them the exact budget figures for 1923-24; we were working *pari passu* with them all through the last three months, but the budget figures which have gone into our estimates were only ready a week or fortnight at the most before the date on which I had to present the budget. The difference of 376 lakhs in this case is an increase as compared with the figures as they left the Retrenchment Committee. But as has already been explained by Mr. Innes, nothing was included for the increments; nothing was included for the additional inspectors whose appointment was sanctioned by the Finance Committee and has been proved to be necessary, and the Inchcape Committee very carefully guarded themselves against saying that the budget figure of 1922-23, *plus or minus* their recommendation for retrenchment or increase was to be the budget figure for 1923-24; they did not say that and they did not mean it. In this case the increase of 3 lakhs has been fully explained by Mr. Innes as being necessitated by special increases required in order to collect revenue. If the Honourable Member will kindly look down this sheet, he will see there is a *minus* quantity in this case and under Taxes on Income and under Opium; and broadly speaking in all the other cases where there is a *minus* figure it will be at once explained; but in the other cases there is a very big reduction, and as compared with the total figures 14,769.53 that left the Retrenchment Committee—who have recommended a reduction of 9 crores, we have been able to effect a reduction of just over 7 crores, that is to say, a little less than 2 crores less than the figures that they gave.

Mr. W. M. Hussanally: Sir, there is one point that I should like to be a little further explained, and that is, that all the items of new expenditure sanctioned by the Standing Finance Committee were subject to the

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approval of the Retrenchment Committee and the question that now arises is whether all these items of new expenditure were submitted to the Retrenchment Committee and whether they were approved of by them. If these items of new expenditure were not subjected to the scrutiny of the Retrenchment Committee, then I say there is no reason why these new items of expenditure should be included in the budget. That proviso was specially made by the Standing Finance Committee, in all items of new expenditure sanctioned by them, and if these new items of expenditure have not been approved by the Retrenchment Committee, I think they ought to be taken off.

Mr. R. A. Spence: Sir, is not the greater part of this excess of 3.76 lakhs accounted for by this excess payment to Travancore and Cochin States—a non-votable item? (*Cries of 'No'*) If Honourable Members will look at the figures they would not perhaps say 'No.' They will see that the figures for payment of compensation to Travancore and Cochin States have gone up by Rs. 2,70,000, and that has been explained by the Honourable Commerce Member as being payment made over to Travancore and Cochin States for services rendered and therefore under contract and therefore the budget has not gone up over the Inchcape figures. I take it that is how it has gone up, anyhow by Rs. 2,70,000.

Mr. Jamnadas Dwarkadas: Sir, such increase in the expenditure raises what I consider a very important issue for this Assembly to decide. Here you have a recommendation made by the Retrenchment Committee, that Rs. 47,000 be reduced out of the budget estimate of 1922-23, which means that the Retrenchment Committee thought that the budget estimate of 1922-23 was too much, was in excess by Rs. 47,000 over the required figure. Well, instead of a reduction now we find that the Government proposes to increase the expenditure by about Rs. 4 lakhs. The issue now before the Assembly is this: the Retrenchment Committee having proposed a reduction, would the Government be justified at this stage in this year in bringing proposals for increased expenditure? If we allow that in this case, it would only mean that next year we shall have all kinds of new proposals made by Government under all items, saying that the Retrenchment Committee could not go into the circumstances that arose in the year 1923 and therefore the proposed increase is due to the fact that the Retrenchment Committee was not able to consider those circumstances. Here the Retrenchment Committee has made its report and as my Honourable friend Mr. Hussanally pointed out the Standing Finance Committee whose authority has been quoted made it a special condition that the grant was subject to the approval of the Retrenchment Committee. (*Mr. N. M. Samarth:* "All their recommendations.") If we give in on this question, we shall not only be going, as I take it, against the wishes of the Retrenchment Committee for reduction, but we shall be involving the House further in sanctioning certain proposals for increased expenditure which in the interests of retrenchment we are not called upon to do. I therefore support my Honourable friend Mr. Manmohandas Ramji's motion.

The Honourable Mr. C. A. Innes: Sir, I should just like to clear up certain misapprehensions which have arisen owing to the intervention of my friend, Mr. Samarth. It has been suggested that the Inchcape Committee expressly passed the Customs budget for 72.74 lakhs subject to a reduction of Rs. 47,000 on account of the pay of the Commissioner in

Bombay. Now, let me take the first point about the pay of the Commissioner in Bombay. That recommendation of the Inchcape Committee for reduction of that amount is contingent upon the appointment of a Controller General of Customs. If we appoint a Controller General of Customs we shall be able to oust the local Governments from the administration of customs and then we should be able to save that amount of Rs. 47,000 under the pay of the Commissioner. Well, we have still got to create the post of the Controller-General and until we do so we must have somebody in Bombay to hear appeals against decisions of collectors in customs cases. Therefore that proposal to reduce Rs. 47,000 cannot for the moment be given effect to.

Now, the next point I wish to make is this. The Inchcape Committee asked us for our budget figures for 1922-23; we sent them and they worked upon those figures; but I deny altogether that their report is meant to be interpreted as passing our budget for this year on the figure of last year. Now, what have we done? The new items entered in our budget for 1923-24 are shown in big black ink in this budget; they amount to Rs. 39,000 only.

The only other increases which appear in the Budget are on account of proposals sanctioned in our last Budget or by the Standing Finance Committee between the last Budget and the September meeting, and they were sanctioned by the Assembly during the demand for Supplementary Grants. There are no new proposals—this is the point I wish to make—there are no new proposals in this Budget other than those shown in big print in the Budget. One is the pay of the three Assistant Collectors. Now it is perfectly true, as Mr. Hussanally has said, the Standing Finance Committee passed that proposal regarding the provision of Rs. 30,000 for three Assistant Collectors subject to reconsideration in the light of the Retrenchment Committee's recommendations. The Standing Finance Committee did not suggest that that proposal should be placed before the Inchcape Committee; nor could the Inchcape Committee have dealt with individual items of this kind. The only reservation the Standing Finance Committee made was that that proposal might require reconsideration in the light of the Inchcape Committee's Report. Now you have got the Inchcape Committee's Report here. Is there any charge against the Customs Department of extravagance? Is there any charge against us that we made greater provision than is necessary? Not at all. Absolutely nothing of the sort. And I have already given an independent explanation and justification for that extra demand of Rs. 30,000. We cannot go on as we are doing now with a leave reserve on a service of 25 officers of only three probationers. The usual leave reserve in any Government Department is 30 per cent. We have now got in the Customs Department a leave reserve of only 15 per cent. or so with the result that when our officers go on leave we cannot man the Department properly.

The other item is the entertainment of 3 Appraisers, 1 Auditor and 3 Clerks in Madras. That is due to the new system adopted in regard to the assessment to custom duty of registered letters and parcels coming from England. Formerly the English Post Office used to prepare a way-bill. That way-bill came out a week before the letters and parcels. The valuations were worked out on that way-bill and the whole thing was done in Bombay. Now the British Post Office have refused to go on with that system unless we pay £5,000, and we have had to adopt another system. Part of the system is the decentralisation to Madras of their own assessing work. That has necessitated the small increase of establishment.

[Mr. C. A. Innes.]

The only other item is the revision of the pay of the Chemical Examiner's Laboratory Assistants in Bengal. That is simply because with the existing sanctioned pay we cannot keep the Laboratory Assistants: they are tempted away to other posts.

Now what I have tried to make out is this. It is not right that the House should think that the Inchcape Committee passed the Budget for the following year. All they did was they examined our Budget for the current year and they said they had no recommendations to make. We now put up a Budget before you which shows certain new items—they are printed in black letters—and it shows the effect of certain new proposals already sanctioned by the Assembly—sanctioned, that is, by the Standing Finance Committee, for which Supplementary grants have been given by the Assembly in September. That being so, I hope the House will not accept this recommendation to reduce the Budget by 4 lakhs of rupees.

Mr. T. E. Moir (Madras: Nominated Official): Sir, my only justification for intervening is that for part of the period, at any rate, to which this additional expenditure relates I served as Chairman of the Standing Finance Committee. Unfortunately I have not with me a copy of the document to which the Honourable Member for Commerce and Industry referred which declared our intentions as regards the items of expenditure which we had passed in their relation to the recommendations of the Retrenchment Committee. There has been a certain looseness of phraseology regarding our intentions. As far as I remember, and as far as I am able to gather from the proceedings of the Standing Finance Committee, we never used the phrase "subject to the approval of the Retrenchment Committee". Our expression throughout was "subject to the recommendation of" or some such phrase; and I think the other Honourable Members of that Committee will bear me out when I say that our intention was that the mere fact that we passed a particular item of expenditure was no justification for the Government undertaking that expenditure if, in doing so, they ran counter to the recommendations of the Retrenchment Committee. (An Honourable Member: "Quite so.") I am unable myself to say whether in any item in connection with the expenditure on Customs the Government have contravened that intention and understanding; but I am perfectly ready to accept the assurance of the Honourable Member for Commerce and Industry that in no case has that understanding been contravened. I hope that these few remarks will clear up the point about our recommendations so far as the Standing Finance Committee is concerned.

If I might add one more word; if I am in order, may I say that the attitude in which the Standing Finance Committee regarded all recommendations in respect of increase of expenditure in revenue producing departments was that they examined every recommendation most closely and in every case they satisfied themselves before giving their assent to such expenditure being included in the Budget that it was essential in the interests of revenue. That was a commonsense standpoint to take and it was with reference to that consideration that they scrutinised every item throughout.

Mr. N. M. Joshi (and other Honourable Members): I move that the question be now put.

Mr. President: The question is that the question be put.

The motion was adopted.

Mr. President: The original question was:

"That a sum not exceeding Rs. 66,17,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Customs'."

Since which an amendment has been moved:

"That the Demand under the head 'Customs' be reduced by Rs. 4 lakhs."

The question I have to put is that that reduction be made.

The Assembly divided:

AYES—52.

Abdul Majid, Sheikh.	Kamat, Mr. B. S.
Abdulla, Mr. S. M.	Lakshmi Narayan Lal, Mr.
Agarwala, Lala Girdharilal.	Latthe, Mr. A. B.
Ahmed, Mr. K.	Mahadeo Prasad, Munshi.
Asjad-ul-lah, Maulvi Miyan.	Mudaliar, Mr. S.
Ayyangar, Mr. M. G. M.	Mukherjee, Mr. T. P.
Ayyar, Mr. T. V. Seshagiri.	Nag, Mr. G. C.
Bagde, Mr. K. G.	Nand Lal, Dr.
Barua, Mr. D. C.	Neogy, Mr. K. C.
Basu, Mr. J. N.	Pyari Lal, Mr.
Bhanja Deo, Raja R. N.	Ramayya Pantulu, Mr. J.
Bhargava, Pandit J. L.	Ramji, Mr. Manmohandas.
Bishambhar Nath, Mr.	Rangachariar, Mr. T.
Chaudhuri, Mr. J.	Reddi, Mr. M. K.
Dalal, Sardar B. A.	Samarth, Mr. N. M.
Das, Babu B. S.	Sartaraz Hussain Khan, Mr.
Faiyaz Khan, Mr. M.	Sarvadhikary, Sir Deva Prasad.
Ginwala, Mr. P. P.	Shahani, Mr. S. C.
Girdhardas, Mr. N.	Singh, Babu B. P.
Gour, Dr. H. S.	Sinha, Babu Ambica Prasad.
Gulab Singh, Sardar.	Sinha, Babu L. P.
Hussanally, Mr. W. M.	Sinha, Beohar Raghubir.
Iswar Saran, Munshi.	Srinivasa Rao, Mr. P. V.
Jamnadas Dwarkadas, Mr.	Ujagar Singh, Baba Bedi.
Jatkar, Mr. B. H. R.	Venkatapatiraju, Mr. B.
Joshi, Mr. N. M.	Vishindas, Mr. H.

NOES—51.

Abdul Quadir, Maulvi.	Hindley, Mr. C. D. M.
Abdul Rahim Khan, Mr.	Holme, Mr. H. E.
Abdul Rahman, Munshi.	Hullah, Mr. J.
Abul Kasem, Maulvi.	Ikrumullah Khan, Raja Mohd.
Achariyar, Rao Bahadur P. T.	Innes, the Honourable Mr. C. A.
Srinivasa.	Jamali, Mr. A. O.
Aiyar, Mr. A. V. V.	Ley, Mr. A. H.
Aiyer, Sir P. S. Sivaswamy.	Lindsay, Mr. Darcy.
Akram Hussain, Prince A. M. M.	Mitter, Mr. K. N.
Allen, Mr. B. C.	Moir, Mr. T. E.
Amjad Ali, Maulvi.	Muhammad Hussain, Mr. T.
Blackett, Sir Basil.	Muhammad Ismail, Mr. S.
Bradley-Birt, Mr. F. B.	Mukherjee, Mr. J. N.
Brayne, Mr. A. F. L.	Nayar, Mr. K. M.
Bridge, Mr. G.	Percival, Mr. P. E.
Burdon, Mr. E.	Rhodes, Sir Campbell.
Cabell, Mr. W. H. L.	Sams, Mr. H. A.
Chatterjee, Mr. A. C.	Schamnad, Mr. Mahmood.
Clark, Mr. G. S.	Shahab-ud-Din, Chaudhri.
Cotelingam, Mr. J. P.	Singh, Mr. S. N.
Crookshank, Sir Sydney.	Sircar, Mr. N. C.
Faridoonji, Mr. R.	Spence, Mr. R. A.
Gajjan Singh Sardar Bahadur.	Stanyon, Col. Sir Henry.
Gidney, Lieut.-Col. H. A. J.	Townsend, Mr. C. A. H.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hailey, the Honourable Sir Malcolm.	Willson, Mr. W. S. J.

The motion was adopted.

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LEGISLATIVE ASSEMBLY.

[12TH MARCH 1923.]

The Honourable Sir Basil Blackett: Sir, I should like to make it perfectly clear that a reduction of this sort in expenditure could not be taken into account so as to reduce our budget deficit, because it is one which I cannot possibly regard as in any way reducing the deficit as it stands at present. If I was really expected to make that reduction, I should have to take at least a crore from my estimate for revenue. From the point of view, therefore, of the deficit, the whole still remains to be covered, and I myself cannot regard that as a real cut and therefore it does not affect the amount of the deficit remaining to be covered.

Mr. President: The question is:

"That a reduced sum not exceeding Rs. 62,17,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Customs'."

The motion was adopted.

The Assembly then adjourned for Lunch till Twenty Minutes Past Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes Past Three of the Clock. Mr. President was in the Chair.

TAXES ON INCOME.

The Honourable Sir Basil Blackett: Sir, I beg to move:

"That a sum not exceeding Rs. 58,93,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Taxes on Income'."

Rao Bahadur T. Rangachariar: Sir, I beg to move:

"That the provision for Re-organisation of Income-tax Officers under the head 'Taxes on Income' be reduced by Rs. 2,00,000."

Honourable Members will notice from page 3 of the memorandum circulated to us that the Retrenchment Committee did not propose any reduction over the Budget figure of 1922-23 under the head 'Taxes on Income.' It stood at 47.01 lakhs. As Honourable Members will notice from column 6 the demand is now 63.79 lakhs. There is an increase therefore of over 16 lakhs over what the Retrenchment Committee said they would not reduce. In fact, all this extra expenditure is due to the re-organisation of the Department in the various provinces. I do not deny that there is necessity for re-organisation. But I do deny that there is necessity for so much pace in the re-organisation scheme. We can get on with the existing arrangements in several places. It is only in important places, in cities where you have got large income-tax amounts to deal with, that these re-organisations may be necessary and be given effect to. But in other places the old arrangement may last. Therefore, while I recognise the necessity for re-organisation, I think we may safely reduce the expenditure by Rs. 2 lakhs. If Honourable Members will turn to page 10 onwards they will notice that in Madras a provision for re-organisation of the Income-tax staff of Rs. 58,000 is provided. On page 11, in the Bombay Presidency, the re-organisation costs about Rs. 3,50,000, and similarly also, in Burma there is a provision of Rs. 1,25,000 on page 13. There are

several other provisions which are scattered here and there. I will not go in for the whole of the re-organisation scheme, but I do think that here there is room for reduction. Honourable Members will also remember that in the year 1921-22 our expenditure was only 23.05 lakhs and what we voted for last year was only 45.31 lakhs as against a proposed demand of Rs. 47.55 lakhs. What they now want is nearly 40 lakhs over the 1921-22 figures and nearly about 17 lakhs over the demand for last year and nearly 18 lakhs over what we granted last year. I propose only a reduction of Rs. 2 lakhs. I therefore commend this modest proposal for the acceptance of the Government and of the House.

Mr. A. V. V. Aiyar: Sir, the Honourable Mr. Rangachariar has in making this motion conceded that it is desirable to proceed with the scheme of re-organisation. That point will no doubt be referred to again by other Honourable Members, and as they may not concede the point so readily, I will make a few remarks about the desirability of going on with this scheme as rapidly as possible. In dealing with this demand in the last two years the Honourable Sir Malcolm Hailey has stated to the House the reasons for going on with the scheme. He claimed that improvement in the Income-tax administration results in just assessments and that it brings into assessment a very large number of people who have hitherto escaped assessment. I will just cite one instance where the improvement in machinery has brought in an increased revenue. There are 20 districts in Bihar and Orissa where we shall ultimately have to employ a special staff for income-tax collection. In 6 districts a special whole-time staff was entertained in the year 1921-22 and in 5 districts a special staff has been entertained only from the beginning of January 1923, while in the remaining 9 districts no special staff has yet been entertained. In those 6 districts the number of assesseees increased from 3,484 in 1921-22 to 8,881 in 1922-23 and the tax increased from Rs. 19,82,000 to Rs. 33,70,000, while in the 9 districts in which no special staff has yet been entertained the number of assesseees increased only from 2,500 to 2,527 and the tax from Rs. 6,58,000 to Rs. 7,92,000. I think, Sir, these figures show conclusively the desirability of proceeding apace with this re-organisation. Sir, we have provided in the Budget for the extent to which we hope to be able to effect re-organisation. But I quite concede that it may not be possible to give effect to our re-organisation to that extent and that there may be some savings. I will show to the House that those savings are required for a definite purpose. As the House is aware, Income-tax was a divided head of revenue before the reforms. The Local Governments then collected the tax for us. They took half the tax under the division of revenue then in force and paid in full for the establishment. Since the reforms income-tax has become a Central subject. We have not got our staff throughout all the provinces and we have to leave the collection to the provinces. They can now only act as our agents and they expect payment for the services which they rendered to us. This question of payment was raised first immediately after the reforms and it has since been in continual discussion with the Local Governments. We discussed the matter on the last occasion at the Conference which was held in Simla in May last with the representatives of the different provinces. It was then decided that the Government of India should work out some formula for determining the remuneration to be paid to the Local Governments and refer it for the opinion of the Local Governments concerned. The matter is still under consideration and we have not come to any final conclusion with the provinces but we have put to them certain definite proposals. We have our

[Mr. A. V. V. Aiyar.]

own Central Government's income-tax staff in the bigger cities and the task of collection is left to the provinces mainly in the case of the rural areas. We find from an examination of the cost of collection in the rural areas where we have got our own staff that the cost of establishment in the rural areas is roughly ten per cent. of the revenue collected. We have made a suggestion to the Local Governments that they should accept from us for the services they render to us payment on that basis. The figures from one of the Local Governments which I have before me show that while we consider this offer very liberal the Local Governments are not of that opinion. As a matter of fact, they are asking for a very much higher percentage of the revenue collected. It follows, Sir, from what I have said that we have a definite payment to make to the Local Governments for the collection of revenue in areas where we have not got our own staff. We have made a certain amount of provision for the expansion of the Central Government's staff in the provinces. If we are not able to carry out that scheme to the extent to which we anticipate, it only follows that we should pay to the Local Governments a larger sum in respect of the areas where we expected to introduce the Central Government's staff but where we have not been able to do it. We have made a provision of Rs. 9 lakhs in the budget for next year on account of payments to the Local Governments, but if we are unable to introduce the Central Government's staff to a larger extent than now anticipated, the result will be that we will have to increase the payments to the Local Governments to a corresponding extent or to be more correct, to a larger extent, as the rate at which they require payment from us is larger than 10 per cent. (A Voice: "How much are they asking?") I have not got detailed figures for all the provinces but I will give them for one province if you like. I have got figures for the Madras Presidency. The total cost of the whole scheme sanctioned for the Madras Presidency, that is, the scheme for the introduction of the Central Government's staff throughout the Presidency amounts to Rs. 8 lakhs, while the cost of the staff at present entertained amounts to Rs. 6 lakhs. The Government of Madras have asked the Government of India for a payment of Rs. 6 lakhs on account of work done by their officers, that is to say, for a payment of Rs. 4 lakhs in excess of the expenditure which will devolve on the Central Government if the scheme for re-organisation is introduced throughout that province. That shows the difficulties in coming to a settlement with the Local Governments. My point is that in the first place it is desirable to introduce this re-organisation and to employ the Central Government's own staff as rapidly as possible in the provinces and in the second place, that to the extent to which we are unable to do so we have only to make an increased payment to the Local Governments. I hope I have satisfied the House that there is no room for any reduction in this total demand because while we admit that there will be some saving in the provision for re-organisation, the amounts are required for a definite purpose. But if the House decides to make a reduction, we will expect the House to indicate how they would make that reduction, and how they would wish us to meet the demands from the Local Governments.

Mr. J. Ramayya Pantulu (Godavari cum Kistna: Non-Muhammadan Rural): I am glad that my Honourable friend Mr. Rangachariar takes the view he has taken to-day of the special establishment for collecting income-tax. If I remember aright, during the discussion on the Income-tax Bill he hailed the prospect of the income-tax work being, after all,

taken away from those great sinners, the revenue officials. But I now see he is himself afraid that the pace at which this separate establishment is being increased is rather too fast. It seems to me, Sir, that a separate establishment for income-tax work is likely to lead to one of two evil results and I want Government to take steps to avoid those consequences. One is that the establishment may become bloated and eat up a good portion of the revenue it produces. On the other hand, it may try to justify its existence by increasing the revenue by over-assessments. Both these alternatives are very bad and I hope Government will take steps to see that neither of these consequences happens. In this connection I wish to suggest to Government the advisability of re-introducing in the Income-tax Act a provision for the composition of income-tax which existed in the old Act. A provision like that will, to some extent, reduce the work of the Department and may result in some saving under the establishment charges.

Dr. Nand Lal: Speaking for myself, I am of opinion that the old system was less expensive and was more convenient for the assessee. I find from a survey of the past years that the expenditure so far as the Income-tax Department goes, has been increasing, and this year's budget demand is decidedly very heavy. You will be surprised to see the increase which we have been witnessing on the expenditure side so far as the collection of income-tax goes. In 1911-12 the whole expenditure was Rs. 4 lakhs only. In 1912-13 it rose to Rs. 8 lakhs. In 1920-21 it again rose to Rs. 11 lakhs. In 1921-22 it rose to Rs. 28 lakhs and for the current year the demand was for Rs. 44,80,000 and for the coming year it is much more. If we take an account of the collection the result of our analysis is very discouraging. It has not been proved by making a reference to the various provinces that on the whole this new organisation has helped us in collecting more irrespective of the increase in rates. The result is otherwise. Take the case of Bengal. The Honourable the Finance Member I think will have to concede this point that the collection in that province has been much less than it was expected. Take the case of the Punjab. Of course, so far as the Madras Presidency is concerned, there has been some increase, but one province is not sufficient to be taken as a criterion. Therefore, so far as the revenue side is concerned, we have not profited very much. There are other phases of it, the convenience and comfort of the assessee. There has been a number of complaints that this department is not properly managed. Assessee are summoned to produce their books and registers on a specific day, without knowing how many registers and accounts will be examined and irrespective of the convenience and comfort of respectable assessee. What is the result? By the end of the day four or five registers have been examined. The other assessee shall have to go back after they have been detained for more than five hours or six hours in some cases. It gives rise to a great amount of discontent. Though the intention of the Government is good that this department may be separated from the old system which was being run by each Local Government separately, experience shows that it has not added to the convenience of the public. Perhaps it may be urged on behalf of Government that your own argument establishes that the Government wants more employees, more examiners to see the registers. In reply to that I may submit that the staff which has been given to the collectors or assessors is more than sufficient. In any case it is more in strength than it used to be under the old system. Now there are Assistant Commissioners and a number

[Dr. Nand Lal.]

of collectors. A collector is put in charge of one district and then sometimes two collectors are deputed in some big towns, as for instance, Lahore has got two collectors. Then there are so many inspectors. So the strength of the establishment is greater than it used to be. There is a third phase of it. It is extremely difficult to see who is responsible for this inconvenience and discomfort. I have been told by very responsible men one of whom put a question in the Punjab Legislative Council complaining against the management of the income-tax department. The reply which was given to that gentleman was that this is a Central subject. I myself put some questions and I was told that the question should be put in the Provincial Council. So the assesseees do not know where to go and lodge a complaint and get their grievances redressed. I submit that there is a great amount of dissatisfaction and discontent on account of the duplication of this management. So therefore the suggestion which has been offered by my learned friend Mr. Rangachariar, I do not think, will meet the need. Therefore I feel forced to say that the old system should be resorted to. The reorganisation will not prove paying to us, nor will it ameliorate the conditions to which a good many assesseees have been subjected. With these few remarks I support the reduction and resume my seat.

Dr. H. S. Gour: Income-tax is a direct tax, and all direct taxes are odious, but when we deal with this income-tax it becomes doubly odious by reason of the fact that a regular Star Chamber inquisition has been ordered since the reorganisation of this department. Accounts books are ransacked, pages after pages turned over and when the accounts are properly kept and produced before the income-tax-inspectors they are only inspected to be rejected and an arbitrary assessment made upon the assesseees. I entirely endorse the remarks made by the last speaker that the assessment of the income-tax in this country has been a fruitful source of widespread discontent, and I think this House certainly would not be justified in lending its assistance to the reinforcement of a department which has certainly not justified itself during its short career. (*Mr. R. A. Spence:* "No.") I shall very briefly point out to the Honourable Member who cries 'No.' He has probably no sufficient experience of the assessment. I shall briefly point out to the House that the incidence of charges on the realisation of income-tax has been steadily growing. In my budget speech I gave the figures to the House. It was originally 1 per cent. and has now gone up to 3.5 per cent. What is the justification for this great rise? The occupants of the Treasury Benches have not justified this great rise. Only a few minutes ago the Honourable Member for Commerce and Industry justified the Customs Department by saying that the incidence of charges of collection was in the neighbourhood of 1½ per cent. If that be the standard of collection, I submit the income-tax collection charges which come to 3.5 per cent. are excessive and there comes a time when I think the assesseees must protest against the kind of inquiries made, the delay occasioned and the general dissatisfaction caused by the mode and manner in which the income-tax is assessed in this country. My friend Mr. Aiyar says that the income-tax administration has to be strengthened because we shall get more money from the people. Surely, Sir, that is not the sole purpose of strengthening the income-tax administration. The object of increasing or revising income-tax administration is to make an equitable assessment

and the question therefore is whether the reorganisation of the income-tax department has been conducive to the more equitable assessment of this tax. On that point Honourable Members on this side of the House join issue with the occupants of the Treasury Benches. We say that a very large increase which has been made in the administrative departments of income tax during the last two or three years, and which is proposed to be made during the ensuing Budget year, is not justifiable and has not been justified in the past. Reference has been made by my friend to certain rural areas. I do not know what income-tax is collected from the inhabitants of the rural areas, and how we shall stand if we were to centralise the collection in the rural areas rather than leave its collection to the Provincial Governments. Those are the facts upon which my friend Mr. Aiyar has been studiously silent, and unless we were given the figures as to what we stand to gain by having a central organisation for the collection of income-tax from these rural areas, we would not be justified in voting away the people's money for the purpose of paying the income-tax collectors and inspectors. Then, Sir, it has been said by my friend that in Bihar and Orissa where they were formerly collecting 19 lakhs of rupees they are now in a position to collect 33 lakhs of rupees. But I ask, at what cost? My friends here will be soon translated to the Olympian heights of Simla, but we have to go down to our constituencies. We mix with the people; we ask them what their difficulties are and we are told that ever since we have taken office this tax has been increased year by year; the inquisition has become more and more oppressive to the taxpayer; the account-books which the people keep never satisfy the inspectors, and even the accounts of the very best accountants are rejected by the inspectors only to make assessments at a fancy figure. This, I submit, is the grievance of the people against which this House must rally to the support of the Mover of this amendment. I support it.

Captain E. V. Sassoon (Bombay Millowners Association: Indian Commerce): Sir, I think this House quite realizes that when you increase direct taxation like the income tax you are liable to make the desire to evade it stronger. Those of us here, I mean all the Members of this House, no doubt disclose our true incomes and pay our proper dues to the Government. Therefore it is to our advantage that others who may not so honestly put forward their complete incomes should be brought to book. (Hear, hear.) I therefore think that we are all agreed that we want to give all the help that is necessary to Government to get the right amount of income from this direct taxation. But I must join issue with the Government when it comes to the question of the charges of the cost of collection against the amount that is received. Mr. Aiyar mentioned that 10 per cent. was offered to the Provincial Governments. I made an interjection and asked how much the Provincial Governments had offered to do the work for. It may be due to my lack of intelligence but all I understood was that instead of an outlay of 8 lakhs by the Central Government the Madras Government offered to do something for 6 lakhs. That, as I have said, may be due to my lack of intelligence; but I was expecting to get percentages. I was . . .

Mr. A. V. V. Aiyar: What I said was that the Madras Government wanted 12 lakhs for a work which the Central Government could have done for 8 lakhs.

Captain E. V. Sassoon: Well, I cannot compare horses with donkeys. Mr. Aiyar told us that we offered them 10 per cent. I would like to have

[Captain E. V. Sassoon.]

something to compare that with. Perhaps Mr. Aiyar or some other occupant of the Treasury Bench will give the information. What I am interested in knowing is this. I see that something like 17 lakhs of extra expenditure is required by the Government for extra collection. Are we going to receive this 1,70 lakhs revenue through this expenditure of 17 lakhs, or what are we to expect to get therefrom? That seems to me to be the real point at issue. If the Treasury Bench can prove that we are going to get a really justifiable return for this expenditure, I for one will support it. But if we are simply going to spend this money without getting a proper return for it, then I am not at all certain that I will not support Mr. Rangachariar, not because I oppose the reorganization of the Revenue Department, but because the subject has not been put before this House in a clear and definite manner which would enable us to understand it. Therefore I do hope, Sir, that we will get some definite, lucid statement from the Treasury Bench showing us what we may expect to get in return for the 17 lakhs we are asked to spend on this Revenue Department.

Maulvi Abul Kasem (Dacca Division: Muhamnadan Rural): Sir, the Honourable Mr. Rangachariar in making his motion clearly stated that he acknowledged that there was a need for the reorganization of the Income-tax Department, but he brought the issue within the narrow limit of whether the cost this House was asked to sanction was absolutely necessary for that reorganization. It has been said by the Honourable Mr. Aiyar that by spending this larger amount we can get more money and do get more money, and some figures were quoted. But may I ask whether, because a larger amount of income-tax was collected in a particular year, it was due to the rise in the income of the people in that year or due to the additional taxation I mean in the rate of income-tax or entirely to the ability and energy of the income-tax officers themselves? I will not, Sir, go into the question of the hardships which are felt by the assessee. Dr. Gour has dealt with it. But I want to know, Sir, why it is that in maintaining a staff of income-tax officers we pay such generous salaries and emoluments? I have no experience of any other province, but in Bengal I know that when these income-tax officers were being appointed advertisements were published in the papers calling for applications; and for about 62 appointments something like 15,000 applications came in. From my personal knowledge I can say that the men recruited from the Provincial Service were given a much higher pay than they received in their service. Am I to understand, Sir, that the work of the Provincial Service, I mean Deputy Collectors, etc., who have to deal with both judicial and executive work, is less arduous or requires less of what has been termed character, integrity and education than the work of income-tax officer? If not, why is it that an income-tax officer is paid at a higher rate than a Deputy Collector or a judicial officer like a Munsiff? If we can get Munsiffs and Deputy Collectors on a particular scale of pay, how is it that we cannot get the same class of officers as Income-tax Officers? Therefore I think, Sir, that the Income-tax Department is not only too generous in the matter of salaries, but in many cases extravagant. For instance, Sir, in the city of Calcutta the Collector of Calcutta was the Collector of Income-tax, Excise and Land Revenue. Now that officer has been relieved of his work of income-tax collecting which has been placed under an official designated a Commissioner of Income-tax, and he is, I believe, paid a very good salary. —I do not know the figure, but a very good salary. But may

I ask, could not that very officer be secured for a much smaller salary than he is now receiving? If he was working as the Collector of a District or as a District Judge he would get much less pay than he is getting as Commissioner of Income-tax. I could understand if it was necessary to get a very senior member of the service that he would have to get his grade pay—a high pay. But if you can do the work with a junior member of the Indian Civil Service why not pay him at the rate he would get in the ordinary cadre? As regards the statement made by Mr. Aiyar that the efficiency of the staff is to be judged by the amount of money collected, I would agree with him if these assessments made by them were subject to any judicial investigation or to a non-official board which examined his assessment and examined the case of the assessee as well. But the facts are that the Income-tax officers assesses an assessee, and if the assessment is not agreed to an appeal is made to his immediate superior who also is an Income-tax official and there the matter stands. So naturally there is not much credit due to the staff for collecting the larger amount of income-tax. I think that the expenditure in this Department is not only on a generous scale but has been spent extravagantly. I therefore support the motion of my friend Mr. Rangachariar.

Mr. R. A. Spence: Sir, I wonder in my heart whether I approve or disapprove of a motion to cut the Income-tax Department. I wonder whether it is going to do my pocket any good. Personally I am afraid it is not, because my money is collected in an easy way. As Dr. Gour stated, we want equitable assessments, and in order to get equitable assessments, it is necessary that we should have assessments, collecting from everybody who is due to pay income-tax, and it is because of the difficulty of doing that that we have to have this heavy expenditure on income-tax. We have had a very interesting electioneering speech from Dr. Gour in this matter. He seems to assume that it is as easy to collect income-tax as it is to collect the customs duty, and therefore he thinks that the charges necessary for collecting income-tax should be in the same proportion as the charges necessary for collecting the customs. Well, if he would make the collection of income-tax as easy as the collection of customs duties, I would join with him in pressing for a reduction of this demand. Dr. Gour says that by passing this we are voting away the people's money. Well, Sir, I think that if we do not spend money on this Department, we are also voting away the people's money, and in this case we are voting away the people's money that would be coming in to the State. There were some interesting figures given by Captain Sassoon. I think he seems to forget the maxim that when business is bad, it is occasionally necessary to spend a little more money in order to increase one's business or to prevent one's business going away. Well, anyhow the more you spend, the more apparently you get, but if you are going to look at figures from that point of view and merely calculate on the amount of money you spend, and not take other things into consideration, it is not right. Just look at the case of Bombay. Poor Bombay spends more money on income-tax than any other part of India, but she does give Government something for it. (Mr. N. M. Samarth: "The whole of it practically.") She spends Rs. 14,79,000 on this head, and she gets in Rs. 6 crores 80 lakhs, whereas Bengal, true, only spends half the amount Bombay does, but she is two crores of rupees down. I do not think that Captain Sassoon's argument holds good. The reason that we are not getting the same amount of income-tax that we got last year or the year before is palpable to him, I should say, as it is to me and various other people. We are

[Mr. R. A. Spence.]

not making the same amount of money that we made before. Well, I think unless we spend this amount of money in the Budget, we shall not get in as much income-tax as we were doing. My Honourable friend, Maulvi Abul Kasem, referred to the generous salaries paid to the people in the Income-Tax Department. Well, I do not want to cast a slur on anybody either to cast a slur on the Collector of Income-Tax or upon the Deputy Collector on the revenue side. But surely, Sir, it is commonsense that when you have people who have to go round and make these inquisitions, as I think Dr. Gour called them,—anyhow very unpleasant inquiries, into people's incomes and extract true figures out of them, then surely, going by human nature, it is wise to pay these people well, and to put out of their minds any idea of temptation. If you pay them badly, they will collect badly. We heard a great deal said against the police in the beginning of this Assembly and really I believe a good bit of it was due to the fact that the police were badly paid; and I think you will hear far less against the Income-Tax Department, and the Income-Tax Department will do its work with less hardships to the people of India if you pay the Income Tax Department well. The Department is going to collect a lot of money for us, and we deserve to have a good Department in order that this tax may fall equitably upon everyone; and that it will not fall merely on the person who has his mercantile books in the city, it will not merely fall on the party who has one set of books for himself, one set of books for his partner and one set of books for the income-tax collector, but that it may fall equally on all people. Sir, I oppose this reduction.

Mr. S. C. Shahani: Sir, the Honourable Captain Sassoon told us that we would be prepared to incur the additional expenditure that has been suggested, namely, 17 lakhs, if we were told exactly how much would be collected by this new reorganization scheme. I submit that we have been told in distinct terms that our revenue for 1923-24 may be estimated at 19.04 crores; that is to say, that our revenue in 1923-24 is as compared to that in 1922-23 to increase by something less than 2 per cent. Now I say 17 lakhs more on the expenditure side mean an increase of about 40 per cent. in our expenditure. I shall give the figures. The actual revenue for 1919-20 is 22.43 crores, for 1920-21 20.91 crores and for 1921-22 18.74. For 1922-23 the estimates were 22.11 crores, and actual collections, 18.69; and the estimated figures, as I have already mentioned, for the year 1923-24 are 19.04 crores. If we look at our expenditure, we find that in the year 1919-20 our expenditure amounted to 15.29 lakhs, in 1920-21, 22.15, and in 1921-22, 22.50. In 1922-23 the estimated expenditure was 47 crores, and our actual expenditure, 45.88; and the estimated expenditure for 1923-24 is 63.79 crores, that is to say, 40 per cent more than our expenditure in 1922-23. If we consider our receipts and expenditure, we find that we expect to realize about 35 lakhs more, and we want to spend on the collection of this 35 lakhs, 17 lakhs more. (*The Honourable Sir Basil Blackett:* "No.") I say, yes. Now this state of things is I think unjustifiable, and a much larger cut than has been proposed by the Honourable Mr. Rangachariar should be deemed necessary in the circumstances. It has been said by my Honourable friend, Maulvi Abul Kasem, that the salaries of the income-tax collectors are high. My study of the figures does not however justify such a statement. I think that the salary of the income-tax collector has been properly fixed: it has been fixed at Rs. 300—900, which is the scale of salaries fixed for Deputy Collectors. The trade depression

has of course been considerable, which accounts for our revenue for 1922 falling below our revenue for 1919, but still the difference in the cost of collection now and the cost of collection sometime ago is very great, and on that account I feel that a much larger cut would be justified. But we ought to remember I suppose the remark that was made by the Honourable the Finance Member that if we went in for large cuts, the Government would give effect to them. Of course such a statement is objectionable on several grounds since the fiscal policy is in the keeping of this House. Still to be practical, I would support the motion that has been made by the Honourable Mr. Rangachariar, and I would commend it strongly to the support of the House.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, in this matter of the reduction proposed by my friend, Mr. Rangachariar, of two lakhs, I am afraid, so far as his argument went, there was nothing said definitely about the manner in which these two lakhs could be cut down. Well, I think, last year speaking on the budget grant, we were in a position of inability to suggest definite grounds for cutting down the demands, and we, therefore, said that we would make certain lump sum reduction and would leave Government to settle their accounts as best as they could. But, this year, we have something to go upon. Now, for instance, the Retrenchment Committee's recommendation in this matter may be referred to. I do not propose to read the whole of it, I will read only one sentence, which is the final sentence in their recommendation:

"Having regard to the importance of maintaining a revenue, we do not recommend any reduction in the estimates in this department for 1923-24 as compared with current year's estimates."

The current year's estimates are 47 lakhs. Does that mean that the Retrenchment Committee said that the Budget for 1923-24 should not exceed 47 lakhs? That is the question and . . .

Mr. President: I am afraid that is not the question. The question is whether we shall reduce the provision for the reorganization of income-tax officers by an amount of Rs. 2 lakhs.

Rao Bahadur C. S. Subrahmanayam: That is the basis of my argument. Did they suggest any reduction in last year's figures? Now, they say that reorganization must be made. The grounds on which the reorganization is suggested are the refusal of the provincial Governments to do the work of the Central Government and claiming a remuneration for the work so done. Now, that matter is at the root of this higher demand. If the provincial Governments are willing to do it at a cost cheaper than the proposed establishment run by the Central Government, it would be a different matter. Are they willing to do it at a cheaper rate? Now, we are told that their rates are not cheaper. In fact, they want a larger sum for the work they do. That is another fact on which we can come to a conclusion. If the provincial Governments refuse to do the work of the Central Government for the same sum which will cost us to do it, and if they want a larger sum, then is it or is it not the economical way of doing it if we do it by the staff of the Central Government? That is one consideration which ought to be taken into account in deciding this matter. Now, in the case of the province of Bihar and Orissa, the same trouble has arisen and additional staff has been provided. That subject was placed before the Standing Finance Committee and as that Government would not do the work for the Central Government and they had

[Rao Bahadur C. S. Subrahmanayam.]

to be provided with a separate staff the Standing Finance Committee agreed to that demand. Therefore, it seems to me, Sir, that before rejecting this proposal of my Honourable friend Mr. Rangachariar of approving of it, on general grounds the question ought to be considered from a business point of view. Do we want the staff or not? In the general argument about the oppressive character of the investigations which the income-tax staff makes there is a considerable amount of truth and it is inevitable that any staff put on that sort of work, assessment and collection of taxes, must cause a considerable amount of irritation. But on that ground I do not think that this demand should be cut down. The remedy should be sought elsewhere, in some other reduction, not in a lump sum reduction of a demand that is made. It is no doubt true that owing to the manner in which in different provinces Indian merchants, who do not adopt the English methods of book-keeping, maintain their accounts, there is always a certain amount of difficulty, a considerable amount of disagreement between the assessing officers and the assessee. Now, what is the remedy? The only remedy is their going round to adopt the methods insisted upon by the income tax department and the income-tax officers also understanding their methods and treating them with a certain amount of consideration. That, again, is not a matter on which you could base an argument for reducing this demand. Looking at it from whatever point of view, it is purely a business matter, a matter which concerns the collection of revenue, and in that, unless from a practical and administrative point of view a definite sum is pointed out as being unnecessary in this demand, I do not think this Assembly could reasonably throw out the demand. In regard to the rural areas, it is no doubt true that there are men, wealthy men, not living in large towns, who could afford to pay income-tax, and probably under a new system they have been escaping the payment of any tax. Why should anyone have any sympathy for a man who has escaped paying the tax or who evades paying the tax when every honest man has to pay. Assuming the fact that a man has really evaded the tax, I will not spend my sympathy towards that man, because while every honest man is paying the tax, he keeps the money to himself. Unless you say that the man is assessed on income which he does not get, and therefore it is unjust, unless you can make out cases of large numbers of unjust assessments, there is no use putting forward that argument. There is no doubt that some people who ought to pay do escape when your staff is not sufficiently able, sufficiently efficient and sufficiently numerous. In regard to the pay which my Honourable friend Maulvi Abul Kasem referred to, I understand the rule to be that if a man who is doing work as a Deputy Collector and Magistrate is taken on to do any of these special branches of work he is paid a sum of Rs. 100 extra, because he is taken away from work to which he is accustomed, there is extra trouble and he loses certain amenities which he possesses as a Deputy Collector and Deputy Magistrate. Therefore, if he is taken to some special departments, such as income-tax, settlement or co-operative work, I understand in some provinces the rule is that he is paid an extra sum that is fixed at Rs. 100. I do not think that any slight increase or even that Rs. 100 is a matter to be complained of, because we have to remember that the deciding officer or the superior officers of income-tax must be paid decently, otherwise there will be considerable danger. I need not dilate the dangerous consequences of under-paying officers entrusted with the work of

assessing incomes. Therefore, Sir, the only ground on which my Honourable friend Mr. Rangachariar could suggest reduction is if it is possible for the department to say with an increase of nearly 15 lakhs which they propose to be able to cut down 2 lakhs. If they could say that there is some direction in which we could take away the 2 lakhs,—I hope they would exercise their minds and state if it is possible,—then only I think we could support Mr. Rangachariar.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I should like, if I may, very briefly to answer some of the questions put by my Honourable friend who is no longer sitting behind me. He stated that he would be prepared to vote against the proposed reduction if he were quite satisfied that re-organization would really pay. Well, Sir, it was my fortune to serve for some time as Assistant Collector in the City of Bombay just about the time when the reorganisation of the Income-Tax Department was being undertaken, and I acted as Collector of Income-Tax there during temporary vacancies on two occasions, and later on I was Collector of Bombay, and for the time being, under the old arrangements, Commissioner of Income-Tax. So, Sir, I have had some small personal experience in this matter. About the year 1907 a vacancy occurred in the office of Collector of Income-Tax, Bombay, and the Government of Bombay appointed as Collector an officer who now occupies the position of Commissioner of Income-Tax, whose name is well known I have no doubt to the Finance Department of the Government of India. (*An Honourable Member*: "Mr. Hartley.") Before that officer had been in Bombay as Collector of Income-Tax for more than a year, he set himself steadily to press upon the Government the necessity of thoroughly reorganising the Department so far as the City of Bombay was concerned. The result of his efforts and of the reorganisation which the Government largely on his recommendation undertook was that, in the space of a very few years, the income-tax collections in the City of Bombay were doubled. Later on, on his advice also, the system of special income-tax officers was extended to some of the larger cities in the Bombay Presidency. The results everywhere were the same, the collections increased considerably and finally he was asked to suggest a scheme for extension of the system to the mofussil and now in the Bombay Presidency there are a number of special income-tax examiners and other officers for assisting in the collection of income-tax in the rural districts of Bombay. Everywhere the scheme has been successful. So my friend Captain Sassoon, if he will take the trouble to pay a visit to the Office of the Commissioner of Income-Tax in Bombay, will be able to satisfy himself that there is not the slightest fear that the Government of India will lose—on the contrary they will gain enormously by a thorough reorganisation of this Department.

With regard to the point made by Dr. Gour about what he calls the inquisition in the rural parts of the country. I have no doubt that many official Members of this House have had experience of the duties of Income-Tax Collectors or Commissioners in the rural districts. Under the old system when the assessment was made by an unskilled staff, by the ordinary revenue staff of *mamlatdars* or their subordinates we had the greatest difficulty in arriving at the proper estimate of an assessee's income, but now with the assistance of trained inspectors, we are really able to find out actually what a man's books reveal and what the state of his income is, and the assessee is also benefited because he has to deal with a man who is trained on definite principles, who can point out to him in what

[Mr. P. B. Haigh.]

respects his accounts are wrong, in what respects his accounts fail to reveal his proper income. Under the old system, the assessee was apt to be met with a vague statement that the examining officer cannot believe your accounts are right and your income must be so and so. Under the present system the assessee has to deal with a trained man who has to work on a system, and the superior officer, the Collector or the Commissioner of Income-tax, when he is hearing the petition has an opportunity of examining the assessee's accounts systematically with the assistance of a man who can point out in what respects the accounts are wrong. It is a far more satisfactory system when it comes to the actual petition than the old haphazard way. The honest assessee has nothing to fear from a trained staff. Of course there is no doubt that many more people are now assessed than before because of the more searching investigation that is made, and that can never be popular. But as the Honourable Member has pointed out, we cannot have sympathy with people who ought to pay income-tax and don't, and you cannot condemn a department as inquisitorial because it finds that certain people have not paid income-tax hitherto who ought to have done so. I am quite satisfied, Sir, that if the reorganisation now proposed is carried out in the other Provinces, especially in the big cities, on the same lines on which it has been carried out in the City of Bombay, an immense increase of revenue will accrue to the Government of India, and both assesseees and the Government of India will be benefited.

The Honourable Sir Basil Blackett: Sir, the position in regard to this estimate is the same as in regard to the estimate for Customs with which we dealt this morning in that no new provision is made in this estimate except such as had the approval of the Standing Finance Committee. Further all the new provisions, in fact the whole provision that is included in this estimate is included for the purpose of raising money. It is impossible, of course, to give exact figures, but for every 10-rupee cut made in the estimate as it now stands, it is the view of the Government that it would have to pay 12 rupees instead of 10 rupees to the Provincial Governments, and would in addition lose an amount of revenue at which we can only make a shot, but which may be put at, say, 30 rupees. The comparison with previous years is startling. It startled me when I first saw it. It was:

	Rs.
Actual expenditure for 1921-22	23 lakhs.
Revised estimate for 1922-23	44 "
Estimate for 1923-24	62 "

Those were startling figures when one noticed that there had been an increase of, I think, only 36 or 37 lakhs in our estimate of receipts from income-tax this year. I naturally inquired into this change. The real fact is that the expenditure for the last two years at any rate does not represent the actual expenditure as we have not settled with the Provinces. The Provinces have asked and have been promised some suggestion from the Government as to how the expenditure which they have incurred in collecting income-tax should be recouped to them, and as has been already explained, they have been offered, and some of them are dissatisfied with an offer of 10 per cent. of what they collect. It does not mean that the cost of collection is 10 per cent., but if the tax is collected in rural areas there is some justification for a higher percentage than in city areas. But the real increase is not the increase seen from

44 lakhs to 62 lakhs. That 44 lakhs takes no account or only takes a very small account of a sum estimated at about 15 lakhs which has to be paid to the provinces in order to fulfil the promise which the Government of India made to them to pay them a share in the cost of collection. If you add 15 to 44 you get 59 or say 60 lakhs as compared with our 62. The increase this year is therefore 2 lakhs, which possibly is the reason why Mr. Rangachariar hit on that figure to suggest a reduction. The Government would be most happy to accept a reduction if they thought that it would not have a serious effect on the other side of their ledger. The Government are always in this difficulty, of course, when the House comes forward with proposals for reduction and this year they are in a special difficulty because the Government themselves have spent the last two months in making reductions as hard as they can go everywhere and in their opinion the figures that are in these estimates represent,—I was going to say their honest, but I am not quite sure they are honest—their hopeful view of the figures to which they will be able to reduce their expenditure this year. That being so, it is very difficult for the Government to say that they think possibly a cut could be made here because, if they were not budgeting their hardest, they would probably say that they think a small increase ought to be made in order that they may be safe. However, the position there is—I will repeat the figures that I gave—that for every ten-rupee cut which might be made, we should have to pay twelve rupees to the provinces, so it would not be a cut, and we should lose at least Rs. 30 of revenue.

There is one other point to which I should like to refer and that is the complaints that have been made as regards the hard dealing of the income-tax authorities with the assesseees. Well, of course there are points of view from which we have no particular sympathy with an assessee who is under-assessed and a man who ought to be an assessee and is not. Everyone of us is paying more income-tax than he should, if the other fellow was paying properly. It might conceivably be true that, if no one were evading the taxes this year, the budget deficit might be very much smaller than it is, if it existed at all. The man who evades taxes while his fellow is paying is not merely getting off with less than his share but is increasing the share of the other fellow in the burden of taxation. That is one side of the picture. At the same time, the last thing that an income-tax authority ought to do is to incur any just accusation of unfairness or of being too sharp or in any way taking advantage of the tax-payer. One of the important reasons for paying your staff well is that you may get the right class of staff that does not do that sort of thing. But, further, the Board of Revenue and the Finance Department are most anxious that, if you have got to have income-tax, there should be as little injustice as possible about the income-tax, and, though we do not invite all and sundry to send us in complaints about the way in which the income-tax collector has treated them, we are prepared to receive from Members of this House any cases where they think there has been a real reason to suspect that there has been undue hardship on the part of the revenue officer and we should be only too glad to find that after all the assessee has not got much to complain of or, if he has, to see that injustice is not done.

Sir Deva Prasad Sarvadhikary: Sir, Mr. Aiyar has asked and Mr. Subrahmanayam has repeated the suggestion that, if the House is really to carry this proposal of Mr. Rangachariar, some indication should be given as to how the two lakhs was to be met. I recognise reason in

[Sir Deva Prasad Sarvadhikary.]

that and, wherever the Assembly can do it, it should. Not that it is its duty to do so. Sir, scattered all over the income-tax budget and other budgets we have considered amounts budgeted for honoraria—a thing that I do not understand in this concern—allowances, contingencies, and travelling allowances. They are necessary, undoubtedly, and no department can go on without some budget provision under those heads. I would not like to press and do not propose to press the other proposals standing in my name in view of the larger proposal before the House. I have taken up certain items of the kind that I have indicated and making all the allowance that I thought should be made for tolerable efficiency—possibly not ideal efficiency—I make out that about Rs. 3,22,000 could be saved in this department and corresponding sums in other departments which would be helpful. I have tabled various proposals for doing away with the proposed increased expenditure for revision of staff. I will be giving this up. I am afraid introduction of questions of the necessity of revision of staff and of hardships of assesses has to a certain extent clouded the real issue. It is not necessary to raise those issues for the purpose of getting a reduction of two lakhs of rupees on the whole. Out of the budget allotments under the heads that I have indicated it is possible to reduce Rs. 3,22,000 and I am prepared to give the figures to the Honourable the Finance Member and Mr. Aiyar if they would like to go into the matter. Halving it again or nearly halving it, you do get two lakhs of rupees, and that is after all not a very large deduction to ask in this year of stringency.

Well, I am glad, Sir, the Honourable the Finance Member has told us before the voting on this item which is much nicer and more to the purpose than after the voting would have been, as on a previous occasion,—he has told us that the financial result will be a loss of revenue. Is it seriously urged that, if a small portion of the travelling allowances, the contingencies, and honoraria, and allowances amounting to two lakhs of rupees, is cut out, without touching the establishment in any way, without even interfering with the proposed revision of staff? Is it seriously to be urged that that will affect the revenue to the extent of Rs. 30 for every Rs. 10, in other words, that we shall lose six crores over a reduction of two lakhs?

Mr. President: The reason why the Honourable the Finance Member did not refer to that is that it would have been out of order if he had. The Honourable Member is not in order in referring to it. This is an amendment to reduce the provision for re-organisation of income-tax officers.

The Honourable Sir Basil Blackett: Sir, I should like just to say that the Government would be quite willing to cut out all the honoraria in the estimate. It would have no effect on the total.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, it seems to me that a great deal of time has been spent to-day in speaking about generalities without coming to the specific issue which we ought to discuss. It stands to reason that, as a general proposition, if we strengthen our staff, so far as the income-tax department is concerned, we shall have better revenue. I don't quarrel with that. We need not dispute it. So also it may be perfectly correct, as Mr. Aiyar pointed out, that a 10 per cent. basis for payment to the provinces for collecting income-tax would be rather expensive, for the simple reason

that our total expenditure for income-tax now is 58 lakhs of rupees, whereas if we pay to all the provinces on the 10 per cent. basis, as our total income-tax is 19 crores, 10 per cent. of 19 crores comes to 190 lakhs. Instead of 58 lakhs we shall have to pay 190 lakhs. So even that proposition I accept without demur. But the real specific issue before the House ought to be this. Granted, that a re-organisation scheme is necessary and that it is beneficial in the long run, is 17½ lakhs of rupees the minimum for its re-organisation? That is the point. In other words, can you not cut down the 17½ lakhs and yet have re-organisation? Now, to answer this question I take the example of the Bombay Presidency and the specific allotment in this re-organisation scheme for that Presidency, let us examine it from the point of view which I have placed before the House. The total expenditure for the re-organisation of the Department in the Bombay Presidency is Rs. 3½ lakhs. Let us go into the details and find out whether all that Rs. 3½ lakhs is really necessary. I contend, it may be possible to cut down there, either in the new posts to be created or in the new salaries to be fixed. Now, the details of Rs. 3,50,000 are as follows. One Commissioner, on Rs. 2,000, one Assistant Commissioner on Rs. 1,500, four Assistant Commissioners on Rs. 1,000, 36 Income-tax officers, 46 Inspectors, 284 clerks, 243 menial servants and so on. Their salaries vary from Rs. 15 to Rs. 500 or more. The real question which I ask is, are these so many posts necessary, and if Rs. 2 lakhs, as Mr. Rangachariar wants, are cut down and spread over, say, 9 provinces, giving a reduction of only Rs. 25,000 for each province on an average,—it may be Rs. 50,000 for one province and Rs. 10,000 in others—will that little reduction of Rs. 25,000 on an average be or be not permissible in a total of Rs. 17½ lakhs? In other words, cannot the Department cut down, say, Rs. 25,000 from each province and yet have the re-organisation? I do certainly really think, Sir, if you examine the proposition from this logical point of view, that Rs. 2 lakhs in these days when we are scraping every penny in order to meet our deficit would be a reduction perfectly possible which the Government can I think certainly effect without injuring the re-organisation scheme. Sir, I support the amendment.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, it is painful for me to get up. I would have accepted the explanation which has been given by the Honourable the Finance Member, but I think I will be false to my province if I do not repeat the sad story of its people and the bad treatment, which they have received at the hands of the subordinates of that Department. I can assure this Honourable House that in a good many cases they have been treated so very badly that they have altogether forgotten the Mahsuds and are quite prepared to prefer them to these subordinates of that Department. The Honourable Captain Sassoon said that we should co-operate with the Government. By all means, when I get up and say this I am co-operating with the Government. It is but proper that the Government should collect its dues, but by no means in such a summary way. But my point is this, that the Honourable the Finance Member, while encouraging this Department by his remarks must at the same time tell it that it must behave properly, because this Department is directly under us and we are responsible to our constituents if it won't behave properly. No one says that money which is due to the Government should not be paid. But they should not get money which is not their due. If the standard of collecting money is that they should realise more money any how, then, Sir, I will be the last person to support Government

[Khan Bahadur Abdur Rahim Khan.]

in this respect. I will say that it is much better that we should not have any money at all than displease so many people who are the real back-bone of Government and I assure you, Sir, that if anything will stimulate, if anything will make civil disobedience successful, it will be the misbehaviour of this Department. To-day I have received a letter. A generous Hindu gentleman, called Kishan Chand Jain, who always supported not only Government but also various charitable institutions with big donations and subscriptions, went to the officer there and said "My health is bad. Kindly give me 2 months' time and I will submit my accounts, because a part of my accounts has to come from Calcutta." The officer said, "No. You must submit your accounts at once." The result was he left Dera Ismail Khan soon in order to submit his accounts, reached Calcutta and died there of pneumonia. Can you expect the members of his family to co-operate with Government? He did not say that he did not want to submit his accounts and pay the money. He only wanted time and he was entitled to get that time. I say that those officers must be told that they should collect money in a proper way after making a full and thorough inquiry. It should be impressed upon them that a Department which is under the Central Government should be an example for the rest of the provinces to follow. So, if my Honourable friend says that competency means that they should collect more money, if competency is to be measured by the amount of collection of money, I would say "Hand over the Department to the Police. It will do as well if not better." My view is this. When this Income-tax Commissioner comes, the Honourable the Finance Member should ask him how many Hindus, how many Muhammadans, how many European officers are subordinate to him and about the misbehaviour of his subordinates. If you are going to have this Department, go on like this. I will be the first Indian—to say, "For goodness' sake, don't Indianise this Department. Do not have Hindus or Muhammadans in that Department. Their behaviour is so curious and strange that the people are quite fed up with it". I can assure the Government that the people who pay income-tax will lose their confidence in the Government in no time. I will say, Sir, that the Honourable the Finance Member should not only give us this assurance but he should issue orders to the subordinates of this Department to be popular with, and just to, the people. I will add one word more. A gentleman, the President of our Bar, on my return from Simla told me in the Bar Room that if our Inquiry Committee would have taken his evidence after coming in contact with the subordinate officials of that Department, he would not have given evidence in favour of amalgamation with the Punjab.

Mr. President: The Honourable Member is wandering away from the question.

Khan Bahadur Abdur Rahim Khan: As I am the only member from my province, Sir, and as my province is very much more concerned and interested in this subject I had to dilate a bit. The men from Bengal and Madras and other provinces can at least make their voices heard somehow or other. But unless I appear to the Honourable the Finance Member here, our people have no remedy whatsoever any where else. This Department is not under the local Government. As long as it was under the Local Government every thing went on smoothly and well. I would not be so harsh as to say that there should be a reduction but at least I will raise my voice on behalf of the people of my Province and request the

Honourable the Finance Member to take special interest in our people in order to remove and remedy their grievances.

Rao Bahadur T. Rangachariar: How enforce?

Khan Bahadur Abdur Rahim Khan: Sorry, could not catch your words.

Lieut.-Colonel H. A. J. Gidney: Sir, my remarks will be very brief on this motion. I was once told by a very experienced officer that if the Central Government obtained from India all the income-tax that was legitimately due, Budget deficits would be an unheard of event and I believe that there is more than a veneer of truth in this statement. We are asked here, Sir, to support a motion for a reduction of Rs. 2 lakhs. The Honourable the Finance Member has said that if this cut were passed by this Assembly, for every Rs. 10 we cut, we would lose about Rs. 30. Mr. Rangachariar objects to all extra expenditure of 17 lakhs even though the revenue accruing therefrom is about 35 lakhs i.e., a return of over 200 per cent. There is no doubt that the Income-tax Department is one of the most productive Departments of the Government, if properly administered and if we, in this Assembly, were to give our support to a cut which will reduce our revenue, I have no hesitation in saying that we will be cutting our nose to spite our face.

Mr. President: The original question was:

"That a sum not exceeding Rs. 58,93,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Taxes on Income'."

Since which an amendment has been moved:

"That the provision for Re-organisation of Income-tax Officers under the head 'Taxes on Income' be reduced by Rs. 2,00,000."

The question is that that amendment be made.

The Assembly divided:

AYES—48.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Aiyer, Sir P. S. Sivaswamy.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Chaudhuri, Mr. J.
Faiz Khan, Mr. M.
Gowala, Mr. P. P.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.

Mahadeo Prasad, Munshi.
Mudaliar, Mr. S.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sardhikary, Sir Deva Prasad.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Ujagar Singh, Baba Bedi.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—49.

Abdul Rahim Khan, Mr.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Barua, Mr. D. C.
Basu, Mr. J. N.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Brayne, Mr. A. F. L.
Bridge, Mr. G.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridconji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sassoon, Capt. E. V.
Schamnad, Mr. Mahmood.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Dr. Nand Lal: The motion which I propose to move runs as follows:

"That the provision of Rs. 9 lakhs for payment to Local Governments for part services of their staff in income-tax work, under sub-head 'India' be reduced by Rs. 2,00,000."

Sir, I am not one of those who would seriously think that the local Governments should be deprived altogether of the money which may be due to them had they worked properly. But from the number of complaints which have reached me I can easily deduce that their staff and their employees who were entrusted with this work have not been working satisfactorily. Now according to the provisions of the Income-tax Act, returns would be submitted, properly subscribed

Mr. President: I want to know whether the Honourable Member is not discussing the same subject which we have been so far discussing. I gather from his opening remarks that the Honourable Member is proceeding to discuss the subject which we have been discussing for over an hour and three quarters.

Dr. Nand Lal: I am expressing my view as to why this cut should be made and the whole sum should not be given to the local Governments for the services rendered by them to the Central Government, so far as the assessment of Income-tax goes.

Mr. President: The Honourable Member is aware that this subject was discussed along with the question of the reorganisation of the Income-tax officers. I want to know whether the Honourable Member is proposing to continue that discussion.

Dr. Nand Lal: I, during my to-day's last speech, referred to the general phase of it. I am now referring to a particular item and a particular aspect of it. I will not take a minute so far as the general phase of the question

goes. I will purely confine my remarks to the value of the services rendered by the local Governments for which they ask for a certain sum of money. I quite realise that I should work within the scope of this amendment and I can give an assurance that I shall not go beyond that scope. The reason why I move this amendment and ask that a cut amounting to 2 lakhs may be made is this, that some of the local Governments do not deserve the money which is being provided for under this item. (*Cries of "Withdraw."*) I shall see whether you lose your patience or I. When I am determined to do a thing I should do it because I think it is my duty. You are not approaching this amendment with the same seriousness as I do but I am very serious about it. The services must be paid for no doubt, but while we are making payment we ought to see whether the services in lieu of which we are being asked to make payment were good services or not.

Mr. President: This question has been discussed already and answered by Mr. Venkatarama Aiyar. The Honourable Member is not entitled to re-open that subject.

Dr. Nand Lal: May I understand that the Chair means to order that no argument with reference to the character of the services rendered by the local Governments in the direction of the collection of income-tax may be raised. If that is the ruling of the Chair, I shall bow to it.

Mr. President: The question which is raised by the Honourable Member has been already discussed in relation to the motion for reduction which preceded it. The two questions are closely related and I allowed the discussion to proceed on that basis, because otherwise it could serve no useful purpose. The Honourable Member is perfectly in order in asking for a decision whether this money shall be voted or not but he is not entitled to go into the merits of the question which, as I have already said, has been already discussed in the previous debate.

Dr. Nand Lal: I shall then offer my suggestion to the Honourable the Finance Member that he will convey my suggestion to the local Governments that their employees have not rendered full services in the manner we had expected. Since I am not allowed to pursue my arguments further, I will finish with this final suggestion which I repeat that the Honourable the Finance Member will convey an expression of our opinion that we are not satisfied with the working of the employees of the local Governments in this direction, namely, the manner in which they assessed and collected the Income-tax.

Mr. Harchandrai Vishindas: Sir, I move:

"That the provision for Bombay under the head 'Taxes on Income' be reduced by Rs. 100."

The object of this motion of mine is similar to the one in my previous amendment. I want to say that the Karachi staff, especially the subordinate staff of the income-tax department should be treated on the same footing as the Bombay staff, because the Karachi staff are equally worked as the Bombay staff, if not more. Now, in regard to the Customs Department I made a similar observation. The reply of the Member for Commerce and Industry was that as this work had been delegated to the local Governments they do the proper distribution between Bombay and Karachi

[Mr. Harchandrai Vishindas.]

and therefore it was not open to the consideration of the Central Government. My reply is that this is really not an admissible or a valid argument, because as the income-tax revenue is under our control, we have a voice in the matter and how can we have a voice in the matter if the Central Government throws its responsibility off its shoulders and delegates it to the local Government. The question is whether or not we can make suggestions for the consideration of the Central Government. If we are told that the local Governments make these distributions, then we are abdicating our functions. Therefore I think that the proper course for the Government would be to certainly investigate by inquiries or otherwise whether or not our complaints are correct and the fact that the distribution of this expenditure is delegated to the Bombay Government should not relieve the Central Government of its responsibility. That is all my intention.

Mr. A. V. V. Aiyar: Income-tax officers in Bombay and Sind unlike Customs officers are entirely under the Government of India. We are prepared to note the suggestion which the Honourable Member has made in regard to the disparity in rates between the two places.

Mr. Harchandrai Vishindas: I beg for leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. J. Ramayya Pantulu: I move:

"That the demand under the head 'Taxes on Income' be reduced by Rs. 100."

My object in moving this amendment is to draw the attention of Government to one or two points in connection with the administration of the Income-tax Act in connection with the assessment of the income of Firming. Some of the matters I am going to refer to are dealt with in the rules issued under the Act but apparently those rules are not being properly carried out. I therefore wish to draw the attention of Government to some of the grievances that the people in the mufassal seem to be labouring under. I am instructed by a friend of mine, an important merchant in the Godavari District, to point out that when one of the partners to a firm contributes capital to the firm on the understanding that he should get interest for his capital, and that after the interest has been deduced, the profits should be shared amongst the partners, the interest paid to the financing parties from the profit for the purposes of taxing the firm to income-tax, that is, the firm is assessed on the profits including the interest which is really paid to one of the partners. I see that there is a rule in the rules issued under the Act that where one of the partners contributes the capital and he is entitled by an agreement that he enters into with the other partners to interest upon the capital and the claim for interest can be enforced in a civil court, the interest paid to him should be deducted from the profits on which the firm is liable to be taxed. But I understand that this rule is not strictly enforced, and I therefore think that the Government should issue instructions to the Income-tax establishments to interpret the rule in a sympathetic manner and make allowance for the interest paid on the capital so borrowed.

Another instance, Sir, in which some hardship is caused is when a firm borrows money in one year and pays interest thereon in the next year. I am told that no deduction is made for the payment of interest so made

because the money is not borrowed in the year in which interest is paid. I should not have believed such a thing if it had not actually been put to me by a responsible and respectable merchant. You borrow money in the year 1923 and you pay interest thereon in the year 1924, and in assessing you for income-tax for the year 1924 the income-tax officer, I am told, makes no allowance for the interest paid in that year because the money is not borrowed in that year but in the previous year. I do not think that is a proper thing to do.

Then, there is another point, Sir, which I wish to bring to the notice of Government. Under the old Act interest was liable to be assessed to income-tax if it accrued though it has not been actually collected. Under the present rules only the interest that is collected is liable to income-tax. Now, suppose interest which has accrued in the last few years has been assessed to income-tax from year to year, as it accrued and suppose all that is collected in this year, then it is liable to be taxed because it is income actually received. But that amount has already been taxed in previous years because it accrued in those years, and thus there is double assessment. The assessee has no means of showing that this sum has been already assessed in the previous years, because he has not got the details of the sum on which he has been assessed in the previous years. Those details are only available with the assessing officer. It may very easily be that though an assessee has been assessed on certain sums of money on account of interest which has accrued in previous years, but was not collected, he is again assessed on the same income in a succeeding year when it is actually collected. It should be in the power of the assessee to show that he is not liable to be taxed again because that amount has already been taxed. For that purpose he must have with him information to show that these amounts have been already taxed. That information is with the assessing officer, though it does not appear in the order of assessment. I propose, therefore, that the assessing officer should be instructed to give a copy of the details of the assessment to the assessee if he asks for it. Otherwise he cannot show that he has already paid the tax on an amount on which it is proposed to tax him again. These are the points which I wish to bring to the notice of Government.

The Honourable Sir Basil Blackett: Sir, I do not think that the Honourable Member who made this motion will expect me to deal across the floor of the House with the somewhat intricate detailed methods of assessing a very difficult tax. If the Honourable Member will let me have an explanation of the exact point which he wants looked into, I shall be very happy to do so at once.

The motion was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That a sum not exceeding Rs. 58,93,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Taxes on Income'."

The motion was adopted.

The Honourable Sir Malcolm Hailey (Home Member): I understand that this morning suggestions were made with a view to the re-arrangement of the demands for grant in an order in which the Assembly would find it most convenient to debate them. I have consulted with some of

[Sir Malcolm Hailey.]
our friends and with your permission, Sir, we propose to take, beginning from to-morrow, the demands in the following order:

- No. 8 Railways.
- No. 3 Salt.
- No. 4 Opium.
- No. 14 General Administration.
- No. 10 Posts and Telegraphs.
- No. 11 Indo-European Telegraph.
- No. 7 Forests.
- No. 6 Stamps.
- No. 5 Excise.
- No. 12 Interest on debt and sinking funds.
- No. 43 Stationery and printing.
- No. 34 Commercial Intelligence.

We propose that after further consultation we should to-morrow evening issue a further list giving the order in which the remaining grants should be taken. I believe from what I have heard that the order of demands which I have read out to the House will suit its convenience, and it will also suit Government if the debate is taken in that order.

Mr. Jamnadas Dwarkadas: I have only one suggestion to make with regard to the statement made by the Honourable the Leader of the House. I wonder if the Honourable the Leader of the House is aware that a suggestion was made this morning in the House for an informal committee. But, apart from that I thought that before making the statement to-morrow it would be to the convenience of some of us here if the Honourable the Leader of the House and the Honourable the Finance Member could consult some of us as to which items should be taken first.

The Honourable Sir Malcolm Hailey: I am sorry that Mr. Jamnadas was omitted from the consultation; but this statement I have made is, of course, the result of consultation. I should not have drawn up such a list without seeking advice on the subject.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I may mention that I consulted many of my Honourable friends as regards the order in which these demands should be taken. The feeling is that we should have some of these important subjects first disposed of, so that when the final day comes we may not be hurried in the disposal of these important subjects. I therefore told the Honourable the Leader of the House and the Honourable the Finance Member that this would be the best order in which the subjects may be discussed; and I think that is agreeable to most of us here.

The Honourable Sir Malcolm Hailey: If I had had more time, and if the House had not been busily engaged at the moment, I should of course have asked Members of the various Parties in the House to meet me and discuss the matter. I regret I had no opportunity of doing so, but I understood that the matter had been previously discussed between parties in the House, and that very list represented the conclusions to which they had come.

Mr. Jamnadas Dwarkadas: Sir, my only object in pointing that out was that some items should not be left out, because I do feel that even in this list some important items that we should like to consider have been left out.

Mr. R. A. Spence: May I ask, Sir, with a view to our not being hurried, whether you are going to fix any time this week for our sitting—are we going to sit till 7 or 8?

Mr. President: That depends entirely upon the sense of the House as gathered by the Chair. I may point out that the Punjab Legislative Council recently sat till 10-30 p.m. on one day.

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Till 10-15 p.m., I was there.

Mr. President: The arrangement proposed by the Honourable the Leader of the House is not only eminently suitable but is certainly in order, and we shall follow that course.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 13th March, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 13th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

DATE OF FUTURE SESSIONS OF THE LEGISLATIVE ASSEMBLY.

The Honourable Sir Malcolm Hailey (Home Member): I am sorry that I was not in my place yesterday when my Honourable friend Mr. Chatterjee kindly accepted a number of inquiries on my behalf regarding the future sittings of the Assembly. I am now able to announce that there will be a Summer Session of the Assembly. It has been arranged provisionally that this will commence on the 2nd of July. This date has been arranged with the assent of the President.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Can the Honourable Member give us any idea as to how long the Session is likely to last?

The Honourable Sir Malcolm Hailey: I am afraid not, but we anticipate in the light of the business that we can foresee that it will be a short Session.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): What about the September Session as usual? Do I understand that instead of the September Session, we are going to have a July Session?

Mr. President: I understand that the Honourable Member will probably be engaged at that time in meeting his constituents.

THE BUDGET—LIST OF DEMANDS.

SECOND STAGE—*contd.*

RAILWAYS.

The Honourable Mr. O. A. Innes (Commerce and Industries Member): I beg to move, Sir:

"That a sum not exceeding Rs. 54,47,79,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Railways'."

Mr. P. P. Ginwala (Burma: Non-European): I beg to move:

"That the Demand under the head Railways, sub-heading Working Expenses be reduced by Rs. 4 crores."

This is a slight verbal modification of the amendment No. 173 which stands in my name. It was all along my intention to confine my arguments solely to the reduction of working expenses and I did not wish to touch upon any other items, so far as this amendment was concerned. Sir, a layman like myself handling figures against the financial experts of the

[Mr. P. P. GINWALA.]

Government of India is necessarily at a great disadvantage for it is very difficult for him sometimes to follow the reasoning of our financial experts.

To give an instance yesterday, we moved a reduction of Rs. 4 lakhs under the head Customs and the Honourable the Finance Member got up and said that the effect of that would be to increase the deficit by one crore of rupees. Applying that principle, I feel that if I succeed in carrying this amendment of mine, the deficit will be increased by 100 crores. That, however, is the difference between the expert and the lay mind and as the difference is of a permanent character, I suppose it must be allowed to remain. Subject to that limitation, I would invite the attention of the House to a few figures. The original Budget estimate as framed and presented to this House on the 1st of March for working expenses was Rs. 66.51 crores. Now, it has been reduced to Rs. 63.51 crores. It is stated that by this further reduction of 3 crores, Government have given substantial effect to the recommendation of the Inchcape Committee. No doubt, there is a literal compliance with the recommendation of the Inchcape Committee in that adjustment. But I venture to submit to the House that it does not give effect to the implications or rather the opinions of the Inchcape Committee taken as a whole as embodied in the Chapter on Railways. It is within the recollection of the House that the Inchcape Committee laid down a broad general principle that as compared to the Budget estimate for 1922-23 there shall be a reduction of $4\frac{1}{2}$ crores but that as compared with the proposed budget for the present year there shall be a reduction of $3\frac{1}{2}$ crores. In coming to that conclusion they adopted rather a peculiar line of reasoning. They say at page 76 of the Report, paragraph 30, in effect that first of all there was a reduction of 4 per cent. on the estimated revenues, and therefore there ought to have been an automatic reduction of 4 per cent. on the expenditure, and by this reasoning they arrive at the conclusion that as compared with the budget estimate for 1922-23 the estimate for 1923-24 ought to have been less by 2.44 crores, but that, compared to the preliminary estimate for 1924, it ought to have been less by 165 lakhs. Then they go on to say that if the railway administration carry out their other recommendations suggesting economies in certain directions, (but apart from the drop in the price of materials,) the Railway Administration ought to be able to reduce their expenditure by, say, an additional one crore and 75 lakhs. It is in that way that they get their figure of $4\frac{1}{2}$ crores as compared to the budget estimate for 1922-23, and $3\frac{1}{2}$ crores as compared to that of 1923-24. It is a very curious circumstance that in coming to their conclusion they should have forgotten many recommendations that they had made earlier in the Report, and which apparently have not been taken into account in stating their conclusion in those words which you find at the end of the chapter, clause 6 of the conclusions. My submission to the House is this, that though in so many words they only recommend a reduction of $4\frac{1}{2}$ crores on the budget estimate for 1922-23, they really intended to recommend a reduction of at least 8 crores, if not more, and this is how I work out the figures. I will give the figures in their proper order.

	Rs.
Budget estimate, 1922-23	67.99 crores.
Revised estimate according to the Memorandum furnished by the Chief Commissioner	66.33 "
being a saving of	1.73 " on the actual figures.

The Inchcape Committee had not apparently the correct figures for they estimated the actual saving at 1.15 crores, but according to this Memorandum, it should be 1.73 crores, that is to say on the actual figures. But if you take the hypothetical basis applied by the Inchcape Committee, it ought to be 2.44 crores. Then at page 76 also, paragraph 29, they deal with what is called the Programme expenditure on revenue account. The original estimate of 1922-23 was $12\frac{1}{2}$ crores and apparently that was going to be the estimate for this next year in furtherance of a general policy, which it seems has been laid down by the Railway Administration and is to be followed for a series of years. The Inchcape Committee remark in connection with this:

"As a result of our consideration we are of opinion that the budget provision for programme revenue expenditure in 1923-24 should be limited to 9 crores, and that the Agents of individual railways should be empowered to utilise the amounts allocated to their railways at their discretion for either additional repairs or renewals, which, as we have already pointed out, are very closely inter related."

So that there is a clean cut there of $3\frac{1}{2}$ crores, not for every year, but at any rate for the present year, 1923-24.

Then take another heading, the Staff, page 72, paragraph 22. They have come to the conclusion that the Railway Administration is over-staffed and that substantial reductions are necessary, and they point to the very laudable instance of the Great Indian Peninsula Railway which proposes to reduce its staff by 50 lakhs of rupees in this year 1923-24. After referring to the Great Indian Peninsula Railway, they go on to observe:

"Other Agents stated they were gradually affecting reductions, but we consider that in present financial circumstances the employment of staff in excess of requirements cannot be justified. We recommend that a further saving of at least rupees one crore should be effected in salaries and wages in 1923-24."

This gives us an additional one crore, which added to the 50 lakhs of the Great Indian Peninsula, makes a saving of a crore and a half.

Take another item, Fuel. Under Fuel, they budgeted for 10 crores 2 lakhs for 1922-23. They saved about 38 lakhs actually in fuel last year, and according to the Memorandum of the Chief Commissioner, they expect a saving of one crore of rupees on fuel during the present year. I refer to paragraph 19 of the Memorandum where it says:

"The provision in the budget for fuel in the current year was placed at rupees 10.02 crores as compared with the actual expenditure of 9.79 crores in 1921-22. In the revised estimate it has been reduced to 9.64 crores; (that is about 38 crores reduction) due to a smaller quantity of imported coal having been purchased."

The budget for 1923-24 provides for Rs. 8.69 crores. Therefore there is a reduction of at least one crore, if not more, compared to the budget estimate for 1922-23. It really comes to a crore and 30 lakhs. The Inchcape Committee, in referring to that, says at the bottom of page 67:

"In view of all the circumstances we are of opinion that a considerable reduction in the expenditure on fuel should be possible in 1923-24 and we understand that it is proposed to reduce the estimate to Rs. 8.68 lakhs by an arbitrary cut of 1 crore on the demands made by the Agents, included in the preliminary estimates for 1923-24."

So they do not consider the reduction of one crore too high. In fact upon the figures appearing in the Memorandum, compared to 1922-23, there ought to be a reduction of at least one and a quarter crores, but I have taken only one crore. Now, if you total up only these four items which I have

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mentioned, namely, the actual saving during the current year of 1.73 crores, the recommended reduction of 3.50 on the revenue programme expenditure, a crore and a half on the staff and one crore on the fuel, you get a total reduction of 7.73 crores on the budget estimate for 1922-23, whereas, if you take the Inchcape Committee's hypothetical basis, in deriving the saving which, I submit, is the basis upon which any business man would act, namely, that if there is a fall in revenue there ought to be a corresponding fall in expenditure,—you get these figures, 2.44, + 3.50 + 1.50 + one crore, or a total reduction of 8.44 on the budget estimate for 1922-23. Now, if you deduct from the budget estimate of 1922-23, which was 67.99 crores this first total, namely, 7.73, you get 60.26 crores, which ought to have been the budget estimate for this year. But, if you take this 67.99 crores and deduct from that 8.44 crores, which, I submit, is the correct recommendation of the Inchcape Committee, you get 59.55 crores, which is just under 4 crores less than the revised estimate which is presented now of 63.51 crores. So that I venture to submit that, whichever figure you take, there is an excess of about 4 crores in the estimate submitted by the Honourable the Finance Member over what the Inchcape Committee actually recommended. If it is our intention, and if it is the intention of the Government that we must do our best to wipe out this year's deficit, it would be their duty first of all to convince the House that they have done their best and that they are doing their best to reduce their expenditure. If they are able to convince us, we should be the last persons to refuse them any additional taxation that is required. But under these conditions which I have just now mentioned to the House and having regard to the figures, it is perfectly plain that, unless they reduce their estimate by at least four crores of rupees, they would not be doing that which every Member in this House expects them to do, namely, to cut down their expenditure with due regard to efficiency to the lowest possible minimum.

The figures which I have given do not make any allowance for many other causes which may lead to the reduction of expenditure. No doubt we shall be met with certain arguments such as that the staff cannot all at once be reduced, that there may be more fuel used if there is more traffic, and so on; but remembering all these circumstances, there is yet much to look to by way of economy. First of all, I will refer to the drop in prices of materials. Except perhaps, with reference to fuel, there is no account taken whatsoever in my figures of the general drop in prices. We have no evidence, so far as I know, upon which the House can definitely act as to what that drop is, but we have some indication in the Memorandum of the Chief Commissioner himself from which we can reasonably deduce what may be expected. When he deals with the revenue programme of 12½ crores, he suggests a reduction of one crore. That, I take it, is mainly due to the drop in prices of materials. So that, if you take that as your basis, namely, one crore in every 12½ crores, you will probably find that there is room for a further reduction of 3 or 4 crores only on the ground of a drop in prices.

Then, there is one other item that also deals with this revenue programme expenditure. There is no more damning condemnation of the system adopted by the Government in their valuation of depreciation than is to be found in the remarks of the Inchcape Committee. The Government apparently seem to follow what I may describe as the actuarial basis.

that is to say, they fix the life of a locomotive at 25 years or of the rails at 30 years and something else at so many years. When that period has expired they think it is their duty to scrap those articles. I want to ask Honourable Members whether in insuring their own lives they would follow that principle. If an actuary told them that the insurable value of their lives is 20 years, will they after 20 years, commit suicide? I can see no distinction whatsoever between that and the principle that is followed by the Government. You cannot scrap locomotives, for instance, simply because they are 20 or 25 years old. Any Honourable Member from Bombay or Calcutta would tell the Railway Administration how they manage repairs and renewals to their machinery in their mills. They do not scrap their machinery simply because their adviser has told them that it ought to be scrapped after 25 years. Sir, there is a very pathetic story here in this Inchcape Committee's Report of how an Agent tried to persuade the Railway Administration that it was not necessary to go in for a length of 60 miles track. (*A Voice*: "What page.") Page 65. That, as I say, is a very pathetic account of what takes place in our Railway Administration. The Report says:

"It was represented to us by one of the Agents that a considerable portion of the expenditure on his Railway was for renewals which were in his opinion absolutely unnecessary and that 60 miles of line to be renewed in 1923-24 and a similar mileage in 1924-25 could easily be strengthened at about one-third of the cost to last a further 15 or 20 years."

This is how the Chief Commissioner meets him:

"On the other hand the Chief Commissioner stated that the renewals were part of a programme framed with a view to avoiding the necessity of having to renew any unduly large portion of the line in any one year, which would mean a large financial outlay and considerable interference with traffic working."

Then the Inchcape Committee go on to say that that was not the way the Railway Board ought to carry on its business; it ought to be left to the discretion of the Agents. I do not think I am exaggerating the case when I state that most Members of this House will agree with the remarks of the Inchcape Committee and of this Agent, whoever this unfortunate individual was, whose advice was not accepted by the Railway Board. It is all very well to talk of inconvenience, but the far more important thing is balancing the budget and saving public money. It may be that they may be inconvenienced if this procedure is adopted, but that, I say, is a comparatively small matter, and no business man, I venture to submit, will scrap 60 miles of track simply on the ground of inconvenience alone. As I said before, any Honourable Member from Bombay, for instance, my friend, Mr. Manmohandas Ramji, or Sir Campbell Rhodes, from Bengal or anybody else, who has experience of these things, will be able to tell you that that is the most unbusinesslike way of dealing with renewals and repairs. No business man follows this method in practice. So that, far from this 9 crores which the Inchcape Committee allowed for the revenue programme being unduly small, I say it is excessive. The whole system must be thoroughly overhauled and if possible, pending an investigation into it the whole of this 9 crores ought to be saved, if the Railway Board find no other way of making these renewals in a business-like fashion. I think, I can fairly claim that there has not been a single occasion when I have spoken in this House in favour of any proposition which is likely to interfere either with our revenue departments or with our business departments, if expenditure is necessary; but I must protest

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against the manner in which the Railway Administration is conducted and their business methods, or rather I should say their unbusinesslike methods. Then again you will find, that in dealing with stores, for instance, they speak of "an excessive quantity stores" at page 78. Now, I do not know I will try to get the figures—they are not given in any of the documents supplied to us—as to how much stores they are going to purchase out of revenue during the next year; but if what the Inchcape Committee say is right, that they are overstocked with stores, then there must be room for economising in the purchase of stores within the next twelve months.

There I have pointed out at least three sources from which further economies could be effected, if the Railway Administration made up their minds to do so; and if they did so there is ample provision in those economies for what the Honourable the Finance Member described as "lag" in connection with the reduction of staff and other matters. A proposal has been made for increased taxation. It has been condemned in the country so far as the Salt Tax is concerned, not on economic grounds, I admit, but on political grounds. I say that political grounds in this particular case are far more important than economic grounds. I have no hesitation in saying that for I am not one of those who would go out of my way to give an advantage to my political opponent. I know he will make capital out of this against me at the election and I am not going to give my enemy an advantage. I put it plainly and simply on that ground, and this House will be perfectly justified in refusing any further additional taxation from salt only on that ground. Under the circumstances on economic grounds it is not necessary to discuss. If the Budget has to be balanced, the expenditure on railways must be reduced by a further 4 crores, and I do not believe that the Railway Administration will suffer in the point of efficiency by that reduction in spite of what the Honourable the Finance Member said yesterday. I do not think there will be a deficit of 100 crores if we reduce this estimate by 4 crores on the basis employed by the Honourable the Finance Member yesterday; and in any case the Railway Administration would be able to prove what they have failed to prove up to now—that they have at least some business ability to handle with a difficult financial situation by making both ends meet without affecting efficiency in any way. The Inchcape Committee, I need not remind the House, consisted of business men who knew what they were talking about but who forgot to say in so many words what they actually intended. There was satisfaction in the House when it was represented to it that the Government had given effect, more or less full effect, to the recommendations of the Inchcape Committee. That may be literally true, but I venture to submit that that was not the intention of the Inchcape Committee, in so far as it can be gathered from the Report read as a whole. It is the duty of this House, after having insisted upon the appointment of a Retrenchment Committee, to see that its recommendations are fully accepted by the Government. If it does not do that, it might just as well have not asked for the appointment of that Committee at all. It is not necessary to attribute any infallibility to the Inchcape Committee; but I do not believe that if Government wanted to take advice from business men they could have selected a better lot of men than those who sat on that Committee; and for that reason alone, subject to whatever correction the Government may choose to make in my interpretation of the Inchcape Committee's Report, it is the imperative duty of the House to accept this amendment. I move it, Sir.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars : Landholders): Sir, I beg to support the amendment that has been proposed by my Honourable friend Mr. Ginwala; and the reasons why I support this amendment are these. I would request the Honourable Members to look at page 22 of the Explanatory Memorandum on the Railway Budget for 1923-24. On this page they will find a statement of the working expenses of the railways from 1917 to 1923. I would request the Honourable Members to note the figures that are given there. In the year 1917 the working expenses amounted to 31.34 crores; in 1918 to 37.06 crores; in 1919-20 to 45.45 crores; in 1920-21 to 54.51 crores; in 1921-22 to 65.66 crores; and in 1922, revised Budget, to 66.33 crores. The estimated working expenses for the year 1923-24 amount to 66.51 crores, minus of course the 3 crores that have been deducted in accordance with the recommendations of the Inchcape Committee. I would now request the Honourable Members to compare the 1917 figures on the one hand, and the 1922 revised estimates on the other, and to note the increase in the working expenditure amounting to 35 crores. Then I would request the Honourable Members to compare the gross receipts of the railways during the same period. I have worked out these figures. The net receipts are given on page 23. If you add the working expenses and the net receipts, you find that the gross receipts amounted in the year 1917 to 68.90 crores, in 1918-19 to 76.24 crores, in 1919-20 to 79.08 crores; in 1920-21 to 80.97 crores, in 1921-22 to 81.69 crores, and in 1922-23, revised estimates, to 92.07 crores. The estimates for the present year will be 95.57 crores. Now if we compare the gross receipts of 1917-18 with the gross receipts of 1922-23, we find that the increase in the gross receipts has been 23.17 crores. I want the Honourable Members to note that while the increase in the gross receipts amounts to 23.17 the increase in the working expenditure amounts to 35 crores, and after the cut of 3 crores referred to above, to 32 crores. The increase in the receipts has been due to the higher rates. The increase in the working expenses has been something abnormal. I would request Honourable Members to bear with me a little and look into the statement of demands for expenditure chargeable to revenue in India—page 4, appendix B. Here the main heads of the working expenditure are given. The first is maintenance; the second is operative expenses, divisible again into general superintendence and running expenses, and the third the programme revenue expenditure. I request the Honourable Members to note that the programme revenue expenditure budgeted in 1922-23 amounted to 11.81 crores. The whole of this amount was not expended upon the railways during the year, probably because materials were not available; there was a slight fall in prices, and on account of other causes. Only 9.47 crores were spent upon the programme revenue expenditure; that is to say, 2.34 crores were left. I want the Honourable Members to note that this programme revenue expenditure is really not a part of the working expenditure, and that but for this unspent balance of the programme revenue expenditure amounting to 2.34 crores, the Chief Commissioner of Railways would have shown a deficit and not a surplus. The total working expenses in 1922-23 amount to 71.36 crores in the budget, and to 70.22 crores in the revised estimates; that is to say, the saving amounts to 1.14 crores only as against an unspent balance of 2.34 crores. As it has been already rightly pointed out by the Inchcape Committee it is a bad principle to include programme revenue expenditure in working expenditure. The suggestion that the Committee make is certainly worthy to be adopted, namely, that a sinking fund should replace the programme revenue expenditure. Take the year 1922-23. If

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the programme revenue expenditure had been set apart and not included in the working expenditure last year, what would have been the result? The result would have been that this amount of 2.34 crores would have been available this year for the repairs and renewals of the railways. The railways got into disrepair during the war, and it is on that account, it has to be remembered that we have to incur such a large expenditure on repairs and renewals now. On account of a bad system of book-keeping this amount for repairs and renewals comes to be included in the ordinary working expenses, and the Chief Commissioner of Railways is able, of course nominally, to show a surplus.

I would now request Honourable Members to look at pages 80 to 85 of this Appendix B. I am seeking to make out that the expenditure that is being gone in for on the railways is abnormal. I want therefore that the Honourable Members should realise that a very large number of officers is being unnecessarily employed. On pages referred to above you will find the officers drawing Rs. 1,000 and more are enumerated—Chief Commissioner of Railways, Members, Chief Engineers, Chief Mechanical Engineers, Secretary and so on. I have put together the number of officers that have been employed. Of course here, as elsewhere whole lists are not available; and I would collaterally request the railway authorities to kindly supply a complete list of the more important officers so that we may be in a position to institute comparisons; but such information as has been furnished leads us to realise that the number of highly paid officers employed on the various railways is much too large. On the Bengal Nagpur Railway we have 174 officers, and the total mileage is 2,820; on the Bombay, Baroda and Central India Railway the total number of officers is 170, while the total mileage is 3,641; on the Eastern Bengal Railway the total number of officers, drawing of course more than Rs. 1,000, is 91, while the total mileage is 1,734; on the East Indian Railway the total number of officers is 208 while the total mileage is 2,773; on the Great Indian Peninsula Railway we have got 223 officers when the total mileage is 3,335; on the Madras and Southern Mahratta Railway we have 115 officers and the total mileage is 2,938; on the North-Western Railway we have 208 officers while the total mileage is 5,682; on the Oudh and Rohilkhand Railway we have 53 officers while the total mileage is 1,625; on the South Indian Railway we have 50 officers while the mileage is 1,850. Now, if we compare these figures we realise what a waste of public money is made in the expenditure on railways. Contemplate kindly the Oudh and Rohilkhand Railway with a total mileage of 1,625 and with 53 officers; take then the Great Indian Peninsula Railway which has got 223 officers while the total mileage is 3,335; the mileage is double or slightly more than double, but the number of officers employed is four times as much. Then kindly contemplate the Eastern Bengal State Railway with 1,734 miles and 91 officers while the Oudh and Rohilkhand Railway, with which I began, has only 53 officers although the mileage is about the same—1,625. (Mr. T. V. Seshagiri Ayyar: "They are State-managed railways.") I am going to show that company management is not so good as it is represented to be. The Great Indian Peninsula Railway for instance has four times as many officers as the Oudh and Rohilkhand Railway. That is however by the by. But contemplate these sets of conditions to which I have referred, and you will realise that even when you make allowance for the variation of conditions you find that there is great room for economy in the Railway expenditure.

I would now request you to look at page 10 and a few following pages of the same Appendix. Here we find revenue receipts and working expenses for 1921-22 to 1923-24. You find on comparison that on the Bengal Nagpur Railway the working expenses amounted to Rs. 303 lakhs in 1918-19; in 1923-24 they are estimated at 498 lakhs. On the Bombay, Baroda and Central India the working expenses amounted to 419 lakhs in 1918-19, while they are estimated at 813 lakhs in 1923-24. Every other line shows excessive rise in working expenses between 1918 and 1923. Eastern Bengal Railway 225 lakhs against 431, East Indian Railway 465 against 1,017, Great Indian Peninsula Railway 728 against 1,143, Madras and Southern Mahratta Railway 290 against 532, North Western Railway 686 against 1,212, Oudh and Rohilkhand Railway 132 against 260, South Indian Railway 157 against 372. Here too, I would request you will consider with some care one or two sets of conditions. Take the Eastern Bengal Railway; and you will find that the working expenses in 1918 amounted to 225, whereas the working expenses are now estimated at 431. Oudh and Rohilkhand Railway shows 132 lakhs in 1918, but its working expenses are estimated at 260. South Indian Railway shows 157 in 1918 and 372 now. And note the mileage too of these Railways. Eastern Bengal Railway a mileage of 1,734, Oudh and Rohilkhand Railway of 1,625, South Indian Railway of 1,850. Now this mileage will be approximately, roughly of course, the same, still what a difference do you find in the working expenses. On the Eastern Bengal Railway you have 225 lakhs as against 135 on the Oudh and Rohilkhand Railway and against 157 on the South Indian Railway. Then contemplate one other condition of things, and it is this. On the Bombay, Baroda and Central India Railway the working expenses for 1918 amounted to 419, and in 1923-24 they have been estimated at 813. On the Great Indian Peninsula Railway the working expenses for 1918 were 728, and now they have been estimated at 1,143. Now is not all this exceptionally irregular and abnormal? I would earnestly request the Honourable Members to remember these figures which show such an abnormal increase in the working expenses of the railways and to go in for the cut that has been proposed by my friend, Mr. Ginwala. I think we may experience a sniff such as we experienced when we proposed a cut in the Customs expenditure, but I would request the Honourable Members who are in the habit, I think, of vying with each other in outbursts of admiration to remember that these sniffs ought not to be allowed. We now have the fiscal autonomy; and the executive Government has no business to seek to minimise that privilege. If, for instance, we are told that although we pass any Resolutions, we may take it no effect will be given to it we might, I think, very kindly but very firmly put our hand down on any nonsense of that kind. I would request the House to bear this in mind and go boldly forward proposing cuts in all exceptionally irregular expenditure. It is no use enduring abnormal expenditure any longer. The finances of the country have been disorganised, and we realise on studying facts and figures that it is time and high time that we intervened and boldly came forward to suggest necessary reductions of expenditure. If we feel convinced that the reduction in expenditure proposed by us is reasonable, we need not be afraid of any threats that may be held out to us. Excessive expenditure has been a continual theme of discussion in the country, and every effort must be made to end it.

Sir Montagu Webb (Bombay: European): Sir, I find myself in considerable sympathy with the Mover of this motion. I think that the recommendations which Lord Inchcape's Committee have made, are

[Sir Montagu Webb.]

deserving of the most serious study revealing, as they do, in the Railway Department, opportunities for many savings and retrenchments which I trust Government will be able to make. At the same time, I must point out that the Lord Incheape's Committee have made recommendations for very severe retrenchments both in regard to the expenditure from capital which comes out of loans and expenditure from current revenue in respect of maintenance and working expenses. These proposed retrenchments are so severe that I am quite sure that will cause much anxiety among many of the sections of the community who make great use of the Railways. I should like to draw attention to one or two matters which show that all the statistics quoted by Lord Incheape's Committee cannot be accepted at their face value so readily as my Honourable friend, Mr. Shahani, would have us to believe. Now the Retrenchment Committee have prepared a statement of ten of the leading Railways of India showing their receipts and working expenses; and as a result of that statement we find that the most unremunerative Railways in India are the North Western Railway, the Eastern Bengal Railway and the Oudh and Rohilkhand Railway, all of them, be it noted, State-managed Railways. I have no doubt that the advocates and also the opponents of direct State-management will take careful note of this fact. Of these "unremunerative" Railways the worst is the North Western Railway—according to the Report of the Retrenchment Committee. Not only is it the worst statistically, but it is accused of "extravagance" in more than one department.

Now I want to draw the attention of the House to one or two important facts in this connection. The North Western Railway is the main arterial system of the Punjab and Sind, so that anything that is done that affects the efficiency of that Railway, must check the development of the Punjab and Sind. The first point I would like to draw the attention of the House to is this. In the North Western Railway system is included over 1,500 miles of strategic railways. These railways are maintained not for the benefit of the North Western Railway, not for the benefit of the Punjab and Sind, but for the benefit of *all-India*.

The second point to which I want to draw the attention of the House, is that the North Western Railway has to maintain locomotives and stock in order to be prepared for mobilization,—in case there is any difficulty in the North-West Frontier. That again is a matter which does not solely concern the North Western Railway the Punjab or Sind; but it concerns the whole of India. These two points are briefly referred to by the Retrenchment Committee, but I submit, Sir, that the importance which they deserve has not been adequately recognised by the Committee. But there is a third matter of far greater importance. As Honourable Members of this House are no doubt fully aware, the North Western Railway serves one of the largest wheat-growing tracts in the British Empire, possibly one of the largest wheat-growing tracts in the world. For the last three years, Sir, the export of wheat from India has been prohibited partly for economic reasons and partly for political reasons, and the result has been that the North Western Railway has been deprived of a very large portion of its long distance traffic. Most of this long distance wheat is conveyed 800, 900 or 1000 miles to the sea board. Now, Sir,

12 Noon statistics which altogether ignore the fact that one of the main sources of income of the North Western Railway had been checked owing to the prohibition of exports of wheat, statistics that do not take into account rolling stock for mobilization purposes or the 1,500 miles—think of the

figure Sir,—1,500 miles of "strategic" railways maintained for the benefit of all India, can you be surprised that such statistics of the last three years are not very satisfactory? I submit, Sir, that no reliance as to whether the North Western Railway is "unremunerative" or not, can be placed upon figures which omit these considerations. If these considerations be fully weighed, and if we exclude the "strategic" railways and the mobilization consideration, I am confident that the North Western Railway on its commercial sections can earn 5 per cent. and more than 5 per cent. when normal conditions are restored. I would therefore ask the Government of India and the Commissioner for Railways in particular to be extremely careful how he accepts any recommendation of restricted expenditure on the North Western system on the ground that it is "unremunerative."

In the same way, Sir, I do not think that any reliance can be placed upon the figures which were quoted by my friend, Mr. Shahani, comparing the period immediately after the close of the war with the present day. We all know the reason why expenses of all railways and of all other businesses have greatly increased. It is also common knowledge that in this country that our Railway officers in the *highest* grades receive salaries on a far lower scale than is paid to officers of similar grades in other parts of the world, particularly in America. (Mr. Shahani: "Question.") If my Honourable friend who says "question" will investigate this matter himself he will find that what I have said is a fact. These are the reasons, Sir, which impel me to urge Government to exercise great caution in accepting the recommendations of the Retrenchment Committee in the matter of cutting down expenditure on renewals and maintenance and on capital outlay on the North Western Railway.

At the same time I confess when reading the Retrenchment Report, I do feel that Government ought to be able to save more than three crores of rupees on Railways; and although I am not prepared to jump quite so far as an additional cut of four crores which my friend, Mr. Ginwala, urges—I was not quite able to follow his figures fully,—still I do hope that Government will see their way to make a saving of more than the three crores which have been put down in the amended Demand.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir I support Mr. Ginwala's amendment although I cannot accept his figures. Mr. Ginwala proposes to cut down 4 crores of rupees from the original demand as put forward by the Finance Member. That demand stands at 67 crores 47 lakhs. Mr. Ginwala, I think, wants 4 crores cut down from that. (Voices. "No. no. Four crores more. Cut down to 63.") In that case, Sir, I shall confine myself to my own amendment in which I propose that the demand for railways should be 64 crores as recommended by the Incheape Committee. Without formally moving my amendment I shall just speak on the general question of railways.

The Incheape Committee's Report, so far as the question of railways is concerned, has been a great eye-opener to me. That report gave me two good lessons. One was with respect to the exploding of certain military shibboleths, and the second was with reference to the railway budget. The story of waste, extravagance and negligent management which I believe the Incheape Committee has unfolded ought to be a lesson to every Legislator in this House and to Government as well. I attach a great deal of importance to the remarks made by the Incheape Committee about these matters for the simple reason that I believe that

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Our general national finance depends upon railway finance. And further, the difference between solvency and insolvency, between a deficit and a surplus, from year to year, depends greatly upon the vigilance which both Government and this House exercise on the railway budget. Now, the Inchcape Committee has indicated directions in which the waste to which I have just referred goes on. Taking only one head, for instance, the Working Expenses and out of that the railway programme Revenue Expenditure they have pointed out how engines, for example, are actually lying surplus to the requirements of the railways and yet we are going to spend this year a great amount of money on engines. Taking only the revenue account of expenditure, in revenue account alone I believe Government propose to spend something like 12½ crores, or, if we follow this memorandum, 11½ crores of rupees on revenue programme expenditure, and out of that I find that Government want to spend on engines alone 1.66 crores; they want to spend on coaches 95 lakhs and on wagons they want to spend 1.23 crores, making a total of 3.84 crores of rupees on rolling stock and engines. Now, the House must bear in mind that in addition to expenditure on engines and rolling stock from revenue account, we gave Government authority to spend a capital sum of something like 38 crores of rupees, a big item which will react on the purchase of engines and rolling stock from the revenue account. I know we are not going to discuss to-day the capital side of the 38 crores of rupees, but that fact has some bearing on this sum of 3.84 crores for the simple reason that the Inchcape Committee has definitely told us that the number of engines and rolling stock, with reference to the needs of the railways, is in excess of requirements and yet we are going to spend 3.84 crores on engines and rolling stock in addition to the amount we shall spend from the capital account. Now, I know from the capital account we are going to spend in England something like 28 crores of rupees; in India we shall spend only 10 crores. Out of that 28 crores I certainly think that a large amount will be spent on engines and other rolling stock, and I ask the House and the Member in charge of this Department whether it is necessary to go in for this purchase of engines and locomotives in spite of the fact that the Inchcape Committee has told us not to do so on certain railways.

My friend, Mr. Ginwala has referred to the great waste under the head of the staff and that a saving could be made if we followed the recommendation of the Inchcape Committee. Then in connection with renewals again the Inchcape Committee's recommendations reveal the same tale. Now, if renewals are to be carried out on the scale which the railways are pursuing at the present moment, I believe it will lead to an extraordinary amount of wastage on many of the railways. I believe it will mean an extraordinary amount of wastage on many of the Railways. I do think this is a year when the renewals ought to be a little bit restricted in view of the fact that we have a very large deficit. The expenses on the traffic account also are, as the Inchcape Committee have pointed out, extremely heavy; and on the whole, on all these sides, the Locomotive Department on the traffic side, and on the general administration side there is plenty of room for the cutting down of the whole thing. Indeed if the whole of the recommendations are carried out in full, there ought to be a great deal of saving, as we have seen; and if the objection be that there ought to be a certain amount for "lag", the only reply to that is that probably we shall be able to save in many more directions than what Government are proposing to do themselves; further in the second place, I wish to point

out that our receipts are likely to improve far better than what Government anticipate. My reasons for this view are these. In 1921-22, in spite of a bad year so far as trade was concerned, the receipts from railways were something like 81 crores of rupees. We have increased since then both the fares and the freight charges by say 25 per cent. Very well, if 25 per cent. is added to 81 crores, the receipts in 1921 it ought to be say 101 crores, not 95½ crores as the Government are forecasting. I know that probably there are one or two adverse circumstances, but we have a set-off in one or two favourable circumstances. In the first place, during the next year this increase in rates, both in fares and freight charges, will work throughout the 12 months. Last year it did not work throughout 12 months; and in the second place, there is the revival in trade. In 1921-22 the trade was very very slack compared to the next year, I expect. Therefore, on the ground that there is going to be a better revival of trade, and secondly that the new increased rates are going to work throughout the 12 months, there is every reasonable prospect that instead of our realizing 95½ crores, it is possible, if the whole 25 per cent. increase works that is one-fourth of the additional amount comes in, we shall expect receipts to the extent of something like 101 or 102 crores instead of the 95 crores—an increase of 6 or 7 crores. No doubt the whole thing will depend on the monsoon, but I do think on the whole that Government have underestimated their railway receipts, and there is a great deal of margin to cover the lag, or even to cover some of the drastic cuts which my friend, Mr. Ginwala, wants to carry out. It is possible, in spite of the Inchcape Committee's recommendations, to carry the economies still further, and although they recommend 4 crores 59 lakhs, it is possible to carry it out till further and to cover it by the expected receipts from railways to which I have drawn the attention of the Honourable Member. On these grounds, I support the large amount of cuts on the railway Demand which has been proposed.

The Honourable Mr. C. A. Innes: Sir, Mr. Kamat has said that the first lesson he learnt from the Inchcape Committee's Report on Railways was that there had been waste, extravagance, and negligent management in the administration of those Railways. I propose, Sir, first to take up that point with reference to the Report of the Inchcape Committee, and then later to deal with Mr. Ginwala's somewhat extraordinary motion. Now, Sir, as regards this Report of the Inchcape Committee, in many ways it is a most valuable report. It has made suggestions which undoubtedly must be followed up, and will be followed up, but the Report has given rise to these remarks made by Mr. Kamat and also made by Mr. Ginwala, and that being so, I must claim liberty to defend the Railway Department against the criticisms made in that Report. The scheme of the Report is that it compares the working of the Indian Railways in 1913-14, with the working of the Indian Railways in 1921-22 and 1922-23. That was the method adopted by the Inchcape Committee in dealing with all the Departments of the Government of India. It was a rough and ready method, naturally it was the only method that the Inchcape Committee could adopt having regard to the time which they had at their disposal and the immense task which lay before them. Also, I may point out that it was a quite suitable method for adoption in regard to non-commercial Departments. But I dispute entirely the suitability of a method of that kind when you are dealing with a commercial subject like Railways. The Railways depend for their prosperity upon the trade of the country, the state of the trade in the country.

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and it is not fair to judge the working of the railways by comparing the figures of two years taken in isolation. Railways are a going concern and you have to judge them by their working over a series of years. The unsuitability of this method becomes all the more apparent when you consider the exact years selected for the purpose of comparison. As I have said, a railway depends for its financial results entirely upon the state of trade in the year; that is to say, it depends upon conditions entirely beyond its own control. Now, the first year taken for the purposes of this comparison is 1913-14. That was a year of record trade, record prosperity. The other years taken are 1921-22 and 1922-23. Those are years when India is in a trough of post-war depression. Now, let me prove that assertion. I will take as my criterion the import and export trade of 1921-22, as compared with the import and export trade of 1913-14. I have just got a proof copy of the Review of Trade for 1921-22. In that Review of Trade, the trade of that year has been re-valued at the prices in 1913-14. Now what does it show? It shows that there has been a drop in trade amounting to 121 crores of rupees. Again in 1919-20, there was a decrease in trade, as compared with 1913-14, of 128 crores; in 1920-21 a decrease of 113 crores. Now there you see the first explanation. You take one of the worst years you ever had, judged by the volume of trade, and you take one of the best years you have ever had, you lay the figures side by side, you hold up your hands in horror and say, 'how shocking!' It is not fair to the railways; nor does the story end there. Not only, as I say, are we in a trough of post-war depression, but also we are in the throes of rehabilitation. Everybody in this House knows that during the war years the Government of India took everything it could out of the railways and put nothing back. The consequence is that we are faced now with arrears of maintenance and arrears of renewals. Moreover, we have to buy the materials for that maintenance and for those renewals at topmost prices. Mr. Ginwala talked about the drop in prices. But we do not get the benefit of that drop in prices for a year or 18 months. We are passing into use now materials brought when prices were absolutely at their highest pitch. And what does that mean? Let me give you one instance. In 1913 the price of a ton of finished steel in England was 113 shillings, at the end of 1920 it was 359 shillings; and it is the same with every other material. Sleepers have gone up, from Rs. 4 for deodar to Rs. 8-8, sal sleepers Rs. 5 to Rs. 8-8; rails, in 1913 Rs. 130 a ton I think, now Rs. 158, and so on with all materials, and finally during the war, as everybody knows, the purchasing price of money decreased, with the result that there was an immense increase in the wages Bill. So there you have got your first explanation: arrears of renewal and maintenance to be completed, with materials purchased at topmost prices; a heavy increase in the wages Bill, combined with a period of great trade depression. Is it surprising that if you compare the figures of these last two years to the figures of 1913-14, a year of record prosperity, the results appear somewhat startling? But is that peculiar to Indian Railways? Certainly not. I have here an extract from the report of a speech made by the Chairman of one of an important British Railway Companies. What he said was this speaking in the year 1922:

"The volume of traffic both in passengers and goods was smaller than in 1913 and there was a corresponding reduction in train mileage. Our working costs had risen to more than double the 1913 costs."

That is precisely what has happened in the Indian railways. In paragraph 1 of the Inchcape Report it is stated that the working expenses have gone

up since 1913-14 by 131 per cent. If you exclude our programme revenue expenditure, that is our special expenditure from revenue upon renewals, the figure is 114 per cent. That is roughly what has happened to British Railways according to this Chairman of one of the important British Railway Companies, namely, that the working cost had gone up to more than double. If you apply the same method to the accounts of that company, if you point out that their train mileage had decreased considerably and their working expenses had gone up by double, you get very much the same results as the Inchcape Committee has brought out against the Indian Railways. Now, taking a broad view, has the management of our Railways been so disgraceful as Mr. Ginwala would make out? As I have said, you cannot take Railways and judge them by the working of single years; you must judge them over a series of years. Now, what has India made from Railways in the years since 1916-17? It has made a net revenue of over 46 crores of rupees. In the last three years naturally we have not earned our interest, we have not covered our interest charges. The figures given in this report are wrong, because in 1921-22 it shows a loss of 9 crores of rupees; but it is not a real loss. You took 6 crores out of the Railways in the shape of surtax. It came out of Railways. So, if you take that 6 crores, your loss that year was 3 crores. This year it is 1½ crores, and next year we hope it will be smaller still. We hope to cover our interest charges and get a little more. Over this series of years the Indian Railways have been paying the Indian tax-payer a net revenue of 6 per cent. Is that so bad? Compare then the operating ratio of these Indian Railways with the operating ratio of Railways in other countries. I have the figures here. Now, Sir, the operating ratio of the Indian Railways in 1921-22 was 80 per cent. If you give us credit for surtax you took out of us it is 75 per cent. In 1922-23 it was 72 per cent. In 1923-24, we hope to bring it down to 69.5 per cent. In 1920, the operating ratio for the

Canadian Railways was	...	97 per cent.
English Railways	...	98 "
France, Northern Railway	...	140 "
Eastern Railway	...	121 "
Paris-Lyons-Mediterranean	...	115 "
State Railways generally	...	157 "
Belgian Railways	...	135 "
Italian Railways	...	137 "
Norwegian Railways	...	102 "
South African Railways	...	78 "
Japan Railways	...	65 "
New South Wales	...	73 "

In 1921 the figures are almost equally startling.

Canadian Railways	...	92 per cent.
United Kingdom Railways	...	104 "

Mr. B. S. Kamat: Are the amount of comfort and facilities for third class passengers just the same?

The Honourable Mr. C. A. Innes: French Northern Railway 109 per cent. I have shown that in our working for the last six years we have paid 6 per cent. If you judge us by our operating ratio compared with the operating ratio of the Railways of other countries, you find that we are better than most of them. If you take into consideration the fact, as I said now, that during a period of trade depression we have got to spend

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money on the recommendation of our expert Committee, the Acworth Committee, on the rehabilitation of the railways, if you take this special expenditure, if you take into account the enormous increase in the price of materials and the enormous increase in wages and salaries, you find that the case against the Indian Railways is not nearly as black as Mr. Ginwala would have it.

Now, Sir, we come to the actual recommendations of the Inchcape Committee. I will deal with Mr. Ginwala later on. Their first recommendation is that steps should be taken to curtail working expenses. That recommendation is made in paragraph 22 of the report, and it is suggested that at least a saving of one crore should be effected. This is what they say:

"We recommend that a further saving of at least Rs. 1 crore should be effected in salaries and wages in 1923-24."

I do not mean to say that there is no scope for reduction in wages. I do not take that attitude. We are prepared to do our best to make these reductions. But I should like to examine the arguments on which they have based their recommendation. In paragraph 22 they give a statement of the staff. They show increase in that staff, and they also make a mistake. They say that the increase in the technical and industrial staff is 33 per cent. If you examine the table, you find the increase in the technical and industrial staff is only 27 per cent. On the one hand, therefore, you have got an increase in staff amounting to 27 per cent. On the other hand, you have an increase in passenger traffic amounting to 21 per cent., increase in your goods traffic, which taken in bulk only amount to 8 per cent. If you take goods traffic in terms of ton mileage, the increase is 41 per cent. In addition you have got a very large increase in your Capital expenditure, a very large increase in your programme revenue expenditure, necessitating obviously increased staff. You have more Capital expenditure, more works going on and therefore it means more staff. Therefore, the argument as it stands is not particularly a strong one. Stress is also laid on the fact that the Agent of the Great Indian Peninsula Railway has recently effected a reduction of 50 lakhs. I should like to inform Mr. Ginwala that the reduction has already been carried out in the Budget. Well, Sir, I am very glad to see that the Agent of the Great Indian Peninsula Railway has effected that reduction, for the working of the Great Indian Peninsula Railway as judged by its operating ratio is certainly more extravagant than that of other lines. Judged by the figures for 1921-22, the Great Indian Peninsula operating ratio was the highest of all important lines in India, higher even than the North-Western Railway in spite of the special circumstances of the North-Western Railway which extends over a very large area. In 1922-23 the operating ratio of the Great Indian Peninsula, the ordinary working expenses excluding programme revenue expenditure was higher than any other big railway. This year they have got it down, though it is still high. Therefore, the argument based upon the increase of staff, which I have explained, and what the Great Indian Peninsula has been able to do, is not a particularly strong one. Still, as I have said, we are prepared to explore every possible avenue, and I do not wish to be misunderstood. There are many valuable suggestions in this Report which we will examine and follow up as closely as ever we can, but we cannot undertake to make too rapid, too sudden and too drastic reductions in matters of staff. I am glad to say, since the strike on the East Indian Railway last year, we have had a very quiet

year on the railways. But we have had signs of trouble on the Bengal Nagpur Railway owing to reductions of staff, and we have just had a protest from the Great Indian Peninsula staff against the reductions made. It is a specially delicate subject on which I do not want to say too much, but the House must realise that drastic and sudden reductions of staff may have very undesirable results on the railways. That is why we have only made a reduction of half a crore in the ordinary working expenses because we have to allow for time to carry out this reduction

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadian Urban): How much has been allowed out of one crore?

The Honourable Mr. C. A. Innes: Half a crore. Then I come to this programme revenue expenditure. I would like the House to remember that early last year, in 1921, we had an elaborate examination of our Indian railways by special committee containing many railway experts, who spent over a year travelling about India examining the subject and writing a report which generally commanded very great respect throughout the country. On the one hand you have got to remember that you had that expert report written after a very long inquiry in the country. On the other hand you have got a Committee of six very distinguished, very authoritative business men devoting just the small fraction of three months to the subject of railways. What was the whole burden of the Acworth Committee's Report? The first point the Acworth Committee made was that even in 1913-14 our railways were totally inadequate to the needs of the country. They pointed out that in 1921 the position had become ever so much worse. The whole of Chapter II of this Report contains extracts of evidence from all parts of the country complaining of the paralysing effect upon trade of the inadequacy of our railway system. In one case there was a complaint that enormous losses had been incurred in Calcutta because seeds could not be moved up by the East Indian Railway to fulfil contracts; and there have been complaints of that kind from every part of the country. The Acworth Committee found that this was due to two causes. In the first place the railways had not looked far enough ahead. In the second place the Government of India had starved the railways during the war and had not taken the necessary steps to keep the railways up to the mark and to put in a proper amount of renewals. Let me read what the Acworth Committee said (page 30):

"There are scores of bridges with girders unfit to carry train loads up to modern requirements; there are many miles of rails, hundreds of engines, and thousands of wagons, whose rightful date for renewal is long overpast."

They go on to say that what the Government had done by not providing money for these renewals was merely to postpone the expenditure. It was a liability which would have to be faced. Well, Sir, we considered this subject most carefully last year and I thought that the policy of the Government of India, a policy inaugurated, I thought, with the full approval of this House, was that we should make a real effort to overtake these arrears, that we should make a real effort to put our railways into proper order, to rehabilitate them, to make them fit not only to carry the traffic at present, but also to make them fit to carry the traffic of the future, and that is what we are trying to do. That is the policy which we are now engaged upon. It may be that we have made mistakes with particular railways. It may be that we have been too enthusiastic in some respects, but the whole policy which we undertook, I say with the approval of this Assembly, was to make a real effort to effect these renewals as

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quickly as we could and to bring these railways up to the mark, and that is the policy on which we are now being attacked, not by the Inchcape Committee mind you, but by Members of this House. The first suggestion they make is that we should distinguish between unremunerative railways and remunerative railways. That seems to me a somewhat doubtful proposition. Naturally it has been received with great respect since it comes from this very authoritative Committee. But I do regard the proposition with a certain amount of doubt. It is no use quoting to me the experience of England in this matter. England has its railways converging on London and running out to the various ports. In India the thing is entirely different. Our railways depend on each other for their trade. The East Indian hands over to the Great Indian Peninsula at Jubbulpore, and the Great Indian Peninsula hands on to others. They are all exchanging traffic between one another. Shall we say some of these are remunerative and there we will put money into them and not into the unremunerative railways? What is the result going to be? Let us go back to history and look at it in the light of what happened in the war. This Chapter II of the Acworth Committee's Report is full of complaints from one railway that the other railways could not receive traffic from them. I will just quote one instance. It is an instance I may make use of later. On the Great Indian Peninsula Railway, which figures largely in this Report, "inwards traffic from the East Indian, Bengal Nagpur, Bombay, Baroda and Central India, Madras and Southern Mahratta, Nizam's Guaranteed State and other railways is restricted at 15 junctions to form 600 to 80 wagons daily."

That is to say you would have the East Indian rehabilitated, able to carry its maximum amount of traffic, and yet the Great Indian Peninsula unable to take over its due quantity of traffic from the East Indian, and unable to hand to the East Indian the amount of traffic it can carry. That is the first point I want the House to remember. And the second point is, I would like to follow up Sir Montagu Webb's suggestion about the North-Western Railway. That railway is being condemned in this Report as an unremunerative railway. In 1913-14 the North-Western Railway carried 1,300,000 tons of wheat and it carried that wheat a long distance mostly to Karachi. In 1921-22 the North-Western Railway carried 500,000 tons of wheat and it carried that wheat only short distances, most of it to other railways. That is one of the reasons why the North-Western Railway is not doing very well at present. Take the Eastern Bengal Railway. In 1913-14 the Eastern Bengal Railway carried over 1,100,000 tons of jute. In 1921-22 it carried 300,000 tons of jute less due to reduction in the cultivation of jute. Sir, I think I have shown that the suggestion that we should treat certain railways as unremunerative is a suggestion which is to be approached with a certain amount of care. Then we are up against the practical difficulty in this matter that it is extremely difficult to make a sudden cut in programme revenue expenditure. This programme revenue expenditure is being carried on in accordance with a programme which has been sanctioned. A good deal of material which was ordered last year will arrive this year and will fall due for payment. The first preliminary allotment was made to railways as far back as November because we had to give them, in accordance with the recommendations of the Acworth Committee, as much time as possible. We do not know what our actual commitments are compared with the amount provided in the budget, so it is very difficult for us. It is taking a risk even to make this cut of 2½ crores

from programme revenue expenditure because we cannot say exactly what our commitments are. We may be able to cut down this expenditure, but it is a very serious thing to do. As the Acworth Committee pointed out, capital expenditure and revenue expenditure are inextricably mixed and if you cut down the programme revenue expenditure too much you may not be able to make full use of your capital expenditure. You may have locomotives or whatever it may be arriving and may be unable to put them on to the line because we cannot provide the necessary revenue expenditure.

Rao Bahadur T. Rangachariar: May I ask what your revenue programme now is. You budgeted for 11½ crores.

The Honourable Mr. C. A. Innes: We have taken off 2½ crores.

Rao Bahadur T. Rangachariar: It is now only 9 crores.

The Honourable Mr. C. A. Innes: That is right, the same as recommended by the Inchcape Committee.

Rao Bahadur T. Rangachariar: The Committee recommended 9 crores and you have adopted that figure.

The Honourable Mr. C. A. Innes: Yes, I have tried to deal as well as I could with certain general aspects of the problem raised in the Inchcape Committee's Report. Let me come now to Mr. Ginwala's amendment, and I hope, Sir, you will excuse me if I go beyond my time. Mr. Ginwala's speech, if I may venture to say so, is an almost entirely cynical speech. I felt greatly in doubt as to whether I was intended to take it seriously or not. Let me quote just one phrase from the speech. He said that the Inchcape Committee consisted of very prominent business men. He went on to say that they knew what they were talking about and then he proceeded to say but they forgot to say it. Now, Sir, the Greeks had an expression which exactly summed up that remark of Mr. Ginwala's. It was called an *oxymoron*, and I will explain it later to Mr. Ginwala. Does anybody in this House suggest that this business Committee, composed of Lord Inchcape, notoriously one of the greatest business men in the world, and 5 of our leading business men in India forgot to say what it really meant? Surely the House, Sir, will see it is nonsense. We have carried out to the very best of our ability the recommendations of the Committee. We have fallen half a crore short, I admit, because we have to allow for lag, but I should like to say that, though we have carried these reductions out, we have done so with great hesitation, because we are extremely doubtful whether it is practicable to cut down the staff as suggested by the Committee and whether it is actually practicable to reduce the revenue expenditure in view of commitments already existing. However, we have done our best. Does anybody in this House suggest that we have got to go beyond this and deduct over another 4 crores? On what ground? Mr. Ginwala suggests in the first place—I am not sure that I understood this—that, because our revenue this year was less than we expected, therefore, there ought to be an automatic reduction in our working expenses. Next year, we hope to get a revenue much bigger than our revised estimate of revenue this year, and Mr. Kamat has suggested that it might go up to 100 or 101 crores. If it does go up to 100 or 101 crores, then on Mr. Ginwala's argument we ought to provide a very much larger sum for working expenses. (A Voice: "That is our only hope for it to go up.") Then he suggested that

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we could get 1½ crores out of reductions in staff, that is one crore recommended by the Committee and 50 lakhs already proposed, as he put it, by the Agent of the Great Indian Peninsula Railway. Well, Sir, the Agent of the Great Indian Peninsula Railway has already made that reduction of 50 lakhs in his budget for the coming year. Then, Sir, Mr. Ginwala suggested that we should effect another large reduction in fuel. We have already made an arbitrary reduction of one crore on the revised estimates of last year. Here again Mr. Kamat tells us that we are going to have a very large increase of trade and traffic; that again means a very large increase in our fuel expenditure. As regards this fuel, you have got to remember that we are bound by contracts. We have got to pay the price in those contracts, and fuel does not offer very much scope for reduction unless we can effect economies. Here, I should like to correct a mistake in the Committee's Report. They said that we did not take steps to watch the consumption of fuel in our locomotives. That is not correct. I understand from Mr. Hindley and from the Chief Mechanical Engineer, Railway Board, that the consumption of fuel in locomotives is checked most carefully and that the increments in the pays of drivers depends upon economy in their consumption of coal. Then again Mr. Ginwala said that the drop in prices ought to be able to lead to a very large reduction. I have just explained that we do not get the benefit of that drop in prices for a very considerable period. It takes from a year to 18 months to get our materials out from Home, and we are now receiving materials which were purchased at the very high prices of a year or 18 months ago. Mr. Ginwala also made great play with paragraph 12 of the Report. He drew a picture of the Railway Board forcing upon an unwilling Agent expenditure which had no right to be incurred. Well, Sir, the facts of that case are these. The Great Indian Peninsula Railway, as I have just explained, has been allowed to get into rather a bad state, I will not put it higher than that. I have already read out a paragraph from the Acworth Committee's Report which showed that at 15 junctions the traffic had to be restricted owing to the lack of capacity of that line. We know that the line is not in good order; we know also that the Great Indian Peninsula Railway Company has not got very much longer to live and naturally the Company under these circumstances—I am not accusing the Company of anything—look more to getting revenue than to keeping their line in good repair. Surely it is the business of the Railway Board to see that a line which is our property is kept in good condition. In this particular case I have no doubt at all that it was a fair difference of opinion. The Agent thought that this particular line could be propped up so as to last for a further period. The line was inspected by our Senior Government Inspector and he was of opinion that it ought to be renewed. One of the Members of the Railway Board also went over it and the Railway Board for technical reasons definitely thought that the line ought to be renewed. That is the whole secret of that particular paragraph of the Report. I should like to challenge the statement that it is not the proper function of the Railway Board to insist on expenditure against the advice of the Manager and Engineer of a railway. It is the proper function of the Board, I say, to see that the Agents and Engineers of Company Railways maintain our property in good condition, and I am quite sure that I will have the whole House behind me in that remark.

Well, Sir, I am afraid I have detained the House a very long time, but I hope that, in the circumstances of this case, the House will excuse me, and I do hope also that the House will not insist upon this further reduction

of 4 crores. We have done our very best to carry out the actual recommendation made by the Inchcape Committee with reference to the budget of the coming year and I say that it is perfectly useless for Mr. Ginwala or for anybody else to get up now and say "the Inchcape Committee did not mean that; they meant you to take off another 4 crores". We have carried out their reduction; we are quite prepared to follow up their other suggestions for economy and we may be able to effect economies; but I must say definitely that we could not accept responsibility for another reduction of 4 crores. With reference to what Mr. Shahani said, it is perfectly true that this House has a right to make that cut if it so pleases. And I do hope that the House will not think that we in any way resent the criticism we get on these Budget Demands. We do not. We value them very greatly. On the other hand, it is we, it is Government who has to take the responsibility. I am advised by the Chief Commissioner—and he has examined the question most carefully—that we could not possibly run the railways if this extra 4 crores is cut out. It would not be a real reduction of the deficit and I do hope the House will not put me again in the difficulty they put me in yesterday. Yesterday they put me in the difficulty of refusing me the money which I know to be necessary for the administration of the Customs Department. What am I to do there? Am I to go to His Excellency the Viceroy and ask him to restore it? I hope the House will not put me in the same difficulty in this matter. I think they will realise that we, on the Government Benches, have tried to co-operate with the House during the last three years; and I do put it to the House that this motion moved by Mr. Ginwala is not a motion which should be accepted by the House, and that if the motion is accepted by the House, I do not believe that it can be carried out, and if it is carried out, it means, in the first place, that train services will, probably must, be out down; and, in the second place, we are almost certain to have the gravest possible labour unrest all over the railways by the immense reduction in staff which the making of this cut would necessitate. In these circumstances, Sir, I hope the House will reject this amendment.

Rao Bahadur T. Bangachariar: Sir, I am in a somewhat difficult position even after the elaborate explanation of the Honourable Mr. Innes. I quite realise that he was in a difficult position as he had to defend the Railway Board against the Inchcape Committee's Report and the criticisms founded thereon. What we are now immediately concerned with is the Budget for 1923-24. I should have received considerable help in forming my own opinion if the Honourable Mr. Innes had told us under this head and this head the Inchcape Committee made this recommendation; we have carried out that recommendation to this extent under each head, and under the other heads we are unable to carry it out, or how far we have been able to carry out, their recommendations. It is that aspect of the question on which I would like to have information. Probably in the lengthy explanation he had to give he forgot this point with which we are now concerned. I think Mr. Ginwala and the Honourable Mr. Innes are at cross purposes in this matter, due to a misunderstanding perhaps of the Inchcape Committee's recommendations. As we understand those recommendations, they have recommended a cut of 4.50 crores irrespective of the 3 crores recommended under Programme Revenue and also the 1 crore they recommend under Establishment. They recommend 1 crore addition under Establishment; and they recommend 3 crores reduction in the programme of revenue and expenditure by bringing it down to 9 crores from 12.50 crores. We also understand that they recommend a saving of 1 crore under Fuel.

The Honourable Mr. C. A. Innes: We have done that: that is carried out.

Rao Bahadur T. Rangachariar: We should like to know how the 4.59 crores recommended by the Inchcape Committee is made up, what it comprises; and there are also other paragraphs in the Report which make certain recommendations which we fear have not been carried out and are not included in the 4.59 crores. If the 3 crores are included in the 4.59 crores; if the 1 crore under Establishment is included in the 4.59 crores; then what is really the retrenchment that has been effected? What about the Fuel 1 crore?

The Honourable Mr. C. A. Innes: That is carried out in the Budget?

Rao Bahadur T. Rangachariar: What about the 3 crores and the other 1½ crores, including the Great Indian Peninsula Railway, which with 1 crore under Fuel make 5½ crores. There are also other savings which they expect under stores and other things. All this must be more than 4.59 crores. So we are in this difficulty. I have been very carefully reading this Report and I have not been able to make out how this 4.59 crores is made up; what they have taken into account in arriving at this figure. There are several paragraphs in the Report which recommend further reductions, but we fear these have not been taken into account. If that can be explained, probably this misunderstanding of which I spoke will disappear. This recommendation of Mr. Ginwala is not a recommendation made at random. We think we are carrying out the recommendations of the Inchcape Committee, and if we really are satisfied that we are not carrying out the recommendations of the Inchcape Committee, it is better that the House should be informed in that matter.

I may draw the attention of the House to this paragraph at page 80 of the Retrenchment Committee's Report:

"We have discussed this Report with the Chief Commissioner of Railways who accepts the conclusions of the Committee in the present circumstances. Reductions in the Railway Budget are unavoidable. Naturally we may find it convenient in working up to them to make certain alterations in the method of arriving at them and this, we quite realise, he is in general agreement with many of our recommendations."

So that I did not expect this outburst of criticism on the part of the Honourable Mr. Innes against the Inchcape Committee's recommendations when we find the Chief Commissioner was in agreement with them. And in fact they proceed to say:

"The Chief Commissioner was good enough to say that he considers the Report extremely valuable."

The Honourable Mr. C. A. Innes: I said that too.

Rao Bahadur T. Rangachariar: With that certificate from the authority responsible for the running of the railways, I was rather surprised at the criticism levelled at this Report by the Honourable Mr. Innes. In fact, my Honourable friend relied a great deal on the Acworth Committee's Report, but I find that two of the Members were Members of both Committees, and therefore they could not have forgotten what they wrote as Members of that Committee. We on the other hand are inclined to attach the greatest importance to the recommendations made by the Inchcape Committee. We are trying to see if we can balance the Budget. That is the plain truth. We have got to reduce the Budget by hook or by crook, so long as it is a

straight crook—not by misunderstanding each other; we do not want to misunderstand each other. Let us understand the facts correctly.

Now, Sir, one other matter I may mention, and it is this. Last year we were asked to vote 73,67,00,000 for the working expenses of the railways. The voted expenditure was Rs. 73,67,00,000, and the non-voted expenditure was Rs. 20,96,00,000 whereas under the voted head we were asked to vote 6½ crores more than what was actually needed. If Honourable Members will turn to pages 2 and 3 of the revised statement furnished to us a few days ago, Honourable Members will see that in column 9, page 3, the amount actually spent out of the amount voted by us is Rs. 6,61,00,000,—that is less than what we were asked to vote. Why was that extravagant estimate made last year? On the other hand, I find under the non-voted expenditure, they have increased it by 6 crores, because from 20 crores they have increased it to 26 crores. They seem to be budgeting extravagantly in the Railway Department when they ask us to vote more than what is really needed for expenditure. I therefore think on these points

a clear explanation is needed; otherwise I should be bound to support the motion for reduction.

Captain E. V. Sassoon (Bombay Millowners Association: Indian Commerce): Sir, I would like to preface my remarks by saying that I do not support Mr. Ginwala, partly because I do not quite understand his figures, and partly because I, like him, have a great deal of respect for the members of the Retrenchment Committee, and I do not think that had a further cut of 4 crores been justified they would not have made different recommendations to what they did. I rather follow the lead in this case of Mr. Kamat who suggests that we should follow the recommendations of this Committee. I understand from what Mr. Innes has said that the Government are prepared to do that. If I am right in my calculations the Inchcape Committee suggested that a sum of Rs. 64 crores should be sufficient for the provision of working expenses including surplus profits and if I am right I gathered that the budget to-day has made a cut of 50 lakhs less than the recommendation of the Inchcape Committee; that is to say, they have reduced the Inchcape cut by half a crore, roughly speaking. But I would like to draw the attention of the House to the remarks at page 77 of the Inchcape Committee Report in which they point out that they think that much greater reductions can be effected in the near future, and I therefore am not satisfied that it would be impossible for the railway administration to make further reductions to counteract this lag and my feeling therefore is that the Inchcape Committee's recommendation as it stands in the Report and as I believe will be given effect to by a motion of Mr. Kamat, would probably be the practical solution of the wishes of a number of Members of this House. Now, Sir, the Honourable Mr. Innes complained bitterly that it was not fair to judge two years separated as widely apart as 1913-14 and 1921-22, and I think he rather unfairly criticised the Report and Mr. Ginwala for doing this. But I am sure that the Report has in no place suggested that the cost should be the same as in 1913-14, and I do not think I understood that Mr. Ginwala suggested that we should have the same working expenses as in 1913-14. These figures have been simply put down as a guide, and all the members of the Committee and all Members of this House fully realise that we cannot possibly expect to work at the same rate of expenditure as in 1913-14. Now, the Honourable Mr. Innes asked that we should treat these railways as a commercial concern. I, Sir, am more than ready to deal with the subject on those lines. I am prepared to criticise the railway management, not only as regards

[Captain E. V. Sassoon.]

state-managed lines, but also as regards company-managed railways—I shall do so on commercial lines. One of the points laid down in this report is that there is a large surplus, an unnecessary surplus of stores. Now, Sir, all business concerns during the war had to carry big surplus of stores. It was necessary because one did not know when one could get renewals, but directly we knew, the war having ended, that we could get normal supplies, I think that most carefully managed business concerns reduced their orders for stores so as gradually to work off their stocks. I know that in my own concerns I have been doing this during the last three or four years. I suggest, therefore, there was no reason why the railway administration should not have done the same and should not therefore be in a position of carrying surplus stocks of stores, of which I understand from the Inchcape Committee Report, the present price is 50 per cent. below the book value of the stores. That is one of my criticisms.

Another of my criticisms is that though I am fully in agreement with the rehabilitation of railways I am also fully in agreement with the recommendation of the Committee which states that we should repair as much as possible instead of renewing as much as possible. Sir, in this connection only yesterday I was asked by a very charming lady to explain to her the points at issue in the railway demands in the budget. I did so to the best of my ability and she then replied to me "Oh, I understand what it is; the Indian railways are rather like me; I would like to buy new silk stockings, but I have to darn them." I think that that is a very good description of the position of the railways in India; we would like to buy new silk stockings, but we cannot afford to, and therefore we must darn them; we would like to renew, but we cannot afford to and therefore let us repair. Sir, in my business I have been doing this; instead of renewing my machinery I have been repairing it. I am glad to say that my policy has been successful. Only three days ago, when I was in Bombay, a machinery manufacturer was going through one of my mills, and I showed him a department the machinery of which was 30 years old and asked him whether he considered that I ought to scrap that machinery and give him an order for new machinery. His reply was "You would be a fool if you did, because although it is true that the new machinery would be a little more efficient than your repaired machinery, it would only be 5 per cent. more efficient and this 30-year old machinery of yours will be able to give you good service for a large number of years." Now, Sir, when the Honourable Mr. Innes drew attention to the point raised by the Retrenchment Committee whether an Agent should repair or renew a portion of a line, he maintained and quite rightly that the Railway Board should control the Agents. But, Sir, I consider that if the Railway Board insists on renewing a line when repairs would make that line carry on efficiently and effectively for another 15 years, which I believe is the time mentioned in this Report, then I would challenge the wisdom of that Railway Board in insisting on renewals.

The Honourable Mr. O. A. Innes: What about restrictions on the traffic?

Captain E. V. Sassoon: I understood the Honourable Mr. Innes to maintain that a line was in a very bad state. If you have got 15 years more by repairs, you can always arrange to make the renewals spread over the last portion of the 15 years for portions of the line that are entirely worn out.

Now, Sir, another point that the Honourable Mr. Innes mentioned, I think, in criticism of Mr. Kamat's remarks was that we should not compare the two years, because one of the two years was a boom year and

the other was a very bad year for the trade. I think that a railway administration which, I take it, prides itself on being run on commercial lines, should have the business foresight of commercial houses and try to anticipate what the future is going to be like. If the railway administration anticipates a good monsoon and extra trade, I do not think, Sir, that we would grudge it a supplementary grant later on, if it could show that the profits were coming in. On the other hand if it does not consider that we are going to have an increase of trade what is the point of increasing the carrying capacity of our railways at a very high cost, at a particularly high cost because as the Honourable Member has pointed out the prices of materials are still very high? I am not ordering new machinery to-day unless it is absolutely necessary, because I consider that prices will drop. Why, therefore, should the Government do so for its railways, unless it is convinced that the increased expenditure will bring in a profitable return? and in that respect I would like, Sir, to join issue with Sir Montagu Webb as regards the North-Western Railway. If he will turn to page 75 of the Inchcape Committee's Report he will see that the reason why the Committee does not encourage further expenditure on the Railway is because it did not appear to them that the economy to be effected by the use of large engines would be sufficient to justify the heavy expenditure which is apparently necessary to bring the line up to the required standard. Let the North-Western Railway, whether by wheat or any other traffic, show that that expenditure is justified, and I for one would be prepared to agree to it, but if it is not justified then, I think, it should quite rightly be abandoned.

Sir Montagu Webb: The Inchcape Committee apparently forgot all about the wheat export traffic.

Captain E. V. Sassoon: If the Agent who does not appear further up in that paragraph to be very enthusiastic about extra expenditure, if the Agent who is the man on the spot, and who is the executive officer of the Railway and who does know about the wheat traffic, considers that there is likely to be a sufficiently large import of wheat into Karachi at the particular time which Sir Montagu Webb has in mind to justify the capital expenditure in these engines, let the Agent come forward and say so to the Railway Board; let the Government ask us for a supplementary grant, and I think this House will grant it. Let us run these Railways as commercial concerns. If the extra expenditure will bring in extra profits, let us agree to it; if not, let us postpone it as would be done by any commercial house. Sir, that is the line on which my criticism of the Government and the Railway Administration is based. And, Sir, although, as I have said, in prefacing my remarks that I do not propose to follow Mr. Ginwala because I think that his cuts are excessive, I do propose, when the proper time comes, to follow Mr. Kamat into the lobby and insist on the Inchcape Committee's recommendations being carried out.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, the motion for reduction proposed by my friend, Mr. Ginwala, technically is a motion for reducing the voted portion of the Demand. But I submit to the House, that when Government tries to give effect to the reduction which the House may sanction, Government is not restricted to make the reduction only in the voted portion of the Budget. I shall therefore at the outset draw the attention of the House to some items in the non-voted portion of the Railway Budget. The first item to which I would like to draw the attention of the House in the non-voted portion of the Budget is that of Annuities . . .

Mr. President: We cannot deal with Annuities under a motion for reducing the working expenses.

Mr. N. M. Joshi: I suppose, Sir, Mr. Ginwala's motion is

Mr. President: I can understand the Honourable Member's difficulty. The Honourable Member may easily have made a mistake, because Mr. Ginwala's motion for reduction is printed in a wrong place; it should have been "working expenses", and the motion which he has moved is that the Demand under the head Railways and the sub-heading Working Expenses be reduced by Rs. 4 crores. Therefore that restricts the debate to working expenses.

Mr. N. M. Joshi: Sir, I am sorry I misunderstood the point. I shall first deal with the working expenses out of the total demand. The first point I would like to make is about the establishment charges. My Honourable friend, Mr. Shahani, has already drawn the attention of the House to the great rise in the establishment charges of the several Railways. He has compared the establishment charges of the different Railways, but I propose to compare the present year's establishment charges of one Railway with those of the previous year. The Railway which I propose to take for the purpose of comparison is the Bengal Nagpur Railway. In this Railway in the last year's Budget 68 officers drawing Rs. 1,000 and over were shown, whereas in this year's Budget in the same Railway 175 officers drawing Rs. 1,000 and over have been shown. There is thus an addition of 107 officers in one line. I know, Sir, that it may be said that all these 107 officers are not new officers. Some of them may have been promoted and therefore they have been included in the list of officers drawing a salary of Rs. 1,000 and over. But from the Statement it is not clear how many of these 107 officers are new recruits and how many of them have come there on account of promotions. I see however there are at least some offices which have been newly created. There are 4 Personal Assistants out of whom 2 Personal Assistants have not come in the list by promotion. There are some Superintendents. I do not know whether they have come by promotion or not, but it will be quite clear that during one year in the Bengal Nagpur Railway while there were only 68 officers last year drawing Rs. 1,000 and over, this year there are 175 officers drawing Rs. 1,000 and over. Therefore, this point makes it perfectly clear that the establishment charges of these Railways are very extravagant and that they are spending a good deal of money out of the working expenses for establishment charges.

Sir, while speaking about the establishment charges, I would like to make one remark which I also made in the course of my Budget speech, and it is this, that while we compare figures about establishments, we are in a great difficulty because we do not know whether the additional figures are there on account of promotions or on account of new appointments. I therefore feel that the Government, when they prepare the next year's Budget, should place the Members in a position to judge whether the additional posts shown there are new appointments or they have been made by promotions. I suggested to Government that in order to enable Members to compare these figures they should give us copies of the establishment roll. Unless we are furnished with copies of the establishment rolls, we cannot get this information at all, and I therefore trust that Government will accede to my request and enable the Members to compare these figures.

Sir, the Honourable Mr. Innes has made some reference to the retrenchments made by certain Railways, and on this point also I want

to make one remark. The retrenchment made by these Railways has been made mainly in the low paid staff, and there is a great complaint both in the Bengal Nagpur Railway as well as in the Great Indian Peninsula Railway about this matter. I would therefore suggest to the Railway Board that when they ask these Railways to effect retrenchments they should exercise some control over them and ask them to make retrenchments in such a way that the burden will not wholly fall upon the low paid staff but at least a portion of it will fall on the highly paid staff. In the case of the Bengal Nagpur Railway, only yesterday I asked a supplementary question while Mr. Agnihotri's question was being answered, whether when low paid servants were being dismissed, any of the highly paid officers were also being removed. But from the figures I have quoted I have shown that on the Bengal Nagpur Railway there is not only no reduction in the highly paid officers, but while there were 68 officers drawing Rs. 1,000 and over in the last year's Budget, there are 175 officers drawing Rs. 1,000 and over in this year's Budget. My Honourable friend the Chief Commissioner yesterday asked me what was the bearing of my supplementary question. I will make it clear to him. The bearing was that the railways made reductions in the low paid staff only. If he had scrutinised the figures, he would have found in the case of highly paid officers that the number had increased to more than double. (A Voice: "What about the Great Indian Peninsula?") In the case of the Great Indian Peninsula also the same is the complaint. The Great Indian Peninsula has appointed an officer, a Mr. Heseltine or some such name, and that officer in making retrenchments has dismissed a number of low paid servants while the complaint is that he has not touched any of the highly paid officers. Sir, that is not the way to make retrenchment. I therefore think that there is a great room for retrenchment in the case of railways in the item of supervising officers. The establishment charges have grown tremendously and more and more officers are being appointed and their number as shown in the budget statement has been doubled in one year. I therefore hope that Mr. Ginwala's motion will be accepted.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):

Sir, I have tabled a motion for a lesser cut (No. 179). Having gone through the figures, I originally asked for a reduction of Rs. 1,71,70,000, as shown in the printed paper. But on going through the revised figures as supplied to us on Saturday last and availing myself of what Sir Basil Blackett told us, I have sent in a motion reducing that figure to 50 lakhs. If Honourable Members will please read 50 lakhs for the figure 1,71,70,000, then my meaning will be clear. Those figures, with the marvellous plus and minus system brought into the revised paper, work out at 50 lakhs, as Captain Sassoon has pointed out, and leaves something over.

The reason why I ask for this smaller cut is that the Assembly having only recently carried a motion for State management I believe all the support that the railway administration can be given should be vouchsafed. Although it was my duty to take another view from some of my friends at that debate, I am loyal enough to their Resolution to perceive that if railway administration is really to do what is expected of it and must be expected of it, it ought to have a fairly free hand. Therefore I do not propose to go beyond, at least for the present, what the Inchcape Committee laid down. I shall read their words again:

"The budget provision for the working expenses including surplus profits in 1923-24 be limited to 64 crores, subject to"

[Sir Deva Prasad Sarvadhikary.]

a variety of things mentioned in the concluding portion of the recommendations. I do not propose for the present to go into the somewhat hypothetical figures about 4.59 crores and 3.50 crores savings mentioned there, or undertake with Mr. Rangachariar a research into the unspoken thoughts, as Mr. Ginwala put it, of the Retrenchment Committee, nor stop to enquire how the 4.9 crores is made up. For my purposes for the present it would be enough if the Government were to accede to a very small reduction of 50 lakhs which would enable those of us who are wanting a reduction of at least a crore of rupees on the civil side of the expenses to suggest acceptable means for the purpose of balancing the budget. I do not for a moment concede that other reductions will not be insisted on. But for the present I do not think we ought to embarrass the railway administration by demanding more than a cut of 50 lakhs. I am perfectly sure, and I hope the Government will admit, that in dealing with large allotments like this it ought not to be difficult to find that sum of 50 lakhs. Sir, consciously or purposely inflated, but in the first presentment they were inflated, and later on for reasons that have not been made quite clear, it appeared that what was budgeted for last year was not really what was required. And quite naturally that has led us to believe that a small cut of 50 lakhs will not at all prejudice the situation. Sir, when some one proposed that a day should be set apart for discussing the Inchcape Committee's Report, the Leader of the House invited us to discuss the report in the course of the budget debate. The first fruits of that suggestion are now before us. We have had a very animated debate and had retorts from both sides of the House regarding the suggestions made by the Inchcape Committee. When my friend, Mr. Innes, got up I thought he was going to combat Sir Montagu Webb for flinging the first stone at the Inchcape Committee. Well, Sir, some of us will have to follow suit later on, but on surer grounds. Here however I believe the Inchcape Committee was occupying quite unassailable ground. Mr. Rangachariar reminded us that two members of the Railway Board were members of that Committee, and it is not a fact that all that the members learnt about railway administration and railway finance was hurriedly picked up in the course of three months of Delhi dissipation. Far from it. Well, I know in other concerns that there has been corridor talk about "Commercial Commission," about "Clive Street Commission," or as some prefer, the "Bengal Commission," because unfortunately most of the Members happened to come from Bengal or had their training in Bengal. That does not take away from the value of the recommendations of the Committee. Certainly in regard to business positions and commercial undertakings I am not prepared to enthuse to the extent that some Members have done over the Inchcape Recommendations. A great deal more could and should be done. Nor am I prepared to endorse Mr. Innes's severe criticism to-day and give the go-by to the Inchcape criticisms because they happen to be adverse. We are not concerned at present as to how matters of policy which have been introduced in the report, which Mr. Innes criticises, are to be carried out. Where is it however that the Inchcape Committee have erred in insisting on reductions? That is our objective so far as the budget deficit is concerned and I believe that can be met by the lower scale of cut that I am trying to put before the House. I do not think there ought to be any hesitation in acceding to the request for a cut of 50 lakhs. I do not know, Sir, what procedure you will be pleased to adopt when the debate is over and Mr. Ginwala's and other larger demands for reductions are disposed of. I submit that my

motion ought to come last and then it will probably have a better result than the bigger demands.

Mr. President: I can put the Honourable Member's motion now, if he wishes, as an amendment to Mr. Ginwala's in order to give the House an opportunity of expressing its wishes.

The original question was:

"That the provision for working expenses under the head 'Railways' be reduced by Rs. 4 crores."

Since which an amendment has been moved to omit the words 'four crores' and to substitute in their place the words 'fifty lakhs'.

Mr. C. D. M. Hindley (Chief Commissioner, Railways): Sir, amid this welter of figures we have had this morning I feel that the House by now has perhaps realized what the actual cuts which are being made consist of. I think if I may refer again to the Statement which was placed in our hands on Saturday, on page 3 of that statement Honourable Members will see, against working expenses under Budget, 1922-23, the figure of 67.99. That is the figure on which the Retrenchment Committee were working when they proposed their reduction. They made the proposal for a reduction of 4 crores and 59 lakhs which will be found in the next column. In the meantime our Budget had been prepared for 66.51, shown in the next column, that is our Budget prepared for 1923-24. We now propose to make a further reduction of 3 crores on that figure, bringing down the working expenses to 63.51. Therefore, we have our working expenses under that head brought down from 67.99 to 63.51, a total reduction of 4 crores 47.50. Taking the next three figures below relating to surplus profits, etc., down to the bottom of the column, you will see that, as compared with the total cut recommended by the Retrenchment Committee of 4.59, we propose to make a cut of 4.19.93, leaving our total demand at 64.88, irrespective of interest, annuities, and sinking-funds. Now what I want to point out is that the actual retrenchment recommended by Lord Inchcape's Committee was that the working expenses including the surplus profits to Companies should be fixed at 64 crores. If you take the two figures representing working expenses in column No. 6, 63.51 crores for working expenses and 98.77 lakhs for surplus profits, and add them together, you will get the figure to which we have reduced our working expenses corresponding with the basis used in the last recommendation of the Retrenchment Committee, i.e., 64.50. I think those remarks of mine will perhaps meet the Honourable Mr. Rangachariar's request for a clear explanation of what cuts we have made. I may say that we have been going in for a great deal of retrenchment before Lord Inchcape's Committee began to study the question. For many months during last year special officers have been at work on nearly every railway making strenuous endeavours to reduce working expenses in all directions. Now having made those endeavours, the estimates were still in our opinion above what they should have been. I may just quote a few more figures, though I do not want to bore the House. The total demands sent up from the railways, i.e., the estimates made by the Railway Agents which they sent up for our consideration amounted to 70 crores. We reduced these in the first instance to 68, and further down to 66.51, the figure with which we started this Budget, and we have again reduced it now by 3 crores, so that you will see that, altogether, we have made a clear reduction of nearly 7 crores on the figures sent up to us by the Agents of the Railways for consideration. Now, Sir, I think that that shows that we

[Mr. C. D. M. Hindley.]

have not been wanting in our endeavours to make retrenchments in every possible direction. With regard to many of the criticisms which have been made to-day against the Railway Administration, I am perhaps in the rather happy position of looking to the future than to the past, and yet although I admit that there is a great deal of truth in much that has been said, and a very considerable amount of truth in what is written in the Retrenchment Committee's Report, I should like to defend on general grounds the railway administration of the past, for I feel that there is no Department of Government perhaps which receives more adverse criticism. (An Honourable Member: "and for obvious reasons.") But one of the things that I was looking forward to doing when I took up this appointment was to try and clear away some of the mud thrown at the Railway Board, and I do hope I shall have a chance of doing so. Now with regard to some of the criticisms that have been recently made, I would like to refer to one point made by Captain Sassoon. He tells us that instead of replacing our worn-out material, our worn-out engines and stock, we should repair them. He says, 'darn your stockings, don't buy new ones.' Well, we have been doing this, Sir, for years, and we know perfectly well that third class passengers in particular are beginning to feel the darns in the stockings,—and that has been the trouble, dating back from the war period particularly. We have things, Sir, not 30 years old like Captain Sassoon's most excellent machinery, we have engines 40 and 42 years old still awaiting replacement. I should rather like to know whether Captain Sassoon does not find that his 30-year old machinery does not cost him more in maintenance than new machinery would. It is an actual fact that a 40-year old locomotive costs very much more in maintenance than a new locomotive does, and therefore you cannot be sure, deferring the renewals of locomotives, that you are not inevitably increasing the cost of maintenance, because locomotives must run and must keep up to the mark, and there, Sir, we come back to this very difficult question of programme revenue. What is programme revenue? We have heard it discussed in many different directions, and I am inclined to think that it is very hazily understood what programme revenue really is. The nature of programme revenue, that is to say, expenditure incurred according to programme on revenue account is purely part of working expenses and part of maintenance and upkeep. But for the purposes of budgeting some years ago, it was considered necessary and advisable to separate this from the ordinary working expenses account. One of the things about railway working is that your working expenses vary, fluctuate up and down in proportion to the traffic moved. Now in budgeting, especially when, as has unfortunately been the case, our railway budget has been dependent very largely on the exigencies of the finances of the Government of India for the particular year, it has been found very difficult in the past to arrange for this fluctuation in accordance with the traffic receipts. It was therefore considered necessary some years ago to separate that portion of the expenditure which does fluctuate with traffic from that portion which does not and which can be programmed, and that is the origin of the expression 'programme revenue'. It is possible to lay down beforehand what shall be renewed and what shall not be renewed and that is why we have this head of programme revenue, because it enables us, by standardizing to some extent the amount of renewals which is to be done year by year, to look ahead and arrange beforehand and set aside a certain amount of money each year which will be used for necessary renewals and replacements. Then, it will be said, how is the figure arrived at? Now in this

connection the Retrenchment Committee, I think, were possibly led away into a misunderstanding of our actual process. We can, as a matter of fact, justify the expenditure which we proposed, viz., 12½ crores. We have estimates and proposals before us sent by the Railways for the replacement of actually worn-out materials, rails and locomotives which are lying there ready to be replaced and waiting to be replaced not strictly in accordance with any life figure as some Members have mentioned. Not because a rail is 30 years old do we take it out of the line; not because an engine is 35 years old do we replace it, but because those rails are incapable of carrying the traffic at the present time, incapable of carrying our heavier engines and the old engines incapable of hauling longer and faster trains. In other words we have got to make our renewal programme to fit the actual requirements of the different Railways. It is perfectly true, as the Acworth Committee pointed out, that there are hundreds and thousands of units of our stock which require immediate replacement, not because they have run an age limit, but because they are really falling to pieces and cost us a great deal in maintenance; and that is the real reason why our maintenance on locomotives and carriages and wagons have gone up during the last few years, because during the war period and for some years after the war, expenditure on these very necessary renewals was scamped and starved. If you see the figures, you will find that we were not able to expend any appreciable sum in past years owing to financial exigencies. It was impossible to carry out the renewals of engines which were worn out and could not haul the traffic. I think perhaps I have explained what is the origin of this programme revenue. You will see, Sir, that the Inchaape Committee's report refers to a certain Depreciation Committee. The object of that Depreciation Committee was to settle and if possible standardise the expenditure in regard to renewals. It was not intended that they should lay down an exact figure to be spent on any individual Railway each year but their investigations were intended to enable us to form a basis for fixing the amount of programme revenue which should be spent year by year in order to keep the Railways up to the mark. I think there is absolutely no disputing the figures which they have produced and which are now under examination. They have investigated into the case of every Railway in India and after careful consultation with the Agents and Engineers responsible, they show that the arrears of renewals can roughly be assessed at about 18 crores of rupees; and they also say that the normal amount to be used in replacing depreciation should be 9½ crores. I just mention these facts to guard against a fallacy. It is said that the arrears of renewals are 18 crores of rupees, that is to say about two years' arrears. Actually the renewals have been many many years in arrears and 18 crores is the accumulation of the arrears of depreciation in many years which actually exists at the present time.

I think, Sir, that I have explained, how we arrived at our figure which we placed in the original budget. You will see that as against the proposal of 12½ crores, it was anticipated that there would be a saving of one crore during this year, that is to say, we anticipated that there were possibilities of effecting that saving owing to the fall in prices or possibly late delivery of materials. We have brought our figure to 11½ crores, and now, as the result of the recommendation of the Retrenchment Committee we have reduced that figure to 9 crores and made a cut of 2½ crores in programme revenue. Now, it sounds very easy to take a pencil and cut 2½ crores, but I can assure you that it is going to be done with the very greatest difficulty and with the greatest detriment to the Railway property. There is

[Mr. C. D. M. Hindley.]
no doubt whatever that you are deferring very necessary renewals which should be made at the present time. We have not done it year after year. During the war we passed it over because we could not get materials and we could not get money; subsequently also there was no money and we could not get on with the work; and it is now getting into a serious liability. What we are doing is that we are living on Capital. We are eking out the existence of our Railways, not replacing the depreciation that has occurred and we are seriously depreciating the asset; and what is much more important is that we are depreciating the earning power of these Railways. We might perhaps stand by and see the Capital book value of the Railways being reduced, but we are very seriously concerned with the possibility of reducing the earning power of certain parts of our Railways; and that is why I appeal very strongly that this House should not make a further reduction on that figure of 9 crores, programme revenue. We have already explained, I think what has been done in regard to staff. Out of the general head of working expenses, where the Retrenchment Committee recommended a reduction of 1 crore, we propose to make a reduction of 50 lakhs. Now, Sir, it is a very difficult matter to effect large reductions in staff at very short notice. The House has to remember that these reductions will have to come into force on the 1st of April. It is not always possible to get rid of men without notice whatever their stage in the service. You must allow a certain amount of latitude when you are getting rid of a man and depriving him of his occupation. I understand that so far as can be done on the Great Indian Peninsula Railway, the men who have to be unfortunately reduced are being given every possible concession in the matter of leave, provident fund or anything that is due to them. Any leave which they have earned is, I believe, given to them as is natural and right. Now, I ask anyone here, is it reasonable to expect that you can sack men on the 1st of April and give them no leave and no concessions? If that is the case, how are you going to allow for "lag" as it is called in connection with these reductions? For that reason, after very serious consideration we kept our figure at 50 lakhs reduction only. I must say that I have been very seriously impressed not only with the Inchcape Committee's Report, but with the criticisms which have been brought forward to-day. I feel on going through the whole of the report and through the whole of these criticisms that there is a feeling, a commercial feeling. I may say, that the Railways should be better managed and that they should produce a profit and that they should pay their way. I do not believe that it is right that you should ask your Railways to give a very large and substantial relief of general taxation. I believe you should be content to have your Railways paying their way as an ordinary commercial concern, and it will be our business here to carry out as far as we can those recommendations. I gather that Honourable Members do understand how we have arrived at the figures and there is no necessity for me to go further into the figures, but I would rather take advantage of a suggestion made, I think, by Mr. Shahani and Mr. Kamat, that in the event of earnings improving during the year,—as I am optimistic enough to believe they will prove—that it will not be made difficult for us to come forward for an additional grant to meet the necessary working expenses which must arise when greater traffic is being carried. On that understanding, I am prepared on behalf of Government to accept the recommendation made by Sir Deva Prasad Sarvadhikary that the total figure of working expenses should be reduced by 50 lakhs. We shall do our level best to carry out that reduction, though in my opinion it is not a wise thing to do at the present moment. We will do

our best to carry it out, and I may claim that it should be left to me, to the Railway Department, to decide how we should make the incidence of that cut fall. With these words, Sir, I oppose Mr. Ginwala's motion and accept Sir Deva Prasad's amendment.

Mr. P. P. Ginwala: Sir, I want to ask a question. Did I understand the Honourable Member correctly when I heard him say that he had cut down 12 crores 50 lakhs in the estimate to 9 crores in the programme revenue, and that he had effected a saving of half a crore in the staff?

Mr. C. D. M. Hindley: In ordinary working expenses.

Mr. P. P. Ginwala: 3½ crores plus half a crore?

Mr. C. D. M. Hindley: 2½ crores in programme revenue. It stood at 11½ crores and it is cut down to 9. I am talking about the present budget figures.

Mr. President: The original question was:

"That a sum not exceeding Rs. 64,47,79,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Railways'."

Since which an amendment has been moved:

"That the provision for working expenses under the head 'Railway' be reduced by Rs. four crores."

Further amendment moved:

"Substitute the words 'fifty lakhs' for the words 'four crores'."

The question is that that amendment ("Substitute the words 'fifty lakhs' for the words 'four crores'") be made.

The Assembly divided:

AYES—67.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abul Kasem, Maulvi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Aiyar, Mr. A. V. V.
Aiyer, Sir P. S. Sivaswamy.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Barua, Mr. D. C.
Bhanja Deo, Raja R. N.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Brayne, Mr. A. F. L.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Iswar Saran, Munshi.
Jamall, Mr. A. O.
Jannadas Dwarkadas, Mr.
Jejeebhoy, Sir Jamsetjee.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Schamnad, Mr. Mahmood.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Sircar, Mr. N. C.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Yamin Khan, Mr. M.

NOES—27.

Abdul Majid, Sheikh.
 Abdulla, Mr. S. M.
 Agarwala, Lala Girdharilal.
 Asjad-ul-lah, Maulvi Miyan.
 Ayyangar, Mr. M. G. M.
 Ayyar, Mr. T. V. Seshagiri.
 Bagde, Mr. K. G.
 Basu, Mr. J. N.
 Das, Babu B. S.
 Faiyaz Khan, Mr. M.
 Ginwala, Mr. P. P.
 Girdhardas, Mr. N.
 Gulab Singh, Sardar.
 Jatkar, Mr. B. H. R.

Lakshmi Narayan Lal, Mr.
 Mahadeo Prasad, Munshi.
 Man Singh, Bhai.
 Mudaliar, Mr. S.
 Neogy, Mr. K. C.
 Pyari Lal, Mr.
 Shahani, Mr. S. C.
 Singh, Babu B. P.
 Sinha, Babu Ambica Prasad.
 Sinha, Babu L. P.
 Srinivasa Rao, Mr. P. V.
 Subrahmanayam, Mr. C. S.
 Venkatapatiraju, Mr. B.

The motion was adopted.

Mr. President: The question is:

"That the provision for working expenses under the head 'Railways' be reduced by 50 lakhs."

The motion was adopted.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock. Mr. President was in the Chair.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muhammadan Rural): Sir, my amendment as amended again runs as follows:

"That the provision for Working Expenses under the head 'Railways'"

Mr. President: We have passed from Working Expenses; that is finished.

Mr. N. M. Joshi: I have an amendment for cutting down the Working Expenses by one rupee.

Mr. President: We have had a whole morning's discussion on Working Expenses; that subject is now exhausted.

Mr. B. Venkatapatiraju: I had not an opportunity of speaking; I got up ten times as I wanted to speak on the general question.

Mr. President: Mr. Venkatapatiraju, No. 134.

Mr. B. Venkatapatiraju: I move:

"That the provision for Surplus Profits under the head 'Railways' be reduced to Rs. 65,00,000."

That point was raised because the Inchcape Committee at page 293 of their Report suggested that the amount might stand at that figure. Now, I propose to raise the question of principle instead of sticking up to that figure, because Surplus Profits have to be paid to the Companies under the terms of the contracts, and you cannot go beyond the terms of the contract, and the terms of the contract with reference to various companies differ, though we deplore the necessity for the Government to enter into different methods of agreeing to give surplus profits. For instance, I may

mention that surplus profits were given in this wise. For the East Indian Railway, four-fifths of the Surplus Profits up to Rs. 25 lakhs, to the Government and one-fifth to the Company; in excess of 25 lakhs, fourteen-fifteenths to the Government and one-fifteenth to the Company. In the case of the Great Indian Peninsula Railway the Surplus Profits are divided as follows: nineteen-twentieths to the Government and one-twentieth to the Company. Similarly, with reference to other companies the profits are divided in the proportion of four-fifths and one-fifth. In the case of the Bengal-Nagpur Railway it is in the proportion of three-fourths and one-fourth and in the case of the Burma Railway three-fourths and one-fourth. My point is this, I was not able to understand why this excess amount was fixed in the present estimates, whereas at page 293, the Inchcape Committee suggested only 60 lakhs. Either they were not in possession of the figures or perhaps a larger amount is expected to be realised in the working of the current year. They wanted to provide 98 lakhs in order to give a margin over 60 lakhs provided in the Inchcape Committee's Report. I suggest 65 lakhs might be put in.

With reference to the Surplus Profits, Sir; I want to bring to the notice of the Government whether the terms of the contracts are properly scrutinised before the amounts are allowed under the head of Surplus Profits. The terms of the contracts are clear that the permanent way and rolling-stock should be maintained in good repair and that this should be met out of the gross receipts, that is out of the working expenses. If that amount is not realised, how can you take it under Surplus Profits and divide it between yourself and the Companies? So far as you are concerned, you need not think you are making a good bargain by taking it, because you have to pay interest and all the profits you are realising fall short of the interest. For instance, in the case of 8 companies out of 12 you have lost 20 crores and this year you propose a loss of 5 crores on these 8 companies. After all, you speak of a commercial concern, but how can this be when the nine-tenths shareholder loses. We do not grudge this division of Surplus Profits in the case of companies who are trying their level best to secure some profit to us, but what I say is, when you have allowed a profit, do you first of all see that renewals which ought to be maintained under the terms of the contract are really maintained by the companies instead of asking us to pay for this out of our revenues? If you put it under renewals it would come under general revenues because you may take it under the Capital Account. But what I want to show is that, in order to give Surplus Profits, you must provide for repairs and maintenance of the rolling-stock. Where you have paid, you are not doing any justice to yourself but doing unnecessary generosity in favour of the companies. During the period of the war, when repairs and maintenance were not properly maintained, because I want to use the words specifically, repairs and maintenance distinguishing them from renewals, i.e., to provide any fresh article or new addition the expenditure must be met out of the capital funds. Therefore, I do not take up that course. I would only concern myself with repairs and maintenance of the rolling-stock and permanent way which should be kept in proper condition. When you have not done that during the period of the War you have been satisfied in dividing this amount with the Companies even to the extent of giving 1 crore and 4 lakhs year before last; and last year you provided 60 lakhs. Not satisfied with that you are providing 98 lakhs. Now I suggest to you, Sir, in the evidence given before the Aoworth Committee some member stated this surplus profit is not properly earned at all. It is not commercially earned. It is true you may literally fulfil the terms of

[Mr. B. Venkatapatiraju.]

the contracts by stating whatever amount that is not actually spent on repairs and maintenance of rolling stock and permanent way might go towards surplus profits beyond the guaranteed interest, 4 or 5 per cent. and interest on the capital outlay according to the circumstances of the case. Now I ask if that course is adopted whether the Government is not a loser on that account, whether the Government was not to pay a larger amount as surplus profits because the Government supervision has not been effective in order to see that the amount is properly spent on repairs. If you cannot spend it, as suggested by Lord Inchcape, you keep the amount in suspense, because you cannot divide the profits without meeting the necessary obligations which were entered into under the contract, and therefore, Sir, I would ask for an explanation from Government. Lord Inchcape's Committee suggested 60 lakhs. Why have you put it at 90 lakhs when you have suggested 66½ lakhs surplus profits on 92 crores gross receipts; why have you put it at the higher rate of 98 lakhs on gross receipts of 95½ crores. Secondly, whether during all these years repairs and maintenance have been carried on as per contract, and where they failed to carry them out, what steps were taken by the supervising authority to see that Government did not lose on that account. I want an explanation, and therefore unless I am satisfied on these points I wish it to be reduced to the figure of 65 lakhs.

Mr. C. D. M. Hindley: Sir, I can quite see that the figures put before Honourable Members may perhaps have given rise to a certain amount of misapprehension. As I mentioned this morning, the figures taken by the Retrenchment Committee are those of the Budget estimate for 1922-23 where will be found the figure of 60 lakhs for surplus profits paid to Companies. The Retrenchment Committee naturally did not propose any alteration in this figure, but I must point out that under the obligations of our contracts with these companies surplus profits are calculated by a definite formula which was laid down in each contract. To arrive at the surplus profits for these Companies we take the gross earnings and then we deduct from the gross earnings the working expenses (working expenses including all outgoings on maintenance and renewals). From that net figure, again, has to be deducted the standing charges in respect of interest on debentures and interest on the Company's share capital. We thus get at a net figure which is divided in a fixed proportion laid down under the contract between Government and the Company.

Now these contracts were made at various periods of our history. Some of them date back a great many years; some of them have been made comparatively recently; but all of them have been made with due consideration at the time to the market value of money and to the value of the property which the Company was taking over and the value of the services which Government was receiving. After the most careful consideration every one of these contracts has been prepared and in no case is the Company obtaining a larger share of the profits than is its due. With those contracts, therefore, before us, the amount which has to be paid is naturally an obligation on Government and one which cannot be avoided. We are told that we must run our railways on a commercial basis. One of the first principles of sound commerce is to honour your contracts, and we cannot avoid these demands which have been calculated, or will be calculated, on the actual net earnings received by the Companies. Now Honourable Members will see quite clearly that if the gross earnings remain

untouched at the same figure we propose, and if the working expenses, including renewals, are reduced by a large figure, the net earnings on each railway will be largely increased and therefore, applying the formula in the contract, the surplus profits to each company will also be largely increased. That is the explanation of the change from 60 lakhs in the second column of this statement to 98 lakhs. In the last column 98 lakhs represents the best estimate we can obtain of the surplus profits that will be due to the Companies under their contracts. With this figure of gross earnings and this figure of working expenses as the result of the further cut which we have agreed to this morning, I anticipate that there will be some further increase to the surplus profits which we may have to pay to these Companies in the same proportion.

I have said that the surplus profits of each railway administration, arrived at in the way I have described, that is to say, by deducting the working expenses from the gross earnings and then applying the proper proportion between the Government and the Company, vary in many cases in accordance with the different contracts that have been made from time to time. To illustrate how this division is arrived at I can quote one or two figures. In the case of the Bengal Nagpur Railway, for instance, the surplus profits, the Company's share of surplus profits is 5.65 lakhs; the estimated Government share is 52.5 crores. In the case of the East Indian Railway the Company's share is estimated at 8 lakhs; the Government share at 239.22 lakhs. In the case of the South Indian Railway, the Company's share is 1.98 lakhs, the Government share 30.18. And so on. So that the House will see that the Companies are not getting a very large or disproportionate share of the profits earned.

With this explanation, Sir, I hope my Honourable friend will be satisfied that we cannot do otherwise than pay the amounts that are due under their contracts to those Companies.

Mr. B. Venkatapatiraju: What about repairs and maintenance?

Mr. C. D. M. Hindley: The Honourable Member, I think, raised a further point about whether these Companies have in fact repaired and carried out the necessary replacements to their property.

Mr. B. Venkatapatiraju: Under the terms of the contract. They must be met out of surplus profits.

Mr. C. D. M. Hindley: The Honourable Member desires to know whether the property has actually been kept in proper repair under the terms of the contract. That is so, Sir, in so far as Government has been able to finance them; but I must make it perfectly clear that there were periods when the finances available for these operations were not sufficient, and we are now reaping the harvest in the heavier depreciation expenses which we have got to meet.

Mr. President: I find from a note in front of me that the Honourable Member intended to move a reduction by Rs. 100 and not Rs. 33 lakhs. Which does he really wish?

Mr. B. Venkatapatiraju: Rs. 100, Sir.

The motion that the provision for surplus profits under the head Railways be reduced to Rs. 65,00,000 was, by leave of the Assembly, withdrawn.

Mr. K. O. Neogy (Dacca Division: Non-Muhammadan Rural): I am perfectly aware, Sir, that the obligation under the contracts with the different railways cannot be avoided in regard to the payment of surplus profits . . .

Mr. President: The Honourable Member had better move his motion for reduction by Rs. 100 to put the discussion in order.

Mr. K. O. Neogy: I move:

"That the provision for Surplus Profits paid to Companies under the head 'Railways' be reduced by Rs. 100."

I began by saying that we cannot possibly avoid the obligation that the contracts have created; but it is quite clear from the statement that Mr. Hindley has made just now that the surplus profits have a sure tendency of increasing by postponement of legitimate repairs. That postponement may be due to avoidable and unavoidable causes. So far as the war period was concerned, I recognise that the postponement was inevitable to a certain extent. But Mr. Hindley was not certainly right when he said that this was a necessary incident of the war period and the war period alone. I would draw his attention to the observations made by the Acworth Committee to the effect that this aspect of railway policy has been in existence from before the war. If the Honourable Member will turn to paragraphs 70 and 71 of that Report, he will find what the Acworth Committee has had to say on this question. They observe:

"The Great War is an explanation, if not an excuse, for many particulars which no one would defend under normal circumstances. We cannot think that even the war is sufficient to explain the treatment of Indian railway revenue in the last few years At an early stage of the war it became difficult to obtain from Europe the customary supplies. Later on it became practically impossible. The inevitable result was that maintenance and renewals fell seriously into arrears from 1914 to 1918."

In the foot-note on the same page they say that the policy of undue postponement of revenue renewals, which in fact has meant taking as net revenue money that should properly have been treated as working expenses, is of long standing and not merely the result of the exigencies of the war period. So I should like to correct Mr. Hindley on this point.

Then, Sir, I propose to place the comments of the Acworth Committee on this aspect of the railway administration. They say:

"Obviously the expenditure was only postponed and had to be faced later on. An ordinary commercial concern"

(mark that, because too much is sometimes made of the commercial principles on which an administration like the railway administration should be run when we ask for any reduction)

"An ordinary commercial concern would as a matter of course have carried the money so underspent to a reserve for renewals, to be spent when the materials were again available. The independent railway companies did this. Not so the State. The money was treated as part of the ordinary revenue of the Government in the year in which it was not spent. . . . The apparent gain was not real. Had there been a separate railway budget the money underspent would have been earmarked in it as advanced to the Government for general purposes. It was indeed announced at one time that a reserve was being made, or would be made. The end of the war has come, and the money is not there; other liabilities had been too strong for the Government of India and so the reserve fund vanished"

Mr. President: The money is not there and is not included in the vote.

Mr. K. O. Neogy: Sir, connected with the question of surplus profits is the question of the creation of a depreciation fund. The question is whether any company or the Government have a right to credit to their

general revenues or to their surplus profits any amount that ought to be kept aside in a depreciation fund with which to meet any deferred renewals which could not be carried out by reason of any exigencies of the moment. That is the point that I wish to make. Now, Sir, I will ask Honourable Members to bear with me for a few minutes. As early as 1917 Sir Hugh Bray raised this question in the old Imperial Council. He pointed out that the railways were making a great deal of money and they were putting by no reserve and at the end of the war, when it was possible to spend money it might be difficult to get hold of that money. In 1918 we find the Honourable Sir William Meyer provided a special reserve of Rs. 30 crores for this particular purpose; but two years later the Honourable Sir Malcolm Hailey replying, I believe, to Mr. Crum, said that this amount went to increase the Secretary of State's ordinary ways and means balances, and in the evidence which Sir William Meyer gave before the Acworth Committee he said that this special reserve was raided by reason of the exigencies of the exchange situation created by the policy of Reverse Council Bills. This, in brief, is the history of the reserve that was actually provided by Sir William Meyer, and which is no longer there. Now, Sir, what about the share of the surplus profits that has been appropriated by the companies, a share which does not legitimately belong to them, a share that was swelled by reason of the postponement of renewals during the war period? They have been divided as dividends to the shareholders of the British companies. Sir, I want to inquire whether it is not possible to get the companies to make a refund of the excess amount which they got over the amount which belonged to them legitimately. It has been observed in the Inchcape Committee's report that the taxpayer in India received the benefit of the postponement of these renewals during the war period. I am afraid I have to join issue with the Inchcape Committee on this point, because I have shown that although the revenues of the Government were swelled at that time by reason of the postponement of renewals, the tax-payers have not been benefited; in fact, we are asked to foot a much larger Bill in the shape of programme revenue expenditure to-day than would have been the case if we had a reserve at our disposal to-day. Apart from this the spurious appearance of prosperity which this unspent amount gave to the general revenues of the Government of India, proved an excuse for raising salaries all round, and incidentally also lured us into a false sense of security under which we made a special war contribution of £100 millions to England.

Mr. O. D. M. Hindley: Sir, my Honourable friend, Mr. Neogy, has used in the course of his speech a good many of the portions of the Acworth Committee Report which I had marked in blue pencil to substantiate the position I took up this morning in regard to renewals. I am very grateful to him for bringing before the House this particular point that deferring renewals on railways is only deferring a liability. I think my Honourable friend was one of those who joined this morning in making a further cut in what we call programme revenue, which is, in effect, his depreciation fund which he wants us to put by. As regards the past, I quite agree with him, and I do not think that he had any reason for contradicting me in anything that I said, in fact I think we are quite in agreement that this process of deferring renewals on account of financial exigencies has been going on for a much longer time than from the war period. In fact, I have reason to believe that this portion of the Acworth Committee's Report was very largely based on the evidence which I myself gave to the Committee. I am glad to find myself for once so much in agreement with Mr. Neogy,

[Mr. C. D. M. Hindley.]

but I cannot agree with him when he suggests that we should go to the shareholders of these companies hat in hand and say "give us back some of your surplus profits." (*An Honourable Member*: "Writ in hand and not hat in hand.") Well, Sir, I do not think even a writ would be productive; and what is more, it would not be just because they were compelled by the financial exigencies of the Government of India to withhold expenditure on these necessary renewals. That, Sir, was the particular point of my evidence before the Acworth Committee. As a company's officer, I felt acutely that the Government of India in those days was benefiting the general tax-payer at the expense of the Railways by withholding the necessary funds for renewals and repairs, and I am extremely sorry that that process is now being continued owing to the financial exigencies of the current year. It is, therefore, not fair to blame those companies and those shareholders for taking their just dues under the contracts.

Another point arises in regard to that, Sir. As the Honourable Mr. Innes pointed out this morning during the past few years the tax-payer has benefited by 47 crores of rupees derived from railway surplus profits. I am not in a position to give the exact proportion of those surplus profits which have gone to the shareholders, but it must be, from the figures I gave you a few minutes ago, a very much smaller figure than that. Now, the position we have arrived at is that the general tax-payer has benefited at the expense of the depreciation of the Railways, and that was exactly the point which I wished to make this morning but unfortunately the Clock did not permit me to make all the points that I wanted to make. By cutting down the necessary provision for renewals which I know are required actually, we are deferring the liability and benefiting the tax-payer at the expense of your capital invested in the Railways.

Dr. H. S. Gour: (Nagpur Division: Non-Muhammadan): Sir, the Honourable Mr. Hindley has not appreciated the true import of the Honourable Mr. Neogy's charge against the Government. What he wanted to point out was this, that all the earnings of the Railways are treated as gross earnings. You deduct therefrom the working expenses which consist of the actual cost of the maintenance of the Railways and what is known as programme revenue which, in popular terms, may be called repairs and maintenance. The residue left is called profits, and it is apportioned between the companies concerned and the Government. What Mr. Neogy wanted to accuse the Government of was that during all these years you have not been setting aside out of the working expenses a definite portion for repairs and maintenance but have been transferring this amount to your net profits which are divided between yourself and the companies concerned. What is the reply of the Honourable Mr. Hindley? He says the general tax-payer has benefited at the expense of the depreciation to the tune of 45 or 47 crores of rupees. But my Honourable friend could not have forgotten that the Railways belong to the general tax-payer and what was paid to the tax-payer was his own money. My Honourable friend must not also forget that in the Acworth Committee's Report, it has been very clearly pointed out that many of the companies, for instance, the East Indian Railway and the Great Indian Peninsula Railway, are really no companies at all in the right sense of the term, and therefore when you apportioned the general net profits and gave them over to the companies, you gave them money which was not justly due to them. I will go further and say that even if you benefited the general tax-payer, you did so at the cost of the railway concerned. It was your duty to see that the amount set apart

for repairs and maintenance was not diverted to another purpose, and that is what Mr. Neogy complains of. In the long series of years, not merely during the war but in the years preceding the war and since, you have been sacrificing the amount intended for depreciation, for repairs and maintenance, and you have been transferring it to net profits and dividing it between yourself and the companies concerned. What justification had you for this course of action? That is a point on which my friend Mr. Hindley has vouchsafed no reply to this House, and I submit that is the gravamen of the charge levelled against the Government by the Honourable Mover of this amendment.

Rai Bahadur Bishambhar Nath (Allahabad and Jhansi Divisions: Non-Muhammadan Rural): Sir, I find that the working expenses of the Indian Railways have risen from 29.35 crores in 1913-14 to 67.99 crores in 1922-23. The percentage on this has been 131 per cent. on maintenance, 125 per cent. on locomotives, 235 per cent. on carriages and wagons and 136 per cent. on special and miscellaneous expenditure. These charges are serious and call for a searching inquiry. It is surprising that the cost of the same or similar works . . .

Mr. President: The Assembly has passed from the discussion on working expenses, and it is now discussing an amendment on Surplus Profits.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I would give a simple answer to my friend, Dr. Gour. If the tax-payers have taken that money out of Railways, we in our last year's estimates made amends for that. We not only voted 30 crores last year, we altogether voted 150 crores for five years. So whatever we may have taken out of railway revenue we are now refunding and a substantial portion of that 150 crores will surely be appropriated for renewal purposes. We have now made ample amends for appropriating railway revenue for general purposes.

Dr. H. S. Gour: Sir, I rise to a point of order. I think I made myself perfectly intelligible that I did not complain of the tax-payers receiving back their money, but what I do complain of is that the companies have received money to which they were not entitled.

Mr. J. Chaudhuri: As for that the Limitation Act would also stand in the way. If this was done three years ago, of course, we cannot sue the shareholders and get a refund. So, the only reasonable course left to us would be to keep the railway accounts now in proper order and allow for depreciation and build up a reserve; that will accomplish the object the Mover of the amendment has in view.

The Honourable Mr. C. A. Innes: Just one word, Sir. I do not think there is anybody on the Government Benches, Sir, who will quarrel with what Dr. Gour has said. I think we all admit that the methods adopted during the war were unwise methods and we are paying for them now. We are all perfectly conscious that during the war we should not have paid away these large sums as windfalls to the general tax-payer and as surplus profits to the companies. The general tax-payer benefited and in accordance with the terms of the contracts the shareholders also benefited. It is merely a matter of the contracts. The only two points which seem to me relevant at the moment are these. In the first place it is no use crying over spilt milk and it is no use trying to recover this money from the shareholders. The other point is that it is up to us to see that we do not make

[Mr. C. A. Innes.]

this mistake in the matter again. That is the very reason why we are taking this advice of the Central Advisory Council. We set this Committee to work out proposals for a depreciation fund and those proposals have been approved in principle by the Inchcape Committee in paragraph 7 of their report. If we adopt these proposals I do not think that the House will in future have cause to complain against the Government of India in this manner.

The motion was, by leave of the Assembly, withdrawn.

Sir Montagu Webb: Sir, I rise to a point of order. In the Demand for Grants which has been placed before this House, Annuities in purchase of Railways is shown under the head of "non-voted." But I have been unable to discover, Sir, why this has been done. I find that according to clause 67A of the Government of India Act that "the proposals of the Governor General in Council for the appropriation revenues or monies relating to the following heads shall not be submitted to the vote of the Legislative Assembly" and the only one of those heads that has any resemblance to this particular Demand for annuities is "Interest and Sinking Fund Charges on Loans." I submit, Sir, that this is not an interest or sinking fund Charge on Loans. This is purchase money which is being paid by Government for certain railways, and, that being so, Sir, I am unable to discover why this House should not express its views on the Demand for that purchase money which does not appear to be debarred under section 67A of the Act.

Mr. N. M. Joshi: On the point of order, Sir, I would like to draw your attention to the last year's budget statement, in which part of the annuities was shown to be votable, that is, these 167 lakhs of which I have given notice. I put that figure especially because I found from last year's budget statement that that item of 167 lakhs was shown as votable. I do not know what has happened in the meanwhile to make that item not votable. As a matter of fact that item of 167 lakhs 87 thousand appears in this year's statement also as Members will notice if they look at Appendix B, State Railways. And this same figure was shown in last year's budget to be votable. I therefore think that there must be some mistake in this.

The Honourable Sir Basil Blackett (Finance Member): Sir, as regards the last point, taking it first because it is quite a simple question of fact, last year exchange was not distributed under the various heads voted and non-voted, but was taken as a single voted head. This year exchange has been distributed under each item. The item which therefore appeared as voted last year was really the exchange on this non-voted item of sinking fund and is now properly included as non-voted.

As regards the main point as to whether this is properly a non-voted charge, it seems to me rather far-fetched to say that an annuity which is an interest *plus* a sinking fund is not an interest and sinking fund charge. (Sir Montagu Webb: "On Loans.") On the general principle on which this interest and sinking fund charge was treated as non-votable, the procedure was based quite clearly on the procedure in the United Kingdom, where consolidated fund charges are not submitted to the actual vote of the House for the specific purpose of making it quite clear to the creditors of the State that sums which are due to them are not liable to run the gauntlet every year of voting in the House. But I would submit further that

whatever the merits of the question on which I think there is no doubt, though certain Honourable Members seem to think there is doubt, section 67A (iv) of the Act, which has been quoted, says:

"If any question arises as to whether any appropriation of revenue or money which is made does not relate to the above heads, the decision of the Governor General on the question shall be final."

And it is in accordance with the directions of the Governor General that this has been included as non-voted.

Dr. H. S. Gour: May I ask the Honourable the Finance Member whether it is in accordance with the general directions of the Governor General that this has been transferred to the non-votable items or whether that is a decision of the Governor General?

The Honourable Sir Basil Blackett: This has not been transferred. It is a non-votable item.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I want to point out to refresh the memory of the Members on the Government Benches that last year we had the precedent of this item being discussed in this very House. I myself raised the point and the Honourable Sir Malcolm Hailey then made a speech and gave an answer to the arguments that had been advanced in the debate. If an item has been admitted as discussable by this House in one year, I do not see how the Governor General, in spite of the powers vested in him, can in the next year rule that that item should be a non-votable one.

The Honourable Sir Basil Blackett: Sir, I think the Honourable Member is mistaken in thinking that this question of the annuities was discussed last year at this stage of the budget. It was discussed in the general discussion, and again this year, on the budget. Therefore, because under the specific directions of the Governor General it was submitted for discussion on the general budget, I submit that it is not in order now.

Mr. Jamnadas Dwarkadas: It was not in the general discussion, Sir, but in the discussion of demands for grants that this item was discussed. If I had the debate here I could at once find

The Honourable Sir Basil Blackett: I submit, Sir, that this does not really affect the question.

Mr. President: The explanation given by the Honourable the Finance Member why the item appears under one head this year and under another head last year disposes of the matter. And in any case, as he has pointed out, the Governor General is the authority concerned and not the Chair. The point of order is one which cannot be settled by the Chair. I must assume that, with the exception of printer's errors, items printed in italics are non-votable.

Mr. Jamnadas Dwarkadas: Is precedent not a sufficient ground for the House to insist on discussing this item? It was discussed last year.

Mr. President: I take the explanation given by the Honourable Sir Basil Blackett, that it appeared in one column last year and in another this year, as sufficient. Does the Honourable Member mean that if one mistake was made, it ought to be repeated?

Sir P. S. Sivaswamy Aiyer (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I concede that if a question has been raised whether a certain proposed appropriation of revenue does or does not relate to the above heads, the decision of the Governor General on the question is final, however patently absurd it may be. But does not clause 4 imply that there should have been a question raised? Does it or does it not mean that a question has been raised, and that on the question so raised, the decision of the Governor General has been pronounced? Now I do not think it can be fairly contended that before any question arises the Governor General can pronounce a binding decision. Nor can I believe that this question could possibly have been submitted to the Governor General in anticipation and a decision obtained from him, before any question at all was raised. It seems to me that the finality declared by clause 4 postulates the previous raising of a question and the deliberate application of the Governor General's mind to a specific question duly raised. May I know when the question arose and when it was submitted to the Governor General for his decision?

Dr. H. S. Gour: Sir, I wish to raise another point in that connection. If you see section 67A, clause (5), you will find that it lays down the general rule that the proposals of the Governor General in Council for the appropriation of revenue or monies relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants. That, Sir, is a general rule. Then we have the exception. The exceptions are specified in the above heads. These are clauses (1) to (5). Now, therefore, we come back to clause (1). Clause (1) lays down 'interest on sinking fund, charges and loans.' My Honourable friend, the Finance Member cannot contend that an annuity is a loan.

The Honourable Sir Basil Blackett: I do.

Dr. H. S. Gour: He says he does. I submit that is a matter upon which a question has arisen between himself and the Members of this House, and the decision under clause (4) must be of the Governor General. Therefore, I submit my Honourable friend, Sir Montagu Webb's motion cannot be ruled out of order without a decision of the Governor General.

Mr. President: These demands are presented on the authority of the Governor General. I must assume from the point of view of the Chair that they have not been presented behind the back of the Governor General.

Dr. H. S. Gour: With due respect to the Chair, the directions and general control of the Governor General is one thing,—a decision on a specific point raised under clause (4) is quite another thing, and I submit there is no decision; and does my friend contend that he has ever taken the decision of the Governor General as required by clause (4) of section 67A? I ask him to answer that question.

Rao Bahadur T. Rangachariar: As this is a point of law which has been raised, I may draw your attention, Sir, to clause (2) also of section 67A, that is, sub-clause (ii) of clause (3), that is, 'expenditure of which the amount is prescribed by or under any law.' Under section 20 of the Government of India Act the revenues of India shall be received for and in the name of His Majesty and shall, subject to the provisions of the Act, be applied for the purposes of the Government of India alone. There shall be

charged on the revenues of India all the debts of the East Indian Company—clause (3) is important in this connection—all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India. Under that clause, this sum, which is allotted really for the payment of this debt, for the purchase of railways, will come under sub-clause (ii) rather than under sub-clause (1), and therefore it may be rightly regarded as having been put under a non-voted head. As regards clause (4) of section 67A, there is a preliminary condition, Sir, that a question should arise. I am not sure that any question arose between the Honourable the Finance Member and His Excellency the Governor General with reference to this matter. A question should arise, and then only His Excellency has to decide. Before any question arises, there can be no decision. 'If any question arises'—that is a condition precedent: unless therefore this comes under sub-clause (ii), this should not be rightly placed under a non-voted head. My own feeling is that it comes under sub-clause (ii).

The Honourable Sir Basil Blackett: Sir, my Honourable friend, Mr. Rangachariar, points out, if this does not come under section 1, it does come under section 2, which is 'expenditure prescribed by an Act of Parliament.' As regards the other point that was raised, the whole of the question as to what should be voted and what should not be voted in the Demand Grants was specifically raised and studied, and it is under the orders of the Governor General that the classification now shown in these estimates takes place. The specific question as to whether these particular annuities should or should not be included as non-voted has not to my own knowledge been raised in the form of a question by anybody where there was any doubt on the subject,—I myself do not admit that there is any doubt—but the general point was raised, and these particular annuities were included under the orders of the Governor General as non-voted.

Dr. H. S. Gour: I think the Honourable the Finance Member could not be unaware of the fact that though the exception is 'of which the amount is prescribed by or under any law', the amount we are concerned with here is 3 crores and odd. Surely no Act of Parliament has prescribed the payment of this amount, and therefore clause (2) is entirely outside the question. If it comes under any clause, it would come under clause (1), and I submit it does not come under clause (ii), and there is no decision of the Governor General as provided in clause (4).

The Honourable Sir Basil Blackett: Sir, Dr. Gour is mistaken as regards the second point.

Mr. President: The discussion must necessarily be fruitless if Honourable Members think that they can obtain a decision from the Chair. If there is a point really in doubt, the decision rests with the Governor General and with nobody else.

The Honourable Sir Basil Blackett: It is not exactly in accordance with the facts to say that it appeared as voted last year; a portion of it, that is, the exchange portion, appeared as voted, but the main portion appeared, and always has appeared, as non-voted.

Mr. Jamnadas Dwarkadas: A crore and 60 lakhs appeared as votable.

Mr. President: The Honourable the Finance Member stated last year—if Honourable Members will look at page 3129 of the Assembly Debates,

[Mr. President.]

Volume II, (Part III), that the "total sum given there as annuities for purchase of railways is Rs. 5 crores and odd, and that it consists of two items: Rs. 1 crore 67 lakhs, which represents the exchange portion"—that has now been transferred?

The Honourable Sir Basil Blackett: Yes. It is a sterling sum of course.

Mr. N. M. Joshi: Sir, I move:

"That the provision for Miscellaneous Railway Expenditure under the head 'Railways' (page 29) be reduced by Re 1."

My object in moving this motion for reduction is to raise two or three points as regards Railway management. Sir, if it be permissible for me to do so, the first point I would raise is that of the annuities. These annuities are being paid by the Railway Board from our revenues instead of making it Capital expenditure. Sir, this method of wiping out our Capital is a wrong method altogether, and in order to show that it is a wrong method, I shall quote one authority. Sir Henry Kimber in his evidence recorded at page 146 of the Report of the Indian Railway Committee, 1921-22, states:

"The principle of converting debt into terminable annuities is quite legitimate and a good plan for any nation to adopt as regards its national debt, but it is quite otherwise to apply it for writing off a valuable asset."

Sir, by this method the Railway Board is wiping out a very valuable asset and, as I stated in my speech during the general discussion of the Budget, if you wipe out your Capital, naturally you reduce the incentive for the Railway Board to economise the working expenses. I therefore feel that this House should express its opinion on this point by adopting my motion. The second point that I wanted to raise was about the sinking funds. Sinking funds are also debited to Revenue account instead of being debited to Capital account.

The Honourable Sir Basil Blackett: On a point of order, sinking funds are also a non-voted item. Is the Honourable Member in order, Sir, in discussing it?

Mr. President: I called on the Honourable Member to move motion No. 140.

Mr. N. M. Joshi: My motion is for reducing rupee one which should come out of the expenses of the Railway Board which manages our Railways. I thought in discussing the expenses of the Railway Board it would be a matter of principle for this House to give certain directions to the Railway Board as to how they should manage their financial affairs, and I therefore thought that I could therefore speak on this point. But still if you rule that I cannot make a speech on that point, I shall turn my attention to another point. Am I in order, Sir?

Mr. President: The Honourable Member is entitled to move Reduction No. 140, Miscellaneous Railway Expenditure, which includes the Railway Board.

Mr. N. M. Joshi: Sir, the Railway Board also pays the sinking funds out of our revenues.

Mr. President: The Honourable Member cannot move that. If he will look at the order issued by the Governor General in Council, he will find that the heads of expenditure specified in sub-section (3) of section 67A of the Government of India Act shall be open to discussion by the Legislative Assembly when the Financial Statement is under consideration, that is on the first two days of the General Discussion, and not on the Demand for Grants.

Mr. N. M. Joshi: Then, Sir, I shall turn my attention to another matter of principle. It is this.

Mr. N. M. Samarth: That clause says, Sir:

"That the proposals of the Governor General in Council for the appropriation revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either Chamber."

This means discussion by both, this and the other Chamber, which latter has no power to vote; and it goes on:

"at the time when the annual statement is under consideration, unless the Governor General otherwise directs"

This cannot mean that we cannot discuss non-votable items at the time of the voting of grants. I submit that we are voting on the general head 'Railways,' and if anybody proposes a reduction of the demand by one rupee, we can go into the whole question as to the whole expenditure on Railways whether votable or non-votable. I submit we are quite entitled to do it. We shall vote upon whatever is submitted to our vote. That does not mean we are prevented from discussing the whole question of Railway Administration. That is my submission, Sir.

Mr. N. M. Joshi: May I also on the point of order state that during last year's budget discussion, we voted on a motion for the reduction of the establishment of Army Department by rupee one. If that could be voted upon and discussed in the House, I do not know why this should not be discussed.

Mr. President: The Honourable Member stated that reduction was made in a non-voted item. I am quite sure that the Honourable Member did not move for a reduction in the non-voted item. The Honourable Member is now attempting to move a reduction in a non-voted item, though in the disguise of a votable item. As I have said, the order of the Governor General referred to the general discussion of the Budget in the first two days. The Demands for Grants do not include the non-voted items. They only include the votable items.

Dr. H. S. Gour: May I in this connection point out that a question of this character can only arise after the estimated annual expenditure and revenue are laid in the form of a statement before both Chambers of the Indian Legislature? [Section 67, clause (1).] Consequently, the question as to whether a certain specific item is votable or non-votable cannot arise unless the estimated annual expenditure is laid before this House and then a question is raised and a decision come to by the Governor General. I submit, therefore, Sir, that both Sir Montagu Webb's and Mr. Joshi's amendments are in order unless a question is raised by the Honourable the Finance Member and a decision obtained from the Governor General as provided in clause 4.

Mr. Jamnadas Dwarkadas: Sir, I think what Mr. Joshi wanted was not to cut down Re. 1 from the non-votable item. My Honourable friend, Mr. Joshi, cited the case of the debate that took place on the Army expenditure. We deleted Rs. 100 out of the Army expenditure which was votable in the course of a discussion. If you refer to the pages which contain that discussion, you will find that the reason for cutting down was the heavy military expenditure, the policy of which was criticised by this House. I hold, Sir, with due deference to you, that it is the right of the House in cutting down a votable item to bring the reason for cutting down the heavy expenditure on the non-votable item.

Mr. President: It is not in the power of the Chair to go behind the Government of India Act or an order made by the Governor General under the Act.

Dr. H. S. Gour: Where is the order?

Mr. President: The order only refers to the general discussion of the financial statement.

Mr. J. Chaudhuri: May I suggest that the question be referred back to His Excellency the Governor General and the debate be postponed?

Mr. N. M. Joshi: Sir, I shall, after your ruling, leave the annuities and the sinking funds. The third question that I would like to raise on this motion is about the necessity for the Railway Board to pay sufficient attention to the conditions of life and service of the Railway employees. Sir, it was only last year that there was a very big strike on the East Indian Railway, and on account of that strike our revenues have suffered.

Mr. President: The Honourable Member should not raise that on the present discussion. Payment for working expenses includes payment of wages by the Railway Administrations to the employees under their control. Miscellaneous Railway Expenditure includes the Railway Board and in the case of the Railway Board, it can only refer to the persons composing it. The Honourable Member cannot raise that question.

Mr. N. M. Joshi: May I, Sir, point out to you my difficulty. The only place where I thought I could raise certain questions of general principle was the expenditure of the Railway Board, because the Railway Board is in charge of our Railway management, and if I cannot do that, I shall be certainly handicapped because there may be no other item of such a general character where I could have raised it.

Mr. President: The Railway Board is not the direct employer of these persons to whom the Honourable gentleman has referred.

Mr. N. M. Joshi: Yes, Sir, to the extent to which the Railway Board manages the property of the Government. 95 per cent. of the capital of our railways is Government capital and therefore the Railway Board is naturally responsible for certain general conditions of life and service of the people. I am not going into the detailed question

Mr. President: It has been laid down that on a question of that sort the authority responsible is the Railway Administration itself, not the Railway Board. The precise responsibility of the Railway Board may be difficult to define, but if the Honourable Member wished to raise that question and the effect of reductions of the railway staff, he should have

done so under Working Expenses. Indeed that question was discussed very freely this morning by the Chief Commissioner for Railways and others.

Mr. N. M. Joshi: Sir, I am not raising that question of retrenchments at all. I am raising a point which is only in the competence of the Railway Board, namely, the establishment of Joint Councils and Joint Boards of railways in order that the grievances of the railway employees should be heard. I think that is only within the competence of the Railway Board, and if I have your permission I shall only speak a few words on that point. Sir, last year's strike caused a great amount of loss to Government as well as to the railway employees. It is necessary that we should devise some machinery by which the grievances of the railway employees will be considered by a body on which they will be represented and by which strikes may become unnecessary, and if not prevented, at least delayed. Railway employees go on strike out of sheer helplessness and because they see no other way open to them to get their grievances redressed. Now such machinery has been created in England and other countries. Sir, I therefore request the Government of India and the Railway Board to establish such Joint Boards where the representatives of the employees and of the Railway authorities will meet together and discuss questions of the conditions of life and service of the railway employees. In England there are Local Committees and then above the Local Committees there are Sectional Councils, then there are Railway Councils, then there are Central Wages Boards, then National Wages Boards, where not only the representatives of the employees, and of the Railway authorities, but the representatives of the users of railways are also present. I therefore think that that machinery should be adopted by the Government of India without delay, so that the grievances of the employees may be redressed without resort to strikes. You can ask the Railway employees not to go on strike till these Committees and Councils consider their grievances. On the other hand, Railway employees also will have a right to have their grievances heard by a Committee instead of only one person in authority. I therefore think that the Government of India will take this point into consideration.

There is, Sir, another point which I want to raise on this motion and I shall do that very briefly. The point is the treatment given to third class railway passengers. Sir, the Government of India this year have been very kind to place before us a memorandum in which they have given certain details of the measures which they have adopted for the improvement of the travelling facilities for third class railway passengers, but my contention is that these facilities are inadequate. In order to show in a very few words that those facilities are inadequate and the expenditure incurred is insufficient I will only place before the Assembly a few figures. Sir, our passenger traffic consists mostly of third class passengers. If there is one person in the 1st. 2nd and Intermediate classes, there are 27 persons in the third class. The third class railway traffic is 27 times as much as the 1st, 2nd and Inter classes put together. And if you take our earnings, the earnings from the 3rd class are five times as much as the earnings of the 1st, 2nd and Inter classes put together. Sir, these are the figures as regards the number of passengers and as regards the earnings. But when we come to the expenditure for the improvement of the conditions of travelling for the 3rd class passengers what do we find? Unfortunately I could not find any exact figure in the volumes given to us, but from a little search that I made, I could form a rough estimate, that is, that the expenditure incurred by Government on improving the conditions

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of travelling for third class passengers was only one and a half times that of 1st, 2nd and Inter classes put together. Sir, I do not know why this should be. If you take the number, the third class passengers are 27 times as much as the 1st, 2nd and Inter classes put together; if you take earnings, the earnings from the 3rd class are five times as much as those from the 1st, 2nd and Inter classes together. If you take all human beings to be equal, the expenditure ought to be 27 times as much because the number of 3rd class railway passengers is 27 times that of the others. But, Sir, in this 'practical' world we look more to finance than to human life. But even taking the financial side, if the 3rd class railway earnings are five times as much as those of the 1st, 2nd and Inter classes put together, the expenditure on improving the conditions of 3rd class travelling ought to be at least five times as much as the expenditure on the 1st, 2nd and Inter classes together, but what do I find? I find that the expenditure is not even twice as much as the expenditure on the 1st, 2nd and Inter classes. I therefore think that the Railway Board will very soon present a statement showing what amount of money they have spent for improving the travelling facilities of the 3rd class railway passengers, and also what they are doing for the 1st, 2nd and the Inter classes. I want a comparative statement. Without comparison you cannot really find out whether Government are doing their level best or not.

Sir, I want to draw the attention of the Government to another matter, namely, that in their Advisory Councils for railways both central and local they ought to include representatives of the third class railway passengers. I do not say that the present members of the Central Advisory Councils do not look to the interests of the 3rd class railway passengers; but even they will admit that if one of them is nominated by Government as a representative of the 3rd class passengers, he will find his hands strengthened, and he will be responsible to the 3rd class passengers in the country who will look to him to represent their grievances to the railway authorities. I therefore think that the Railway Board should pay serious attention to this question and very soon put on the Central Advisory Board a representative of the 3rd class railway passengers and insist upon such representatives being put on local Advisory Councils.

Sir, I also want to make another point, that the Railway Board gives more attention to the goods traffic than to the passenger traffic. Sir, in the memorandum given us by the Railway Board they have stated that they are spending three crores of rupees on passenger traffic while they are spending 5 crores of rupees on goods traffic—I am only talking of improvements—while the revenue received from the passenger traffic is 40 crores and that from the goods traffic is 50 crores. The revenue from the goods traffic is only 10 crores more while the proportionate amount spent for goods traffic improvement is much more than the Railway Board ought to spend.

Sir, under miscellaneous expenditure I also want to raise one small point, and that is about 'Surveys.' The Government of India's present policy is not to spend a large amount of money on the construction of new lines and therefore there is no need for spending money on new surveys. The Government of India have already spent crores of rupees on making surveys and I do not know how many lines of railways have been surveyed by them. The list will go into thousands, and I do not know why they should add to the list which already exists by spending lakhs of rupees on new surveys. I therefore think that this expenditure on new surveys

is absolute waste, because the lines which we have already surveyed cannot be constructed unless we have got hundreds of crores of rupees. Why, therefore, should we spend money on making new surveys?

Sir, these are the points on which I wanted to raise a general discussion, and I think the House, in order to show their sympathy with the railway employees and the third class railway passengers, will accept my motion.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, there is only one out of the many points which Mr. Joshi has touched upon with which I wish to deal and to which I wish to give my support. It relates to the general administration of the employees of the railways. He has put before this House certain facts which I, from personal knowledge, can corroborate, and in support of this he has asked the House to support his motion so as to get an expression of opinion from the Railway Board as to whether this state of affairs will be corrected. He referred to the dissatisfaction at the treatment that is meted out by Railway officials to the staff. Sir, I have ample evidence to support this state of affairs at least on one Railway in particular (*Dr. Nand Lal*: "Not to the staff.") I do not mean the superior staff. (*Dr. Nand Lal*: "He meant to the third class passengers.") My remarks regarding the staff come under the General Administration of Railways. (*Dr. Nand Lal*: "I cannot understand that.") There are certain committees and bodies that are in operation in England called the Whitley Committee, etc. I believe that the Post and Telegraph Department is introducing a similar Committee in some of their larger offices in India, and I think it would be a good plan if all Railways in India were to emulate this example, especially when one realises that it was quite recently that the Railway Board issued a circular to all railways (it seems to me that the various railways at their own sweet will and pleasure, and when it suits their own convenience, accepts or rejects circulars or mandates from the Railway Board) based on the Government Servants' Conduct Rules prohibiting any railway servant from bringing any grievances to the notice of any Member of the Indian Legislature. I consider that the employees of all Railways, be they State Railways or Company-managed, should not be deprived of this inherent civic right, and I will tell you why. Certain Railways seem to be singular in the limited application and attention they give to their subordinates when they appeal against punishments meted out to them by their Railway Officials. I have had occasion to write to various railways on this very matter. If a railway employee enjoys the right of a vote, I fail to see why he should be deprived from bringing his grievance to the notice of his representative. Besides that, there are innumerable cases in which Railway subordinates have for petty offences been summarily dealt with, and I consider that it is not fair to deprive these employees of this legitimate means of redress. This state of affairs once obtained in many departments in England and to remedy this the Whitley Committee were put into operation. I would suggest for the consideration of the Railway Board the introduction, as has been done in the Indian Post and Telegraph Department, of such a Committee of Adjustment on all Railways consisting as it does of representatives of both employers and employees. I wish to assure the House that on certain railways and in certain departments there is a very acute feeling of resentment and discontent on this subject and would be failing in my duty if I did not publicly state here that certain railway employees do not get adequate justice from their Departmental heads. It is to remedy this that I wholeheartedly support Mr. Joshi in his remarks and I therefore bring this

[Lieut.-Colonel H. A. J. Gidney.]

matter to the very serious and early notice of the Railway Board and ask them seriously to consider whether this unjust state of affairs could not be remedied and the employees of all railways be given a safeguard against this treatment which I would call bureaucratic or autocratic administration of justice on the part of certain railway officials.

Mr. K. Muppil Nayar (West Coast and Nilgiris: Non-Muhammadian Rural): Sir, I have also a similar proposal which I gave notice of for the purpose of eliciting information.

In the first place I wish to mention that I had before the publication of the Railway Committee's Report, given notice of a Resolution recommending the appointment of representative non-official local advisory bodies to the various Agents of the managing agencies of Indian Railways. For one reason or another I was unable to move the Resolution, but when I wanted to bring up the matter lately I learnt that the Government contemplated taking action in this matter. I now wish to ask what the Government's proposals are both regarding State-managed and Company-managed railways in this connection.

I also want to know when we may expect an actual beginning of work in connection with the Shoranur Manantody Railway.

Lastly, I want to know if there is a chance of the restoration of the Mangalore mail which I understand was autocratically cancelled due to an inter-company quarrel without the least regard to the convenience and comfort of the public.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadian Urban): Sir, with your permission, provided I am in order, I wish to offer a few observations about the constitution of the Railway Board itself. I take it, Sir, that I am in order, and I shall therefore proceed. Ever since the constitution of the Railway Board, there has been in political circles a great deal of feeling against it, but we find that the Railway Board, which the Acworth Committee calls the step-child, I do not know of whom, has been severely criticised by the Acworth Committee as well as by the Retrenchment Committee. Before I proceed any further, Sir, I wish to say a word about the Acworth Committee's Report and the Report of the Retrenchment Committee. It is not for me to sit in judgment on the respective merits of the distinguished men who sat on these Committees, but I shall say this that, as regards any retrenchment or as regards any reforms that are advocated mainly on financial grounds, the proposals that have been made by the Retrenchment Committee carry far greater weight with us than the recommendations suggested by the Acworth Committee, and the reason is obvious. If the House will turn to the Report of the Acworth Committee it will find from its terms of reference that at the time that the Acworth Committee was appointed there was no question of retrenchment.

What that Committee was asked to do was to make recommendations about the following subjects: (a) direct State Management; (b) management through a Company domiciled in England and with a Board sitting in London; (c) management through a Company domiciled in India and with a Board sitting in India; (d) management through a combination of (b) and (c); and advise as to the policy to be adopted as and when the existing contracts with the several Railway Companies can be determined. I venture to think that the real question which the Acworth Committee had to decide was the case of Company Management *versus* State Management.

Now when we come to the constitution of the Retrenchment Committee we find from the terms of reference that it was to make recommendations to the Government of India for effecting forthwith all possible reductions in the expenditure of the Central Government, having regard specially to the present financial position and outlook. In so far as questions of policy are involved in the expenditure under discussion, these will be left for the exclusive consideration of Government, but it will be open to the Committee to review the expenditure and to indicate the economy which might be effected if a particular policy were either adopted, abandoned or modified. My submission is that as far as the cuts in expenditure and the policies and principles based on financial consideration are concerned, the House will do well in being guided by the recommendations of the Retrenchment Committee, not because I mean for a moment that there is any superiority in this Committee over the other, but because this Committee, the Retrenchment Committee, was called upon to consider the question of economy, when it had the advantage and the very great advantage of having the report of the Acworth Committee before it. I therefore say that the remarks made by the Honourable Mr. Innes about the Retrenchment Committee and its inability to fully appreciate some problems, have left me utterly unconvinced. Now both these Committees, as I said at the outset, are against the Railway Board. What do we find them say? The Acworth Committee say:

"The function of the Railway Board is not to carry out routine duty but to shape policy, to watch, to think and to plan;"

And by implication they say that the Railway Board has failed in discharging its function in these respects. They say how the details came to be centred in their hands, and have considered—I need not go into all the details—the various complaints that were made against the Railway Board. They tell you the number of communications sent up and so on. What they say in effect is that all this must change. The constitution of the Railway Board, they say, must undergo a change and they propose a scheme of their own.

When we come to the Report of the Retrenchment Committee, we find the same thing. They too are not very pleased with the Railway Board, and what they suggest is that there should be one Member of the Executive Council in charge of Railways who ought to have one Chief Commissioner for Railways and one Railway Financial Adviser. Now I understand, Sir,—that the reconstitution of the Railway Board is under consideration. I wish to know whether this Railway Board is to remain; but before I proceed any further I wish to make it clear that I have nothing to say personally against any Member of the Railway Board. If I make any remarks, those remarks should be taken as directed against the system and not against the men who administer it.

Now what I wish to know is what is going to be the constitution of the Board? Are these officers to remain under different names? Are these three officers to remain or is the Government going to adopt the recommendation of the Retrenchment Committee? Because it will be noticed that according to the Retrenchment Committee's Report, very large powers are going to be given to General Managers of different Railways and very many matters of detail will not be coming up to the Railway Board. Under these circumstances, I do strongly think that it is necessary that the recommendation of the Retrenchment Committee should be accepted on this point. Then there is another matter and it is this, the Railway Board has failed in Indianising the services under its control. (An

[Munshi Iswar Saran.]

Honourable Member: "What about Indianising themselves?" They can Indianise themselves after they have Indianised their services. I do charge the Railway Board most deliberately for not having taken all those steps which we might well have expected it to take. Of course, in reply the Honourable Mr. Innes, in one of his most sweet, reasonable, conciliatory, though not convincing ways, will say "We used to have four inspectors before, we have now appointed six. Isn't that progress?" and we shall cheer. "We used to have seven ticket collectors before. Their number has been increased to nine; and indeed we are in considerable sympathy with all that you say; but don't hustle us. Look at the progress made so far." And some of us are so constituted that we are transported to the seventh heaven of bliss and delight whenever any official announcement is made which may have even the faintest trace of what might be regarded as progress. Unfortunately I am not that way built. Whenever an announcement is made, I wish to look into it and examine it carefully. Now, look, Sir, at what happened in another place when the question of the appointment of railway inspectors was raised. One gentleman, I suppose some Member representing the Railway Department, said, "Oh, well, we are doing all that we can; we are in great sympathy, but we want men of proved merit and ability." This efficiency, according to the Hindu theory of transmigration, has been born again and has now got the name of 'proved ability and merit.' It is efficiency no longer. And the reply of this gentleman compelled a very distinguished and a most highly respected countryman of mine to get up in that same place and say, "Oh, we have had enough of your sympathy and we have heard enough of your efficiency." I repeat that remark, Sir. It was made by a very distinguished man indeed. I say, look at your workshops; what has been done? I shall be told—Mr. Innes will tell us—"Oh, we are considering a scheme of education, of taking these boys into the workshops;" but I shall beg Mr. Innes, if he will attach any importance to what I say, to get into our skins and to see how we feel really the way in which practically the door is banged in our face. It is no good saying that out of hundreds of appointments you have got a few Indians here and a few Indians there. I repeat, Sir, that I hold the Railway Board responsible for this, and I suppose there is no one in this House who will not sympathise with me including my Honourable friend, Colonel Gidney, who is not here. The gallant Colonel is in a most peculiarly happy position; when there is a question of appointments he is an Indian; when there is a question of opposing political progress and political reform, he is something which I cannot describe . . .

Lieut.-Colonel H. A. J. Gidney: That is not true, absolutely untrue.

Munshi Iswar Saran: Sir, the other day we talked about communal representation, but I say if there is one department where you do really want this Indian representation it is the Railway Department. Perhaps the remark will at once be made "Have you got knowledge of these railways and experience? Do not begin to run before you have learnt to walk." But what I pray of these gentlemen is to allow us to creep at least; they do not do even that. They will say "We are thinking, cogitating, discussing, appointing committees, considering reports; but we are in considerable sympathy with the object." But what is the result? I shall ask the gentleman who might answer for the Railway Board to tell us here and now in clear and distinct language what has been the progress that has been made since this Reform Council came into existence. Is not that a fair question? If my Honourable Colleagues are satisfied with

the progress that has been made, then well and good; if they are not satisfied, I submit it is up to them to pass this vote as a vote of censure—I do not mind saying so—on the Railway Board for not having given effect to this policy. Why, Sir, the gentleman who represented the Railway Board in answer to a question of my friend Mr. Samarth said as follows: The question was:

"Will Government be pleased to state what action they have taken or propose to take on paragraph 32, pages 22-23 of the Majority Report of the Royal Commission on Public Services in India, as regards their recommendation that a determined and immediate effort should be made to provide better educational opportunities in India, so that it may become increasingly possible to recruit in that country the staff needed to meet all normal requirements of the Locomotive and Carriage and Wagon Departments of the Indian Railways?"

Listen to the reply:

"Government in despatch No. 15-Ry., dated the 16th August, 1919, advised the Secretary of State that it was difficult to obtain in India suitable recruits for the Superior Locomotive and Carriage and Wagon Departments and that no substantial change in the immediate future could be looked for . . .

But, of course, it ended with sympathy:

"At the same time, it was pointed out, that Government were by no means oblivious of the need for giving Indians the training recommended by the Commission and reference was made to proposals sanctioned in 1918 under which selected Indian graduates receive a preliminary training in the workshops of the East Indian Railway at Jamalpur or Lilloah and are then sent to England at the Company's expense to complete their training."

I need not read the other questions. Now, this is how the matter really stands. You are told that you do not get amongst Indians, specially of the respectable classes, men who will take off their coat and work. That might have been true sometime back; but go to the Benares Hindu University and go to the Engineering College; and you will find boys, bright lads of respectable families, who take their coat off and do work there. Sir, I have heard it from a very reliable gentleman whose name I shall not mention, that in Ajmer young man after young man went into the workshops but was not given admission. The answer given was "This workshop is meant for the sons of artisans and labourers." I have no reason at all to doubt the statement made by that gentleman to me; and I put it to the House, is that a satisfactory state of things?

I do not wish to detain the House. One word more. I was travelling the other day and I met an Anglo-Indian boy about 18 years of age; he was going to Delhi on business and that boy was getting Rs. 60 a month, and perhaps Rs. 2 a day as travelling allowance and that boy told me that he got this appointment two years ago. Can you imagine an Indian boy getting an appointment in the Railway Department at 16? So I submit, Sir, the Railway Board has failed to give effect to the policy of Indianisation and on that ground alone I shall ask and most earnestly ask the House to mark its sense of disapproval by accepting the amendment that my friend has proposed.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I am not going to inflict a long speech on the House—I will offer a few remarks only. I share the views of my Honourable friend, Mr. Joshi, that the third class passengers are not properly treated and I agree with him when he says that these third class passengers are the most paying customers. I also agree with him that the Railway Board has not done anything effective as yet in order to ameliorate the condition of these dumb people. I am not prepared to assert that the Railway Board has been sleeping over it, but I

[Dr. Nand Lal.]

raise my voice in regard to this point, that if they have done anything that thing has not proved practically good and effective. I ask them that they will be pleased to see that active steps are now taken so that the complaint of these poor and most-paying customers may be attended to.

Another point to which I wish to invite the attention of this House is this: that if my information is correct the Railway Department has got to pay about a crore of rupees in the way of compensating people who have lost their property in the railway. Now, may I ask the Railway authorities, can they not effectively manage that this railway pilfering and these railway theft cases may be reduced? May I ask the Honourable Mr. Innes what steps have been taken in this direction? For the last two years we have been harping on it, one Member after the other has been inviting the attention of Government to this. May I ask what step has been taken? Can he prove some sort of decrease in the number of theft cases?

There is a third point to which I invite the attention of this House and that is this: my impression is and it is based on oral complaints which have been brought to my notice, that in some cases the old stores are put up to auction and they are sold very cheap and unfortunately some of those old stores, after they are put up to auction and sold, will find their passage to the same railway stores again. If this information is correct, then we have got serious complaint against the Railway in respect of the money which is spent in the purchase of these so-called railway stores. I invite the attention of the Railway Board to this complaint. If there is real truth in this complaint then they will try to see that this is very seriously attended to.

Another point to which I seriously invite the attention of the Railway Board is this: that a considerable amount of money is spent in the purchase of stores and those stores are indented for from England. Sir, a portion of the stores ought to be purchased in this country if they are available. If those articles are not available, of course, the Railway Department will be constrained in indenting for them from England in the first place, or from other places if those articles cannot be obtained even there. These are the few points to which I would specially invite the attention of the Railway authorities, and if they will not take these suggestions seriously, I am afraid the mass of criticism which is subsisting will remain, and I may tell them that their administration will never be considered as a good administration at all. We have got a series of complaints against the Railway Administration so far as these points are concerned, and if the Railway Department will try to see that all these grievances are redressed, it will be a great boon to everybody, otherwise the money which we are voting will not give effect to our real desire. With these few remarks, I support the motion which has been moved.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): Sir, I want to add my voice to what has been already said by my Honourable friends, Mr. Joshi, Munshi Ishwar Saran and Dr. Nand Lal. The other day an Honourable Member said here when we were discussing the question of reserving intermediate and third class compartments for Europeans and Anglo-Indians that it would not be proper for us to decide that question as there was only a minority of European and Anglo-Indian representatives in this House. I think it will be more proper to say that we would not be justified in deciding anything against the third class passengers, because in this House we have hardly a representative of the third class passengers as

against a few representatives of Europeans and Anglo-Indians, and I believe that, although the third class passengers have no direct representation in this House, we shall not be doing our duty if we did not do our best to voice their grievances.

Now, Sir, I have a recollection of having been instrumental in approaching the Railway Board for removing a grievance of the Bombay suburban passengers. It has been pointed out here, and rightly too, that while the Railway Board considers it its business to interfere with every detail of the administration, on large questions of policy, which is its real function, it is generally silent and acquiesces in anything that the minor administrations decide to do. Here is one glaring instance of that. In Bombay suburban fares were unduly raised. There was an outburst of protests in all parts of Bombay. It was in opposition to the policy laid down by the Local Government itself of encouraging suburban traffic in order to remove the congestion from the city to the suburbs. I may also venture to say that the Local Government itself desired that living in the suburbs should be encouraged by any means that it was possible to adopt even by reducing the fares or by electrifying the Railways or by extending the tramway service. In spite of all that, the Railway Companies unduly increased the suburban fares. Protests were made in all parts of Bombay. I had myself the honour of presiding over a meeting called by the Railway Passengers' Association to protest against the step taken by the Railway in Bombay in increasing their fares unduly. I communicated with the Honourable Member, I communicated on behalf of the public meeting with the Railway Board. My Honourable friend, Mr. Innes, was, I very well knew, out of Delhi at that time and was not able to deal with the question, and I have no complaint against him. But I do want to point out here that the Railway Board failed to redress the grievance, a legitimate grievance, of the third class passengers, the poor suburban passengers of Bombay. Instances of this character can be multiplied. In the Acworth Committee's Report, and especially in the evidence placed before the Acworth Committee, we find that the Railway Board was instrumental in increasing the burden of correspondence on trivial matters with the Secretary of State. For instance, it was pointed out here that the increase in the pay of a foreman was a subject of correspondence which cost a good deal to the Government of India. No wonder that the expenses of the Government of India and the Railway Department should go up, but instances of this character can be multiplied. The whole point that I want to make is this. I do not want to weary the House with all the instances about which, I am sure, Honourable Members know full well, but I do want to say this that the Railway Board has to all intents and purposes failed to carry out the purposes for which it was created. If it has done anything, it has added to the burden of expenditure of the Government of India. It has not improved in any way the railway administration of this country; it has given no satisfaction to any class of passengers in this country, and therefore it is but fit that we should pass this vote.

The Honourable Mr. C. A. Innes: Sir, I always look askance at the seemingly innocent and trivial reductions by a rupee, for I never know from what side and on what points I am going to be attacked. In the course of the last hour, I have noted down no less than 14 different points, and I am supposed to be able to stand up here and reply to each and every one of them. Now, let me first take the point raised last by my friend Mr. Jamnadas Dwarkadas. We have heard a lot this morning about the necessity of efficient, commercial, business management of our Indian

[Mr. C. A. Innes.]

Railways. That was the gravamen of the charge which was made by more than one speaker this morning. But when it hits Bombay, then we hear another story. Now let me tell the House the true story of the season tickets of the suburban traffic in Bombay. The rates for Bombay, Baroda and Central India season tickets in suburban traffic in Bombay had not been raised for forty years. Now how enormously prices have risen during these forty years is well known to Members of this House, and when after careful examination the Railway Company raised those rates—and mind you, I satisfied myself that the rates to which they had raised were very moderate,—there was a scream from Bombay 'how dare the Railway companies raise their rates?' We are asked, the Indian taxpayers are asked, to subsidise the Bombay suburban traffic, and it is quoted against us that the Bombay Government protested against this. It is very easy for a local Government to take this generous line, but it is the Central Government, it is we who have to pay. Is there anybody here who can dispute the reasonableness of raising rates which have been in force for forty years? Now, Sir, I have dealt with one point.

Mr. Joshi raised the question of Conciliation and Arbitration Boards and of the prevention of strikes on Railways. These two last questions, Conciliation and Arbitration Boards and the prevention of strikes in public utility companies have been taken up by the Government of India, and we are considering the question of submitting legislation not to this House at this stage, but of circulating it to the country for criticism. That is all I can say on that point at present. The Railway Board did also address the various Railway Administrations with regard to Whitley Councils, but I do not know exactly what progress has been made. At any rate, I do know that the East Indian Railway has made an advance in that direction by appointing welfare committees on which the men are represented as well as the staff. That step was taken after the East Indian Railway strike in order that there might be co-operation between the men and staff.

Then, of course, we have heard the grievances of the third class passengers. Well, the House knows that there was a debate on this question last September, and various points and suggestions were made not only by Mr. Joshi but by other Members of the House as well. We have addressed all Agents of the Railways putting forward to them the more important suggestions made in the course of that debate, and we have asked them to let us have a reply as to what action can be, has been, or should be taken on those suggestions. When we get those replies, we shall have to consider in what form we can make them public. I am rather puzzled as how best to make it public, but we shall make the information available to the House in some way or other, and I propose to consult the Central Advisory Board on that subject. As regards the local Advisory Councils

5 P.M.

Mr. Joshi raised the point that the third class passenger, if I got him right, was not represented on the local Advisory Councils. Well, Sir, again I am in a difficulty. I have not got here the actual circular letter we wrote to Railway Administrations on that subject. But we did make very careful provision in those suggestions for the representation on the local Advisory Council of, what I may call, representatives of passengers. We suggested representatives of the travelling public. The Central Advisory Council, as the House knows, exists for a rather different purpose. Whether we are right or we are wrong, we deliberately departed from the recommendations of the Acworth

Committee in this respect. We decided that as we had got the Legislature sitting here the form of Central Advisory Council to have was not a Council in which commercial and other representatives from different parts of the country should be represented, but a Council which should be composed of Members of the Legislature. It exists mainly, at least in my view, for advising us on large question of railway policy.

As regards the Shoranur-Manantody Railway I must again remind my friend the Honourable Mr. Muppil Nayar that we have just been told by the Incheape Committee that we must treat our railways as strictly business concerns and we must try to show a net $5\frac{1}{2}$ per cent. profit on our capital expenditure. Now, Sir, if we apply that criterion to the Shoranur-Manantody Railway, I am afraid it will be the Greek Calends before that railway is constructed. There may be very strong reasons, and I am sure there are very strong political reasons why that railway should be constructed, but if that is the case, obviously it is the local Government which should construct the railway. We have been negotiating with the Government of Madras on that point. I have just had a letter on the subject, but I am sorry I have not had time to study it and I do not know what the latest development is.

Then we come to my friend Mr. Iswar Saran. I may assure him at the outset that I have not the slightest intention of saying anything sympathetic this afternoon. The first point he took up was about the reorganization and re-constitution of the Railway Board. Now, I think the Government of India has always recognized that there was something wrong with the constitution of the Railway Board. The Acworth Committee has, of course, brought that out, the real reason being that, through no fault of its own,—and that is a point I wish to make very clear—the Railway Board as we have had it so far has been absolutely crushed by the load of routine and case work which came up to it. Well, we have taken the first step in the direction of re-constituting it by appointing my friend, Mr. Hindley here as Chief Commissioner. We have given him larger powers than the President of the old Railway Board had, and Mr. Hindley was instructed that his first duty on assuming his new office was to submit his proposals for the reconstitution of the Railway Board. I have just received those proposals and all that I am in a position to say at the moment is that they are under the consideration of the Government of India and we hope to formulate our conclusions on them at the earliest possible date. The whole design of the proposals is to meet the objections which have been taken not only by the Acworth Committee but also by the Retrenchment Committee to the Board as at present constituted. That is, the whole design of Mr. Hindley's proposals is to relieve the Chief Commissioner and the men at the top of this load of routine work, to keep them free of the machine, to give them time, to use Sir William Acworth's phrase, to watch, to think and to plan, and above all to give the Chief Commissioner time to travel more about India to keep more in touch with Railway Administrations and more in touch with the local Governments. (A Voice: "Are you going to have a Member for Communications?") I am not in a position to say anything on that point.

Dr. Nand Lal in his interesting speech referred to the question of compensation and he asked what steps the Government of India proposes to take to reduce these very heavy claims for compensation. There is only one real step that we can take and that is to improve our system of watch and ward on the different railways. That, as the House will see, requires expenditure and more staff, and I am afraid the action taken by

[Mr. C. A. Innes.]

the House this morning may make it more difficult for us to do that. But still it is a matter which is being taken up by every Railway Administration.

Then again, Dr. Nand Lal made a great complaint of the fact that the railways do not buy enough stores in India. He suggested that, too much as a matter of course, the Railway Administrations went to England for the stores and materials they require. Well Sir, not only am I Member in charge of the Railway Department, but also I am Member in charge of the Industries Department (A Voice: "and Commerce.") Thank you. And I have the very greatest sympathy with the idea and I do feel that we ought to do all we can to encourage the purchase of stores in India not only by the Railway Department but by other Departments of the Government of India. But here again I must point out to the House that the House cannot have it both ways. If the Railway Department is in future to show 5½ per cent. returns on its capital, then on behalf of the Railway Department we shall have to claim that we buy our stores, materials and everything else in accordance with the hardest business principles. As I say, the House cannot have it both ways. Are we to be treated purely as a commercial concern and are we to show this dividend? (Cries of "Yes.") If so, we must buy in the cheapest market. However, I am not stating that as a question of policy; I am merely pointing out that the Incheape Committee's report in that matter raises certain points which will require very serious consideration.

The only other question is that of Indianization, and here as I am on such difficult ground I think I had better leave my Honourable friend Mr. Hindley to carry on.

Mr. C. D. M. Hindley: I rather hesitate, Sir, to delay the House at this late hour with the recital of more figures, particularly when I look forward to this time next year when I shall be told with great certainty by Dr. Nand Lal that I have done nothing during the year. No matter what we do, Sir, the Railway Board is told year after year "What have you done? You have done nothing". Incidentally, in regard to third class passengers . . . (Dr. Nand Lal: "I did not say that. I pointed out what you might have done.") I understood Dr. Nand Lal to say that we had done nothing. I think those are the words he used. As regards third class passengers, there is a little bit of our Memorandum tucked away here which perhaps Honourable Members have not read which gives a very full description of what the railways are doing in regard to third class passengers.

Regarding Indianization, during 1922-23, in comparison with the figures of the previous year the number of statutory Indian officers on railways rose from 301 to 325. The total number of European officers remained stationary at 1,316. (A Voice: "How many statutory and how many pure Indian?") In the previous year pure Indians 236 and Anglo-Indians 65; at the end of the year pure Indians 251, Anglo-Indians 74. The number of European officers remained stationary owing to the fact that though 18 Europeans were appointed during the year, the same number left for one cause or another. Then, on the three State Railways, I can give details, the European recruits numbered 16, and Statutory Indians 24, of whom Indians were 15 and Anglo-Indians 9. In the Engineering Department on these lines the Europeans and Statutory Indians were 4 and 5, respectively, while in the Traffic Department alone the Statutory Indian recruits numbered 16, 8 Indians, 8 Anglo-Indians. There were no Europeans recruited in the Traffic Department in 1922. On the Company

worked Railways, altogether 95 appointments had to be filled up during the year, of which 40 were filled by Statutory Indians and 55 by Europeans. (An Honourable Member: Can you tell us how many were gazetted officers, what rank of gazetted officers?) (Dr. H. S. Gour: "How many Indians?") I have not got the details. Taking the subordinates, the next grade, the total number of Indians and Anglo-Indians rose from 2,12,074 to 2,14,631, while the number of Europeans fell from 3,961 to 3,923. (An Honourable Member: "What is the maximum pay for these subordinate appointments?") I have not got the figure. The total number of employees of all classes was 754,500. I just incidentally would like to point out that on all railways the number of superior officers as a whole, is about 1,600 and the number of total staff 750,000. When you talk about making retrenchments of the officers, of the senior officers, where are you going to get crores out of these 1,600 supervising officers? This is not the point at the moment, but I thought it would be interesting to bring that out. With regard to Indianization in general, it is not true that we have not done anything. I would ask the House not to pay too much attention to the criterion figure. We know what you can do with statistics and what different kinds of statistics there are, but as a matter of fact I want to point out that we have during the last year made a very definite move forward in the direction of training the staff of all kinds, of all classes, for the work which they have to do. The House will remember that on the motion, I think, of my Honourable friend, Mr. Jannadas Dwarkadas, a Resolution was passed relating to the training of railway staff. In accordance with that Resolution Mr. Cole, a late Secretary of the Railway Board, was placed on special duty and he spent a great deal of time in collecting and collating information regarding the availability of places for training. We now have his report, which has recently been put in the hands of the members of the Central Advisory Council. It has not yet been published. I understand it has been distributed to the members of the Central Advisory Council. In this Report, when the Honourable Members have time to peruse it—it has been rather delayed in the Press, I am sorry to say—will be found a complete scheme which we hope to work if funds are available; we hope to work for the training of officers and other classes of staff with a view to improving the prospects of the men in the railways and enabling Indians and others in this country, Indians especially, to take advantage of railway training collaterally with the theoretical training of schools and colleges. I do not want to enlarge upon this at the moment because it is a long and difficult subject, but I do want to assure the House that the Railway Board during the past year have taken one of the greatest steps forward in this direction of perfecting the training of Indians for work on the railways.

Mr. President: The question is:

"That the provision for Miscellaneous Railway Expenditure under the head 'Railways' be reduced by Re. 1."

The motion was negatived.

Mr. Jannadas Dwarkadas: With your permission, Sir, I wish to correct a statement of fact that was made by my Honourable friend, the Finance Member, I am sure inadvertently. He said that the item that was discussed last year was one crore and 67 lakhs, which was the exchange item. I see now I have got a copy of last year's Debates—that the actual motion was for the reduction not of a crore

[Mr. Jamnadas Dwarkadas.] and 67 lakhs but for three lakhs of rupees. (Mr. President: "No.") These 3 crores included a crore and 67 lakhs, and it was also admitted by my Honourable friend, Sir Malcolm Hailey, last year, that there was an item of a crore and 17 lakhs which I said ought to be debited to the capital account but which he said was of the nature of a sinking fund, but he never raised this point that it was a non-votable item. The Honourable Finance Member says it could come under the head 'Exchange' but it also could come under the heading 'Sinking Fund' which is now declared to be non-votable. If you will refer to page 3124 of last year's Debates and also to the Honourable Sir Malcolm Hailey's speech on page 3129, you will find that the statement that I am now making here is correct.

The Honourable Sir Malcolm Hailey (Home Member): If I may correct the Honourable Member, that motion that Mr. Jamnadas Dwarkadas refers to, was not a motion for a reduction of 3 crores. The motion was of the Demand under the head 'Railways,' that it be reduced by 25 lakhs. That obviously could not refer to a reduction of the amount which he mentioned. It is perfectly true that when Mr. Jamnadas Dwarkadas came to speak on the motion of Sir Vithaldas Thackersey, he mentioned that he also had a motion for reduction of 3 crores, and, doubtless, by the exercise of those arts which are not unknown to the House, he did include in Sir Vithaldas Thackersey's motion his own suggestion for a reduction of 3 crores.

Mr. President (to Mr. Jamnadas Dwarkadas): The Honourable Member should not take it upon himself to correct a statement made by the Honourable Finance Member when he himself turns out to be entirely incorrect. The Honourable Member said that a motion was moved which was not moved. The motion was to reduce the whole Railway Demand by Rs. 25 lakhs. The Honourable Member referred to his own motion, but it was not moved.

Mr. Jamnadas Dwarkadas: But I referred to the motion and was ultimately prevented from moving it because of the explanation offered by the Honourable Finance Member.

Mr. President: Precisely. The Honourable Member referred to it; but no attempt was made to move the reduction of a non-votable item, for that would have been out of order.

Do Honourable Members desire to continue the discussion? (Voices: "No, no, no.") Or are they prepared to dispose of it now? I may say it is not much use continuing the discussion if the Executive Council disappears from the House, as they doubtless will, and we might go on to 162 and postpone the rest till to-morrow.

The Honourable Sir Malcolm Hailey: May I move that the main question be now put.

Mr. President: The question is:

"That the main question be now put—(Demand as reduced by the vote of the Assembly this morning)."

The motion was negatived.

The Honourable Sir Malcolm Hailey: I made the motion just now merely for the purpose of enabling the Honourable the President to take

the sense of the House and not with any idea of closing the debate. I promised that we would, if possible, issue a further list this evening giving the order in which the Demands for Grants are to be taken. I have this list; it is not perhaps necessary that I should read it out to the House. I merely, with your permission, place this list on the table, Sir, with a view to its being distributed as governing the order in which the Demands will be taken when the previous list is exhausted.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 14th March, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 14th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

STATEMENT OF BUSINESS.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): May I, Sir, with your permission, inquire of the Honourable the Leader of the House if we are going to get any further day for non-official Resolutions this Session?

The Honourable Sir Malcolm Hailey (Home Member): I am afraid I shall have to consider that in the light of the progress we make with the voting on Demands for Grants and the Finance Bill. I shall hope to be able to give a definite answer to the Honourable Member about the middle of next week.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): May I ask a similar question with regard to the Inchcape Committee's Report, the discussion of which has now become imperatively necessary, apart from the Budget.

The Honourable Sir Malcolm Hailey: Does the Honourable Member wish that we should delay the further progress in voting on Demands for Grants in order that we may discuss the Inchcape Committee's Report? I see at present no other way of doing it than that.

Sir Deva Prasad Sarvadhikary: The Honourable the Leader of the House must know that I did not mean that.

INDIANISATION OF EIGHT UNITS OF THE INDIAN ARMY.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I ask the Honourable the Army Secretary a question of which I have given him private notice? Will he be pleased to lay before the House and to explain to the House, the scheme regarding the Indianisation of the 8 Units which was promised sometime ago?

Mr. E. Burdon (Army Secretary): Sir, I have been asked to furnish the House with a statement giving full details, and explaining the implications, of the scheme for the Indianization of 8 units of the Indian Army, which was recently announced to this Assembly by His Excellency the Commander-in-Chief. I have accordingly had a statement prepared, which, with your permission, I propose to lay on the table. It shows exactly how the scheme will be put into operation and the conditions which govern the matter. For the convenience of Honourable Members, and in order to enable the whole question to be readily understood, I have embodied in the statement a brief account of the system of organization of an infantry

[Mr. E. Burdon.]

battalion and a cavalry regiment of the Indian Army, in so far as their establishment of King's commissioned officers is concerned; and also a brief account of the system which governs the promotion of King's commissioned officers of the Indian Army up to and including the rank of Lieutenant-Colonel.

STATEMENT EXPLANATORY OF THE SCHEME FOR THE INDIANIZATION OF 8 UNITS OF THE INDIAN ARMY.

1. The units selected for Indianization are—

Cavalry.

7th Light Cavalry, late 28th Light Cavalry, Madras.
16th Light Cavalry, late 27th Light Cavalry, Madras.

Infantry.

2-1st Madras Pioneers, late 64th Pioneers.
4-19th Hyderabad Regiment, late 98th Infantry, Hyderabad.
5th Royal Battalion, 5th Mahratta Light Infantry, late 117th Royal Mahrattas.
1-7th Rajput Regiment (Q. V. O. L. I.), late 2nd Q. V. O. Rajputs.
1-14th Punjab Regiment, late 19th Punjabis.
2-1st Punjab Regiment, late 66th Punjabis.

2. An Indian Infantry battalion has the following establishment of King's commissioned officers :—

Appointment.	Rank.	Number.
Commandant	Lieutenant-Colonel or Colonel	1
Second in Command	Lieutenant-Colonel or Major	1
Company Commander	Captain or Major	4
„ Officers	Lieutenant or Captain	4
Adjutant	Ditto	1
Quartermaster	Ditto	1
		12

The posts of Adjutant and Quartermaster are filled by selection from officers of the unit. Generally speaking, the most efficient of the senior subalterns fill these posts. The establishment of King's commissioned officers of a cavalry regiment is on lines closely similar to the above. The designation of certain of the appointments is different; for example, a Squadron Commander and a Squadron Officer in a cavalry regiment correspond to the Company Commander and the Company Officer of an infantry battalion.

3. King's commissioned officers in the Indian Army receive promotion up to and including the rank of the Lieutenant-Colonel according to a time-scale, subject, in the case of each step, to certain prescribed examinations being passed. A King's commissioned officer should normally enter the Indian Army in the rank of Lieutenant at the age of 20 years. He receives promotion to Captain after 9 years' service, to Major after 18 years' service, and to Lieutenant-Colonel after 26 years' service. Details of the retention and promotion examinations which have to be passed are given in Appendix A to this statement. In addition to the prescribed tests and qualifications exacted from each individual officer, there are certain other subjects, included in the training of the soldier, in which a proportion of officers of every regiment must be specially trained; for example, physical training, including athletics, gymnastics and mental development; machine gun fighting; signalling, including the use of electrical appliances, etc. Further, in order to qualify for the post of Adjutant, a special certificate in musketry has to be obtained; and while, as has been shown, promotion to Lieutenant-Colonel is obtained by length of service and after passing certain qualifying examinations, the command of a unit is only given to those Lieutenant-Colonels who are selected *ad hoc* by the Selection Board. The Commandant of an infantry battalion is required to vacate his command on attaining the age of 52 years; and the Commandant of a cavalry regiment is similarly required to vacate his command on attaining the age of 50 years.

4. A list of Indian officers who already hold King's commissions in the Indian Army is given in Appendix B to this statement. These officers have been classified as follows :—

Table A.—Indore students who received their first commissions when over 26 years of age.

Table B.—Direct commissioned officers who received their first commissions when over 26 years of age.

Table C.—Previously commissioned officers who received their first commissions when over 26 years of age.

Table D.—Indore students who received their first commissions at the age of 26 years and under.

Table E.—Sandhurst cadets and others who received their first commissions at approximately the same age at which a British officer enters the army.

The tables show also the dates on which each officer would qualify for promotion to Captain, Company Commander, and Major, according to the time-scale and the normal course of promotion; and, in each case, the age of the officer on these dates. It will be seen that many of these officers, having received their first commission at an age much greater than the normal age, cannot hope for a normal career in the Indian Army. To indicate an extreme case, there is one officer who would be over 57 years of age before he could qualify for the command of a Company in the rank of Major, according to the prescribed tests applicable to all British officers. As previously stated, an officer is required to vacate the command of an infantry battalion on attaining the age of 52 years. It follows therefore that, for the purpose of officering, with Indian officers holding the King's commissions, the 8 Indianizing units, it will be desirable to rely mainly on those Indian officers who have obtained their first commission at approximately the same age as a British officer and can therefore hope to reach the highest posts within the age limits laid down. Of this class there are already 21 in the army.

5. It has accordingly been decided that 8 of the Indian officers of suitable age will be transferred at once as Company or Squadron Officers, one to each of the 8 units destined for Indianization, replacing in each unit a British Company or Squadron Officer who will be transferred elsewhere. In 1924, another batch of 8 Indian officers will be similarly transferred, replacing an equal number of British officers. In 1925, the same process will be repeated. But in that year the officers already available will be completely absorbed, and the numbers will in fact have to be made up by young Indian officers who have in the meantime qualified at Sandhurst. According to the process stated, at the beginning of 1927, all Squadron or Company officers of the Indianizing units will be Indians; the senior of these will be about 29 years of age and will have about 6 years' service. At this stage the situation will arise that any further postings in accordance with the process laid down would entail the appointment of the senior amongst these Indian officers to the command of Squadrons or Companies. These will be, in comparison with the officers of non-Indianizing units, young and relatively inexperienced. The nature of the further step will necessarily depend upon the development which have taken place in the interval.

6. Indian officers at present serving in the Indian Army who, for the reasons stated above, are not posted to Indianizing units, would ordinarily be passed to the non-effective list in the usual manner. A proposal is under consideration that their services should be utilized by appointing them thereafter to the Territorial Force, a course which might be of distinct benefit to the State.

7. The earliest date by which the 3 units could be completely officered by Indian officers, holding the same qualifications as are laid down in respect of British officers and having had the same advantages of training and experience as British officers, would be approximately 22 to 23 years from the present time. It might be possible to shorten this period to some extent if Indian officers of outstanding capacity come to the front during the process of development. Exceptional promotion could conceivably be given to such officers, since unusually rapid promotion has actually to be given in war time to specially good officers and men who are required to replace casualties. But the expedient could not be relied upon as a normal procedure: it would never be relied upon as a normal procedure in the case of British officers. The question would be not merely one of studying the pace of Indianization; the first obligation of the Government would be to study the safety and efficiency of the units under Indianization; and from this point of view, it would not be right, and it would not be prudent, to impose on an Indianizing unit a system which would never normally be imposed upon a British unit or a non-Indianizing unit of the Indian Army. Finally, there is the consideration that it might not be regarded as fair to place upon the first generation of Indian officers of the Indianizing army a burden of responsibility which normally a British officer of corresponding age and experience would never be asked to shoulder. Essentially, special promotion, such as has here been indicated, could only

[Mr. E. Burdon.]

be given on the merits of individual cases. It is patently impracticable to attempt to regulate the matter by any *a priori* formula.

A question has been asked whether the experiment is to be fully tried before the next step is taken, that is to say, in dealing with the other units of the Indian Army. The point is one on which Government are not in a position to make a statement. It would obviously be premature to do so. The first measure of Indianization has only now been embarked upon, and the developments to which it may lead cannot be foreseen or foretold.

APPENDIX A.

EXAMINATIONS WHICH KING'S COMMISSIONED OFFICERS OF THE INDIAN ARMY ARE REQUIRED TO PASS FOR RETENTION IN THE INDIAN ARMY AND FOR PROMOTION.

I.—*Examination for retention in the Indian Army.* (To be passed within 3 years of appointment).

1. Preliminary test in Urdu (equivalent to the old Higher Standard Hindustani).
2. (a) Drilling a regiment of cavalry or battalion of infantry.
(b) Regimental duties, including matters relating to discipline, interior economy, pay and pensions, double company accounts and books, arms, ammunition, and equipment, supply of clothing and necessities, the classes of which the corps is composed and recruited, and, for cavalry officers, the supply of horses and saddlery.
(c) Indian military law and musketry if not in possession of an officer's musketry certificate.
(d) (For cavalry officers.) Veterinary treatment and shoeing, footing of saddlery.

II.—*Examination for promotion from Lieutenant to Captain.*—

- (a) Practical examination in the field without troops to test a candidate's knowledge of Cavalry, Artillery and Infantry.

Field Service Regulations, Map reading and Field Engineering, Military Hygiene.

- (b) Written examination 4 papers.

- (i) Military Organisation and administration;
Administration of Military discipline and Law.
- (ii) Imperial Military Geography.
- (iii) Military History.
- (iv) Tactics, Map reading and Field Engineering.

COURSES.

Qualify at an Army School of Education.

(In addition to the above certain technical examinations have to be passed by Artillery, Medical and other technical services.)

III.—*Examination for promotion from Captain to Major.*—

- (c) Practical examination. Tactical exercise in the field without troops embodying the employment of a mixed force of all arms, to be of such a nature to test the candidate's capabilities of appreciating a situation.
- (d) Written examination 5 papers.

- (i) Military organisation, Military administration, administration of discipline and military law.
- (ii) Government of the British Empire and Imperial Military Geography.
- (iii) Military History.
- (iv) Educational Training.
- (v) A short essay on a military subject.

COURSES.

Small Arms School (Rifle, Automatic, Grenade, Light Mortar).

(In addition to the above certain other examinations have to be passed by officers of technical services.)

IV.—*Test for promotion from Major to Lieutenant-Colonel.*—

Pass a Course of Instruction at the Senior Officers' School, comprising:—

(Practical and Theoretical.)

- (i) The organisation of all units within a division.
- (ii) The tactical employment of the various arms.
- (iii) The principles of training and system to be adopted.
- (iv) Co-operation between the staff and troops.

APPENDIX B.

List of Indian Officers who already hold King's Commissions in the Indian Army.

TABLE "A".

Indore students who received their first Commissions when over 26 years of age.

No.	Rank.	Name.	Where serving.	DATES.				AGES.				
				1st Commission.	Captain.	Company Commander.	Major.	On 1st Commission.	At present.	On Captaincy.	On becoming Company Commander.	On Majority.
1	Lieutenant	Bakshi Chaud	56th Rifles	17th July 1920.	17th July 1929.	1st Jany. 1935.	17th July 1938.	36½	38	45½	50½	54½
2	"	Anter Singh	22-25th Cavalry	Ditto	Ditto	Ditto	Ditto	33½	35½	42½	48	51½
3	"	Sher Mohammad Khan.	18-19th Lancers	Ditto	Ditto	Ditto	Ditto	32½	34½	41½	47½	50½
4	"	Mohammad Ayab Khan.	22-25th Cavalry	Ditto	Ditto	Ditto	Ditto	30½	32½	39½	45½	48½
5	"	Jai Singh	45th Sikhs	Ditto	Ditto	Ditto	Ditto	27½	29½	36½	42½	45½
6	"	Partab Singh	5-8th Cavalry	Ditto	Ditto	Ditto	Ditto	26½	28½	35½	41½	44½
7	"	Sajjan Singh	11th Rajputes	Ditto	Ditto	Ditto	Ditto	26½	28½	35½	41	44½
8	"	Sabyabrata-Singh Roy.	2nd Rajputes	Ditto	Ditto	Ditto	Ditto	26½	28½	35½	40½	44½

TABLE "B".
Direct commissioned Officers who received their first Commissions when over 26 years of age.

No.	Rank.	Name.	Where serving.	Dates.				Ages.				
				1st Commission.	Captain.	Company Commander.	Major.	On 1st Commission.	At present.	On Captaincy.	On becoming Company Commander.	On Majority.
1	Lieutenant	Lachman Singh	15th Sikhs	7th Oct. 1919.	7th Oct. 1928.	7th April 1934.	7th Oct. 1937.	41½	44½	50½	56½	59½
2	"	Bhimsing Thapa	3rd Gurkha Rifles.	Ditto	Ditto	Ditto	Ditto	39½	42½	48½	54½	57½
3	"	Hissam-ud-din	21-23rd Cavalry	Ditto	Ditto	Ditto	Ditto	37½	40½	46½	52½	55½
4	"	Janda Singh	72nd Punjabis	Ditto	Ditto	Ditto	Ditto	37½	39½	46½	51½	55½
5	"	Thakur Singh	47th Sikhs	Ditto	Ditto	Ditto	Ditto	36½	39½	45½	51½	54½
6	"	Sundar Singh	41st Dogras	Ditto	Ditto	Ditto	Ditto	36½	39½	45½	51½	54½
7	"	Amar Singh	33rd Punjabis	Ditto	Ditto	Ditto	Ditto	35½	38½	44½	50½	53½
8	2nd-Lieut.	Inder Singh	31st Lancers	14th Jan. 1922	14th Jan. 1931.	14th July 1933.	14th Jan. 1940.	36½	36½	45½	50½	54½
9	Lieutenant	Mit Singh	47th Sikhs	7th Oct. 1919.	7th Oct. 1928.	7th April 1934.	7th Oct. 1937.	31½	33½	40½	45½	49½
10	"	Khan Mohammad Khan.	35-36th Cavalry	Ditto	Ditto	Ditto	Ditto	27½	30½	36½	42½	45½
11	2nd-Lieut.	Najibullah Khan.	46th Punjabis	14th Jan. 1922.	14th Jan. 1931.	14th July 1936.	14th Jan. 1940.	Details not available.				
12	"	Nur Ahmad Khan	9-10th Horse	Ditto	Ditto	Ditto	Ditto					
13	"	Kasimnath Dalir	116th Mahrattas	Ditto	Ditto	Ditto	Ditto					
14	"	Amrut Rao Mohite	103rd Mahrattas	Ditto	Ditto	Ditto	Ditto					

TABLE "C".
Previously Commissioned Officers who received their first Commissions when over 26 years of age.

No.	Rank.	Name.	Where serving.	Dates.				AGES.				
				1st Commission.	Captain.	Company Commander.	Major.	On 1st Commission.	At present.	On Captaincy.	On becoming Company Commander.	On Majority.
1	Captain	Kanwar Amar Singh.	2-4th Cavalry	25th Augt. 1917.	25th Augt. 1921.	25th Feb. 1932.	25th Augt. 1935.	39½	43½	43½	35½	57½
2	"	Zorawar Singh	1-3rd Horse	Ditto	Ditto	Ditto	Ditto	34½	39½	38½	48½	52½
3	"	Abdal Samad Shah.	31st Lancers	15th Dec. 1919.	...	15th June 1934.	15th Dec. 1937.	36½	39½	...	50½	54½
4	"	Age Cassim Shah.	104th Rifles	25th Augt. 1917.	25th Augt. 1921.	25th Feb. 1932.	25th Augt. 1935.	33½	38½	37½	48½	51½
5	"	Ba'la Sahib Daphle.	16th Rajputs	Ditto	Ditto	Ditto	Ditto	33½	38½	37½	48½	51½
6	"	Mhd. Akhbar Khan.	1st Brahmans	Ditto	Ditto	Ditto	Ditto	32½	37½	36½	47	50½
7	"	Pirchi Singh	5-8th Cavalry	Ditto	Ditto	Ditto	Ditto	32½	37½	36½	46½	50½
8	"	Rana Jodha Jang	23rd Pioneers	Ditto	Ditto	Ditto	Ditto	27½	32½	31½	42	45½

TABLE "D".
Indore students who received their first Commissions at the age of 23 years and under.

No.	Rank.	Name.	Where serving.	Dates.				Ages.				
				1st Commission.	Captain.	Company Commander.	Major.	On 1st Commission.	At present.	On Captaincy.	On becoming Commander.	On Majority.
1	Lieutenant	Mohammad Mauir Khan	18-19th Lancers.	17th July 1920.	17th July 1929.	1st January 1935.	17th July 1938.	26	27½	35	40½	44
2	ditto	Maung Ba Hpu	1-70th Buffans	Ditto	Ditto	Ditto	Ditto	26½	27½	35½	40½	44½
3	ditto	C. B. Ponappa	11th Malattas	Ditto	Ditto	Ditto	Ditto	26½	27½	35½	40½	44½
4	ditto	Chit'ar Singh	2nd Rajputs	Ditto	Ditto	Ditto	Ditto	25½	27½	34½	40½	43½
5	ditto	Daulat Sen	36th Sikhs	Ditto	Ditto	Ditto	Ditto	25½	27½	34½	40½	43½
6	ditto	C. Poonoose	75th Carnatics	Ditto	Ditto	Ditto	Ditto	25½	27½	34½	40½	43½
7	ditto	Maung Aye	1-70th Buffans	Ditto	Ditto	Ditto	Ditto	25½	27½	34½	40½	43½
8	ditto	J. R. Cama	69th Panjabis	Ditto	Ditto	Ditto	Ditto	24½	27½	33½	39½	42½
9	ditto	Bigvijay Singhji	1-15th Rifles	Ditto	Ditto	Ditto	Ditto	24½	27½	33½	39½	42½
10	ditto	Ajab Singh	22-25th Cavalry.	Ditto	Ditto	Ditto	Ditto	24½	27½	33½	39½	42½
11	ditto	Pritam Singh Bakhshi	38-39th Horse	Ditto	Ditto	Ditto	Ditto	23½	27½	32½	38½	41½
12	ditto	Hamidullah Khan	124th B. Lancers	Ditto	Ditto	Ditto	Ditto	23½	27½	32½	38½	41½
13	ditto	Ajir Amil Kudra	26th Panjabis	Ditto	Ditto	Ditto	Ditto	23½	27½	32½	38½	41½
14	ditto	Mahmud Havelat Khan	67th Panjabis	Ditto	Ditto	Ditto	Ditto	23½	27½	32½	38½	41½
15	ditto	Mohammad Akbar Khan	1-12th Cavalry	Ditto	Ditto	Ditto	Ditto	23½	27½	32½	38½	41½
16	ditto	Mohammad Abdullah Khan	29th Panjabis	Ditto	Ditto	Ditto	Ditto	23½	27½	32½	38½	41½
17	ditto	Mir Haider	92nd Panjabis	Ditto	Ditto	Ditto	Ditto	23	24½	32	37½	41
18	ditto	Gul Sher Khan	18-19th Lancers	Ditto	Ditto	Ditto	Ditto	22½	24½	31½	37½	40½
19	ditto	Mohammed Ali Khan	9-10th Horse	Ditto	Ditto	Ditto	Ditto	22½	24½	31½	37½	40½
20	ditto	Veshashar Nath Singh	20-29th Cavalry.	Ditto	Ditto	Ditto	Ditto	22½	24½	31½	37½	40½
21	ditto	Maung Kin Maung	1-70th Buffans	Ditto	Ditto	Ditto	Ditto	22½	24½	31½	37½	40½
22	ditto	Abdul Rahim Khan	Guides	Ditto	Ditto	Ditto	Ditto	21½	23½	30½	36½	39½
23	ditto	Arifal	123rd Rifles	Ditto	Ditto	Ditto	Ditto	20½	22½	29½	35½	38½
24	ditto	K. M. Carappa	2-125th Rifles	Ditto	Ditto	Ditto	Ditto	20½	22½	29½	34½	38½

TABLE "E".

Sandhurst cadets and others who received their first commissions at approximately the same age at which a British Officer enters the Army.

No.	Rank.	Name.	Where serving.	DATES.					AGES.				
				1st Commission.	Captain.	Company Commander.	Major.	On 1st Commission.	At present.	On Captaincy.	On becoming Commander.	On Majority.	
1	2nd-Lieutenant	Bedi Daya Singh.	16th Lancers	14th July 1921.	14th July 1930.	14th January 1936.	14th July 1939.	22½	23½	31½	37	40½	
2	Ditto	K. S. Rajendra Singh.	3rd K. R. R. C.	Ditto	Ditto	Ditto	Ditto	22½	23½	31½	35½	40½	
3	Lieutenant	Sikandar Ali Mirza.	33-34th Horse	16th July 1920.	16th July 1929.	16th January 1936.	16th July 1938.	20½	22½	29½	35½	38½	
4	2nd-Lieutenant	Faiz Mohd. Khan.	Green Howards.	14th July 1921.	14th July 1930.	14th January 1936.	14th July 1939.	20½	21½	29½	35½	38½	
5	Ditto	Mohd. Nawaz Khan.	7th Hussars	23rd December 1921.	23rd December 1930.	23rd June 1936.	23rd December 1939.	20½	20½	29½	34½	38½	
6	Ditto	E. Yusuf Khan.	2nd Warwick's	Ditto	Ditto	Ditto	Ditto	20	20½	29	34½	38	
7	Ditto (N.B.—In addition there are 4 other officers newly joined from Sandhurst.)	Sarwar Ali Khan.	1st Worcesters	14th July 1921.	14th July 1930.	14th January 1936.	14th July 1939.	19½	20½	28½	34½	37½	
48	Lieutenant	Maung Kin Maung.	1-70th Burmans.	7th October 1919.	7th October 1928.	7th April 1934.	7th October 1937.	20½	23½	29½	35½	38½	
49	Ditto	K. S. Himat Singh.	4th Rajputs	23rd March 1918.	23rd March 1927.	23rd September 1932.	23rd March 1936.	20½	24½	29½	35	38½	
40	Ditto	K. S. Madeo Singh.	3-39th Garhwalis.	24th October 1918.	24th October 1927.	24th April 1933.	24th October 1936.	20½	23½	29½	34½	38½	

* Direct commission.

† Previously held Temporary Commission.

Mr. T. V. Seshagiri Ayyar: Sir, may I know what period, the longest period, within which the Indianisation of these 8 Units is expected to take?

Mr. E. Burdon: The matter is one which requires to be stated with a considerable degree of precision. It has been explained very fully in the body of the statement, and I think it will be more satisfactory to my Honourable friend if he will wait till he reads the statement.

Rao Bahadur T. Rangachariar: Sir, may I ask if it is a fact that it will take 23 years before these 8 Units become Indianised.

Mr. President: I think the Honourable Member had better wait till he has the opportunity of looking at the paper and then he can put any questions.

Mr. T. V. Seshagiri Ayyar: What is the total number of Indian officers in these 8 Units?

Mr. E. Burdon: The establishment of King's commissioned officers in an Indian Infantry Battalion is 12, and in a Cavalry Regiment 13.

THE EXCLUSION FROM INHERITANCE BILL.

Mr. T. V. Seshagiri Ayyar: Sir, I beg to present the Report of the Select Committee on the Bill to amend the Hindu Law relating to the exclusion from inheritance of certain classes of heirs and to remove certain doubts.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

AMENDMENT OF SECTION 4.

Mr. Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I beg to present the Report of the Select Committee on the Bill further to amend the Code of Criminal Procedure, 1898, amendment of section 4.

THE BUDGET—LIST OF DEMANDS.

SECOND STAGE—*contd.*

DEMAND NO. 8.—RAILWAYS—*contd.*

POINT OF ORDER—NOMINAL CUT ON VOTABLE EXPENDITURE.

Range of Discussion on Non-votable Expenditure.

The Honourable Sir Malcolm Hailey (Home Member): Sir, there was a discussion in the House yesterday, during part of which I was unfortunately absent, on a point of order. Briefly, it referred to the extent to which on a proposal for what we have come to know as a nominal cut on votable expenditure, questions might be raised and discussion might range over questions relating to non-votable expenditure. I appreciate the fact that you have given your ruling on the subject, but for my own part, and I may perhaps be blamed for not having raised the point last year, I am conscious of the fact that in previous discussion on the Demands for Grants, opportunities were taken by the House for raising questions ranging over non-votable expenditure in the course of discussing cuts of a nominal nature

on votable expenditure. I am not, it may be well understood, desirous of arguing against your ruling; I am equally desirous to avoid putting forward any proposal which might embarrass the Honourable the Finance Member. I am far from either intention, but may I suggest, in view of the terms in which the Governor General's Order regarding discussion of non-voted items is couched; in view also of our previous procedure, that without in any way altering your previous decision, and without prejudice to any final decision that you may come to on the subject, it would be possible for you, during the next few days to allow the House, as an interim arrangement purely and without prejudice to the future, to discuss on nominal cuts relating to non-votable expenditure general questions relating to votable expenditure. I put that request forward, because I feel that the House would perhaps, during the general discussion, have taken a fuller opportunity of discussing non-votable expenditure had they been aware that it would not be possible for them to discuss these questions on motions placed on the paper in regard to votable expenditure. I of course wish to be precise on one point only, and that is that such motions should be actually of cuts of a nominal character. It is quite clear, Sir, that I could not put forward or support any proposal for a reduction in votable expenditure of such a nature that it was really intended to affect non-votable expenditure. My suggestion relates entirely of course to motions for nominal reductions.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I am sure we appreciate this concession to the weakness of the House, if I may put it so, its faults and defects to which they have got accustomed and which for a short spell might be permitted to continue. Sir, we have often been told that within the powers reserved to us larger conventions might grow up, and that is exactly what the House has been trying to do in this matter, and they have been allowed to do that. It is not as if there had been lapses which have to be condoned and need be now further condoned. I purposely refrained from taking part in yesterday's discussion for an obvious reason, and that is that these are matters that had best be allowed to grow their own way. And if they are not allowed to grow as they ought to grow, as conventions, then any concessions from the Government such as has been hinted at to-day would be valueless. Take for instance, what Mr. Jamnadas Dwarkadas referred to yesterday. He relied on the convention that sprang up last year. Unfortunately there were slight elements of inaccuracy owing to the exact proceedings not being before us. Mr. Jamnadas referred to what had been allowed before and this is exactly what the House has been trying to follow up. This proposed concession comes in another shape and I do not know whether it will serve any useful purpose or whether we had not better go on in the way we are doing. We do claim that by effecting cuts on votable items it is not only intended to raise a discussion but there is a desire to force the hands of the Government with regard to votable, that that is the clear object with which these cuts are proposed; and if this power is to be taken away, I do not much appreciate the value of the concession that has been announced to-day.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I did not understand you yesterday to rule that all discussion outside the particular item as irrelevant. You can, on a motion for a substantial reduction of a votable item, support your position by showing other ways in which that amount can be found. It is not an actual vote

[Rao Bahadur T. Rangachariar.]

on a particular item; in the argument in support of the motion I refer to various items which might have been done by Government, and thereby they need not ask for so much vote from the Assembly. In that way I do not understand that you ruled out such discussions as out of order. If you did, Sir, because the matter was discussed at very short notice and without any previous preparation for it, I would ask you to reconsider it. We do not want any concessions; we want to stand on our rights such as they are and if we have not got those rights we must agitate for getting those rights. By all means let us cultivate the habit of making conventions, but not against law. I do not think, Sir, there is anything in the rules or in the Act preventing us from supporting our motions for reduction of particular grants, whether it be a nominal sum or a substantial sum. I do not want to take this recommendation which the Honourable Leader of the House has suggested that it must be a nominal sum. It might be a substantial sum, but in asking my substantial sum reduction I may be able to show there are other ways in which the Government could have found this money and therefore I need not grant it. I am asked to grant a particular sum and I tell the Government "You can find that sum elsewhere." Sir, it is a perfectly legitimate argument to adopt, and I do not think you will rule such an argument out as irrelevant.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): I support what Mr. Rangachariar has said, Sir. Take for instance, what we had last year. We made a certain cut of a lump sum in certain grants and left the Government to adjust it in any way they liked between non-votable and votable as they chose. Here is the list supplied to us—the statement of the expenditure that is appropriated and that is reduced. Take for instance, the North-West Frontier Province. We asked and we carried a vote for a reduction of Rs. 12 lakhs and 90 thousand. How have the Government adjusted it? In that sheet, on page 10, it will be found that the original amount which was non-voted was Rs. 1,38,08,000 and the net grant voted by the Assembly was Rs. 1,11,22,000. How did the Government adjust it? They reduced the non-voted item from Rs. 1,38,08,000 to Rs. 92,99,000 and reduced the voted item to Rs. 14,79,000. It is for the Government to cut out according as they choose. It is for us to say "We are not going to grant anything more than this; you had better adjust yourself in any way you like between voted and non-voted as you did last year."

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I rise only to remove a misapprehension that might have been created by what my Honourable and esteemed friend Sir Deva Prasad Sarvadhikary said. Yesterday evening I had no time to urge the point that I was laying emphasis on. All the time, Sir, I was trying to prove that the discussion had been allowed last year in the course of discussions on demands for grants on items which it is urged this year are of a non-votable character; and in doing so I referred to the motion which was on paper in my name but which I refrained from moving only because before moving that I wanted to obtain some information from the Honourable the Finance Member. The Honourable Finance Member in replying never raised the point and I am still prepared to maintain that he had not the slightest idea of raising the point of order if that motion had been moved; and if he denies it I am prepared to accept his statement. But the Honourable the Finance Member in dealing with that point treated me

very fairly and answered all the arguments that were urged by me in speaking on my intention to move the motion. That alone prevented me from technically moving the motion; all the arguments were urged and in the course of discussion on Sir Vithaldas' motion for all practical purposes I urged also the possibility of my moving the motion if the Honourable the Finance Member's explanation was not satisfactory. I do not think, Sir, that I was inaccurate; besides, all that I was trying to prove yesterday was—and that I think has been proved beyond doubt—that last year in the course of the discussion on demands for grants, those items which are considered non-votable to-day were allowed to be discussed. Apart from that, the reason of the non-votable items being too heavy was allowed to be urged by Members as a reason for cutting down the expenditure on votable items. That was all that I wanted to urge and I do not think that I am guilty of inaccuracy.

Mr. President: The point in its essence is simple; but before I approach the main point put to me by the Honourable the Home Member I want the Assembly to clear up its mind of the confusion which arose owing to the fact that a certain item which appeared in last year's estimates as votable appears in this year's estimates as non-votable; therefore, though Mr. Jamnadas Dwarkadas' words were applicable to that point, they are not applicable to the main question.

The Home Member has put to me a point which is not only of great importance for this House but of great constitutional importance. As the Assembly is aware, I have endeavoured always to interpret the spirit rather than the letter of the Rules and Standing Orders. I have no intention of enforcing in a hard and fast sense the ruling given yesterday and I am prepared to acknowledge that the interpretation which I placed on the Governor General's order is open to argument. Therefore I may say that I am glad that the Honourable Home Member has taken this point in order that the further proceedings on the demands for grants may be put properly in order.

Mr. Rangachariar has suggested that if a large reduction is moved on the votable portion and carried then the Government must find means either in the votable or the non-votable portion of carrying that into effect. But I may point out to him that we should be establishing a very unfortunate precedent if I were to accept that without reservation; and the reservation which I must put to the Assembly in this: the non-votable portion in certain parts of the budget is much larger than the votable; and if I were to allow him to move a reduction on the votable item larger than the votable item itself, then obviously I should be allowing him to do a thing which is not permitted by the rules.

Rao Bahadur T. Rangachariar: I did not mean that.

Mr. President: But the Honourable Member meant it in essence though not in form. What the Honourable Member is asking me is to allow him to proceed not exactly on that line, but with that object and effect in view. Therefore, I think, for the purposes of the remaining discussion, I must adopt the more restricted procedure suggested by the Honourable the Home Member on the assumption that the Government itself is not impervious to argument and that where a reduction of a nominal amount is carried by the Assembly, the arguments used will carry their due weight with the Government. I may say in general that I am glad that the Honourable the Home Member has taken a liberal view of the constitution.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, after what has fallen from the Chair, my perplexity has become greater. I understood, Sir, ever since the commencement of this Assembly that we were always at liberty to use pressure upon the Government to economise upon non-votable items by making corresponding cuts in the votable items and that we were not restricted to any nominal amount in our cuts on the votable items. I now find, Sir, that the practice of the last two years will have to be modified, and if I wish to make a cut of a lakh of rupees in the non-votable item, I shall not be entitled to make that cut in a votable item and use it as a lever upon the Government to transfer it to the non-votable item. All that the Honourable the Home Member has suggested is that a nominal cut should be made in the votable item and leave the Government to make such cuts as they desire to make in the non-votable items. That, Sir, would be reversing the practice and procedure which has been followed during the last two years and which we, Sir, have followed even during the last two days. I, therefore, submit that that is a practice which has developed into a convention of this House, and we shall be going back upon a convention, the validity of which was never challenged by the Honourable the Home Member when he was in charge of the finances of the country. I therefore submit that we must not break upon a rule which, at any rate, has been established and become established during the last two years.

The Honourable Sir Basil Blackett (Finance Member): Sir, in making the motion yesterday and in asking you to give a ruling that the discussion on sinking funds on a motion for a reduction in the Railway Demand was out of order, I was following the practice which was in entire accordance with the practice in the House of Commons. A consolidated fund charge is not a charge which on any occasion in connection with the voting of the Demands or estimates in Great Britain the House of Commons can use as an argument for cutting down voted expenditure. The difference of course between the position in England and the position here is that, there are other things besides the consolidated fund charges which are non-votable. So far as the consolidated fund charges are concerned, the ruling that you have given, gives this House probably rather more liberty of voting, of expressing its view by voting on a consolidated fund charge than is granted to the House of Commons.

I would just like to refer to one other argument used by Mr. Samarth. He said that if this House were to reduce a votable item, it was open to the Government to spread that reduction over the votable and the non-votable portion of the vote. That is not so. The Government can only spend on voted expenditure such sums as are voted by this House, and if this House reduces a vote of 10 crores by one crore to 9 crores and there is a non-voted portion of one crore in addition to that sum voted, it is perfectly true that as a matter of money, the result at the end of the year might be that the Government had spent only 10 crores, by saving one crore on the non-votable instead of on the votable. But we should have to come back to the House and obtain its authority for that additional one crore on a supplementary vote. This Government can only spend on votable expenditure what the House votes. If this House reduces a voted item by a crore, the Government has either to reduce its voted expenditure by a crore or come back to the House for a supplementary grant. So that it is not true to say that the Government has liberty to adjust a cut in a votable portion of the vote by non-expenditure under a non-votable portion.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I ask the Honourable the Finance Member a question. Supposing out of a sum which is regarded as non-votable there is an amount which is not spent, you can adjust the unspent amount of the non-votable portion and use it for votable items. Of course, it will come by way of a supplementary grant, but when you ask for a supplementary grant and when the House finds that there is money in the non-votable item which can be transferred to the votable portion, there will be no difficulty in giving you a grant. That will be the position.

The Honourable Sir Basil Blackett: That may be the position, but the technical position is that on a votable expenditure Government can only spend money that is voted. If you cut a Demand by a crore, the question whether there is money unspent has nothing to do with the case. It is simply a question that this House has the right to determine by vote what sums shall be voted for the Government to spend on certain services. The Government cannot spend a rupee more on these services without getting further money voted by the House.

The Honourable Sir Malcolm Hailey: It was an old saying that the Greeks feared their enemies even when they brought them gifts. I thought that I was endeavouring to get over a difficulty that was raised yesterday and was asking your assistance to surmount it. The difficulty as I saw it and as I put it, arose purely out of one matter, namely, whether you could discuss non-votable questions on a motion relating to a nominal cut on a votable item. That I understand was the exact point on which you gave your ruling. I find, however, that my well-intentioned efforts have been misconstrued into an attempt,—I am sure I am right in using the word 'misconstrued' because that is the practical effect of what Dr. Gour said,—to curtail a convention of another nature at which the House is said to have arrived. Nothing was further from my thoughts; nor would that result be involved in the permission which I asked you to give. As for the alleged convention, Dr. Gour said that last year the House was in the habit—whether it was a good habit or bad habit I leave the outside world to judge,—of making large cuts from votable items on the suggestion that it would leave it to us to distribute those as we liked between non-votable and votable. It is true that the House took that course, but it is a process against the correctness of which we argued both on practical and constitutional grounds. As the Honourable Sir Basil Blackett said, the House by doing so could not alter the constitutional position; if we could not effect reductions on the non-voted section then the total budget provision under the head was insufficient; and even if we did so, the matter had to be regulated subsequently by a supplementary grant within the voted head. When I proposed this morning that when nominal cuts were proposed on voted items the House should be able to discuss non-voted heads of expenditure, I did not, of course, in any way suggest that the House should not be at liberty to vote reduced supply on voted items when it could indicate that such reductions could be met by a feasible reduction in the scale of voted expenditure. Nor could I suggest that the President should go behind the motives of the House in making such cuts. We well know that last year large cuts on votable expenditure were moved and were supported on arguments which really had nothing whatever to do with the subject matter in hand. That is to say, the House, while fully acknowledging that we could not earn our Customs revenue without a

[Sir Malcolm Hailey.]

full establishment, nevertheless decided that 4 lakhs should go out of it. They argued it on grounds which they themselves will now admit had very little to do with the question whether a reduction in establishment was really possible. In other words, admitting that we still needed the establishment, they nevertheless voted reduced supply on this head and suggested we might make it up out of the army or elsewhere. We cannot go into the motives of the House in making these cuts on votable expenditure. I say nothing now as to the propriety or reasonableness of this procedure, nor do I suggest that it could or should profitably be followed again. I am not on that point—I only suggest that on motions for reduction of votable expenditure purposely placed on the list with the view of raising discussion or eliciting information you might allow the discussion to range over non-votable items.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, the question which was raised before this House yesterday involved two principles of great constitutional importance. One has been discussed and is being discussed to-day before this House. With regard to that, I would remind the Honourable the Home Member that his predecessor gave an assurance, when we made lump cuts last year, that, if the cuts could not be made from the votable items, the non-votable items would be reduced.

The Honourable Sir Malcolm Hailey: Would the Honourable Member kindly say who gave that assurance?

Mr. J. Chaudhuri: Sir William Vincent. He gave an assurance that, although we cut down votable items, if the reduction could not be made from votable items without making administration impossible, he would make some reductions in the non-votable items.

The Honourable Sir Malcolm Hailey: The Honourable Member will, I am sure, excuse me if I interrupt him to put him right on facts. It was suggested that a total reduction might be made under the head "General Administration." Sir William Vincent accepted that—that cut was not made by the House—he accepted that and said at the same time: "I am sure the House will not bind me to make it purely in one direction, but I shall spread it over the entire head, votable and non-votable." That, the Honourable Member will admit, is entirely different to what we are discussing now.

Mr. J. Chaudhuri: I quite admit that. My point is that that is a mode of bringing indirect pressure on the Government.

The Honourable Sir Malcolm Hailey: No pressure was needed in that case.

Mr. J. Chaudhuri: I do not question for a moment that, so long as this distinction between votable and non-votable exists, of course we cannot effect a reduction in the non-votable items. But in that respect, what the Honourable the Home Member has said is a concession. The non-votable items are not a permanent fixture and the scheme of the Act is that they will gradually be made votable. Now, the other question of principle that was raised yesterday on the merits, I have looked into the Government of India Act, and there can be no question that annuities are non-votable under the existing arrangement. But I would point out that

a question of principle as regards the privileges of this House that was raised was this. My learned Leader, Sir Sivaswamy Ayyar, raised the question that under section 67A, whenever a votable item is transferred to a non-votable head then the question should arise in this House. It would have been regular if, when this change was made, the matter was brought before the House and the change was effected in a regular way. That would have been a compliance with the requirements of section 67A to which Sir Sivaswamy Ayyar referred.

As on the merits, my friend Mr. Rangachariar referred to section 20, which says:

"All expenses, debts, liabilities, contracted and incurred on account of the Government of India should be a charge on the Revenue."

That is clause 20 (c). Now, if we refer to section 28, there is no doubt with regard to the question under the Government of India Act. These railways were acquired by the Secretary of State under powers therein referred to.

Mr. President: The Honourable Member is now arguing a question of merit, which is somewhat remote from the real point of order raised by the Home Member. I must ask him to bring his remarks to a close.

Mr. J. Chaudhuri: So I say on the merits of this question, the annuities are non-votable, but the other question that is indirectly involved is a constitutional question, and a question of the privileges of this House. Supposing next year a certain item is transferred from under the head of votable to non-votable without reference to us, that will be an encroachment on the privileges of this House and that will be an unconstitutional course.

Mr. President: That question has not yet arisen.

Sir Montagu Webb (Bombay: European): I beg to move, Sir, that the House do now proceed with the further consideration of the Demands for Grants.

Mr. J. Chaudhuri: That is indirectly involved and that is why I say I must enter my protest on constitutional grounds and on the ground of its being an encroachment on the privileges of the House.

Mr. President: I think I cannot allow the Honourable Member to raise a large issue like that. As far as I am able to understand, this is really a book-keeping entry.

The Honourable the Finance Member: Yes.

Mr. J. Chaudhuri: If any Member of this House does not appreciate the point, perhaps the Honourable the Finance Member will.

Mr. President: The Honourable Member has just said that he is satisfied that this particular item is non-votable.

The Honourable Sir Basil Blackett: Sir, the item in question is an annuity payable to the shareholders of the East Indian Railway Company. It is a sterling sum. Last year, owing to the way in which our accounts were drawn up, the sterling sum was shown in rupees with the equivalent of two shillings to the rupee. That left a gap of a very considerable sum between the amount of rupees required and the amount of rupees shown

[Sir Basil Blackett.]

at 2 shillings to the rupee. Under another head "Exchange", the additional sum was included. That was under a general item for Exchange, but was treated as votable, obviously quite wrongly, purely by mistake. This year the exchange being shown at 1s. 4d. the rupee sum which is the equivalent of the sterling sum is shown entirely under one head as non-votable. The amount that has been transferred from votable to non-votable is simply the exchange difference between the rupee at 1s. 4d. and the rupee at 2s. on a sum something over three million pounds representing the shilling annuity. I think there is a certain amount of misapprehension as to what the House is doing when it is voting demands for grants. What it is doing is appropriating a certain sum of money for expenditure by the Government on certain items. It votes that a crore be spent on such and such a department, on the voted portion. It is not framing a budget; it is not providing money, it is simply appropriating a given sum for a given expenditure. If it appropriates a reduced sum or if it reduces that expenditure by half, that is at that moment a direction to the Government to spend half that sum on these particular items of the voted expenditure. But there is a good deal of confusion of thought, I think, on what it is doing. It is simply voting certain sums for certain purposes and if it reduces the sums voted, that is a direct reduction of the sums available to the Government for those purposes and has no other effect.

Detailed Discussion.

Mr. President: The House will now resume the discussion on Demand No. 8 under the head "Railways."

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhamadan Urban): With your permission, Sir, I shall say only one brief word about all these three items.*

Mr. President: Do they come under the head Working Expenses?

Munshi Iswar Saran: Yes. According to the ruling given by you yesterday, I understood that all these proposals for reduction of smaller sums were included in the proposals for the reduction of larger sums and when the vote on the bigger issue was given, then the smaller ones went out. If that was your ruling, then, Sir, I cannot move these three items for the obvious reason that they are included in the head Working Expenses. But if, on the other hand, you are now pleased to hold that in view of the discussion that has taken place it may perhaps be more useful that these smaller reductions, which are really made to raise questions of principle and discussion on various matters should be allowed, then I shall, with your permission, make a few observations. It is a matter entirely for your decision, Sir.

Mr. President: The Honourable Member must not take the ruling regarding the discussion of a particular item in this case as applying to all cases. The ruling which I gave in the case of one of Mr. Joshi's amendments was not on the point of votable or non-votable but on the point that the matter had been fully discussed under Working Expenses and that

* "144. That the provision for Engineering Department, Appendix B (page 4) be reduced by Re. 1.

145. That the provision for Locomotive Department, Appendix B (page 4) be reduced by Re. 1.

146. That the provision for Carriage and Wagon Department Appendix B (page 4) be reduced by Re. 1."

it was the duty of the Chair to avoid as far as possible the repetition of discussion under successive motions for reduction. As the Honourable Member will remember, there was a long debate on Working Expenses and I think the Chair was entitled to assume that those who wished to discuss matters arising under Working Expenses would do so on the larger demand even though they themselves had put down smaller demands. The Honourable Member must not understand as regards the general application of the ruling that where a larger demand has been moved and voted upon, therefore *ipso facto* it rules out of order smaller demands, because that is not so. But in this case, from the point of view of orderly procedure, it would be improper to allow successive discussions of all smaller motions which come under Working Expenses in view of the fact that Working Expenses was fully discussed yesterday morning.

Munshi Iswar Saran: Perhaps it is my fault, but if you will be pleased to turn to amendment 132A, on page 10, you will find the following:—

"That the provision for Working Expenses under the head Railways (page 29) be reduced by Re. 1."

After the discussion on the larger question you passed over this and similar other items. Perhaps it may be my mistake, but I understood that all these smaller items were ruled out simply because the discussion had taken place on the larger item. Your ruling would necessitate that in the discussion on the larger item, all those people who had given notice of amendments for smaller reduction will, as a matter of right, be entitled to speak. Otherwise, there will be this obvious difficulty. Assume, Sir, for the moment, that twenty of us have given notice for reduction of a particular demand by Re. 1, Rs. 2 and so on, and there is a discussion about the reduction of the same demand by Re. 1 lakh. Further assume that a discussion of the larger reduction takes place and the question is decided. Now, if it is to be held that all the people who have given notice of smaller reductions are ruled out, then it appears to me, Sir, perfectly reasonable that all these people should have the right of expressing their views in the discussion on the larger reduction.

Rao Bahadur T. Rangachariar: The President has not said "No" to it.

Munshi Iswar Saran: I do not say that the President has said "No". I am only pointing out that this would be the inevitable consequence of that position.

Mr. President: The Honourable Member means that a Member in whose name a motion for reduction stands, which is less than the amount in the motion under discussion, ought to have the right to be called by the Chair. Is that what he means?

Munshi Iswar Saran: As you have been pleased to put the question I must answer it. Yesterday after the discussion on the larger reduction was over, you called on other men. I did not like to jump up to be told that I was out of order. This is exactly what happened yesterday. As soon as that was passed, you passed over this item and went down to some other item and called upon some other Member of the House. If you mean that each Member is to get up, then I suppose you will be pleased to allow us to have a little breathing time, because, you announced the vote and then you passed on and called upon another man. It is really impossible for a man to stand up in the interval between the announcement and the calling up of another man. That is the difficulty. As regards this particular item . . .

Mr. President: If the Honourable Member thinks that he still had the right to move the reduction of Re. 1 after we carried Sir Deva Prasad Sarvadhikary's reduction of Rs. 50 lakhs, we carried out his intention.

Munshi Iswar Saran: The reason is this. When there is a proposal for the reduction of a large amount that may be guided by considerations of a very different nature and it may not be necessary in the discussion of that large item to bring forward those matters which a man who proposes a reduction of, say, Re. 1, wishes the House to consider. I mean it is perfectly obvious.

Mr. President: I just called upon the Honourable Member to move 144. If he means that it is simply a vote reducing the Working Expenses, then it is out of order. But if he wishes to raise a particular point, then he is in order. I fail to understand his grievance regarding his motion for reduction of Re. 1.

Munshi Iswar Saran: As regards the reduction of Re. 1 it has nothing to do with the reason why that reduction of Rs. 45 lakhs or Rs. 50 lakhs should take place. I shall now come to this question* of 144, 145 and 146. I may take all these together. It is not necessary for me to make a long speech about it. I only put them down in order to draw the attention of the Honourable Mr. Innes and the Chief Commissioner to the grievance that there exists about the employment of Indians in these various Departments.

Mr. President: We have already had that discussion.

Lieut.-Colonel H. A. J. Gidney: Are you not satisfied? (A Voice: "Withdraw.")

Munshi Iswar Saran: That is perfectly so and I was therefore not going to move it. But you were pleased to call upon me. Take, for instance, the Carriage and Wagon Department. Not a word was said yesterday about it. If these are included technically under the head Working Expenses, then that goes. But if it is not, then I submit that I would be perfectly justified in moving my amendment No. 146, for not a word was said about it yesterday. But before I proceed, I shall beg you to consider that according to this view the right of a Member to move a particular amendment will depend to a large extent on the observations that have been made by the speakers in the discussion of the larger amount.

Mr. President: The Honourable Member will remember that the Commerce Member in replying said that he was replying
12 Noon. to no less than fourteen points under this vote and one of those was the very point of Indianisation. It is not the duty of the Chair to protect the right of any individual Member to raise a question at its proper point. He must realise that though it was somewhat disorderly the question of Indianisation was raised on two votes, Working Expenses and the Railway Board. The Assembly will appreciate the difficulty of preventing a repetition of discussions; but it is the duty of the Chair as far as possible to do so, because otherwise the same question would be raised on nearly every one of the votes. When once the question has been thoroughly discussed the Chair must protect the right of other Members of the House to raise other questions on other

* Vide page 3380 of these Debates.

votes. (Hear, hear.) If the Honourable Member proposes to raise the question of Indianisation I am afraid he is not in order.

(Cries of 'Withdraw', 'withdraw'.)

Munshi Iswar Saran: The only word I wish to say to those who shout 'withdraw', is that I am withdrawing this motion not in response to that shout but in compliance with your ruling.

Corruption on Railways—Pilferage of Fruits, etc.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I shall not make reference to those points which were adverted to yesterday and day before yesterday. I shall confine my remarks to one point alone which was not brought within the scope of discussion during these two days. That point is this. Two years back on the floor of this House I had the privilege of raising my voice and addressing the Railway Department that some of the stationmasters do not give a free supply of wagons to traders and merchants.

Mr. President: Order, order. That was thoroughly discussed on Working Expenses.

Dr. Nand Lal: With due deference, Sir, I remained present in this House during the last two days and so far as my recollection goes none of the Honourable Members of this House made any reference to the point which I am urging now. The point which I am referring to is this that the merchants and tradesmen . . .

Mr. President: The Honourable Member must have forgotten certain passages in the Debate in which under Renewals this question was very carefully gone into both by the non-official Members and by Members of the Government. If the Honourable Member has some other question to raise, I shall allow him to proceed.

Dr. Nand Lal: I am not referring to the question of renewals or the question of the number of carriages or the question of the difficulties of third class passengers. I am now referring to the conduct of certain stationmasters towards the merchants and tradesmen, that is, corruption. That point was never brought within the scope of any discussion during the last two days, and if I go beyond that point, then I may be asked to resume my seat. Since I am in favour of discipline I wish to ask your permission to proceed. May I proceed to that point?

Mr. President: The Honourable Member did not make it clear to me that he was going to discuss the question of the conduct of stationmasters.

Dr. Nand Lal: I thank the Chair for the permission granted to me. Sir, I shall not repeat the preliminary point which I had raised. It happens in many cases that a merchant applies to the stationmaster for the supply of wagons and the stationmaster tries to pretend that he has not got sufficient supply of those wagons which are required by the merchant or the tradesman as the case may be. But if that merchant or trader gives something to the stationmaster the wagons crop up in no time. The House is intelligent enough to understand what that thing is and I need not mention it. I address the Railway Department that the country will feel very much indebted to that Department if they will take effective measures so that the corruption, in any case, may be reduced, if it cannot

[Dr. Nand Lal.]

be eradicated. It is impossible for any Department to eradicate it, because, unfortunately, this evil habit has got its existence in the whole world. Therefore, I will not ask the Railway Department to do that which is impossible, but I am fully justified in asking that they will do their level best to see that this evil is minimised. Perhaps it may be urged on behalf of the Department "This criticism is merely destructive. Have you got any constructive suggestions to make?" Here I may add it is my duty, as a Member of this House, to offer those suggestions. The suggestion is that a register may be kept, at every railway station, so that if any merchant or any tradesman wants to have the supply of one wagon or two wagons, he may put down in that register "I want one wagon or two wagons on a certain day", and that register may be subscribed to or signed, in the way of authentication, by the officer in charge of that station, it may be the Superintendent of the station, so far as the bigger towns are concerned, or the stationmaster, as far as the smaller stations concerned. This will, in a way, meet the requirement and there will be, in any case, less chance for that stationmaster to get his palms greased. Another point in connection with the Traffic Department which was not urged before is—most of us are quite alive to this fact and I think the Railway Department too—that if you send a parcel containing oranges or mangoes from one place to another, your consignee will not be fortunate enough to get the whole of the consignment, but he will find something less, in some cases half, and in some other cases one-third. May I invite the attention of the Traffic Department to this evil which exists on a very large scale. I think even some of the official Members may have felt very deeply the loss of fruits which they might have sent for from a certain place. I think this is a point, in which we are very much concerned, and an honest effort must be put forth to see that this evil is reduced. Sir, the purity and honesty of the Department are essential factors, which go to give a good name to that Department and if the Railway Department will do something in the direction I have suggested most of the criticism which is levelled against it will have been removed at once. I move:

"That the provision for Traffic Department under sub-head Ordinary Expenses (b) (i) (4)—Appendix B be reduced by Rs. 100."

Mr. R. A. Spence (Bombay: European): I think there is a good deal in what Dr. Nand Lal has said especially in regard to fruits. I well remember trying to discover what had happened to a basket of mangoes and at last when I traced my complaint and got into the clerk's office, I discovered the empty basket under the clerk's table. Dr. Nand Lal made a constructive criticism and offered a suggestion to the Honourable Member in charge of Commerce and Railways in regard to a register of wagons. May I ask him to carry the suggestion a little further? It is a difficult problem. Perhaps the railway people might get assistance if they referred this matter to one of the Secretaries of the Gymkhanas who have great difficulty in arranging a register for tennis courts. If it is a difficult matter to arrange a register for tennis courts I am sure it would be a very much more difficult matter to arrange a register for wagons.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): The point that has been brought forward by Dr. Nand Lal is a very important point indeed. Corruption among railway station staff is a very common thing all over India. Not only does corruption exist in regard to the supply of wagons and pilferage of fruit, but corruption exists in almost everything connected

with the railway station working. For instance even the foodstuff vendors pay annuities to the station staff and I have tabled a question upon this point of annuities of this kind to which I expect an answer in a few days more. The question I admit is a very difficult one for solution for one reason and that is that whatever is earned by this corruption is divided not only amongst the whole station staff, but also amongst the underlings and subordinates in the offices of the District Traffic Superintendents and others, with the result that these station masters are emboldened in their attempts to fleece the public. It has occurred within my own knowledge and experience that a station master drawing only about Rs. 50 or 60 a month has been kept at a particular station and only that station for years together, sometimes 15 or 20 years. At the time of transfer he carries a fortune of over two or three lakhs. In one instance I remember that a particular station master who was working on the Sind section carried a fortune of 2 lakhs at retirement and he had no son or daughter, and I do not know what he did with that money. Similarly with regard to foodstuff vendors, they have to pay regular annuities and even commissions to the station staff or the staff of higher offices, for securing a licence for the purpose of vending these foodstuffs. The result is that the travelling public is mulcted. They get very inferior stuff. No body cares to look at what is being sold to them what the public are given to eat and at what rates. The suggestion made by Dr. Nand Lal with regard to keeping a register in regard to the supply of wagons will hardly do. There are ways and ways of doing things and evading the supply. I consider this matter is so important that I have suggested the appointment of a committee to go into this matter regularly and make a thorough inquiry and find out how far this evil exists and what should be the remedies for stopping the same. The thefts are not confined entirely to parcels of fruits but to much more valuable articles, such as ghee, liquor and things of that kind. These are freely robbed while in transit. A tin of ghee or kerosine is tampered with and the contents removed. In some instances the public have complained that instead of ghee they found stones when these tins are received by them. Thefts of mangoes and fruits are common complaints on all railways and the fact that superior officers of the Railway Department have not paid any consideration to the complaints which are by no means new or tried to stop the nuisance has led the public to believe, though wrongly, that the railway officers themselves encourage their subordinates. I say that these things will never stop unless a regular committee is appointed and the matter is thoroughly gone into and some strong measures adopted for stopping this scandal. I would therefore draw the attention of the Chief Commissioner to this point very particularly.

Sardar B. A. Dalal (Bombay Northern Division: Non-Muhammadan Rural): I rise to support and voice the grievance of Dr. Nand Lal. I represent the Northern Division and I have received a telegram a few days ago from the timber merchants of Godra that they applied to the Station Master and the Traffic Inspector to supply them wagons but unfortunately their request was not conceded. The same telegram was addressed to your goodself and to Mr. Jamnadas also. These grievances ought to be remedied. They have been waiting for so many months and still they have not been supplied with wagons. Consequently they were put to a loss of some lakhs. Some remedy must be found for this grievance and I suggest to the Railway Board to do their best in this matter, to make inquiries whether what I have said is a fact or not. It is a fact, because I have got a telegram a few days ago.

Mr. K. G. Bagde (Bombay Central Division: Non-Muhammadan Rural): The evil which is now under discussion was brought to the notice of the Acworth Committee and in their report they have made the following remarks. I am reading at page 53, paragraph 165:

"It is not too much to say that petty payments for wagons have now grown into a system of organised blackmail. The Railway Board and the railway officials, though they hesitate to admit that the evil is as serious and widespread as the traders claim, do not attempt to deny its existence. They deplore it, but are disinclined to accept responsibility. The practice, they say, can only be stamped out by convicting and punishing the bribe taker. This has been done in some cases, but not with sufficient frequency or certainty to stop the practice. If conviction of the bribe taker in a law court were the only means of stopping the practice, it would evidently continue indefinitely. For normally the only witness against the bribe taker is the bribe giver and as he is *particeps criminis* and equally liable to punishment, he can hardly be expected to come forward to give evidence. The practice must be stopped, not by conviction of offenders, but by prevention of the offence. And this we are convinced can be done as soon as the authorities are sufficiently in earnest about the matter. We feel that the evil would not have grown so serious if the Railway Board has appreciated its magnitude, and after a thorough investigation had grappled with it as a general question affecting all India and had insisted on reforms of the methods of wagon distribution."

The report is signed 22nd August 1921. It is more than a year and a half since the report was published and I would like to know from the Honourable Member concerned what steps have been taken in this direction.

Mr. J. P. Cotelingam (Nominated: Indian Christians): With reference to the point raised by Dr. Nand Lal as also by Mr. Spence and Mr. Hussanally, I believe a Committee was appointed last year to go into the whole question of the revision of railway risk notes. That Committee went round the country, took evidence and dealt also with the question of pilfering referred to by the Honourable Member and we have received copies of that report. I do not know what action has been taken in the matter by the Railway Board.

Mr. C. D. M. Hindley (Chief Commissioner, Railways): Although this discussion when started by Dr. Nand Lal was perhaps received by the House with a certain amount of levity, I can assure Honourable Members that this matter of corruption and pilferage is a serious one, on which the Railway Board feel very acutely and we feel that definite steps must be taken to eradicate these abuses. In regard to the general question of the distribution of wagons between stations, I must again mention that this depends to some extent on the total number of wagons available. Individual stations in various parts of the country undoubtedly feel the pinch when the number of wagons which are available or the number of wagons which can be moved are in deficit of the number required for the total traffic. This symptom, which Honourable Members know from their own experience, of wagons not being easily available at stations does hang on the general question of the provision of facilities and the renewals of stock on the railways. That is the general aspect of it.

In regard to actual distribution, various railways have different methods of ensuring that the goods brought to each different station are carried away in turn. Acting on the suggestion of the Acworth Committee, very shortly after we received their Report, this matter was brought prominently to the notice of all railways, but the suggestions which have been made by Dr. Nand Lal and Mr. Spence are, if I may say so without disrespect, of a somewhat amateur nature compared with what we are actually doing and

have been doing for some considerable time. It is not at all comparable to the difficulties of the Secretary of a Gymkhana Club, if I may say so. Each railway has its own special system of registers. When goods are brought to a station for consignment, they are entered in a register in rotation and on many railways—I am not prepared to say that it is the case on every railway—those registers are periodically submitted to and certified by the district officers. The penalties for changing the order of those consignments as registered are very severe indeed. I may say from my own experience on the East Indian Railway that no less than six station masters were dismissed for altering the order of consignments in registers without authority. I know from my own experience that this is a matter which is looked into very carefully by district officers. I say that their measures may not always be effective in every direction, and, in so far as they are not effective, we shall endeavour to tighten them up; but the measures are there and the machinery is there. (A Voice: "Perhaps that machinery is never used.") I think if Honourable Members have occasion to send consignments, if they make inquiries at their own stations, they will find out exactly what the practice is.

In regard to corruption, I must again mention what was mentioned to the Acworth Committee, namely, that both sides to the transaction are to blame, and I do deprecate putting the whole blame upon the receiver of a bribe in a matter of this sort and not on the people who offer it. (A Voice: "Shame.") I wish to clear to some extent these attacks that have been made upon a very hard-working body of people. There are black sheep in every flock, and we cannot expect every one to be absolutely honest, but I do not believe that they are as a class essentially dishonest. I should like to say here publicly that they are men with whom I have worked myself from the time I joined the railway; I have had many friends among them and I know, as a whole, that the station masters and men of that class, who have dealings with this class of business, are honest. There are dishonest ones among them no doubt, but it is the duty of any Honourable Member who wishes to traverse this statement, if he has individual cases within his own knowledge, to bring them forward. (Mr. Darcy Lindsay: "Is it always the station master?") I was referring to those who have to deal with the registration of goods. Mr. Hussanally, I think, went further and said some of the bribes which are collected or alleged to be collected in these cases are divided amongst some other members of the staff. Well, I say any case of this sort which is brought to notice will be and shall be properly investigated. I do not think it is quite fair to make general statements on some individual cases or upon hearsay. (Sardar Bahadur Gajjan Singh: "There are no parties in the case of mangoes and any other fruit.") I have not come to pilferage yet, Sir. I want to say on the general question that it is not a matter over which we are sleeping. We have had it under discussion and we are pressing on the railways at every possible opportunity to improve their methods of registration of goods and distribution of wagons. On certain sections of the North-Western Railway it may interest Honourable Members to know that we have been developing a system whereby by means of telephone instruments and what we call "train control," adapting it for another purpose, we have been getting gradually a system into force whereby the district officers themselves can be put in touch every day with the consignments which are waiting at the stations and the position of the requirements of wagons. This is a very definite step forward, and I believe myself that it will effect a great reduction of these complaints about inequality of treatment of consignments.

[Mr. C. D. M. Hindley.]

There we bring the small station directly under the district officer and the whole position can be reviewed. That is a matter we cannot go on very rapidly with, because the House is not giving me sufficient funds with which to carry on these improvements. These are the improvements I want to make, and, of course, we shall be stumped in some directions.

I must say with regard to pilferage that this is another matter which is causing us very great concern. We hear about fruit, apples and mangoes, being stolen and, looking at the matter from a very light point of view, I am afraid those are things that touch individual Members of this House; but the railways know full well and I agree quite definitely that pilferage on the railways has become a very serious evil and it is a matter which we are taking up on very definite lines. We have had the matter investigated, as perhaps Honourable Members will recall, in connection with the Railway Police Inquiry Committee, which sat either last year or the year before, and the steps which that Committee recommended us to take we are taking to the best of our ability. The re-organization of our watch and ward staff is one of the most important matters which we are taking up. It is a matter which varies in its different aspects in different parts of the country. Every province of the country has different aspects of this most important question owing to the different kinds of people who commit pilferage and the different classes to be dealt with. For that reason it has been taken up individually on the different railways. Some railways have already made a step in advance and appointed a special police officer to re-organise the watch and ward, for we are satisfied that it is only by making better security methods for the goods while in our care as carriers that we can hope to reduce to some extent this pilferage which has grown to such very large dimensions; and I hope that this House, the country and the public generally will realise that this is a somewhat slow matter and will take time. It is a matter of organization and of gradually countering the evil by suitable means wherever we can do so. I think, Sir, those are the main points.

There is one other point which I forgot to mention regarding vendors on the North-Western Railway. I am sorry I have not here with me the exact terms under which these vendors are allowed to be given licenses, but I believe I am right in saying that on the North-Western Railway these vendors do not pay anything for their licenses. On some railways they are made to pay a certain fee for licences, and it is possible that Mr. Hussanally may have mixed these two things up. I believe it is a fact on the North-Western Railway. There is no definite fee for licence, and of course I quite admit that it may be within his knowledge that certain of these vendors have paid money for their licences to sell food; but that I may say is not within the knowledge of the responsible officers of the railway or they would have taken action at once. It is not a recognised practice.

With regard to the statement that no one cares what food they sell or what prices they charge, I believe it is a fact that they have a definite schedule of food which they sell at each station, and that the prices are fixed and reviewed from time to time.

I think, Sir, those are all the points that were raised on this amendment.

Mr. Harchandrai Vishindas (and other Honourable Members): I move that the question be now put.

Mr. President: The question is that the question be put.

The motion was adopted.

Mr. President: The question is:

"That the provision for Traffic Department under sub-head Ordinary Expenses (b) (i) (4)—Appendix B (page 29) be reduced by Rs. 100."

The motion was negatived.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan): Sir, as I think since yesterday morning, Government has already come in for a great amount of ragging, and as we have only three and a half days left for the other Demands, I shall not move this amendment:

"That the provision for Government Supervision under the head Railways, be reduced by Rs. 5."

Mr. B. Venkatapauraju (Ganjam cum Vizagapatam: Non-Muhammadan Rural): Sir, I propose to take only a few minutes.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): I have not had a chance of moving my amendment No. 150 yet.

Mr. President: I called on the Honourable Member just now. The Honourable Member must realise that is one of the subjects which we have discussed. What point does he wish to raise?

Mr. K. C. Neogy: I want to raise a specific point with regard to one particular railway. I beg to move, Sir:

"That the provision for Programme Revenue Expenditure—Assam Bengal Railway, Appendix B (page 8) be reduced by Rs. 100."

If Honourable Members will turn to page 8 of Appendix B, they will notice that the provision for Programme Revenue Expenditure is shown as Rs. 6,99,000 in the actuals of 1921-22. This year the figure stands at Rs. 14,61,000—that is to say, more than double. I will remind the House that the Assam Bengal Railway has cost the tax-payer 18 crores in capital cost and 9 crores in interest charges already, and that the line involves an annual net loss of about 40 lakhs to the tax-payer. Now, Sir, if Honourable Members will turn to page 63 of the Inchcape Committee's Report, they will find that they strongly recommend that that expenditure on unremunerative lines must wait until the financial position improves. I want to know from the Honourable Member in charge as to how he proposes to effect any cut in this amount of Rs. 14,61,000 and whether he has borne in mind the recommendations of the Inchcape Committee in sanctioning this Programme Revenue Expenditure for the Assam Bengal Railway.

Mr. C. D. M. Hindley: Sir, in the revision of the Programme Revenue figures which was made in the cuts as a result of the Retrenchment Committee's recommendations, we have, as I mentioned to the House before, made a cut of 2½ crores of Programme Revenue on our total figure as put before the House in the Budget. We had already made a cut of 1 crore and therefore the total amount which we budgeted, 12½ crores, will be reduced by 3½ crores. These figures in Appendix B relating to the Assam Bengal Railway were included in the original total figure, and we have not yet had time to distribute that total amount of cut over the different railways. It is a matter which requires very great care because there are certain railways which require more renewals perhaps than others; but I can assure the Honourable Member that in the case of the Assam Bengal

[Mr. C. D. M. Hindley.]

Railway we shall give full effect as far as we possibly can, having regard to commitments and liabilities, to the recommendations of the Retrenchment Committee. I am not in a position to make an announcement as to the exact figure to which the provision for the Assam Bengal Railway will be reduced.

Mr. K. C. Neogy: Sir, I beg to withdraw my amendment. The motion was, by leave of the Assembly, withdrawn.

Catering and Advertising Department—B.-N. Railway.

Mr. B. Venkatapatiraju: Sir, I move:

"That the provision for Catering and Advertising Department under the head Bengal-Nagpur Railway Company, Appendix B (page 13), be reduced by Rs. 100."

Sir, it must be admitted that reasonable facilities should be provided in India as in other places for passengers who are travelling; but unfortunately in India the railways do not compete for the travelling public and therefore they do not care for the comfort of the passengers. Of course it is true they provide refreshment rooms and dining cars

Mr. President: Order, order. I assumed the Honourable Member was going to raise some particular point in connection with the Bengal Nagpur Railway.

Mr. B. Venkatapatiraju: I am coming to that, Sir.

Mr. President: The Honourable Member has been embarking on a general discussion, which is not in order.

Mr. B. Venkatapatiraju: I want to show, Sir, that there are European refreshment rooms, not only for Europeans but for those who take European food, and in order to give additional facilities the Bengal-Nagpur Railway have established a Catering and Advertising Department. So far advertisements are concerned we find in the carriages whisky is advertised, and wherever we turn our eyes we have advertisements of whisky before us. But leave that alone. Unfortunately the Department which has been set up to provide comforts, so far as I am aware in our part of the country, is causing much inconvenience and discomfort to the passengers. It is in this way. Before Waltair station was taken up by the Bengal-Nagpur Railway it was under the Southern Mahratta Railway, when there was no complaint. The rooms were leased for Rs. 15 by the Southern Mahratta Railway to the Indian refreshment room contractor. Subsequently from the Southern Mahratta Railway the Bengal-Nagpur Railway took charge of that, and now instead of giving it to some respectable person on contract, they have given it to some Friends and Company, friends of somebody, who in their turn have given it to somebody else, and instead of realising Rs. 15, per mensem they wanted to take Rs. 300 the first month, then Rs. 400 and then Rs. 500. Out of sheer despair the party refused to pay and he refused to vacate. Things were at a standstill and then the public met twice or thrice and sent telegrams to the Agent concerned and he said he would not interfere because the arrangement had been made by the Catering Superintendent. What were we to do, if they wanted to charge Rs. 500. For better accommodation they do not charge for the European refreshment room anything. Therefore this amount must come out of the pockets of Indian passengers. Is it not the intention of the Railway Department

in making these arrangements to provide facilities for passengers and not that certain people should make profits out of the poor unfortunate passengers who travel several hours a day in the train. Therefore, Sir, this matter is one which the Government should take serious notice of. They should not allow any one to sublet it to anybody else, who in their turn sublet it to somebody else, so that the last man might fleece the passengers by charging unconscionable rates for dirty food supplied to these unfortunate third class passengers. Therefore, Sir, I invite the attention of the Chief Commissioner to this point. As my friend points out this is the only refreshment room for passengers that you have on the line; you do not find it at other stations, except what we call *kutchra* food—*puris* and the like which are sold by vendors. Most of the southern people do not take these *puris* and *kutchra* food; they want rice and other things and that cannot be had unless provision is made for refreshment rooms. In this matter, Sir, though help was wanted, it was not actually given; when they have appointed three officers drawing Rs. 1,000, Rs. 800 and Rs. 700 per mensem to look after these small things, can they not provide better facilities for the poor passengers?

Mr. N. M. Joshi (Nominated: Labour Interests): I want to make one remark, Sir, before Mr. Hindley replies. In reply to one of my questions on this point the Honourable Mr. Innes stated that the Bengal-Nagpur Railway spends Rs. 33,289 on its Indian branch of the Catering Department and Rs. 2,79,700 on the European Branch, or nearly ten times as much. While spending Rs. 33,289 it makes a profit of Rs. 28,000 on the Indian branch; that explains the *kutchra* food mentioned by Mr. Venkatapatiraju. On the European branch they spend Rs. 2,79,000 and make a profit of only Rs. 20,000. I think, Sir, this is evident partiality and the Chief Commissioner will perhaps be able to explain this.

Mr. C. D. M. Hindley: Sir, with regard to the complaint of my friend, I found it a little difficult to understand exactly what his specific complaint was. He seemed to give rather scant recognition to the efforts that have been made by the Bengal-Nagpur Railway to put their catering arrangements on a proper footing. They have taken a great deal of trouble about it and I believe that the public generally who use the Bengal-Nagpur Railway are satisfied with the arrangements that have been made. (*Cries of 'Not at all.'*) I stand corrected; I have not been on the Bengal-Nagpur Railway myself very much, but I have heard a great deal of praise of the arrangements made. In regard to Waltair I am afraid my knowledge does not extend to the details of the arrangements made at that particular station, but I will ask the Agent of the Bengal-Nagpur Railway to give attention to the complaint that has been made.

Regarding Mr. Joshi's figures—I beg the Honourable Member's pardon—they are my figures, I think the explanation of these figures is that the European branch as it is called was started first by the catering department because it was considered then that that was the department which wanted organising. The vendors and others on the stations at that time apparently met the requirements of passengers, but there had been subsequently complaints from the members of the Indian public about this, and the catering department therefore took over the Indian side of it as well. That possibly is the explanation of the figures for the Indian branch being considerably less than the European branch

Mr. N. M. Joshi: What about the profit on the Indian branch?

Mr. C. D. M. Hindley: Another explanation is that the European branch does not only the catering in the refreshment rooms but also supplies stores and provisions to the staff along the line. I am not in a position to explain the reasons for the profit on either side, but I must point out that in either case there was a small profit made and I do not think that the railway itself is looking to making a large profit on either branch. I am quite satisfied from the reports that I have seen that they are taking the matter quite seriously and not using it as a means of obtaining a heavy profit from the public, and I am quite certain that Sir Godfrey, the Agent of that Railway, would be the very last to attempt to make a profit out of food supplied to Indian passengers.

I will bring the matter of Waltair station to his notice at the first opportunity.

Rao Bahadur T. Rangachariar: I only want to add one word, Sir, because I have been travelling by this Bengal-Nagpur Railway. They may take a lesson from the Madras and Southern Mahratta Railway and the South Indian Railway in the matter of food supplied to Indian passengers; and if the Honourable the Chief Commissioner will travel in the south of India he would recognise what public opinion there has effected; there we make ourselves felt on the railway administration and we have had these arrangements improved. When I passed Waltair I had to suffer a lot; in fact I had to break the railway rules by having the food cooked in my own compartment; and you will find that there is a lot of trouble felt by the Indian passengers. You get unwholesome food vended on the railway platforms; you have no room to go to and all these things require to be looked into; it is not only the Waltair station, but all along the line you have these difficulties.

Mr. B. Venkatapatiraju: Hoping that the Chief Commissioner will attend to these difficulties I do not press my amendment.

The motion was, by leave of the Assembly, withdrawn.

Mr. B. Venkatapatiraju: The next motion is:

"That the provision for Engineer-in-Chief for Vizagapatam Harbour under the head 'Bengal-Nagpur Railway Company' be reduced by Rs. 5."

His pay is Rs. 3,000 and I propose by this reduction to raise the question. I have no complaint against the officer; he is a very able and sympathetic and energetic officer doing his level best; but my complaint is against the Government because they have taken money and purchased land to the value of Rs. 8 to 20 lakhs; they have kept that officer really without any work to do; they have demolished several buildings in the town of Vizagapatam and they have made the town congested, and now that they have got 38 crores for expenditure they have not provided a single pie for the extension of the Harbour there. What is their object in keeping the Engineer on Rs. 3,000 if they have not made up their mind and prepared to proceed in the matter? They have acquired hundreds of acres of land to the utter inconvenience of the people. When they started this project, did they not have estimates before them? Did they not have a clear understanding whether it was a profitable concern or not? If it is a profitable concern, when they have at present ample funds before them, about 38 crores, why should they not proceed and provide funds for it? If they think, on the other hand, that it will not pay, then why should they have acquired the land at all? Probably they might have seen several

articles that appeared in the *Statesman* wherein it was shown that if proper facilities were provided the return would be not merely 5½ per cent. but more, because it would facilitate trade and bring foreign goods at less cost by steamer *via* Vizagapatam to Calcutta, and it would save a lot of money in traffic. I had a discussion with several officers and they at least made me understand that they are quite satisfied with the programme and that it will be a profitable concern. Under these circumstances I do not see what change of policy has come upon the Government of India. The other day when I asked a question they said they were considering—in the year 1921. I am told that the Bengal Nagpur Railway offered to do the work if certain facilities are offered to them, and when I asked a question the Government replied that they did not know whether any specific suggestion was made, but they were considering. How long are they going to consider it? Why do you keep an officer on such a salary without utilising him? Is it not a waste of public money? Therefore I appeal to the Honourable Mr. Innes to see that when there are ample funds available and when they have seen that it is an absolutely paying concern, they should launch it especially when they have spent some amount on it already for that purpose, instead of keeping an officer waiting in expectation of doing something from year's end to year's end.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I must admit that this project for a harbour at Vizagapatam has been hanging fire for some time. The original intention was that we should have a railway port at Vizagapatam. That was agreed to, and the intention was to go ahead. Then the financial difficulties arose, and when we did arrive at a solution of those financial difficulties by the large amount of money granted to us for capital expenditure, the House will remember that in accordance with the definite recommendation of the Acworth Committee, it was decided that that money should be devoted to the rehabilitation of Railways and not to new projects of development. That is the reason why we were unable to provide last year from this capital programme money for the development of the Vizagapatam harbour. Naturally we have been endeavouring to find out other methods of financing the scheme, and we have been in negotiation with certain financiers connected with the Bengal Nagpur Railway, and they are on the point, I understand, of putting up definite proposals for financing this project of constructing a harbour at Vizagapatam. We expect those proposals shortly and then we should be able to come to a decision whether to accept those proposals or to follow the suggestion which has been thrown out by the Incheape Committee, namely that instead of spending all this money upon the rehabilitation of Railways we should go in for new developments; but I must ask my friend to be patient for a little time longer.

Mr. B. Venkatapatiraju: Sir, in view of the observations made by the Honourable Member in charge, I do not wish to press my motion.

The motion was, by leave of the Assembly, withdrawn.

General Superintendence.

Dr. Nand Lal: My motion is that the provision of Rs. 12,638 for General Superintendence, Appendix B, (page 49) be reduced by Rs. 500. I shall not take more than three minutes. There is only one point, Sir, to which I should like to invite the attention of the House, and when the House hears me, I am sure it will appreciate my arguments, barring, of course, a few members, who have no mind to do their duty. Sir, if the

[Dr. Nand Lal.]

Chief Commissioner of Railways will give me some sort of undertaking, then I shall withdraw my motion at once. The point which I wish to bring to the notice of the House is this. That sometimes, not only I, but, other Members of this House also, must have seen women and children walking about at the railway station platforms being unable to get suitable accommodation. The train has arrived, and there is no Railway official to look after them; to see whether they are properly accommodated or not. Adult passengers are able to look after themselves if they are put to any discomfort or inconvenience. But old women and little children without their parents find it very difficult to find accommodation. Sometimes the children have their parents with them, but they are too old to find suitable accommodation. In such cases I think it is incumbent upon the Railway Department, which is the carrier, to see that their customers are properly accommodated in the carriages. If a passenger goes to the station master, he asks him to go to the platform inspector. If he goes to the platform inspector, he asks him to go to the ticket collector, and the poor passenger does not know how to steer himself. He has paid you the money and he claims that he should be given a proper seat, and it is incumbent on the railway authorities to discharge their obligation. If the Chief Commissioner of Railways will give me some sort of undertaking, that he will do something effective in this direction, I shall withdraw my motion at once.

Mr. C. D. M. Hindley: Sir, there are two points which occur to me in regard to this suggestion. One is that I do not think that, when a passenger takes a ticket, the Railway Administration is necessarily responsible for guiding his erring footsteps from the point where he steps on to the station premises up to the place where he gets into the carriage. We assume that the ordinary passenger has a certain amount of intelligence and he can get the information if he wants to as to where his train is and how he has to get into it. But the larger problem which I know Dr. Nand Lal is referring to is a difficult one, especially at large stations, and in the hurly-burly of getting into the train I appreciate the fact that it is very difficult for inexperienced people to find their way about. On larger stations, therefore, we have appointed on certain railways a class of Passenger Superintendents as is known to many Members of this House. These have proved very useful in some cases, in other cases they have not come up to the requirements altogether. I think that is a matter which the Railway Administrations will see to.

Now the other point that I want to come to is this. You are asking me to cut down expenditure on staff. At the same time questions are fired at me as to why more staff is not employed for looking after passengers, why more staff is not put on to stop pilfering and to stop corruption. Now, Sir, I am not able to do impossibilities. I will do my best, and certainly every Railway Administration will do its best under the very great difficulties which are being imposed upon them now owing to retrenchments. But we cannot have luxuries in the matter of passengers travelling if we are going to cut our working expenses down to the very lowest limit. I will take note of what Dr. Nand Lal has said on the wider aspect of the question with regard to larger stations, and I am quite sure that the Railway Administrations will do what they can in the matter.

Dr. Nand Lal : Since an understanding has been given, and I believe that it is a very sincere one, I beg to withdraw my motion.

Railway Board.

Mr. J. Chaudhuri: Sir, my motion is as follows:

"That the provision for establishment of the Railway Board under sub-head 12—Miscellaneous Railway Expenditure India under the Head B—Railway Revenue Account (page 78) Appendix B, be reduced by Rs. 100."

This is a motion for a nominal reduction of the establishment of the Railway Board. My object was to elicit some information from the Honourable Mr. Innes: I understood that the Railway Board was in a state of flux and he has given us some answer to it already and he further mentioned that the matter is under the consideration of His Excellency the Governor General in Council. If he can give us any further information I shall be very happy. We have cast upon him a very great responsibility by passing our Resolution with regard to such an important Railway as the East Indian Railway being taken over by the State. In order that the State may take it over and carry on the business efficiently, it is essential that the reorganization should take place as early as possible, and the Honourable the Member in charge ought to be in a position to enlighten us on it during the Simla Session. So I will not press that point.

But I would draw the attention of the Honourable the Chief Commissioner to a fact, that the Incheape Committee has mentioned. This Report is indeed very valuable in many ways. But in certain respects it

1 P.M. seems to be a little hasty. One of the items that the Incheape Committee mention is that the Railways showing the worst results relatively from 1913-14 are the North-Western, the Eastern Bengal State Railway and the Oudh and Rohilkhand. I have looked into the history of Railways and I find the Eastern Bengal State Railway is not at all a losing concern. I do not wish to refer in detail to the fact that it has raised its capital in recent years. I will put it generally to the Chief Commissioner that its capital has been raised to the extent of nearly 13 or 14 crores or more. If was, 10 years ago, only 27 crores, now it is 41 crores or more.

Mr. President: We cannot discuss railway finance now.

Mr. J. Chaudhuri: What I say is that this Railway is not getting the advantage of the additional capital, for this reason. Sara Bridge has been put up at a cost of 3½ crores, and the broad-gauge has been extended for about 50 miles beyond. That entailed an enormous outlay of capital. But as the Honourable Mr. Innes said the other day, its profits depend on the traffic in jute,—that is, from the jute area from Jalpaiguri down to Sara Bridge. And one of the reasons for the building of the Sara Bridge and the broad-gauge line was to obviate the necessity of transshipment. But now that we have spent this capital of about 13 or 14 crores, still we are precisely in the same position as before.

Mr. President: The Honourable Member should raise this point over the vote to the Eastern Bengal State Railway itself.

Mr. J. Chaudhuri: I do not raise it here, Sir. I just draw attention to it and will finish soon. I would not like to take up the time of the House again. But I say that if this line is to reap the full advantage of that capital, the broad gauge line should be pushed up to Jalpaiguri if not to Siliguri; to curtail the capital expenditure now will result in a loss. So these are matters . . .

Mr. President: The Honourable Member must pay attention to what I said to him just now. This should be raised on the Eastern Bengal State Railway. I cannot go back on my decision.

Mr. J. Uhaudhuri: I hope the matter will be gone into by the Chief Commissioner and the Honourable Mr. Innes, so I withdraw this motion.

Sir Deva Prasad Sarvadhikary: Before the Honourable Member is allowed to withdraw, Sir, may I ask the attention of the House to a definite question of importance under Miscellaneous Railway Expenditure in Exhibit B and that is with regard to audit and control. There was a question I asked some time ago as to whether it was intended in any way to relax the audit with regard to railway accounts. Some people are under the belief that there is a move in that direction. If that is so, it will be extremely unfortunate. Railway audit such as it is is good, but Government audit should on no account be relaxed. Then, Sir, on page 79 there is a reference to the Indian Railway Accounts Committee about which there is no allotment. I do not know quite what that means. If it is a question of the Railway Advisory Board in some way, I want to ask as to whether means could be found for making the deliberations of all Railway Committees accessible at least to the Members of this Assembly.

Mr. O. D. M. Hindley: There is only one point there, Sir, that I think I need refer to. I presume the Honourable Member is referring to page 79 of Appendix B—he said Exhibit B. The Indian Railway Accounts Committee was a departmental Committee appointed for a definite object, to look into certain matters in regard to accounts—I see that it is mentioned in the Report of the Retrenchment Committee. As far as I remember,—I am not quite acquainted with the facts,—but, as far as I remember, it completed its work in 1921-22 and therefore there is no provision for it in the current year's budget. With regard to the relaxation of audit on railway accounts, I do not think, Sir, there is any such proposal and I do not think the Government will entertain any proposal to relax in any way whatever the audit over railway accounts.

Mr. S. O. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, I beg to move:

“That the demand under the head ‘Railways’ be reduced by Rs. 5 crores.”

Since this appears to be a large amount, with your permission, Sir, I would reduce it to one crore and a half. There has been apparent to me a feeling in the House, nay a conviction, that the expenditure under this head has not been cut to the last limit. So far as I have been able to understand the opinion of my Honourable friends, I feel that this proposal of mine will find favour with them. (Mr. R. A. Spence: “No, no.”) I have already spoken on this subject and I therefore do not propose to inflict another speech on the House. I merely formally move it.

Rao Bahadur T. Rangachariar: I wish to move my amendment to this amendment of Mr. Shahani's, Sir,—my amendment No. 177.

Mr. President: You had better take the Honourable Member's instead. It is almost the same thing.

Rao Bahadur T. Rangachariar: Mine is for 1 crore and 14 lakhs, Sir. 40 is a mistake.

Mr. President (to Mr. Shahani): Will the Honourable Member withdraw in favour of Mr. Rangachariar's amendment?

Mr. S. O. Shahani: Very well, Sir, I withdraw.

Rao Bahadur T. Rangachariar: I beg to move:

“That the demand under the head ‘Railways’ be reduced by Rs. 1,14,00,000.”

Sir, my object in reducing this general demand by 1 crore and 14 lakhs

Mr. Jamnadas Dwarkadas: In addition to the 50 lakhs?

Rao Bahadur T. Rangachariar: Yes, that is already carried. My object is not to cut down the actual expenditure under the various heads which Honourable Members will find on page 29 of the Demands. They may make reductions here and there under Miscellaneous or they may find funds otherwise. I point out to the Government a ready method which it is perfectly open to them to adopt and I hope they will adopt it and if they adopt it they need not cut down the expenses under these heads. I am quite aware that against the 4 crores and 59 lakhs recommended by the Inchcape Committee they have already accepted a reduction of more than 4 crores and 59 lakhs, so that we have no complaint to make against the Railway Department that they have not carried out the recommendations of the Inchcape Committee, although these recommendations are still indefinite and hazy to me. But I take it, this is not the time to quarrel about it and I dare say we will soon understand it. I said, Sir, it is easy for the Government to find this money without in any way impairing the efficiency of the work next year. If Honourable Members will turn to page 7 of the Railway Memorandum circulated to us, there is a very handy entry of 1 crore and 21 lakhs which, by providing for interest for one year, reduces itself to 1 crore and 14 lakhs, which is readily available in the hands of the Government. And that is why I say, without in any way impairing the efficiency of the working, Government will find a method of recouping this expenditure. It is only a pen transfer which can be done in a second and without any effort they can find this money. I commend this motion for the acceptance of this House.

Mr. P. P. Ginwala (Burma: Non-European): Sir, I support generally the vote for reduction but I am afraid I cannot accept the reason that my Honourable friend, Mr. Rangachariar, has given for the acceptance of his motion. It is the worst way of financing that I can think of. If this method is sound, why not finance the whole of your Budget for borrowing money in this way to pay off an annuity which is nothing more than payment of a sinking fund *plus* interest. There are various other items here of this nature. It will be the easiest thing in the world for us to go and borrow money and reduce our deficit. I am surprised, Sir, that even such a distinguished authority as my Honourable friend, Sir Montagu Webb, is in favour of this financial method. It will be much more straightforward of us either to leave this deficit uncovered or to say that the deficit should be financed directly out of loan. But you are camouflaging your argument. You are like the ostrich hiding your head in the sand, and just because you cannot see anything, you imagine that nobody notices anything. That, I submit, is no ground whatsoever for making this reduction. But I put

[Mr. P. P. Ginwala.]

it on the general ground. I am not so satisfied as my friend, Mr. Rangachariar, seems to be that the Government has given full effect to the Inchcape Committee's recommendations. What the Government has done is simply this. They have no doubt, as I said yesterday, reduced the Budget by Rs. 4,50,00,000 as compared with the budget estimate of 1922-23. But this is how they have done it. They have deducted Rs. 3,00,00,000 which in ordinary circumstances is in the nature of capital expenditure—from the revenue programme. The other economies consist merely of economy in fuel added to Rs. 50 lakhs already saved by the Great Indian Peninsula Railway. That is how I account for these Rs. 4½ crores. If this is what the Inchcape Committee intended to do, I submit, that the Inchcape Committee has not done anything whatsoever, for practical purposes and it is no good our talking about the recommendations for economy that have been made by the Inchcape Committee. The plain truth of the matter is that the Honourable Members on the Government Bench ~~could themselves have effected these economies without the Inchcape Committee ever sitting~~, if that was really all that the Inchcape Committee intended to do. There is no economy in the general administration of Railways, if this is the method in which they want to give effect to their recommendations—I ask the House, to examine the way in which Government say they have given effect to the Inchcape Committee's recommendations. There is no element of permanency in this method. The Rs. 3 crores which they have deducted from programme revenue only applies to this year. It means that in the next year they will come forward and say "These Rs. 3 crores were deducted last year, because the Inchcape Committee said so. Let us have them back. As for the rest we have already saved one crore on fuel, and the Great Indian Peninsula has already saved Rs. 50 lakhs." I submit, Sir, that this is not treating the Inchcape Committee with respect. That is not what they could possibly have intended. That is what the Railway Administrations ought to have done themselves without the help of the Inchcape Committee, and I maintain, that there is a further Rs. 3 or 4 crores which can be deducted if the Inchcape Committee is treated with that respect which it deserves. This is camouflaging the figures to put it plainly. This deduction does not come from the general administration of Railways at all. It is merely postponing the evil day to the extent of 3 or 3½ crores. If that is what the House understands by economy, I have nothing to say. But if the House insists upon permanent economy in the administration of Railways, then it must ask for the further reduction, if not of 4 crores, as I asked for, to the limited extent proposed by my friend, Mr. Rangachariar, not for the reasons given by him but for the reasons I have given now. I have given them in a straightforward fashion. I do not wish to blind myself to the fact that if you accept the amendment for the reason that my Honourable friend has given, you will be simply throwing dust into your own eyes, but if you look at the position in a plain business like fashion, you must insist upon a further cut being made in the general expenditure on Railways. I support this amendment.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, after the discussion yesterday Mr. Ginwala pointed out to me that he was not satisfied that the cuts that have been made really bore out the recommendations of the Inchcape Committee and at some little trouble, with the help of a Member of Government who had studied them,

I went through these accounts and I quite agree up to a point with Mr. Ginwala that the final recommendations of the Inchcape Committee do not actually carry out the detailed recommendations paragraph by paragraph. I take it that what happened is this. In the paragraphs, the Inchcape Committee recommend a cut on the 1922-23 Budget in the programme of revenue expenditure of Rs. 2½ crores, another cut of 1 crore on coal and Rs. 50 lakhs already cut by the Great Indian Peninsula on salaries and wages and an additional crore which the Committee thought could be cut by other Railways. Besides these, I see on page 70 an item of Rs. 23 lakhs, the difference between Rs. 81 lakhs and Rs. 104 lakhs which they consider could be made up by general tightening up of control. That is to say, we have a total recommendation of Rs. 5,23 lakhs, against which, on page 77 they advise Rs. 4½ crores, a difference of Rs. 73 lakhs. Now, Sir, I take it that after consideration and probably protests made by railway officials they decided to recommend Rs. 4½ crores, adding as you will notice a rider that they consider that other savings could be made. Well, Sir, one of my reasons for suggesting yesterday that the extra Rs. ½ crore should be made in spite of the Government provision for lag was because of these additional cuts. So, what we have really done is this. We have suggested a total cut of Rs. 4½ crores allowing this Rs. 73 lakhs as lag. If the Railway Administration is able during the year to catch up all that Rs. 73 lakhs, that will, in my opinion, enable them to give us the full Rs. 4½ crores. If we look at the lag, instead of having Rs. 50 lakhs they now have Rs. 73 lakhs. I think it is that Rs. 73 lakhs, which is the real amount recommended in the pages of the report and not in the summary which Mr. Ginwala has noticed but has not been able to calculate correctly. On the main motion which we are now discussing, we are asked to reduce the grant by Rs. 114 lakhs. Mr. Rangachariar's point is a sound one, because, Sir, the total amount of the grant is Rs. 67,47,00,000 less Rs. 3 crores, that is Rs. 64,47,00,000 less the Rs. 50 lakhs, which, roughly speaking, gives Rs. 64 crores. We have now got to the point of cutting the grant down to Rs. 64 crores. We agree that under the Inchcape Committee's recommendations we should give Rs. 64 crores for Working Expenses and for surplus profits. Therefore Mr. Rangachariar is quite correct in opposing the reduction of Rs. 64 crores by another Rs. 1,14,00,000. What Mr. Rangachariar is really doing—he has approached it in an indirect way—he is logically pursuing the course that was initiated this morning, of suggesting to the Government that they should consider seriously the motion that was raised by Sir Montagu Webb yesterday and which was ruled out of order. The suggestion of Mr. Rangachariar is that they should consider that suggestion and that that would be a method by which the Government could get money to pay for this cut of Rs. 114 lakhs. I personally would have preferred to have followed the advice which you gave us this morning. I would have preferred to have made the cut by the nominal amount of one rupee so as to use that as moral pressure on the Government to seriously consider the advice of capitalising these annuities. Still, there is no reason, as the Leader of the House mentioned this morning, why we should not make a cut of the total amount instead of a nominal amount. I think the feeling on this side of the House is strongly towards capitalising these annuities. I think if it had not been for that feeling we should not have had this motion before us to-day. Mr. Ginwala has argued probably from the point of view of Sir Basil Blackett on the disadvantages of capitalising these annuities. Some of us take the point of view that if you purchase an article, whether it is a railway or a mill, and if you decide to pay a certain amount in cash and a certain

[Captain E. V. Sassoon.]

amount is spread over a period this amount could have been capitalised and borrowed, and for that reason, as the State cannot make both ends meet, we suggest capitalising some of these liabilities which are on the border line of capital and revenue,—we say put these over to capital. Let us spread the paying of that capital amount over a further period,—that is what we should be doing by borrowing—so as to give temporary relief I am not saying I like it. I am not saying that I would not have much preferred to put as much as possible to revenue, but we are looking forward to the Finance Bill when we shall have to supply the money for the paying of these grants. We see before us the proposal of the Finance Member in respect of salt. We do not like that. We find no other, at any rate, feasible suggestion put forward to replace that demand. We are therefore trying to cut our coats according to our cloth, and although I agree it is to a certain extent juggling, by a mere book entry, I think if we are even straining the point a little so as to balance our budget without having to refuse to pass a very unpopular measure we should do so. Therefore, I hope that the Finance Member may help us if not by taking this amount and putting it into capital, by showing some other means of getting at the same result.

The Honourable Sir Basil Blackett: Sir, after the speech that we have just heard I think it is quite unnecessary for me to argue the details of the thing behind the thing. This is one of those cases where as the Irishman said it is not the thing that is the thing but it is the thing that is behind the thing that is the thing. The last speaker said "We cannot balance our budget, we do not know how to make the budget balance and therefore let us fake it." That is what is being proposed. It is perfectly absurd to say that there is any real difference between charging to capital a sum which on certain arguments may or may not be on the border line and saying we are budgeting for a deficit. To pretend one thing when you are doing another is absurd. One of the objects we had in view in aiming at a balanced budget was to improve our credit. You will do much more damage to your credit if you fake a balance than if you budget for a deficit. This particular question about the capital portion of an annuity can be argued up and down, other things can be argued up and down. The Railway accounts by common consent are not in as good a condition as they might be. We ought to have undoubtedly a provision for reserve fund. We ought to have probably a depreciation fund. The only provision in these accounts which is of that nature is this small annuity and a small sinking fund in addition. It is the same in regard to our general accounts. We have totally insufficient sinking funds. Outside our general accounts we have—I have referred to it already—we can see no reasonable ground for not charging to revenue an amount which is charged against capital. Bastable has been quoted against me. I am not sure he has not been misquoted but I should like to say I entirely disagree with Bastable if he said anything of the sort. I should be very sorry if Bastable wrote anything of the kind. I should also like to draw the attention of the House to another technical point. This is a motion to reduce the voted portion of the Railway demand—the only portion with which this House is directly concerned—by Rs. 114 lakhs. If you carry that motion, that is a direction to Government to spend Rs. 114 lakhs less on the voted portion. I was rather shocked to hear it suggested that the Government can do it by underspending somewhere else, that is to say, that the Government has

a right to spend more money than the House votes for it. Is that what you really mean? That it is a perfectly decent thing that we should be gaily spending more than the House has appropriated, on the expectation (A Voice: "Adjust or re-adjust?") that you can come back later on and ask for a supplementary vote? (A Voice: "Under-spend the non-voted.") If you under-spend the non-voted you are appropriating a certain amount to voted expenditure. If you invite me to over-spend what you have already given me you are inviting me to over-spend subject to under-spending the non-voted portion. Then you are inviting me to misappropriate (A Voice: "We sanction it by a general Resolution") in the hope that after the event I will get your sanction. I am taking this technical point because if the House is going to assert its authority to control the expenditure of Government it must insist on this golden rule that the Government shall not spend money above what the House has appropriated if it can possibly avoid doing so, in advance of the appropriation of that money by the House. And to suggest gaily at this stage that we should go ahead and by saving on non-voted portion misappropriate money (A Voice: "No, no")—that is what you are suggesting, I submit, Sir, that it is what is being suggested

Rao Bahadur T. Rangachariar: If I may explain, keep it there and come to us and say "Here is the money and please allow us to spend it."

The Honourable Sir Basil Blackett: I am perfectly content to accept Mr. Rangachariar's definition of misappropriation. I should like to add this one remark. Government cannot accept the suggestion that any portion of these annuities should be transferred to capital. If a cut is made on that ground it will not be a cut which will have any influence on the total of the deficit as viewed by the Government.

Mr. Jamnadas Dwarkadas: I do not know whether the House really is asking the Finance Member to fake up the accounts in order to produce a balanced budget, because if the House is doing that, when it suggests that the annuities should be charged to capital it is in very good company. I may for the information of the Finance Member quote here certain passages from Government documents themselves. I just want to point out to the Honourable the Finance Member that during all these years this point was not raised. From 1900 to 1920 except 1908-09 I think when we had a deficit we had years of fat surpluses. And when you have a year of surplus you do not mind its being chargeable to revenue, but on many occasions it has been pointed out

The Honourable Sir Basil Blackett: May I rise on a point of personal explanation? I think it will help to shorten the discussion. As I said, you can argue this question up and down but whatever we do about this particular point it will not alter the general fact that in my view we shall be attempting to fake instead of make a budget balance. You can take one single item by itself and say that it should not be chargeable to revenue, and you can argue on a dozen other items that they should not be chargeable to capital. As regards the statement that this question was not raised till 1920, I would point out that it was actually raised in 1906, as the correspondence which was circulated last year will explain. It arises now in a deficit year, because you are attempting to fake a balance when you have not got a balance.

Mr. Jamnadas Dwarkadas: If you read the General Administration Report of 1910 you will find it there stated in paragraph 4 of the Report that the financial result of the working of State railways was a net gain of Rs. 298.75 lakhs. This result, however, and I want the Finance Member to notice this particularly, is arrived at after inclusion in the charges against revenue of a sum of Rs. 13.108 lakhs representing the portion of annuity payments and redemption of capital. Omitting this item which is not properly a revenue charge, the result is a net gain of 430 lakhs, but I do not merely stop here. You take the Financial Statement introduced by Sir William Meyer in the year 1914-15. There again he says: "Admitting that annuity payments are really of a capital nature amounting as they do to the discharge of debt." So there again Sir William Meyer himself admits that while in a surplus year you can make them chargeable to revenue, there is justification in making it chargeable to capital. So after all the House is not demanding anything like faked accounts. All that we are demanding is that these annuities should be chargeable to capital. I can quote paragraphs from report after report to strengthen the argument that we have advanced here. I do not know wherefrom my Honourable friend, Mr. Ginwala, brings his knowledge of finance, but in very many countries this practice is prevalent and the annuities are chargeable to capital. The late Finance Member, Sir William Meyer, has himself admitted it. Your own reports have admitted it that these are really a charge on capital. I will be very glad if the Government can cut down at the instance of my friend, Mr. Ginwala, a sum of one crore and 14 lakhs from the voted item. No one would be more pleased than myself but in order to secure a balanced budget, I think you would be perfectly justified in doing what your own past Finance Members and your own Administration reports have recommended should be done.

Mr. T. V. Seshagiri Ayyar: If it is a question of direct vote whether annuities should be charged to capital account I would have no hesitation in agreeing respectfully with the Finance Member and disagreeing with my friends on this side of the House. But, Sir, I am going to give my vote to my Honourable friends, although I do not agree with them as regards their contentions. As was pointed out by the Honourable the Finance Member yesterday, the practice in England has been since 1906, since I believe Mr. Asquith became Chancellor of the Exchequer, not to charge annuities to the capital account. What would be the effect of charging annuities to the capital account? The result would be that you go to the world's market and say that as we are not able to pay from the revenues what we have been paying as annuities, we want to borrow; and what would be the state of your credit? Certainly you will have no credit in the world's market if you tell them that you are not able to pay from the revenue account what you have been paying hitherto: it would be mischievous and it would bring down the credit of this country if we say we are not able to do what we have been doing hitherto, namely, to charge to revenue these annuities which have been paid for a long time; but I am in agreement with my friends that this amount can come from the general accounts and therefore I shall vote for the proposition that has been put forward by Mr. Rangachariar.

Sir Deva Prasad Sarvadhikary: Reference has been made to the correspondence in 1906, which was circulated last year. Unfortunately I have not got a copy of the correspondence before me and I must make very guarded reference to it, but my recollection is that it was made abundantly clear that what was asked by the Government of India at that

time was considered as the correct mode of keeping accounts and that could not be followed because of what was considered to be the law on the subject. There is some doubt whether the law is to that effect or not. But if that is the law, there would be no difficulty in changing the law. Fake and misappropriation are strong terms, even though they may be lightly used and I am sure neither this House nor the other House where the term was first used are going to be party to anything of that kind. If we vote for it, as I hope we shall, it will not be by way of being a party to fake. Supposing the whole of the amount that has been devoted to annuities had to be paid in the year in which the rights in the railways were taken over by the Government, what would you have done? Would you not have raised a loan? Instead of doing that you have been spreading over that loan on a number of annuities. In the ordinary course of things and if annuities were not then in vogue, you would have raised a loan and will have been paying the interest all these years. I admit that what goes by the term annuities may be divided into two parts, namely, capital portion payable during the year and interest portion. There may be differentiation with regard to that; but it cannot be soundly and legitimately urged that the whole of that is chargeable to revenue. Well, the Honourable the Finance Member has shuddered at the idea of professors becoming Financial Members. It is not a new thing in the world for Professors to have risen to higher posts than that. One of the corridor aphorisms, if I may so call it, is that when a civilian financier has bungled the finances of the Government of India expert financiers have come in and there is a variant of that aphorism also, viz., where experts have bungled, it is the civilians that have got the matters straight. There is room for legitimate difference of opinion and I do not think that the application of strong terms will be justifiable if the House decides that what ought to have been paid out of loan, on which interest is paid, has really been spread over a number of payments in the shape of annuities consisting of portions of capital and also of interest. That being the state of things, I do not think that the House would be wrong (if it is permissible to do so under the ruling proposed this morning), in voting for the reduction that has been proposed by Mr. Rangachariar. I should be free to vote for it, in spite of what I said yesterday. My observations yesterday were confined to working expenses and I did not believe in crippling the railway administration so far as the working expenses are concerned, after imposing fresh burdens upon it. But if there are other ways open to us, which we may legitimately fall back upon by way of reducing the deficit, we are entirely justified in resorting to them.

Sir Montagu Webb: Sir, there is one point on which I should like to say a few words. I trust that this House will not be misled by the expression "fake". With all respects to the Honourable the Finance Member, I think we can take it that the payment of capital liabilities out of loan money is not "faking" the accounts.

The Honourable Sir Basil Blackett: I do not think that was what I said. What I said was that this question could be argued up and down on its merits and that it was part of a very much bigger question. With regard to this question whether annuities should be charged to capital or not, what I did say was that it was impossible, in the circumstances of this year, having regard to the other condition of our Budget, having regard to the absence of reserve funds and other things and the presence of the Delhi capital expenditure and other things quite

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illegitimate, to pretend to have a balanced budget by saying this item should be charged to capital.

Sir Montagu Webb: It is a very common device in the discussion of matters of account, when you are making an amendment or attempting to make an amendment of which perhaps your own adversaries do not approve, for your opponents to say that you are "tinkering" with the accounts or "doctoring" the accounts. We were told to-day that, if we put capital expenditure to loan on this particular occasion, we shall be "faking" the accounts. Well, I submit, Sir, I have dealt with accounts—private and public—for 30 years and I know far too much about accounts—to be affected by the suggestion that any particular course of this kind would be "faking" the accounts.

I would like to recall to the House what are the facts of this case. I think it was about 1880, that Government first exercised its option of purchasing one of the Indian railways under the option in its contract. In those days to have had to pay for this railway out and out would have involved the raising of a loan of 26 millions sterling, possibly over 30 millions sterling if we take the premium on the value of the shares. Now, 30 or 40 years ago the idea of the Government of India raising a loan of 30 millions sterling was unthinkable. Why, only six or seven years ago, when I ventured to suggest that the Government of India should raise a loan of twenty millions sterling towards the war, the suggestion was received with universal ridicule and I was called the "wild man of finance" or something of that kind. Now, during the latter half of the last century there was a great vogue in favour of annuities. People at large, professors in colleges, financiers and others, all commenced to talk about annuities. People began to discover what a splendid thing it would be if you could pay off the whole of the National Debt by way of annuities. They said "Why should we go on paying interest on our National Debt year after year and, having paid interest for 40 or 50 years, or more, find that the debt remains at the end of that period just the same? Let us turn all our national liabilities into annuities." It was at this time that the Secretary of State for India had somehow or other to make a *bandabast* for purchasing the East Indian Railway. It is not unnatural that the idea of settling this difficult problem by way of annuities received favour, and the East Indian Railway was purchased by way of annuities. Unfortunately, the conclusion of the public was such that nobody liked annuities and, as the years went on, the idea of turning our debts into annuities completely failed because, however suitable they are from the point of view of the State, the public do not like annuities, because each payment that the public receives in the form of an annuity means that they are receiving not only their interest but also a little bit of their capital back. Of course, you ought to re-invest that little bit of capital if you are a wise person, but people who receive an annuity are liable to spend it all and not re-invest that little bit of their capital as they should do. The consequence was that annuities for the repayment of Public Debt have never been popular. But the fact remains that in its essence an annuity is the repayment of a portion of the capital and the interest. Now, in this particular case we are paying annually some five crores under the heading of Railway annuities; of that 5 crores about one quarter is capital and the rest is interest. Now, Sir, if our finances are in a thoroughly sound condition and we have a handsome surplus, there could be nothing wiser than to repay out that capital

out of that surplus; but this coming year we shall not have any surplus; yet we are still invited to make a capital payment from revenue in spite of our deficit. I do not think that this House can be surprised that, in the circumstances, the suggestion has been put forward that we should, at least for one year, make this capital payment out of loan money, rather than out of revenue, which we have not got. That is the simple matter of the case and I naturally rise to say, Sir, that such a financial transaction appears to me, with some 30 years' financial experience behind me, to be a thoroughly sound proposition. I repudiate the suggestion that the House would be "faking" the accounts, if they made such an amendment.

The Honourable Sir Malcolm Hailey: I must apologise for rising at this moment, when the House is suffering from the fact that the memory of its breakfast is long past, and its hopes of lunch seem infinitely dim; but I think we ought to get our minds a little clearer on the two avenues of thought which have been moving the House for the last half hour. We do not any of us want to base a vote either for or against a motion on matters of verbiage or expression. We want to get to the substance and we also want to be quite honest with ourselves. Now, here you have a motion which calls for a reduction of over a crore of rupees on the voted expenditure. It is supported on two grounds. First of all, there are certain advocates for it who say that we can reduce our railway working expenses by that amount, and they will vote that reduction on that account. There are others who believe that we have made all the reduction possible in our working expenses, but nevertheless they are going to vote for this motion on an entirely different ground which I need not now describe to the House. I say this is a matter on which the House needs to be honest with itself. I do not think it is possible that these two schools of thought can either honestly or logically unite on the same platform. The process savours too distinctly of a desire to refuse supply at any cost, in spite of any argument and indeed without reason. Now let us assume that the amendment is passed. Yet, what I take to be the larger part of the House agrees that we cannot really cut our working expenses any lower and that it would be dangerous to do so. (*Several cries of dissent.*) Yes, I hear murmurs to the contrary, but I have heard also speeches in the sense I am now voicing. There are undoubtedly—and I merely quote what has been said here this morning—a large number of the Members of this House, and some Members who are not lacking in business experience, who hold that we have already reduced our working expenses to the lowest possible figure. Then we have got to make this money up from elsewhere, or we shall not earn our full railway revenue. Here comes in the second school of thought. They say "You have your non-voted section, transfer a certain sum from that section to capital or loan, and you will be able to find the money." We can only do that if we are honestly convinced that this would be the proper course to take, and if, after being convinced that that is the proper course to take, we could come back to the House with confidence that, after we had effected that operation, the House would vote the necessary crore and a quarter to replace this cut in our working expenses. For, after all, the working expenses must be met. I say that we need, first of all, the conviction that we can properly effect this transfer and, secondly, a certain guarantee that if we come back to the House, they would supply us with the requisite crore and a quarter to replace working expenses. Now, can we with honesty to ourselves, work on that conviction? Sir Basil Blackett has

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admitted that the proposed transfer is one of those questions which you can argue up and down. That is perfectly obvious. It has been argued up and it has been argued down in the past; and argued both ways again to-day. The point on which we lay stress is this,—that whatever the rights of the case may be, though it is true that in the past the expenditure has at times been described as of a capital nature; though it is equally true, on the other hand, that there are many of us who believe that railway annuities being in the nature of a sinking fund should properly be a revenue charge; but balancing those two arguments or putting them both aside, if you like, we lay greatest stress on this, that this expenditure has been charged for a large number of years on revenue, and on what appeared at the time to be on reasonable grounds.

Mr. Jamnadas Dwarkadas: In surplus years.

The Honourable Sir Malcolm Hailey: Not entirely last year, if I may point out to the Honourable Mr. Dwarkadas, it was paid in a deficit year. He himself raised the point that it should not be paid in a deficit year and when I pointed out that it was after all in the nature of a Sinking Fund he very handsomely withdrew his objection.

Mr. Jamnadas Dwarkadas: Sir, I rise to make an explanation. Last year the Honourable Member said the point would be considered, whether in a deficit year it should be charged to revenue, and on that I did not move the motion.

The Honourable Sir Malcolm Hailey: At any rate, the result of it was that whether through lack of pressure on the part of Mr. Jamnadas Dwarkadas or for some other reason, it was paid in a deficit year, and it has been paid in previous deficit years in the same way.

We are applying continually to the outside world for money. An important item on which we must lay stress is our financial credit. We do not wish to present to the outside world the fact that for a number of years we have charged this considerable item against revenue but now, finding ourselves in a difficulty, we propose to pay it from our loan accounts. We do not consider that that would redound to our credit. Financial critics might say—"That is all very well in itself. It may be that there are arguments on both sides. It may be that from a book-keeping point of view or from a commercial point of view, this may not be an entirely incorrect transaction." As I said, there is something to be said on both sides; but they might say—"Why have you never adjusted the whole of your accounts on this basis? Why is it you take this particular item and charge it to loan account? Why do you not re-adjust the whole of your accounts in order to bring properly against your revenue account the many items which you are now spending from your loan account and which, on a more strict commercial basis, you should charge to revenue?" The question is awkward and inconvenient. We cannot deny that there is a certain number of items of no inconsiderable amount, which we are now incurring from loan accounts. Our justification for maintaining them in the present circumstances is—firstly, that we have done it in the past and that is a kind of justification in itself—that is, it at least keeps our accounts consistent in the eyes of the outside world; it knows exactly where they are in relation to the past. Secondly, we shall not be able, until we have re-cast our whole commercial and other

transactions on a book-keeping basis, to effect the transfer. That is our case. Do not let us go into minute arguments as to whether this particular item can or cannot be charged to loan account. Let us bear in mind only what effect this transfer might have on the outside world from which we have to raise our money. They will say—"Are your finances in such a sound condition after all, if when you are temporarily pinched you have to take what has always been an item of the revenue account, and purely for purposes of convenience now charge it to loan account?" My own impression is that if one of the commercial institutions to which Sir Montagu Webb has referred, and with which he himself has been honourably connected in the past, if it were to do the same, then I do not say that it would be charged with any kind of misconduct, but I do say that its financial reputation, when they came to raise fresh money, might be impugned in the money market.

Mr. N. M. Samarth: I am sorry, Sir, to detain the House at this late hour, but as reference has been made to the subject as to what is to be done when the State is in such a state of financial stringency that it must keep its accounts in a particular way, I will again read another passage, a short passage, from Bastable on "Public Finance", who is my great authority. If I had to take my lessons in Public Finance from Mr. Seshagiri Ayyar or Mr. Ginwala, I would have to burn up all my text-books on the subject.

Mr. P. P. Ginwala: But from the Honourable the Finance Minister?

Mr. Jamnadas Dwarkadas: There is a great deal of difference between you and the Finance Minister.

Mr. N. M. Samarth: Now, Sir, the substance of that passage—I will give the reference, it is in Book 5, Chapter 5,—the substance of those two parts of paragraph 2, is that the State is in a different position from a private individual in the case of loans and borrowings, and the passage says that in the case of the State there are some special features of public economy that give a peculiar colour to its borrowing, more particularly in the case of the Central Government. The sources of individual wealth reside in property or person or capacity to earn. It is from them that all private income comes; but the State's revenue is mainly derivative. It can compel the tax-payer to supply funds. Now comes the passage to which I refer:

"The method of borrowing is therefore naturally suggested, where heavy taxation is for the moment undesirable and is further encouraged by the fact that public credit has the advantage of resting on a broader and more enduring basis. So far as a public domain is in existence, loans may be regarded as virtually mortgages raised on its security, as many of the early loans were in form as well as in fact."

He again proceeds:

"A second peculiarity of public economy is the difficulty of sudden retrenchment in its case."

And, consequently, he says:

"when under any given state of things, a deficit is imminent and new taxes are not for the moment available, borrowing is necessarily prescribed."

Well, I again say, I prefer to have my lessons in Public Finance from Bastable than from Mr. Ginwala or Mr. Seshagiri Ayyar. The question specifically dealt with by him. Here we are faced with this necessity.

Mr. P. P. Ginwala: Sir, I rise to make a personal explanation. What I said was that if you said you were going to borrow in order to cover your deficit, I should have no objection for it would be a more straightforward course. What I was objecting to was the method.

Mr. N. M. Samarth: Again I say that Mr. Ginwala has some curious notions of public finance. When we say it is to be transferred into capital account, it means that it comes out of borrowing. Sir, this is not the only item that we ask to be transferred. There are several amendments of which notice has been given by me of the same character. I made the matter clear in my speech on the Budget. I am going to insist on the thing being done. It is not faking accounts but keeping accounts properly. It is improper book-keeping against which this Professor has protested, and he has said that if you ask any Department to make retrenchments you may take it that that Department will not make the retrenchments. If it is a complicated undertaking which the State undertakes, it is liable to resort to a bad or defective system of book-keeping. I can read you another passage to that effect. But there is no need to do so. I insist upon purity of book-keeping in the Government of India; it is not faked, it is proper book-keeping I insist upon and I trust that the House will carry it.

The motion that the demand be further reduced by Rs. 1,14,00,000 was put and the Assembly divided:

AYES—67.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Aiyer, Sir P. S. Sivaswamy.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Dalal, Sardar B. A.
Das, Babu B. S.
Gajjan Singh, Sardar Bahadur.
Ghose, Mr. S. C.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jamali, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Jejeebhoy, Sir Jamsetjee.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—37.

Abdur Rahim Khan, Mr.
Acharyar, Rao Bahadur P. T.
Srinivasa.
Ahsan Khan, Mr. M.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Brayne, Mr. A. F. L.
Bridge, Mr. G.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.

Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.

The motion was adopted.

Mr. President: The question is:

"That a sum not exceeding Rs. 62,83,79,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Railways'."

The motion was adopted.

The Assembly then adjourned for Lunch till Ten Minutes Past Three of the Clock.

The Assembly re-assembled after Lunch at Ten Minutes Past Three of the Clock. Mr. President was in the Chair.

DEMAND No. 3—SALT.

Mr. A. H. Ley (Industries Secretary): Sir, I beg to move:

"That a sum not exceeding Rs. 1,13,84,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, on account of 'Salt'."

I only wish to say, Sir, that in making this motion, it involves, as the House will see, a reduction of Rs. 84,000 on the demand originally presented to the House, and that in effecting this reduction Government have proposed to accept in full the recommendations of the Retrenchment Committee.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,13,84,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Salt'."

It will probably save the time of the House if we have a general discussion on the administration of this department, and then take each item for reduction, thus strictly limiting the subsequent debate to the points raised.

Mr. T. V. Seshagiri Ayyar: There may be no motions.

Dr. Nand Lal: Sir, if the Honourable the Commerce Member will give me an understanding that the present system of issuing licences, in favour of a few merchants, which, to all intents and purposes amounts to a salt monopoly, will be abolished, then in the interests of economy of time I shall not move my motion.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, if the Honourable Member wishes an undertaking from Government regarding the agency system, may I explain to him that we have already abolished to all intents and purposes the agency system in respect of certain Punjab sources, and that we have under consideration the question whether we should or we should not abolish the system altogether in respect of the Rajputana sources.

Dr. Nand Lal: I accept the explanation given, and therefore, I shall not press my motion, Sir.

Sir Deva Prasad Sarvadhikary: Sir, motions Nos. 83, 84, 86, 87 and 88 standing in my name on the paper seek to make a larger reduction than a lakh of rupees. Since the revised figures came to my hands, I sent in a revised motion asking for reduction of one lakh of rupees on the total demand, and I think it will be convenient if I take all the different items and indicate as to how that lakh of rupees can be made up without serious detriment to the working of the department.

Mr. President: I understand the Honourable Member is moving a reduction on the whole vote?

Sir Deva Prasad Sarvadhikary: If I may, Sir, with your permission.

Mr. President: Then I think I must go through the others first.

Sir Deva Prasad Sarvadhikary: As you please.

Dr. Nand Lal: I do not propose to move mine in the interests of the economy of time.

Mr. President: That proposes a specific amendment on a particular point. Am I to understand that the motion which Sir Deva Prasad Sarvadhikary rose to move is to be taken as covering the large reductions upon the total vote?

Sir Deva Prasad Sarvadhikary: That is a bigger demand for cut, Sir.

Mr. President: Mr. Braja Sundar Das is not in his place.

Sir Deva Prasad Sarvadhikary: Sir, I base my request, I shall not call it a demand for further economy without attacking the department itself, the working strength of the department, establishment and other things, which cannot be attacked on short notice. The second thing that I want to avoid is, demanding anything that may not be within the limitations of the retrenchment recommendations of the Incheape Committee. If we save a lakh of rupees under this grant in other directions, it will enable us to get what we are trying hard to get, namely, a substantial reduction in the general expenditure. From that point of view, limiting myself strictly to expenses such as I have indicated in Nos. 83, 84, 86, 87 and 88 which relate in all cases to allowances, honoraria and such like things. In passing, I desire to acknowledge, Sir, that it has been pointed out to me that honoraria is not necessary. That is I have been told only an account head

'Allowance and Honoraria'. There may be no actual honorarium involved in that item. So when I speak of honoraria, I speak of the general account head 'Allowances and Honoraria.' I know, Sir, that in asking for a reduction in expenses under the heading 'Salt' we are somewhat in the position of a person in whose house hemp or rope was not mentioned because a forbear was hanged in some previous period of time; it is hanging in prospect which we are trying to avoid. But it is not from that point of view that I am trying to recommend this reduction. Whether the increased salt tax comes or not will not be much of a matter so far as these expenses are concerned. Taking for example the first item of allowance and honoraria under the Northern India Salt Department, we have a provision for about Rs. 1,21,000 including house-rent, compensation for dearth of food, and travelling allowances. I do not say that there should be no compensation for food or no house rents or no travelling allowances, but it is a big item and we want a reduction. Then going on to the next item of contingencies, we have the provision of Rs. 7,87,000 all over the place are strewn provisions for contingencies, travelling allowances, giving up some of which will not hurt efficiency but may bring us relief.

Then we come to the thick-lettered new items providing for Assistant Commissioner's bungalow, quarters for drivers and fitters, and various other new items of expenditure, some at least of which may stand over, and as I am cutting down my own demand for reduction to a lakh of rupees it ought to be possible for the authorities to distribute further cuts, so that a lakh of rupees may be saved. I do not want to touch the absolutely imperative items of expenditure such as godowns which may be required for the better working of the department, but providing quarters may in this year of financial stringency should stand over. About Rs. 40,000 could be saved under one item. I need not indicate the various other small items of allowances, honoraria and contingencies that are spread all over the budget. On the whole what I desire—and I hope the House will be with me in carrying out the suggestion—is that a small deduction of a lakh of rupees should be made. Incidentally we may take steps to see, if possible that the importation of salt should be brought down to a minimum and further facilities should be provided in this country for manufacturing a better class of salt. That can be done in some of the Bengal fields and other fields. But I shall probably be told that that will involve further expenditure. Not necessarily. It could be done by better organisation. At all events this small reduction of a lakh of rupees ought not to be impossible.

Mr. A. H. Ley: Sir, I am obliged to my Honourable friend, Sir Deva Prasad Sarvadhikary, for stating that in the first instance he does not propose in this motion of his to suggest a reduction of staff or establishment. I understand him to say that he proposes to effect this reduction by small items scattered over various portions of this budget and one of the main points that he raised was the provision for new works and quarters for the staff. I quite realise that he does not wish to cut down items which are obviously required for preserving the output of salt. But he did suggest actually that we should cut out the Assistant Commissioner's bungalow at Khewra and I think he was aiming at quarters for clerks and such items. Well, Sir, I only wish to point out with regard to these items that these are absolutely essential items if we are to retain our staff at Khewra at all. As the Honourable Member, I am sure, is aware, we adopted the policy

[Mr. A. H. Ley.]

of extending the works at the Khewra mines with the object of increasing the output of salt. This led in the first place to the appointment of an Extra Assistant Commissioner at Khewra, and the appointment of extra clerks, and it is absolutely essential to provide quarters for them for the simple reason that there are no quarters there at all. Khewra is a little settlement in the salt range. There are no houses there—the only people who go there are Government servants—so quarters have got to be provided. If you don't provide the houses you cannot send anybody there. At present, the quarters for clerks there are hovels—they can only be called hovels at the present moment. We have had trouble with our clerical staff at Khewra for the simple reason that we have not provided adequate quarters so far, and I am afraid that, if we refuse to adopt this grant, the only result will be that we shall not be able to post the staff which we require to Khewra. And the same remark applies to the other items with regard to quarters. I may say that these proposals for new quarters have all been considered in detail. They are absolutely essential proposals which we consider necessary to keep up the manufacture of salt. They have been consented to by the Standing Finance Committee and I do hope the House will support us in pressing that these quarters should be built. Perhaps I should say that, with regard to allowances and honoraria, which my Honourable friend referred to, we are proposing a total cut of Rs. 84,000. We are proposing, here again, following the Retrenchment Committee's Report, a cut of Rs. 26,000 in these particular items. The other items are essential. To take this particular item of travelling allowances—there is a small reduction here on last year as will be observed, in spite of the increase in railway fares. And we consider that this is essential, because the staff obviously has got to undertake frequent visits of inspection to see not only that the manufacture of salt is maintained but also to visit the salt sources, for instance in the Native States, in order to see that no illicit practices go on. We cannot possibly cut down the travelling allowances further, unless we agree to reduce those activities of the department, which, I venture to think, would obviously have very undesirable results. And again in supplies and services, we propose to cut that down by Rs. 15,000, following the Inchcape Committee's Report, Rs. 5,000 in contingencies, and here again, following the Retrenchment Committee's Report, over Rs. 10,000 in petty construction and repairs. This is suggested by the Retrenchment Committee, although I feel that the Commissioner of Salt Revenue, Northern India, will experience great difficulty in giving effect to this recommendation, for the same reason as I have suggested in regard to quarters. I only wish to emphasise the fact that these proposals for new quarters and for new works, are all part of the general scheme which has been adopted for some years past in the Northern India Salt Revenue Department, and in Bombay and Madras to a certain extent, for developing our salt sources and increasing the supplies of salt. That is the main object to increase the supplies of salt, for three obvious reasons. They are, firstly, we want to make ourselves self-supporting. We don't want to rely more than we can help on supplies of imported salt. I think all Honourable Members will remember the difficulty which we experienced in 1918, for instance, when the imports of salt were curtailed during the war, and it was really then that this forward policy of developing our salt sources was started. Then secondly, as a corollary of that, it is felt, and I think all Honourable Members will realise, that this policy of the development of the salt sources in order to increase the supplies of salt is the one

satisfactory, obvious, economical way of keeping down, as far as we can keep down, the price of salt, which is, I think, an object which everyone of us has at heart. And, finally, of course, the third reason is that if the amount of salt is increased, we get something like five or six times the amount of expenditure back in the shape of revenue. So that is the basis of all these proposals for developing the salt sources, building works and quarters for the staff, and I do trust that the House will take this into consideration and will not support a motion for any further reduction.

Dr. H. S. Gour: Sir, there is one point in connection with my friend, Sir Deva Prasad Sarvadhikary's amendment to which I should like to invite the attention of the House. The budget estimates for Salt appear to have been framed on the assumption that the enhanced duty on salt will be sanctioned by the House and increase the general revenue by $4\frac{1}{2}$ crores of rupees. Honourable Members will find, if they turn to page 300 of this book of Demands, that our revenue from Salt is $7\frac{1}{4}$ crores per annum, and the Government expect to raise this revenue by $4\frac{1}{2}$ crores by the doubling of the salt duty. The estimate of expenditure under this head is therefore framed on that assumption. At any rate, it is perfectly clear that, if this House votes the additional duty on salt, the Government are not going to revise their figures and the figures which they have set out under demand No. 3 will be the expenditure incurred for raising salt worth $11\frac{1}{2}$ crores of rupees. That is a fact from which the Government cannot get away. I, therefore, ask, Sir, that, if suppose this House refuses the enhanced duty on salt, we shall be making only the estimated sum of $7\frac{1}{4}$ crores. (*The Honourable Sir Basil Blackett: "Why?"*) Now, then I ask another question. Is expenditure of Rs. 1,14,00,000 odd justifiable for raising a revenue of Rs. $7\frac{1}{4}$ crores which works out to something like 15 to 20 per cent. of the gross revenue? I submit that there is ample room in this Budget for further curtailment of expenditure under this head. The Honourable the Mover of the amendment has drawn the attention of the House to various items appearing in black letters. Honourable Members will find that besides the construction of quarters for the Assistant Commissioner and the rest we have also on page 19 a very large sum earmarked for the revision of the pay of the establishment and so on. Now, I ask, Sir, is not this revision of the pay of the establishment contemplated in view of the additional revenue which the Government expect to make from this head of revenue?

The Honourable Mr. A. C. Chatterjee (Education Member): No, certainly not.

Dr. H. S. Gour: And I further ask, what urgent necessity is there for this revision of pay of the establishment in this year of straitened finance? As regards the building of quarters, Sir, if we have got no money, we do not erect new houses, but the Government seem to think otherwise. When they have no money in hand they complain that it would be an unwise policy to borrow money, and yet they ask the vote of this House for the construction of quarters upon which the return would be negligible. I therefore submit that so far as the construction of quarters is concerned, no case has been made out why this House should vote the additional sum demanded from it for the construction of quarters; and as regards pay and allowances, our best justification for refusing an enhanced grant is that we ourselves are passing through a severe financial crisis, and as the whole country suffers, our staff on the salt works must wait for another 12 months. On these grounds, Sir, I support the amendment.

The Honourable Mr. A. C. Chatterjee: Sir, the Honourable Dr. Gour has tried to confuse the issues and mislead the House. The proposal to enhance the salt duty has nothing whatever to do with this demand for a grant for the manufacture of salt and for the establishment of a preventive staff. It has nothing whatever to do with it. I think the Honourable Dr. Gour ought to have known that. He has been in this House for the last three years. This demand has been debated on year after year. It has been discussed before the Standing Finance Committee in detail and the Honourable Dr. Gour has been furnished with the proceedings of the Standing Finance Committee. Sir, I am pained and surprised to hear the line of argument which has been adopted by the Honourable Dr. Gour. The whole object of Government, Sir, as has been explained more than once, has been

Dr. H. S. Gour: True economy.

The Honourable Mr. A. C. Chatterjee: to develop a Swadeshi industry. We expected that this House would support Government in that enterprise. Instead of that, Dr. Gour comes and crabs us. He has taken exception to the revision. So far as I can judge, the only material point he has raised is with regard to the provision of quarters and the revision of the pay of the establishment. With regard to the provision of quarters, Sir, I should like Dr. Gour to go and live in Khewra and then he will know what it is like. I paid my first visit to Khewra last October. I was, I must confess, rather reluctant to be any party to the construction of a large number of quarters without knowing what was really required. So I paid a visit to Khewra. I came to the conclusion that I should not like to live there even if the most luxurious quarters were provided for me there. It is the bleakest spot I believe in India. It is right in the heart of the salt range. There are no villages and no habitations anywhere near there. These people have to go and live right down in the heart of that mountain without any shelter from rain or from sun, and it is only right when Government is a large employer and when Government is making any profits out of a particular industry that it should provide quarters for its labour. I think, Sir, it is inhuman to contemplate that we should employ people there, whether they are Assistant Commissioners or whether they are labourers and should allow them to suffer from the inclemencies of the weather in a most desolate spot such as Khewra is. I would most earnestly request the House not to cut down this provision for quarters. With regard to the pay of the establishment, that comes mostly in Bombay and Sind. The fact is that when salaries were raised all round two or three years ago, these people were not given the enhancements that were due to them. This was kept back for two years for scrutiny by the Bombay Government and by the Government of India. The most elaborate scrutiny was applied to these proposals and I may say, that after the Government of India had come to the conclusion that these increases should be allowed, the proposals were most elaborately scrutinised again by the Standing Finance Committee and any Member of the Finance Committee here will bear testimony to the fact that the proposals were most moderate and by no means generous. I think, Sir, it would be extremely unfair on the part of this House to cut out this provision for a revision of the pay of the establishment in the case of men who have been waiting for this revision for the last three years. I do not think, Sir, I have anything further to say. I hope, Sir, that now this demand will be passed by the House.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, the proposition before the House is what I would call a commonsense proposition. We are passing through very stringent times and our duty is to manage our house as best we can while we are tiding over these bad times. The position is, we are faced with a deficit of Rs. 4½ crores and we are trying to set our house in order. We feel that we can do, as we have done in the past for so many years, without these quarters for Assistant Commissioners.

The Honourable Mr. A. C. Chatterjee: No.

Mr. Pyari Lal: There is no reason why we should not do without them for another year.

The Honourable Mr. C. A. Innes: Who is to do without them?

Mr. Pyari Lal: In the same way, the provision for the revision of the salaries of these clerks and other establishment could wait for another year as they have waited for so many years. Dr. Sarvadhikary originally proposed a cut of nearly 5 lakhs but now he has come down to a very proper figure of 1 lakh. This is a very modest sum especially when you cut 1 lakh out of a total expenditure of 1 crore and some lakhs, and this sum can be very easily met. The Department should consider that they are so hard up and should not incur any unnecessary and avoidable unpopularity in the country by imposing a salt tax. We want to avoid that, and the best way is to cut down our expenditure as best we can and act as a prudent householder. What would an ordinary householder do when he is confronted with a difficulty of that sort? He will cut down his expenditure in every direction and absolutely avoid all expenditure of a new character. The Government of India ought to do the same and it is in that sense that this reduction is proposed. Dr. Gour said that the Government of India or the Finance Member is contemplating an increase in the salt revenue by 4½ crores or 5 crores and that is why he has thought fit to indulge in the luxury of granting additional pay or additional houses or additional quarters. From that he drew the inference "because this provision is entered in the budget therefore I say that he wants this additional income," not that he said that it is expressly provided in the Budget and in that sense I think the Honourable Mr. Chatterjee wrongly understood him.

Mr. C. A. H. Townsend (Punjab: Nominated Official): I know Khewra well and that is my only excuse for taking up the time of the House. I have been more unlucky than the Honourable Mr. Chatterjee in that that place is in a sub-division in which I was stationed in the earlier part of my life in India. Strange to say, I was very happy there: it may, however, have been because I had a house there. I entirely agree with every thing that has fallen from Mr. Ley as to the necessity of providing quarters at Khewra. I can add nothing to what he and Mr. Chatterjee said as to the impossibility of finding any quarters for the new staff they are proposing to send there, to a village which entirely depends for its life on the salt industry. As regards the general remarks that have fallen from the last speaker and from Dr. Gour as to the advisability of postponing this expenditure till times improve, I would draw the attention of the House to the footnote (a) at page 17 of the Demand for Grants:

"Provision made for improvement of salt sources and development of mines which will yield increased revenue."

[Mr. C. A. H. Townsend.]

That point was made by Mr. Ley also, but I wish to draw the attention of the House to it. I was, as Director of Civil Supplies in the Punjab during the concluding years of the war, acquainted with the problems that confronted Government owing to the cessation of import of salt by sea into India and with the great trouble that people in the whole of north India were put to owing to the consequent very great rise in the price of salt. The Government of India is entirely right in trying to overcome these difficulties and to develop the salt industry in India and thereby help an indigenous industry. I earnestly ask the House to reject this amendment.

Mr. N. M. Samarth: I am afraid my Honourable friends who have raised the question of retrenching the expenditure of this Department are labouring under some misapprehension. If they refer to the statement, Revised Schedule of Demands, at page 3 they will find that the Retrenchment Committee recommended a reduction of Rs. 19,15,000 and they will find in the last column that the whole of the reduction has been given effect to. Unless Dr. Gour means that somehow or other the Members of the Retrenchment Committee were taken into the confidence of the Government of India and told that they were going to raise the salt tax by doubling it, I do not know how the Retrenchment Committee recommended only Rs. 19,15,000. It is unreasonable to suppose that they knew anything about it and the Department has given effect to the full cut recommended by the Inchcape Committee. Besides, as a Member of the Standing Finance Committee these proposals of the Salt Department came to us and we scrutinised the proposals of this Department very carefully and we sanctioned in some cases extra expenditure, say, at Tuticorin because we knew that the expenses incurred there for housing and other things, the construction of works and so on, would bring in more salt and practically, if I may say so, reduce the importation of European salt at Calcutta. If that is so, it is an indigenous industry and everything that is necessary to see that that industry thrives should be done, and I trust that the House will not accept any curtailment.

Sir Deva Prasad Sarvadhikary: I do not believe in a house divided against itself, and certainly not in section of the House divided into subsections. Therefore I ask your leave to withdraw my amendment after Mr. Samarth's rebuke.

The amendment was, by leave of the Assembly, withdrawn.

Babu Braja Sundar Das (Orissa Division: Non-Muhammadan): I move:

"That the Demand under the head 'Salt' be reduced by Rs. 14,78,000."

Sir, there is nothing in the budget to show what sum is spent on the production of salt and what sum on the prevention of the illicit manufacture of salt. From the figures that we have in the budget we cannot understand that. That puts us in a very bad position to make up our minds regarding the demands. The Honourable Mr. Chatterjee has just narrated that it is a growing Swadeshi concern and therefore no cut should be made under this head. I would refer to page 224 of the Indian Retrenchment Committee Report where you will find that the province of Bengal depends entirely on imported salt. So does the province of Bihar and Orissa to a certain extent. Nay, Orissa with a large seaboard entirely depends on the imported (either provincial or external) salt, and India

with a vast seaboard of thousands of miles is depending on imported salt. On the 5th March 1921 I asked a question of the Government and there it was stated that about one-fourth of the salt consumed in India was imported from outside. So, I fail to understand how the Swadeshi concern helps us in getting all our needs from the country itself. In 1918 we in the Bihar and Orissa Legislative Council moved a Resolution for the manufacture of salt on the Orissa coast, but I think it was negatived by the Government of India. Therefore I think that the Swadeshi concern in respect of salt which is said to be a growing concern is not making much headway and hence I move my amendment that this amount be deducted from the expenditure that is incurred on the prevention of illicit manufacture of salt.

The amendment was negatived.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,13,84,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Salt'."

The motion was adopted.

DEMAND No. 4—OPIUM.

The Honourable Sir Basil Blackett: Sir, I beg to move:

"That a sum not exceeding Rs. 1,85,53,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Opium'."

Dr. Nand Lal: The opinion on this side of the House is that no amendments may be moved.

Mr. President: The question is that that demand be granted.

The motion was adopted.

DEMAND No. 14—GENERAL ADMINISTRATION.

The Honourable Sir Malcolm Halley: I beg to move:

"That a sum not exceeding 74 lakhs be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'General Administration'."

Honourable Members will see that the sum originally placed in the Demands for Grants was 81,58,000. The reduction now proposed as the result of the report of the Inchcape Commission is 7,58,000, making a net demand of 74 lakhs. If Members wish to compare the progressive reduction of expenditure under this head they will find the figures at the bottom on page 36 of the Demands for Grants. In 1921-22 the actual expenditure was 1,25,06,489. In 1922-23 our estimate was 1,03,32,000, exclusive of exchange. The revised estimate for 1922-23 was 1,32,05,000 inclusive of exchange, exchange accounting for 26½ lakhs. Our budget estimate is 1,20,20,000 inclusive of exchange which will now be reduced, owing to the reduction of 7,58,000, by a further 12 lakhs, of which 7½ lakhs are voted. It will therefore be 1,08,20,000.

Hill Journey Allowances of the Governor General.

Munshi Iswar Saran: With your permission, Sir, I should like to modify my amendment and move it in the revised form:

"That the provision of Hill Journey Allowance under sub-head 'Staff and Household of the Governor General' be reduced by one rupee and also that the provision for Hill journey allowance and Hill journey charges wherever they occur be reduced by one rupee."

[Munshi Iswar Saran.]

It will be in the recollection of the House that there was a debate in 1921 when the House had an opportunity of considering this question and I must say that the opinion of the majority then was that the present system of the move to Simla should be kept intact. But, in spite of that vote of the House this question will continue to come before us till it is finally settled in the way in which the country wants it to be settled. We have it in the report of the Retrenchment Committee that the cost of this move was about 3,87,000, in 1921-22, and it strengthens our position to find that the Incheape Committee itself has recommended a substantial reduction in the staff of officers that go to the hills as well as the amount of establishment and so on. I say, that is a vindication of the position that was taken by those of us who were against the Simla exodus in 1921. I venture to think that the position taken up by Government on that occasion was that the matter rested entirely with us. The question was left in our own hands and Government said distinctly that they were not going to take any part or express any opinion either way. That shows, I think, that the Government itself has now begun to see the wisdom of the step that is being advocated and which at the present moment I have the honour to advocate. This question, Sir, can be looked at from two points of view. One is financial and the other is the general point of view. Now, we all know that in the old Imperial Legislative Council there were many Members who raised their voice against this exodus to Simla. We also know that the National Congress, other political bodies, provincial as well as local, have expressed themselves clearly and emphatically against this exodus. It is true that the financial aspect

of it may not be very serious and I do not wish to exaggerate it. For the last two or three days we have been hearing only of crores. Where crores are spent in this fashion, after all it does not really so much matter that a few lakhs of rupees are spent over the move to Simla; but I do venture to think that there are other considerations which make it imperative to express our opinion decidedly against it, and the reasons are these. No Government can successfully administer a country if it is not in close, intimate and daily touch with the people. (Sir Deva Prasad Sarvadhikary: "How about Delhi?") My Honourable friend, Sir Deva Prasad Sarvadhikary, seems to imagine that outside Calcutta there is no place a contact with which would be of any help to Government. That is not so. As regards Delhi, this is a closed question now, but if we were free to discuss it, I think my Honourable friend himself would admit that a great deal could be said in favour of Delhi as well as in favour of Calcutta. (Voices: "More so in favour of Bombay.") Now, Sir, there is no doubt that this proposition cannot be got over that for successful administration it is absolutely necessary that you should be in touch with the people. Sir, I venture to think, and I hope at least some of my friends will at least agree with me that, if Government had been in close touch with the people during recent times, some of the unhappiest and most unfortunate events that have taken place would perhaps have not occurred. Sir, I dare not prophesy, but, if I could, I would say that the historian of the future, when he begins to write the history of India, will feel amazed that a Government from the hilltops used to administer for about half the year this vast and great country. You cannot govern and administer a country from the clouds; that is perfectly obvious (Mr. R. A. Spence: "What about keeping your head cool?") (Dr. Nand Lal: "That is exactly the point.") Now, Sir, reference has been made to

climate and there is no doubt about it that in April, and May, and in the hot weather generally some parts of India and, I must say most frankly Delhi also are hot. (A Voice: "And Allahabad.") Yes, Allahabad is hot. (A Voice: "Very hot.") Yes, but if you got a fee you would not mind going there. (Dr. Nand Lal: "You have got your home there.") Sir, let us look at the question seriously. The climate of Delhi is hot, but, if you undertake the responsibility of governing and administering a hot country, you cannot run away from the heat, you have got to put up with it. That is the first question and the fundamental question which you have got to face. Sir, as regards the principle underlying my amendment is concerned, I venture to hope that there will be no serious disagreement with me, but where the disagreement comes in is when you come to look into practical difficulties and personal considerations, and I wish to refer very briefly to those. It is said it is very comfortable and very pleasant to go up to the hills in the hot weather. Well, Sir, I cannot say that it is not so, but there are so many things which are convenient and comfortable, but which for good and valid reasons we dare not have. Sir, who is there, if he had the money, would not drive in a Rolls Royce? Who is there who would not live in the hills? Who is there who would not like to have all the comforts and even luxuries of life? But the financial and other considerations prevent a man from having them. Now, what I tell you is this. Here, in India, you have millions of people living and working in the plains in the heat. Do they all go up to the hill-tops? Do people go up to Simla and Naini Tal, I am speaking of my own province. How many do? Very few. (Lieut.-Colonel H. A. J. Gidney: "Many.") My Honourable friend, Colonel Gidney, is so displeased with my remark yesterday that I should not say that by this interjection of his he betrays his colossal ignorance of the real Indian community.

Now, Sir, it may be true that you work better on the hills; it is more comfortable; but, Sir, I ask, is it impossible to work in the plains? I shall run very hurriedly over all these arguments which have been repeated so many times. Do not Judges work hard here? I am only talking now of the case of Europeans. (Cries of "No, no.") My Honourable friend, Sir Malcolm Hailey, used to work in the plains, but, since his translation to the Executive Council, I suppose he has lost this capacity of working in the plains during the hot weather.

The Honourable Sir Malcolm Hailey: I hope the Honourable Member does not suggest that I do not work now.

Munshi Iswar Saran: Now, Sir, you have a number of barristers, a number of big merchant princes; they all work on the plains. (Sir Campbell Rhodes: "Hear, hear.") My friend, Sir Campbell Rhodes, says, "Hear, hear," because he has got to work in Calcutta: he cannot leave his work and go up to the hills and do all his business from there. Occasionally he goes to the hills, but not like you from April to September, I think. (Dr. H. S. Gour: "Till the end of October.") Till the end of October. Sir, if you look at this question from the purely personal point of view, there is a great deal to be said in favour of this move to Simla and I would certainly vote myself in favour of this exodus to Simla if that was the real standpoint of looking at the problem, but if, as representatives of the people, it is our business to take into consideration these grave and serious questions of principle, then, I say it is our clear duty to say that the Government ought not to go up to the hills and that we ourselves should not hold our

[Munshi Iswar Saran.]

meetings in Simla. The Government, on the last occasion when this question was discussed, left the matter in our hands, but I am very sorry to say that by our own action we did not take advantage of the position taken by Government. I do sincerely hope that on the present occasion we shall give a better proof of our long-sightedness and of our patriotism by accepting this amendment.

Sir, there is one question I would like to ask. I have never been to England but I am told that in winter it is very cold. That is what some of my friends who have been to England have told me. If that is so—I have no information about it myself—will some of the Honourable gentlemen occupying the Front Benches tell me if the Members of Government run away from England during the cold weather (A Voice: "They do.") in order to avoid climatic conditions. (A Voice: "They do.") I should like to ask my Honourable friend where the Parliament sits in winter. Let my Honourable friends name the place where for 4 or 6 months in the year British Government permanently resides away from London. That is the point; not that individual members go for short periods. It is no good, I submit, Sir, looking at this question in this light-hearted fashion. Do it if you like, but take it from me that in the next Council or in the Council after the next this question is bound to be settled and settled in the only way in which it ought to be settled—that is, the exodus will have to be stopped. (Several Honourable Members: "Certainly not.") Some of my Honourable friends who are opposed to it say "Certainly not." What is the good of saying it, when they know that the better mind of the country is almost practically unanimous on this point, that there should be no exodus to the hills. They have exposed the harmfulness and the wastefulness of this migration to the hills times out of number, and it is for us, if we feel for the country and represent its interests to say emphatically that this exodus to the hills is harmful, and to vote to-day in favour of the amendment.

Rao Bahadur T. Rangachariar: Sir, I rise to a point of order. I want to move a more substantial amendment. I do not want to play with the subject, but to be serious about it.

My amendment is No. 330.

Mr. President: I will put the first:

"That the provision for Hill Journey Allowance under sub-head 'Staff and Household of the Governor General' be reduced by Re. 1."

It must be understood that if I allow the discussion to proceed on Munshi Iswar Saran's amendment for the reduction by Re. 1 of the provision for Hill Journey Allowance under sub-head 'Staff and Household of the Governor General', the House cannot open the question again after it has decided that—open the question, that is to say, of the move to the Hills.

Rao Bahadur T. Rangachariar: Then, Sir, I will have to move my amendment about Hill Journey Allowances. No. 330.

Dr. H. S. Gour: I have also a question to ask. I have a series of amendments, not directed against the move to the hills but against the long stay of the Government and the Members in Simla, as I want to cut down the expenditure to a minimum.

Mr. T. V. Seshagiri Ayyar: May I make a suggestion in regard to this matter? I have also two amendments at page 24, and my Honourable friend, Mr. Rangachariar, has one, No. 330. Would it be possible to have a general discussion, and then take votes upon the various motions? That would be the best thing. There are two amendments of mine, one of Mr. Rangachariar, and one of Munshi Iswar Saran.

Mr. President: All I was pointing out was that we cannot have the discussion twice. As far as the Chair is concerned, there is no objection for taking the discussion under any of these heads.

Dr. H. S. Gour: Sir, I think all the amendments can be boiled down to three points: that there should be no move, that the move should be for a shorter period, and that in any case the Legislative Assembly and the Council of State should not hold their Sessions in Simla. These are the three points upon which all these amendments converge, and if you, Sir, would direct the House upon these three points, it will help us.

Mr. President: It is obvious that the question of the sitting of the Legislature in Simla is a separate one to the move of the Government to the hills. These can therefore be taken as separate amendments. The other relates to the time which the Government of India spends actually in the hills, and I am afraid it is a little difficult to see on what amendment it can be taken. If that is the point which Mr. Rangachariar wishes to raise

Rao Bahadur T. Rangachariar: Yes, Sir.

Move of the Government to the Hills.

Mr. President: We had better proceed with the issue in its largest form raised by Munshi Iswar Saran. The House will be restricted to the argument that there should be no move to the hills at all.

Sir Deva Prasad Sarvadhikary: That would not shut out observations on the cutting down of the demand under General Administration—say, for instance, in connection with my amendment No. 336; I gather from what has fallen from you, Sir, that reference to Hill charges would not be allowable later on when the question of detailed demand referring to Hill charges under General Administration comes on.

Mr. President: The motion for reduction made by the Honourable Member from Allahabad raises the issue in its naked form, that there should be no move to the hills. When we dispose of that question, I shall tell Honourable Members what is in order and what is not.

The Honourable Sir Malcolm Hailey: We have an amiable habit in this House of discussing for nearly three quarters of the day what we shall talk about for the rest of the day; but I understand that we are now to discuss only the question whether the Government of India should move to the hills at all, and, by implication, I assume, also, whether the Legislature . . .

Dr. H. S. Gour: No, no. You have distinctly ruled, Sir, that the question of the Legislature will be the subject of separate discussion.

Mr. President: The Honourable Member from Allahabad, in the way he has put his question, has raised the question of the move of the Government of India to the hills, and those who wish to discuss that question will discuss it in this debate. Those who desire to speak on the

[Mr. President.]

subject of the Legislature sitting in Simla will presumably reserve their remarks till we come to the other amendment.

The Honourable Sir Malcolm Hailey: I see I should have said nine-tenths of its time instead of three-quarters! Well, Sir, this proposition has not now been put forward nor is it being debated, for the first time. As Munshi Iswar Saran says, it was debated in 1920 first of all in the old Council. We then had thirteen capitals indicated to us, each with its own claims. It was debated again in some form in 1921, but in a form that did not allow of a definite decision as to whether the Government of India should go to the hills or not. There of course the motion was that the Assembly recommend that a Committee should be appointed to go into the possibility of establishing a permanent capital of India in a place possessing a salubrious and temperate climate throughout the year. The preliminary discussion whether such an attempt was necessary occupied most of an afternoon. It began at 3.10, I notice. At 4 o'clock, we had exhausted the claims of Nagpur, or it might have been perhaps Pachmarhi. We proceeded shortly afterwards to discuss other alternatives, and we got thoroughly tired of the question towards evening and took no vote on the matter. Now I hate to spoil sport. There I see sitting my Honourable friend, Sir Basil Blackett. He has before him some tiring days which may involve the cutting down of some of his demands for grants. If I did my duty by him, I should incite the House to prolong consideration of this engaging topic, hoping to occupy some considerable part of the remaining few days before the guillotine comes down and saves the remainder of his demands. But I suggest, Sir, that after all, if you move a nominal reduction in order to call forth an expression of the opinion of the Legislature, it should be in a matter which can have effect on the current Budget. It would be valuable no doubt if we could get from this Assembly an opinion as to what we should do in the summer, but whatever that opinion may be it would be impossible that we should give effect to it in the present year—that is to say, that if it were decided that we should go to one of the many capitals which have been recommended to us, it is of course clear that we could not do so for many years to come; and if the decision were that we should stay down here in the hot weather, even so it is well known that we have not as yet and will not have for a couple of years the buildings which will enable us to do so. Our Secretariat is not ready, our houses are not ready. Therefore, putting it on that ground only I think that the House would hardly be justified in proceeding to a discussion to settle this question under the impression that a decision could have any effect on the budget of the present year. There will come a time of course when the question will possess more relevance, that is to say, when New Delhi is complete and the House itself has some experience of what a hot weather in Delhi means. I speak of it myself without any apprehensions at all for two excellent reasons: it is probable that I shall not be at the time in India, and in the second place having spent six hot weathers here I shall not mind spending another. I can therefore be perfectly impartial when speaking on the subject, but I claim it is only a House with experience of our summer arrangements in Delhi and of the capacity of the New Council Chamber that can give a final decision whether it would recommend to the Government of India to stay here or go to the hills. I would suggest that the House refuse to enter into a discussion on this topic to-day or to delay the question so much in advance of a period when we can give effect to it. I would only note one thing, Sir, it is curious that we are now only the

middle of March, in an exceptionally cold season, and yet at the very moment that Munshi Iswar Saran began to suggest that we should not go to the hills, somebody demanded that the fans should be put on!

(Cries of: "Withdraw, withdraw.")

Rao Bahadur T. Rangachariar: Sir, much to the dissatisfaction of my Honourable friends who cry "withdraw", "withdraw", I am sorry to say it is impossible for us who take this view to agree to such a course. It was very well to say in the first year "Have experience." We have had experience of Delhi; we have had experience of Simla. Sir, the move of the Government of India to the hills, to delightful Mashobra and other sweet spots there, which I have myself enjoyed, is too attractive indeed. We are all human, no doubt. But at the same time we have to consider the year we are passing through, the financial crisis the country has been passing through, the burden of taxation which we have been putting upon the country year after year; and, Sir, to say "withdraw, withdraw" a serious motion like this, I really cannot understand. Sir, I will have my say notwithstanding the cries. Sir, I beg to suggest that a beginning should be made in this direction. It is not too soon to begin. If the House affirms its opinion that the move to the hills is undesirable, I think it is by means of a vote like this that we should express our opinion. I agree the time is not yet that you can abandon the whole move to the hills next year; that is not the suggestion of this motion. But this House, having had three years' experience of the way in which the Government of the country is run, having had intimate and close acquaintance with the way in which the Government of India is transacting its business, it is up to us to record our emphatic opinion that it is no longer desirable that this practice should continue. Here you are all elected representatives of the people who sent you here to watch their interests. Are we really advancing their interests when you say "By all means, go on, govern the country from the hills"? Why, Sir, London has become a very short journey just now. Why not govern the country from London? If the Assembly moved to London and held its summer Sessions there, probably we may be able to influence the administration much more effectively than we are doing here. The Noble Lords, Lord Peel and Lord Winterton might perhaps condescend to grace this Assembly with their presence more often to watch the debates in this House, before talking of this young and inexperienced and enthusiastic Assembly who have committed errors now and then. Sir, why not we move to London? Why not? It is as practical, as useful, perhaps as I said more useful than moving to the hills, and trying to govern the country from the heights of Simla. What happens? It is said they go there for six months. But really work is put out of gear for say a fortnight before and a fortnight after. Look at the move of the whole Secretariat including the army of clerks, peons, bearers and records and look at the extraordinary move which takes place in April and again in November. You have to see the train loads of people and goods and other things which pass between Delhi and Simla. Look at the enormous waste of expenditure. When are you going to begin to put a stop to this? I may be told that nobody can tell when New Delhi is going to be finished. Can anybody tell? Probably we will have to ask an astrologer to say when that day will come. Are not houses enough here? Is it necessary that the whole of the Secretariat, including this army of clerks, should go there? Cannot business be transacted if His Excellency the Viceroy and the Members of the Council stay there with their important Secretaries and

[Rao Bahadur T. Rangachariar.]

Under Secretaries, the other people, poor mortals like myself, staying here and doing the work? Why should all these people be taken there? I have no doubt they are tempted by the Simla allowance, house allowance, local allowance and all those things. But look at the torture these people are put to. Look at the depths they have to go down every day and come up. Has any Honourable Member gone down to those places where the Indian clerks have to live and seen how after a heavy breakfast they have to walk up? I mean it is all very well for us to talk of joys for those of us who live in big palaces and all that on level roads and go about in rickshaws or ride. What about these poor people who have to go down and mount up immediately after a heavy breakfast, mount up perhaps a thousand feet? I do think, Sir, the time has come when this representative House should express its opinion. Even the unrepresentative House time after time recorded its opinion by its non-official votes. No doubt the official majority were able to defeat motions which were brought then. Now, Sir, with an elected majority of representatives of the people in this House, if this motion should be defeated, I do not think it will redound to our credit or add to our colours. It is quite true that it is not a practical proposition now as the Honourable the Home Member said; but they can cut short the stay there. Why should they stay there for six months all round? Could not Honourable Members stay there for three months? Have not the Provincial Governments set an example in this matter? I know Sir, that the Madras Government moved up to Ooty for six months, following the vicious example of the Central Government, and now they have come down; only the Governor and the Members go there and they stay there for only three months or four months; the Secretaries go and come and the whole of the Government is carried on at Madras. Madras is quite a hot place; in fact the weather there can only be classified into hot, hotter and hottest; you have no cold weather there at all. Therefore, when Madras has set an example, and other provinces have set an example, why should we, why should this Central Legislature set a vicious example to other Provincial Governments to follow? They have already set a good example. You have to recognise the financial limits, the financial resources of the country. Can we afford to have this costly move up and down year after year? We are all accustomed to be brought up in luxury, especially magnates from Bombay, and our Punjab friends are anxious for hill stations. (A Voice: "Supposing Bombay magnates are not in favour of going to the hills.") Then that shows they are not here sitting as magnates. I am proud of that. We are here for the toiling millions who cannot get even one full meal a day and from whom we wring and we propose to wring the salt tax, why? In order to meet this costly administration. And are we going to allow this costly administration? I am told "withdraw, withdraw" on a plain matter of this sort on which the country has been agitating year after year; Congress after Congress has been agitating over this question of exodus to the hills and the country has been crying hoarse for the last so many years. I do not know, Sir, if this was not the first question which every politician took up and was agitating time after time. In a matter of this sort when we have had enough experience an expression of opinion on our part will greatly add to the weight of the opinion of the country, and I do hope, Sir, this House will carry the vote which is clearly its pious expression of opinion in order that it may be given effect to in later years when Delhi is really fit for habitation to such Honourable Members who think that Delhi is not fit for habitation. What about the 2 lakhs of people who live here all the year round

Are we better than those human beings? Are they not human beings like ourselves. It is said that Delhi is unfit for habitation. I ask, do these 2 lakhs of people flee away from Delhi? Sir, it was not without a purpose that I called for a fan. I called for it deliberately because of the coming motion. I wanted to remind Honourable Members that Delhi is not what it was years ago. Thanks to our engineers, thanks for the other comforts which have been added time after time. You can make a cold room warm, and you can make a hot room cold. That is exactly the reason why I called for fans in order to remind Honourable Members of the existence of these fans. Therefore, I say, Sir, with all these modern conveniences, living in such open spaces as Raisina where you have got all the conveniences

Mr. P. P. Ginwala: No, no.

Rao Bahadur T. Rangachariar: It is all very well for Mr. Ginwala to say no, no, but I do enjoy this place, and if we really hold a Session in the hot weather, there is nothing to be afraid of. No doubt we have hot winds. You may have hot winds, but where have you not got them? Let us remember that we are born in this country. That is why I told my friend Sir Basil Blackett on the Budget speech 'love the heat of this country'. It was not without a purpose I mentioned that to him. If you love the heat of this country, then only you will love the people of this country, and therefore I say let us not flee from the heat of this country. Sir, I strongly support this motion.

Sir Deva Prasad Sarvadhikary: Sir, I desire to give this motion my very strong and hearty support, but I do not propose to walk into the trap and take up much of the time required to be devoted to other grants. I do not suggest that the trap has been laid by the Leader of the House, on the other hand he has frankly warned us against it. But before we get away from the confusion of issues I think this House owes an initial duty. As we are discussing the question of the staff of the household of the Governor General, I think it is up to us to acknowledge and appreciate what His Excellency has been pleased to do himself not only in graciously accepting, but in suggesting cuts in his own household, an example which might well be imitated by others

Mr. President: The House is now discussing the move to the Hills of the Government of India.

Sir Deva Prasad Sarvadhikary: Exactly, Sir. When we know and appreciate what the Governor General himself has done in effecting cuts in his own household, and as we know that the vote will come to His Excellency standing in the . . . he helpful in giving effect to the desires of this House in this concern if they are That is the bearing of my non-official portion of the House is concerned and it is up reference to what His Excellency has done. The . . . of my . . . take the first one good and 'the only good; in reducing the hill charges of the year, step this year by accepting some motion later on for cutting down the charges. We do recognise that we cannot do the whole thing in one year, and it will have to be done year by year; but the first step has to be taken this year. From that point of view and as a recognition of principle, I think this House should take the initial step of carrying this motion so that when the items relating to hill charges come up we may give effect to the principles we lay down and reduce the expenditure as far as possible.

Mr. President: The original question was:

"That a sum not exceeding Rs. 74,00,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'General Administration'."

Since which an amendment has been moved:

"That the provision for the Hill Journey Allowance under sub-head 'Staff and Household of the Governor General' be reduced by one rupee."

The question I have to put is that that reduction be made.

The Assembly divided:

AYES—50.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Barodawalla, Mr. S. K.
Basu, Mr. J. N.
Bhanja Deo, Raja R. N.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Jejeebhoy, Sir Jamsetjee.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lalshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Beohar Raghurib.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Willson, Mr. W. S. J.

NOES—53.

Abdul Quadir, Maulvi.
Abdur Rahim Khan, Mr.
Abdul Rahman, Munshi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Ahsan Khan, Mr. M.
Aiyar, Mr. A. V. V.
Aiyer, Sir P. S. Sivaswamy.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Brayne, Mr. A. F. L.
Bridge, Mr. G.
Burdon, Mr. E.
Cabell, Mr. W.
Chatterjee, Mr. H. L.
Clark, Mr. A. C.
Cotton, Mr. G. S.
Cotton, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gidney, Lieut. Col. H. A. J.
Ginwala, Mr. P. P.

Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Ikramullah, Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Man Singh, Bhai.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nand Lal, Dr.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Pyari Lal, Mr.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Schamnad, Mr. Mahmood.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Sinha, Babu L. P.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.

The motion was negatived.

Move of the Legislature to the Hills.

Mr. T. V. Seshagiri Ayyar: Sir, now that the Government have carried the day and as it has now been, so far as this House is concerned, established that the Executive Council should go to the Hills, my proposition reduces itself to this, that the Legislature should not move to the Hills.

Sir, something may be said in favour of the proposition that the Government which is largely manned by gentlemen from England who are accustomed to a cold climate should not be asked to remain in a hot place, but there can be no excuse, so far as Indians are concerned, for claiming that they should have the same privileges as are enjoyed by the Executive Government. We are born in this country and most of our lives have been spent in hot places and it seems to be unpardonable that we should claim the right to go to the Hills at the expense of the poor people of this country. Some of us, no doubt, Sir, do like to go to the hill station in order to recoup our health. If this has to be done, we must do it at our own expense and not at the expense of the people of this country. That is a point which I hope my friends will remember in speaking on this proposition and in voting upon this proposition. Sir, when I had an opportunity on the very first occasion some years ago of moving in this House this proposition, I asked the question: Is there any other country in which there are two different Legislatures, one at a place wherein the Legislature sits for six months, and another at a place where the Legislature sits for another six months? I do not think there is any parallel for what we have in this country.

Sir Montagu Webb: Sir, on a point of order, may I ask to which motion the Honourable Member is speaking?

Mr. President: He is moving the second part of Munshi Iswar Saran's motion.

Mr. T. V. Seshagiri Ayyar: Sir, this is without any precedent and without any parallel. I think, Sir, as has been pointed out by my friend, Mr. Rangachariar, the country as a whole wants that we should not follow the bad example which has been set by the Executive Government by moving to the Hills. And I think we must show some sacrifice by refusing to go to the Hills and by consenting to work in the plains and that, Sir, will show to the country that we are really looking to the interests of the people and not looking after our own interests. I do not think, Sir, it is necessary to say much because a great deal has been said already. I move the motion standing in the name of Munshi Iswar Saran, namely:

"That the provision for Hill Journey charges wherever they occur be reduced by one rupee."

The Honourable Sir Malcolm Hailey: This is another of those herrings which, if I consulted only the immediate interests of my friend, Sir Basil Blackett, I should like to see trailed across the course of the discussion of the demands for grants—the question whether, if the Government of India goes to the Hills, the Assembly should not do so. May I hope that my friend, Mr. Seshagiri Ayyar, will not again advance the argument which he just used, that it is necessary for the Government of India to go to the Hills because it is so largely the concern of Englishmen. Believe me, I think there are very few Englishmen here who would claim that exceptional privilege purely on that ground. Certainly I should never

[Sir Malcolm Hailey.]

think of doing so. It is quite obvious that there are a large number of Indian Members of this House also who consider that a move to the Hills is in present circumstances advisable. But taking the question whether, even if the Government of India goes to the Hills, the Legislature should not go there, may I point out to Mr. Seshagiri Ayyar that what he has put forward is not a proposition that would lead to the reduction of expenditure but one which would lead at present to some increase. For if the Government of India goes to the Hills and stays there, and the Legislature comes here, then it is clear that the Government of India—or a large part of it—would have to move down here at a considerable expense and the expenditure on the whole would probably be increased over the extra expenditure involved in the Legislature going up to Simla instead of meeting in Delhi.

Mr. T. V. Seshagiri Ayyar: What about the cost of the permanent buildings?

The Honourable Sir Malcolm Hailey: The House on a previous occasion decided against Mr. Seshagiri Ayyar by voting 67 to 21 that the permanent buildings in New Delhi should go forward, and I take it that that, therefore, is a matter which has been settled.

Mr. T. V. Seshagiri Ayyar: I am speaking of the permanent buildings in Simla.

The Honourable Sir Malcolm Hailey: The permanent buildings are already in Simla, and I say it would cost very little more for this House to go to Simla to meet the Government of India, whereas, on the other hand, we should certainly be involved in a great deal of extra expenditure if the Government of India or a large part of it were to come down to meet the Legislature here. For I suppose that the Legislature would hardly like to come here and for the Government of India not even to pay them the compliment of appearing on the Benches. Then again, there would of course be very considerable expenditure in other directions connected with their visit. I would again repeat, that this, for the present moment, is not really a practical proposition. Let us wait until our Legislative Chambers in New Delhi are built. They are being completed, as I have said before, under a deliberate decision of this Assembly. A vote which has been repeated not once but twice, a vote which involved full discussion, much consideration and an expression of very decided opinion on behalf of certain members. Am I wrong, Sir, is my recollection betraying me, that Mr. Rangachariar himself told us in the course of one of our discussions that there was an occasion when in the hot weather he swooned on the platform of the Delhi Railway station? I can only congratulate him, on the fact that he has now found it possible to face with greater equanimity the rigours of our Northern summer and I congratulate my friend Sir Sydney Crookshank on the efforts he has made to make Mr. Rangachariar comfortable in Raisina.

Dr. Nand Lal: Sir, I am afraid most of us are becoming sentimentalists. We ought to show to the world outside the House that we are practical Legislators. In the name of economy arguments have been advanced and those arguments have been based on the ground that our countrymen are living in the hot places and why should we as Legislators go to Simla and enjoy the salubrious climate of that place? If it were not

the question of real economy against the motion according to my way of thinking, I would have shared the view of the author of this amendment. But I am afraid he had not sufficient time to look into the items and to come to the right conclusion as good arithmetician, in order to see whether the arguments, which have been advanced by the Mover in favour of savings, are good and acceptable or not. Let us take the economic phase of the question. Have we got houses built in Simla? And if these Legislators live in Simla will there be additional expense? I think the whole House would have to admit that there will be no additional expense at all. We have got houses here in Delhi at Raisina, similarly we have got houses there at Simla. If we cease to go to Simla, if the exodus to Simla is not accepted, then those houses there will remain vacant. Who will be responsible for the cost of repairs? What answer have you got for that? Do you mean to say that after we have spent lakhs and lakhs of rupees in building those houses, those houses should remain vacant or that we should invite tenants to go and occupy them? Are you really serious? Now, let us take the question of travelling allowance. I think none of us can advance this argument that this Assembly should hold its sittings for 12 months. You shall have to admit that there must be some interval. If this Assembly will sit for three months in the winter at Delhi, there must be a summer session also, because we have to discuss the most important questions which may crop up in that season. If it is admitted that there will be no additional expense in our going to Simla, then naturally there will be no harm if we sit there and discuss these important questions at Simla. Another point which might have troubled my learned friends from Madras is that it is a very cold country. That is the only argument which was advanced a year before and which is for all intents and purposes advanced this time, too. Well, I say that if you are afraid of winter, then Delhi is as cold for you in winter as Simla will be in summer. It does not make any difference. On that score also, I may say, that your argument has not got much force. There is another point which supports my argument in opposition to this amendment, and that is this. The quality of work depends on mentality. I ask the gentlemen who are the authors of this amendment whether they will be able to apply their minds to the important work here at Delhi in summer or there at Simla? Once upon a time I took a note of the amount of work which we had done at Simla in the summer and then I tried to find out the amount of work which we had done here at Delhi and the result which I arrived at was that despatch of work at Simla was much more and better in quality than that in Delhi. Is there any Member of this Assembly to question the correctness of this result? If there is any I shall welcome him. Then, Sir, do you want to perform your duty efficiently and properly or not? If you simply want to say, purely on sentimental grounds, that, "If our countrymen are living in the plains why should we live in Simla?" my answer to it would be "Do not take your motor cars here. Do not drive in them. Do not charge any allowance at all, if you want to make a sacrifice, if you have got real sympathy with the people. There is no sympathy at all if you say, "We do not want to go to Simla, we shall sit here and charge the allowance all the same." There is no practical sympathy in it. Here, my learned friend Mr. Jamnadas Dwarkadas changed his clothes the other day. I asked him, "Hullo! summer has arrived?" He says "I cannot stand the heat". My learned friend has summer clothes just now on and that is a testimony which I can rely on. If this Legislature will not have the exodus to Simla, I am afraid the House will be very thin. Some of you fall sick and your doctor's bill will be

[Dr. Nand Lal.]

very heavy. I wish you may have an experience of stopping here in summer in Delhi; then you will come to know. I am sure that none of you will then have the courage nor desire to move any motion or any amendment in regard to this matter. Then, Sir, to discuss the question of so-called touch or contact, I may say, it does not make any difference. You will remain in contact with your country at Simla. You will be in contact with your people at Simla.

Rao Bahadur T. Rangachariar: Who are they?

Dr. Nand Lal: There are the newspapers. Do you mean to say that the Post Office will be stopped if you go to Simla? There will be no such thing at all. At Simla you will have the same channels of information which you could have in Delhi. There is therefore no force in this argument that we shall not be in close touch with the people if we are there. We shall be able to read from the newspapers what the conditions of the country are and what the views of the people are. That we do always. Does any of you go personally to your constituents individually to inquire how they feel and what their opinion is? Do they come to you at Delhi? You collect your information, you gather your information from the papers. Sometimes you receive letters. Therefore, this argument that we shall be far away from our countrymen has got no force. Allow me to point out that Simla is within your country. Simla is not separate from your country. Those who are living in Madras or Bombay may now be very well-informed that Simla is within British India and it is a part of our country. It is as good

5 P.M. a part as our Delhi. Now, the argument has been advanced that this Provincial Council and that Provincial Council decided in this way, and in that way. I may inform my learned friends, who pose to be well-informed,—and I am afraid they have betrayed their ignorance of what is going on in the country—that the Punjab Provincial Council some time back has passed a resolution in favour of the exodus to Simla, and here my Honourable friend on the right has very rightly informed me that a great majority of that House decided in favour of going to Simla and I am told that one of the reasons, which were assigned there, was that we would be able to put forward intelligent work at Simla. Bombay and Madras members have got little justification to be in support of this amendment. (*A Voice:* “Bombay is not.”) They did not take part in the debate but so far as the voting goes they, if my information is correct, sided with the other side. They are near the sea coast, as you know. They have, in summer, certainly a better breeze, which we may call technically sea breeze. They do not want any sort of change and they think that if the Council will sit here at Delhi it will not make any difference to them. Instead of attending this Assembly regularly and punctually and its full session they, in any case some of them, may not come here, for some days when it is very hot in Delhi and very nice at their sea coast. The correctness of my view on the point will be verified, if once, at least, as an experiment, this Assembly sits here in Delhi in the summer. I think the result of that will go to corroborate my argument which I am placing now before the House. I do not wish to make it a question of sentiment. We should try and assist this House by our views which can stand the test of practicability. On these grounds, Sir, I oppose this amendment which I am sure will be thrown out as its predecessor was thrown out.

Colonel Sir Sydney Crookshank (Public Works Department Secretary): Sir, as Honourable Members appear to be looking forward with great keenness to the day when they will be able to sit in Delhi in Session year in and year out, if I have the permission of the Chair to digress for a moment I will inform them how soon their expectations in this direction will be fulfilled. In 1924 electric light and power, irrigation, sanitation, miscellaneous, and railway diversion works in connection with the construction of the New Capital will be completed; the year 1925 will see the completion of the Secretariats and other buildings, that is to say, residential and such like buildings, the communications, and miscellaneous public improvements; lastly towards the end of 1926 Government House and the Legislative Chambers will, it is hoped, be complete and ready for occupation.

Mr. Jamnadas Dwarkadas: I rise to give my support to the amendment moved by my Honourable friend Mr. Seshagiri Ayyar and I want the House to consider the question on its own merits. I do not want the House to be led astray by the remarks that have been made by my Honourable friend, Dr. Nand Lal, that it is only from a sentimental point of view that we from Bombay and Madras look upon the exodus to Simla as in itself undesirable. Now, the Honourable Sir Malcolm Hailey replying to the arguments of Mr. Seshagiri Ayyar said that so far as the question of expenditure was concerned it would not only make no reduction in expenditure but that it would increase by reason of the Legislature not going up to Simla and the Government of India having to move to and fro from Simla to Delhi. We have lost the first amendment moved by my Honourable friend, Munshi Iswar Saran. What remains now for us to do is to pass this amendment so that we can compel indirectly the hands of the Government of India to suspend their intention of going to Simla. I know that if the Legislature is prepared to undergo this self-sacrifice of not going to Simla and is prepared to sit and legislate in Delhi the Government of India cannot with any sense of reason afford to go and spend their days in Simla. I want the House also to take another thing into consideration. It is not merely, after all when you come to look at it—not merely the financial aspect of the question that ought to weigh with this Legislature. I for one have absolutely no doubt that it would pay, that it would be a financially lesser burden on the country if we decide to remain for all time in Delhi, but there is another aspect of the question. I want every Honourable Member of this House to put this question seriously to himself. Is it possible for us for all time altogether to legislate for the country sitting in Simla? Are we really in touch with public opinion when we are far away in the clouds of the Himalayas? Are we really in a mood to legislate in the proper way for the country sitting in that far distant places where we have to take a few days before we acclimatize ourselves to the weather and secondly the weather conditions are such that they are not suitable to the exigencies of the modern way of living? I want the House also to consider the question from this point of view. At present we sit in the year about 2½ months here and about a month or less than a month in Simla. This is not going to be the case for all time to come. I was informed that the Parliament in England has to sit for 9 or 10 months in the year. I look forward to a time and I hope that time will come very soon, when people will take seriously to the service of the country and we shall have to sit not merely 2½ months here and one month in Simla, but for 9 or 10 months continually. (*Cries of:* “No, no.”) There can be no royal road to the service of a vast country like India and if there are

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people who will come out to serve the country by entering Legislatures they must put aside ideas of comfort. The most predominant idea should be to serve the country best at the least cost to the country and at the maximum sacrifice of everyone who is called upon to render service to the country. If you have that conception of service and if you place side by side with that conception the idea of having a comfortable time in Simla and legislating sitting in that Chamber,—they are more to suit the convenience of the powers that be rather than to suit the convenience of the country—well, I can only say this that there are other people besides ourselves in this country who whatever may be our differences with them are prepared to bear the exigencies of the climate and all the sacrifices that they may have to undergo for the purpose of rendering the best service to the country. I wonder if the House decides in favour of going and legislating in Simla whether it is really carrying out the wishes of the country in this matter. As has been pointed out, it is for years now that this cry against the exodus to Simla has been raised. The powers that be are out of touch with public opinion. Look at what is happening in India for the last three years. Perhaps that argument had less force in it a number of years ago than it has to-day. Before 1912 and 1913 perhaps public opinion had not been so developed in this country. Perhaps political consciousness had not reached the stage which it has reached to-day. Is it safe, I ask the Members of this House, and the powers that be in the interests of this country that while eventful things are happening every day in this country, when the political consciousness is so raised that you have got to be in touch with everything that is going on in all parts of the country that you should go and legislate at a place which seems to me the most distant place for being informed of what is happening in the country. We have to take a very serious view of our duties. I am afraid I must inform the House that in dealing with this question you cannot afford to take a light view. You cannot afford to treat the question from the point of view of your comfort or from the point of view of your convenience. What does your convenience matter compared with the convenience and comfort of the country, compared to the duties which you are taking upon yourself for doing your best to serve the country. I say it to the Government that it is no longer safe that they should remain away from touch with the public opinion of the country for such a long time as seven or eight months. I know myself when we discussed this question in 1921 we were told "Oh, you are all new. You wait here and spend a year or two and then you will find the advantages of Simla". Well, Sir, we have had sufficient time at our disposal to compare the respective merits of legislating in Simla and of legislating in Delhi. As regards the argument that my Honourable friend has advanced that in Simla we have done the work with more despatch, the record of the Legislative Assembly will speak for itself. I do hold in spite of what my Honourable friend has said that we have done far more important work in Delhi than we have done in Simla. That is an argument that does not arise. If my Honourable friend will not understand it, I cannot help it. I said that that argument is outside the question. The question is this. As a body representing public opinion in this country, entrusted to serve this country by means of our Membership of the Legislative Assembly, we cannot afford to be out of touch with public opinion. We cannot afford to allow the powers that be to go right away from public opinion. We must bring them into the centre of things. We must see that we locate ourselves in the centre of things, so that we may

know what is going on outside the country and what is going on outside may affect our doings, as it is intended that it should affect in the Legislature. You cannot treat this question lightly. I think the effect of your going to Simla will be, I may be pardoned for saying so, that you take a very light view of our duties towards those who have sent us to legislate for them. Both from the financial point of view and also from the patriotic point of view of doing our duty to the country, it seems to me that we are approaching the time when we shall have to work far more and for a longer number of months than we are doing now. I believe it is necessary that we should consider the question from the proper standpoint and decide to remain in Delhi at whatever cost we may have to do it. I heartily support the motion and I hope Honourable Members will voice the public opinion of the country held for a long number of years if they support this motion. Only one more point. In 1920 we were told that the point was raised by the Imperial Council. If I remember rightly, one of the Members of the Government, my Honourable friend Mr. Sarma was a strong advocate, if I am not mistaken, of the policy of remaining in Delhi and not going to Simla. I do not know whether it was in 1920 that my Honourable friend held that view.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): I never expressed that view.

Mr. Jamnadas Dwarkadas: If I am not mistaken in 1921 when he was a Member of the Government he took a different view. I do not also know this, and my Honourable friend Mr. Rangachariar referred to it in the course of the discussion in 1921, that my Honourable friend, Mr. Sarma, took the other view at one time.

The Honourable Mr. B. N. Sarma: Mr. Rangachariar was mistaken. I never expressed an opinion on the question of the exodus to Simla.

Mr. N. M. Joshi: How did you vote?

The Honourable Mr. B. N. Sarma: I may inform Honourable Members that I was absent from Delhi when the Honourable Mr. Srinivasa Sastri raised the question. So there was no question of voting.

Mr. Jamnadas Dwarkadas: That gives me one more argument to strengthen my case. I wonder how I forgot all about that argument. The Right Honourable Srinivasa Sastri can be said to have more experience than any one of us of the sitting both here in Delhi and in Simla. The Right Honourable gentleman has certainly a better idea of his duties to the country than many people have and I believe that his opinion at any rate ought to count but

The Honourable Sir Malcolm Hailey: I was present in connection with that debate. The Honourable Mr. Srinivasa Sastri complained greatly of Delhi and said that it was impossible to open your mouth without getting a fly down into it. I wish merely to mention that point.

Mr. Jamnadas Dwarkadas: I hope my Honourable friend will not try to win me away from my support of Delhi. I believe the Right Honourable Srinivasa Sastri complained of Delhi, because it was probably in his mind

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- (b) Whether the Sind Rajputana District consists merely of Nasirabad Brigade, the troops at Karachi and Hyderabad Sind, and small detachments at other cantonments which were formerly under the Mhow Division or the Bombay Brigade?
- (c) Whether approximately three quarters of the area under the Military charge of the Western Command is desert and very sparsely inhabited?
- (d) Whether the only portion of the North-West Frontier under the charge of Western Command is that extending from south, near Wana, to near Duzdap, in addition to the remainder of the frontiers of Sind-Baluchistan?
- (e) Whether under the circumstances, Western Command may not well be abolished?

Mr. E. Burdon: (a) Yes; and also Waziristan, which though temporarily under the direct control of Army Headquarters, forms part of the Western Command. I may add that the Baluchistan District includes a very considerable tract in the Zhob area.

(b) The Sind-Rajputana district comprises—

- (1) The defended port of Karachi;
- (2) The troops at Karachi;
- (3) The troops at Hyderabad (Sind); and
- (4) The Nasirabad Brigade area with headquarters, two battalions, and one battery at Nasirabad, and detachments at Ahmedabad, Ajmere, Baroda and Deesa.

(c) A large portion of the area controlled by the Western Command is desert and sparsely inhabited.

(d) The frontier line at present controlled by the Western Command extends from Wana along the Afghan frontier to Chaman, thence to Duzdap, thence southwards to the Persian Gulf, a distance in all of approximately 1,100 miles, or about two-thirds of the total extent of the North-West Frontier of India.

(e) There is no intention at present of abolishing the Western Command.

Mr. W. M. Hussanally: May I know, Sir, what is the number of troops stationed at Karachi and Hyderabad, (Sind)?

Mr. E. Burdon: I could not give you the exact figure offhand.

MR. LALKAKA OF THE KARACHI CUSTOM HOUSE.

564. ***Mr. Harchandral Vishindas:** (a) Will Government be pleased to state if Mr. Lalkaka, an Assistant Collector, in the Karachi Custom House, is proceeding on leave shortly?

(b) If so, will Government be pleased to state if they will appoint as his successor an Indian or an Anglo-Indian?

The Honourable Mr. C. A. Innes: (a) and (b) Mr. Lalkaka has applied for leave, but his leave has not yet been sanctioned. Government are not in a position to say what arrangements will be made if the leave is granted.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, a Message has been received from the Secretary of the Council of State, intimating that, in accordance with Rule 36 (3), of the Indian Legislative Rules, the amendments made by the Legislative Assembly in the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, were taken into consideration by the Council of State at its meeting on the 13th March, 1923, that the Council of State has made certain further amendments to the amendments made by the Legislative Assembly, and that the Council of State has agreed to the remaining amendments made by the Legislative Assembly. A copy of the Bill, as further amended, has been sent along with the Message.

THE BUDGET—LIST OF DEMANDS.

SECOND STAGE—contd.

DEMAND NO. 14—GENERAL ADMINISTRATION—contd.

Mr. President: The Assembly will now resume consideration of Demand No. 14; the question put from the Chair having been:

"That a sum not exceeding Rs. 74,00,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'General Administration'."

Private Secretary to His Excellency the Viceroy—Postage and Telegram charges.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I beg to move:

"That the provision for Postage and Telegram charges under the sub-head 'Private Secretary to His Excellency the Viceroy' be reduced by Rs. 25,000."

Honourable Members will see this entry at page 37 of the Demand. Last year we voted Rs. 80,000 for this purpose and from the revised statement furnished to us, Honourable Members will find that this vote was exceeded by a sum of Rs. 40,000 and the reason given before the Finance Committee was this—at page 40 of the proceedings of the Standing Finance Committee, dated the 29th January, etc:

"Supplementary grant of Rs. 40,000 required to meet the excess expenditure incurred under the head of Postage and Telegram charges over the budget estimate for the Private Secretary to His Excellency the Viceroy."

The Committee agreed to the demand being put forward but viewed with anxiety the large increase in expenditure, which was understood to be mainly due to Telegraph charges. The Committee wanted to know if certain economies could not be effected in respect of Express Inland Telegrams by giving priority to ordinary Government telegrams over other telegrams at ordinary rates, and whether foreign cables could not more frequently be sent at Deferred rates; and there were some reasons given for this. Honourable Members will see that in that most eventful year, 1919-20, when Lord Chelmsford was Viceroy, the expenditure on Postage and Telegrams was only Rs. 95,604, and the next year, 1920-21, which was also an eventful year in the country, the expenditure was only Rs. 1,06,444. But in the year 1921-22, after His Excellency Lord Reading assumed charge, the Postage and Telegram charges rose to Rs. 1,87,961, and last year, as I have already said, we voted Rs. 80,000 and they came forward with a demand for a further demand of Rs. 40,000, so that the

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revised estimate stands at Rs. 1,20,000. Sir, this matter was investigated by the Inchcape Committee and Honourable Members will find references to it on pages 128 and 141. I may mention that telegraph charges and postal charges are incurred under the head "General Administration" in various Departments and directly under the control of His Excellency the Viceroy there is the Foreign and Political Department which incurs a very large sum under this head annually. That is, this sum incurred in the Private Secretary's office is in addition to this large sum spent in the Foreign and Political Department. On page 128 of the Inchcape Committee's Report, paragraph 10, it is said:

"The cost of the telegrams despatched by the departments during 1921-22 was approximately Rs. 3,33,000, the heaviest expenditure being incurred by the Foreign and Political Department (Rs. 1,35,000)."

The Army Department comes next and next comes the Home Department:

"We are of the opinion that a large curtailment in the number and length of telegrams could be effected without any loss of efficiency."

Turning to the other side, Sir, from which the wire is pulled—I mean London—on page 141, paragraph 45, it is said:

"There has been a large increase in expenditure on telegrams, contingencies and miscellaneous items."

If Honourable Members will just pause and think over the figure of Rs. 1,00,000 and Rs. 1,80,000 spent on telegrams, it comes to Rs. 300 and odd per diem and nearly Rs. 10,000 per mensem—More than a Governor's pay is sometimes spent in one Department alone on this part of the administration. Sir, we have been told that we are ruled from Whitehall. Yesterday we tried to avoid the reproach that we are ruled from the heights of Simla. But I think it is a truth to say that now-a-days the wire is being pulled too often from Whitehall and that perhaps accounts for the large expenditure incurred in telegrams, and I am afraid that His Excellency's Government is not allowed that free and full play which they ought to have in the exercise of their responsible duties in this country. That accounts perhaps for the high amounts incurred in these various matters. I do think, Sir, in all conscience, that now-a-days the mails are so rapidly taken from place to place—London is only within about 13 or 14 days' reach,—probably from Delhi it may be about 16 days' reach,—and that being so why this large expenditure should be incurred in telegraph charges is rather difficult to see. We have not increased the cost of telegrams after we came into power here. Any increase there was was in the year 1920 before this new Legislature came into existence and therefore that does not account for this increased cost and increased number of telegrams. Mr. Jamnadas Dwarkadas referred us the other day to a passage in the Acworth Committee's Report where they make a reference to the extraordinary control from London over the question—I think it was—of some purchase.

Mr. Jamnadas Dwarkadas: (Bombay City: Non-Muhammadan Urban): Foremen's salary and promotion.

Rao Bahadur T. Rangachariar: Over the question whether certain foremen should get promotion or not. If in such matters public money is to be spent in this extravagant scale, I think, Sir, the Assembly ought to record its opinion in a matter like that. The Foreign and Political

Department and the Private Secretary's Office being under the control of His Excellency the Viceroy we have to help the Finance Department in this matter. They are rather in a delicate and awkward situation. They cannot exercise that wholesome check which they do exercise over other Departments. Their position is somewhat delicate and awkward, and therefore the Legislature has to come to the aid of the Finance Department in a matter like this, and I think, Sir, it is but proper that we should cut down the vote under this head. I propose that Rs. 75,000 be allowed under this head. That is a very large sum having regard to the fact that it is only for the Private Secretary's Office. Honourable Members will also notice if they turn down the page that there is a sum of Rs. 5,000 and odd which is to be spent by the Military Secretary in telegrams and postal charges, and if Honourable Members will turn over a page or two, they will find the Foreign and Political Department spending nearly Rs. 2,00,000 in postages, telegrams and contingencies, so that it is a very large sum which we are voting really and I do not think we are doing any injustice in this matter by urging this motion. I think we should impress upon those people who are responsible for this expenditure that we, as an Assembly, do insist upon economy in these matters because people are apt to be negligent. It is these small amounts which go to pile up the large amount which the country has to pay and now-a-days I think every pie saved will be to our credit. I do press this motion for the acceptance of the House.

The Honourable Sir Malcolm Hailey (Home Member): I had better explain exactly to the House what these postage and telegram charges are. We are of course considering not postal and telegraph charges connected with the Government of India as a whole but those which are despatched from the Private Secretary's Office. Now, these are of three classes. In the first place there are, of course, a number of telegrams despatched between His Excellency the Viceroy and the various heads of Provinces and the like in India. Those are included under this head. Work now-a-days proceeds—though perhaps it is not always admitted I know myself to be right in claiming this—much more rapidly than in the old days. A far greater variety of questions come up. Political situations arise very rapidly and they have to be dealt with with equal rapidity. That is the first class. The second class of telegrams provided for are those between the Viceroy and the Secretary of State. No one would hold that it is advisable that His Excellency the Viceroy should be debarred from constant communication and in the most rapid fashion with the Home Government. There are continually now-a-days questions of Imperial importance—take only such questions as those of Kenya—in which His Excellency's constant intervention is required or such questions, again, as the Turkish peace settlement. Communication on such topics cannot, owing to the rapidity with which events move, be conducted by letter. Everybody must in short agree that it is to the advantage of the State that His Excellency the Viceroy should remain in the closest touch with the Cabinet at Home.

Mr. Rangachariar has suggested that this all tends to regulation from Whitehall. I hope the House will not allow itself to be swayed by a suggestion of this nature. If Whitehall was going to regulate us, they could do so just as easily by letter, and indeed, on the whole, the constant facility of correspondence and of communication between the Home Government and His Excellency the Viceroy is one great means of preventing any such regulation. The Viceroy by means of telegrams can place himself almost in close touch with the Cabinet which is necessary to explain our views and

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position. The third class which contributes very largely to this expenditure is cipher telegrams sent from the Government of India. When our Departments have to send telegrams in cipher and on many occasions they have to do so—they pass through the Private Secretary's Office. That is as a measure of convenience because we can concentrate in one place the coding and de-coding arrangements. As to the cost that has been incurred in the past, Mr. Rangachariar had the figures correctly. In 1920-21 the cost was Rs. 1,06,000. In 1921-22 I admit there was a burst of expenditure (Rs. 1,87,000) but we are proposing in this year only Rs. 1,00,000. Therefore as between 1921-22 and the coming year we shall already be spending less by Rs. 87,000, and as between 1920-21 and the coming year we should be spending less by Rs. 6,000. I am only putting the case on those grounds and I suggest to the House that it is not well to attempt to curtail a communication of this nature between His Excellency the Viceroy and the Home Government.

Mr. Jamnadas Dwarkadas: I hope the House will try to look at the question from the point of view of the interests of India in this matter. The Honourable Sir Malcolm Hailey has tried to answer my Honourable friend, Mr. Rangachariar's arguments by saying that on important questions like those of Kenya and the Turkish question the Viceroy has to communicate with the Home Government by means of telegrams. Now, Sir, I believe that the Honourable the Home Member could not have chosen worse instances to strengthen his argument in support of telegrams, for if there are two questions on which a considerable delay and an unjustifiable delay has caused a good deal of inconvenience to this country they are those questions of Kenya and the Turkish question. (*The Honourable Sir Malcolm Hailey:* "Our delay?"). Ever since the beginning of this Session—and I think I myself was instrumental in putting a question or two on this subject—every day we inquired whether any cable had been received and the answer was in the negative. (*The Honourable Sir Malcolm Hailey:* "You are referring to despatches.") On Imperial questions which seemed to be a strong point in the argument of my Honourable friend, Sir Malcolm Hailey, on Imperial questions on which this country no doubt feels very keenly, delay cannot be avoided by the increase in the expenditure on telegrams. Personally I feel that if we had the figures before us, if we had details of telegrams exchanged on Imperial questions and the telegrams on questions in which this House would consider the constant interference of the Secretary of State a most undesirable thing—if we had details of those we would have no difficulty in finding out that the cost of telegrams which come under the latter category is much heavier than the cost of the telegrams exchanged on Imperial questions on which Whitehall does not help us much in solving our problems. I was also anxious to know from the Honourable the Home Member whether the cost of the telegrams exchanged between the Provincial Governors and the Secretary of State was included in this and so far as my recollection goes (*The Honourable Sir Malcolm Hailey:* "It does not include it.") Then the case is still worse. This does not include the cost of the telegrams which are exchanged between the Provincial Governors and the Secretary of State. Perhaps I do not know whether this is the right time to protest against this practice but look at what this means. The Viceroy has a certain policy. The Provincial Governors have their own views. They communicate direct with the Secretary of State and the Secretary of State in the light of the telegrams received from the Provincial Governors sends his instructions to

the Viceroy. The Viceroy answers and the whole business of sending telegrams from here to Whitehall and from the provinces to Whitehall and back from Whitehall to provinces and back from Whitehall to the Viceroy—the whole business is multiplied. It is high time that we did put a stop to this in the interests of the country itself because the sanctioning of these telegram charges means countenancing and encouraging the continuous interference of the Secretary of State with the carrying on of the Government of India. I strongly support the amendment moved by Mr. Rangachariar.

Mr. N. M. Joshi (Nominated: Labour Interests): I only wish to add a few remarks to those that have already been made. Mr. Rangachariar has seen some danger in giving a large amount to His Excellency the Viceroy for his cablegrams, posts and such like communications. But, Sir, I see another constitutional danger in giving large amounts of money to His Excellency the Viceroy. If His Excellency the Viceroy can very easily be in communication with the Secretary of State, to that extent he will begin to depend for advice and guidance upon the Secretary of State more and more than upon his Executive Councillors and the Legislatures. That is, Sir, the greatest danger from my point of view. His Excellency the Viceroy is, after all, a constitutional ruler and we want him to be guided by the Members of His Executive Council and by the Legislatures in India.

Mr. President: The Honourable Member cannot go deep into constitutional questions. Telegrams are, after all, only a means of communication.

Mr. N. M. Joshi: I do not wish to go deep into the matter. I only wanted to point out the danger of placing a very large sum at the disposal of His Excellency the Viceroy for telegrams.

Sir Montagu Webb (Bombay: European): The Honourable the Home Member stated, I think, that a large portion of this expenditure went in the despatch of code telegrams on behalf of the Foreign Office and other Departments. Would it not be better, as a matter of accounting, if, where telegrams are sent on behalf of the various Departments, the charges were debited to those Departments so as not to swell artificially the debit to the Private Secretary to His Excellency the Viceroy?

The Honourable Sir Malcolm Hailey: I will examine that point and see whether it would be convenient to adjust the account. As I say, the convenience of the present arrangement is that the coding and decoding staff is kept in one place and we utilise it. I do not want in any way to extend this discussion, for as you, Sir, have said yourself, we seem to be dipping rather deep into constitutional matters on a question of despatch of telegrams. But I must point out to the House that two very opposite views have been put forward to-day, one by Mr. Jamnadas Dwarkadas and by Mr. Rangachariar that the facility of sending telegrams helps the Secretary of State to overrule us; indeed there is a suggestion that the greater part of the telegrams that we despatch from here is by way of protest to the Secretary of State. On the other hand, Mr. Joshi's point of view is that the facility of sending telegrams, the fact that His Excellency the Viceroy knows that there is Rs. 25,000 more or less in the Private Secretary's budget for the purpose, may induce His Excellency to enter into

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an unholy alliance with the Secretary of State against the Members of the Executive Council. Take it one way or the other; but do not combine arguments so opposite as this in swaying your decision on this point.

Mr. President: The question is:

"That the provision for Postage and Telegram charges under the sub-head 'Private Secretary to His Excellency the Viceroy' be reduced by Rs. 25,000."

The motion was negatived.

Staff and Household of the Governor General—Tour expenses.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I beg to move:

"That the provision for Tour expenses under sub-head 'Staff and Household of the Governor General' be reduced by Rs. 20,000."

We find in last year's budget the sum asked for was Rs. 3,65,000. We find that in the revised estimate the sum actually demanded was 4,32,700. Now we have been asked Rs. 4,26,900. We do not know whether when a supplementary budget comes like last year we shall be asked to vote for another Rs. 70,000. However assuming this figure to be correct I submit that the tour expenses form a very large amount. I do not mean to repeat my remarks of last year. I do not mean to say that His Excellency should not take special trains whenever His Excellency thinks this desirable. What I submit to the House is this. What object is gained by these tours of His Excellency. We know in olden times our rulers, the Rajas and Maharajas, used to go in disguise and find out what really the complaint and the grievances of the people were.

The Honourable Sir Malcolm Hailey: How do you know that the Viceroy does not?

Mr. B. N. Misra: If that be the object even 40 lakhs may be spent to remedy the grievances of the people. We find that His Excellency's tours are either public or private. If it is a private tour, we find it in the papers that His Excellency will arrive on such and such a date at such and such a place and so on. Whether it is public or private, so far as the general public is concerned, they know very well where His Excellency is. Then, Sir, wherever His Excellency goes, we find that interviews are allowed. They are all practically arranged through application to the Private Secretary or whenever he happens to be in a mofussil through the District Magistrate and so on. And who are the persons that are allowed to interview His Excellency? If you will see the list of the interviewers you will find that they are Rai Bahadurs, Rai Sahibs, Khan Sahibs, Khan Bahadurs and so on.

The Honourable Sir Malcolm Hailey: You might include Mr. Gandhi.

Mr. B. N. Misra: So far as I read the papers, Mahatma Gandhi came to see His Excellency. These men are generally either semi-Government men or demi-officials. I mean Rai Bahadurs and Khan Bahadurs or the officials. Further I do not know if my Honourable friends have read of or come to know of any instances in which His Excellency paid any visit in disguise and learnt from the common people their complaints against his administration or the oppressions of his subordinate officers at any place. I speak subject to correction. But as far as I know the papers say that His Excellency attended a ball, or a dance or gave a party or held a Durbar.

This is all that we find from paper and programmes published in Gazettes, etc. We see after the transfer of the capital to Delhi His Excellency has been invariably going to Calcutta and some other places every Christmas. Of course no other place can provide amusements and other things which Calcutta provides. If really the object is to find out how the people are living and how the administration is going on, His Excellency ought to divert his attention to other directions and I see no reason why he should always go to Calcutta or Burma and not to other parts of the country. We find also that when complaints are made to His Excellency personally, these complaints are sent to be dealt with by the departments and as a matter of practice that is systematically followed. These are forwarded to the local Governments who forward it to the Commissioners who forward it to the Collectors and District Magistrates who forward it to the sub-inspector of police and who again makes inquiries from the village chaukidar or dafadar and the complaints are again submitted to the District Magistrate, the Commissioner, the local Government and so on.

Mr. President: The Honourable Member cannot embark on a discussion on the entire administration on a vote for tour expenses.

Mr. B. N. Misra: My object is to show that the grievances of the people are not taken into consideration by His Excellency in his tour programmes. Many of these tours are made to the States, from which the British tax payers do not really derive any benefit. Most of these tours and tour expenses consist in visiting big States

(Cries of "Withdraw.")

Well, I do not mind withdrawing, if you think it is such a small matter. You propose to impose an additional tax on salt on the poor people and spend lakhs here. If that be the object, then I withdraw.

Mr. P. P. Ginzala (Burma: Non-European): Sir, before the motion is withdrawn

Mr. President: The motion cannot be withdrawn without the leave of the House.

Mr. P. P. Ginzala: Sir, I could not hear or follow the arguments of my Honourable friend on the opposite side. But whatever those arguments may be, I strongly oppose any reduction of this vote. I think the complaint is not that His Excellency the Viceroy and the Members of His Council, do too much touring but that they do not tour the country enough. If His Excellency the Viceroy does really wish to get acquainted with the country and wants to break away from the bureaucratic notions which he is bound to imbibe from the Government Benches, the safest thing he can do is to get away from both Delhi and Simla as often as he can and have a look at the outside Indian world. The immediate reason, however, why I got up to speak was with reference to my own province. During the last 22 years I believe only two Viceroys have visited that province, and I really do wish to know whether His Excellency is going to visit our province at all. When on former occasions a Viceroy did come, if he came during the first year of his office, and if we asked him to do anything he replied that he had not been long enough in the country: he must take time to consider and when he got back to Calcutta he forgot all about it. If a Viceroy came at the end of his term of office he said he was very sympathetic but he had no time left in which to give attention to our needs. Sir, I hope that on the present occasion the necessity of either kind of reply will be avoided by His Excellency the Viceroy coming to our province during the middle of his term of office.

The Honourable Sir Malcolm Hailey: Sir, I of course cannot give any definite answer to Mr. Ginwala on the subject of a visit by His Excellency to Burma, though I can promise to convey to His Excellency as soon as possible what Mr. Ginwala has said on the subject.

The motion is being withdrawn and I am sure it is not the desire of the House that I should answer at length the arguments put forward by its Mover. But the House will permit me to say that, while it is fully within its competence to discuss the expenditure on His Excellency's tours, and the propriety of extending or restricting those tours, yet I am sure it will feel that any discussion which imputes to His Excellency motives of an undesirable nature in choosing one spot rather than another, or unsuitable motives in selecting his visitors and the like, is to be deprecated in this House. (Hear, hear.) I am sure that the Honourable Member did not really mean to overstep the bounds of what I may describe as delicacy in this respect, but certain observations did fall from him which I think might be somewhat misunderstood outside this House unless it was very clear that the House itself did not agree with the tenour of his remarks upon the subject. (Hear, hear.) That the House does not so agree is I think perfectly obvious from the attitude of the House in asking him to withdraw his motion.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I too oppose this amendment. (*Cries of "He has withdrawn."*) But I wish to make one observation and that is, that probably it is not generally known that most of His Excellency the Viceroy's tours are to the capitals of Indian Chiefs and Princes and these tours do a great deal of good. I wish that His Excellency would extend his tours in British India in the same way as he does in the Native States.

The amendment was, by leave of the Assembly, withdrawn.

Executive Council—Travelling and other allowances.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I beg to move:

"That the provision for travelling and other allowances under sub-head 'Executive Council' be reduced by Re. 1."

Sir, my object in bringing forward this proposition is not to ask that the travelling allowance be actually reduced, but it is to seek an opportunity to put before the House one or two matters of great importance. We find that the Acworth Committee as well as the Inchcape Committee have suggested the re-allocation of business between the various Members of the Executive Council. We find that the Acworth Committee as well as the Inchcape Committee are agreed that there should be one Honourable Member of the Executive Council in charge of Communications, which will include amongst other things Railways. Now, that being so, we would like to know if there is any prospect of these recommendations being given effect to in the near future? And if that be so, will Government take into consideration the strong feeling that exists amongst Indians that some of the Indian Members of the Executive Council should be put in charge of administrative Departments? There is a strong feeling on the subject as must have been plain to every body from the remarks made by different speakers on previous occasions. It is to reiterate those remarks and to insist again on the importance of its being taken into consideration

Mr. President: I want to provide the Honourable Member if possible with the opportunity of discussing that question; but I think it might be

an unfortunate precedent if I allow him to discuss a question of that magnitude on so restricted a motion as a motion for reduction of travelling allowance. He had better reserve this question till I put again the total vote for General Administration. Then I think it will be the proper time to raise it, and I expect the Honourable Member to take his own opportunity of catching the eye of the Chair on that occasion.

Munshi Iswar Saran: Sir, you will please permit me to say that the effort to catch the eye is not the same thing as actually catching the eye.

Mr. P. P. Ginwala: I move:

"That the demand for tour expenses under sub-head Executive Council be reduced by Rs. 100."

Sir, I am afraid I am going to strike a provincial note once more in connection with this reduction proposed by me. I do not know whether it can be a real grievance for any province that Honourable Members of the Executive Council do not visit it at all. But in the case of my Province it happens to be a grievance I think and the time has arrived when it may be rectified. I know the Honourable the Home Member is in a very fortunate position. He has got one of our Secretaries in his office, who no doubt keeps him in the proper path and prevents him from making mistakes from pure ignorance of our conditions also has opportunities of supplementing his knowledge of the province by going through petitions for clemency which he gets at least four times a month and from which, I daresay he thinks he can gather the characteristics of my people. But apart from that, I venture to submit, that every Member of the Executive Council ought to make it his duty to visit this most interesting province which India possesses. This Assembly has got into the habit of complaining against the methods of Whitehall mainly on the ground of its colossal ignorance with regard to Indian affairs. I do not know whether I should apply that epithet to Honourable Members on the Treasury Benches with regard to Burma, but if I did I do not think I should be far wrong. There is one extenuating circumstance, however, in the ignorance of the Government of India about Burma, and that is that it is entirely indifferent to our affairs and therefore its ignorance does not do us so much harm as it might do. But the time for *laissez faire* is slowly passing away and it would be just as well that they should place themselves in a position to understand the various problems which unfortunately are bound to come up before them until we are able to claim our separation, our release, or rather our manumission from the Government of India. I know, how dangerous a thing it is sometimes to ask for a visit from any Member of the Government of India.—Mr. Innes was there I think for some time. He caught hold of all our rice I think, and he claimed that he made nine crores of rupees profits from this transaction. I do not know whether it was he who advised the Government or somebody else to make an attempt to stick to this amount, but the attempt was made and we eventually defeated them. But even if we should run a risk of this kind, we should welcome some sort of personal investigation into the problems of the province as long as they have to be determined by the Government of India or subject to the decision of the Government of India, and I would ask the Honourable the Home Member whether in these touring expenses any provision is made for a pilgrimage to my province (*A Voice:* "But there are elected Members here from that province.") I am afraid the elected Members cannot impart to the Government of India knowledge about places they have never seen. If any visit is contemplated I should like to know, which Honourable Members

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intend to give us a visit, and whether it is going to be those American tourist visits of three days after which they will write their impressions in official documents and go entirely wrong, or whether there is going to be a really genuine visit which will give them some indication of our requirements. I move my motion.

Mr. President: The question is:

"That the Demand for Tour Expenses under sub-head 'Executive Council' be reduced by Rs. 100."

The Honourable Sir Malcolm Hailey: I quite recognize Mr. Ginwala's motives, Sir. But it is a queer way to get us to Burma by reducing the travelling expenses which are necessary to carry us there. But that is only incidental, and, of course, it was the only way open to him of approaching the question. When we discussed recently the question of His Excellency the Viceroy's tours, I ventured to suggest to the House that a little delicacy was required in approaching the matter. But when, Sir, you propose to cut the touring or other expenses of Members of the Executive Council, we are ready to admit that no delicacy was required at all, we are lambs ready for slaughter. Instead of that, Mr. Ginwala has extended to us a very charming invitation to his province. Now I believe that there are only two ambitions on the part of Members of the Executive Council. One is to see the end of the sittings of the Legislative Assembly, and the other is to get to Burma. I have again and again seen tours planned for Burma: again and again, unfortunate events have prevented their being carried out. This time, there are indications that at least two Members of Council are attempting to get there. For my own part I can only say that I hope they will be successful. The exact information therefore I cannot give to Mr. Ginwala, though I hope to be able to do so at a later date.

Mr. P. P. Ginwala: I ask, Sir, to be allowed to withdraw my motion. The motion was, by leave withdrawn.

Munshi Iswar Saran: In view of the suggestion made by you, I do not move No. 238.*

The motion was, by leave of the Assembly, withdrawn.

Dr. Nand Lal (West Punjab: Non-Muhammadan): I think, Sir, the provision is rightly demanded; therefore I do not propose to move these amendments. (Nos. 241 and 242).

Legislative Assembly—Daily allowance of non-official Members.

Rao Bahadur T. Rangachariar: Sir, I beg to move:

"That the provision for Daily Allowance of Non-official Members under sub-head 'Legislative Assembly' be reduced by Rs. 24,000."

† The Rs. 200 is an unnecessary addition. Honourable Members will notice, if they will turn to page 38 of the Demands, that the daily allowance provided for official and non-official Members of the Legislative Assembly for the year 1922-23 amounts to Rs. 95,960, and for the coming

* "That the provision for travelling and other allowances under sub-head 'Executive Council' be reduced by Re. 1."

† "List of motions,—No. 243, namely:

243. That the provision for daily allowance of non-official Members under the sub-head 'Legislative Assembly' be reduced by Rs. 24,200."

year they will amount to Rs. 1,20,000. I do submit, Sir, that there is a short paragraph in the Retrenchment Committee's Report which I think all of us should read, mark and inwardly digest; that is at page 127.

Mr. President: The Honourable Member is moving the reduction of daily allowance or of travelling allowance?

Rao Bahadur T. Rangachariar: Daily allowance.

Mr. President: Then it is the larger figure.

Rao Bahadur T. Rangachariar: I will explain, Sir, how it is possible. I am sorry,—the daily allowance of official and non-official Members amounts to Rs. 2,84,200. At page 127 there is a very short and significant paragraph as regards this: "The large increase which has taken place in expenditure since 1913-14 is due to the appointment of full-time Presidents, since the expansion of the Councils, the longer sittings held under the reformed constitution, and the grant of more liberal allowances to Members present in Delhi and Simla. The bulk of the increase is inevitable, but we feel that the matter of reduction or otherwise in travelling and other allowances is one that should be left to the Legislature." Sir, reading between the lines, the Inchcape Committee, whose members were for the most part, it must be borne in mind, paid, hinted at a reduction. There is one rule to which I would draw particular attention, it seems to be erring on the side of extravagance, and that is this. The rule provides that Members who come here for 7 days before the actual meeting are entitled to draw daily allowance for 7 days, and you are also entitled to draw for seven days after the meeting is over. It seems to me a most extravagant allowance to allow such a long limit. I can understand 2 days, I can understand 3 days; I do not think, Sir, that for any meeting more than three days is really needed for us to come here or for us to stay after the meetings, either before or after the meetings begin. I hope Honourable Members will endorse that view. When we are preaching economy to the Government Benches, let us practise it ourselves and show to the Government that we are prepared to do, to forego extravagance. During the initial stages of the existence of this Assembly the Government were generous enough to make this provision and to make a handsome provision, and we are thankful to them for all the comforts they are providing us, but we do think we are provided with greater comfort than we need be. While we are grateful to them for this provision, we do think it is extravagant, and I therefore ask that the estimates which will be framed for the current year should be on the footing that only three days' allowance is granted either before or after the event. In this way, I have calculated the amount, assuming we have got two Sessions, you get a week beforehand, that is, 4 days beforehand and four days afterwards, that is 8 days, 8 plus 8, 16 days. Putting it at 15 days, and assuming that 50 Members will be drawing this on an average out of 150 Members, I think that it would not be a large sum which I propose to reduce. I have not asked for opinions. I have avoided going into personalities in this matter. If any Honourable Member considers it is a bad principle, do endorse it by your vote emphatically, but I do consider it is a very good principle I advocate and that we should affirm it, and I hope, Sir, the House will cut a fair amount. I should like to be informed, and I am quite prepared to substitute a nominal sum of Rs. 4,000 instead of Rs. 24,200—I am entirely in the hands of the Assembly in that matter, but it is the principle I wish to affirm, which is that this provision for seven days before and seven days after should be done away with. That is the object of my motion.

Mr. President: Motion moved:

"That the provision for Daily Allowance of Non-official Members under the sub-head 'Legislative Assembly' be reduced by Rs. 24,200."

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural):

12 noon. Sir, I do not want to give a silent vote on this matter without strongly supporting the motion moved by my Honourable friend, Mr. Rangachariar. It is really very important that we should show some retrenchment in our own allowances and the case which has been rightly put by my Honourable friend appears to me just and proper. It is really not too much to expect Honourable Members to charge at the most for 6 days or 4 days or 3 days, as my Honourable friend says, both times put together. With these observations, I strongly support the motion.

Mr. R. A. Spence (Bombay: European): Sir, I should support, as I did before, the motion of my friend, Mr. Rangachariar if it was for the revised amount of Rs. 4,000. I think every one of us is agreed that seven days is far too much, but as was pointed out by Mr. Rangachariar there were very few people who draw that amount and the amount of Rs. 24,200 is therefore far in excess of the amount that would be saved by doing away with three days' allowances; and, therefore, as it is more than would be saved by doing away with the 3 days' allowances is it for us to cut down the allowances for Members of the next Assembly? Two years ago or three years ago, Sir, this Assembly voted this Assembly more money and more allowances—Rs. 20 instead of Rs. 15. Now, this Assembly's life is drawing to a close. Is it for any Member of this Assembly who is not absolutely certain that he is going to be a Member of the next Assembly to cut the allowances of the next Assembly? I say no, it is not. Acting in the interests of economy two years ago a number of us voted to reduce our own allowances and we quite rightly voted, although many of us sacrifice a great deal in coming here, and I suppose there is practically nobody in this Assembly who can say that he makes money out of coming here. But that is a very different matter. We should not cut more than the sum which would be saved by this very reasonable suggestion of my Honourable friend, Mr. Rangachariar, viz., that we should only be paid three days before and three days after we come here. But the sum of money which would be saved is only Rs. 4,000, and yet the motion before the House is to reduce the allowances by Rs. 24,000.

Rao Bahadur T. Rangachariar: You move an amendment.

Mr. R. A. Spence: If I may move an amendment to substitute the figure Rs. 4,000, I heartily do so. If we are to cut it by Rs. 24,000, I consider we would be in the wrong.

The Honourable Sir Malcolm Hailey: We believe it will save about Rs. 10,000.

Mr. R. A. Spence: May I move an amendment that the allowances be cut down by Rs. 10,000?

Rao Bahadur T. Rangachariar: I accept that amendment, Sir.

Mr. President: Further amendment moved:

"Substitute the figures '10,000' for the figures '24,200'."

The same purpose will be served if an assurance is given by Government that the suggested rule will be applied.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, in regard to the definite proposal put forward in the amended motion, the position which Government propose to take is this. Should the decision of the Assembly be in favour of the motion as now amended, Government will carry that out in the ordinary way by reducing the demand by an amount which on calculation may be found to be equal to the allowances as now suggested.

Mr. President: Amendment moved:

"Substitute the figures '10,000' for the figures '24,200' (in amendment No. 243*)."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is:

"That the provision for Daily Allowance of Non-official Members under the sub-head 'Legislative Assembly' (page 38) be reduced by Rs. 10,000."

The motion was adopted.

Legislative Assembly—Haulage of motor car and Conveyance Allowance.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, I move:

"That the provision for Haulage of motor car and Conveyance Allowance under the sub-head 'Legislative Assembly' (page 38) be reduced by Rs. 50,000."

The object of this amendment is to do away with the haulage allowances which Members bringing their motor cars to Delhi are entitled to receive now. This stands, Sir, on an altogether different footing from the allowances which seems to be the privilege of Members of this Assembly to draw. It is entirely different from the daily allowance, also from the travelling allowance. Motor cars, I suppose, are contrivances of recent years, and at one time—to answer the argument of my Honourable friend Mr. Spence—at the commencement of this Assembly, when we came to Delhi, it may have been considered that Delhi would not provide the necessary number of conveyances for Members living at a distance from the Assembly Chamber. Probably in order to make up for the lack of conveyance facilities and conveyance equipment in Delhi it may have been necessary to give this allowance for haulage of motor cars. But, now, we find that Delhi can supply all sorts of conveyances, from the high class tip-top motor car to the lowest conveyance of pristine times. So, I think the ground on which solely an allowance like this could be made does not exist now. Then, it might be said that you cannot deprive Members who are accustomed to this means of conveyance, or to their particular conveyance, when they come to Delhi in the service of the country. Motor folk like carriage folk of old are men of means; I assume that and I do not think that assumption will be questioned, and those Members are generally wealthy merchants or big land-owners or professional men who are in fairly affluent circumstances. It is not everyone that brings his motor

* Vide page 3448 of these Debates.

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car haulage does not arise at all, so this motion ought, I think, to be moved in the next House when it is formed.

Mr. B. C. Allen (Assam: Nominated Official): I rise, Sir, to a point of order. Surely this is a case in which we can apply the principle advanced by Mr. Ginwala. Mr. Ginwala explained to us how Viceroys who visited Burma in the first year of their office said that they had no experience and therefore could take no steps to alleviate their grievances. At the conclusion of their terms of office, they had no time to do so. My Honourable friend has objected to this House legislating with regard to motor haulage, but if we don't take action to reduce this allowance, how will it be possible for our successors to do so during the following year?

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I am much indebted to Mr. Subrahmanayam for his appreciative reference to my efforts to get the travelling and similar other avoidable charges reduced. I desire to assure him that, when I came to move my general motion for a reduction of five lakhs, I was intending to refer to what he has attempted in the motion before the House, and, if he is able to carry this motion, I shall undertake to reduce my demand for reduction by Rs. 50,000 and ask the Honourable the Home Member to accept the lower figure of four lakhs and a half for reduction on General Administration. But, Sir, there are one or two matters about which I think apprehension ought to be removed. In Simla there is no rickshaw allowance and Members do get on without losing efficiency or suffering in any way in health or work. There is a difference in Delhi and that is demonstrated by the Rs. 5 allowance which Members are allowed. People who bring motor cars are allowed only Rs. 2-8 a day (*Dr. H. S. Gour*: "They are not allowed anything at all.") Oh yes, they are allowed Rs. 2-8 a day for petrol in Raisina. Whether therefore there will be a real saving or not if motor cars are not allowed to be brought is a matter that will have to be gone into. Reference has twice been made to the little paragraph in the Retrenchment Committee's Report regarding what is called there the more liberal allowance to Members at Delhi and at Simla than used to prevail before. Well, if both the Houses were agreeable, I am sure the Members of this House would be prepared to accept the lower allowance. It was as a question of principle and prestige that this House voted for a higher allowance. And incidentally I cannot help recalling to mind a somewhat inaccurate statement made by one of the Members of the Incheape Committee, not in committee but on a convivial occasion. He was complaining that, when he was a Member of the Legislature in the old days, he never got an allowance, like the Members of the present Legislature get. His complaint, Sir, was exactly the complaint of our Delhi colleague here. That Member probably never travelled out of Calcutta. He ought to have known that a three-figure allowance used to be given as a lump grant to Members from outside Calcutta and Simla attending meetings of the Council. Let us have these reductions by all means and I think it is up to the Members of this Legislature to bring forward Resolutions of this kind and the one we have just passed to show that when we want reductions elsewhere we are ourselves prepared to submit to cuts.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, last year there was a similar motion for the reduction of the grant under the haulage

of motor cars. This hardy annual has re-appeared again and my friend Mr. Subrahmanayam is the sponsor to this motion. The one question which concerns the Members of this House, and to which the Honourable Mover of this amendment has adverted, is that, if the Members are not allowed haulage for their motor cars in Delhi, how are they to get about? My friend Mr. Subrahmanayam has answered that question for the Members by stating that there is a sufficiency of motor cars and carriages of all descriptions which the Members can engage during their stay in Delhi. That is an invitation which I have no doubt Members of this House will gladly accept, provided my friend the Honourable Mover of this Resolution will foot the Bill; because my friend could not be unaware of the fact that the daily charges for motor cars in Delhi is in the neighbourhood of Rs. 80 to Rs. 100 per diem. Consequently, if my friend allows Members of this House to use motor cars in Delhi and that is a statement with which he opened his speech, I do not know where my friend would economise the Rs. 50,000 which he wishes the reduction to be under this head. And in retrenching Rs. 50,000 on this head, whether he would not swell the expenses of motor cars hired out and placed at the disposal of Members. Now, Sir, the other question which my learned friend raised was a very interesting question. He said Members of this House who bring motor cars to Delhi are all well-to-do people; they can all afford to pay for the haulage of motor cars, and therefore, there is no reason why Government should be made to pay for the haulage. But my friend surely could not have forgotten the fact that, if the wealthier Members of the Assembly possess motor cars which they can bring to Delhi at their own expense, the other Members of the Assembly are wealthy enough to provide their own maintenance when they are in Delhi; and if it be any argument at all that the wealthier Members of the Assembly should pay for their motor cars, is it not equally cogent an argument that the other Members of the Assembly should also pay for their own maintenance? As the one class can afford to pay for their motor cars, the other class can equally afford to pay for their subsistence in Delhi. But my friend could not have forgotten the fact that whether he refers to the one class or to the other, they come at immense sacrifice of time and money and come to Delhi to place their services at the disposal of the State, and, if they are to pay for their motor cars, surely my friend will not grudge them the payment which they would naturally expect for the loss of time which they devote to the service of the State, and what would be its value? Placed at its lowest estimate, I think if you were to value the services of a man like my friend Sir Campbell Rhodes, or my friend, Sir Montagu Webb, or my friend, Rai Bahadur Subrahmanayam, I am perfectly certain that the retrenchment of Rs. 50,000 will be merely a fleabite compared to the expenses which the State will incur in compensating them for the loss of time in coming to Delhi and placing their invaluable services at the disposal of the State. Then, my friend said that Members of the Local Council and the papers made some adverse criticism upon the pile of buildings in Raisina and the comparative ease and luxury in which Members lived there. I am afraid my friend has weakly yielded to these criticisms. He might have paused for a moment to think whether the comfort which he himself enjoys in the hostel at Raisina is anything compared to the comfort to which he is accustomed in the place he hails from, and, if he was to place side by side the comfort and the sacrifice he has made, the time he is spending and the inconvenience he is suffering during his stay in Delhi, I have no doubt that the comforts he speaks of are incomparably small to the service he renders the State and the sacrifice he makes in the name of patriotism.

[Dr. H. S. Gour.]

I am sure, Sir, that my Honourable friend has been unduly moved by the cheap criticisms of the yellow press. I am sure that if the Members of this House were given no allowance at all and if they came in clean clothes to this House, these newspapers will complain that these Members somehow or other are able to live in luxury and comfort. The poor man, Sir, always rails at the rich and when he becomes rich himself he realises that the difference between the poor man and the rich man is at times a lack of effort. Now, Sir, my friend Sir Deva Prasad Sarvadhikary who has pronounced his benediction upon this amendment and come to terms with the Mover of this amendment

Sir Deva Prasad Sarvadhikary: And I hope with the Government Members.

Dr. H. S. Gour: with a promise that he would reduce his demand by Rs. 50,000 if this motion is carried has perhaps not vouchsafed to this House any explanation as to what will be the conduct of this House if you were to deprive it of the ordinary amenities of life, if you were to deprive the Members

Rao Bahadur C. S. Subrahmanayam: Not ordinary.

Dr. H. S. Gour: of the ordinary necessities of life

Rao Bahadur C. S. Subrahmanayam: Extraordinary.

Dr. H. S. Gour: and what would be the position of the future Members of this Assembly who would have to consider that not only would they have to come up to Delhi but they would be provided with no conveyance or haulage allowance which their predecessors had, thanks to the motion of the Honourable Mr. Subrahmanayam. I therefore submit, Sir, that my friend could not have seriously intended this House to commit itself to a proposal which, as my Honourable friend Maulvi Abul Kasem has pointed out, would not affect the sitting Members but is likely to prejudice the Members to come. One more word in connection with the cost of the haulage and the daily allowance given to the Raisina residents. I have heard from some Members that Members in addition to the actual haulage allowance for motor cars receive, some say Rs. 5, some say Rs. 2-8-0, per diem. Well, Sir, I do not know what Members are the fortunate recipients of these *douceurs*. It may be that those who live 8 miles away in the wilds of Raisina are paid these small amounts by way of solatium. I do not grudge it to them. I am perfectly certain, Sir, that so far as the haulage of motors is concerned, this House will signify its views in the manner in which it did last year when a similar question was debated in this Assembly.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I rise to oppose the motion brought by my friend Mr. Subrahmanayam. Before I begin, Sir, I must make it clear that I have no motor car and I do not charge for haulage allowance. Therefore, whatever I say does not apply in my case. Sir, a motor car for those who reside in Raisina is a *sine qua non*, for one reason, Sir, it takes my carriage nearly one hour to come here from Raisina in the morning and one hour more

in the evening to go back. We are kept here very often after 5-30 P.M. and sometimes even up to 6 P.M. Last night we were kept till 6-30 P.M. by a Select Committee, going home after that time and taking an hour more to reach our home, if home it can be called, famishing for a cup of tea on the way before you get home to have one. Is that the way, Sir, in which the Assembly should treat those Members who come here to devote their time and energy for the work of the country? Whereas a motor car will take you home within about 10 or 15 minutes. On the other hand, Sir, there is another difficulty so far as carriages are concerned. You have to keep the carriage here the whole day. The horses will have to remain without any food or water perhaps. You don't know what time you are going to get off from the Assembly. Sometimes we get up early, sometimes late, so that every gentleman who brings his carriage or motor here has to keep it waiting nearly the whole day, as I suppose every one of us will bear testimony to. Therefore, Sir, bringing a motor car, for those who possess one is necessary though it is a little costly affair. I know a friend of mine has hired a motor for himself in Delhi and he pays Rs. 350 a month besides the cost of petrol and the pay of the chauffeur, if I mistake not. Thus it will appear that it is a very costly affair to hire a motor. But if you keep it for the day, the charges are much more heavy, as has been pointed out by Dr. Gour. Thus it is almost impossible to get on without a motor for those gentlemen who have got any value for time and to expect them to pay for the motor out of their own pocket and come and reside here for three months in the cold weather and a month in Simla is certainly more than what the Assembly can expect. I know, Sir, so far as the Bombay Council is concerned, there are several Members who do not attend regularly because they find the expenses too heavy in Bombay and Poona and the allowances they draw are not sufficient. This was the complaint made to His Excellency the Governor of Bombay only a few days ago so far as Sind Members were concerned during a visit which he paid to Karachi recently. Mr. Subrahmanayam thinks that the gentlemen who are residing in Raisina hostels are enjoying all the comforts of life that they possibly can expect at home, and yet, let me inform him that both the hostels are lying empty. There are only a few gentlemen who care to go into those hostels and no more, with the result that one of these hostels has been sold off to the Telegraph Department. That does not speak for the convenience and comfort of these big piles of buildings with their appendages. I think these hostels afford far less comfort than they ought to, with all the money spent upon them. Compared to these hostels the Windsor Place quarters are a little more comfortable. But you certainly demand a certain amount of comfort and convenience when you have to come and reside here nearly for three months. You cannot stay without convenience and comfort if you have to make a long stay. Gentlemen who go to the Provincial Councils have only to stay for 10 or 15 days at a time and they can go back home, so that their case is quite different from ours. We come all the way from our homes and stay here at a stretch for 2 or 3 months. Naturally therefore we expect rather better comfort than what the Members of the Provincial Councils have. I hope the House will not carry this motion.

One more reason that occurs to me is this that we cannot afford to be generous at the cost of other people. What does the motion as it is brought mean? It means cutting down the allowances of our successors.

[Mr. W. M. Hussanally.]

It is very easy to be generous at the cost of our successors. If Mr. Subrahmanayam was serious he ought to have moved his motion last year and touched his own pocket.

Sir Campbell Rhodes (Bengal: European): My Honourable friend Mr. Subrahmanayam seems to have so little support in this House that I am glad of the opportunity of taking my stand beside him on this occasion. My reason for supporting this motion is simply this. I am strongly in favour of following the precedent of other countries of the payment of Members in order to allow Members who could not otherwise afford to enter on a political career to do so. But I am not in favour of paying the rich man more than his poor neighbour and that is, in effect, what this Resolution means. (*Cries of "No, no."*) It means in fact that the man who has a motor car and therefore is able to afford some of the amenities of life is paid haulage of his motor car whereas a man without a motor car does not get that money and if he lives on this side of Delhi he gets nothing, but if he lives on the other side he gets an amount which as Dr. Gour has pointed out is hardly sufficient. I presume that all these allowances will be stopped as soon as we all get to Raisina. I do not share the pessimism of some Members of this House about not coming back next time and I cordially agree with what Mr. Allen said that we have the right to settle the budget for this year. I have not heard it suggested in the votes of grants in general that we should only budget up to the 1st November or whatever date the dissolution occurs, and having voted for this Resolution last year I feel I am perfectly consistent in voting for it again this year.

Bhai Man Singh (East Punjab: Sikh): I have to oppose this amendment. I have not got a motor car and so I have never brought one here and I cannot say whether I will do so in the near future, and even if I bring it I do not think I will be a loser if this amendment is passed for I think the haulage from Lahore to this place is less than the daily conveyance allowance for the Session. So far as I am personally concerned, I am not at all touched by the proposal or by the grant of motor haulage. But the main question is this. Delhi is not one city, but if I may say so, is a group of two or three towns. There is Raisina, there is this part of Delhi and then there is the big main city and it is not very easy to go from place to place without having a conveyance at your hands. Those gentlemen who at their own places are habituated to the use of motor cars—I cannot say why we should force them not to have the use of a car at Delhi when they come to discharge their public duties here. Moreover, it is quite easy to say that such and such a person being a rich man should pay from his own pocket. If that argument holds good, then if a man wants to come and live in Delhi he should pay from his own pocket for his living too. The question is whether a motor car is or is not a necessity or well-nigh a necessity. Of course, so far as I am concerned, I have never felt a motor car a necessity at my original place, Ambala, I have felt it rather as some necessity at Lahore, but I think I have always felt a motor car an absolute necessity at Delhi I have always felt great difficulty without having a conveyance at my disposal at Delhi. I know that many of my friends had to walk actually from this place for some distance before getting a *tonga* and whenever you phone from the hostel to a *tonga* stand they sometimes say "No *tonga* is available"; another time they say, "*Tonga* coming" and you have to wait half an hour and

again you phone up and they say, "We have just sent a *tonga* and it may come in ten minutes." I think some may feel inclined to dispense with coming to the meeting altogether if they cannot get a *tonga* just in time. Suppose a man who is living in the Raisina Hostel is delayed half an hour after 11 o'clock it is practically impossible for him to get any conveyance from that place to this place. It is not only that we have to come here 4 or 5 days a week but we have got many other things also to do. We are not supposed to come here—only to come here in this Chamber, attend the Assembly and go back. Of course, as social men we have to move in the social life of Delhi. Not only that. I think there are many matters which we cannot always discuss on the floor of this House but in connection with which we should try to see Members of the Government or other officials in charge and bring to their notice the defects in the working of the several departments. There is therefore much more need for moving about in Delhi on our part than appears to be on the face of it. I therefore think that it is an absolute necessity that those who can at all afford to keep a motor car must bring their cars. If I can legislate I would say that every Member who has got a motor car must bring it up to Delhi not only that he may use it himself but also that he may give a lift to a poor man like myself now and then. I am really astonished at the remarks about the more liberal allowances given to Members of the Legislative Assembly. I shall feel obliged to any gentleman of the Assembly who can show how the Members of this Assembly or of the Council of State are given a more liberal allowance than their predecessors. I think that statement is based upon some misconception. No doubt, some people in the past have criticised our Resolution of 1921. But are we always to follow what the Press say whether it is reasonable or unreasonable? One word more. My friend Mr. Subrahmanayam grudges the little haulage allowance that is given to the Members but he forgets that Members of the Legislature in India are the lowest paid throughout the world, even as compared with the smallest colonies and the smallest countries, if not the lowest, well nigh the lowest as compared with all the countries. I remember to have compared the figures last year and if my memory does not fail me there is not a single instance where such allowances are less. I cannot understand why the country and the tax-payer should grudge a gentleman bringing his motor car to Delhi when he is using that car in his own place. It is said that it is simply giving an extra advantage to the rich man who can keep a motor car, but I submit that the rules allow a Member to bring a pair of horses also to Delhi if he wants to do so. I think a good many of us have got our horses. They can bring them here if they choose to, but I may remind my Honourable friends that the distances in Delhi are so great that even a pair of horses if used regularly are bound to grow much thinner though I would not say die. I have seldom seen any good horse in Delhi which is put to any great use. With these remarks I oppose the amendment.

1 P.M. (*Voices: "The question may be put."*)

Mr. President: The question is that the question may be put.

The motion was adopted.

Mr. President: The question is:

"That the provision for haulage of motor car and conveyance allowance under sub-head 'Legislative Assembly' be reduced by Rs. 50,000."

The Assembly divided:

AYES—34.

Abdul Rahman, Munshi.
Abul Kasem, Maulvi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Agarwala, Lala Girdharilal.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Faridoonji, Mr. R.
Iswar Saran, Munshi.
Jamall, Mr. A. O.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Lakshmi Narayan Lal, Mr.

Mitter, Mr. K. N.
Mukherjee, Mr. T. P.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Rhodes, Sir Campbell.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Schamnad, Mr. Mahmood.
Sinha, Beohar Raghubir.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Willson, Mr. W. S. J.

NOES—45.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Ashan Khan, Mr. M.
Aiyer, Sir P. S. Sivaswamy.
Ayyangar, Mr. M. G. M.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Barua, Mr. D. C.
Bishambhar Nath, Mr.
Bradley-Birt, Mr. F. B.
Bridge, Mr. G.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Cotelingam, Mr. J. P.
Dalal, Sardar B. A.
Das, Babu B. S.
Gajjan Singh, Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Holme, Mr. H. E.

Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Jejeebhoy, Sir Jamsetjee.
Kamat, Mr. B. S.
Lindsay, Mr. Darcy.
Man Singh, Bhair.
Misra, Mr. B. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Ramji, Mr. Manmohandas.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Shahab-ud-Din, Chaudhri.
Sinha, Babu L. P.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Vishindas, Mr. H.
Webb, Sir Montagu.

The motion was negatived.

Mr. P. P. Ginwala: I move:

"That the demand under the sub-head 'Legislative Assembly' be reduced by Rs. 100."

Sir, in moving this reduction I wish to draw attention to two or three outstanding facts. First of all, I will draw the attention of the Assembly itself to the fact that in these last 3½ days we have gone through five demands, and that in the remaining 2½ days we have 60 odd demands to deal with. If we go on at this rate I fear that at 5 o'clock on the last day the President will find that the whole burden of the Assembly will be thrown on himself of moving one demand after another until all the demands are finished. Now, Sir, the Assembly this morning showed rather a close-fisted patriotism in regard to money; but I think that if it had got close-fisted with regard to the use of our time when these demands are being discussed, there would be more national economy in the end. I know that this is the most unsuitable day for me of all the days in the

year, for making remarks of this description because on this day the General Administration demand comes on and I have to make three or four speeches. But I have limited myself to my ordinary proportion for there are 710 amendments on the notice paper and if we divide that by 143 you get 5 and I have given notice exactly of 5 amendments. I may draw the attention of Honourable Members to the fact that there are important questions coming up even to-day on the General Administration demand, and if we do not perform our duty of speaking so strenuously we might be able to further the ends we have in view much better.

The second thing to which I wish to draw the attention of the Assembly and of the public at large is the fact that though I am guilty of drawing a motor car allowance I have attended practically every meeting of the Assembly from the beginning and I propose to do so to the end. There are a number of Members of this House who have not put in even one appearance, not only this Session but for two Sessions. It is imperative for the public to know, especially on the eve of the elections, how they have been treated by their representatives whom they have sent up to this House. I leave the matter at that.

The third point is that I want to know from the Honourable the Law Member how the position stands in regard to the separation of establishments. This question was raised by me during the last budget discussion in which I raised the point that the President should have a separate establishment, a separate Secretariat, and my friend, Mr. Subrahmanayam, brought up a Resolution to that effect during the Simla Session. The temperature of the Assembly, however, got so high then that we thought it best to adjourn further debate until, as the Law Member stated, the Incheape Committee had sent in its report. The Incheape Committee has come and gone, the report has been published, and I believe the Honourable the Law Member then gave us an undertaking that if this principle was accepted and if it did not involve any extra expenditure, he would be in favour of giving effect to it. And if I recollect rightly, Sir, you also admitted that the principle was a good one and that when the time came it should be given effect to. I would like to know from the Honourable the Law Member now, since the Incheape Committee have already recommended a reduction of one lakh and some odd thousand rupees in the Legislative Department, whether he is in a position to carry out this principle, which in substance was accepted by the Assembly on more than one occasion. I move my amendment.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, my Honourable friend, Mr. Ginwala, has referred to three points during the course of his speech. In so far as the first two points are concerned, I do not think that either he or the House expect any observations from me upon those points. With regard to the third point mentioned by him he has called upon me to make a statement as to the position at this moment with regard to a separate establishment for this House. Well, Sir, if I may venture to correct him in regard to one statement which he made, I would point out that in the debate which took place on Mr. Subrahmanayam's Resolution in connection with this matter, my predecessor the Honourable Dr. Tej Bahadur Sapru did not give the undertaking that my learned friend mentioned in his speech. What he did say was that as a matter of principle he was in sympathy with the theoretical proposition enunciated in that Resolution; but when coming to the practical aspect of the question, he pointed out that the proposal would undoubtedly involve additional expenditure and mentioned that in view of the fact that the Incheape

[Dr. Mian Sir Muhammad Shafi.]

Committee was going to inquire into the expenditure of the Government of India in all their Departments, it would be wiser on the part of the House to postpone a discussion of this matter until after the Inchcape Committee had reported. It was in view of the advice, if I may so characterize it, given by my predecessor that the House adjourned the discussion on this matter. Honourable Members will remember that in his speech on that occasion Dr. Tej Bahadur Sapru pointed out that the work in his Department was so voluminous that the staff at present employed in the Secretariat of the Legislative Department was just sufficient to cope with that work and that the proposal put forward by my Honourable friend, Mr. Subrahmanayam, that the existing staff in that Department could be apportioned between the establishment which he was advocating and the Department itself was not at all feasible. Now, my short experience of a little over two months compels me to endorse that particular statement made by Sir Tej Bahadur Sapru in this House to its fullest extent. It therefore follows that a separate establishment will mean additional expense. Now Honourable Members will have noticed that the Inchcape Committee in their Report have said nothing one way or the other about a separate establishment for the Legislative Assembly.

Sir Deva Prasad Sarvadhikary: But they proposed a cut in your Department.

The Honourable Dr. Mian Sir Muhammad Shafi: That is only one Additional Deputy Secretary and one of the three Solicitors. They realized, I have no doubt, that the work in the Legislative Department was so heavy that the staff of that Department was really barely enough to cope with it, and therefore their recommendations are as I have mentioned just now only those two recommendations. Well, Sir, I understand that the matter was discussed before the Inchcape Committee, but they left it alone. The only inference that I can draw from that fact is that, without incurring additional expenditure, the Inchcape Committee realized that such an undertaking could not be made by the Government of India. That is exactly the position at present. I myself have not had time to look into this matter, to examine what the exact position will be if the proposal for a separate establishment is actually carried out. I am sure Honourable Members realize that soon after I assumed charge of the Law Membership, came the Legislative Council Session, and that the Department has been so busy in connection with various matters concerning the Legislative session that, so far as I am concerned, I had no time to examine this matter. Sir, in the few observations which you were pleased to make when this matter was last discussed this is what you observed, if I may venture to quote from what you said on that occasion:

"I should have been glad to have on the records of the Assembly the explicit judgment of the House in favour of a separate establishment; but the reasons given by the Honourable the Law Member for the postponement of the consideration of that proposal seems to me to be cogent, and, therefore, I think the course which Mr. Rangachariar proposes is reasonable and proper. The only thing that makes me regret that we should have to adopt that course is that the next time we take up this subject we may have to deal with a different Law Member."

Well, Sir, I venture to take the liberty of assuring you that although it is a different Law Member with whom you have to deal in connection with this matter, he fully realizes the difficulties of the existing situation, and, in theory, he agrees with his predecessor that the change of form which Honourable Members opposite seek to introduce is one which is

logical. I am sure the House will realize that I have not had an opportunity of examining this matter; I am not in a position just at this moment to give any undertaking on behalf of the Government of India, but I assure the House that as soon as the legislative session is over, I shall myself carefully examine the whole question, and whatever conclusions I may be able to arrive at will be carried out hereafter.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I rise to say two words upon this matter. The one relates to the actual subject-matter, the other relates to the appeal made by my friend, Mr. Ginwala. Sir, as regards the actual question before the House, I am unable to understand why there should be any difficulty in dividing the Department into two Branches and placing one under your control. Sir, I take it that the work is being done by the Department, both as regards the Executive Branch of it and as regards the Legislative Branch of it. If the work is being done by a number of people pooled together, looking into the work from these two standpoints, it should be an easy thing to divide the work among a certain number of clerks and the Superintendents, and to place one set of clerks and certain Superintendents under the control of the President, so that there may be no mixing up of the two classes of work, and I think that that ought to have been done long ago; I am rather surprised to hear from the Honourable the Law Member that he has not been able to give time to the consideration of a subject which was moved a year ago and upon which I think the House expressed fully and clearly its sentiments. So, Sir, I hope that before long he will take into careful consideration the desirability of dividing the two Departments. Sir, upon the other matter I hope my friends in this part of the House will pardon my saying a few words. We have got very important things coming up. I do not object to Members placing their views before the House, and putting them to the vote, but if we would put some restraint upon our speeches, I think we will be able to make a great deal more progress than we have been able to do hitherto. It is absolutely necessary that some of the very important matters which are coming on hereafter should also be placed before the House. If we go on at the rate at which we have been going on this morning and since yesterday, the result will be that a large number of important subjects will have to be given up, and they will be put *en bloc* by the President, and there will be no discussion whatever; we have got only six days—I think we ought to have longer time,—and I hope the Honourable the Leader of the House will hereafter consider the desirability of giving us more days. There are some Members on this side of the House who say that they ought to have longer time, and I agree with them. It has been decided that we shall have time only up to Saturday, and the question before us is,—are we going to have the same kind of consideration given to very unimportant matter as we have been doing hitherto, and leaving altogether to chance, when the time comes for the closure being applied, of important matters being put *en bloc* to vote? Are we prepared to contemplate a contingency of that kind? I appeal to my friends to put some restraint upon themselves in speaking upon the various matters that may come up.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, I should like, with your permission, to make one observation. My respected friend, the Honourable Mr. Seshagiri Ayyar, expressed his surprise that I had not had time to look into this matter. May I remind him that I was not a Member of this House when the discussion on Mr. Subrahmanayam's Resolution took place. I was not even present.

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LEGISLATIVE ASSEMBLY.

[15TH MARCH 1923.]

Mr. T. V. Seshagiri Ayyar: I spoke of the Law Member, not of Sir Tej Bahadur Sapru or Sir Muhammad Shafi.

The Honourable Dr. Mian Sir Muhammad Shafi: And it was not until notice of this motion, which is now before the House, was received in the Department that I had an opportunity of looking into the literature connected with this matter. Before that, having assumed charge of the office only recently, I naturally did not know anything.

Mr. President: On that point, an attack should not be made on the Law Member but on me. I gave two undertakings to the Assembly,—the first, this time last year and the second, in September. Nothing has been done in this matter because, on a preliminary examination, it became clear to myself and to Sir Tej Bahadur Sapru, the then Law Member, that if any action were taken, it would inevitably create an additional charge on the revenues of the country and neither he nor I were prepared to make any proposals of that kind at that time. I will now add a further undertaking to what has been said by the Honourable the Law Member, that before the Assembly meets again for its final session in Simla in July, we shall examine the question in greater detail than we have hitherto done, and I hope we shall be in a position to place specific proposals before the Legislative Assembly, and possibly, I may inform Members, they may include the placing of similar proposals, linked proposals, before the other Chamber, so that when the time comes, if there is an improvement of our finances, and money is available for the purpose, these proposals may be put into operation at once. I think the Honourable the Law Member, like myself, has accepted the principle that it is desirable that the Indian Legislature should have a separate establishment of its own.

Mr. P. P. Ginwala: Sir, I beg leave to withdraw my motion (No. 246).

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, while we are discussing the question of a separate establishment, incidentally, I wish to invite attention of the Members to a want which I, at any rate, have been feeling, namely, the want of newspapers in the reading room of the Honourable Members of this House. I believe, Sir, that legislators while they are in session should be in daily touch with the press and the public opinion of the whole country; it is a necessity that there should be on the table of the reading room newspapers from all parts of the country if we are to formulate our opinion here after taking into consideration the views of various people. To illustrate my point, I may mention I noticed, for instance, in a Bombay paper—I mean the "*Times of India*"—various valuable articles recently on the Budget, regarding the salt duty and on Waziristan or Kenya. If these newspapers are on the reading room table, I do think Members will read such articles and then come to a mature judgment about these questions. I think also that there is a way to meet this convenience without any additional burden on the tax-payer. We have effected this morning a saving of Rs. 10,000 from the daily allowance of Members regarding the 7 days prior to and subsequent to the departure of Members. If we devote a portion of that Rs. 10,000 to the purchase of newspapers while Members are in Sessions here, I believe it will meet a great convenience and also help the deliberations of this Assembly.

Sir Deva Prasad Sarvadhikary: Sir, from the point of view that you have been pleased to suggest and which the Honourable the Law Member

has also suggested with regard to the proposed division of establishment, I wish to bring to your attention for consideration the need of seeing that the establishment should not only be self-contained but should have full work during 12 months. This is necessary not only from the financial point of view but also from office management point of view which cannot be overlooked in this connection.

The motion was, by leave of the Assembly, withdrawn.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, may I be permitted to say that we will take note of the request made by Mr. Kamat and see what can be done in that connection.

Council of State—Travelling Allowance.

Rao Bahadur T. Rangachariar: I much regret, Sir, that I have to make this motion in this House, but under the constitution as it is, the other House has no vote on the Demands, and, therefore, it is for this House to express its opinion. I move, Sir:

"That the provision for Travelling Allowance under the sub-head 'Council of State' (page 38) be reduced by Rs. 30,000."

Rs. 30,000 is a mere rough guess, but whatever the figure may be, the principle which I wish to emphasise is this, and I hope the Honourable the Finance Member will take note of it for other people. Here in an extravagant scale people are allowed one whole compartment to travel all about the country. I do not know if it is the practice in any other country. Four first class ticket charges are allowed not only to Members of the Council of State but to other officers who are called first class officers. I do not know what they are. But I have seen them occupying a whole compartment to the prejudice of the public and to the prejudice of the tax-payer. I hope my Honourable friends in the other House will not take offence at this motion which I am making, but I do think it is not necessary to provide a whole compartment for Members to travel about. They must mix with people. You come across friends while travelling, and make friendship sometimes everlasting friendship and sometimes otherwise. But, be that as it may, I think the travelling allowance may be cut down conveniently, and I hope, Sir, that it will be accepted by the House.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, in connection with the motion made by my Honourable friend Mr. Rangachariar, I venture to appeal to the sense of delicacy of Honourable Members opposite. I venture to suggest to them that it is, to say the least inadvisable for this House on its own motion to cut down the privilege at present enjoyed by the members of the other House. (*Rao Bahadur T. Rangachariar:* "Nothing wrong in it. We attack no less a person than His Excellency the Viceroy.") I do not know whether such a proposal as this is calculated to promote that spirit of good-will and co-operation which ought to exist between the two Houses. What the Government propose to do in this connection is that they will place before the other House a motion for revision of the rules in this connection and if the other House agrees, Government will carry out the decision accordingly. But in any case Government propose to take away this privilege from the official Members. I think the House would be well advised to leave this matter at that.

Rao Bahadur T. Rangachariar: On that assurance, Sir, I withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

Dr. H. S. Gour: Sir, by a curious coincidence I had also given notice of a similar Resolution*, and I should like to justify the notice I gave with reference to a few facts not adverted to by the Honourable Mover of the last motion. Honourable Members will recall that a motion was brought forward before this House in the first year of its life for equality of status and treatment between the Members of the two Houses, and Honourable Members will also recall, that the Resolution was passed by the vote of this House. Now, equality of treatment and status requires that in the matter of travelling allowance, there must be equality. (*Mr. R. A. Spence:* "Also in voting on the Budget.") Consequently . . .

Mr. President: Does the Honourable Member raise the same question?

Dr. H. S. Gour: It is for reduction by Rs. 20,000.

Mr. President: It is the same question which Mr. Rangachariar withdrew on the assurance of the Honourable the Law Member. I think in view of that fact and in view of the fact that we have reached that stage at which we should economise time, I think it better that the Honourable Member should let the matter stand where it is.

(*Cries of "Withdraw, withdraw."*)

The motion was, by leave of the Assembly, withdrawn.

Rao Bahadur T. Rangachariar: Sir, this is only the matter which we passed for ourselves as regards one week's stay before and one week's stay after. On the same assurance, I am prepared to withdraw this motion (No. 249)†.

The Honourable Dr. Mian Sir Muhammad Shafi: I am prepared to give the same assurance.

The motion was, by leave of the Assembly, withdrawn.

Council of State—Conveyance Allowance.

Rao Bahadur C. S. Subrahmanayam: Sir, I move:

"That the provision for Haulage of motor car and Conveyance Allowance under the sub-head 'Council of State' (page 38) be reduced by Rs. 25,000."

Mr. President: Before the Honourable Member embarks on arguments, I must warn him and the rest of the Assembly that though they are entitled to a decision on the question, I fail to see the difference between a motor car owned by a Member of the Council of State and a motor car owned by a Member of the Legislative Assembly. Therefore, I think the House must come to a decision on the point without further argument.

Rao Bahadur C. S. Subrahmanayam: Am I to understand, Sir, that I should not make a few remarks?

* "That the provision of Rs. 80,000 for Travelling Allowance of official and non-official Members under sub-head 'Council of State' be reduced by Rs. 20,000."

† "That the provision for Daily Allowance under the sub-head 'Council of State' (page 38) be reduced by Rs. 30,000."

Mr. President: The Honourable Member may be more ingenious than I am. The difference is not between a Member of the Council of State and a Member of the Legislative Assembly, but between the cars that they own.

Rao Bahadur C. S. Subrahmanayam: Am I to understand that I cannot speak?

Mr. President: I will wait and see what the Honourable Member proposes to say.

(*Cries of: "Withdraw, withdraw."*)

Rao Bahadur C. S. Subrahmanayam: Whatever may be the cries of "withdraw", which cannot terrify me, just as the vote of the Assembly, on the Haulage allowance of Members of the Assembly has not terrified me, they have simply shown that Members cannot think aright when their own interests are concerned and that they can think very severely and very stringently when the rights of officials are concerned. I find that if it is an allowance for an official, say a motor car allowance for an official of the Council of State, it is said that he ought not to get it. But I cannot understand how it makes any difference. What is the special merit of the work or the quality of the work which a non-official Member does as distinguished from the quality of work which an official Member in this Assembly does. After all what are the arguments which were put against it? They said we want a car to go about and visit the ruins of Delhi. The only business on which we are here is to attend the Legislative Assembly.

Mr. President: The Honourable Member is repeating the speeches that were made before.

Rao Bahadur C. S. Subrahmanayam: It was said they wanted a car for going about Delhi, never mentioning the object for which the car was needed, namely, to come to the Assembly and go back to our quarters. To that extent any allowance which is given is relevant.

Dr. H. S. Gour: I rise to a point of order after the ruling from the Chair . . .

Rao Bahadur C. S. Subrahmanayam: By interrupting me you are not going to effect an economy of time . . .

Mr. President: Order, order. Dr. Gour.

Dr. H. S. Gour: Sir, I rise to a point of order. So far as I can see, in spite of the ruling of the Chair, my friend in his motion is repeating himself. He takes the risk of other Members striving to reply to him in case he is allowed to go on.

Mr. President: The Honourable Member need not usurp the functions of the Chair.

Rao Bahadur C. S. Subrahmanayam: I thought just as much; the Chair was quite competent to take care of itself. I feel considerably strengthened in the view I have taken that this motor car allowance is an illogical and unreasonable one by the number of votes I was able to secure in support of my motion.

Mr. President: The Honourable Member knows that he is out of order. Does he wish to proceed? He can move the motion and ask for a decision on it, but it is impossible for him to make a speech without repeating previous arguments.

Rao Bahadur C. S. Subrahmanayam: The rules are unreasonable. Some people living in Metcalfe House alongside the Council of State are allowed this privilege. Why should it be allowed?

Mr. President: I cannot allow the Honourable Member to continue. If I allow him to continue, I must allow others to do the same. I will put the question and take the decision on it.

The question is:

"That the provision for Haulage of motor car and Conveyance Allowance under the sub-head 'Council of State' be reduced by Rs. 25,000."

The motion was negatived.

Mr. President: Mr. Sarfaraz Hussain Khan. The Honourable Member's amendment:

"That the provision for Travelling Allowances of official and non-official Members under sub-head 'Legislative Bodies' be reduced by Rs. 25,000."

is the same question as the previous one. The Honourable Member will remember that Mr. Rangachariar moved a reduction of a similar kind and that the Leader of the House met him on that point saying that the question would be considered, whereupon it was withdrawn. Does not that satisfy the Honourable Member?

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): What I mean is that in 1922-23 the grant was Rs. 95,960 and this year, 1923-24, it is Rs. 1,20,000. If I am satisfied in regard to the figures I shall withdraw my motion.

Mr. President: More Members of the Assembly are expected to travel.

Khan Bahadur Sarfaraz Hussain Khan: Why?

Mr. President: More Members are expected to attend the sittings of the Assembly!

The Honourable Sir Basil Blackett (Finance Member): Sir, the estimate is based on the latest available details of actual results this year. I have not got them before me, but the figure is based on the experience of the last year. We thought it necessary to make a slight increase in the light of that experience.

(Honourable Members: "Withdraw".)

Mr. President: That takes us down to the end of the Legislative Bodies. I think we had better adjourn.

The Assembly then adjourned for Lunch till Twenty-Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty-Five Minutes to Three of the Clock. Mr. President was in the Chair.

Foreign and Political Department—Pay of Officers.

Dr. Nand Lal: My motion runs as follows:

"That the provisions for pay of officers under the sub-head 'Foreign and Political Department' be reduced by Rs. 1,000."

I recognise that the Government of India really means to give training to Indians in various important Departments, but, while conceding that, I feel constrained to submit before this House that they have not very seriously taken any effective step to initiate Indians into the Foreign Department, because my examination of the whole question leads me to believe that the Indian element in this Department is comparatively small, and I would like to suggest that the Government of India will kindly see their way so that Indian grievances in regard to this question particularly may be attended to at the earliest possible date. Sir, I admit that the officers, who are working in the Foreign and Political Department are those who have got great experience and they are such as are really capable of holding that responsible post or those responsible posts in that Department. But, when I go to the budget and I compare it with the expenditure of that Department in 1913-14 and then to subsequent years, then I feel shocked to observe that there is a tremendous and uncalled for increase in it, namely, in the expenditure. And, with a view to support my arguments, Sir, may I invite your kind attention to the opinion which is embodied in the Report of the Indian Retrenchment Committee? One of the Honourable Members wanted to know the page—the page is 129. Sir, in 1913-14, the actual expenditure was Rs. 7,16,900. In 1921-22 it rose, so far as the revised estimate goes, to Rs. 10,40,500. And, again, we find an uncalled for rise when we come to the year 1922-23. What do we find there, Sir? The budget estimate says Rs. 10,12,900. When we come to the year 1923-24, there, of course, we find that the demand is a little less than that which was asked for last year, that is the demand for next year amounts to Rs. 10,36,200. Now, Sir, I submit before this House that they will kindly compare these figures; compare the figure which is demanded for next year with that of 1913-14 and then you will agree with me that this expenditure is too much. It looks too much when we take into consideration the present financial embarrassment of our Indian Government. Then, Sir, after this, may I invite your attention to the demand, page 39? What do we find there? Secretaries—2—Rs. 4,000 a month. May I ask, why 2 Secretaries? Why not one Secretary? I should like to hear the explanation which may come forth. My submission is that one Secretary will be sufficient to cope with the work. What is the opinion of the Retrenchment Committee and what does their Report say? I am not simply making an unsupported assertion before you. I am the last person to put forward an assertion which has not got tangible support. Now let us examine the recommendation of the Retrenchment Committee. They say, on page 129:

"This Department has proposed savings of about Rs. 47,000 for 1923-24. The clerical establishment has increased from 102 before the war to 123 at the present time"

The Report has, if I mistake not and as it appears to me, proved itself a little hard on the poor clerks only. The Report did not think that there

[Dr. Nand Lal.]

are two Secretaries and if one Secretary may be asked to leave this Department and to go to another Department, and that it would effect a saving of Rs. 48,000 a year more. The learned Members of the Committee did not give consideration to that. But the number of clerks specially occupied their mind. I do not know the reason. It is best known to them. Then they say:

"We have ascertained that the ratio of clerks to receipts and issues is high and we consider that establishment should be reduced to pre-war numbers, saving a further Rs. 50,000. The expenditure in the current year's budget for contingencies, Rs. 1,64,000, includes Rs. 1,00,000 for postage and telegrams . . ."

and so on. I am skipping over one or two lines to save the time of the House and I come to the conclusion, by which I mean the recommendation in its final shape. They say:

"The total reduction which we recommend together with the saving proposed by the department is therefore Rs. 1,47,000 . . ."

Has that recommendation been attended to? Has it been brought into practice? Perhaps the Government Benches may say: "We have already issued a statement showing the reduction in various Departments." In order to meet that anticipated answer may I invite your attention to it? There it is given "General Administration—Rs. 7,58,000". They have not specified any thing in connection with this Department at all, they have not given any note purporting to show that the reduction which has been recommended by the Committee has been brought into practice, or that they are going to do it in this very Department (Political and Foreign) had they made any note relating to that reduction, I would have been the last person to take even one minute of this Assembly. But since they have not done so, my fear is that perhaps the Department may go scot free which I should not like to see. With these few remarks, in the interest of economy of time I come to the conclusion which is this, that this House will give serious attention to the question which I have raised. So far as the details concerning the Indian element go, Munshi Iswar Saran, I think, will relieve me of that duty. With these remarks I submit my motion* before the House and I hope they will appreciate it.

Mr. Denys Bray (Foreign Secretary): Sir, I had expected my Honourable friend, Dr. Nand Lal, to confine his attack to the Foreign and Political Department, but he has devoted the bulk of his attack to the Incheape Committee. The Incheape Committee had very little to say against the Foreign and Political Department, and therefore it has borne the brunt of Dr. Nand Lal's attack. He asked whether we have effected the saving of Rs. 95,000 which is shown in the supplementary statement. We have. The reason why we have not been able so far to effect the full saving recommended by the Incheape Committee is that we cannot all of a sudden reduce those extra clerks for whom, I am glad to say, Dr. Nand Lal put in a word of sympathy. And I would here ask the House and those commercial Members in the House that may have vacancies in their firms to consider the claims of clerks not only in my Department but in other Departments who are shortly to be thrown forth upon the world. I myself can offer firms clerks tried and trained in the not least efficient—if my friend Munshi Iswar Saran for once will allow me to use the word—tried and trained in the not least efficient Department of the not least efficient bureaucracy in the world. Dr. Nand Lal asked why this Department has two

* "That the provision for pay of officers under sub-head 'Foreign and Political Department' (page 39) be reduced by Rs. 1,000."

Secretaries. I feel more inclined myself to ask why there is one Department and not two in charge of these very separate affairs, foreign and political. The relation between the two is of the flimsiest. I would remind Dr. Nand Lal that the combined Foreign and Political Department has not, as other Departments have, a Member in this House or the other. Our Member is His Excellency the Viceroy to whom we cannot turn, as other Secretaries can to their Members, at all hours of the day for advice and instructions and directions.

The only other point, I think, that Dr. Nand Lal brought forward was the question of the Indianization of the Secretariat. Now, among the officers in the Secretariat there is, as a matter of fact, one Indian officer. But he is an officer of comparatively low rank, and therefore, for all practical purposes I admit that the Secretariat of the Foreign and Political Department is not Indianized. But I would ask the House to consider our difficulties. I think the House will admit that in this somewhat technical Department we cannot draw assistance from Indians in the Provincial Secretariats. The work there does not lead on to the work in the Foreign and Political Department. We are therefore thrown back upon what we call the Political Department, that is to say, the Executive officers belonging to the Foreign and Political Department. Now, Sir, up till September, 1921, the doors of the Political Department were to all intents and purposes shut to Indians. True we had had one or two distinguished exceptions, notably that very distinguished frontier officer, Sir Abdul Quayyum, who ended his days as a member of the Political Department. But that was a very rare exception. Now, in September, 1921, we opened our doors wide. We opened our doors to Indians on exactly the same terms as to Europeans. The Department was opened to Indians in the Indian Civil Service and to Indians in the Indian Army holding King's Commissions. We went a step further. We provided for Indians what we have not provided for Europeans—I had almost said a back door, but I do not like the term—a side door, a "private entree" to Indians of the Provincial service who had shown special merit. Let me take the applications we have received from Indians of the Indian Army. Since 1921 there have been two—two men with splendid records, one with a most gallant war record. But the one is in his 40th year, the other in his 43rd or 44th year; and I am a little doubtful myself whether men who have reached that age without training in a civil department are altogether suitable for admission to the Political Department. Let me now turn to the chief avenue that leads to the Indian Political Department and to the Foreign and Political Department Secretariat—the Indian Civil Service. How many applications does the House think that we have received from Indians in the Indian Civil Service for admission to the Political Department since 1921? Not one.

Mr. K. Ahmed: Did you advertise that you wanted Indians?

Mr. Denys Bray: The announcement was made, I think, in this House. I certainly have referred to it more than once myself. It was issued in the public press and it was sent forth to all Local Governments. If this House can help the Political Department and help Government in bringing forward suitable applicants from the Indian Civil Service for the Political Department, we shall be most grateful. Well, Sir, as the Army has practically failed us, as the Indian Civil Service has failed us hitherto entirely, we have been thrown back upon the Provincial Civil Services. Far be it from me to suggest that we have not secured admirable men from those admirable Services, we have admitted five already. But Provincial Service training is not training for the Secretariat, and even for the

[Mr. Denys Bray.]

executive line. Men of the proper stamp in the Provincial Services are necessarily not as plenty as blackberries. Before long the supply of really suitable men must become exhausted. Moreover, it is of paramount importance in my view that we should not continue indefinitely to confine ourselves to members of the Provincial Civil Services. For there is a great danger that Indians in the Indian Civil Service may come to look upon the Political Department as a service suitable enough for Provincial Civil Services but not quite suitable for themselves. It is therefore that I repeat again that any assistance that this House can give us in inducing Indians in the Indian Civil Service to come forward will be greatly valued. I admit that service in the Political Department is not always and everywhere attractive. We have many stations which are the reverse of attractive. I listened with some amusement yesterday to the discussion of various temperate and salubrious stations in India. I thought of Quetta—a station that I personally value very highly—I thought of Quetta where even at this time of the year I have known icicles hang by the wall, as long as myself. I thought of the barren trade route that leads from Nushki to Seistan. Not all the eloquence of Mr. Chatterjee's picture of the horrors of Khewra can come up to that. (A Voice: "That was a fancy picture.") The picture I draw of the Chaghai desert is not a fancy picture at all. I thought of Mekran, that howling desolation of abomination. I thought of those stations on the Persian Gulf which some of my Bombay friends probably know. (Dr. Nand Lal: "Is that the only reason why Indians should not be initiated?") I hesitate to follow up my Honourable friend's interruption, because I feel very strongly the force of the appeal made by my Honourable friend, Mr. Seshagiri Ayyar, for despatch of business.

Munshi Iswar Saran: An esteemed friend of mine who happens to be a Member of this Honourable House told me this morning that the discussion of this question is tiring. I have only to add another adjective and then I shall whole-heartedly agree with him, that it is tiring as well as distressing. My Honourable friend, Mr. Bray, has relieved me of the necessity of quoting any figures on the present occasion, for he says, and I hope I am doing him no injustice, in an apologetic tone that up to September, 1921, the door was shut against Indians and since then the door has been opened wide. Those of us who know how careful the Honourable Mr. Bray is in the choice of his language and how his language is not only elegant but also accurate will feel rather surprised that he should call this opening to be a wide opening. Now, we are told that the reason why there are only 5 or 6 Indians in the Foreign and Political Department is that suitable Indian candidates from the Army and the Civil Service are not forthcoming. Sir, this statement is something about which it is very difficult for me to express any opinion as I have no personal knowledge on the subject. By his remarks Mr. Bray wanted to create the impression that the members of the Indian Civil Service or of the Army are not forthcoming—I mean the Indian members—because of those horrible places where they might be posted. But he has forgotten to mention that there are so many attractions in the Political and Foreign Department. What about the Residents of Kashmir and what about the Residents of other equally good places where you can combine pleasure with business to a most perfect degree? Are there not those attractions before them, and are the Indian members of the Indian Civil Service and the Indian officers of the Indian Army so dense, or so unimaginative as not to know the prizes that they can win if they enter this Department? Sir,

I do not wish to question for a moment the statement made by my Honourable friend, Mr. Bray, but I must confess that I do not feel convinced that the sole and only reason why since 1921 only 5 or 6 Indian officers have been taken into this Department is that many candidates have not been forthcoming.

Mr. Denys Bray: May I interrupt? If I gave my Honourable friend, Munshi Iswar Saran, the impression that there has been any lack of applications from the Provincial Civil Services I was in great error.

Munshi Iswar Saran: I must have been very unfortunate in the choice of my language if I created the impression that there was any dearth of applications from members of the Provincial Civil Services. Mr. Bray made it perfectly clear and I understood him thoroughly. What he complains of is that the Indian members of the Indian Civil Service and the Indian officers of the British Army have not been sending up applications for being taken into this Department. Sir, as I said before, I do not feel convinced by Mr. Bray's explanation that the sole reason why you find so few Indians in this Department is the reason assigned by him. Here is an argument brought forward which at its face value seems to be forceful, but I have some suspicion in my own mind that this is not the sole and only reason of the fact that there are only a few Indians in this service. When I talk of Indians I do mean Indians of all classes, be they Indians or be they Anglo-Indians, be they Hindus or be they Muhammadans—they are all entitled to have their share in the Foreign and Political Department. I hope that some explanation which will convince and satisfy the House will be forthcoming next year and I hope that it will be the good fortune of Mr. Bray to get up in this House and say that the number has increased a very great deal. There can be no doubt that there exists and I hope Government will make a note of it, a great feeling of dissatisfaction in this House as regards the shortness of the number of Indians in the Foreign and Political Department.

There is another reason why I gave notice of the motion standing in my name and it is that I wish to ask this House to consider the question whether the attitude taken and the remarks made by the representative of the Foreign and Political Department in the other Chamber does not necessitate a protest and a very strong protest from the Members of this Assembly. And I wish, Sir, with your permission to refer to that. It will be in the recollection of the House that the Princes Protection Bill was thrown out by us. The question whether that was a wise step or was an unwise step is one with which I am not concerned at this moment. We all know that under the certificate of His Excellency the Governor General this Bill was introduced in the other Chamber and while introducing this Bill and whilst speaking on this question the representative of the Foreign and Political Department permitted himself to make these observations about this House. I shall, Sir, read a few lines from that:

"Surely, Sir, a Bill that comes before either Chamber of the Legislature with credentials of this nature is one which deserves the most earnest and the most serious consideration. And what is the answer that the Legislative Assembly have given? I am willing to believe that when they gave that answer they did not realize all that it implied. But, taken at its face value what does that answer mean? They refused to allow this Bill within the precincts of their House; they have flung it back practically in the face of the Government of India; they have told the head of that Government that his ideas about the interpretation of contracts, his ideas on the subject of honour are less than dust in the balance."

I shall beg the House to carefully mark the following words.

Mr. Denys Bray: On a point of order, Sir. Is this really relevant?

Mr. President: This is a vote for the Foreign and Political Department and under the arrangement come to,—I would not call it a ruling,—between the Chair and the Honourable the Home Member the action of the Foreign and Political Department is under review. I was waiting to see whether the Honourable Member would remain in order. I admit that he is getting near the border.

Munshi Iswar Saran: I shall keep on the right side, Sir.

"But what is more than this is that their decision at its face value means that in their view, contracts and treaties have no meaning, that honour is a plea that they will not discuss and that they recognise none of the agreements which have been concluded by the Executive Government of this country. Surely, Sir, that brings us to the edge of an abyss, and it is only the feeling that the Assembly did not really realize what their action implied that makes it possible for us to take a more optimistic view of the situation than we might otherwise have been able to do."

Sir, not only non-official Members of the other House took exception to these remarks but I am very glad to say that on that occasion the then Home Member raised his voice of protest and this is what he said:

"Sir, I should like to say at the outset that I do not take the same view as the Honourable Mr. Thompson took of the action of the Legislative Assembly in respect to this Bill. I do not believe and I have every authority for what I am saying that they ever intended in any way to flout His Excellency. I do not think that the suggestion that the honour of the Government of India or the honour of the Viceroy has not weighed with them as dust in the balance is correct."

And then he says:

"I believe that the Assembly acted unwisely (a matter of opinion and I join issue with the then Home Member on this question) in rejecting the motion for introduction and I believe that that feeling is shared by many here. But I feel with Mr. Kale that it is neither fair to them to criticise them in the manner adopted, nor do I think it will do this House or the Government any good. I cannot believe that remarks made here in antagonism to the other House can produce good results. I agree that we have been forced by the action of the Assembly into a very unfortunate position."

Mr. President: I agree that it is difficult to say whether the Honourable the Home Member was talking of the Political Secretary in his capacity as Political Secretary or a Member of the Council of State. I think the Honourable Member must now come more particularly to the vote to be given to the Foreign and Political Department in the forthcoming year.

Munshi Iswar Saran: I will make one submission, Sir, in regard to this. Mr. Thompson occupies a seat in the Council of State not in his individual capacity. Mr. Thompson occupies a seat in the other House as the representative of the Foreign and Political Department. Any remarks that are made for instance by the Honourable the Home Member here are made by him not, as Sir Malcolm Hailey but as the Honourable the Home Member. So, I submit, with great respect, that Mr. Thompson, when he made these remarks, made them as the representative of the Foreign and Political Department and it is this view I take it that Sir William Vincent took of those remarks. Sir, there were other Members as I have already said who raised their voice of protest, but I need not refer to them owing to the exigencies of our business. What I beg to say here in most clear and most emphatic language is this, that it

is up to this House to enter the strongest protest against the remarks made by the Political Secretary on that occasion. There may be difference of opinion as regards the attitude adopted by this House towards the Princes Protection Bill, but I venture to hope and sincerely trust that there will be no difference of opinion between the various sections in this House that the dignity and the honour of this Assembly should be kept intact and that no official should take advantage of his position and attack us in the manner in which a responsible official of the Government of India has done in the other House. I submit, Sir, that it is up to us by our vote to show that we strongly resent these remarks and indignantly repudiate them and that the Political Secretary should not have attacked us behind our backs. If he wishes to attack us or for the matter of that any other official wishes to attack us, he should do so on the floor of this House.

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Are we not doing the same here?

Munshi Iswar Saran: You are forgetting that the Foreign and Political Department is represented here by my Honourable friend Mr. Bray. You forget that the Indian Legislative Assembly is not represented by anybody there.

Chaudhri Shahab-ud-Din: For whom did Sir William Vincent speak?

Mr. President: My Honourable friend must be aware from these interruptions, that he is leading the debate into a dangerous course. I must ask him to desist now and come to the subject of the vote.

Munshi Iswar Saran: I shall say only one word in regard to the interruption of my Honourable friend, Chaudhri Shahab-ud-Din. He seems to be awfully simple; he imagines that some one in that House represents the Assembly. The Honourable the Home Member does not represent there the Legislative Assembly; that is a fact which he ought to understand.

Before I close my remarks, I say with all the earnestness that I can command, that it is up to this House by its vote to-day to show that it will stand no nonsense of this character and no accusation of this character from anybody, be he the Political Secretary or be he even a higher personage.

The Honourable Sir Malcolm Hailey: I really do not believe that the House wishes to be led by Mr. Iswar Saran into a discussion on the merits of the speech delivered by a Member of the Council of State. I do not think that it could really desire by a vote given here to canvass a matter which we all know closed last summer. The interruptions which occurred in the course of his speech showed very clearly to me that Munshi Iswar Saran had been led by the fervour of his advocacy into using expressions which were likely in the long run to do little good to the relations between this House and that. Now, let me take his proposition. He proposes this motion for reduction on the ground that Mr. Thompson represented this motion for reduction and Political Department in the Council of State. But only the Foreign and Political Department in the Council of State, Mr. Thompson, however he comes into the Council of State, is just as much a Member of that body as I am, however I come to this Assembly, a Member of this House. As a Member of that body he is entitled to the same rights of free debate as

[Sir Malcolm Hailey.]

any other Member of the Council of State. You cannot give him a dual personality and when what he says pleases you say that he is a Member of the Council, and when it displeases you, say that he is speaking only as a Government official, and is not entitled to the protection which ought to be extended by one House to views expressed in another. Let me go a little further. On that occasion the criticisms delivered by Mr. Thompson regarding the action taken by this House, into the merits of which I do not desire to enter here, were deprecated by Sir William Vincent. Did he do so as a Government officer or did he do so as a Member of this House? Of course he did so entirely as a Member of this House; he, more than anyone else, was affected by the manner in which the Bill was treated in this House, but he thought nevertheless that in the circumstances it was necessary to deprecate any attack on this House or suggestions as to its motives in refusing introduction of the Bill. But his protest was not (like that of Mr. Iswar Saran) against the Department, but against criticisms of the House by a Member of another.

Sir, we all value our position in this Assembly. We come here partly as Government Members to represent the Government view; but while retaining that position we have tried to identify ourselves with our colleagues in the Assembly, just as Government Members in the Council of State do try to identify themselves with the other Members of that body. I deprecate strongly the suggestion that we should, in speaking in either branch of the Legislature, be treated as though we need a position apart from other Members, and we ought, if we have to advert to action taken in another House, to be treated in the same way as non-official Members and not as officers of this or that Department. I agree, of course, that we ought also to follow the general conventions regarding criticism of one body by another. Now, Sir, I would only say I have heard Mr. Iswar Saran himself at times criticise the Council of State; I have heard from other Members of this House descriptions of the Council of State which I was a little sorry afterwards to see in print. Every time I have heard those criticisms, sometimes slighting, I have deprecated them. I hold that it is in the best interests of either body that it should not attack the other, either in the mass or as individuals. (Hear, hear.)

Munshi Iswar Saran: On a point of personal explanation, Sir, I wish to know if ever I have said that the other House did not pay due regard to questions of honour, etc., as did Mr. Thompson in the other House?

The Honourable Sir Malcolm Hailey: I do not know why he should ask that question from me. I did not put it to him that he had ever said so. I said I had heard him criticise.

Munshi Iswar Saran: Criticism is another matter.

Mr. President: The question is:

"That the provision for pay of officers under the sub-head 'Foreign and Political Department' be reduced by Rs. 1,000."

The motion was negatived.

Rao Bahadur T. Rangachariar: I move:

"That the provision for Establishment under the sub-head 'Foreign and Political Department' be reduced by Rs. 100."

I framed this motion, Sir, as a protest against the way in which the Foreign and Political Department have behaved in three most important matters. First of all, Sir, in depriving this House of its privilege of voting supplies. In the second place, Sir, in attempting to place us in opposition to Princes of the Realm. In the third place, Sir, in their entire poverty of talent in finding Indians to fill the Foreign and Political Department. Sir, if Honourable Members will turn to page 281, they will find a footnote on an important fact, a political event of great importance, probably a historical event, concealed in a footnote; and this Assembly is taken into its confidence by way of a footnote. Honourable Members will remember that for the last two years we have been discussing the administration of the Bangalore Assigned Tracts, a small area which has been entrusted to His Majesty's Government by the Mysore Darbar. And year after year, in 1921 and 1922 this House examined the demands made and scrutinized the demands made on behalf of that small district. And now, Sir, Honourable Members will find that it "has been decided that the expenditure in the Bangalore Assigned Tracts should be treated as non-voted." What an easy job it is to deprive Honourable Members of their privilege, the small privilege which this House enjoys in the shape of discussing grants. I wonder who is responsible for this. Of course they claim no responsibility. This House need not be consulted in a matter of such great importance! It does not matter whether the people inhabiting that small district have any legitimate source through which they can ventilate their grievances! It does not matter whether, for instance, that small place maintains a costly police establishment! It does not matter how the revenues are extracted, how the income-tax is levied there, it does not matter how the hospitals are run there, whether private patients who resort to the hospitals are made to pay for the doctor's fees or not. Sir, these matters are now placed beyond the pale of criticism by this short footnote which you will find at page 281. Sir, I well remember, as a Member of the Standing Finance Committee, examining the proposals for revision of pay of the establishment in that small tract. We put some very inconvenient questions to the officers on the spot, as to why they maintained such a large number of police in such a small station which is no bigger than a suburb of Madras. We put inconvenient questions as to why clothing should be so largely availed of, more often than in other places, and these questions went in 1921 and 1922 to the Bangalore Administration. His mighty majesty the Resident of Bangalore became annoyed, and here comes the foot note to tell us that it has been put under the non-voted head. Is this Assembly going to allow such an important action to be unnoticed? Are we going to lend ourselves to these transactions? Are such steps to be taken without the consent of the people, without the people being informed, the people who are affected by such an action being even informed? Sir, I have a pile of grievances which I have been asked to ventilate in this House on behalf of the people of Bangalore. Sir, I am shut out altogether by this single entry. How can such an action be taken by any responsible Government I fail to see. Sir, in the next place, on what grounds have they tried to drag us into a quarrel with the mighty and noble Princes of this land? Why have they accused this Assembly of being hostile to the aspirations, to the rights and privileges of the Princes, who are our own blood, who are our own bone—far was it from our intention to put ourselves in opposition. Sir, the Princes are not to be separated from the people whom they govern. This Assembly

[Rao Bahadur T. Rangachariar.]

was anxious, by the vote on the Princes Protection Bill, to tell the Government "we shall not deal with these States piecemeal. If the Princes require protection, the people require protection also; and therefore we said 'don't come to us with these piecemeal measures'." Sir, the rules and the Standing Orders prevent us from putting questions about what takes place inside these territories. Sir, as many Honourable Members will bear me out, by every mail we get complaints from one Resident or other of one Native State or some other

Mr. Denys Bray: I rise to a point of order. "Indian States?"

Rao Bahadur T. Rangachariar: Yes, Sir, Indian States. I forgot for the moment; I am sorry—asking us to take up this question and that question. You will remember, Sir, you ruled me out on an interpellation which I asked permission to put to this House about what took place in Hyderabad. You rightly, Sir, did so, I do not complain; this House and the other House are prevented from indulging in questions and Resolutions about what takes place in Indian States. Sir, our plea is, if the people of those States cannot claim protection at the hands of this Assembly, the Princes of these States can no more claim protection at our hands. That was the attitude we emphasised by our votes, that was the attitude which was emphasised by the responsible Committee in which a few Members of the Government took part. That was the attitude which was maintained by the Government of India till the year 1910. It was in the year 1910 for the first time that this Bill or law was enacted in order to give them protection. Having been once put on the Statute Book, within a few years it was repealed, and in 1910 this novel piece of legislation finds a place in the Statute Book of our country,—and it is no wonder that the Committee, the responsible Committee, advised its removal. This Assembly acted on the advice of such a responsible Committee without further examination. Without anybody being taken into confidence, all of a sudden, at the fag end of the session, we were asked to sanction the introduction of a measure which we felt was a piecemeal legislation, which we felt was one we had already advised against, and at that fag end, we said, 'no, you have not appointed another Committee to re-examine the matter.' We said that not on grounds of any hostility to the Princes. They tried to drag us into a quarrel with the Princes; we have no quarrel with the Princes; the people of this country have no quarrel with the Princes; this Legislature has no quarrel with the Princes. I give this assurance on behalf of the non-official Indian Members here in this Assembly to the Princes of this land, that we were not actuated by any motive of hostility. It was a red-herring

Mr. President: The Honourable Member will see that if I allow him to say that, I shall have to allow other Members to say other things. He is in order in discussing the action of the Foreign and Political Department in relation to the matter of the Princes Protection Act, but he must keep off the territory of the Princes.

Rao Bahadur T. Rangachariar: The subject was so tempting, Sir, that I was rather drawn into it. Sir, the point which we wished to emphasise was that we were unfit to legislate for them so long as we could not discuss them. Give us the power to discuss that, and we will legislate for them. It is no use asking this Assembly merely to record a decree

passed elsewhere and to tell us that we did not observe the honour of contracts. Who made the contracts? When were the contracts published? Were they published? When were they made? By whom were they made? The way they have attempted to go in justification of the measure is rather novel procedure. Sir, the ink on the Resolution was hardly dry: when we passed our Resolution rejecting the motion on Saturday, on the Sunday morning, on the next Sabbath, comes the certification of the Bill! Up it goes to the other House, then to Parliament, and then it is passed: This is the way in which representatives of the people, a responsible Legislature, are treated. I wish to record by means of this vote our emphatic protest against the procedure adopted in respect to this Princes Protection Bill. They tied us down, they have dragged us into a quarrel with the Princes; they have not attached any importance to this Assembly. Sir, the Foreign and Political Department are responsible for that.

Sir, the third point which I wish to raise is the question of what we told to-day about the open door of the Foreign and Political Department. I wish, Sir, it were really open. May I offer a humble suggestion to the Honourable Mr. Bray? Instead of asking for applications from Army officers who hold the King's Commission, why did he not do something else? He complains very old people, people of 40 and 43, applied—you must have anticipated when you pass a rule like that, inviting applications from Army officers who hold the King's Commission, that people do not hold the King's Commission at the age of 25 in this country: and therefore that was merely a blind, merely to appear to satisfy the demand in this Assembly to throw open the Foreign and Political Department. Was it an advertisement this Assembly asked for,—to invite applications from Army officers who hold the King's Commission? Where are they to come from? Where are they? That is the question. This invitation was issued to the Indian Army officers holding the King's Commission,—and the Indian Civil Service while we know perfectly well how few are the Indians in the Indian Civil Service; you have to go all the way to England to get yourself enlisted in the Indian Civil Service. Lay down any test you want, and hold examinations here, young men will be forthcoming anxious to serve in those unhappy places that Mr. Bray mentioned. I am glad to see Mr. Denys Bray alive in this Assembly after all those unfortunate experiences. Look at his bright face, he delights this Assembly with his eloquence. One of the objects of my motion was to draw him into eloquence. Very seldom we can get him to talk, and when he gets on to his legs, we are simply charmed. Sir, here he is the product of Quetta, the product of the North-West Frontier. How is it impossible for my countrymen to also acquire those things there? Surely, the Assistants and Naib Tahsildars and others on the Frontier are Indians. There only the big appointments are held by the Civil Service. What about the other fellows who rot there along with the I. C. S. people? Surely, therefore, it is not a question of racial difficulty or racial unfitness. It is really a question of want of opportunities. Be honest, be sincere in your attempt to get Indians. Sir, have you ever walked along the corridor of the Foreign and Political Department? Have you ever glanced at the sign-boards which hang there? Sir, I have walked this side and that side and it is very difficult to find an Indian name in any of the sign-boards there. I am glad to see scattered here and there in this branch to my right some Indian names. Surely, it cannot be said, it cannot honestly be said, that Indians are not fit to enter the portals and keep company with those bright fellows whom I see sitting there working.

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LEGISLATIVE ASSEMBLY.

[15TH MARCH 1923.]

[Rao Bahadur T. Rangachariar.]

Sir, it is all an excuse. Let us make an honest and earnest attempt. I move my motion, Sir, as a protest against all these three points which I have mentioned.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, Mr. Rangachariar has mentioned that the head "Bangalore" has been transferred from the votable list and has been classed as 'Political' and excluded from our vote to-day. There are two other small items which have been similarly excluded from our vote and included in the Political Department, to which I draw the attention of the House. Honourable Members will find, if they turn to Demand No. 45, adjustments with Provincial Governments, page 153, one is under Burma—Assignment towards the cost of the Burma Military Police, voted. The amount in 1922-23 was Rs. 45,74,000. Under Assam there is another item, Assignment towards the cost of Frontier Military Police, Rs. 14,00,000; and in the footnote you will find that "these assignments have been transferred to political." So, I want to reinforce the arguments which Mr. Rangachariar adduced, and I want an explanation from the Foreign and Political Department as to why this was done. Then, Sir, there is another point to which I wish to draw the attention of the House. It is to the recommendation made by the Incheape Committee regarding the increase of expenditure in the Political Department. It will be seen, if Honourable Members will turn to page 155 of the Incheape Committee's Report, that they condemn the lavish proposal of having a Legation built at Kabul at a cost of 16 lakhs of rupees. If Honourable Members will turn to page 152, they would find, moreover, that Kabul, which was responsible in 1913-14 for an expenditure of Rs. 49,000, has gone up in the matter of expenditure to Rs. 5,26,000 in 1922-23. I am perfectly aware of the important change that has been effected in the status of the representatives of the British Government at Kabul, I believe, last year or the year before. But, Sir, now that the representative of the British Government at Kabul is His Majesty's Minister, and is no longer a Resident of the Indian Political Department, it is but proper that the cost of his establishment should be borne by the British Treasury, or at least half of that cost should be borne by the British Treasury on the analogy of the Legation in Persia. Now, coming to Persia, again, we find that the Incheape Committee have pointed out that though in Persia the total Political expenditure is to be divided equally between the British Government and the Government of India according to the recommendations of the Welby Commission, there are certain items in which this division is not observed, and they urge on the Government of India the necessity of representing matters to the British Treasury in order to secure a more equitable adjustment of the financial responsibility as between the British Treasury and the Government of India. With these words, Sir, I beg to support the motion.

Mr. Denys Bray: Sir, not all the eloquence of Mr. Rangachariar will induce me to make a speech. His elaborate reference to Bangalore took me somewhat by surprise, though I must say at the outset that I have to thank Mr. Rangachariar for his courtesy and consideration in warning me beforehand of the three points that he wished to bring forward under the cover of this motion for a reduction. But I little expected to have a full dress debate on the three points. As regards Bangalore, the position is really quite simple, and I think, that if Mr. Rangachariar will carry his

memory back, he will find that he did not discuss last year, and that the House did not raise, motion after motion for a reduction in the Bangalore Demand for Grant.

Rao Bahadur T. Rangachariar: I did it in the Finance Committee.

Mr. Denys Bray: Oh, I was not there. Bangalore, strictly speaking, is not British territory at all. This would not in itself be a sufficient reason for not submitting the Demand to the vote of the Assembly. The real reason is that Bangalore finances itself, and under an arrangement made with the Mysore Durbar many years ago, the surplus, after the needs of the Civil Station have been met, is handed over to the Mysore Durbar. Hence, if this House were to spend its time in cutting down the Bangalore Demand for Grant, it would not be enriching the Central Revenues; it would in effect be voting money to the Mysore Durbar to the detriment of the development of the Station itself and against the interests of the British subjects resident there.

Rao Bahadur T. Rangachariar: Can we discuss the administration?

Mr. Denys Bray: As for the grievances that the residents of Bangalore may have, it is perfectly open to any Member of this House to ventilate them at any time.

Rao Bahadur T. Rangachariar: You have not placed the Grant before us.

Mr. Denys Bray: The Burma and Assam cases which my Honourable friend, Mr. Neogy, referred to have been settled for us over our heads by the Auditor-General. If you will turn to the Notes at the beginning of the Supplementary Statement which was placed before us, you will see it there stated. The matter is automatic. I shall most certainly not follow my Honourable friend, Mr. Rangachariar, in initiating a debate on the Indian States (Protection against Disaffection) Bill. He made a speech to-day, Sir, that he was going to make, had the House allowed the introduction of that Bill. On the subject of Indianisation, I have little to add to what I have already said. The Honourable Mr. Rangachariar has put forward a suggestion that we should open our ranks to direct competition. We may be reduced to this. If we do not get the applications from the Indian Civil Service which I still look for and hope for, then I feel pretty sure that we may have to resort to some such method as this. But I personally think it would be a great mistake, a great pity. With regard to Europeans, we recruit from the Indian Civil Service and the Indian Army. Now, the work in the Political Department is in some ways rather special. Officers—admirable officers—sometimes come to us from the provinces or the army, and find after a time that either they do not suit the work or the work does not suit them, and they go back to the Civil Service or to the Army as the case may be. And it is very advantageous both to Government and to the men themselves that there should be this asylum to which they could go. But under the system Mr. Rangachariar proposes there would be no such asylum. If we had a bad bargain, we would have to keep him; and similarly if a man found that we were a bad bargain, he would have to keep us.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I rise to a point of order with regard to that. I raised the question yesterday whether it was competent for the Government of

[Mr. J. Chaudhuri.]

India or any of its departments to transfer a votable item to a non-votable item and my Honourable friend, Mr. Denys Bray, has to-day mentioned that the items to which my friend, Mr. Neogy, referred have been transferred under the orders of the Auditor-General. Now we understood that under section 67A of the Government of India Act the Governor General was entitled to transfer a votable item to a non-votable head.

Dr. H. S. Gour: No, surely not.

Mr. J. Chaudhuri: That was the contention put forward. My point of view was that unless that question was raised in this House and we expressed an opinion with regard to it, the Governor General has no power; that is, unless a question is raised and discussed in this House as to whether such a matter is or is not, it is not within the competence of the Governor General, to decide the question under section 67A, clause 4.

Mr. President: The Honourable Member is arguing a point of great constitutional and political importance which is too wide for a point of order. The terms of the Act are quite explicit. It speaks in section 67A, sub-section (2), clause (5) of "expenditure classified by the order of the Governor General in Council as:

- (a) Ecclesiastical,
- (b) Political,
- (c) Defence.

I do not find any words there, "by and with the assent of the Indian Legislature."

Mr. J. Chaudhuri (the Honourable Sir Malcolm Hailey having also risen to speak): I am putting my point and the Honourable the Home Member may then speak

Mr. President: The Honourable Member asked me for a ruling on a point of order. I was pointing out to him that it is not a point of order; it is not for the Chair to settle. The matter is already, as far as I can judge, settled by the Act.

The Honourable Sir Malcolm Hailey: I wish to point out to Mr. Chaudhuri that the point he is on at present does not really arise out of the classification of the Assam Military Police expenditure as Political. That case was dealt with by the Auditor-General as one of ordinary classification of expenditure for accounts purposes and on his classifying the expenditure as Political. It automatically fell under the provision of sub-clause (5) of sub-section 3 of section 67A, which reserves political expenditure from the vote. This was a new question of accounts classification, and as no question arose such as is contemplated in sub-section (4) whether the classification was proper for the purposes of the Act, it was not referred for the views of the Governor General. That sub-section runs as follows:

"If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final."

That is a different operation. This present case was one of a purely automatic result of a change in accounts classification regarding a particular item.

Mr. J. Chaudhuri: I think that when such a change is made on the ground that it comes under the head "Political" it should be mentioned in a note or otherwise to give us an opportunity to discuss.

Expenditure in Bangalore District—relegation to non-votable list.

Mr. T. V. Seshagiri Ayyar: Sir, the question which was raised by Mr. Rangachariar has not been answered at all by Mr. Bray or the Honourable the Leader of the House. The point is that during the last two years questions relating to expenditure in the Bangalore district were allowed to be discussed in the Standing Committee and also in the Assembly. This year we find a footnote to the effect that it is non-votable. That means that we cannot discuss it. The question on which we want to have a reply from the Leader of the House as well as from the Foreign Secretary is this. Under what authority has this expenditure which has always been open to discussion, been removed from its discussable position and been relegated to the category of non-votable expenditure? That is the point on which we want some explanation, and Mr. Bray, who spoke on this matter, has not given us any explanation. And, Sir, it has been said by the Honourable Mr. Bray that even if we reduced a portion of the expenditure, the result of it would be that the Mysore Government would get the benefit of it. The question is not what Indian Government is going to get the benefit of it, the question is whether we have a right to ventilate the grievances of the people which we have been allowed to ventilate heretofore, but which, without our consent, has been taken away from our cognisance. And that is a question on which we would like to have a fair answer from the Government Benches. Upon one other matter

Mr. President: Before the Honourable Member proceeds, I think we had better deal with that point which is in the nature of a point of order. It is a point of considerable importance and somewhat difficult to elucidate.

The Honourable Sir Malcolm Hailey: I do not know whether I shall be able to elucidate the point fully to the Members of the House at such short notice, though I am the fortunate possessor of a copy of the Government of India Act while they probably have not copies before them. But may I point out the exact operation? In the first place the Act directs that the Governor General in Council shall lay the estimated annual expenditure before the Legislature in the form of a statement; it then goes on to reserve from the vote expenditure classified by the order of the Governor General in Council as Ecclesiastical, Political or Defence. This obviously refers to the primary classification, for instance, Army and Air Force as 'defence' or consular expenditure as 'political.' But there is a good deal of doubt sometimes regarding particular items, whether they should be entered in the accounts as Political or Ecclesiastical or defence. Such doubts frequently arise as a matter of ordinary accounts classification, quite apart from any effect such classification may have as a consequence of the terms of this Act. That is to say that while there is no doubt at all as to the pay of members of the ecclesiastical establishment, there might be some doubt whether, say, graveyards and their maintenance should be entered as ecclesiastical or not. Similar cases of course arise in regard to Political. I have known numerous cases of items of expenditure which are under the general control of the Political Department and which are very nearly akin to true political expenditure but about which a doubt arises as to exactly where they should be classified in the accounts. Shall we say that the Political Department has control over a certain police

[Sir Malcolm Hailey.]

force? Are we to put that down under the head police, or is it to be put down under the head Political? I am speaking here, let me repeat, of questions arising regarding classification for ordinary accounts purposes. When such a question of doubt of mere accounts classification arises, we ordinarily refer to the Auditor General; he, of course, has a statutory position in regard to these matters. If the Auditor General says this particular item is undoubtedly Political, then it goes into the Political head of our accounts, and unless any question arises such as the propriety of its inclusion under that head for the purpose of this Act (and I shall deal subsequently with the method of solving such questions), it would automatically, as being under the Political head, be reserved from the vote. Now, that is what happened in the case of these two police battalions. There are I think three police battalions in Assam as the House no doubt knows. I mention the fact in order that they may have no suspicion that we are doing anything irregular in this case; they are kept there for the protection of that part of our North-Eastern frontier. Incidentally the fact that they are there saves us expenditure on military battalions in that quarter. Under the arrangement come to under the Meston Settlement, we pay for these battalions in a lump sum. Our Auditor General told us that as a matter of accounts classification they ought to go down under the head "Political." They have been entered there and it is simply because of this change in accounts classification that they are automatically excepted from the vote. There are other cases where by a change in accounts classification of a particular item it automatically comes under the vote. But, as I have said, cases sometimes arise not as a mere result of a change in accounts classification, but as the result of a question arising whether a particular item or series of items is correctly classified for purposes of 67A of the Act. Such cases may arise owing to discussions between two departments in the Secretariat; when such a definite question arises, and there is a difference of opinion, the Governor General issues an order on the subject, under sub-section (4) of section 67A, after consideration of the matter on its merits. He definitely, in other words, classifies it as "Ecclesiastical," "Political," "Defence," or otherwise. I do not think there is anything in the Act which at all . . .

Rao Bahadur T. Rangachariar: May I point out that it must be done by the Governor General in Council?

The Honourable Sir Malcolm Hailey: I think that Mr. Rangachariar is looking at the wrong clause. Sub-section 4 says:

"If any question arises as to whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General—(he may trust my eyes in this matter)—on the question shall be final."

The House will remember that there is exactly the same provision in regard to provincial items, where the decision of the Governor is final. The cases which so arise are few and far between; but I do not think the House will find anything in the Act to support Mr. Chaudhuri's contention that the question can only arise as a result of doubts expressed in the Legislature.

Mr. J. Chaudhuri: If it arises before the Governor General in Council, then the Governor General's decision will be final. If it arises out of demands, it should arise in the House and, after we have expressed our opinion, then the Governor General may decide. Our point of view is that it should not be done behind our backs and I also maintain that, if it arises between Members of his Council, the Governor General would

not be justified in deciding it behind the back of the Members of the Council. That is precisely my point.

The Honourable Sir Malcolm Hailey: Mr. Chaudhuri says, that it is undesirable to decide the question behind the back of the Legislative Assembly. But I thought that he was speaking on a point of law, and I cannot find anything in the Act myself, which says that it is essential that the Governor General's order on this particular point shall only be taken as the result of a question having arisen in the Assembly,—that was his first point. He further says that the Governor General should not take a decision of this kind in regard to a matter which has come under the consideration of the Governor General in Council behind the back of his Council. May I ask Mr. Chaudhuri in the latter case to allow the Council to look after its own interests? If a case arises in the course of the discussions between Members of the Governor General's Council, the Governor General takes his decision as a result of such discussions. Let me repeat as to the main point which he has made, that there is nothing whatever in the Act which says that the discussion of the Governor General shall not be taken on a point which has been discussed in the Assembly until the views of the Assembly have been placed before the Governor General.

Mr. J. Chaudhuri: Sir, may I point out that there are certain matters in which the House has certain privileges. With regard to demands we can vote the demands and if any item under the demands is taken away from within our jurisdiction, we are entitled to raise that question. Similarly, with regard to the Governor General in Council, there are certain matters, such as Ordinances, for instance, which are within the exclusive jurisdiction of the Governor General. But there are certain other matters which are within the jurisdiction of the Governor General in Council and, if such questions as we are discussing arise in the Council of the Governor General, as it must under section 67A, clause 3 (v), and if the Home Member says that it would fall under the head "Ecclesiastical" or the Finance Member says that this should not fall under the head of "Ecclesiastical" then it will be quite competent and open to the Governor General to decide under section 67A, clause 4, whether it should or should not fall under the head "Ecclesiastical." That is my simple contention, with regard to our privileges as well.

Dr. H. S. Gour: Sir, I rise to a point of order. Lest the House should go astray from what my friend the Honourable Mr. Chaudhuri says, let me point out to the House and point out to you, Sir, that this is not the intention of section 67A of the Government of India Act. A plain reading of that section will disclose the following point . . .

Mr. J. Chaudhuri: Sir, I rise to a point of order. I asked for an answer from the Home Member and from the Government Benches,—not from Dr. Gour.

Dr. H. S. Gour: Very well, Sir, I shall rise to a point of order upon which I invite your decision,—on a substantial issue which I wish to state before this House. If you turn to 67A of the Government of India Act, paragraph 1, you will find, Sir, the genesis of the budget laid there, namely:

"The estimated annual expenditure and revenue of the Governor General in Council shall be laid in the form of a statement before both Chambers of the Indian Legislature in each year."

[Dr. H. S. Gour.]

This constitutes the proposal of the Government of India, as is clear from paragraphs 2 and 3.

Paragraph 2 says

Mr. President: That is not a point of order.

Rao Bahadur T. Rangachariar: May I mention, Sir,—I assume that there was a decision of the Governor General in Council classifying this as "Political." I protest against it. If there was no decision, I am on better ground. If there was a decision, I protest against it. That is my vote.

The Honourable Sir Malcolm Hailey: Since the point was raised by Honourable Members, I was endeavouring to explain fully the processes by which a change may be made in the classification of items presented from time to time to the Assembly. I explained the process—it is a purely automatic process—by which a change may be due to a purely accounts classification, also the process by which the Governor General gives a decision when the point arises in connection with a correct classification for the purpose of 67A of the Act. Now let me come to the definite case before the House, that of Bangalore. That case did arise in discussion between the Departments and the Governor General gave his decision. I do not, of course, go into the exact reasons which actuated the Governor General in giving his decision.

Rao Bahadur T. Rangachariar: Governor General or Governor General in Council?

The Honourable Sir Malcolm Hailey: Governor General.

Rao Bahadur T. Rangachariar: Not the Governor General in Council?

The Honourable Sir Malcolm Hailey: No, Sir. It is a case under sub-section (4).

Rao Bahadur T. Rangachariar: Look at clause (3) (v) please:

"Expenditure classified by the order of the Governor General in Council as—

- (a) ecclesiastical;
- (b) political;
- (c) defence."

Is there an order of the Governor General in Council classifying this as political?

The Honourable Sir Malcolm Hailey: The general classifications of expenditure are laid down by the Governor General in Council. When a doubt arises regarding a particular item of expenditure, for the purpose of this section of the Act, then sub-section (4) comes into operation. On this particular question of Bangalore as I say the decision of the Governor General was taken. Bangalore is financed entirely from certain funds, the surplus of which goes to an Indian State. (*Rao Bahadur T. Rangachariar:* "Collected from the people.") As the surplus goes to an Indian State, which is more interested therefore than is the Assembly itself in the amount of the expenditure, the decision was to classify it as "Political." The decision was not taken with a view to closing to discussion the grievances of the inhabitants of Bangalore. The fact that it is not voted and is under the head "Political" does not necessarily close discussion of that nature.

It might have that effect if Bangalore were truly part of a Native State and were not under British Administration. I invite the Honourable Member to say whether we have in the past in any such similar case ever attempted to closure the discussion in regard to Administered Areas. This is not a single instance.

Rao Bahadur T. Rangachariar: My point is we cannot discuss it at this date—to-day, whereas if it was a voted head I can reduce the grant under that head. But I cannot do it to-day. I have to adopt this indirect manner.

Mr. President: Does the Honourable Member propose to give up the arrangement made yesterday?

The Honourable Sir Malcolm Hailey: We have actually been discussing it. It is now only 4 o'clock. Even if the rest of the House would like to go home we are perfectly willing to listen to Mr. Rangachariar's account of the grievances of the inhabitants of Bangalore up to any time this evening, and we are perfectly willing to ask the Governor General to redress these grievances. There is really no bar to a discussion of this nature. As a matter of fact, Mr. Rangachariar knows that quite well.

Rao Bahadur T. Rangachariar: Am I to take it, Sir, that I can move to-day a reduction of the pay of the Superintendent of Police, Bangalore district, by Rs. 100? Can I do it to-day?

The Honourable Sir Malcolm Hailey: The Honourable Member has already moved for a reduction of Rs. 100 in order to call attention to the alleged grievances. I would now ask him to pursue the enumeration of those grievances of which he speaks and which I confess appear to me somewhat hypothetical.

Mr. J. Chaudhuri: With regard to your ruling, Sir, yesterday when this point was raised, the Honourable the Chair said that it was a question of transfer of entry in the books of account. But here it is more than that. Something which was within the scope of our vote has been removed outside that scope. Of course we have had a discussion with regard to that, but I say, very rightly as it is a matter of privilege which we have exercised hitherto and cannot close without giving us an opportunity to discuss it.

Sir Montagu Webb: Sir, I move that the question be now put.

Mr. P. P. Ginwala: Sir, it is extraordinary how very little progress we make in constitutional matters within a year. Last year this House carried a Resolution that it was within the discretion of the Governor General to abolish this distinction between "votable" and "non-votable" items. The Government

Mr. President: I allowed a discussion of that matter on a point of order. The discussion on the point of order developed unfortunately into a debate. That point of order is now disposed of and the Honourable Member will address himself to the Foreign and Political Department.

Dr. H. S. Gour: How has it been disposed of, Sir?

Mr. President: Because the Chair says so!

Mr. P. P. Ginwala: My contention is with regard to the two points that Mr. Rangachariar has raised. First of all, the Political Department has somehow managed to place its expenditure under the non-votable head, and that, I say, shows that we are moving backwards and not forwards. We protested against expenditure which was once treated as votable being this year made non-votable . . .

Mr. President: Order, order. The Honourable Member has not understood what the Honourable the Home Member pointed out to the House. The transfer of these matters is done by order of the Governor General in Council on the advice of the Auditor-General who is the officer retained for that purpose amongst other things. It is not done by order, and cannot be done by order, of the Foreign and Political Department. I have allowed the House, as I said, to discuss that point of order at great length. The Honourable Member must now address himself to the Foreign and Political Department vote.

Mr. P. P. Ginwala: Yes, Sir. I am not discussing any point of order. What I meant to discuss is the Government method. They say they took the advice of the Auditor-General. We protest against the advice of the Auditor-General. He is not the Legal Adviser of Government. It is a question of law. The Auditor-General cannot decide what is obviously a point of law . . .

Mr. President: Order, order. After I have informed the Honourable Member once more what the position is, this discussion must cease. The Governor General in Council classifies expenditure. Whenever a doubt arises, and there is a dispute as regards classification in which the Legislative, Finance and Foreign and Political Departments take opposite views, the Governor General in practice refers it to the Auditor-General and his order is carried out.

Dr. H. S. Gour: May I ask, Sir, if the decision of the Governor General on the subject is available to the Members of this House?

Mr. President: The Honourable Member knows perfectly well that the decision is carried out in the Demands for Grants presented to the House.

Dr. H. S. Gour: I find no decision of the Governor General as contemplated in clause (4) included.

Mr. President: The Statute does not authorise or instruct the Governor General in Council to transmit his orders to the House. He transmits it to the Honourable Member concerned in the Department.

Dr. H. S. Gour: The Statute compels the Governor General to decide, Sir.

Mr. President: The Honourable Member must take it that this was decided.

Mr. P. P. Ginwala: I think that in view of your last remark I shall not pursue this point now. I shall find another opportunity later on. I shall confine myself for the present to the Political Department. Now, our grievance against the Political Department is this, that it brought before the House a measure for its approval which under the rules of debate the House would not have the power to debate properly. When that motion came before the House we could not have discussed the relations of the Indian Princes with the British Government and without a fair and proper

discussion of the relations based upon treaties of the British Government with the Indian Princes we could not have decided whether such legislation was necessary. It was the Political Department . . .

Mr. President: The Honourable Member is trying to deliver a speech which would have been in order when the Bill was presented. I may remind the Honourable Member that it was open to any Member of the Assembly to have asked the Chair when that Bill was presented what the scope of the discussion would be. Had that point been taken then, the information available to the House might have been larger than it was.

Mr. P. P. Ginwala: I suppose we are expected to know what the rules of the House are and we anticipate that it would not be permissible for the Chair then to give us that latitude within those rules. That was the reason why this House would have nothing to do with a measure of that description. That was the position that this House took up. At least some of us did so. The rules are so framed that you could not possibly have allowed a discussion of the relations between the Indian Princes and the British Government upon which largely the utility of that measure depended. Therefore this House would have nothing to do whatsoever with a measure of that kind. The position that I take up is that the Political Department has no business to come to this House for legislation which on its merits cannot be discussed within the rules of procedure prescribed for discussion by this House. It is all very well for Honourable gentlemen on the Government Benches to say—as I heard Mr. Denys Bray say—that the debate would have been allowed. How does he know? As we understood the rules, and as we thought the rules would be interpreted by the Chair, such a discussion would not have been allowed. The main reason for the enactment of the Bill, according to the view then put forward and by the Government was that it was required in order to give effect to certain treaties, treaties relating to the relations of the British Government with the Indian Princes. We should have expected the Government to lay those treaties on the table of the House. We should have asked for Government's authority to enter into those treaties and we should have inquired whether Government's contention followed from the treaties. You would have been bound to tell us that according to the rules of business we could not be supplied with such information, and we would have at once been stopped from proceeding further. Did the Government suppose that we were going to give sanction to a measure at any stage of its passage without being placed in possession of all the necessary documents and information? They would never have told us enough of the treaties to enable us to judge of their binding nature with reference to the necessity of the proper legislation. They would have said "No, the rules forbid it." As a matter of fact, Mr. Neogy asked that the papers relating to the treaties should be laid on the table of the House and the question itself was disallowed. How did the Government expect us then to do anything else with a Bill of that description except to reject it the moment it came before us. Then if a question . . .

Mr. President: The Honourable Member cannot proceed with that point. I have pointed out that what Members are entitled to do is to discuss the action of the Political Department in relation to those matters that arose out of the preparation of the measure, such as the appearance of their representative before the Press Committee and so on, but to review now the speeches which were made, or which might have been made on a motion which the House rejected, is not in order.

Mr. P. P. Ginwala: I shall close my remarks with this one observation that we shall have nothing to do with the Foreign and Political Department in this House in so far as it has reference to the relations with the Indian Princes, and if it persists in bringing measures before this House in connection with these matters we shall show our disapproval of that Department by the adoption of this motion.

Khan Bahadur Abdur Rahim Khan: Sir, I have been listening to the speeches delivered by the Honourable Members on this matter. I will not go into the legal aspect of their speeches, but coming as I do from a part where we have a Resident at Kabul, I think my remarks will be of some use in the consideration of this question. My Honourable friend has said something about the waste of money at Kabul. Well, I am afraid these remarks must be very discouraging to those officers who have got troublesome and painful duties to perform. I am sure in their heart of hearts they must be expecting an expression of thanks and gratitude from us, but when they read in the newspapers the remarks made by a responsible House like this they will feel very disappointed. Now, I assure those gentlemen, coming as I do from the North-West Frontier Province, that it is due to their presence and their personality at Kabul that we have peace on the frontier. But for their diplomacy I am sure this country would have been taxed much more, would have been burdened with a lot of expenditure. It is their presence there that has saved us from a waste of money and it is due to their presence there that we are getting on splendidly with Afghanistan. At present our relations with Afghanistan are very friendly and it is wholly due to their presence and ability.

Rao Bahadur T. Rangachariar: May I rise to a point of order? Nobody has attacked those officers, we have not said a single word against those very noble people who are doing their work right loyally.

Khan Bahadur Abdur Rahim Khan: Of course, Mr. Rangachariar has been in that part of the country and he has got a very good opinion about them. I mentioned their names because attack is made on the expenditure of the institution of which they form a part. Leaving that aside, I will advise my Honourable friends that if they want to learn anything from the British people they will have to learn from the Foreign and Political Department. The thing is that this is the school where you see the life in practice, this is the school from which you can learn a lot, but if you criticise this Department which has got the interests or the destiny of India in their hands what would be the condition? (*Cries of 'Oh.'*) My Honourable friends say 'Oh!' They do not realise what is going on. If you want to be strong you must have either a strong army to answer blow for blow, but if you cannot have that, you must have diplomacy. And if you are not going to have either a strong army or good diplomacy,—I do not know what will happen, and the speeches that are delivered will have no use and will be ineffective. I would suggest to Honourable Members that when we have got this Department, we should see what they have been doing, whether the work which was entrusted to them is being done faithfully and loyally and whether that has been fruitful. If that be the case, I think it will be unfair to criticise that Department or to drag it in in the newspapers. I would not have got up and said these words but for the fact that certain Honourable Members do not realise the effect of the newspaper attacks on the independent territory whose people do not know what is going on outside. By these attacks you compromise the prestige

of the Department and belittle their services. I can say that this Department has produced personalities of whom India in general and the Foreign and Political Department in particular should be proud. The other day Mr. Bray mentioned the name of Sir Robert Sandeman, a gentleman who has got a glorious record and for generations he will be remembered. I do not think that there will be any Indian or any Englishman who enters the service of the Foreign and Political Department who will not study his books and profit by his advice. Then I will mention Sir Henry McMahon who followed Sir Sandeman's footsteps, Sir Louis Dane, Sir George Roos-Keppel and we have now Sir John Maffey who has been doing and is still doing wonderful work. (*A Voice: "Who says they are not?"*) I do not mean that you blamed them, but I say that to criticise that Department which has produced such giant figures is not good in the interests of India and in the interests of those people who are serving us. (*Dr. Nand Lal: "None of us has criticised the personality of any officer."*) I am glad that my Honourable friend, Dr. Nand Lal did not keep quiet as he used to do. Of course, I agree with my Honourable friend Mr. Rangachariar that this Department should be Indianised. I will be the last man to say that there should be a bar against Indians in this Department. On the other hand I say, this service is a most important service and that it must be Indianised. I will be failing in my duty towards my country or my community if I say that this Department should not be Indianised. What I say is this that this Department expects some consideration and courtesy at our hands and that we should be a little generous towards them. (*Cries of "Let the question be put."*)

Mr. President: The question is that the question be put.

The motion was adopted.

Mr. President: The question is:

"That the provision for Establishment under the sub-head 'Foreign and Political Department' be reduced by Rs. 100."

The Assembly divided:

AYES—46.

Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhanja Deo, Raja R. N.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Chaudhuri, Mr. J.
Das, Babu B. S.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatriaju, Mr. B.
Vishindas, Mr. H.

NOES—53.

Abdul Quadir, Maulvi.
 Abdur Rahim, Khan, Mr.
 Achariyar, Rao Bahadur P. T.
 Srinivasa.
 Ahsan Khan, Mr. M.
 Aiyar, Mr. A. V. V.
 Aiyer, Sir P. S. Sivaswamy.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Amjad Ali, Maulvi.
 Barodawalla, Mr. S. K.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Brayne, Mr. A. F. L.
 Bridge, Mr. G.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Clark, Mr. G. S.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Faridoonji, Mr. R.
 Gidney, Lieut.-Col. H. A. J.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.
 Hussanally, Mr. W. M.
 Ikramullah Khan, Raja Mohd.
 Innes, the Honourable Mr. C. A.
 Jamall, Mr. A. O.
 Jejeebhoy, Sir Jamsetjee.
 Ley, Mr. A. H.
 Lindsay, Mr. Darcy.
 Mitter, Mr. K. N.
 Moir, Mr. T. E.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Nabi Hadi, Mr. S. M.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Samarth, Mr. N. M.
 Sams, Mr. H. A.
 Sassoon, Capt. E. V.
 Schamnad, Mr. Mahmood.
 Shahab-ud-Din, Chaudhri.
 Sircar, Mr. N. C.
 Spence, Mr. R. A.
 Townsend, Mr. C. A. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.

The motion was negatived.

Khan Bahadur Sarfaraz Hussain Khan: I beg to move:

"That the provision for service postage and telegram charges under sub-head 'Foreign and Political Department' be reduced by Rs. 20,000."

In 1922-23 the demand was one lakh and in 1923-24 the demand is 1,20,000 and then below that is another provision for service postage and telegram charges, Rs. 6,230 and the footnote explains "Provision intended for charges on the drop copies of messages intercepted at Karachi, Bombay and Madras for repetition to His Excellency the Viceroy. I do not see why this increase should be made and if I get an explanation which is satisfactory I will not press my motion. In view of the fact that the political atmosphere is better than last year, I do not see why this increase should be made. If I get a satisfactory explanation I will withdraw my motion.

Mr. Denys Bray: Sir, I am glad to give my Honourable friend the most satisfactory answer of all: the reduction has already been made—and more also.

The motion was, by leave of the Assembly, withdrawn.

Lieutenant-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, my remarks will be brief, I wish to take advantage of this opportunity of approaching the Member in charge of this Department with a view to ascertaining from him an explanation on the administration of this Department. I take my stand on the general question and in doing so I wish to refer particularly to the replies which the Honourable Mr. Bray gave to certain questions that I asked him in September 1922. I approach the matter, Sir, with the same desire as did my Honourable friends, Dr. Nand Lal and Mr. Rangachariar, but from a slightly different angle of vision. He was pressed by these two Honourable Members for an explanation as

to why the Political Department was not being Indianized. I am afraid I have to press him for an explanation as to why the Department is not being Anglo-Indianized and to ask him when replying to kindly reconcile his reply with the replies he gave me in September 1922, as to why members of the domiciled community are being excluded from the Political Department. Sir, when Mr. Jamnadas moved his Resolution on Indianization of the Public Services, he interpreted the word "Indianisation" as including all communities, and I therefore expect the Heads of all Government Departments to take that view, and which view this Honourable House has unanimously accepted. If I am so far right, Sir, then I should like to ask Mr. Denys Bray why he gave the following reply to my question in September 1922, when I asked him why members of my community had not been appointed in the Political Department:

"The appointments in question were made in pursuance of the policy adopted by the Government of India with the approval of the Secretary of State for India of admitting a substantial proportion of Indians in the Political Department. The question of admitting members of the Provincial Civil Service who belong to the domiciled community has not been considered."

I can see my Honourable friend, Munshi Iswar Saran, smiling at me and I feel sure that he will readily agree with me that if my community is included in the term "Indianization," then the Member in charge of this Department as also of all other Departments should give the same privileges and rights to the domiciled community, and if not, then in common with other Indian communities I have the right to ask "why not?"

Mr. Denys Bray: Sir, the reply I gave the Honourable Member was to the effect that the question of admitting members of the Provincial Civil Service who belonged to the domiciled community had not been considered. It has not been considered as a general question, for the Indianization that has been effected was put into effect definitely with the object of opening the Political Department to Indians in the strict, or rather the narrow sense of the word. But I can assure the Honourable Member of this, that if a suitable member of the domiciled community belonging to either the Indian Civil Service or to the Indian Army or to the Provincial Civil Service puts in an application for admission to the Political Department, that application will be considered on its merits.

Sardar Gulab Singh (West Punjab: Sikh): I move:

"That the provision for Foreign and Political Department under the head 'General Administration' be reduced by Rs. 20,000."

Sir, a comparison of the figures given in the detailed estimates and report of the Inchcape Committee and revised schedule of demands will show that the expenditure under the sub-head "Political and Foreign" has been increased. The recommendation of the Inchcape Committee especially supports my view. Now, Sir, at page 4 of the revised schedule of demands, the reduction recommended by the Retrenchment Committee is 49 lakhs 89 thousands; whereas the reduction made is 36 lakhs 37 thousands. My proposal for reduction, Sir, is very moderate; only Rs. 20,000 for one Departmental sub-head. Sir, it has been very rightly remarked by the Honourable the Finance Member that we have another reason for reductions. The budget is a budget with a deficit of 5 crores, which of course must not be made good by taxing the country which is already over-taxed. And as far as borrowing is concerned, Sir, the Government of India already stands in debt to the extent of Rs. 700 crores and money is scarce in the country and the Imperial Bank interest rate is 8 per cent. . . .

Mr. President: I am afraid the Foreign and Political Department are not responsible for the finances of the country.

Sardar Gulab Singh: Very good, Sir. Then I move my amendment that the reduction of Rs. 20,000 be made under this sub-head.

The motion was negatived.

Dr. Nand Lal: I move that:

"The demand under sub-head 'Foreign and Political Department' be reduced by Rs. 5,000."

Sir, as I have already taken part in the debate and as Mr. Harchandrai Vishindas has not had any opportunity of taking part and he is desirous of dealing with a special point relating to his province, I transfer my right of speaking on this motion to him.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Now, Sir, I wish to bring to the notice of the Political Department as a general question of administration of a particular instance in which the Political Department have worked in a manner which is very much to be regretted. I refer to the well-known case of Sher Muhammad Bijoy Ali on the Sind frontier. Now there is a Sind Frontier Regulation which is under the jurisdiction of the Foreign and Political Department which vests summary powers of dealing with certain cases . . .

The Honourable Sir Malcolm Hailey: May I point out, that is a matter under the Bombay Government, and the Honourable Member will find that it was dealt with in the Bombay Legislative Council and by the Bombay Government . . .

Mr. Harchandrai Vishindas: That may be, but my submission is that it is a branch of the Political Department. I will simply, by unfolding the case, be bringing it to the notice of the Political Department, so that they may take any action they think fit in the interests of punitive administration.

Mr. T. V. Seshagiri Ayyar: It was a question of privilege that was discussed in the Bombay Council. This matter is open to us on the vote as regards the Foreign and Political Department. I do not see how this can be ruled out. We are fully entitled to discuss this question when we have to consider a demand relating to the Foreign and Political Department. Whether the Bombay Council was justified or not, that is a different matter. It was a question of privilege which was discussed there, and I do not think we can be shut out from discussing this subject here.

The Honourable Sir Malcolm Hailey: I wish to shut out nothing, but I am bound to point out for the information of the President, the final orders are passed by the Governor of Bombay, not by the Governor General in Council; and that the action taken under the Regulations was taken by an officer of the Bombay Government and not of the Government of India.

Mr. Harchandrai Vishindas: I may point out for the benefit of the Honourable the Home Member, this Sind Frontier Regulation No. 579 is a Regulation made by the Governor General, not by the Governor of Bombay and therefore, with due submission, it was entirely within the jurisdiction . . .

Mr. President: The question is not who made the Regulation, but who is responsible for its administration.

Mr. Denys Bray: Certainly not the Foreign and Political Department.

Mr. President: The Honourable Member denies all knowledge of it?

Mr. Denys Bray: Entirely.

Mr. P. B. Haigh (Bombay: Nominated Official): May I ask the Honourable Member if I am not correct in stating that the officer concerned in this case is the Deputy Commissioner in charge of the Upper Sind Frontier, and that that officer is an officer of the Bombay Government?

Mr. President: Then I think the point raised by the Honourable the Home Member originally that the Bombay Legislative Council was the proper place in which to raise this question in the first instance is correct; and as the Honourable the Foreign Secretary has said that he has no immediate responsibility in the matter, I am afraid the Honourable Member will only be ventilating a grievance with very little purpose.

Mr. Harchandrai Vishindas: After what has been pointed out by Mr. Haigh, I rather thought that this Deputy Commissioner's action that was taken, which is the subject matter of the complaint, was taken by the Deputy Commissioner of Jacobabad; and if Mr. Haigh is right, the Deputy Commissioner comes within the jurisdiction of the Political Department so far as this particular branch of the administration is concerned?

The Honourable Sir Malcolm Hailey: He is an officer of the Bombay Government.

Mr. Harchandrai Vishindas: So far as the working of that Regulation is concerned, and the Baluchistan Frontier Regulation and other Frontier Regulations are concerned, I think all these are within the cognizance of the Political Department.

Mr. Denys Bray: No, Sir.

Mr. P. B. Haigh: May I point out that the Upper Sind Frontier Regulation is to the best of my knowledge concerned with one of the districts, the Upper Sind Frontier, which is a part of the Presidency of Bombay. It has nothing to do with the Foreign and Political Department.

Mr. President: It is clear now that the arena for this matter is the Legislative Council of the Presidency of Bombay.

Mr. Harchandrai Vishindas: May I ask your ruling, Sir, as to whether I can unfold the case here and then leave it to the Political Department eventually to take such action as they think fit, or not?

Mr. Denys Bray: That action will be *nil*.

Mr. Harchandrai Vishindas: And may I make my remarks . . .

Mr. President: I must assume that the President, Bombay Legislative Council, appreciated the fact and accepted the fact that this matter was within the competence of the Bombay Government and therefore, *mutatis mutandis*, within the competence of the Bombay Legislative Council; and especially in view of the fact that the Government of India Act is based largely upon the extension of the autonomy of the provinces, I think it is the duty of the Chair and this Assembly to respect that. It is the Honourable Member's misfortune that he does not sit in the Bombay Legislative Council.

Mr. Harchandrai Vishindas: Then I take it that I cannot make these remarks, and I bow to the ruling of the Chair.

Mr. B. H. R. Jatkar (Berar Representative): Sir, I move:

"That the provision for Foreign and Political Department under head 'General Administration' be reduced by Rs. 100,"

as a protest against the action of the Foreign Department. I am not concerned with the Political Department but with the Foreign Department in respect of action about their legislating for Berar. Very recently, Sir, the Foreign Department made an amendment to the Berar Land Revenue Code authorising the Government of the Central Provinces to increase the jaglia cess from 12 pies to 27 pies and the education cess from 6 to 18 pies. This House will be surprised to know that the Foreign Department is the legislative body for Berar which is not British India. It is administered by the Central Provinces Government; Members from Berar are sent to the Central Provinces Council, but they have no power to pass any legislation for Berar. Neither has this Legislative Assembly any such power. It is the privilege of the Foreign Department to legislate for Berar. The feeling in my constituency is very high against this piece of legislation, this amendment, which presses hardly upon the agriculturists in Berar. In fact it raises a cess, double or three times the old one because the Central Provinces Government wants the services of the Mahars in the Province at the cost of the agriculturists and not of the provincial funds. There is a surplus of Berar revenue in the hands of the Central Provinces Government and in spite of that fact they want to raise this cess to such an enormous amount. There is no other province, I believe, in which the cess ranges so high as 27 pies and 18 pies in the rupee of land revenue, and it is against this section of the Foreign Department that I raise a protest. It would have been far better, Sir, if the Berar Members of the Central Provinces Legislative Council or the Berar Members of the Central Legislature could have been consulted before the Foreign Department sanctioned the increase, and I would request the Government of India in the Foreign Department to take some steps in this matter and to lay out a procedure by which the elected representatives of the people would be taken into confidence before sanctioning any future legislation for Berar. The feeling in Berar is very high against this increased cess which was proposed in spite of protest after protest made by the people. The Berar Members in the Central Provinces Legislative Council are powerless, and nothing can be done here also; and hence I request the Government of India to find out some means by which they can take into confidence the Members from Berar while dealing with such matters. With these words, I move this formal amendment.

Mr. President: I cannot put this particular question because we have already decided not to do so. The question is:

"That the provision for Foreign and Political Department under the head 'General Administration' be reduced by Rs. 100."

(The Honourable Mr. B. N. Sarma rose to speak.)

Mr. J. Obaudhuri: On a point of order. Does the Honourable Mr. Sarma represent the Foreign Office?

Mr. President: The Government is entitled to use what mouthpiece it chooses.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, the Government of India fully appreciate the difficulties which have been represented to us by the Honourable Mr. Jatkar. They were faced with this difficult position, mainly, as to whether they were to give effect to the representations, the Resolutions of a duly constituted Legislative Council representing the Central Provinces and Berar, or as to whether they were to come to a judgment different entirely from the one recommended by that legislative body. I may state in a few words that the Central Provinces Government, which recommended the adoption of the measure now under discussion, were reluctant to move in the direction in which they were ultimately prevailed upon to do by the Central Provinces Legislature. The Central Provinces Government pointed out various difficulties in the way of the adoption of certain measures pressed upon them by some of the representatives of the Berar Province. With the assistance of the Members of the Central Provinces Legislative Council, these Berar Members passed a Resolution demanding of the Central Provinces Government to abolish the *Baluta* to raise a cess, if necessary, for the purpose of paying these hereditary service-holders, the Mahars and others in the Berar Province, and consequently the position which the Central Provinces Government were faced with was, 'shall we give effect to this duly constituted Legislative Council's representation, or shall we disregard their recommendation?' Much to the regret of the Honourable Mr. Jatkar, the Central Provinces Government followed the constitutional procedure of giving effect to the recommendations of that body. They brought these rules into operation in some form in order that they may carry out the wishes of those representatives and they came up to the Government of India for sanction. The Government of India, therefore, were faced with a situation in which a Provincial Government which has been given very wide powers have taken definite action in conformity with the wishes of the elected representatives of the people of Berar and the Central Provinces, and they felt that although technically the Foreign and Political Department of the Government of India would have to legislate in the matter, still it was not desirable, although there might be room for a difference of opinion, to veto the action which has been taken in pursuance of the recommendations of that body. I, therefore, think, Sir, that in this matter at any rate the Central Provinces Government and the Government of India have acted in conformity with the wishes of the people as represented in the Council and the grievances of the people, if any, should be directed towards those gentlemen in the Council who have misled the Government—it may be—into taking an action of the kind. If the Berar representatives are able to persuade the Central Provinces Government into considering again the matter, the Government of India may not be unwilling to deal with the position as it may arise hereafter. But I think Honourable Members will appreciate that we should encourage as far as possible the growth of a correct constitutional position and competition as between the Government of India and the Local Government, and it is, Sir, in order to promote the growth of that Convention, in order to give effect to the wishes of the people, that the Government of India have acted in the way in which they have acted; and I, therefore, think that far from condemning the Foreign and Political Department, Honourable Members of this House who have the future growth of representative institutions in this country at heart ought to welcome the action which the Government have taken after due consideration.

Mr. B. H. R. Jatkar: There was no Resolution in the Central Provinces Council to increase the cess.

The Honourable Mr. B. N. Sarma: With your permission, Sir, I will say this. Questions relating to revenue do generally come up to the Revenue and Agriculture Department on which we advise the Foreign and Political Department which ordinarily accepts the advice given. That is the reason why I have stood up to-day in order to defend the position of the Government of India in this respect.

Mr. B. H. R. Jatkar: I beg to withdraw my motion. (No. 260.)

The motion was, by leave of the Assembly, withdrawn.

Maulvi Abul Kasem: Sir, as a similar motion to mine stands in the name of my Honourable friend, Munshi Iswar Saran, I think
5 P.M. I shall ask him to move his.

Home Department—Inspector of Office Procedure.

Munshi Iswar Saran: Language, Sir, has been given to conceal thoughts and motives and intentions. I have the honour, Sir, to move this amendment which stands in my name, namely:

“That the provision for one Inspector of Office Procedure under the sub-head ‘Home Department’ (page 39) be omitted.”

Sir, the House will remember that there was a debate in the year, I think, 1921, about this matter and that debate was more or less a heated debate. As far as I am concerned, I can promise that in a very few cool words, I shall put my position before the House. There are Honourable Members in this House who have all along been of opinion that the utility and the necessity of this appointment is open to serious question. As one might have expected in 1921, there was an attempt made to justify the appointment, but fortunately for those who entertain this opinion, the Inchcape Committee has come to their rescue, and I shall only read the remarks made by the Inchcape Committee about this particular appointment. They say:

“The appointment of Inspector of Office Procedure costing Rs. 30,000 was created on the recommendation of the Llewellyn Smith Committee to re-organise office procedure in the Secretariat with a view to greater efficiency and economy.”

I shall request the House to mark these words:

“We understand that very little has so far been done in this direction, the officer having been diverted to miscellaneous duties.”

This is again very important, Sir:

“We have had evidence that the present procedure is in many ways defective, and that both economy and expedition could be secured by more businesslike disposal of receipts and in other ways. We consider, however, that it should be taken up by the heads of the departments concerned in present recommendations, and that subsequently, after a re-assessment of the Finance Department should be deputed to examine the possibilities of effecting further economies in staff. If this course is adopted the continuance of the appointment of Inspector of Office Procedure under the Home Department will be unnecessary.”

I submit, Sir, that I cannot put my own words in clearer and stronger language. In view of the remarks of the Inchcape Committee, I submit that the position use what mouthpiece it particular post need no longer remain is perfect.

down, Sir, I wish to say that on the last occasion unfortunately, Sir, discussion turned on to the personality of the officer. I have not the slightest intention of saying or suggesting anything about the present incumbent of this office. It is as a matter of principle that I am reluctantly forced to move that this item be omitted.

Dr. Nand Lal: Sir, I have got a similar amendment in my name and therefore I desire to take part in this debate. I endorse the view of my Honourable friend, Mr. Iswar Saran, that we have nothing to do with the personality of the officer, who is immediately concerned with this motion; and, as a matter of fact, I do not know who that officer is. We wish to fight against the expenditure only, and that is the main point which has prompted us to place this subject before this House. Sir, it is no less than a wonder to me as to why the Home Department is so anxious to stand decorated by the post of this officer, whereas, the other departments of the Government of India have been deprived thereof. I believe they do not grudge it; and, therefore, there seems to be no occasion why our Home Department should be given this peculiar and special privilege. My Honourable friend, Mr. Iswar Saran, has adverted to the opinion of the Committee—I mean the Retrenchment Committee, but he has—I cannot say designedly but perhaps by oversight—omitted, so far as I can remember, to read the concluding portion of that recommendation. Therefore, I feel bound to invite the attention of this House to those lines alone:

“Its abolition will secure a saving of Rs. 30,000, and we recommend that the budget for 1923-24 should be fixed at a certain amount.”

Now, Sir, this report was before the Honourable the Finance Member. He has very kindly supplied us with a list indicating retrenchments or reductions. There is no note appended to it, no explanation has been given whether the post of this officer, which I have already described, will be abolished or not. If any note were made or some explanation had been given from the Government Benches, I would have felt reluctant to take even one minute on this point. But in the absence of any explanation, in the absence of any note whatsoever pertaining thereto, I invite the House's attention to this specially, and I move this amendment and I hope this House will unanimously agree with me and support this amendment, namely, that this post may be abolished, which will give us a saving of Rs. 30,000 a year. The House will not forget this most important point that we are in financial embarrassment and we should try to see that money may not be spent in these unnecessary decorations. With these few remarks, and in the interests of the economy of time not going into details, I submit the amendment for the disposal of the House.

Mr. T. Rangachariar: Sir, I do not propose to address the question of the recommendation that this office be abolished, of India may show this from Government. How long this officer, who hereafter, of employment, has been in service, and what provision should encourage such people who are thrown into the street as it were position and contribute their active years of valuable service to Government; Local Government, the Government propose to make in carrying out such Convention, in order to Government of India.

and I, therefore, think **Mr. Malcolm Hailey** (Home Member): Sir, Dr. Nand Lal has given no indication of how far we intended to comply with the growth of representatives of the Inchcape Committee. (Dr. Nand Lal: welcome the action which is the point and post.) The Inchcape Committee, consideration.

[Sir Malcolm Hailey.]

working on the budget estimate of 1922-23, found the expenditure of the Home Department proper (I use that term as distinguishing it of course from the several attached offices which it superintends), found the expenditure of the Home Department proper to be Rs. 6,41,800, and it recommended that we should effect a saving of Rs. 97,000. Among the savings indicated was that of the post of the Inspector of Office Procedure. Now it will be readily understood that since the issue of the Report of the Inchcape Committee, we have not had time to go into the full details of the reductions which we expect to make in the Department, but we have agreed with the Finance Department that we shall make reduction of Rs. 87,000; that is to say we have allowed only Rs. 10,000 for lag in the present year. That Rs. 87,000 is included on account of general administration. The original demand grant being Rs. 81,58,000 we propose to reduce from that Rs. 7,58,000, and the Demand put to the House is Rs. 74,08,000. The Rs. 87,000 referred to is part of the reduction of Rs. 7,58,000. Considering the difficulty of making reductions of this kind in full immediately, I think the House will agree that we have acted loyally by the Finance Department. Whether the abolition of the post of the Inspector of Office Procedure will be involved in that cut of Rs. 87,000 I am not able to say at the immediate moment. All I can say is that we will make that reduction of Rs. 87,000 and I think that the House will realise that it will be unreasonable to ask us to make a larger cut, as this motion would do, than the Inchcape Committee itself has asked us to make. We are considering the position of the Inspector of Office Procedure. I am not going here into the merits of the question which has been raised by Mr. Iswar Saran. The House debated that point on a previous occasion. All I can say is that we are attempting to give full effect to the cut of the Inchcape Committee, and it is not impossible that this Office will have to go in order to realise that cut. Mr. Rangachariar asked what standing the Officer had and what arrangement would have to be made if an officer of this nature was turned adrift from Government service. I do not remember the exact number of years of service the officer has had, and with regard to the latter part of Mr. Rangachariar's question, he has raised just one of those difficult questions which it is difficult to answer at a moment's notice, though an answer will have to be found to it. Obviously if we are to make, not only here but elsewhere, the cuts which have been demanded by the Inchcape Committee, there will be a considerable number of officers and subordinates who will be deprived of their employment, and I intend to put later to my Honourable friend the Finance Member certain proposals as to the correct method of dealing with these officers and subordinates.

Mr. President: The question is:

"That the provision for one Inspector of Office Procedure under the sub-head 'Home Department' be omitted."

Munshi Iswar Saran: May I be permitted to withdraw my motion in view of the statement of the Home Member?

The motion was, by leave of the Assembly, withdrawn.

Raq Bahadur T. Rangachariar: With your permission, Sir, I wish to lump together motions 265, 266 and 271 as they all raise points of which I have given notice to the Honourable the Home Member. My first and most important point is the question of when the Government of India

Secretariat,—I mean the Secretaries, the Joint Secretaries, Deputy Secretaries, Under Secretaries and Assistant Secretaries in it,—will take in a large number of Indians. Sir, I may at once say that I have the greatest admiration for the Secretariat people with whom I have come in contact. I have come in contact with several departments of the Government of India, and I cannot find a better lot of people elsewhere. It is to that company, if I were young, I should have aspired to belong. (*Dr. Nana Lal:* "You are not too old yet.") I am too old, I am sorry to say. But I want my countrymen to imbibe that spirit of devotion, that intelligence, that culture which these people bring to bear upon the daily performance of their duties. When I turn to the Legislative Department, when I sat with them, their draftsmen, during the last two weeks, I simply admired their capacity, how they have been able to put into shape Bills which we non-officials bring forward without much thought, which they put into shape, and they oblige us in the kind way in which they put these into shape. When I go to the Finance Department, complex problems are solved in the most easy manner. When I go to the Home and other Departments similar assistance is rendered. And in the Finance Department I am glad to see my countrymen taking their legitimate share, and I hope they add to the improvement of that Department by their presence there. And I do not want to see my countrymen taking their fair share in the Home Department, Sir, under Sir Malcolm Hailey; in the Foreign and Political Department under Mr. Denys Bray, who is eloquent with facts; under Mr. Thompson, who is eloquent but without facts. And I want them also to associate with my Honourable friend, Mr. Burdon, whose office I have seen sometimes—when he was absent—but I have failed to recognise any Indian face, except in the matter of finance; there, of course, he has the competent assistance of my Honourable friend, Mr. Mitra, one of the ablest financiers the country has produced. Sir, this subject is a very thorny subject. It created a scene in the otherwise serene atmosphere of the Upper Chamber, so much so that my Honourable friend the Right Honourable Srinivasa Sastri himself lost his temper and was able to convince the Government Benches that they had a poor case. Sir, there are Indian members of the Indian Civil Service who have undergone experience in the various provincial Secretariats. I know some of them. Sir, for want of a better job in their own line, have distinguished themselves as Dewans of first-class Indian States. Is it not a matter for us to hang down our heads that our servants should be lent to foreign States when there is scope for them here in our own sphere of activities? No doubt, time was when Indians as such were tabooed. That was not so very long ago. But, Sir, since 1908, new days have come into existence. After 1908, at least I had hoped a departure had been made, and the doors of this sacred Secretariat would be thrown open to Indians in larger numbers. Sir, that is my appeal in that direction. I hope the Honourable Member will give us an assurance in this direction that both I. C. S. men and provincial service men will find their due share and I am sure that the men in the Secretariat, as it is, will welcome them as assistants, but I want they should extend that hand also as able lieutenants and as colleagues and sometimes to take their places with distinction.

Another question which I wish to raise is another constitutional question of great importance, which I know has troubled many a Member of Council, both European and Indian. Sir, the question of the direct access of the Secretary over the head of the Member to His Excellency the Viceroy and the Government in the provinces. But here, I confined to the position of

[Rao Bahadur T. Rangachariar.]

Secretaries here. I mean it is an unheard of thing in any other constitution that such a thing should remain. It may be the vestige of ancient days when the East India Company ruled this country as Agents on behalf of the Crown. But, after the Crown took charge, why such a state of things should continue I fail to see. Sir, recently I was reading a very interesting book—Sir Guy Fleetwood Wilson's "Letters to Nobody," where he as a Member who was the Finance Member of this Government has written as follows:

(I am referring to pages 116 and 117 of this very interesting book, which I will ask Honourable Members to read.)

"From an Englishman's standpoint the great flaw in the Indian governmental system lies in the fact that Secretaries to Government, the equivalent of our Under-Secretaries of State, take the file papers which are to come under discussion direct to the Viceroy before the Council sits and discusses the question at issue with him in private. There is a two-fold objection to this method. It may in certain conditions enable the Secretary to intrigue against his Chief and it offers him the great temptation of indulging in wholesale agreement with the Viceroy, on whom his advancement depends."

And he adds (and I think we may add our testimony also in that matter—I have not searched the cupboards of the Members but I dare say, there is many a skeleton concealed in these cupboards:)

"Nothing but the conspicuous loyalty of the Indian Civil Servant has obviated a breaking-up of a machinery which combines in a Viceroy the dual functions of a Sovereign and a Prime Minister, and enables a permanent official to influence him, should he wish to do so, against the Minister in charge of the Department concerned."

Sir, that is a system which I think ought to be done away with now that Members are responsible to the Legislature—I hope they are now, and they act as Ministers, and here the Viceroy occupies a dual position. Whatever views the Secretariat have should end with their conference with the Member. They should be able to argue out the matter with the Member in charge and there their position must end. They should not have direct access elsewhere. Oftentime, I understand, the rule enables the Secretary to differ from his Chief and take the matter up and call for a Council meeting if he likes and in that way he is able to spoil the effects which the Minister in charge may be able to produce on the administration. Sir, this matter becomes very important. I do not think I should conceal my thoughts on this position. I have heard very responsible people who have occupied the position of Members, specially in the case of Indians who have been Members with European Secretaries to deal with. And if they want to carry out a particular policy, they find it difficult to carry it out unless of course they come across an amiable Secretary who will put up with it and look at it from his point of view. It appears to be a vicious principle. It has no precedent anywhere and it should not be allowed to continue any longer.

Sir, the third point which I wish to raise is the question turning upon the recommendation of the Inchcape Committee whereby they propose to veto the Resolution passed by this Assembly last September by which we voted the annual grant to this Medical Research Institute. We all had the matter discussed and thought it was going to be a very useful institution. And I hope the Government will not come to a conclusion on that recommendation without giving an opportunity to this Assembly to consider it again. For it has hopes not only for research in western science, I say it has hopes of opportunities for research into the Ayurvedic and Unani systems of medicine. Sir, it was in that view I supported the motion. We

must have a Research Institute of that sort, where both the systems of medicine can be brought into operation and collaboration and therefore it should not be abandoned without further and careful consideration of the question.

Dr. H. S. Gour: Is that the Home Department?

Rao Bahadur T. Rangachariar: I beg your pardon. All these general questions I think the Honourable the Home Member will take charge of, because they are general questions which arise. No doubt, it pertains to the Medical Department but I believe these general questions arising out of the Inchcape Committee's recommendations are under the Home Department.

Dr. Nand Lal: I thought the Medical Department was under Education.

Rao Bahadur T. Rangachariar: I think Honourable Members may well leave me to take care of myself. I am not acting without instruction and I am advised that the proper Member to address is the Honourable the Home Member. Sir, I raise these points and make my motion. Not all these three motions. I will move the last, Sir, with your permission.

Mr. President: We can take it all on the motion of Mr. Joshi:

"That the provision for Pay of establishment under the sub-head 'Home Department' be reduced by Re. 1."

Mr. N. M. Joshi: Sir, there is a mistake in my motion. I wanted to put in the word "Industries" and I put in the word "Home".

Rao Bahadur T. Rangachariar: I will move 271:

"That the provision for contingencies under the sub-head 'Home Department' be reduced by Rs. 50."

The Honourable Sir Malcolm Hailey: Mr. Rangachariar refers to two points, the first relating to the increase in the number of Indians employed in the higher posts in our Secretariat; he is not I think referring to the ungazetted establishment—he refers entirely to the posts of Secretary, Deputy Secretary and the like. Now, the matter has so recently formed the subject of debate in another House that it is perhaps unnecessary for me to trouble this House with any elaborate display of figures on the subject. But it is within my own recollection that I heard Sir Harcourt Butler in the old Council make a speech congratulating India on the fact that he had in his Department one Indian Assistant Secretary. As the House knows the matter has gone far beyond that now. As Mr. Rangachariar says, he meets Indians everywhere now in the Secretariat and he speaks of their capacity with appreciation. In the other House the difficulty we found was that we were asked to lay down a definite scale for the employment of Indians in the Secretariat.

(At this stage Mr. President vacated and Sir Jamsetjee Jejeebhoy took the Chair.)

I do not think that Mr. Rangachariar is asking for that now, all he is asking for is a guarantee that their claims will not be overlooked in making future appointments in the Secretariat. Of course we make our appointments in the Secretariat mainly from the Provincial Secretariats: it is to our interest to select our men who have had experience of work in the provinces. Obviously they would not be of the fullest use to us if they had no such experience. Now, the number of Indians is growing largely in

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the Provincial Secretariats, 5 out of 71 Secretaries are now Indians; 2 out of 14 Deputy Secretaries, 15 out of 44 Under Secretaries, and 25 out of 44 Assistant Secretaries are Indians. We now, therefore, have there a growing field of recruitment and I think the House may rest assured that we shall not neglect it. We realise as fully as the House does the value of associating Indians with us in our work in the Secretariat. If the cases have not been numerous in the past, and it is so, it has largely been owing to the fact the Provincial Secretariats had not themselves trained up a sufficient number of Indians for us to draw upon. I can say nothing as to a definite ratio of Indians in the Secretariat, because these are selection appointments and it is always difficult to lay down a ratio for purely selection appointments. It is easy enough with regard to recruitment, but not so when you come to selection appointments. But, as I say, the House can rest assured that although we do not wish to bind ourselves to a definite ratio, we shall do our best to obtain recruits to our Secretariat from among Indians employed in the Provincial Secretariats. Now, as regards the second point, that is the position of Secretaries, it will be understood that I speak perhaps with a little delicacy on the subject as a Member in the presence of many Secretaries. But I think I may say with confidence that among the many Members of Councils with whom I have been associated at different times I have not found the feeling expressed in the quotation from Sir Fleetwood Wilson's book, and if I may say so, I am myself a little in doubt as to the experience on which he based his conclusion.

Mr. Jamnadas Dwarkadas: Not while they are Members.

The Honourable Sir Malcolm Hailey: When I look back on the Secretaries that Sir Guy Fleetwood Wilson had, when I realise that his Secretaries were for the greater part of his tenure Lord Meston and Sir William Meyer, I am astonished to think that he should have concluded that there was any danger in the constitutional position which I am about to discuss.

Rao Bahadur T. Rangachariar: With your permission, Sir, I may inform the Honourable Member that for want of time I did not read the last sentence. "Personally," he says, "I readily confess I never experienced a shadow of difficulty. My Secretaries to Government and myself were as one." He says so.

The Honourable Sir Malcolm Hailey: I am very glad the Honourable Member has read us that addition, because it solved any doubt that the remarks of the author were drawn from any personal experience. Now, I do not wish unduly to delay the House with another constitutional discussion this afternoon. But the facts are interesting in themselves. I may remind the House that from the time of Warren Hastings and Sir Phillip Francis the Government of India was governed by a committee of which the Governor General was President. Up to about 1857 an individual Member of Council had no power to issue orders in the name of the Government of India on cases which had not been brought before the Council. The Governor General alone had that power and he exercised it on the papers submitted to him by the Secretary. That is clear from Lord Ellenborough's speech on the East India Council Bill in 1861. When Lord Canning made a formal division of business among Honourable Members after the passing of the Councils Act in that year, and they were empowered to issue orders in the name of the Government of India, it was felt essential to have some effective security against their committing the Government to

important decisions of policy without the knowledge of the Council or the Governor General. Now that position is in essence the same to-day. We are a corporate body; our individual functions are exercised subject to a joint responsibility, and the co-ordinating factor is the Governor General. The Secretary's first task is to bring before the Governor General cases in which it is essential that he should decide whether decisions of a Member or of a Department should be seen by other Members of Council. The Secretary takes them to the Governor General for that purpose and the Governor General then, if he thinks the matter important, orders it to be brought before a full Council. I know of no other method by which the co-ordinating authority would be in a position to exercise his responsibilities. Unless we had this provision it would be possible for an individual Member of Council to issue orders over-ruling a Local Government, to issue orders that might affect largely other Departments and his Colleagues, and for effect to be given to those orders with results which of course would be destructive of the corporate nature of our work. There is of course a second provision in our rules of business, namely, that a Secretary can take any case to the Viceroy and express his opinion upon it. That again, I think, is reasonable, because it must be realised that Members of Council are appointed primarily not as heads of departments but as Members of a Council; they are only placed in charge of a particular subject at the order of the Governor General. Now, there are many technical points concerned in the work of some Departments—and when I say technical, I do not refer only to what is usually included in the term—but many points of specialised knowledge, let us say, relating it may be to educational, or revenue, or medical matters and such like, which require a special experience. I think it is well that there should be an officer possessing such experience who is able to put his views to the Viceroy, in view of the fact that the Member may often not have the same special knowledge. That is the reason for constitutional arrangement. May I add this that there has been one unhappy case in recent years within the Government of India which was entirely due to the breakdown of this constitutional provision, that is to say, orders were issued by a Member without reference to a Secretary; and had the usual Secretariat arrangement been carried out, the trouble which then arose, and which gave all of us so much pain would never have arisen. For my own part I am far from wishing to see this constitutional provision abrogated; I believe that it is a great safeguard to other Departments and to the Local Governments. The Secretary is a Secretary to the Government of India, and responsible not only to his own Departmental Member, but to all of us. The House will remember that when we discussed the Esher Committee Report there was put forward by that body a proposal that we should have a Secretary to the Army Headquarters and not a Secretary to the Government of India in the Army Department. A strong opinion was then expressed that the appointment of a Secretary to Army Headquarters, who was not responsible as Secretary to the other Departments of the Government of India, and who did not have the constitutional power of referring matters to the Viceroy, would constitute a great danger to the Civil Departments of the Government of India. I come to the third point, that is, that relating to the Medical Services. I am sorry if I gave Mr. Rangachariar to understand that I myself would be able to answer this question. I undertook that he should be answered on the point, and I would ask Mr. Chatterjee to do so either now if the Honourable Member so wishes or subsequently when he deals with the particular motion relating to Medical Services. (Rao Bahadur T. Rangachariar: "That will suit me all right.")

Dr. Nand Lal: Sir, I will make only one observation and that will be relating to a certain suggestion which has been offered by the Honourable the Home Member. He was pleased to remark that so far as recruitment goes he should like that our Secretaries and Assistant Secretaries should be taken from the Provincial Secretariats. My submission before the House is that it will hardly be compatible with justice, so far as the deserving subordinates in the Secretariats of the Government of India are concerned. Of course, there is some force in the suggestion that the Secretaries that we will have from the Provincial Secretariats must have had some sort of experience. But in reply to that I may submit that our own Assistant Secretaries, or those who are fully deserving of being promoted to Secretaryship here in the Government of India have got experience. So, if on the ground of experience Assistant Secretaries in the Provincial Secretariats are to be given promotion or elevation to the Secretariat of the Government of India, the claims of those Assistant Secretaries or such other men, who are entitled to be promoted to the post of Secretary and have been and are working in the Government of India should be given due consideration. I submit that the Honourable the Home Member will give consideration to this suggestion of mine, so that those who are working in the Government of India may not feel discouraged.

Mr. Deputy President: The question is:

"That the provision for contingencies under the sub-head 'Home Department' be reduced by Rs. 50."

Rao Bahadur T. Rangachariar: I do not press it after the statement made by the Honourable Sir Malcolm Hailey.

The amendment was, by leave of the Assembly, withdrawn.

The Honourable Sir Malcolm Hailey: Mr. Chatterjee will deal with the other subject, that is, the one relating to Medical Services when we come to the subsequent grant relating to the Medical Services.

Rao Bahadur T. Rangachariar: Amendment No. 269.* I do not understand what the entry in the demand means. I want information on that point.

Dr. H. S. Gour: I raised the same question about two years back. I was informed that there was a very large number of surplus Army Officers. I believe the number was something like 2,800 or thereabouts,—I speak from memory subject to correction. In the speech I delivered last year on the subject of the appointment of a Retrenchment Committee I pointed out that a great many of these surplus Army Officers were employed in doing more or less clerical work. I have been reading in the newspapers an account that the surplus Army Officers are being sent away every week or every month in a certain ratio. I want to know what was the original number of surplus Army Officers, when they were discharged and how many

Mr. Darcy Lindsay (Bengal: European): I want to ask on what particular amendment my Honourable friend, Dr. Gour, is speaking. Has it been moved?

* "That the provision for Passage of Surplus Indian Army Officers selected for the Indian Civil Service under the sub-head 'Home Department' (page 40) be reduced by Rs. 9,120."

Dr. H. S. Gour: I am afraid my Honourable friend must have been engaged otherwise

Rao Bahadur T. Rangachariar: It is true I did not formally move it, but I intended to. It runs as follows:

"That the provision for Passage of Surplus Indian Army Officers selected for the Indian Civil Service under the sub-head 'Home Department' be reduced by Rs. 9,120."

Dr. H. S. Gour: I should like information as to how many officers now remain, before how long they will be all sent away and what will be the total cost to the State of these Surplus Army Officers.

Mr. J. P. Cotelingam (Nominated: Indian Christians): This motion does not refer to the question of the 2,000 and odd surplus officers who have been allowed to relinquish their appointments. Quite recently the Secretary of State issued a notification offering a certain number of appointments to those amongst the surplus officers who have qualifications to enter the Indian Civil Service.

Dr. H. S. Gour: I am perfectly aware of what my Honourable friend, Mr. Cotelingam, has said, but I only wanted to enlarge on the question put by Mr. Rangachariar and generally address my inquiry about the surplus Army Officers. If the Honourable Member in charge is unable to give the information to-day I will not press the question.

The Honourable Sir Malcolm Hailey: I understand that this definite motion refers to a sum which we have placed in our budget at page 40, "the passage of surplus Indian Army Officers selected for the Indian Civil Service." The House knows quite well what our arrangements are for recruiting for the Indian Civil Service. We have a progressive rate of recruitment of Indians—33 per cent. rising to 48 per cent. It is now 37½ per cent., the remainder of the recruitment is in Europe. The number of European recruits obtained by the ordinary competitive examination in England has fallen very far indeed below the average. And under the Temporary Provisions Act, which does not expire till 1924, it is open to us to recruit either by competitive examination or by nomination subject to proper tests. During the later stages of the war we recruited under the Temporary Provisions Act by nomination among British Army Officers. Now in order to complete our European recruitment, we have, instead of recruiting from among surplus British Army Officers, decided to take a certain number of Indian Army officers, that is to say, officers who were in the Indian Army, but have been declared surplus to establishment. There were altogether some 1,900, so declared surplus to establishment, and we thought that if possible we would obtain our recruits from this source rather than by nomination in England itself, for they would have some experience of the country and of the language, while there seemed little doubt that we could find from among the large number of surplus officers men who had commenced a university career in England and are well qualified to fulfil the literary tests. I may add that the officers apply in India. They undergo a literary test here and their papers are sent Home to the Civil Service Commissioners who are responsible, of course, for recruitment to the Indian Civil Service. If accepted by them, the officers then go Home to appear before the Civil Service Commissioners and complete their final tests. So far our arrangements contemplate sending 12 officers Home, but it is not known yet whether that number will be worked up to, because we do not know how many will be accepted by the Civil

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Service Commissioners when they see their papers. So it is possible that the full sum placed in the budget may not be required. I would add that it is perhaps purely an accident that the sum finds its place here, because the officers surplus to the Indian Army establishment who are being dispensed with are being given a free passage Home. So these particular officers, it may be 12, in number, would receive that passage Home in any case, but as they are going Home for the particular purpose of appearing before the Civil Service Commissioners, we have made provision for them in the Home Department estimates. I hope that explanation will satisfy my Honourable friend.

Rao Bahadur T. Rangachariar: Then I do not press the motion* and withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. K. G. Bagde (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to move:

"That the provision for other Contingent charges under the sub-head 'Home Department' be reduced by Rs. 5."

By moving this reduction I intend to raise the question regarding the working of the Standing Committee attached to the Home Department. Honourable Members might be remembering that on the 19th of January, 1922, the Honourable Mr. Neogy moved a Resolution recommending to the Governor General that Standing Committees elected by Members of the Legislature be associated with the different departments of the Government of India except the Army and the Foreign and Political Departments. This Resolution at that time was vehemently opposed on behalf of the Government, but it was carried by the House. Then on the 22nd August rules were published in pursuance of that Resolution. For the information of Honourable Members I may just read the rules which were intended to define the scope of the duties of these Committees:

"The following subjects will be laid before the Standing Committees.

1. All Bills introduced or proposed to be introduced by non-official Members of the Legislature and the Legislative proposals which the Department concerned intends to undertake and on which the Member in charge of the Department desires the advice of the Committee.
2. Reports of Committees and Commissions on which the Indian Legislature is not adequately represented and on which the Member in charge of the Department desires the advice of the Committee.
3. Major questions of general policy on which the Member in charge of the Department desires the advice of the Committee.
4. Annual reports."

There is a proviso which lays down certain limitation on this rule but I do not think it necessary for me to read that proviso. Now, Sir, we do not know what help these standing committees have rendered to Government. If we followed the debate on the original Resolution it will be very easy to find that the aim of the Mover was that Members who were on the committee should get experience in the administration of the various departments of the Government of India. I do not know how far that aim has been fulfilled. The rules which I have just read out will

* "That the provision for Passage of Surplus Indian Army Officers selected for the Indian Civil Service under the sub-head 'Home Department' be reduced by Rs. 9,120."

make it clear to Honourable Members that the functions of these committees are purely advisory. In that debate the present Home Member and his predecessor both made a great point that these committees would hamper and raise difficulties in the way of Government. Sir William Vincent said "Now that would not be the case exactly here because any Committees appointed would be advisory. But at the same time any Member of the Government might be put in a very difficult position by Members of a Committee. They ask for papers and the Government says 'No. They are not going to be put before you'. 'Very well, my friend' the Committee say 'you wait till we get the Assembly down on you; you are not going to accept our views on the subject; we will see what the Assembly has to say on that'." Now, no member of these committees has come forward before this Assembly at least with such a threat. From that I think that the Honourable Members who are on the committee have not raised any difficulties in the way of the Government. But our experience on the 20th of last month shows that these Committees, at least one of these Committees, has been used by Government as a handle to throttle our freedom of action. On that day Government depended upon the opinions of the Standing Committee attached to the Home Department for throwing out two Bills, one Bill introduced by our friend Dr. Gour, I think the Bill to amend the Legal Practitioners Act, 1879, and the other was the Inter-caste Hindu Marriage Bill of the Honourable Mr. Latthe. Now Sir, I do not think it is desirable on the part of Government to use the opinion of the Standing Committees for curtailing our freedom of action; because the Assembly would then be thrown into a very awkward position. There has been some talk about the Princes Protection Bill to-day and the Honourable Members might be remembering that some section of the press found fault with the fact that the Princes Protection Bill at its first reading was thrown out by the Assembly. Now Sir, Government at the instance of these Committees is laying down precedents by throwing out these Bills at the first reading. What I want to object to is that the Committee at least should be strictly neutral with regard to social legislation in which I am very keen personally. Now we have suffered a good deal from the opinion of this Committee with regard to these two Bills and I do not think there is any probability of our getting those Bills through in the life time of the present Assembly. And the other thing I want to bring to the notice of this House is that these Committees should be given more important work. I would like to know from the Honourable the Home Member what work, especially with reference to the third clause, i.e., major questions of general policy—have been referred to these Committees, and if no such questions are referred to these Committees, then I think the creation of the Committees has not been of any use, or at least has not been of that much use which was expected from their creation. I therefore request the Honourable Member to give me an explanation on this point.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban):

Sir, at this late hour I had no intention of detaining the House, 6 p.m. but owing to certain observations of a very general character which have been made, I feel it my duty to place an aspect of the question which has been held back from the House. The principal complaint of my Honourable friend, if I understand him rightly, was that in matters of social legislation the Committee attached to the Home Department, which is of an advisory character, should not give any opinion which would go to influence the decision of the Governor General or of the Executive

[Mr. J. N. Mukherjee.]

Government. My Honourable friend forgot that Bills of a certain class have to be introduced into the Assembly with the previous sanction of the Governor General. Now, in matters of social legislation, I must state to the House, that the communities affected by Bills of that character feel it as a grievance that their opinion is never taken before their introduction in the Assembly. The party who is going to be affected, the communities concerned, are kept in the background. Honourable Members in this House will readily see that the House was not constituted on a religious and social basis, but upon an administrative basis. Though, no doubt, under certain circumstances social legislation may be taken up by the Legislature, yet as a rule the Governor General has to inform himself as to the trend of popular opinion with regard to any piece of social legislation and to form his own opinion accordingly. Now, Members do not come to this House with a mandate from their communities. As matters stand now, a community is thrown on its back summarily in this House, and social legislation is attempted to be rammed down its throat. That is the sort of process that is attempted in this House. I, for one Sir, protest against such a procedure. The Governor General, before he grants his sanction to any Bill affecting communal laws, should have a full opportunity of knowing the views of the people who are going to be affected by the proposed legislation. The committees, it could be thought, afford some means for conveying the sentiments of the people with reference to social legislation. But that I submit, is unfortunately a view which, in the present state of things does not hold good for all practical purposes. The class of people who are coming into the Assembly have cut themselves adrift, more or less from the great masses of the people in certain respects, and if they take upon themselves the duty of expressing the sentiments of the people in matters of social legislation, I submit they do so on their own responsibility, but certainly without any mandate from the people at large. Therefore Sir, although advisory committees afford some check, that check, I submit, is insufficient. If the Governor General takes advice from these advisory committees, generally speaking he does the very thing he ought to do and what the country expects him to do. I am voicing the opinion of a large class of people with whom I am in touch, when I say that they wish that the Governor General and his Council should inform themselves as to the propriety of any social legislation before its initiation. As regards administrative questions, it does not matter Members of which community in the Legislative Assembly take part in their decision or what sort of religious views they hold. It is a pure question of administration in such cases, and I have nothing to say as to the functions of these advisory councils, in general, except that in administrative matters their advice should be obtained more readily than is the case now. Sir, I oppose the motion, on the whole.

Rao Bahadur C. S. Subrahmanayam: Sir, the point is a very narrow one. The question specifically raised is the advice which the Committee is said to have tendered to the Home Department. And only two points relating to that consultation were taken up for discussion. The first was with regard to Dr. Gour's Bill which I presume is a Bill relating to women being admitted to the legal profession. The objection was not on any social ground. There were certain technical difficulties in drafting, and therefore it was said that the drafting should be undertaken by Government, and that the matter should not be left entirely in the hands of a private Member, and Government were agreeable to undertaking legislation

in the direction in which it was desired by the Mover; then the opinion that was given was in consonance with the opinion received from outside competent authorities. On that point I think the Committee, or any individual Member of the Committee, could not be blamed, and there is no element of social or racial or any other consideration governing the advice tendered on that matter. With regard to the other matter, that is, Mr. Latthe's Bill, the opinion was based more upon the convenience of the Members, the convenience of the Assembly, and convenience based upon economy. There was Dr. Gour's Bill, which he had strenuously during the last two years advocated before the Assembly, and it was taken up by a Committee; and I believe, judging by the event, that Bill has been put into shape and presented to this House. Well, that Bill was in course of consideration, discussion and shaping, and it was thought that another, not exactly on those lines but somewhat similar lines, would simply confuse the issues and would probably be a set-back to Dr. Gour's Bill. Then there was also for consideration this Bill introduced for the first time in this session and which may not have any chance of being passed into law before this Assembly dissolves, and it was on the ground of convenience, not on the ground that that Bill had anything to do with social or religious or other matters; it was on that ground, and when these matters came up for discussion, the Government said: 'This is our opinion, which is also confirmed by the opinion which we got from the country, and I think on these two points, it is only a matter which any legal man or any man who is slightly conversant with legislation and the methods of legislation would have advised. Those are the two points I think which require some kind of explanation from a Member.'

Rao Bahadur T. Rangachariar: I am afraid, Sir, the discussion has taken an altogether wrong direction. The point which I wish to emphasise somewhat on this Resolution is this. These Standing Committees were appointed to get into live touch with the real internal administration of each Department; they were not appointed to examine non-official Bills merely, they were appointed to go and acquaint themselves with the internal machinery. With that object, we put them in, and our complaint is that, at any rate my complaint is that, so far as the Home Department is concerned, they used their Committee merely for the non-official Bills, and I do not see any evidence that this Committee was brought into touch with the internal machinery.

Mr. N. M. Joshi: I also support the motion made by my Honourable friend, Mr. Bagde. When the Standing Committees were elected, we thought they would do more useful work than advising the Government to throw out private Bills. If the Standing Committee's advice is to be followed by Government in certain matters, I am quite sure no private labour legislation will have any chance in this House.

(Voices: "I move that the question be put.")

Mr. Deputy President: The question is:

"That the provision for other Contingent charges under the sub-head 'Home Department' be reduced by Rs. 5."

The motion was negatived.

Dr. H. S. Gour: Sir, at this stage may I ask you to adjourn the House?
(Voices: "We must go on.")

Staff Selection Board.

Mr. Sambanda Mudaliar (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Sir, I will not detain the House for more than two minutes. You will see, Sir, that the main function of the Staff Selection Board is to provide clerical officers for performing duties under the control of the Government of India. Now in regard to this, the Inchcape Committee have recommended, on page 135, that it should be put on a self-supporting basis. They said:

"It is probably desirable that there should be an institution of this sort to recruit for the Secretariat, but when the Board again fully functions an endeavour should be made to render it entirely self-supporting."

You will see that in the present year's Budget provision is made for Rs. 4,880. My submission is that this amount is quite unnecessary, and, having regard to the recommendation of the Retrenchment Committee, it should be put on a purely commercial basis, and it should be made self-supporting. I think the expenses, whatever they may be, should be met from the examination fees, and it is hardly necessary that an amount of Rs. 4,880 should be set apart for this item. I therefore recommend this for the approval of the Assembly.

Mr. Deputy President: The question is:

"That the provision of Rs. 4,880 under the sub-head 'Staff Selection Board' be omitted."

The Honourable Sir Malcolm Hailey: Sir, we had previously been spending a sum of about Rs. 22,000 to Rs. 22,800 on the Staff Selection Board; we now propose to place a sum of Rs. 4,880 in the Budget. That expenditure is merely intended to carry on the Board on a minimum basis for six months until we have the Report of a Committee of this House on the operations of the Staff Selection Board. That Committee was appointed in 1921; we have not yet received its Report. When we receive the Report, we shall be able to take further action with regard either to the continuance of the Staff Selection Board or to its abolition. The sum of Rs. 4,880 simply covers a minimum office staff, for its move to Simla, and provides for the summoning of a few candidates and stenography and typing. It provides for nothing else, we shall be holding no examination, and is merely intended to give us an opportunity of deciding what we shall do with the Staff Selection Board.

Mr. Sambanda Mudaliar: Sir, I beg to withdraw the motion.

The motion was, by leave of the Assembly, withdrawn.

Central Bureau of Information.

Rai Bahadur G. C. Nag (Surma Valley *cum* Shillong: Non-Muhammadan): Sir, I move:

"That the provision under the sub-head 'Central Bureau of Information' under the head 'General Administration, ('Home Department')' be reduced by Rs. 50,000."

Sir, I have not been able to understand the utility of this Central Bureau of Information. So far as I have been able to follow its activities, I find that it only compiles the Moral and Material Progress Report of India out of materials supplied by the various Departments. How far this is justifiable, I would refer Honourable Members of this House to the remarks of the Honourable Finance Member made the other day; he said that the progress of the country was no better than a rake's progress. Now, my point is if the Government are anxious to bring out

a narrative of the events touching on the moral and material progress of the country for a year or a number of years, I should not dispute the desirability of their doing so. Can they not do this without incurring such a heavy expenditure? I think they can place an officer on deputation for a period of three months and get the work done. I do not know why, for achieving this object, the Government should go to the expense of maintaining a whole-time Director of Information on Rs. 2,000 to Rs. 2,750 and a whole-time Assistant Director on Rs. 1,200 to Rs. 1,500 with a staff of clerks and servants, all costing the country no less than one lakh and a half of rupees annually. In these days of deficits when we are starving such useful departments such as Education, Medical Relief, Sanitation and the like, it seems nothing short of a folly to indulge in such a luxury as a Central Bureau of Information, in Delhi or Simla, and that at such a high cost. Then, again, Sir, there is another point. For whose benefit do the Government keep this Bureau? So far as the public are concerned, the Bureau seems to care precious little for its interests. By way of illustration I would invite attention of the House to the leaflet issued by the Bureau in the month of July last and re-published in the newspapers of the country dealing with the question of State *versus* Company management of the Indian Railways. The object of the leaflet was to influence public opinion in favour of Company management and to condemn State management of the Indian Railways. The Honourable Mr. Innes replying to an interpellation on the 6th September last admitted that the leaflet was published by the Publicity Bureau on the materials supplied by the Railway Board. In other words the Bureau acted in that matter as the mouthpiece of the Railway Board, which, it is well known, is in favour of Company management. This was the manner in which the Bureau served the public in a matter of such vital importance. If the Central Bureau exists to voice the opinion of particular departments of Government, why, what object could be more easily served by such department publishing its views on a particular subject in a leaflet of its own. The Bureau exists merely as a post office in this matter and serves no other purpose.

Then, there is one other point. The reason why the Inchcape Committee did not propose a cut out of this department of Central Bureau of Information is, I think, very simple. The Bureau stood on a temporary footing, being called into existence during the time of the War. The Bureau was not intended to live for all time to come. It is for this reason that the Inchcape Committee left the Bureau untouched.

Now, coming to the particular expenditure incurred by the Bureau, there is an item of Rs. 50,000 provided as a new expenditure. I invite the attention of Honourable Members to page 40, in column three against Miscellaneous charges in connection with publicity work. There is a new item of expenditure put down as Rs. 50,000. This, I think, can easily be cut down, without even abolishing the department or impairing its activity to any appreciable extent. No indication is given as to how this large amount is going to be spent and I think I am on safe ground when I suggest that this estimated expenditure of Rs. 50,000 may be cut down. Sir, I move my amendment.

Mr. B. S. Kamat: Sir, I believe the Mover of this amendment has taken a very narrow view of the duties of the Publicity Department. I believe the duties of a Publicity Department are two-fold, first in respect of publicity abroad, regarding the actions and the doings of the Government of India for information of people abroad, and publicity within India. So far as

[Mr. B. S. Kamat.]

publicity abroad is concerned, I do not think there is any civilised Government which does not maintain some Publicity Department or other; and if we abolish our Publicity Department, probably we shall be doing a thing quite out of accord with what all the civilised Governments are doing at the present moment. Then, again, Sir, it is, I believe the Joint Parliamentary Committee which drew attention to the fact that the Government of India all these years were not doing their publicity work adequately, and the Joint Parliamentary Committee has pointed out that if the Government of India took necessary action in giving publicity to their policy and to their views in the right manner a good deal of misrepresentations and other unhealthy news which gets abroad or even which circulates within the country would be avoided. I, therefore, think that this Publicity Department has been brought into existence in pursuance of the recommendation of the Joint Parliamentary Committee. Then, Sir, so far as the work of this department is concerned within India, the Publicity Department is serving a very useful purpose in supplying both to the editors and to the public at large authentic information regarding various problems which the Government of India have to solve, the various policies which it initiates, and it is a link between the Government of India and the journals which circulate information for the country and the masses. Then, again, so far as the masses are concerned, they have to depend upon somebody, some agency, for authentic information. I believe the information supplied by this department is valuable in many respects. The Mover of this motion alluded to a certain pamphlet or leaflet with reference to the question of Company *versus* State management. Those who hang their argument on one particular issue or one particular incident and argue from it so large a question that the whole of this department should be abolished or Rs. 50,000 should be cut down, take indeed a very limited view of the matter. If, for instance, a particular Communiqué is issued, say, by the Government of India as a whole which is against the wishes of a particular section of the public or of this House and if someone were to propose that because a particular Communiqué was not in accordance with the views of a particular section of the community, is it fair that the whole of the Government of India should be censured or their activities cut down? I believe that would be carrying the matter too far. On the whole, I think this department is doing very useful work, and if the information which ought to reach the masses in larger proportion does not reach them it is an argument in favour of strengthening the department rather than curtailing the activities of that department.

Rao Bahadur T. Rangachariar: Sir, as a Member of the Publicity Board and as Chairman of the Madras Publicity Board, I may mention what the functions of a Publicity Department are and should be. They act as interpreters of the Government to the people and of the people to the Government. These are the two-fold objects in view. When the Publicity Department was constituted in Madras and also, I take it here, in the first year when I came here, I found the Publicity Department of the Government of India was entirely an officially run organisation. In fact when this question came up in 1921, I pointed out to the Assembly and to the Government the desirability of forming a Board with non-official majority, so that the guidance of the policy of publicity should be in the hands of a responsible Board and not in the hands of merely interested Government Departments. Sir, that suggestion was acted upon in a way but not to my entire satisfaction. At the same time, I accepted a seat inside

that body, and from inside that body I have been agitating for re-constitution of that Board, and I am glad to say we have succeeded in that attempt. Sir, instead of the Board being merely composed of selected non-officials and officials, we have provided for a new constitution by which the majority of the Board are to be elected, 7 from this Assembly and 2 from the Council of State, with 3 non-officials selected from outside, specially people connected with the press and 3 officials only. And we have also made proposals that rules for the guidance of the Publicity Department, including the Budget relating to that Department, should be laid down by that Board. Publicity is essential in all respects. My Honourable friend has referred to a single instance in which the Railway Board view was presented to the public. When the matter came to the notice of the Board, we passed a Resolution that opportunities should be given to those who hold the opposite view to express their view in the matter and we laid it down for the guidance of the Publicity Officer that, whenever any controversial question arises, equal opportunity should be given for both sides and well informed people should be invited to give expression to their views, whichever side they take. So that that is on the records. Sir I do not know how many Honourable Members have used that Department. I have used it myself for my work here. Whenever I want information on any question which comes up for discussion in the Assembly, I appeal to that Department and get the cuttings relating to the particular subject and post myself with regard to it. What prevents Honourable Members from using the Department in that way? It is intended for that purpose. Let us look at it from another point of view. You have here so many departments where you complain work is duplicated. If you go to the Industries Department, they refer you to the Commerce Department. If you go to the Commerce Department, they refer you to the Health Department; if you go to the Health Department, they refer you to the Education Department. In that way you have to go fishing for information, searching for information. Sir, my ambition is to have a clearing house where both the Government and public can get the information and statistics on every point which comes up for discussion in this Assembly and the Council of State. Where else can you get it? You must have co-ordination. Otherwise the Posts and Telegraph Department will have their department of information and intelligence and other departments will have their departments of information and intelligence, and in that way you will be employing numerous officers. There is great scope for Indians training themselves in publicity. This department ought to act as a means for collecting information, comparing statistics, presenting them to the public in a readable form. How many of us look at the reports and the statistics and figures in them and come to right conclusions based on those figures? Sir, the mission of this Department is to produce leaflets explaining the administration, the statistics bearing upon it and the right conclusions to be drawn from them, and to put people in the way of thinking for themselves on statistics and public questions. Sir, this is the work to be done. You do want a highly qualified man to run that Department. I ask my Honourable friend to read a recently published American publication called "Public Opinion." There is a whole chapter relating to intelligence, intelligence which the Government should have, intelligence which the public should have. Simply because Honourable Members are offended at one leaflet issued to go and launch upon a crusade like this upon a Department is rather discouraging for work of this sort. Sir, I think we ought emphatically to express our opinion that there should be only one department where all departments

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should go for information, where the public should go for information, and I hope the Government have agreed to our proposals. It was only last week we made our proposals about reorganisation and I hope His Excellency the Viceroy has accepted our recommendations in that case. I say it is a good beginning. I was very sorry when I saw in the papers that the Madras Publicity Board was abolished. Sir, we in Madras did not dabble merely with Government information, we issued leaflets on industrial matters, organised lectures on various matters of public interest and educated the people in various ways and made them think for themselves. On account of the financial stringency, thanks to the Honourable Sir Malcolm Hailey's refusal to reduce the Provincial Contribution, Madras has had to starve in many ways and I am very sorry this Department has come under that ruthless blow. Sir, I hope we will not repeat that mistake here. I earnestly appeal to the House not to repeat it.

Mr. Darcy Lindsay: Sir, I thoroughly agree with my Honourable friend, Mr. Rangachariar, in his strong advocacy of an increase rather than decrease in the grant for publicity work. To my mind, Sir, had there been more publicity in India, some of our past troubles would have been greatly lessened. The Government of India meets with much abuse, but all the same it does very excellent work that the people at large know nothing about. This never gets to them and it is only the alleged misdeeds that are magnified. What we want to get to the people is the good work done by the Government in the interests of the people. I know a little about this publicity work, Sir. When the war was on the Government of India formed a Publicity Department, with the special object of spreading throughout the country true news regarding the war, and the reasons for rise in prices which was so largely affecting the people. In Bengal as well as in Madras there was a Board formed for this publicity work. Pamphlets were issued, lecture parties were formed, and we started a newspaper, as I think was also done in many other Provinces. When the war came to an end, owing to the tightness of money, the Government shut down all this very useful publicity work. As I said in my opening remarks, had this only been continued, much of our recent troubles would have been prevented. With these remarks, Sir, I strongly oppose this amendment.

(Honourable Members: "The question may now be put.")

The Honourable Sir Malcolm Hailey: I know that there are many friends of this Department here and I need only add a few words to what they have said on its behalf. A Government without some organization for publicity is like a human being without eyes and without a voice. You may just as well try to govern in modern conditions without proper publicity, as to undertake any other difficult operation in life without being able to see what you are doing, or to express your ideas intelligibly. I am unfortunate this evening; I am indeed in a very difficult position. I believe the House wants us to spend a great deal more on this Department. I believe if we had put in twice the amount, the House would have seen it through, and the difficulty that I have to face is this, that having engaged to reduce some Rs. 87,000 on behalf of the Finance Department to satisfy the claim of Rs. 97,000 put forward by the Incheape Committee, my Department, in a fit of ill-timed thrift, has proposed to make certain deductions in the original demand for the Central Bureau of Information. I know that, if I were to go through these reductions now, revealing the details to those who have advocated the Department to the House, it would

be so heart-rending to them that they would turn on me on some future occasion and vote a reduction which I did not want because I have made on this occasion a reduction which they do not want. I will only say this that I fully recognise what Mr. Rangachariar said regarding the necessity of having as wide a non-official basis as possible for the Committee which is to advise and guide this Department.

Mr. Jamnadas Dwarkadas: Has the proposal for the change of name been accepted?

The Honourable Sir Malcolm Hailey: The proposal put forward by the sub-committee for the constitution of the advising and guiding committee has been accepted and will be given effect to. The question of nomenclature is one which we could discuss at any time. I don't think the Department would do any better work under another name, but, if the Advisory Committee would like a variation, I should be prepared to accept it.

Rao Bahadur T. Rangachariar: I think it has already been done.

Mr. Deputy President: The question is:

"That the provision under sub-head 'Central Bureau of Information', under the head 'General Administration ('Home Department')' be reduced by Rs. 80,000."

The motion was negatived.

Dr. Nand Lal: Sir, I have studied the question again and I am, now, of opinion that this is a very useful Department, namely, the Bureau of Central Intelligence. Therefore, I do not propose to move this motion.*

Sir, the whole subject has been fully discussed with reference to a number of amendments, and therefore, in the interests of the economy of time, I do not propose to move this motion.†

Rao Bahadur T. Rangachariar: Sir, as we are entering a new Department, Education and Health, and as there are one or two points especially with regard to the Army Department which will take time and which we cannot enter into to-day, may I suggest that we adjourn now?

THE MUSSALMAN WAKF REGISTRATION BILL.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I beg to present the Report of the Select Committee on the Mussalman Wakf Registration Bill.

The Honourable Sir Malcolm Hailey (Home Member): I wish to announce that various representations have been made to me on a matter of interest to the Assembly. It has always been customary before any of

* "That the provision for Bureau of Central Intelligence under sub-head 'Home Department' be reduced by Rs. 35,000."

† "That the demand under sub-head 'Home Department' be reduced by Rs. 50,000."

[Sir Malcolm Hailey.]

our previous Councils dissolved to have a photograph taken of the entire body. The question of dissolution is still no doubt far away, but it was felt by many of its Members that, as perhaps the meeting in Simla might not be a full one, it would be advisable to take a photograph here. It is proposed, therefore, to have a photograph taken at 10-30 on Monday morning at the Secretariat.

The Assembly then adjourned till Eleven of the Clock on Friday, the 16th March, 1923.

LEGISLATIVE ASSEMBLY.

Friday, 16th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

VENDORS AT N.-W. RAILWAY STATIONS.

565. ***Mr. W. M. Hussanally:** 1. How many Mahomedan and Hindu Vendors of food-stuffs are there on the Sind Section of the North-Western Railway?

2. Are there any rules regulating the vend of food-stuffs on the North-Western Railway?

3. What stuffs are Mahomedan vendors allowed to sell and what the Hindu vendors?

4 (a) Is it a fact that the Railway have recently imposed a license fee upon these vendors?

(b) If so, how much per year?

5. Is it a fact that vendors of food-stuffs at Railway Stations are obliged to pay a sort of annuity to the station staff to propitiate them; and are also required to serve the station staff without remuneration?

6. Do Government propose to appoint a Committee of Officials and Non-Officials to inquire into the complaints against railway servants of corruption and suggest remedies?

Mr. O. D. M. Hindley: (1) There are 63 Hindu and 10 Mahomedan vendors on the Sind section of the North-Western Railway.

(2) The reply is in the affirmative.

(3) A list of articles sold by vendors on the station platforms, etc., on the North-Western Railway is being furnished to the Honourable Member separately.

(4) (a) and (b). No license fee is imposed upon vendors on the North-Western Railway.

(5) and (6) The reply is in the negative.

REHABILITATION OF GOVERNMENT PAPER.

566. ***Mr. R. A. Spence:** Will the Government be pleased to state what action they propose to take in regard to the findings of the Committees appointed in 1921 in Bombay and Calcutta to consider the rehabilitation of the 3 per cent. and 3½ per cent. Government Paper?

The Honourable Sir Basil Blackett: After a great deal of enquiry and consideration, Government have come to the conclusion that no specific measure of rehabilitation is practicable and that improvement in the value of these securities must be the gradual result of the general rehabilitation of India's finances.

Mr. Darcy Lindsay: Will the information contained in the Report be published or made available for Members of the Assembly?

The Honourable Sir Basil Blackett: If Members of the Assembly desire it, it can no doubt be published.

Mr. R. A. Spence: May I ask that the information be published? I think it would be most interesting.

The Honourable Sir Basil Blackett: Possibly it would be better before answering that question to wait and see what the information is.

GAZETTED APPOINTMENTS IN ORDNANCE DEPARTMENT.

567. ***Mr. Sambanda Mudaliar:** Will the Government be pleased to state:

- (a) The number of Gazetted appointments in the Ordnance Department of Government of India.
- (b) Whether any of these Gazetted appointments is being held by an Indian? If not, why not?
- (c) Whether Government is aware of the grave discontent among Indian Officers drawing a salary of Rs. 200 and more in regard to their claims to Gazetted appointments being overlooked?
- (d) Whether Government will be pleased to consider the advisability of appointing Indians for Gazetted posts in the Ordnance Department of the Government of India including Factories?
- (e) Whether Indians employed in the Ordnance Department including Factories are granted leave under Civil Service Regulations? If not, why not?

Mr. E. Burdon: On the presumption that the Honourable Member's question refers to civilian appointments in the Ordnance Department, the answers to his questions are as follows:

- (a) Twenty-six.
- (b) and (d) None of these appointments is held by an Indian. There is nothing to prevent an Indian from being appointed to any of these posts provided he possesses the requisite qualifications.
- (c) No.
- (e) The answer to the first part is in the affirmative. The second part does not arise.

WORKING OF SALT DEPARTMENT.

568. ***Bhai Man Singh:** (a) Will the Government be pleased to state which of the salt mines are worked under the Northern India Salt Department and the expenses of which are charged under that heading; and which of these mines are situated in the Punjab?

(b) Which of the officers and other establishment mentioned in demand No. 3, under the heading of the Northern India Salt Department are common to all the mines under the Northern India Salt Department and which are working solely at the Warcha, Khewra, Jammu and other salt mines in the Punjab and at Sambhar, respectively, and what is the total pay drawn by such officers at each of these mines?

(c) Are the accounts of the said mines kept separately and if so, are shares of the pays of the officers common to all the mines adjusted in their accounts and if so, what are the respective shares charged to the account of each mine?

(d) Will the Government be pleased to state separately the expenditure on officers establishment and working of the Khewra, Warcha, Jammu and other Punjab salt mines including expenses incurred on preventive establishment and otherwise?

(e) Will the Government be pleased to state separately the income of the said mines?

(f) How much increase of income does the Government expect from these mines by the improvement made during the current year and proposed to be made during the next year (1923-24)?

Mr. A. H. Ley: (a) The salt mines now worked by the Northern India Salt Revenue Department are the Salt Range Mines at Khewra, Warcha and Kalabagh in the Punjab. Other salt sources worked by the Department are the quarries in Jatta, Bahadur Khel and Karak in the Kohat district of the North-West Frontier Province, the evaporation sources of the Sambhar Lake, Didwana and Pachbadra in Rajputana, and the small brine works at Sultanpur in the Gurgaon district of the Punjab.

(b) The staff which may be considered common to all the sources mentioned above (that is, mines, quarries and "evaporation" sources) is as follows:

1 Commissioner.	
1 Deputy Commissioner.	
1 Personal Assistant to Commissioner.	
1 Consulting Engineer (temporary).	
16 Clerks, permanent.	} In Central Office.
17 Clerks, temporary.	
1 Kotgasht.	
3 Jamadars.	
1 Daftri.	
21 Peons.	

I will give the Honourable Member a printed list of officers and establishment of the Northern India Salt Revenue Department, which gives in detail information of the staff employed at the different sources and the rates of pay drawn.

(c) The accounts of the said sources are kept separately, but no share of the pay of the officers common to all is adjusted in those accounts.

(d) Figures for each source separately are not available. The expenditure for 1922-23 on officers, establishment and working of the Salt Range Division as a whole including expenses on preventive establishment but

excluding expenditure on bags and despatches (recoverable from traders), as estimated to be as follows:

				Rs
<i>Salt Range Division.</i>				
Pay of officers	...	...	...	93,000
Pay of establishment	...	...	...	1,97,000
Working charges	...	...	...	11,81,800
TOTAL				14,71,800

(e) The income of the Salt Range Division for 1922-23 is estimated at Rs. 69½ lakhs.

(f) It is impossible to give an estimate with any correctness of the increased output to be anticipated from a portion only of the developments ultimately projected, but the improvement scheme for the Khewra and Warcha mines as a whole aims at an ultimate increase in output of about 40,00,000 maunds annually, which means increased receipts in duty of half a crore at the rates of duty previously in force, viz., Rs. 1-4 a maund and a crore at the rates at present in force.

INSPECTION OF INCOME-TAX ACCOUNTS.

569. ***Bhai Man Singh:** 1. Is the Government aware that paragraph 64 printed on page 105 of the Income Tax Manual, 1922, makes it discretionary for the Income Tax Officers to call for Account Books even after the submission of Audited Statement of Profit and Loss?

2. Is it a fact that this discretion is greatly abused and assesses are compelled to submit accounts even after they get them audited as provided in the Income Tax Manual?

3. Is the Government aware that such Account Books when submitted pass through several hands, the Munim, the Inspector, the Head Clerk and the Income Tax Officer?

4. Is it a fact that in the majority of cases facts coming to their notice in the course of examination of Account Books are disclosed, to the great detriment of the interest of the assesses?

5. Is the Government aware that a very respectable firm of Ambala Cantonment is alleged to have suffered through such disclosure and has complained about it to the Income Tax Officer concerned?

6. Are the Government prepared to consider the question of issuing instructions to the Income Tax officers directing them not to call for an inspection of the Account Books of an assessee where the statement of profits and loss has been duly audited by qualified Auditors or at least not to so call for the books unless there are very special reasons which should be recorded in writing for doing so as well as to direct that very serious notice be taken in the case of any such disclosure?

The Honourable Sir Basil Blackett: 1. Sub-section (4) of section 22 of the Income-tax Act empowers the Income-tax Officer to call for such accounts and documents as he may require from any person who is liable to make a return of income.

2. The accounts have to be examined even when an audited statement of profit and loss is produced.

3. Account books produced before an Income-tax Officer may pass through more than one hand in the Income-tax office, but all particulars contained in such accounts are to be kept confidential by the income-tax employees who are liable to be punished under section 54 of the Act for disclosing any such information.

4. No such complaint has been received by the Government.

5. No.

6. An audited profit and loss account is not a correct statement of the profits liable to income-tax, and it does not appear necessary to amplify the instructions contained in paragraph 64 of the Income-tax Manual against the unnecessary detention of the books of an assessee.

THE BUDGET—LIST OF DEMANDS.

SECOND STAGE—contd.

DEMAND NO. 14—GENERAL ADMINISTRATION—contd.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, with Mr. Rangachariar's permission, I beg to move his motion No. 284, which runs as follows:

"That the provision for Assistants, Clerks, etc., under sub-head 'Department of Education and Health' be reduced by Rs. 100."

I shall confine my remarks solely to one institution in Delhi, and that is the Lady Hardinge Medical College whose finances as admitted by the Honourable the Education Member are in a very unfortunate position. It is a very unique institution and I think the Government should do something to make that institution a successful one and not allow it to die of starvation. It is an institution in which female students alone are allowed to pursue their studies; and when I say that we in Madras have got an exceedingly good institution and that it does not attract even two or three women for the medical degree whereas that even from Madras as many as ten women are studying here for the purpose of taking degrees, it shows how popular this institution is. In this country co-education is not possible to the same extent as in other countries. We can send here our girls to take their degrees in an institution entirely managed by women, in which male students do not study; and that is the reason why this institution is so very successful; I think nothing should be done to make that institution less useful than it is at present, and I am quite sure that the Government have no intention of doing it. I believe there is some difference of opinion as regards the position of this institution owing to the attempt which is being made by the college authorities to have the science department within the institution. The Vice-Chancellor of the Delhi University put certain questions to show that it should be affiliated to the University of Delhi. I may say that I have very great sympathy with the functioning of the Delhi University; but I will say this much also that if it comes into conflict with the Medical College I have no doubt what my position would be. I will certainly not allow the Medical College to die out and the Delhi University to gain by the dying of that institution. We must do everything that lies in our power to see that

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this institution is successful, and we want the science class in the Medical College itself, because if it is a science class in the University, male students will also attend it and as I said already female students will not go to a school largely where male students are reading. Under these circumstances it is absolutely desirable that there should be a science department in the Medical College itself and I hope the Honourable the Education Member will see his way to give sufficient funds; as he admitted the other day when I put a number of questions that there is a deficit; this institution should not be allowed to be in that unfortunate position. This institution has also got a hospital which is one of the most popular hospitals that we have in India. They have also an exceedingly good hostel attached to the institution. I am not quite sure whether I have set a good example, because I am particularly anxious that I should not set a bad example. I was almost going to ask you if it is in your province to fix five minutes limit for discussions this day, because there are a large number of subjects to be dealt with which we must get through; and I hope I have not set a bad example for speaking for a long time. I have tried to bring by remarks within the five minutes limit and I shall ask others also to impose this limit upon themselves.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): I do not know whether you have already ruled in anticipation of the request made by my Honourable friend, Mr. Seshagiri Ayyar, that all speeches shall be retrenched to five minutes, but I hope to curtail my remarks within that compass. I think my friend has entirely misunderstood me if I gave him the impression that I was opposed to the continuance of the Lady Hardinge Medical College for which I have the warmest regard. It is also wrong on the part of my learned friend to assume that we wish in any way to cripple the resources available for the management of that college. What we, on this side of the House desire, Sir, is to make the Honourable the Finance Member a little more charitable to the subject of Education. The Inchcape axe was particularly sharp upon Education and it seems to have got blunted after the Educational grants were cut. The result has been that the subject of Education, Public Health, Sanitation and all the nation-building departments have suffered heavily at the hands of the Inchcape Committee; and it is with that object in view that I put certain questions on the last occasion, but if the Honourable the Finance Member desires to take the sense of this House. I have no doubt that the sense of this House so far as the non-official Members are concerned is strongly and unanimously in favour of making generous grants to educational institutions, Lady Hardinge College as well as the University of Delhi and its constituent Colleges. If he is generously disposed, we have no doubt whatever, Sir, that the Lady Hardinge College will get the grant which it so badly and sorely needs.

The Honourable Sir Basil Blackett (Finance Member): May I just ask, Dr. Gour, Sir, where he hopes to get the money from?

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, my Honourable friend, Mr. Seshagiri Ayyar, has made this motion, I take it, to draw the attention of the Government to the needs of Lady Hardinge Medical College. I do not desire to interfere in the internecine warfare between the Democratic Party and what I may describe as the remnants of the Democratic Party. I think my Honourable friend, Mr. Seshagiri

Ayyar, knows perfectly well that Government have always been extremely sympathetic towards the needs of the Lady Hardinge Medical College. As a matter of fact, even at the present moment, the bulk of the amount needed by that College is furnished by Government, and I am sure that my Honourable friend, Sir Basil Blackett, will be sympathetic towards any reasonable demand that may be made on behalf of that College. But at the same time I hope that my Honourable friends here will endeavour to raise private donations on behalf of that College. I do not think it is desirable that any institution of this sort should depend entirely on Government support. I shall take this opportunity, Sir, to furnish the information which my friend, Mr. Rangachariar, asked for yesterday with regard to the Medical Research Institute. The position with regard to that Institute was that the Government made an annual grant of Rs. 5 lakhs to the Medical Research Fund Association, and Government have also, altogether, a staff of 25 officers in the Bacteriological or Medical Research department. Of these 25 officers, 9 are employed in provincial institutions and are paid for by the provinces. Three or four of these officers—I do not know exactly which—are attached to the Kasauli Institute which is a Central Institution. The remaining 12 officers—some Indians and some Europeans, some of them I.M.S. officers and some non-I.M.S. officers—are out in the field doing actual research work. Of the Rs. 5 lakhs grant to the Association, about Rs. 2½ lakhs are saved every year in order to make up a capital fund for the building of this institute. The rest of the money is spent on the activities on which these officers are at present engaged. The Government of India have always been extremely anxious to devote money to Medical Research in furtherance of the interests of India as a whole. The question, however, was examined by the Retrenchment Committee, and, as Honourable Members are aware, the Retrenchment Committee have recommended the practical extinction of the department. As my Honourable friend the Finance Member has already said, this is one of the questions which is at present under the consideration of the Government of India, and I am unable to say what the final decision would be. There are two possible courses open, either the course which has been recommended by the Retrenchment Committee or the alternative by which we can retain a skeleton machinery for continuing Medical Research and when finances improve to renew the grants to the Medical Research Association for the building of the Institute. Personally, Sir, I hope that a broader spirit will prevail, but, as I have said, it is impossible to anticipate the decision of the Government of India, and I hope my Honourable friend will be satisfied with the explanation that I have been able to furnish him.

Mr. T. V. Seshagiri Ayyar: I do not press my motion, Sir.

Mr. J. P. Cotelingam (Nominated: Indian Christians): Sir, I would like to say a few words on the fate of Education at the hands of the Retrenchment Committee, and the action taken or proposed to be taken by the Government of India on the recommendations made. Honourable Members will see from page 196 of the Report of the Retrenchment Committee that they recommend that the scheme of the University of Delhi be reconsidered, and that the grant to non-Government Arts Colleges and to the Delhi University be reduced. Sir, I would like to say at the outset that while the Members that composed the Committee were expert businessmen and sharp in the use they made of their axe, they did not profess to be experts in matters educational. From the recommendations they have made, they do not seem to have realised that they were to a

[Mr. J. P. Cotelingam.]

very large extent counting upon the educational experience of their student days. For example, in the matter of grants, they have proposed the apportionment of grants according to the number of students that attend schools or colleges. That is an exploded theory. We would like to give more attention to quality than to quantity. A school or a college may by lowering its standard attract a very large number of pupils and be able to earn a large amount of grant. In the Madras Presidency some years ago aided schools, especially primary schools, were given what were known as "results grants". On the results produced at inspection or examination, the amount of grant to the various schools was determined. It is a matter for regret that the Retrenchment Committee should give expression to a piece of fallacious reasoning, when in the matter of grants for primary education, they should state that the grants should be fixed on the basis of an average of one teacher per 25 pupils rising to one teacher per 30 pupils. It should be the other way about. Time was when, owing to the paucity of trained teachers in our schools, we were obliged to have a larger number of pupils in a class than an ordinary teacher of ordinary capabilities could manage. We are now looking forward to the time when we shall have trained teachers in all our elementary and secondary schools and have fewer pupils in a class so they can be handled in a satisfactory manner by the teacher. Therefore, instead of fixing the grant at one teacher for 25 pupils, we hope to provide larger grants on the basis of one teacher for less than 25 pupils.

The grants to the three colleges, the constituent colleges of the University of Delhi, are to be reduced. I must state that if the grants are cut down, these three colleges, and especially St. Stephen's College, the foremost of the three, cannot go on. Government has already laid down the policy of education, namely, the allotment of an increasing amount of grant to schools and colleges which continue to be efficient. If the grant is all at once to be cut down on the recommendation of the Retrenchment Committee, Sir, I must say that it will amount to a breach of faith. The cutting down of the grant to education, be it to the University or to aided colleges, or to secondary schools is "the most unkindest cut of all". Educational expense in the maintenance and in the strengthening of colleges is bound to increase, and to fix it, as the Retrenchment Committee has recommended, is tantamount to a reduction. The colleges are trying to cope with the situation created by the establishment of the University. They are trying to improve and increase their staff. It will therefore take not less than 10 years or so before they can reach their normal standard of increase and development. If the grant that is now proposed to be cut down on the recommendation of the Retrenchment Committee is to be given effect to, I fear these three colleges may soon go out of existence. There are no local bodies that will come to their rescue if Government should reduce or withdraw their grant. And if these three colleges should be weakened by the reduction of the grant as proposed by the Retrenchment Committee, it will mean this, that Government will have to establish a college of their own and maintain it at an exorbitant cost. There is only one other alternative, if the grant to the colleges is reduced. Fees will have to be increased, and if fees have to be increased, fees will also have to be increased in the Punjab. If the standard rate of fees is not raised the Delhi Colleges cannot afford to raise their fees. Depending upon the support that Government will give, the management of St. Stephen's College have obtained large support from their Missionary Society, as also

from the Cambridge Mission, and if Government is to withdraw their grant I am pretty certain that their supporters in Cambridge and in the S. P. G. Society will withhold or reduce their support. Honourable Members know that the staff of the college is very efficient. There are seven Englishmen from the University of Cambridge or other Universities and on their Indian staff professors who are distinguished men of Indian and European Universities. If this support is withdrawn, the staff will soon find other places where their services will be required.

I trust that the appeal made on behalf of the Lady Hardinge College will receive due consideration, and that the grant required for the maintenance of that College will be increased, that the grant already promised to the Delhi University will be continued, and the secondary schools and colleges in Delhi will, instead of having their grants reduced, have them increased in proportion to the work that they are doing and are expected to do. Sir, in the same strain throughout the chapter on education the Retrenchment Committee have proposed reductions. No doubt they recommend that large grants should be given for the support of primary education and they are right there, but when they recommend that, in the interests of economy, grants to secondary schools and colleges be cut down I think they are making a fatal mistake. It would be a suicidal policy to reduce or cut down the grants that are being given to maintain educational institutions. With these few remarks I resume my seat.

Mr. T. V. Seshagiri Ayyar: I do not press my motion.

The motion was, by leave of the Assembly, withdrawn.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I move:

"That the provision for one Educational Commissioner under the sub-head 'Department of Education and Health' be omitted."

Sir, as you know the Education Department is a nation-building department. Education moulds the character and helps to maintain life, and I think every one of us will have the sincerest sympathy with this Department. I may thus suggest to the Honourable the Finance Member that he will try to see that the Delhi University, which is one of the most desirable Universities, though she is the youngest one, may not suffer in any way. She may be maintained; she may be supported

Mr. President: We have had that discussion. I thought the Honourable Member was going to raise some other subject.

Dr. Nand Lal: I am not referring specifically to that subject; I am going to make a submission before the Finance Member that he may try to protect these institutions. If he wants money, I shall give him cuts from other sources.

Mr. President: We have passed from that point. The money which Government are prepared to give for Education, was discussed on the previous amendment. The House is my witness that no one rose to continue that discussion. It is now closed.

Dr. Nand Lal: Thank you, Sir, I am always in favour of expedition of work. I want that all these colleges in Delhi may be supported and also the schools, that generous contributions may be made to them, and that in any case education here may not suffer in any way. But Sir

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Mr. President: The Honourable Member is not paying attention to my ruling. He must discuss his motion to reduce the vote for the Educational Commissioner's Department.

Dr. Nand Lal: I have attained the point which I have wanted to achieve.

Now, Sir, while I am in favour of the Educational Department, I am not in favour of any kind of extravagance. Now, when I go into the matter, what do I find? On page 43 under the heading "Educational Commissioner", I find a salary of Rs. 2,500 to Rs. 3,000 or Rs. 35,470 allotted for the purposes of this officer. To my mind it does not seem to be at all necessary under the present state of affairs when Education is a transferred subject.

Mr. President: I did not quite appreciate what the Honourable Member was moving. The Educational Commissioner is a non-votable item.

Dr. Nand Lal: The Educational Commissioner is a non-votable item?

Mr. President: Yes.

Mr. R. A. Spence (Bombay: European): It is printed in italics on page 43.

Dr. Nand Lal: My motion is No. 289, and the next one, namely, 290 is also mine.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): May I, Sir, know if the Chair has ruled that all speeches should be confined to five minutes. Dr. Nand Lal has exceeded that time.

Mr. President: In any case the Honourable Member must move something else.

Dr. Nand Lal: May I inform Mr. Hussanally that I am as obedient to the order of the Chair as he is; he should not intervene. I may be permitted to say that I am as amenable to discipline as he is. I am not satisfied, Sir, that this is a non-votable item.

Mr. President: I am quite satisfied that it is.

Dr. Nand Lal: If you say so, Sir, then I must accept it and resume my seat.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I move the motion that stands in my name, namely, "That the provision for Educational Commissioner under the sub-head 'Department of Education and Health' (page 43) be reduced by Rs. 40,000."

Mr. President: That also, I am afraid, is out of order because the entire vote for the Educational Commissioner is Rs. 54,210, of which the votable portion is only Rs. 10,740.

Mr. J. Chaudhuri: I move this for the purpose of eliciting information. As I have often stated, the total non-votable item might come up to that, but the salary of the Educational Commissioner comes up to Rs. 32,270, which is non-votable; the Curator, Bureau of Education, Rs. 10,140, is votable, and several other items which come up to Rs. 1,14,000.

Mr. President: The Honourable Member need not repeat this sum. I have already informed him that his motion is out of order in its present form.

Mr. J. Chaudhuri: Might I modify it and say that the amount be reduced by one rupee. I raise a question of principle and nothing more, and I want information from the Honourable Member in charge of Education. I moved a similar motion last year and I left it to the Department and also for the consideration of the Retrenchment Committee. On page 130 of the Retrenchment Committee's Report they take precisely the same view that we did last year. They say:

"We do not consider that there is any justification for the retention of the Educational Commissioner, the Bureau of Education and the Central Advisory Board, costing about Rs. 1,00,000 or for the retention of the Department as a separate entity."

The Honourable Mr. A. C. Chatterjee: May I interrupt at this stage in the interests of the economy of time. I expect that my Honourable friend, Mr. Chaudhuri, is raising the question whether these officers ought to be kept on in spite of the recommendations of the Retrenchment Committee. I wish to point out to him that my Honourable friend, the Finance Member has already taken credit for a very large sum in order that the recommendations of the Retrenchment Committee might be given effect to, so far as possible, and the question of the retention of all these officers and offices is at present under consideration, and I do not think any useful purpose will be served by a discussion at the present moment.

Mr. J. Chaudhuri: Sir, I do not press my motion but I may offer some suggestions with regard to that. We do not want that the useful work that is being done in this Department should be discontinued, but we only want that economy should be effected. There are, at present, two Departments, one under the Educational Secretary and another under the Educational Commissioner. The Educational Commissioner is a member of the Indian Civil Service and he might be usefully employed elsewhere. (A Voice: "He is not.") The work of the Department may be carried on by the Secretary and one Assistant Secretary. The Department collects a lot of information which is useful in the provinces. I do not wish at all that the purpose that this Department serves and the useful work that is being done by it should be discontinued, but I suggest that the two departments should be amalgamated and economy effected, and only a sufficient staff should be retained for the purpose of carrying on the work that belongs to the Central Government. Formerly, this Department looked to Education outside the Central Government, for instance, the Calcutta University, and education all over India. Those are now transferred subjects and the provinces look to their own education. But this Department should exist for this reason that they sometimes require information regarding other provinces and sometimes of the foreign Universities, and I know that the Central Government keeps up-to-date information with regard to the progress of education in other parts of the world. I do not wish that these activities should cease, but my contention is that the Department should only keep a sufficient staff and a minimum staff, through which they can carry on their work; and, as my Honourable friend has said that the matter is receiving consideration, I am prepared to withdraw my motion.

The Honourable Sir Basil Blackett: Sir, I rise in connection with the point of order that was raised just now. I think there is a certain amount of room for misunderstanding. Dr. Nand Lal's amendment No. 289 was

[Sir Basil Blackett.]

that the provision for one Educational Commissioner be omitted. That would, I submit, be clearly out of order because it is one Educational Commissioner who is non-voted, but the whole of the Rs. 1,14,000 is for the Educational Commissioner with the Government of India, that is the office.

Mr. Chaudhuri's amendment No. 291 is in order or not according as whether Educational Commissioner means the particular item only or the general sub-head.

Mr. J. Chaudhuri: Sir, I have reduced it to Re. 1. I have taken off Rs. 39,999.

Mr. President: The question is:

"That the provision for Educational Commissioner under sub-head 'Department of Education and Health' be reduced by Re. 1."

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, it seems to me rather extraordinary that the Government should take advantage of the provision that when you do not require to spend money at all the old item should not be wiped out from their Demand for Grants. The Honourable Sir Basil Blackett sits there without explaining in full and giving satisfaction to my Honourable friend Mr. Chaudhuri as to whether it is necessary at all to keep up the appointment of a member of the Indian Civil Service as Commissioner of Education. Education has become for some time past a transferred subject. We are paying Rs. 5,333, to a Minister per month in almost every province

The Honourable Mr. A. C. Chatterjee: May I rise to a point of order, Sir. May I ask whether Mr. Chaudhuri withdrew his motion or not? I thought, Sir, that he withdrew it.

Mr. K. Ahmed: Neither, Sir, has my Honourable friend, withdrawn it, nor has the leave of the House been granted; and I am perfectly right in asking again for our satisfaction on this question, whether you require the services of an Educational Commissioner at all. If you do not, is it right for you to say that the item is non-votable and therefore you must rule me out. He says "Look here, the Demand and the contents of this budget are non-votable and you cannot move your motions" and here is our President who says it is out of order to vote on the motion. My Honourable friend, Dr. Nand Lal, again, on account of an oversight, or probably his eye-sight being defective did not see the *italics* properly. However that may be, Sir, it is clear that the services of an Educational Commissioner are not necessary, and still Sir, this Government will not do anything. We have always accused the Government of spending money like this, and it seems to me this is the proper time when we may ask for an explanation to satisfy this House that this post of Educational Commissioner, on which we are spending so many thousands of rupees a year is necessary.

Mr. W. M. Hussanally: Sir, on a point of order. Can we discuss this question of the Educational Commissioner, which is a non-voted subject?

Mr. President: As I have already pointed out, the Honourable Member was out of order in attempting to move a reduction which included that particular item; but the question is open for discussion though not for a vote.

The Honourable Sir Malcolm Hailey (Home Member): Might I intervene for a moment? As I introduced the general head "General Administration" I should like to recall to the House the fact that it stood in the original demand for grants at Rs. 81,58,000. We propose to deduct from that, owing to the recommendations of the Inchcape Committee, 7½ lakhs. Might I suggest to the House that the real question at issue is whether from that general head we have now made the minimum necessary provision or not? That is really the main point at issue. Have we acted up fully to the recommendations of the Inchcape Committee and the requirements of retrenchment in this matter? If we have, the House should vote supply. As we saw yesterday, there are a large number of separate items, some of them votable, some of them non-votable, on which the House had its observations to make. I would say again that we are prepared to receive the observations of the House as regards the particular items under which we should make that retrenchment of 7½ lakhs to which we are bound. That reduction is in the voted head, but it is always possible for the House, as we know by experience to discuss other items on motions for reduction of establishment. That is to say, taking the case in point, the Educational Commissioner, himself a non-voted item, has an establishment. If the House thinks the retention of the Educational Commissioner to be unnecessary, it is always possible to point this out on a motion to reduce a clerk. So we do not really, by reason of the fact that he is non-voted, keep the question from discussion. But I wish to lay stress on this, that we are making a total retrenchment of 7½ lakhs out of a budget head of 81 lakhs. We are prepared to receive the criticisms of the House in regard to separate items. We do not in any way close a discussion because some of them are voted and others non-voted. But I suggest that the main point is, whether we have sufficiently complied with the requirements of the Retrenchment Committee, in deducting 7½ lakhs from a total of 81 lakhs.

Mr. K. Ahmed: Sir, I am nearly satisfied with the explanation that has been given by the Honourable the Home Member and I see his presence of mind is always ready to tackle a point, but it is not altogether satisfactory with regard to the point on which I wanted an explanation so that this House might have been satisfied that the Government of India, and specially the Finance Department, are not putting a thing which is not accurate.

Mr. President: The question is that the reduction be made.

The motion was negatived.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, Mr. Kamat himself, being ill, has authorised me to say that as he has been satisfied, probably for the considerations that the Honourable Sir Malcolm Hailey has just now put before us, that all that he wanted has been done, therefore this amendment* should drop out.

Sir P. S. Sivaswamy Aiyer (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, with your permission I should like to make one suggestion which might have the effect of saving a large amount of discussion, saving the time of the House and enabling it to pass on to other

* "That all votable items under the sub-head 'Educational Commissioner with the Government of India' be omitted."

[Sir P. S. Sivaswamy Aiyer.]

items. The real question is, as was pointed out by the Honourable Sir Malcolm Hailey, whether the Government have gone far enough to meet the recommendations of the Inchcape Committee. They have made a certain amount of cuts. If instead of indulging in detailed criticism, and making these nibbling proposals to reduce something from this, something from that demand, we move one of those propositions which propose a lump cut under the total demand for General Administration—proposals ranging from a reduction of 5 to 20 lakhs—if some one of these proposals is moved, then we shall have the opportunity of expressing an opinion as to whether the head General Administration can bear an additional cut, and if so, by how much. That, I think will concentrate attention upon the main issue in the case.

I believe, so far as this side of the House is concerned, a very large number are of opinion that the head of General Administration can bear a little more squeezing. I for one should think that it can stand another cut of 5 lakhs. As a matter of fact, the proposals made by the Government fall short of the proposals of the Inchcape Committee by about 13 lakhs. Therefore if we propose an additional cut of 5 lakhs, the requirements of General Administration will not be seriously interfered with and we shall not be paralysing the activities of the departments connected with General Administration. If this suggestion commends itself to my friends here, I hope that one of these propositions at page 24, Nos. 333, 334, 335 or 336 will be moved. I am sorry that Sir Deva Prasad Sarvadhikary is not able to be present this morning, but he was anxious that his proposition, No. 336, should be moved. If my friend, Mr. Samarth, or my friend, Mr. Ginwala, will move

Dr. H. S. Gour: You move it; we will accept it.

Sir P. S. Sivaswamy Aiyer: If you will permit me to do so, Sir, I should like to move:

“That the demand under head ‘General Administration’ (page 36), be reduced by Rs. 5 lakhs.”

This is the minimum amount of the cuts proposed under the head General Administration, in these Resolutions of which notice has been given—Resolutions Nos. 333 to 336. Among these proposals No. 336 is most moderate. I think from a practical point of view there is advantage in moving this proposal instead of many of these nibbling Resolutions.

Mr. President: But I have got to protect the rights of the nibblers. I should like to be able to assume with the Honourable Member that those Honourable Members are going to withdraw their motions in favour of his. (Cries of ‘Yes.’)

Mr. T. V. Seshagiri Ayyar: I may mention one point; there are departments with regard to which we want information; we do not want to move reductions by dribbles—that is not what we want, and we will no doubt accept the motion as regards the Rs. 5 lakhs. There are other departments as regards the expenditure on which we want information; we cannot raise such discussion if we are to have a general discussion only on the motion for reduction by Rs. 5 lakhs. These departments will have to be brought under the scrutiny of this House and we shall have to ask questions. We

are quite willing to accept the suggestion made by my Honourable friend that as regards the general reduction there should be a reduction of Rs. 5 lakhs, but some of the departments will have to come under the scrutiny of the House; that cannot be avoided—for example, the Army.

Mr. President: May I take it that that is the general sense of the House that we should have a reduction of say Re. 1 or Rs. 100 on each department on which discussion is desired, and in the end Sir Sivaswamy Aiyer will move a reduction of Rs. 5 lakhs? (Cries of ‘Yes.’)

Lieutenant-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): I rise to a point of order: I wish to talk on one Department in this amendment and I desire to know whether I shall be given an opportunity to do so.

Mr. President: Which department?

Lieutenant-Colonel H. A. J. Gidney: On the Medical Department. Sir, I wish to take advantage of this opportunity to ask the Honourable Member in charge of the Civil Medical Department certain information on various subjects. Sir, in my speech on the general discussion of the budget last year, I made certain general observations suggesting certain changes; one of the chief points I raised was that owing to the frequent overlapping, interchanging and dove-tailing of the functions of the Directors of both the Civil and Military Medical Departments, I considered that the appointment of one Director of the Medical Services in India, both civil and military, of course with an adequate staff, would be ample. Sir, from the Detailed Estimates we know what is the cost of the upkeep of the office of Director-General, Indian Medical Service; I am, however, unable to obtain a similar knowledge from the figures supplied to us in the Army Estimates as to the cost of the upkeep of the office of the Director, Medical Services in India, but I think I am right in saying that it stands at a much higher figure than the upkeep of the Director General, Indian Medical Service. We have here, Sir, two Directors with two complete and separate offices controlling one department in India, embracing as they do the medical needs, both civil and military of this country; each one necessitating a lavish expenditure of money. I submit that one Director with an adequate staff would be enough. Here I submit, Sir, is room for great economy in both civil and military Budgets. I regret to notice that in the Retrenchment Committee Report no remarks were made about this point. Certain retrenchments are suggested, such as the abolition of the appointment of Public Health Commissioner and the reduction of the clerical staff of office of the Director General, Indian Medical Service and other matters—making a total retrenchment in this department of something like Rs. 1,10,000. I find it very difficult to avoid referring to the military medical department; I am afraid I must do so. If one refers to the Retrenchment Committee Report on the expenditure of the military medical department it will be noticed that a total cut of over Rs. 50 lakhs is recommended. I consider that the time has come when these two departments or Directorates should be made into one. With such overlapping of functions and with such duplication of labour, I consider it is a waste of money to administer the medical needs of India from these two separate departments; each one costing such a large sum. I therefore put it for the serious consideration of Government as to whether further economies could not be effected on the lines indicated here. This is the first subject to which I wished to refer.

[Lieut.-Colonel H. A. J. Gidney.]

The second subject which I wish to refer is one which I am afraid the Honourable Member in charge of this portfolio will say that I am poaching on provincial preserves but I shall risk it because I feel I am treading on safe or already beaten ground. I refer to the Registration of Nurses in India. The various Provincial Councils who have been approached on this matter declare it to be an all-India question which can be dealt with by the Government of India only. Accordingly I approached the Government of India on the same matter and was told by the Honourable Member in charge that it was a purely provincial matter to be dealt with by them and not by the Government of India. I am therefore puzzled by the question of responsibility and I therefore ask for the indulgence of the House while I again refer to this matter. I would ask this House as also the Honourable Member in charge of this department to bear with me whilst I refer to the details in the training of nurses in India. We have in India various medical institutions giving a nurse's training to a large body of ladies, both Indian and of the domiciled community. It seems hardly necessary for me to refer to the very important place a nurse occupies in the treatment of the sick. Here in India we have a noble body of women who are given three or four years' training as nurses, who are allowed to practise their profession in this country, who are given diplomas as fully trained nurses, but who are denied the rights which are to-day possessed and enjoyed by even compounders so far as registration in India is concerned. These nurses are able to earn a livelihood in this country, but if they go to any other country, say England, they are denied recognition as trained nurses and in some cases the practice of their profession, because the Government of India has up to date refused to recognise this body of women by registering them under an Act. It is not so hard for them here, but when they elect to go to any other country they are denied the recognition of their profession and are looked upon as quacks. They are not so much affected now as they will be from July of this year because a recent communication has been received from the Secretary of the General Nursing Council of England and Wales to the effect that those nurses who wish to register under the Nurses Registration Act of England must do so before July this year. Otherwise they will have to subject themselves to certain examinations. Now, Sir, I consider this is not fair to the nurses in this country. The only province in India that has so far effected registration is Burma, a province, which my Honourable friend, Mr. Ginwala, complains, is being neglected, but which has led the way to other provinces in this respect and is worthy of emulation. I submit, Sir, that the Government of India must not and cannot shirk their responsibility in this important matter. I am not satisfied, nor are the nurses in India satisfied, with the Provincial Governments shirking and transferring their duties to the Central Government and the Central Government when approached doing likewise to the Provincial Governments. Surely I am not asking too much of the Central Government to give effect to this legislation, *viz.*, "An All-India Nurses Registration Act". The Nurses Association in England refuses to recognise any Provincial Act in India and is prepared to recognise an all-India Act only. Will the Honourable Member in charge of Education inform me if he will be able to introduce an All-India Nursing Registration Act before next July. If he cannot do so by then, will he at least give me an assurance that he will be kind enough to ask the Director General, Indian Medical Service, to write to the Secretary Nursing Association of England and Wales, and assure him

12 Noon.

that he will move in the matter and ask that the time limit for Indian trained nurses desirous of registering as such in England be extended to July 1924. I should be grateful if the Honourable Member would do this.

Now, Sir, the next subject I wish to talk on is also a matter which I fear encroaches on the domains of the provinces. It refers to a body of medical men in whom I am naturally very much interested, I mean the Military Assistant Surgeons. I do not mean the Military Assistant Surgeons who are employed in the Army. Their grievances will be discussed by me in a subsequent motion. I refer to those who are employed in the Civil Medical Service in the various provinces.

The Honourable Mr. A. C. Chatterjee: May I ask, Sir, if the officers under the Civil Medical Departments in the various provinces come under this head? They are not employed under the Government of India.

Mr. President: Does the Honourable Member mean in this case they are under the direction and control of the Local Governments?

The Honourable Mr. A. C. Chatterjee: Yes, Sir.

Mr. President: In that case, I think, the Honourable Member is out of order.

Lieutenant-Colonel H. A. J. Gidney: I wish to accept your ruling on that matter, Sir. But I beg to differ from the Honourable Member in charge of this portfolio in so far that I am not specifically or exclusively referring to those Military Assistant Surgeons who are civilly employed in the various provinces, and that I am also referring to those Military Assistant Surgeons in civil employ—(I submit, Sir, with all due respect to the Honourable the Education Member),—for whom the Director General, Indian Medical Service, is directly responsible.

Dr. Nand Lal: When you accept the ruling of the Chair, you must accept the assertion of the Honourable the Education Member.

Lieutenant-Colonel H. A. J. Gidney: With all respect to the Chair and to the Honourable Member in charge, I submit, the Director General, Indian Medical Service, is directly responsible for the Indian Medical Department, in fact it is impossible to dissociate him from the working of that department in whatever way the Military Assistant Surgeons are employed, and with your permission, Sir, I wish to push that point if I am in order.

The Honourable Mr. A. C. Chatterjee: So far as those officers who are employed directly under the Government of India, I have no objection to the Honourable Member airing their grievances, but I do not think he will be in order to ventilate the grievances of those Military Assistant Surgeons who are employed under Provincial Governments.

Lieutenant-Colonel H. A. J. Gidney: I beg to disagree even here with the Honourable Member. I submit, Sir, that since the Military Assistant Surgeons belong to a Department for which the Director General, Indian Medical Service, is directly responsible and since this comes under general discussion to-day I believe I am in order when I referred to those Military

[Lieut.-Colonel H. A. J. Gidney.]

Assistant Surgeons who are in civil employ. But, Sir, all that I desire is to obtain from the Honourable Member in charge of this Department an assurance that he will give this matter his sympathetic consideration. We have here the Director of Indian Medical Service as the head of a department which is known as the Indian Medical Department. Those Members who are employed outside the army,—they may be employed by the Central Research Institute or they may be employed in other civil capacities—are under the control of the Director General, Indian Medical Service, and it is in regard to these people that I am speaking. These officers are enlisted in the service from the middle class of the domiciled community. They undergo training for 4 or now for 5 years in well recognised medical institutions and are trained by the same class of professors—Indian Medical Service Officers—who train the Civil Assistant Surgeons. They receive a diploma of equal licensing value to any medical degree in India. If they are not graduates,—I am not going to draw comparisons to their disfavour, because I opine it is not the degree that makes the man but it is the man who makes the degree,—these men are now as good as any of the graduates of the Indian Medical Colleges. Some of these Assistant Surgeons, generally the more brilliant and experienced men, are appointed as Civil Surgeons in various provinces and so have come under Provincial control, Medicine being a transferred subject. Now, Sir, these Assistant Surgeons perform the same duties as do their Civil Assistant Surgeon colleagues who are similarly employed but strange to relate are in some provinces denied the same pay. How often have I not heard Honourable Members in this House declare that if an Indian does the same work as an Englishman he should be given the same pay. I ask this House to apply the same principle to these Military Assistant Surgeons of the domiciled community who are doing the same kind of work as their civil Indian colleagues but who are being given a lower rate of pay. If the Honourable Member in charge of this Department will give me an assurance that he will be kind enough to look into the matter and remedy what is really a crying need, I am sure he will earn the gratitude of the entire department, a department that has done much for India in the past and that is still doing much good for the country.

Sir, the last matter that I wish to talk on is the Senior Women's Medical Service. I believe that, though it is not quite a Government department, it is largely subsidized by Government, and I therefore think it comes within the purview of this general discussion.

Mr. R. A. Spence: May I know what this Senior Women's Medical Service is?

Lieutenant-Colonel H. A. J. Gidney: It is the opposite of the Junior Women's Service. It is really a quasi-official department which is controlled by a lady Chief Medical Officer. This service gets a large grant from Government and also depends for its maintenance on subscriptions from various Indian sources. Sir, my criticisms on this department will not be destructive in character, because the work that is done by this noble body of lady doctors is one that commands my unstinted admiration and praise as also the gratitude of India. But I have a few criticisms to make as to its constitution. Here is a service, Sir, that is entirely financed by Indian subscriptions including one annually from the Government of India. Here is a service, Sir, that is entirely devoted to giving female medical relief in India. Here is a service which I consider *par excellence*

as one which should be recruited entirely in India and not as it is to-day a service for such large employment of English lady doctors recruited in England. I do not wish to decry the splendid services of these English lady doctors; but I do think that the time has arrived when a serious move should be made to recruit this service entirely in India. It is all moonshine to tell me that we have not got the right type of Indian and Anglo-Indian lady doctors in India. The Colleges in India to-day are getting full of Indian and Anglo-Indian domiciled women who have taken to the study of medicine. And I consider that the time has come for the Director of this service to pay greater attention to recruitment for this service in India and to cease recruiting so largely from England. India is quite capable to-day of supplying its own medical needs, both army and civil, both male and female, and I consider that further recruitment in this service should be confined entirely to India and India only.

The Honourable Mr. A. C. Chatterjee: Sir, the Honourable Member has raised several questions. He has discussed whether there should be one Director for all the Medical Services in India or whether there should be a Director General of the Indian Medical Service and a Director of Medical Services. I think my Honourable friend, Mr. Burdon, would be able to enlighten him on this point, and I will leave it to Mr. Burdon to answer Colonel Gidney in regard to this particular matter. Then, the Honourable gentleman passed on to the question of the abolition of the Public Health Commissioner. That matter is also under the consideration of the Government of India and it is not possible for me to say yet what would be the final decision. The third point which Colonel Gidney has referred to is the question of the registration of nurses. I think I indicated to the Honourable gentleman, in answer to a question some time ago, that this was a provincial transferred question, and really the Government of India could not interfere unless he could bring it within the Devolution Rules as a central subject. If the Honourable gentleman, to whom I shall give every opportunity of doing so, can convince me that this is a central subject, I shall be quite willing to go further into the matter. Then, Sir, he passed on to the question of the pay of Military Assistant Surgeons. So far as I could understand, he was comparing the pay which Military Assistant Surgeons received in the provinces with the pay of Civil Assistant Surgeons in the provinces. That, again, Sir, is a purely provincial subject, and I really do not feel that I am competent to answer on behalf of the provincial Governments. Then, Sir, he has spoken about the Women's Medical Service. This is a service which is controlled by a private Institution, to which it is true Government give certain aids. I shall bring to the notice of that Institution the remarks of my Honourable friend.

Lieutenant-Colonel H. A. J. Gidney: Sir, I thank the Honourable Member for what he has just said, and beg to ask that Government will kindly interest themselves and inquire into the matter particularly so far as Assistant Surgeons in the United Provinces are concerned.

Mr. E. Burdon (Army Secretary): Sir, I think my Honourable and gallant friend, Colonel Gidney, raised the question whether it would not be feasible to amalgamate the appointments of Director of Medical Services and Director General of the Indian Medical Service. Well, I should like to explain that this point was, so far as I know, specifically before Lord Inchcape's Retrenchment Committee. It was raised by certain of the questions in the Questionnaire. And it is clear that the Retrenchment Committee found it impossible to pursue the idea of securing an economy by

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the means which my Honourable friend has indicated. Speaking on behalf of the Army Department, I can say that, from our point of view, it would be quite impracticable to allow the Director, Medical Services, to sacrifice the amount of time which would be required if he were to discharge satisfactorily the duties of Director General of the Indian Medical Service in addition to those which he is already required to carry out. The Director of Medical Services is already very fully employed not only in supervising the Medical Services of the Army but in constructive work and research work which aim at the maintenance of the highest possible standard of health amongst the troops, both British and Indian. There is one other point I should like to suggest to the House, namely, that it would be entirely inappropriate for the Director of Medical Services, primarily a military officer serving under the orders of the Commander-in-Chief, to be concerned with the administration of the Civil Medical Services and with general questions of public health. I think the House will recognise that it would be quite unsuitable for the Director of Medical Services, an officer, as I say, directly under the orders of His Excellency the Commander-in-Chief, to correspond with Provincial Governments on general questions of that kind.

Finally, the Director of Medical Services has hitherto nearly always been drawn from the Royal Army Medical Corps. I do not say that this arrangement will necessarily hold good for ever. It is possible that we may depart from it and recommendations to that effect, based upon certain proposals made by the Esher Committee, are actually under consideration. At the same time, it is certain that the Director of Medical Services will still from time to time be an officer of the Royal Army Medical Corps—an officer who need not necessarily have any knowledge of the problems of India except those which affect troops employed in India, and troops are employed under rather specialised conditions in India. That, I think, is a final and very convincing reason why it would be difficult, if not entirely impracticable, to amalgamate the two appointments which have been mentioned.

Dr. Nand Lal: Sir, I move:

"That the votable portion of the demand under sub-head 'Finance Department, Pay of officers,' be reduced by Rs. 100."

Sir, I want to invite the attention of the House specially to one point and that point alone has prompted me to offer this amendment. You will be pleased to see on page 130 of the Report of the Indian Retrenchment Committee that the expenditure on the Finance Department in 1913-14 was Rs. 4,10,200; in 1921-22, in the shape of revised estimates, it rose to Rs. 6,74,500; and again it rose in 1922-23, in the form of budget estimates to Rs. 6,91,200. Now, the recommendation which has been made and which is embodied in this Report, is that "this Department has already effected a reduction of Rs. 3,500 to meet the cut made by the Legislative Assembly and of Rs. 57,600 by the abolition of a post of Joint Secretary and by the amalgamation of two branches and by other economies, or in all Rs. 92,600,—allowing for further reductions in the number of peons which it may be possible to make." Here I pause for a moment and invite the Honourable the Finance Member kindly to give serious consideration to the suggestion which I am going to offer before

this House, that these peons may not be dismissed and that instead of these peons the post of some other officer, whose salary may be sufficient to cover the salaries of a number of these poor clerks and peons, should be abolished. I, with due deference, disagree with this particular recommendation of the learned Committee if it really suggests the dismissal of peons. Had I the time, I would have tried to point out that many thousands of rupees more could be retrenched and I cannot see any reason why these poor peons are going to be victimised. With this brief suggestion, I submit that the Honourable the Finance Member will kindly see his way to save these poor men, namely, the peons.

The Honourable Sir Basil Blackett: Sir, the difficulties of an economist are great. Dr. Nand Lal has objected to the effecting of economy by the dismissal of peons. He suggests that it might be effected in other ways. But I would ask, "What is the purpose for which the House votes Government money to spend upon the Finance Department?" It is that the Finance Department may do a certain amount of work. For that purpose it requires a certain staff and that staff requires a certain number of, among other persons, peons. If the staff which is employed in doing a certain amount of work can do with less peons, is that a matter to which we should object? I do not think it is really necessary very seriously to deal with this proposal. Peons are not dismissed for the amusement of turning them out of work and peons are not employed simply for the purpose of their getting salaries. They are employed if they are needed and they are not employed if they are not needed. Surely the only criterion that we should use there is, what is the minimum number with which we can get through a certain amount of work.

Mr. K. Ahmed: I do not think, Sir, this question has been sufficiently understood. The amendment is:

"That the votable portion of the demand under sub-head 'Finance Department, Pay of Officers,' be reduced by Rs. 100."

I find they are, Sir, on page 44 all in *italics*. We cannot touch them because they are untouchable. It is not the sense of this House to take away their peons but to seal them with the robe of red-tapeism. The question is: not whether Rs. 100 is not actually Rs. 99 plus Re. 1 but it is the expression of this House that they disapprove of the intelligence that has been applied hitherto as far as the Finance Department is concerned and therefore Rs. 100 is to be taken away from the officers' pay—not of untouchables but of touchables. They have got some officers in their office that can be touched. If Rs. 100 is taken away from their salary just to show our disapproval of the action of the intelligent members of untouchables, they will be more intelligent and will try their utmost to realise the situation as they thought they would be more independent without peons. I suppose then our purpose will be served, and that is why, Sir, we want that Rs. 100 should be reduced.

Mr. President: The question is that that reduction* be made. The motion was negatived.

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): I think the Honourable Sir Sivaswamy Aiyar is going to move a general reduction. I shall speak on that reduction.

* "That the votable portion of the demand under sub-head Finance Department, Pay of Officers (page 44) be reduced by Rs. 100."

Mr. N. M. Joshi (Nominated: Labour Interests): May I move my small amendment of reduction of Re. 1 in the Industries Department, of which I said yesterday that I had put in the word "Home" for "Industries" by mistake? It is No. 267. In moving my motion,* Sir, I want to draw the attention of the House to one of the recommendations of the Inchcape Committee. It is given on page 132. The Inchcape Committee say as follows regarding the Labour Bureau:

"We consider that the work done by the Industrial Intelligence Section and the Labour Bureau could be discontinued without serious inconvenience. It is represented that a certain amount of labour and other legislation is pending in the immediate future, but this could, in our opinion, be more appropriately arranged for by placing an officer temporarily on special duty than by making permanent additions to the establishment."

Thus, Sir, the Retrenchment Committee suggest to the Government of India to abolish the Labour Bureau of the Government of India. Sir, the Retrenchment Committee consisted of eminent men but that Committee had one defect, namely, it consisted mostly of business people and as business people

Mr. R. A. Spence: Is that a defect?

Mr. N. M. Joshi: . . . there was not much love lost between themselves and labour as well as between themselves and the Department of Government which concerns itself with labour. Therefore, the suggestion that they have made is natural. But at the same time the House must remember that it does not consist mostly of business people and it ought not to consist mostly of business people. The House represents the country and as such the House has also a duty to represent labour interests. Sir, at present the Government of India is not spending a large sum of money on its Labour Bureau. There are only two large appointments that I see here, a Controller of Labour whose salary is Rs. 1,500 and an Adviser to the Labour Bureau on a much smaller salary. Sir, the gentleman who occupies the post of Controller of Labour Bureau is known to this House. The House knows very well my friend Mr. Clow. They have seen his ability and I can assure the House that his sympathies for the interests of labour are also as well known. Sir, it is mistake that the Government of India should think of abolishing this office if they are thinking of doing so. But I would like the House to express its opinion against its abolition if Government thinks of abolishing that office. Questions regarding labour will arise every now and then. You are not going to get rid of the labour problem, especially so as the House wants the country to develop industrially very fast. If the country develops very fast industrially the industrial development will bring in its train certain evils which you cannot avoid and which the world has not avoided. Therefore, it will be a great mistake if the Government of India ever think of abolishing its Labour Bureau. It is absolutely necessary that the conditions of life and work of labour should be studied by the Government of India.

Rao Bahadur T. Rangachariar: (Madras City: Non-Muhammadan Urban): And the people.

* "That the provision for Pay of establishment under sub-head Industries Department be reduced by Re. 1."

Mr. N. M. Joshi: Sir, there is another appointment in that Bureau—the Adviser to Labour Bureau. Unfortunately I do not see any amount placed against that head in this year's Budget. I do not know whether the Government of India even before the Retrenchment Committee was appointed, have decided to abolish that post, and if the Government of India have done it, it is a great pity and I want the House to tell the Government of India that they have made a great mistake in abolishing that post. Sir, that post was held by a lady, Miss Broughton, whose sympathies towards labour were also very great. She had done very valuable work in studying the conditions of life and work of the women workers in India, and, Sir, I was hoping that the Government of India would very soon undertake legislation prohibiting the employment of women and providing benefits for women working in factories. As a matter of fact I have given notice of a Resolution to that effect, but unfortunately if the Government of India decide to abolish that post, there is hardly much hope for me. I therefore feel that even if the Government had decided to abolish that post they will reconsider that decision and restore that post. It is absolutely necessary that the country should not neglect the labour problem. If they neglect it to-day I think the country will have to be sorry afterwards. I therefore move my amendment that the amount for the Industries Department be reduced by Re. 1.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): While I have my differences with Mr. Joshi on many points I am glad to say that on this occasion I endorse every word that he has said with regard to the Labour Bureau. It is already in the air, perhaps encouraged by the reports appearing in irresponsible newspapers, that this House as it does not consist properly of representatives of labour does not do justice to the requirements of the labour population. I do not for a moment admit that we are guilty in that direction. I hold that this House in spite of the fact that we have no direct labour representation in the Assembly itself has gone a great way to legislate for the benefit of the labour in this country. But I do hold that the step that we are about to take if we were to recommend to Government that the recommendation of the Retrenchment Committee in this direction should be accepted—that step will land us in considerable difficulties with labour. We shall be rightly misunderstood by the labour population of this country. We shall be rightly told that we neglect the demand that labour has on us for considering its requirements in this country. I hold that there is no reason whatsoever to do away with this Department which has shown that it is capable of doing excellent work. All of us who had the occasion to hear Mr. Clow and to know something of his work connected with the Labour Bureau will bear testimony to the usefulness of his contribution to the work of the Industries Department. We are keen and rightly keen on seeing this country placed on the path of rapid industrial development, but we should be making a mistake if we blinded ourselves to the evils that will inevitably accompany the rapid industrial development of this country. Therefore, a Bureau like the Labour Bureau is extremely necessary for enabling us to minimise those evils, to avoid the mistakes which have been made in other parts of the world and to avoid the dangers which have accompanied industrial development in other countries. I hope therefore that the Government will not in this respect countenance the recommendation made by the Inchcape Committee but will continue to allow the Labour Bureau to carry on its useful activities.

Rao Bahadur T. Rangachariar: May I make a suggestion? I fail to see why this Labour Bureau should not be amalgamated with the Central Bureau of Information. (Laughter). I see some Honourable Member laughing at it, but I do think that there is a lot in co-ordination. Instead of each Department having its own Bureau I think that if we have a Central Bureau of Information in which all Departments can come together it will conduce to economy and it will conduce to speedy disposal of work. I do think that instead of abolishing the Labour Bureau steps should be taken to amalgamate it with the Central Bureau of Information.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I do not think that Mr. Rangachariar has quite appreciated the work which the Labour Bureau does. The Labour Bureau exists for the purpose of collecting, collating and studying information regarding labour questions throughout India. We collect information regarding such matters as strikes, the reasons for strikes, how they were dealt with, the working of the Factory Act and so on. This information is continuously being collected and is continuously being studied and I think that every one in this House will recognise that in these latter days it is very necessary that the process should be carried on. I am, however, in a difficulty in dealing with Mr. Joshi's motion, for as the House knows, the whole of the future of the Departments of the Government of India and of the staff to be attached to the Departments as reorganised is now under consideration. All I can say at the present moment is that we realise the importance of the issues raised by my Honourable friend Mr. Joshi and that we will take those issues into very serious consideration when we finally rearrange these Departments.

Mr. N. M. Joshi: I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Statutory authority for maintenance of Standing Army.

Mr. P. P. Ginwala (Burma: Non-European): I move:

"That the demand under sub-head 'Army Department' be reduced by Rs. 100."

I may remind the House that last year a similar reduction was moved and carried by the House by a very large majority in which you will find that practically every non-official, European or Indian, Member of this House with the exception of three Indian non-official Members voted in favour of the motion for reduction. That motion was carried mainly on two grounds, first of all, on the ground of excessive military expenditure. I believe my Honourable friend Sir Montagu Webb made a very powerful speech condemning the extravagance of the military expenditure on that occasion. The other ground was that this House was unwilling to vote any money to the Government unless the military expenditure was made votable. Since then the position has developed a bit against the Government if I may so put it, though these two complaints still remain to a very large extent. Last September I put a question to the Army Department as to what statutory authority existed for the maintenance of an army in India in times of peace. A reply was given to me on the 15th January this year to that question in which it was stated that there were certain statutes upon which they relied. I am satisfied that by a *bona fide* mistake they had forgotten to mention that all those statutes had been repealed. I repeated the question on a subsequent date and I got a definite reply from the Government that there was no

statutory authority for the maintenance of an army in India. Questioned further as to what other authority they had, they said they depended upon the inherent powers of the Crown for the maintenance of an army. I venture to submit to this House that this is not an academic question as some Honourable Members may seem to think. It is a very serious question to my mind. This inherent power of the Crown so far as the constitutional law of England is concerned is for practical purposes a myth. If anybody tried to suggest in Great Britain that under the inherent power of the Crown it was possible for the Crown to maintain an army, he would run the risk of being beheaded. The Crown had that power at one time but that power has been taken away long since and for two hundred years or more at any rate in England this inherent power of the Crown has never been exercised for the maintenance of an Army. But the argument may be advanced by the Government, as no doubt it will be advanced, that in England by statutory enactments that power has been curtailed but that the Crown may still exercise the power outside Great Britain. I deny that there is any such authority for that proposition. I see the Honourable the Law Member has got some books on constitutional law from which he will no doubt read later on but I do not think I shall trouble the House with reading any authority on that subject. I shall be satisfied if the Honourable the Law Member is able to convince the House that in any Colony the Crown has attempted to maintain a Standing Army at the expense of the colony,—which is the point—under the inherent powers of the Crown. There would have been a revolt in the Colonies if the Crown had attempted to do that. The Crown may have maintained in the past an Army under the legal authority of an Act of Parliament in the colonies for garrisoning the Colonies but it was Parliament who voted the money. They never attempted at any time to maintain a Standing Army in any of the Colonies for which the Colonies themselves paid. If the Honourable the Law Member attempts to meet this objection he must bear these two things in mind, that the Crown maintained an Army under this inherent power in the Colonies and that the Colonies were made to pay for the Army. Now even looking at the past history of legislation in this country, you would find that the Crown never attempted to do that even in India. The Army was maintained under an Act of Parliament by the Crown in India so far at any rate as the East India Company was concerned and so far as that army was transferred by the East India Company to the Crown and an express provision had to be made in the Government of India Act, 1858, creating a charge upon the revenues of India in respect of the Army that was then transferred. But even if that did apply, apart from the fact that that has been repealed only to the extent to which the army could be maintained by the East India Company, it will not apply to any extension of the Army or increase in the strength of the Army. Anyhow that provision has been repealed. The Government of India Act, 1858, especially the provisions of that Act relating to this have been expressly repealed and in fact the Government have admitted that there is no statutory authority. So I do not think it is necessary for me to labour that point.

Now, I maintain, Sir, that the Government of India does not do itself any credit by maintaining an army in this fashion. It helps itself to the revenues of India by making military expenditure non-votable but it goes further. It establishes an army wholly without any legal authority. It is an illegal position, and it will be much truer to call this despotism, which

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is sometimes described as a benevolent despotism, a military despotism from the constitutional point of view. I do not mean it in any other sense. When they have got no authority to maintain the Army, they do maintain an Army and they turn to the revenues of India for the purpose of paying an Army illegally maintained by them. Now, take the logical consequence of this maintenance of the Army in India with regard to the constitution of England itself. It simply means this that the Crown can maintain a very large Army in India, if it chose, which it can employ anywhere else, even against the British people themselves. It is repugnant to British notions altogether that the Crown should have either direct or indirect power to maintain a Standing Army without the express authority of Parliament. I am not raising any technical objections whatsoever, I may assure the House. But what I suggest to the Government of India is this, that instead of taking their stand on such shadowy right as the inherent power of the Crown, it would be doing the right thing not only from its point of view, but of every element in and outside this House if it took steps to regularise this position. It can do it in two different ways. Last year we claimed that it was in the discretion of the Governor General to treat military expenditure as votable, if he liked. The Government were advised by their Law Officers to the contrary and we see what good use they have made of that advice. Many items which were formerly votable have now become non-votable

The Honourable Sir Malcolm Hailey: And vice versa.

Mr. P. P. Ginwala: True, Sir, but the process has begun and I do not know where it will stop. I do not say that what they are doing is illegal. But I would point out to the House that there is a very serious risk of the scope of non-votable items being extended, if we do not safeguard ourselves. Secondly, they have got the usual method which they have in their own country to have a statute passed by this Assembly every year authorising them to maintain the Army at a particular strength; that would legalise the whole situation. I am willing to believe they will not easily adopt that course, because they unnecessarily suppose that we shall not be willing to allow them to maintain the Army at the strength at which they wish to maintain it. The sooner they disabuse themselves of this, the better it would be for their relations with this House. What we want them to do is to lay their cards on the table properly, and I have no hesitation in saying that this House would do everything that they reasonably require for the maintenance of an Army for the defence of India. I do not wish to take too much of the time of the House by dwelling too long on the constitutional aspect of the question. I will put it to the Government merely from the practical point of view. They will not be able to convince anybody, even if the Law Member cited hundred authorities, that such a thing as the inherent power of the Crown exists. The man in the street will not be able to follow that at all, and it is his money that you are spending. You have got to satisfy him that what you are doing is legal, that it is right and that it is based on some authority. You may cite, as I say, hundreds of books, but that will not carry the slightest conviction. What would convince the people of this country of your *bona fides* in this respect is to come boldly to this House every year asking for an Army Act or to make the Military expenditure votable. Sir, I move my amendment.

Mr. President: Amendment moved:

"That the demand under sub-head 'Army Department' be reduced by Rs. 100."

If I allow the Honourable Member to move and the debate subsequently to proceed on the lines of the constitutional argument which he has presented, I think I should add that I do not want thereby a precedent to be created. On the whole I think it would have been better to raise a large issue like this on the motion that the Finance Bill be considered rather than on the Army vote, but as it is technically in order, I have accepted it, though with that warning.

Sir Montagu Webb (Bombay: European): Sir, I spoke last year in support of Mr. Ginwala's motion to reduce the Army expenditure, which I considered was a danger, and a grave danger to the finances of this country

Mr. President: Is the Honourable Member going to discuss the issue raised?

Sir Montagu Webb: No, Sir.

Mr. President: Then for the purposes of orderly debate, I think we will exhaust that first.

Lieut.-Colonel H. A. J. Gidney: Sir, I do not intend to emulate my Honourable friend, Mr. Ginwala, in questioning the constitution or the right of the Government to maintain an Army in India. I desire to confine my remarks to the military medical department of the Army.

Mr. President: Perhaps the Honourable Member did not hear what I said to Sir Montagu Webb. I think we had better exhaust the subject raised by Mr. Ginwala's speech, and if other Honourable Members do not wish to speak on that now I shall call upon the Law Member.

Dr. H. S. Gour: Sir I wish to contribute a few words to the constitutional question raised by the Honourable Mover of this amendment. Honourable Members will know that under constitutional law the Sovereign was at one time ideally the centre of all power, but as the constitution developed, sovereignty became divisible and sovereign rights were gradually transferred to the people. That is the genesis of the British Parliament. The sovereign rights have been practically all transferred to the British Parliament. Therefore though the King of England, remains the fountain head of honour and perhaps of mercy, all the constitutional power of the King of England is transferred to and vested in the British Parliament. That is also the position as regards the Colonies. The sovereign power has been transferred by the various Acts constituting the constitutional Acts of the various Dominions. In India up to the passing of the Reforms Act we had the semblance of a constitution, but even that constitution had laid down a very salutary principle, now embodied in section 21 of the Government of India Act. It laid down that:

"Subject to the provisions of this Act and rules made thereunder the expenditure of the revenues of India both in British India and elsewhere shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of those revenues or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act shall be made without the concurrence of a majority of votes at a meeting of the Council of India."

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[Dr. H. S. Gour.]

All the revenues of India are therefore directly under the control of the Secretary of State and no grant or appropriation of those revenues can be made except in the manner and to the extent provided by this Statute. The question therefore arises, are the revenues of India for the maintenance of the Army in this country diverted in accordance with the provisions of section 21 of the Government of India Act? That, I submit, is the short question. When Mr. Ginwala interpellated the Government, the position of the Government was that the Army in India is maintained under the inherent power of the Crown, and that there is nothing in the Government of India Act to prevent the revenues of India being utilised for the purpose of maintaining such an Army. The latter argument is met by reference to section 21 of the Government of India Act to which I have adverted. There remains the question about the inherent power of the Crown. I have already submitted to Honourable Members that the moment the sovereignty becomes merged into a Parliamentary Statute and a constitution is granted to a colony or to a country, *pro tanto* the inherent powers of the Crown are affected and modified and, so far as the Statute now known as the Government of India Act lays down a certain mode and manner in which the revenues of India shall be applied, the powers of the Crown are limited; otherwise, there would be a repugnancy between the constitution granted by Parliament and the inherent rights of sovereignty, and I therefore submit that it is not right to claim that the Army in India is maintained under the inherent power of the Crown. The position, therefore, is reduced to this. We have to pay the major portion of our revenues for the maintenance of the Army in India. There is no statutory authority for the payment of the Army in this country; the inherent power of the Crown cannot be invoked in support of its maintenance; the position, therefore, is that constitutionally this expenditure is being incurred upon a purpose not justifiable by law. What is then the remedy? The obvious remedy suggested by Mr. Ginwala is that there should be an Annual Army Act enacted in this country as it is enacted in England, which provides for the maintenance and pay of the Army in the United Kingdom. That Annual Army Act is subject to the annual vote of the House of Commons, and, if a similar Army Act is enacted in this country, it must be brought to this House and be subject to its vote.

The other position raised by my friend, Mr. Ginwala, is, with all deference to him, untenable. He said that the other alternative open to the Government was to make Army expenditure votable and thereby circumvent the legal difficulty which he has enunciated; but I do not see, Sir, how by transferring the Army vote from the non-voted to the voted portion of the Budget, the legal objection would be surmounted. I therefore submit that the Government should, in order to legalise the Army in India, take legislative measures and bring an enactment annually for the acceptance of this House. That seems to be the constitutional position.

I understand, Sir, that the question as regards the excessive military burden from which this country suffers is not to be discussed at this juncture, and, therefore, what I have to say on that question I shall say later on.

Sir P. S. Sivaswamy Aiyer: Is there anything forbidding military expenditure?

Dr. H. S. Gour: The Honourable Sir Sivaswamy Aiyer has asked me a question and I

Mr. President: Order, order. The Honourable Mian Sir Muhammad Shafi.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, on the motion now before the House my Honourable and learned friend Mr. Ginwala has raised the question of authority for the maintenance of a Standing Army in India. I have no doubt that my Honourable friend has thought it necessary to raise this question again at this stage by reason of the answer which was given to him at a previous meeting of this Assembly, according to which answer there was no statutory authority in the Government of India Act for the maintenance of such an Army, and the inherent power of the Crown was invoked in support of such maintenance. I am prepared to admit that the answer then given to my Honourable friend was not quite correct.

Rao Bahadur T. Rangachariar (and others). Who gave that answer?

The Honourable Dr. Mian Sir Muhammad Shafi: There is statutory power in the Government of India Act itself for the maintenance of a Standing Army in India, and I now proceed to make that position clear. If Honourable Members will turn to section 1 of the Government of India Act, they will find that this is what the section enacts:

"The territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King Emperor of India and all rights which, if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territory, may be exercised by and in the name of His Majesty as rights incidental to the Government of India."

Now, Honourable Members will notice that according to the express enactment embodied in this section, all rights possessed by the East India Company prior to the enactment of the 1858 Act, referred to in this section, may now be exercised by the Crown or the Government of India. My Honourable friend, Mr. Ginwala, has himself admitted to-day that the East India Company had authority to maintain an Army in India, and he pointed out that the authority empowering the East India Company to maintain an Army was derived from an Act of Parliament. I see my Honourable and learned friend Mr. Rangachariar shake his head. Let me invite his attention to what is known as the Indian Mutiny Act, George II Chapter IX "An Act to punish mutiny and desertion of officers and soldiers in the service of the United Company of Merchants of England trading to the East Indies." The language of that enactment is somewhat of the old type; but my Honourable friend will find that Parliament in this enactment recognised the right of the East India Company to maintain an Army in this country

Rao Bahadur T. Rangachariar: Conferred it.

The Honourable Dr. Mian Sir Muhammad Shafi: —*Recognised*, I said—and went on to make provisions for courts-martial and other matters—expressly recognised, there was no question of conferment—recognised the right of the East India Company to maintain an Army in India. As a matter of fact prior to the enactment of this statute, the East India Company actually did maintain an army in India; this Act recognised the right of the East India Company to do so and went on to make provisions for the administration of military affairs and of the army in this country. That right of the East India Company was again recognised in the Act of 1833; and in 1858 when the administration of the affairs of this country was taken over by the Crown from the East India Company, you will find that in the Act of 1858 provisions were expressly embodied for the

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transfer to the Crown not only of the civil but also of the military administration. (Mr. N. M. Samarth: "Existing establishments.") It was unnecessary at that time to make the provision embodied in those sections because the administration of India was being transferred from the East India Company to the Crown . . .

Mr. P. P. Ginwala: What happened to the inherent power of the Crown in 1858?

The Honourable Dr. Mian Sir Muhammad Shafi: Let me make the position clear. There was no question at that time of the inherent power of the Crown, and so far as this part of my argument is concerned, there is for my purpose no question of the inherent power of the Crown now. I am not dealing with the extent of the inherent power of the Crown in this part of my argument. What I am emphasising is this, that Parliament, having by a statute recognised the right of the East India Company to maintain an army in India and having subsequently in the Act of 1833 repeated the recognition of that right, when the administration of the affairs of this country, civil and military, were taken over, or in other words were transferred from the East India Company to the Crown, in 1858, it became necessary to make those specific provisions for the transfer to the Crown not only of the civil but also of the military administration of the country from the East India Company. But the military administration of the country, having once been transferred under that statute to the Crown and having become vested in the Crown from that date onwards, there was no necessity to repeat these sections now in the Act of 1919. All that was necessary to lay down and to embody was that the rights which the East India Company possessed before the enactment of the statute of 1858 should now be exerciseable by the Crown. Section 1 of the Government of India Act clearly lays that down and all rights exerciseable by the East India Company before the transfer of the administration from the hands of the East India Company to the Crown can now be exercised by the Crown. The words are "and all rights which if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories may be exercised by and in the name of His Majesty as rights incidental to the Government of India." It is clear, therefore, that there is a statutory power—no question of the inherent right of the Crown—a statutory power conferred upon His Majesty to exercise all rights which were exerciseable by the East India Company in respect of any territories, and those rights can be exercised now.

Now, I ask the Honourable Members to turn their attention for a moment to section 20 of the Act, sub-section (1). According to this sub-section, "the revenues of India shall be received for and in the name of His Majesty and shall, subject to the provisions of this Act, be applied for the purposes of the government"—not with a capital G but with a small g,—“of India.” Now defence of India against foreign invasion or against an insurrection in the country is part and parcel of the duties connected with the Government of India and is one of the duties cast upon Government. It is clear, therefore, that under section 20, the revenues of India may be applied for maintaining an army for the defence of India and also for putting down any rebellion that may occur in the country itself, for armies cannot be improvised in a day. It is indeed obvious that one of the essential duties which the Government has to

perform is to be prepared to defend the country against foreign invasion, and that cannot be done unless Government maintains an army. And if you compare the language of this sub-section with the language embodied in section 22 of the Government of India Act, the point will become still more clear. This is how section 22 runs:

"Except for preventing or repelling actual invasion of His Majesty's Indian possessions or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces, be charged upon those revenues."

A careful examination of section 22 makes it perfectly clear to any reasonable mind that this section embodies a prohibition that the revenues of India shall not be spent upon any military expedition beyond the frontiers of India unless that military expedition is rendered necessary for preventing or repelling actual invasion of His Majesty's Indian possessions. It follows, therefore, I submit necessarily, that the revenues of India may be spent upon any military expedition necessitated for preventing or repelling actual invasion of His Majesty's Indian possessions and that these revenues may be spent upon military forces maintained for that purpose. It is clear, therefore, that section 22 justifies the maintenance of a Standing Army in India in order to prevent or repel actual invasion of His Majesty's Indian possessions and that the revenues of India may legitimately be spent on the maintenance of such army.

Again, Sir, it is because that is the position laid down in this Statute that certain other provisions have been enacted in the Government of India Act. Let me invite the attention of the House to section 36, clause 4. According to section 36, clause (4) (this section refers to the constitution of the Executive Council):

"If any Member of the Council (other than the Commander-in-Chief for the time being of His Majesty's forces in India) is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties."

Then, according to section 37:

"If the Commander-in-Chief for the time being of His Majesty's forces in India is a Member of the Governor General's Executive Council, he shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor General."

It will be clear from these provisions that, because there is statutory authority, as I have contended, for the maintenance of an Army in India, it is therefore necessary to have a Commander-in-Chief of that Army in this country and the Commander-in-Chief occupies as a member of the Government of India a certain position in the Executive Council which is described in section 36. If, among the Members of the Executive Council there should be one who holds a military position in the Army in India, maintained under the statutory authority referred to, then he will not, while he is a Member of the Executive Council, hold any command in the Army itself. Again, when we turn to section 44, what do we find? This is what that section contains:

"The Governor General in Council may not, without the express order of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or state dependent thereon, or against any prince or state whose territories His Majesty is bound by any subsisting treaty to defend or guarantee), either declare war or commence hostilities or enter into any treaty for making war against any prince or state in India, or enter into any treaty for guaranteeing the possessions of any such prince or state."

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Now, this section again clearly contemplates the maintenance of an Army, the expenditure on which, as I have already observed, is a charge on the revenues of India, because otherwise this particular section would be entirely meaningless. Declaration of War in certain circumstances by the Governor General in Council presupposes the existence of an Army which he will make use of immediately on a Declaration of War and the whole scheme of the various provisions embodied in the Government of India Act, cognate to the matter with which we are now dealing, clearly indicates the correctness of the contention which I have submitted to the House, based on section 1 of the Government of India Act, that is to say, the authority of the Crown to maintain an Army in India and the revenues of India being chargeable for the expenses of that Army is well established by statute, otherwise all these various provisions to which I have invited attention would be meaningless.

Then, if you turn to section 65 (1) (d), the Indian Legislature has power to make laws:

"for the Government officers, soldiers (airmen) and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act (or the Air Force Act)."

That provision again clearly shows the existence of an Army in India and the power of the Indian Legislature to enact laws for certain purposes which govern the soldiers employed in that Army. Again, according to section 67 (2) (c):

"It shall not be lawful, without the previous sanction of the Governor General, to introduce at any meeting of either Chamber of the Indian Legislature any measure affecting—

* * * *

(c) the discipline or maintenance of any part of His Majesty's military, naval or air forces",

thus excluding the jurisdiction of this House and of the other House in connection with certain matters connected with the military forces in this country.

Then we come to section 95. This is what that section enacts:

"The Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, may make rules for distributing between the several authorities in India the power of making appointments to and promotions in military offices under the Crown in India, and may reinstate military officers and servants suspended or removed by any of those authorities."

Here again, the House will notice that this particular provision in the Act contemplates the maintenance of an army in India and the appointment as officers of that army by any authority to whom such power of appointment may be delegated by the Secretary of State in Council.

Again in section 96-A:

"Notwithstanding anything in any other enactment, the Governor General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed."

and so on. Provision is thus made for appointment not only of British subjects but even of Rulers of Indian States or of subjects of Indian States to military appointments in India.

The whole scheme of the Act, therefore, clearly shows that the right to maintain an army in India just as it existed in the days of the old East India Company, is recognised by section 1 of the Government of India Act and that right is vested in His Majesty the King Emperor. The revenues of India may be properly made use of according to section 20 in the maintenance of that army, various provisions are made showing that a Commander-in-Chief for the Indian forces and various other officers for the Indian army may be appointed in this manner and that the Indian Legislature is empowered to pass certain laws to which even soldiers of His Majesty's Army in India will be subject, express provision is made excluding certain matters from the jurisdiction of the Indian Legislature and other cognate provisions have been enacted in this Statute clearly providing for matters connected therewith. It is clear, therefore, from a perusal of the various provisions embodied in this Act relating to the administration of military affairs in this country that there is ample statutory authority for the maintenance of an army in this country, and also for expenditure out of the Indian revenues for the maintenance of that army.

In conclusion, there is one observation, Sir, which I have to make upon the general principle to which Mr. Ginwala and more particularly my Honourable friend Dr. Gour referred. Dr. Gour pointed out that in the first instance all authority is vested in the King Emperor. "The King Emperor is the centre of all authority" was the expression I think that Dr. Gour used. But he pointed out that in England by reason of certain enactments the authority with regard to the maintenance of an army had been transferred from the Crown to the Parliament. That is exactly the position. In England prior to the enactment of the particular statute which was in the mind of my Honourable friend—the Bill of Rights—the Crown had full power to maintain an army in the Kingdom of Great Britain. It was the Bill of Rights which took away that power from the Crown. The Bill of Rights applies only to the Kingdom of Great Britain, for at the time it was passed India was not part of that Kingdom at all. This is perfectly clear—my Honourable friend, Mr. Ginwala shakes his head—it is perfectly clear even from the latest Army and Air Force (Annual) Act. (Mr. Ginwala: "May I say the Annual Army Act provision is entirely different from the Bill of Rights.") If you will turn to the Preamble of the Army and Air Force (Annual) Act, 1922, you will find:

"And whereas it is adjudged necessary by His Majesty and this present Parliament that a body of land forces should be continued for the safety of the United Kingdom and the defence of the possessions of His Majesty's Crown and that the whole number of such forces should consist of two hundred and fifteen thousand, including those to be employed at the depôts in the United Kingdom for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within His Majesty's Indian possessions."

It is clear from the last words of this paragraph of the Preamble which I have just read that His Majesty's Forces in India are excluded from the application of the Statute. Well, what I was going to emphasize is this: In every country when constitutional development takes place from autocracy towards democracy all power is at the earlier stage vested in the Crown. Gradually as constitutional development takes place, by various enactments powers are transferred from the Crown to the democratic

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Government that may be introduced in the country. It is not until the stage of full responsible Government is reached, when the administration vests in the hands of a Parliament, that the Crown is deprived of the power possessed by it to maintain an army. When that stage is reached in India and an express provision is then enacted that no forces will be maintained unless with the sanction of the Indian Parliament, then and then alone the power of the Crown to maintain an army in India will disappear and that power will be transferred to the Indian Parliament of the future. Until that stage is reached the power vests in the Crown apart even from any statutory authority and I submit that the reply given at the previous stage—the latter half of the reply that was given at the previous stage—was really correct and that it was fully justified on principle. I submit to the House that there is ample statutory authority for the maintenance of an army in India and for the expenses of that army being charged on the revenues of India and also that even upon general principles the position taken up by my Honourable friend is unsound.

Sir P. S. Sivaswamy Aiyer: After the elaborate speech of the Honourable the Law Member, it is hardly necessary for me to intervene in this debate. If I enter the lists at all, it is rather the temptation offered by an abstract legal discussion to a quondam lawyer. Let me congratulate my friend Dr. Gour on the discovery he has made, I am afraid, I must say, of a mare's nest. The point that he has taken may, I think, be much more shortly disposed of than it has been by the Honourable the Law Member. The Honourable Dr. Gour has asked for the statutory authority under which the army in India is maintained.

(At this stage Mr. Deputy President took the Chair.)

May I ask him what authority there is in the Statute for maintaining a Police department, for maintaining an Education Department, for maintaining any of the numerous other Departments which are essential to the administration of any civilised Government?

Dr. H. S. Gour: The various Acts of the Indian Legislature.

Sir P. S. Sivaswamy Aiyer: Now, Sir, my Honourable friend, Dr. Gour, referred to section 20 of the Statute. Now section 20 lays down this:

"There shall be charged on the revenues of India alone (a) all the debts of the East India Company, (b) all sums of money, costs, charges and expenses which if the Government of India Act, 1858, had not been passed would have been payable by the East India Company"

Dr. H. S. Gour: I rise to a point of order. My Honourable friend has entirely misunderstood me. I did not refer to section 20 but to section 21.

Sir P. S. Sivaswamy Aiyer: I am coming to that. It is necessary for my purpose to refer to section 20;

"... and (c) all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India."

Does it mean under a specific provision of law or statute or does it mean all those expenses which it is lawful for the Government to incur in the absence of any prohibition of that expenditure? I take it that the plain and commonsense interpretation which should be placed upon this clause

is simply this. That whatever expense may be lawfully contracted, that is without infringing any law, on account of the Government of India may be paid out of the revenues of the Government of India. The Government of India carries on numerous functions and the expenditure which it has to incur on account of these various functions come under this head, expenses lawfully incurred on account of the Government of India. Now, come to section 21 upon which my learned friend places some reliance:

"Subject to the provisions of this Act and the rules made thereunder, the expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council and no grant or appropriation of any part of those revenues or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act shall be made without the concurrence of a majority of votes at a meeting of the Council of India."

That provides for the control of the Secretary of State, though it says, subject to the provisions of this Act or the rules made thereunder. Now, the object of section 21 is simply to secure the control of the Secretary of State and not to define the specific purposes for which the revenues of India may be employed or may not be employed. I will not take up the time of the House by referring to section 22 which by expressly forbidding operations beyond the frontier contemplates operations within the frontier and necessarily the maintenance of a military force within India. Nor is it necessary for me to refer to any of the other sections already referred to. But there is one section which I think has not been referred to by the Honourable the Law Member and to which I may make a reference, and it is this. Section 67-A (1):

"The estimated annual expenditure and revenue of the Governor General in Council shall be laid in the form of a statement before both Chambers of the Indian Legislature in each year,"

and so on. Clause (3) states:

"The proposals of the Governor General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly"

and so on, and one of those heads is "expenditure classified by the order of the Governor General in Council as defence." What further authority do you want than this? But I prefer to rest the case in favour of the maintenance of an Army not merely upon section 67A, nor upon any of the other sections which are all perfectly relevant and which are of great weight, but upon the higher ground and the simpler ground that the maintenance of an Army and the defence of a country are part of the essential purposes of any civilised Government and any expenditure incurred for those purposes would be expenditure lawfully incurred on account of the Government of India. I think it unnecessary to take up the time of the House with any further observations.

Rao Bahadur T. Rangachariar: Sir, I am afraid our sympathies ought to go to the Honourable Mr. Burdon in the very delicate position he has been placed by the Law Department of the Government of India. Here was a deliberate interpellation put by my Honourable friend, Mr. Ginwala. First of all, we were told that the army is maintained under a particular Statute. That was on the 15th of January 1923. Then, my Honourable friend Mr. Ginwala politely drew the attention of the Honourable Mr. Burdon and asked "Are you not referring to repealed Statutes?" The

[Rao Bahadur T. Rangaachariar.]

Honourable Mr. Burdon, I take it, even if in the first instance he did not take the advice of the Law Department, I hope and I trust, and knowing Mr. Burdon as I do, I am sure, he did consult the Law Department before he gave the second answer; for, I am not sure he would have ventured to give an answer about "inherent power" without consulting this Department of the Government of India. What, then, did the Law Department advise Mr. Burdon? "Yes, they are repealed Statutes." Sir, I hope the Honourable the Law Member then looked up the Government of India Act, looked up all these sections which he referred to this morning, and he might have usefully referred to another section also which neither the paid department nor the unpaid department of the Law Department of the Government of India referred to this morning, which perhaps throws more light in their direction than they have laboured to point out; that is section 33 of the Government of India Act, which has been before me in dealing with this question. It refers to the Civil and Military Government of India, which perhaps is more apposite than all the laboured explanation which my Honourable friend sought to impute from the various other sections which he referred to. The powers of Civil and Military Government of India vest in the Governor General in Council subject to the orders of the Secretary of State. It is that section which has given me trouble in this matter, not the other sections referred to by my Honourable friends, both to the right and left of this House. Sir, the whole question is—and that is the question which has been missed by both my Honourable friends who spoke this morning—the question is, what is the right of the Government of India to maintain an army in times of peace, when there is no Military Government. No doubt Government maintains an army in times of peace, Sir, against the subjects of the Government. That also has to be remembered. I can understand the power of the Government to maintain an army to repel enemies from abroad to attack enemies within. Sir, for the purpose of internal peace, what right has any Government, unless that right is conferred by law, unless the Government is to be a Military Government, what right can the Government have to maintain an army unless it is empowered by law? I quite see from the regard which my Honourable friend Sir Sivaswamy Aiyer enjoyed in the Council Chamber in Madras, he is prepared to support and infer everything in favour of the Government, but, Sir, we who belong to the non-official world refuse to subscribe. Sir, if that is so, why should the Preamble of the Army Act in England say:

"Whereas it is illegal to maintain military forces in times of peace."

Mark the language, "it is illegal to maintain military forces in times of peace," therefore we enact such and such provisions. On the 19th of February 1923, an answer was given to this Assembly. I hope this Assembly is being treated seriously by the Law Department, not playfully. On the 19th of February 1923, the answer was given to us that these three Statutes had been repealed. Then under what power is this Army maintained? "Under the inherent power of the Crown." Sir, having said that on the 19th of February, to-day, when they are driven into a corner, the Law Department does not give up the inherent power, but invokes some other power, that is the implied power. If it was a plain statutory provision, lay people as we are, we would have asked for a reference to the particular section. Look at such and such a section. There would be no elaborate argument. The

very elaborate and laboured argument urged by our learned friend, the Law Member, shows how very weak the case is. I do not know how many of us have been convinced by this elaborate argument. I find it was an elaborate argument. What trust are we to place on it? Where are we now I want to know. What weight are we to attach to it as against the opinion given on the 19th February 1923? The matter is involved in serious doubt. I want this matter to be treated seriously. I am sorry if I bore the House in this matter. I quite recognise this is a constitutional question which cannot be discussed effectively or usefully on the floor of this House. We have raised this question and we want the Government of India to examine its position carefully and, if necessary, consult the law officers of the Crown, those famous law officers of the Crown in England, or eminent constitutional authority in this matter. Sir, we are not willing to take the law as laid down by either the Honourable the Law Member on the 19th of February, or to-day, or as laid down by the Honourable Sir P. Sivaswamy Aiyer for whose opinion I have the greatest respect, but I rather think the question was sprung upon him to-day, and I am sure he did not prepare for this and he gave an opinion offhand, which he seldom does, and therefore I attribute it to his innate sympathy for bureaucracy. But I do not want the House to decide this question. I do not think it was the object of Mr. Ginwala. It was not my object when I gave notice of this issue. We of the Assembly view this question with some seriousness. We will be very glad indeed if the Government will go to Parliament if they distrust us, or come to us and ask for legal authority if there is no legal authority. We are concerned, Sir, for this military expenditure and we want to see if it is really incurred legally. I ask the Government in all seriousness that the matter should not be disposed of in this light and easy manner in which they have attempted to dispose of it.

Sir Campbell Rhodes (Bengal: European): I move that the question, if there is one, be now put.

Sir Montagu Webb: On a point of order, may I ask if we shall have a further opportunity of discussing the Army Vote in other respects than this constitutional point?

Dr. H. S. Gour: When I rose to speak, Sir, I asked the Chair whether the other question was reserved for further discussion and I understood the Chair to say that it was.

Sir Montagu Webb: Then, Sir, my point is answered.

Mr. Deputy President: The question is that the question be now put. The motion was adopted.

Mr. P. P. Ginwala: I ask for leave to withdraw this motion. The motion* was, by leave of the Assembly, withdrawn.

The Assembly then adjourned for Lunch till a Quarter to Three of the Clock.

* "That the demand under sub-head 'Army Department' (page 47) be reduced by Rs. 100."

The Assembly re-assembled after Lunch at a Quarter to Three of the Clock. Mr. Deputy President (Sir Jamsetjee Jejeebhoy) was in the Chair.

MESSAGE FROM THE COUNCIL OF STATE AND BILLS LAID ON THE TABLE.

Secretary of the Assembly: Sir, the following Message has been received from the Secretary of the Council of State:

"I am directed to inform you that the Bill to give effect to certain Articles of the International Convention for the Suppression of the Traffic in Women and Children, as passed by the Legislative Assembly at its meeting of the 9th March 1923, was passed by the Council of State at its meeting of the 15th March 1923, with the amendments indicated in the attached statement. The Council of State requests the concurrence of the Legislative Assembly in the amendments."

Sir, I lay the Bill on the table.

In accordance with Rule 25 of the Indian Legislative Rules, I also lay on the table the Bill to declare the law in force in certain territories of the district of Sambalpur and to provide that the past administration of those territories shall not be called in question on the ground that they were not included in the territories administered by the Government of the Central Provinces, which was passed by the Council of State on the 15 March, 1923.

THE BUDGET—LIST OF DEMANDS.

SECOND STAGE—contd.

DEMAND NO. 14—GENERAL ADMINISTRATION—contd.

Rao Bahadur T. Rangachariar: I am sorry my friend Sir Sivaswamy Aiyer is not here in his place. Nevertheless I have been told that one remark which I made during my speech just before Lunch was understood in an improper way, my reference to his "innate sympathy with the bureaucracy" and "unpaid" advocacy. It was far from my intention to impute anything to my Honourable and esteemed friend. I am very sorry I used that expression and I now withdraw it.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Did you call upon me, Sir, to move No. 323?

Mr. Deputy President: Yes.

Munshi Iswar Saran: I beg your pardon, Sir. I was under a misapprehension. If you will allow me I shall move it now.

Rao Bahadur T. Rangachariar: Is it to be taken that No. 317 is disposed of?

Mr. Deputy President: Yes.

Munshi Iswar Saran: If you will be pleased to allow me, Sir, I shall move No. 323. Thank you, Sir. I move:

"That the provision for sub-head 'Army Department' under the head 'General Administration' be reduced by Re. 1."

I wish to invite the attention of this House to the reduction that has been made in the sum set apart for the Territorial Force. As the time is very short I wish only to indicate the points on which I would like to invite the attention of the military authorities as well as of the Honourable Members of this House.

One may not be quite in perfect agreement with the details of the scheme of the territorial force, still the consensus of opinion amongst us is that all that can be done should be done in order to push forward this scheme of the territorial force. It is, therefore, to be deeply regretted that the meagre sum that was allowed for the scheme last year has been cut down by Rs. 10 lakhs.

Then there is another point to which I wish to draw the attention of the House very briefly and it is the announcement that was made about the Indianization of the Indian Army. Now, Sir, at the time that the announcement was made, I am afraid the Honourable Members of this House did not have the full scheme before them and therefore were not in a position to view the question in its proper perspective; but now the scheme has been supplied to us by the Army Department and we are in a position to really understand the full effect of the announcement that was made some time ago on the floor of this House. As it will be in the recollection of this House, it was said that 8 Indian units would be Indianised. Now what we find is from this scheme that it would take at least from 20 to 23 years to Indianise these 8 Indian units. Then there is this paragraph in this statement:

"A question has been asked whether the experiment is to be fully tried before the next step is taken, that is to say, in dealing with the other units of the Indian Army. The point is one on which Government are not in a position to make a statement. It would obviously be premature to do so. The first measure of Indianisation has only now been embarked upon and the developments to which it may lead cannot be foreseen or foretold."

So the result of it is this: that this first instalment as it were of this reform that we have got is to take about quarter of a century to come into full operation, and as regards the future developments of this scheme of Indianisation we know very little. For, as it is said, it is rather premature at this stage to say anything about what the future is going to be. I submit that this scheme, now that all the details have become public property and are known to all the Honourable Members of this House as well as to everybody outside this House, will not—I say so, Sir, after full deliberation—give satisfaction to the people. About a quarter of a century to be taken for the Indianisation of 8 units and the rest to remain in doubt and in uncertainty because the Government of India is not in a position to make any definite statement. I need not in this connection draw the attention of the House to the fact that there are various services of the Army Department to which no reference is made. The Indianisation for the present is to be confined to the Infantry and to the Cavalry; but as Honourable Members of this House are fully aware, there are other departments of the Army about the Indianisation of which the scheme is perfectly silent. I therefore submit, Sir, that this announcement which has been made is hardly satisfactory.

Sir Montagu Webb: Sir, this time last year in common with many other Members of this House I supported a motion for a nominal reduction in the vote of the Army Department in order to express the very great anxiety that I and others felt at the magnitude of the military

[Sir Montagu Webb.]

charges. Well, Sir, the Inchcape Committee have made their Report, and on the first page of their Report on Military Services, they write:

"The expenditure which has been incurred in the past may have been inevitable, but the question is whether India can afford to maintain military expenditure on the present scale as an insurance against future eventualities. In our opinion the repeated huge deficits of the last few years, in spite of the imposition of heavy new taxation, have made it abundantly clear that India cannot afford this expenditure."

That opinion, I submit, Sir, confirms the soundness and the statesmanlike character of the action taken by this House last year in making every effort in its power to cut down the military expenditure. A few paragraphs later on the Inchcape Committee write:

"We are informed that there is no idea in the mind of the Government of India of continuing a forward military domination up to the Durand line at the present time."

Notice those two qualifications "*up to the Durand line*" and "*at the present time*." The Honourable the Foreign Secretary informed us that it was the intention of Government to maintain what I can describe as a half forward policy, that is to say, to occupy a line half way through Waziristan, and it is in this connection that I desire to give expression to the anxiety which many of us are still feeling with regard to the crores and crores of rupees which are being poured into Waziristan. If I understood my Honourable friend the Foreign Secretary correctly the other day, he stated in eloquent language that the fundamental difficulty of this frontier problem was that the frontier districts "*breed too many and feed too few*," and that consequently the men of the hills have to come down into the plains in search of food and so forth. Now, I understand the present policy of Government is to construct a big lateral road at the foot of the hills, and another road behind the Mahsud territory and through Waziristan, and that it is proposed to employ local forces to police this road. I am still left in some uncertainty as to how the expenditure of all this money and the construction of these roads is going to cause the Waziris to breed LESS and to feed MORE?

Rao Bahadur T. Rangachariar: Buy more rifles.

Sir Montagu Webb: On the contrary, it seems to me that the expenditure of huge sums of money in this country may quite conceivably produce just the opposite effect and that we shall find the Mahsuds, strengthened and supplemented by the receipt of several crores of rupees, in possession of still more rifles and in a position to give more trouble than ever before. It is because I feel some uncertainty and anxiety in this connection that I should like some further explanation in this matter.

Dr. Nand Lal: Sir, I endorse the view which has been put forward by the last speaker, but I should like to make an addition to it, and you will be surprised to hear, Sir, that so far as the special political expenditure in Waziristan went, it was Rs. 60,40,000 in 1922-23. The House will agree with me that this expenditure is very excessive and some portion of it must have been given to the people of Waziristan, and it is no wonder to me that some portion thereof might have been used by them in the purchase of arms, ammunition and rifles which may have been used, I am afraid, against the law-abiding and loyal subjects of His Majesty. Therefore, Sir, I submit that this heavy expenditure, which tells upon us, may be reduced as early as possible. With these few remarks, I resume my seat.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, some time back when there was

3 P.M. debate of this question I strongly supported the close-border policy. I still stick to that. But unfortunately, the honourable gentlemen who have spoken about the frontier and about the money spent on it, specially my learned friend, Dr. and Lal, are labouring under a wrong impression. They are mistaken they think that they will altogether cut off the Mahsuds, so that they on't have any relation or anything to do with them. If they think they can keep them at arm's length they are mistaken. There are two alternatives before them. Either to subjugate them, which is both impracticable and impossible in the present circumstances, or the next best thing to adopt the close-border policy which has been mentioned by Mr. Bray. I am afraid that the Honourable Members who say that the allowance which is paid to these Mahsuds and Afridis is a sort of bribery are altogether wrong and mistaken; they do not know that the money which is paid to them is in exchange for tolls, which they used to realise and enjoy in ancient times, and are now taken up by the Government instead. (Dr. and Lal: "I may point out to the Honourable Member that Afridis are different to Mahsuds.") Sir, I may at least expect this much from Dr. and Lal that, as when he speaks I listen to him patiently, he should do the same when I address the House. The tribes render also other services; for instance, they are responsible for keeping these roads safe and if any offence is committed on these roads they are held responsible for it. So, when you get some service from them, is it not fair to pay them something in return? When you enter into friendly relations with them, you must pay them what is their due. They have also got some rights, which must be respected. I am rather surprised at the suggestion made by some Honourable Members that, if you give them this money, they will get rifles with it. They don't know that these tribesmen are well-to-do people and as the Bokhara line is altogether open now and great trade is done in arms traffic they will not experience any difficulty on that account. Do you mean to say you think that they buy rifles with only the money you give them. That is not correct, on the other hand, it will be an inducement to them to behave well and render necessary services. Now, I will bring to your notice one important point which is that at present we are fighting a portion and not all the Mahsuds—we are fighting with only 1-10th of them, which has cost us so much in life and money. If all of them combine and fight us, you can easily judge the result. Even in the time of Sir Robert Sandeman, who pursued that policy of peace, do you mean to say he did not pay these people? If you think by not paying them you will have peace, you are mistaken. Even for the close-border policy you will have to spend money, although comparatively much less. You will have to increase the constabulary, you will have to increase your scouts, formerly the militia, you will have to construct towers and roads all along the border. Now, the question is, you have got two alternatives before you, either to occupy the country, and subjugate the people, for occupation you should give as much money as the military experts require or you must follow the close-border policy and grant the funds asked by the Political Department as the policy of occupation is rejected and the policy of close border is adopted, you should grant what they demand. Sir, if they cannot see their way to either then I think these Honourable gentlemen ought to go there and take charge themselves. I am sorry to say that the criticism on the frontier always causes the settled district people to suffer. I mentioned that last time and

[Khan Bahadur Abdur Rahim Khan.]

refer to it now. These cries against the frontier bring forth nothing but retrenchments, these retrenchments affect our legitimate demands. Retrenchment is just now thrust upon us and has recoiled on the people of the settled districts. On that account our education has greatly suffered; on that account everything else has suffered. I mean and refer to the report that was recently submitted by the Incheape Committee. With due respect to the experience of such a great statesman, with due respect to his great services to India in general, I must say that we, the settled districts people, have become the victims of his report, which has specially nipped our education in the bud, as no further grant will be given to the Islamia College, Peshawar, and the present grant of the Hindu College, Dera Ismail Khan, will be altogether stopped in future.

Mr. K. Ahmed: Sir, what is the relevancy of this?

Khan Bahadur Abdur Rahim Khan: My Honourable friend says there is not relevancy. I will request him just to think for a moment. Sir, I simply want to clear the situation so as to enable the Honourable Members to see what they should do. My Honourable friend perhaps wants to make a speech. So, I do not like to take up the time of the House. I must end my speech with the request that it will be a great mistake if you deduct any money under the head of the North-West Frontier Province.

The Honourable Sir Malcolm Hailey: I very much regret, Sir, that my friend Mr. Burdon is not able to be here to answer for the Army Department owing to sudden illness. I cannot myself offer to undertake the defence of the Army Department; but I will endeavour to give Mr. Iswar Saran some information in reply to the points which were raised by him. The first related to the reduction of expenditure on the territorial force. The Budget stood at Rs. 40 lakhs last year; it is Rs. 30 lakhs this year. The reason for this is that last year the estimates provided for certain initial expenditure which will not have to be incurred this year. The Rs. 30 lakhs which is provided does not therefore mean a reduction in the territorial force. We were simply able to budget for Rs. 30 lakhs this year because last year we incurred the necessary initial expenditure for the existing battalions. There are now formed 20 units of infantry and 6 units University corps. There are still to be formed during the coming year 2 mechanical transport sections and 2 electrical companies and a field ambulance. I hope that these facts will disabuse Mr. Iswar Saran's mind of any idea that the reduction of expenditure in itself necessarily means a reduction in the strength of the territorial force. As regards the second point, he expressed disappointment, as a result of his study of the statement which was placed on the table by Mr. Burdon, in regard to the Indianisation of 8 Indian units. He laid great stress on the fact that it will take somewhat over 20 years to completely Indianise those units. That of course follows from a calculation of the length of time it takes to arrive at particular grades of rank in the Indian Army. The difficulty of course would be to expedite the process in the case of Indian officers at a rate over that which applies to British officers. He is, however, taking an extreme figure; the date he gives is the date at which they will be completely Indianised; the great bulk of officers in those units will, of course, be Indianised long before that period. It is, of course, the case that we have had to admit that we cannot foresee the process of

further Indianisation, namely, how long we should have to wait before the present experiment is regarded as successful and a further step forward be taken. But we cannot foresee the future. I will only put this to the House that it knows perfectly well that a process of this kind, when once begun, does not stop.

Munshi Iswar Saran: How long will it take?

The Honourable Sir Malcolm Hailey: To answer that question would require a prevision which neither I nor any Member of Government could exercise. We have begun the process. The Honourable Member may well rest assured that if in the initial stage we are persuaded that the steps that we have taken in the Army are as successful as it has been elsewhere then the process will be more rapid than at present seems likely. With regard to the remaining criticisms that have been uttered on the subject of the Army to-day, they relate mainly to Waziristan. My Honourable friend Mr. Bray is here. He has already given the House a very full appreciation of the situation in Waziristan and of the policy decided on. The motion is for reduction of one rupee only. I have not heard from Members here any desire to condemn whole heartedly the policy which Mr. Bray has put forward. . . .

Rao Bahadur T. Rangachariar: This is not the time or place for discussing such a large question. I would ask for a separate day for discussing that question.

The Honourable Sir Malcolm Hailey: I was coming to exactly the same conclusion as my Honourable friend Mr. Rangachariar. I was wondering whether in the course of demands for grants we could profitably discuss a question like that of Waziristan and I was going to leave the matter in the interrogative form to the House.

Mr. Deputy President: The question is:

"That the provision for sub-head 'Army Department' under the general head 'General Administration' be reduced by rupee one."

The motion was negatived.

Lieutenant-Colonel H. A. J. Gidney: Sir, I am sorry that the Member in charge of the Department is not here to answer my question. (Cries of "What is the number of the amendment?") The subject I wish to talk about is

(Cries of "What number?")

Mr. Deputy President: It is almost the same as No. 316.

Dr. Nand Lal: I may invite your attention to No. 327. It does not relate to the same proposition.

Mr. Deputy President: I called upon the Honourable Member (Colonel Gidney) to move the amendment which stands here in his name. That amendment is not printed.

Lieutenant-Colonel H. A. J. Gidney: Regarding my amendment and with your permission, Sir, I wish to ask not for a reduction of Rs. 15,000 but for a reduction of one rupee only in the pay of the Assistant Secretary of the Army Department, Government of India. I do this to have an opportunity of bringing before this House certain matters in connection with the Military Medical Department.

Rao Bahadur T. Rangachariar: I rise to a point of order. There is amendment No. 316 by Munshi Iswar Saran. You ruled that I could not move No. 317 and I also understand that you ruled that No. 316 could not be moved. This is only No. 316 repeated by Colonel Gidney.

Dr. H. S. Gour: And of which we had no notice.

Mr. Deputy President: If you object to the amendment on the score of want of notice I must rule it out of order.

(Then the Deputy President called upon Mr. Agnihotri to move his amendment).

Lieut.-Colonel H. A. J. Gidney: I do not know whether my amendment has been ruled out of order because I do not know whether it has been objected to formally.

Mr. Deputy President: Yes.

Munshi Iswar Saran: I just wish to know whether the recommendation of the Inchcape Committee in regard to the post of Inspector General of Irrigation has been carried out, and if not, when it is proposed to carry it out.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): The matter is being considered. It has not been decided yet what to do with this question and I think it will be decided very speedily.

Munshi Iswar Saran: Then I do not wish to move my amendment No. 326.*

Dr. Nand Lal: Sir, I beg to move:

"That the demand under sub-head 'Public Works Department' be reduced by Rs. 10,000." •

As you know, the public works in the major provinces is a provincial transferred subject and the Irrigation Department also, though it is a reserved subject, is very intimately connected with the same department. Then the Government of India has not much to do with both the public works and irrigation and therefore in the face of this fact it seems to be hardly necessary that so much expenditure may be incurred by the Government of India. In support of my argument may I invite your attention to the report of the Retrenchment Committee. By making reference to the report, you will be pleased to see that the public works in the major provinces is a provincial transferred subject, while irrigation (I am reading from page 133), with which this department also deals is a provincial reserved subject in regard to which the powers of the provinces have been largely increased:

"We do not consider that a separate department of the Government of India is in the circumstances required to deal with such questions as concern that Government. We understand that a large amount of the work at present transacted by the department consists of estate work in connection with the properties of the Government of India, in Delhi and Simla, the allotment of houses, etc., etc., which could more appropriately be dealt with by local administrative officers than by a department of the secretariat. A Branch of the department deals with Posts and Telegraphs administration which we propose should be placed under the Communication Department."

* "That the provision for Inspector General of Irrigation under sub-head 'Public Works Department' be reduced by Rs. 1."

In the presence of this recommendation my submission before the House is that the expenditure which we are incurring is not such an expenditure as is indispensably necessary and if the Honourable Member in charge of the Department will give me an undertaking that these recommendations will be appreciated and will be adopted, I shall not labour the point at all.

The Honourable Mr. B. N. Sarma: All that I shall say now is that the recommendations of the Retrenchment Committee on this question will be given very careful consideration. That is the answer which I gave to Munshi Iswar Saran also. I cannot usefully pursue this subject within the limited time at our disposal and therefore I shall not attempt to answer my Honourable friend. As I have said already, the recommendations are being considered and some of the money which is proposed to be saved under the head 'General Administration' includes the savings which would be the result of the re-grouping or re-amalgamation or partial retrenchment of some of the items included in this head also.

Dr. Nand Lal: In the circumstances I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. P. P. Ginwala: In the notice paper, I have stated that I intended to move for a reduction of Rs. 15 lakhs. With your permission, I will alter it to Rs. 5 lakhs. I move:

"That the demand under the head 'General Administration' (page 36) be reduced by Rs. 5 lakhs."

As suggested by our Leader of the National Party this morning, there is general agreement on both sides of the House that the reduction of 5 lakhs on this head "General Administration" is not too much. In fact, a good deal more might have been asked for, but as there is this consensus of opinion in favour of reduction only of Rs. 5 lakhs, I shall only ask for that amount. I will draw your attention to page 4 of the Revised Schedule of Demands, from which it would appear that the reduction proposed by the Inchcape Committee was Rs. 49,89,000, but effect was given to Rs. 36,37,000, so that there is a real margin of 13 lakhs from which I ask that Rs. 5 lakhs more should be deducted, and there would be Rs. 8 lakhs for what the Honourable the Finance Member described as the "lag." I think that is a very generous allowance even for a department which generally lags behind other departments. I move my amendment.

Lieut.-Colonel H. A. J. Gidney: Sir, I am glad at last to have this opportunity of my Honourable friend Mr. Ginwala's amendment to put forward certain points and obtain certain information regarding the Military Medical Department and in doing so, I wish to state at the outset that it is not my desire to sacrifice quality for quantity. Having been a member of the Indian Medical Service myself, I feel I can talk with some experience both as a Military and a Civil Medical Officer. Whilst carefully studying the various books with which we have been provided, it struck me, that there is room for a great deal of economy in this Department. A glance at the staff of the Military Hospitals (*vide* Army Estimates and Retrenchment Report) shows that there are 333 Royal Army Medical Officers entertained in India at a total cost of Rs. 39 lakhs per annum. That there are only 1,927 beds occupied per day in all the British Army Hospitals. This works out roughly to about 6 beds per officer. Of course, I am aware that

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the R. A. M. C. Officer has other important duties to perform, e.g., sanitation, specialistic, daily outdoor sick, etc. I am intentionally confining my remarks to attendance on in-patients. Then, take the I.M.S. Military Department. There are 495 I.M.S. Officers entertained at a total cost of 47 lakhs of rupees per annum. The daily average occupation of Hospital beds in all Indian Army Hospitals is 4,506. This works out at about 10 beds per I. M. S. officer. Further examination into the personnel of the British Army Hospitals reveals the fact that there is a body called the R. A. M. C. Ranks, recruited from the same class as the British soldier but differs from him in that they receive a sort of a training as male nurses. These men, ill-educated and partly trained, have recently been brought out to India, I believe, with the ostensible purpose of replacing the I. M. D. in British Army Hospitals, but are to-day employed as male nurses. This corps has a total of 470 maintained at an annual cost of 6 lakhs. Besides this there are about 400 Military Assistant Surgeons I. M. D. costing Rs. 15 lakhs per annum who are employed in British Troops Hospitals and who, as per figures quoted, i.e., 1,927 beds in daily occupation, have 4½ patients to attend to daily per man. Then there is the Queen Alexandra's Military Nursing Service, which consists of about 233 nurses recruited from England and 66 in this country, total about 300. The Retrenchment Committee Report shows that in the British Army Hospitals there is a daily occupation of 1,927 beds and 4,506 in the Indian Army Hospitals. This works out to about 8 patients for each British Hospital nurse and about 68 patients to each Indian Hospital nurse, although the Member in charge of this department when I asked him a question in January last year replied to me that there were 38 beds per nurse in the British Hospitals and 100 per nurse in the Indian Military Hospitals. Besides this, Sir, there is an enormous menial personnel attached to the various military hospitals. It would weary this House if I went into further figures and percentages but with the personnel I have detailed it works out as follows: For the daily care of 1,927 in-patients in British Hospitals a staff of 1,465 trained personnel is employed whilst in Indian Military Hospitals a staff of 1,155 (i.e., I. M. S. officers and Sub-Assistant Surgeons) is engaged for the daily care of 4,500 in-patients. Now, Sir, take the total strength of all ranks of the British Army as 79,000 and the total strength of the Indian Army as 250,000; alongside this take the gross expenditure of the Army as 64 crores and then see what amount of this sum is spent for the upkeep of the Military Medical Department you get

Mr. P. P. Ginwala: I rise on a point of order. This does not come within General Administration.

Lieut.-Colonel H. A. J. Gidney: From the calculation I have made it works out that the total military medical expenditure is almost 1/20th of the total military expenditure of the Army. In other words it works out that for the medical needs of every soldier (British and Indian) in this country, it costs the Indian tax-payer Rs. 100 per soldier per annum. Delve a little further into the figures supplied to us and it will be seen that each British soldier costs the country Rs. 78-8 per annum in medical personnel alone (not to mention the more expensive items as diet, housing, menial establishment, clothing, etc.), while the Indian sepoy costs only Rs. 23 per annum, less than one-third of the British soldier. Now, Sir, if you refer to the Inchcape Committee's Report you will notice a fuller

list of the personnel than those referred to in my percentages on pages 20-21. You will also notice that that Committee has exposed the fact that in the British Army whilst 8,270 Hospital beds are provided and fully maintained, the daily average occupation is only 1,927 patients, i.e., less than one-fourth of the beds are utilised. Whereas in the Indian Army for which 12,703 beds are provided, only 4,506 are in daily occupation, i.e., a little more than one-third is utilised. Assuming we accepted this one-fourth and one-third as the actual in-patient hospital needs (I do not suggest this for one moment) of the army, surely one is entitled to suggest a bigger reduction than what the Committee have already suggested, namely, 5½ lakhs. Let us for a moment forget the professional view of the matter which I admit demands surplus hospital accommodation to meet the needs of unhealthy months when more beds are occupied, also epidemics, etc., and look at it from a purely business or tax-payer's point of view and from which this expenditure cannot be dissociated. Well, what do we observe? Personnel, both superior and subordinate, accommodation, equipment, etc., are maintained at the cost of the Indian Exchequer to three times or at least twice as much as the actual medical requirements of the armies in this country. Is this necessary? Is this fair to the Indian tax-payer? Is this sound business? Is it sound finance? I would like to know how any business concern could be run on these lines. I should like to ask my friend, Mr. Darcy Lindsay, as an assurance expert, what it would work out per year to any firm if it had to pay a premium of Rs. 100 per each one of its employees. Now, Sir, the waste in this department was so glaring that the Inchcape Committee found it necessary to suggest a reduction of 53 lakhs out of a total revised estimate of about 3 crores apart from other savings suggested. Assuming that this were a votable item and dealing with it on the question of supply and demand as a business proposition purely, this House would be entitled not to call for a retrenchment of 53 lakhs as has been suggested but of almost 2 crores. This for reasons already given would be a fallacious argument. Nor do I suggest it. Moreover the figures and percentages quoted by me are rough and have been extracted from the mass of figures to illustrate my argument and to demonstrate on what lines retrenchment can be effected in the Military Budget. I speak as a medical man and I have no hesitation whatever in assuring this House that the Military Medical Department offers *par excellence* a most fertile field for substantial financial retrenchment, even much more than has been suggested by the Inchcape Committee. I now propose to show this House how this retrenchment can be effected. The nurses employed in British Hospitals belong to the Queen Alexandra Nursing Service, and are recruited in England at a total cost of about 9 lakhs. I ask here—Is this expenditure necessary and is this service a necessity, especially when I tell this House that there is ample and suitable material in this country from which to get nurses of equal ability and at a much cheaper rate without any desire to decry or undervalue the admirable services rendered by this service to the British soldier. Yet I consider its retention in India under the circumstances detailed—a finesse or a frilling to the medical needs of our troops, and not an absolute necessity. The day of white nurses for white troops is gone, and the expenditure incurred on this service not only increases our army estimates but deprives nurses trained in and of this country, both Indian and other communities, of employment. During the war nurses from India were largely employed and were then found quite good enough for British troops and their war records prove what splendid work they did, but, now, with peace they are considered not good enough and nurses are imported from England on much

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higher wages. I consider, Sir, that this is a wanton waste of money, and that these nurses should be replaced by the trained women of this country. Why should the British Army in India need not only their food but their nurses from England? The time is not far distant when every military medical officer will be recruited in this country. That was the object of the Resolution, which I called my Medical Swaraj Resolution, which I brought before this House last year, but which was rejected. I make bold, however, to now say that in a short time a similar Resolution will yet be accepted by this House. I therefore submit that that is one of the means of retrenchment in the military expenditure and I present it for the serious consideration of the Member in charge. My next suggestion is as regards Assistant Surgeons. Here, you have a body of men 400 strong costing the State annually 15½ lakhs whose training of 4 and 5 years has been and is being debited to the Indian Exchequer. They are fully qualified and trained professional men who can sign certificates of life and death and whose certificates of licence are equivalent to those of any imported medical man for an Indian Court of Law. These men of the I. M. D. are appointed to British hospitals in a professional capacity subordinate to the R. A. M. C. officer. But as a matter of fact what duties are assigned to these men? They are used as glorified compounders not as professional men, following behind R. A. M. C. officers whilst they stroll through the wards taking down prescriptions and making entries in the diet sheets. That is how these professional men are used in British Military Hospitals. Why? Because I suppose the R. A. M. C. officers feel that their professional work cannot be shared with these subordinates. Anyhow, here we have an efficient body of professional men costing us 15½ lakhs per annum and I have no doubt many in this House have received treatment from this body of men whose services and salaries are wasted in British Hospitals simply because they are refused their proper position. I understand that it was, and may be is still, the intention of the D. M. S. India to replace these professional men by a body of poorly educated, partly trained European male nurses recruited in England called R. A. M. C. Ranks, 470 of whom are to-day employed in British Hospitals in India at an annual cost of 6 lakhs. It may interest and greatly surprise this House to know that the Privates and N. C. Os. of this Corps receive higher salaries including allowances than the junior classes of Military Assistant Surgeons. Can you conceive of anything more wasteful than the employment of this corps, than the replacement of Military Assistant Surgeons by such a body of men and who to make matters worse receive a higher salary.

I submit, Sir, for the very serious consideration of the Honourable Member in charge and this Honourable House that this R. A. M. C. (Ranks) should be forthwith abolished as not only unnecessary but a colossal waste of public money. They are of no use to-day. They were not found necessary before for British Hospitals and why should they be necessary now? This attempt to replace a fully qualified body of Assistant Surgeons by another body of partly trained, comparatively ill-educated male nurses is, I consider, a criminal spoliation of public money.

Now, Sir, I also submit for the serious consideration of the Honourable Member in charge that the strength of the R. A. M. C. officers should be markedly reduced. To call upon this House to permit an annual expenditure of 37 lakhs of rupees for the maintenance of 333 R. A. M. C.

officers who have about 6 in-patients per day per doctor is a ridiculous waste of money. The same remarks apply with almost equal cogency to the I. M. S. I know, Sir, that these officers do other duties, such as Serologists, Bacteriologists, Public Health Officers and so on; but that does not detract from the strength of my argument or its cogency. I am seriously tempted—nay, I feel I am entitled to ask the Military authorities as also this Honourable House whether it is really necessary for British soldiers when they come out to India to bring their own nurses with them—a privilege that is even not enjoyed except by a few English babies when they come to this country. Queen Alexandra Service Nurses have done noble and admirable work in the past and also to-day but the time has come owing to this enormous military budget for replacing them with nurses recruited and trained in this country and who can be obtained at a lower cost—at least Rs. 100 less. Excluding other incidental expenses, e.g., passage to and from England, etc. I offer this as another way of effecting further retrenchment in the Military Medical expenditure.

The last point I wish to suggest to the Member in charge is that if the British Military Hospitals cannot find suitable and legitimate work for the Military Assistant Surgeon, then say so. Free them from the undignified and profitless work to which they are put and transfer their services bodily to Civil India which to to-day crying out for trained medical men. Refuse to allow the Army authorities to use these trained Military Assistant Surgeons as glorified compounders and clerks to R. A. M. C. officers and so help to still further reduce the Military budget.

Rai Bahadur L. P. Sinha (Gaya cum Monghyr: Non-Muhammadan): I rise to support the motion moved by my friend Mr. Ginwala and in doing so I will confine my remarks to the reorganisation of the five Departments only. The Retrenchment Committee recommended the fusion of the five Departments, namely, that of Education, Revenue, Commerce, Industries and Public Works, and to divide again into two Departments, namely, General and Commerce. They showed by a statement, at page 134 of the Retrenchment Committee's Report, that the total cost of all these five Departments, according to the Budget for 1922-23, is Rs. 24,68,900, and their recommendation was to reduce this expenditure to 13 lakhs by the reconstitution of these two Departments. So thereby they suggested a reduction of Rs. 11,68,000, of which they thought one lakh will be required for the expansion of the Board of Revenue and Staff. Thus the ultimate saving proposed by the Committee was Rs. 10,68,000. But, Sir, Government in their revised Schedule of Demands accepts to reduce only a sum of 5 lakhs, thereby leaving Rs. 5,68,000 unreduced. In supporting the motion I would commend to Government the proposal of a further reduction of 5 lakhs which I think will not be very unreasonable on my part to demand considering that even then Government will have Rs. 68,000 for their terminal charges for these Departments. Lastly, Sir, I would like to draw the attention of the House to the fact that the figures taken into account by the Retrenchment Committee in proposing their reductions were the figures of the original Estimate for the year 1922-23. Presumably the revised budget figures for the same year were not placed before the Committee and in my opinion had the revised figures for those five Departments which is nearly 2 lakhs less than the original Budget figures been placed before the Committee, their proposed reductions would have been still greater. With these remarks, Sir, I beg to support the motion.

Mr. A. F. L. Brayne (Finance Department: Nominated Official): Sir, I might perhaps be able to explain the position and indicate what Government have been able to do in this matter. My Honourable friend, Mr. Ginwala, pointed out that the reductions recommended by the Committee amounted to about 49 lakhs and that Government had reduced only 36 lakhs leaving 13 lakhs still to be taken off. Now, when Mr. Ginwala was dealing with that budget head, he was dealing with a very much wider field of expenditure than that which is now under the consideration of the House, namely, Demand No. 14, General Administration. If the House will turn to page 128 of the Report of the Retrenchment Committee, they will find in paragraph 2 that this budget head includes about 22 lakhs of expenditure in the minor administrations, which is distributed over the North-West Frontier Province, Delhi and various other minor administrations. There is also expenditure of about 70 lakhs in England which covers the cost of the India Office and the High Commissioner. Under the head General Administration, we are only concerned with the Governor General and staff, the Executive Council, the Legislative bodies, the Secretariat and attached offices. Now, under the first three heads, the Governor General, Executive Council and Legislative bodies, it is not intended either by the Retrenchment Committee or, as I understand, by the House to make any reduction at all. That leaves us with the Secretariat and attached offices. Now, on page 144 of the Report the Committee indicate their conclusions. As regards the Secretariat, they say that there should be reductions amounting to 14 lakhs, and under the head Attached Offices, which are shown at page 135 of the Report, they indicate savings of Rs. 3,95,000. The total savings thus indicated amount to 18 lakhs. Now, against that, the Government have taken Rs. 8,67,000 in the budget out of the 14 lakhs proposed for the Secretariat; and out of the Rs. 3,95,000 proposed for the attached offices they have taken Rs. 3 lakhs, that is to say, out of 18 lakhs proposed for reduction Government have carried 12 lakhs into the budget. That leaves 6 lakhs to be dealt with. Now, is it at all possible to reduce another 5 lakhs from that 6 lakhs? The 5 lakhs will be found as follows: at page 134 of the Report the Committee indicates certain savings under various departments, Foreign and Political, Home, Legislative, Finance; those savings have already been carried into the budget within a few thousand rupees. They show that certain other departments costing about 24 lakhs might be amalgamated into two departments the cost of which would be about 14 lakhs, taking into account a lakh for the expansion of the Board of Revenue; that is to say, they indicate a saving of 10 lakhs. Government have only taken into account 5 lakhs there for the simple reason that they have to allow for a very considerable lag and terminal charges. Even supposing that a decision were arrived at on this subject to-morrow it could not be carried into effect in time to secure a larger saving than 5 lakhs for the simple reason that the Secretary of State's sanction has to be obtained to reduction of some appointments. Further, we have to give three months' notice to staff. Those who are discharged will go on leave and their leave allowances will continue to be carried against the Budget. Therefore, so far as can be seen there is no possibility of saving more than 5 lakhs under this head.

Mr. Deputy President: The question is:

"That the demand under the head 'General Administration' be reduced by Rs. 5,00,000."

The Assembly divided:

AYES—53.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Aiyer, Sir P. S. Sivaswamy.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Dalal, Sardar B. A.
Das, Babu B. S.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamall, Mr. A. O.
Jannadas Dwardkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sinha, Beohar Raghubir.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—34.

Abdul Rahim Khan, Mr.
Abul Kasem, Maulvi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Brayne, Mr. A. F. L.
Bridge, Mr. G.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Cotelingham, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Munammad Ismail, Mr. S.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sassoon, Capt. E. V.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was adopted.

The Honourable Sir Basil Blackett: Sir, before the final question is put, I must try once again to explain what the position is. Under the estimate for General Administration we have made a cut which is the best estimate we can make of what would be the effect of putting into force at the earliest possible moment all the cuts recommended by the Inchaape Committee, including the cuts which various Members of the House have to-day expressed their desire not to see enforced. The House has made a cut of five lakhs over and above that. Now, Sir, we do not produce estimates in which there is five lakhs which we can spare. It is out of the question that we should make a cut of five lakhs in this case and at the same time carry on the administration. The House must realise its

[Sir Basil Blackett.]

responsibility. We have done our very best to present estimates representing the minimum that we should spend if we carried out all the Inchcape Committee's recommendations. The House has questioned some of these recommendations and has yet made a further cut of five lakhs. That is the position.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): We have been told that the Government made all the cuts which the Inchcape Committee recommended. May I point out that the Inchcape Committee on page 144 recommended a saving of Rs. 14,08,000 on item No. 1 and of Rs. 3,95,000 on item No. 2 that is to say, about Rs. 18 lakhs, out of which Government have made a cut of 8.67 lakhs on item No. 1 and 8 lakhs on item No. 2, in all 11.67 lakhs; that is, short of the Inchcape Committee's recommendations by 6.3 lakhs.

The Honourable Sir Basil Blackett: That is exactly the position. As I have said before, we have presented an estimate which represents the best view that we can have of what would be the expenditure next year if we put all the Inchcape Committee's recommendations into force at the earliest possible moment. There must be an allowance for lag. Those recommendations are not in force to-day. They will not be in force on the 1st of April. As the Inchcape Committee themselves have taken pains to point out, their figures are the figures for a year in which the recommendations would be in full force as from the 1st of April without any allowance for lag or terminal charges.

Mr. N. M. Samarth: The question is whether at the end of the year you will be able to make that reduction or not.

The Honourable Sir Basil Blackett: The answer is in the negative.

Rao Bahadur C. S. Subrahmanayam: I rise to a point of order, Sir. I am afraid this post-war discussion probably is not entirely in order.

Mr. Deputy President: I am afraid that the Chair cannot help the Government in this matter. The vote has been carried by the Assembly.

Dr. H. S. Gour: I will only add, Sir, that if the Honourable the Finance Member has any difficulty where to make the cuts, we will assist him.

(Mr. Deputy President then called on Dr. Gour.)

Mr. P. P. Ginwala: I have got one, Sir, No. 338. I beg to move, Sir:

"That the demand under the head 'General Administration' be reduced by Rs. 100."

Mr. Deputy President: I think the demand for reduction by Rs. 5 lakhs having been carried, these drop out. I thought Dr. Gour was going to speak on the question which has just been moved by Sir Basil Blackett.

Dr. H. S. Gour: I was then going to say that if the Honourable the Finance Member has any difficulty where to make his cuts from, Members of this House will gladly place their services at his disposal and show him to do it.

The Honourable Sir Basil Blackett: Sir, I shall be delighted to accept any assistance of that sort. but I defy the Honourable Member to show where I am to cut these particular items on which a vote has

just been taken by the Rs. 5 lakhs which the House has requested us to cut. It is no good saying there are cuts elsewhere. The cuts must be here. The House has given Rs. 5 lakhs less for our expenditure under these heads than the minimum that we estimated. It is no good saying that there are cuts elsewhere. That does not touch the question.

Mr. Deputy President: The question is:

"That a sum not exceeding Rs. 68,90,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'General Administration'."

Mr. P. P. Ginwala: Before the demand is put I should like to make a few observations. Sir, I was under the impression that at this stage the House would be in a position to express its general opinion on the General Administration of the country during the last 12 months and with that idea I gave notice of my amendment No. 338. I do not wish, however, to weary a House which is already wearied with debate, but I think it is our duty to point out to the Government by way of a parting gift before we leave this demand as to what we think of the administration as a whole. The Honourable the Finance Member has just now suggested . . .

Mr. Deputy President: Is the Honourable Member moving his amendment?

Mr. P. P. Ginwala: I am speaking on the general motion.

Mr. Deputy President: I thought we had been talking about this for the last two days.

Mr. P. P. Ginwala: I am now summing up the results. The President himself suggested this . . .

Mr. Deputy President: That was when the motion for a reduction of the General Administration charges came up. I thought Members had an opportunity of speaking on these matters in detail.

Mr. P. P. Ginwala: We wanted to raise this general debate on the General Administration as a whole. We were then told that an opportunity will arise at a later stage when this can be done. I offered no arguments at all on the motions for reduction and I submit that the House is entitled to express its opinion on the General Administration as a whole. I am not going into any particular Department at all. My submission is this that the Honourable the Finance Member in his speech as well as the other Government Members who have spoken have bewailed the series of deficits which we have had to face and have traced many of the causes for these deficits, but the most important and obvious cause was never hit upon by them, that is, the past extravagance of the administration of this country. Last year the House may remember we moved a very small reduction of Rs. 25 lakhs in the Railways Demand and we were told that it would be disastrous if as much as Rs. 25 lakhs were deducted from the Administration charges. We have seen now the result. They themselves have been able to save about 2 crores of rupees on their original estimate and this year they have submitted practically to a Rs. 4½ crores reduction. Though of course, we do not propose to censure them in respect of whatever their conduct may be in the future with regard to expenditure, I think it is the

[Mr. P. P. Ginwala.]

duty of the House to let them know what we think of their past expenditure. There are many other points to which reference may be made in dealing with General Administration. There is the question of the Army. We are entirely dissatisfied even now with their Army policy. Sir Montagu Webb objected to the expenditure which was still being incurred, and for that not any one particular Member of the Government is responsible but the whole Government is responsible. Then there was this question of votable and non-votable subjects. They have as a Government, as I said this morning, restricted the scope of the votable items in some places and extended the scope of the non-votable items, and this House cannot allow . . . (The Honourable Sir Basil Blackett: "And vice versa.") But we do not object to a non-votable item being made votable. (Dr. H. S. Gour: "That is our right.") We positively object to a votable item being made non-votable. This is the only opportunity which we can get to express our opinion on these various aspects of general administration. I hope the Government will show a certain amount of penitence and that they are on the way to mend their extravagant habits of expenditure and . . .

Mr. Jamnadas Dwarkadas: I rise to a point of order. I do not want to interrupt the Honourable Member's speech, but I should like to know what we are discussing. (Cries of "General Administration.") What is the question? It has not been placed before us (Cries of "Remarks on General Administration.")

Mr. P. P. Ginwala: I am sorry that the Honourable Member is so impatient of any remarks in the nature of censure on his Government . . .

Mr. Jamnadas Dwarkadas: I am only anxious to know what is going on.

Mr. P. P. Ginwala: I am trying to point out to the House that I think it is imperative on it to draw the attention of Government to the fact—even though we have the highest opinion of each individual Member of the Government which no doubt many of us have—that as a body we have not got such a favourable opinion of them as administrators. If the House does not express its opinion now I would like to know when it will. In these remarks though I was not allowed to move a formal nominal vote of reduction I have sufficiently explained my own views upon the work of Government as a whole, during the last twelve months.

The Honourable Sir Malcolm Hailey: I do not think that it is the desire of the House that a reply should be made at this point to a motion which was, with all deference to the Chair, so entirely out of place. We have devoted two days for the general discussion of the affairs of Government and its administration. Some 40 Members spoke on that occasion. We have devoted now very nearly three days to detailed discussion on separate items of administration. There have been some hundreds of motions tabled, in the course of which individual aspects of the administration have come under discussion. Now we come to a stage, in which you have put before the House the final demand for grant for General Administration, that is, the expenditure on the Secretariats and the Legislative bodies. I notice that no one chose that opportunity for initiating a general discussion on the conduct of the Legislative bodies. The Honourable Member however thinks that he is in place in taking this opportunity for a general criticism of the whole course of Government Administration. I doubt whether that

is really the desire of the House that we should here and on this occasion, an occasion so entirely out of place, seek to justify the whole of our administration in past years. We are well aware of the somewhat bitter, somewhat irreconcilable attitude that is frequently taken by some Members of the House in regard to every action of the Government, good or bad. Take only one point. We know that when we do our best for retrenchment by appointing a powerful committee like the Inchcape Committee, and loyally accepting its recommendations, nevertheless there are those who express the most extreme form of dissatisfaction because we cannot make the whole of the reductions with immediate effect. Again, we are told that we have deliberately, and perhaps this is the worst insinuation of all, attempted to extend the classification of non-votable items, whereas the fact probably is that the re-classifications made actually extend the items on which the House has to vote. I conceive that I shall not be doing my duty if I were now to detain the House by a long debate on points such as these or by a lengthy review of all that we have done in the past. On a statement such as Mr. Ginwala made, I decline altogether to accept his good opinion of the individual Members of the Government. I treat that kindness on his part with complete contempt; for we must be judged as a body and as a whole. I maintain that he is doing, and he knows that he is doing nothing but wasting the time of the House in attempting to raise a general discussion of this nature on this particular motion.

Mr. Deputy President: The question is:

"That a sum not exceeding Rs. 68,90,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'General Administration'."

The motion was adopted.

DEMAND No. 10—INDIAN POSTAL AND TELEGRAPH DEPARTMENT.

Colonel Sir Sydney Crookshank (P. W. D. Secretary): Sir, I beg to move:

"That a sum not exceeding Rs. 8,07,98,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'the Indian Postal and Telegraph Department'."

Sir, at the outset I would invite the attention of Honourable Members to the report of the Indian Retrenchment Committee, page 107, item No. 8 under the head of "conclusions" from which they will see that that Committee made proposals for a reduction of the colossal sum of Rs. 1,37,27,000 in the Budget Estimate for 1923-24 for this Department. This reduction has to be made against the items detailed in the last right-hand column of Appendix A which will be found on page 109 of the same Report. As against this very large sum, the department has by a Herculean effort—I may almost say—effected reductions which amount to about 128 lakhs of rupees, which is therefore only a few lakhs short of the total reduction which was recommended by the Committee. Honourable Members will no doubt realise that in a department like the Post and Telegraph Department, which is a commercial department depending very largely on its business for the revenue which it receives and in which it has obligations, commitments, agreements, contracts and other undertakings to fulfil, it is an extremely difficult matter to make reductions on this very large scale.

[Colonel Sir Sydney Crookshank.]

As an instance of the difficulties which we have to contend with, I will just read out a telegram which we received yesterday:

"At overflowing meeting last night of members, Indian Telegraph Association, Calcutta Centre, comprising all grades and ranks traffic and engineering branches, unanimously resolved respectfully to submit following to Government. Meeting views with grave concern suggestions and recommendations Inchcape Committee as touching possible reduction in pay, discontinuance of house rent and other allowances and free quarters as also reduction in engineering and traffic higher appointments and respectfully urges on Government the rejection of these recommendations which are viewed as arbitrary, harsh and unjustifiable, and as creating substantial grounds for widespread discontent. Resolution has support of entire Association and staff throughout India and Burma. Majority staff and families in dire poverty, children ill-fed, ill clad, while schooling beyond their means; any reduction in pay or allowances can only reduce them to state desperation; earnestly pray protection against recommendations in question."

Many other telegrams of a like nature have been received from powerful unions and associations throughout the country. In putting forth their amendments, I would venture to ask Honourable Members gravely to consider the difficulties and disabilities which we had to contend with in making this very large cut of 128 lakhs and to remind Members that, as I have already stated, we have done our most.

Mr. B. N. Misra: Sir, I beg to move:

"That the provision for Working Expenses under the head 'Indian Postal and Telegraph Department' (page 31) be reduced by Rs. 25,000."

When I sent this amendment asking for a reduction of working expenses, I made up my mind to point out the top-heavy administration of this Postal and Telegraph Department. Sir, if we compare the increase of work since 1913-14 to about 1921-22 and if we compare the increase of officers and staff, we find that really the increase of officers in the Postal and Telegraph Department has been nearly 32 per cent., whereas in regard to the staff the increase is by about 17 per cent. In the two departments really the officers have been increased in such large numbers that it costs much more than is really desirable in the interests of the working of the departments. The staff has been increased only by 17 per cent. Moreover I find the increase of expenditure is more in the Telegraph Department, although the Department, as was pointed out by the Honourable Mover, is a commercial concern. The Postal Department pays more revenue to the Government and it transacts much pecuniary business, Savings Bank, Registration, and many other branches which fetch more revenue. But I see less money has been spent on it, whereas on the Telegraph Department much more money has been spent and the increase of revenue has not been really so much. Of course there is no separate accounts and we do not find the income separately shown, but really that will be found to be the case if the matter is scrutinised. Then, Sir, we find the pay in both the departments is very disproportionate. In the Telegraph Department you find the pay of these officers is much more, whereas people who transact very responsible business such as receiving money orders or savings bank deposits and have heavy and responsible transactions in money are paid much less. I beg to point out to the House that even in England these services are not paid on a separate scale. They give the same pay to both the branches. I fail to see why in India a separate pay and a very much higher scale of pay should be paid to the Telegraph Department, and why the Postal Department

should not be paid on the same scale. I had in my mind several other details to point out but I do not do so now. The Retrenchment Committee desire retrenchment of some items which are very undesirable. They propose to take away some postal peons and take away some small officers whose pay is very small but who render much service to the public and whose retention will be very beneficial to the public, but they want to keep many highly paid officers at the top who really do nothing except perhaps supervise, and do not really do useful work for the public. I find there are several amendments in this matter and especially one by Dr. Gour who asks for a reduction of 10 lakhs, and as I ask for a small sum, I must leave my arguments to be advanced by Dr. Gour. I wish him success and I hope he will get this 10 lakhs. In his favour I withdraw.

Mr. Deputy President: I consider it a useless taking up of time for the Honourable Member to have made all these remarks and then to have withdrawn the amendment which stands in his name. If he wanted to withdraw in favour of Dr. Gour, it was open to him to do so without making this speech.

Dr. Nand Lal: Sir, my motion runs as follows:

"That provision for 'Indian Postal and Telegraph Department—Working Expenses (Stores and Working Establishment—Voted Expenditure)', Appendix A, be reduced by Rs. 500."

I recognise that the Indian Postal and Telegraph Department is a very useful department. It is apt to be considered the eye and ear of the public. It is a department through whose services one can speak to one's relations and friends at a great distance. I will not trouble the House with details, but there is one aspect of the question, which has induced me to offer certain suggestions. One is this, that in the Telegraph Department the Indian element, especially at those telegraph offices which are located in big cities, is comparatively very small. May I invite the attention of the Government of India to this point?

The second point which I wish to place before the House is this, that lots of printing is done, and I am told that private printers are not given full share in this work.

The third point, which has been considered a great grievance by the public, is this, that stores are purchased and that a very large portion of those stores is not purchased in India. If this is a fact, and if this complaint which has reached me has got any truth in it, then I hope that the Government of India will, for the future, take some suitable measures that this grievance on the part of Indians may be properly and adequately redressed.

The other point to which I wish to draw the attention of the House is that last year we seriously suggested to the Government of India, especially to the Honourable the Finance Member, that if we were to abolish the quarter-anna post card, most probably that abolition would not eventually pay us and that, instead of gaining something, we might lose. If my information is correct, then I think that eventuality has happened. I hope that Government this year will kindly give serious consideration to the suggestion which was put forward last year and which, most probably, may be repeated this year.

The same complaint may be urged, in the form of a repetition, in connection with the enhancement of postage in connection with letters, that is, from half an anna to one anna. So far as my information also in this

[Dr. Nand Lal.]

connection goes, the Postal Department has not gained much. I therefore hope that the Government of India will give serious attention to this question also; this time it is not too late for the Government to think of it. In this Department, serviceable as it no doubt is, we should try to see that the system which we adopt and the rates which we may fix may be such a system and such rates as may be able to fetch more money for us, that is this fixity of rates should be on business lines; a rate which will invite the public to make use of the Post Office. Allow me to say that this increase in the rate of postage has put a clog in the way of the poor people to have communications with their relations and with their kith and kin, and in certain quarters it has been considered an impediment in the way of some commercial people also.

The last point, which I have got to urge, and which is equally serious, so far as its character goes, is that some complaints have reached me to show that when the public goes to some of the big Post Offices they are sometimes detained and in the case of letters sent to the Post Office, the answers are given too late. If these complaints are correct, then the Government of India will be kind enough to see that this complaint is also remedied.

With these few remarks I submit this amendment before the House and, if the Honourable Member in charge will give me some undertaking that these grievances will be attended to seriously by the Government of India, I shall not press the point very much.

The Honourable Mr. B. N. Sarma: Sir, it may assist the House in curtailing the discussion if I make a general statement as to the efforts we have had to make in order to comply with the suggestions of the Retrenchment Committee to reduce recurring expenditure met from Revenue to the extent of 137 lakhs and from Capital to the extent of 50 lakhs. The Department loyally submitted to this recommendation almost wholly, because we felt that it was undesirable in the present financial condition of the country to press for the full expenditure which would be really necessary to keep the Department efficient, well staffed and ready to take up the work which has been steadily flowing in during the last few months. They have agreed, I may state to the House, to some retrenchments even to a greater extent than has been suggested by the Retrenchment Committee in order to be able to accept the figure of 137 lakhs within a very narrow margin, and in order to do so, the straits to which they have proceeded will be realised by Honourable Members when they know that they have to submit to a grant for maintenance and repair of postal buildings amounting only to Rs. 73,000 as against a normal figure of Rs. 4,23,550. That is, they had to agree to a cut of Rs. 3,50,000 upon maintenance and repair of buildings, and a cut of a lakh on telegraph buildings.

It would be detaining the House unduly long if I were to go through the various retrenchments which the Department had to submit to, and which the Government had to accept. Suffice it to say that, in view of the diminution in the amount of work that was due to trade depression largely, we agreed to a small reduction under the head of Staff, and to a considerable reduction under various items, aggregating as Sir Sydney put it, roughly to 129 lakhs under Revenue and 50 lakhs under Stores. I think further, Sir, it would be impossible to go further without sacrificing completely all efficiency and producing an amount of discontent which no Department can afford to face.

Well, a good deal of apprehension is being entertained by the staff, but we hope that we shall be able to continue, without any very substantial retrenchment, most of the staff at present working under the various departments, without seriously affecting any emoluments they have been drawing as the result of the recommendations of the Postal Committee and the Telegraph Committee which sat two years ago. There seems to be an impression due no doubt to a statement made in the Retrenchment Committee Report that the number of officers in this department has grown out of proportion to the increase of work since 1913-14. I may correct that misapprehension because it was due to the fact that a number of officers who were drawing less than Rs. 200 and who were not included within the figures of 1913-14 were, owing to the recommendations of the Postal Committee having been given effect to, brought on a scale at which they were drawing more than Rs. 200; there is no increase in strength or increase in numbers as stated; they were brought under the head of officers drawing 250 or more and consequently there is an increase from 514 to 678. As a matter of fact if those who have been promoted by reason of those increments be deducted, you will have to reduce the figure by about 70 so that the proportion is exactly to the increase in the work and Honourable Members will see therefore that on the postal side there has been no undue increase at all in the number of officers.

I may point out another error which has crept in with regard to the telegraph figures. We are actually 16 under strength if we are to take the recommendations of the Telegraph Committee which sat in 1920 as to what should be the proper strength to do a certain amount of work. But we had to put up with that deficiency and we mean to put up with that deficiency because it would be unreasonable to increase the strength at a moment of financial stress like this. There seems to be also a general idea that there is a very large number of very highly paid officers in this department and retrenchment might just as well be effected in the upper ranks with financial benefit and without considerable loss of efficiency. I may point out, Sir, that the committee which sat to investigate the grievances of the postal staff found that the number of higher offices open to the staff was remarkably low in this department. 14,500 or 14,700 clerks had very few higher offices open to them; you have got about 181 or more superintendents and a large number of postmasters, and the higher appointments which are open to these were considered low and they have made recommendations to improve their prospects. Therefore the number of higher officers in this department is not relatively as large as perhaps would be urged as desirable in the interests of the staff. I shall not take up the time of the House by pointing out how the figure is smaller than it is perhaps in some other departments and how economically this department has been working with the staff at its disposal; but we have agreed to reduce some of the highly paid posts having regard to the considerations I have already mentioned. During recent years there has been a promotion of many Indians from the special or local scale to the general scale, adding to the increased cost in some directions; and Honourable Members may rest assured that this aspect of the question will be borne in mind whenever there is any possibility of increasing the Indian element; but I may say that this department is chiefly manned or almost wholly manned by Indians including in that term Anglo-Indians or statutory Indians. Sir, with regard to the printing and stores and similar . . .

Dr. Nand Lal: I made reference specially to the Telegraph Department, not to the Postal Department, so far as the Indian element goes.

The Honourable Mr. B. N. Sarma: If there be any special grievance which Honourable Members desire to bring to the notice of this department, they would only too readily inquire into them and set right any such grievance as may exist. There was one suggestion made by Dr. Nand Lal with regard to the increased postal rates introduced last year. It is a large question, and I do not want to go into it now. The Department and the Government are as anxious as ever to keep the postage as low as possible. The revised estimate is 969 lakhs as against 905 of 1921 Actuals. Therefore, there is an increase of 64 lakhs, and although I admit that the postage revenue has suffered to a slight extent owing to increased rates, there has been a steady improvement and the figures that we have taken in February last indicate an improvement of about 13 per cent., and we hope during the next year to give the general exchequer as much as 161 lakhs of rupees net. I do not think I need take up the time of the House any more, but I think we have done all that we could to carry out the recommendations of the Retrenchment Committee and Honourable Members will not, I hope, suggest any further retrenchments which would be detrimental to the efficient working of the department.

Dr. Nand Lal: Sir, in view of what has fallen from the Honourable Member in charge, I beg leave to withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

Rao Bahadur T. Rangachariar: Sir, I intended to raise a very broad question and a very important question too under the head of provision for allowances, honoraria, etc., to the Wireless Branch of this Department, but I do feel, Sir, that this is not the occasion for raising it. I refer to the question of wireless broadcasting in this country and it will require another day for discussion. I heard that my Honourable friend, Sir Sydney Crookshank, is himself going to bring up the subject in the shape of a Resolution. I hope, Sir, the matter will be placed before this Assembly and that no decision will be arrived at before this Assembly has had an opportunity of considering the scheme which I see has already excited a great amount of public comment in consequence of the conference which was held recently. I understand the subject is a very important one and that the department itself would like to discuss it on a separate day.

The Honourable Mr. B. N. Sarma: I may suggest, Sir, that the question which it was proposed to discuss if time permitted is with regard to the wireless scheme as a whole, and not with regard to wireless broadcasting. But I may assure the House that the scheme that we put forward was for the purpose of eliciting the views of the general public on a tentative embryonic scheme and that we did not want to proceed at all in haste and grant licences without ascertaining what the public opinion was. We have to take sufficient protection to safeguard the interests of the community generally, for promoting the general interests of any Indian companies that may exist or that hereafter be started and also for safeguarding the interests of the press. Any representations that may be received will be fully considered, and I do not think anything will be done hastily. It was with a view, as I said, to elicit public opinion that we have published the draft licences, and we hope the public will kindly co-operate with us. The thing cannot be put off indefinitely. I agree the country has a right to know what we propose to do and we do expect

their co-operation and friendly criticism in that respect, so that the future promotion of wireless broadcasting which we think ought to be assisted may proceed on healthy lines.

Rao Bahadur T. Rangachariar: My point is whether this House will have an opportunity to discuss the subject, so that we may offer our criticisms on the proposed measures, if not now, at least in the July session. It is a very important question, and it will not do to merely consult the public and the newspapers, but this House also should have an opportunity to discuss it, and I wish to emphasise it.

Dr. H. S. Gour: Sir, the motion which I beg to move is:

"That the demand under the head 'Indian Postal and Telegraph Department' be reduced by Rs. 10,00,000."

Honourable Members will find from the statement supplied by the Finance Department, under the head Posts and Telegraphs the following statement:

"Excluding Interest on Debt the budget of the Department was about Rs. 9 lakhs above that recommended by the Retrenchment Committee. A further provisional reduction of Rs. 3 lakhs has been made in the provision for expansion of establishment."

If, I understand this statement aright, it means that 9 lakhs of rupees above that recommended by the Retrenchment Committee was budgeted for and in response to the recommendations of the Retrenchment Committee a reduction has been made of 3 lakhs.

(At this stage Mr. President resumed his seat.)

Therefore, 6 lakhs worth of retrenchment recommended by the Incharge Committee have not been given effect to. It was very refreshing to hear the Honourable Sir Sydney Crookshank reminding the House that the Postal and Telegraph Department is a commercial Department. Now, Sir, if we turn to this commercial Department, what do we find? The Honourable the Finance Member in his budget statement referred to this Department in the following terms:

"The effect of the new postal rates during the first few months of the financial year was to reduce correspondence. There have since been signs of recovery and the public are now getting gradually used to the higher postal charges. For the present, however, I think we must anticipate a diminution of 106 lakhs in our anticipated receipts in 1922 and 1923. There is a small saving in working expenses and, after debiting interest, the Department will probably prove to have been run on a profit of about 24 lakhs."

Do Honourable Members realise what this statement means? It means that this commercial Department of the Government of India spends about 100 per cent. upon its management and the outturn is either nil or negligible. That is the first thing Honourable Members must bear in mind. Another question that Honourable Members cannot forget is the discussion we had in this House last year when the postal and telegraph vote was under discussion. The Honourable Mr. Geoffrey Clarke, speaking on behalf of the Posts and Telegraphs, justified the increased postal rates on the ground that it would bring more income and wipe out the deficit and with the surplus there would be expansion of the Post Office. He pathetically referred to certain struggling Post Offices which would have to be closed if we did not accede to the increased postal rates. That appeal

[Dr. H. S. Gour.]

was not unsuccessful. But what has been the result? The Honourable the Finance Member's statement and the statement reiterated in brief by the Honourable Mr. Sarma has told us that the expansion of postal traffic has not been commensurate with the increased postage. On the contrary, the postal receipts have gone down in consequence partially of the increased postage. Now, Sir, I submit every economist knows that a time comes when what we call the saturation point is reached in taxation, and so far as postal rates are concerned, I submit that saturation point was reached last year, and the more you tax, the less you are likely to get out of that Department. I therefore submit that the first and dire necessity that confronts us as regards the management of the Post and Telegraph Department is drastic retrenchment. Now, in this connection, the Retrenchment Committee have made some caustic references to the inefficient management of the Post and Telegraph Department. My friend the Honourable Mr. Sarma has already referred to a few of their recommendations. Let me categorise them for the benefit of the Honourable Members. In the first place, they say that while during the last ten years under review the officers have increased by 82 per cent., the staff has only increased by 17 per cent. In this connection I have not overlooked the explanation given by the Honourable Mr. Sarma to which I shall presently advert. Then the Retrenchment Committee point out that the staff is excessive. Thirdly, they point out that the cost of travelling allowances is also excessive. Fourthly, they point out that there has been a great waste in stationery and printing. Let me give you one illustration culled from the Retrenchment Committee's own report. Last year they printed 50 millions of telegraph forms. But how many were really utilised? You will never guess it. Only 20 millions. The rest were all scrapped. (A Voice: "Whose fault is that?" and other interruptions.) I am coming to that. Then, Sir, the Retrenchment Committee point out that the staff of the officers of these two Departments get free quarters and houses to live in and they deprecate the giving of these houses free of charge to the officers of the Department and insist that a reasonable rent must be demanded of them. Lastly, they come to the question which one of my interjectors referred to, namely, the large accumulation of stores. Honourable Members will observe that the Government of India is more or less a Government of the Stores Department. No less than Rs. 59 crores worth of stores are lying stocked or imbedded in the depôts of the Government of India. The Inchcape Committee have pointed out that this very large collection of stores which is daily deteriorating is inadvisable and that it should be disposed of to the advantage of the State. Now, in connection with the subject of Posts and Telegraphs they equally advise the Government not to make these large collections of stores for postal and telegraph purposes. Now, if these criticisms of the Retrenchment Committee are given due effect to, I have no doubt that the small sum of Rs. 10 lakhs when compared with the colossal figure of 8 odd crores of rupees would be, I submit, a very small percentage of economy which this House must ask the Post and Telegraph Department to make during the ensuing year. I feel, Sir, that there is absolutely no justification for not effecting the economy which we demand. I said at the commencement of my speech that I shall not forget to advert to the speech of my Honourable friend, Mr. Sarma. My Honourable friend has developed a true and genuine bureaucratic spirit. Whenever any question is put to him he tells us that the subject is under consideration. Whenever any demand is made it

will receive his sympathy, but beyond consideration and sympathy it does not go. Now, Sir, we are here not to invest in sympathies and considerations but to compel the occupants of the Treasury Benches to make themselves responsive to the will of the people's representatives in this House, and I submit that we shall not hear year after year these bureaucratic shibboleths which are hurled at us and have been hurled at us during the last three years. The matter is receiving due and sympathetic consideration." We shall judge of their acts by the results and not by the promises and I think that the least that we can do in connection with the subject of Posts and Telegraphs is to ask my Honourable friend the Member in charge to set his house in order by cultivating a little more of the commercial spirit to which the Honourable Sir Sydney Crookshank adverted and run this Department as any businessman, as any commercial man will do. Why, Sir? There are many ornaments of the commercial firms in this House. If I tell any one of them that I am going to embark on trade and I am spending 9 crores of rupees, at the end of the year either to lose 10 lakhs or to make this small pittance of Rs. 10 or 20 lakhs with the qualification and the necessary qualification of "probably" being superadded to my profits, what will be the result? The commercial expert will say, "Wind up your business. You are incapable and incompetent to run a business from which you can make no profit," yet we are told that this is a commercial department which requires every sympathy and consideration of the Members of this House. It is needless for me to point out that if we ask this House for a cut of Rs. 10 lakhs we are not doing much more than what the Retrenchment Committee have themselves recommended, and allowing for that most felicitous expression with which the Honourable the Finance Member has made the Members of this House by this time sufficiently familiar,—allowing for the lag, I am sure that the sum of Rs. 10 lakhs which we cut out of the budget for Posts and Telegraphs is as reasonable a cut as we should expect in the circumstances of the case. My friend the Honourable Mr. Sarma anticipated some of the arguments which were likely to be raised in the course of this debate by referring to one or two points. He first of all said and that was no doubt a statement which the Honourable Sir Sydney Crookshank stated that if we are to make any cuts at all, it would lead to widespread discontent. Now, Sir, whoever ever thought in a commercial department of making increases of salary and fearing economy on the ground that the employees will say "We do not like it." I am sure, Sir, that when the cuts are made people who are affected by the cuts do not like it at all. But that is a piece of unpopularity to which all departments are subject, to which all commercial houses are subject but the fact that it will lead to discontent in certain quarters should not deter the Honourable Member in charge from bringing into practice the principle which he himself has been enunciating, that this department must be run on a truly commercial and economical line. Then, Sir, I find that the Honourable Members are bubbling with enthusiasm to vote for my motion. I shall therefore be brief. My friend the Honourable Member in charge has said that there has been increase in the percentage of officers due to revision of pay. That may account for the number but it does not and cannot account for the cost. Then turning to the Telegraph Department may I once more recall that hackneyed complaint, complaint hackneyed but yet unredressed, that it has become the monopoly of Europeans and Anglo-Indians, and the sons of the soil are as a body not admitted within its sacred fold.

Mr. R. A. Spence: Are not Anglo-Indians sons of the soil?

Dr. H. S. Gour: We as the representatives of the people shall not be satisfied till we have seen the Indianisation of at least those services in which the Indians have proved their merit and competency. The Posts and Telegraphs are the departments of State in which the public are vitally and directly interested. They have a right to see that their representatives are admitted into the higher ranks of the Telegraph Department. My friend the Honourable Mr. Sarma made a casual allusion to Anglo-Indians and Europeans employed in the Services. I shall be very much interested to hear if he would vouchsafe some more particular information and give us the figures of the last three years, so that we may carry them to our constituents and tell them what we have done in the way of strengthening the Indianisation of these two services. How many Indians have been admitted into the superior ranks of the Telegraph Department? What was their number three years ago, and what is their number to-day? These are facts, Sir, upon which the Members of this House would like to have some enlightenment. Sir, I move my amendment.

Mr. President: Does the Honourable Member move his amendment for reduction of Rs. 10 lakhs? (Voices: "Five lakhs.")

Dr. H. S. Gour: Five lakhs.

Mr. President: Amendment moved:

"That the demand under the head 'Indian Postal and Telegraph Department' be reduced by Rs. 5,00,000."

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I had no intention of taking part in this debate, and it is because I did not want to take up the time of this House that I did not move several motions that stood in my name. But Dr. Gour has just now set such a bad example to this House that I feel tempted to say a few words. Sir, it has been already observed that the increase of work in the post office has not been commensurate with the increase in the superior staff, and I think the Honourable Mr. Sarma pointed out that there was some misapprehension in regard to the classification of the staff due to the increase of salaries as a result of the last revision. I will, therefore, leave out the superior staff when I give a few figures to this House. The increase of work in the post office has been 35 per cent. if we compare the figures of 1913-14 with those for the year 1921-22. Now, let us see what the increase of staff has been in the different branches of the postal organisation. I leave out the superior staff altogether, the direction and its staff. The increase of clerical staff in the Postmaster-General's offices has been 38 per cent., that is to say, 3 per cent. in excess of the increase in work, and menials in these offices 38 per cent. Then, in the presidency and district offices, postmasters and clerks increased by 28 per cent. as compared with an increase of work of 35 per cent., and the menials in the presidency and district offices increased by 18.8 per cent., and the postmen increased by 11 per cent. as compared with 35 per cent. increase in work.

Now, let us come to the telegraph branch of the combined department. The increase of work in the telegraph branch has been 22 per cent., if we compare the figures for 1913-14 and the figures for 1921-22; and the increase in the number of telegraph masters has been 34 per cent., or 12 per cent. in excess of the increase of work. And, then, the increase of telegraphists

and signal room clerks has been 27 per cent. or 5 per cent. in excess of the increase in work, and the menials in the telegraph department increased by 70 per cent. as compared with the increase of work by 22 per cent. Now, how does the Honourable Member in charge propose to effect the cuts in compliance with the recommendations of the Inchcape Committee? I find that the postmasters, gazetted and non-gazetted, were 7,302 in 1922-23. Their number as given in the paper supplied to us in connection with the budget of this year is 7,278, that is to say, a decrease of 24. Then, again, taking the postmen and the village postmen, their number in 1922-23 was 29,528. Their number as given in the papers in connection with the present budget, is 28,736, the reduction being 792. Let us compare with these figures the reduction proposed under Telegraphs. The Telegraph Masters numbered 335 in 1920-21. Their number has been set down as 353 in the present budget. Now Dr. Gour has already referred to the recommendation of the Inchcape Committee in regard to the question of house rent and allowances enjoyed by the telegraph people. I will only draw the attention of the House to another recommendation of the Inchcape Committee, namely, that the number of Telegraph Masters and telegraphists which stands at 3,426 ought to be reduced to 2,806, that is to say, by 626. I would very much like the Honourable Member in charge to explain as to how he justifies this disparity in the cuts on the two branches of the joint department. Now, Sir, it will be seen that it is the public who are going to be affected by this unusual cut in the number of postal peons and delivery clerks and people whose duties are in connection with the village post offices. But, Sir, what do we find when we come to the higher grades? The number of Superintendents of Post Offices stood at 150 in 1922-23. The Department proposes to cut this down to the remarkably low figure of 148, removing two probationary Superintendents. I may point out to the House the Superintendents' work has been decreased of late years by reason of the curtailment of the number of inspections which they are required to make of the various post offices. I believe about two or three years back they were required to inspect the post offices twice a year, and now they are required to inspect each post office, I believe, once a year only. There is another point. Inspectors are now authorised to inspect more offices. Besides that, when we come to the amount of travelling allowance set down under the head Superintendents we find that the amount has been cut down considerably. That at least shows that the Superintendents are not expected to inspect the post offices as they used to do in the past years. What justification is there therefore for retaining the number of Superintendents at 148? Sir, Dr. Gour in opening his speech, referred to the Postal Department as a commercial department, and he cited the authority of the Honourable the Finance Member in his support. I beg to join issue both with the Honourable Finance Member and Dr. Gour on this point. I think it is a public utility department and it will be wrong on our part to look for any surplus revenue from this department in aid of the general revenues of the country. I believe that the principle which is observed almost throughout the world in regard to this matter, is not to consider the Postal Department to be a commercial department in the strict sense of the term, but to consider it a public utility department, whose primary duty is to assist the public in carrying on their business and thereby indirectly enable Government to benefit by their efforts.

Now, Sir, I propose to deal with this point at some length in connection with the Finance Bill, and, therefore, I do not want to tire the patience of this House now.

Lieut.-Colonel H. A. J. Gidney: It is a true saying, Sir, that "a little knowledge is a dangerous thing" but it is a truer saying that "no knowledge is crass ignorance". Dr. Gour has exemplified this and in his usual thunderous way takes every opportunity in this House of bombarding the Members in charge of various Departments for information regarding the community which I have the honour to represent asking what percentage of appointments we hold, etc., notwithstanding the fact, as this House knows, that it is my desire to discourage and disclaim communal preferences. Dr. Gour has to thank my community for his seat in this Assembly, but I shall take good care, Sir, that he will get no more votes from them at the next election. Sir, I rise to strongly protest against the amendment which Dr. Gour has moved and I do so with a certain amount of inside information and knowledge of the Telegraph Department, for I had the honour last year to sit on the Telegraph Committee which inquired into and adjusted certain of the grievances of this Department. I protest against this motion not with any communal feelings or with any desire to satisfy the insatiable appetite of Dr. Gour when anything comes up about my community, but to discuss its merits on the lines indicated by my Honourable friend Mr. Neogy who calls this department one of public utility and not as one of the money making departments of the Central Government. Sir, it was two years ago when discussing the Budget that the Member in charge of this Department openly admitted that he knew very little about the profit and loss of the Post and Telegraph Departments. It possessed no such account. Quite recently two distinct committees have sat to inquire into the details and grievances of this Department. I was on the one which sat last year. We now have the report of the Retrenchment Committee before us. This morning when discussing the Medical Department I paid great attention and respect to the report made by the Retrenchment Committee on that department. I regret to say that I cannot give the same weight to their report on the Telegraph Department. If Honourable Members will turn to page 94 and read the top paragraph of that page they will find it stated:

"It has not been possible for us in the *limited time* at our disposal to make any *exhaustive analysis* of the staff employed in relation to the work performed, but in order to attain a *general impression*, etc., etc."

(The *italics* are mine.) Now, Sir, this paragraph itself condemns the report of this Retrenchment Committee on the Postal and Telegraph Departments and it cannot be compared in value with the reports of the two previous Committees which sat to discuss the detailed working and grievances of this Department. I, therefore, cannot pay much attention to what this Committee has said so far as this Department is concerned. True there is room for some retrenchment in these Departments but certainly not on the lines indicated by this Committee. Let us take the first suggestion on page 94 of this Report—"Reduction in the staff". Now, Sir, the work performed by the Telegraph Department is essentially a fluctuating one; greater in one month than in another. It usually is. Does the House think that, if a staff of 500 is required for the month of September, that because traffic is less a month hence, the strength of the staff should be proportionately reduced in the interests of economy? Telegraphists are skilled and highly trained men who cannot be taught within a month. You must have a big reserve to fall back upon for all requirements including a leave reserve and, therefore, I submit that any reduction in the staff is not a wise move. Dr. Gour talked about

the waste of millions of telegraph forms that are printed. I wonder how many forms Dr. Gour has wasted for his own use! It is not the Government that is responsible for this waste. It is the public. I wonder how many unused telegraph forms he has hidden away in the drawers of his Vice-Chancellor's office writing table!

Then, Sir, another question very lightly entered into by the Inchcape Committee is that of house accommodation and house rent for the staff. Sir, I had a lot to do at the last Telegraph Committee on this very matter, which was brought prominently to our notice, and I am sure Mr. Rangachariar, who was the President of that Committee and who was very averse to agreeing to any increased allowances to the staff, will remember that he himself saw the necessity of granting adequate house allowance when it was absolutely necessary. Sir, I cannot conceive of any Member of this Honourable House giving serious attention to the remarks made in the top paragraph of page 100 of the Retrenchment Committee's Report. This Committee when talking about house accommodation said:

"We are of opinion that in cases where it is necessary to provide quarters for the staff reasonable rents should be charged, and where such accommodation is not available house rent allowances should be granted for a reasonable period until the men transferred have had an opportunity of finding suitable accommodation."

This paragraph alone proves conclusively that this Committee was ignorant of the difficulties in obtaining house accommodation in Simla and Delhi, not to mention other parts of India. I therefore consider it would be a very unwise and unjust retrenchment to make in the house rent of the staff.

Dr. Gour then twitted my Honourable friend, Sir Sydney Crookshank, on the contents of the telegram which he read out to the House as reflexive of the personal views of the Telegraph staff regarding the retrenchments suggested by the Inchcape Committee and tried to belittle its value and weight. Let me in all the seriousness and emphasis at my command inform Dr. Gour—I notice a sardonic smile developing on his face—that whatever his feelings are towards any community and their supposed monopoly of this Department and which I challenge, I wish to impress upon him this one fact: The Telegraph Department constitutes one of, if not the most, delicate and important wheels in the Government clock, and I would advise him and this Honourable House not to undervalue this wheel—not to understaff the men working this wheel—not to underpay the men who control this wheel and not to underestimate the telegram read out by Sir Sydney Crookshank, otherwise they will overstrain the working of this wheel; and I hesitate to think what will be the result if that wheel in the Government clock were so overstrained as to stop working. I offer this note of caution and advice for the serious consideration of this Honourable House and I strongly urge you to oppose this demand and so show your appreciation of a Department which has always done its best for the country and risen to all occasions.

Rao Bahadur T. Rangachariar: Sir, I have sometimes felt that being on Committees is sometimes a convenience and sometimes an inconvenience. I could be a popular champion to-day in opposing extravagance and advocating economy to-day if I had not some inside knowledge of the difficulties that the Postal and Telegraph Departments have to grapple with. Sir, from the year 1918 onwards serious crises have been averted by the tact, prescience and careful handling of the situation which was shown by the Government from time to time. Sir, let us remember that

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we are dealing with the human element, mostly educated human element, in both these Departments. We are not dealing with inanimate things like Stores. The army of postal officials, the army of telegraph officials, who are scattered throughout the country from north to south and from east to west—we have to take their position into account in dealing with this question. Sir, my Honourable friend Colonel Gidney has referred to one portion of the Inchcape Committee's Report; I wish to speak always with the greatest respect of that Committee. In this matter of free house allowances, however, to these officials of these departments I cannot but think that they have made a grave blunder. Sir, remember that these postal and telegraph officials have to be at their post of duty at all hours of the day and night to obey the calls of the public. Have you seen the telegraph officials, those of you who take so much interest, have you seen the telegraph officials working in Simla? Have you seen them without house accommodation being provided there, they have to walk up to the Telegraph Office on the Mall, nearly four or five miles from far away residences? Sir, they have to go there at 10 o'clock at night; their shift hours change; they do not get all day hours; they have to go at their shift hours; they have to go at 8 o'clock at night and leave at 3 or 4 A.M. for their homes. Is it just to compare these people with other Government servants who have to go at fixed office hours, just as in revenue offices or courts where you can go at 10 o'clock and get back home at 5 or 6 in the evening? Sir, there are Government servants and Government servants. It is a very large question as to who you should provide accommodation for, and I think the rules made by the Government of India in that respect do not at all err on the side of humanity. I have examined those rules with care and I find that it is difficult to impose more restrictions than there are already in them.

Again, Sir, I called for a statement showing how the retrenchment proposed by the Committee has been carried out. The chapter on Posts and Telegraphs is one of those interesting chapters where the Retrenchment Committee have been able to go through the matter most thoroughly, for it is one of the earliest subjects they took up, and the then Director General of Post Offices was supple in their hands. They discussed every proposal with him and I find almost all these proposals carried out. If Honourable Members will compare the figures recommended by the Committee and the figures carried out, Honourable Members will really be surprised at the effort put forward by that department in loyally carrying out these recommendations. The figures tell their own tale. Honourable Members will see the recommendations of the Inchcape Committee came to 137 lakhs and they have actually carried out 131 lakhs. I have not worked out the percentage. Has any other department carried out the recommendations to that extent, may I ask? I am afraid, Sir, my Honourable friend, Dr. Gour, unfortunately had to deal with this department; if he had any prior motion under any other department I should have heartily supported him. But here he has touched a place where in fact it is impossible to make further cuts without sacrificing efficiency and without sacrificing human beings.

Sir, I know quite well that a certain portion of the Telegraph Department known as the general scale was some years ago avowedly kept for a particular community and in fact the Government of India of those days had a secret confidential Resolution on this subject. But I am glad to say that that Resolution has been cancelled. Now, Sir, in the general

scale of telegraphists a larger number of Indians have been taken into service. I can assure my friend Dr. Gour that progress is being made, but progress can only be made. You cannot kill people who are already in service. They have to go; vacancies should occur before you can introduce Indians, and I do think that an honest effort is being made in introducing Indians in the general scale of telegraphists. I have not got the figures with me here,—I have them in Madras,—but I am sure the Honourable Member in charge will be able to tell us those figures, in fact, it will also be a revelation to my friend Dr. Gour, if the Honourable Member in charge will show him my confidential report which accompanied the general report as President of the Telegraph Committee. Sir, matters are improving, and I am glad to say they are improving. I am sure some of my friends behind me are not satisfied with the progress made. I may also share in their dissatisfaction, but after all, we can bring pressure to bear upon the department. I do not think we have much reason to complain of the Postal Department. If Honourable Members will look at the postal establishment, they will see that there is a very large proportion of Indians in the officers' grades. In the telegraph line, it requires technical training, and facilities have to be created in this country; especially in the engineering department there are not now so many facilities and the Government ought to provide them in this country. All these things do take time, and I do think, Sir, that we should be unkind to a department like this which is serving the public honestly and faithfully. Now, can you think of a department where it is so easy to be dishonest? Letters are addressed to you, and you don't know what letters are addressed to you, and you get them all right. Look to the regularity of the service. Is it not easy for the poor postman to merely throw away those letters and say he delivered them? Are there many complaints to the effect that the addressees do not receive their letters? Take the money order system. Look at the large sums of money which are remitted by Money Orders and handled by these postal officials. Are there many cases of misappropriation and theft? There are no doubt, but they are very few.

Dr. H. S. Gour: May you not pay too much for a good thing?

Rao Bahadur T. Rangachariar: That is a point of view, no doubt, but I do think it is not possible to estimate these things from outside. May I with all respect to Dr. Gour point out that it is more for the persons in charge of the department to know these things rather for us to offer criticisms on such details. By all means let us offer criticisms on broad principles. I ask my Honourable friend Mr. Raju not to treat my remarks with that smile with which he greets them. I know he pointed out this morning a paragraph about allowances. It is there the Retrenchment Committee have egregiously erred, I am sorry to say. However, I hope, Sir, my friend will not press this motion. It will be an unpleasant task to differ from him on a matter like this, but if he presses this motion to a division, I shall certainly record my vote against him.

Mr. R. A. Spence: I move, Sir, that the question be put.

Mr. H. A. Sams (Director General: Posts and Telegraphs): Sir, before I pass on to my remarks on the criticisms passed on the department, I should like first of all to point out a matter which I do not think the House has quite realised. The budget estimate for 1922-23 was 10,17,00,000, as you will see on page 109 of the Inchcape Committee's

[Mr. H. A. Sams.]

Report. I want the House to realise this that assuming that this sum had been taken as the basis of our budget for 1923-24 it would have had to be automatically increased by two items. One is an increase of 13½ lakhs for increments of the staff which are absolutely automatic; the other is 6½ lakhs for the effects of sanctions, that is to say, that, if we appoint a clerk this year on an average of 6 months, we have obviously to pay him for 12 months next year; if the rent of a house is increased Rs. 100, that is to say Rs. 600 for this year, it will obviously be Rs. 1,200 next year. To the best of my knowledge, the Inchcape Committee did not take that into account. But our figure Rs. 8,93,18,000 does include these increases. What I claim therefore is not only that we have not done less than what the Inchcape Committee recommended; we have actually gone further. They did not take these items into account and we have. I want the House please clearly to understand that and especially my Honourable friend, Dr. Gour. He says that we are under the mark; I claim very distinctly that we are actually over the mark.

Now, Sir, the Honourable Mr. Misra has twitted us with making our cuts from the lower end of the Department instead of from the higher. I may tell him, as perhaps he is not aware—one of our handicaps is that while the Honourable Members of this House do not exactly know what positions we have already won, we on the other hand do not exactly know where they are going to attack. I want to tell Mr. Misra that three very high officers have been dispensed with this year already, namely, the Traffic Controller on the Telegraph side, a Deputy Postmaster General in Bombay, and an Assistant Director General of my office. I think that this is an earnest that we are not trying to cut down only from the lower end of the line.

Dr. Nand Lal made a remark about printing. I may inform him, as perhaps he is not aware of the fact that we get our forms from two sources, one is the Government contractors, a private firm, which is under the Industries Department and therefore is not under our control at all. The other is our own Postal Workshops at Aligarh. I mention this for Dr. Nand Lal's information.

Dr. Nand Lal: I was really referring to the work done at Aligarh. My submission was that the printing may be done through private agency. The Government should not get itself associated with that at all.

Mr. H. A. Sams: I can tell the Honourable Member that, as a matter of fact, at Aligarh, taking everything into consideration, we can print 20 per cent. cheaper than a private firm can. As regards stores, my Department will be only too glad if we can get the whole of our stores in India. Waiting about for stores to come from England not only increases our stocks but also costs very much more than we need pay. I will mention only one item, it is a very big item—which we cannot at present get in India, and that is wire. Now, Sir, the whole of our Telegraph Department turns on that. We talk about wires, we send wires, we receive wires, you see stranded wires along every mile you travel by train. Every inch of that wire has to come from England. And I for one am sure that our Engineering Branch will be only too glad when India herself can produce wire—it will be a magnificent industry for India.

Mr. W. M. Hussanally: What about the printing of postage stamps.

Mr. H. A. Sams: That is a matter with which my Department is curiously and paradoxically enough not concerned. It belongs to the Industries Department. We simply buy our stamps from them. We buy our stamps from the Treasuries and perhaps my Honourable friend Mr. Ley will be able to give you further information on that subject.

Sir, I have already answered my Honourable friend, Dr. Gour, on the question of our having made a less cut than the Inchcape Committee required. I hope I have satisfied him on that point. He has told the House that the postage has gone down. This is an important question—Rs. 12 lakhs more actually than was recommended—and I should like Dr. Gour kindly to listen to this. Here are the figures for the sale of postage stamps in 1921-22 and 1922-23. I will take the first month. In April 1921-22 the sales were 71,99,000; in this April they were 56,35,000. Of course Dr. Gour will immediately say "Obviously the postage has gone down." But I may remind Dr. Gour that the new postage rates came into existence on the 24th of April. It shows, therefore, conclusively I think, Sir, that some other condition, something else was operating and not merely the higher rate of postage stamps. As a matter of fact, taking into account receipts from the National Cash Registers in Bombay and Calcutta, which are practically the same as stamps, the total for 1921-22 was 6,51,00,000, while this year, taking the average—we have not yet got the actual figures,—it will be 7,12,00,000, that is to say, we shall be at the end of the year 6 lakhs to the good on the sale of postage stamps and receipts of National Cash Registers. That, I think, is satisfactory, and the House can imagine what our figures would have been if we had not raised the postage. Dr. Gour has mentioned travelling allowance. He will see that we have cut that down by Rs. 8,55,000. Personally I regret this step. I am convinced that every touring officer justifies every penny that is spent on travelling allowance. However, this is a lean year and the Department has among other items cut down the travelling allowances ruthlessly.

Mr. W. M. Hussanally: Is it a fact that every Superintendent of the Post Office whatever his pay travels first class?

Mr. H. A. Sams: I cannot go into that question now. I am not prepared to discuss the whole of the travelling allowance rules.

Lieut.-Colonel H. A. J. Gidney: Why can't you?

Mr. H. A. Sams: Colonel Gidney has answered Dr. Gour on the question of forms but I may inform the House of a rather amusing incident that happened the other day when a lady told me that a certain fruit-seller in Delhi was spreading out his wares on postal money order forms. The abuse of forms does not lie with us. It lies with the public. Either they get more forms than they require or as I am inclined to think some of them got forms which they do not intend to use for their legitimate purposes but for other purposes. I have issued a circular prohibiting the giving of bunches of forms to the public.

Mr. Darcy Lindsay: Why not charge for them?

Mr. H. A. Sams: That is practically impossible. The question of House rent has been ably dealt with by my Honourable friend Mr. Rangachariar who in this respect, and I may say in every respect, is a champion of the Department, and I thank him sincerely for championing that particular cause. (A Voice: "He is a bureaucrat.")

[Mr. H. A. Sams.]

I am glad to see that in this respect he has ranged himself on the side of the noble army of bureaucrats. Dr. Gour criticised the question of stores, and there I am entirely in agreement with him. In October-November last an officer was put on special duty to examine the whole question of stores in the Posts and Telegraph Department and the conclusion that he came to was that we could reduce the stocks very considerably and that if we could only get more articles in India, we could reduce them to a very much greater extent. It has been said that Indians are not getting a fair share of the loaves and fishes of the Department. I may say that on the Telegraph side there was recently a Chief Engineer who was an Indian, with an eye-glass, but still an Indian. The Chief Electrician is an Indian and a very able and clever one. The Traffic Controller, as long as the appointment existed, was an Indian and the Controller of Stores is an Indian. These are a few of the higher appointments which come to my mind. The postal side, as you know, has always been an Indianised Department practically from the very start. Mr. Neogy has insinuated to a certain extent that the cuts we have made have been not altogether fairly done. I can assure Mr. Neogy,—and I hope that he will take my word for it, because I was present at the meeting when Mr. Clarke and the other officers of the Department went through the Budget and made the cuts—that there was no question whatever of cutting more from one Branch than from another. We simply considered each particular item and we decided whether we could cut it out or cut it down or whether we could not do so. I will ask Mr. Neogy to accept my assurance on that point. Mr. Rangachariar has made a small mistake. He has assumed that the Inchcape Committee dictated to my predecessor. That I can assure him was not the case. The Inchcape Committee asked him to do what he could. Mr. Clarke and his principal officers met together on a historic Sunday, stayed in office the whole day long and the four of us went through the budget of 1922-23 and then Mr. Clarke told the Committee what we could do. Subsequently, we found that we could do a certain amount of more retrenchment. But it was Mr. Clarke who told the Committee what he could do, and I think it is rather a feather in our cap that the Committee agreed with him rather than that he agreed with them. I do not want to detain the House any longer as it is getting late. But what I want the House to realise is that the budget we put forward is an estimate only. It does not represent a correct and accurate account. We can only say what we think we shall want. If we find we do not want it it will be saved. What I do want to assure the House is that we have honestly tried to effect retrenchment in view of the present serious financial situation. We have made great sacrifices and it will be very difficult to carry on, I am almost certain that during the course of the year we shall have to go to the Standing Finance Committee for more money in certain respects. But I do want the House to be generous to us and to realise the fact that we have really and honestly done our best to meet the present financial situation.

Dr. H. S. Gour: In view of the assurance given by the Honourable Member that he merely thinks what he wants and that he will see that real economies will be effected in the Department on the lines indicated by ourselves on this side of the House, and more in view of the fact that a House divided against itself cannot stand, I wish to withdraw this motion.

Mr. President: Is it your pleasure that the amendment be withdrawn?

Mr. R. A. Spence: I object.

Mr. President: The question is:

“That the demand under the head ‘Indian Postal and Telegraph Department’ be reduced by Rs. 5 lakhs.”

The motion was negatived.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): I wanted to raise a question about one branch under this demand, namely, broadcasting

Mr. President: It is very inconvenient that the Honourable Member should raise this point at this stage. It would help the Chair if only Honourable Members would rise in their places before the question is put on a general reduction such as we have just disposed of, otherwise there would be too much repetition. I deliberately did not call upon the Acting Director General when he rose for the first time because other Members wished to speak, and I did not want him to have to speak twice. So far as I remember, the Honourable Member did not rise in his seat.

Mr. J. N. Mukherjee: I unfortunately did not catch your eye.

Mr. President: The Honourable Member is perfectly entitled to move his amendment but it is inconvenient especially at this late stage of the discussion of the Demands to ask for two speeches from the post office, when one will do. (*A Voice:* “The question has been discussed already.”)

Mr. Deputy President: That is so.

Mr. President: That only makes the position of the Honourable Member worse.

Mr. President: The question is:

“That a sum not exceeding Rs. 8,07,98,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of the ‘Indian Postal and Telegraph Department’.”

The motion was adopted.

Mr. T. V. Seshagiri Ayyar: I should like to say, if I am in order, that I hope that nothing will be done to interfere with the extension of the post offices in the villages. That is a very desirable thing. In this connection I should like to say

Mr. President: Is the Honourable Member rising on a personal point of order?

Mr. T. V. Seshagiri Ayyar: Yes. In this connection I should like to point out, if I understood the Honourable the Leader of the House aright, that he seems to have used the expression that my friend, Mr. Ginwala, was wasting the time of the House, when he was speaking on the general administration. Sir, none is more considerate to Members of this House than the Leader of the House and I do not think that he really intended to convey that imputation against my friend. It may be that myself and my friend have not understood the Honourable the Leader of the House properly; and I believe he would give us an assurance that he did not intend to convey the imputation that my friend was wasting the time of the House.

The Honourable Sir Malcolm Hailey: I was not conscious that I used that phrase, but I am reminded that I did so, and desire therefore to recall the circumstances to the House. What I was protesting against was the proposal that we should have a discussion on the whole conduct of Government, in every department, and in every sphere of activity, on a final motion for a grant which, as I have already pointed out, related to the head under which we provide funds for the Secretariat and the Legislative bodies. My remarks were directed mainly to a protest against utilising that opportunity instead of taking the occasion which the rules provided, namely, of the general discussion of the Budget. I would like to add that I regret to realise that it was Mr. Ginwala whom I accuse of wasting the time of the House; for, we know Mr. Ginwala is a constant attendant at the meetings of the House and one who always speaks to the point and, if I may be allowed to say so, never speaks too often. My remarks were intended to be of a general nature, and if they were couched in somewhat warmer terms than I have frequently used in this House, then, I would only ask Members opposite to remember that Mr. Ginwala made, at what seemed to me a most inopportune occasion, a general attack on our administration and made certain insinuations against us. Now, I felt very much the terms in which the insinuations against the Government were couched, for I say with some confidence that nobody has worked harder than we, the present Members of the Government, to maintain good faith with Members of this House. I would remind the House of what was once said by a Judge in Ireland: he asked people to remember that even the common policeman who walked the streets had a soul. If insinuations of that kind are made against us, we must resent them. If we are to be attacked, I ask that we be attacked in season and not out of season. I ask again that we may be attacked for our vices and not for our virtues. Thus, when we had been asked to make a small retrenchment of 25 lakhs and we succeed in making a retrenchment of over a crore, it was not reasonable to impute this to us for blame. Those were the kind of attacks that I resented. Well, it was far from my desire to accuse Mr. Ginwala of a practice of wasting the time of the House; but I did feel that the occasion for those attacks was misplaced; I did feel that they were out of season, I did feel the insinuations made were unreasonable, and that we were entitled to resent them.

Mr. P. P. Ginwala: Sir, I do not wish to lose the very good opinion of the Honourable the Home Member which he expressed when he said that I did not speak too often, by refraining from speaking a few words now. I do not think that the Honourable the Home Member can charge me with insinuation. I do not believe I insinuate anything at all, for I am rather like the Irishman who told a man that he wanted to give him a hint, and when asked what the hint was, he said: "Somebody has stolen my coat, and I think it is you." That is the way in which I generally make my insinuation and I am sorry to think that I have not made my observations sufficiently plain for the Honourable the Home Member to take them as criticisms, and not as insinuations. However, so far as I am concerned, I may assure the Honourable the Home Member that I indulge myself very much in free criticism of the Government and I expect the same thing from the Government as far as I am concerned, and nothing that he said to-day put me out in the least. I may perhaps add that if the Honourable the Home Member had not shown a little bit of temper, I should have taken him for a mediocrity. I am very much obliged to the Honourable the Home Member for having spoken as he has done.

DEMAND NO. 11—INDO-EUROPEAN TELEGRAPH DEPARTMENT.

Colonel Sir Sydney Crookshank: Sir, I move:

"That a sum not exceeding Rs. 22,24,000 be granted to the Governor General in Council to defray the charge which will come in course of payment for the year ending the 31st day of March, 1924, in respect of 'the Indo-European Telegraph Department'."

Sir, before we enter upon a debate on the amendments which have been tabled on this Demand, perhaps it will assist Honourable Members if I just briefly explain in as few words as possible what the position is in regard to this particular department. It is a department which is managed entirely by the Director in Chief, whose headquarters are in England. The Government of India have very little to do with it, that is to say as regards the direct administration and control of the department, and only deals with such correspondence on routine and departmental matters which come through my office in connection with matters of general administration and international questions. We are therefore in the position of the man who lies in bed all the year round and at the end of the year stretches out his hand and picks up a large sum of money for which he has done nothing. In the case of the year 1921-22, which is the last year for which I have detailed information, the Government of India picked up a net profit of Rs. 8,49,518. This I may remark was rather less than what it had been in previous years, but that is due not to any fault on the part of the Director in Chief, or the Government of India, but to the chaotic conditions in Russia and in the Balkans by which the telegraphic communications beyond Teheran and Pao were interrupted and are still interrupted. We must therefore look upon the gift which we receive in the shape of revenue in the Indo-European Telegraph Department for which we do nothing not too gladly. The Committee's honourable Members will refer to page 115 of the Committee's Report, they will find the total of the budget items for 1922-23 amounts to Rs. 43,35,000. Against that figure for the current year the Committee have recommended a reduction of Rs. 7,34,000. Honourable Members will observe that the proportion of reduction to the total expenditure is a very large one indeed. However, after careful consideration in the Government of India and reference to the Director in Chief I am able to inform the House that this reduction of Rs. 7,34,000 will be effected in full during the following year. We should perhaps, in considering the amendments, be careful not to do too much to kill the goose that lays the golden eggs.

Mr. N. M. Samarth: Sir, I move the amendment:

"That the demand under the head 'Indo-European Telegraph Department' (page 32) be reduced by Rs. 2,11,500."

Now, my intention is not to kill the goose that lays the golden eggs. My demand really amounts to asking that the sum of Rs. 2,25,000, which you find as Capital Outlay in Demand No. 11, the whole of which is votable, be transferred to Capital Account and not be charged to Revenue. Therefore, the goose remains and the golden eggs also remain. The House will find at page 122 of the Income Committee's Report that the Honourable Mr. Purshotamdas Thakurdas written a minute of dissent on it, and he has pointed out that this is a commercial department which has been very remunerative to the Government of India, having yielded on the capital sum a return varying from 4.4 per cent. in 1913-14 to 14.58 in 1919-20 after allowing for a sinking

LEGISLATIVE ASSEMBLY.

Saturday, 17th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

RAILWAY SERVICE.

570. ***M. K. Reddi Garu:** 1. (a) With reference to the reply given to starred question No. 466, will Government be pleased to state the definition of "Railway Service"?

(b) Do the staff employed on ordinary Secretariat work in the Railway Department and the Office of the Accountant General, Railways, fall under the category of "Railway Service"?

(c) Is there any difference in the condition of service between the Ministerial Staff of the Railway Department and other departments of the Government of India? If so, what are the differences?

(d) Is it not a fact that for the matter of pay, allowances and conditions of service the staff of all Departments of the Government of India Secretariat are considered as a homogeneous body? If so, how is it that the staff of the Railway Department are treated differently?

2. Will the Chief Commissioner of Railways be pleased to lay on the table a copy of the orders of the Government of India declaring the service of the Ministerial Staff of the Railway Department as "Railway Service" quite distinct from "Secretariat Service"?

3. Is the Office of the Accountant General, Railways, a part of the Railway Department or of the Finance Department? If the latter, how are the staff employed therein treated as belonging to "Railway Service"?

Mr. C. D. M. Hindley: 1. (a) Railway service is ordinarily held to mean employment on railways and in the offices administering railways.

(b) Yes.

(c) There are no material differences.

(d) Yes. The justification in respect to passes is explained in (g) of reply to question No. 446 on 5th March 1923.

2. There is no such order, nor in view of the reply to Part 1 (a) of the question any necessity for it.

8. The Accountant General, Railways' Office like other offices of auditors attached to State Railways perform dual functions concerning both the Finance and the Railway Departments.

M. K. Reddi Garu: How many first and second class tickets by way of these concessions were issued and what is the money value of the tickets so issued?

Mr. C. D. M. Hindley: I must have notice of that question but I think a similar question has already been asked.

GRANT OF PASSES CONSIDERED IN FIXING SALARY.

571. ***M. K. Reddi Garu:** (a) With reference to the reply given by Mr. Hindley to part (d) of Sir Deva Prasad Sarvadhikary's starred question No. 446 stating that the additional emoluments received by the Staff of the Railway Department in the shape of passes and P. T. O.'s were taken in account in fixing their salary, will the Finance Member kindly state why it was considered necessary to place them in a better financial position than the staff in other Departments of the Government of India?

(b) Is the Government aware that men belonging to other Departments of the Government of India are willing to get their services transferred to the Railway Department if possible on a reduced scale of pay provided the free Railway passes continue?

(c) Do Government propose to take steps to remove this disparity?

Mr. C. D. M. Hindley: I have been asked to reply to this question.

(a) The grant of passes at the discretion of Railways concerned is an incident of railway service. The trifling monetary value of this concession does not justify differentiation in scales of pay.

(b) No.

(c) In view of (a) above, this question does not arise.

Sir Deva Prasad Sarvadhikary: What is considered to be railway service in this connection? Is service with the Railway Board railway service for these purposes?

Mr. C. D. M. Hindley: Perhaps the Honourable Member did not hear the first part of my reply to the first question which I will repeat:

"Railway service is ordinarily held to mean employment on railways and in the offices administering railways."

UNSTARRED QUESTIONS AND ANSWERS.

SELECTION GRADE POST OFFICES IN THE BENGAL AND ASSAM CIRCLE.

236. **Rai T. P. Mukherjee Bahadur:** (a) Will the Government be pleased to state why important urban municipal towns and former head Post offices such as Dum-Dum, Naihati, Kanchrapara, Ranaghat, Katwa, Serampore, Kushtia, Rampurhat, Kharagpur have not been taken in the group of selection grade Post offices in the Bengal and Assam circle?

(b) Do the Government propose to enlist them in place of the following unimportant stations, viz., Habibganj, Karimganj, Bhairab, Jhalakati, Patuakhali, Jamalpur and Feni?

Colonel Sir Sydney Crookshank: (a) and (b) The list of selection grade appointments sanctioned for the subordinate Postal service on the recommendations of the Postal Committee, 1920, included such appointments as could properly be classified as supervisory or were otherwise sufficiently important to be placed on higher rates of pay than the time-scales provided for officials performing the ordinary clerical work of the Post Office. The question whether any alterations are necessary in respect of the list of selection grade appointments in the Bengal and Assam Circle is under examination.

POST OFFICE AT NARAYANGANJ.

237. **Rai T. P. Mukherjee Bahadur:** Will the Government be pleased to state (a) the extra expenditure required to meet the cost of a 2nd head office at Narayanganj and (b) another Superintendent of Post Offices for Narayanganj Division, (c) under what circumstances was such expenditure sanctioned by the Government of India? (d) Were not head offices in sub-divisional towns abolished under some principle? (e) Will the Director General kindly explain the altered circumstances which justified him to advise the Government of India for deviation from that principle?

Colonel Sir Sydney Crookshank: (a) Rs. 134 a month.

(b) Rs. 87 a month in the office establishment of the Superintendent. No new appointment of Superintendent was created; an existing appointment was transferred from the reserve to the administrative staff.

(c) Owing to urgent administrative necessity.

(d) The general principle ordinarily followed is to have a head post office for each revenue district, but occasionally it becomes necessary to depart from that principle in the interests of administrative convenience. The question of reducing the Narayanganj head post office to the status of a sub-office and of abolishing the Narayanganj Postal Division, as a measure of retrenchment, is however under consideration.

(e) The number of offices under the Dacca Head Office was very large and it was becoming increasingly difficult to exercise an effective control over them. There was also congestion of work in the Dacca office itself. It was further reported that the European and Indian residents as well as the Chamber of Commerce at Narayanganj desired that the status of the office should be raised to that of a Head Office.

EXPENDITURE INCURRED FOR THE INCHCAPE COMMITTEE.

238. **Rai T. P. Mukherjee Bahadur:** Will the Government be pleased to state the amount of expenditure incurred for the Inchcape Committee and lay on the table a statement showing the details on each head?

The Honourable Sir Basil Blckett: A statement is laid on the Table giving the information asked for.

Statement showing details of the expenses incurred or likely to be incurred up to 31st March 1923, in connection with the appointment of the Income Committee.

SUMMARY OF THE EXPENSES.

	Rs.
(1) Retrenchment Office	45,108
(2) Special Officer, Finance Department (Ordinary Branch)	31,151
(3) Finance Department (Military Branch)	15,000
(4) Military Estimates	19,000
(5) Retrenchment Committee proper	86,442
Total	1,96,701

Expenditure incurred in connection with the preliminary work of the Committee (i.e., Retrenchment Office).

	Rs.	A.	P.	Rs.	A.	P.
Pay of Secretary to the Government of India, Retrenchment Office, from 6th July 1922 to 31st March 1923, at Rs. 4,000 per mensem	35,355	0	0			

Establishment.

1 Stenographer from 3rd July 1922 to 19th January 1923 at Rs. 306 a month and from 20th January 1923 to 31st March 1923 at Rs. 315 per mensem	2,755	12	0
1 Assistant and Cashier from 7th July to 30th September 1922 at Rs. 125 a month and from 1st October 1922 to 31st March 1923 at Rs. 175 per mensem	1,400	13	0
1 Typist from 15th November 1922 to 28th February 1923 at Rs. 80 a month	282	11	0
4 Peons (plus 1 engaged from 7th September 1922 to 31st December 1922)	653	5	0
Total	5,092	9	0

Allowances.

Travelling allowance from Delhi to Bombay and back	1,224	0	0
" " Simla to Delhi	790	0	0
" " Delhi to Lahore and back	344	0	0
Other allowances	399	0	0
Total	2,757	0	0

Contingencies.

Service Stamps	279	0	0
Telephone charges	375	0	0
Other charges	1,250	0	0
Total	1,904	0	0

(Special Officer in the Finance Department (Ordinary Branch)).

Pay of the Special Officer in the Finance Department at Rs. 2,250 from 22nd May to 15th October and at Rs. 2,350 from 20th October to 31st March 1923	24,36
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	Rs.	Rs.
Establishment.		
1 Assistant from July to October 1922	1,122	
2 Stenographers (1 from 15th June to 30th November 1922 at Rs. 175 per mensem, from 1st December 1922 to 28th February 1923 at Rs. 200 per mensem and for March 1923 at Rs. 175 per mensem, and 1 from 5th September to 24th October 1922 at Rs. 175 per mensem)	2,030	
1 Clerk for October	156	
2 Typists	449	
2 Peons	853	
Total		4,110

Allowances.

Travelling allowance from Simla to Delhi—		
(i) Officer on Special Duty	265	
(ii) Office establishment	836	
Simla House Rent	540	
Separation allowance	300	
Grain Compensation allowance	12	
Total		1,958

Contingencies.

Stationery and Printing	250	
Carriage of Records	132	
Postage and telegrams	20	
Other Charges	50	
Total		452
Total		31,151

Finance Department (Military Branch).

Expenditure due to appointment of additional Financial Adviser, while Mr. Mitra was engaged on preparation of case for Committee	15,000
Total	15,000

Military Estimates.

Additional cost incurred in connection with special duty of Major General Charles and Colonel Wigram	19,000
Total	19,000

Retrenchment Committee proper.

I.—Subsistence allowance at Rs. 1,500 a month—

	Rs.
1. Sir Thomas Catto (did not draw any allowance).	
2. Sir Alexander Murray from 6th November 1922 to 2nd March 1923	5,747
3. Sir R. N. Mookerjee from 9th November 1922 to 24th February 1923	5,385
4. Honourable Mr. Purshotamdas Thakurdas from 5th November 1922 to 31st March 1923	5,945
5. Mr. D. M. Dalal from 5th November 1922 to 16th March 1923	6,575
6. Mr. J. Milne from 5th November 1922 to 16th March 1923	6,575
7. Mr. H. F. Howard from 5th November 1922 to 16th March 1923	6,575
8. Salary of Colonel J. C. Harding-Newman from 12th November 1922 to 15th February 1923 (pay at Rs. 2,200 plus special pay at Rs. 10 per diem).	7,933

44,735

I.—Subsistence allowance—contd.

	Rs.	Rs.
Subsistence allowance to Messrs. Dalal, Milne and Howard during the period of voyage to India and back (one month) at £100 a month.	4,500	
Salary of Mr. J. Milne to be re-imbursed by the India Office to Great Western Railway from 15th October 1922 to 31st March 1923 at £1,750 per annum.	12,030	
		16,530

II.—Travelling allowance—

(a) Three first class passages from England to India and back for Messrs. Dalal, Howard and Milne at £78-10-0 each.	7,066	
(b) One single first class fare each from Bombay to Delhi to Messrs. Dalal, Purshotamdas Thakurdas, Milne and Howard who travelled by Special Train.	430	
(c) Double first class fare to Messrs. Dalal, Purshotamdas Thakurdas, Milne and Howard from Delhi to Bombay.	860	
(d) Double first class fare to Sir Alexander Murray and Sir R. N. Mookerjee from Calcutta to Delhi and back.	840	
(e) Haulage of Motor-cars of the President and Members of the Committee from Bombay and Calcutta to Delhi and back.	2,008	
(f) Double first class fare to Colonel J. C. Harding-Newman from Delhi to Karachi (from Karachi to Delhi he travelled on military warrant).	189	
		11,901

III.—Office establishment from 27th October 1922 to 31st March 1923—

(a) Ministerial establishment—	
1 Superintendent at Rs. 400.	
1 Assistant and Cashier at Rs. 200.	
1 General Clerk at Rs. 125.	
4 Typists at Rs. 120 each.	
2 Typists at Rs. 100 each.	
(b) Menial establishment—	7,636
1 Duftry at Rs. 24	
1 Jamadar for President at Rs. 25.	
1 Dafadar for Secretary at Rs. 20.	
15 Peons at Rs. 16 per mensem each.	
(c) Travelling allowance of Superintendent to and from Bombay.	189
(d) Grant of bonus to the ministerial establishment	926
	8,751

IV.—Contingencies—

Service Stamps	120
Telephone Charges	1,300
Liveries, etc.	615
Stationery and Printing	600
Furniture	800
Other charges	1,000
	4,435
TOTAL	86,442

(Note A. No expenses have been incurred in connection with witnesses except travelling allowance to officers of Government under the ordinary rules.)

(Note B. The figures are not final.)

THE BUDGET—LIST OF DEMANDS.

SECOND STAGE—contd.

DEMAND NO. 7—FORESTS.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I beg to move:

"That a sum not exceeding Rs. 9,28,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Forests'."

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, here as elsewhere I am scrupulously avoiding saying anything beyond the recommendations of the Inchcape Committee, and I am trying, as far as possible, to confine the question to the existing recommendation for retrenchment. As the motion standing in my name shows, it is under the head Allowances and Honoraria and Supplies and Services that I ask for comparatively small reductions within the limits of the Inchcape Committee's recommendations, so that the objective that we all have may be reached. I do not think I can put my case any higher than that. I recognise that Allowances and Honoraria and Supplies and Services are all necessary, but, having regard to the exigencies of the times, I want to have them reduced as far as possible. Undoubtedly some reduction has already been made but we believe that further reduction is possible; in the absence of details under those heads, it is not possible to indicate exactly which of the items should go out in the lump deductions indicated in the demand asked for.

Mr. President: Is the Honourable Member moving 122?

Sir Deva Prasad Sarvadhikary: And 123.* My remarks will apply to both. I do not want to make two speeches. But the two proposals may be put separately.

Mr. President. The question is:

"That the provision for Allowances and Honoraria under the head 'Forests' be reduced by Rs. 15,000."

Mr. J. Hullah: Sir, a reduction has already been made, as Sir Deva Prasad Sarvadhikary admits, and I cannot say that any further reduction is possible. We are working down, as far as possible, to the recommendations of the Retrenchment Committee and the matter of allowances and contingencies will, of course, receive our attention. The allowances are for travelling allowance to officers on tour and to the establishment and a large part of the travelling allowance is spent by the Inspector General of Forests whose tours are extensive and to distant places including the Andamans and Coorg which are two of the Forest properties under the Government of India. The other allowances are, for the most part, house rent to the office establishment at Simla, separation allowance for clerks at Delhi who leave their families in their villages, local allowance to menials at Simla and Delhi and house rent to clerks at Delhi who are not provided with quarters. Beyond an assurance that we shall do our best to cut down these allowances as well as everything else in accordance with the recommendations of the Retrenchment Committee, I cannot say definitely

* "123. That the provision for Supplies and Services under the head 'Forests' be reduced by Rs. 1 lakh."

[Mr. J. Hullah.]

whether there is scope for reduction or what amount of reduction we may be able to make.

Sir Deva Prasad Sarvadhikary: Miscellaneous charges Rs. 2,18,000.

Mr. J. Hullah: I am sorry, I did not know that was included in the Honourable Member's motion.

Sir Deva Prasad Sarvadhikary: That is under Supplies and Services.

Mr. J. Hullah: I see. The figure is on account of the expenses of the economic branch of the Research Institute. The new buildings for that branch are just approaching completion and the plant for installation is lying at Dehra Dun and will now be placed inside these buildings. We have almost completed our staff of research experts in the economic branch and they will now be able to get to work properly with the new plant which has already arrived. The miscellaneous charges are mainly in connection with the material on which they will work. It would take me, I am afraid, about half an hour to read out the various details included in this sum of Rs. 2,18,000. But I may say that of the reduction of Rs. 55,000 shown under votable items, Rs. 50,000 is on account of deduction from this particular figure, so that the amount granted to the Research Institute for these miscellaneous supplies will not be Rs. 2,18,000 but Rs. 50,000 smaller than that figure. In short, we have already made a reduction of Rs. 50,000.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Sir, may I in this connection inquire what is the meaning of the statement in the revised statement prepared by the Finance Department "The reduction of Rs. 96,000 is effected by not filling up two appointments and by reduction in miscellaneous expenditure at the Research Institute. What I want to know, Sir, is how far the Research Institute will be affected by the proposed reduction of Rs. 96,000 and what are the two appointments brought under reduction in consequence of this revision.

Mr. J. Hullah: The two appointments are those of the Forest Botanist, non-votable, for whom a Budget provision of Rs. 25,800 was originally made, and the Systematic Entomologist for whom a Budget provision of Rs. 15,380 was made. In addition there is the Rs. 50,000 reduction which I have just mentioned, and a reduction of Rs. 5,000 on account of passages of Indian probationers to England. The total of these items is Rs. 96,000, of which Rs. 91,000 will be a retrenchment on the Dehra Dun Research Institute.

Sir Deva Prasad Sarvadhikary: I do not wish to press the motion. I fully accept Mr. Hullah's explanation. I fully believe in the future of this institution and do not desire to press this.

The motion* was, by leave of the Assembly, withdrawn.

Sir Deva Prasad Sarvadhikary: The same observation applies to my motion† No. 123 also.

The motion was, by leave of the Assembly, withdrawn.

* "That the provision for Allowances and Honoraria under the head 'Forests' (page 27) be reduced by Rs. 15,000."

† "That the provision for Supplies and Services under the head "Forests" (page 27) be reduced by Rs. 1 lakh."

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, I move:

"That the demand under the head 'Forests' be reduced by Rs. 43,800."

The Budget estimate of this year is in excess of the Budget estimate of last year by Rs. 2,55,000 taking both the votable and non-votable items into consideration and the excess is Rs. 2,42,000 taking only the votable items into consideration. The Retrenchment Committee has recommended a reduction of Rs. 6,90,000 of which Rs. 86,000 is under the head Forest Research Institute and the rest is on expenditure in England. After this recommendation a reduction of Rs. 55,000 has been made. But I ask for a further reduction under this amendment. Sir, it is very much encouraging to learn from the report of the Retrenchment Committee, that all the officers who have appeared before it were very earnest for reduction in the expenditure, and I hope that if they will try to economise, they will be able to further reduce the expenditure to the extent asked for under this amendment. There is one matter, Sir, to which I want to draw attention under this head. Although we have been informed that there has been a reduction of Rs. 55,000 under votable items, we have not been as yet informed whether there has been any reduction on the non-votable items. Though I am quite alive to the fact that we have no right to vote regarding non-votable items, yet we have a right to know whether the reduction recommended by the Committee has been accepted or not. Day after to-morrow we are going to sit to consider the Finance Bill and before we do that we are entitled to know whether the reduction recommended by the Committee for the non-votable items also have been accepted by the Government or not. I move my amendment.

Mr. J. Hullah: Sir, if the Honourable Member thinks that, whereas the Retrenchment Committee has recommended a reduction of more than Rs. 6 lakhs under the head Forests, we have made a reduction of only Rs. 55,000, he is very greatly mistaken. The Inchcape Committee in dealing with Forests did not take the Demand, Forests as it appears in this volume, but the Budget head Forests, which includes not only the headquarters charges and the Dehra Dun Institute but also all the expenditure in the minor administrations such as the Andamans, Coorg, the North-West Frontier Province and two or three other places where forests are of less importance. The total Budget under Forests is Rs. 47 lakhs while the Inchcape Committee figure is Rs. 45.55 lakhs. We had therefore already come very nearly down to the Inchcape Committee figure. But we have made a further cut of Rs. 96,000, so the total expenditure on forests will be Rs. 46,10,000. We are thus only Rs. 55,000 short of the recommendations of the Inchcape Committee. The Honourable Member also said that the Assembly was entitled to know whether any reduction had been made in the non-votable head. I have just explained that provision for two officers has been cut out, the Forest Botanist and one of the Entomologists. The reduction on account of these two officers is Rs. 41,000.

Rai Sahib Lakshmi Narayan Lal: Sir, I do not press my amendment.

The motion was, by leave of the Assembly, withdrawn.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muhammadian Rural): Sir, I move:

"That the Demand under the head 'Forests' (page 27) be reduced by Rs. 100."

[Mr. B. Venkatapatiraju.]

I make this motion in order to raise a question. A provision was made for the Dehra Dun Imperial Research Institute. We find, Sir, that the decision arrived at by this Assembly was not given proper effect to in this wise. Firstly, it was sanctioned long ago by the Secretary of State that we must have facilities provided for the Imperial forest recruitment in India with the approval of the Government of India; but later on the Government of India changed their mind. Eventually the Honourable Mr. Hullah on behalf of Government introduced a Resolution in this Assembly that we should go back upon the decision of the Government of India as well as the Secretary of State to provide a fully equipped institute in Dehra Dun. But after mature consideration this Assembly decided that we should still stick to the old decision arrived at by the Secretary of State and the Government of India. We insisted that as soon as possible it should be done, but that in the interval the old system might continue. Now I find that nothing has been done to show that any attempt is made to secure at an early date a fully equipped institute for training our Imperial recruits for Forest service. Fortunately, there is no difficulty for we find that the present Institute is fully equipped. We have got about 85 officers, about 25 of whom are persons imported from England who must be highly qualified experts because we are paying them good salaries. Therefore nobody need say that we have not got a fully equipped Institute. Where was the difficulty of training Indians here for that Service. Long ago, the Public Services Commission stated that we should have a fully equipped institute in India. Not only that. They went further and said that there should be no limit placed on the number of officers to be recruited in India for the Imperial Service. They also added that there is no policy underlying it because this Forest Service has nothing to do either with Imperial connections or with the British supremacy.

Therefore, when there is no policy underlying it, it is purely a matter of employing our own men to do forest service. The first complaint is that in the Research Institute you have not appointed any Indian. Out of 25 officers of the Imperial cadre there is not a single Indian. You only find one assistant who is employed in research. Why they have failed to employ additional assistants in order to do research work I do not understand. What was the difficulty felt to secure Indian recruits to be trained in India, instead of sending them to England for the Imperial Forest Service, whatever be the difficulties of securing the attendance of British recruits here. After all, this is not absolutely necessary though at the present moment we are recruiting only 40 per cent. here and 60 per cent. in England. The other day the Honourable Mr. Hullah stated that there was no objection to recruiting the 100 per cent. of Indians. What is the use of these pious statements when they are not put into practice? There is not much change whether the portfolio is in the hands of an Indian Member or an English Member because under both we find the same difficulty and there are no additional Indians employed in the Imperial cadre and no attempts are being made to train Indians here. Therefore I submit that it is unfair that the opinion of this Assembly should be brushed aside in this manner. Even the Retrenchment Committee suggested that so far as the training is concerned, it is desirable that it should be extended. But what they said is "You need not indulge in having costly constructions which cost 125 lakhs." That may be or may not be. After all, these may be uneconomical economies. But for educational purposes any amount spent is absolutely necessary and a proper investment; whether it be in Dehra

Dun or at Delhi it is absolutely necessary that we should have fair educational facilities in India. This Assembly, at least on the non-official side, will not agree to any unnecessary reduction in the matter of national development purposes, and therefore we insist that something must be done in order to give full effect to the pledges given from time to time and to the assurances given that they are Indianising the Forest Service which is a matter in which they admit there is no policy underlying it.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): I shall not at this stage enter into a discussion as regards the Resolution which this House and the Council of State have passed regarding the future training of Europeans and Indians in India at the Dehra Dun Institute. But I shall place before the House some of the difficulties in the way of the Government's arriving at any definite conclusion on that point till now. The Department of Revenue and Agriculture has until very recently been in some doubt as to whether the Dehra Dun Forest Research Institute would continue to be a living Institute or would be abolished or so seriously retrenched as to be practically infructuous for the purposes for which it was intended. In view of the present financial stringency an opinion has been entertained in some quarters that it would be unwise to embark upon this kind of expenditure and that it would be for the Provincial Governments to take up research in the various provinces because most of the forests are located in the provinces. An alternative suggestion has been made that if the Government of India are to find funds for this Forest Research Institute they should be to a very great extent reimbursed by contributions from the provinces and the decision of the Government of India could not be definitely ascertained by the Department until they knew what the Retrenchment Committee had to say upon the subject. The Department felt that it would be wrong on their part to deal with the question until the Retrenchment Committee had reported upon it. Now, that the Retrenchment Committee has recommended that the Forest Research Institute should continue to function substantially as hitherto except perhaps with regard to certain departments of research about which they entertained doubts—now that the Retrenchment Committee have recommended that the educational activities of this Institute should not be hampered, the Department are in a position to take up the question as to how far they would be able to give effect to the recommendations of this House in the matter of education for training for the Imperial Service. But there is no use disguising from myself or from the House the fact that to give full effect to the Resolution may be difficult inasmuch as our Public Works expenditure has been asked to be curtailed by the Retrenchment Committee, and apart from any recommendations which have been made by the Retrenchment Committee it would be unreasonable for the Department to ask the Government of India to embark upon a heavy expenditure on buildings at present. The Incheape Committee has recommended that no further buildings should be taken on hand and that the expenditure should be limited to the commitments already made. We have been obliged therefore to reduce our expenditure on the Dehra Dun Institute to Rs. 8 lakhs which sum has been provided in order to carry out the works which had been undertaken for housing the Economic Section. The Department and the Government of India have therefore to ascertain as to whether it would be possible with the limited space at Dehra Dun Institute to find quarters for all the students and for the various classes in case the educational activities of the Research Institute are to be enlarged on the scale recommended. But this much I may assure the

[Mr. B. N. Sarma.]

House that the Government of India hope to give effect to that recommendation to the largest extent possible and to start training at as early a date as may be practicable so as to make a beginning with the limited funds at their disposal. We do not want to put off indefinitely on account of want of funds, if it be found practicable, to undertake the training of Indians for the Imperial Service in India. I am as keen as any Honourable Member to push on the good work and you may rest assured that it is not for want of will on the part of the Government of India that this has been held up hitherto, but it is because there are so many practical difficulties which we have to surmount before the scheme materialises and becomes an accomplished fact. Honourable Members will themselves notice that in the Resolution which they have passed they have suggested that the present arrangement should continue until the Research Institute can be brought up to that stage at which it would be possible to undertake the training of both Europeans and Indians in India. I am not for a moment saying that the Government of India should not give effect to that recommendation but I am only suggesting that we may have to make a smaller beginning than that in order to carry out the wishes of the Assembly, the Council of State and the Indian people at large. The House will be interested to know that about 58 per cent. of probationers in England at the present moment are Indians. That is due to the fact that in the previous years it was not possible to recruit the proper number of Indians but we find now that the provinces owing to financial embarrassments have asked that the number should be limited as far as possible and that is the reason why in the coming year we have to reduce the number of recruits to 15, 10 of whom would be Europeans and 5 Indians. So from this explanation my Honourable friend will see that the Government of India (and the remark that it makes no difference whether the department is in charge of an Indian or a European is perfectly justifiable) would try to give effect to those recommendations as far as possible and we mean to give early consideration to that Resolution inasmuch as we now find that the Retrenchment Committee has definitely recommended that the educational programme should not be curtailed and that the Research Institute should function as hithertofore, although I for one do not see at present whether we shall be able to give effect to the recommendations for curtailing some of the branches of research activity in the manner suggested in that report. I do not think I should be justified in taking up further the time of the House at this stage.

Sir Deva Prasad Sarvadhikary: I desire to say just one word in support of the point of view put forward by Mr. Raju and at the same time to put in a very strong protest against abandonment of the Research Institute. We are prepared to accept the recommendations of the Incheape Committee with regard to other matters. But in matters like this I am at one with Mr. Innes, although he was wrong on the particular occasion to which I refer. With regard to research, education, sanitation and even archaeology, I am not prepared to accept their recommendations for they are short sighted. The Government would be well advised in reconsidering their decision. We must go on with research as begun, the Forest Department may die but the forests will live and live to redound to the wealth of India if properly handled. Anything that is not done now or omitted for advancing those researches on proper lines and enabling our people to take a high position in forest work will be suicidal.

Mr. B. Venkatapatiraju: I withdraw my motion on the assurance given by Government.

The motion* was, by leave of the Assembly, withdrawn.

Mr. J. Ramayya Pantulu (Gudavari *cum* Kistna: Non-Muhammadan Rural): I should like to make a few remarks in regard to the point raised just now

Mr. President: The motion has just been withdrawn by the leave of the Assembly.

Mr. J. Ramayya Pantulu: I want to speak on that portion of the Research Institute which consists of the Institute proper, but not the college.

Mr. President: The Honourable Member can move his motion and then see whether he will keep in order.

Mr. J. Ramayya Pantulu: I beg to move:

"That the demand under the head 'Forests' be reduced by Rs. 100."

I move this motion in order to call the attention of the House and also the attention of the Government to what I consider to be the unsatisfactory condition of the working of that portion of the Research Institute which forms the Research Institute proper, apart from the Forest College. That institute consists of a number of departments which are engaged in making experiments with a view to enhancing the commercial value of our forests. Each of these departments is presided over by a highly paid expert. Most of these experts have been imported from foreign countries, mostly from America and Canada. The work that these experts are expected to do is partly to make experiments and partly to train Indians to make those experiments themselves, so that, in course of time, these Indians might replace the foreign experts. I find, Sir, that although there are as many as six departments attached to the institute not a single Indian has been trained in the work of this department except one in the timber testing department. There is the forest wood technology, the paper pulp department, the timber testing department, the wood seasoning department and the tanning department. To none of these departments except the timber testing department, is an Indian attached, so as to be trained to do the work himself and in due course, to replace the present expert when his term of contract expires. Thus the main part of the work of these experts has been neglected to the detriment of the interests of the country. There is one other matter. In the matter of the timber testing department, we have got an expert on Rs. 1,500 a month and we have got his assistant and I am told that these two gentlemen have not got one-tenth of the work which they can do. I recently paid a short visit to Dehra Dun and the timber testing expert told me that he has got only two machines now with which he is able to make only one thousand tests in the course of a month. The scheme of the work of this department is that every one sort of timber must undergo five thousand tests. Now these two existing machines are able to make only one thousand experiments in the course of a month. So that it takes five months to complete all the experiments on one timber. I am told that we have got about 300 sorts of timber in our forests, so that will take 125 years to test all these timbers. But the same expert told me that he could supervise the work of 20 machines if he had them; but he has only two, and hence there is not really enough work for himself and his assistant and we are simply wasting a large amount of money. The present policy of Government is a mixture

* "That the Demand under the head 'Forests' be reduced by Rs. 100."

[Mr. J. Ramayya Pantulu.]
of parsimony and extravagance. You maintain a highly paid establishment and you do not give it enough work to do because you say you cannot afford to appoint assistants or buy more machines. I do not think, Sir, that that is economy; it is extravagance. If you want to continue that timber testing department you ought to give it a sufficiency of work to do, so that there may be some hope of this part of the work being finished within a reasonable time. It will otherwise take 125 years to complete.

I should like, Sir, to know what the Honourable the Revenue Member is going to do in this matter.

The Honourable Mr. B. N. Sarma: Sir, I do not think I need grudge any criticism which will provide me with more funds for my institute; but Honourable Members will realize that it has been impossible hitherto to find assistants or machines in the absence of accommodation. But we hope to be able to find both during the next year, as the Economic Section is going to be housed appropriately and I do not think the complaints we have heard to-day will be heard any longer. I wish Honourable Members had borne that in mind when they proposed a further curtailment. I am glad they have not proceeded with it. In the demand for supplies and services it was proposed and we have already accepted a cut of Rs. 50,000. But I think the Government of India, in view of the financial stringency, had no alternative but to proceed cautiously and slowly. Now that research work is being appreciated in all departments there is no doubt the Government will do their level best to find full employment for all their experts. We have been reproached for not finding assistants in the technological and other departments; but where we could we have employed assistants who will in due course succeed these experts imported from outside; and we hope to pursue this policy so that these costly agencies may be replaced by an indigenous agency of an efficient character and at a reduced cost.

The motion was, by leave of the Assembly, withdrawn.

Dr. Nand Lal (West Punjab: Non-Muhammadan): I move:

"That the demand under the head 'Forests' be reduced by 5 per cent."

Sir, as you know, the revenue derived from forests, in the provinces goes to the provinces. There are some forests indeed which are in the possession of and under the control of the Government of India, as for instance, forests in the North-West Frontier Province, Coorg and the Andamans. Sir, as you know, recently a very large sum has been spent on the exploitation of the forests and that expenditure naturally induces me to ask what the result has been, what produce and what stock is available, what revenue has been derived? I confess my inability to lay my hand on any reliable literature pertaining to this point and I think it is necessary to draw the attention of the Honourable Member in charge of this Department to the paucity of literature on this subject. Now, Sir, in considering the expenditure involved in the development of forests, for instance in the North-West Frontier Province, may I invite your attention to page 235 of the report of the Retrenchment Committee. You will feel surprised at what it tells us. The information embodied in the report runs as follows:

"In 1913-14 the expenditure was Rs. 1,31,300, and the revenue which we then derived was Rs. 2,66,000."

Now, look at the rise so far as expenditure goes in 1921-22. It rose to Rs. 8,77,000

The Honourable Mr. B. N. Sarma: May I suggest, Sir, that the Honourable Member is out of order because he is discussing expenditure in the North-West Frontier Province, whereas the demand is only with regard to forest research. I think the Honourable Member will have an opportunity of discussing the other matter later.

Dr. Nand Lal: Yes, I concede that there is force in that point and I therefore withdraw my amendment.

The motion was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That a sum not exceeding Rs. 9,28,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Forests'."

The motion was adopted.

DEMAND NO. 6—STAMPS.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I beg to move, Sir:

"That a sum not exceeding Rs. 1,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Stamps'."

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I move:

"That the demand under the head 'Stamps'—including expenditure in England—be reduced to Re. 1."

The point which I wish to raise in connection with the demand for Stamps is about the manufacture of stamps in India. Honourable Members will remember that I raised this point last year. I wanted to know why the Government of India did not manufacture their stamps in this country. I had hoped that the Department concerned would take some steps during the past 12 months, but I am sorry to find that in that period very little seems to have been done, if I may judge by a reply to a question of mine given by the Honourable Mr. Innes recently in this House. In reply to that question about the manufacture of stamps Mr. Innes said—

"No detailed inquiries have so far been instituted by Government in this matter."

Sir, the contract with Messrs. De la Rue and Co. terminates next year and if any firm in India has to undertake this work I fear some time will be necessary for them to instal new machinery.

If Government therefore take no action till then, it is just likely that they may turn round next year and say it is not possible for any firm in India to manufacture stamps at all. I want to know, therefore, whether Government have really taken any serious steps in the matter and whether they have the will to do something. The second point which I wish to ask in this connection is with reference to the administration of Stamps and Stationery Department by the Controller of Stationery and Stamps in Calcutta. Those who have read the report of the Inchcape Committee must have seen that the Controller has not been as vigilant as he ought to have been with reference to a number of matters, chiefly about recoveries. The Calcutta depôt is a distributing depôt for the distribution

[Mr. B. S. Kamat.]

of stamps to Provincial Governments and minor Administrations. I find from the Report of the Incheape Committee that the Controller of Stamps and Stationery has not recovered from the Provincial Governments even the cost of stamps supplied for instance to Bengal or the cost of even plain paper supplied to some other Provincial Governments. He has neither recovered for the Central Government the loss in exchange and in some cases not even the cost of transit to Provincial Governments. It seems rather curious that this Controller is not looking after his accounts and recoveries which he should have made. I should like to know, therefore, what action has been taken to see that recoveries are properly made and the expenditure of the Stamps Department is not unduly inflated.

The Honourable Mr. O. A. Innes: Sir, I will first take up the question of the manufacture of stamps in India. I think the House ought to realise that this question of the manufacture of stamps in India is a very difficult question. If we hand it over to a private firm, only one firm can be entrusted with the work. There is no firm in India which is at present printing stamps at all. It is a very difficult and a very technical matter. There are special difficulties in India and the House will realise that when the firm is first undertaking this printing, we may run the gravest possible risk of a breakdown. That is the reason why the Government of India have proceeded cautiously in this matter. It is not correct to say that we have done nothing in the matter. On the contrary we have sent Home, or rather Colonel Willis of the Mint Department has been sent Home to investigate the question of printing notes in India, and we took advantage of his presence at Home to ask him to investigate the question of printing stamps in India with reference to any special difficulties which there might be owing to climatic and other reasons, and we associated with Colonel Willis Mr. Ascoli who had been on special duty for a considerable time in the Printing and Stationery Department to investigate all the activities of that department with a view to economy. Colonel Willis did not get Home till, I think, November or December last, but I arranged that they should send us a cable just before the Budget debate in order that we might know what progress they had made in their investigations, and I have received that cable. They have arrived at the conclusion in regard to technical difficulties that no very material difficulties exist. But they go on to say that at the commencement very considerable non-productive expenditure must be faced during the experimental period. They express doubts whether it would be wise to entrust the manufacture to any private firm which has not hitherto printed stamps as the process requires very different qualifications from ordinary printing, and it will necessitate a long term contract to cover heavy material charges and involves risk of breakdown with disastrous consequences. They go on to say that if Government undertakes the work, an experimental press should be started this year. To test gums, inks and paper and to ensure proper registration and impression after the existing contract expires it will be necessary to import machinery and materials. They add that a preliminary report is being despatched so as to reach us, if possible, by the end of March and they will follow it up by more detailed proposals. As soon as those proposals arrive, I will place them before the departmental Committee of the Commerce Department in order that the whole matter may be investigated. It will require, of course, very considerable preparatory work before either Government or the private firm, if we decide on

giving a contract of this kind to a private firm, can really get going with the printing of stamps. That may necessitate some extension of this contract to De La Rue and Co. The existing contract with De La Rue and Co. contains a clause to say that if it is not terminated, it runs on, but can be terminated at any time at six months' notice. That is the exact position as regards the manufacture of stamps in India. One point more I have got to make. The House must remember that many of these stamps are stamps which we supply to Local Governments. We cannot expect Local Governments to indent on us, assuming that we start our own manufacture in India, unless we can show that we can print those stamps as well and as economically as they can be imported. That would not necessarily apply to postage stamps. Colonel Willis and Mr. Ascoli say that so far they find it impossible to give any estimate of the cost. They add that it is improbable that material economies will result during the earlier years.

I now turn to the other question raised by Mr. Kamat, and I may say at once that had Mr. Kamat moved a reduction of one rupee in the Demand for Stamps, I would have been tempted to take that one rupee out of my pocket and place it on the table. For, I must confess that the Incheape Committee's report has brought to light a bad state of affairs, and the Government of India must accept responsibility for that state of affairs. What happened was of course that the implications of the Reforms Scheme were not realised. Formerly, when we had a combined purse the question of recovery from Local Governments did not arise. When the Reforms Scheme came in and non-judicial stamps were transferred to Local Governments as a provincial source of revenue, it was not realised at first that the recoveries ought to have been made. There was some confusion undoubtedly, want of co-ordination, as the Incheape Committee put it, between the Controller of Printing and Stationery on the one hand and the Accounts Officers on the other, as also want of co-ordination between the India Office and the Government of India in this matter. What I can say is that this matter was discovered some time ago and instructions have already been issued or are being issued to Local Governments. We have not only to effect recoveries which are in arrears but to make such changes in the system as will prevent a recurrence of maladministration of this kind in the future.

Dr. Nand Lal: Sir, I generally place implicit faith in the correctness of

the information which is given by the Honourable Mr. Innes, but

12 Noon. I am sorry I cannot do so on this occasion. If I understand aright and if my information is correct, we find machinery of this type and work of this kind going on in Hyderabad, Deccan and one or two other States and my informant told me that it proved a great success. Now, when this point is raised, the Honourable Mr. Innes comes forward with this sympathy for the Indian enterprise that if this system of industry is allowed in India, most probably it may prove disastrous. I may say this is left-handed sympathy. My own belief is, and I think this is the opinion of the majority of big printers in India, that if this task is entrusted to them, they will be able to do justice to it. Considering the great amount of expenditure which we incur, we feel forced to offer this suggestion to the Government of India that they may kindly give a trial to Indian printers, and if they do it, they will soon come to know and realise that Indians are fully capable of doing it and Indian soil is quite agreeable to that work.

Dr. H. S. Gour: I had tabled an amendment also:

"That the demand under the head 'Stamps'—including expenditure in England—be reduced by Rs. 100."

I should like to say a few words in connection with that amendment. Last year this question was debated in this House, and the Honourable Mr. Innes, speaking for his Department, passed on to me some daubs of stamps produced by a Native Indian State, and said, "if this is the kind of work which is done in India, would it justify the indigenous printing of stamps." Since then I have collected information. I prepared a very large number of letters and sent them on to different States, and in response to my invitation and to my surprise, I received a very large number of stamps actually manufactured in this country. I showed a great many of them to the Honourable Mr. Innes, and I remember I also passed round that album for the inspection of the House. (*Cries of "Yes" "yes."*) I also received a copy of the Goble's Automatic Printing Machine catalogue which showed how the whole thing is done by automatic machinery. It is not a question of climate or of gums, but a mere question of investing a sum of money and indenting on Germany for this Goble's machine, which is used, I believe, in all the countries of Europe and America, and if I mistake not in the State of Hyderabad. The stamps which I showed to the Honourable Members of this House and to the Honourable Mr. Innes were a revelation. They were embossed stamps of the most beautiful type produced by machinery which gives no trouble and which were actually being used in Hyderabad. I asked the Honourable Mr. Innes to look at his picture of the stamps which he showed me and mine of the stamps produced in the country. Now, Sir, after that ocular demonstration, I am surprised that the deputation that went to England to inquire into the possibilities of printing stamps in this country has sent by cable that extremely disappointing report, and I am further disappointed to hear from the lips of the Honourable Mr. Innes that he will first of all try in an experimental measure a small printing press. (*The Honourable Mr. C. A. Innes:* "I did not say that.") He says he did not say that. I stand corrected; that there are insuperable difficulties; (*The Honourable Mr. C. A. Innes:* "I did not say that.") that there are difficulties in the way of starting the printing of stamps in this country. Now, Sir, I ask the Honourable Mr. Innes how have these difficulties been overcome in the Indian States where stamps are actually being printed, and in the adjacent island of Ceylon where beautiful stamps are printed, in Assam and in Japan, which print their own stamps and do not indent on Thomas de la Rue and Company. I say, Sir, that even if it cost a little more, the Honourable Mr. Innes could not have forgotten his own Resolution, moved the other day in this House, on the question of free trade and protection. Speaking on that subject, the Honourable Mr. Innes said that the policy of the Government of India is to foster indigenous industries. Now printing is an indigenous industry. It requires development, and unless you take some risks, how are you going to develop the printing of stamps in this country? Honourable Members will find, if they turn to the Demand book, that we buy from Thomas de la Rue and Company stamps to the value of half a crore of rupees per annum, and we have to keep in addition a costly establishment for the storage and distribution of these stamps. I therefore submit, Sir, that, if you put all the costs together, it certainly would not come to much more than you would spend upon the local printing of stamps. And even if in the commencement the stamps are not produced as well as they are done by

the firm overseas, I am sure that the Members of this House will overlook these small defects which are compatible with small beginnings, provided the industry receives a stimulus which it deserves at the hands of the Government and the printing presses in this country are encouraged to invest in the machinery which is necessary for the purpose of doing work of this character. I have in my possession information from several firms in this country who are prepared to take contracts and run all the risk that is necessary in the printing of these stamps, and they are firms who have been doing work with credit for the Government for a number of years. I ask, Sir, why should not these presses be employed for the production of stamps in this country? Then, Sir, it has been said by the Honourable Mr. Innes that it is possible that Messrs. Thomas de la Rue's contract might be extended. Let me in this connection draw the attention of the House to what the Inchcape Committee themselves recommend in this connection. On page 231 they say: "There would appear to be many advantages in getting post cards at any rate printed in India." They are in favour of the printing of stamps and post cards in the country, and they say that, at any rate, let the post cards be printed in this country; not that the stamps should not be printed in this country also. And they point out that it would be economical if a beginning is made with the printing of stamps in this country. I submit, Sir, that this House should speak with no uncertain voice on this great subject of developing one of the rising industries of this country, namely, developing the printing press in India. And we can never develop these presses unless the Government extend to them their patronage. They have the right to expect it; we have the right to demand it, and I think it is up to the Government to respond to the call made upon it and see that, instead of following the policy of *laissez-faire* the Government also feel with the House that, whether risks are taken or not, one supreme effort shall be made for the purpose of printing stamps in this country. I hope, Sir, that the Honourable Mr. Innes will revise his words and his thoughts and give this House a more re-assuring message that he will accede to the unanimous wish—I think it is a unanimous wish on this side of the House—that stamps should be manufactured in this country at the earliest opportunity, and that we cannot tolerate the extension of Messrs. Thomas de la Rue's contract at enhanced or unenhanced rates.

I move my amendment.

Mr. Darcy Lindsay (Bengal: European): Sir, I should like to ask the Honourable Mr. Innes whether any suggestion has been made to the present contractors, Messrs. de la Rue and Company, to establish a factory in India for the manufacture of stamps. They are a very old firm in this class of business and entirely to be trusted in the manufacture and distribution of stamps, and I think that is one of the points that weighs very strongly with the Honourable Member. That stamps can be made in this country I, for one, am satisfied, both as regards quality and price. We have had stamps made in Calcutta for an Indian State by Messrs. Thacker Spink and Company that I think are equal to any stamp manufactured by Messrs. de la Rue and Company. (*Dr. H. S. Gour:* "I showed those stamps to the Honourable Mr. Innes.")

Another point, Sir, of extreme importance to India is the money that would be saved in carrying much smaller stocks. I believe I am correct in the statement that the Post Office alone carries at least a two years' supply, and I believe their stock is in value something like Rs. 20 to

[Mr. Darcy Lindsay.]

Rs. 25 lakhs. If stamps were manufactured in the country, there would be no necessity for carrying more than a six months' supply and the interest on Rs. 10 lakhs or Rs. 15 lakhs thereby saved is a considerable sum. This includes all classes of stamps manufactured, and on these grounds I strongly urge that arrangements should, if possible, be made for the manufacture of stamps in India.

Sardar B. A. Dalal (Bombay Northern Division: Non-Muhammadan Rural): With your permission, Sir, I might mention that stamps are made in the Indian States, especially in Baroda, and, if my information is correct, also in Rajpipla, and it should not, I think, be very difficult to manufacture them in India; so this enterprise might be entrusted to Indian firms.

With these remarks, I support the amendment.

The Honourable Mr. C. A. Innes: Sir, the difference between Dr. Gour and Mr. Darcy Lindsay and myself is merely a difference of point of view. Dr. Gour and Mr. Darcy Lindsay have no responsibility in this matter; the Government have. As I have said, this is a very important question indeed. The Government now supply postage and judicial stamps for all India and, before we embark on a new departure in the way of manufacturing those stamps in India, we must be thoroughly satisfied that we are not going to have a breakdown. That is the reason why Government consider that they must watch their steps most carefully and that they must proceed cautiously. That is why we have had the question examined by these two officers at home and that we propose to await their report before we take further steps. Both Dr. Gour and Mr. Darcy Lindsay have referred to the fact that certain Indian States print their own stamps. I am aware of that fact, but they have me at a disadvantage. I also have made inquiries; I also have information on this point, but that information was supplied to me in confidence and I am not at liberty to use it. Neither Dr. Gour nor Mr. Darcy Lindsay referred to the cost of printing those stamps, and I might point out that in this matter in these times of financial stringency cost is a very serious consideration. (*Dr. H. S. Gour:* "I have been informed, Sir, that the cost is 15 to 20 per cent. cheaper than Thomas de la Rue's rates.") My information, Sir, is different and surely this different information indicates the necessity of proceeding with care and caution. Dr. Gour then stated that the House would not tolerate any extension of the de la Rue contract. We have no present intention of extending that contract. All I say is that, if re-arrangements are decided upon by the Government and arrangements through private firms for the manufacture of stamps in India are not completed in time, the contract will continue to run under the operation of the clause in the contract which provides for its running on and termination at six months' notice. I suggest, Sir, that the House should remain content with what I have told them, namely, that by the end of this month or next month we shall have this report out from home. The whole question will then be discussed with full knowledge in that report and that report will be put up to a departmental Committee of the Commerce Department with a view to see what further action should be taken.

Mr. President: Does the Honourable Member move a reduction?

Dr. H. S. Gour: Yes, Sir.

Mr. President: Of one rupee or Rs. 100?

Dr. H. S. Gour: One rupee will do, Sir.

Mr. President: The question is:

"That the demand under the head 'Stamps'—including expenditure in England—be reduced by one rupee."

The motion was adopted.

Mr. President: The question is:

"That a reduced sum not exceeding Rs. 999 be granted to the Governor General in Council to defray the charges which will come in course of payment for the year ending the 31st day of March, 1924, in respect of 'Stamps'."

The motion was adopted.

DEMAND NO. 5—EXCISE.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That a sum not exceeding Rs. 1,000 be granted to the Governor General in Council to defray the charges which will come in course of payment for the year ending the 31st day of March 1924 in respect of 'Excise'."

The motion was adopted.

DEMAND NO. 12—INTEREST ON DEBT AND SINKING FUNDS.

The Honourable Sir Basil Blackett (Finance Member): Sir, I beg to move:

"That a sum not exceeding Rs. 22,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March 1924 in respect of 'Interest on Debt and Sinking Funds'."

Sir Campbell Rhodes (Bengal: European): Sir, I notice in this demand that the question of Exchange enters very largely into the matter. My Honourable friend, Mr. Jampadas Dwarkadas, recently asked a question of the Finance Member in regard to the sale of Council Bills and I should like to supplement that question by asking whether the Honourable the Finance Member has considered the point and, if so, whether he has arrived at any conclusion. The regulation of exchange operations, the sale of treasury bills and the provision of ways and means are all inextricably mixed together, and it seems to me wrong that while one of these three items is regulated in England, the other two are regulated out here, and that it would be in the interests of economy if the whole were regulated on the spot. Speaking last week in a small mofussil station I was careful to say not that the Council sales should be effected here in India but that they should be regulated, if not actually effected, in India. For I realise there are difficulties in the way of effecting Council Bills in India. There are two primary difficulties. In England there is one centre, London: here there would be about five. Also the Government of India would not care to part with money at one end until they received it at the other. But I see no objection to the actual regulation of the sale of Council Bills being effected in this country, and in fact I see very obvious advantages. I believe that the Government could so regulate their exchange operations as to get their money home at better rates and at the same time come to the help of the trade of the country when there was a tendency towards a rise.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I support the motion made by my Honourable friend, Sir Campbell Rhodes, and in doing so I associate myself with the remarks that he has made. A few days back I put a few questions to the Honourable the Finance Member in order to find out who it was that controlled this policy of the sale of Council Bills, and when the answer was that it was the Secretary of State, who controlled it; I put a further question and asked him whether the Finance Department of the Government of India here was not capable of regulating the policy of the sale of Council Bills and why it was not done. The answer of the Honourable the Finance Member was "Well, it was obviously so because it has been so for a number of years." Well, Sir, Sir Campbell Rhodes has rightly pointed out that it will be to the advantage of this country to regulate and control the policy of the sale of Council Bills here at this end. There is one more suggestion that I was going to make, and I should like to know from the Finance Member if it is a suggestion that can be put into effect. If I understand rightly, the present method is to ask for tender in sterling value. If you could effect the same in rupees I think more advantage would be taken by the people of this country than by merely capitalists and banks. I do not know how far it is possible to arrange that, but if it is possible I think it would be of great advantage to the country.

Sir Montagu Webb (Bombay: European): Sir, if I understand this demand aright, it is purely to provide the money to pay for the skeleton forms of Government Promissory Notes. If that be so, might I put in a suggestion that while the Honourable the Commerce Member is thinking how to print stamps in this country, he might also take into consideration if it will be possible to print Government Promissory Notes also?

The Honourable Sir Basil Blackett: Sir, I shall be glad to convey to the Honourable the Commerce Member the suggestion which has been made.

I do not want to delay the House long on this general subject of Council Bills which arises presumably on this vote because a large item in the vote represents exchange on London. Sir Campbell Rhodes has repeated here some very interesting suggestions which he made in a speech in Calcutta a week or two ago, and Mr. Jamnadas Dwarkadas has also supported the general proposition that the Government of India should not confine itself to one method only of obtaining the sterling it requires, namely, the sale of Council Bills through the Secretary of State in London. This matter has been under consideration from time to time and I should like to make it clear to the House that the Secretary of State and the Government of India do not regard themselves as in any way confined to this one method of remittance. If occasion arises, they regard themselves as free to buy sterling in the market in India.

Sardar B. A. Dalal: Have they ever done so?

The Honourable Sir Basil Blackett: It has been done on occasion but not to any very large extent. The further suggestion that has been made was, I understand, not that there should be a change in the place at which Councils should be sold, but that there should be a change in the control or regulation. I think it is obvious that London has very many advantages as the place in which to effect Council sales. The method of Council sales has the great advantage to which Mr. Jamnadas Dwarkadas referred,

that it has been in force for a hundred years and is well understood and works fairly well in ordinary times. The possibility of adopting a system of tender in India is one which will not be lost sight of, but there are a good many difficulties and no very obvious advantages as compared with sale in London. I do not quite follow the suggestion that was made by Mr. Jamnadas Dwarkadas that we should do our transactions in terms of rupees. What is really done is that rupees are offered for sale in London. So long as your desire is to remit money to London, you must either offer rupees to be brought in London or offer to purchase sterling in India. That is simply the obverse of the same transaction. The question of regulation of sales is one to which attention will be given, but I think the House should not misunderstand the position. It is only a question of machinery. At the present time the Secretary of State does effect his operations in consultation with the Government of India, and it is only a question of emphasis, I think, and not a question of real change unless it is suggested that some other agency than the Bank of England should be employed.

Sir Montagu Webb: May I suggest, Sir, that the Imperial Bank of India be permitted to sell sterling at all times in India?

The Honourable Sir Basil Blackett: The matter will be considered.

Sir Deva Prasad Sarvadhikary: Sir, the sporting offers about laying a rupee down on the table are tempting. Whether I receive the offer or not, I should like if I may to leave out the word 'crore' in my amendment,* showing how generous one, without what Mr. Innes calls any responsibility, can be. It has been pointed out that this is only a vote for Rs. 22,000, and that not even for note forms but skeleton forms of notes. Incidentally therefore I desire to raise a question with regard to what is called service expenditure,—Provision for service of new loan. Well, Sir, as the Honourable Finance Member reminded us, though not a windfall, for the time being it was a great help to us that the whole of the provision for service as well as the whole of the loan were not necessary last year. There were thus some savings last year which reduced the deficit to a certain extent. This year, I believe, we stand on firmer ground than that, and it will not be a question of all the loan Government had intended not having to be contracted, but the Government loan being actually intended to be less this year. If my reading of the situation is correct, I should like to ask the Honourable Finance Member as to whether even now some appreciable reduction could not be made on the non-voted item, namely, in the provision for service of new loan,—both the rupee loan as well as the sterling loan. What are the facts of the case? Last year, I believe for the rupee loan Rs. 1,25,00,000 or thereabouts was provided. For a flotation of Rs. 46 crores the total expenditure was somewhere in the neighbourhood of Rs. 58 lakhs, giving service costs at about 1½ per cent. This year our loan is expected to be Rs. 25 crores—and if the proposal for carrying Railway annuities to capital is given effect to—Rs. 26 crores. At 1½ per cent. which is the figure for the last year, it would cost us about Rs. 32½ lakhs. There is also a provision for 80 lakhs under this head, and if my reading of the situation is correct there will be a saving of something like Rs. 47½ lakhs.

Then turning to the sterling loan, we are, I believe, in a similar favourable position; we are going to raise a loan, I believe, of £50 millions. That, on last year's figures, will cost us 87½ lakhs according to the calculations that

* That the demand under the head 'Interest on Ordinary Debt and Sinking Funds' (page 52) be reduced by one crore." (As printed in the list).

[Sir Deva Prasad Sarvadhikary.]

I am mentally making. I take it that facilities in London are not less than here and if the expenses are $1\frac{1}{2}$ per cent. or, including brokerage at $1\frac{1}{2}$ per cent., even then the savings would be $37\frac{1}{2}$ lakhs. Between this $37\frac{1}{2}$ lakhs and the $47\frac{1}{2}$ lakhs on the rupee loan, something like 85 lakhs may be expected to be saved. One cannot be as sanguine as all that. But supposing half or nearly half of that was to our credit that would bring us 50 lakhs. Then there is another point of view—the question of interest for the broken period. Loans are not floated immediately; there is some saving of interest in the broken period if the loan can be floated in a suitable market, supposing here also we make a saving, altogether there will be a net saving that will be helpful to the present situation as there was last year. From this point of view, Sir, I desire to draw the attention of the Honourable Finance Member to the question and want to elicit an expression of opinion as to whether our point of view is reasonable or not.

Mr. President: The question is:

"That the demand under the head 'Interest on Debt and Sinking Funds' be reduced by Re. 1."

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, in addition to what my friend, Sir Deva Prasad Sarvadhikary, said, there is another point, and it is this. This figure on page 84—Rs. 47,50,000—is calculated at Rs. 10 to the £, whereas all other calculations are made at Rs. 15 to the £. The point was that last year when 47 crores of loan were raised in this country, the expenditure including all the charges and broken period interest were 58 lakhs. On that ratio this year it ought to be something less than 30 lakhs. Similarly on the sterling loan there should be an expenditure not exceeding 25 lakhs. So with these two savings and the saving in exchange, a substantial sum could be saved and that will go to reduce the deficit.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, may I say a word as I have given notice of a similar motion? It is not a simple expression of opinion only that I expect from the Honourable Finance Member—I expect him to make a specific declaration as to how much, having regard to the facts placed before him, he is prepared to deduct from the amount which he has entered for service charges. There is only one other matter which I should like to mention and that is this: last year the amount of the rupee loan was, I believe, 47 crores; this year it is intended to float a loan only of 25 crores of rupees. If that is so, there must be a considerable reduction in the sum provided for service charges. Another item that has been mentioned is the amount of charges for a sterling loan—the amount entered is £485,000; it was 475,000 last year; it is £485,000 this year. As pointed out by my friend, Mr. Subrahmanayam, if you put it at the rate of Rs. 15 a £, there must be a considerable reduction and even if we

Mr. A. V. V. Aiyar (Finance Department: Nominated Official): There must be an increase.

Mr. T. V. Seshagiri Ayyar: I take it that you will have to pay about 70 lakhs if your calculation is correct, and I take it that if you float a loan at such a period as to make the intervening period between the time at which the interest begins to run and the time that the loan is subscribed

as short as possible, you will be able to make a great saving. The loan certainly should be floated in a manner that the finances of the country should suffer least. If you take all these considerations into account, I have no doubt you will be able to cut down the amount by something like Rs. 35 lakhs at least. I suggest this, Sir, to the Honourable the Finance Member so that he may cut down from this non-votable item at least Rs. 35 lakhs.

Mr. A. V. V. Aiyar: Sir, it is somewhat disheartening to find that when we are doing our best to reduce our expenditure, our action is used to our disadvantage.

Sir Deva Prasad Sarvadhikary: Not at all.

Mr. A. V. V. Aiyar: Last year we made a provision of 125 lakhs, and it is said that we spent only 58 lakhs, and that is the case. But I will take the House a few years back. In 1919-20 we floated a loan of 21 crores and we had to spend 131 lakhs on that, which amounted to 6 per cent. Similarly in England in 1921-22 we floated a loan of 17 million pounds, on which we had to spend 375,000 pounds. Obviously in a matter of this kind we should be guided by the conditions of the money market from time to time, and it is not desirable to tie Government down to any fixed dates within which loans may be floated, or fixed period for which interest should run in the first year. This is a matter in which Government should have as free a hand as possible, and I am sorry to say that after careful consideration we cannot see our way to accept any reduction under this head.

Mr. President: The question is:

"That the demand under the head 'Interest on Debt and Sinking Funds' be reduced by Re. 1."

The motion was negatived.

Mr. President: The question is:

"That a sum not exceeding Rs. 22,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March 1924 in respect of 'Interest on Debt and Sinking Funds'."

The motion was adopted.

DEMAND NO. 43—STATIONERY AND PRINTING.

Mr. A. H. Ley (Industries Secretary): Sir, I beg to move:

"That a sum not exceeding Rs. 57,92,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Stationery and Printing, including Expenditure in England'."

The motion was adopted.

DEMAND NO. 34—COMMERCIAL INTELLIGENCE.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That a sum not exceeding Rs. 2,13,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Commercial Intelligence'."

Khan Bahadur Sarfaraz Hussain Khan (Tirhoot Division: Muham-
madan): Sir, I beg to move:

"That the provision for Superintendent and clerks under sub-head 'Bureau of Commercial Intelligence' under the head 'Commercial Intelligence' be reduced by Rs. 80,000."

The amount budgeted for 1922-23 was Rs. 61,810, but in the current year the amount has been increased to Rs. 1,58,780. The first thing that I should like to know is as to why this increase has been made. Now the Retrenchment Committee say on page 214 of their Report:

"This Department was, no doubt, useful during the war when the Director had various duties to perform in connection with the supply of munitions and when it was considered inexpedient to publish any information relating to the movement of trade, but it is questionable whether it is now necessary to maintain an establishment on this scale for the purpose. In view of the necessity for retrenchment, we are informed that certain existing or contemplated activities of the department have been abandoned which will effect a saving in the current year's budget of Rs. 1,08,000 and of Rs. 1,59,000 in 1923-24. Whether Indian trade benefits to an extent warranting the expenditure which will still remain is open to doubt, and we recommend that further economies should be effected, increasing the saving to Rs. 2,09,000."

Further on, the Retrenchment Committee say:

"In view of all the circumstances we are of the opinion that the budget of the combined department should be reduced to Rs. 2,00,000, a reduction of Rs. 1,20,000 on the budget for 1922-23."

Therefore, Sir, in view of the fact that the Retrenchment Committee have recommended a reduction and also in view of the fact that an increase has been shown in the current year's expenses in this department for a Superintendent and clerks, I move that the budgeted amount should be reduced by Rs. 80,000.

Rai Bahadur Lachmi Prasad Sinha (Gaya cum Monghyr Non-Muham-
madan): Sir, I beg to support the motion put forward by my Honour-
able friend, Khan Bahadur Sarfaraz Hussain Khan. Under the head
Commercial Intelligence we were asked this year in the original Demand to
vote for 2 lakhs 63 thousand. In the revised estimate which has since
been issued we are asked to vote for Rs. 2 lakhs 13 thousand. But the
proposal of the Retrenchment Committee was to reduce 1 lakh 59 thousand
from the budget figure of 1922-23. Honourable Members will see this for
themselves from page 214 of the Retrenchment Committee's Report. If that
proposal had been accepted, the figure under this head would have come
down to 1 lakh 57 thousand. Sir, the ultimate saving proposed in the
combined departments of the Directorate of Statistics and Bureau of
Commercial Intelligence was Rs. 2 lakhs 80 thousand—(page 215 of the
Retrenchment Committee's Report), thereby giving them a sum of Rs. 2
lakhs only. So if we reduce the amount allotted to the Bureau of Com-
mercial Intelligence by 60 thousand it will still leave a sum of nearly a
lakh for that branch (1 lakh 57 thousand 5 hundred minus 60 thousand, equal
to nearly a lakh). Further the actuals of 1921-22 of the Bureau of Com-
mercial Intelligence as shown in the Demands is roughly 1 lakh 60
thousand whereas it has been raised to 8 lakhs 3 thousand in 1923-24 which
is nearly double and the figure for pay of establishment, etc., was 47 thousand
9 hundred in 1921-22 which was raised to 96 thousand 7 hundred and
fifty in the budget estimate of 1922-23 and which is now proposed to be
raised to one lakh 82 thousand in 1923-24. So out of all these figures, if
we reduce even this item of pay of establishment by 60 thousand rupees,
it will still leave in the hands of Government 1 lakh 22 thousand which is
also greater than the sum voted for last year.

Dr. Nand Lal: Sir, I have also got an amendment relating to this
demand and happily I have now given some thought to and seen the
literature on the subject. I have gone into it, so far as I could, and I
have been driven to this conclusion that this Department is a most useful
Department, so far as the commercial development of our country goes. I
am sorry I sent in this amendment of mine before going thoroughly into
the subject, and in the circumstances, which I have stated above, I do
not now propose to move it. Besides I also feel constrained to oppose
this amendment, now before the House, for various reasons. I would have
put forward all these reasons had I the time, but unfortunately the Leader
of this side of the House, I mean the Democratic Party, has prompted me
to cut short, and therefore, to prove myself loyal to his command and in
the interests of economy of time, I confine myself to this remark, that
the arguments which have been advanced by my learned friend is untenable
and if he would care to spend a little more time on the details, he will
find it (his argument) to be incorrect. With these few words, I oppose
this motion.

The Honourable Mr. C. A. Innes: Sir, I should like to say a few words
in continuation of what Dr. Nand Lal said. I don't think my Honour-
able friends on the left have realised the true figures. The Incheape
Committee recommended that the two Departments be now combined into
one and the budget estimate for the Commercial Intelligence Department
and the Statistics Departments should be revised to a net figure of
Rs. 2,00,000. The budget demand we have put up to the Assembly is for
Rs. 2,63,000; that is to say, we are Rs. 63,000 in excess of the figure
suggested by the Incheape Committee. Like Dr. Nand Lal I regret very
much the necessity of cutting down this Department. It is a very import-
ant Department for the Commerce Department of the Government of
India. The Commerce Department of the Government of India spends
most of the year at Delhi and Simla. It is quite essential that we should
have a link between ourselves and the commercial centre of India, namely,
Calcutta, and that is one reason why a commercial intelligence officer is
extremely necessary. Then, again, that Commercial Intelligence Depart-
ment exists mainly for the small manufacturer and small trader in India.
Since 1913-14 the letters received by the Commercial Intelligence Depart-
ment has increased enormously. These are nearly all inquiries from small
traders and small manufacturers in India asking to be put in touch with
markets. We have built up quite a big organisation, a big connection with
the commercial sections of the various Consular offices all through the
Empire. Well, most of that work now, I am afraid, must go by the
board. We could not show any direct return for the money we spent.
Nor are we going to show that, because it is not our business or our
practice to follow up our advice. We merely try to bring these small men
into touch with outside markets. And then, again, this Department
supplies us with statistics we require, not only with sea-borne statistics but
the other kinds of statistics. We shall have to restrict these statistics
drastically and that is what we are now engaged in doing. But we recognise
that in these days the most important thing is to balance the budget, and
we are doing our very best to carry out the recommendations of the Retrench-
ment Committee. But, for the coming year, we have not been able to
carry them out, and that is for various reasons. In the first place, we have
to see which of our statistics we can get rid of with the least disadvantage.
In the second place, there is the usual lag to be accounted for. For instance,
if this reduction were carried out, the first thing I should have to do would

[Mr. C. A. Innes.]

be to retrench at once and without any notice at all an officer who has served the Government of India faithfully for the last 30 years. As he is to retire in December, we propose either to retain him or to give him leave till December and I am quite sure that the House will want us to treat the men whose appointments are being retrenched with consideration of that kind. The House may rest assured that we are doing our best to carry out these retrenchments. If we have not been able to come up to the exact budget figure recommended by the Inchcape Committee, it is because we have not had time in a complicated Department fully to explore all the avenues. In these circumstances, I hope the reduction will not be accepted by the House.

Mr. President: The question is:

"That the provision for Superintendent and clerks under sub-head Bureau of Commercial Intelligence under the head 'Commercial Intelligence' be reduced by Rs. 80,000."

The motion was negatived.

Sir Deva Prasad Sarvadhikary: The Honourable Mr. Innes joining forces with Dr. Nand Lal will vanquish anything. I would rather withdraw my motion which ran as follows:

"That the demand under the head 'Commercial Intelligence' (page 99) be reduced by Rs. 1,00,000."

Babu Braja Sundar Das (Orissa Divisions: Non-Muhammadan): Sir, the object of my moving this motion is this. The Retrenchment Committee have recommended a big cut in this very useful Department of the Government of India, and it is to bring to the notice of the Government my disapproval of the recommendations of the Inchcape Committee in this instance that I brought forward this amendment and I think that the Government of India should not agree to the recommendation of the Inchcape Committee at least in this direction and make this Department as useful as it could possibly be for the industrial and commercial development of India. With these few words, with a view to economy of time, I move my motion.*

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I wanted some information from the Department and I hope my Honourable friend, Mr. Innes, will enlighten me. Sir, I live very near this office called the Commercial Intelligence Department in Council House Street, Calcutta. I do not know much about it but I have seen that there are a number of rooms and a large number of European high officers going there. I do not see many Indians amongst the officers going there. I find some of them are in italics on page 99 under Demand No. 84—Commercial Intelligence and they are non-votable. But there are some items, for instance purchase of furniture, Rs. 1,500, and service postage and telegram charges, Rs. 15,000; I do not know what are the particulars—how many messages and of what description are sent that we shall have to incur Rs. 15,000 within 12 months. I do not know if there is any necessity for incurring the last item on the next page—page 100—other contingent expenditure—and there are also postage and telegraph charges. There are thus two items. I do not know what the second item for Rs. 5,000 is for. This is a second item

* "That the demand under the head 'Commercial Intelligence' (page 99) be reduced by Rs. 100."

on a similar subject giving another Rs. 5,000 after the first item of Rs. 15,000. I ask whether my Honourable friend Mr. Innes will enlighten us for the benefit of the country.

The Honourable Mr. C. A. Innes: Sir, Mr. Ahmed has omitted to notice that this year we have combined the Department of Director of Statistics and the Commercial Intelligence Department, and no separate provision at all has been made this year for postage and telegram charges. It is all shown under the head Commercial Intelligence, Rs. 15,000. The reason why it is rather large is that the Commercial Intelligence Department is in the habit of sending Home a weekly cable to the city of London summarising the trade prospects in India. The discontinuance of that telegram is under consideration and Mr. Ahmed may rest assured that these telegram charges will be brought under very careful scrutiny in order to effect the retrenchment recommended by the Inchcape Committee.

Mr. K. Ahmed: What about purchase of extra furniture and other things I have stated?

The motion was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That a sum not exceeding Rs. 2,13,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Commercial Intelligence'."

The motion was adopted.

DEMAND NO. 44—MISCELLANEOUS.

The Honourable Sir Basil Blackett: I move:

"That a sum not exceeding Rs. 21,23,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Miscellaneous'."

Khan Bahadur Sarfaraz Hussain Khan: I beg to move:

"That the provision under sub-head Miscellaneous and Unforeseen Charges under the head 'Miscellaneous' be reduced by Rs. 1 lakh."

My simple reason is that in the year 1921-22 the Miscellaneous and Unforeseen Charges came to Rs. 83,160. In the year 1922-23 the budget estimate was Rs. 3 lakhs. And it is again Rs. 3 lakhs for the coming year. I do not see why in the present financial condition it should not be reduced. It is stated here "Miscellaneous and Unforeseen Charges". Miscellaneous is a thing which covers many items. We do not know what the unforeseen charges are. It is in this view that I would like to move my amendment.

The Honourable Sir Basil Blackett: Sir, the actual expenditure in 1921-22 under this head was Rs. 60,45,000 including the non-votable items, against a figure of Rs. 47,45,000 which we ask for the coming year; that is a reduction of 13 lakhs. The Honourable Member's suggestion therefore that there has been an increase over the actual expenditure of 1921-22 is based on some misapprehension. As regards the details of this vote they are set out fairly fully on pages 149 to 152 of the book. They are, as the Honourable Member says, of a miscellaneous character. All the large provisions included are identified there. We are of opinion that the sum

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we ask for is necessary for the purpose of carrying on the ordinary administration. I do not think that because the Budget estimate for this current year is rather less than what we want now, it is possible to say that we can carry on next year on a figure less than the figure we have here put down. I have more than once informed the House that we have introduced estimates showing the lowest possible figure, in some cases I fear too low, on the expectation that we shall work down to it—I do not say that particularly applies to this estimate but I do not think that there is any item in this estimate on which we can save unless we cease to carry on some particular service, and if the House wishes for reduction I suggest it is only by pointing out the particular items on which we can say that in this case there is any possibility of saving money.

The amendment was, by leave of the Assembly, withdrawn.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muham-madan Urban): Sir, I have the honour to move:

“That the provision for ‘Public Services Commission’ under head ‘Miscellaneous’ be omitted.”

So far as this question is concerned, the attitude of the Assembly is perfectly clear. We gave expression to our strong disapproval of the Commission on a previous occasion. It will be in the recollection of the House that there was no division called and I may take it that that motion was carried, if not unanimously, of course not unanimously, at least by an overwhelming majority. For the purposes of this motion I need not suggest for a moment that there may be no grievances of the Indian Civil Service or of any other service but we do most seriously and strongly object to the appointment which has been made I shall not say in defiance of but in opposition to the practically unanimous opinion not only of this Assembly but of Indians outside this Assembly. It is of no use for us to try to know what the view of the Government of India is in this matter because the Honourable the Home Member said on the previous occasion that he would not disclose the correspondence that has passed between the Government of India and the Secretary of State and the view that the Government of India held on this question. He said that any such disclosure would be against all precedent and against the usual practice of the Government of India. I only need refer to the assurance given by Government on the floor of this House so far as the question of emigration was concerned. Government said that it was trying to do all that it could to see that the position of Indians overseas was improved and that all their legitimate grievances were removed. Might I say in passing that it would have been well if Government had also on this occasion given us an indication of its own attitude in this connection but as it pleases Government not to disclose its own view, I do not think any useful purpose will be served by my asking Sir Malcolm Hailey to say what is the correspondence or what is the nature of the recommendation made by Government. Sir, I have not forgotten and indeed those Honourable Members who will support my motion have not forgotten that there is every chance, I had almost said certainty, that if this motion is carried, Government is going to restore this item. Sir, this is really a serious and important question and I can assure the House that those of us who have made up our minds to vote for this amendment have not done so without giving their best and most serious thoughts to this aspect of the matter. But, Sir, when we find that the Secretary of State and the authorities in England will persist in a course

of action against the practically unanimous wishes of the people, then it is the clear and bounden duty of the House to say “No” to it. Our position is this. We will have nothing to do with the step that you have taken. The responsibility is yours. You do whatever you please. Sir, it is a subject on which one can speak very strongly but I refrain from doing so for the reason that our views have already been fully expressed on the last occasion and I dare not taken more time in view of the guillotine at five o'clock this evening. I therefore move this amendment and I hope that the House will by an overwhelming majority carry it, because any other course will be inconsistent with the position adopted by us on the last occasion and I say that it is up to us to be consistent and to show that as far as this Commission is concerned our dislike of it, our disapproval of it has not diminished one bit. My Honourable friend Mr. Jamnadas Dwarkadas was perfectly right the other day in what he said at the time of putting questions. “Is Government aware that our disapproval of this Commission continues undiminished?” I venture to say that Mr. Jamnadas gave expression to the views of a great many of us present in this Chamber and of a very large number of people outside it. I beg to move my amendment.

The Honourable Sir Malcolm Hailey (Home Member): It would be well I think that I should attempt to forestall other speakers, because I wish to put to the House certain considerations on this question; they may not perhaps affect what they feel on the subject of the Royal Commission, but I hope that they will affect the attitude of the House on this particular vote. Mr. Iswar Saran was correct enough in saying that the attitude of the House when we previously discussed this question was unmistakeable. It left us in no doubt of the fact that the majority of the House did then, and on that occasion, feel that a Royal Commission should not have been appointed. Now, let me disclaim any desire to go again into the merits of the question as it stood then. But we have since published the terms of reference. This much at all events you will allow me to say, that the terms of reference prove that those of us who then spoke in justification of the appointment of a Commission were correct in forecasting that it would have a much wider scope and one more interesting to India at large than was at the time anticipated in the press in India, and indeed was anticipated in this House. We are told, however, by Mr. Jamnadas and by Mr. Iswar Saran that since the publication of the terms of reference no change has taken place in the view held by the majority of the people on the subject of a Commission. That is not true of the press; there has been more than one signal convert, but on the facts let me say this that after all it might be worth while for us to pay something to get a solution of the following question:

“The possibility of transferring immediately or gradually any of their present duties and functions”

that is, the duties and functions of the All-India Services,

“... to services constituted on a provincial basis.”

Believe me, if we get a satisfactory solution of even that question it would be very well worth the three lakhs we propose to spend on the Commission. Then again if we should get a satisfactory solution of the question of the recruitment of Europeans and Indians respectively, for which provision should be made in the constitution established by the Government of India Act, that again might from any point of view be worth very much

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more than the three lakhs we propose to spend. Now, that is as much as I shall say on the merits of the question, for I feel strongly, that everything that has been said here on the merits of the question itself has found its answer, and an ample answer in the terms of reference.

But, I wish to put another aspect of the case to the House, more appropriate to the occasion. We are preparing a Budget in which we place such expenditure as we believe to be necessary and unavoidable, and we ask the House to vote supply accordingly. In the process of discussing the demands for supply, the House on many occasions points out to us directions in which it thinks that the whole or a part of that expenditure could be avoided and other expedients adopted; in other words, it indicates directions in which money might be saved; and if it fairly convinces itself that money can be so saved, it is entitled to demand that a reduced provision should be made in our account. But here we have a case in which we know that the expenditure must be incurred. The House may say that they regret it, and that they would very much rather that it had not come about; they may reiterate that they would have preferred a different form of inquiry to solve their problems, which they admit require solution; nevertheless they know as well as we know that this expenditure cannot now be avoided. They may not like the origin of the Commission; but they must recognize the fact that under the orders issued by His Majesty's Government the Commission will be appointed, and has to be financed. Now, when we are faced with unavoidable expenditure of this type, can we reasonably refuse supply for it? If supply is refused, it simply comes to this, that though there is no provision in our accounts, yet the money must be spent and the House will be in the position of refusing to allow the provision in our Budget of expenditure for the avoidance of which they can suggest no practical expedient. It is not, therefore, on this occasion a mere question of expression of opinion, or, if I may put it that way, of resentment; on this occasion, it is merely a question of provision of money for unavoidable expenditure. May I take a domestic analogy? Nobody likes paying income-tax. There are few people who show a glow of satisfaction when they receive their income-tax returns. And yet in drawing up your domestic budget, would you allow your dislike of the tax to prevail to such an extent that you would refuse to take cognisance of the fact that you had to pay? Would you arrange the scale of your expenditure on the supposition that this demand should not be made and therefore would not be met? That is an exact enough parallel.

Dr. H. S. Gour: Do votable items of the Budget stand on that analogy?

The Honourable Sir Malcolm Hailey: Though this is a votable item, it is clearly enough unavoidable, and I say it is not a reasonable attitude for this House to take up that it ought not to be included in the account. Taking the matter on a broad and common-sense view, I say that in these circumstances it is not possible in reason to refuse, merely on a point of dislike, to allow this item a plea in the Budget. If it is a question of expressing feeling that has already been taken, here we are merely in a question of providing money for unavoidable expenditure. Indeed, whatever I may feel as to the wisdom of the former vote taken by the House, I can go so far as to say that by allowing this item to stand it does not in any sense whatever commit itself to any change of its feelings

on the subject of the Royal Commission. I have myself every confidence that when that Commission is appointed, when the House sees its personnel, when it gets to work, a great change of feeling will take place. I remember well the criticisms in this House on the subject of the Inchcape Committee; I remember how in Simla I was made the target of questions and objections regarding its composition, and regarding its sphere of operation. The attitude now is completely changed; there are few who do not welcome its results. I believe myself that the House will in time come to welcome the results obtained by the recommendations of this Royal Commission, but for the present I confine myself to saying this, that by allowing this item to stand in the Budget, the House does not necessarily indicate to be public that those who have before been opposed to its appointment have changed their view. And the House can therefore, in spite of what Mr. Iswar Saran said, with perfect consistency with its former opinion, allow this item to stand.

Mr. Jamnadas Dwarkadas: Sir, it is really a matter of regret to me that in this respect I cannot agree with the views expressed by my Honourable friend Sir Malcolm Hailey. There was a little bit of heat shown yesterday by some speakers, and in answering the arguments advanced, my Honourable friend Sir Malcolm Hailey refused to accept as a compliment the statement that nothing was meant against the individual Members of Government. I want the Honourable Sir Malcolm Hailey to believe me when I say, and I say it in all sincerity, that in opposing this grant of 3 lakhs of rupees for the Public Services Commission we have nothing absolutely to say against not only the personnel of the present Executive Council, but also against the Government of India as it is at present constituted. But despite all that my Honourable friend has said in support of the Assembly voting a grant of Rs. 3 lakhs, I feel convinced that the Assembly will be stultifying itself if it takes any other course except the only consistent course it can take, and that is, it should refuse to vote this sum of three lakhs. My Honourable friend says, "You have already expressed your opinion, you condemned the appointment of the Royal Commission, now when it comes to voting the money, even if you vote this money your opinion will be on record that you have condemned the appointment of the Commission." Let us consider what that means, that when it came to expressing your view with regard to the appointment of the Commission in words, in talk, you were prepared to condemn it, but when you were called upon by the exercise of the power that is vested in you to mark your approval or disapproval of the step taken by His Majesty's Government, you failed to put your intention into practice,—you refused to exercise the vote that you had, and you voted away the country's money for the appointment of this Commission. Is this House prepared to place itself in this stultifying position? After all it is not the talk that counts, it is the exercise of the power that you have over money, although in a limited sense, that is of real significance; and the only significance that will be attached to our inconsistent attitude on this occasion will be that perhaps the terms of reference announced later on by His Majesty's Government have won a few votes from the other side to the side of the Commission. If you analyse the speech of the Honourable the Home Member, you will find that the danger is great. The Honourable the Home Member has referred to the terms of reference. He has expressed his own opinion that the terms of reference are wide enough, that they are wider than was contemplated by the Members of this Assembly. If we took a different attitude from what we took when we

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were discussing the question of adjournment I believe that the interpretation of that attitude will be this that, having seen the terms of reference, we have changed our opinion and veered round to the view that the appointment of the Commission is not only necessary but wise. I say that, if this House is prepared to endorse that opinion, it is entitled to vote these Rs. 8 lakhs; but if the House, in spite of the publication of the terms of reference, sticks to its opinion that the Commission is not necessary, that the appointment of the Commission is not wise, and that the Commission is being appointed in the teeth of the opposition of the sensible element of the people of this country, then this House can take no other step than to refuse to vote the Rs. 8 lakhs that are asked for. What will be the effect? The Honourable the Home Member says that the expenditure is unavoidable and that, therefore, you have to vote it. How is it unavoidable? The House has the power to vote this money. If we refused to vote it, if events took their natural course, this Commission would, even at this stage, not be appointed. But I can see what the Honourable Member means. He means that, His Majesty's Government having appointed this Commission, even though the House refused to vote the money, the money will be provided by the only course that is open to His Excellency the Governor General to take, namely, by certifying and restoring the grant. Well, Sir, if His Excellency the Governor General and the Government of India are prepared to take that course in the teeth of the opposition of not only this House but also, if I may say so, in the teeth of the opposition of the whole of the people of this country, let the responsibility of doing so rest on their shoulders and not on our shoulders. We are here, after all, to represent our constituents and are responsible to them. How can we take any course which, in our honest opinion, is not calculated to do good to the constituents whom we represent here. If you do not agree with our opinion, and if you think that this is an item which needs to be restored by the extraordinary power that is vested in His Excellency the Governor General, you are free to do so, but you will do it on your own responsibility and you will not throw the responsibility on our shoulders. I ask the House to adopt the only course that this House in consistency and out of self-respect can adopt, namely, to refuse to vote the grant.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indian): Sir, I admire the man who has the courage of his own conviction and holds it. But after we have heard what the Honourable the Home Member has said, I do not admire the courage of my Honourable friend Mr. Jamnadas Dwarkadas in upholding his former conviction and opposing this motion. When this subject was discussed some weeks ago in this House, I think I was the only member who supported the appointment of a Royal Commission. Sir, I have got the permission and the support of the Leaders of many minority communities in this Honourable House in what I intend saying now, in so much that we support the appointment of this Royal Commission to India. Sir, when I last supported this, Mr. Jamnadas got up and twitted me for suggesting that it was quite possible that one of the terms of reference of this Commission would be to consider further Indianisation of the services. It might have seemed to Mr. Jamnadas an absurd suggestion but it was quite a possible one, and I repeat in the hope that it might tempt Mr. Jamnadas Dwarkadas to agree to this Commission; though I see he is still determined to oppose it.

The Honourable the Home Member has told us, in fact most Members of the House have already seen, the terms of reference; and no one here, I am sure, will doubt that they are very wide in nature and include many important matters. In fact, it embraces more subjects than we originally thought the Commission would do and I am not at all sure, Sir, that it may not lead to expedition in Indianisation of the services, to use the word 'Indianisation' in a very generic sense.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Including Anglo-Indians!

Lieut.-Colonel H. A. J. Gidney: Yes, including Anglo-Indians. Sir, when this Royal Commission was formerly discussed, pointed and repeated reference was made and quite rightly made regarding the I. C. S. amongst whose members great uncertainty exists regarding their future. There is no doubt, Sir, that the I. C. S. man who enlisted in 1913 does not like the India of 1923. There is also no doubt, Sir, that the India of 1923 does not like and does not much want the I. C. S. man of 1913. But the I. C. S. man who comes to India from 1923 onwards wants to know what India will be like in 1929 or 1933, because he wants to know what his terms of appointment will be. There is no doubt, Sir, that the Indian Civil Service is to-day not recruiting the type of man it did originally, and it is a doubtful matter whether it would not be better to let India recruit the best of her own men instead of the third or fourth rate men from England.

This Commission will also consider the advisability of short service for future I. C. S. appointments so that India can, in its transitional stage, still get the best that England can give her for the administration of this country. Now, Sir, the Honourable Sir Malcolm Hailey referred just now to the advisability or possibility of provincialising all the Imperial Services and which I think every Member of this House was pleased to hear though Mr. Jamnadas called it a "bait." In this Honourable House we hear a lot said about the Services not being properly Indianised or not being done at a quick enough pace. Well, here is a Commission that will possibly help you in getting a quicker pace on—or at least, in provincialising the various services; and yet we hear Honourable Members objecting to this Commission.

Well, Sir, whatever the composition of this Committee is—I however hope the minority communities are represented on it—I trust that one of the subjects that will be seriously and thoroughly discussed will be communal representation in the various services. This I submit should constitute one of its most important terms of reference, and on this matter alone I feel sure this Commission will be welcomed by every member in this Honourable House who belongs to a minority community or to a politically backward community.

Mr. P. S. Sivaswamy Aiyer (Tanjore cum Trichinopoly: Non-Muhammadan Rural): I have had very considerable difficulty in making up my mind on this question, which is one upon which it is by no means easy to come to a conclusion. At the outset I should like to state that I am by no means enamoured of this machinery of a Royal Commission which the Secretary of State has proposed to set up for the purpose of enquiring into the questions indicated in the terms of reference. That does not mean that I ignore the existence of grievances on the part of members of the Indian Civil Service regarding their condition. It does not mean that I admit that there is no ground for an enquiry. I should have very much

[Sir P. S. Sivaswamy Aiyer.]

preferred any enquiry of that sort to be conducted by a body appointed by the Government of India itself. There is a growing feeling of dislike of any dictation from outside India to the Legislature here in India; and there is a feeling that at the bottom of this decision to appoint a Royal Commission there is a certain amount of want of confidence in this Legislature. That accounts, I believe, for the feeling of irritation which has been displayed by the members of the Assembly. I should therefore have preferred to employment of some machinery which would not have offended the susceptibilities of this House. Now, Sir, with regard to this question of the grant for this body, two courses have suggested themselves to me as worth considering,—whether we should carry the disapproval that we expressed on the last occasion to the point of voting against the grant, or whether we should reaffirm our disapproval by giving an unmistakeable indication that we do not take any responsibility for the decision to impose this burden of three lakhs upon this country. I am aware of the existence of a strong feeling in the House against the allowance of this demand for the expenses of a Royal Commission; but at the same time I feel that we should not give any occasion to the Secretary of State to exercise his power of interference and suggest to the Government of India the restoration of the vote against our decision. That is a course which I dislike intensely and I should prefer to avoid giving any occasion for the exercise of that power of restoration of the demand over our heads. Again there is another circumstance which weighs with me to some extent, and that is, that the rejection of this demand may probably create an atmosphere of bitter prejudice against us in England. On the one hand consent to this demand will create prejudice against us in this country; on the other hand the rejection of this demand will probably create an atmosphere of very strong prejudice against us on Parliament and on public opinion in England. With all these various considerations present to my mind, the course which seems to me to be the best to adopt in the circumstances is to refrain from voting, leaving it to the official element in the Assembly to pass the demand on their own responsibility. If the non-official members of the Assembly as a body refrain from voting and make it clear that their abstention is due to the disapproval of the particular machinery which the Secretary of State has chosen to employ, I think it cannot be charged against us that we have changed our attitude or that we have in any indirect way expressed our approval of the appointment of this Royal Commission. Speaking for myself, I should rather refrain from voting than vote against the grant, and if other Members of the Assembly approve of my suggestion, I hope they will also refrain from voting, leaving it entirely to the officials to carry out the mandate of the Secretary of State.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, the feeling of the non-official portion of this House as regards this question of the Public Services Commission has been stated to be the willingness of India to look after her own services. I agree with that feeling. I think that we should look after our own services and that it should not be necessary for a Commission to be sent out from Home to put any grievances right. But, Sir, before we express our objections in any case,—shall I say very particularly and virulently against the appointment of this Commission,—we must first feel sure that we have done all that is possible in looking after our own services.

Mr. Jamnadas Dwarkadas: We are ready to do it.

Captain E. V. Sassoon: Mr. Jamnadas says we are ready to do it. I ask, have we always done it? Now, Sir, I have an amendment later on in the paper on the question of the police which I will move if the guillotine does not fall before it comes up. I hold in my hand here a pamphlet which has been issued by the Indian Police Association and issued not in India, but in London. This pamphlet puts forward grievances which the Police state they are suffering under, and I must admit that on reading through the pamphlet and with my own very slight knowledge of the conditions in this country, I think there is a great deal to be said from their point of view. This pamphlet refers people desiring extra information to the Secretary in Pall Mall. Now why does the Indian Police Association find it necessary to state their grievances in London and not in Delhi? They say in their preface, "because they cannot obtain the redress by departmental action and they have no means of ventilating their grievances." Sir, this pamphlet reached me on last Saturday. I cannot help feeling that if it had been universally known that this Assembly was prepared to ventilate the grievances of any of the services, that before taking the trouble to circulate this pamphlet in London, we should have had these grievances put before Members of this Assembly. And, it is because there is widespread ignorance in the services in regard to this point, that they feel it necessary to go to the Secretary of State, and I think that it would be inadvisable for us to express any very violent opinion against the appointment of this Commission, because the supporters of this Commission might say: "If you had actually carried out what you say you are prepared to carry out, why do we have pamphlets like these circulated in London?" Sir, that is why I hope that there will not be a very violent expression of opinion as regards this Commission. But I equally hope that this Assembly will advertise as widely as possible that, if we have not ventilated the grievances of any of our services, it is not because we are not prepared to do so, and we would welcome any opportunity for doing if they will bring forward their grievances.

The Assembly then adjourned for Lunch till Fifteen Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes Past Two of the Clock. Sir Campbell Rhodes was in the Chair.

Mr. T. V. Seshagiri Ayyar: Sir, I was surprised to listen to the speech of my friend Captain Sassoon on this subject. He seemed to suggest that simply because some of the service men have chosen to ventilate their grievances in England, therefore, we must take it that they have no confidence in the Legislature and that we should abrogate our functions and proclaim to the world that it is better that some outside agency undertakes to redress their grievances. Sir, if this is to be carried to its logical extent, the Government of India in this country cannot be carried on for a minute; I am surprised that a shrewd business man like the Honourable Captain Sassoon should have indulged in an argument of that kind. Sir, so far as my Honourable friend Sir Sivaswamy Aiyer is concerned—he will pardon me for saying it—he seemed to be thinking aloud all the time that he was speaking and I doubt very much whether his thinking aloud had come to an end; and whether he had reached the stage of conclusion; he has

[Mr. T. V. Seshagiri Ayyar.]

not given any clear lead upon a matter of this kind. If he had been clear and had given his time and attention to the subject, I would be the first person to agree with him. But I am not convinced from the way he spoke that his thoughts had materialised and that he had come to any definite conclusion on a matter of such grave importance. Sir, I am under no illusion as regards the result of any adverse vote upon the Government in this Assembly. There is no doubt that the Viceroy would certify or restore; because a Commission has been resolved upon and it is only the question of personnel that remains to be settled. It is not to be expected that the Government of India would say "Find money in Parliament or somewhere else". They will have to find the money where the Governor General will have to certify. That is not the matter which concerns us. The question is, shall we be true to ourselves if after having passed a vote of censure the other day, we to-day say that we shall allow the Government to do what they like, and that we shall express no opinion upon the question at issue. As Mr. Jamnadas has pointed out, I think we would be stultifying ourselves if we take up that attitude. It is not a question of our being heroic. It is a question of our being true to ourselves and it is a question of dignity and self-respect after having passed the vote we did the other day. Sir, the Honourable the Leader of the House spoke about the merits of the case. I am not going into it, but may I ask Government what their feelings are on the subject? Having sent out the O'Donnell Circular and seeing that the present Commission will make it unnecessary to consider the replies to that Circular and to come to a decision, I ask what is their feeling in regard to this matter. Have they not been snubbed by the Home Government, and do they not owe it to themselves to resent this indignity which has been put on them? It is desirable that the Executive Government should have the confidence of the people and what confidence can the people repose in them when they find that every one of their acts is being turned down by an authority far away from India. I am anxious as far as possible to avoid a conflict with the Executive Government. I would have gone a great way to avoid that conflict, but, Sir, if it is a question of losing our own honour, losing our own dignity, I do not think that we should mind any conflict which may arise in the matter. A suggestion has been made that if we cut down a rupee from the whole demand we would be equally effectuating the purpose which we have in mind. With all deference to those from whom this suggestion has emanated I must respectfully demur to such a course. Sir, we already expressed our disapprobation of the idea of appointing a Commission when we moved for the adjournment of the House. We then unmistakably showed to the Government that we did not like the procedure adopted in England it was really a vote of censure that was passed. That has already been done. Now comes the question whether we should vote the money for a Commission which we do not want, which we have protested against; and this is the only opportunity we have of carrying out in practice the conclusion which we reached the other day. This is the occasion. The question of voting funds is entirely in our hands subject to any control as to certification which the Governor General in Council may possess. Now, are we going to be frightened by the fact that there is going to be certification? If we do that we will not be true to ourselves, and in order that we may be consistent and that the dignity of this House may be maintained I hope that the non-official Members of the House would stand by what they did on the last occasion and vote against this grant.

Mr. N. M. Samarth: Sir, I formally propose an amendment to the effect that the grant be reduced by one rupee.

In spite what has fallen from Mr. Seshagiri Ayyar that this would not mean our giving effect to our condemnation of the appointment of a Royal Commission in the teeth of the opposition of this House . . .

Munshi Iwar Saran: I rise to a point of order, Sir. No notice having been given of this amendment I beg to object to it.

Mr. N. M. Samarth: As to the point of order, having regard to what happened during the debate there is no notice required of an amendment to an amendment and I can propose it on the spur of the moment.

Mr. Chairman: It is objected to. I am afraid the Honourable Member is not in order.

Mr. N. M. Samarth: If that is so, I have no option but to oppose the view of those who are asking that the whole vote be disallowed. I may say that on the day the adjournment took place I voted with those who were in favour of the adjournment. At that time the terms of reference were in a state of flux. Now the terms of reference of that body are out. I am a robust optimist and not an impotent pessimist and I think that difficulties exist in order that they may be surmounted and not in order that you may be daunted by them. The terms of reference are there and they include to all intents and purposes the issues which were raised in what is known as the O'Donnell Circular. Is it possible that the Government here can determine the issues satisfactorily acting by themselves the issues which were raised in what is known as the O'Donnell Circular? It must be a body deriving its authority from Parliament in order that the ultimate decision of it may be binding both upon the Government of India and the Parliament itself. And nothing but a Royal Commission could really be appointed in order that those issues, namely, the issues involved in the increasing association of Indians in every branch of the administration may be satisfactorily decided. When the question of adjournment was moved, these terms were not before us and the terms now include this item. This is one of the principal items in the terms of reference. Another point to which the Honourable the Leader of the House referred is this. The question which has been agitating us ever so long is the question of the all-India services. The Members of those services go to the provinces. Take the Indian Medical Service, for instance. The Medical Department is a transferred department in a province. Now is that officer to be under the control of the Minister who is in charge of that department or is he not? All these questions will have to be gone into and the provincialisation of the different services will have to be determined. Take, for instance Bombay. Bombay is a comparatively rich province. It may afford to give higher salaries than Bihar and Orissa, or for the matter of that the Punjab or the Central Provinces may. We may engage our technical experts and our other Officers on any salaries that our resources can afford and we can progress. That is also a matter which will have to be decided. I do not think that those who say that we should be consistent are alive to the importance of the terms of reference as they are. Again, some think that nothing will come out of this Royal Commission. On the contrary, a man of my temperament says, "Very good, whatever the personnel may be men of my type and others of my type and of my way of thinking will go

[Mr. N. M. Samarth.]

and fight our cause before that Commission and we shall present our case in the best possible way." Sir, this attitude of pessimism and importance is an attitude which does not appeal to me. As I have said, if you do not accept the reduction of the amount by one rupee, there is no course left for me but to vote for the grant. Now the position of Government is this and the position of this House is this. Whatever the view of the Government might have been at the time when the Commission was going to be appointed only with a view to inquire into the grievances of the Services, it must be said to the credit of the Government of India that they saw that the terms of reference must be widened and the terms have accordingly been widened. Now there is the grant of 3 lakhs, whether you pass it or not. Place yourselves in the position of Government. Do not divest yourselves of the responsibility of those who are in office. They have to find the money, willingly or unwillingly, *volens volens*, for the Commission which has been appointed by His Majesty's Government. What are they to do? You say you merely decline to grant it. By your declining to grant it, you are not going to do anything which will bring relief to yourselves but which will merely stultify the Government of India. I do not think it is practical politics to do anything of the kind and I, therefore, oppose this motion.

Sir Deys Prasad Sarvadhikary: Sir, I should have been pleased to follow Mr. Samarth, the whip of my party, to the Lobby, as is my duty—when I do not happen to feel the other way, I would have done so, if he had been permitted to move the proposed reduction of Re. 1. But that having been disallowed and he having expressed determination in the alternative of supporting the grant, his and my way lie apart in this matter. If the condemnation that could be conveyed by the reduction of a rupee is not allowable the House in my judgment has no other course left open but to oppose and solidly oppose this grant. I do not think, Sir, that the speech of the Honourable the Leader of the House or the early publication of the terms of reference have helped to clear up the situation at all. On the contrary, it has certainly added to my difficulties. If there had been a motion at the instance of the Governor General for increasing the sum provided (Rs. 3 lakhs) to the amount that the last Public Services Commission had cost, I should have understood the situation. Undoubtedly the terms of reference have been expanded and that itself carries with it the augmented difficulties of the situation. The expansion of the terms of references will not satisfy those for the removal of whose grievances the Commission was in the first instance conceived. We have had many warnings about that in the press that represents their views. They say if the scope of work of the Commission is going to be as wide as the terms of reference show and if the Commission is not coming to India till the next cold weather, they do not want to have anything to do with it but would prefer direct action that they contemplate. In the meantime we have had an expression of opinion from responsible men like Mr. Seshagiri Ayyar that when the Commission comes people should give it the widest possible berth. As I said on a previous occasion, I have no sympathy with that attitude, and when the Commission does come in spite of public opinion it will be up to us to give it all possible help. But that is another story. Sir, if the entire question of provincialization and Indianization of the services is to be taken up it will be a much larger work. The last debate on the subject here in this House must have helped in widening the terms of reference, which is a gain so far as

it goes. If however all that is to be done, the somewhat sneering allusion of the Secretary of State or Under Secretary of State, I forget which, to Lord Islington's criticism as to the time likely to be taken by the Commission and the cost—the sneering reference to Oriental delay of the last Public Services Commission—no longer holds good. The time that will be taken, the money that will be spent, will be nearly as much as if not more than the Islington Commission cost and a large portion of the report of that Commission is now reposing on the upper shelf. There is no finality with regard to these Commissions. Commission after Commission comes; one recommends, the other condemns; Government criticises and defers action; those affected also criticise. I have not heard any reference to-day to what is the clear duty of the Government and I include the Secretary of State in that term,—under the Government of India Act. I do not want to minimise the value of what Captain Sassoon has brought to the notice of this House. All services are entitled to have their grievances looked into and redressed but the Government of India Act has provided a statutory remedy with regard to that, standing, permanent, lawful and legal—if one wants to distinguish the two things as I am told there was an attempt yesterday to do here. The Public Services Commission to be appointed under section 96C of the Government of India Act, shall according to its terms discharge in regard to recruitment and control of the Public Services in India such functions as may be assigned thereto by rules made by the Secretary of State in Council. All questions that possibly can arise and come before the Secretary of State can be provided for by the Rules. The terms of reference which have been somewhat inexplicably published long before the Commission is due to come, the contemplated Commission could probably discharge for the time being all the functions narrated there. But there will be no finality, I differ from Mr. Samarth that the findings of a body, say, like the Statutory Commission, would not find acceptance at the hands of those concerned. Well, if they do not accept what the Statutory Commission may do we are powerless. That is the only thing that the Government of India Act has provided for the purpose of meeting all contingencies and it has not yet been even tried. It is no good agitation being started by any Service without exhausting the remedies under the Act. The Royal Commission has been thought of as a passing remedy and is coming, no matter at what expense, no matter against what volume of public opinion. Though the terms of reference have been published the Commission is not coming out straightaway. So far as our finances are concerned, one might have waited till they right themselves and a supplementary grant might have been asked for when the Commission was about to start. Then again we do not know anything about the personnel of the Commission. That would be another determining element so far as the judgment of this House is concerned. Therefore we are not in the position in which the Assembly could be called upon to revise its decision and be asked to vote this amount at the present moment. Sir, we have been told that it will make a very bad impression about this Assembly in England if this grant is withheld. I doubt it. Moreover I suppose this will not be the first time that the Assembly will have taken responsibility with regard to that. Year before last the Lytton Committee was blocked. It was not a Royal Commission, but it was a Commission upon which the Secretary of State had set his heart. I am not complaining of that. The Commission could not come and instead we had Lord Lytton coming out to Bengal as Governor, which by itself is a net gain. But the point I want to make is so far as this Assembly is concerned, this will not be the first time when it has withheld a grant which the Secretary of State has wanted. We often

[Sir Deva Prasad Sarvadhikary.]

hear about the likelihood of the certifying procedure and of the grant being restored. It is not for us to mention that; it is not for us to think of that. It is bad enough that the official Members have been reminding us about it. It is bad enough that they forget that it is not good form to remind the tribunal before which they are pleading of what the appeal Court is likely to do. If that was attempted in other tribunal, the visitation would be severe indeed. But we ourselves need not put that forward as a reason why what is considered wrong should be done. I do not want to withhold hospitality from anyone, but this stands on quite a different footing. If the Commission has to come, for certain purposes, and those do not happen to be purposes which this Assembly—as I gather from the speeches—is prepared to endorse, there can be no question of lack of a due sense of hospitality. If the other course of reducing a rupee is not open—and I myself should have been prepared to accept that course as giving expression to what we think in the matter—the only course left to the House is to vote against the grant and leave the authorities to take any steps they like.

(Several Honourable Members: "The question may now be put.")

Mr. Jamnadas Dwarkadas: On a point of order, Sir. I was not here when the Honourable Mr. Samarth moved that a reduction of Re. 1 be made. As objection was taken to that amendment, I understand you ruled that out of order, Sir. May I point out, Sir, that in many instances in the course of the discussion on Demand for Grants the Honourable the President has after the discussion has gone on for some time allowed amendments for reduction of Re. 1 in order that discussion may be concentrated.

Dr. Nand Lal: I believe that my Honourable friend is asking the Chair to review the order. There is no rule for reviewing the order in the present circumstances.

Mr. Chairman: If it is the wish of any Members in the House that they should have the opportunity of considering this amendment, it is within the province of the Chair to allow it to be moved and discussed. If I can get any indication that there is a wish to move and discuss this amendment—which is not really a substantive motion—I am quite willing to allow the House to discuss it.

Dr. Nand Lal: Sir, there is no use in shutting our eyes to the facts and consequently, speaking for myself, I concede at once that the terms of reference, as we now see, are decidedly wider than we thought they were before. But I may say to Sir Malcolm Hailey that that wide character of the terms is not a complete answer to our exceptions which we very respectfully take to this Commission. Our objection is based on three grounds: firstly, that it is not the Government of India who desired it, it is not this country which required this Commission, but this is a Commission which has, I may submit with due deference, been hurled upon us; and, on principle, Sir, the people of this country are against it. The second ground is this, that we do not want it at all. We do not want a Commission. Had we wanted it, we would have put forward our petition, in that behalf, before the Government of India ourselves. The third ground on which we oppose it, is this that we are poor. In our present condition we cannot afford to spend the money. As you know, India has been renowned

for a good many things, and one of those things is her hospitality. She will be ready to extend her hospitality, she will be ready to accord reception, but she feels very reluctant to afford that hospitality on this occasion. I do not agree with the Honourable Mr. Jamnadas Dwarkadas that since we have committed ourselves once, therefore, we are limited to-day. Again speaking for myself, if I were guilty of an error of judgment once and some fresh data is placed before me I shall be quite prepared to review that judgment. But no fresh data has been shown. no further evidence has been set before us, no new grounds have been set forth.

Mr. Jamnadas Dwarkadas: I rise on a point of personal explanation. I never expressed my opinion on the merits; I only rose to a point of order with regard to the amendment.

Dr. Nand Lal: I have the greatest respect for the soundness of the opinion of Sir Sivaswamy Aiyer, but I am sorry I have to differ from him, and he will excuse me for that, and it will not minimise the force of my statement that I have got a genuine respect for his views. I differ from him. My own opinion is this that either we should vote for a thing or go against it. I have no faith in political jugglery, that we may reduce it by one rupee. We do not want it; we cannot afford to invite the Commission, therefore, why should we not, like straightforward men, go and say to the Government of India, "Well excuse us, we are not prepared to welcome this Commission." Now, Sir, a very forcible argument has been advanced on behalf of the Government, and that argument as usual emanated from our learned Leader of the House, I mean the Honourable the Home Member, "that after all this country will have to pay." "When you know you will have to pay, why don't you pay up sweetly?" My answer to that is this, if we make ourselves a party to such action we shall be considered guilty at the bar of the people of this country. What answer shall we give? If the Government of India is prepared to put that burden upon us, we shall have to pay, but we shall not be responsible for that; that payment will be due to our submission. But if the Government calls upon us to give our consent, we refuse and we refuse with the greatest possible respect. With these few remarks I very respectfully submit that this House will go against this Demand.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I shall be very brief because so much time has been taken on this subject. There are some statements made which should not go unchallenged. I will first deal with Mr. Samarth. He first of all asked permission to move an amendment to reduce the demand by one rupee, which, was tantamount to a vote of censure against Government for making this demand. But when he found that it did not find favour with the House, he at once turned round and began to support the whole grant. It is therefore quite clear that he has been inconsistent. The points which have been made by those who are against the grant have not been at all sufficiently answered. One point is this; that it is the function of this Legislative Assembly, and of the Central Legislature to take action upon these questions and to take these questions into consideration, and that it was a great insult to this country and to this Assembly that an outside party should have made the appointment of this Commission. Then, Sir, with regard to what Captain Sassoon said that we have not done anything, the answer to that is who is responsible for that? Could not Captain Sassoon have

[Mr. Harchandrai Vishindas.]

tabled a Resolution that a Committee be appointed to go into these questions? Moreover that practically is a censure on the Government of India. It was up to the Government of India to appoint a Committee to go into all these questions. The reason why we say that this question should have emanated from some party here is that in that case we, the non-officials, would have been properly represented on this Committee, and the Committee appointed would have been a mixed one consisting both of officials and non-officials. That purpose has not at all been served by the appointment of this Royal Commission. At any time, it was up to any Member to move a Resolution for the appointment of a Committee; it was even up to the Government Members, the Home Member or anybody else, to move for the appointment of a mixed Committee of officials and non-officials.

One more point and I have done. Sir Sivaswamy Aiyer said that one of the reasons why we should vote this grant is that we shall be creating a feeling of bitterness in England if we do not. I think, Sir, that English feeling is already bitter against us on this point for the simple reason that we have already passed a vote of censure in the shape of a motion for adjournment; but I do not believe that that result will ensue. On the contrary, I think that John Bull is a fair and straightforward man, he is a strong fighter, and he would appreciate the fact that we have been consistent in our attitude. On the other hand, if we were now to vote this grant, we should be lowering ourselves in his estimation as he will say "Oh, these are weak-kneed, at one time they take a strong attitude, but afterwards they get frightened and cave in." Sir Sivaswamy Aiyer also said that if we did not vote the grant the amount would be provided by certification to avoid which we should vote for the grant. My answer to that is, that we are not afraid of certification. We have to express our own opinions and judgments without any thought of certification because otherwise we shall be laying ourselves open to the charge that we throw over our convictions for fear that our action might be modified or upset by the Government. Well, if we were to proceed on that hypothesis, I think we shall be unable to contest any of the demands made by Government. For that very reason we should insist upon our own opinions and our proper judgments being expressed. I say, if there is to be certification, so much the better. I welcome that because each time of certification there will be driven a further nail into the coffin of despotic Government.

(Cries of "Let the question be now put.")

Mr. Manmohandas Ramji (Indian Merchants Chamber and Bureau: Indian Commerce): Sir, after hearing all the arguments, I think that it would be better for this House to take some middle course. If we reduce this grant, by 3 lakhs, the suggestion will be that, as we have on a former occasion voted against the appointment of this Commission, therefore, in order to keep up our position, we have voted against this grant. Well, Sir, if there was a possibility that, if we reduced this grant by 3 lakhs, the amount would be reduced, and kept there, it would be all right; but that is not going to be the case. There is some other authority which can restore this grant. Now, why go to that extent when we can avoid that position and keep up our own position by not stultifying ourselves in

joining to accept this grant? Therefore I propose that this grant may be reduced by Rs. 10, and thus show our disapproval.

(Honourable Members: "The question be now put.")

The Honourable Sir Malcolm Hailey: The House must allow me one observation. I do not think that I could allow it to proceed to a vote on this question without calling attention to two or three remarks which have fallen from the speakers in the course of the discussion.

It has been sought to create prejudice against this Commission on a ground which I confess to me is both novel and astonishing. It is said that it has been appointed—and I quote the exact words—"appointed by an outside authority." It is the first time that I have heard that a Commission appointed by His Majesty the King at the suggestion of the Cabinet of Great Britain is a Commission which has been appointed by an outside authority to India.

Then it is said that the course which has been taken prevents an examination of outstanding questions on the services by officials and non-officials. That again is a most astonishing statement. Till you see the composition of the Commission, what right has any Member here to prejudge and prejudice it by a statement of this nature?

It is said that Government must take the responsibility, and if this expenditure is reduced the Governor General must certify it. The correct word, of course, is "restore" and the correct agency is not the Governor General but the Governor General in Council; but that is by the way. But the ground on which that statement was made is this—that if certification or restoration is resorted to, it will be welcomed because it is a fresh nail in the coffin of a bureaucratic Government. Is that so? Or is it an invalidation of the principle for which most Members of this House have stood, namely, the Reforms? I ask you to judge what is the exact effect of such a process before you welcome it, as Mr. Harchandrai Vishindas has so lightly done. I return to my original point, that in a proposal of this kind, which is for removing a definite provision from the Budget, you must decide not on a question of like and dislike, but on another consideration—whether your account will be correct if you omit it. There is no escaping this expenditure, as the House well knows. It must then find a place in the accounts; there is no avoiding that; and to seek to cut it out of the accounts would be simply to attempt to render those accounts to that extent inaccurate. You will not gain in any way in the expression of your resentment or your feeling on this subject by removing from your Budget expenditure which must be incurred and for which somehow or other provision must be made. That was my point, I avoided any discussion—and I am glad to say the House for the most part has also avoided discussion—of the merits of the Royal Commission. We are addressing ourselves to the Budget, and I ask you to decide the question purely from the Budget point of view.

(Honourable Members: "The question be now put.")

Mr. Chairman: The question is:

"That the question be put."

Before I put it, I would like to say there have been indications from several parts of the House that they wish Mr. Samarth's amendment to

[Mr. Chairman.]

be put before the House and therefore, if this motion is carried, I shall put that amendment first. The question is:

"That the question be now put."

The motion was adopted.

Mr. Chairman: Order, Order. The question is:

"That the provision for 'Public Services Commission' under head 'Miscellaneous' 3 p.m. be reduced by Re. 1."

The Assembly divided:

AYES—16.

Abdul Rahim Khan, Mr.
Abul Kasem, Maulvi.
Aiyer, Sir P. S. Sivaswamy.
Amjad Ali, Maulvi.
Das, Babu B. S.
Gajjan Singh, Sardar Bahadur.
Jannadas Dwarkadas, Mr.
Muhammad Ismail, Mr. S.

Mukherjee, Mr. J. N.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

NOES—56.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhanja Deo, Raja R. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faiyaz Khan, Mr. M.
Faridoonji, Mr. B.
Gidney, Lieut.-Col. H. A. J.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hailey, the Honourable Sir Malcolm.
Innes, the Honourable Mr. C. A.
Iswar Saran, Munshi.

Jafri, Mr. S. H. K.
Jamall, Mr. A. O.
Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Moir, Mr. T. E.
Mudaliar, Mr. S.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Schamnad, Mr. Mahmood.
Singh, Babu B. P.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sinha, Beohar Raghobir.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Vishindas, Mr. H.

The motion was negated.

Mr. Chairman: The question is:

"That the provision for 'Public Services Commission' under head 'Miscellaneous' (page 159) be omitted."

The Assembly divided:

AYES—46.

Abdul Majid, Sheikh.
Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Faiyaz Khan, Mr. M.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jafri, Mr. S. H. K.
Jannadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramji, Mr. Manmohandas.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Singh, Babu Ambica Prasad.
Sinha, Babu Adit Prasad.
Sinha, Babu L. P.
Sinha, Beohar Raghobir.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—45.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Bagde, Mr. K. G.
Bhanja Deo, Raja R. N.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Brayne, Mr. A. F. L.
Bridge, Mr. G.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jamall, Mr. A. O.
Latthe, Mr. A. B.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sassoon, Capt. E. V.
Schamnad, Mr. Mahmood.
Singh, Mr. S. N.
Sircar, Mr. N. C.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was adopted.

(At this stage Sir Campbell Rhodes vacated and Mr. President took the Chair.)

Mr. Lachmi Prasad Sinha: Sir, the Retrenchment Committee's findings are that the receipts in 1922-23 including the grant of the Rajkot College are expected to exceed the expenditure by Rs. 12,000 and the College authorities moreover gave the Committee to understand that the college is going to be self-supporting—vide Retrenchment Committee report, page 192.

The Honourable Mr. A. C. Chatterjee (Education Member): May I rise to a point of order, Sir? The Honourable Member is referring to the demands for grants under Education. I do not think it has been moved yet.

Rai Bahadur Lachmi Prasad Sinha: Are we not dealing with Education? If not, I am sorry, Sir, that I moved my motion under a misapprehension.

Mr. President: We are now under the head Miscellaneous.

The question is:

"That a reduced sum not exceeding Rs. 18,23,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Miscellaneous'."

The motion was adopted.

DEMAND NO. 27—EDUCATION.

The Honourable Mr. A. C. Chatterjee: Sir, I beg to move:

"That a sum not exceeding Rs. 2,49,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Education'."

I may state, Sir, that the grant originally entered in the Demands for Grants was Rs. 2,80,000 and a reduction of Rs. 31,000 has now been effected.

Rai Bahadur Lachmi Prasad Sinha: Sir, the Retrenchment Committee's findings are that the receipts in 1922-23 including the grant of the Rajkot College are expected to exceed the expenditure by Rs. 12 thousand and the College authorities moreover gave the Committee to understand that the college is going to be self-supporting (Retrenchment Committee report, page 192) so their final recommendation was not to make any provision for this college whereas Government in their Budget, 1923-24, demands from us a sum of Rs. 28 thousand for the College. Further on, so far as the Aitchison College is concerned, the Committee remarked that the finances are in an unsatisfactory condition. It also observed that question of discontinuing the grant is being considered. But, Sir, here also a sum of Rs. 28 thousand is being demanded from us. In the first case there appears to be no necessity for having any grant in aid for the Rajkumar College considering that it is self-supporting. Even if it were not I think this expenditure should come from those who are directly benefited by this College. So far as the second one is concerned, it has been pointed out by the Retrenchment Committee that only 16 per cent. of the students are from Indian States and the rest from the Punjab. So here also the expenditure should come from the Indian States where students are directly benefited as well as from the Punjab Local Government. In the circumstances, Sir, I think my motion for reducing this 56 thousand rupees is not unreasonable one. Further though in the Revised Schedule we find a cut of 81 thousand from the total budgeted figure for the head of Education, we do not know how and from what other sub-heads it is going to be made up of:

"That the provision for charges under sub-head Chief's Colleges under the head 'Education' be omitted."

Mr. Denys Bray (Foreign Secretary): The Honourable Member I am sure on reflection will realise that it is hardly practicable suddenly to withdraw subventions of long standing which meet a considerable percentage of the cost of these institutions. What Government have already done

is this. We have reduced the grant to the Rajkot College from Rs. 25,000 to Rs. 10,000 and the grant to the Aitchison College, Lahore, from Rs. 28,000 to Rs. 15,000. The Bombay Government hold out hopes that by next year it may be possible to make the Rajkot College self-supporting, and in response to a special appeal a substantial increase of contributions from the States to the Aitchison College is expected in the coming year. Honourable Members may say that the States should contribute themselves. My answer is that the States do contribute and contribute generously. There is not one of these institutions—and I am now speaking of the Chief's Colleges in general—which would have come into existence had it not been for the support of the Princes, and there is not one which would continue in existence if that support were withdrawn. I would ask the House to reflect what the result would be if we effected an immediate withdrawal of these grants to these colleges. (A Voice: "It will be good to the country.") As I have said, we are doing what we can to reduce them. We have already reduced them by more than 50 per cent. If we reduced the whole of these subventions of ours all of a sudden, we should be putting these Colleges in a position of great difficulty, and I venture to think that our action would be regarded as, what on the Foreign side of the Foreign and Political Department we would call, an unfriendly act. British India, after all, is surely interested in the better education of the Princes and their Thakurs and Sardars. That statement no one I venture to think, will deny. And British India is interested also in the maintenance of cordial relations with the States. And I think if the House will throw out this motion their action will be regarded as an olive branch and as an earnest desire of this House to maintain those friendly relations between British India and the Indian States, which is so essential to the well-being of India as a whole.

Sir Deva Prasad Sarvadhikary: I strongly oppose this motion, not because it is necessary so much to extend the olive branch Mr. Bray has spoken of (though I fully believe in it), but I oppose it on larger issues. In the first place not a pice that can be avoided ought to go out of the Educational Budget. The cuts cannot be assented to by any one determined on advancing the interests of the people as a whole. I think Educational grants ought to be increased. I want to draw the attention of the Government of India to this need and taking a leaf out of Mr. Innes' book (wrong book to begin with, but there are right pages in it), to make a stand and a determined stand to see that nothing in the way of education and allied nation-building subjects should suffer.

In the second place, the Indian Princes are an integral and a very important part of the whole of Indian polity. I believe it would be a mistake to interfere in the least degree with the better education of our Indian Princes. Surely they would pay more if they are obliged to but that is not the point. We want to be in touch with their education, in seism of their education; and above all we want to see that their education is a little more Indianised. We want to Indianise the services. Indianise some of our own people. We want also to Indianise our own Princes. We have been trying elsewhere to suggest that education in India should be self-contained as far as possible, there should be greater co-ordination of educational works. The education of Indian Princes should also be self-contained as far as possible. I had occasion of getting into touch with some of these Colleges like the Aitchison College. They are doing excellent work and I shudder to think of what would happen if the education of those who come under the influence of those Colleges were neglected. There

[Sir Deva Prasad Sarvadhikary.]

is a great deal of room for improvement for which means should be forthcoming. I think that we should mark our sense of appreciation of the work that is done there by withholding support to a motion like this. I propose to speak later on other educational grants and then I shall go into the general question of Education.

Mr. President: The question is:

"That the provision for charges under sub-head Chiefs' Colleges under the head 'Education' be omitted."

The motion was negatived.

Dr. Nand Lal: Sir, I move:

"That the provision for charges in connection with inspection of Chiefs' Colleges under the head 'Education' be omitted."

As you know, Sir, education is a department which moulds the character of the people. It is a nation-building department and if any department renders the best service to the country, it is, to my mind, the Educational Department. The reason why I put forward this amendment is this. That I should like to know from the Honourable Member in charge of this Department as to what is the specific charge in regard to the maintenance of the Chiefs' Colleges. If the Honourable Member will be able to let me know the specific charge exclusive of other items then I shall not press my amendment at all.

The amendment was, by leave of the Assembly, withdrawn.

Sir Deva Prasad Sarvadhikary: I move:

"That the demand under the head 'Education' be reduced by Rs. 100."

Sir, this is an Irish method of reduction for which I move because I want more. And I want to say generally that I hope the Education Member of the Government will make a strong stand and oppose all avoidable educational cuts. I do not now want to go into details. There is a Departmental Committee attached to the Department and I think the Committee ought to be consulted before cuts are assented to. Without betraying official secrets, I understand that there is a difference of opinion with regard to the matter. In order that the Department may be strengthened and public opinion consulted, I hope the Departmental Committee will be consulted before these cuts are made.

The Honourable Mr. A. O. Chatterjee: Sir, as the Honourable Member has said that he does not really want any reduction in this head, I hope he will withdraw his motion. As regards consulting the Departmental Committee, I shall do my best to consult that Committee if there is time to do so before decision is come to on any points connected with reductions under this head. But, as the Honourable Member will see, the only reductions so far as this head is concerned which have been proposed and have been accepted relate to the Chiefs' Colleges.

The motion for reduction was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That a sum not exceeding Rs. 2,49,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Education'."

The motion was adopted.

DEMAND No. 49—DELHI.

The Honourable Sir Malcolm Hailey: I move:

"That a sum not exceeding Rs. 28,33,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Delhi'."

The House will see that the original budget demand was placed at Rs. 30,58,000 as against Rs. 33,68,000 in the revised estimate for 1922-23. That therefore was in itself a reduction of over 3 lakhs of rupees. From that Rs. 30,58,000 we have further proposed to reduce Rs. 2,25,000, making a total reduced demand of Rs. 28,33,000. Of the Rs. 2,33,000 about Rs. 1,45,000 have been deducted under general heads, Police, General Administration, Contributions and the like, and the remainder has been effected under Education, Public Health and Medical.

The Honourable Mr. A. O. Chatterjee: Sir, as I understand that a number of Members in this House are interested in the question of the grants for education under the head 'Delhi', I may be permitted to explain that there has been a reduction proposed of Rs. 75,000 on the grants as put forward in the Blue Book. The whole of this sum is proposed to be cut from the grants for the Colleges and secondary schools in Delhi. As matters now stand, it is not proposed to make any cut out of the grant to Delhi University. But if it is the wish of this House that any cut should be made from the grant for the Delhi University, then one of these motions that are now down on the paper could with your permission be utilised for giving expression to the views of the House.

Mr. T. V. Seshagiri Ayyar: I am moving, Sir, one of the motions* standing in the name of Dr. Gour. It is felt by my friends on this part of the House that not a pie should be cut down from the grant to the Delhi University. Sir, we are all agreed that there must be a central institution like the University, in a place where the Capital of India is situated, and it would be a very unwise thing to cut down any portion of the money which has been sanctioned for carrying on the work of that institution. Sir, it has been suggested by the Inchcape Committee that the grants to the colleges should be cut down. We on this part of the House resent any such reduction being made, because we think that in these matters, in the case of nation-building departments, no attempt should be made to cut down even a single rupee from the grant which was already promised. Under these circumstances, Sir, I oppose the motion which is made, namely, to cut down the original grant by a large sum of money, Rs. 80,000 which, apparently under the revised grant will be taken away from the educational institutions in this province. Sir, I have spoken, because it is the desire of my friends on this side of the House that there should not be very many speeches. I believe I am expressing the sense of the whole of the non-official Members on this side of the House when I say that there should be no reduction whatsoever in regard to the grant to the colleges and the University.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I heartily support the observations made by my distinguished and Honourable friend, Mr. Seshagiri Ayyar, that there should be no reduction in one form or other from the grants made to Education in general or to educational

* "That the provision under the sub-head 'Education—University' under the head 'Delhi' (page 206) be reduced by Rs. 1.

[Maulvi Abul Kasem.]

institutions in particular. We, Sir, the people of India, not of the Delhi province, welcome the establishment of a University at Delhi and we fully appreciate the action of the Government in establishing a University in the Imperial City and headquarters more or less of the Central Government, and we are grateful to Government for that. But, Sir, in this connection, I have been charged to make a little observation of my own for the consideration of the authorities of the University whoever they may be, official or non-official. Sir, when the University Bill was presented to this House, there was a provision—a meagre provision no doubt—for the representation of the members of the Muhammadan community on the University itself. But, Sir, the Select Committee which met discussed this. I happened to be one of the members of the Select Committee and I had the privilege of suggesting that in the constitution itself it should be laid down that a certain proportion of Muhammadans should be on the Senate. Unfortunately, Sir—and I regret it very much—a House where the Muhammadan element was in an absolute and hopeless minority, not only threw out the proposal which was in the original Bill as drafted by the Government draftsman, but also my recommendation on the subject, and the result has not been satisfactory from a Muslim point of view. Out of the 85 members of the Senate, I do not know . . .

Mr. President: I ask the Honourable Member whether in order to satisfy the grievance which he is putting forward legislation would be necessary or not.

Maulvi Abul Kasem: No, it is not for legislation, Sir. The University is not yet complete. Out of 85 members of the Senate there are only 9 Muhammadans and that is a grievance, Sir, and there are other matters also. The Muslim public, and the educated public in particular, feel that their interests are not properly considered and are not safeguarded. I hope, Sir, that in making the nominations to the remaining seats to the Senate and also in other matters, the learned Vice-Chancellor and His Excellency the Chancellor will take these matters into consideration. But before I sit down I shall be failing in my duty if I do not observe that the learned Vice-Chancellor of the University has been instrumental and sympathetic in securing one or two Muhammadan members for the Senate, and I appreciate that thankfully. But the constitution itself is bad, but whatever it is, I hope some remedy will be found for a proper representation of Muhammadans and for the safeguarding of Muhammadan interests. Sir, the Muhammadans are backward in education and I think they need a helping hand to help them through. My learned friend Mr. Seshagiri Ayyar said that education was a department for nation-building. If you have to build a nation, you have to build each component part of the nation before it can be built.

Khan Sahib Maulvi Abdul Quadir (Central Provinces: Nominated Non-Official): Sir, being interested in matters educational, I rise to say a few words on this occasion as it grieves one to see that efforts have been made to effect economy under the head Education, due perhaps to the suggestions in the report of the Incheape Committee to the effect that there was no need for Delhi University under the present financial stringency, as university education was available for the people of Delhi Province elsewhere in their neighbourhood, and hence the University scheme may be reconsidered. Lord Incheape's Committee, Sir, has no doubt done immense good to India

by recommending cuts in various other departments, but it has done incalculable harm to the people of this country by suggesting savings under the head Education. If anything is needed for India, education is the thing which is most needed for her. Without education in its proper sense, it is impossible for her to make any headway towards the realisation of the object of the Reforms Scheme. It is not possible to have proper education without establishing a University in every big and important city throughout India. Fortunately the Delhi University has been formed and is put in working order and now to think of setting at naught the whole edifice by refusing to grant its working expenses and the grants of the college affiliated to it or to try to cut down anything from the above grants is not in my humble opinion, to say the least of it, a sound principle. It practically amounts to acting like a gardener who tills and prepares his ground, plants fruit trees in it, waters and nurtures them till they are in full blossom, and when they are about to bear fruit, he allows them to go dry because he experiences some difficulty in watering them for the time being and because he can import his fruit from elsewhere. I would appeal to this Honourable House to find out means to spend more upon the education of our countrymen, rather than think of curtailing the expenditure under the head of Education. Universities do not often come into existence and easily, but if they once come into existence, it is our bounden duty to maintain them at any cost. If the financial conditions are not favourable this year, let us hope we shall be having a surplus budget next year or the year after next. We can ill-afford to live year after year upon deficit budgets. If we have the good of our country at heart, we must reduce our expenditure under other heads and make ever-increasing provision for education. Without education we cannot prosper. The more we spend upon education the greater will be our progress towards the attainment of our national aspirations. The solution of the communal problem also lies in the spread of education broadcast. It depends upon one community understanding the interests of the other communities properly and thoroughly. Till then it is not possible to do away with the differences that exist between community and community and give rise to internecine disputes in time and out of time. Besides that, education spreads knowledge and has got the inherent property of increasing the more you spend it as somebody has aptly said:

Vidya dhana sub dhanan te sant kahat sardar

Kharche se kuchh ghatat nahin din din hoya udar

Of all the wealth in the world the wealth of education is the superiormost, because, unlike the other heads it increases by expenditure and does not decrease. I strongly deprecate any attempt whether it be on the part of Government or on the part of any individual Member of this House to effect retrenchment under the head of education. It will be a bad day, Sir, for India when this Honourable House will decide upon retrenchment under Education. I oppose the amendment.

Mr. Mahmood Schamnad Sahib Bahadur (West Coast and Nilgiris: Muhammadan): Sir, I oppose any grant being made to the Delhi University. All around Delhi we have got several Universities and there is no justification for a separate University for Delhi as it is and in the present circumstances. The idea of a University for Delhi was conceived with the object of giving equal facilities to all communities and so the Delhi University Bill was drafted with a provision to give separate representation to Muhammadans; but, when it came out from the Select Committee, that clause

[Mr. Mahmood Schamnad Sahib Bahadur.]

was omitted by the advice of men like Dr. Gour, who are enemies of communal representation. And now, Sir, the Retrenchment Committee also has very rightly remarked that the idea of a University for Delhi was premature. If a University in the Capital City be started without a proper representation of the important minor communities, it will spread discontent and will also be very prejudicial to the spread of education among these communities. So I say the amount of Rs. 40,000 may be spent for education in general.

With these remarks, I resume my seat.

Dr. Nand Lal: Sir, I am in favour of the maintenance of the Delhi University; my belief is that it will, one day, prove a very useful University, and I entertain a hope that pupils from various Universities will flock to it. The beginnings of the Delhi University have encouraged me to hope that the day will come when this Delhi University will be considered one of the most prominent Universities in the whole of India. All colleges and other educational institutions may be helped, whether they are medical institutions, whether they are arts institutions, whatever institutions they are, in connection with the Educational Department, may be fully supported, namely, all colleges and all schools here deserve support. I am not standing here to offer any adverse remarks, but I am bound to give a response to the expression of opinion which, whether accidentally or designedly, has been made by my distinguished friend the Honourable Mr. Abul Kasem. He says Muhammadan interests may be safeguarded. May I remind him that Education itself is a department in which we should not think of this caste or creed. Education itself is so sacred a thing that it should not be subject to communal representation. We Hindus would welcome Muhammadans; they are our brethren. We shall be very glad to see the Court is decorated by some of them. But I may venture to say that it should be efficiency and ability which should be the measure and criterion, and not caste. I think no communal question should be talked over on the floor of this House, namely, Central Legislature. This sort of opinions should not be given vent to here. I am very sorry I have got to differ from my Honourable friend. I differed from him on some previous occasions, and I thought he would give due consideration to my suggestions in favour of nation-building. How long shall we keep on to these communal interests? We shall never make a nation, and with all due respect I offer my suggestions to those gentlemen who are great advocates, or so-called advocates of communal representation, that they should try to stamp out this evil which is eating into the vitals of our people in India.

With these remarks I submit that there should be no communal representation, at all, in these sacred University matters. Efficiency, ability and utility should be given due regard, and not the question of this creed or that creed.

Sir Deva Prasad Sarvadhikary: Sir, I strongly support the plea that the usefulness of the Delhi University, for bringing which into existence we were responsible, should not be interfered with. The damage to the Colleges will be incalculable; they have been taken away from another University, and made to place themselves on another footing. And now, in the name of an ill-considered plea for economy put in by people who do not happen to have studied the question, I do not think we ought to go back upon what we did only the other day. The Inchcape Committee were very well advised in many important matters in pronouncing what

in our profession we call appeal proof judgments. In this case they have not resorted to this wisdom and not one of their educational recommendations can be supported.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I am going to support this amendment from another point of view. I am glad that from every corner of this House the voice is heard in support of education, which is a very healthy and promising sign to meet my purpose. But I am very sorry to see in my unfortunate Province retrenchment is directly made in education. I am sorry to notice that in the Report of the Inchcape Committee unfortunately there is a serious retrenchment in education. There are three institutions in my Province. The recommendation is that further grants should not be given to two of these institutions, and in regard to the third that no grant should be given at all; this is death blow to our education and is bound to displease the whole Province.

Mr. President: We are discussing one institution.

Khan Bahadur Abdur Rahim Khan: I am coming to that as I see the sense of this House is entirely in favour of education. I support this proposal and I hope when my turn comes, they will support me too, and will not disappoint me.

Mr. B. S. Das: Sir, I rise to sound a note of warning to my friends who are interested in the University of Delhi. From experience I am bound to sound this note of warning. The Government of India in matters of education are fond of putting very ambitious programmes before the public; they help it to a certain extent, give it a start, and then fall back. That is the case here. That is what I say from experience. They put before us a very ambitious scheme long ago in the shape of a Patna University. It was to be made a residential one; large sums of money were to be spent on that University; that was the original scheme. The Government of India had first made . . .

The Honourable Mr. A. O. Chatterjee: May I rise to a point of order? Is the Honourable gentleman in order in referring to the affairs of the Patna University which is at present under the control of the Bihar and Orissa Government?

Mr. President: I am sorry I missed the word "Patna". The Honourable Member must come to Delhi.

Mr. B. S. Das: What I am narrating is the experience that I had in connection with this University. The Patna University was first started by the Government of India; the scheme was sanctioned by the Government of India and was only recently after the reforms that it was made over to the Government of Bihar and Orissa; but the Government of India were its sponsors . . .

Mr. President: That may be perfectly true, but we are only discussing Delhi now.

Mr. B. S. Das: I bow to your ruling, Sir. I only meant to say that those who are interested in the University of Delhi should take note from the fact and from the experience that we have gained from the University of Patna, that they should not be very hopeful regarding the ambitious schemes and programmes that are before them. Thereby I do not mean to withhold my support to any motion for grant to the Delhi University; I have

[Mr. K. Ahmed.]

education is given, nor education that is given in the way of attending lectures only, or writing out theses without taking any lessons from the tutorial staff that has been given by the University, Sir. The other question that has to be considered is this. That, here you have got a different kind of people; some of them will not allow their children to read the Ramayana or Mahabharatta. Would any of my Hindu friends like to see his child read the Bible or some other religious book, e.g., Koran? A Hindu father would say he would not like his child to do that.

Mr. President: The Honourable Member is getting too far from the University of Delhi.

Mr. K. Ahmed: Therefore, Sir, in the University where all these things are required, I do not think any of my friends, both Dr. Gour and Dr. Nand Lal, would object to them. I am told, Sir, Dr. Nand Lal is associating with people very much and indeed getting his social education accomplished properly from this Institution. We find he is progressing gradually and I do not see why that principle should not be applied with regard to other people, especially in the province of Delhi. Probably he did not mean what he had said. My notion of education is quite different and that by passing an examination after reading two or three books is no education at all. Sir, without entering into any further discussions with regard to the curtailment of any amount, I think we have had many cuts in the other subjects, and I do not think we should be unfair with regard to this grant. And I hope Dr. Gour as the Vice-Chancellor of this University will realise and appreciate the situation so that the people of this province who have got the University here will feel that they are actively taking part in it.

The Honourable Mr. A. C. Chatterjee: Sir, we have had an extremely interesting speech from my Honourable friend Mr. Kabeer-ud-Din Ahmed. I have no desire to enter into the merits of that speech and I have no doubt that the Honourable the Vice-Chancellor of the Delhi University will profit by the admonition that has been given to him by Mr. Kabeer-ud-Din Ahmed. Nor, Sir, do I wish to be lured into a discussion with my Honourable friend from Orissa regarding the attitude of the Government of India towards the Patna University. You, Sir, ruled him out of order. Still he managed to put in a plea on behalf of a province which is always crying for more funds and for more assistance from the Government of India. My Honourable friend Mr. Abul Kasem and also my Honourable friend Mr. Mahmood Schamnad referred to the question of Mussalman representation on the Court of the Delhi University. That is a matter, Sir, which does not at present concern the Government of India, but I can promise my Honourable friends that I shall bring their views to the notice of His Excellency the Chancellor. I think, Sir, I may take it that the House in general approves of the grant to the Delhi University. ("Hear, hear" and cries of "Yes.") I have nothing more to say except that with regard to the cuts in the grants for Education generally, that is to say, grants for the Delhi Colleges and the Secondary Schools, I can only promise that the views of the House will be taken into consideration.

Dr. H. S. Gour: Sympathetically.

Mr. T. V. Seshagiri Ayyar: On that assurance, I withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That a sum not exceeding Rs. 28,33,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Delhi'."

The motion was adopted.

DEMAND No. 41—CIVIL WORKS.

Colonel Sir Sydney Crookshank (P. W. D. Secretary): Sir, I beg to move:

"That a sum not exceeding Rs. 1,16,37,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Civil Works'."

Honourable Members will find on a reference to page 121 of the Demand for Grants that this figure which I have just given them, is short by Rs. 11 lakhs of the original figure which was inserted in this demand. The reductions effected under that figure of Rs. 11 lakhs have been distributed—or rather it is proposed to distribute them—as follows:—From the allotment of Rs. 10 lakhs for the Forest Research Institute at Dehra Dun, a reduction of Rs. 2 lakhs; from the Agricultural Research Institute at Pusa, Rs. 1 lakh; from the School of Mines and Geology at Dhanbad, Rs. 2 lakhs; from Repairs generally, Rs. 3½ lakhs; from Minor Works, Establishments and Miscellaneous, Rs. 2½ lakhs; total Rs. 11 lakhs. Honourable Members will no doubt realise that seeing that the demands received by us from Provincial Governments and Local Administrations under the head Civil Works amounts to no less than Rs. 338 lakhs, the reductions which we have effected, by which the grant now stands at Rs. 124 lakhs, plus Rs. 52 lakhs for the roads in Waziristan, is a very small demand to make, and, in the circumstances, having consideration of the fact that there are practically no demands for original works not in progress, and that we shall have to reduce very heavily the provision which we usually make for minor works and repairs, the demand which I now place before the House is a bed-rock demand and will, I hope, be accepted *in toto*.

Khan Bahadur Sarfaraz Hussain Khan: I wish to move amendment No. 527*.

Mr. President: The Honourable Member must put it in a form in which I can conveniently put it to the House. What I want is a sum that can be deducted from the main sum of the estimate and not to search the amounts of last year and find out what sum it is that the Honourable member wants to deduct.

Colonel Sir Sydney Crookshank: Perhaps I can explain to the Honourable Member what the actual position is. I think he refers to the figure of Rs. 1,98,000 which stood against the item Reserve for last year's Budget Estimates. But I should like to point out to him that that figure was not actually acted upon as the reserve for the Public Works Department in the current year 1922-23 actually stood at Rs. 11,49,000 at the commencement of the year. This year in consultation with the Finance Department we have fixed our reserve at Rs. 6,77,000, and as a general rule it stands at Rs. 10 lakhs.

* That the provision under sub-head Reserve under the head 'Civil Works' (page) be reduced to the estimate of 1922-23."

Khan Bahadur Sarfaraz Hussain Khan: I do not move my amendment.

Mr. N. M. Samarth: I move:

"That the demand under the head 'Civil Works' including expenditure in England be reduced by Rs. 87,25,080."

I will not make a speech. I have already said that these are amounts required not for repairs but for original works and should be transferred to the Capital account. Rs. 52 lakhs of them are for Waziristan and there are other items charged to revenue the total amount of which is Rs. 92,82,000. I deduct interest at 6 per cent., which amounts to Rs. 5,56,920, and the remaining Rs. 87,25,080 is the amount by which I want a reduction. The reduction to be made is this that this amount be transferred to the Capital account and the interest that I have mentioned, that is, Rs. 5,56,920, be made chargeable to Revenue.

Mr. Ashruf O. Jamali (Bengal: Nominated Non-Official): Sir, I rise to support the motion just now moved by my Honourable friend, Mr. Samarth. On the 6th instant I made a remark in this House that there were some charges made to revenue which should go to capital account. I understand from the Honourable the Finance Member that those charges which are of an unproductive nature should not be taken to capital but should be taken to revenue. He went as far as saying on Sir Montagu Webb's remarks that it would be faking accounts. With due respect to his high authority I beg to differ. Take the case of a building of a factory. You have the main building of a factory in which you put your machinery. Take the cooly lines that you build for a factory. The main building or the cooly lines or barracks are all unproductive, but do you carry them to revenue account? Certainly not. It all goes to capital in the ordinary course. Take the four walls of a building that you erect. Do you carry that to revenue? No. It is unproductive, but goes to capital account. Sir Montagu Webb rightly remarked the other day that if our pockets were full, if we were not asked to put fresh taxation, then if we charged this to revenue it would be different but in the present condition of the country's finances when we are faced with a deficit budget, I think that such charges should go to capital account and not to revenue expenditure. With these remarks I support the amendment of my Honourable friend, Mr. Samarth.

The Honourable Sir Basil Blackett: I should like Members of the House to imagine themselves in possession of a lakh of rupees which they want to invest. They receive a prospectus from a company which is appealing for subscriptions for a crore. It is going to spend that crore in putting up a factory which is going to produce no revenue. It is not the crore that is going to produce the revenue though there may be other things which go to produce the revenue. They do not pretend it is productive. Would anybody invest capital in such a company? They would invest that capital in a company that was re-productive. Is a road in Waziristan re-productive expenditure? How can it be regarded as capital expenditure? I have already expressed myself at great length on this subject and do not wish at this time of the day on the last day of the discussion to reopen the controversy about charging certain items to revenue or to capital. I have stated that I would be no party to faking the account and I stand by that statement. We have got a deficit this year which we are trying to cover. If we do not cover it we end the year with

increased amount of unproductive debt. If we say that a certain amount of our expenditure on public works and other things ought to be charged to capital and we proceed to charge it to capital and we do not attempt to cover it with revenue, at the end of the year we have got an increase in our unproductive debt. I appeal to the House—what is the difference between that and budgeting for a deficit? It is really silly to pretend in a year of this kind that you can balance your budget, when you are in difficulties, by calling a spade a potato. If you call it an agricultural implement, you may be a little nearer the truth but what you are suggesting in this case is that something that is obviously unproductive, that obviously yields no revenue should be treated as if it were a reproductive, useful asset in which you are investing money for the benefit of future generations. If the money we invest is going to earn revenue for the next generation, there is something to be said for charging it to capital and if the next generation is going to get the benefit of the revenue, there is no reason why it should not pay for a certain amount of the interest. If there is no revenue coming from it, why should you charge posterity with the expense of keeping up the unproductive building as well as with the cost of paying interest on the original capital cost? Posterity may have done nothing for us, but we have given a hundred crores deficit to posterity; is not that enough?

Sir Montagu Webb: I should like to say a word or two in support of Mr. Samarth's motion. It is perfectly true that roads in Waziristan are not likely to yield anything in the form of revenue, but I think we might look at the problem in this way: The system of finance which has been adopted during the last four or five years has been of a most severe character. This unfortunate country has had to pay for the whole of the last Afghan war, the whole of the recent expeditions on the Frontier out of current revenues; and now we are asked to pay still more for building roads, barracks, and other buildings into this God-forsaken place Waziristan, and all out of revenue. (*The Honourable Sir Basil Blackett:* "Not all out of revenue.") As far as I can see, Sir, all out of revenue. (*The Honourable Sir Basil Blackett:* "A hundred crores out of deficits of the last few years.") The deficits of the past years, Sir, have been filled by borrowing and by—I will not permit myself to use the expression "faking" the currency,—but by, shall we say, enlarging the paper currency. Well, Sir, that is equal and tantamount to borrowing. But the point I desire to put before this House is that this is very severe finance. I think it is not at all unreasonable, if we have to incur excessive expenditure in times of difficulty, to suggest that this expenditure especially capital expenditure, should be spread over a series of years rather than placed—all of it, into our current revenue budget when we frankly have not got the money to pay for it. For that reason, Sir, I think there is a very good argument indeed for spreading this excessive expenditure on the Frontier over a series of years, and I myself should see no harm whatever in the circumstances in putting a certain amount of capital outlay now being expended in Waziristan into capital and leaving posterity to bear some small portion of that outlay. For that reason, Sir, I support Mr. Samarth's amendment.

Sir Deva Prasad Sarvadhikary: Sir, the hand of the clock is moving forward and I see Sir Basil Blackett's spirits are rising. Phoenix-like immobility of expression, now and again brightened by Omar Khayyam like twinklings of the eye, is disappearing and we are repeatedly warned against

[Sir Deva Prasad Sarvadhikary.]

"faking." The Assembly is also beginning to be guilty of what is called by the Finance Member silly things. Luckily His Excellency the Commander-in-Chief is not here, otherwise he would not have very much relished the idea of having called the Waziristan investments a profitless and unprofitable concern. Because "posterity has done nothing" for Sir Basil Blackett, as he puts it, he would not like posterity to pay. But posterity will or ought at least to pay for security, if there is real security in the matter. What is the one reason of our becoming "silly," as we have been charged to-day? We have had the whole philosophy of "lag" dumped down for our benefit and laggards have been tolerated and encouraged. I see Sir Basil Blackett worships with me at a common shrine and that is wisdom bubbling Punch. He gave us a dose of Punch in his opening speech. I should like to give him another. He may have seen a recent cartoon in 'Punch' about incorrigible and habitual sitters-out who are a nuisance and enterprising hostesses have been advised to provide for a moving stairway on which these sitters-out dump themselves down when they ought to do otherwise. What the Finance Member should have done as soon as he took charge of the entertainment, was to provide this moving stairway and get his habitual sitters-out on it, not to allow them lag to the extent he has permitted but to compel them to give effect to as much of the Inchcape reductions as possible. Because that has not been done, because we have to meet what, to borrow Sir Basil's language, may be called a "faked" deficit, we are drifting to all sorts of shifts. He reminded the House that the Provincial Governments are fond of their little baby deficits which they want to nurse and display by way of exciting commiseration. Some Member here asked whether the Government of India itself was not doing the same, and now that he is within a few minutes of having everything his own way the Finance Member reminds the House that profitless and unprofitable investments like those in Waziristan ought not to be paid for by posterity, because, some old number of Punch had probably taught him that posterity had done nothing for us.

The Honourable Mr. B. N. Sarma: Sir, I think it is my duty to point out that the Waziristan expenditure amounts to only 49 lakhs and odd as against the 87 lakhs proposed to be transferred to the head "Capital" by means of reduction under this head. That is one point, and the other point is that the whole of the Public Works accounts and the principle on which that expenditure is being incurred for the last so many years, proceed on the assumption that we should look to Revenue for items of an unproductive character. Many of these items, Kabul Legation and many of these roads, etc., are of an unproductive character and it would be dangerous to transfer all of them to the head "Capital".

Mr. President: The original question was:

"That a sum not exceeding Rs. 1,16,37,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Civil Works' including expenditure in England."

Since which a motion for reduction has been made:

"That the demand under the head 'Civil Works' including expenditure in England be reduced by Rs. 87,25,080."

The question is that that reduction be made.

The Assembly divided:

AYES—47.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Aiyer, Sir P. S. Sivaswamy.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhanja Deo, Raja R. N.
Bhargava, Pandit J. L.
Das, Babu B. S.
Faizaz Khan, Mr. M.
Gajjan Singh, Sardar Bahadur.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jafri, Mr. S. H. K.
Jamali, Mr. A. O.
Jannadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Mudaliar, Mr. S.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Schamnad, Mr. Mahmood.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sohan Lal, Mr. Bakshi.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Webb, Sir Montagu.

NOES—48.

Abdul Rahim Khan, Mr.
Abdul Rahman, Munshi.
Abul Kasem, Maulvi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Ahsan Khan, Mr. M.
Aivar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Ayyar, Mr. T. V. Seshagiri.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Brayne, Mr. A. F. L.
Bridge, Mr. G.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.

Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Jejeebhoy, Sir Jamsetjee.
Kamat, Mr. B. S.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Nabi Hadi, Mr. S. M.
Nand Lal, Dr.
Percival, Mr. P. E.
Rajji, Mr. Manmohandas.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Townsend, Mr. C. A. H.
Willson, Mr. W. S. J.

The motion was negatived.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): My amendment is:

"That the demand under the head 'Civil Works' including expenditure in England be reduced by Rs. 5,00,000."

Although my motion is for a reduction of 5 lakhs, I wish with your permission to move for a reduction of one rupee only, and my object in doing so is this. The Province of Bihar and Orissa is known as the youngest Province and Honourable Members are well aware of it. I think that is

[Mr. B. N. Misra.]

the reason why we have been given a seat very near the Chair, very near the Honourable the Government Members, so that they will protect us with much more care. But unfortunately, Sir, you will find the cruellest cuts which have been made by Sir Sydney Crookshank have been directed against this youngest of the Provinces. He mentioned to this Honourable House that he has made a cut of Rs. 11 lakhs and out of that amount he wants to cut one lakh for the Pusa Institute and two lakhs for the building for the School of Mines at Dhanbad. I submit, Sir, that, although Bihar and Orissa is the youngest province in India, it is the richest province with its hidden wealth. Honourable Members are well aware of the coal mines of Jherriah, Dhanbad and the recently discovered coal mines at Talchar. They are aware also of the Tata Iron Works at Jamsedpur and so many other mines that exist in the Hill Tracts of Orissa in the province of Bihar and Orissa. Sir, Honourable Members want to develop industry and to open up the resources of the country. Unless there is a School of Mines and Geology at Dhanbad, this object cannot be achieved. (*Cries of "Withdraw, withdraw."*) Sir, the province of Bihar and Orissa is not only the youngest province but it is also known to be the poorest province. I submit that the Honourable Sir Sydney Crookshank ought to find the 3 lakhs from elsewhere and not give this cut to this the youngest province. (*Cries of "Withdraw, withdraw."*) No, Sir, I will not withdraw. My province is vitally interested in mines and we have no other wealth. Honourable Members want money and where are they to get it unless they open up the resources of the country and the best way to open the resources of the country is by having a School of Mines in a place which is full of these mines. Sir, I implore the Honourable Members of this House to remember that at least this item should not be cut and that the School of Mines should be built as early as possible. The Government of Bihar and Orissa cannot do it. The work has been taken up by the Central Government. I earnestly request Sir Sydney Crookshank and the Department not to make this cut, as the work is shown to be in progress and has been sanctioned. If the Honourable Member wants the money he should find it from anywhere else, and not make this cut.

The motion was negatived.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,16,37,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Civil Works' (under the control of the Public Works Department)."

The motion was adopted.

DEMAND NO. 56—EXPENDITURE IN ENGLAND UNDER THE CONTROL OF THE SECRETARY OF STATE FOR INDIA.

Mr. President: The question is:

"That a sum not exceeding Rs. 14,82,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Expenditure in England under the control of the Secretary of State for India'."

The motion was adopted.

DEMAND NO. 57—EXPENDITURE IN ENGLAND UNDER THE CONTROL OF THE HIGH COMMISSIONER FOR INDIA.

Mr. President: The question is:

"That a sum not exceeding Rs. 77,88,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March 1924, in respect of 'Expenditure in England under the control of the High Commissioner for India'."

The motion was adopted.

DEMAND NO. 58—EXPENDITURE CHARGED TO CAPITAL IN RESPECT OF RAILWAYS.

Mr. President: The question is:

"That a sum not exceeding Rs. 38,61,93,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Expenditure charged to Capital in respect of Railways'."

Mr. B. Venkatapatiraju: Sir, as His Excellency the Viceroy has not acceded to our request for more time to discuss these demands, we are hastening to take all these together in a few minutes. I suggest that there should be a reduction of 10 crores in the provision under the head Railways (page 288), but as there are several amendments for a reduction of Rs. 8,61,00,000, I move for the reduction of Rs. 8,61,00,000.

The Incheape Committee suggested that we should not waste our money even though it was available for us on unremunerative Railway lines. I shall read only one sentence from that Report which will convince every one that it is useless to spend money merely because it is available. At page 78 they say:

"This being so, we cannot believe that it is legitimate under any circumstances to put Rs. 67 crores of capital, borrowed at a high rate of interest, into lines which are already a very heavy drain on the resources of the State and we recommend that, except in case of commitments already entered upon, no further capital expenditure be incurred on these lines until the whole position has been examined by the Financial Adviser and reviewed by the Government."

They suggest that the money could with advantage be devoted to the construction of new lines promising an adequate return.

I will just mention that, leaving aside the amount which is shown as capital expenditure, if you take proper account of the amount already spent out of our revenues we have lost something like 68 crores, and if interest is added to that, it amounts to 300 crores. Apart from that amount we have to realise not less than 35 crores on the admitted capital outlay whereas we are realising from 28 to 30 crores. How can we profitably employ more funds, unless we can show a better return? Therefore under these circumstances I appeal that the amount be reduced by Rs. 8,61,00,000.

The Honourable Mr. C. A. Innes: Sir, I sincerely hope that the House will not accept a motion of this kind moved in such hurried fashion. I would remind the House that only last year we decided in this Assembly that we should amend our ways in regard to railway capital expenditure. We have received, only just received, the very important report of the Acworth Committee. The whole burden of that Report was a protest

[Mr. C. A. Innes.]

against the way in which the railways had been financed. They described it, not exactly in those terms, but they suggested that the railways had been financed in a hand-to-mouth fashion. They (the railways) never knew at the time when the year was about to commence what money they were to receive for capital expenditure. The Committee laid the greatest possible stress that there should be no lapse of allotment from year to year in order that the railways might proceed with their capital expenditure on a definite orderly programme. The House therefore, again following the Acworth Committee, decided that this programme of 30 crores a year should be embarked upon for a period of five years in order that the railways might be rehabilitated.

I need not repeat what I said on Tuesday regarding the appalling state into which our railways have been allowed to get and regarding the paralysing effect which the deficiencies of our railways have had upon the trade and the transport and commerce of our country. It was only last year we came to that decision. In the first year it was inevitable that we could not spend the whole of the allotment. That allotment has been carried on to the year 1923-24; and now it is proposed to destroy those programmes altogether, to throw the whole thing into the melting pot by making a cut of not less than 8 crores. If that is done, I ask the House in all seriousness, what reputation for political stability will this House have, and what guarantee we who are trying to run the railways will have that ever again we can look to the stability of our system of finance? Again we are going back to the old hand-to-mouth system; again the railways are going to be sacrificed to the exigencies of the general financial position. I ask this House, are they going to place us in a position of that kind, and if so, what the position of those who are trying to run these railways will be in the future? It is perfectly true that, according to the recommendations of the Inchcape Committee, as soon as we have that Financial Adviser, we will re-examine these programmes. As a matter of fact we have already taken that matter in hand; the Agents of all the railways are coming to Delhi next week and we propose to re-examine those programmes; owing to the cuts which we have had to make in programme revenue expenditure it is unlikely that we shall be able to spend all these 38 crores next year, and we will re-examine these programmes and if we see our way in the light of that re-examination to inform the Finance Department of a probable saving in capital expenditure, the House may rest assured that we shall inform the Finance Department accordingly. I would point out to the House that by making this cut they are not in any way going to affect the revenue budget for the next year; they are not in any way going to reduce the budget; all you are going to do is to throw the programmes of capital expenditure which we have embarked upon with the fullest concurrence and authority of this House, to throw them into most utter confusion. I suggest that the wise plan is to leave it to us. You have got this Inchcape Committee's Report; we propose to re-examine the whole matter in consultation with the Agents and in consultation with the Financial Adviser. That is a wise position for this House to take up, and I hope that the House will not accept this motion.

Mr. B. S. Kamat: Sir, it is necessary just to say a word or two in reply to the Honourable Mr. Innes. It is perfectly true that the Acworth Committee advised a large expenditure on the Railways; it is perfectly true also that this Assembly has committed itself last year to a

expenditure of 30 crores per annum. But we have to act each year according to the financial exigencies of the times, and if we ask that Rs. 88.61 lakhs should not be spent this year, it does not mean that the view of this Assembly is to give up the principle of lapses. The only reason is that the Inchcape Committee's Report which came on top of the Acworth Committee's Report has shown clearly to this House that there is a surplus of engines, there is a surplus of rolling stock in certain cases on the railways, and a mere windfall of 38 crores would be misspent during the next year, if we do not curtail it by 861 lakhs; we have enough engines and enough rolling stock, and it is unnecessary, therefore, to purchase more engines and more rolling stock unless it has been shown to us to our satisfaction that this expenditure on engines and other things is necessary in 1923-24. Then again if we save 861 lakhs, we save a great deal of interest; and I think taking this year's deficit and other points into consideration we would be perfectly justified in withholding this 861 lakhs, not because we want to give up the policy of spending on railways but because the railways have enough of stock and enough of engines and other material to go on with.

Sir Montagu Webb: Sir, I oppose this amendment; it is perfectly true that the Inchcape Committee have recommended certain investigations and possible savings in certain directions; but they do not recommend any cutting down of capital expenditure as a whole; and while further investigation will no doubt show that it may be possible to save in certain directions, I have no doubt that investigation would prove that it will be wise to spend more in other directions. I would ask the House, therefore, to reject this amendment.

Sir Campbell Rhodes: Sir, I am sorry to disoblige my friends, but I am afraid I cannot let this go with a silent vote. I remember a short time ago a very important committee meeting in Calcutta and discussing this question and after long argument coming to a decision which I think was unanimous and which included some of the most distinguished Members of this House of all parties, that during the next five years a sum of Rs. 150 crores should be set aside for the rehabilitation of the lines. If the proposition before the House is that the North-Western Railway should be abolished as an unremunerative line, as a representative from Bengal, I do not think I have any objection to raise. But I do say as regards the lines on our side of India, that 30 crores a year are absolutely insufficient. If any Member will travel down from Delhi to Calcutta, he will find at every siding station one, or very often, two goods trains waiting to let the Punjab Mail pass. These trains contain coal very largely for up-country industries. The coal position is getting serious. If Honourable Members will take the trouble to read the speech of the President of the Indian Mining Association in the paper this morning, they will see there a reference to the desperate position into which the industries of India are getting owing to the lack of facilities both for opening up new coal fields and for developing those we have. I think Honourable Members will agree with me that the industries of this country are closely connected with the coal supply. As I pointed out, Sir, in the Fiscal Commission debate, sea freights are falling month by month, and against that we are putting up our railway freights, we are destroying our railway facilities, and we are not enabling our Indian industries to compete with imported goods. Our consuming centres are very largely at the ports.

[Sir Campbell Rhodes.]

I can mention, for instance, sugar. We are preventing the sugar growers of the central portions of India from competing in the Calcutta market. The freights from Java are very low. Honourable Members by refusing this grant will be helping the foreigner against our own industries, and with what advantage, I cannot say, because the money that can be invested in railways is not unremunerative; it will pay its own interest if properly invested and it will do more, and I am rather surprised that Honourable Members who have been with me on the Fiscal Commission and who have investigated this question of railway facilities should now come forward and say we do not want our railways.

Mr. T. V. Seshagiri Ayyar: I never said that.

Sir Campbell Rhodes: It is well known, Sir, that all railway development was stopped during the war, that we are years behind, that our rolling stock is in a hopeless condition and that rehabilitation is absolutely essential, and I quite agree with the Retrenchment Committee that, while it may be undesirable to spend money at the present high rate of interest where there is no hope of a return, surely it is an ordinary commercial proposition to invest money where there is not only a return to the railways, but what is still more important, a valuable return to the industries of the country. If this amendment is going to be passed, I think Honourable Members might as well throw the Fiscal Commission Report into the waste-paper basket, because that Report dealt very fully with this question, and it pointed out that protection was useless unless we have something to protect, and if we are to starve our lines of communications, we are going to starve our own industries, and we are rapidly bringing about a time when the coal position will become absolutely intolerable and the whole industry of the country will be turned upside down. Sir, I strongly object to this amendment.

Mr. C. D. M. Hindley (Chief Commissioner, Railways): Sir, I am not quite sure whether to take this trifling cut which is proposed of 8 crores as a vote of censure on my Department or as a practical measure for reducing the commitments of India during the ensuing year. I am inclined to think from the speeches which have been made in favour of making this cut that the intention probably is to express disapproval of the way in which the Railways have been run. Well, Sir, I have been through a good deal of this during the last two or three days and, in comparison with the proposal for a vote of censure by moving a reduction of one rupee which the House was good enough to reject, this proposed cut of 8 crores regarded as a vote of censure really leaves me cold.

I should like to take up one or two points in Mr. Kamat's speech. He says that the Retrenchment Committee have shown that there are surplus engines, surplus wagons, and surplus everything else, which are not being properly used. Now, Sir, I think perhaps, in reading the Retrenchment Committee's Report, Honourable Members may have been misled in one respect, not noticing that the figures referred to were those mainly of 1921-22. There can be no doubt whatever that the position is rapidly changing now. Our traffic earnings are improving week by week and the need for engines and wagons for railway facilities is increasing as it was increasing in the years before. We certainly had bad years, we had bad traffic years, but there is little doubt that we are on the eve of

large traffic developments. Now, Sir Campbell Rhodes has shown the position in the coalfields. He has also referred to the sugar position and I believe there is no Honourable Member here who has any experience of Railways and the effects of railway working on the trade of the country, who will not agree that the Railways at the present time are unable to effectively move the traffic which is offering. If and when we have another revival of trade, such as a large movement of wheat or a revival of the coal output in the collieries, we shall be in exactly the same position as we were in a few years ago when the Railways were impossibly congested, and I say that this is not the time, when we are on the eve of a development of traffic, this is not the time to curtail our expenditure on development.

In regard to the practical effects of a cut such as some Honourable

5 P.M.

Members propose to make, it must be remembered, and anyone who has taken the trouble to read through Appendix C will see at once, that the amount which we are budgeting to spend in this year forms part of a series of practical measures of development. It is not that we are just taking this year by itself and saying "We will buy so many engines and so many wagons." What we have got in our budget this year is part of a continuous scheme of development, and, if this cut is to be made now, as the Honourable Mr. Innes has pointed out, immense damage will be done to the orderly progress of these programmes. Not that, as someone mentioned the other day, it will cause me inconvenience; I don't mind that a bit. But it will cause inconvenience to the proper working out of our schemes of development.

Mr. President: The original question was:

"That a sum not exceeding Rs. 38,61,93,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Expenditure on Railways charged to capital'."

Since which a motion for reduction has been moved:

"That the provision for construction of State Railways under the head 'Railways' be reduced by Rs. 8,61,00,000."

The question I have to put is that that reduction be made.

The Assembly divided

AYES—31.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Gulab Singh, Sardar.
Jafri, Mr. S. H. K.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Mudaliar, Mr. S.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—53.

Abdul Bahim Khan, Mr.
 Abul Kasem, Maulvi.
 Achariyar, Rao Bahadur P. T.
 Srinivasa.
 Aiyar, Mr. A. V. V.
 Aiyer, Sir P. S. Sivaswamy.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Amjad Ali, Maulvi.
 Barua, Mr. D. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Brayne, Mr. A. F. L.
 Bridge, Mr. G.
 Chatterjee, Mr. A. C.
 Clark, Mr. G. S.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Faridoonji, Mr. R.
 Gajjan Singh, Sardar Bahadur.
 Gidney, Lieut.-Col. H. A. J.
 Ginwala, Mr. P. P.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.

Hullah, Mr. J.
 Ikramullah Khan, Raja Mohd.
 Innes, the Honourable Mr. C. A.
 Jamall, Mr. A. O.
 Jamnadas Dwarkadas, Mr.
 Jejeebhoy, Sir Jamssetjee.
 Ley, Mr. A. H.
 Lindsay, Mr. Darcy.
 Misra, Mr. B. N.
 Mitter, Mr. K. N.
 Moir, Mr. T. E.
 Muhammad Ismail, Mr. S.
 Mukherjee, Mr. J. N.
 Nayar, Mr. K. M.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Rhodes, Sir Campbell.
 Samarth, Mr. N. M.
 Sams, Mr. H. A.
 Sarfaraz Hussain Khan, Mr.
 Sassoon, Capt. E. V.
 Schamnad, Mr. Mahmood.
 Singh, Mr. S. N.
 Sohan Lal, Mr. Bakshi.
 Townsend, Mr. C. A. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.

The motion was negatived.

Mr. President: The question is:

"That a sum not exceeding Rs. 38,61,93,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Expenditure on Railways charged to Capital'."

The motion was adopted.

DEMAND No. 9—IRRIGATION, ETC.

Mr. President: The question is:

"That a sum not exceeding Rs. 12,97,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Irrigation (including Working Expenses), Navigation, Embankment and Drainage Works'."

The motion was adopted.

DEMAND No. 13—INTEREST ON MISCELLANEOUS OBLIGATIONS.

Mr. President: The question is:

"That a sum not exceeding Rs. 3,20,93,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Interest on Miscellaneous Obligations'."

The motion was adopted.

DEMAND No. 15—AUDIT.

Mr. President: The question is:

"That a sum not exceeding Rs. 69,72,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Audit'."

The motion was adopted.

DEMAND No. 16—JAILS AND CONVICT SETTLEMENTS.

Mr. President: The question is:

"That a sum not exceeding Rs. 2,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Jails and Convict Settlements'."

The motion was adopted.

DEMAND No. 17—POLICE.

Mr. President: The question is:

"That a sum not exceeding Rs. 22,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Police'."

The motion was adopted.

DEMAND No. 18—PORTS AND PILOTAGE.

Mr. President: The question is:

"That a sum not exceeding Rs. 11,08,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Ports and Pilotage'."

The motion was adopted.

DEMAND No. 19—SURVEY OF INDIA.

Mr. President: The question is:

"That a sum not exceeding Rs. 19,97,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Survey of India'."

The motion was adopted.

DEMAND No. 20—METEOROLOGY.

Mr. President: The question is:

"That a sum not exceeding Rs. 5,62,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Meteorology'."

The motion was adopted.

DEMAND No. 21—GEOLOGICAL SURVEY.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,72,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Geological Survey'."

The motion was adopted.

DEMAND No. 22—BOTANICAL SURVEY.

Mr. President: The question is:

"That a sum not exceeding Rs. 17,82,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Botanical Survey'."

The motion was adopted.

DEMAND No. 23—ZOOLOGICAL SURVEY.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,10,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Zoological Survey'."

The motion was adopted.

DEMAND No. 24—ARCHÆOLOGY.

Mr. President: The question is:

"That a sum not exceeding Rs. 12,45,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Archæology'."

The motion was adopted.

DEMAND No. 25—MINES.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,06,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Mines'."

The motion was adopted.

DEMAND No. 26—OTHER SCIENTIFIC DEPARTMENTS.

Mr. President: The question is:

"That a sum not exceeding Rs. 4,70,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Other Scientific Departments'."

The motion was adopted.

DEMAND No. 28—MEDICAL SERVICES.

Mr. President: The question is:

"That a sum not exceeding Rs. 7,30,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Medical Services'."

The motion was adopted.

DEMAND No. 29—PUBLIC HEALTH.

Mr. President: The question is:

"That a sum not exceeding Rs. 3,57,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Public Health'."

The motion was adopted.

DEMAND No. 30—AGRICULTURE.

Mr. President: The question is:

"That a sum not exceeding Rs. 6,61,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Agriculture'."

The motion was adopted.

DEMAND No. 31—CIVIL VETERINARY SERVICES.

Mr. President: The question is:

"That a sum not exceeding Rs. 6,11,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Civil Veterinary Services'."

The motion was adopted.

DEMAND No. 32—INDUSTRIES.

Mr. President: The question is:

"That a sum not exceeding Rs. 44,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Industries'."

The motion was adopted.

DEMAND No. 33—AVIATION.

Mr. President: The question is:

"That a sum not exceeding Rs. 19,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Aviation'."

The motion was adopted.

DEMAND No. 35—CENSUS.

Mr. President: The question is:

"That a sum not exceeding Rs. 26,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Census'."

The motion was adopted.

DEMAND No. 36A—INTERNAL EMIGRATION.

Mr. President: The question is:

"That a sum not exceeding Rs. 56,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Internal Emigration'."

The motion was adopted.

DEMAND No. 36B—EXTERNAL EMIGRATION.

Mr. President: The question is:

"That a sum not exceeding Rs. 44,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'External Emigration'."

The motion was adopted.

DEMAND No. 37—JOINT STOCK COMPANIES.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,33,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Joint Stock Companies'."

The motion was adopted.

DEMAND NO. 38—MISCELLANEOUS DEPARTMENTS.

Mr. President: The question is:

"That a sum not exceeding Rs. 18,37,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Miscellaneous Departments'."

The motion was adopted.

DEMAND NO. 39—CURRENCY.

Mr. President: The question is:

"That a sum not exceeding Rs. 49,68,000 be granted to the Governor General in Council to defray the charge which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Currency'."

The motion was adopted.

DEMAND NO. 40—MINT.

Mr. President: The question is:

"That a sum not exceeding Rs. 15,99,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Mint'."

The motion was adopted.

DEMAND NO. 42—SUPERANNUATION ALLOWANCES AND PENSIONS.

Mr. President: The question is:

"That a sum not exceeding Rs. 38,44,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Superannuation Allowances and Pensions'."

The motion was adopted.

DEMAND NO. 45—ADJUSTMENTS WITH PROVINCIAL GOVERNMENTS.

Mr. President: The question is:

"That a sum not exceeding Rs. 3,62,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Adjustments with Provincial Governments'."

The motion was adopted.

DEMAND NO. 46—REFUNDS.

Mr. President: The question is:

"That a sum not exceeding Rs. 7,17,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Refunds'."

The motion was adopted.

DEMAND NO. 47—NORTH-WEST FRONTIER.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,02,00,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of the 'North-West Frontier'."

The motion was adopted.

DEMAND NO. 48—BALUCHISTAN.

Mr. President: The question is:

"That a sum not exceeding Rs. 26,83,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Baluchistan'."

The motion was adopted.

DEMAND NO. 50—COORG.

Mr. President: The question is:

"That a sum not exceeding Rs. 13,27,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Coorg'."

The motion was adopted.

DEMAND NO. 51—AJMER AND MERWARA.

Mr. President: The question is:

"That a sum not exceeding Rs. 14,67,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Ajmer-Merwara'."

The motion was adopted.

DEMAND NO. 52—ANDAMANS AND NICOBAR ISLANDS.

Mr. President: The question is:

"That a sum not exceeding Rs. 41,59,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'the Andamans and Nicobar Islands'."

The motion was adopted.

DEMAND NO. 53—RAJPUTANA.

Mr. President: The question is:

"That a sum not exceeding Rs. 4,39,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Rajputana'."

The motion was adopted.

DEMAND NO. 54—CENTRAL INDIA.

Mr. President: The question is:

"That a sum not exceeding Rs. 6,32,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Central India'."

The motion was adopted.

DEMAND NO. 55—HYDERABAD.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,77,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Hyderabad'."

The motion was adopted.

DEMAND No. 59—IRRIGATION CHARGED TO CAPITAL.

Mr. President: The question is:

"That a sum not exceeding Rs. 22,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Expenditure on Irrigation charged to Capital'."

The motion was adopted.

DEMAND No. 60—TELEGRAPHS CHARGED TO CAPITAL.

Mr. President: The question is:

"That a sum not exceeding Rs. 94,30,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Expenditure on Telegraphs charged to Capital'."

The motion was adopted.

DEMAND No. 61—NEW CAPITAL AT DELHI CHARGED TO CAPITAL.

Mr. President: The question is:

"That a sum not exceeding Rs. 1,93,24,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Expenditure on New Capital at Delhi charged to Capital'."

The motion was adopted.

DEMAND No. 62—INTEREST FREE ADVANCES.

Mr. President: The question is:

"That a sum not exceeding Rs. 9,13,69,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Interest free Advances'."

The motion was adopted.

DEMAND No. 63—LOANS AND ADVANCES BEARING INTEREST.

Mr. President: The question is:

"That a sum not exceeding Rs. 14,48,68,000 be granted to the Governor General in Council to defray the charges which will come in course of payment during the year ending the 31st day of March, 1924, in respect of 'Loans and Advances bearing Interest'."

The motion was adopted.

SUMMARY OF CUTS IN DEMANDS.

The Honourable Sir Basil Blackett: Sir, I think it would be for the convenience of the House in view of Monday's debate on the Finance Bill if I were to sum up the position as regards Revenue and Expenditure as it stands after the voting on the Demands for Grants. I have also an announcement to make on behalf of the Governor General in Council. The

reductions that have been made by the House in the Estimates as presented are as follows:

	Rs.
Under the head 'Customs'	4 lakhs.
Under the head 'Railways,' there have been two separate cuts —	
one	50 "
and the other	1,14 "
Under the head 'General Administration'	5,10,000
Under the head 'Stamps'	100
Under the head 'Miscellaneous'	3 lakhs.

I have to announce that the Governor General in Council has decided that the cut of Rs. 114 lakhs in the Railways is one which cannot be made consistently with the discharge of his responsibilities. In regard to the other cuts, there has not been time of course for the Governor General in Council to consider the cut of Rs. 3 lakhs that was made under the head 'Miscellaneous' to-day. But taking those cuts, the cut of Rs. 50 lakhs under Railways was agreed to by the Honourable Member in charge of Railways. The cut of Rs. 10,000 under 'General Administration' was agreed by the House and they provided means for meeting it. The other cuts would, as I had to state to the House at the time when they were made, if it were attempted to put them into effect in full, almost inevitably make it impossible for us to carry on the General Administration, or in the case of Customs to collect the revenue which is due. The net expenditure as presented in the Budget was Rs. 130,87,92,000. A deduction of Rs. 7,27,000 has to be made from that in view of the fact that we were able to make cuts of a little over the 4 crores that I spoke of in the Budget speech. That reduces the total to Rs. 130,80,65,000. The cuts made by the House, excluding the one of Rs. 114 lakhs which I have mentioned, amount to Rs. 62,10,100, leaving the expenditure at the stage—Rs. 130,18,55,000. I have had to explain to the House that the estimates as presented were the lowest figure which having in mind the total as a whole, the Government could honestly put forward as likely to be reached in reduction of expenditure this year. We feel bound, therefore to ask that apart from that total of Rs. 130,18,55,000, which I have mentioned, and considering our deficit, we should make provision for expected supplementaries, mostly to replace the cuts that have been made, to a total of Rs. 12 lakhs. That leaves our expenditure at Rs. 130,30,55,000. As against that our revenue on the basis of taxation as it stands at present was put in accordance with the Budget speech at Rs. 126,61,71,000, leaving a deficit still to be covered of Rs. 3,68,84,000.

Mr. President: This House now stands adjourned till Eleven of the Clock on Monday morning, the 19th March, 1923. I may remind Honourable Members that arrangements have been made for an official photograph of the Assembly at 10-30 on Monday morning and I hope Honourable Members will be here before that hour.

The Assembly then adjourned till Eleven of the Clock on Monday, the 19th March, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 19th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN:

Sir Henry Moncrieff Smith, Kt., C.I.E., M.L.A. (Secretary, Legislative Department).

QUESTIONS AND ANSWERS.

RAILWAY CONNECTIONS IN WEST COAST DISTRICT, MADRAS.

572. ***Mr. Mahmood Schamnad Sahib Bahadur:** 1. Is it a fact that there is only one railway line passing through the Palghat gap, connecting the West Coast districts of the Madras Presidency with the general railway system?

2. Is it a fact that as this line was damaged during the Malabar rebellion military movements to Malabar were delayed, and hence the suppression of the rebellion was considerably delayed?

3. Do the Government propose to connect the general railway system with the West Coast railway by the construction of the long proposed Mangalore Arsikere (or rather Mangalore Hassan) line and facilitate the movements of military, etc., to the West Coast districts of the Madras Presidency?

Mr. C. D. M. Hindley: (1) Yes.

(2) The answer to the first part of the question is in the affirmative. As to the second part, in view of the fact that the damage to the Railway line in question was very quickly repaired, it cannot be said that the length of time taken to suppress the rebellion was thereby materially affected.

(3) The reply is in the negative. The position of the Mangalore Arsikere (Mangalore Hassan) Railway project is as stated in the answer given to the Honourable Member in the Legislative Assembly on 5th March, 1921.

PASSAGE CONCESSIONS TO CERTAIN OFFICERS.

573. ***Rai Bahadur G. O. Nag:** Is it a fact that in consideration of the high cost of passage to the United Kingdom certain concessions have been sanctioned for all gazetted officers of Non-Asiatic domicile to facilitate their passage home?

The Honourable Sir Malcolm Hailey: The answer is in the affirmative. The concession is in the form of an interest free advance for passage money.

Mr. K. Ahmed: Could not that concession be applied to any other country, Sir, except the United Kingdom? What is the principle followed in granting the concession?

The Honourable Sir Malcolm Hailey: The high cost of passages to Europe is the reason.

CONCESSIONS TO MEN RECRUITED THROUGH STAFF SELECTION BOARD.

574. ***Rai Bahadur G. C. Nag:** (a) Is it a fact that men from all provinces are recruited through the Central Staff Selection Board in the Government of India Secretariat?

(b) If so, will Government be pleased to state whether the grant of any concession is under consideration in respect of the different classes of officers employed in the Government of India Secretariat in view of the prevailing high rates of railway fares? If not, why not?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) For journeys on duty the ordinary travelling allowance rules apply. Private journeys are, of course, not paid for by Government.

INABILITY OF SECRETARIAT STAFF TO VISIT THEIR HOMES.

575. ***Rai Bahadur G. C. Nag:** (a) Is the Government aware that there is a growing discontent amongst the Secretariat staff owing to their inability to visit their homes even once at long intervals?

(b) If the answer is in the negative, will Government be pleased to enquire about the matter through the Association of the Uncovenanted Service of the Government of India?

The Honourable Sir Malcolm Hailey: (a) Government are not aware that this is the case. The expenditure on leave allowances would certainly indicate that sufficient leave is granted to the Secretariat establishment.

(b) The Association is of course at liberty to make any representation they may wish.

FREE PASSES AND P. T. O's.

576. ***Rai Bahadur G. C. Nag:** What is the total number of men (excluding the menials) belonging to the Railway Board, who are eligible for the privilege of free passes and P. T. O's?

The Honourable Mr. C. A. Innes: 130.

COST OF P. T. O. CONCESSION.

577. ***Rai Bahadur G. C. Nag:** (a) Will the Government be pleased to state what will be the total additional annual cost if the concession of a P. T. O. is granted to all men of the Government of India Secretariat once a year?

(b) Will the Government be pleased to state whether this additional cost will be covered by the corresponding gain which will accrue from the abolition of the free Railway passes to which the staff of the Railway Board are at present entitled? If so, will the Government be pleased to give this suggestion a trial?

duty which has been collected in anticipation need not be refunded, though we object to the salt duty. That proposal seems to merit consideration. That will perhaps bring in about 30 lakhs; and for the rest I think we can trust to the wits of the Finance Minister to find some means of bridging over the small gap.

Under these circumstances, I think that it would be not wise of the Assembly to leave the deficit uncovered and that, on the other hand, we must endeavour to cover it at least in very great part. What exactly will eventually commend itself to the general sense of the House I am not in a position to say. Nor am I to be understood as committing myself definitely to this suggestion, though I think there is a great deal to be said for it. And I therefore commend this suggestion to the House.

Sir Campbell Rhodes (Bengal: European): On a point of order, Sir. I should like your ruling, as to whether the interesting speech to which we have just listened and which raises many obviously controversial matters would have been in order in the discussion under section 2. If so, Sir, I would appeal to the House in the interests of the economy of time to allow the Bill to be introduced and so continue. I do not think we desire to be ruled out of order and miss our opportunity of speaking on certain points which have just been raised.

Sir Montagu Webb (Bombay: European): On another point of order, Sir, the Honourable the Finance Member has suggested that we should save time if we could proceed direct to the consideration of clause 2 of the Bill. May I say, Sir, that if we do that, I think that in the economy of time it would also be very valuable to us if we could have your ruling as to whether all these amendments which are before us are in order. It has been suggested by Members among themselves . . .

Mr. President: I can take that when we come to the clauses. It is hardly a point of order on consideration. As regards the point put to me by Sir Campbell Rhodes, the reply to him is that the whole of the speech delivered by my Honourable friend on my left from Madras (Sir P. S. Sivaswamy Aiyer) is in order on *this* motion. The first half of the speech would not be in order on clause 2, the second half would be. That is to say, I am prepared to allow the general question of taxation raised by my Honourable friend to be discussed on clause 2. More general matters arising out of the administration of the country will not be in order on clause 2.

Sir Montagu Webb: Sir, may I explain my point? The point I had in view is this. If you, Sir, rule for example, that all these proposals for additional taxation are out of order, then our consideration of the salt tax will have to be on entirely different lines to what it would be if you rule these amendments in order. There are several proposals for additional taxation and there is some uncertainty in Members' minds as to whether these proposals are in order or not. If we know at the beginning that they are not in order . . .

Mr. President: I told the Honourable Member that that point of order relates to the amendments which must be taken after we pass the motion for consideration. I think there is a good deal in the appeal made by the Honourable the Finance Member and Sir Campbell Rhodes that in so far as the House wishes to discuss the salt tax or alternatives to it,

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that discussion had better be reserved till we come to clause 2. Technically it is in order on the motion for consideration; but I leave it to the sense of the House whether it ought to be discussed now and repeated on clause 2.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I desire to make a few general observations on the Bill now submitted to the House for consideration. I do not wish, Sir, to repeat what has been repeated on the floor of this House *ad nauseam* that the heavy deficits of the Budgets of the last two years are due to military expenditure. I only wish to point out to the House that the suspicion which we then had in our mind that the military policy of the Government of India was dictated from outside has received confirmation in the telegram reporting the discussions in the House of Commons. I quote from Reuter's telegrams:

"The War Office was unable to agree with the Government of India regarding the latter's proposal for reductions in the number of units but the War Office was discussing the possible saving by cutting down establishments."

Now mark the next sentence:

"It must be remembered that the British regiments in India embrace part of the reserve and any reductions must necessarily affect their power of mobilisation. If the War Office agreed to the Government of India's making excessive decreases it would eventually mean further cost being thrown on the British Budget for making up the reserve in other ways."

We have been impressing, Sir, upon this House that the military policy of the Government of India was being dictated from outside. We are to-day presented with this spectacle of the British battalions marching on the prostrate form of the Government of India. The Army in India is an Imperial reserve for which the people of this country are made to pay. The Colonies refuse to pay for it; the British tax-payers refuse to pay for it, and therefore, the Army in England is sent out to this country to be paid for by the people of this country for external Imperial purposes. That is the situation. How far this House will keep on financing from year to year this insatiable Moloch of military expenditure can only be answered not by His Excellency the Commander-in-Chief nor by the Government of India but by the War Office and the Imperial Cabinet responsible for the defence of the British Empire. This, I submit, is a situation of abject helplessness not on the part of the Members of this House only but on the part of the distinguished occupants of the Treasury Benches. His Excellency the Commander-in-Chief, the Government of India, and the military advisers of the Government of India recommended a reduction, as we now see from the papers, but the War Office have vetoed it.

The Honourable Sir Malcolm Hailey (Home Member): No, no.

Dr. H. S. Gour: That is what the telegram says.

The Honourable Sir Malcolm Hailey: Then it is incorrect, Sir.

Dr. H. S. Gour: The Honourable the Home Member tells us that it is incorrect. Last year, he will not forget, I asked for the publication of the correspondence between the Government of India and the Secretary of State on this subject. Was that correspondence published? I ask the Honourable the Home Member to publish those despatches—the correspondence between the Government of India and the Secretary of State.

The Honourable Sir Malcolm Hailey: That cannot refer to the instance which the Honourable Member has just mentioned. The despatches of last year cannot throw any light on the matter which the Honourable Member has just quoted to us.

Dr. H. S. Gour: I repeat it, Sir, that this is an old controversy in which the Government of India and the Secretary of State for the last two years have been fighting for the reduction of the military troops in this country, and they have repeatedly been over-ruled by the Secretary of State. Does the Honourable the Home Member deny that statement?

The Honourable Sir Malcolm Hailey: I said, and I repeat that it was not correct, as Dr. Gour had stated, that the War Office had over-ruled the recommendations of the Government of India for effecting certain reductions in expenditure in the Indian Army Budget.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): What does it amount to?

Dr. H. S. Gour: I understand the Honourable Member as well as he understands me. We are both trained in the same school. I do not wish to pursue this question any further. I only wish to repeat what I have been repeating during the last two years that the military policy of the Government of India is being dictated by the War Office and the Government of India are as helpless in the matter as we ourselves. That is all to the credit of the Government of India, and whatever may be the result, we are obliged to His Excellency the Commander-in-Chief and the Government of India for fighting for the cause of India and fighting for economy in the military administration of this country, and we hope that with our support their just cause will triumph.

Now, Sir, we pass on to another subject. Much though we object to this military burden, helpless though we are in combating it, what should be our position regarding the Finance Bill? Are we to do, as has sometimes been suggested that we should withdraw all our assistance and leave the Government to such devices as they may resolve upon? (*A Voice*: "Who suggested that?") I am glad to hear one Honourable Member saying who suggested it. Now, my Honourable friend Sir Sivaswamy Aiyer said that that is a suggestion—I do not say it is a suggestion made by any one in particular but that is a suggestion. Well, Sir, so far as we are concerned, we and the Government of India are at one on this point that we cannot for the credit of this country allow this uncovered deficit.

Now, then, the next question and a question of very great moment that arises in this connection is how to cover the deficit. We have already impressed upon the Government of India the desirability of making further retrenchments, but then we cannot count upon them. We must take the budget as it is presented to us and upon the happy contingency of the Government of India making further retrenchments in expenditure we cannot ignore the deficit that lies in front of us. We must provide against it. Additional taxation is therefore inevitable and the alternatives that we are confronted with are either the salt tax or some other tax. So far as salt tax is concerned, I voice the sentiments of the Honourable Sir Sivaswamy Aiyer that we on this side of the House are unanimously opposed to it. The only concession we are prepared to make is that the tax already collected (*Cries of "No, no."*)—that is a concession (*A voice*:

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"Who is making?"—the only concession that is possible in the circumstances (A Voice: "Most unjust") is that the tax collected may not be refunded to those who paid it. (Voices: "No.") But that would not solve the difficulty. At the very most the Government will make something like 35 lakhs of rupees. We have still to explore other avenues of taxation and I would add to the three mentioned by Sir Sivaswamy Aiyer a fourth one, namely, an import duty on iron and steel. I suggest that there is a very good reason why we should levy an import duty on iron and steel. (A Voice: "And tax industries.") The importation of iron and steel is prejudicially affecting the only pioneer industry that exists in this country and which the Fiscal Commission recommended should be supported at all costs. The European manufacturers of iron and steel are passing through a severe financial crisis and they are dumping their goods upon the soil of India at and below cost price, the effect of it being to extinguish this rising national industry in the country. An import duty on iron and steel would be in keeping with the declared policy of the Government. It will give us money and also serve incidentally to protect this struggling industry. I do not know how much it will bring us. I am told that it will bring us about Rs. 80 lakhs of rupees at 20 per cent. We have then to find about Rs. 268 lakhs. Of the three suggestions made by my Honourable friend Sir Sivaswamy Aiyer a surcharge on customs commends itself to me (Cries of "No, no" and "Hear, hear"), and I submit, Sir, it is the least objectionable of all taxes. I strongly deprecate a surcharge on income-tax and submit that any surcharge on income would not only be unpopular in the country but would saddle unjustly upon the people of this country a tax against which they are loudly complaining, and which as one Honourable Member says is already a heavy burden upon the tax-payer. I therefore suggest, Sir, that, the only solution that is possible in the circumstances is a surcharge on customs (Voices: "No, no.") and an import duty on iron and steel. (A Voice: "What about silver?") One more word and I have done. I beg to caution the Honourable the Finance Member and the Government of India that this last action of ours must not be regarded as a precedent. The Government of India have been budgeting for deficits during the last three years and I say, Sir, that this shall positively be the last year when the Government of India will come before this House and ask for further taxation to redress the financial equilibrium.

His Excellency the Commander-in-Chief: I should like at once to answer what the last speaker has said and the quotation that he has made from a Reuter's telegram which he read out to the House. The statement that has been reported as having been made in the House of Commons does not agree with the information in our possession and we are ascertaining whether this message as reported is correct. We have every reason to believe that the reduction in British troops which has been put forward by the Government of India and agreed to by me and which gives the pecuniary saving we are counting on will in the end be agreed to by His Majesty's Government. The question of the form which these reductions will take is still under consideration but His Majesty's Government have not signified that they are in any disagreement with the amount of reductions that are proposed and it is after all the amount which affects us here in the discussion on the Budget. I want to make that quite clear. There are certain reciprocal arrangements which, as the House will understand,

exist in a big organisation like an Army, which is enlisted in one country and is employed in another, and in which the Cardwell system of one unit abroad and one at Home is a basic principle. A reduction such as that which we have proposed affects the whole machinery for the production of recruits and of training of men in England itself. Therefore as the one hangs upon the other, and as a settlement cannot be reached in a moment we are still considering with the Imperial Government what actual form the reductions themselves shall take.

Mr. P. P. Ginwala (Burma: Non-European): I should like to ask one question in connection with this Reuter's telegram. Has His Excellency seen this quotation from a letter written by Field Marshal Sir William Robertson, which is reproduced in this morning's *Pioneer* on the same subject? He says in this letter:

"Hitherto we have been able, in time of need, to obtain both British and native troops from that country for employment elsewhere, as in the South African War, the Boer rising, the Great War and now in Mesopotamia, Palestine and China. The Indian garrison has therefore constituted, in practice if not in theory, a valuable Imperial Reserve paid for by India whilst employed there and by the British Exchequer only when employed in other places. But this very convenient arrangement is drawing to a close, for repeated requisitions for Indian assistance, coupled with the grant of to a self-government and the cry for greater economy in military matters, have led to an emphatic desire that the Army of India shall be employed only for Indian defence. Proposals for reducing it are already afoot, and in the near future the British portion of the garrison will probably be cut down."

Mr. President: I do not think that His Excellency the Commander-in-Chief is responsible for the opinions of other soldiers however eminent I understand that Sir William Robertson is no longer in the employment of the Imperial Government.

Mr. P. P. Ginwala: My point was, if the Reuter's telegram is incorrect, is there any foundation for this opinion here?

Mr. President: The Honourable Member can discuss that with Sir William Robertson.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): We have to consider in this Finance Bill the methods for obtaining funds to meet the deficit as originally put forward in the Finance Member's Budget speech and modified to the extent of the concession made by the Honourable the Commerce Member. I should like here to express my appreciation which I think will be shared by a number of members as to the extremely pleasant way in which we have been met by the Commerce Member on Railway questions. He has, I feel, tried to meet us in every way he has found possible even though he may have felt that he was sacrificing his better judgment to some extent. I feel that he has tried to associate us with this task and I personally appreciate the fact that our efforts or suggestions should have been taken so seriously and that they should to some extent have been given effect to. I think possibly the reason why the majority of this House followed him on the point of the capital expenditure on the railways was because after he had assured us that he would look into the matter and would not spend more than was necessary we felt that we could trust him to carry out our wishes. Now, Sir, this attitude forms a rather sharp contrast with that of the Finance Department under the Finance Member. It may be that I have misunderstood the intentions of the Finance Member but I must say that I found no apparent desire on his part to meet the wishes of the House

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or its suggestions in any direction. It appeared to me that the Finance Member rejoicing as he does in the education of the British Treasury considers he knows a great deal more of such matters than some of us do. I put this forward because I wish any misunderstanding to be put right. I think some of us feel, if I am allowed to say so, that the Finance Member has taken up an attitude something like this: 'You may think so, but I don't and that settles the question.' If we take the printed sheet that we have in front of us, which represents the last statement made on Saturday before we adjourned, you will notice that of the cuts that were made by this Assembly one cut has been restored by the Governor General in Council and as to the other cuts, these apparently are not restored by the Governor General in Council but there is merely a statement made that it is considered that an allowance, which amounts to the amount of these cuts less Rs. 10,000, travelling allowance of the Members, should be made by a supplementary grant. In other words, if I am not very much mistaken in my reading of this paper, this House has been informed that because the Government or the department concerned does not consider that these cuts are possible, *ipso facto* they should be restored without any statement to the House as to whether the wishes of the House are to be in any way met and without the Governor General in Council being asked to restore these cuts. As far as one of the items is concerned, No. 6, regarding the Public Services Commission, I am one of those who think that the Government would have a strong case in asking the Governor General in Council to restore it, for the reason that it is not in the province of the Government of India to decide whether this Public Services Commission should come out or not and therefore I am one of those who did not consider it fair for us to blame them and to remove funds from them for an action for which they could in no way be held responsible. But what about the other points? The Government may have thought that our cuts were severe but the Government is responsible for the administration and I think that they should either have asked the Governor General in Council to restore them or that they should have at any rate shown some desire to carry out our wishes. It may be that it is chiefly a question of phraseology. It may be that they should have told us that they would do their best but they might have to come to us again. But as it is I for one do not think that it is treating this House with consideration if we are told "We do not think this cut is justified so we do not propose to take any notice of the action of the Assembly." Sir, in my opinion the powers of the Governor General in Council are quite necessary powers considering the newness of our constitution. But I think, Sir, they should be powers that should be kept in reserve and not used lightly. I look on the powers of the Governor General in Council in the same way as I look on the sword that is carried by His Excellency the Commander-in-Chief. Should His Excellency ever be attacked, I feel certain that he would give a very good account of himself with the help of his sword. But I doubt very seriously whether His Excellency the Commander-in-Chief considers it necessary to draw his sword every time he may want to sharpen a pencil or may wish to use a tooth-pick. I suggest, Sir, that the powers of the Governor General in Council should therefore be restricted to those occasions when it could honestly be said that the business of the Government and the administration could not be carried on owing to the vote of this House. Now, Sir, let us take the particular item that has been restored. The Finance Member admitted

to us that there might be arguments in favour of this particular crore and 30 lakhs being taken as capital, but his argument was that as this had not been put to capital in the first place therefore he considered it inadvisable to transfer it now. But suppose the Government had met us in this respect, could it be said that the whole fabric of the administration of Government in India would rock? That, supposing this item had been taken from expenditure and put to capital, the Government could not go on with its work? The Honourable the Finance Member may have thought it inadvisable, he may have considered that the fact that this item which might be considered capital was originally put to expenditure might be misunderstood elsewhere and for that reason it was advisable to leave it where it was. But as this House, having considered his argument, gave its unmistakable view that it did not agree with it, I think this was a case where the Honourable the Finance Member might have used his discretion and have met us. I quite realize this was a non-votable item. I quite realize that the Honourable the Finance Member was entirely within his rights to say, "I will not consider this point, this cut that you have made in respect of a non-votable item: I will take it in its narrowest sense and therefore I will have it restored." I admit that, but I do think this was a case where the Honourable Member might have looked at the question from a broader aspect and have tried to meet us in some way. I do feel that the Honourable Member has not given signs of any desire to meet this House in any way as regards this matter. And now, Sir, we shall be asked by the Honourable Member to vote for an increase of the salt tax to meet this deficit: a deficit which some of us do not consider represents a true deficit. Some of us consider that if the accounts had been kept in another way, in a way which we consider justifiable even though it may not agree with the pre-conceived ideas of the Honourable the Finance Member, there would not be so large a deficit and this small deficit could have been met in another way than that proposed by the Honourable the Finance Member. Now, Sir, one of the charges that is made against this Assembly is that the Members of this Assembly do not represent the people of India. That is a charge that is thrown at us not only here but is thrown at us at Home. I venture to say that, as far as the proposed salt tax is concerned, we do represent the large majority of the people of India whether individuals with votes or without votes. I therefore say that if the Government on the advice of the Finance Member chooses to overrule any vote against the salt tax that may be given, they will have no excuse for stating that the vote was made in defiance of the wishes of the large majority of the people of India.

Now, Sir, there is another point on which I feel deeply. If the policy which I have seen working, the policy of the Government of India as we have seen it carried out by the Leader of the House, by the Commerce Member, and by, the other day, the Postmaster General in his explanation of his items, the policy of associating us with them, of not only asking us for our views but trying to put any views of ours into effect, if that policy is not to be gone on with, if we are to find ourselves faced with a policy which is "here are our views; we consider that only these views are right; it may be that we are not entirely correct in every detail but we propose that these views should be passed by the House *in toto* and if they are not passed by the House we shall ask the Governor General in Council to use his powers to put back every comma and every fullstop that may have been taken out." I venture to say that if that new policy, which I hope is not really the new policy, of the Government and which

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I hope is due merely to my misunderstanding of the situation, if that is to be the new policy, I for one venture to say that my own activities here do not appear to justify the sacrifices that I have to make in not looking after my own affairs. I make a present to the Honourable the Finance Member of the obvious retort that this Assembly has got on very well without me in the past and will probably be able to do so in the future. I should welcome that retort. It would enable me to go to my supporters in my constituency and suggest that as I was doing no good here I might be allowed to look after my own business. If we are merely to record our assent to the proposals of the Government, there are probably a large number of other Members who could use their intelligence and their activities better elsewhere. It might be advisable and suitable for us to send the peons from our offices to take our places with instructions to cry "aye, aye" to every demand of the Government. That would no doubt be very satisfactory to Members of the Government; it would be equally satisfactory to our peons who would draw our allowances; the only people who would not be satisfied would be the negligible 250 millions of taxpayers in the country. Sir, I have put this point of view very strongly. I have put it forward perhaps more strongly than some people may think justifiable. (*Cries of "No, no."*) If I have done so I have done it on purpose, because I consider that the moment has come when we should definitely hear whether the policy that has so far been carried out, whether the treatment that we have been receiving, is to continue or whether there is going to be a change. Therefore, Sir, I beg the Leader of the House, with all the emphasis at my command, to pause before accepting this new policy, if there is a new policy, of the Finance Member, who with the face of a cherub and the methods of a tank, is more successfully, more expeditiously and more surely wrecking the Reforms than the most enthusiastic, the most optimistic extremist in his wildest hopes could have ever imagined possible.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I would have preferred to speak when section 2 of the Bill is to be taken into consideration; but, Sir, the bad example set by my Honourable friend, Sir Sivaswamy Aiyer, has spread and the contagion has affected me also. Sir, I wish to offer a few remarks upon the question which he raised, namely, whether there should be an uncovered deficit, and whether we should not do something to bridge the gulf, as he said. Sir, before proceeding further, I should like to add one sentence to what the Honourable Captain Sassoon has said. He has said that as regards the salt duty, we are here representing fully the people of this country; we are not a microscopic minority in this respect as we are called, we are representing the unanimous voice of the people of this country. There is only one matter, one consideration which I would urge upon Government and it is this. They knew very well that when there was a deficit of 20 crores, and when they brought forward a proposition to increase the salt duty, this House did not listen to it. This House showed by unmistakable terms, by the language then used, by the sentiments then expressed, that an enhanced salt duty was out of the question. That was at a time when there was a deficit of 20 crores of rupees; that was at a time when this Assembly had two years still to run. Now, when the deficit is 4½ crores, when we have got to face our constituencies, the Government have taken into their head to impose the salt duty. If they do this, can they rightly turn to

us and say, "you ought to do everything in your power to help the Government and that otherwise there will be the necessity for certification"? If the certification comes, it will be brought about by their own act; they have brought it upon themselves, and we, as representatives of the people, are not responsible for it. Sir, that is a consideration which I would ask the Honourable the Finance Member to take into account; apparently he was not fully aware of the circumstances which led to the voting of the duty on the last occasion; and I believe if he had known the sentiments of the people in this matter, he would not have proposed to increase the salt duty by one hundred per cent. Sir, my Honourable friend, Sir Sivaswamy Aiyer, made one suggestion; he said, the suggestion which he made was a straight and clear one, namely, that there should be a surcharge of one anna in the rupee on the customs. With all deference to my friend, I think, he will find that this proposition will not go down the House, because what does it come to? Take for example, the duty on piece-goods. If we are going to add one anna in the rupee to the piece-goods, what would be the position? The seller would increase the price by 2 annas: and the persons whom we are so anxious to protect, namely, the poor people, would be the persons most hit by that. There can be no doubt if you increase the duty upon customs, it would affect the poor people; and there is no use (*Voices of "No, no, no."*) There is no use in saying that you want to protect them from the salt duty if you tell them at the same time that you are going to increase the duty on customs. It would be taking away with one hand what you give with the other. That is the position, and I say that any attempt to increase the customs duty by one anna would not be regarded as in any way helping the poor. Sir, there was a suggestion made by Sir Gordon Fraser on the last occasion. That holds the field, according to me. I admit that by having half an anna upon customs and also upon income-tax (*Voices: "No, no"*) a good portion of the deficit will be covered. I know some of my friends will cry "No" "No" when the question of income-tax comes but if they are really anxious to help the poor, if they are really anxious to save them from heavy taxation, they ought to consent to an increase of half an anna in the rupee in the income-tax. Sir, there is only one more matter at present to be mentioned as I shall speak on the Bill later on, and it is this,—as regards the suggestion made by my friend, Dr. Gour, that the money collected during the interim period before the Act comes into force, should not be refunded. There was a cry from my friends that would be regarded as robbery. Now I put to them a plain issue. Supposing you remit it, who will get the money? The middleman would get the money. The poor people who have purchased the salt would not get the benefit of it; and therefore, if you are going to remit it it is not the poor man that will be helped, it is the middleman who will take the money; there is nothing wrong in the Government retaining the money which they collect now. Sir, there are other matters upon which I should like to speak later on. I hope that this discussion may now come to end and that we may proceed to consider the various sections of the Bill.

Mr. T. E. Moir (Madras: Nominated Official): Sir, I am most reluctant to continue the debate on the general question in view of the desire expressed by some Members of the House for a more detailed discussion, but there are one or two points to which I should like to draw attention which it will possibly not be in order for me to refer to when we come to the discussion of clause 2. In the first place, let me say that I listened to the speech of my quondam chief, Sir Sivaswamy Aiyer, with a great deal of

[Mr. T. E. Moir.] interest and attention. I should like to express my regret, after hearing that speech, that for the greater part of this Session of the House, the Madras Presidency has been deprived, by circumstances beyond his control, of his powerful advocacy in certain concerns to which I shall have to refer. Next, Sir, I wish to make one general remark as to the speech of Dr. Gour. In reading through that interest in Chapter of the Inchoate Committee's Report which relates to Railways, I found certain cryptic allusions to something called a "super-heater". Now I really do not know what a super-heater is, and if I were placed in front of an engine by the Honourable Mr. Hindley, and asked to point it out I should be quite incapable of doing so. I can only suppose that a super-heater is in the mechanical world something that has the characteristics of Dr. Gour in the oratorical world. But the point which I wish to put and which arises out of his speech is, are we still discussing the Budget and the Finance Bill as put before us? Dr. Gour put his hands into his pocket and produced a telegram which I have not seen, and which apparently in his view has entirely upset the whole course of our debate, blown our Budget and our Finance Bill to the winds, and left us nothing to discuss. I merely wish to ask the Finance Member whether we are really still discussing the Finance Bill. I take it that we are. Then, Sir, I should like to refer to some remarks of Captain Sassoon. Captain Sassoon is exceedingly angry that a suggestion which he threw out in the course of our discussion on the Budget was not accepted by the Government (Mr. Jamnadas Dwarkadas: "Put forward by 67 Members")—of which at any rate he was one of the supporters. Well, Sir, may I say to the Honourable Member that when the point was under discussion I did my best to follow it, but when I looked to Captain Sassoon for an explanation of the proposal which would really commend itself to me if I may say so, Captain Sassoon entirely failed to render the proposal attractive to me. It may have been the fault of the proposal, or it may have been the fault of Captain Sassoon's advocacy, but to my mind it seemed to be merely an invitation to the House to resort to another of those wretched expedients which have in part led to the present situation and which I hope we are not going to repeat in future. (Mr. Jamnadas Dwarkadas: "That was a suggestion from Sir William Meyer.") I am not going to follow the Honourable Captain Sassoon in his constitutional discussions. He tried to lay down the principle that resort to the extraordinary powers conferred on the Governor General in Council should only be resorted to when certain conditions had been established. Between the lines, it seemed to me that what Captain Sassoon was really laying down was that these extraordinary powers were not to be resorted to unless Captain Sassoon himself agreed to their being used.

Captain E. V. Sassoon: I would like to inform the Honourable Member that I would not dream of arrogating to myself the knowledge that everything I said must be correct, but I thank the Honourable Member for considering that I would only suggest points that would be reasonable.

Mr. T. E. Moir: Sir, I now turn to the real issue which we have to face. In this paper which was circulated to us this morning we come up against the cardinal fact that we have still a deficit amounting to 368 lakhs, and as far as I can gather from the discussion, everybody is agreed that that deficit must be covered. I am not sure whether any one in the House dissents from that view. I take it that no one does, and therefore the only question that remains is now, how that deficit is to be covered. At present the proposal made by the Government, namely, to increase the

salt tax from Rs. 1-4 to Rs. 2-8 a maund holds the field (*Honourable Members:* "No.") I do not say that other proposals have not been put forward, or that these other proposals are not deserving of consideration, but I notice that not one proposal has been put forward in one quarter which did not immediately evoke a storm of protest from another quarter of the House, and therefore from the practical point of view the proposal that does hold the field is the proposal of the Government of India. (*Sir Deva Prasad Sarvadhyakary:* "Which has evoked a storm in all parts of the House.") Now, Sir, we have had an expression of that general opposition to the salt tax, but it has been nothing more than general. The question has not been presented from the financial point at all. Now we all know what is at the back of the minds of Honourable Members who oppose the salt tax. They frankly admit that it is not on financial grounds that they oppose the proposal of the Government (*Mr. Jamnadas Dwarkadas:* "No, no one admits that") but it is on, shall I call it, political grounds. (*Mr. J. Chaudhuri:* "Economy.") Now Sir, I think it would be well if somebody said a word on the salt tax from the financial point of view. As I have said, it at present holds the field, and at any rate the salt tax does present certain advantages. In the first place it is certain. In your financial machinery there is not a single tax that offers such an element of certainty as the salt tax. I think that will be generally admitted

Mr. President: If the Honourable Member proposes to discuss the merits of the salt tax, I think he had better reserve that until we come to clause 2. He is aware that I have allowed a general discussion to proceed in spite of the appeal made by the Finance Member and Sir Campbell Rhodes; but I must ask him not to go into much detail regarding the merits of the salt tax or its particular effect on the economic life of the country.

Mr. T. E. Moir: Sir, in accordance with your ruling, I shall, of course, reserve any remarks I may have to make from that point of view to a later stage. But, Sir, there is one point which I do wish to bring to the attention of certain Honourable Members of the House. My Honourable friend Mr. Kabeer-ud-din Ahmed I think rather objects to an official Member attempting to express his views or attempting to influence the House in any way. Now, Sir, it is perfectly true that I have got no constituency, but I can claim that I have a mandate and my mandate is derived from the Madras Presidency. The mandate which I have received from the Madras Presidency is either to secure in this Budget a reduction of our contributions or at least a Budget which will hold out to the Presidency to which I belong an immediate prospect of relief. Now, Sir, if we allow this Budget to pass with another deficit, I would ask Honourable Members who, like myself, come from that Presidency, what hope they would have of relief. And, remember, relief to us depends not on temporary expedients such as I have referred to but on the real gap between recurring expenditure and recurring revenue being filled up. Temporary expedients you cannot repeat, you exhaust them; and, therefore, so far as the Madras Presidency is concerned, what we require is a Budget which is really balanced, not one which is merely balanced on paper. Now, Sir, I have, I am afraid, more than once wearied the House on this subject, but still I have that mandate, and in loyalty to that mandate I must express my views. We may be defeated again; the result of our deliberations to-day may be that the deficit is not closed—let me repeat, the real deficit—but in that case I shall go back to the Madras Presidency and say, we have still to keep up

[Mr. T. E. Moir.]

the fight, success may yet attend upon our efforts; but, if that situation arises out of what I should consider the ill-judged and misguided action of the representatives of that Presidency, if they do not see that the interests of their Presidency is bound up with the financial solvency of the Government of India, I shall go back and say we are defeated and we are defeated finally. I shall not attempt in any way to minimise the fatal nature of that defeat. We, from Madras, have for the last two years by every possible means been urging upon the Government of India the necessity of balancing their Budget and of beginning the process of reducing the provincial contributions, a question in which not only was my own province concerned, though I can only speak for it. We have been urging them to do that. They have now placed before the House a balanced Budget and, if we from Madras take any share in any action which will convert that balanced Budget into an unbalanced one, then we have no longer any claim upon the Government of India at all. They have done their best and we have failed them at the last moment. I sincerely hope that no Member who represents the Madras Presidency will incur the reproach that he has misrepresented his own Presidency here and failed to take advantage of an opportunity, which it seems to me may never recur, of making assured that demand which all its representatives for the last two years have urged upon the Government of India.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, much as I wished to desist from taking part in this general discussion, the remarks of the last speaker have called me on my feet. I do not wish to follow the example of assuming the role of a monitor either to individuals or to the Assembly, or to speak on behalf of Madras, which, Sir, is rather hydra-headed and it is very difficult for anybody to say that he represents Madras.

Sir, I do not recognise that this Assembly is responsible to make up the deficit which the Government of India think there ought to be. I quite realise that as far as possible this Assembly should try to balance the Budget, namely, the Budget it has framed and not the Budget which somebody else has framed, however responsible he may be. Sir, if the Honourable Mr. Moir thinks that Madras will welcome a balanced Budget by the imposition of a salt duty, then he is very much mistaken.

Mr. T. E. Moir: On a point of order, Sir. It is perhaps necessary that I should deal with that point. I am informed from Madras that responsible opinion in Madras regards this question of a reduction in the contributions as of such paramount importance that to secure it the Madras Presidency is prepared even to accept the burden of an additional salt tax.

(Honourable Members: "No, no.")

Rao Bahadur T. Rangachariar: I deny the authority of those Honourable gentlemen in whose name my Honourable friend speaks. I know Madras much better than Mr. Moir does. Sir, I can speak in the name of Madras. I said I would not be tempted into any such path. Sir, I may say that the people whom I know and they are a vast community would not relish any balanced Budget with the salt tax imposed. Sir, Madras officials—honoured names there have been, may I quote the name of Mr. Gibson for the recollection of Mr. Moir—Madras officials have always stood against the imposition of the salt tax. They know the value of salt to the agricultural population of that Presidency, and it is idle to pretend

I turn now to another point. I have heard some of my Honourable friends more than once in the course of the last ten days talk about the temporary financial stringency, and these temporary difficulties we are in. I wish I could say that I believe that these are necessarily temporary. But can we honestly say so?

Rao Bahadur T. Rangachariar: What about the military?

The Honourable Sir Basil Blackett: The military expenditure has been cut down this year from Rs. 67½ crores to Rs. 62 crores.

Dr. H. S. Gour: You must bring it down to Rs. 20 crores.

The Honourable Sir Basil Blackett: The figure given by the Inchcape Committee is Rs. 57½ crores. (A Voice: "Without altering the policy.") On the contrary, after making considerable reductions in the number of the troops, British and Indian. (A Voice: "You cannot change your policy.") I beg the Honourable Member's pardon. These estimates are framed on the assumption that the reductions agreed to by His Excellency the Commander-in-Chief and agreed to in principle at Home are carried out.

Rao Bahadur T. Rangachariar: May I point out that in Waziristan and on other temporary works we are spending more than 3 crores of rupees which will not be a recurring thing.

The Honourable Sir Basil Blackett: I was just coming to that point. It is perfectly true that there are non-recurrent items of expenditure in the Army estimates and I shall be disappointed—I will not put it higher than that at the moment—I shall be much disappointed if the Army estimates are as high as 62 crores next year, but there are a good many other considerations besides the fact of these non-recurrent items in Waziristan. There will be certain terminal charges—if there is no lag there will be terminal charges of rather heavy amounts I am afraid to meet in 1924-25. Over two crores of the reduction this year is purely a non-recurrent reduction, it is a reduction in stores. By living on existing stores we are able not to buy new ones so as to reduce our total reserve—a most important reduction of extreme value, but it does not enable you to look forward to recurrent reduction next year. When you have worked your reserves down to your minimum you have to go on replacing. So far from being a recurrent saving that is a non-recurrent saving which will have to be made good next year. Now, there is another item in our estimates to which to some extent the same considerations apply. The three crores of our reduction in Railway expenditure this year is a reduction of programme revenue. I do not want to go into the point, but obviously that is a postponement of expenditure—I do not want to beg the word by saying necessary—it is a postponement of expenditure which has to be made good if our Railways are to earn us interest. We cannot live on that sort of thing.

Then, as we stand, we have got a deficit of Rs. 3½ crores uncovered. Have you any real hope, real certainty that next year without any increase of taxation that could be covered? I do not say there is no hope, but is there any certainty? We have had two good monsoons and on the law of averages can we really expect two more or one more this year? People talk glibly about revival in trade. There has been an improvement in trade, but there can be no permanent, long-enduring improvement in trade while the French are in the Ruhr, while the whole of continental Europe is

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in the state in which it is, while our customers are unable to take our goods. There is no certainty of a surplus next year on the existing basis of taxation and I am afraid I must add there is a probability of a deficit unless we cover it by additional taxation this year. That is where the great merit of the Government's proposal comes in on financial grounds. The proposal would bring in $4\frac{1}{2}$ crores of additional revenue this year covering our deficit and leaving us a small surplus for contingencies. A year after it would add six crores to our revenue—an addition of $1\frac{1}{2}$ crores. That is a very important point, because with that duty imposed we shall be next year in a position in which I am prepared to say in the absence of very adverse circumstances the recurrence of a deficit is most unlikely. On the contrary there is every probability—given a few favourable turns of Fortune's wheel—that we may have quite an appreciable surplus, to do what we want to do with our surpluses. I shall come to what we want to do in a moment. But before I go on to that I want just to deal with some of the various suggestions that have been made for alternatives. As my friend from Madras said just now, the fact about all these alternatives is that they seem to secure no more unanimity than the salt tax. If the Government and a certain number of Members are opposed to the refusal of the salt tax, there is so far as I can see a complete absence of any kind of unanimity among Members of this House as to any substitute. What are the substitutes that have been suggested? I take for this purpose the order paper containing the amendments so that I may deal with some of them. I do not think that any suggestions have been made to-day which were not put forward before. I will take the duty on silver for which my friend, Sir Montagu Webb, holds a brief. This proposal has been put forward in each of the last two years and after discussion it was not agreed to. I do not mean that it has been voted against, I am not sure of the facts. I believe it was voted against one year. The difficulty about the duty on silver is that, first of all it is most undesirable to have a duty on the precious metals which come in and go out and thereby play a most important part in balancing imports and exports and exchange. A duty on precious metals is open to enormous theoretical difficulties. But I do not want to delay the House with them, if they agree, as I think they do, that it is a fact. The next difficulty is, although it is quite true we had a duty on silver some time, it did not contain any provision for a rebate on export. It is really, we are convinced, out of the question to introduce a duty on silver now without giving a rebate on export. Otherwise we shall play havoc with our exchange position. Silver must be able to go out freely to balance the position when the exchange is temporarily against us and we are in need of that support. Assuming that to be the position the yield is extremely uncertain. I begin with the year 1916-17. I do not begin with that year for any reason except that it seems to be going far enough back. In that year I see there was a net export of 12 million ounces. With a duty of let us say an anna, we should have lost 12,000,000 annas net in that year. In 1918-19 there was a small import. In 1920 there was again a small import. In 1921 it was fairly large, 21 million ounces of net imports. In 1921-22 it was 61 million. We should have got a large revenue that year. In 1922-23, for the first ten months we have 61 millions. We should have got considerable amount here. But the mere fact that we have just had two years of large imports here means it is quite possible that if you impose a duty this year, we might find that it has brought a loss and not a gain. In any case the amount that we can

count on its bringing in this next year would be very small. I do not think the House will wish me to spend more time on that. It has been put forward in one special quarter but it has not very strong support. Next I take the export duty on petrol. Here I should like to observe that it is rather striking that among the suggestions that have been put forward export duties hold the foremost place. An export duty on petrol has been suggested. It has also been suggested that we should have an export duty on jute, and the export duty on hides and skins, which was our one small concession to the overburdened tax-payer, is opposed. I am reminded of the words of some one to-day, that income-tax is also a burden on the tax-payer. I was much interested to hear that. I wonder whether that is true of any other tax. The reason why the export duties are opposed is, I think, because it is rather difficult to see who the tax-payer is and on whom the burden falls. They sound popular in theory; they are dangerous things in practice as everybody knows and I think there was a general recommendation in the Fiscal Commission's report against export duties. Now, we have already had more than one debate on the question of an export duty on petrol. Opinions have differed but the Government are convinced that it would bring in a very small amount, nothing like the 70 lakhs which has been spoken of, while it would re-act very severely on the price, possibly, of petrol and certainly of kerosine in this country. If that is so, if it touched the price of kerosine, that would very quickly have an effect on the pocket of the very poor, much heavier than the salt tax, in spite of the fact that it would bring in much less than one-tenth of the sum expected from the other into the revenue.

I will leave my Honourable colleague the Member for Commerce to deal with the proposal not to reduce the export on hides and skins. That is a speciality. But obviously it is not really a question of covering our deficit or not however we deal with that. The reason that was put forward was the fact that it is regarded as essential in the interests of an existing export trade.

The import duty on iron and steel is the next suggestion. The House has just agreed that a Tariff Board ought to be set up. A Tariff Board is about to be set up and its first duty will be to look into the question of how to turn our unscientific revenue tariff with its protective results into the beginning of a protective tariff. Is this the moment to make a sudden change in your iron and steel position? (A Voice: "There is no difference of opinion.") I do not think there is any unanimity in this House on that subject. (A Voice: "For revenue purposes.") For revenue purposes! If it was imposed on all the railway material that was bought by the Government, it might bring in a considerable sum; but I do not think it would improve our net railway revenue. It is really a very complicated question, but for revenue purposes, a duty of the size that is suggested is out of the question; it is so obviously an important protective duty, protecting or otherwise all the numerous industries that depend on iron and steel—it is obviously a thing you cannot jump into. The next and last suggestion is the one that has become associated with the name of Sir Gordon Fraser. It has rather lost some of its pristine virtue in the course of discussion in the House. It was originally a proposal for half an anna in the rupee on all receipts from customs, excise and income-tax,— $\frac{1}{32}$ surcharge on all those receipts. When it was first put forward, I stated at the time that it was a novel idea to me and it seemed to be worth consideration. Now as an expedient, it is one to which there are

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considerable objections, but if it was really part of a final settlement of the deficit, however objectionable it might be, provided it is limited to 1/32, say 3 per cent., it is worth consideration. But there is no unanimity in the House on that question; but supposing that we agreed, how should the balance of the deficit be covered? It would bring in 2 crores if it was imposed in full but I agree with my Honourable friend, Mr. Seshagiri Ayyar—I think it was he—that the objections to imposing it on cotton imports and cotton excise are very great. I have worked out the figures, and I come to the conclusion that if you impose it on the cotton imports and excise, whereas the whole of the proposal of Sir Gordon Fraser would bring in only 2 crores per annum as against the 6 crores in a full year which is obtainable from salt, it involves an additional expenditure of almost exactly the same number of annas per annum as the increase in the salt tax for a poor family. If you take a family, an average family of 4, and you impose a 3 per cent. duty on cotton piecegoods, you get something between 11 and 12 annas for a family per annum, which is the additional charge you are imposing on them by their share in this cotton and cotton excise duty, which is very much the same as salt.

Mr. Jamnadas Dwarkadas: Sir, we discovered in the course of the evidence before the Fiscal Commission that not more than 15 per cent. of the population use imported cloth, imported goods.

The Honourable Sir Basil Blackett: There are two possible answers to that. I was talking of an increase both of the excise and customs, but I will say this that I do not think that the manufacturer here gets the whole benefit of the difference between the customs and the excise duty.

Mr. Jamnadas Dwarkadas: I am very sorry to interrupt the Honourable Member. But if he relies on his own admission in the Financial Statement, he will find that a year of depression has set in, and the prices will be low, whether the price of foreign cloth is high or not.

The Honourable Sir Basil Blackett: Sir, I am not quite sure what my Honourable friend, Mr. Jamnadas Dwarkadas, is driving at, but I think my statement holds that an increase even to the small extent of this sur-charge that is suggested, if it is imposed on the cotton excise and on the cotton customs, will have at least as harmful an effect on the budget of the very poor as the salt tax. (*Mr. Jamnadas Dwarkadas:* "Cotton excise, yes.") I think that I need not argue it any further with my Honourable friend. If you begin to make exceptions, the most popular exception in this House seems to be the income-tax. You can cut out the income-tax. (*Voices:* "No, no.") I think the House wants to cut out the income-tax; they want to make an exception to the proposal by cutting out the sur-charge on all income-tax. There is sufficient absence of unanimity in the House to justify me anyhow. That leaves you only the Customs. If you begin to make exceptions in the Customs and still retain it at only half an anna in the rupee, the maximum you would get from it is something under a crore. It is true it has been suggested that it should be increased to an anna in the rupee. What was a dangerous and undesirable expedient then becomes a thoroughly bad tax. The original suggestion was half an anna in the rupee, but if you do more it means you are simply increasing your Customs duty, and if you are going to do that, I think it is desirable that you

should do it scientifically. I do not want to go arguing about the salt tax; I should be out of order if I did, and I have possibly been led a little further than I ought to have been in dealing with that point. The position remains that the salt tax is the proposal put forward by the Government and it is thoroughly unpopular. I would like, however, to quote two remarks that I heard during the votes for Demand Grants. One, the House will remember, by my friend, Mr. Ginwala, was that the salt tax has been universally condemned not on economic but on political grounds. Then we have a rather pretty commentary on that statement coming from an Honourable Member from the Punjab: "If anything will help non-co-operation it is the income-tax department," he said. Are we not in the position that all taxation is unpopular and the Government has made one unpopular proposal. A large number of equally unpopular proposals have been put forward by the House. There is no kind of unanimity as to which one of them we should accept. (*An Honourable Member:* "Accept the suggestion of the majority.") Is there a majority for any good tax that would cover our deficits? (*Dr. H. S. Gour:* "Customs.") I really do not think Honourable Members can say there is. If that is so, we come back to the salt tax, which is what the Government have proposed. Now we have proposed this because we want a really balanced budget this year, and if we can get it, real surpluses in the years to come. The salt tax does give us hope of obtaining such a result. In the absence of very adverse circumstances we surely could hope on that basis that the budget for next year and the year after would certainly balance, and given a few favourable results among the possible contingencies, we ought to have a balance sufficient to begin to do some of the things we want to do. Honourable Members in this House have referred again and again to expenditure on education and public health and similar services. Who spends money on education and health and similar services? It is the Provincial Governments. If you want to improve the position of the nation-building departments (I must say I do not like the phrase), the way to do it is to improve the Provincial budgets.

Dr. H. S. Gour: Let them stew in their own juice.

The Honourable Sir Basil Blackett: If they stew in their own juice it seems to me the 'nation-building' departments will stew in their own juice also. The Government's policy is, as soon as it has a surplus, to make a beginning in the reduction of the Provincial contributions. That is the Government's policy and it means to follow that policy as soon as it has a surplus. Obviously if it is going to have a deficit this year from the action of the House, it is not getting much encouragement in its policy. If the House is really anxious to secure an expansion of the 'nation-building' services, let it take action which will improve the position of those Provincial budgets. I do not confine myself merely to the provincial budgets. We have had years of expanding taxation. We may not, with that liability to the provinces, be able to look forward at a very early date to the converse, namely, reduction of taxation, but among those taxes there are some that certainly want readjusting. We want to have money to consider the tax side of our Budget, not from the point of view of what we must have but a little bit from the point of view of whether this or that tax is damaging this or that interest. We want to begin to make a reduction in some of our taxes, and, to do that, we want a steady surplus of income. I appeal, therefore to the House, I appeal to every Member of it and to all who are interested in Education and Public

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Health, to all who are interested in the development of the industrial life of the country, to come to the support of Government in this matter. I made an appeal, which was listened to in a way that encouraged me, at the time that I introduced the Budget, that we should all work together. As a matter of fact, we have all been working together but we have got rather fissiparous, we have all got off a little bit to our own particular nostrums of doing it. Let us stick to this, that we must balance the budget, and we can balance the budget if we are prepared to make the sacrifice of voting for increased taxation if it is really necessary to do it. I do appeal to the House, let us come together and cover this deficit by our own efforts.

Sir P. S. Sivaswamy Aiyer: May I ask the Honourable Member whether the provision for maintenance of the fighting forces makes any allowance for the proposed reduction of the fighting units?

The Honourable Sir Basil Blackett: It assumes that all the reductions that are proposed by the Retrenchment Committee and were agreed to by His Excellency the Commander-in-Chief will be put into force as soon as possible. I am not, I am afraid, sufficiently familiar with the details to answer this question beyond that, but it is on the assumption that the recommendations of the Retrenchment Committee are accepted in full that those estimates were framed.

Sir P. S. Sivaswamy Aiyer: May I know when it is expected to come into force? I find that the provision for the maintenance of the fighting forces shows that the fighting forces are calculated at exactly the same strength as last year.

The Honourable Sir Basil Blackett: I think that our difficulty was that we were not able to show any other figures than the existing ones in the estimates, but it does not mean that no changes will take place during the year. I think the position really is this that, for this year, the lag and the terminal charges owing to the necessary postponement in effecting the reductions would balance the reductions that we are able to make during the course of the year. It is a method of showing the figures, but I do assure the House—and there is nothing hidden in what we have done—that we have prepared those figures on the basis that the whole of the Inchcape Committee's recommendations are put into force at the earliest possible moment.

(Several Honourable Members moved that the question be now put.)

The motion was adopted.

Mr. President: The question is:

"That the Bill to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the duty leviable on certain articles under the Indian Tariff Act, 1894, to fix maximum rates of postage under the Indian Post Office Act, 1898, to amend the Indian Paper Currency Act, 1923, and to fix rates of income-tax, be taken into consideration."

The motion was adopted.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock. Mr. President was in the Chair.

POINT OF ORDER.

The Courtesy of Debate.

Mr. President: Before we proceed to the consideration of the clauses of the Finance Bill, there is a matter to which I wish to draw the attention of the Assembly.

When a Member has spoken, the courtesy of debate requires his presence in the Chamber during succeeding speeches. As Honourable Members will have observed this morning, a speech, of a somewhat pointed, personal and forceful character was delivered by the Honourable Member from Bombay, Captain Sassoon. The Honourable Member then left the Chamber and therefore committed, perhaps inadvertently, an act of parliamentary discourtesy. In view of the character of his own speech it was peculiarly incumbent on Captain Sassoon to remain in his place till the luncheon adjournment.

I do not wish it to appear that the censure of the Chair falls too heavily on the individual Member in question. He is entitled to the benefit of the First Offenders Act; but I wish to establish now the proper practice that the courtesy of debate requires the presence in the Chamber, of a Member who has made a speech during succeeding speeches—especially if that speech is of a somewhat personal character, as in the present instance.

Mr. K. Ahmed: Is that the practice in England in the House of Commons?

Mr. President: Certainly.

Captain E. V. Sassoon: Sir, no one can regret more than I do the fact that owing to an engagement which I had to keep I was not present when the Honourable Member replied to my remarks. I can assure the House further that I, wrongly apparently, considered that the debate would have continued beyond the luncheon interval and that the reply would not be forthcoming till after that interval: otherwise, Sir, I can assure you and the House that nothing was further from my intention than to avoid being here when that reply was made.

CONSIDERATION OF CLAUSES OF BILL.

Mr. President: I think it would be convenient for the Assembly to proceed immediately to the consideration of clause 2, postponing consideration of clause 1 (Short Title, Extent and Duration) till the substantive proposals of the Bill have been considered and decided.

POINT OF ORDER.

Scope of Finance Bill.

The Honourable Sir Malcolm Hailey: Sir, in the absence of my Honourable friend the Finance Member, as we are now taking up the clauses of the Finance Bill, I am compelled to ask you, if you could conveniently give us your ruling as to the admissibility of a number of amendments that have been tabled and are before the House? I refer of course to the point whether it is possible for non-official Members to put forward proposals involving increases of taxation.

Sir Campbell Rhodes: Sir, before you answer that question, I should like to ask you whether clause 67, sub-section (2), of the Government of India Act has any bearing upon this subject. It reads as follows:

"It shall not be lawful without the previous sanction of the Governor General to introduce at any meeting of either Chamber of the Indian Legislature any measure affecting the Public Debt or public revenues of India or imposing any charge on the revenues of India."

Mr. Jamnadas Dwarkadas: I wonder if again I may call to the assistance of those who have given notice of amendments the precedent established by this House in the matter of amendments of the character referred to by my Honourable friend, the Home Member. You had an instance year before last and last year; the Honourable Members from Karachi, Mr. Price in the first instance and afterwards Sir Montagu Webb, introduced an amendment to have a silver duty; that was thoroughly discussed. Whatever the fate of it was I am not concerned with at the present moment, but it was allowed to be discussed. I myself in the year 1921 moved an amendment to the effect that an import duty on yarn should be levied; that was also allowed to be discussed. Then last year, if you look at the debates, you will find that instance after instance can be found of Members having introduced amendments which were fully discussed and no point of order was raised. Therefore, Sir, I hope that the House, having been entitled to move amendments in the last two years, the practice will be continued this year, especially when the suggestion for an alternative is, I should say, inevitable.

Dr. H. S. Gour: May I also, Sir, in this connection point out that section 67 (2) to which my friend, Sir Campbell Rhodes, has referred merely deals with the introduction of any measure, an independent measure, and does not rule out an amendment to an existing measure introduced by the Government and under discussion by this House.

The Honourable Sir Malcolm Hailey: I have only asked of course for your ruling on this matter, and in the course of giving your ruling you will, no doubt, interpret for us the meaning of the words to which Dr. Gour has referred. But with reference to what Mr. Jamnadas Dwarkadas has said, I may remind him that the majority, if not all, of the motions to which he has referred just now were motions for the transfer of a particular article from one section to another of the Schedule.

Mr. Jamnadas Dwarkadas: That is a technical distinction.

The Honourable Sir Malcolm Hailey: There are of course on the paper before us motions which do not refer to the transfer of articles from one section to another of the Schedule, and indeed which refer to Acts which are not before the House at all. I merely wish to point this out to you, before you give your ruling.

Mr. President: There are really two points of order before the House. The first raises the question of the scope of the Finance Bill, and the amendments which will be in order in respect of its scope. The Finance Bill recites the Acts proposed to be amended. Acts not there recited will not be open to amendment by the House.

The second point is the question whether amendments proposing increases in taxation will be in order. The point raised by Dr. Gour seems to me to be one for legal argument and interpretation as to whether a measure, in the words of the Statute, must be held to cover an amendment or not.

On that I am not prepared to pronounce, but if it were held that the word 'measure' did include amendment, then I think the Chair would have to rule that that section could not be held to apply to the ordinary process of amendment because in that case it will not only rule out motions to increase a tax, but also motions to reduce it. Therefore I put that on one side.

There being nothing in the Rules and Standing Orders relating to amendments to the Finance Bill proposing increases of taxation, we are, I think, thrown back upon the procedure of the House of Commons upon which this procedure is based. I think it is obvious that the Imperial Parliament intended to confer the same powers and the same restrictions regarding the levy and appropriation of public revenues which it itself enjoys. Neither the House of Commons nor the Legislative Assembly is empowered to increase a demand for a grant. The House of Commons is equally forbidden to increase a tax. That general principle has been laid down many times, and I think that it is one which we ought to apply here. Therefore those amendments which propose increases of taxation will not be in order.

Sir Montagu Webb (Bombay: European): May I point out that the effect of this ruling will be this: This House is asked to consider legislation to provide the money for carrying on the work of administration next year, yet some of these amendments of the Tariff Act cannot be discussed as they add to the revenue. If we have not the power of proposing alternative variations in the Tariff Act, then this House has only power to cut down proposals for revenue, and produce deficits.

Mr. President: I think I can meet the Honourable Member's point at once. I have suggested in a previous ruling this morning that the discussion on clause 2 which increases the rate of the salt duty shall proceed on the basis not merely of the salt duty itself but of alternatives to it, and if in the course of the debate it is clear that there was—I shall not say unanimity—but a general agreement that a certain alternative is preferable to the salt duty, then that alternative could not be made effective in the present measure except on the motion of a Member of the Governor General's Executive Council. It is not that the proposals are excluded from discussion, but that they cannot be moved on a motion of a non-official Member. That is in strict accord with parliamentary practice in the House of Commons where a motion to propose an increase of tax must be made by a Minister of the Crown.

Dr. H. S. Gour: May I, Sir, in this connection inquire whether if the Government proposal is for the decrease of the tax, as for instance, under clause 2 of section 3, an amendment maintaining the *status quo ante* would be in order.

Mr. President: The existing charge is in the Indian Tariff Act as now on the Statute Book. Therefore, that item could not be held as a proposal to increase the tax.

Rao Bahadur T. Rangachariar: Sir, if I heard the Honourable the Leader of the House aright, he made a distinction between new proposals and proposals which merely tend to transfer one item from one part of the schedule to another, but the effect of the transfer will be to increase the duty. Would that be in order, Sir?

Mr. President: No; that falls under the ruling too.

Mr. Jamnadas Dwarkadas: With your permission, Sir, I will say this. Take an article which is at present classed under the 15 per cent. tax. But if any Honourable Member suggests that this article should be transferred from the ordinary list to the list of articles of luxury, will it be open for him to do that, Sir?

Mr. President: The point is somewhat hypothetical. I should like to deal with it as a specific instance, but I think the general principle of the ruling must be held to apply there also.

Rao Bahadur T. Rangachariar: For instance, there is also a proposal of mine to transfer Steel and Iron from one part of the Schedule to another part of it, but in the same schedule. But the difference will be in the percentage which will be fixed upon it, for one is, I believe, 15 per cent. and the other is 20 per cent. It is really the Government amendment, and I propose another amendment with reference to those three items which are under consideration.

The Honourable Mr. O. A. Innes (Commerce and Industries Member): I should like to point out that the amendment proposed by Government in regard to the items mentioned by Mr. Rangachariar is merely to alter the wording in accordance with the Machinery Committee's Report. We have not proposed any alteration in the rate of tax. May I point out, Sir, that from the point of view of the Commerce and Industries Department, and of the trade and commerce of the country, it seems to me to be a very dangerous precedent that a proposal to increase the duty on very important classes of imports like that is liable to be sprung upon the trade and commerce of the country at two days' notice.

Sir P. S. Sivaswamy Aiyer: Sir, in view of the decision which you have just given and which you have told us represents the practice in the House of Commons, I do not propose to argue this point. But I just wish to make one last appeal to the non-official Members of the House, and it is this; that, unless we can come to some sort of agreement among ourselves as to what alternative or substituted tax we shall have and unless we cease to ride our individual hobbies to death. Unless we can come to an agreement among ourselves, we shall not be in a position to come to terms with the Government and make some definite suggestions to the Government, so that they may initiate the necessary constructive proposals themselves. We shall then be landed in very undesirable consequences. The result of our failing to reach anything like a fairly unanimous and on the whole acceptable conclusion will be that we shall not be able to introduce any one of the alternatives or get the Government to consider it, and, on the other hand, we may succeed in throwing out the proposal for enhancement of the duty on salt but throwing it out merely for the pleasure of throwing it out without succeeding in getting it out of the Statute Book. The result will be that, if we reject the salt tax and cannot constitutionally or in any regular manner get any alternative tax introduced, His Excellency the Viceroy will be obliged to restore it. (*Honourable Members:* "Why"?) That I think will be necessary. (*Honourable Members:* "Let the Government make other proposals.") There will be a deficit and I do not think it is reasonable for us to expect that the Governor General will or can contemplate with equanimity the accrual of another deficit for another year. The natural and the probable and reasonable result of our action in throwing out the salt tax without being able to substitute something else in its place, will be to have the salt tax restored and thus bring about the very result which all

of us are anxious to avoid. (*Honourable Members:* "No.") And I therefore, make, with all the earnestness at my command, an appeal to Honourable Members of this House that, if it were possible to arrive at something like a fair agreement by getting a little more time for discussion among ourselves, I would suggest, that the discussion of the details might be adjourned till to-morrow.

Rao Bahadur T. Rangachariar: In any event, we are not agreeable to the salt tax. If the Government will accept anything else.

Sir P. S. Sivaswamy Aiyer: Unless we can agree upon some alternative, unless there is a chance of that alternative proposal being carried, the Government will not see its way to putting it forward on their own responsibility. That will be the result. If we are able to tell the Government that certain proposal will be acceptable to the House as a whole then we may expect the Government to put it forward. If the Government cannot put forward a constructive proposal as an alternative and if we cannot do it constitutionally, then the results which I have pictured are bound to ensue. If the other Members of the House think that there is any prospect of any agreement by adjourning the House now and meeting together and considering this matter, I would move that adjournment. Otherwise, not.

Mr. T. V. Seshagiri Ayyar: May I say a word, Sir?

Mr. President: The original question was that clause 2 stand part of the Bill, since which an amendment has been moved that the debate be now adjourned.

Mr. T. V. Seshagiri Ayyar: May I say a word now, Sir? My Honourable friend is placing us in a very awkward and a very undesirable position by making a suggestion of this kind. We do not know what is in the minds of the Government. We wanted that certain things should be done as regards the salt tax. We also made constructive proposals, but on the motion of the Leader of the House you have ruled, Sir, that those constructive proposals cannot be discussed. If the Government brings . . .

Mr. President: I have not given any such ruling. These subjects can be discussed but they can only be carried into law on a motion by a Minister of the Crown.

Mr. T. V. Seshagiri Ayyar: I understood they can be discussed only if they are put forward by a Minister of the Crown.

Mr. President: The Honourable Member has forgotten the arrangement which we came to this morning. They can be discussed on the motion for salt tax as possible alternatives but they can only be made operative, that is, they can only be put into law on the motion by a Member of the Executive Council.

Mr. T. V. Seshagiri Ayyar: I have followed that. I am sorry if I have not expressed my meaning clearly. What I say is, no constructive addition to the taxation can be made unless it be by a motion made by a Member of the Government. That is what I understood the position to be. There is no use discussing the matter unless there is any chance of its becoming law, and therefore, it is for the Government to say and to suggest on what matters they are willing to take the sense of the House and on what matters they are prepared to see that that sense is carried into

[Mr. T. V. Seshagiri Ayyar.]

effect. There is no use of an academic discussion on a matter which cannot ultimately be given effect to. In these circumstances, Sir, the position taken up by my Honourable friend seems to be somewhat unfortunate. So far as one question is concerned, there is no difference of opinion, and that is upon the question of salt tax. After we have discussed that and come to a decision if my Honourable friend moves for the adjournment of the House for considering on what matters the Government want the decision of the House, then it would be timely. But upon this question of salt tax, there is no difference of opinion and there is no use adjourning the House just at present.

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, the Honourable Mr. Seshagiri Ayyar has been speaking for Members on this side of the House. I do not know whether he considers me on this side or on the other side.

Mr. T. V. Seshagiri Ayyar: I did not speak for you.

Chaudhri Shahab-ud-Din: Please listen. A number of Members in this House,—and I can say this without fear of contradiction—whatever may be the pretensions of those who are against the salt tax,—will vote for it, if they are assured that some other kind of tax is going to be imposed and accepted by the Government or by the House. Unless that question is decided satisfactorily, there are some who are not going to oppose the salt tax, and I may tell Mr. Seshagiri Ayyar that he is mistaken and should not count upon a number of Members on this side of the House.

Mr. T. V. Seshagiri Ayyar: We will see about it.

Chaudhri Shahab-ud-Din: If we are assured that such and such a tax is going to take the place of the salt tax, we may vote with those who are against the salt tax. But if it is meant that the salt tax must be thrown out first and then some other tax, which may not affect uniformly all tax-payers of India, shall be imposed, then not only I but a number of Members will oppose the salt tax. That is the position and apart from considering what the attitude of Government in this matter will be, that is the question to be considered. We are prepared to throw out the salt tax provided you are prepared to accept some other kind of tax and this must be settled first. We must decide upon the form and amount of the tax, and then and then alone some of us will be prepared to oppose the salt tax. Otherwise, we shall firmly vote in its favour, because we consider that the tax we impose must be a uniform tax, and affect every man equally in the land. In my opinion every one should contribute equally for the maintenance of internal peace and order and for protection from external aggression. Those people who say that the salt tax must be thrown out because it is a very hard tax, a very dreadful tax, have not given any reasons.

Mr. President: The motion before the House is that the debate be adjourned and the arguments brought forward by the Honourable Member must be addressed to that point. The real question is whether it is possible on the floor of the House now to decide whether a satisfactory alternative to salt tax can be found or not, and if it cannot be found on the floor of the House, it may not be found by an adjournment during this afternoon.

Chaudhri Shahab-ud-Din: For these reasons I strongly support the motion for adjournment moved by Sir Sivaswamy Aiyer.

Dr. H. S. Gour: Honourable Members must realise that we are on the threshold of a grave constitutional crisis. Consequently nothing that we say or do should be done in a moment of hurry. But at the same time, the Honourable Sir Sivaswamy Aiyer's motion for an adjournment would have been well-justified if we had received any encouraging nod from either the Finance Member or any other occupant of the Treasury Benches. All the possible avenues for taxation, all the possible substitutes have been threshed out outside the House, and presented on the floor of this House this morning for the consideration of Government. Sir Sivaswamy Aiyer has himself made a very constructive proposal, but unfortunately for Members on this side of the House the Honourable the Finance Member has categorically dealt with each one of those proposals and rejected them. I do not understand that the Honourable the Finance Member is in a position to reconsider his decision, and unless he is in a position to reconsider that decision, I do not think that we shall gain anything by acceding to the motion for the adjournment of the House. What possible forms of taxation remain to be discussed upon which Members may informally or formally put their heads together? The Honourable the Finance Member in the course of his budget speech and later on in the course of the budget discussion has very clearly indicated that he and other Members of the Government of India have explored every avenue as a substitute for the salt tax, and I can assure the Honourable the Finance Member and his colleagues on the Treasury Benches that we have not been remiss in our anxiety to find substitutes and the substitutes that we offered to him this morning appear to be the only substitutes possible for the salt tax. In this view, unless he is in a position to reconsider his rejection of the proposals made this morning, it seems to me futile to adjourn the House for a further consideration. The Honourable Sir Sivaswamy Aiyer has not made any constructive proposal other than the proposals made, discussed and rejected this morning, and unless we are in a position to have a fresh matter to discuss with the Members of the Government I do not think we shall be well-justified in asking the House to adjourn this sitting and go into the lobbies or elsewhere to discuss proposals of a nebulous character upon which individual Members may agree but the House may not. I, therefore, suggest that nothing will be gained and time will be lost in acceding to the motion made by the Honourable Sir Sivaswamy Aiyer.

Mr. J. P. Cotelingam (Nominated: Indian Christians): Sir, I think the proposal for adjournment made by the Honourable Sir Sivaswamy Aiyer is a constructive proposal. A number of recommendations were made this forenoon by various Members of this House in order that the taxes so recoverable may cover the imposition of the salt duty to which nearly almost all the non-official Members are opposed. I think, Sir, if the proposal of the Honourable Sir Sivaswamy Aiyer is accepted by the House, that will give all the non-official Members an opportunity to come to some unanimity in the matter of fresh taxation, which may meet with the approval of the Finance Member. I would, therefore, urge that the House agree to the motion for adjournment in order that we may have time to consult and come to some conclusion.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I feel that the situation is one which we must approach in a spirit of give and take. Unless that spirit is present, there is no use adjourning the House. When the Honourable Sir Sivaswamy Aiyer made his motion,

[Mr. Pyari Lal.]

I thought he had received some encouragement, some hint, from Government that they were prepared to accept any alternative proposal that was unanimously made by the non-official Members of the House; but from what Dr. Gour has expressed and suggested, it does not appear to be the case. Therefore, I think no good object will be served by adjourning the House at this time. The situation that would arise would be simply this. Supposing all of us agreed that instead of the salt tax some other tax or taxes should be levied, supposing we unanimously agreed to that proposition and we went to the Government with it, and the Government discarded it, what would be the result? All our labour would be simply lost. Therefore, unless the Government side are equally agreeable to any alternative proposal that we make, there is no use adjourning the House.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, most of the speakers to-day in joining this discussion have referred to "we on this side" or "we on that side" of the House, but, I will say, that we, in this corner of the House, do not approve adjourning the House for this purpose.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, my feeling is that we are almost unanimous with regard to surcharge of Customs and Income-tax. (*Voices*: "No; we are not; absolutely not.") At any rate, the majority of this House will accept it. There should be no difficulty then in removing the proposed enhancement of the salt duty. I propose that we do adjourn to come to some understanding. There is a possibility of our differences being very amicably adjusted.

The Honourable Sir Malcolm Hailey: I am afraid that Sir Sivaswamy Aiyer's proposal took the House somewhat by surprise, and perhaps for that reason some of my friends opposite did not at first welcome it. I will tell the House what our own attitude is on the question. I recognise that Sir Sivaswamy Aiyer put it forward purely on his own account, and purely out of that desire which he has always shown to arrive at a decision more satisfactory than is likely to be attained by controversy in the House or by voting in the division rooms. When the Honourable Finance Member addressed the House this morning it was clear that of the various alternatives that had been under discussion, no one course seemed to commend itself to every section of the House. Even this afternoon in discussing merely the question of the adjournment some differences of opinion on the suggested alternatives have begun to manifest themselves. I can certainly say that we feel on our side that it would be an advantage if the House could be given an opportunity of seeing whether those who are opposed to the proposals of Government cannot consolidate on any one alternative proposal. If that were done, at all events the air would be clearer; at all events we should know whether we had then anything before us which we could accept. For that reason, and because I believe that these questions often do yield to informal discussion when they prove intractable to discussion across the floor of the House, I would support Sir Sivaswamy Aiyer's proposal; if we could discuss the matter between ourselves even for an hour we might do good. Certainly I do not think that it would be a waste of the time of the House.

Mr. President: The question is that the debate be now adjourned. The motion was adopted.

The Assembly then adjourned till Five Minutes to Five of the Clock.

The Assembly re-assembled at Five Minutes to Five of the Clock. Mr. President was in the Chair.

Sir Campbell Rhodes: Sir, I beg to move the adjournment of the House until to-morrow.

Mr. President: I cannot accept a motion for the adjournment of the House, because the power to adjourn the House lies with the Chair. I understand from the Honourable the Commerce Member that the Home Member will make a brief statement before we adjourn. I understand it is the intention to ask the Chair to adjourn the Assembly now. I therefore propose to wait till the Home Member can be in his place.

The Honourable Sir Malcolm Hailey: We are grateful to you for allowing the adjournment this morning. We have, I think, made a certain amount of progress; though we have not arrived at accord, we have managed at least to define our positions more clearly. It is our general desire, Sir, that you should allow us a further opportunity of discussion by adjourning the House till the usual hour to-morrow.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 20th March, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 20th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

INTERMEDIATE CLASS CARRIAGES ON BOMBAY, BARODA AND CENTRAL INDIA RAILWAY.

598. ***Munshi Iswar Saran:** (a) Is it a fact that there is no intermediate class carriage on B. B. and C. I. Railway running between Agra and Cawnpore?

(b) Is Government aware that the absence of this class of accommodation is a source of great inconvenience and hardship to the travelling public?

(c) Will early steps be taken to provide this accommodation?

The Honourable Mr. C. A. Innes: (a) The reply is in the affirmative.

(b) Government have no information to that effect.

(c) The Railway Administration is watching the result of providing intermediate class accommodation on trains between Bombay and Viramgam before introducing this class of accommodation on other services.

Rai Bahadur Bakshi Sohan Lal: Is it also a fact that there is no intermediate or third class on the Bombay Mail running between Lahore and Peshawar?

The Honourable Mr. C. A. Innes: I do not think that that question arises, Sir.

POTATO TRAFFIC FROM FARRUKHABAD.

599. ***Munshi Iswar Saran:** (a) Is it a fact that Farrukhabad in the United Provinces produces a great deal of potato which is sent to other places in the country?

(b) Is it a fact that the increase in the railway rates is threatening to seriously interfere with the export of potato from Farrukhabad?

(c) Is it a fact that the short supply of wagons to the potato dealers in Farrukhabad between January and May produces great loss and hardship?

(d) Is it a fact that there is considerable dissatisfaction against the goods department at the Farrukhabad railway station?

The Honourable Mr. C. A. Innes: (a) The reply is in the affirmative.

(b), (c) and (d). Government have no information. Enquiry has been made and the result will be communicated to the Honourable Member in due course.

PRINCE OF WALES' SPECIAL TRAIN.

600. ***Mr. Mohammad Faiyaz Khan:** (a) Will the Government be pleased to state the cost of the special train made last year for His Royal Highness the Prince of Wales while visiting India?

(b) What has become of that special train?

The Honourable Mr. C. A. Innes: (a) His Royal Highness the Prince of Wales' special train was built at a cost of Rs. 9.26 lakhs (of which Rs. 6.12 lakhs represent the cost of material subsequently to be used for the ordinary purposes of the Railway for which it was originally obtained).

(b) The train was made up of eleven coaches which are being disposed of as follows:

One coach was sold to the Government of Bihar and Orissa for the use of the Governor of that province,

Six are being converted into ordinary stock for public traffic, and

Four have not yet been finally disposed of, but they will probably be used for additions or replacements of stock.

Mr. K. Ahmed: At what price have they disposed of it to the Government of Bihar and Orissa?

The Honourable Mr. C. A. Innes: I must ask for notice of that question.

EXECUTIVE MEMBER'S BOGIE CARRIAGE.

601. ***Mr. Mohammad Faiyaz Khan:** What is the cost of making an eight wheeler bogie carriage for the use of an Executive Council Member of Government of India?

The Honourable Mr. C. A. Innes: No carriage has been built for a Member of the Executive Council for many years. The existing carriages were built mostly at a cost of about Rs. 28,000 each. It is estimated that carriages of the same type, if built now, would cost about Rs. 50,000.

Mr. K. Ahmed: Is the cost of these carriages made for Members of the Executive Council votable or non-votable?

The Honourable Mr. C. A. Innes: No demand for money for building a carriage of this kind has been put before the Legislative Assembly or is likely to be put before the Legislative Assembly.

MUTUAL BENEFIT SOCIETIES IN MADRAS.

602. ***Mr. M. G. Mukundaraja Ayyangar:** Did the Government of India receive memorials, communications or written representations from the Secretaries of the several Permanent Funds in the Madras Presidency in January and February, 1923, that:

(a) the Mutual Benefit Societies earning small profits, sometimes much less than the taxable minimum in the case of other persons under the Finance Act, 1922, suffer a great deal by their being liable to pay income-tax at the uniform rate of one anna six pies in the rupee, whatever their income;

(b) rules may be framed prescribing the Mutual Benefit Societies which come under the Indian Income-tax Act;

(c) the provisions in the explanation to section 10 (2) (iii) of the Income-tax Act XI of 1922 be not made a dead letter by not framing any rules under the Act?

The Honourable Sir Basil Blackett: The answer is in the affirmative.

MUTUAL BENEFIT SOCIETIES: EXEMPTIONS UNDER INCOME-TAX ACT.

603. ***Mr. M. G. Mukundaraja Ayyangar:** (1) Is it a fact that representations were made by a large number of Mutual Benefit Societies in the Madras Presidency, requesting the Government to make under section 60 of the Income-tax Act exemption in the case of Mutual Benefit Societies, and make clause A, Part I, of III Schedule of the Finance Act, 1922, applicable to them instead of Part B?

(2) Are the Government aware that the Mutual Benefit Societies are not satisfied with the way in which their representations were disposed of?

(3) Are the Government also aware that the way in which these representations were disposed of, was against the assurances given by the Government in this House when the Income-tax Bill was under discussion last year?

(4) If so, do the Government propose to have rules under the Income-tax Act, to relieve these Societies from the hardship to which they are now subject?

The Honourable Sir Basil Blackett: (1) Representations were received from several societies asking the Government to make special arrangements under section 60 of the Income-tax Act.

(2) The societies were informed that action was postponed pending a decision of the High Court to which reference had been made at the instance of one of the societies as to whether profits of such societies are taxable.

(3) The offer of the Government to make special arrangements under section 60 was rejected by the Assembly which inserted instead the Explanation to section 10 (2) (iii) of the Act.

(4) I would refer the Honourable Member to the reply given to question No. 158 at the meeting of the Legislative Assembly on the 12th February 1923.

Rao Bahadur T. Rangachariar: Sir, with reference to the High Court case referred to here, is it not under the old Act?

The Honourable Sir Basil Blackett: I do not think so, but I am not certain of the facts.

UNSTARRED QUESTIONS AND ANSWERS.

REGISTRATION OF AEROPLANES.

240. **Mr. Saiyed Muhammad Abdulla:** Will the Government be pleased to state what steps are taken after the registration of aeroplanes to inform the fact to the District Officers or Political Officers concerned to give publicity in the areas where the aeroplanes are to be used?

Colonel Sir Sydney Crookshank: Up to the present no such intimation has been furnished. The Government of India are, however, prepared to communicate the registration of aeroplanes to the Local Government or Administration concerned, leaving it to them to take such action as they may deem necessary.

LEAVE OF MR. J. K. N. KABRAJI.

241. Mr W. M. Hussanally: (a) With reference to the answer given by the Honourable Finance Member to my question No. 359, at Simla, is the Government of India aware that Mr. J. K. N. Kabraji, late Member of the Legislative Assembly, was granted by the Government of Bombay privilege leave for 5 months and five days from 26th October, 1921; that after having enjoyed leave for 1 month and 28 days only Mr. Kabraji came to Delhi on 24th December, 1921, having been authorised by the Government of Bombay to attend the Delhi Session of the Legislative Assembly; that Mr. Kabraji attended the meetings of the Standing Finance Committee from 2nd January, 1922, and thereafter the whole Session of the Legislative Assembly up to 28th March, 1922; that Mr. Kabraji's request to the Government of Bombay to count as duty the period of such attendance has been refused by that Government in their letter No. S.-20-2, dated 7th April, 1922, and again in their letter No. S.-20-2, dated 13th November, 1922, even after the answer to my question No. 359 had been communicated to that Government and without giving reasons for disregarding the ruling of the Government of India; and that Mr. Kabraji has consequently enjoyed only privilege leave for one month and 30 days excluding Christmas holidays, instead of 5 months and 5 days?

(b) Is it a fact that under the Leave Rules Mr. Kabraji could suffix Christmas holidays to the privilege leave enjoyed up to 23rd December, 1921, as he joined duty at Delhi after the Christmas holidays on 2nd January, 1922?

(c) In the circumstances does the Government of India propose to point out to the Government of Bombay that the period of Mr. Kabraji's attendance at Delhi must be counted as duty in view of the answer of the Government of India to my previous question?

The Honourable Sir Basil Blackett: I am having the matter investigated and will inform the Honourable Member of the results as soon as possible.

1ST AND 2ND CLASS RAILWAY TICKET CONCESSIONS.

242. Mr. Sambanda Mudaliar: (a) Will the Government be pleased to state the reason and circumstances under which the old system of issuing return first and second class tickets at reduced rates according to the practice that was in vogue some years back was discontinued by the authorities of the S. M. Railway and S. I. Railway?

(b) Having regard to the increase of rates, will Government be pleased to direct the authorities of S. M. Railway and S. I. Railway to adhere to the old system of issuing return first and second class tickets at reduced fares?

Mr. C. D. M. Hindley: (a) The system was discontinued not only on the Madras and Southern Mahratta and South Indian Railways but on all the other important railways. This measure was necessitated by the conditions brought about by the war.

(b) The Honourable Member is referred to the answer given to question No. 522 in this Assembly on the 9th March 1923.

INTERMEDIATE CLASS ACCOMMODATION ON MADRAS RAILWAYS.

243. Mr. Sambanda Mudaliar: (a) Is Government aware of the fact that there are no intermediate compartments in the mail and passenger

trains running between Madras and Mettupalaiyam and the inconveniences which middle class people are put to?

(b) Will Government be pleased to direct the early introduction of intermediate compartments in the said railways to facilitate travelling?

Mr. C. D. M. Hindley: (a) The reply is in the affirmative, but Government is not aware of the alleged inconvenience referred to.

(b) Government are informed that intermediate class accommodation is not provided in passenger trains as there is no demand for it.

Intermediate class accommodation will be provided in the mail trains as additional stock is built. The present stock is unsuitable for the purpose.

TAXES ON MOTOR CARS.

244. Lala Girdharilal Agarwala:* (a) Is it a fact that motor car owners who purchase a car for Rs. 4,000 have to pay taxes on it in the first year amounting to Rs. 1,297 and thereafter nearly 10 per cent. of the initial cost every year subsequently as printed in the *Pioneer* of Allahabad, dated 8th March, 1923, at page 14?

(b) Are the Government aware that the United Provinces Government proposes to impose a further tax of Rs. 180 yearly on each motor car?

(c) If the reply be in the affirmative, do the Government propose to do anything in the matter?

SWEETMEAT STALLS AT STATIONS.

245. Rai T. P. Mukherjee Bahadur: (a) Will the Government be pleased to state the procedure adopted in making settlements of sweetmeat stalls, etc., at important Railway stations?

(b) For how many years at a time are those stalls generally settled?

(c) Are those stalls sold at a public auction? If so, is there any rule for the purpose? And will the Government be pleased to lay a copy of the rule on the table?

Mr. C. D. M. Hindley: (a) and (b). The procedure varies on different railways both in regard to the charging of fees and the term of contract, but the ordinary practice is that a nominal charge or license fee is made to vendors and contractors licensed to sell sweetmeats, etc., on station platforms, and contracts are usually made annually. As stated by me on 16th March 1923 in reply to question No. 565 in the case of the North Western Railway, no license fee is imposed on vendors.

(c) The reply is in the negative.

RECEIPTS FROM STATION VENDORS.

246. Rai T. P. Mukherjee Bahadur: Will the Government be pleased to state the amount received every year from the station vendors?

Mr. C. D. M. Hindley: The Honourable Member is referred to the answer given on the 5th February 1923 in this Assembly to item (4) of Question No. 141 asked by Lala Girdharilal Agarwala in a similar connection.

* The reply to this question will be printed in a later issue of these Debates.

REDUCTION OF BRITISH TROOPS IN INDIA.

Mr. E. Burdon (Army Secretary): Sir, I understand that some misapprehension has been created in regard to the position which has actually been reached in the matter of the proposed reduction of British troops in India, and with your permission, Sir, I should like to have an opportunity of removing that misapprehension. Actually the position is as follows:

His Majesty's Government have agreed, both in principle and in detail, to the reductions in British Infantry. These amount to a total reduction of something over 5,000 British soldiers from the existing establishment. The other two important recommendations with regard to reduction of British troops were the reductions of Artillery and British Cavalry. The position as regards these is as follows:

The House is aware that the Inchcape Committee proposed and His Excellency the Commander-in-Chief agreed to, amongst other things, reductions which included the equivalent of an entire Brigade of Artillery. His Majesty's Government are at present considering whether that is the most suitable form which the reduction of artillery should take. I would put the matter like this to make it as clear as possible to the House. One method of effecting the reduction is to abolish an entire brigade, that is to say, we should then have 10 instead of 11 brigades of artillery. Another alternative form would be to retain the whole of the 11 brigades but to retain them at a lower establishment, that is to say, with fewer horses, fewer guns and fewer men, and the guns which would be put out of commission in peace time would be kept in store and would be available to be drawn upon in the case of mobilisation or emergency. A similar question is under discussion as regards the British Cavalry, that is to say, whether entire units should be disbanded or whether the units should be retained at a lower establishment; for example, you may have three squadrons instead of four squadrons. Now, the question which form the reduction should take is a purely technical military matter. Naturally every one concerned is anxious that the reduction should do as little harm as possible. On the other hand, whichever technical expedient is adopted, so far as the financial aspect of the matter is concerned, it is immaterial. The pecuniary saving would in either event be obtained, and I am able to inform the House that in principle His Majesty's Government have agreed, subject to the settlement of the form, to the pecuniary saving of the amount required being carried out.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, may I in this connection inquire how far His Majesty's Government have accepted the proposal formulated, if any, by the Government of India accepting the recommendations and Resolutions passed last year on the Esher Committee's Report, that the Army in India shall be primarily and solely maintained for the defence of India and not for any Imperial purposes; secondly, what were the recommendations of the Government of India regarding the reduction of troops in consequence of the Resolution of this House; thirdly, what were the reductions actually sanctioned by His Majesty's Government and what reductions were vetoed by His Majesty's Government?

Mr. President: I think the questions asked are important and should appear on the paper with notice.

Mr. E. Burdon: I am quite willing to answer them, Sir. The answer to the first part of the question—I am not sure I got the third part

correctly, perhaps my Honourable friend will repeat it later on—but as regards the first part—what action has been taken with regard to the Esher Committee Resolutions—well, a very long printed statement was laid on the table of this House not so very long ago, in response to a question; and that contains the information which the Honourable Member desires. With regard to the particular Resolution to which he referred, I may say that that Resolution has been accepted by everybody concerned, I am speaking of the Resolution regarding the maintenance of the Army in India solely for the requirements of India—that is the Resolution to which I think my Honourable friend referred. The second part of the question I am afraid has escaped me

Dr. H. S. Gour: The second part of my question was, what was the actual reduction recommended by the Government of India in the British troops in this country and what were the reductions actually sanctioned?

The Honourable Sir Malcolm Hailey (Home Member): That was not the Honourable gentleman's question. What he asked was, what was the reduction recommended as the result of the Resolution of this House. As a result of the Resolution of this House no reduction was involved and no reduction was recommended.

Dr. H. S. Gour: I modify the question now, Sir. What was the reduction recommended by the Government of India?

Mr. President: I think the result has proved that the Chair was right; the question must be put down with notice.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): If the Chair will permit me, Sir, may I inquire whether anybody either from India or from England representing the Government of India went and took part in the Brussels International Conference where it was decided only about two years ago that no nation should keep up an army incurring a cost of more than 20 per cent. of the revenues of that country?

Mr. President: That also had better be put on the paper.

THE BUDGET—THE INDIAN FINANCE BILL.

FINAL STAGE—concl'd.

Mr. President: The House will now resume the consideration of the Bill to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the duty leviable on certain articles under the Indian Tariff Act, 1894, to fix maximum rates of postage under the Indian Post Office Act, 1898, to amend the Indian Paper Currency Act, 1923, and to fix rates of income-tax.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I do not propose to move my amendment* unless you allow me to amend it in the terms in which it is put by some of my friends lower down. At the same time I admit that it might be said that since others have given notice of Resolutions on the same lines, I should have no precedence in a matter like this. Therefore if you would allow me to move one of the amendments of which notice has already been given, I will move; otherwise I withdraw my amendment.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I object to any such procedure.

* "Omit clause 2 of the Bill and re-number the subsequent clauses."

Mr. T. V. Seshagiri Ayyar I have not sat down yet.

Mr. President: The Honourable Member had better sit down now. If the Honourable Member does not move his amendment I must call on Mr. Jamnadas Dwarkadas.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I stand in the same position, Sir, as Mr. Seshagiri Ayyar; I prefer the other amendments.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): I move:

"That clause 2 of the Bill be omitted."

(Cries of 'No.') Sir, Honourable Members have already in their possession a copy of the Finance Bill containing clause 2. I shall not, therefore, read it for the information of the House. The purpose of my amendment is to move that the duty on salt be not enhanced. This has been the subject of prolonged discussion in this House, and Honourable Members will remember that a similar motion moved by Government on the last occasion during the last budget was considered, debated and defeated by the vote of this House. That was, Sir, also a deficit year. This year again we have a deficit, though a smaller one. The question arises whether we should or should not balance the budget. On that question Honourable Members have expressed their views with no uncertain voice in the course of general discussions. We are all agreed that the budget must be balanced, but we have suggested ways and means for balancing the budget. All our suggestions have been rejected by the Honourable Finance Member

Mr. Jamnadas Dwarkadas: May I rise to a point of order? Last year this was the ruling that you were pleased to give with regard to the amendments being moved. Mr. Spence asked:

"May I know in what order the amendments are taken up? There is no reference in the printed documents which we have in hand."

The President said:

"The Title and the Preamble to the Bill come last. Therefore the amendments on the first page cannot be moved just now. When I called upon Rao Bahadur Rangachariar to move his amendment to clause 1, he made a reasonable suggestion to postpone. In items 13 to 24 the motion that clause 2 be omitted is unnecessary—in fact it is not allowed by the Standing Orders—and therefore we come to item No. 25 where Mr. Joshi desires to substitute the words 'one rupee and four annas' for the words 'two rupees and eight annas' in the clause imposing the enhanced salt duty."

Sir, you ruled last year that it was not only unnecessary—amendments of this character—but that it was not allowed by Standing Orders. May I ask your ruling now whether this amendment is in order?

Mr. President: Which Standing Order does the Honourable Member refer to?

Mr. Jamnadas Dwarkadas: I have quoted from the passage that you yourself, Sir, referred to; this is from your speech

Mr. President: If the Honourable Member will read Standing Order 33, he will see that that ruling was given under a misapprehension regarding the scope of the existing Salt Act. The Honourable Member will see that the Standing Order No. 33 says that an amendment may not be moved which has merely the effect of a negative vote. I admit at that

time I thought it merely had the effect of a negative vote, and it was not, I think, till later in the debate that I discovered that it had a positive effect, because it restored salt to its original position; it was more than a direct negative.

Dr. H. S. Gour: Sir, I was going to say when I was interrupted that we have explored every possible avenue and made our suggestions for the consideration of the Government. All these suggestions have been rejected by Government. The sole question, therefore, that the Government wish to press for the consideration of this House is the question relating to the enhancement of the salt tax. Now, Sir, I should like clearly to define for the non-official Honourable Members the position regarding the enhancement of the salt duty. There can be no doubt that the whole country is unanimously opposed to the enhancement of the salt tax. We are the representatives of the people of this country. (A Voice: "Why was it imposed last year?") We have received a mandate in no uncertain terms that we should not vote for the enhancement of the salt duty. As representatives of the people, whatever may be your personal views, you are bound to carry out the wishes of your constituency. It would be in accordance with parliamentary constitution and tradition. In England a duty on tea was sought to be levied. Members of the House felt that a duty on tea would affect the general tax-payer in a very small way and that it would not perceptibly increase the price of tea, and yet they were bound to obey the mandate of their constituents and oppose the tea duty. I submit, therefore, it would be in accordance with parliamentary constitution and tradition for the Members of this House to carry out the behests of their constituents. If they do not follow the views of their electorates, they cease to represent them, and whatever therefore may be their personal views either on political or economic grounds, I submit, standing as we do here as representatives of the people of this country, we must and are bound to voice their views and give effect to their representations. In ordinary circumstances, that would, I submit, close the matter so far as we, the elected non-officials in this House, are concerned; but we have other reasons to oppose the enhancement of salt duty. It has been said by the Honourable the Finance Member and repeated by the other official spokesmen, that the duty on salt will fall very slightly upon the consumer since its incidence will be no more than three annas per head per annum. But, Sir, it cannot be forgotten, that to tax salt is to tax alike man and beast, because salt is a necessity not only for human beings but also for cattle, and no account has been taken in the statistics presented to us of the large consumption of salt necessary for the maintenance in fit condition of agricultural cattle. But, Sir, the Honourable the Finance Member reminded us the other day that statistics are things which can be used to prove anything, and I therefore ask Honourable Members not to exaggerate the importance of the figures that have been presented to us. We have to look at this question from the broad standpoint of commonsense. The people don't like the tax, and we, therefore, as representatives of the people, cannot support it; and when, added to this fact, we have the further fact that we know as a matter of fact that poor people will be hard hit by the enhancement of this duty, the case against the increase of salt tax is strengthened. Sir, I move my amendment.

(A Voice: "Which is that amendment please?")

Mr. President: The motion is:

"Omit clause 2."

The Honourable Sir Basil Blackett (Finance Member): Sir, I do not propose at this stage to attempt to enter into argumentation in regard to the salt tax in general. I wish merely to point out to the House what the effect of this amendment is. As you have already stated, Sir, it is more than a direct negative. It does not restore the position to what it has been in the last year when the duty remained at Rs. 1-4-0. It has this effect, that after the 31st March of this year there will cease to be any duty imposed by an Act of this House on salt, but automatically the powers of the Governor General in Council granted by an Act of 1888 to impose a duty not exceeding Rs. 3 per maund on salt in India are revived. That is to say, if this amendment is accepted, the House, as I see it, hands back to the Government the duty of deciding with what duty and at what rate salt shall be taxed up to Rs. 3.

(Cries of "Withdraw, withdraw.")

Mr. C. A. H. Townsend (Punjab: Nominated Official): Sir, I understand that some Honourable Members of this House go so far as to wish to abolish the salt tax altogether. A few are willing to agree to an increase in the rate of taxation

Dr. Nand Lal (West Punjab: Non-Muhammadan): There is no proposal to abolish it altogether.

Mr. C. A. H. Townsend: . . . but not to the extent asked for by the Government. But many Honourable Members of this House have sent in amendments the object of which is to leave the salt tax as it is. Before the Assembly comes to a decision, Sir, on this important matter I wish to put a few considerations before it. First, on the general question as to whether it is desirable to have a salt tax in this country or not. I wonder if it is realised that an unskilled Punjabi labourer who owns no land and who, I may say, is now getting at least twelve to fourteen annas a day, need pay, if he drinks no liquor, no taxation whatever to Government other than the small amount due on the salt he uses. He lives in a house made of the simplest materials, can dress himself and his family of khadar cloth made of local cotton and spun and woven in his village. Many eminent economists hold the view that every resident of a country, however poor, should contribute some small amount to the revenues of his Government. Many critics say that salt is a necessity of life and therefore should not be taxed. India is not the only country in which salt is a fiscal monopoly. It is the same both in Austria and Italy. Dr. Gour, Sir, referred to the duty on tea in England. But in that cold country tea is practically a necessity of life, and every pound of tea that enters the country pays now a tax of over 3d. per pound, and that represents in Indian currency a duty of over of Rs. 15 per maund. Now, as to the rate of duty. The Honourable Finance Member said, and Dr. Gour accepted his figure, that the proposed doubling of the tax would involve an additional expenditure of a rupee per year per family. Well, Sir, a few days ago, I had the temerity to check the figure of the Honourable the Finance Member. Strange as it may appear, I found it correct. Dr. Gour has just said that this figure of 3 annas a head does not make any allowance for the salt required for cattle. Well, Sir, I asked a friend of mine, who is in intimate touch with the salt question in the Punjab, which he has specially studied; he tells me that this figure of three annas does include an allowance for cattle. I mentioned, Sir, a few days ago the troubles we had in North India owing to the cessation of the import of salt into India during the war. I wish the

House would realise that between 1917 and 1919 salt in the Punjab, although the duty was what it is now, sold at much higher rates than it will even if the whole increase of duty Government ask for is sanctioned. In 1918 the price of salt at Lahore was very nearly Rs. 5 a maund. Even with a duty of Rs. 2-8, salt should be available in that city at Rs. 3-8 a maund. These high rates lasted for three years; but the difference between the tax and the retail price went then not into the pockets of Government, but only enriched speculators and middlemen. Of course, our people grumbled, but they "stuck it" all right. Surely, Sir, it is not unreasonable for Government to ask the people in the present financial stress to pay an increased amount for their salt, but still an amount considerably less than they paid for some years to mere speculators and middlemen.

To adopt a phrase used by the great Duke of Wellington in another connection "the Government of India has to be carried on somehow." Well, the Government of India ask the House for means to enable it to be carried on, and put forward the only constructive proposal that I have heard in the long discussions that have taken place on this subject in the last fortnight, which will give them the minimum amount of additional taxation they required. Is it fair, Sir, I ask the House, to the Government of India, with its heavy responsibilities, is it fair to the reputation of the House itself, as Sir Sivaswamy Aiyer said yesterday, to decline to sanction the extra taxation, and to leave, as last year, an uncovered gap between its anticipated income and expenditure for next year of millions of pounds sterling?

Rai Bahadur Pandit J. L. Bhargava (Ambala Division: Non-Muhammadan): Sir, as pointed out by the Honourable the Finance Member, if this amendment is carried by the House, the effect will be that there will be no section in the Indian Finance Act which can fix the salt duty. The effect of this amendment being carried, therefore, would be ultimately that the Government will, under the Salt Tax, be able to fix a duty up to a maximum of Rs. 3. Now, that is not the object which the Honourable Mover has in view. His object is to have the tax reduced to Rs. 1-4 and not to allow it to be enhanced. As this object can be secured only by the amendments which appear on the paper in my name and the names of several gentlemen who have given notice of a motion that Rs. 2-8 be reduced to Rs. 1-4, I would request my Honourable friend the Mover to withdraw his motion.

Dr. H. S. Gour: Sir, I withdraw my motion.

The amendment* was, by leave of the Assembly, withdrawn.

Dr. Nand Lal: May I submit, Sir, that I may be allowed to move this amendment† of mine after we have discussed the question, which is the vital question before the House, as to whether there should be any increase in the duty on salt or not? Because my amendment will be of material good if it is discussed after the discussion on that point.

Mr. President: Is it the Honourable Member's intention to raise by the words he proposes to insert the question whether a rebate should be payable or not for the tax paid in March?

* "Omit clause 2 of the Bill."

† "(a) In clause 2 (1) insert the following at the beginning:—"With effect from the first day of April, 1923."

Dr. Nand Lal: Yes, Sir.

Mr. President: Then it had better be raised, I think, on an amendment of a more precise character.

Dr. Nand Lal: Sir, have I your permission to move my other amendment, No. 17, relating to the vital question which is before us?

Mr. President: Mr. Rangachariar's amendment comes first.

Rao Bahadur T. Rangachariar: Sir, I am delighted, and I am sure the House is delighted that, by the timely warning given by the Honourable the Finance Member, the House and the country have been saved from a catastrophe which the last amendment threatened. Sir, the Government have opened their mouths wide in putting forward this motion to enhance the salt duty. There is a deficit of 3.68 crores and they put forward a proposal to raise a revenue of 6 crores by putting on an extra Rs. 1-4 in the way of salt duty. Sir, after listening to the remarks made by the Honourable the Finance Member yesterday, my mind was set thinking as to what really is at the back of the Government of India in this proposal. I am afraid, Sir, they want to stabilise the present rate of expenditure by this proposal. The Honourable the Finance Member refuses to look at the deficit of this year as a mere temporary phase. He has told us yesterday that he considers this will be a permanent deficit and what is the necessary implication therefrom? That the military expenditure should remain at or near 58 crores. Sir, His Excellency the Commander-in-Chief has already told us that he refuses to accept the recommendation of the Inchcape Committee that the military expenditure should eventually be reduced to 50 crores. His Excellency has deliberately stated that to this Assembly, and this statement by the Honourable the Finance Member supports that statement made by His Excellency the Commander-in-Chief. The Honourable the Finance Member is confronted with this difficulty. He takes it that the permanent expenditure of India will be every year 180 crores; he wants the permanent revenue to remain at about 180 crores. That is why he wants the salt tax to be enhanced. The surcharge will be temporary; the salt tax will be permanent. That is the view which he has taken and that is the view this House is asked to endorse by a vote on this clause. I ask Honourable Members to remember that. If you will look back at the history of this duty, from the year 1888 to 1903 the Executive Government of this country, with whom this power vested of either enhancing it or reducing it, kept it at Rs. 2-8-0. In 1903 the Executive Government, without any pressure from the representatives of the people, themselves voluntarily reduced it to Rs. 2 and again they reduced it to Rs. 1-8-0. They again reduced it to Re. 1-0-0, and in times of dire need in the year 1916 they had the courage only to put it up by 4 annas. Sir, when a bureaucratic Government was running the Government of this country, without any vote of even a representative or an unrepresentative House, when the Executive Government could not summon courage to put on any extra salt duty, a representative House is called upon to enhance the duty by 100 per cent. Let us remember that when we give our votes in this matter. When the Executive Government themselves felt the injustice of piling up this salt duty, are you, a representative House, going to allow this enhancement? Sir, it has been said that the pressure which will be felt by the people by the enhancement of the salt duty will be very light and will be only 3 annas per head of the population. When people are spending money in liquors, in toddy

and other things, when prices have gone up, and when wages have gone up, the salt duty has not gone up commensurately and therefore, they say, what is the harm in putting on this duty? May not the same argument be applied to any tax which you put on? We are eating so much rice, Sir. Every family spends much more on rice than they spend on salt. They spend much more on wheat than they spend on salt. So that, why not put on a tax on food? You have put on a tax on clothing. These are the two things which no civilised Government will ever venture to put a tax upon. They are the necessities of life. No politician, no economist will tell you that any country can put on a tax on food or clothing. Sir, this is a necessity for life—necessity for existence. The salt tax is in theory—it is not a mere political question which politicians want to take advantage of—it is in theory—I have the authority of the Honourable Mr. Innes last year—in theory it is unsound; in practice it works out unjustly. In practice it works out unjustly because the capacity to pay the tax becomes less and less as you go down the scale. Sir, I do not eat more salt than my servant. In fact, perhaps I eat less. He uses more salt than I do. Therefore, whereas I can afford to spend 3 annas on myself, my servant cannot afford to spend 3 annas without the burden being felt more largely by him than it bears upon me. So that, in theory it is unsound and in practice it works out inequitably, and that is the reason why the Government of India, when they were responsible to the people without the intervention of a Legislature, felt the inequity of it, felt the injustice of it and they would not dare to enhance the duty. Sir, last year it was perfectly open to my Honourable friends on the Treasury Bench to have enhanced the duty without consulting this Assembly. There was no legislative prohibition against their enhancing it up to Rs. 3 a maund. They had the power in their hands. Why did they not do it? Why did they consult us? Why did they deliberately put it before us and desired a vote of this House on that matter? Sir, they wanted to avoid the odium of the curse of the 300 million people of this country. Sir, as has been stated in books on taxation, to tax the very poor at a shilling costs two shillings. But the ultimate cost cannot be measured. It goes deep down into the minds of these people and that is the surest method of making your Government unpopular. That is the surest method of making them say, "Here is a Government which will tax even our very necessities of life. What use is that Government to me if I cannot have my sprinkle of salt without paying for it?" That will be the attitude they will adopt. It is that which has weighed with the Government all along. We have been asked to look at it from a wrong point of view altogether. We are told that it is not going to be felt. Nothing is going to be felt. But remember this. It is the last straw that breaks the camel's back. We have already increased the cost of living on account of economic world conditions. We have already increased the cost of living by putting on these import duties. They have to pay for clothing, which is a necessity, much more than they have hitherto been paying for it. Where they were using—as the Honourable Sir Campbell Rhodes told us last year—18 yards before, they are now content with using 9 yards. I hope I am quoting the figures correctly. (A Voice: "10 yards.") They are using 10 yards. That shows that if you put on the prices of these things, they stint themselves to the extent of the barest necessity. So also, if we increase the price of salt, they will be obliged to stint in the supply of salt to themselves and to the members of their families and to the poor cattle which they keep. It needs no argument to convince the House that that will be the necessary result. Once you make the salt cheap, there is more consumption. Once you make it

[Rao Bahadur T. Rangachariar.]

dear, there is less consumption. That argues for itself. Therefore, I do not think I should take the time of the House much longer in arguing these matters. So that, my proposition is, let us have the existing duty. Let there be no more enhancement of this tax. We have already agreed to Rs. 1-4-0 and I am glad the Government have given the power to this Assembly to vote upon this question and they have not ventured to impose it themselves. Therefore, my amendment is to substitute the figures Rs. 1-4-0 for the figures Rs. 2-8-0 which are proposed in the Bill. Sir, this will no doubt leave us with a deficit. What is after all a deficit? The deficit can be worked down in two ways. We have already made several suggestions to the Government as to how they may meet this deficit by further taxation on our part and how on their part they might bring down the deficit by practising more economy. Sir, the Inchcape Committee have not said the last word when they fixed the figure at 19 crores. Page after page they have said, "This matter requires investigation; that matter requires investigation" and they have referred to various matters under every head. When are you going to investigate these? Are you going to investigate these conditions or not with a view to effecting economy? If you do, you will be effecting further economy and you need not be afraid.

Mr. President: Order, order. I do not think I will allow salt to include the Inchcape Committee.

Rao Bahadur T. Rangachariar: I beg your pardon, Sir. This deficit need not stagger us at all. After all, the country's credit did not suffer when we had Rs. 20 crores of deficit one year. The country's credit did not suffer when we had Rs. 9 crores of deficit in another year. And surely, we are not going to be staggered by the statement made by the Honourable the Finance Member that because we are leaving a deficit of Rs. 3 crores, the credit is always to suffer subsequently.

Mr. President: The Honourable Member will realise that there is a further stage when the Assembly can discuss the final effect of what is done on the Budget. That is the stage that the Bill be passed. Here we are discussing a more restricted question now, namely, reduction of the figure proposed by Government to the figure proposed by the Honourable Member.

Rao Bahadur T. Rangachariar: I move:

"In clause 2 (1) that the word and figures Rs. 1-4-0 be substituted for the word and figures Rs. 2-8-0."

The Honourable Mr. O. A. Innes (Commerce and Industries Member): Sir, my Honourable friend Mr. Rangachariar is a difficult man to follow. I do not mind his eloquence. I know this Assembly well enough. It is a true democratic Assembly and mere eloquence makes very little impression upon it. What does count with this Assembly is sincerity and what makes Mr. Rangachariar a difficult man to follow is that he uses his eloquence to reinforce convictions which he feels most sincerely. But, Sir, let me ask Mr. Rangachariar and let me ask this House to give us on this side of the House credit for equal sincerity. Mr. Rangachariar yesterday said that in putting forward this proposal to enhance the duty on salt the Government had wantonly provoked a collision with the House. Sir, I do not think that Mr. Rangachariar should have made that remark. We on the Government side have tried to work with this House for the last three years and I am not aware that there was anything in our record which authorised or justified Mr. Rangachariar to make so serious a charge

against the Government. (A Voice: "Certification.") (Mr. Rangachariar: "With respect to this proposal.") It is perfectly true that last year we put this proposal before the House. It is perfectly true that the House rejected that proposal by a large majority. We were perfectly well aware of that fact and if we have again put the proposal before the House, the House may rest assured that we have done so with the fullest sense of responsibility.

It is common ground with all of us that we must balance the budget. Whatever Mr. Rangachariar may have said in his speech this morning, I think that the outstanding feature of our debates and our discussions yesterday was the unanimity in all quarters of the House that India cannot afford again to go before the world with a deficit budget. (A Voice: "Real deficit.") Sir Basil Blackett laid special stress upon that fact in his budget speech, and until Mr. Rangachariar made his remark a few minutes ago I have not heard the soundness of Sir Basil Blackett's proposition challenged anywhere in the House and I think, Sir, that it is a tribute to the Assembly's sense of financial responsibility. As I have said, it is common ground with all of us that we must balance the budget. That was the axiom, that was the postulate with which we started when we first began to prepare our budget, and the House may rest assured that before we came forward with this proposal to enhance the duty on salt we had explored with the utmost care every possible alternative which could occur to us. We examined the Customs schedule, we examined the income-tax, the Railway rates, Postal and Telegraph rates. Everywhere we got the same reply. Always we came back to salt, nothing but salt. Again, since the Finance Bill has been before the House, other alternatives have been suggested to us, and as the House knows, each and every one of those alternatives has been subjected to the most searching examination, and I say it again, again we come back to salt. Salt tax may not be a popular tax, may be a tax distasteful to the people of this country, but the burden of that tax is so distributed among the population of India that it becomes negligible in individual cases. (Cries of "No, no.") It gives us certainty for the future. It gives us the money we need for the present, and it gives us the money we need for the future. It enables India to stand out among the nations of the world as one of the few nations which has been able partly by retrenchment and partly by shouldering the burden of taxation to balance its budget and it restores our credit. Whatever Mr. Rangachariar may say, I say it is essential for India that we should have a balanced budget this year in order that our credit may be rehabilitated.

Now, Sir, let me turn to Mr. Rangachariar's charge that we have wantonly provoked a conflict with this House. Because last year we put this proposal and it was turned down, therefore Mr. Rangachariar says that we have no right again to put the proposal up. There is all the difference in the world between last year and this year. Last year we put the proposal before the House and the House turned it down. It was I who defended the proposal and looking back on the history of that time I say now that the Assembly was right. Even if the tax had been imposed last year it would not have balanced our budget, it would have still left us with a large deficit and the Assembly insisted that the remedy lay in retrenchment. Well, Sir, we have retrenched. As a result of the Inchcape Committee's report we have reduced the Army. We have reduced the army expenditure by five crores of rupees and more. We have it on the authority of His Excellency the Commander-in-Chief that we have effected those reductions

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at some military risk. Again, Sir, we have effected retrenchments on the civil side. People in this House may think that we have not retrenched enough, that we have not done all that we can in the way pointed out by the Incheape Committee's report. Sir, as one who has served the Government of India for many years my fear is that we have retrenched too much. The reason why any Department looks askance at retrenchment is that that Department sees the implication of what we are doing. It sees the harm that retrenchment may effect, but, Sir, like everybody else in this House, we in the Government of India . . .

Mr. President: I had to call the Honourable Member from Madras to order in order to prevent him from continuing on that line and I will ask the Honourable Member to keep himself within the same limit.

The Honourable Mr. C. A. Innes: I merely wished to make the point that the position this year is entirely different. Last year we had not done all we could have in that direction. This year we have done all the retrenchments we can and still we are faced with a deficit. The problem still remains how to cover that deficit and the difference between the House and the Government of India is this that we say that salt is the only way. The House says that there are other ways, but they have not been able to give us any unanimous vote as to what other ways should be proposed—even a majority vote—there is no assurance of it and they have not been able to prove to us that the other ways they may propose are in accordance with the principles of sound, wise, economic taxation.

Then, again, Sir, there is another difference between this year and last year. The position has changed economically. India is better off this year than it was last year. Prices of foodstuffs have fallen in this year by 20 per cent. The price of wheat has fallen by more. Take the price of wheat at Lahore in January 1922 and the price of wheat at Lahore in January 1923. In January 1922 you could buy for a rupee 3 seers and 15 chittaks of wheat. In January 1923 you could buy for a rupee 8 seers and 8 chittaks of wheat. That is to say, the price of wheat is less than half it was last year. Think what it means to the poor man. After all, your salt is a condiment and the man uses just an infinitesimal quantity every day. Wheat is a mainstay of life and the poor people spend the greater part of their income on foodgrains and foodstuffs; and when you find that those foodgrains and those foodstuffs are less than half the price they were this time last year, then do not talk to me about the hardship you are going to put on the poor man by putting on a small increase in the price of his salt. Let me take this economic argument. Is there any one here who really advances it seriously? It is a very useful thing to be able to say, "Oh no, we do not oppose this salt tax on political grounds; we oppose it on economic grounds." But, Sir, is that an honest belief? I gave the figures last year; Dr. Gour said that my figures of last year took no account of the consumption of salt by cattle. That, Sir, is not correct. Last year we took the total consumption of salt in India and the total population of India and we arrived at what the consumption of salt per head per annum was. It was 6 seers of salt per annum. An increase of duty of Rs 1-4-0 per maund means an increase of 3 annas in the price paid for the amount of salt consumed per head per annum; 3 annas! and that includes salt required for cattle; let Dr. Gour mark that fact. Three annas per head: 12 annas per family; one anna per family per month: 1 pie per family every 2½ days; there is the sum for you. Is anybody here

really seriously going to assert that a small increase of that kind is going to hurt any one seriously? And mind you, I do not lay too much stress on those figures. People may say that that may be the increase in price measured by the increase of duty, but when the middleman passes that duty on to the consumer he will pass on more than the duty. Well, Sir, I have got information on that point. The retail price of salt in Delhi on the 28th February before this new duty was imposed was 16 seers to the rupee, 1 anna per seer; that is, your 6 seers per annum cost 6 annas. The retail price of salt in Delhi on the 10th March after this duty had been imposed was 11 seers to the rupee; that is, the price paid for 6 seers per annum is 8 and eight-elevenths annas; that is to say, the actual increase is less than your 3 annas per head per annum.

Let me take another point. Mr. Joshi says that before we impose taxes of this kind we should make a proper economic survey. Give us the money; give us this salt tax and I hope that we will be able to make this economic survey. But, Sir, people are working at this problem; they are working at it in Mr. Joshi's own town of Bombay. Family budgets of 3,000 families have been prepared by careful investigators, non-official investigators, people with no axe of any sort or kind to grind. I am not going to give the figures because they are not material to my present purposes; I am merely going to give the percentages and that will reinforce the point which I made just now that an increase in the price of salt is as nothing compared with an increase in the price of foodgrains and foodstuffs. The results of these family budgets show that these working people in Bombay spend 32 per cent. of their monthly income on foodgrains; they spend more than 10 per cent. on other foodstuffs; and they spend 4 per cent. on salt. Mr. Rangachariar says that this increase in the duty on salt is the last straw that breaks the camel's back. Sir, it is no use flinging phrases at me like that. If we lay a straw on the poor man, a bad monsoon lays a flail upon him, a far heavier flail than anything we can do in the way of a salt tax. I repeat, Sir, there is nothing in this economic argument. Let the House clear its mind of all prejudice. I am not going to overstate my case, I am not going to say that I like this tax. I am quite prepared to admit that any tax, however small it may be, any tax which is a tax on a necessity of life is theoretically bad. All I say is that having regard to all our necessities, having regard to our deficit, this tax which imposes a burden which is negligible on the people of this country is on the economic side the soundest way of giving us the money which we require. Mr. Rangachariar says that it will give us more money than we want. It is going to give us 4.50 crores this year and all we want is 3.89 crores, and next year it will give us 6 crores. But, Sir, Mr. Rangachariar knows as well as I do that a great part of our income now is a transitory income, that the Government of India is in honour bound to repay 9 crores of contributions to the provinces, and have we not got to look ahead and provide for the future. Sir, as I have said, let us be honest and let us drop this economic argument; let us get to grips with real facts. What is the objection to this salt tax? The objection to the salt tax is the political objection. Some people say that they dare not go back to their constituency; they dare not face the electors; they dare not say that they have agreed to the salt tax. Well, Sir, I have sufficient confidence in the Honourable Members who constitute the non-official majority in this Assembly to believe that they will put personal considerations of that kind aside. Their real objection is that if we put on this salt tax we give a handle to the non-co-operator. Well, Sir, I do not wish to understate or in any way to

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 minimise those objections. I recognise that they are perfectly real. But, Sir, they can be exaggerated. All our information is that as regards the agricultural classes, as regards the rank and file of the country, the non-co-operator has lost his influence in the last six months. The population of this country are beginning to recognize and beginning to feel that half their troubles are due to these non-co-operators. (Hear, hear.) I do not believe that the increase in this salt tax will have any effect in that way upon the bulk of the population of this country. And as regards your own electors, the people who elect you, surely you can educate them; surely you can explain to them why we have been compelled to adopt this tax; and, Sir, if they are reasonable men I am sure they will listen. Sir Sivaswamy Aiyer laid his finger the other day upon the real objection to this salt tax. For many years,—I admit it,—for many years political India has fought against the salt tax. They have said that it is a tax which ought not to exist, much less to be increased. It is felt that mere consistency compels you to take the same line, and that is why Sir Sivaswamy Aiyer said that it was not practical politics even to think of raising the salt tax. It is an article of faith; it is a creed in political India that the salt tax must not be raised. Well, Sir, creeds become outworn: articles of faith require readjustment to changing conditions; and every now and then you have to re-examine the foundations of your belief and that is what I ask the House to do to-day. It is said that the imposition of this tax will be a violent shock to the reforms, a staggering blow to the reforms. That may be so, Sir, but there are worse things than shocks, there are worse things than blows. A worse thing is the cancer which eats away the root of the reforms. What is it? What is it that is preventing the reforms from having their full effect at the present moment? I say it is one word, or two words: 'financial stringency in the Government of India, and financial stringency in the Provincial Governments'. We all know with what high hopes the Ministers in the provinces assumed the tasks allotted to them, we all know how they hoped that they would be able to show the bureaucracy how money should be spent on education and sanitation. Have those hopes been fulfilled? Is it not a fact that, instead of these hopes being fulfilled, there is a dull resentment against the reforms? And why? Because the Ministers have not been able to get any money to justify themselves, or any money to carry out those projects on which such high hopes were pinned. Then, again, I do not suppose there is any one in this House who does not remember the remarkable speech delivered by Mr. Clayton in September 1921 in the Assembly. Mr. Clayton made the point that the one essential in India at the present time was a fundamental unanimity. The whole of these reforms presuppose that India can weld itself into one homogeneous nation. These provincial contributions, are they not a sore which is eating away India? Are we not setting Madras against Bengal, the United Provinces against Bombay, all because these provinces feel a resentment at these contributions? Madras feels that she is being unjustly treated; the United Provinces, the same, Bengal, the same. Sir, I say that if we take the long view, we do not allow ourselves to be blinded by the easy considerations of the present. I say that this House will recognize that the real danger of the reforms does not lie in the imposition of a small addition to the salt tax. (A Voice: "100 per cent.") It lies in our allowing the financial stringency to continue in the Government of India and in the Provincial Governments. I can claim that we on our side have done all we can. The Government of India have retrenched,—we have retrenched to the very best of our ability; and I say that no Government

could have done more than we did on that Report. And I feel that we are now entitled to ask this Assembly to show, on their side, their responsibility. I ask them to take the long view,—to risk unpopularity, to risk shame, to risk obloquy, not to be guided, not to be weighed, by what I called just now the easy consideration of the present. If this Assembly rises to the occasion now, if it agrees to the small tax, then I say that, judged by the tribunal of history, the Assembly will have done the wise and the right thing; it will have risked unpopularity, it will have made sacrifices in order to restore India's credit, in order to restore India's finances, and in order to make these reforms a success. Sir, I hope the House will not accept this amendment.

Ohaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, no one will deny in this House or outside it that the salt tax is a very undesirable tax, a very distasteful tax, a very detestable tax and, as it is characterized by some, perhaps a very dreadful tax. But the question before this House is whether we can avoid the imposition of this tax. If a tax is inevitable, as has been admitted tacitly by this House (Voices: "No, no, no.")—it has been argued from the Government Benches that the balancing of the Budget shall enhance the credit of India and make India a solvent country, prove India's solvency beyond doubt—and I have not heard a single voice in this House denying the desirability of balancing the Budget. If I am right so far, then I think it follows that the balancing of the Budget may be taken as a fact admitted almost on all hands. If that assumption of mine is correct, then I think I am justified in concluding that the imposition of a new tax is inevitable, it is unavoidable; and it is on this assumption that I move my amendment. If, of course, the House were to decide that no tax is necessary and that, therefore, no tax should be imposed, I will be the last, as I said yesterday, to propose that a new tax should be imposed; but if a tax is inevitable, if it is unavoidable, then I think the salt tax is the best tax. My reasons for this position are very simple. It is a tax which affects all tax-payers equally, the rich and the poor are equally affected by it. It has been argued by Mr. Rangachariar and some other speakers that while the rich people will not mind paying 3 annas a year, that is, one copper a month, a tax of 3 annas per head per annum shall seriously affect the poor. I will assume that we are advocating only the cause of the poor, and that it is in their interest that we are opposing this tax. I would like on that assumption, to enlighten the House, so far as my province is concerned that the so-called poor in the Punjab can more easily afford to pay this tax than the so-called rich. (Voices: "No, no." "Take us there.") Sir, despite the impatience on the part of certain Honourable Members of this House, I feel bound to lay some hard facts before the House for its consideration. The population of the Punjab, perhaps unlike many other provinces, can be divided into three classes. The so-called poor or the labouring classes. I include the agricultural as well as the industrial labour. Then there are the middle-class people both among agriculturists and traders; the majority of agriculturists are owners of very small holdings. Then, there is the higher class, the rich people so to say, that is, whether they are lawyers, merchants, or big zemindars. As regards the middle classes, I am in a position to say, without fear of contradiction, that they are perhaps the poorest lot. The labouring class is very well off; its standard of life is in certain cases higher than, or at any rate equal to, the standard of life of the middle class; in fact, the middle-class people have to defray certain expenses on occasions of marriage and at other social functions which the members of

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the labouring class have not to defray and I know it as a fact, and I believe I will be supported by some Punjabees in this House, that some members of the so-called poor labouring class are in fact bankers of the so-called rich middle-class people; they have more money—and I think their habits of economy and frugality have enabled them to save some money—to set aside some money, which they actually lend out to the so-called rich middle class people who are the owners of very small holdings and whose expenses are comparatively higher than those of their frugal labourers. It is this labour class, the so-called poor class in my province, in whose interest I am expected to oppose the salt duty. But if my knowledge of my province is correct, I am fully justified in saying that if this tax is to be opposed, the opposition is not justified in the interests of the so-called poor labourer whose wages, I think, have been under-estimated by the Honourable Mr. Innes in his speech. I have made inquiries and learn that here at Delhi a labourer is getting 9 annas a day, but in the Punjab, in Lahore, we cannot get a labourer even for one rupee a day to-day; and I can say without fear of contradiction that my knowledge is as accurate as it is first-hand and personal. Now, that wages are so high and the labouring classes are so well off, that they are, in some cases, if not in a large number of cases, bankers of the so-called rich middle classes, to advocate the cause of the so-called poor, in my humble opinion, is going against facts. As regards the rich people, surely they can very easily pay the small tax of annas 3 per head per annum. This is not questioned or doubted by anyone in this House. Now, as regards the amount of taxation, and its incidence on the poor, one pice a month is the burden which the so-called labourer shall have to bear if the proposed duty of Rs. 2-8 per maund is imposed. Every labourer in my province is consuming tobacco worth two pice a day. Tobacco is a luxury, while salt is a necessity. (A Voice: "Tax tobacco.") Tax it by all means. Impose an excise duty if you will. I do not mind at all. Tax it, but you will find it difficult, if not impossible, to tax local tobacco. You have already taxed foreign tobacco, I think, very heavily, and I shall not mind if the local tobacco is taxed. Do so by all means. I do not object to that. But I am stating a fact and that fact is that every labourer in the Punjab is consuming tobacco worth two pice a day. A labourer who is consuming so much tobacco, a luxury, I think, may well be expected to pay one pice a month. (A Voice: "Does the Agriculturist do the same?") Yes; he is doing the same. In my province smoking is so common that, barring the Sikhs, perhaps even one per cent. of the Punjabees are not free from this vice. (An Honourable Member: "Very sorry.") I am very sorry myself, but I am stating the fact. This is not smoking.

Mr. President: It is not usual to smoke salt.

Chaudhri Shahab-ud-Din: Then, as the Honourable Mr. Townsend said, we have salt mines in our own province, yet we had to pay for salt during the war more than Rs. 5 a maund at wholesale rates, the retail rate being far above Rs. 5 a maund. But the so-called poor labourer who had to buy salt at so heavy a price not only for one or two years, but for 3 or 4 years, never grumbled against that high rate. I am told that if this new tax is imposed—and I have no reason to doubt the correctness of figures calculated by the Honourable Mr. Townsend,—that the price of salt shall exceed Rs. 3-8-0 per maund if the duty is doubled. I, therefore, propose that instead of imposing the full tax, that is, instead of doubling it from Rs. 1-4-0 to Rs. 2-8-0, let us be contented with Rs. 2

a maund. (Rao Bahadur T. Rangachariar: "Why?") Because, I may be allowed to say in answer to my Honourable friend, Mr. Rangachariar, according to my calculations if the tax is enhanced from Rs. 1-4-0 to Rs. 2 per maund and not to Rs. 2-8-0, the income from that source will be rupees 2 crores and 65½ lakhs. Then, I would invite the attention of the Honourable Mr. Rangachariar to his own amendment at the top of page 6, that is, if we exclude ordinary cotton goods which are used by the so-called poor people, and a sur-tax or a sur-charge of 6 pies per rupee is levied upon Customs, that will bring, according to my calculations, about Rs. 1 crore; and thus we will have altogether about 3 crores and 65 lakhs, and I think we shall be able to balance our Budget.

These are the reasons why I propose that instead of Rs. 2-8-0 per maund we must have a tax of Rs. 2 only.

With these remarks, I propose, Sir, that a tax of Rs. 2 per maund may be sanctioned and not of Rs. 2-8-0 per maund as proposed by Government in clause 2 of the Bill.

Mr. President: In order to give an opportunity of discussing this amendment to Honourable Members, I propose to take the Honourable Member's amendment in this form, as an amendment to Mr. Rangachariar's amendment:

"Omit the words 'one rupee and four annas' and insert the words 'two rupees' in that amendment."

Mr. B. C. Allen (Assam: Nominated Official): Sir, Mr. Rangachariar's words carry such weight in this House that it is impossible to allow any observation of his to pass unnoticed. There were two grounds on which he attacked the salt tax. Firstly, he took the natural ground that it is very undesirable to tax a necessity. Now I am not certain whether the House realises the extent to which necessities are taxed elsewhere. I am not sure whether my friend, Dr. Gour, knows that tea is taxed at all. Another Member stated that the tax on tea was Rs. 15 per maund. The Commerce Department will, I hope, correct me if I am wrong, but my impression is that tea is not taxed at the rate of Rs. 15 per maund, but at the rate of Rs. 45 a maund in the case of tea which comes from British territory and at Rs. 70 a maund if it comes from outside the Empire. There are two points which I would like the House to remember. Firstly, that tea is almost as much a necessity as salt in a country like England and, secondly, that tea is consumed in much greater quantities than salt. I would ask the House to compare this tax of Rs. 45 on tea with the proposed tax of Rs. 2-8 on salt. The second point taken by my Honourable friend was that when the Government was a bureaucratic Government it did not venture to raise the tax on salt but now that it has been liberalized it comes forward and asks this House to do so. Well, Sir, I would only quote to Mr. Rangachariar an authority which even Mr. Rangachariar will accept as being no less weighty than himself where democratic questions are concerned. A debate took place in the old Council in 1918 when Pandit Madan Mohan Malaviya spoke as follows:

"My friend said 'Remember, in any form of popular Government there must be a great deal of extra taxation'. My Lord, we are thankful to him for reminding us of it. If we have studied any books on History, Economics or Political Science, that truth has been ingrained in us. We know that ever popular Government means greater expenditure. We are longing for the time when we shall be put in power to raise further taxation."

(A Voice: "Not on salt.") Sir, those are weighty words. I commend them to my Honourable friend.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, this tax on salt has given me any amount of anxiety and I have been considering over it all night last night after the effort for a compromise that was made for nearly three hours yesterday. But, unfortunately, Sir, the more I have been thinking of it, the more I am persuaded to believe that I cannot agree with my Honourable friend Chaudhri Shahab-ud-Din. Sir, any tax is odious and unpopular, but it cannot be denied that this tax is the most odious and unpopular of all. It has been brought up here in this Assembly and also in the Councils before times out of number and with one unanimous voice from the unofficial Benches it has been rejected as unsuitable and as one which should not be imposed. And with the result of the vote only last year, I think my friends on the non-official Benches will only be stultifying themselves if they give any vote contrary to what they did last year. And, being the most unpopular tax, I do not suppose my friends on this side will be able to face the popular discontent out in the country if they vote in favour of the tax.

Sir, I think the bait thrown out by the Honourable Mr. Innes to the Members from Madras and the Punjab to vote for this tax in order to relieve themselves of the burden of provincial contribution will not prevail, and it will be treated with the scant courtesy which it deserves. (*Mr. R. A. Spence*: "Oh!") Sir, I will not repeat the arguments which have been employed from time to time against this tax, but if arguments were needed, I would refer my friends to the most important speech made by the Honourable Sir Dinshaw Wacha only the other day in the Council of State. My friends call him the Nestor of Indian Finance. I will not take up the time of the Council in quoting from his speech which, I daresay, many of my friends must have read for themselves.

One point, Sir, that I have been thinking about is whether, as put by the Honourable Mr. Innes, we have sufficiently retrenched our expenditure so as to necessitate any further taxation. As my Honourable friend Mr. Rangachariar put it, the Inchcape Committee had not the last word to say upon retrenchments. I consider that, apart from the Inchcape Committee's Report, there is a good deal of expenditure which can be retrenched. Above all, if the Government were to look into the Stores Department and consider the question whether the stores should be purchased in India or in England, they will find a considerable opportunity to retrench in that direction even this year, so as to cover this small deficit. But even supposing there is a small deficit left at the end of the year, they will find that there will be many items in the various departments where they will not have been able to spend all the allotments made under the various sub-heads, and they will find that they can easily make up or that they will have made up the little deficit which is now left over uncovered.

Sir, for these reasons I think I must oppose this tax.

Baba Ujagar Singh Bedi (Punjab: Landholders): Sir, I intended to move the amendment, No. 23, which stands in my name, and I submitted a note to the Honourable the President to the effect that I would like to speak immediately after the Honourable the Finance Member would speak; but, unfortunately, I could not get that opportunity, and my friend Chaudhri Shahab-ud-Din got the preference.

Mr. President: I cannot allow that remark to pass. The Honourable Member suggests that I gave the Honourable Member from Lahore an unfair precedence over himself. He himself is well aware that the amend-

ment in his name on the paper is not the amendment which Chaudhri Shahab-ud-Din has just been moving.

Baba Ujagar Singh Bedi: I did not mean that, Sir.

Mr. President: Then the Honourable Member should not say it.

Baba Ujagar Singh Bedi: On the day the Budget was introduced and when the Honourable the Finance Member enlightened the House with his harangue, I was somewhat perplexed whether or not the duty on salt as proposed by the Honourable the Finance Member would be agreed to.

In the first place it appears to me that there will be no need for fresh taxation for the revenue as has been pointed out by the Honourable the Finance Member, is anticipated for 1923-24 to be 198.52 crores against the expenditure for the same year, which is estimated at Rs. 204.37 crores. Thus leaving a deficit for 1923-24 of Rs. 5.85 crores.

But taking into consideration the net interest on Gold Standard Reserve which is 1.59 crores, the balance deficit remains 4.26 crores.

Again having regard to grants that have been curtailed and if the Government strictly adheres to the policy of retrenchment there probably remains no need for any fresh taxation.

But if at any rate there is any exigency to raise fresh taxation I would strongly oppose and deprecate the principle of taxing and overtaxing a certain sect of people and coming forward with a proposal to enforce super-tax which is so heavily felt by them.

This super-tax was only imposed as a war measure though the war terminated four years back, but pity, the super-tax is still in force.

I am afraid here I have to give an instance of the time when immediately after the demise of the Lion of the Punjab, Maharaja Ranjit Singh, there was no regular Government and some soldiers that were putting up in a fort began to depredate a village named Sanghoi in the District of Jhelum and after every second or third day whenever they stood in need, they joining together conversed "let us go and plunder Sanghoi."

The result was that after two or three invasions there was nothing left in the village to be depredated any further.

Sir, we should not adopt the measures to tax one particular class of men. Besides the principle of taxation does not allow to tax in such a form which should be so heavily felt by the tax-payer.

To my mind the taxation should be in such a form as would not tell heavily upon the tax-payer and yet will fetch more revenue.

Therefore if it is sought at all to enhance the revenue by fresh taxation I should not be reluctant to accept the duty on salt by annas 12 per maund only as proposed by my Honourable friend Chaudhri Shahab-ud-Din.

And therefore I will ask the indulgence of the House to bear with me for a couple of minutes.

Sir, it is advocated from certain quarters that the duty on salt should not be increased either politically or economically since it is the poor man's necessity.

These arguments do not convince me, in the first place if it was politically or economically improper to impose duty on salt, then, Sir, there should have been no duty on salt at all. But what we find is that there is already

[Baba Ujagar Singh Bedi.]

a duty imposed on salt of Rs. 1-4-0. If it was in any way detrimental politically, economically or otherwise to the Indian interest, then, Sir, why the House agreed to this duty which is already in existence.

Now therefore this part of the argument cannot arise.

What the Honourable the Finance Member wants is to increase the duty by Rs. 1-4-0 more, so as to meet the deficit for 1923-24.

The second part that it is the poor man's necessity, therefore the duty on salt should not be increased, does not appeal to me as well. I look at the enhancement of duty on salt from a different standpoint.

It is a general cry that the money market is very tight. One would naturally like to know where all this money has gone to, which was jingling in the pockets of the public a few days back, because had there been any money in India its circulation would not have stopped, on account of which the business is getting duller and duller every day.

Some persons reply that such money as was earned in the days of war has gone to foreign countries, while others emphasize that the Indian money has been taken off in the form of unsettled state of exchange.

But, Sir, even if it had gone to the foreign countries, then too its circulation could not have stopped.

But to me what appears, is that all this money had been spent on buildings, ornaments or other such like things and thereby the money has gone into the hands of the labourers in the form of wages and their requirements being small such wage earners have withheld the money, and hence the circulation of money has been greatly depressed.

Now, Sir, in support of my argument, I would like to draw the attention of the Honourable House to the mere fact that in the pre-war days, a lay wage-earner was drawing something like 6 or 7 annas a day; during the war it went up to one rupee or even more. An ordinary mason in the pre-war days was earning one rupee a day; his wages have risen up to rupees three or four a day.

Although the values of different commodities and necessities of life in which they stand in need of, have dropped considerably, even then, Sir, their wages are still there and they do not agree to take a penny less than their so enhanced wages.

Their requirements are such as even one day's wage would suffice to support them for many a day.

Therefore it has become almost impossible to reduce their these high wages because the money which they have earned in the war days and which they have withheld along with the present wages that they are earning, have made them so stubborn and sturdy, that they would not heed to any reduced rate now. They can live for months and months without doing any work, and the public standing in need of labour, without which they cannot do, are bound to bend before them.

It is said that if we adopt the proposal of the Honourable the Finance Member, i.e., to impose a duty on salt, it will affect the poor, does not hold good.

Let us examine therefore how much will it affect if the proposal is accepted. The Honourable the Finance Member proposes an increment of Re. 1 and annas 4 per maund on salt. This means that he proposes Re. 1 and annas 4 on 40 seers, and that comes to half an anna or 6 pies

per seer. Now one man does not require more than $\frac{1}{2}$ tola of salt for his requirements per diem. It means that the duty as proposed even if accepted will bring a pressure of one twenty-sixth of a pie only to each individual.

My amendment proposes only an enhancement of annas 12 per maund, which further reduces the so-called pressure to one-fortieth of a pie to each individual, which means that in two months' time he will have to pay a duty of one pie.

Now, the august House will realize what and how much it affects the so-called poor, who are drawing such high wages in these days.

On the other hand if we resort to the amendment we could create an enhancement of something 3 crores of rupees according to the figures calculated by the Honourable the Finance Member.

And thereby there could be every hope to relieve the province from the pressure of the Provincial Contributions which ultimately will benefit the provinces as a whole.

If we propose any other taxation like sur-tax Custom, then even this burden will fall ultimately on the poor much heavier than the salt as the values of the commodities so taxed will naturally rise the triple of the duty proposed.

Again the Honourable Members will find that this salt duty as is proposed by the Honourable the Finance Member in clause 1, sub-clause (3) of the Bill is only for one year, that it will remain in force up to the 31st day of March 1924.

It will not be inexpedient if we increase a little duty on salt for one year to raise the revenue, thereby to meet the deficit of 1923-24.

Before I resume my seat I should appeal to the Honourable the Finance Member if he could see his way to meet the House half way.

Khan Bahadur Maulvi Amjad Ali (Assam: Muhammadan): Sir, I would point out that this tax on salt has become a vexed question altogether and we have been wasting our eloquence on it for some time past; but the House is unable to come to any conclusion. Those who advocate the cause of the poor people, so far as this tax is concerned, have some motive and that motive is attributed to the fact that elections of the Legislative Assembly are near at hand. Then again some of those who support this tax have also some motive. Now, Sir, the public time is being wasted in this fashion and we are not able to come to any solution. It is undisputed that there is a deficit of Rs. 4 crores odd. It is also undisputed that this deficit must be met. Of these two things we are quite sure—that there is some deficit and that it must be met. These are quite clear. Now, Sir, we have been crying that there should be no tax on salt. Very well, if there is no tax on salt, point out certain other means by which that deficit can be met. That is the point. The Government does not want to impose salt tax for nothing. Government wants to raise money to meet the deficit. If the House is prepared to meet that deficit, I think the House should be prepared to point out some other means to meet the deficit. Government is not vindictive that out of *aïd* they are going to impose some tax on salt. The only reason which actuates Government to propose taxation like this is to meet that deficit. Yesterday there was a talk of compromise and for that purpose the House was adjourned under the permission of the President. When the discussion was going on it pleased Sir Sivaswamy Aiyer to put forward certain proposals, and one of

[Khan Bahadur Maulvi Amjad Ali.]

the proposals was to have 9 pies surcharge on customs, excise, and income-tax. Well, he appealed to the Members present there, and specially to my friend, Mr. Seshagiri Ayyar, to accept his proposal . . .

Mr. President: The Honourable Member must realise that he should not refer to proceedings about which this House officially knows nothing. That conference was held *in camera* without reporters being present, in order to enable the Members freely to express their minds and to discuss the matter in all its aspects with a view to arrive at a satisfactory compromise. There has been no statement made here to-day that that compromise was reached, and therefore I think that the opinions expressed privately ought to remain private.

The Honourable Sir Basil Blackett: May I suggest, Sir, that the statement that has already been made as to what was alleged to have been suggested by particular individuals ought not to appear in the official record?

Mr. President: As to what ought not to appear in the official record is a difficult point to decide. The Honourable Member from Assam will do well to refrain from referring to things which other Members have said in private.

Khan Bahadur Maulvi Amjad Ali: What I submit to this House, Sir, is that that proposal may come to this House for decision. That is a very reasonable proposal, and I think if it comes before this House with the permission of the Chair, it may be accepted by a large number of the Members of this House and further discussion may be put an end to. For that reason, Sir, I was going to speak about the proceedings which took place yesterday. If you will permit that that subject should come up before the House . . .

Mr. President: If the Honourable Member wishes to discuss a proposal of that kind, he may put it forward publicly on his own responsibility, but I must ask him not to refer in detail to the proceedings of that conference about which this House has no information.

Khan Bahadur Maulvi Amjad Ali: Now, Sir, if the salt tax is not accepted by this House, then I appeal to the Members of this House to put forward certain other suggestions by which money may be raised to meet the deficit instead of wasting our labours for nothing. I think I will have to put in an amendment, but those Honourable Members who have sent in amendments may in the course of their observations point out certain means by which money may be raised and the whole discussion may be put an end to.

Sir Montagu Webb (Bombay: European): Sir, I am opposed to the doubling of the salt tax, but I do think in present circumstances that salt should contribute to some extent towards the removal of the present financial difficulty, and I therefore support the amendment moved by my friend Chaudhri Shahab-ud-Din. I am opposed, Sir, to the doubling of the salt tax for two reasons,—economic and political. There is no doubt whatever that the salt tax is objectionable, in that it is a tax upon a vital necessity of life, the reduced consumption of which must tend to affect the health of the people. Then too, at the present moment the political situation is such that I do not think it would be wise on the part of Government to arouse and incur further hostility by forcing upon the public a doubling of the existing rate of duty. I have been collecting during the

past week or two salt-tax cuttings from newspapers in all parts of India in order to better understand popular feeling in this matter. I expect Government have done the same thing. Now, Sir, what do I find? I find a universal condemnation of this proposed doubling of the salt duty except by one or two papers and one or two groups upon whom that duty would fall with the least weight, upon whom the duty, even if doubled, would be almost imperceptible. Well, Sir, there is nothing peculiar about that state of affairs. Every section of the community objects to a duty when it is going to fall upon themselves. I notice that the motor trades strongly object to the existing scale of motor duties and have asked for them to be reduced. Other trades also are asking for duties to be reduced. I have a bundle of telegrams here, Sir, very strongly objecting to the proposed surtax on the customs duties, which it is said, instead of bringing in extra duties, would merely check imports and probably reduce the estimated receipts from Customs which the Finance Member has already made. The Bombay silver interests, of course, object to the imposition of a silver duty. On my wiring and asking them if in the circumstances they would not support the small duty on salt, they have replied: "Your question is irrelevant". And so on. The fact is, Sir, that everybody objects to a duty being put on that commodity which particularly affects him. And so, I do not think Government can feel any surprise if objection is expressed to any proposed increase of salt duty for the reasons which I have already stated.

Now, Sir, I noticed yesterday that my Honourable friend from Madras expressed considerable contempt for the political argument. He spoke almost as though politics were a matter of no account in a consideration of this kind. So, too, the Honourable the Finance Member spoke with even greater scorn of the political consideration. He said: the objection to this enhanced duty is a mere matter of sentiment,—and he spoke, or he implied, that in the consideration of the Budget we ought to be guided by pure, undiluted reason: we ought to work solely on the cold logical financial principles which are generally believed to guide authorities in Lombard Street and in Whitehall. We should not allow sentiment to interfere with the preparation of our budget. I do hope, Sir, that the Honourable Member will not bring ideas of that kind into his consideration of this budget. Why, Sir, what is it that makes the world go round? Sentiment! (*The Honourable the Finance Member:* "Money".) What was it that caused the nations of East and West to spring to arms to repulse the attacks of the Central European Powers in the recent war? Sentiment, Sir, the feeling that might should not conquer right; the desire to assert our belief that humanity was higher and greater than brutality. I dare say, if the Honourable Member turns his glance to the incidents that are now taking place on the continent of Europe, he would hardly advance the argument that the people of Europe at this moment are influenced by motives of pure reason. (*The Honourable Sir Basil Blackett:* "They ought to be; that is the trouble.") Well, Sir, why should we expect more reason in India than we can find in Europe? It is normal and natural that the public should be influenced by consideration of sentiment, and I am glad to think, Sir, that in the Government of this country, there is hardly a single law that does not take into consideration and rightly take into consideration, the feelings and the sentiments of the people of this country. And, therefore, Sir, I do hope that the Honourable Member, in considering this salt duty, will pay due weight to the feelings and the sentiments of the people of this country. Surely, Sir, one of the first and most important considerations in the art and science of Government is to win

[Sir Montagu Webb.]

the assent, the confidence, and the co-operation of the governed. And that being so, we must consider sentiment; and we must consider politics.

Now, Sir, I would carry the argument just a trifle further and ask the Honourable Member to think what has happened during the course of the first Session of the reformed Assembly. Three years ago, after the introduction of this democratic scheme of Government, Members were invited to come to this Assembly to assist in carrying on the Government of the country. They came in many cases amidst a good deal of hostility and hostile criticism from unfriendly and sometimes malicious critics. What did they find? The first year they appeared here, a deficit of Rs. 26 crores. They were asked "Would you please vote additional taxation to that extent?" Well, Sir, the newly elected Members of this Assembly with great courage and considerable foresight and statesmanlike outlook did vote that Rs. 26 crores, and were duly abused by the enemy in consequence. That was the first year. Now, Sir, as regards the second year. Members returned a year ago to this Assembly. What did they find? A deficit of Rs. 31½ crores. They were once more asked to assent to every kind of taxation including salt. Well, Sir, once more the Members of this House did vote that extra taxation. They certainly rejected the salt and I was glad to hear the Honourable the Commerce Member say that in the circumstances he thought that Members were right in rejecting the salt and insisting on severe retrenchment, which policy has worked out very well. Now we come to the third year in which these newly fledged democratic Legislatures approach their duties. What are they asked to do? Again a deficit and this time the "ultimate reserve of taxation," as the Honourable Member called it,—the ultimate reserve—the salt-tax is once more brought out and they are asked to double it. And, Sir, the first general election is in sight! This Assembly is finishing its life and going back to the electorate. These Members, having during the whole of their time imposed a succession of additional taxation are now asked as their last act, to double the salt-tax and then go back to their constituents and ask for re-election!

The Honourable Sir Malcolm Hailey (Home Member): You kindly voted for us last year.

Sir Montagu Webb: Well, Sir

Mr. President: Order, order. The Honourable Member is rather a long way from the subject. At the moment Chaudhri Shahab-ud-Din moved his amendment the issue was narrowed between the two figures, and particularly I understood the Honourable Member wished to address himself to that.

Sir Montagu Webb: The object of my remarks is to persuade the Members of the Treasury Bench and Government Officers to abandon the idea of doubling the salt tax, and to accept the amendment which my Honourable friend has put before them. I may say that although I used the political argument at some length, I was not concerned so much with the fate of the Legislators as with the fate of the Government, and the Reform Scheme itself. Now, Sir, during the last two or three years it has been my fortune to travel round the whole of this country two or three times, and I must say, Sir, that nothing has depressed more than to note the growth of suspicion, hostility, loss of confidence, and disbelief in the sincerity of Government, and of Government's good motives that has sprung up on all sides. This has very often, I think, been the result of ignorance and malice; but still it exists, and I know no royal road to getting over this difficulty. But I submit to the officers of Government that it is very inadvisable in

these particular circumstances to go out of the way, so to speak, to double the salt tax and thereby place a handle in the hands of the enemy to make Government still more unpopular. We are at present in a very difficult situation. I confess that I do feel some sympathy with what an Honourable Member from Bombay said yesterday in this connection that it seemed to me that the Honourable the Finance Member was very severe and unbending in that although we are in a great financial difficulty he would not allow the whole of the war expenditure to be debited otherwise than to revenue

Mr. President: The Honourable Member is now quite out of order.

Sir Montagu Webb: I will come right back. I was about to recall the fact that an Honourable Member from Bombay had severely criticised the Honourable the Finance Member for being stern and unbending. The Honourable and gallant Member, I think, in his similes and criticisms went very much further than needs of the case or the facts of the case demanded. Now, I would like to appeal to my Honourable friends, Mr. Seshagiri Ayyar and Mr. Rangachariar who are stoutly resisting this proposal to double the salt tax—I would appeal to them that they on their side must not be rigid and unbending. Here is an occasion where there must be give and take on both sides. It is no use for us to say that one side is unbending when we on the other side are similarly unbending. I do appeal therefore my friend Mr. Seshagiri Ayyar and his party who propose to leave the salt tax at Rs. 1-4-0 to bend and to meet the situation half way by acquiescing in and supporting the amendment put forward by my Honourable friend Mr. Shahab-ud-Din to raise the salt duty to two rupees only.

Mr. President: I see Honourable Members are not very willing to discuss the amendment to the amendment and I shall therefore dispose of it

The Honourable Sir Basil Blackett: Before you put the amendment, if you are about to put it, I should like to say that in the difficult circumstances that have arisen Government obviously prefer Rs. 2 a maund to Rs. 1-4-0 a maund and they will feel bound therefore, if the amendment of Rs. 2 a maund is put before the amendment of Rs. 1-4-0, to vote for the amendment to the amendment to the extent of putting Rs. 2-0-0. They reserve, of course, their right to a further consideration of the question when the main question is put as between the Finance Bill and the amendment.

Mr. Jamnadas Dwarkadas: May I, Sir, request you not to put the question at the present moment?

Mr. President: I warn the Honourable Member that the issue is very narrow and I shall have to pull him up sharply. I had to pull up Sir Montagu Webb three times, and I warn the Honourable Member that the issue is so narrow that it is difficult to keep the discussion in order.

Mr. Jamnadas Dwarkadas: I want to support the motion as moved by my Honourable friend Mr. Rangachariar and oppose the amendment as moved by my Honourable friend, Mr. Shahab-ud-Din, and in dealing with this I shall certainly have to deal with the speech that my Honourable friend Mr. Innes has made in support of the Government proposal. The Honourable Mr. Innes

Mr. President: The Honourable Mr. Innes has not spoken on this amendment.

Mr. Jamnadas Dwarkadas: The Honourable Mr. Innes has spoken on the motion of Mr. Rangachariar

Mr. President: The Honourable Mr. Innes has not spoken on this amendment.

Mr. Jamnadas Dwarkadas: Sir, the Government have taken this attitude now of supporting in the first instance the amendment put forward by Mr. Shahab-ud-Din. To all intents and purposes it may be said that so far as Mr. Rangachariar's motion is concerned we have those that support Mr. Shahab-ud-Din and those that support the Government combining to vote against that amendment. I therefore take leave to review some of the arguments advanced by the speakers for an increase of salt tax. It has been pointed out that it is necessary to look ahead. I hope that that lesson will be taken to apply more to the Government Members than to ourselves. We have had an admission here that the attitude that we took up last year has turned out to be the right attitude, and the attitude that the Government took last year has turned out to be the wrong attitude. I won't wonder if next year, in spite of the strong advocacy that we have heard in favour of the enhancement of the salt tax, we are again told by Government when we have defeated them once more that we were in the right and they were in the wrong. It is they who ought to look ahead and not try to impart that lesson to us.

But, Sir, another argument has been put to us. We have been told, "you are opposing this enhancement only on political grounds, because you are not likely to convince your electorate. Go and educate your electorate." Now, Sir, yesterday you placed upon us a number of restrictions that are imposed on the Members of the House of Commons. I wonder if a responsible Member of the House of Commons could have said to the other Members of the House of Commons, "we are unbending; go and educate your electorate." It is because in this House we have Members who are not responsible

Mr. President: The Honourable Member is entirely irrelevant.

Mr. Jamnadas Dwarkadas: I was only trying to deal with the argument that was advanced. I only meant to say that if the Honourable Member was responsible

Mr. President: If the Honourable Members wish to discuss the general application of the salt tax they had better let me get the issue between Rs. 2 and Rs. 2-8 out of the way.

Mr. Jamnadas Dwarkadas: My only submission, if I may be permitted with all due respect to the Chair to make it, is that the position has been altered by the Government practically accepting the amendment moved by Chaudhri Shahab-ud-Din.

Mr. President: The Honourable Finance Member announced that Government proposed to vote for that amendment but they safeguarded their rights as they must, because they will have a further opportunity in common with the rest of the House of discussing the issue between Rs. 2 and Rs. 2-8.

(Several Honourable Members: "The question be now put.")

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: The original question was:

"That clause 2 stand part of the Bill."

Since which an amendment has been moved:

"That in clause 2, sub-section (1), for the words 'two rupees and eight annas' substitute the words 'one rupee and four annas'."

Since which a further amendment has been moved to Mr. Rangachariar's amendment:

"to omit the words 'one rupee and four annas' in order to insert the words 'two rupees'."

The question I have to put is that that amendment be made.

The Assembly divided:

AYES—48.

Abdur Rahim Khan, Mr.
Abul Kasem, Maulvi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Barua, Mr. D. C.
Bhanja Deo, Raja R. N.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Bridge, Mr. G.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Reddi, Mr. M. K.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Sinha, Babu Adit Prasad.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Ujagar Singh, Baba Bedi.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

NOES—55.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Ahsan Khan, Mr. M.
Asjad-ul-lah, Maulvi Miyam.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jafri, Mr. S. H. K.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Jejeebhoy, Sir Jamsetjee.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.

Latthe, Mr. A. B.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sinha, Beohar Raghubir.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

The motion was negatived.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock.
Mr. President was in the Chair.

Mr. T. V. Seshagiri Ayyar: Sir, after what the Honourable Mr. Innes said, namely, that from the economic point of view there can be no doubt that the salt tax can be fully justified, it requires some temerity to answer that argument, but I would add in all humility as my friend, Mr. Iswar Saran would have it—I would say that there is another side to that question. Sir, I have collected statistics to show that whenever the duty was high, the consumption of salt in this country has been very low, and as the duty was lowered from year to year, the consumption increased. I will mention only a few figures and then pass on my table to the Honourable Mr. Innes. When the tax was Rs. 3-4-0, the consumption of salt in this country was 28·8 million maunds. When it was Rs. 2-8-0 it came up to a considerably higher figure. When the tax was Rs. 2, it went up to 38·2. When it was Rs. 1-8-0, it went up to 41·3. When it came down to Rs. 1, it went from 48·5 to 48·2; and again when it went to Rs. 1-4-0, it came down to 44·8. Now, during the last three years there has been some increase, and it is now 52·8. Now, Sir, that shows that if the tax is low, there is greater consumption of salt in this country; and what does it mean? It means freedom from epidemic diseases, and that people will be healthier in consequence of the consumption of salt. And what do they consume at present? It is 12 lbs. according to official estimates, whereas in Burma, according to official estimate, they consume 17 lbs. per head. Now, if there is less tax, people would be in a position to consume a great deal more and thereby the Government also would be in a position to get more income. Sir, I think if the Government would apply its mind to reducing the tax instead of increasing it, they would get a great deal more income than they are getting now, because there will be greater consumption of salt.

Sir, the Honourable the Finance Member has used one argument very consistently and I must, with your permission, refer to it for a minute. It is this. He told the House that Member after Member had risen in his place and said that there should be a balanced budget. Sir, when we said that at the time when the Budget was introduced in this House—and I was one of those unfortunate men whose expression has been availed of by the Honourable the Finance Member—what we meant was that we and the Government should sit together and see that the expenditure is cut down a great deal more and that thereby the Budget is balanced. That is what we intended to convey to the Honourable the Finance Member and not that if the Government were not going to do that, we should help them by the imposition of new taxes. If the Honourable the Finance Member is under that impression, he is very much mistaken. The argument which has been put forward very often from the Government Benches that it is our duty to balance the Budget has no force whatsoever if they would not meet us half-way. If they themselves cut down their expenditure, then it may be possible for us to meet them half-way. The principle of give and take seems to mean, according to the Government Benches "Give everything and we shall take everything." That is the only meaning they ascribe to the expression "give and take." There is one other matter to which I wish to allude and then I will sit down. It is this. A great deal has been made about this being a question of sentiment and of its not being based upon sound reasons, that it is for political reasons that we are voting

against the salt tax. I will admit for the moment that it is a question of sentiment. But can any civilised Government afford to ignore the feelings of a whole nation? If it is a sentiment, it is the sentiment of the intelligentsia of the country, of the poor of the country and of every one living in the country. Can any civilised Government afford to ignore that sentiment and say "We are going to enforce our sovereign will upon you." Can you say that? Will any civilised Government be justified in saying that? As regards the political reasons, I am astonished that officials who have been born in England and who have been brought up in the atmosphere of political amenities, should take exception to my friends saying that on political grounds it would be impossible for them to go before their constituencies if the salt tax is increased. Sir, speaking for myself, I am in a very fortunate position; I am not in the same unfortunate position that my friends are in. I am a nominated Member and, therefore, I have no constituency to which I have to account; but, so far as my friends are concerned, is there anything wrong on their part if they say "We want to serve the country again and it would be impossible for us to do that if we are parties to the increase of the salt tax." Is there anything wrong in their saying that? I can understand the Government Benches saying "We are not bound to help you; there are as good fish in the sea as come out of it, and those who come after you might help us to balance our Budget." But let me ask them if there is anything wrong on the part of my friends if they say that it is not fair to them to ask them to consent to this tax, and that, if they do, they will not be able to get back. Sir, I think they are justified in that and I think a great deal has been said about it which ought not to have been said.

For these reasons, Sir, I am strongly of opinion that the motion which has been made to reduce the tax to Rs. 1-4 should be accepted by this House. There are some friends who have spoken against the increase of the duty by 100 per cent. but who have voted for the increase of the duty by eight annas. I am quite sure, if they are consistent, they will go into the Lobby with us when this question of raising the duty by 100 per cent. comes to be voted on.

Sir Campbell Rhodes (Bengal: European): Sir, I feel the debate has lost a little of its reality since the trial of strength this morning, but there are one or two points that I should like to put before Honourable Members. Personally I am not altogether sorry that the rather wishy-washy compromise proposed in the amendment of my Honourable friend and so ably advocated by the sentimental financial expert from Karachi did not succeed. I would much rather face the straight issue and at the outset I would like to endorse what Sir Montagu Webb said, about the difficulties this Assembly has experienced, and also to pay my tribute to the Honourable Members on my right who have done so much these last three years and worked so consistently and so successfully to get the expenses of the Government down.

Various alternatives have been put forward and I would like, on the permission you kindly gave us yesterday, to refer in brief to one or two of these alternatives. There is the question of book-keeping my Honourable friend from Karachi advocated—that is to say, to balance the Budget with the help of an eraser and a penholder. I do not think he was really serious in that suggestion.

(An Honourable Member: "He was.")

Sir Campbell Rhodes: He may have seemed so to the Honourable Member, but to me it looked as if he was speaking with his heart in his mouth and *ipso facto* therefore his tongue must have been in his cheek. But another proposal has been made,—and here again I find my foes are of my own household—by the President of the Madras Chamber of Commerce,—this question of surcharge. I submit, Sir, that the only justification for a surcharge is a national and sudden emergency occurring between two Budget periods when at all costs money must be suddenly raised. I do not know whether it has occurred to Honourable Members—I should like to think that it has not—that this suggestion was the suggestion for tax-paying Bengal.

Mr. Jamnadas Dwarkadas: Also Bombay.

Sir Campbell Rhodes: I will take in my friends from Bombay. They and we between us provide practically the whole of the income-tax and the import duty. But Bengal also, I may tell Bombay, supplies 77 per cent. of the export duties, so that this, Sir, after the generosity of the House last year in regard to Provincial Contributions is an attempt, after giving us 63 lakhs, which they said we were honestly entitled to, to charge us about 2 crores.

Then, Sir, Mr. Moir expressed some doubt yesterday as to what a super-heater was. I may tell him in simple language that a super-heater is a method of turning steam into gas. That brings me to my friend, Dr. Gour. He suggests that the tax on iron and steel should be put up. Dr. Gour had, I believe, a most successful career at Cambridge as an economist. (A Voice: 'No.') I have his own authority for saying so. That, Sir, was many years ago, but I do take exception when he drags into the quagmire of economic fallacy the Members of the Fiscal Commission. I have the book here, Sir, and I can lend it to him and he can rub up his somewhat tarnished economic truths by reading that book and finding out where we recommend heavy import duties on iron and steel. I am not quite sure in regard to cloth whether my friend, Mr. Jamnadas Dwarkadas, was not a little off the rails and was going a little away from the report which he enriched with his own signature. Well, Sir . . .

Mr. Jamnadas Dwarkadas: Will the Honourable Member read out exactly what the Fiscal Commission has said with regard to steel?

Sir Campbell Rhodes: I think it would save the time of the House if Members will read it at leisure. But, Sir, Mr. Jamnadas Dwarkadas will find out exactly what they said in paragraph 108. We have explored all these methods and we have found that they are impracticable. Then we come back to the question of balancing the budget. My Honourable friend, Mr. Seshagiri Ayyar, was very anxious to balance the budget as long as it was cutting down the grants; but he is not so anxious now and he is willing to face a deficit. Well, Sir, I am not. We have done our level best to balance the budget by cutting down the grants and we have failed. The alternative now before the House is a salt tax or a deficit and it is suggested that the salt tax would press more hardly on the poor. I am not certain about that. The Finance Member has pointed out that a deficit is adding to the unproductive debt of the country, but experience has shown that it is also adding to the inflation of the currency. Now, that means in simple language that a rupee purchases less than it did before the inflation and therefore the poor man can buy less salt with the money. Whichever alternative you adopt, whether it is deficit with its necessary

inflation or salt tax, you will inevitably reach the same end, putting some burden on the poor. I think, Sir, and I think most in the House will admit, that this is really a political rather than an economic question. The Members of the House are faced with the alternative of either their lives or their principles, and I would suggest that while it is an uncertainty about their life it is a certainty about their principles, and by saving their principles they may also save their lives. The Honourable Mr. Innes suggested that the constituencies should be educated. It was received very coldly in the House,—why, I do not know. Whether the implication was that the members are not qualified to educate their constituencies or the constituencies are not capable of being educated, I cannot say, but if they want a text book, I strongly recommend to the Government that the eloquent and convincing speech of the Honourable Member for Commerce which he made in the House this morning should be distributed broadcast in all vernaculars throughout the country.

There is another reason, Sir, why I gave my vote last year, and shall give it again, to the salt tax. We have tried, as I have said, to balance our revenue, and we have failed. We want permanently additional sources of revenue. That is what I personally want, and what I should imagine the Government probably also want. Let us face that fact. We are not living now in abnormal times. We are working under normal conditions, and we cannot gamble on better monsoons than we have had this year in the future. Last year my Honourable friend Mr. Joshi twitted me because I preferred salt to cloth. Mr. Rangachariar has, I think, answered that argument, but I may point out that in the interests of the people, it is better that for every rupee you collect sixteen annas should go into the pockets of the Government. That is the case in salt. The case of cloth is that for every rupee you collect from import duties six annas will go into the pockets of Government. I hope, therefore—though I admit it is a very faint hope,—after the division this morning, that the House will reconsider this matter.

Captain Sassoon in a speech which contained much that I personally take strong exception to mentioned that it was within the rights of the Government to restore this salt tax if the House threw it out. Where you have rights, and I am addressing myself now to the Honourable the Finance Member and his colleagues, you have also responsibilities,—if Members say they must represent their constituents, then the Honourable the Finance Member must represent sound finance; otherwise it was not necessary to have brought him out from England; we might have got our Finance Minister nearer, say from Karachi. (A Voice: "Why not from Calcutta.") I am afraid Calcutta would not help. A celebrated surgeon was taking half a dozen senior medical students round the hospital in London, and coming to a certain bed he asked the students what they thought of the condition of the patient. They all said, he was not very ill and they thought if he were left alone he would be all right. The surgeon replied "Gentlemen, you do not realise the symptoms, and I shall operate to-morrow". Here the patient interposed and said "you will certainly do nothing of the sort when the majority is 6 to 1 against you." I leave the Honourable the Finance Member and his colleagues to take the bearing of that story and to decide what is right both in the interests of their own reputation and of the life of the patient. But I appeal, Sir, once more to the House to take a more statesmanlike view of this position than has been indicated in some of the speeches. My Honourable friend Mr. Rangachariar says that the Government Benches are afraid of odium. The

[Sir Campbell Rhodes.]

Honourable Member for Commerce has looked across the House and has said "Why not have the pluck to do it?" Standing in this position, Sir, I see many reeds on both sides of the House shaking in the wind and I would urge a little courage. I would urge Members to lead rather than be led by their constituencies. This question of odium does not appeal to me at all. Face the odium. I gather Mr. Rangachariar's new chemical designation for salt in future will be "odium chloride". I appeal, therefore, finally, Sir, to the House to accept their responsibilities and not to look back at the burning cities of bankruptcy behind but, if they do it, I can only repeat that old warning, which seems extraordinarily appropriate to the subject before us: "Remember Lot's wife."

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, notwithstanding your best endeavours and the prevailing depression in trade, one trade, in particular (in spite of this stifling weather), has been flourishing, and that is the trade in red herrings constantly trailed all across the line. Some are always trying to get us out of vision of the one issue now before us, and that is whether there is going to be enhancement of salt duty to the extent of Rs. 2-8 after the amendment to the effect that it be raised to the extent of Rs. 2 has been lost. That is all that we are now concerned with. And I do not think that appeals to passions and prejudices, whether with regard to provincial contributions or the likelihood of Bombay and Bengal having to pay more in the shape of income-tax and customs duties, need trouble us for the present purposes. I should have thought, Sir, that, after the Honourable Mr. Innes's eloquent disclaimer of eloquence of a democratic nature, we should have had less eloquence of a bureaucratic nature, trying to take us away from the issue before us.

Sir, an appeal has been made on the ground of economic aspects of the question. I desire to offer one or two observations with regard to that to start with.

Mr. Innes gave us certain figures. The latest figure, according to him, regarding the Delhi retail salt market, is 11 seers to the rupee or thereabouts. Mr. Innes probably, like another occupant of the Government Benches with whom I had the honour of talking about the matter, had sent for his butler and asked him what he spends on salt—if his butler is the man to spend money on salt as he spends money on other "necessities." He may have found out, by calculations in his office as well as this direct investigation, that the increase is no more than 3 annas a head. Well, I had the curiosity to send for my bazaar *chit* this morning and the retail price of salt at Delhi this morning, or yesterday morning, is 10 pice to the seer for, no doubt, salt of the better kind. Therefore, it is not a question of whether the extra tax is to be 12 annas or Rs. 1-4. It is much more. The moment you disturb the market after it is getting settled down, unscrupulous—call them if you like—dealers, middlemen, intermediaries, disturb the market to an extent that makes the real rate inoperative for you cannot stabilise retail rate without objectionable control. Last year, there was this attempt to raise the tax. It failed. I don't complain. I don't call it want of consideration or courtesy on the part of Government to bring it forward again. It is worse. I would like to borrow

8 P.M. Mr. Innes' own language with regard to attempts to interfere with other portions of the Finance Act Schedule. He appealed to us not to disturb other markets on short notice but to let things go on. Well,

last year people thought that a steady salt rate was to be continued and on the 1st of March we have this proposal. Disturbing influences have been in operation already and revenue to the tune of Rs. 30 lakhs will probably have been collected by the end of the month. But the people pay a great deal more. All this goes to show that although the initial amount of taxation may be small, the extent of bad and malignant influences on the market is tremendous, and we have got to save people against results of fluctuation. Sir, the question of the use of tea in England has been brought in. I should like to know whether England makes its own tea in the same way as India has been making its own salt and can make its own salt if it is allowed and if there is encouragement. Therefore, the two questions are not analogous at all.

Mr. R. A. Spence: Are both necessities?

Sir Deva Prasad Sarvadhikary: Well, salt also is I suppose a necessity in England—at least now. Is it taxed? Where is the good of talking about necessities that you create. To some people beer is a necessity. But that is no reason why the Honourable Member from Bombay should plead for free beer.

Mr. R. A. Spence: No, not at all.

Sir Deva Prasad Sarvadhikary: Coming to another branch of the economic question, 3 annas only—a miserable negligible 3 annas—to be added per head and why object to it. But 3 annas out of how much? The other day a question was asked in the House and was never attempted to be answered because Government had not the materials though it should have, "What is the average income of the people of this country?" was asked and we have no up-to-date information. In old school books, probably now standing discredited, it was put down at something like Rs. 50 a year. (A Voice: "Rs. 35.") I am taking it at the higher figure, because that was at one time quoted. Let us have it even at Rs. 60 a year or the stupendous sum of Rs. 5 a month to be spread over all the necessities of life. We have been reminded, Sir, of how the cloth situation will be affected if we were to put on what was suggested with regard to surcharge on customs duty. But let me assure this House, Sir,—at least that portion of the House that does not know anything about it—that the 12 yards or 10 yards standard of cloth does not apply to people except to a very small extent. There are people in India who have to go about from month to month and year to year with a modicum of 3 yards of clothing purchased or donated at some ceremonial time and which has to do duty for all the year and more. But these people must have salt and plenty of it. That is the only thing that they have to fall back upon. As regards tobacco that Chaudhri Shahab-ud-Din speaks of, I am at one with him. Like me if he will start an anti-smoking society in the Punjab and be the President of the society I should understand his point and plead that the agriculturist or the artisan who spends Rs. 2 on his tobacco and should not do that. But the men I speak of have to go on from day to day literally without their pinch of salt. What is the use of quoting cloth figures and tobacco figures with regard to a much more prosperous class? This, Sir, with regard to some of the economic aspects of the question.

As regards the political aspect, Sir, I shall take up a much smaller issue. Was there any political aspect of the kind suggested present in the

[Sir Deva Prasad Sarvadhikary.]

minds of Assembly last year? There was none, for there could be none. And yet the House made up its mind definitely, and unmistakably and made that mind quite clear. Sir, as I have had by way of penance, occasion of telling the House more than once, that all these stock arguments in favour of salt duty are absolutely familiar ground with me, because I have had—I shall not say the misfortune but the necessity of using them longer than Mr. Innes has been in service. But I have long changed my point of view, examined the foundation of belief as Mr. Innes appeals to us to do. I believe that where the country is strongly and fairly unanimously of the mind that it is with regard to salt duty, it is the duty of those who have been favouring us with those stock arguments to revise their position and see eye to eye with the country which should be spared this fiery cross. It is a mistake to suppose that we cannot face our constituency because there is going to be this extra salt tax. Would it affect them? It is a very limited constituency, a very limited constituency. I repeat though I hear a cry of 'No' behind me. I shall explain myself. The constituency has to pay a certain amount of tax without which they cannot come on the register of voters. They are not in the position of those I speak of and will not mind an increase, slight or large. It is those who are never on the voting list, who have no chance of coming on the voters' list—it is those that this House has to think of, and not merely of the individual constituency. All these considerations point to one direction regarding the immediate matter before us, namely, this House cannot consistently with its attitude last year do anything but oppose the proposed salt tax. Sir, I shall not take a share in the red herring trade and I shall not go in this connection again into the question as to how this budget is to be balanced. We have had our say. We have made our suggestions, we have shown our anxiety to do the best we can to help the Government. (A Voice: "No.") There is absolutely no good of meaningless interruptions like that because the House tried to find the best devices it could on short notice and insufficient materials which have not been acceptable. As Mr. Rangachariar has pointed out, we are prepared to meet a deficit as we make it out, not one that has been made for us, certainly not one that has been handed to us not only for a series of years but almost for generations. We have done a great deal. We want to do more and rigid retrenchment is one of the methods. The Honourable Mr. Innes reminded us that there is a great deal of difference between last year and this year. So do I say, and we have just begun retrenchment; we have not devised nor carried out retrenchment to the fullest possible extent. I recognise that the whole of even the Incheape reductions could not be carried out this year. I also recognise that the civil authority have been partly helpful. I am thankful that the Railway authorities have to a certain extent come to our assistance by accepting my proposal about the Railway cut and by being helpful in other ways. While we have succeeded in getting a cut of Rs. 62 lakhs I believe or in the neighbourhood of that figure on the civil side, could not the Military authorities do something since we appealed to them last? There is a considerable amount of margin of recognised possibility of reduction leaving alone reduction of units and other questions that must await decision elsewhere. Could not the Military Authorities have taken our pitiful circumstances into consideration and said, here is another crore which without inconvenience we propose to spare, say out of the barracks, say out of the stores, or out of a thousand and one other things with regard

to which neither Whitehall nor the British Cabinet need dictate—could not they have come to our assistance and helped us and thereby minimised the supposed deficit? Then there is the question of accounting so slightly spoken of; but that has got to be put right. These are matters which under your ruling, (and I do not want to abuse your ruling except to show that ours is not a blind vote)—I will not go into now. The major question now before us is as to what is to be done with regard to this extra tax and I think that the House has one clear duty before it, namely, to reject it. Those who could not go the whole way with us but were for a compromise of Rs. 2 cannot now go back upon what they have given out as their principles, including the gentleman from Karachi who has come in for a good deal of Bengal sarcasm. In the words of Mr. Seshagiri Ayyar, they have to go into the lobby with us.

Mr. T. E. Moir (Madras: Nominated Official): Sir, I am afraid that I am in trouble again. I do not like to be in trouble, especially when it is really my own fault. But it is rather a shock to me to be accused by my Honourable friend Sir Montagu Webb of being devoid of sentiment. I was, Sir, under the impression that for the last year or more I had been engaged on a somewhat quixotic crusade which practically every one else thought could only be defended on sentimental grounds. But it is my own fault, because my Honourable friend based his remarks on a speech which I made yesterday. Sir, I am not a particularly adroit or experienced debater and I think the House will remember that I had the misfortune, quite deservedly I admit, to be called to order by the Chair for going beyond the scope of the debate and inexperienced as I am,—I am rather easily put out of my stride—the result was that various misleading lacunae were apparent in my argument which might not otherwise have appeared. But Sir Montagu Webb himself is not entirely devoid of sentiment, is, may I say, not devoid of practical common sense either because in referring to my lack of sentiment he himself took the opportunity of putting forward what I might refer to as Sir Montagu Webb's election mixture, which, as far as I could make out, was 50 per cent. sound common sense and 50 per cent. sentiment. I have no doubt that is a very good mixture for elections. But I also think that what we are still really discussing is this deficit and how it is to be met. Now, opinion on this point has apparently somewhat veered in certain quarters since yesterday, for I remember distinctly putting the question whether it was not the case that every Member in this House agreed that the deficit had to be met. I paused for an answer deliberately and I heard not a single voice raised in dissent from that proposition though demurred to to-day. Now, Sir, have I ever said that I liked the salt tax or that I liked additional taxation? I do not, any more than any other Member of this House. But surely when it is a choice of evils it is at least legitimate to consider that in the interests of the country at large, it may be worse that we should leave that deficit uncovered than that we should cover it by additional taxation, even if that additional taxation implies an addition to the salt tax. I do not think that there is any question of callousness necessarily involved in putting forward that proposition. I do not expect every one to agree with me, but at any rate there surely is, I think every one admits it, much to be said against our leaving this deficit uncovered. Now, Sir, it is very difficult to confine oneself to the point or points which happen to arise out of a particular motion or amendment, but I should like to state now,—I think I shall in the main only be repeating—some of the arguments as regards the salt tax. I shall do so in the first place from

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a purely financial standpoint, if I may try for a moment to ascend those somewhat arid heights which most of the Members of the House rather studiously avoided. I should like to endorse what Sir Campbell Rhodes has said as to the fact that the salt tax has at least one merit, that you do gain the whole of the additional taxation for the public exchequer. My Honourable colleagues on the Finance Committee will remember that in the last two months we have had a large number of proposals put before us for the strengthening of the other revenue-raising Departments, whether it be the Customs Department or the Income Tax Department or our Railways or our Posts and Telegraphs, and on each occasion we have been told, and we have generally found it necessary to accept that view, that this additional expenditure was essential in order to secure the additional revenue. But as regards the salt tax, I remember last year—I can speak for Madras only—that when we were informed that the salt tax was to be raised, we did not consider it necessary to ask for a single additional clerk or peon or any other official in our salt establishment; that is to say, that the whole of the additional taxation was going to be collected without any additional expense; and here perhaps I might correct a statement which I have heard from one Member, that is to say, that the additional taxation proposed was 6 crores; I understood that it was 4½ crores, this year. I suppose that the reason why 4½ crores only is estimated is that there are large stocks at present in the hands of dealers which they will naturally sell before buying more salt. But at any rate that advantage cannot be claimed for the other proposals which have been put forward as alternatives. The two principal alternatives are, an increase in the customs or in the income-tax. Now I cannot help being struck by the fact that the income-tax and customs have let us down very badly in the last two years, and that it is exceedingly doubtful if any readjustment of the income-tax or the customs could possibly meet our real requirements in the current year. In saying that, I am not in the least attempting to argue that the compromise which some Members of the House sought to achieve would have been a bad thing. I would have been prepared myself, if that compromise had been secured, to welcome it, in spite of that lack of sentiment which has been attributed to me. A further point to which I would like to draw the attention of the House is that as far as I can see—and I am here talking of the four principal heads of revenue with reference to which, I think, comparison might justly be made—that whereas in 1913-14 the salt tax represented something like 26½ per cent. of the revenue under those heads, even with an increase to Rs. 2-8-0, at which figure I may remind the House it has stood on a previous occasion, the percentage that the salt tax would bear to the total collections under these heads would be only about 15 per cent. Now, what this conveys to my mind, taken together with the failure of Customs and Income tax to realise our expectations, is that the effect, the financial effect, of the new financial arrangements have not been entirely or correctly foreseen and that there is in consequence a lack of balance and of due proportion in the present incidence of our taxation, for which the present proposal will really be in part a remedy. I cannot possibly enter now on such a wide question, but it seems to me that the criticism applies not only to our taxation but also to our tariffs, and that the temporary expedients such as have had to be adopted year by year with reference to the existing financial situation have gradually thrown our whole taxation system out of gear. I sincerely hope that that is a question which the Finance Department will take

under consideration before another budget is placed before this Assembly, because I do not think that we cannot possibly go on for another year, quite apart from questions of deficit or anything of that kind, without a real over-hauling and examination of the principles underlying our taxation and our tariffs. Now, to deal for a moment with the sentimental grounds I do not think that any Member has really made out a case that we are going to impose on the people of this country an intolerable hardship by this increase of the salt tax. As has been pointed out, any slight increase, any slight fluctuation in food prices, a few weeks' anxiety about the monsoon in any part of the country, would have a much more serious effect on the agricultural population than the proposed increase in the salt tax. But there is one consideration with reference to this question of balancing our Budget which I would like to put to the House. I have listened in this Assembly to a great deal of discussion about tariff reform, about our being master of our own fiscal policy. We have even talked of the abolition of the salt tax. Now, I am perfectly certain that all such talk is entirely in vain so long as we continue to have deficits; so long as we have deficits, our financial policy must be deflected by purely revenue considerations and it would be no use of our talking about tariff reform or fiscal freedom; and paradoxical as it may seem, the royal road to the ultimate abolition of the salt tax may be to balance our budget this year even if it be at the cost of increasing the salt tax. At any rate, if we want our fiscal freedom, in my opinion we have got to get rid of both deficits and of provincial contributions.

Now, Sir, I wish to turn to a few remarks which fell from one or two of the speakers in this House. Dr. Gour said that he would not tax salt because it was a necessity. Now, I would ask Dr. Gour if he considers clothing a necessity. I have always understood that clothing is regarded as the mark of and necessary to a civilised community and I have several times in the Indian press seen it thrown up against my own countrymen that at a time when India was at the height of its civilisation my ancestors were roaming the woods in a garment which consisted of at most two coats of paint. For myself, I have always been rather suspicious of the truth of that statement. My own experience of the hills and heights of Caledonia stern and wild has convinced me that the climate is really against a garment of that kind; in fact, I have not even had the temerity to wear what is regarded as my own national costume. But I was also interested in Dr. Gour's interpretation of the constitutional position of an elected Member of this Assembly with reference to his constituents. Dr. Gour said that the correct position was to follow their mandate. Now, I would have no objection to Dr. Gour following that mandate if he did it consistently, but, since I came up to Delhi, I have been deluged with literature in the form of protests against legislation proposed by Dr. Gour. One piece of that legislation is, I find, entered on the agenda for to-morrow. (A Voice: "Oppose it.") I do not know and I cannot say what the real attitude of Dr. Gour's constituents is to that legislation, but certainly the impression I have got is that they are distinctly against it. But I do not think Dr. Gour can have it both ways. He cannot lead from in front in matters of social reform and lead from behind in matters of taxation.

Now, Sir, I should like to turn to one or two remarks made by my Honourable friend Mr. Rangachariar. I was astonished to hear him throw

[Mr. T. E. Moir.]

out the suggestion that Government were in this matter merely attempting to deceive the Assembly. Now I have had many a bone to pick with the Government of India, but the suggestion that they have some ulterior motive in view, other than that of sheer financial necessity in balancing the Budget, has never crossed my mind, and I should have thought that the paramount obligation upon the Government of India to do so would be evident to anyone, and of course I am not in the least prepared to suspect the Honourable the Finance Member of wishing not to balance his Budget but to ensure the position of the Government of India so that they may continue on what Mr. Rangachariar terms their extravagant course—that rake's progress of which we have heard. If I found any reason to suspect that that was the case, let me assure Mr. Rangachariar that I should gladly join him in the hunt. Now I hope, Sir, I need say nothing more about the suggestion that the Government of India are a set of bold buccaneers who are merely raiding hen roosts for their own purposes. But another remark which the Honourable Mr. Rangachariar made was that he was not prepared to tax foodstuffs. That remark seemed to me incomprehensible. Ever since taxation was known, it seems to me that in India, the fiscal system had been based on the taxation of food stuffs. Is our land revenue in its essence anything else than the taxation of foodstuffs? What is it derived from? In the old days the Government of the country took its share direct of the foodstuffs. It took it in kind. Subsequently, when currency came into vogue and it was possible to do so, for the convenience both of itself and the people of the country it converted that share of the foodstuffs of the country into its cash equivalent. But what still more astonished me was that while many Members of this Assembly avow they are not prepared to vote any additional burden on the poor agriculturist in this matter, they are not consistent even in this. It was only the other day that I heard one Honourable Member—I do not think he is present now—say with reference to the question of tariff reform and protection that he was prepared to put a burden and a considerable burden on the country. He admitted that it would be a burden and he said that he was prepared to put that burden on the country, and he also assumed at the same time that the country would be prepared to take that burden on its shoulders. My Honourable friend, Mr. Rangachariar, also pointed out that even in the stress of war time the Government of India only imposed an addition of 4 annas to the salt tax. Now, Sir, when I came up here I was very unfamiliar with the financial policy of the Government of India. I am still very much at sea, I admit; but I have been slowly coming to the conclusion that to a very large extent our financial troubles now are due to the weakness—I might almost say, the folly—of our financial policy during the war. Those years of the war were really, as far as India was concerned, the fat years, and in those years we made no provision for the lean years which we did not see were coming, and in that respect I almost feel that I owe an apology to the Honourable Sir Malcolm Hailey.

I had been inclined, like some others, parrot-wise I am afraid, to assume that the responsibility was mainly his. I am beginning very much to doubt that, and to feel that it was not his fault so much as the fault of his predecessors who left to him a financial situation from which we are only now beginning to extricate ourselves. Now, Sir, one last point. One Honourable Member, I think it was the Honourable Member for Commerce

and Industry referred—I have hitherto been dealing with the question on pure financial lines—referred to the political grounds underlying our attitude towards this question of additional taxation on salt, and in that connection he referred to the fact that apprehensions of what the non-co-operators might say or do account largely for that attitude. Now, as to that, I have personally had much experience of the ways of the non-co-operators, and I do not think that I am likely to underrate either their malice or their capacity for abuse. But I will say this, that I have never yet known—I cannot recollect a single occasion on which any Government in this country or any official or any responsible non-official has yielded to his apprehension of that capacity and at the same time received any recognition or gratitude from the non-co-operators for so doing. But I will add, Sir, that in the Madras Presidency at any rate we are not afraid of non-co-operators. We have had our fight with the non-co-operators and we have beaten them and those who are now engaged in working the reforms in that Presidency are in no wise to be terrorised by the non-co-operators or by threats of what they may say or do. This budget as I have said has given to the Madras Presidency a view from Pisgah of the Promised Land, and let me say this, that if the Madras Presidency consents once again to go forth into the wilderness it will not be because of anything that the non-co-operators may say or do.

Rai Bahadur Bakshi Sohan Lal (Jullunder Division: Non-Muham-madan): Sir, it is admitted on all hands that salt is a commodity of life which is an absolute necessity for every human being, as well as for agricultural animals, specially of this poor agricultural country. A tax on salt affects more or less everybody from the highest to the lowest, but as a matter of fact it affects the poor the most. The middle classes, the wealthy people and others have the good luck of tasting other things like sweets, acid things and others, but the poor have got nothing to swallow their dry bread except with the help of salt. Salt is the only medicine for them; salt is the only luxury for them, and salt is the only thing on which their life can depend. The logic of the enhancement of the wages of labourers does not apply to the case of the salt tax. The 300 million or more population of this country does not consist entirely of labourers or traders or official and non-official workers. The proportion of such men is not more than one-tenth of the whole population. The majority consists of those who are unfit to work, the unemployed, indigent, impecunious, old persons incapable of moving about, the poor, the sick in bed, the children and *purdanashin* ladies, and last but not the least Hindu and Muham-madan widows with some children in arms, who, even if able bodied, have to depend entirely on a scanty earning of one anna or two by working a *charkha*. The reason why some Members of this Assembly have spoken in support of increasing the salt tax is because they do not know the condition of the poor people of this country. There is no representative of the poor in this Assembly, because they have no place even on the franchise list of the provinces or of the Assembly. They have got no property or other qualifications to send their representative. The labourers have got their representative in Mr. Joshi who is nominated by Government, but may I ask, who is representing in this Assembly those who are not labourers or have any property qualifications? The number of these people is certainly much more than those who are represented in this House. Their number who are not represented here is probably not less than 9/10ths of the whole population of this country. Are we not to safeguard the interests of those who are not represented here? Only those people who go to the

[Rai Bahadur Bakshi Sohan Lal.]

villages know of what value salt is to the poor people, where salt is not produced. These poor people will take in barter the things which are produced in the village, grain, or any other thing, but salt which is to be imported from a distant place is to be purchased, and it cannot be assumed that it is very easy for every individual in this country to pay four annas. The number of people who are able to pay four annas is very small; the greater majority of them are those who cannot afford to pay even 4 annas. So it is in the interests of those persons who have no voice in this House except by the generosity of the Members of the Assembly that this salt tax should not be increased. I should say that even the most greedy among the profession of money-lending or of law or of medicine extend their free help to such men. There is a Punjab proverb that *Dayan bhi ek ghar rakh leta hai* which means that even a wizard retains at least one house untouched from his life-sucking charms or magic. There is an exception to every rule, so if there is to be an exception to taxation, salt should be the exception. A duty on tea, timber, cloth, iron, chinaware, tobacco, etc., or even on railways or postages will affect only those who can afford to pay in consideration of what they avail of, but this salt tax mostly affects those who cannot afford to pay and who cannot enjoy even the advantage of tea and cloth, etc. Their case is quite different from the rest. The enhancement of the wages has not in any way ameliorated their condition. They have rather been put into the worst position by the increase in the prices and in the wages. They have no means to earn but have to pay higher for their dry bread and salt. May I ask, is there any tax on salt in England, in France, in Italy, in America, or any other country? (The Honourable Sir Malcolm Hailey: "Yes, it is a state monopoly in those countries.") That is a different thing altogether. Certainly we will have to balance the budget of this great empire, but we also have to look to the budget of the poor and I respectfully submit that under any circumstances the tax on salt ought not to be increased and, if there is any occasion for a prosperity budget, the first thing to abolish would be the existing tax on salt. With these words, I support the motion.

The Honourable Sir Malcolm Hailey: I feel under a great disability in addressing the House at this moment. Not only has the House already by its previous vote given some indication of its feelings on this question but the arguments on both sides have been put and rebut, have been argued and counter-argued and I feel that it would be of little avail to me now to re-state the case for the increase in the salt tax or to argue its necessity in the light of our financial position. Yet, there are considerations which I must put to the House, for I feel deeply the gravity of this occasion. I have felt it so deeply myself that I, with other friends, have been unremitting in our efforts to attempt some solution which would avoid the motion for doubling of the salt tax being put to the vote of the Assembly. To avoid that, we were willing to agree, as the House knows, to a solution which we ourselves felt in some respects highly undesirable. I need not go into its details here, for the attempt has failed. With the best good will we could not secure agreement, and we now stand faced with the necessity of supporting on behalf of Government the original measure embodied in the budget proposals. And this, Sir, comes at a moment when we are closing a momentous chapter in the history of this Legislature and indeed of the Reform Scheme. One has only to look back on the events

of the last year to realise its importance. It is not only the fact that the Legislature has represented to us, who have the interests of the Reform Scheme at heart, a proof that there was in India a strong and solid body of moderate opinion which the chief bulwark against the forces of disintegration and almost, I would add, of anarchy that seemed at one time to be flooding the country; it was not only that it has proved to us that to that extent the Reforms were a success; but its own history as a Legislature has not been devoid during the last year of incidents which will have a powerful bearing on the history of India and its relations to Great Britain. I need not perhaps dilate on the importance which history will attach to what has happened in this Legislature in regard to questions such as our fiscal relations or to the Bill which affected the juridical relations of Europeans and Indians, nor in another sphere, to the discussions regarding the State management of railways. It is enough to say, that this question comes as the last of a series of discussions of the highest importance; it will be practically the last serious decision which this Assembly as an Assembly will have to take. Our business in Simla is seldom of the first importance. We foreshadow only a short Session there this year, and naturally, in a short Session, we shall, if we can avoid doing so, avoid bringing before the Assembly any matter of very grave moment. But that is not the only reason why I feel the gravity of the occasion, for it is an open matter between us that the decision will have other implications of a constitutional nature. Perhaps those in themselves are more important than the effect of this immediate decision

Mr. K. Ahmed: What are they?

The Honourable Sir Malcolm Hailey: . . . more important perhaps than the effect of this decision on the finances of the country.

Rao Bahadur T. Rangachariar: Don't raise them.

The Honourable Sir Malcolm Hailey: I have no intention and indeed I need to repeat that defence on the economic side of our proposals so brilliantly put forward by my friend Mr. Innes. I am dealing rather with larger issues. I am answering the first question which has been put to us, how we, as a Government, came to put this proposal before the House. Indeed, it was put to us in this form, which suggested that we had done so lightly and without due consideration. Sir, was it likely that a Government constituted such as ours, and a Government which had behind it the record of the last two years, would have put such a proposal forward lightly or without a due prevision of its consequences? There are those in the present Government who in their sphere and among critics, both in India and outside, have incurred a certain amount of obloquy because we were previously unwilling to produce or to face a constitutional deadlock. Surely we of all others would hesitate to do anything which would seem to imperil an ideal to which many of us were firmly attached, I mean the progress of reforms. Is it likely that we would have put forward such a proposal unless we had felt that it was the only and the final solution of our difficulties? One final remark; I know I am now treading on somewhat delicate ground and I must choose my words—but I said that the proposal involves grave constitutional implications. Well, how came it then that we as a body put forward a proposal which, by carrying such implications involved also consequences affecting the head of our Council, for in the ultimate resort an individual responsibility of a very heavy

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nature might fall on him? I can only say this that it was unlikely that we would, without the most anxious consideration, give advice to the head of our Council which might finally involve him in making a decision of so momentous a nature, the more serious for him because not only has he a long Liberal career behind him, but from the first has had as his one consideration out here the task of making a success of the reform scheme. Well, Sir, we put this proposal forward, as has already been pointed out, in circumstances entirely different to those which prevailed last year. Last year we had our deficit, not the first of such deficits I am sorry to say. It was no doubt impairing our credit, but circumstances had not arrived at the condition in which we now find ourselves. Let me explain the matter from my point of view. Deficits are an extraordinary danger in finance. But although our operations last year presented all the characteristic dangers of a deficit, that is to say, although it forced us to raise our temporary loans at a higher rate because we had not a hold on the money market, although constructively, at all events, the series of deficits may have led to some inflation, yet we had not arrived at the stage when those who were advancing us money could definitely say that they despaired of our ability to rehabilitate ourselves. The circumstances of our finances had not then been explored to the full. Now we are in a different position. We have had every sphere of our expenditure narrowly and carefully examined. We have loyally and to the best of our ability given effect to the recommendations put forward by the expert body which examined our expenditure. (*A Voice*: "Not fully.") Not fully, Sir, because no human being can forthwith and within a few months give complete effect to such recommendations. But I am taking the position of the outside world. They will say that last year it is true there was a deficit, but it was quite possible that this was temporary, since we had not then regulated our affairs. Now, they know that even after the immediate maximum of retrenchment has been made India will have a deficit. That affects our credit in quite a different degree to the circumstances of last year. I sincerely believe that unless we can now balance our budget we shall be affected in our credit; and let me say that I am not sure that it is always recognized in this House quite what this means to us. Until we re-establish our credit we shall always have dear money in India. Since we must borrow both in Europe and in India the effect of short borrowing in England so increases our operations here that we lose all control over interest rates. Dear money in India does not only mean a fresh burden upon our revenue but it means of course high interest rates throughout the country, and that affects everybody, everybody who is starting a new industry, everybody who is seeking finance to maintain an existing industry. The re-establishment of our credit for the purpose of raising our loans is a primary necessity not only for the State, but it is of vital interest to everybody concerned in commerce or industry in this country. That then is our obligation towards our credit. But we had also the internal obligation, if I may use that word. In the first place, it is clear that our retrenchment will leave us as a Central Government almost stagnant in some Departments. That fact has already been sufficiently voiced in the House and not only on this side of the House. Our retrenchments will leave us in a state in which we can do nothing to promote that higher technical education which is necessary to fit Indians to take their place in our Imperial Services. But of course we have also

a further obligation. Mr. Rangachariar said that our only object in trying to get this extra taxation by salt was so to confirm our position that we might rely on maintaining always an expenditure level of 130 crores. Now, of course, that is not so. In the first place we know that although we can give effect this year to part only of the proposals of the Retrenchment Committee, the effect of those proposals should be continuing. We do not necessarily look merely to maintain expenditure at the level of 130 crores, because we hope the effect of the Retrenchment Committee will, given fair harvests and fair times, enable us to reduce that. But we have obligations of 9 crores of rupees to the provinces. I am not going to dilate on that question myself. It has caused me enough criticism and enough unhappiness to justify me in avoiding the subject. But there the obligation remains and somehow or other we must confront the necessity for our revenues being reduced by that amount. Those then were our obligations, and it was with a sense of the gravity of those obligations that we put forward our budget proposals. We are told that we might have avoided putting them forward, if we cared to do so. It has been suggested to us, but I do not think it has been suggested to us seriously, that there were other forms of taxation; I say, not seriously because when the House has tried to explore those other forms of taxation, it has always fallen into divided camps on the subject. I think I may say with some confidence that, had we from the very first and while preparing our budget been discussing with the House these alternative forms of taxation, the differences which have now appeared would have been equally strong, and we should have found ourselves in exactly the same position. Anything which involved further direct taxation would have been deeply resented by one section, and anything which involved further increase of the customs would have been equally resented by others. So I think I am justified in saying that now at all events the House at large is agreed that alternative forms of taxation could not safely be recommended as supplying the deficiency in our accounts. We are told again that we could have avoided it if we had acted more strenuously in following the recommendations of the Inchcape Committee. Indeed some have even gone much further and have said "A fig for your Inchcape Committee! if we ourselves had undertaken retrenchment, we would have gone very much further; it was an accommodating kind of Committee which first learnt how much each Department could spare and then proceeded to cut just that amount off." A more unjust, a more unreasonable description of the operations of that Committee it would be impossible to frame. I believe myself that there are few in this House who ever thought that a Retrenchment Committee could put forward proposals for so substantial a reduction in our current expenditure; and I can say with confidence that if those who say we have not done our best to meet the recommendations of that Committee, were to sit with us and were to attempt to face the task of carrying those recommendations out, I doubt myself whether they would be successful, as we ourselves are likely to be, in carrying out those recommendations. "A few crores more off the Army would do all that was wanted!" It is an easy word! But I, who had some experience of the difficulties of reducing army expenditure after the Great War, who have seen how extraordinarily difficult it is when you are just building up your machinery after the chaotic conditions introduced by such a war. I have seen how almost impossible it is at once and at one swoop to make large reductions, unless at the same time you reduce the strength of your combatant troops. Personally I believe that we shall be lucky if we manage to work down to the figure which we have taken for the retrenchments

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recommended by the Committee in the present year. At all events I can say, with the utmost confidence on behalf of my colleagues, that if ever their ready compliance and loyalty was shown in carrying out the recommendations of a Committee, many, if not most of whose recommendations were bound to be distasteful, that loyalty was shown on this occasion. We are told that there is another method of meeting the difficulty; and here, again, well aware as I am how much this question has already been discussed, I shall touch on it but very lightly, I mean the method of altering the form of our account. I should not indeed have touched on it at all if it had not been that our inability to take this course has been quoted as a proof that we ourselves have been unduly obstructive, unduly hard to move, and unaccommodating in this respect. I say 'ourselves', Sir, advisedly, because there was a personal attack made on the Finance Member, which attributed that attitude of mind entirely to him. Sir, I do not see the author of that attack. (A Voice: "He is here.") Yes, he is here. I should like to say as little as possible as to the manner of that attack. I will say a little of it, because I believe myself that on the whole the House so far disagreed that it has strengthened Sir Basil Blackett's position. But I must say this, that it has been one of our traditions here, and a tradition of which we are proud, that we do not indulge in personal attacks on each other. We attack each other's ideas; we attack each other's principles; we attack each other's policy. In neither case are we sparing in our criticism. But we do not attack the individual. Yet that is exactly what was done on this occasion, and were that method to be followed generally in this House, there are few who would not have cause to look back on the innovation with genuine regret. As to the arguments on which that attack was based, I must say this. So far from any one individual member of our body having been unduly unaccommodating in this respect, anything that has been done in regard to the restoration of grants refused is the decision of our body as a whole and we stand and fall together by it. Now, grants have been restored in two respects. One relates to the Royal Commission. I suppose there is nobody here who did not expect that if the vote went against us—and I think I may claim that it was perhaps only by a chance that it did go against us—we should in the ordinary discharge of our duty have to restore that grant, and I will add, Sir, that I do not think there is anybody here who resents our having done so. (Mr. Jamnadas Dwarkadas: "No, no. We do resent.") But, there was a second case in which the grant was restored. I argued it before; I am not going to argue it again. But I wish to quote the actual words used by Captain Sassoon in supporting the proposed transfer from Revenue to Capital. Remember again, when you hear them, that it was the Finance Member who was unaccommodating because he could not see his way to yield on this point.

This is the argument on which the proposal was based:

"We find no other at any rate easy suggestion put forward to replace that money. We are therefore trying to cut our coats according to our cloth and, although I agree it is to a certain extent juggling"

So, Sir, it was put forward with the admission that it confessedly was juggling and the Finance Member was unaccommodating because he refused to juggle. I commend Captain Sassoon to put forward an argument of that nature at a meeting of one of his companies in Bombay.

I suggest to him that, if at any time he should be in the position of having to raise further money and, in order to show a good return should be under the necessity of putting his affairs in as favourable a light as possible to the public, I commend to him to suggest to the shareholders that they should indulge in the operation of juggling in order to make their accounts look better. I will only give him one other piece of advice. He said that, if this were the attitude we were to take up on behalf of Government, he was doing little good here and he might as well return to his constituents. I have no desire to see him return to his constituents, Sir, because I think that, if he stays here, he will learn something which will be valuable to him in after life, if it is only a proper reticence in debate.

When those were the alternatives, namely, when it has not been really suggesting to us that there is any better tax, when it has been put to us that we might get square by making further retrenchments which we knew to be impossible, or by changing the form of our accounts, we have felt that we are indeed left with this one sole resource; and, if we have felt that, I do not think that anybody can accuse us of wilfully flouting public opinion or wilfully offending a deeply felt sentiment. We knew and recognised that sentiment. But, we were faced with a necessity for which we saw no other solution and a necessity, Sir, for which at this moment frankly I and those with me see no other solution now. Believe me, if we still hold to our position, it is not because we do not recognise the difficulties of our opponents; it is not because we are unmindful or careless of the depth of sentiment on the subject of the salt tax, or of the 20 years' history behind it. We recognise that it will require courage on the part of Members of this House to support that tax, and yet, although it is with an uneasy heart—for I myself would have been too glad to have avoided fresh taxation and more than glad to have avoided this particular item of taxation, yet though my heart is uneasy on the subject, I can with some confidence still put this solution forward. The one thing that we want now is a courageous and a consistent attempt to get into a position where we can at last see daylight. If it requires courage on your part, believe me you are not alone in that. It has required on our part also courage, for we know that we run the risk of incurring much criticism, much misinterpretation, and even discontent. My last word to the Assembly is this—that if you can take your courage in both hands now, if you can get into a position where you can at length see daylight, then you are at the beginning of a new state of things; you will have reached something like stability, and financial stability is the basis of your future progress. But as long as your condition of instability lasts, you will still year after year have to face recurring trouble, not only financial but political. It is only by facing the situation now that you can put the finances of India into a condition when India itself can, with something like a serene outlook on the future, set to work to readjust its relations with the Provinces, to provide Ministers, who are the chief agents of reform in the Provinces, with means to make their position real, it is only then that you can look with anything like a clear and serene vision on the future.

Mr. President: Amendment moved to clause 2, sub-section (1):

"For the words 'two rupees and eight' substitute the words 'one rupee and four'."

The question I have to put is that amendment be made.

The Assembly divided:

AYES—59.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Ahsan Khan, Mr. M.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiz Khan, Mr. M.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Hussanally, Mr. W. M.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah, Khan, Raja Mohd.
Iswar Saran, Munshi.
Jafri, Mr. S. H. K.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.

Lalshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sinha, Beohar Raghubir.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Webb, Sir Montagu.

NOES—44.

Abdur Rahim Khan, Mr.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Bridge, Mr. G.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jejeebhoy, Sir Jamsetjee.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Sinha, Babu Adit Prasad.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Ujagar Singh, Baba Bedi.
Willson, Mr. W. S. J.

The motion was adopted.

Mr. President: I had better call upon Dr. Gour to move the proposal he has put on the paper in the form of a new clause which ought to be added as sub-clause (3) of clause 2.

Dr. H. S. Gour: Sir, I wish to move the following amendment

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Might I suggest to the Chair that the number of the amendment should be stated.

Mr. President: It is amendment No. 47, slightly redrafted.

Dr. H. S. Gour: It is No. 47, redrafted for me by the Legislative Department. It reads as follows: It will be sub-clause (2):

"Notwithstanding anything contained in the Provisional Collection of Taxes Act, 1918, the duty on salt manufactured in, or imported into, any part of British India other than Burma and Aden shall for the period beginning on the first day of March, 1923, and ending on the day preceding the commencement of this Act be deemed for all the purposes of the Indian Salt Act, 1882, to have been imposed by rule made under section 7 of that Act at the rate of Rs. 2-8-0 per maund of 82 and 2/7th lbs. avoirdupois."

Now the real point of this amendment, as Honourable Members will see, is this. The Government of India ordered the levy of the enhanced duty on salt from the 1st of March of this year. And consequently they will have realised between 25 and 30 lakhs of rupees between the 1st of March and the date on which the new Finance Bill comes into operation. And the question, therefore, is whether the Government of India should, on the passing of our amendments, refund the money which they have received on the basis of the enhanced salt duty. If Honourable Members will consider for a moment from whom this duty has been realised and who will ultimately profit by it, they will have no difficulty whatever in supporting my amendment. The enhanced duty was realised by the middleman, the contractor. He immediately passed it on to the other subordinate sellers and ultimately to the consumer. It has been distributed, therefore, all over the country. If this refund is to be made, it cannot go back to the payers of the enhanced duty. It will go to the middleman who has already profited by the enhanced duty and has passed it on to other people. I think, therefore, it is just and fair that the State should not lose and the middleman should not gain what would be an unearned return and I therefore submit that, while coming to the aid of the State, we are also looking to what is intrinsic justice. And I, therefore, Sir, move that my amendment should be accepted by the House. I move it.

The motion was adopted.

Mr. President: The question is that clause 2, as amended, stand part of the Bill.

Sir Montagu Webb: Sir, the effect of the Resolution to keep the salt tax at Rs. 1-4 will deprive Government of the anticipated revenue which they expected to derive from that source. I therefore take this opportunity of inviting the Honourable the Finance Member's attention once again to the scope for further taxation which is afforded to him by a replacement of the import duty on silver. I had on the agenda paper a motion for the reimposition of this old tax, but the Honourable the Finance Member referred to this briefly as unacceptable to Government. But I would seriously ask Government to reconsider this matter because, in my opinion, Government are simply throwing away quite unnecessarily at least a crore and a half of rupees a year. Now, this tax of four annas on silver which was on silver for several years, and yielded Government very substantial revenues, was removed not under any pressure from this House, not under any pressure from the public, but was taken off in response to what I can only call the theoretical disquisitions of the Batington Smith Committee that it was undesirable to tax the precious

[Sir Montagu Webb.]

metals. Now, Sir, silver coming into this country is imported by the public mainly for the arts.

Dr. H. S. Gour: Sir, I rise to a point of order. I ask you, Sir, whether, in view of your ruling given yesterday that it was not open to any Honourable Member to propose a new form of taxation, the Honourable Member is in order in proposing a new form of taxation.

Mr. President: As far as I am aware, he is not proposing and could not propose a new form of taxation under this clause or any other.

Sir Montagu Webb: What I mean, Sir, to suggest for the consideration of the Treasury Benches is the re-imposition by them of this tax. Silver is imported into this country by private persons solely for ornaments. It is a luxury import pure and simple,—and I see no reason whatever,—no sound economic reason whatever, why this tax should not be relieved. The only objection, Sir, that has been made on this occasion comes from the Bombay bullion merchants themselves; in other words, from the traders who deal in silver. Just as the man who deals in boots naturally objects to a tax on boots, so the trader who deals in silver naturally objects to a tax on silver. Now, the Honourable the Finance Member said that at any rate this tax without a rebate on export was unacceptable to him, because it would interfere with trade in silver. I am a merchant myself. I know perfectly well that cotton goods are imported into this country, that they pay substantial duties, and are re-exported in the ordinary course of trade. I import sugar into this country, Sir, which pays a very substantial duty and is exported again in the ordinary course of trade and I see no reason whatever why silver should not come into this country and pay its four annas duty and be exported when the market suited in the ordinary course of trade with or without a rebate. Why, Sir, in the course of the last few days, the price of silver has risen over three pence per ounce. That is, in the last few days, the variations in the sterling price have been almost as much as this proposed duty. The duty was paid before without any difficulty. No body objected to it. Government got their crores. If unfortunately they had not removed their tax, I think they would have received Rs. 2 or 3 crores a year on the average in revenue to this day. I therefore appeal to the Treasury Benches and to the Finance Member to reconsider the probable revenue which could be derived from a re-imposition of this 4 annas tax.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): Sir, I rise to oppose this suggestion. Sir Montagu Webb says, "Here is an opportunity for Government to fill up their treasury with a crore or more of rupees" and he suggests that silver is an article of luxury. We have traded on this question since the last two years. It was put forward by Mr. Spence in the first year of this Assembly's existence.

Mr. J. P. Cotelingam (Nominated: Indian Christians): Mr. Price.

Mr. Manmohandas Ramji: By Mr. Price from Karachi and it was thrown out. Now, the Honourable Member from Karachi moved a similar motion last year and that was also negatived. He has made himself bold to make that suggestion again this year. I wonder, Sir, why Karachi is so very persistent in putting this question before this House so persistently. If Karachi thought that there was something in it, I think Bombay and

Calcutta would have thought of it much earlier and they would have come forward. Sir, it is not with the idea of finding sources of revenue to Government to the extent of Rs. 1 crore. There must be something behind it and the question is whether it is going to affect, or tamper with, our exchange policy. Perhaps the latter must be the reason for it. If that is so, I think this House will take into consideration the fact that we should not so easily tamper with an important question like this, affecting the whole policy of this country in the matter of exchange, by a vote here or there. It is a policy which, if accepted, will act to the detriment of this country. Now, Sir, Sir Montagu Webb said that though we are putting duty on piece goods and other articles it is refunded all the same. But he forgets that the duty is refunded only when it can be traced positively to the consignment, as it was when it was imported. If the Customs authorities are satisfied that on a particular parcel or on a particular package duty has been paid, it is refunded. Here, in the case of silver, its identity cannot be traced when it is re-exported. We have lots of silver here lying, which has not paid duty for importation, and if we begin to give a bounty, on export, the question arises on which consignment will this bounty be given. Shall we give a bounty on all the hoards that we have, by sending them to some other country? Who will be benefited by that? I think the argument is totally fallacious. Then, Sir, last year Sir Malcolm Hailey had explored all the arguments that were advanced in favour of this duty and I do not propose to repeat them just now. I am convinced that the attitude taken up last year by the Finance Department and the Members of this House is in itself a guarantee that this suggestion will not be accepted.

Clause 2, as amended, was added to the Bill.

Sir Campbell Rhodes: I beg to move amendment No. 31:

"That for sub-clause (2) of clause 3 the following shall be substituted:

"(2) In Schedule III to the same Act item 3 shall be omitted."

This is in effect to do away with the export hide duty. It has been an unfortunate experience in fiscal reform for which the commercial community are equally responsible with the Government of India. In the unanimous report of the Fiscal Commission it was dealt with in paragraphs 190 and 191:

"This first experiment of the Government of India in protection followed, in our view, a wrong method."

"If the tanning industry requires protection this should be given by an import and not by an export duty."

And again at 191:

"The depression in hides caused by the export duty added to the natural world depression in price has resulted in many cases in making it unprofitable to collect the inferior hides. We have received evidence that the hides are frequently allowed to rot on the carcasses and that in consequence of low prices which have undoubtedly been accentuated by the export duty a source of wealth in the aggregate not inconsiderable has naturally been destroyed."

At the meeting of the Associated Chambers of Commerce, Sir, in January last, there was a very animated debate on this subject which ended in the following Resolution being passed by a majority of six Chambers to three:

"That in the opinion of this Association the export duty on hides and skins should be immediately removed on the grounds that, first, it has proved useless for the purpose for which it was imposed: second, it is economically unsound: and third, it has caused undeserved loss and suffering to all concerned and particularly to those working in a small way in the villages throughout India."

[Sir Campbell Rhodes.]

(*Rao Bahadur T. Rangachariar*: "May I have the names of the three Chambers who dissented?") It does not give the names. Speaking from recollection, one was Madras. (*Rao Bahadur T. Rangachariar*: "Madras, Bombay and United Provinces?") I am not sure. Now, Sir, turning to the figures of actual experience to bear out the remarks contained in the Fiscal Commission's report and in the Resolution I have just read out, in 1900 to 1914 the average exports of hides from Calcutta was 90 lakhs per annum; in 1921-22, it was only 45 lakhs. You have therefore, Sir, a value which I roughly estimate at 2½ crores either tanned locally or, as the Fiscal Commission's report says, rotting on the fields. Now, we know that though the local tanning industry has increased, it has not increased to anything like that extent. Speaking to hide experts in Calcutta I was told that on the first immediately after this reduction was made there was a revival in trade; and taking up last week's *Capital* I find the market report says that there are eager buyers and a good demand and that hides are now coming down from up-country stations which owing to their distance and the high railway rates were unable to dispose of their hides previously.

Chaudhri Shahab-ud-Din: I rise to a point of order. The reference in the amendment proposed appears to be to the Tariff Act of 1894 as only in that Act is there a Schedule III; but item 3 of that Schedule relates to rice and not to skins or hides. (*A Voice*: "That has been amended.")

Mr. President: Sir Campbell Rhodes is perfectly in order. He has moved the omission of item 3 in Schedule III to the Indian Tariff Act. Item 3 is—"Raw hides and skins *ad valorem* 15 per cent., etc." What is the Honourable Member's point?

Chaudhri Shahab-ud-Din: Sir, my point is that in item 3 of Schedule III to the Indian Tariff Act rice is mentioned.

Mr. President: You have the wrong Act.

Sir Campbell Rhodes: Sir, I was just finishing and all that the Honourable Member has done is to spoil the effect of my peroration. What I wish to point out is—I do not want to over-state my case—that owing to world conditions which have been aggravated by this duty, there is an enormous wealth in India being actually destroyed, as was pointed out in the Fiscal Commission. That wealth, I estimate, for Bengal and the surrounding districts only, at two crores of rupees. We have there a loss of wealth, which is probably the case elsewhere in India, as large as the provincial contributions and certainly larger than the salt tax. In the Fiscal Committee's Report we denounced practically all forms of export duty. We pointed out how the country loses in its competition with the world by imposing such duties, and it is in order to benefit, not the hide merchants, not the local tanners, but the people of the country that I move my amendment.

Mr. President: Amendment moved:

"For sub-clause (2) of clause 3 the following shall be substituted:

'(2) In Schedule III to the same Act item 3 shall be omitted.'

Rao Bahadur T. Rangachariar: Sir, I beg most emphatically to oppose this motion of my Honourable friend, Sir Campbell Rhodes. Sir, this was the one duty which was avowedly imposed by the Government of India to protect an indigeneous industry in this country. All other duties were imposed for the purpose of revenue,—this was the first duty which was imposed on the ground of protection. Sir, the tanning industry in South

India, in the Madras Presidency, in the Bombay Presidency, in the United Provinces, it was for the protection of the tanning industry in these provinces that this duty was imposed. Sir, as the Fiscal Commission themselves recognized, of which my Honourable friend, Sir Campbell Rhodes, was a most distinguished Member—my only regret is that no Member from Madras representing this industry sat on that Commission (*Mr. Jamnadas Dwarkadas*: "Mr. Seshagiri Ayyar was there." *Rao Bahadur T. Rangachariar*: "But he does not represent the tanning industry.") I am sorry also that Sir Logie Watson happens to be absent from this Assembly to-day—this duty was welcomed on all hands; in fact public opinion was behind it unanimously; the Chambers of Commerce, including the Bengal Chamber of Commerce, supported the imposition of this duty at the time it was imposed in 1919. Sir, it was rather unfortunate that the time chosen was inopportune. As the Fiscal Commission themselves recognized in paragraph 190 referred to by my Honourable friend, they say, 'we are aware that the experiment was introduced at a most unfavourable moment, and that the export duty was not the main cause of the depression that has overtaken the export trade.' They say that their objection to it is based upon principle. Sir, we cannot sacrifice what we have already done merely on the ground of principle. My complaint is that this experiment has not been tried sufficiently long. Sir, no experiment can be pronounced a failure or a success unless you give it a fair trial. You have not given this experiment a fair trial; that is the point which I ask the House to remember in this connection. In an earlier part of the Report I think the Fiscal Commission recognize that a period of 20 to 30 years is necessary in order to find out really whether any proposed duty will act to the betterment or detriment of an existing industry. Sir, three years, and three years, most inopportune years, is too soon to judge of the result of this experiment on which the Government of India embarked. Sir, the depression in the hides and skins trade is—I will not say entirely—is mostly due to the condition in Central Europe. Sir, Germany and Austria were our main customers. We know how those countries have failed. The depression in the trade is not due to the export duty at all. You may remove the export duty as much as you like, but I do not think that the depression is going to improve. The condition will remain there so long as our customers are unable to buy. That is the real secret of the depression in the hides and skins trade. Sir, this is not the first time that Bengal is attempting to remove (*Mr. J. Chaudhri*: "No, no.")—I am thankful to my Honourable friend, Mr. Chaudhri,—I mean this is not the first time that the representative of the Bengal Chamber of Commerce tries to remove this duty. His predecessor in office tried to do it in 1921, I mean Sir Frank Carter, and he failed miserably. I hope, Sir, the same result will await my Honourable friend's motion. It is true he said he invoked the authoritative pronouncement of the Fiscal Commission, of which my Honourable friend, as I have already said, was a distinguished member, and how far he contributed to the result is rather difficult to estimate. Sir, I have here in my hands a telegram showing that the Madras Chamber of Commerce, the Southern India Chamber of Commerce and the Hides and Skins Merchants' Association—and I lay emphasis on this—the *Hides and Skins Merchants' Association*, strongly protest against the reduction of export duty on raw hides and skins, and at a joint meeting held on the 5th of March, it was unanimously resolved to suggest that no rebate be allowed. That is again another point on which I have got a separate motion about the proviso contained in that clause; so that, Sir, they object to any reduction, and, therefore,

[Rao Bahadur T. Rangachariar.]

they object much more to the removal of this from the schedule altogether which my Honourable friend aims at. Sir Logie Watson, Sir, told this Assembly in 1921 how for 25 years as a man in the trade he had been agitating for the imposition of this duty, but the Government of India only accepted it in times of war, because they were forced to do it on account of war conditions, because Germany took all our raw hides and converted them into boots. Sir, he pointed out most forcibly that whereas these countries which he enumerated were willing to take all our raw products without any duty, they imposed a heavy duty on manufactured articles. "They do not want our manufactured articles. What they want from us is our raw material." Sir, we are playing into the hands of such countries which are wanting our raw products but do not want our manufactured articles. Sir, he suggested that "it would have done a great deal of help if conditions had been normal, and it would accomplish a good deal more if Government will take into consideration what I have urged upon them many years ago, namely, to make the duty into Germany, France, Italy, etc., commensurate with the duty which they impose upon our manufactured articles." Sir, if the Government of India had done that, this duty might have helped us, helped the trade considerably. The Honourable Mr. Innes speaking on behalf of the Government on that occasion also pointed out that it was not right to judge of the effects of this export duty by the abnormal conditions which prevailed, and those abnormal conditions have not ceased to exist as men in the trade will tell us. It is not necessary that they should be in the particular trade. Everywhere we hear cries that on account of the exchange and on account of other difficulties trade suffers enormously and we know it to our detriment, as our revenue returns show. In fact, the Honourable Mr. Innes in meeting the argument which has just been advanced by my Honourable friend, Sir Campbell Rhodes, said this: "The export duty is accused of being the cause of all the troubles under which the trade is labouring." Now, Sir, in this particular case nobody is able to say, or indeed has said, that our export duty is the cause of the stagnation of the hides and skins trade. If that was so in 1921, that opinion is also endorsed by the passage which I have read from paragraph 190 of the Fiscal Commission's report. Therefore, Sir, I submit that the tanning industry is a very important industry in South India and also in other provinces, I do not know what other Members from Bombay and the United Provinces have got to say about this. I know this, Sir, that, when this duty was put on in 1919, it was welcomed with both hands and with all heart, and, if this duty is removed or reduced, the news will be received with great pain in my province. In fact I am going to oppose the original motion of Government for reducing this duty. But of this, Sir, there can be no doubt that we should reject this motion of Sir Campbell Rhodes.

The Honourable Mr. C. A. Innes: Sir, I think I am correct in saying that the real battle over this hides and skins duty will come on when the motion is made to restore the duty to its original figure. All I will say, therefore, with regard to Sir Campbell Rhodes' amendment is this. The Government, having regard to the present financial situation, have gone as far as they think it right to go to relieve what they know to be a very real burden on a very important export trade. That being so, Sir, I am afraid I must oppose Sir Campbell Rhodes' amendment.

The motion was negatived.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, the motion that I have to move is:

"That in clause 3 (2) for the figure and words '5 per cent.' substitute the figures and words '12 per cent.'"

I do not understand, Sir, why the duty on this has been proposed to be reduced from 15 to 5 per cent. In the statement which I have got of the Sea-borne Trade it appears that in 1920-21 the total export was 164 tons; in 1921-22 the total export was 133 tons; so that exports fell by only 31 tons last year. Whereas, export to Germany in 1920-21 was nil, in 1921-22 it rose to 18 tons, and we are not aware whether it has risen this year or not. So, in the circumstances, I do not see any justification for reducing the duty from 15 to 5 per cent. Further, I say that the market which was totally upset for the last few years on account of the war is now gradually and slowly settling down, and thus it may well be expected that exports will probably increase in the coming year. Thus I do not see any justification, as I have said, for reducing the tax from 15 to 5 per cent.; but, simply with a view to test the reduction, I propose that it should be reduced from 15 to 12 per cent. and not to 5 per cent. I move the amendment.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, I beg to move the last portion of my amendment No. 30, that in Schedule III to the said Act in the fourth column of item 3, Raw Hides and Skins, the proviso shall be omitted.

This export duty was fixed by the Act of 1919, and at the same time a proviso was added so as to give, to use short language, Imperial Preference. The proviso, as Honourable Members will remember, runs as follows:

"Provided that, subject to such conditions as the Governor General in Council may by notification in the Gazette of India prescribe, a rebate shall be granted to the exporter of two-thirds of the duty levied on hides or skins exported to any part of His Majesty's Dominions or of the territories of any Indian Prince or Chief under the suzerainty of His Majesty or of any territories under the protection of His Majesty or in respect of which a mandate of the League of Nations is exercised by the Government of any part of His Majesty's dominions."

This has been carefully examined by the Fiscal Commission and in paragraph 198 of their Report they say this:

"It follows from the general principles which we have stated above that we are opposed to the use of preferential tariff for the purpose of granting . . . The existing duty contains a preferential provision. The duty is at the rate of 15 per cent. *ad valorem* with a rebate on hides and skins within the Empire. We have no hesitation in condemning this provision."

The Honourable Mr. C. A. Innes: May I rise to a point of order, Sir? I understand the Honourable Member is discussing clause 3 (2) of the Indian Finance Bill. Clause 3 (2) makes a proposal that for the whole of the entry in the fourth column of the Schedule the words "five per cent." shall be substituted. That is to say, the amendment before the House abolishes this preference altogether. The Honourable Member is now proposing that the preference should be dropped. I wish to explain that in our amendment we do drop it.

Mr. President: In that case the Honourable Member from Madras and the Chair have fallen into the same error in assuming that the amendment was only to change the 15 per cent. to 5 per cent.

The Honourable Mr. O. A. Innes: It states explicitly that 5 per cent. be substituted.

Rao Bahadur T. Rangachariar: The proviso will be there all the same.

The Honourable Mr. O. A. Innes: No, Sir.

Rao Bahadur T. Rangachariar: If the Chair rules it is already comprised—if that is the intention, then I need not proceed.

The Honourable Mr. O. A. Innes: That is the intention. That is how the draft was drawn in accordance with our instructions to the Legislative Department.

Rao Bahadur T. Rangachariar: The language is not happy. The proviso will be there still.

Mr. President: The Honourable Member may make quite certain of excluding it by a negative vote now.

Rao Bahadur T. Rangachariar: Then I need not argue it out.

Mr. President: What has the Legislative Secretary to say?

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I am asking for a copy of the Tariff Act.

Mr. President. I am just putting the question now.

The Honourable Mr. O. A. Innes: I should explain that if the House is going to restore the 15 per cent. then I do not think that the proviso ought to be omitted, because I do not think the House should vote on a question of this kind on a side issue. Our instructions clearly were that for the whole of this entry in column 4, simply 5 per cent. should be substituted. There should be no preference of any sort.

Rao Bahadur T. Rangachariar: Then I do not think there is any language here to show. You do not remove the proviso unfortunately.

Sir Henry Moncrieff Smith: The proviso is part of the entry in column 4. If the Bill removes the whole entry in column 4 and substitutes something else for it, the proviso has necessarily gone.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is that Clause 3 stand part of the Bill.

Rao Bahadur T. Rangachariar: Sir, I beg to oppose this motion. Sir, as I have stated already, it is too soon to interfere with this duty. It was introduced with a deliberate purpose; it has not been given a fair trial and, I do not see, Sir, why the Government, when they are going to await the constitution of the Tariff Board in order to carry out the recommendations of the Fiscal Commission, are in a hurry to carry out this recommendation. I fail to see it. The matter may well be allowed to remain as it is. I hope, Sir, that normal conditions will return in a year or two, in which case it will be of great advantage to the tanning industry if we retain this export duty at 15 per cent. In fact, but for the tanning industry in this country, during war time I am sure the Government would have been put to considerable strain. This industry came to the help of Government, in fact placed the whole of their materials at the disposal of Government and they were able to use the industry very largely in carrying

on the war. So it will not do to allow this industry to die out. On the other hand I appeal to the Government to use every effort in their power to put this industry on a proper basis. I do think, Sir, that the supposed loss in other parts of the country is fanciful. I do not think there is really any demand for hides and skins from the rest of the world. That is the real cause of the depression in the trade. When the time comes it will be very difficult to re-impose this duty. Let the Statute remain as it is now, and let us try it for another year or two and then see really whether it has had any noxious effect on the trade. Then it may be time enough to remove it. I therefore appeal to Government not to press this motion.

Sir Montagu Webb: Sir, I support the motion now before the House. Mr. Rangachariar has expressed a hope that the 15 per cent. duty will remain on as a form of protection to the Madras tanning industry. Well, Sir, the Indian Fiscal Commission has carefully considered this very point; the Fiscal Commission has made a report in favour of discriminating protection be it remembered. Now, let us hear what it says about this duty:

“We hold, therefore, that so far as the export duty on hides and skins is intended to be *protective*, it cannot be justified.” (Paragraph 193).

I think, Sir, that disposes of the subject.

The Honourable Mr. C. A. Innes: Sir, this morning the House determined to do justice to the poor man. This afternoon I hope that they will do justice to a poor trade. Let me remind the House of the history of this unfortunate export duty. It is one of the worst mistakes that the Government of India ever made. At the end of 1919 at the height of the post-war boom, when neither the Government of India nor the trade were in a condition, I think, of real sanity, the Government of India arrived at the conclusion that they were in a position to dictate the form in which their raw materials, these raw hides, should leave the country. Consequently they put on this extremely heavy export duty, an export duty of 15 per cent. *ad valorem*; and they put it on raw hides and skins with two objects: one of their objects was, as Mr. Rangachariar has rightly said, to encourage the tanning industry in India, and the other object was to try to retain within the Empire a key industry. That was the reason why this proviso to which Mr. Rangachariar has just drawn attention was inserted in the Schedule—the proviso which allows a rebate of 2/3rds. of the duty on all hides and skins exported from India provided that they are tanned within the Empire. Now, Sir, these are the two objects with which the Government of India imposed this duty. And I say without fear of contradiction that both those two objects have not been attained. We have not by this very questionable means of an export duty succeeded in encouraging the tanning industry in India or other leather industries, nor have we succeeded in keeping this key industry in the Empire. On the contrary, as before the war, so now, England has almost dropped now from the market in regard to raw hides. We discovered our mistake not very long ago when we imposed this duty. As I said, we imposed this export duty when the trade was at the top of the boom. Hardly had the ink dried on our notification before the slump began. Since then until very recently there has been a progressive decline in trade. I do not for a moment say that it was the mere fact that we had put on this export duty that ruined

[Mr. C. A. Innes.]

the trade. Mr. Rangachariar is correct there; the trade was ruined not by the export duty, but by a general worldwide slump and by the inability of Germany and other countries which used to buy hides to purchase our hides. I admit that fully. But you have got to remember that you have got here one of the most important export lines which is in the position of the greatest possible depression. They are having the greatest possible difficulty in selling their hides, in getting any export demand for their hides, and the Government of India by their own action have placed them in greater difficulties by imposing this 15 per cent. export duty upon these hides and skins. An export duty is always a dangerous thing. I have heard it described as an economic horror, because you can never be sure where the incidence of that duty is going to fall. If you have a monopoly you pass that duty on to the foreign consumer; if you have not got a monopoly, your purchaser has to pay the world's price and he has to bear the brunt of your own export duty; that is to say your tax recoils upon your own men. Now we have long known that this tax was a failure having regard to the object with which it was imposed. We are now keeping it on purely for revenue purposes. Now, I want to know, is it right that the general tax-payer should benefit at the expense of our traders in hides and skins? Is it right that when this hides and skins trade is in this depressed condition we should continue to place upon it an export duty of 15 per cent? It is the heaviest export duty we have, a heavier duty than on tea, a flourishing industry at the moment, a heavier duty than on rice—another flourishing industry and very much heavier than the export duty on jute. It is the hides and skins trade that we have selected for the heaviest of all export duties. That is the reason why the Government at last decided, whatever their financial condition may be, that the time has come when in justice to this trade they must reduce this duty.

Mr. Rangachariar said that we must keep on this duty because we must protect the Madras tanning industry. Now, Sir, I come from Madras. I used to take a very great interest in that industry, in fact I used to run a school for the benefit of that industry. But, Sir, though I come from Madras, I protest most strongly against sectional interests like the interests of Madras and Cawnpore in a House like this, a House which is representative of all India, being allowed to override the general interests of the country. Sir, what is the Madras tanning industry? I do not wish to decry it, but is it an industry which makes things which are used in this country? No. The Madras tanned hide is merely a half-tanned hide. It is a very useful industry in that it employs a certain number of tanners, but the product is exported, just like the raw hides are exported, to England. It is not an industry which produces anything for use in India. And if you want protection for industries of that kind, take protection by all means after you go to your Tariff Board, but protect them by means of an import duty, do not go protecting them by means of an export duty of this kind. Mr. Rangachariar says we have done nothing in the way of protecting these tanning industries. We have. I do not say that we did it intentionally, but Mr. Rangachariar knows, as well as I do, that the import duty on leather goods since this export tax was put on has been raised from 7½ per cent. to 15 per cent. The leather industries are not only behind a tariff wall of 15 per cent. but they are getting the benefit of this export duty of 15 per cent. I do not think I need set out to prove how much this hides trade has suffered. As I

have said, the mere fact of the export duty being put on has not been the cause why the trade is in such depression. It is due to other causes but the fact that the depression exists is beyond all argument. In 1911-12, in 1912-13, in 1913-14, the average export of raw hides in India was over 50,000 tons a year. In 1920-21 they had dropped to 18,000 tons; in 1921-22 they rose slightly to 25,000 tons. Now, that brings me to another point. Here we see signs of a revival of trade. It is just when the trade is beginning to revive that your export duty becomes most burdensome because it is just this additional burden, where the demand is beginning to arise, it is just this additional burden of the 15 per cent. that turns the scale against India. I deal with another point—not a point raised by Mr. Rangachariar but a point raised by Sir Gordon Fraser. Sir Gordon Fraser is one of our leading tanners in Madras. Therefore, like Mr. Rangachariar, he is interested in the maintenance of this unfortunate duty. Sir Gordon Fraser said that we have a monopoly of these light hides that the world must buy from India because they cannot get them anywhere else. (Mr. Rangachariar: "Especially of buffaloes.") That is not correct. India has not got the monopoly of these light hides. You get these light hides from other places, particularly China. And that is one of the mistakes we made when we thought in 1919 that we were in a position to dictate the form in which our material should leave India. Now, there is one other point I wish to make and I hope the House will agree with me that it is absolutely decisive. As I say, we have here a sick trade. And, as I say, we have a trade that is just beginning to show some slight signs of recovery. Now, it is not merely a question of the 15 per cent. We have also to take into account the various valuations. As the House knows, I think, we don't fix the prices of each consignment when it leaves the country. We base our valuation on the prices usually of the previous year. They are fixed in December; they usually remain in force for the following year. Now, Sir, when the trade in 1921 was slumping away, those valuations were reduced and when they were fixed in December 1921, the prices were still low. In 1922, there was some recovery in prices and in December, this last December, when the question of revising the tariff valuation of hides came up, I was faced with the problem whether I should raise the tariff valuations to their appropriate figure although at that particular moment I had actually circulated a file to the Government of India proposing either the reduction or the removal of the duty or whether I should temporarily extend the existing valuations. Well, I temporarily extended the existing valuations. I may have been wrong in doing so. At any rate, I took the responsibility on myself of doing it,—the reason being, as I have said, that the trade was just showing signs of reviving, and, if we were about to reduce the duty, I did not think it right that we should stop the revival by suddenly raising the valuations. Now, Sir, if the House puts this duty back to 15 per cent. I must warn the House that I must raise the valuations. The Government of India in the Commerce Department cannot evade the duty, imposed by the Legislature, by allowing artificially low valuations, and therefore, whatever happens, whether this duty goes back to 15 per cent., or whether the House accepts my proposal and keeps it at 5 per cent., these valuations must be raised after giving the usual notice to the trade. If the House accepts Mr. Rangachariar's motion and puts this duty back at 15 per cent. then I can only assure the House that we shall deal one more staggering blow at this wretched trade. If you accept my motion to reduce this duty to 5 per cent. you lose very little revenue, because the tariff valuations, as I say,

[Mr. C. A. Innes.]

must go up. In fact, you may lose no revenue at all. The mere fact that we are going to reduce this duty to 5 per cent., has already induced a briskness in trade. Let me read from a Cawnpore letter in this week's Indian Trade Journal:

"News about the reduction of the export duty on hides has had a very salutary effect upon the market and has led to increase of business."

Sir, if you accept my proposal, you lose very little revenue, but on the other hand, you will encourage a revival, and in fact you might get more revenue than you expect. If the House on the other hand is led away by Mr. Rangachariar from Madras, if the House is led away by these Madras interests, to keep the duty at 15 per cent., then let the House take the responsibility. I have warned them. I say that we shall be doing one more injustice to a very hard hit trade. Remember Burma too. In Burma the effect of this export duty has been—I say it with sorrow—very disastrous indeed. All efforts to encourage tanning in Burma have failed, the trade has been gravely injured. Let me end on the note with which I began. The House this morning did justice, as they thought, to the poor man. Let me appeal to the House again to do justice to a poor trade.

Mr. Harchandrai Vishindas: Sir, I might inform the Honourable Member for Commerce and Industry that he need not entertain any serious apprehension that the House is going to follow Mr. Rangachariar. I come from a province in which there are a number of Muhammadan traders in hides and skins,—and here, with apologies to Mr. Shahab-ud-Din who, I was informed,—I myself being then absent—had sounded a certain note that Hindu Members of the House had no sympathy with the Muhammadan traders of hides and skins, I as a Hindu want to assure my Muhammadan brethren that we do not observe any sectarian distinction in this regard but want to do justice to people to whom justice is due. Now, these hide-traders have suffered considerably since the imposition of this higher export duty and wherever this hide trade is in existence, I think the Honourable Member for Commerce and Industry must have received complaints from there that these traders have been ruined. In my part of the country those men who were rolling in lakhs have now become heavily indebted. Not only that. I expected the Honourable Mr. Innes to lay the greatest stress upon one point—greater than he has actually done. My own impression has been—of course I am speaking on this point without any expert knowledge, but subject to correction from the Government Benches—that as a matter of fact, even from the point of view which we had at the time when we imposed this heavier duty, it has not been a success; in other words, that it has not produced the income which we expected it to bring. Is that so?

The Honourable Mr. C. A. Innes: Yes.

Mr. Harchandrai Vishindas: If that is so, then we are defeating the very object we have in view. On all sides, in all directions, we are going on wrong lines. We are acting very foolishly. You do not get the revenue for which you impose taxes; your trade is ruined; your traders have become considerably indebted. And I think the only effect of continuing this heavy export duty will be that one or two tanners in the Madras Presidency will be benefited. I think that it is a most inequitable procedure altogether. To ruin numbers of traders and producers for the

benefit of one or two institutions is most unjust and inequitable. What is more, Mr. Rangachariar tells us that it is for the benefit of the uplift of this industry that this tax should be maintained at a figure of 15 per cent. Can he point out to us what uplift this industry has received since the imposition of this higher duty? I think absolutely none, and after the Honourable Mr. Innes has pointed out to us the various drawbacks of this higher duty, the various injuries and disadvantages, I think the House will be consulting the best interests of the country by refusing the suggestion of Mr. Rangachariar and supporting the proposal of Government.

Chaudhri Shahab-ud-Din: While I thank whole-heartedly the liberal-minded Honourable Mr. Harchandrai Vishindas and other Hindu gentlemen who have opposed the vicious amendment of the Honourable Mr. Rangachariar, the head of the Hindu orthodox community here in this House, I venture to give one or two more reasons why this tax should be reduced and the Government proposal accepted by this House. (*Cries of "We are all agreed."*) I am very thankful to all of you who are now agreeable. (*A Voice: "Sit down."*) Let me finish my sentence. In 1921 when Mr. Price, the then Karachi Member of the Assembly, moved the removal of this export duty, I put it to the House that it should be altogether removed. The Government was neutral and it was left practically to the elected Members of the Assembly to decide whether they would continue the tax or not. (*A Voice: "Government opposed it."*) No. Government did not oppose. But unfortunately for me and for the community to which I belong, we were in a minority and therefore lost. This time I am thankful to Government and also to the liberal-minded Hindu Members of this Assembly who have supported the Government. The fact of the matter is, if salt is a necessary of life, mutton also is a necessary of life for Mussalmans. They take mutton day and night, though orthodox Brahmins and many other Hindus do not touch it. It is common knowledge that the higher the price of skin the lower the price of mutton. If the skin sells at a higher price the price of mutton goes down. Therefore, even on grounds other than those advanced by the Honourable Mr. Innes it is reasonable that the duty should be lowered if not altogether removed.

Rao Bahadur T. Rangachariar: I have nothing to do either with the Hindu or the Muhammadan question. The Southern India Skin and Hide Merchants Association is composed entirely of Muhammadans and they support me. The Southern India Chamber of Commerce is mostly composed of Muhammadans. I have nothing to do with hides or mutton. My constituency demands this measure.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

Mr. Harchandrai Vishindas: What about my amendment to clause 3, Sir? My amendment is No. 28.

Mr. President: I called upon the Honourable Member but as there was no response I went on to the amendment of Mr. Rangachariar.

Clauses 5 and 6 were added to the Bill.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): I rise to a point of order. My amendment was with regard to clause 3A, a new clause, and may I know why my amendment has not been allowed?

Mr. President: The amendment of the Cotton Duties Act is outside the scope of the Bill.

Mr. Harchandrai Vishindas: I have also to rise to a point of order. I should like to know if it is the Chair that calls upon the proposers in whose name the amendments stand, or have they to get up of their own accord.

Mr. President: The Honourable Member must rise to protect his own interests. But I did actually call the Honourable Member.

Mr. Harchandrai Vishindas: No, Sir, if you will excuse me. You said "Clause 3 stands part of the Bill", and I then got up and said I had a proviso to move. That was the only time I could get up.

Mr. President: After we had disposed of Dr. Gour's amendment to clause 2, the proviso relating to a provision for the collection of taxes, I called the name of Mr. Harchandrai Vishindas because his amendment followed. He was not then in the House and I assumed he had gone away.

Dr. Nand Lal: The Chair has been pleased to direct that a gentleman who is the author of an amendment should rise. I rose 20 times and could not catch the President's eye.

Mr. Harchandrai Vishindas: I authorized Dr. Nand Lal to move for me. But I thought it had not been reached.

Mr. S. J. Shahani: I rise to a point of order. I have not understood why my amendment was disallowed. Excise is included under Customs and under this head an excise duty of $3\frac{1}{2}$ per cent. is provided. I have proposed a reduction in this excise duty and my respectful submission therefore is that I should be allowed to move this amendment.

Mr. President: The Honourable Member is proposing to amend the Cotton Duties Act of 1896. The amendment of that Act is not in order. That first amendment that is in order now is amendment No. 58 standing in the name of Sir Montagu Webb where he proposes to reduce the rate of import duty on saccharine from Rs. 20 to Rs. 5.

Sir Montagu Webb: Sir, I beg to move:

"That in Schedule I in proposed amendment No. 7, for the word and figures 'rupees 20', wherever they occur, the word and figure 'rupees 5' be substituted."

I move this amendment, Sir, in response to a request which I have received by telegram from the Karachi Chamber of Commerce. The Karachi Chamber wired to me that the imposition of 20 rupees per pound import duty on saccharine represents over 400 per cent. of the market value. The full new duty cannot be recovered from the ultimate consumer and will probably kill the trade in this commodity involving heavy losses under existing contracts. That, Sir, explains itself. I need add to that that if Government are unable to accept my amendment then I would draw the attention of Government to the fact that existing contracts ought certainly to be exempted as in previous cases. I beg to move the amendment in my name.

Mr. President: Amendment moved:

"In Schedule I in proposed amendment No. 7, for the word and figures 'rupees 20', wherever they occur, the word and figure 'rupees 5' be substituted."

The Honourable Mr. O. A. Innes: Sir, when I explain this matter to the House, I do not think that they will accept Sir Montagu Webb's amendment. The fact of the matter is that saccharine is ordinarily 550 times as sweet as sugar. The present price of saccharine is about Rs. 3-12 a pound, and at present it bears the same rate of duty as sugar, namely, 25 per cent. The result is that you get in a pound of saccharine on payment of a customs duty of about 15 annas. That pound of saccharine is equivalent in sweetening power to 550 lbs. of sugar, and the result of course is perfectly obvious. It is not peculiar to India; every other country almost in the world, most countries in the world, have had to adopt special prohibitive import duties on saccharine in order to protect their sugar revenue. We have already had signs of its coming into India; the imports of saccharine in the last three years have been rising very much indeed, and therefore we have had to adopt this method of imposing a very heavy duty on saccharine in order to equalize the duty on saccharine to the duty on sugar and to protect our sugar revenue. We hope that in this way we shall save at least 19 lakhs in our revenue, and that being so, I hope the House will agree that we must do this. France has a prohibitive duty, England has a duty of 576 times the duty on sugar. This being so, I hope the House will not accept this amendment.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Sir Campbell Rhodes: Sir, my amendment is No. 68:

"In Schedule I to the Bill omit amendments Nos. 10 and 11 and re-number the subsequent amendments accordingly."

My Honourable friend, Mr. Rangachariar, and I made our attacks on the Honourable the Commerce Member single-handed, with no result, and I hope we shall be more fortunate if we attack in company. This question of tea boxes and tea lead is a most interesting study in fiscal problems. It is evidence of an industry started under the protection of revenue duties or rather the haphazard protection produced by the war. There is here, Sir, a conflict of interest, and on this subject, this book to which frequent reference has been made, the Fiscal Report says: "In all such cases the most essential reform is that the utmost publicity should be given to the inquiry of the Tariff Board, so that all interests concerned may have a full opportunity of representing their point of view." It is thought in Calcutta that the action of Government has been influenced by direct pressure from a certain quarter in Calcutta.

The Honourable Mr. O. A. Innes: I should like to contradict that statement at once, Sir. I should like to explain that this proposal was first put up in 1920 and was turned down by myself because the tea industry in that year was in a very bad state.

Sir Campbell Rhodes: I am very glad, Sir, to have that disclaimer. It is of course one which I accept and which the House I know will accept, and it will remove the wrong impression which has been formed in

[Sir Campbell Rhodes.]

Calcutta. On this question of fixing correct valuations for different purposes, a distinguished free trade journalist said recently in Calcutta, and in criticism of the Fiscal Report, that he would rather a hundred times have a revenue tariff formed in honest ignorance by Government officials—the words are his, and not mine—than a scientific tariff drawn up by a number of men who knew all about it. Well, Sir, that journalist takes one view, the Fiscal Commission and the tea trade take another. I should just like to state the problem as it would be put before the Tariff Board; and in this connection during our debate on the Finance Bill both the Honourable Sir Basil Blackett and the Honourable Mr. Innes have told us under different circumstances to wait for the decision of the Tariff Board. That is what I wish Government to do in this case before making this important alteration. Well, Sir, on the one side we have this new tea box making industry in India fulfilling many of the requirements laid down in the Fiscal Commission's report, raw material and home market. So far from being protected at the moment, the protection is rather the other way. Tea boxes are made of three ply wood in which expensive glue of cement is used. If it comes in the form of a tea box, it comes in at 2½ per cent. If it comes in the form of cement for local industry, then it comes in at 15 per cent. We have, therefore, an industry which might well look for protection from the new tariff board. But take the other side of the question. The tea industry claims that this is their raw material and doubtless the Commerce Member will tell me that packing material does not usually come in free or at a nominal rate. I must point out that packing material in the case of tea is a very large item on the production of the finished article. We have also, Sir, in the case of the tea industry an export duty put on in 1916 and condemned by the Fiscal Commission. The tea industry is being constantly chased both by the Honourable the Finance Member and the Honourable the Commerce Member. The Commerce Member has put on the export duty. The Finance Member has made the discovery that tea is not an agricultural industry, because it has to undergo certain processes before being packed. He has also discovered that the tea planter occupies a bungalow. There is, therefore, a case to be put before the tariff board, and I do not think the case can be adequately discussed in this House or decided by a stroke of the pen by the Government of India. The decision of the tariff board, if I may anticipate it, would probably be that this duty would be justified if the tea industry were not handicapped by export duty. But, I submit to the House that it is not fair to leave off all the handicaps and then put on this protective tariff.

Mr. George Bridge (Assam: European): Sir, I rise to support the amendment moved by my Honourable friend, Sir Campbell Rhodes. It would seem on a point of administration it is proposed by Government to raise the import tax on tea boxes and tea lead from 2½ to 15 per cent., or seven times the former tax. This means making the tea industry pay some lakhs of rupees more. Sir, the tea industry is just emerging from the waves of depression which overtook it in 1920, when tea was selling in open market for less than the price of the boxes it was packed in. Just as the planter is raising his head above these waves of depression there comes another wave of taxation to overwhelm him. It may be said to have had a prosperous year, but it will only allow many gardens to put back to their reserve what they had to take out in 1920. I would point out to the Honourable Assembly that there are also other taxes on tea which Government in its solicitude for the industry has imposed on it. What about the

export tax on tea which was put on as a war tax? The export tax is undoubtedly a dangerous tax, as the Member for Commerce said in referring to the export tax on petrol. Therefore I say that the export duty on tea is a dangerous duty and it interferes with our trade. The Honourable the Commerce Member would not put an export duty on jute or on petrol and the reasons that he adduced for this have double force in the matter of tea. The reason why the Honourable the Finance Member would not put an export tax on petrol applies equally, if not with greater force, to tea which has to compete in the open markets of the world against Java, Sumatra, China and Ceylon. It is well known that petrol throughout the world is marketed by the closest possible trust methods and there is actually no competition in its sales. Again, we have a new tax put on this year. After aeons of time the Government has discovered that we are three-fourths agricultural and one-fourth manufacturing. By this conjuring tricks we have now to pay another new tax on tea. The British Government last year took off some of the tax on tea considering the wants of the poor who universally drink it, but the Government of India though professing their desire to reduce the consumption of liquor, opium, *ganja*, overtax the only article which may lead to their disuse. Every tax put on by Government increases the price to the consumer. Tea has been making good strides in India, but I am afraid the high price it is fetching now partly due to the high taxation will put it out of the reach of the poor to buy.

(At this stage Sir Jamsetjee Jejeebhoy, the Deputy President, took the Chair.)

As India is taking more tea yearly, it is greatly to the benefit of this country that they should take tea instead of *ganja*, opium and liquor. If more tea was drunk in India the people would be healthier. Seeing that 'Planter' has converted the jungle of Assam into smiling Edens where the only snake in the grass was the non-co-operation movement which has been scotched and driven to its hole, where we hope a firm Government will keep it, seeing the planter has helped Government by importing thousands of coolies who ultimately become Government raiyats and pay Government rent, seeing that without the labour imported at the cost of the planter Assam was decreasing in population, we must ask the Government not to put a higher tax on our boxes and tea lead, as these are just as essential as machinery which pays 2½ per cent. I would, therefore, ask Government not to press for this increase, but to encourage the cup that cheers but does not inebriate. I would therefore ask the House to vote for Sir Campbell Rhodes' amendment.

Rao Bahadur T. Rangachariar: I wish to give my support to this motion. It appears to me that this is an indigenous industry, though in the hands of Europeans, and I think we ought to do everything for it. We should treat this as part of machinery. When the trade grows, we could go after them in the shape of income-tax and super-tax. I think about 50 lakhs are spent in importing these tea chests, and they are imported mainly from Great Britain. If we had a local industry to produce these tea chests, then I would be the first to enhance the duty. But as we have not got the necessary raw material for making the tea chests in this country, I do think, Sir, it will work as a hardship on this industry if this duty is enhanced.

The Honourable Mr. C. A. Innes: Sir, I do not wish to take up Mr. Rangachariar in what he just said, because I do not admit that in any way we have raised this duty on tea chests and tea lead for protective purposes. But Mr. Rangachariar was wrong—there are firms making these chests in Calcutta and naturally if we raise this duty as I have proposed these firms which are making these things in the country will be assisted. But this is the point I want to make. It is not for that reason that we propose this increase in the duty on tea chests and tea lead. Let me explain the whole matter. For the last three years, as the House can imagine we have been searching through our tariff schedules with a microscope in order to try and find items on which we can legitimately raise the duty; and we have as the House knows raised the duty on practically every item. Now in 1920, when the tariff schedule was coming under this usual examination, the proposal was put up to me, as I have said, that we should no longer allow this special concession to the tea industry, that its tea boxes and tea lead should come in at a special concession rate. But we decided that as the tea industry at that time was in an extremely depressed state the time was not opportune for raising the duty. Now, this year, as the House knows, I felt compelled to make various proposals to the Finance Department which involved a loss of revenue, and I was called upon to try and make up in any legitimate way I could the revenue which we were sacrificing. And so again we resuscitated this proposal regarding tea chests and tea lead. I do admit that there would have been enormous force in what Sir Campbell Rhodes said, had there been any question of a protective duty; had I been proposing a protective duty on tea chests and tea lead for the benefit of an industry in India, had I been proposing that without awaiting the careful investigation of the Tariff Board, I should have been in an absolutely indefensible position, but I am not doing anything of that sort. What are the facts? What is the duty upon tea chests and tea lead? A special concession rate of 2½ per cent.

Rao Bahadur T. Rangachariar: You want to raise it to 15 per cent.

The Honourable Mr. C. A. Innes: We are merely raising it to the general *ad valorem* rate. Ordinary lead coming into the country pays 15 per cent.; the position now is that if it comes in for the purpose of being made up into tea chests, it pays only 2½ per cent.; similarly ordinary wood coming into the country pays 15 per cent.; but if you bring three-ply wood because it is for tea chests it comes in under the 2½ per cent. item. I admit that the tea industry does suffer from the disability of the export duty, but the question before the House is whether in these days of financial stringency there is any reason why we should continue to allow tea chests and tea lead to come in at a special concession rate of 2½ per cent. or whether they should come in at the ordinary rate of 15 per cent. That is the whole question before the House.

Mr. Darcy Lindsay: There is one important point, Sir, that I would like to put to the House, that these tea chests are brought into the country only for the purpose of export; the tea is filled into the chests and the chests leave the country again. I therefore ask the House, is it fair to impose so heavy an import duty as 15 per cent?

The amendment* was negatived.

Sir Montagu Webb: Sir, I beg to move:

"That in Schedule I in proposed amendment No. 16 (Item No. 87) after the words 'conveyances including' the words 'motor cars of fifteen-horse power or less' be substituted."

The object of this amendment, Sir, is to make a distinction between motor cars of high power and motor cars of low power. At present all motor cars pay an import duty of 30 per cent. *ad valorem*. If my amendment be accepted by Government and by this House, then motor cars of less than 15-horse power would come in on the 15 per cent. scale duty. I daresay this House is well aware that it has been a great grievance and source of complaint from the motor car industry that motor cars that are now used for business purposes and are an important part of the machinery of trade and commerce should be taxed so heavily as 30 per cent. The problem also has another aspect. Nearly all the cars of over 15-horse power are of foreign manufacture, whereas British manufacturers give particular attention to cars of less than 15-horse power. The effect of the present taxation is to give a direct encouragement to foreign cars and to correspondingly check the importations of British cars. I do not think, Sir, that that was the intention of the Legislature when the present duty was introduced. In making this proposal, I do so with confidence and in the belief that with the difference in the duty there will probably be no difference in the amount of revenue collected by Government. I think probably the chief American cars can afford to bear a few rupees more duty, and I expect the British cars will be able better to compete by the aid of the difference in duty.

I recognise that the introduction of the expression 'Horse power' may perhaps present a technical difficulty to Government, and I suggest therefore for the consideration of Government, if there be any trouble in accepting 15-horse power, that some of the formulae that are in use in other parts of the world may perhaps be adopted. I notice that in Calcutta the Municipal Corporation have introduced a formula based upon the area which the wheel base of a car covers. In France the classification is by the combined cubic contents of the combustion chambers of the cylinders. The British Government determine the horse power by a well known formula: Horse power equals $\frac{1}{4} \times 2 D \times N$ where D is the diameter of each cylinder, and N the number of the cylinders. I mention this in case the expression 'horse power' presents any technical difficulty. I confidently commend this amendment to the acceptance of the House.

The Honourable Mr. C. A. Innes: Sir, if Sir Montagu Webb wishes to make any proposal for Imperial preference, I suggest that he should make an open proposal and not try to introduce it in this way. As I understand his amendment, it is an amendment to get into India the low power English car, cheaper than the high power Canadian or American car. It is very much better, Sir, I think that we should discuss this question of motor cars on Mr. Spence's proposal which is a proposal to deal with motor cars as a whole. The advantage of our present rate of tariff duty is that it is 30 per cent. *ad valorem*, and therefore the cheaper the car the less the duty you pay. I have got one other objection to Sir Montagu Webb's proposal to tax motor cars on horse power and so on. I will just read an extract from the "Autocar" of the 16th February:

"Nothing is more arbitrary than the present method of determining horse power. A 15-horse power Italian car drops to 10-horse power when it reaches France and climbs to 13.9-horse power when it lands on British territory."

[Mr. C. A. Innes.]

Similarly, the American method of calculating the horse power is, I believe, different from the English method. I say, Sir, that this proposal is not sound. Moreover, I do not believe that it would fulfil the objects which some people have in view, namely, of bringing in the cheap car, cheaper than the dearer or luxury car. But if we are to deal with motor cars properly we must deal with the question on Mr. Spence's amendment.

The amendment was negatived.

Mr. R. A. Spence: Sir, I think we have already

Rao Bahadur T. Rangachariar: Sir, I think it would be better if you would call out the number of the amendment because there are so many amendments.

Mr. Deputy President: It is No. 82.

Mr. R. A. Spence: Sir, I think we have already had a good deal of discussion in this Assembly as to whether a motor car is a luxury or not, and I think we must be very nearly as united on the point that a motor car is not a luxury as we were on the point that salt is a necessity of life. But it is a fact, Sir, that motor cars are not imported into this country for purposes of serving as luxuries. We do not go for joy rides in this country. We use our motor cars for means of getting about the country. The cases of people who go for joy rides in this country are very few and far between. A motor car is used in this country as a help to one's business; as a help to those living on estates in the country. Think, Sir, of the people who live on estates in the Madras Presidency, for instance, in Travancore and Mysore. Think of the tremendous distances that they have to cover. Do you think, Sir, that these people buy motor cars merely for the sake of luxury? No, they are an absolute necessity to them. Sir Montagu Webb had, I think, in his previous amendment really not the idea of introducing a preferential tariff by the back door, but by meeting the views of some of those who say "Oh, look at the Rolls Royce Car, that is a luxury," and therefore, he proposed that a car of small horse power only should be exempt, but as the Honourable the Commerce Member has pointed out to us the difficulties there are in regard to differentiating cars on horse power, I think that we may disregard the few cars that come into this country which might be called luxuries. The Honourable the Commerce Member will probably be able to tell us how many Rolls Royce cars came into India last year. I know the Rolls Royce Manager in Bombay told me that business is very bad. But, Sir, that is my argument. I do not want to detain the House this evening. Motor cars are necessities, and therefore I do ask this House to support me in my amendment asking that necessities should not be classified and charged as luxuries. There are other speakers here, Sir, who can carry on this argument better than I can but I do not believe that the reduction in the duty will cost Government as much as it looks on paper. With these words, Sir, I move my amendment which runs as follows:

"In Schedule I to the Bill, after amendment No. 16 insert the following amendment:

'16A. After item 87, the following item shall be inserted, namely:

'87A. Motor cars, motor cycles, motor scooters, bicycles and tricycles and articles adapted for use as parts and accessories thereof: provided that such articles as are ordinarily also used for purposes other than as parts and accessories of motor vehicles included in this item or in No. 87 or of bicycles or tricycles shall be dutiable at the rate of duty specified for such articles.'"

Rao Bahadur T. Rangachariar: But what does your amendment mean?

Mr. W. S. J. Willson (Bengal: European): Sir, I beg to support the amendment of Mr. Spence. I touched lightly on the subject in the general debate on the budget and I don't think it is one that requires dealing with at any length. It appears to me to be so perfectly obvious. There is one point I would like to have touched upon and that is the enormous lack of employment that has been caused by the heavy handicap to the motor industry, and I don't think, Sir, that any long speech is necessary in any way to support this amendment which speaks for itself.

(At this stage Mr. President resumed his seat.)

The Honourable Mr. C. A. Innes: Sir, I feel that it is rather an ungrateful task to be getting up time after time to defend high import duties upon what I recognise to be important trades. I don't do it with any liking for the task, I can assure the House. But deliberately, two years ago, in view of our financial needs, we raised the duty on motor cars from 7½ to 20 per cent. Again, last year, we had to raise it for the same reason to 30 per cent. We did it quite deliberately and we did it solely for the reason that we might get as much revenue as we could out of the imports of this article. I don't think that anybody says that motor cars are a luxury. Some motor cars of course are a luxury. It depends on the type of cars you have. Other motor cars, of course, are very necessary for the purposes of trade, commerce, transport, etc., but the whole theory of the tax is that a man who can afford to keep a motor car can afford to pay a heavy tax upon that car. After all, the House must remember that we have been driven in the last two years to great expedients to get revenue. Why, even to-day, the Government came forward with this proposal for the salt tax. Now, as I have explained, we have no desire at all to injure this trade. All we are out for is to get revenue and, if we could see that by reducing the tax on motor cars from 30 per cent. to 15 per cent. or 20 per cent., if we could see that by such a reduction of the tax we should so stimulate the trade as to get more revenue, we should not hesitate to do so. The whole reason why we are putting this tax on the trade is the need for revenue. Now, we have examined this question not once but a dozen times from that point of view, from the point of view whether by reducing the tax we should get more revenue, and we are unable to get a satisfactory answer to that question. We are unable to see that a reduction in the tax would stimulate the import of motor cars and would thereby give us more revenue. What is the reason why the import trade in motor cars is not more flourishing at present? Mr. Spence, Sir Montagu Webb, Mr. Willson, will no doubt say that it is due to this heavy rate of import duty. But I don't think that is correct. I have the figures here. The real reason why the motor trade is in a stagnant condition now is that during the two years 1919-20 and 1920-21, there were enormous imports of motor cars into India. The average imports before that time had been somewhere between three and four thousand cars a year. In these two years, there were imported into India over 25,000 cars, far more cars than were necessary to replace the short imports of the previous years and it is these heavy stocks of cars which have been hanging over the import trade. Is Mr. Spence sure that he has got the whole of the trade behind him in this demand for a reduction of the import tax?

Mr. R. A. Spence: I have the Motor Trade Association behind me.

The Honourable Mr. C. A. Innes: My information is that there are many firms which have still got large stocks of cars and that these firms are by no means anxious to see the rate of duty reduced. However, that is my information and Mr. Spence, I may admit, has the authority which must attach to the Motor Trade Association. What I say to the House is this, that the reason why the trade is stagnant at present is, as far as we can see, the very large imports in 1920 and 1921 and the stocks which still hang over the trade owing to these imports. That view is confirmed by the well known fact that it is very difficult in India now to sell a second-hand car. A further reason why the trade is stagnant is the general fact that trade in India is not very prosperous at present and people have not got money to spend on motor cars. That, Sir, is our reading of the situation. I can assure Mr. Spence and everybody else in this House that the operation of this rate of duty—a heavy rate of duty, I admit it to be—is being carefully watched and that as soon as we are satisfied that a reduction in the rate of duty will give us an increase in revenue, we shall not hesitate to reduce the rate. At present we have got no assurance to that effect.

Mr. President: The question is that that amendment be inserted.

The motion was negatived.

Mr. President: The question is that Schedule I stand part of the Bill.

Mr. R. A. Spence: I do not know whether I can move my other amendment. It is such a very small one. I mean No. 88.* It has got the merit of not affecting the revenue of the Government of India. That is one of the greatest merits about it.

Mr. President: So far as I can see, the Honourable Member could discuss it on the Schedule though it is beyond the scope of the Schedule as drawn up.

The question is that Schedule I stand part of the Bill.

Mr. R. A. Spence: Sir, might I draw the attention of the Honourable the Commerce Member to one small matter? For years, Sir, at least until quite recently, prints which were imported into this country for binding in books published in this country were imported free of charge. At the present time, according to the Act, you can bring into this country maps for inserting in books printed in this country free of charge. You can bring into this country covers for those books free of charge. But for some reason, prints cannot be brought into this country free but have got to pay 30 per cent. duty. The prints I am especially interested in are what might be called scientific prints. They are coloured illustrations brought in for the Journal of the Bombay Natural History Society, a Society, Sir, which Government has supported in the past. Perhaps, if the Honourable Member could by some executive action allow those

* "In Schedule I to the Bill after amendment No. 21 insert the following amendment:

'21A. To item 137 the following shall be added, namely:—'excepting prints included in item 24'."

prints which are certified as intended for publication in Scientific Journals to be imported free, it would serve my purpose. I may point out that if I wished to swindle—a thing which I don't wish to do—I believe I could do it by binding all these prints up together in a book and then bringing them into this country as a book, in which case I could get them in free. But that, of course, is a thing that I should not dream of doing and I hope Government will save me from the temptation to do it.

Sir Montagu Webb: May I draw the attention of the Government to the fact that the present import tariff contains no item for Wireless Telegraph Apparatus. Wireless telegraphy is, after all, in the process of development and I submit that it is highly desirable in the general interests that every encouragement should be given to the public to experiment further and develop this new and most amazing invention. I tabled an amendment suggesting that such wireless telegraph apparatus might be allowed to be imported under a certificate from the Director-General of Posts and Telegraphs, at the low rate of 2½ per cent. duty, in that way protecting the revenue as far as was necessary. I think that if Government could give consideration to this fact it might assist the development of this most important industry.

The Honourable Mr. C. A. Innes: The wireless telegraphy question is under separate consideration and the Director-General of Posts and Telegraphs is dealing with that subject. As regards Mr. Spence's proposal, of course, we have considered a similar proposal though it was not the particular proposal which Mr. Spence has made. The trouble is that his proposal raises rather an important question of principle. One of the fundamental principles of our customs administration and of tariff is that we do not take into account in assessing an article the use to which it is intended to be put. That is the trouble which Mr. Spence's proposal involves. However, it will be considered.

Schedule I was added to the Bill.

Dr. Nand Lal: May I ask the Honourable Member in charge whether there has been some increase in the revenue on account of making the weight 2½ tolas? My moving the first part of the amendment No. 93 rests on the reply given.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): There has been an increase of about Rs. 60 lakhs under Stamps generally.

Dr. Nand Lal: Then I do not move (i). I move clause (ii):

"In Schedule II to the Bill:

Under the heading 'Postcards', for the existing entries substitute the following:

'Single	...	...	...	Quarter of an anna.
Reply	...	...	...	Half an anna'."

My submission before the House is that my information is that the Postal Department has not gained much on account of dropping the old system and resorting to the new one, that is, making single post card half an anna instead of quarter an anna, and making the reply post card one anna instead of half an anna. If my information is correct, that there has not

[Dr. Nand Lal.]

been an appreciable increase in the revenue, then I submit that it is not desirable that this rate should be adopted for the year 1923-24. There has been considerable inconvenience to the public on account of this increase which was sanctioned last year. And my submission is that the Government of India will be able to give due consideration to this inconvenience of the public in face of the fact that there has not been much increase in the revenue.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I quite recognize that this late hour is not quite appropriate for discussing the financial policy of the post office. But regard being had to the fact that the Postal Department is handing over to the general exchequer this year the large amount of one crore and forty-seven lakhs of rupees, I do not think I should let this occasion pass without some comments. Sir, the other day we heard Dr. Gour say that the Postal Department was a commercial Department and he wanted his pound of flesh from this Department. Now, the question is, is the Postal Department a revenue-earning Department at all? I will not refer in detail to what the position is in other countries, but I believe it is generally agreed that the Postal Department is regarded all over the world as a public utility department, subject to the condition that if there is any surplus revenue left in the hands of the Postal Department after meeting the requirements of the expansion of postal facilities, that surplus revenue belongs to the general exchequer. I remember to have read a speech of Mr. Gladstone while he was Chancellor of the Exchequer in England in which he expressed his gratification that Parliament had surrendered $1\frac{1}{2}$ million pounds of revenue which the general exchequer used to derive from the post office, and he said that a wiser measure was never adopted.

Mr. President: I am afraid I cannot allow the Honourable Member to take up the general question whether this is a public utility or commercial department. He is entitled to use that incidentally but not as the main part of his argument.

Mr. K. C. Neogy: Sir, connected with the question of the proposed reduction of the rates is the question how far the finances of the Department will be affected by the proposal and how far the Department is justified in handing over to the general exchequer the large surplus of 1.47 crores, without providing cheaper and larger postal facilities. That is how I bring it in. Now, Sir, if Honourable Members will refer to the interesting publication of Mr. Geoffrey Clarke on the history of the Indian Post Office, they will find that when the Postal Commission was appointed in 1850 they based their reforms throughout on the principle that the post office is to be maintained for the benefit of the people of India and not for the purpose of swelling the revenues of India. Mr. Clarke on this observes that:

"It is greatly to the credit of the Government of India that in all times of stress and strain as well as in times of prosperity they have loyally observed this principle although there have been many temptations to go contrary to it."

Now, Sir, if we come to the year 1868 we find that the then Finance Member stated that the Post Office is so potent an engine of civilization that no Government could be justified in allowing fiscal considerations to stand in the way of any improvement. Again we find when we come to the year 1905 when, as a result

Mr. President: The Honourable Member had better come to the year 1923-24.

Mr. K. C. Neogy: I am coming presently to the present year. In 1905 when certain concessions were announced in regard to postal rates, Mr. Gokhale expressed his gratification that this announcement was accompanied by another announcement that the Government did not intend to regard the Post Office as a revenue earning Department at all. And Mr. Gokhale expressed his hope that in future the surplus revenue of the Post Office would be devoted towards the expansion and cheapening of postal facilities more and more. That was in 1905. If we look into the figures of that period, we will find that between 1905-06 and 1909-10 the increase in the number of extra-departmental agents was 15 per cent., but during the next 12 years, that is to say, between 1910-11

Mr. President: Order, order. If I allow the Honourable Member to go on, I shall have to allow the Honourable Member to roam over the whole administration of the Post Office on a post card.

Mr. K. C. Neogy: Sir, I am referring to the fact that the Postal Department has really curtailed their programme of expansion, and I was illustrating this from the figures, because I find that, whereas in five years the expansion in the rural postal facilities was 15 per cent., during the last 12 years that expansion has progressed by only 2.9 per cent., and during the present Budget it is proposed further to curtail that programme, much to the detriment of the rural population in India.

Khan Bahadur Sarfaraz Hussain Khan: Is the gentleman in order? We are dealing with the question of the post card, and at this late hour he is going over the whole administration.

Mr. President: I have been trying to point out to the Honourable Member that he is going so far out of order that I shall soon have to ask him to resume his seat. He is entitled to argue the question on the basis no doubt of a public utility, but only in so far as it affects post cards.

Mr. K. C. Neogy: Sir, it is very difficult to separate the question of the general expansion of postal facilities from

Mr. President: On the contrary it is quite easy, and it has to be done!

Mr. K. C. Neogy: I shall try to be in order now. What I object to is the handing over by the Postal Department of its surplus revenues without looking to the convenience of the public in the matter of cheaper postal facilities. That is the main point which I want to advance before this Honourable House.

There is another point to which I wanted to refer in this connection, but I do not know whether I will be in order,—it is as regards the absence of commercial accounts in the Postal Department.

Mr. President: Order, order. The Honourable Member is very ingenious and very persistent; I must rule him out of order.

(Voice: "I move that the question may now be put.")

Mr. President: The question is that the question be put.

The motion was adopted.

Mr. President: Amendment moved:

"In Schedule II, for the existing entries under the heading 'Postcards' substitute the following:

'Single	...	...	...	Quarter of an anna.
Reply	...	...	...	Half an anna."

The motion was negatived.

Mr. President: The question is that Schedule II stand part of the Bill.

The motion was adopted.

Mr. President: Schedule III.

Mr. M. G. Mukundaraja Ayyangar (Madura and Ramnad *cum* Tinnevely: Non-Muhammadan Rural): Sir, I gave notice of two* amendments, and the second is an alternative to the first; but since I sent notice of these amendments, I have been informed by a responsible gentleman that the effect of my first amendment would be to reduce income of the Central Government by a very large amount. If that should be the effect of my first amendment, I do not desire that the Government should lose such a huge sum, especially in these days of financial stringency. I would, therefore, with your permission, withdraw the first amendment, and I will move only the second amendment. The object of this second amendment is to remove the great hardship to which the Mutual Benefit Societies and the Fund Offices which are a real boon to the poor in the country are subjected by being asked to pay a flat rate of $1\frac{1}{2}$ annas in the rupee whatever their income. Honourable Members will see that in the case of ordinary individuals, the taxable minimum under the Act is Rs. 2,000, that is, those whose total income is less than Rs. 2,000 are not liable to tax and even in the case of these persons, there is a graded scale of Income-tax ranging from 5 pies to $1\frac{1}{2}$ annas in the rupee of their income. But in the case of these Mutual Benefit Societies and Fund Offices which come under the definition of Companies under the Income-tax Act, 1922, they have to pay at a flat rate of $1\frac{1}{2}$ annas in the rupee even if their income be very much below Rs. 2,000, which, as I said, is the taxable minimum in the case of others. These societies pay at the end of the stipulated period to the shareholders the amount they had paid and the interest on the amount they had paid. But yet these societies and fund offices are taxed under the Act. There are a great number of such societies and fund offices in the Madras Presidency whose annual total income may not be Rs. 2,000 but very much less than that amount. But all these are liable to be taxed at the rate of $1\frac{1}{2}$ annas in the rupee. I do not think it is necessary for me to invite the attention of the House to the fact that this change was introduced for the first time in the Finance Act of 1922. Under the Income Tax Acts of 1917 and 1918, companies as well as individuals were not liable to pay any income-tax upon incomes below the taxable minimum. But in the year 1922 under the Finance Act, the

* "In Part I. A of Schedule III, Rates of Income Tax, after the word 'individual' in the first line, insert the words 'Every Company' and in Part I. B. omit the words 'Every Company. and'."

minimum taxable income in the case of companies was taken away and all companies were made to pay at the flat rate of $1\frac{1}{2}$ annas in the rupee irrespective of their income and the result is that the smaller companies which deserve our sympathy and encouragement are very severely dealt with. The several Local Governments pointed out this anomaly of taxing small companies without reference to their income even before the Income-tax Act was passed. Our Honourable friend, Mr. Moir, as Secretary to the Government of Madras, has, in his letter to the Secretary to the Government of India, No. 322, dated the 12th of December, 1921, stated as follows:

"The clause (referring to clause 17 of the Income-tax Bill) proposes to tax companies and firms on their income even though it does not amount to the taxable minimum as fixed from time to time. The Governor in Council is unable to understand the difficulty which led to the necessity for this amendment, and whatever it is, he is of opinion that some other way should be found of meeting it. To tax a firm whose income is less than the minimum would be going against the main principles of the Act."

Mr. Sim, the then Joint Secretary, Finance Department of the Government of India, said in this House during the discussions on the Income-tax Bill:

"At the same time, there is a certain amount of hardship in connection with some of these societies, owing to the fact that the members of these societies in some cases are not personally liable to Income-tax. Clause 60 of the Bill gives the Government of India power to reduce taxation or to make any concessions they please in favour of any particular class of income. The Government of India are quite prepared to consider the case of these societies when the full facts are placed before them, to consider whether any special concession is required or whether any special arrangements are necessary in order to secure an equitable assessment of Income-tax."

Since then representations have been made and full facts have been placed before the Government of India by very many societies and fund offices of the Madras Presidency and, yet, Sir, nothing has been done in the matter as promised. I, therefore, think, Sir, that there is no use of placing any reliance on the assurances given by the Government in this matter and submit that the amendment I have proposed should be made in the Finance Bill. Sir, I move my amendment.

The Honourable Sir Basil Blackett: Sir, the question of how certain mutual benefit societies should be treated in Madras, and in fact in India, was raised in connection with the Income-Tax Act last year. On behalf of the Government of India Mr. Sim, I think it was, offered during the debate to make arrangements for special treatment of such societies under section 60 of the Act or otherwise by issuing executive instructions. But this proposal was rejected by the Assembly which inserted an explanation under the Act, under which recurring subscriptions paid periodically by shareholders or subscribers of mutual benefit societies as may be prescribed shall be deemed to be capital borrowed. The result of that would be that the interest payable thereon would have been allowed as business expenses. The Income Tax Department, immediately the Act was passed, took steps with a view to taking action under this explanation. But meanwhile one of the leading societies in Madras applied for a reference to the High Court on the question whether the income of such societies is liable to tax at all. Since then, Sir, we have been awaiting a decision on this point from the Madras High Court. We recognise that if the decision is much longer delayed it is necessary that we should attempt to take action and we are prepared to consider whether we can use our powers to issue executive instructions that if a society and its subscribers agree in cases

[Sir Basil Blackett.]

where the income is small, say Rs. 2,000 or less,—we might possibly consider going even above the Rs. 2,000—instead of taxing the society at the maximum rate, we should get a list from the principal officer of the company or society of the amounts paid out to subscribers showing the original subscription and the interest thereon. And the income-tax officer of that locality would go through the list and ascertain from his registers or from his own knowledge of the locality which particular recipients are liable to income-tax. He would then be able to add the amount of interest they had received to the income on which they would otherwise have been assessed and the effect would be that he would assess the individual where he was liable direct instead of assessing the company. I think that, if the decision of the High Court is not received soon, we can meet the difficulty in which the Honourable Member is interested in that way, and I would suggest that, in those circumstances, he should withdraw his amendment.

The motion was negatived.

Dr. Nand Lal: Sir, my amendment runs as follows:

"In Part I, A of Schedule III to the Bill in items Nos. (4) to (7) the following amendments be made:

- (i) Against item No. (4), for the word 'nine' substitute the word 'eight'.
- (ii) Against item No. (5), for the words 'one anna' substitute the words 'ten pies'.
- (iii) Against item No. (6), for the words 'one anna and three pies' substitute the words 'one anna'.
- (iv) Against item No. (7) for the words 'one anna and six pies' substitute the words 'one anna and three pies'.

Sir, the income-tax payers are so hard hit and it is pity that some of us have no sympathy with them. The income-tax payer (Cries of "Withdraw, withdraw.") I cannot understand whether these gentlemen who say "withdraw, withdraw" understand their duty or not. It is a pity. If they want to take rest they may please themselves by leaving the House. Well, Sir, I am sitting here to do my duty. These Income-tax payers are, as I submitted above, very hard hit and allow me to say, though perhaps the Government Benches may not like to receive that message, that there is a great amount of discontent in regard to the present excessive rates of income-tax that is being levied. Now, last year, there was an enhancement in the rate of income-tax. Well, there was a general complaint against us and on most occasions, we, the representatives of the people, especially some of the elected Members, were taken to task by our constituents. The reply which we gave to them, with a view to redress their grievances, was "It is perhaps only for one year, and we shall in our humble way try to see that next year there may be some sort of decrease, if possible in the rates." But this year also

The Honourable Sir Malcolm Halley: Might I ask who gave that undertaking?

Dr. Nand Lal: We, some of the elected Members, gave an oral reply to some of those who asked us on that point, namely, some of us, in that manner gave a moral consolation to our constituents; they will not come to you, Sir, they will send us to you, and that is the guiding principle upon which the whole representation is based. Therefore, Sir, at least we, the elected Members, feel bound to invite the attention of this Assembly to

this real grievance of these honest men who work very hard and, after having worked very hard, they earn money, and they have to give a very big slice of it to the Government.

The second phase of the question is, what measure has been adopted in fixing this rate of income-tax. The measure which seems ostensibly to have been adopted is that for each Rs. 5,000 there will be an increase of one pie. Sir, will you please see item No. 2. There it is given that when the total income is Rs. 2,000 or upwards but is less than Rs. 5,000, the tax is 5 pies in the rupee. Then you will be pleased to see item 3. When the total income is Rs. 5,000 or upwards but is less than Rs. 10,000—6 pies in the rupee. Now, when we compare these two items and the rates at which the income-tax is assessed, we are driven to this conclusion, that for each sum of Rs. 5,000 there will be an additional charge of 1 pie. Now, Sir, will you be pleased to see item 4 where it is given when the total income is Rs. 10,000 and upwards but is less than Rs. 20,000—9 pies in the rupee. Now according to that measure, according to that criterion, this ought to have been 8 pies, because there is an addition of Rs. 10,000. For every additional Rs. 5,000 there will be an addition of 1 pie; so by an arithmetical calculation the result arrived at is that the rate ought to have been 8 pies, not 9 pies. Then, Sir, I may invite your attention to item 5, where it is given, when the total income is not less than Rs. 20,000 and upwards but is less than Rs. 30,000—1 anna in the rupee. Now according to that criterion, according to that measure which was adopted with reference to items 2 and 3, it ought to have been only 10 pies; but we find that the result at which last year this Assembly arrived seems to be wrong. Whether it was right or wrong, we must accept it so far as last year is concerned; but for the next year I am raising this point before this Legislative Assembly that there is a mistake. There should be some fixity of standards.

Mr. R. A. Spence: According to how much a man can afford to pay?

Dr. Nand Lal: Whether you can afford to pay or not is a different question. Now I am discussing the arithmetical error which has been made.

Then, Sir, you will be pleased to see that there is a mistake due to an arithmetical error in item No. 6, and the same mistake has recurred in item No. 7.

Mr. R. A. Spence: No mistake.

Dr. Nand Lal: I submit there is the mistake and this mistake may be removed, and if this House will appreciate this contention of mine, then the rates will be as follows:

So far as item 4 is concerned, the rate will be only 8 pies. Again, so far as item No. 5 goes, the rate will be 10 pies. So far as item No. 6 goes, the rate will be 1 anna; and concerning item No. 7 the rate will be 1 anna 3 pies. The Schedule of last year with reference to these items does not seem to be based on an accurate arithmetical measure and criterion, and this Assembly should like to see that whatever is being passed for the next year, it should be based on accuracy. We have to avoid inaccurate arithmetical calculation. Sometimes bankers and merchants and income-tax payers—I mean assesses generally—laugh at our this arithmetical inaccuracy. Is this House prepared to accept that charge? (Cries of "No.")

[Dr. Nand Lal.]

Of course, Sir, I believe that some of you would like to have rest instead of doing duty.

The third point to which I wish to invite the attention of the court, I beg pardon, of the House—we lawyers are used to use that word—is this; there is a great amount of sensation and feeling and the merchant classes are feeling it very deeply. Therefore, I submit that to put an end to that grievance this House will be pleased to, at least, reduce the rates so that they may be relieved of this onerous charge to a certain extent.

Mr. Darcy Lindsay: I move, Sir, that the question be put.

The amendment was negatived.

Schedule III was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Basil Blackett: Sir, I beg to move that the Bill be passed.

Mr. President: The question is that the Bill be passed.

Mr. W. S. J. Willson: Sir, I am extremely sorry to intrude myself upon the House at this very late hour, but I am in a position of considerable difficulty. When Dr. Gour moved his amendment No. 47, the House had already had a great deal of talk about salt and I think it had had more than enough of it: so it happened that when you read his amendment the House shouted 'Aye' at once and although I rose to address you at the time, I unfortunately failed to catch your eye. Now, Sir, had the amendment, when Dr. Gour moved, the effect which he claimed for it, I should myself have voted for it. But it does not have that effect at all; and the consequences of it are so far-reaching that I do not want to allow this Bill to be passed without lodging my protest. I, Sir, am supposed to be an authority on the salt procedure in Calcutta, and it would be strange indeed if a representative of the trade, here in this House, allowed this to pass without lodging his protest. The position aimed at was, as Dr. Gour's amendment showed, that those who have sold their salt at a rate covering high duty should not get a refund; so far so good; but what happens in effect is this. The salt is landed in the Government bonded

7 P.M. golahs in Calcutta. You have to go to the Government and pay your duty day by day. There is such a block of deliveries at the Custom House and the golahs that you do not get delivery of the salt on the day you pay the duty. A merchant finds it necessary to pay some duty every day so that his chalans which are put in at the bottom of the file come gradually to the top. Now, Sir, I have every desire to be brief, so I do not want to go into the details at any great length, but it happened that 12 months ago we had exactly the same position. A firm in Calcutta had actually paid duty at the old rate of Rs. 1-4-0 on the 26th November, yet on the 2nd of March could not get delivery of that same salt. The Government refused to deliver that salt unless the excess was paid. Now in this year's case we have it that since the 1st of March the Government have refused to take any duty under the rate of Rs. 2-8-0, and in order that the merchants may come up to the top chalans, they had to pay Rs. 2-8-0, and we heard to-day on official authority that no less than thirty lakhs of rupees

duty have been paid on that basis. Now, Sir, if we are going to steal half of that duty, I think really it is a robbery of fifteen lakhs of rupees. These chalans are at the bottom, and they will not come to the top—I cannot tell you at the moment for how long; but it is some weeks, but by that time everybody knows that the salt duty has not been raised and the merchant who has, on the good faith of the Government, deposited his duty at Rs. 2-8-0 will not now be able to get it back. That, Sir, is a position which I cannot accept, and I cannot allow this Bill to pass without lodging protest against it. I do not know what further course is open to me except either to advocate the restoring of the duty to Rs. 2-8-0 so that it may be the same for everybody, or to oppose the passing of this Bill.

Sir Montagu Webb: I understand, Sir, that the motion now before the House is that the Bill, as amended, be passed. The result of the amendment is to leave us where we were before with a deficit, I understand, of 3 crores 68 lakhs of rupees. The efforts to provide alternative taxation in the form of a surtax on customs revenue have failed and I should like to make it known officially that I have received a large number of telegrams both from Bombay and Karachi most strongly protesting against any such increase of Customs Duties. The Honourable the Home Member in his very impressive speech advocating the doubling of the salt tax said that there was no alternative tax. I submit, Sir, that there is at least one alternative tax to which I have already referred, namely, the silver tax. In that connection the Honourable the Finance Member speaking on the subject of rebates remarked that in one year upon which quite casually he had to put his finger, the exports of silver from India were greater than the imports; and that consequently Government in that year instead of collecting money would have lost money. Now, Sir, I have the figures here of the last fifty years, and I cannot find any year except that very one year in which the exports of silver have exceeded the imports. So I think that Government need have no fear that even if they re-impose the silver duty and give a rebate on exports, they are likely to lose money.

Further, Sir, in making his appeal for the doubling of the salt duty, the Honourable the Home Member stated that although we have made our retrenchments, yet we cannot meet our expenditure, and therefore he advocated the imposition of a double salt tax. Now, Sir, I suggest the position is really this. The Inchcape Committee have made certain recommendations for retrenchments amounting to over nineteen crores of rupees. It has been impossible, naturally quite impossible, to bring into effect all those recommendations for this coming year. But we take it that Government are going to endeavour to bring into effect the whole of those retrenchments later on. So that the real position, as I see it, is not that we have made our retrenchments and cannot meet our expenditure, but that we have made as many retrenchments as are practicable during the forthcoming year and that we cannot meet our expenditure during the forthcoming year. But, I presume that the year after, when all these retrenchments are made, we shall be able to meet our expenditure. Therefore, Sir, the difficulty, the crisis, if I may so put it,—which we have now to overcome is this 8-68 crores deficit which has to be covered in some way during this coming year.

Now, Sir, I submit that there is an alternative to further taxation which we have not yet discussed, and which we have not yet considered. There is lying at this moment in London to the credit of the Secretary of State

[Sir Montagu Webb.]

for India over sixty crores of rupees—inoperative and doing nothing. The Honourable the Finance Member towards the end of his budget speech, paragraph 49, proposed to make use of a portion of that Reserve towards covering the deficit. I estimate that portion to be somewhere about a crore of rupees. This sum he proposes to utilise from that Reserve towards covering the deficit. (*The Honourable Sir Basil Blackett*: “The interest only.”). Now, why should we limit that appropriation to one crore? By appropriating 3 or 4 crores, say, our temporary difficulty for 1928-24 could be overcome. (*The Honourable Sir Malcolm Hailey*: “Why have any revenue; why not take that?”) Now, Sir, that reserve to which I am referring is the Gold Standard Reserve and I would ask your permission and the indulgence of this House to devote three or four minutes to an explanation of what that Gold Standard Reserve is. It was formed, in the first instance—built up of the profits on the coinage of rupees with the object of providing a means of remittance to England in case exchange fell below 1s. 4d. On every rupee that is coined at the present day from new silver, Government makes about 3 pence or 4 pence profit. Originally, it was intended that that profit should be held in India in the form of gold so that when the balance of trade turned against India, the gold could be remitted if necessary to London. Owing to a whole list of incidents and circumstances into which I need not go now, and against many of which I have often protested, the whole of that Reserve has been transferred to London, and it is now kept, not in gold but in securities.

The particular point to which I wish to invite attention this evening is the magnitude of that reserve,—over sixty crores of rupees. I believe every authority at this moment is agreed that this reserve is unnecessarily swollen,—unnecessarily big, and that we might very well utilise some portion of it for other purposes. A couple of years ago, the Bengal Chamber of Commerce gave evidence before the Babington Smith Committee in this connection. They said that, in their opinion, if the Reserve was large enough to meet a two years' balance of trade against India, that was all that was necessary. What exactly a two years' adverse balance of trade might be was not defined. It was often thought in pre-war days to be about eight million sterling per annum. Even if it were taken at ten million sterling, that would make the Reserve only twenty million sterling. Well, from the balance of trade point of view—and I am supposed in some quarters to be an authority in these matters—I myself have often urged that thirty million sterling was sufficient. But let me recall to the House for a moment the opinion of the late Sir Lionel Abrahams. Sir Lionel Abrahams was undoubtedly one of the greatest financial authorities that the India Office has ever sheltered. Now, Sir Lionel Abrahams only two years ago expressed the opinion that twenty-five million sterling would be quite sufficient; but he added that it would be better perhaps not to lay down any hard and fast rule at the moment. Now, Sir, note that figure, from the greatest expert—25 million sterling. I am prepared personally to make it 30 million sterling. But suppose even you make it 35 million sterling. There is, I submit, Sir, in that Reserve a considerable surplus of which we might very well take advantage in the present crisis. I should be very surprised indeed to learn from the Honourable the Finance Member that he considered forty million sterling, that is to say, sixty crores, was necessary at the present day in London. I feel convinced that he will—I should be very surprised if he

does not—admit that that is a very substantial reserve, and larger perhaps than there is any necessity for.

Now, Sir, the problem which is before us at this moment is whether or not it is expedient to make use of any portion of the Gold Standard Reserve. We have before us this crisis of a deficit, and the possibility of the Governor General in Council being asked to double the salt tax in face of the opposition of this House. Personally I should regard that as a crisis, a very grave crisis indeed. I fear that it would be treated by the public as a general breakdown of the Reform Scheme. It would be said, “Here is a general, and practically unanimous opinion of the people as far as we can see, against any doubling of the salt-tax and yet, for the third year in succession, we are called upon to vote more taxation, and that too at the last moment, just when the Parliament is dissolving, just when the Members are returning to their constituents asking for re-election,—just when the feelings of hostility against the Government are dying down,—at that very moment, Government ignoring public opinion, doubles the salt tax. I think, Sir, that such a course would be a calamity; and it is for that reason I would urge upon the Government to weigh very carefully the possibility of utilising from the Gold Standard Reserve not merely the one crore which the Honourable the Finance Member himself proposes to take from the Reserve but a further three or four crores, and all our difficulties vanish without any financial mishap, and without any political disaster.

The Honourable Sir Malcolm Hailey: What a pity we retrenched!

Sir Montagu Webb: Well, Sir, I do not think it is a pity. It is a pity we did not retrench two years ago. The more we retrench the better. I put it for the serious consideration of Government that in a grave political crisis of this kind, with this Reserve of money at their disposal which can be utilised,—I suggest they should give this alternative way out of the present difficulty their very serious consideration.

Mr. Jamnadas Dwarkadas: Sir, I have no desire to detain the House at this late hour, but I do believe that while we are at the final stage of the Finance Bill, it is necessary that the constitutional aspect dealt with, with his characteristic skill by the Honourable the Home Member should also be considered by us. The Honourable the Home Member, it must be said to his credit, has not minced matters. He has told us—and there, I think, we are in agreement with him—that we are on the verge of a crisis, that for the last three years in the life of this Assembly, to use the words of the Honourable the Finance Member, we have somehow or other pulled together, that in this very Session we had various controversial questions which came up before the House and that by the efforts, the most laudable efforts, both of the Government as well as of the House, even on those controversial questions we have come to an unanimous conclusion, and it is a pity that on this question of the Finance Bill, there should exist between the Members of the Government and the Members of this House a difference which is not merely in the nature of an ordinary difference, but which is likely to assume the shape of a crisis, threatening to endanger, if I may say so, the bona fides of the Government of India, threatening to embitter more the already embittered feelings of a certain section of the people against the Government. It would be nothing short of a calamity. It would be nothing short of a calamity if the Government in spite of the almost unanimous opinion of the country and the opinion expressed here by a large

[Mr. Jannadas Dwarkadas.]

majority of the House (A Voice: "Not very large") were to get certified the tax which the House has rejected. I want to say in answer to the remarks made by the Honourable the Home Member and other Members that the Government must take it from us when we say that it is not merely for the purpose of getting ourselves re-elected that we have voted against the enhancement of the salt duty. No.

The Honourable Sir Malcolm Hailey: The Honourable Member would do me the credit to say that I did not suggest that.

Mr. Jannadas Dwarkadas: I did not mean that the Honourable the Home Member suggested that, but it has been suggested by some Members that the reason that has guided many of the Honourable Members of this House to take up the attitude that they have taken against the enhancement of the salt duty is political and sentimental. Now as regards the reason being political, I want at once to say to the Government that I do not think that most of the Members of the House, at any rate, are actuated by the feeling that they would not be returned at the next elections if they voted in favour of the enhancement of the salt duty. The reason is neither altogether sentimental, but it is the conviction of many of us that it is a most unpopular tax, that it is a tax which will embitter the feelings of the poorest people of this country, that it is a tax which will weigh heavily on the shoulders of the poorest people of this country. (A Voice: "No.") It is that reason, it is that conviction, right or wrong (A Voice: "Wrong") which has led many of us to take up the position that we have taken. The Honourable the Home Member spoke on the necessity of having the courage on this question to support the enhancement of the salt duty and avert a difficult situation. Now, Sir, I need hardly give an assurance both to this House and to the Government that there are Members in this Assembly who by their past record can claim that the personal consideration of election or any consideration of that character has never stood in their way of doing their duty even by displeasing a large section of the people by their support of Government when they thought it necessary to do so, and if speaking for myself I had thought that it was necessary to support Government, that it was right to support Government, I would have done so at any cost. I know many Members of this House would have done so at any cost, but I repeat that it is this feeling that we should be doing something wrong, that we should be doing something that is detrimental to the interests of the people of this country,—nay, more than that, it is the feeling that we shall have dis-served the Government itself which asks for our support—it is that feeling that has guided us in coming to the decision that we have come to. What, then, is the Government to do? Two ways are open to the Government. The Government might yield to the wish expressed by this House, or the Governor General may use the extraordinary power vested in him in order to certify the enhancement of the salt duty which the House has rejected. I do not want to mince matters. I want to imitate the good example set by the Honourable the Leader of the House. I do not want to mince matters. I want to tell the Government very frankly that the consequences of certifying this enhanced tax over the heads not only of the Members of this House but against the expressed opinion of the people of this country—that the Government's restoring the tax against the almost unanimous vote of the people of this country will be very grave. In the past before the Reforms came into existence, many a time it fell to the lot

of the Members of this House and public bodies outside this House to warn the Government of the danger of ignoring public opinion in many matters. The Government on most questions paid no heed to public opinion and this obstinate attitude on the part of Government became the parent of many a disaster to this country. I stand here to repeat the warning that has been given in this House and outside this House in the past on many measures; it may be in a small measure, but it seems to me that the situation is similar to what it has been in the past. It is perhaps, more serious, because you are on the eve of undoing the great work that in the first three years of its existence the reformed Legislature has done for this country. I therefore warn the Government, whatever may be the result of the House's attitude, let them stand by the constitution, let them respect the wishes of this House. It might mean temporary injury or it may not. I am not sure that it will. But in the end by respecting the wishes of this Legislature, by carrying out even against its own pet theories the desire expressed by a large majority of this House, the Government, I am sure, will ensure the solid foundation on which the Reforms have been built. I appeal to the Government to lay aside all other considerations. The credit of the Government of this country will not suffer. Sir Montagu Webb has suggested one remedy. I am not prepared to say that I am in agreement with that remedy, but I do feel that many a remedy can be suggested, that further retrenchment, if necessary, may be effected; other steps may be taken; a small deficit may be left uncovered; it is not likely to imperil the credit of this country in the eyes of the world; but the restoration of the salt tax in the teeth of the opposition of the people is going to imperil the credit, the bona fides of this Government in the eyes of the people of this country, a consideration which is more important than any other consideration. Only last year we were on the verge of chaos in this country. This House stood by the Government like one man then. But for the support of this House the Government would not have been able to put down a movement which threatened to bring disaster to this country, which threatened to transform this country into a place of chaos and anarchy. That fortunately has disappeared from this country. Let not Government, by any unwise action, bring about in this country again a situation which they might at a future date have to repent, and which will not be conducive to the good and the welfare either of this country or of its relations with Great Britain. I appeal to the Government once more. Exercise patience, exercise commonsense, do not suffer, as Lord Curzon pointed out, from the fault of not looking ahead sufficiently. Take a long view of things. Try to pacify the people of this country on every reasonable question. I say that this is one of the most reasonable demands that the House has made, and I trust, that the Government will not propose an enhancement of the tax on salt against the wishes of the people. It is not too much to demand from the Government to carry out in this respect the wishes of this House. Sir, I appeal to the Government to respect the wishes of the people.

The Honourable Sir Basil Blackett: Sir, I do not wish to detain the House at this late hour, but there are one or two points which it is necessary that I should not leave completely unanswered. I do not propose to follow Mr. Jannadas Dwarkadas in his very eloquent appeal; all I would like to say on that subject is that, speaking here, I regret exceedingly that the House has missed what seems to me a unique opportunity for confounding for ever any questioners outside this country of the reforms scheme. But I will say no more on that subject; I will deal with the two other points raised. As regards the point raised by Mr. Willson in

[Sir Basil Blackett.]

regard to salt, the Government will be prepared to consider the point which he has raised and will, if necessary, consider whether any action need be taken in another place. The Honourable Member from Karachi seems to founder deeper and deeper in sentimental finance, as it has been called to-day, with every stage of the crisis; the more he is driven to face the necessity of adopting sound methods of dealing with the difficulty, the more unsound are the expedients which he tries to find to slip out of it. He has again repeated that this is a temporary crisis, it is a temporary financial stringency. I have stated more than once, and it has been said by others, that that is a view which cannot be put forward with any certainty, I would like just to make this point. He said that the cuts suggested by the Retrenchment Committee are something over 19 crores, and though we cannot put them all into force this year, we ought to put them in to force next year. I hope we shall put into force next year every possible retrenchment, but I must point out that at least 6 crores out of those 19 crores are non-recurrent savings: non-recurrent—there is the lag and terminal charges this year, which make our total actual savings, I think, about 12 out of the 19 recommended by the Retrenchment Committee. But of those 12, I think I am right in saying that at least six are non-recurrent; they do not recur next year; so that we cannot take too rosy a view of next year's situation.

Sir Montagu Webb has a rather indistinct idea as to where the line is to be drawn between capital and revenue. He says we are using part of the Gold Standard Reserve this year; I would point out that we are only using the interest on the Gold Standard Reserve, which is recurrent. If we do not touch the total reserve this year, that interest is a recurring item—it is a recurring interest item we are using, we are not using the principal. I will not be diverted at this moment into discussing whether or not the gold standard reserve is sufficient or insufficient for its purpose or enter into other arguments as to its use. Obviously the gold standard is needed and required for the purpose of dealing with our exchange and stabilising our exchange when the moment comes for doing it. That would be the moment to consider how finally to dispose of our available resources for stabilising exchange. If we were simply to use them for the purpose of meeting our current outgoings, we should be spending Capital on Revenue purposes, but I think it is a little beyond. (A Voice: "Use it for deflation.") If we use it for deflation, it is not revenue. I think Sir Montagu Webb said that 8 million pounds was about the maximum needed to cover any two years' adverse balance of exchange. (Sir Montagu Webb: "Eight millions a year.") In 1920-21 we had an adverse balance of 48½ crores, and in 1921-22 a total adverse balance of 32 crores, or a total adverse balance of 80 crores in two years. (Sir Montagu Webb: "Surely, Sir, not the balance of trade.") I am sorry to hear at the last moment a suggestion, which might mislead public opinion, put forward that there is a possibility of covering the deficit by a sound means and it would be very unfortunate if that went out to the world as a possibility, when I believe, as even Sir Montagu Webb must know, that it is not in any sense a suggestion for balancing the budget. It is a suggestion for devising ways and means which we need not discuss. It is not in any sense a suggestion for making the Budget balance.

Mr. President: The question is:

"That the Bill to fix the duty on salt manufactured in; or imported by land into, certain parts of British India, to vary the duty leviable on certain articles under the

Indian Tariff Act, 1894, to fix maximum rates of postage under the Indian Post Office Act, 1898, to amend the Indian Paper Currency Act, 1923, and to fix rates of income-tax, as amended, be passed."

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Hailey: I should like to make a statement, Sir, regarding business. Lists of business for Wednesday and Thursday have been distributed. It is not proposed to hold a meeting on Friday. On Saturday we propose to take any business that may be left over from Thursday, and after that to devote, what I hope will only prove to be half a day, to private business. For that purpose we propose to ballot for two Resolutions. We propose to keep the list open from 10 to 1 P.M. to-morrow and have an informal ballot at lunch time. On Monday we propose to take Government business and on Tuesday there may be a little Government business remaining over to be taken, and after that is finished, we propose to proceed to complete as far as possible the list of private business which was down for Thursday next and some of which will no doubt be remaining over for completion. (Munshi Iswar Saran: "Is that the last day?") I hope, Sir, that we shall be able to inform you that we have no further business after Tuesday.

The Assembly then adjourned till eleven of the Clock on Wednesday, the 21st March, 1928.

LEGISLATIVE ASSEMBLY.

Wednesday, 21st March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

GOVERNOR GENERAL'S ASSENT TO BILLS.

Mr. President: I have to acquaint the House that His Excellency the Governor General has been pleased to give his assent to the following Bills:

The Indian Cotton Cess Act, 1923;
The Indian Income-tax (Amendment) Act, 1923;
The Government Savings Banks (Amendment) Act, 1923;
The Prisoners (Amendment) Act, 1923;
The Criminal Law (Amendment) Act, 1923.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, in the absence of the Honourable the Home Member I move the motion which stands in his name to-day, namely:

"That the further amendments made by the Council of State in the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, be taken into consideration."

The House is well aware, Sir, that the Council of State, so far as the volume of amendments made by it is concerned, has done very little to the Bill. They have in fact made four amendments, three of which were put forward at the instance of Government and the fourth by a non-official Member. The three matters in which Government sought to amend the Bill as it was passed by the Legislative Assembly were in respect of the changes made by this Assembly in sections 162, 195 and 406. I do not think, Sir, at this stage I need enter into details as to Government's motives or reasons for putting forward these amendments which the Council of State accepted. As the individual amendments are taken into consideration, it will be open to the House to discuss them and Government will then have an opportunity of explaining its own position with regard to them.

Mr. President: The question is:

"That the further amendments made by the Council of State in the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, be taken into consideration."

The motion was adopted.

Mr. President: Amendment made by the Council of State:

"That in clause 34 of the Bill—

(a) in the proviso to the proposed sub-section (1) of section 162, the words 'allow inspection to the accused and' were omitted; and

(b) after the same proviso the following proviso was added, namely:

'Provided further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.'

The question I have to put is that this Assembly do agree with the Council of State in the said amendment.

Bhai Man Singh (East Punjab: Sikh): I have sent notice of two amendments but I do not know if copies have been received or not.

My first amendment is that this whole change should be omitted and that the clause, as passed by the Legislative Assembly, should be re-instated. In the alternative I have suggested that the words "or that its disclosure to the accused is not essential in the interests of justice" should be omitted.

Mr. President: As regards the first proposal made by the Honourable Member, an amendment must be in a form which can be put from the Chair in its proper place in the Bill, and therefore, the first proposal of the Honourable Member is one that I cannot accept. The second one is in order.

Bhai Man Singh: May I then, Sir, propose the second amendment only. I am just now told that it is the result of some compromise effected, of which I of course have got absolutely no knowledge, but if some of our Members have got this knowledge and declare that it is a compromise then I have nothing to say. As a matter of fact, I really object to the words "that its disclosure to the accused is not essential in the interests of justice", because they are so wide that anything could be brought under them, and, practically speaking, if we retain these words, the whole change that we have made becomes a nullity. As I have been told that there has been a compromise, I do not wish to move this amendment.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, as there may be two conflicting views regarding this amendment, I may be permitted to say a few words in connection therewith. As Honourable Members are aware, when this clause was under discussion in this House, the non-official Members moved and carried an amendment that all statements made to the police should be available to the accused for the purpose of cross-examination. The Honourable the Home Member took exception to the generality of this amendment and pointed out a case of a widespread conspiracy in which the names of persons not directly concerned in the trial of the case might be involved and which would highly prejudice the administration and not serve the immediate purpose of the accused, and consequently it was moved by the Honourable the Home Member that this clause required some modification. Honourable Members will remember that we on this side of the House were prepared to accede to the suggestion made by the Honourable the Home Member, and while several drafts were exchanged nothing could be settled and nothing was settled. In this state the amendment went to the other House and then after some discussion the clause

which the Honourable Members find now before them for consideration was drafted. I find one Honourable Member suggesting that this disclosure to the accused is not essential in the interests of justice (*Mr. T. V. Seshagiri Ayyar*: "Unnecessary.")—is unnecessary. I wish to point out that that is a very necessary safeguard in the interests of the accused. That is to say, if it is essential in the interests of justice to the accused, copies shall be given and the exception that finds a place now in section 162 seems to me a very limited exception, and it is not likely to frustrate the ends of justice. If it does and cases do arise in which the accused is deprived of the right of cross-examining witnesses in the light of the statements made to the police it will be open to Honourable Members to move for the further amendment of this section later on; but for the present I think it worth while accepting the clause as it has been drafted and accepted in another place.

Mr. President: The question is that this Assembly do agree with the Council of State in the said amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"In sub-clause (5) of clause 47 of the Bill, for the proposed new sub-section (5) of section 195, the following sub-section be substituted, namely:

'(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.'

The question I have to put is that this Assembly do agree to the amendment made by the Council of State.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"For clause 109 of the Bill the following clause be substituted, namely:—

'109. For section 406 of the said Code the following section shall be substituted, Amendment of section 406, Code of namely:— Criminal Procedure, 1898.

'406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal from order requiring security for keeping the peace or for good behaviour. against such order—

(a) if made by a Presidency Magistrate, to the High Court:

(b) if made by any other Magistrate, to the Court of Session:

Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session:

Provided further that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123.'

Dr. H. S. Gour: Sir, I oppose the proviso and I wish to give my reasons for doing so. Honourable Members will remember that this clause was the subject of a lengthy debate in this House. The object of constituting the Sessions Judge as the sole appellate tribunal in cases of apprehended breach of peace and security of behaviour was justified on the broad principle that the District Magistrate is technically and in many

[Dr. H. S. Gour.]

cases in reality the head of the district police, and proceedings, whether under section 107 or section 110, are initiated by the police with his cognizance and at times with his approval. Therefore if a Magistrate subordinate to him decides a case under these sections it is but just and fair that the appeal should lie to an independent tribunal, neither prepossessed nor prejudiced nor suspected of prepossession or prejudice in favour of or against either side. Honourable Members will realise that for a long series of years the country at large has been crying for what is now known as the separation of the judicial and executive functions, and a small beginning was made in this House by transferring these appeals from the head of the district police to an independent judicial officer. All that could be said for and against our amendment was said by the representatives of either side, and after full consideration we decided that such cases must go to the Sessions Court who is a judicial officer and before whom the accused is likely to get better justice. That amendment has been substantially altered in another place and I wish to point out to the Honourable Members here that if we accede to the clause inserted elsewhere we shall be neutralising the effect of the amendment we made after long and anxious debate. What is the effect of this proviso which is sought to be inserted? The effect is that the Local Government may by mere notification completely frustrate the declared policy and object of the Indian Legislature and that all such cases shall be heard in appeal by the Court of Session. It arms the chief executive authority in the Province to constitute a special tribunal in derogation of the wishes of this House. Sir, Honourable Members are not unfamiliar with the constitution of such exceptional tribunals by executive notifications. My lawyer friends also know the great danger of arming the executive with this power. The Central Legislature is the sole judge and shall not allow the executive to do its work in designating officers to hear appeals from these cases. If Honourable Members desire that the District Magistrate should continue in future as he has been empowered in the past to hear appeals against these police cases, let them cut out the proviso and let them also cut out what they decided on the last occasion. But let there be no doubt that if this proviso is allowed to obtain a place on the Statute Book, it will completely neutralise the effect of the amendment which this House made, because the Local Governments always prefer rough and ready justice to considered and deliberate justice which the Sessions Judges deliver. Executive Governments will complain and I know the Honourable the Home Member will lay before you considerations of economy, of convenience, and appeal to you in the name of economy and convenience to allow the proviso to go on the Statute Book. But I ask, Sir, was this not the consideration presented to you on the last occasion when this amendment was under discussion in this House, and did you ignore that consideration presented to you by the occupants of the Government Benches? What fresh facts could be brought to light have been brought to light. What facts are there now to ask you to reconsider your judgment and go back upon the amendment which you deliberately made, despite the opposition of the Honourable the Home Member and his colleagues? I submit that the time has now come when cheaper justice, expeditious justice must be subordinated to the higher considerations of purer, unadulterated and unsuspected justice. It has been said and it was said on the last occasion that these are after all preventive sections. They penalise nobody and what harm is done if an accused is bound over

to be of good behaviour or to keep the peace? Well, Sir, I am sure that those who advance that argument would not like to be bound over on the mere ground that no harm is done if security is demanded of them for being of good behaviour or to maintain the peace. We know, Sir, that a man's character is at times blighted by proceedings taken under these sections; he becomes a police suspect and the proceedings under section 110 expose him to a systematic persecution which curtails his liberty, exposes him to the ignominy and shame of a person who is or suspected to be a habitual criminal, not because there has been any conviction against him, but because he is bound over to be of good behaviour. Who is bound over to be of good behaviour? Who can be bound over to be of good behaviour? A person who has been of bad behaviour, who is a habitual criminal, does mischief, commits thefts, robbery, dacoity and all the allied offences which are categorised in that section. Listen not, therefore, to the plea that might be raised that no conviction is made in an order passed under section 110. Dismiss from your consideration that these are mere preventive sections and they do no harm but are merely intended to preserve the public peace. Reflect for one moment on the great injury that has been done to individuals in proceedings instituted against them under these sections; and I ask, therefore, that these sections cannot be dismissed as sections of a purely preventive character. These are all the arguments that have been advanced, arguments based on considerations of economy and of convenience and of what is called the comparatively trivial character of the proceedings under these sections. I have dealt with them, and I have no doubt that the House will agree with me that this provision is a dangerous provision and that it should be deleted from the Statute Book.

The Honourable Sir Malcolm Halley (Home Member): May I ask that the Honourable Member will put himself in order by informing us exactly what motion he is putting forward?

Dr. H. S. Gour: Sir, I move that the clause which runs thus be not accepted by this House:

"Provided that the Local Government may by notification in the local official Gazette direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session."

The Honourable Sir Malcolm Halley: Sir, I am afraid the Honourable Member has not quite put himself in order yet. At this stage of the proceedings the motion that will be made is dictated by the following rule:

"The other Chamber may either agree to the Bill as originally passed in the originating Chamber or as further amended by that Chamber, as the case may be, or may return the Bill with a message that it insists on an amendment or amendments to which the originating Chamber has disagreed."

Dr. H. S. Gour: I therefore insist that I want the restoration of this clause as it was originally passed by this House and we do not accept the amendment made in another place.

Mr. President: Does the Honourable Member wish to put the motion in the form that this Assembly do insist on its original amendment?

Dr. H. S. Gour: Yes.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): They have added a further amendment to our amendment.

Mr. President: As far as I can see it does not apply to the whole of the new section.

Sir Henry Moncrieff Smith: The whole section has been redrafted by the Council of State, and if this House confines itself to insistence on the amendment that it previously made it must not only remove that proviso but it will set the clause back into the form in which it emerged from this House on the last occasion.

Dr. H. S. Gour: I may say in this connection, Sir, that we shall not quibble about words and if there are any verbal changes made for the purpose of improving the draft, we will treat it as substantially an amendment of this House, though there may be verbal variations. What we object to is the insertion of the proviso which I have read out and which substantially varies the amendment of this House in the Council of State.

Mr. President: The procedure laid down in the rule makes it evident that the Assembly must insist on the entire clause as originally amended by the Assembly and the rules will not permit the acceptance of the suggestion made by Dr. Gour.

Dr. H. S. Gour: Very well, Sir; to comply with the rule I insist upon the restoration of the clause as amended by this House.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Was notice given of this amendment, I wish to know.

Mr. President: It cannot be called an amendment. A special form of procedure is provided for the stage which we have now reached. Honourable Members will realise that the Bill originated in the Council of State and then it came to this Assembly and was taken in January; then it went back to the Council of State and now it has come back again from the Council of State a second time. The procedure is restricted to that laid down in rule 36, sub-rule (4), which is the operative rule for the purposes of the present discussion.

The Honourable Sir Malcolm Hailey: Sir, I merely rise for the purpose of getting the motion in order. We quite understand the purport of the opposition of Dr. Gour. We merely wish to get the matter into such form that it will comply with the requirements of our Standing Orders, and in that connection I will explain to the House what exactly will happen if it follows Dr. Gour in what he has proposed. If the Bill is now returned with a message intimating that this Chamber insists on amendments to which the originating Chamber is unable to agree, then that Chamber may either report the fact of the disagreement to the Governor General or allow the Bill to lapse. We have, therefore, arrived at a somewhat interesting stage in the history of the Criminal Procedure Code (Amendment) Bill. I shall not weary the House by again reciting its long previous history, and it is quite unnecessary for me to remind the House of the fact that this Bill has engaged a considerable portion of the time of this Session. It has gone back to the other House, and the other House has returned it here. As a result of much work here, there and between, if I may so put it, we have now arrived at an agreement on practically every point at issue; or shall we say that if we have not arrived at an agreement, for that connotes a certain mental satisfaction which is perhaps present neither in our minds nor yours, we have at least arrived at a settlement on every point except this. If we do not arrive at a settlement on this point, then, as I have just pointed out to the House, the

other Chamber will eventually be faced either with the necessity of reporting to the Governor General the fact of this disagreement or of allowing the Bill to lapse. Well, for my part, Sir, I should be sorry to see the Bill lapse, if only because of the great amount of time, labour and anxious care that has been bestowed upon it. Believe me, we should not have thought of introducing this proviso unless we had been fully convinced of its necessity, for we recognized the consequences its insertion was likely to bring in view of the opinions previously expressed in this House. I will admit at once that from what I may describe as a purely Home Department point of view there are some features about the Criminal Procedure Code, as it now stands, which do not greatly commend themselves to me. There are many improvements, I admit, and we should be glad to see those improvements introduced; but there are other features which, as I have said, do not greatly commend themselves to us, and the question will finally arise in our minds whether we, balancing the two, are so enamoured of the revised Criminal Procedure Code that we shall attempt to take any further steps to put it into final operation or whether we shall perforce be obliged to retain the law as it now stands. That is the decision at which we shall have to arrive. I should be glad to avoid having to settle those issues.

Now, Sir, the House will agree that we have tried to meet it in every possible direction, and here we have one item, not an item perhaps of the very first importance (*Dr. H. S. Gour: "No"*) on which we have been unable to arrive at an agreement. Now what are the facts about this? We have conceded the principle that appeals ought to go to the Sessions Judge. So much we have conceded, but we have found ourselves unable to go with the position described by Dr. Gour. He says that the Legislative Assembly has decided and must insist that all appeals shall go to the Sessions Judge; but our point is that this Assembly has not yet provided the Sessions Judges to whom those appeals should go, and it cannot do so. I would remind the House, in the first place, that we have now open to appeal orders passed under section 107. Appeals, therefore, against those orders will be heard for the first time, and will swell the general body of appeals under these security sections. Now I have been unable to form any accurate calculation of what the total number of appeals will be that are likely to go to Sessions Judges. I can only tell the House there are on the average of the last three years 43,000 persons annually subjected to this class of orders in India. The House can form its own conclusion as to the number of such persons who are likely to appeal to Sessions Judges. They must be considerable. There will first be the appeals against the order of the District Magistrate in which there is now no appeal. Then as regards appeals against the orders of first class Magistrates, which are now heard by District Magistrates, I would point out that there is a much larger number of District Magistrates than of Sessions Judges, and take it whatever way you will, it is quite certain that we should have to increase the number of Sessions Judges to hear these appeals. That is to say, that although we have at present an organization which can and does hear the appeals and against whom I will not admit the charge that they do not hear those appeals properly,—yet we should add to the expenditure of the Local Governments by forcing them to appoint fresh Sessions Judges. Various calculations have been formed as to the numbers which will be required. I do not wish to pin my faith to those, for they cannot, in the circumstances, be accurate. It has been suggested, for instance, that in the Punjab from 5 to 7 Sessions Judges will be required; and in other provinces such, as the United Provinces, there would equally be a certain

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necessity of appointing fresh Sessions Judges. Now, Sir, how does the case stand with regard to our Sessions Judges? We have, as the House is aware, already thrown additional criminal work on them as a result of the enactment of our Racial Distinctions Bill. Local Governments pointed out at the time and High Courts also adverted to the fact that that would be the result. As the House is well aware, District and Sessions Judges have now practically to confine themselves in many areas to their appellate work and can do little original civil work; in some cases it is much worse. Listen to what the Patna High Courts said on the subject. They were writing on the subject of the changes introduced by the Racial Distinctions Bill. They said:

"The Judges entertain no doubt that in this province no District and Sessions Judge will have time to attend to any civil appellate business. It was once hoped that District Judges would occasionally take original civil suits, but in the majority of districts that hope is now impossible of fulfilment and the most that can be expected is that they should in the exercise of their appellate jurisdiction see something of the work of their Munsifs and Subordinate Judges."

Now, if that is the case already, have we any right here to add to the work of Sessions Judges to such an extent that they will not even be able to attend to their civil appellate work? Having already given up hope largely of their being able to take original work, we now intrench on the time which they can give to their appellate work, and the only alternative to that is appointing fresh Sessions Judges. Dr. Gour sought to make light of this consideration, and I think that when the matter was previously discussed other Members resented our taking shelter behind considerations which were mainly financial in their nature. Well, Sir, we have, I am afraid, learnt in the course of the budget debates the importance of such considerations in regard to our own finances, and I think that it is the duty of this House to show an equal consideration to the finances of Local Governments; nay, to show consideration also to the interests of civil litigation in the provinces. I believe that there are provinces where the Local Government would not find it necessary to use this proviso; there are places where the number of orders passed under Chapter VIII of the Criminal Procedure Code is small and there would be no reason for withdrawing such cases from the purview of the Sessions Judge; but there are undoubtedly provinces where the considerations to which I have referred would and must apply. Now, Sir, that is the ground and, I think, the substantial ground on which we have felt ourselves obliged to insert this proviso. May I add that there is nothing in it which justifies the criticism that Dr. Gour has extended against it as unusual, or as taking the matter out of the hand of the Legislature and placing it in the hand of the executive. You have parallels elsewhere. The Local Government can by Notification, for instance, decide whether trials shall be by jury or by assessors. The Local Government (although I know this provision is objected to) can decide when section 80 powers should be given to Magistrates. And you will find as the result of the investigations which we are now making, following the report of the Racial Distinctions Committee regarding the use of that section, that Local Governments will take their stand in regard to its use not on grounds of principle but on grounds of economy. There is therefore I say nothing unusual in this proviso and nothing unreasonable. I admit there is in many quarters a strong feeling that there should be a complete division of functions between the executive and the judicial, an old-standing feeling which has found fresh impetus from the Committees

appointed at the motion of our Legislative Councils. Well, how far have Local Governments as yet found themselves in a position to carry out such recommendations? Nowhere, I believe, and it may be some time before they can do so. I say to the House this, that they may advisedly leave this question to be decided as part of the general question of the separation of executive and judicial functions, as indeed it is a part. When Local Governments are in a position to carry out the concrete suggestions of the various committees they have appointed in regard to the separation, then will be the time, but not before, to insist that all appeals against orders passed under Chapter VIII of the Criminal Procedure Code shall come before the Sessions Judges. But until then you must be swayed by exactly the same considerations as are swaying Local Governments in this respect: that is to say, that whatever desire there may be to completely separate these functions, yet for the present financial considerations are too strong. You have here in your Act a provision on which future action can be taken as circumstances permit. Leave it there. When the wider question is settled and provision is made for the administrative changes which that settlement will involve, then this section will stand in good stead. But meanwhile the proviso is in our opinion necessary.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I think the House must recognize the strength of the plea put forward by the Honourable the Home Member for the retention of the provision as a purely transitory measure. We all know, and the Home Member himself has admitted it, that we must do all we can to get judicial and executive functions separated. That is the ideal that we had before us for a long time, an ideal which the Government is just recognizing as needful but for the attainment of which active support was not forthcoming on its part so long. That support is now coming. One must admit the correctness of what has been stated with regard to the heaviness of the work of Sessions Judges. We feel that every day in Bengal. The instance of Bihar and Orissa has been quoted, but long-suffering Bengal complains as little as possible. The District Judge, who is also the Sessions Judge in most places, has absolutely no time for what would be considered his legitimate work, his original suits, his appeal work and miscellaneous civil work. The head of the judiciary of the district undoubtedly ought to see as much of appeal work both civil and criminal as possible, and he will do so where it can be arranged for; where it cannot be is the only area in regard to which I understand this provision is to apply and for as short a period as possible. Having regard to that view of things, about which there can be no gain-saying, and fully conceding the soundness of the proposition that economic grounds ought not to be a reason for the denial of justice, it is impossible to insist that this provision shall rigidly stand out. The District Magistrate, I hope, will soon be relieved of all work of this kind; when the District Magistrate entirely takes over the judicial work, he will have to do work of this kind to a very considerable extent. Where the Local Government feels that a particular District Magistrate is not fit to be entrusted with this work, or where this is not desirable, I have no doubt that the proviso will be judicially interpreted and judicially administered. For this reason, Sir, and not for the first reason put forward by the Honourable the Home Member do I object to Dr. Gour's motion. The first objection put forward was that, for fear of possible lapse of the Bill, the House ought to agree to the alteration made by the Council of State. If unfortunately that is the position of things created by the Standing Rules.

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and Orders, you have got to face it, and think about amending it in a way that will not involve the lapsing or rejection of a whole measure because, with regard to a small part of the Bill like this, there happens to be a difference of opinion between the two Houses. Even if there be an acute difference of opinion, the undesirable results that the Home Member has indicated ought not to take place and nothing should interfere with our reaping the fruits of long-drawn labours like those we have gone through. But the likelihood of the result indicated would not itself influence our consideration. On other grounds, however, on the somewhat low ground of expediency, I think we might allow this provision to stand for the present, absolutely on the understanding put forward by the Honourable the Home Member that it is a temporary, transitory provision necessitated by the exigencies of the case, to be remedied as soon as possible, and never to be applied unless there is the clearest possible necessity for it.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, my reason for rising to address the House this morning is because Dr. Gour has made use of some expressions which I do not think ought to go unchallenged. I believe, Sir, that I am the only Member of this House who is actually at this moment a District Magistrate, and I trust therefore that the House will forgive me if I attempt to make some reply to what Dr. Gour has said. Sir, Dr. Gour has told the House that the justice administered by District Magistrates is rough and ready in comparison with the considered and deliberate justice of the Sessions Judge. Well, Sir

Dr. H. S. Gour: I rise, Sir, to a point of order. I am afraid my friend, Mr. Haigh, must have entirely misunderstood me. What I said was that Government wanted rough and ready justice

Sir Deva Prasad Sarvadhikary: And wanted Magistrates to administer it.

Dr. H. S. Gour: Yes, I repeat that statement.

Mr. P. B. Haigh: I cannot see the point of order. As for the statement that Government wants rough and ready justice, well, Sir, I am not in a position to answer for the Government; the Honourable the Leader of the House will no doubt do that. But Dr. Gour went further and went on to say that the justice administered by the District Magistrate, as compared with that administered by the Sessions Judge, was impure, adulterated, suspect. Sir, I repudiate those charges, and I would beg Dr. Gour to remember that even District Magistrates are not devoid of a sense of professional probity: and when a case in which a man who was bound over to be of good behaviour comes up to the District Magistrate on appeal, he has no right to assume that the District Magistrate will not undertake consideration of that case without a due sense of his responsibility towards the accused and towards the Government whom he is serving. Sir, I feel it my duty to protest in the name of District Magistrates against charges of that kind and language of that sort being used in this House. Sir, as regards the general question, I do not wish to add anything to what the Honourable the Home Member has said; and from the words of the last speaker it is quite clear now that the consideration that he has urged will carry their due weight with this House. But I would point out one thing to Honourable Members, and that is, that if Dr. Gour could have his way, and if

the effect of his motion would simply be to exclude the proviso, then the very large number of persons who will be affected by this section and who will be compelled to go on appeal in every case, not to the District Magistrate but to the Sessions Judge, will inevitably in many districts be subjected to great delay, and I doubt whether, even in the interests of those persons, it is desirable that this proviso should be exercised.

Mr. Pyari Lal (Meerut Division: Non-Muhammadian Rural): Sir, we are driven to a very unfortunate position. The Honourable the Home Member has laid before us the procedure in case Dr. Gour's motion is accepted. It will mean that the work on this Bill for the last three years, that is, of all those persons who went before us and our work for the last three months on this Bill, will be completely lost, and it stands a chance of being destroyed at the hands of the Council by its allowing it to a lapse. Well, Sir, who is responsible for this position? We from the very beginning have been, and as has been conceded by the Honourable the Home Member, the whole country is very strong on this point. They want to have the executive functions of the District Magistrate to be separated from the judicial, and it was to give expression to our feelings on this point that this particular amendment was introduced by this Assembly

in the Criminal Procedure Code. We knew at the time that 12 noon. the Honourable the Home Member was opposed to it, but he is a strong man and he must have his way. The Government go to the Council of State and force their will on that august body. They come back again to us and they want to force our hands. Either we must accept it at the point of the bayonet or throw it out. Now, being in this position, our difficulty is that we do not know what to do. We do not want that the Bill for which we have spent such anxious thought and time for so many months should go by the board in this manner; at the same time, we do not want that this proviso objected to by Dr. Gour should receive universal recognition; because in the same breath you say that the appeal should go to the Sessions Judge and yet that the Local Government should undo all what we have done here, that it may transfer these appeals again to the District Magistrate. But, however, situated as we are, we must accept the inevitable and there is only one way out of it, and that way has been suggested by the Honourable Member himself, the gentleman who is responsible for all our misfortunes, and that is, if we let this proviso go now, afterwards when the separation of the executive from the judiciary is carried out, we can come back to the Legislature with a fresh amendment of the Criminal Procedure Code. That is the only alternative left. I know it, Sir, for a fact that all criminal cases, whether they be original or appeal, before the district Magistrate do not give much satisfaction. In spite of what the Honourable Mr. Haigh has said, I join issue with him. Is there a gentleman in this Assembly who has any experience of cases heard by District Magistrates who can lay his hand on his heart and say that the District Magistrate is the proper judicial officer to hear judicial cases? I know it for a fact for the last 40 years that there are very few appeals, if any at all, which are accepted by the District Magistrate. In fact they have a printed form ready which says: "I see no reason for interference". These are the only words that the parties receive, and naturally so, because they are such busy officers who have so many and multifarious duties to do. The District Magistrate is not sitting there as a judicial officer, but he is there as a Magistrate, whose functions, according to him and according to all accepted notions, are very different from those of a judge and therefore we cannot

The Honourable Sir Malcolm Hailey: Is a Magistrate not a judicial officer?

Mr. Pyari Lal: He might be just technically so to suit the exigencies of the executive Government; otherwise he cannot possibly devote the amount of time required to decide judicial cases. Therefore, on all hands it is very desirable that he should be relieved of this work. I understand that the United Provinces Government have already decided this matter and they have formulated their views and submitted them to the Government of India; and if that reform is accepted, of course as a matter of fact the amendment above referred to will have to be introduced at a very early date in the Assembly and if other Governments also follow suit, I suppose not much harm will be done if we let the present occasion pass and come afterwards and have this suggested amendment introduced.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): May I enquire from the Government whether they will undertake to issue instructions that this power should be very sparingly exercised, so that the apprehensions that have been entertained by Dr. Gour that as a rule all Local Governments will be empowered under this, may be removed?

The Honourable Sir Malcolm Hailey: In a matter of this kind we consider it proper to leave that discretion to Local Governments. I should be very sorry indeed to think that any instructions that were issued from the Government of India could be interpreted in the sense that we ourselves thought that the charges which have been levied here to-day against the judicial character of District Magistrates had any justification. I consider that this is a matter which must be left to the Local Governments and to the public opinion as expressed through local Councils.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I wish to say at the outset that I neither agree with Mr. Haigh nor with my friend, Mr. Pyari Lal, about their estimate of the judicial work done by District Magistrates. There are some very excellent District Magistrates who write elaborate, well reasoned and well thought out judgments, while there are others who do not do it. But there is one fact which we ought to take into account and it is this, that as far as a District Magistrate is concerned, it is his duty to hear all sorts of reports from the police. Influential and important men come from all over the district, they relate to him their own troubles, their own grievances, and thus a great deal of information reaches him which does not reach the Sessions Judge. The Sessions Judge, therefore, has certainly to depend more on the record before him than on outside information. Be that as it may—there is a very strong feeling that it would be far better if these appeals were decided by Sessions Judges. I shall ask the Honourable the Home Member to consider one particular matter. He may feel convinced that these appeals could very well be heard by District Magistrates but he ought to take into account the very strong feeling that exists in the country. As a matter of fact, a European lawyer of eminence, while I was coming up here, said to me "If you can get nothing done please see that these appeals in what are called in my province *badmashi* cases, should on appeal go up to the Sessions Judge and should not be heard by the District Magistrate." It may be a wrong feeling, but there the feeling is, and I venture to think that a careful and cautious administrator will make a note of that feeling and will try to do all that he can in order to remove it. If the Honourable the Home Member will tell the House

that this provision is really temporary, for 2 years or 3 years or 4 years, and that there is not the slightest apprehension of its remaining long on the Statute Book, I venture to think that, as a matter of compromise, it will be acceptable even to my friend Dr. Gour and to Mr. Pyari Lal.

Mr. Pyari Lal: I have accepted it already under those circumstances.

Munshi Iswar Saran: Sir, there is no doubt that the acceptance of this provision may lead to a few more appointments of District Judges, but I shall ask the Honourable the Home Member to consider the new arrangement which has already been made. Subordinate Judges in many places have been given the status of Additional Sessions Judges and they hear criminal appeals. Moreover, as appeals from Magistrates of the first class generally go to Sessions Judges, I do not see why this provision should be introduced, which would be an exception.

I must confess that the Home Member laid great stress, and very rightly, on the financial or the economic consideration, and he did not seriously combat the view that it would not on the whole be better and more advisable that these appeals should go to the Sessions Judge. I shall say this, that a little expense for the production of the belief amongst the vast masses of the people that justice is done to them would be well justified. I shall say only one word, Sir, and it is this. The Honourable the Home Member has said, if you insist on it there is this trouble, that either this Bill will lapse, or the matter will have to be reported to the Governor General. Sir, prudence and compromise are most admirable virtues, but there are occasions when they degenerate into either weakness or vice. This is the situation. It was the same thing over the Racial Distinctions Bill—accept this or that condition or the whole Bill drops. It is the same thing here again—we are told to accept this proviso, otherwise the whole Bill lapses. I do not say it is the Home Member or Government that has brought us face to face with this situation. Whether it is due to the intervention of some mysterious power I know not, but we are confronted with a position which is not acceptable to us, and then it is said, "Look here, the work of so many years will be wasted if you do not agree with this proviso, there are so many improvements you can have by accepting it." Too much stress is being laid on this line of argument, and I should say that it is time now, or perhaps the time will soon come, if it has not come to-day, when this House will have to make up its mind and say "Well, we are clear, we adopt this attitude, and we are ready to take the consequences." I shall say to the Honourable the Home Member that he will shorten the debate and there will be no necessity for voting if he will state that this is only a temporary measure, and we need not entertain any apprehension regarding its becoming permanent.

Mr. Darcy Lindsay (Bengal: European): I move that the question be now put.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, as a Sessions Judge myself I am not likely to be unduly biased in favour of District Magistrates; but I may say I have had some experience of the work of Magistrates, because I have been taking appeals for the last 15 years from Magistrates, including District Magistrates. I believe that Honourable Members have an idea that the District Magistrates are sometimes influenced by considerations other than the actual evidence before them. This, however, is not really so except in an infinitesimal number of cases. Well, Sir, I would also like to confirm the statement of the Honourable

[Mr. P. E. Percival.]

the Home Member that Sessions Judges, especially in Sind where I come from, have very little, if any, time for civil work. They are occupied the whole time with criminal work. Sessions cases and criminal appeals take up practically the whole time of Sessions Judges; and the additional work thrown on them by the Racial Distinctions Bill and this Bill will still further the criminal work of Sessions Judges. There is one other point to which I should like to draw attention, as I think, it has not been realised by Honourable Members; and that is that the alterations made by this Bill in section 406 have had the effect mentioned by my Honourable friend Sir Henry Moncrieff Smith in regard to another clause, namely, that the Government have already gone nine-tenths of the way to meet the wishes of the Assembly. I believe that 90 amendments, large or small, have been made in this Bill by the House, and have been accepted by Government, that is to say, cases in which Government have been out-voted, and cases in which Government have accepted the amendments; and there remains only this one little item, in which case too Government have gone nine-tenths of the way to meet non-official opinion. Now the existing law is that there is no appeal in the case of security against a breach of the peace. Under the present Bill there is going to be an appeal in the case of security against a breach of the peace as well as of security for good behaviour. That is one alteration. The second alteration is that there is at present no appeal from an order of a District Magistrate or of a Presidency Magistrate. Now there is going to be an appeal from the Presidency Magistrate to the High Court and from the District Magistrate to the Sessions Judge. So in that case the wishes of the Assembly have been entirely met. There remains the third case, that is an appeal from a First Class Magistrate. Now Honourable Members will see that even in that case the wishes of the Assembly have been met to a very great extent, that is to say, the normal procedure will be in future that appeals from First Class Magistrates will go to Sessions Judges and not to District Magistrates. The one and only distinction that has been made in this Bill, which is not in accordance with the suggestions of this Assembly, is that the Local Governments, where they think it necessary in districts such as those in Sind where there is a great deal of criminal work, and in those districts only, can, by notification, direct that such appeals will go to the District Magistrate. I think it is not probable that Local Governments will apply this provision in districts which are not very criminal. There are districts in which there is not a very large amount of crime, and in those districts only the appeals will go to the Sessions Judge; but there are districts in which the Sessions Judges have no time to take these appeals. Therefore I do suggest, in the interests of the Local Governments themselves, that this proviso might be allowed to stand. I appeal to Honourable Members that, as in the case of the Racial Distinctions Bill, so in this Bill also they will act in a spirit of compromise and accept this small amendment which will meet the wishes of the Local Governments.

Mr. Harchandral Vishindas: I move that the question be put.
The motion was adopted.

Mr. President: Amendment moved:

"That this Assembly do insist on clause 109 as amended by the Assembly."

The motion was negatived.

Mr. President: The question is:

"That this Assembly do agree with the Council of State in the said amendment."
The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"That in clause 145 of the Bill in the proposed sub-section (8) of section 526 the words 'prior to the accused entering on his defence' were omitted."

The question is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: The question is:

"That this Assembly do agree to the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as further amended by the Council of State."

The motion was adopted.

THE INDIAN OFFICIAL SECRETS BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

"That the amendments made by the Council of State in the Bill to consolidate and amend the law in British India relating to official secrets be taken into consideration."

As will be seen, Sir, the amendments introduced are small and I think I am correct in saying that they merely give effect to two small amendments that were put forward in this Assembly by a somewhat keen critic of our Bill, but which he did not move. We ourselves thought, however, that it was our duty to move them as rendering the Bill more complete and carrying out generally the ideas which had actuated the Select Committee in dealing with the Bill.

Mr. President: The question is:

"That the amendments made by the Council of State in the Bill to consolidate and amend the law in British India relating to official secrets be taken into consideration."

The motion was adopted.

Mr. President: Amendment made by the Council of State:

"In part (e) of sub-clause (1) of clause 6 of the Bill, for the words 'or uses' the words 'or knowingly uses' were substituted."

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

Mr. President: Further amendment made by the Council of State:

"In Part (b) of sub-clause (2) of clause 6 of the Bill, for the words 'neglects or' the word 'wilfully' was substituted."

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

THE ABOLITION OF TRANSPORTATION BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

"That the Bill to provide for the abolition of the punishment of transportation in respect of criminal offences be referred to a Select Committee consisting of Rao Bahadur T. Rangachariar, Mr. J. N. Mukherjee, Mr. K. B. L. Agnihotri, Mr. N. M. Samarth, Mr. P. E. Percival, Colonel Sir Henry Stanyon, Munshi Iswar Saran, Chaudhri Shahab ud-Din, and myself."

The circumstances in which I put this motion will no doubt be perfectly clear to the House when it remembers the terms in which a motion for introduction was put forward by Sir William Vincent in September 1921. We are taking action to do away with the punishment of transportation in consequence of the Report of the Jails Committee. As Sir William Vincent explained in introducing the Bill, there was little difficulty on the question of principle. The whole difficulty arose in detail, that is to say, on the Schedules. We then stated that we would place the Bill before Local Governments and take their opinion. Those opinions are now complete, but some of them have only just arrived and we have not therefore had time to circulate them, but we shall place them at the disposal of the Select Committee, if my motion is accepted. I have said before, there is probably no difficulty on the subject of principle. The question of detail presents great difficulties and we therefore wish to have the matter considered in the light of the opinions of Local Governments as soon as possible by a Select Committee. That is the reason why I make this motion at this stage, hoping that the Select Committee may possibly be able to commence its sittings a few days before our session in July next.

Khan Bahadur Saiyid Muhammad Ismail Khan (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Sir, may I have your permission to suggest that two more names be added to the Select Committee, namely, those of Khan Bahadur Sarfaraz Hussain Khan and Rai Bahadur Lakshmi Prasad Sinha. They are both Honorary Magistrates of great experience and if their names be added to the personnel of the Select Committee proposed by the Home Member I am sure they will be of great assistance to the Select Committee.

Mr. President: The question is:

"That the following names be added to the list of Members of the Select Committee, namely, Khan Bahadur Sarfaraz Hussain Khan and Rai Bahadur Lakshmi Prasad Sinha."

The motion was adopted.

The question is that the Bill be referred to that Select Committee.

The motion was adopted.

THE INDIAN MERCHANT SHIPPING BILL.

Mr. President (to the Honourable Mr. C. A. Innes): The motion for the consideration of this Bill to consolidate certain enactments relating to Merchant Shipping has already been passed.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Yes, Sir.

Mr. President: Will the Honourable Member now move his amendment to clause 4?

The Honourable Mr. C. A. Innes: May I explain, Sir, why I bring this Bill forward again for consideration. I should just like to explain to the House why I have again ventured to place this Bill before the House. The House will remember that last March when I moved that the Bill to amend our Mercantile Marine law should be taken into consideration, I explained that our Mercantile Marine law was contained in no less than 21 different enactments some of them dating back 75 years and many of them overlapping and interlocking in the most complicated and confused way. The result is that our ship-owners, our sea captains, the Maritime Local Governments and the Government of India have the very greatest difficulty in ascertaining the law on any particular point. In addition to that, the law in many respects is out of date. Consequently, when the Statute Law Revision Committee was established, almost the first thing we asked them to take up was the consolidation and amendment of these laws. Well, I believe that they departed in this matter from the usual procedure. Instead of proceeding first with amendment and then going in for consolidation, they decided that, having regard to all the circumstances of the case, in this particular instance consolidation must be taken up first as a condition precedent to amendment; but acting again on the advice of the Statute Law Revision Committee, I did not move last March that the Bill should be passed into law. On the contrary, I suggested that we should be given time to prepare an amending Bill, that the amending Bill should then be placed before the House, and that, at a convenient stage, the amending Bill and the Consolidation Bill should be referred back to a Joint Select Committee in order that a final Bill might be placed before the House. Well, Sir, further experience has shown that it will be a long time before we can place an amending Bill before the Assembly. We have already addressed Local Governments on two matters which will involve an amendment of certain Chapters of this Consolidation Bill. We have also had an officer on special duty in the Department, and we have advanced a considerable way with our amendments to the Bill. But these amendments will require reference to Maritime Local Governments and it will certainly take a considerable time before I am in a position to place final proposals before the House. Consequently, the Statute Law Revision Committee has again addressed the Government of India and has suggested that this Consolidation Bill should be passed into law. They suggest that this Bill, though possibly it contains defects especially in the matter that it does not deal with the registration of ships, is a very useful measure in the clarification of our Shipping Law; and, therefore, acting on the advice of that Committee, I have again brought the Bill before the House.

I now beg to move:

"That in clause 4 for the words 'used for the public purposes' the following be substituted, namely:

'employed otherwise than for profit in the public service'."

This clause, Sir, exempts from the operation of the Act ships belonging to His Majesty or the Government of India and ships belonging to any foreign Prince or State and used for the public purposes of that foreign Prince or State. It has been suggested to us that the words "used for public purposes" are obscure and require clarification, a special point being that certain foreign States, the United States Government and the Australian Commonwealth also, have started State lines of passenger steamers, and it has been suggested to us that there is no reason why these State lines should be exempted from the operation of our Shipping Law. The existing law is also rather obscure on the subject, the actual

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phrase used being different in different Acts. We have referred the point to the President of the Statute Law Revision Committee and on his advice we have suggested this amendment. I move that amendment, Sir.

The motion was adopted.

Mr. President: The question is that clause 4, as amended, stand part of the Bill.

Mr. R. A. Spence (Bombay: European): Might I ask the Honourable Member for Commerce, Sir, exactly what the words "or the Government" mean in this clause 4—is it the Government of India?

The Honourable Mr. C. A. Innes: The Government of this country, Sir.

Clause 4, as amended, was added to the Bill.

Clauses 5—16, inclusive, were added to the Bill.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That in sub-clause (1) of clause 17, for the words 'Lieutenant, Sub-Lieutenant, Navigating Lieutenant or Navigating Sub-Lieutenant in His Majesty's Navy or of Lieutenant in the Royal Indian Marine,' the words 'Lieutenant in His Majesty's Navy or in the Royal Indian Marine' be substituted."

This is purely a drafting amendment. The clause exempts from the necessity of examination for certificates of competence certain officers of the Royal Navy and the Royal Indian Marine. We are advised that the wording I am now suggesting is necessary in order to bring our law in accordance with the fact.

The motion was adopted.

Clause 17, as amended, was added to the Bill.

Clauses 18 to 92, inclusive, were added to the Bill.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That in clause 93 for the word 'revocable' the word 'irrevocable' be substituted."

I am here, Sir, correcting a printing error. This clause is based on section 73 of the Indian Merchant Shipping Act of 1879 and by a printing mistake they have put in the word "revocable" instead of "irrevocable."

Sir Montagu Webb (Bombay: European): In my copy of the Bill the word "irrevocable" duly appears.

The Honourable Mr. C. A. Innes: I think the explanation of that, Sir, is that the Legislative Department thought they might possibly treat this merely as a printing error, but afterwards decided that the amendment ought to be brought before the House. In the original copy of the Bill as placed before the House the word is "revocable." I think that is the explanation.

The motion was adopted.

Clause 93, as amended, was added to the Bill.

Clauses 94 to 296, inclusive, were added to the Bill.

Schedule I was added to the Bill.

Schedules II, III, IV and V were added to the Bill.

Clauses 1, 2 and 3 were added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That the Bill as passed by the Council of State and as amended by this Assembly be passed."

The motion was adopted.

THE INDIAN PENAL CODE (AMENDMENT) BILL

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

"That the amendment made by the Council of State in the Bill to give effect to certain Articles of the International Convention for the Suppression of the Traffic in Women and children, be taken into consideration."

As the House will see, the amendment consisted merely in introducing the commencement clause as to the necessity of which, and I hope the justification for which, I previously addressed the House in asking for the passing of this Bill.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I am still in doubt as to the object the Government have in view with regard to this matter. I take it, Sir, that the clause has been inserted in order that time may be given to the Honourable the Home Member to ascertain from the Local Governments their view on the amendment which we adopted. Supposing, Sir, it happens that Local Governments are against raising the age from 16 to 18, does it follow that the Act itself will not be brought into force at any time? This clause says simply:

"It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint."

There is no obligation apparently on the part of Government to bring it into force at any time. Supposing on the receipt of opinions, the Government of India is convinced that the Local Governments are opposed to the raising of the age from 16 to 18, is it the intention of Government not to bring the Act into force at all? If that is the object, the result will be this, that although we have passed the Act here the Government by executive order may never bring it into force. That will be the situation which would arise by the amendment made in the other House. I should like to know what the view of Government would be in case the Local Governments are opposed to the raising of the age from 16 to 18.

The Honourable Sir Malcolm Hailey: The purpose of the commencement clause is not that which Mr. Seshagiri Ayyar has suggested. It is that we may have an opportunity of consulting Local Governments and the public with regard to the action which should be taken not only in respect of this one new clause in the Indian Penal Code but in regard to the effect which its addition would have on existing sections of the Code. We wish to have an opportunity of consulting Local Governments and local bodies on both questions. Now he asks me what would happen if public opinion—he says the Local Governments, but I am going to say, if I may, instead, public opinion—is opposed to the raising of the age as originally proposed in our Bill from 16 to 18. I ask him in return, would there not be an obligation on us, if public opinion really were against this, to bring the matter before the Legislature again? A commencement clause was necessary, first, in order that we might have an opportunity of such consultation; and that such consultation is required in view of the effect of the

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new Bill on the existing clauses of the Indian Penal Code I think every one here will admit. Now, what would have been the alternative? The alternative would have been to ask the Governor General not to give his assent to the Bill until such consultation had taken place—an undesirable alternative. It is far better that it should be effected in this natural and constitutional way. As for the future, Sir, I cannot of course bind myself here. If we find that there is a general feeling in favour of raising the age to 18 throughout the Indian Penal Code, if that is a very general feeling throughout India, we should have no hesitation in coming up on the subject to the Legislature. That is one possibility. The other possibility is that there may be an equally strong feeling on the other side. It is suggested that if we find that feeling so strong, and if, therefore, in consequence of it we do not bring the Bill into operation at all, then . . .

Mr. T. V. Seshagiri Ayyar: Suppose the opinions are equally balanced?

The Honourable Sir Malcolm Hailey: The Honourable Member is presenting me with a conundrum so difficult that I cannot at present see an answer to it, for I find it difficult to assume that opinion can be really equally balanced on a question of this nature. However, at present I am on the alternative suggested by the Honourable Member himself, namely, if opinion were strongly against the proposed general raising of the age I am afraid that I should be inclined to give the Governor General the advice that, if public opinion were really seriously against the Assembly on this matter of social legislation, if it were seriously against the Assembly—I am not using the word lightly—that he should refuse his assent to the Bill. I am afraid, that if public opinion were seriously against the Assembly—and I say again seriously—I should give the Governor General the advice not to put the Bill into operation until those who were in favour of the change from 16 to 18 had persuaded public opinion that it was wrong. That, I think, is a perfectly reasonable and logical position, and the only one consistent with our own responsibility. I do not think that anybody can complain if an executive government, on whom after all the burden of carrying a measure of this sort into effect must rest, should have some consideration of what would happen if there were wide popular opinion expressed against a measure which the Legislature had passed. That is the position, Sir. I have tried to put it perfectly frankly. But for the present I do not think the Honourable Member need envisage the further possibilities that he has suggested. For the present all we want is an opportunity of consideration.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I was rather surprised at the question put by my Honourable friend to my left who is here to press public opinion always; his question rather suggests a lurking feeling that in this matter public opinion may assert itself against the advanced social reformers who are responsible for the passing of this measure in this Assembly. If that is not the fear, then we need not be afraid of public opinion. (*Mr. T. V. Seshagiri Ayyar:* "I am not afraid.") I am glad to hear that my Honourable friends are not afraid of public opinion. But there is a great deal of necessity for taking public opinion in this matter, for the very simple reason that we are taking the public by surprise by this measure. When this Bill was introduced it was introduced to suppress white slave traffic. Let us remember that. The public paid no more attention to it, because it concerned white slaves, and not brown slaves. If . . .

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): On a point of order, my friend is not correct.

Mr. President: That is not a point of order. If the Honourable Member wishes to correct Mr. Rangachariar he can do so later. If Mr. Rangachariar chooses to give way, he may do so, but he is in possession of the House.

Rao Bahadur T. Rangachariar: Sir, I am perfectly in order. I know the contents of the Bill as it was put forth to the public; it was a Bill, as it was introduced, to suppress white slave traffic in this country; the public therefore did not care what provision you enacted. They wanted to suppress white slave traffic and they were quite willing to have it suppressed; you may put any age you like, 21 or 25; they did not care about it. But, Sir, this Bill has now assumed a new shape in that you have enacted a new provision concerning a domestic crime, a crime committed inside the country, with reference to people in the land. Of this the public had no notice; of this the public had no opportunity to give expression to their views. Therefore, Sir, I think Government are acting with a full sense of responsibility in saying that they will consult public opinion before they put this into force. Sir, when the Government say "we want to consult public opinion," that we, the representatives of public opinion, should cry against it seems to me an enigma.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, as I was the first on the last occasion to raise a question which involved a constitutional issue, may I once more ask the House to consider what position they would be put in if they consent to the course suggested by the Honourable the Home Member. We have already a second chamber; the Honourable the Home Member wishes now to introduce a third chamber, the Chamber of public opinion. (*Cries of "Hear, hear."*)

The Honourable Sir Malcolm Hailey: I acknowledge the compliment, Sir.

Dr. H. S. Gour: Now, Sir, I ask Honourable Members what is public opinion and how do the Government collect public opinion? Are there any written rules about it? Is there any constitutional way of gathering public opinion? There is no referendum, no plebiscite; the public letter is a letter drafted by the Home Department to the Local Governments with a direction to consult such bodies or persons as the Local Governments may deem fit. The Local Governments thereupon collect the opinions of such bodies and persons as they think fit; these opinions are then collected in the offices of the Local Governments and transmitted with the opinions of the Local Governments themselves to the Home Department. There they are digested, summarised and laid before the Home Member. Afterwards the thing passes out of the sight of man into the inner cabinet of the Government of India; that is public opinion. There is no constitutional way of collecting public opinion, and the history of the last twenty years shows that whenever Government have collected public opinion, public opinion has always sided with the Government. I give you a few examples. When the question of mass education was agitating the late Imperial Legislative Council, the Honourable Mr. Gokhale pressed for free and compulsory mass education. That motion was opposed by the Government. Afterwards they acceded to the wishes of that House and said that they will consult public opinion. Honourable Members will be surprised to hear that the public opinion collected by the Home Department was universally against free primary education . . .

The Honourable Sir Malcolm Hailey: Compulsory.

Dr. H. S. Gour: Yes.

The Honourable Sir Malcolm Hailey: And that is exactly the position at the present day in most provinces.

Dr. H. S. Gour: There are numerous examples where public opinion, the so-called public opinion, collected in the manner in which it is done, has not voiced the true sentiments of the people of this country.

Mr. President: The Honourable Member is straying away from the motion before the House. After all, this is the arena of public opinion.

Dr. H. S. Gour: I therefore submit that the setting up of another tribunal, another body, to revise and correct the proceedings of this House is unconstitutional. It is not provided by any part of the written law. The Honourable the Home Member says that under the Act this Bill cannot become law unless it is assented to by the Governor General. That is a constitutional position, and the Governor General is entitled to withhold his assent which he may do on a sufficient cause shown. I submit that is a sufficient safeguard against any hasty or ill-advised action taken by this House in the matter of social or other legislation. Why do the Government now wish to forge another weapon and add it to their already too powerful armoury? You had an example this morning of the deliberate opinion recorded by this House, modified in another place, and, as an Honourable Member put it, thrust down the throats of this House at the point of the bayonet. Well, Sir, that is bad enough, but it would be much worse if the ram rod of public opinion is to be thrust into the delicate machinery of the Central Legislature. I therefore submit that we should not submit to this departure from the established constitution which gives Government sufficient safeguards against ill-judged and hasty legislation, and we should not give the Government the power of withholding their assent or of indefinitely postponing the commencement of a measure passed by the two Houses. Sir, it is a dangerous precedent; it is unconstitutional; it is unworkable, and I submit there is no machinery which this House has prescribed or accepted for the purpose of collecting public opinion—public opinion of what classes, of what persons, of my friend Mr. Rangachariar? If his opinion is to guide social legislation we shall have to wait till the Greek kalends before any advance is made in this direction. When we were told that we do not want this piece of legislation because it does not suit a certain class of landholders in my friend's presidency who would be prejudicially affected if the age of consent is raised from 16 to 18 [*A Voice (from the Madras Benches): "It is not true"*—that was his plea, that was his statement, that was his sole justification for resisting this motion. He is now prepared to trample under foot the established rules of constitution merely because he thinks that this is a fine moment for postponing the bringing into operation of this most salutary piece of social legislation. My friend must remember that he may get an immediate advantage, but at what cost? He is sacrificing a principle which might hereafter be used against this Legislature. Some of his pet schemes might pass through in both the Houses, and yet the Government may say, 'we are not bound to enact these into law until

we have consulted public opinion.' Remember, then, that it is a weapon which might be used as much against my Honourable and learned friend, as against the social reformer. I therefore ask, Sir, that this House should not give its assent to a departure from the ordinary constitution and reinforce the executive Government who may, upon what they consider to be public opinion, refuse to bring into operation a measure which we have passed and which has passed the other Chamber. I ask, Sir, do not Honourable Members know, do they not realise that in a vast body of opinions collected there are bound to be opinions some for and some against social legislation? All social legislation cannot be supported by the unanimous voice of the people. It must of necessity be supported by people who believe in the utility of social advancement. Conservatives and those who desire to make no advance will always oppose any movement directed towards the amelioration or advancement of their fellow-men. I therefore submit, are you to leave to this unsafe judgment of the executive as to what they consider to be public opinion on a matter of this great national importance? In the printed compilation which was presented to the Members of this House in connection with this measure, has not this question been thrashed out in all its details? (*A Voice: "No."*) My friend Mr. Rangachariar said that the public were misled into thinking that this had something to do with the White Slave Traffic. I deny that state-

I P.M. ment. If Honourable Members will turn to any page of that compilation they will find that all the public bodies and Associations were dealing with, not the International Convention, but the specific amendments of the Indian Penal Code, and they were asked whether the age should be limited to 16 or extended to 18 or 21. This question, Sir, was the subject of a debate in this House, and surely, intelligent public opinion, if it follows the debates in this House and in the other House, could not be unaware of the true nature of the reform that Members of this House then desired and have since enacted by a measure of legislation. I therefore submit that it would be creating an abnormal and dangerous procedure if this House in a moment of weakness, in a moment of supine indifference, were to allow the Government to seize hold of an advantage by referring to what they call public opinion, a question upon which our voice, the voice of the constituted representatives of the people should be final and should not be open to further revision.

Then, Sir, my friend the Honourable Mr. Rangachariar said, you need not be afraid of public opinion, the public have been taken by surprise. I have answered both those questions. My learned friend does not disguise his real sentiments. (*Rao Bahadur T. Rangachariar: "Never does."*) He never does, he says. But whether he ever does or not, on this occasion his intention is manifest. He is prepared to oppose this measure by hook or by crook. I do not know, Sir, as he said the other day, whether that crook is going to be a straight one. I have a shrewd suspicion that it is not. But whether this measure is to be opposed by Mr. Rangachariar by, for the time being, lending his support to the Honourable the Home Member or not, I appeal to this House for the sake of its own dignity, for the sake of the constitution which it is called upon to work, and lest dangerous precedents should be created, to resist this additional power which the Honourable the Home Member wishes to confer upon the executive Government. I submit, if the existing constitution gives the Governor General the power, and that power is being enlarged because the Governor General cannot indefinitely withhold his

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assent to a measure of legislation passed by the two Houses (The Honourable Sir Malcolm Hailey: "Why not?") If he can I do not see, Sir, why you should not rely upon that power and why you should add a commencing clause. Please justify it yourself. I do not understand it. If the Governor General possesses the power under the existing law to withhold his consent and he can withhold it for any length of time, then I ask, why have you inserted this commencing clause? What is the real object? Why do you not avail yourself of it? No explanation of it has been given, and I submit, in the absence of explanation, I feel suspicious that this clause will unduly enlarge the power of the Government to refuse to extend the operation of an Act which would otherwise be extended if the Government had the power merely to advise the Governor General to withhold his assent.

On these grounds, Sir, I oppose the commencing clause.

Mr. President: The question of the assent of the Governor General is not a proper thing to be brought in here. It is part of the constitution that laws are passed by the Indian Legislature, which is composed of the two Chambers and of the Governor General for that purpose. Here the sole question in issue is whether the Governor General in Council, that is, the body commonly described as responsive to this Chamber, is to be given a discretion in the choice of the date when this measure is to come into force.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I rise to support my Honourable friend Dr. Gour. This, Sir, seems to be a day of surprises. During the course of the last few hours the Honourable the Home Member seems to have developed a very wonderful love for the public opinion of this country. It was only yesterday that he appealed to the Members of this House that, in order that they should do what he considered to be just and right, they should flout the opinion of their constituencies and follow the Honourable the Home Member's lead. Sir, to-day he wants the Honourable Members to consult public opinion, not the public opinion as represented by this House, but as represented by some other organizations in the country. I do not know which organizations he referred to. Did he refer to the Indian National Congress? Does he consider that the Indian National Congress or any other Congress is more representative of public opinion than this body. Sir, my second surprise is that my Honourable friend Mr. Rangachariar, who I thought had some opinion of this Assembly as a representative body, has shown to-day that he has no respect for the representative character of this Assembly. (Rao Bahadur T. Rangachariar: "Not in social matters.") Sir, he says, not in social matters. If he considers this Assembly to be a representative body for legislation then it is as representative of public opinion in social legislation as in any other legislation. (Hear, hear.) Sir, my Honourable friend Mr. Rangachariar said we need not be afraid of public opinion. Certainly I am not. I am quite sure if you go to the public again public opinion will support the view which I have put forward on two previous occasions. But that is not the question. I feel that this Assembly represents public opinion in India more than any other body in this country. I am not prepared to accept the verdict of public opinion in this country as represented by any other body. That is the

reason why I support my Honourable friend Dr. Gour. Sir, if public opinion has not been consulted, whose fault is this? It is more than a year since this question was discussed by this Assembly. When it was brought forward first in this Assembly a large section of this House expressed its views on certain matters. The Government of India knew that they were going to bring forward a Bill to give effect to the Convention. They consulted the Local Governments and the Local Governments have consulted public opinion. We do not know on what points public opinion was consulted. Unfortunately, I have not got here the letter which the Government of India wrote to the Local Governments and to organizations representing public opinion. If we had that letter before us we would know on what points public opinion was consulted. Sir, I think that public opinion was consulted on the main question before us, and if it was not consulted it is not our fault but the fault of the Government of India. And I also feel that this House should not accept the main amendment which the Council of State has made. What is the use of that amendment? If the Government of India is against the Bill, let them advise the Governor General to withhold his assent to that Bill. If the Government of India is in favour of this section but the Government of India want to consult public opinion as regards the raising of the age from 16 to 18 in other sections of the Penal Code, then the way open to Government is to allow this Bill to be passed and then to consult public opinion as regards the change of age from 16 to 18 in the other sections of the Penal Code. I assure the Government of India that I shall give my fullest support to that proposal of theirs if they come forward with such a proposal at all. Therefore, I think, if this House accepts the amendment made by the Council of State, it will stultify itself in the first place as being an unrepresentative body, and in the second place as showing by their own vote that they had made a mistake. I therefore hope that this Assembly will do nothing of the kind and throw out the amendment made by the Council of State.

Mr. S. O. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, I also rise to support what has been stated by the Honourable Dr. Gour. In matters of social legislation we feel very reluctant to be guided in any manner by my Honourable friend Rao Bahadur Rangachariar. I trust that the House will not be misled on this occasion by my friend whom I have just now mentioned. It is only reasonable that a measure that has been passed by this House should receive better consideration. After it has been passed, that it should be referred to certain bodies for an expression of opinion which is to be deemed public opinion, this procedure is reprehensible; I daresay that this procedure is not being adopted anywhere else, and this is a novel procedure intended to defeat the measures that found any favour with this House. With these remarks, I resume my seat.

Rai Bahadur Bakshi Sohan Lal (Jullunder Division: Non-Muhammadan): Sir, I have to ask one question. May I specially ask for the rule or order under which a Bill may be circulated for public opinion after it has been concurrently passed by both the Chambers of the Legislature, and also what would be the fate of this Bill, which has been passed by both the Houses, if the public opinion is not collected before the end of this Session, which is quite close, and if the Home Member does not like to move under order 4 (2) given at page 29.

Mr. President: The word 'opinion' has been used in a somewhat confusing sense. There is the purely official and technical sense in which the phrase 'eliciting opinion' is used. That consists—I am not sure that I accept Dr. Gour's description of it as exact, but I accept it as a roughly accurate description—of the process by which Government consults Local Governments, High Courts and certain other constituted authorities regarding the applicability of a measure in certain circumstances. The Honourable Member is thinking of something totally different; he is thinking of consulting the friends of the Honourable Members below him and other persons supposed to represent a certain state of social opinion. The point at issue here is whether the Government is to have a discretion in applying this; and the Home Member has put forward the plea that the Government ought to have such discretion, because it wishes to assure itself regarding the general state of opinion on this subject in the provinces. There is no real point of order that can be raised here.

Rai Bahadur Bakshi Sohan Lal: The Standing Order has not been noted, as I asked, under which any matter connected with the Bill is to be referred to

Mr. J. Chaudhuri: Sir, may I ask the Honourable Sir Malcolm Hailey to remove some misapprehension? My friend, Mr. Rangachariar, said that the measure was called white slave traffic, but is it not the case that this measure was brought first in the form of a Resolution before this House which related to the International Convention, and then, it was distinctly stated that it was not merely the white slave traffic which came within the scope of the Convention but it related to traffic in women and children generally? I would further ask if the object of the circulation of this Bill is not only to ascertain opinion on this particular measure but also with regard to the raising of the age-limit in the cognate sections of the Indian Penal Code, which are not before us? I do not oppose, Sir, the decision of the Government, for this reason that if the cognate sections of the Indian Penal Code are modified in the light of this, of course, that too will be in the interest of social reform or rather protection of women and children. And the third question that we raise is, is not the scope of this Bill independent of the consent of the person who is procured? In the Indian Penal Code, if anyone procures another without her or her guardian's consent, for immoral or illicit purposes, then only the person procuring will be punishable. The International Convention is different from the scope of the existing provisions of Indian Penal Code, inasmuch as it would punish the procurer irrespective of any such consent. Those are the three points that I would like the Honourable Member to clear up.

The Honourable Sir Malcolm Hailey: Sir, I am astonished to hear that to-day is a day of surprises. When I moved for the final passing of this Bill, dealing perfectly frankly with the House, I said that I intended to secure, if I could, the insertion of a commencement clause. I explained the reason, and the House, with full knowledge of that, passed the Bill. Where then have I sprung a surprise on an astonished House? It knew all about it from the very first (*Mr. N. M. Joshi:* "Your love of public opinion, that was the surprise.") And it agreed from the first. It is only

when the Bill comes back again, that some reason is found for what Dr. Gour described as a suspicion. Well, I hope that we may in the future manage to take such a course as may avoid arousing suspicion in Dr. Gour's breast,—for those suspicions seem to take an unconscionable time to explain, and to involve a good deal of fervent language. 'Unworkable, unconstitutional, flouting the Assembly'—all that arises out of a little suspicion. Now, Sir, let me first, before I proceed to deal with those suspicions, deal with his facts, or may I rather say, his mis-statements. He said that the exact terms of the Indian Penal Code amendment which would be necessary had been placed before the public, and that that fact was fully shown in the opinions recorded in the mass of correspondence that was placed before Members. Well, I have here the original documents; they do not, as the House will see, constitute a mass of correspondence. The terms on which the matter was placed before Local Governments and the public are here; the letter began by reciting the fact that we had acceded to the International Convention for the suppression of the traffic in women and children and the like. It referred to the Resolutions that were brought forward in the Council of State and in the Legislative Assembly. It mentioned that Mr. Joshi pressed for the acceptance of the convention at the age accepted by other countries, that is 21 years, and lost that motion by 8 votes. On the other hand, it pointed out that Dr. Gour thought that the age should be 18 instead of 16. It stated briefly the objections to that change in the age which were voiced in the Assembly. It said in conclusion that as a result of the opinions received, necessary steps would be taken to draft the sections that were required in the Indian Penal Code. It is, therefore, incorrect to say that the public had before it the amendments of the other sections of the Indian Penal Code which are now involved; and Mr. Rangachariar was perfectly correct in saying that no one has yet been consulted on the effect—the net effect—which this amendment would have on the remaining sections of the Indian Penal Code. He is further perfectly correct—the House will know how much it goes to my heart to have to agree with Mr. Rangachariar—in saying that one object of introducing a commencement clause was to give us an opportunity of consulting not only with regard to the age which should be taken for this particular offence, but for the remaining and more serious offences in the Indian Penal Code. We sought an opportunity in fact to deal with the question as a whole, and if possible to avoid the surprising illogicality that the age of 18 should apply to what will strike most people as a comparatively minor offence while the age of 16 would apply to some of the gravest offences which a man can commit. (*Voices:* "Why pass this measure?") (*Dr. H. S. Gour:* "Don't pass this measure.") Don't pass the Bill. In effect, I am only seeking delay in bringing it into operation. Sir, this measure, which was accepted by the House by a majority of three, after they had originally thrown out a somewhat more strenuous attempt to raise the age of majority on the part of Mr. Joshi, is now described by Dr. Gour as so sacrosanct that we must consult nobody any further on the subject. He says that public opinion has been sufficiently ascertained already in these opinions. Let me say that if anybody will refer again to those papers,—he will find that it was a matter which aroused very little public interest at the time, owing no doubt to the fact that it seemed to deal at first sight purely with external traffic.

Rao Bahadur T. Rangachariar: And I think we gave the title "White Slave Traffic" in our Bill.

The Honourable Sir Malcolm Hailey: It had that title undoubtedly.

Dr. H. S. Gour: May I point out in this connection that Sir Reginald Craddock introduced a similar measure at the instance of the Honourable Mr. Dadabhoy in the old Council and the matter has been before the public since the last 10 years.

The Honourable Sir Malcolm Hailey: Yes, Sir, and the late Council would not have it. That is the case. The particular proposal contained in this Bill was undoubtedly introduced to the public—don't let us blind ourselves to the facts—under the title of the White Slave Traffic, and that is the reason why it received so little examination on the part of the various people to whom it was submitted; and indeed many of the opinions recorded turn entirely on the question of the age which should be taken in penalising the procurement of girls from outside India. But, Dr. Gour adds that it is no matter if public opinion was not sufficiently ascertained before; there is no other standard of public opinion than this House. I can very well understand a gentleman in Dr. Gour's somewhat peculiar position objecting to the collection and the recording of public opinion. He has had a somewhat sad experience. He exhibits in his own case an almost theological hatred of other people's opinion when directed against a measure to which he is devoted. I can understand that in his case the experience is such that it does not incline him to go to the public again. I have a great admiration for those social reformers—there are some in India but more perhaps in Europe—who live and work among the classes adversely affected by our social organisation and seeks to ameliorate their conditions. I have somewhat less admiration for the social reformer whose chief efforts are in the Legislature, not that I object to anybody taking legislative action, but because he himself does little to prepare the ground for the steps which he wishes to carry into legislation. But I have always noticed with regard to your social reformer that he is as a rule peculiarly unreceptive in regard to other people's opinion. When he has once made up his mind on the desirability of a measure, then nobody else is right and nobody else has a right to say a word. That is exactly the case here. By a majority of some 8 Members, the party which wished this reform in the Legislative Assembly has secured the passing of the Bill, and, as far as I can see, their one object now is to prevent anyone else throughout India having a word to say on the subject. (Voices: "No.") That, I think, is an attitude which hardly redounds to their credit, and indeed, I think, many of the opinions which they have used here to-day on the subject of the undesirability of Government consulting public opinion, will strike the outside world in a somewhat curious light. (Sir Deva Prasad Sarvadhikary: "There is no they in it. It is singular.") The final question has been asked us, "Why, if you think it wrong yourselves to introduce this Bill without further delay and consideration, why don't you advise the Governor General to refuse his assent to it?" I have explained before that I am quite prepared to advise the Governor General to refuse his assent to it. (Voices: "Do so.") But this, I consider, is a far more desirable way of effecting what we want. After all, when the Governor General has refused his assent to the Bill that refusal cannot subsequently be withdrawn. The Bill goes; but by the process I suggest we keep it alive. I think that in itself ought to be a sufficient answer to those who would have us place the whole responsibility on the Governor General. As I say, that in itself should be a sufficient answer to those objections.

(Voices: "No.") But if it is not a sufficient answer let me quote to Honourable Members the fact that in a very considerable number of the Bills which we have introduced in the Legislature, there is a commencement clause. There is no novelty about it whatever. It is one of the commonest of devices of legislation, and indeed . . .

Rao Bahadur T. Rangachariar: We did it the other day in the Racial Distinctions Bill.

The Honourable Sir Malcolm Hailey: You have done it in the Racial Distinctions Bill and in the Criminal Procedure Code; you have done it to-day in yet another Act. My friends, who are a little better acquainted with drafting of legislation than I, could probably recite you the names of a hundred Acts with a similar beginning. Simply because we wish to take this very ordinary procedure in this case we are treated at once with suspicion. We are told that we have broken through every constitutional safeguard and the most extraordinary exaggeration is used in speaking of our proposal. This last is perhaps the worst. We are told that we should invoke the power of the veto powers of the Governor General merely in order to delay the operation of a Bill about the effect of which we wish to inquire. That is, we are invited to use the heaviest machinery of the State in order to effect a purpose which can be equally well achieved by the very simple, very ordinary and the entirely constitutional device which I have placed before the House.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): I am sorry to observe that the Honourable the Home Member has invited all this hostile criticism by his 'over-honesty.' If he had not stated in the very beginning that he was going to elicit public opinion on the point, we would not have said anything about it, and if this commencement clause were introduced just as it was, that is, silently, there would have been an end of the matter. But the difficulty arises from the fact that he states that he is going to consult public opinion now after we have passed the Act. What Dr. Gour says is that this is unconstitutional. Surely, we are putting the cart before the horse. If public opinion was to be invited, it ought to have been done before the Bill came to be considered and passed by this Assembly. That stage is long past. Let the Honourable the Home Member keep his own ideas to himself of what he means to do before allowing this Bill to have force. It is I suppose perfectly open to him, as Home Member, to ask for any information that he likes and this Assembly need not know it, and he may postpone its enforcement for five or ten years or for any length of time he likes. It is perfectly in his power to do so.

Mr. R. A. Spence (Bombay: European): I move that the question be put.

Mr. President: Amendment made by the Council of State:

"Clause 1 was re-numbered sub-clause (1) of clause 1, and to that clause the following sub-clause was added, namely:

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint."

The question is that this Assembly do agree with the Council of State in that amendment.

The Assembly divided:

AYES—67.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Ahsan Khan, Mr. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Ayyangar, Mr. M. G. M.
Basu, Mr. J. N.
Bhanja Deo, Raja R. N.
Bhargava, Pardit J. L.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Bridge, Mr. G.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Das, Babu B. S.
Faridoonji, Mr. R.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

NOES—22.

Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Gour, Dr. H. S.
Iswar Saran, Munshi.
Jafri, Mr. S. H. K.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.

The motion was adopted.

Mr. President: Further amendment made by the Council of State in the Indian Penal Code (Amendment) Bill:

"The following clause was added after clause 3:—

"4. In the Second Schedule to the Code of Criminal Procedure, 1898, after the Amendment of Schedule II, Code of entry relating to section 366 of the Indian Penal Code the following entries shall be inserted, namely:—

366 A	Procurement of minor girl.	May arrest without warrant.	Warrant	Not bailable.	Not compoundable.	Imprisonment of either description for ten years and fine.	Court of Session.
366 B	Importation of girl from foreign country.	May arrest without warrant.	Warrant	Not bailable.	Not compoundable.	Imprisonment of either description for ten years and fine.	Court of Session."

Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Jejeebhoy, Sir Jamsetjee.
Kamat, Mr. B. S.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu Ambica Prasad.
Spence, Mr. R. A.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Townsend, Mr. C. A. H.
Ujagar Singh, Baba Bedi.
Vishindas, Mr. H.
Webb, Sir Montagu.

Man Singh, Bhai.
Mudaliar, Mr. S.
Nabi Hadi, Mr. S. M.
Nag, Mr. C. C.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Schamnad, M. Mahmood.
Shahani, Mr. S. C.
Sohan Lal, Mr. Bakshi.
Venkatapatiraju, Mr. B.

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

The motion was adopted.

STATEMENT OF DEMANDS REFUSED BY THE LEGISLATIVE ASSEMBLY AND RESTORED BY THE GOVERNOR GENERAL IN COUNCIL.

The Honourable Sir Basil Blackett (Finance Member): Sir, in pursuance of Standing Order No. 73, I lay on the table a statement showing the action taken by the Governor General in Council in pursuance of section 67A (7) of the Government of India Act in regard to certain demands for grants which have been refused by the Legislative Assembly and are regarded as essential to the discharge of his responsibilities. It is just a formal statement:

"In pursuance of section 67A (7) of the Government of India Act the Governor General in Council is pleased to declare that the following demands which have been refused by the Legislative Assembly are essential to the discharge of his responsibilities, namely:

Number of demand.	Service to which demand relates.	Amount of demand refused by the Legislative Assembly.
8	Railways—Working Expenses	Rs. 1,14,00,000
44	Miscellaneous—Public Services Commission	8,01,000

E. M. COOK,

The 28th March, 1923.

Secretary to the Government of India."

ELECTION OF MEMBERS FOR THE PUBLIC ACCOUNTS COMMITTEE.

Mr. President: Before adjourning, I would invite the attention of the Assembly, particularly the non-official Members of the Assembly, to the fact that at the end of the business to-day an election of Members to serve on the Committee on Public Accounts has been set down. Eight Members have to be elected by a procedure which ought by now to be familiar to Members. The following candidates have been proposed for election to the Committee:

Mr. Braja Sundar Dass,
Mr. B. N. Misra,
Mr. N. M. Joshi,
Mr. Syed Nabi Hadi,
Mr. Ambica Prasad Sinha,
Mr. K. Ahmed,
Mr. K. G. Bagde,
Mr. K. C. Neogy,
Rao Bahadur P. V. Srinivasa Rao,
Sardar Gulab Singh,
Rai Sahib Lakshmi Narayan Lal.

I may also remind Honourable Members that the ballot for Resolutions to be set down for Saturday will take place during the luncheon interval.

THE INDIAN FINANCE BILL.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Before you adjourn, Sir, I should like to put one question to the Honourable the Leader of the House with regard to procedure. We are informed that in the other House the Finance Bill has been laid on the table as a recommended Bill. What will be the exact procedure which will come into effect now? Will the Bill at all come back to this Assembly. We should like to know this, because some of us are rather anxious to get away. As there is not much time before us, I should like to know from the Honourable the Leader of the House if the Bill is likely to come back to this Assembly.

The Honourable Sir Malcolm Halley (Home Member): I will take it from the Honourable Member that such a recommendation has been made. I must take the facts from him.

Mr. Jamnadas Dwarkadas: I am only informed of this; I do not know whether it is true.

The Honourable Sir Basil Blackett (Finance Member): Sir, I can confirm the fact.

Mr. President: The Honourable Member cannot expect an answer to a hypothetical question.

Mr. Jamnadas Dwarkadas: The Honourable the Finance Member has confirmed the fact.

The Honourable Sir Malcolm Halley: In those circumstances I can only refer the Honourable Member to section 67B of the Government of India Act from which it will be clear that if the recommended Bill is passed by the Council of State it will have to come back to the Assembly.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): When will the other House take up the Finance Bill?

The Honourable Sir Malcolm Halley: On Friday, and our intention is to bring it back to this House on Monday.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock. Mr. President was in the Chair.

THE MALKHARODA AND GAONTIA VILLAGES LAWS BILL.

The Honourable Sir Malcolm Halley (Home Member): Sir I beg to move:

"That the Bill to declare the law in force in certain territories of the district of Sambalpur and to provide that the past administration of those territories shall not be called in question on the ground that they were not included in the territories administered by the Government of the Central Provinces, as passed by the Council of State, be taken into consideration."

The object, Sir, of this Bill will be sufficiently clear to the House in the Statement of Objects and Reasons, and indeed I think that if I were to attempt to add to that Statement of Objects and Reasons by any verbal statement of my own, I might perhaps add great complexity to what is

already, as I am sure the House will feel, a sufficiently complicated question.

Babu Braja Sundar Das (Orissa Divisions: Non-Muhammadan): Sir, I beg to oppose the consideration of this measure on the following grounds. This Bill originated in the Council of State and properly speaking the people affected are not represented there practically, and moreover there is nothing on paper to show whether the consent of the people affected has been obtained or not. Then it is well known to the Government of India that there has been an agitation going on for a very long time that the tracts of the Ooriya-speaking people should be placed under one Government. But that is a larger question which I do not like to bring in here. Let me mention incidentally that instead of putting all the Ooriya-speaking tracts together, some small portions are being taken from the Government of Bihar and Orissa. Two years ago some villages were taken away from the district of Balasore and added to Midnapur in Bengal, and the people of those villages were never consulted. Here again, it is doubtful whether the people of the villages concerned have been consulted. As we see from the Statement of Objects and Reasons, it will appear that a few Zemindars were left out in Central Provinces at the time of the redistribution of districts by Lord Curzon in 1905 and Sambalpur was added to Bengal. Phuljhar, Padampur and some other Ooriya-speaking Zemindars were left in the Central Provinces. Those Zemindars have certain villages under them in what now constitutes the Province of Bihar and Orissa. These Zemindars carry on their litigation work in the Criminal Courts of the Central Provinces therefore the people, ignorant as they are, did not object to it, and this created a precedent for their demanding that these villages should be added to the Central Provinces. As I have already stated, the Bill originated in the Council of State where had there been a single representative from Orissa I think he would have questioned it; but there was no representative practically and therefore the Bill had an easy passage in the Upper House.

My friend, Mr. Joshi, just mentioned a few minutes ago that the Honourable the Home Member has surprisingly developed a love of public opinion recently. That love, I find now is completely lost here in this piece of legislation. The Honourable the Home Member asked us to defer our consideration of the previous measure simply because the people had not been sufficiently consulted, and here I think the people have not been consulted at all. Sir, this small piece of legislation does not affect the Government of India, nor does it affect the other advanced Provinces, but it really affects a small people like Ooriyas—therefore I commend it to the Government that the consideration of the Bill, or the passing of the Bill, should be postponed and public opinion—I mean the opinion of those really concerned, i.e., the people of the villages affected—be obtained as well as the opinion of the Governments concerned be obtained. I do not know—there are no papers to show—whether the Bihar Government has been consulted or not, or whether the people of those villages have been consulted at all. As far as I do know, public bodies in Orissa have not been consulted; and therefore I put it to the Government to defer the consideration of this measure for a little longer. It won't affect anybody. At the same time it will give satisfaction to the people themselves, and particularly as the larger question is hanging in the balance before the Government of India, and as we have been agitating for the last 20 years and still we do press on the Government of India to put all Ooriya-speaking tracts under one administration. Therefore I would submit to the Government and to the House to

[Babu Braja Sundar Das.]

defer the consideration of this Bill a little longer. With these few words, I oppose the motion.

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): Sir, I also beg to oppose the consideration of this Bill which the Honourable the Home Member has brought forward, though my attitude is one of a friendly critic of Government.

I shall invite the attention of Honourable Members of this House to the several proclamations referred to in the beginning. That is, the proclamation of the Government of India in 1905; then again in 1912; then again in 1923. Honourable Members will find that this part of the Ooriya country is being kicked like a football from one Government to another Government. If I tell them a little more they will be surprised to learn that this part of the Sambalpur district prior to 1860 formed part of the Orissa Commissioner. Then it was transferred to the Chota Nagpur Division and it remained for some time under the Commissioner of Chota Nagpur. Then it went to the Central Provinces. About 1905 it again came back to Bengal and then to Bihar and Orissa. So that Honourable Members will find that the people residing in this border land between the Ooriya country and the Central Provinces are being treated very lightly. Of course they are really a sort of backward people in those parts and I must say that the Reforms Scheme has not, I think, been extended to that part as it is a backward tract and there is no representation of it either in the Central Provinces Government, not to speak of the Council of State. The fact remains however that for the purposes of judicial administration or civil administration this part has been under the Sambalpur District all along and for a long time under Bengal and now under Bihar and Orissa. As for the case referred to, when I was practising at the Calcutta High Court the case was there; then after a separate High Court was established at Patna it was transferred there and then on some grounds it went to the lower court and then again it was tried in the Sambalpur and Manbhum District and it then went to the High Court and so on. So practically these people for the last so many years are accustomed to look to the Patna High Court and the Calcutta High Court for their litigation, and now if this Bill is passed then the result would be that these litigants or perhaps all the pending cases will have to go to the Central Provinces administration because clause 3 says "and the said territories are hereby declared for all the purposes of the Central Provinces Courts Act, 1917, to form part of the territories to which that Act extends." So the result will be that these litigants will again have to go to the Central Provinces and will have to go to the Judicial Commissioner at Nagpur.

My other objection is this; the Honourable the Home Member will remember that in reply to certain questions of mine about uniting all the Ooriya-speaking tracts under one Government, he was pleased to reply that the matter was under the consideration of the Government of India and of course Honourable Members are aware that a Resolution was moved in this very Assembly before the Reforms Scheme in 1920 and the Government of India promised to consider the matter and they have obtained the opinion of the Local Governments and the matter is finally awaiting their finishing hand to give a final stroke to the long desired object of the Ooriyas, that is to bring all the Ooriya-speaking tracts under one administration and if that is the case, this Bill can wait. If the Government of

India consider the case favourably and all the Ooriya-speaking tracts are brought under one Government, these people from this Malkharoda Jaghir and Gaontia villages will come back again to the Ooriya province; then in that case it will be a great hardship if this Bill is passed now, and the consideration of this Bill may therefore be postponed till that question is decided. I do not think it will take such a long time as the Local Governments have already been asked for and the local Council of Bihar and Orissa has already expressed its view as required under the Government of India Act, for the transfer of territories from one administration to another. Under these circumstances this may be postponed and it will not act as any hardship. With these remarks I oppose this motion.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): This discussion is proceeding, Sir, under some misapprehension. The Sambalpur District of the Central Provinces was detached and made a part of the Province of Bengal some 18 or 20 years ago, prior to which it was an integral part of the Central Provinces and the first settlement of that district was made by an officer of the Central Provinces administration. Honourable Members who have spoken on this Resolution seem to be of opinion that the Government are trying to filch the district of Sambalpur from Bihar and Orissa and tack it on to the Central Provinces, and the last speaker seems to have taken for granted that the zemindari of Malkharoda is an Ooriya-speaking Zemindari. Nothing can be further from the truth. The Malkharoda and Phuljhar Zemindari with which I am very intimately familiar is a Hindi-speaking Zemindari and it is wrong to assume that it is a part of the Ooriya-speaking tract. What happened is this. A portion of the Sambalpur District is no doubt Ooriya-speaking; but interspersed in that district there are a very large number of Zemindaris which are purely Lariya-speaking or Hindi-speaking Zemindaris. It has been ever since the annexation of the District of Sambalpur first in the Province of Bengal and later on after the formation of Bihar and Orissa it has been a standing grievance with the people of that district that they are not able to obtain administration of justice with that despatch which their position deserves. Now, let me illustrate to the Honourable Members the position of these unfortunate people. If they have got any case in court, the Sessions Court is in Cuttack and if they want to go to Patna they have first to go to Calcutta and then go on to Bankipore or Patna. Their long connection with the Central Provinces, their revenue laws being the same as the Central Provinces Revenue Laws, and the whole district being subject to the Central Provinces Land Revenue Act and the existence of the Gaonti tenure in that district which is the tenure generally prevalent in the division of Chattisgarh of which Raipur is the headquarters, and of which Sambalpur formed a district, has always tended to remind them of the good old days when they were part and parcel of the Central Provinces; and they have never become reconciled to the position that has been allotted to them as a border district first of Bengal and later on of Bihar and Orissa. But as I have said, Sir, this is a larger question. We must not confuse the issue. We are here concerned with the very small matter referred to in Schedule 2. The names of the Malkharoda Jaghir and Gaontia villages are set out there. These are the people regarding whom the Government of India propose legislation. It is a matter of doubt and it is to settle that doubt that the Government of India have undertaken this legislation to declare that they are part and parcel of the Central Provinces and are subject to the jurisdiction of the courts in that province. I do not see what advantage

[Dr. H. S. Gour.]

will be gained by further delay and further consideration. Of course, I do not share the passion for popular opinion of the Honourable the Home Member, but nevertheless I recognise that there may be a time and occasion when delay would improve matters; but in this small matter upon which the Statement of Objects and Reasons appended to the Bill is sufficiently clear, I do not see what further light can be thrown on the subject and I therefore support the motion of the Government and oppose the motion made by my two Honourable friends.

The Honourable Sir Malcolm Hailey: I am very glad to have obtained the assistance of Dr. Gour who with his local knowledge has been able to dissipate, and I hope finally to dissipate some of the doubts which my Honourable friend behind had cast on this case. I am not going to run the risk of further confusing the House by any lengthy statement on the subject. There are, however, one or two considerations that I must put forward in order to explain our position. What is the exact operation that we are undertaking? There were certain villages which we thought we had left with the Central Provinces. They are under the Central Provinces revenue law; they have been accustomed to go to the Central Provinces courts. Their civil administration, since their transfer or since their assumed transfer, has been in the Central Provinces.

Mr. B. N. Misra: My Honourable friend will find that since this territory was transferred to Calcutta in 1905, the people always went to the Calcutta High Court, and after 1912 they are under the Patna High Court.

Dr. H. S. Gour: They are under the Central Provinces law.

The Honourable Sir Malcolm Hailey: I will explain how far they have since 1905 been under the Calcutta or Patna High Court. Our intention was to leave these villages which were under the Central Provinces revenue law in the Central Provinces. Now it has been discovered that in the notification which we issued we had not carried out our intention, and I imagine that this has come as a considerable surprise to the people themselves. The Honourable Member said that they are accustomed to look to Patna for their appellate jurisdiction. As far as we know only one case has gone to Patna. Some acute legal brain discovered that there was a doubt as to where their appeal lay. It was finally decided that it lay with Patna, but until that discovery was made,—I believe, that the people were under the impression that the whole of their appellate jurisdiction lay in the Central Provinces itself. We have issued a notification, as we are entitled to do, assigning these villages to the Central Provinces, and we merely ask for legislation in order to clear any doubts or remove any difficulties that may have arisen owing to the fact that our intention was not properly carried out in our Notification. That is all that the Bill sets out to do.

Now, I am told that we should delay this case on one major and one minor consideration. The major consideration is this, that the Ooriya-speaking peoples have for a long time been seeking union under one administration. There are certain Ooriya tracts in Madras, some in Bengal, some in Bihar and Orissa and some in the Central Provinces, and this much-divided people desire for union under one of the existing administrations or a new administration of their own. The Honourable Member says that as the matter is under our consideration, he has no doubt of a favourable

decision. If there is a favourable decision, so much the better for him, but I very much doubt if it can be an early decision. Here you have four Governments, all of whom want to keep under them their existing Ooriya-speaking populations—a great compliment to my friend. Each Local Government is prepared, I think, to take over more Ooriyas from another Local Government, but not to give up what they already have. I should not be surprised that the proper solution of the whole question did not lie in the constitution of a sub-province or a new province. That, indeed, is, I believe, the only solution which will give complete happiness to my friend. But it is not a solution at which one can arrive easily, nor is it one which we could carry it into execution speedily in our present financial condition. And indeed, Sir, with the lessons before us of what has happened when we previously attempted to re-arrange the boundaries of provinces, I feel myself that a good deal of hesitation is required before we put any such scheme into execution. That, Sir, is the case, and I do not think, after what I have said, that anybody would feel that it is worth while delaying this small piece of legislation which relates only to a few villages until the larger consummation arrives to which my Honourable friend looks forward so fondly.

Then, there is the minor consideration, namely, that the people themselves have not been consulted. We have, of course, consulted the Local Governments. I cannot trace here any definite expression of opinion on the question of what my Honourable friends have been pleased to describe as a transfer,—I cannot trace any definite expression of opinion from these villages, but may I point out to them the case is exactly the opposite to what they put. They say that we are transferring these villages from one province to another. We say that these villages have been under the Central Provinces administration, they have been under the Central Provinces revenue law, and that they themselves believe that they are under the Central Provinces, and all we are doing is to confirm that decision and not to make a change. If we were really proposing to take these villages from one province to another, then there might be good reason to consult them. All we are seeking to do is to leave them where we thought they were and where, in my opinion, they themselves believe they are. But with regard to any question of their transfer to Ooriya-speaking confederation, might I point out to my Honourable friend that Dr. Gour was perfectly correct in saying that the larger portions of these villages, namely, those in the Malkharoda Jaghir, are not Ooriya-speaking at all. On that point, we, of course, have consulted the people, I mean on the point whether they wish to join any Ooriya-speaking confederation. Malkharoda it is stated to have no Ooriya element in its population or language. As might be expected therefore, considerable opposition was there expressed to the proposal to amalgamate the tract with the Province of Bihar and Orissa. That does not look, Sir, as though there was any need to consult them on the question now before us.

Then again as regards certain villages in the Chandrapur-Padampur Zemindari, the people there speak a variety of Hindi, and here we are told the feeling is the same, and the preference to present arrangements is unanimous. Some of the villages state that they suffer great inconvenience and many disadvantages from the difference in language and habits of life, and they would like to be amalgamated with the Bilaspur district, rather than with the Ooriya-speaking tracts. So all the evidence we have is that these villages would very much prefer to be in the Central Provinces.

[Sir Malcolm Hailey.]

That, Sir, is our case. If after that the House considers that we are doing an injustice to these people, then we are perfectly willing to take any other measures to rectify our decision that may be required. (A Voice: "Commencement clause.") As I said before, it must be an unhappy situation for these people who imagined that they were in the Central Provinces, suddenly to discover that they have to take their appeals to Patna—an exceedingly difficult and long journey for them, and an inconvenient matter in another way, for all their institutions, as far as we know, and certainly their revenue law are those of the Central Provinces.

Mr. B. N. Misra: Sir, the Honourable the Home Member said that the law of the Central Provinces applies in Sambalpur. No doubt the whole district of Sambalpur was under the Central Provinces revenue law and the whole district has been transferred and there is no dispute about that. But what is the good of keeping these 20 or 30 villages separate when you have transferred an area of over 4,000 square miles? What is the good of keeping about 50 square miles?

The Honourable Sir Malcolm Hailey: Then perhaps the best thing we could do would be to take away Sambalpur and return it to the Central Provinces.

Mr. President: The question is that the Bill be taken into consideration.

The motion was adopted.

Clauses 1 to 5 were added to the Bill.

The Schedule was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Malcolm Hailey: Sir, I move that the Bill be passed.

The motion was adopted.

THE LEGAL PRACTITIONERS (WOMEN) BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I move for leave to introduce a Bill for the removal of doubts regarding the right of women to be enrolled and to practise as legal practitioners.

Sir, the circumstances under which I introduce this Bill, of which I may say in the language used by after-dinner speakers the pleasant duty has been conferred on me of introducing this Bill, are of course known to the House. The original author of the measure was Dr. Gour and to him the credit is due. We found on examination of his Bill that merely on a matter of drafting it did not meet the situation. We therefore proposed to take the sense of the House on that occasion on the matter of principle. The House approved the principle, approved it I think unanimously. We then undertook to bring in a Bill ourselves which should give full effect

to it and here, Sir, is the Bill. I think I need say little myself in commendation of a measure which in effect has already been passed by the House, and which I know has the approval of the House. Nominally it is a Government measure, but we are only too glad to recognize that it is not in reality a measure promoted by Government and that the credit for it is due to those progressive non-official Members who have had the cause of the women of India at heart. (Hear, hear.)

Mr. President: The question is that leave be given to introduce the Bill.

The motion was adopted.

The Honourable Sir Malcolm Hailey: Sir, I beg to introduce the Bill. With your permission, Sir, I beg to move that the Bill be taken into consideration.

The motion was adopted.

Clauses 1 to 3 were added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Malcolm Hailey: I could wish that every measure I have to introduce to this House could have as easy a passage. But perhaps, Sir, the measures which I have to introduce to the House are not, all of them, quite so beneficent as this.

Sir, I beg to move that the Bill be passed.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I wish to most heartily congratulate Sir Malcolm Hailey and the Government on the introduction of this beneficent measure. Unfortunately it is on rare occasions that I am filled with such gratitude to and admiration for Government as I am filled with at this moment. I have no doubt that this measure will be welcomed by the entire educated community all over the country. I am glad Sir Malcolm Hailey did not wait for his hat to be blown off by Indian suffragettes before introducing this measure. He and the Government have profited by the experience of other countries and I most heartily congratulate them.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I shall be failing in my duty if I also do not join in offering my most hearty congratulations to the Honourable the Home Member for the despatch with which he has carried out the promise that was given to this House that, if the House by a majority carried my motion, to refer my motion to the Select Committee, the Government would introduce a more comprehensive measure drafted on the same lines. And I am glad, Sir, that before this Session is over this beneficent piece of legislation will find its place on the Statute Book. It is the commencement of the emancipation of womanhood, and I can only hope that the benevolence which the Government have shown in this connection will also be extended to other similar matters.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I have never yet made any speech on the motion for the passing of a Bill; but on this occasion my heart is so filled with joy that I cannot help giving expression to my feelings. The House may perhaps consider this to be

[Khan Bahadur Sarfaraz Hussain Khan.]

a small matter, but this time I find that India is giving woman her proper place.

Mr. President: The question is that the Bill be passed.

The motion was adopted.

ELECTION OF MEMBERS FOR THE PUBLIC ACCOUNTS COMMITTEE.

Mr. President: The House will now proceed to the election of Members to serve on the Committee of Public Accounts. I announced before the Lunch adjournment that there are 11 candidates for 8 seats on that Committee. Honourable Members will find the 11 names printed on the ballot paper and the instructions in their usual form. I think Members understand by now the procedure by way of the single transferable vote. I presume that all the 11 candidates still wish to keep their names on the ballot paper.

As only non-official Members take part in the election of Members to serve on the Public Accounts Committee and as there is another item of business which if disposed of would enable official Members to go away if they so choose, I call upon the Honourable the Home Member to oblige the House by moving his motion for referring the proposed amendments to the Standing Orders to a Select Committee.

AMENDMENT OF STANDING ORDERS.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I have to move for leave to amend the Standing Orders of the Legislative Assembly by adding to them a Standing Order in the form annexed, on petitions relating to Bills pending before the Legislative Assembly. The motion which I make is the outcome of proposals put forward originally from a non-official quarter and, as the House will perhaps remember, those proposals were referred to a Committee on which non-officials were fully represented. The draft Standing Order itself is practically in the form recommended by that Committee, it is I think fully in accord with modern parliamentary practice.

Mr. President: Honourable Members will see the form of the draft Standing Order, which I need not read to the House. I have to ask whether objection is taken. As no objection is taken, the Honourable Member has leave.

The Honourable Sir Malcolm Hailey: I now move that the proposed amendments be referred to a Select Committee.

Mr. President: The question is:

"That the proposed amendments be referred to a Select Committee."

The motion was adopted.

The House will now proceed to the election of Members to serve on the Committee on Public Accounts. Members will come to the table to receive the ballot paper.

(Election Proceeding.)

Mr. President: The result of the election will be announced in due course.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Hailey (Home Member): As several Members were absent yesterday evening when I made an announcement about the course of business, I should like to again remind the House that on Thursday we are taking private Bills. We propose, after we have finished Government business on Monday, to continue with those Bills, and again on Tuesday, in order that we may dispose of as many as possible before the Session ends.

Mr. S. O. Shahani - (Sind Jagirdars and Zamindars: Landholders): Sir, may I inquire as to when the Session ends?

The Honourable Sir Malcolm Hailey: To the best of our belief, Sir, on Tuesday.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 22nd March, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 22nd March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

POWER OF THE LEGISLATIVE ASSEMBLY TO REDUCE THE PAY OF OFFICERS OF THE CIVIL SERVICE OR THE ARMY.

604. ***Mr. Mohammad Faiyaz Khan:** Has the Assembly got the power if it wishes to reduce the pay of Indian or British officers in the Civil Service or the Army?

The Honourable Sir Malcolm Hailey: As far as Members of the All-India services and officers of the Army are concerned, the answer is in the negative. As regards other services, the power to influence pay is limited to such effect as may be produced by voting or refusing supply on Demands for Grants.

BHATKAL RAILWAY EXTENSION.

605. ***Mr. Mahmood Schamnad Sahib Bahadur:** 1. Will the Government be pleased to state whether the Bhatkal Railway extension has been given up?

2. Is the Government aware that the proposed railway extension to Bhatkal does not connect the general railway system with the West Coast (Malabar) railway of the Madras Presidency?

The Honourable Sir Malcolm Hailey: 1. The reply is in the negative.
2. Yes.

POSITION UNDER THE INDIAN ARMS ACT OF RETAINERS OF MAHARAJAS, RAJAS AND NAWABS.

606. ***Lieutenant Nawab Mohammad Ibrahim Ali Khan:** I. Are the Government aware that in Schedule I of the New Indian Arms Rules, class 3, all Maharajas, Rajas and Nawabs are exempted under the Arms Act but nothing is laid down about their retainers, in consequence of which the local authorities are not in a position to allow the same liberty in the use of arms as is allowed to the retainers of the exemptees of class 6 who are of inferior standing?

II. Do Government propose to extend the same privileges to the retainers of exemptees of class 3 which are enjoyed by the retainers of class 6; and remove the great anomaly as soon as possible by amending the law or issuing Circulars to local Governments, making the necessary correction?

The Honourable Sir Malcolm Hailey: 1. Yes.

2. The Arms Rules Committee recommended no change in the provisions regarding retainers; and the Government of India are inclined to accept this recommendation unless very good reason to the contrary is shown.

Lieutenant Nawab Mohammad Ibrahim Ali Khan: Has effect been given to this?

The Honourable Sir Malcolm Hailey: Not yet; we are consulting the Local Governments regarding some of its details.

Baba Ujagar Singh Bedi: Is there any hope of giving us some information before the next Session at Simla?

The Honourable Sir Malcolm Hailey: I should hope that we may probably by that time be in a position to give effect to some of the recommendations of the Committee.

OFFICE OF THE MILITARY ACCOUNTS DEPARTMENT, POONA.

607. ***Mr. B. S. Kamat:** With reference to the Office of the Military Accounts Department, Poona, will Government be pleased to state:

- (i) If Government are aware that there is still some discontent amongst a section of the clerical staff on the ground that the pay of clerks in Divisional Offices, even though they were given temporary or supernumerary promotions, has been fixed at a lower stage than that of their juniors in field offices similarly situated?
- (ii) If any representations have been received, how have they been dealt with by Government?
- (iii) If it is true that the rates of pay of accountants and clerks in the Civil Accountant General's offices and those in the Military Accounts offices are the same; if the reply is in the affirmative, will Government kindly state why rates of increment to those clerks who have passed the Subordinate Accounts test are lower than in the Civil Department, although conditions of service in Military Accounts offices are perhaps more onerous; if any representations on this subject have been received by Government how have they been disposed of?
- (iv) If any temporary clerks entertained during the war and being made permanent in the Department are receiving higher rates of pay than those of the permanent clerks senior in service; if so, will steps be taken to remove the anomaly?
- (v) If it is true that the service of Deputy Examiners who were promoted to this grade during the war in place of absentees is not allowed to count towards pension; is it contemplated to remove any discontent on this ground by amending the rules?

The Honourable Sir Basil Blackett: (i) and (ii). Some representations on the subject were received by the Government of India from the clerks of the Military Accounts Department at Poona, but the grant of the special concession in question was not considered necessary in view of the liberal treatment accorded to the Military Accounts establishments generally under the orders introducing time-scale rates of pay.

(iii) The rates of pay of accountants and clerks of the Military Accounts Department are generally similar to those prevailing in the Civil Accountant Generals' offices; but the rate of increments of clerks who have passed the Accountants' test is lower in the Military Accounts Department than in the Civil Accounts Department. A representation for the grant of the higher rate of increment was received from the Military Accounts establishment at Poona, but the Government did not feel able to agree to it.

(iv) Men who had been entertained temporarily in the Military Accounts Department during the period of the war on higher rates of pay for special qualifications have been confirmed on those rates of pay. The Government of India do not consider that others in receipt of lower rates of pay have any legitimate claim to have their pay raised accordingly merely on the ground of length of service.

(v) Accountants who were promoted temporary Deputy Examiners during the period of the war were not allowed to count the higher emoluments towards pension. This decision was arrived at by the Government of India after careful consideration of the rules on the subject and they do not propose to make any amendment in the rules.

COMPLETION OF CUTTACK-TALCHER LINE.

608. ***Babu Braja Sundar Das:** Will the Government be pleased to state when the Cuttack-Talcher line is likely to be completed?

The Honourable Sir Malcolm Hailey: Work on the line has only lately been commenced and it is estimated that it will take about 2½ years to complete.

MILEAGE OF THE B.-N. RAILWAY RUNNING THROUGH THE ORIYA-SPEAKING COUNTRIES.

609. ***Babu Braja Sundar Das:** Will the Government be pleased to state how many miles of the Bengal-Nagpur Railway run through the Oriya-speaking countries under the Government of Bihar and Orissa, Bengal, Central Provinces and Madras?

The Honourable Sir Malcolm Hailey: The mileage of the Bengal-Nagpur Railway running through the Oriya-speaking tracts is approximately as follows:

	Miles.
Bihar and Orissa	540
Central Provinces	13
Madras	58

COACHING TRAFFIC EARNINGS OF THE B.-N. RAILWAY.

610. ***Babu Braja Sundar Das:** Will the Government be pleased to state the amount received annually by the Bengal-Nagpur Railway from Coaching Traffic stating specially the amount derived from the Coaching Traffic to Puri, Bhubaneswar, Baitarani and Jajpur?

The Honourable Sir Malcolm Hailey: The Bengal-Nagpur Railway received from coaching traffic, Rs. 2,21,47,000 during 1921-22 which included sums of Rs. 9,65,794, 1,28,213, 1,03,606 and 43,696 on account of passenger traffic booked to Puri, Bhubaneswar, Baitarani and Jajpur, respectively. Particulars of other coaching traffic booked to these stations are not available.

NUMBER OF MEN IN THE HIGHER GRADE SERVICES OF THE B.-N. RAILWAY.

611. ***Babu Braja Sundar Das**: Will the Government be pleased to state:

- (a) the number of men employed by the Bengal-Nagpur Railway in the higher grade services in their various departments stating how many of them are Europeans, Anglo-Indians, and Indians? Is there any Oriya in the higher grades of services?
- (b) the number of employees who are getting over Rs. 50 per month classifying them according to their nationality? How many Oriyas are there in the employment of the Bengal-Nagpur Railway getting a pay over Rs. 100 and over Rs. 50?

The Honourable Sir Malcolm Hailey: The information in the detail asked for is not available. It can be collected only by special compilations by the Bengal-Nagpur Railway and the Government are reluctant to put the Railway Administration to this trouble.

PASSENGER SUPERINTENDENTS.

612. ***Babu Braja Sundar Das**: (a) In pursuance of the Resolution by Mr. Joshi regarding Passenger Superintendents will the Government be pleased to state if the Bengal-Nagpur Railway have appointed any Passenger Superintendent at Howrah and Puri?

(b) Is it a fact that most of the third class passengers to Howrah between Howrah and Puri are Oriya-speaking?

(c) Do the Passenger Superintendents at Howrah and Puri (if appointed) know anything of the Oriya language?

The Honourable Sir Malcolm Hailey: (a) The reply is in the affirmative so far as Puri station is concerned.

At Howrah there are two Passenger Superintendents under the control of the East Indian Railway. These men attend both East Indian Railway and Bengal-Nagpur Railway passenger trains.

(b) Government understand that the percentage of Oriya-speaking passengers between Howrah and Puri is comparatively small.

(c) The Passenger Superintendent at Puri and one of the Superintendents at Howrah have a knowledge of the Oriya language.

Babu Braja Sundar Das: I beg to put another question.

Mr. President: Does the Honourable Member wish to ask a question of which notice has not been given? If it is a private notice question, that must come at the end.

Mr. K. Ahmed: Sir, in view of the fact that there is no Bengali-speaking Passenger Superintendent on the Eastern Bengal Railway, do Government propose to replace some of the Superintendents when they retire by a Bengali-speaking Superintendent?

Mr. President: Does the Eastern Bengal Railway run into Howrah?

Mr. K. Ahmed: Then I put both the East Indian Railway and the Eastern Bengal Railway.

The Honourable Sir Malcolm Hailey: We were asked to collect certain information about Oriya-speaking Superintendents on the Bengal-Nagpur Railway running into Howrah and Puri. I do not think the Honourable Member is in order in asking about Bengali-speaking Superintendents on the Eastern Bengal Railway.

IMPERIAL INSTITUTE.

613. ***Mr. W. S. J. Willson**: 1. Is Government aware that:

- (a) The Princes and people of India subscribed a very large sum of money towards the building of the Imperial Institute?
- (b) When the building became the property of the British Government this important Indian share was recognised by earmarking a certain portion for Indian purposes and placing it under the India Office?
- (c) The India Office has announced its intention, owing to the discontinuance of the Government of India grant, to hand over this portion of the building to the British Government to be used for other purposes?
- (d) The Indian Committee of the Imperial Institute (which includes distinguished Indian representatives) has protested against the action of the India Office, maintaining that this portion of the Imperial Institute should continue to be Indian and used for Indian purposes as at present?

2. In view of these facts and in addition the expressed wish of the Associations of Commerce, both in India and Great Britain, that India's long connection with the Imperial Institute should be preserved, also of the continued requests which are being received from India for assistance from the Institute, will the Government of India take steps to ensure that the recognised occupation of certain parts of the Imperial Institute for Indian purposes is not disturbed?

Mr. J. Hullah: 1. (a) Yes.

(b) The arrangement made was that the India Office should occupy, as lessee of the British Government, free of rent, firstly a portion of the basement for use as store-rooms and office, and secondly a corridor with passages, stairways and a subsidiary room. The Government of India understand that only the first area, which does not form part of the main building, is to be surrendered.

(c) The intention is believed to be as I have already stated, but I am not aware that the India Office has made any announcement on the subject.

(d) The Government of India have no information of any such protest.

2. The Government of India believe that the portion of the main building which was leased to the India Office is still in possession of the Imperial Institute, and will continue to be used for the Indian Exhibits, which will not be removed. They will, however, ascertain definitely whether this is so.

CONDITION OF PERMANENT QUARTERS AT RAISINA.

614. ***Lieutenant-Colonel H. A. J. Gidney**: 1. Will Government kindly state how many of the recently built permanent quarters at Raisina leaked during the rains, last February, and to what extent?

2. In view of the experience gained during the above period is the Government prepared to say that these quarters will be habitable during the monsoons?

3. If not, are they taking steps to make the roofs really water-tight?

4. Will the Government state what has been spent up to date in electro-wiring the houses in question?

5. Is it a fact that the electric-wiring has been done so unscientifically that much of the material put down only 4 or 5 years ago has perished to such an extent as to need renewal?

Colonel Sir Sydney Crookshank: 1. The total number of complaints of leakage during the rains referred to, received by the Executive Engineer in charge was six.

2. Yes.

3. Does not arise.

4. The total sum spent on wiring residential quarters to date is about Rs. 5 lakhs.

5. No.

Mr. S. C. Shahani: Are the Government aware that the doors and windows, as also the furniture in the Raisina quarters are all ill-made?

Colonel Sir Sydney Crookshank: May I ask the Honourable Member to state exactly what question he has put?

Mr. K. Ahmed: I suppose leakages are generally found in the buildings?

Mr. President: Order, order. Mr. Shahani.

Mr. S. C. Shahani: My question is—are the Government aware that the doors and windows in the permanent quarters at Raisina are badly made and that the furniture which is provided in the permanent quarters is badly made?

Colonel Sir Sydney Crookshank: I am not aware that either the doors or the windows, or the furniture is badly made. The best wood procurable has been obtained and is used in the manufacture of these articles and the best labour available has been employed.

CIRCULATION OF ONE-RUPEE NOTES.

615. ***Sir Montagu de P. Webb:** Will Government having regard to the unsuitability of the one rupee note as currency in this tropical country and to the fact that, according to the Report of the Indian Retrenchment Committee, the one rupee note is apparently more expensive to produce and maintain in circulation than the silver rupee, now revert to the pre-war practice of issuing the silver rupee only in future?

The Honourable Sir Basil Blackett: The matter is under consideration.

Mr. S. C. Shahani: Are the Government aware that the public in this tropical country now consider the one-rupee note as fairly suitable?

The Honourable Sir Basil Blackett: Government are aware from statements that have been made to them both that it will be a disaster if the one-rupee note is not withdrawn and that it will be a disaster if it is.

Mr. S. C. Shahani: Will the Government be pleased to state if it has been found difficult to maintain the one-rupee note in circulation and, if so, why?

The Honourable Sir Basil Blackett: I understand it was a little difficult in the first instance. In certain quarters it is now extremely popular. The whole question is a difficult one. It is very hard to say whether or not it is more expensive to keep the one-rupee note or the silver rupee in circulation and it is hard to say whether the public does or does not want the one-rupee note. The best criterion always in deciding whether a particular form of currency should be kept in circulation or not is whether the public want it or not, and that will ultimately be the criterion in this case.

Mr. S. C. Shahani: Will the Government be pleased to ascertain what the attitude of the public in the matter is before withdrawing the one-rupee note from circulation?

The Honourable Sir Basil Blackett: The Government are endeavouring to do so.

Mr. K. Ahmed: Is the Honourable the Finance Member aware that contagious disease is prevalent especially in this city of Delhi? I suppose plague and small-pox are contagious diseases?

Mr. President: The Honourable the Finance Member is not responsible for Public Health.

COST OF MILITARY SERVICES.

616. ***Sir Montagu de P. Webb:** Will Government be pleased to say what percentage the cost of "Military Services" in India in (1) 1913-14, and (2) 1921-22, bears:

- (a) to the total expenditure of the Central and Provincial Governments combined; and
- (b) to the total cost, excluding Commercial services of administering India of the combined Central and Provincial Governments?

The Honourable Sir Basil Blackett: The percentages required are:

	1913-14	1921-22.
(a)	19.5	23.8
(b)	32	38.3

I may add that the corresponding figures for 1923-24 are approximately (a) 21.6 and (b) 35.2.

Dr. H. S. Gour: Is this percentage arrived at after taking into calculation military expenditure distributed over the heads of civil expenditure, as, for instance, 50 lakhs of rupees under the civil works in Waziristan, the Frontier Military Police and the like?

The Honourable Sir Basil Blackett: I did not work out the figures myself, so I cannot answer finally such detailed questions, but certainly we have not included political expenditure as part of military.

UNSTARRED QUESTIONS AND ANSWERS.

FOOD SOLD BY LICENSED STATION VENDORS.

247. **Rai T. P. Mukherjee Bahadur:** (a) Is the Government aware that the licensed station vendors generally supply inferior food and sell all food and articles at an exorbitant high rate and dupe the passengers?

(b) Is there any officer to supervise the work of station vendors just to see whether they are supplying inferior things or selling things at a higher rate to the passengers than the bazar rate?

(c) Does the Government intend to take steps to protect the poor passengers against extortion by station vendors?

Mr. C. D. M. Hindley: (a) Government are not aware that such is the case. Vendors are bound by their contracts to supply good and wholesome articles at current rates.

(b) The reply is in the affirmative.

(c) The Honourable Member is referred to replies to (a) and (b) of his question.

CHANGES IN LAW AFFECTING THE HINDU SOCIETY.

248. **Babu Braja Sundar Das:** (a) Will the Government be pleased to state if they consult the opinion of any body of Pandits connected with a religious institution regarding changes in law which affect the Hindu Society?

(b) Has the Muktimandap of Puri been ever consulted with regard to changes in social laws of the Hindus?

The Honourable Sir Malcolm Halley: (a) and (b). No. Public opinion is elicited by publication; if the opinion of particular bodies or individuals is sought, the selection is made by Local Governments.

RAJKUMAR COLLEGES FOR ARISTOCRATS.

249. **Babu Braja Sundar Das:** (a) Will the Government be pleased to state how many Rajkumar Colleges for aristocrats are there in India?

(b) Were they started at the initiative of the Government of India or the Provincial Governments?

(c) Is it a fact that minor sons of Landholders and Zamindars are sometimes forced to go there even against the protest of their natural guardians?

(d) What is the standard up to which education is imparted in each Rajkumar College?

(e) Is any method of administration imparted to the students of those colleges, bureaucratic or democratic?

Mr. Denys Bray: (a) There are five Chiefs' Colleges in India.

(b) They were started at the initiative of the local authorities.

(c) Not so far as the Government of India are aware.

(d) There is a Diploma Examination at all the Colleges which is accepted by Universities as equivalent to the Matriculation examination, and there is a Post-Diploma Class at the Mayo College, Ajmer.

(3864)

(e) This question is not fully understood. The subjects connected with administration, in which instruction is given, are " Law " and " Land Revenue and Surveying ".

REDUCTIONS IN THE STAFF OF B.-N. RAILWAY.

250. **Babu Braja Sundar Das:** (a) Is it a fact that great reductions in the staff have taken place in the Bengal-Nagpur Railway owing to retrenchment?

(b) If the reply to (a) be in the affirmative, will the Government be pleased to state the number of hands that have been discharged classifying them under heads, (i) Europeans, (ii) Anglo-Indians, (iii) Indians?

Mr. C. D. M. Hindley: I would refer the Honourable Member to the second part of my answer to Mr. Agnihotri's question put on the 12th March, which deals with the matter. Government do not propose to enquire into the number of hands discharged or the classes to which they belong.

FEMALE WAITING ROOMS AT SAMTHAL HATIM SERAI RAILWAY STATION ON THE O. AND R. RAILWAY.

251. **Mr. Syed Nabi Hadi:** Is Government aware that there is no female waiting room at Samthal Hatim Serai Railway station on Oudh and Rohilkhand Railway and the Indian women feel much inconvenience there?

Mr. C. D. M. Hindley: Government have no information. Railways provide separate waiting accommodation for female passengers where necessary.

IMPERIAL WIRELESS.

Sir Jamsetjee Jejeebhoy: With your permission, Sir, I should like to ask a question about which I have given notice to the Honourable Member in charge. Will Government be pleased to inform the House how the case stands regarding Imperial Wireless?

Colonel Sir Sydney Crookshank: Sir, before replying to that question in so many words, perhaps I may be permitted to take up a few minutes of the time of the House briefly to explain how the position stands, as it may enable Honourable Members better to judge and form their opinions. I would at the outset ask Honourable Members to frame a mental picture of the geographical position of India in relation to Africa, Europe and Asia. From this they will see in their mind's eye that India stands in the centre of a circle comprising South Africa, East and West Africa, the United Kingdom, Egypt, Europe generally, the Near East, the Far East, Singapore, Hongkong, Australia and New Zealand within its perimeter. Honourable Members will thus realise that India's position in the wireless field is one of very great importance indeed, both strategically and commercially. I will not go into the past history of the development of wireless, but, beginning at the year 1920, it will interest the House to know that an Imperial Wireless Telegraph Committee, ordinarily known as the Norman Committee, sat in London to investigate the Imperial Wireless position at large. The conclusions they arrived at were that the programme to be followed should be to develop on steps averaging about 2,000 miles a piece, that is to say, England to Egypt, Egypt to India, India to Singapore,

[Colonel Sir Sydney Crookshank.]

and on to Port Darwin, or Perth and Brisbane. This proposal, which was based on Government management throughout, did not, however, receive any favour either from the Government of India or from the Commonwealth, Dominion and Union Governments. The reason why we in India had no particular use for this arrangement was that for strategical purposes direct communication between England and India was of the highest importance and for commercial purposes to work on these short stages would be unpractical and unprofitable. These views were communicated to the Home Government and the next stage in the development of Imperial Wireless was that in 1922 an Imperial Wireless Co-ordinating Committee sat and recommended that the Indian station should be an Imperial station and more or less left it open to the Union, Dominion and Commonwealth Governments, who, I may remark, had already taken the matter into their own hands by entering into negotiations with branches of the main Marconi Company for the erection and working of their own stations. The Indian Government being reluctant to embark on the programme of expenditure involved the Home Government then offered to provide the money for the construction of this station on the understanding that we worked it and gradually repaid the capital by means of amortization or sinking fund. They proposed, however, to instal a station which in our opinion was not sufficiently powerful to give us the commercial traffic which we considered would be thrown on this central station and would be required in order to make it pay its way. Our views were communicated to the Home Government and as a result the British Cabinet decided that no restrictions should be placed on the arrangements for establishing Imperial wireless long-range stations outside the United Kingdom but that in England itself Government would erect and work its own high-power station. This therefore left us in India with a free hand and the question was then one of the comparative merits of Government erection and control *versus* private enterprise. In the case of Government capital and working, according to the advice which we received from our experts in this direction, the cost of the station was estimated to amount to about £421,000 or say £500,000 to be on the safe side. The ordinary working expenses would be on an average £41,000 per annum—probably more making allowance for the interest and sinking fund charges. There were therefore great difficulties in the way of Government taking up the construction of the installation itself—not only on account of the large amount of capital involved but also because we had no experts of the specialized technical standard required to construct and operating the station. And, moreover, and this is a very important point, we had not the full rights to utilise the Marconi patents and get the advantage of the best apparatus and means of conducting the service. The advantages and disadvantages of private enterprise on the other hand will be fully realised in that Government would not be required to put down capital; possibly they could enter on a contract for majority shares in the same way as the Commonwealth Government did which took 500,001 shares out of a million pounds worth of capital; or they could do what was done by the Union Government—that is to say, give a ten-year contract with the option of taking over the whole concern at a valuation at short notice. A further advantage of private enterprise would be that by coming into a contract with a branch of the Marconi Company we should get the full use of those patents which would make all the difference to the success of the concern. Therefore the balance of considerations was on the side of private enterprise and it remains so

still. What form private enterprise should take has not been fully gone into by this Government. We have had offers from two Indian firms, and also from a branch of the Marconi Company, but our arrangements would naturally be that we would give preference, if we had eventually to decide on going in for a contract, to a Company which was an Indian Company with a large proportion of Indian Directors and floated with Indian rupee capital.

That is the position at present and Government is now investigating further in that direction. That does not necessarily mean that wireless telegraphy throughout India and abroad will revert to contract working. It really means that there will be a blend of State and Company management which I think offers the best solution of this problem. That is to say, the Government would retain in their hands the working of the inland and coastal stations which we now have in India and in Burma and along the coast, and would also encourage the opening of feeder stations within the limits of these inland stations by Local Governments, by commercial undertakings or other bodies such as groups of coal mines, tea gardens, oil fields, or other concerns having occasion to take advantage of having small wireless installations of their own. There would also be the smaller wireless installations which would be worked under licence by the Indian States for the advantage of the communications within those States. So that, as I explained before, Government would still retain in their hands the working of wireless throughout India and Burma and along the coast, and if the proposal to enter upon a contract for the opening of Imperial wireless is found suitable and satisfactory, that would be handed over to private enterprise. It is not possible to state exactly where this high-power station in India would be situated, but it would probably be in a group of stations at places like Agra, Tundla and Hathras, those being about the right distances apart for the grouping of this central high-power world station and having the advantage of close connection with the main telegraphic heart or centre of India at Agra. It will thus be seen that Government have this very important problem under consideration as a part-Government-part-private-enterprise scheme. The traffic which would be thrown on this long range station in order to be of value for commercial purposes, without which it would be insignificant, would be in the nature of 2 million words per annum out of probably a total of 12 million words which pass over the cables; and the rates, although nothing has been fixed or settled in that matter, would probably be about 75 per cent. of the cable rates—that is to say Re. 1 for wireless per word as against Rs. 1-4 for cable transmission. That is the position in which we now stand and we propose to investigate further this field of private enterprise in the shape of an Indian company with Indian capital.

Mr. N. M. Samarth: May I inquire, Sir, whether the Government of India obtained the opinion of the law officers of the Crown as to whether it is legally permissible to the Government of India to grant a licence to any one in regard to wireless telegraphy within British India?

Colonel Sir Sydney Crookshank: I am not quite sure whether I fully understand the Honourable Member's question, but there will be no objection to entering into a contract by the Indian Government in India, as the British Government have already decided that that may be left entirely in the hands of the Indian Government; but I think what the Honourable Member probably has at the back of his mind is the utilisation of the patent rights which are possessed by the Marconi Company. These the

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Government of India will not use, except by arrangement and payment of royalty fees to the Marconi Company as the law authorities in England have stated that payments which were made by the General Post Office to the Marconi Company in connection with the utilisation of some of their patent rights before and during the war cannot be extended to apply to the utilisation of those patents in India.

Mr. N. M. Samarth: I am afraid I have not made myself quite clear. My point is specifically this. Under the Indian Telegraph Act as it stands at present, have they obtained the opinion of the law officers of the Crown as to whether it is legally permissible to the Government of India to grant a licence at all to anybody for wireless telegraphy within British India?

Colonel Sir Sydney Crookshank: So far as I know, it is.

Mr. N. M. Samarth: My question is, have the Government of India obtained the opinion of the law officers of the Crown on that point?

Colonel Sir Sydney Crookshank: I am not quite sure; I shall look up the case and I will inform the Honourable Member later as to the exact position.

Sir Jamsetjee Jejeebhoy: May I inquire, Sir, whether wireless telephony would come within the scope of the proposed company?

Mr. H. A. Sams: Wireless telephony would not, I think, come within the scope of the proposed company which would be simply like any other land line.

Sir Deva Prasad Sarvadhikary: Before entering into any contract would the Government exhaust its inquiries with regard to other methods of wireless under investigation in India and abroad?

Mr. H. A. Sams: What other methods has the Honourable Member in mind?

Sir Deva Prasad Sarvadhikary: For example, regarding those about which question were asked in this House some time ago; that was one class of wireless I had in mind.

Mr. K. Ahmed: As for instance, I handed over a pamphlet of Khan Bahadur Habibur Rahman Khan regarding his original research in wireless telephony and telegraphy, and the Honourable Sir Sydney Crookshank promised that he would read that pamphlet and see if there is any good in it.

Colonel Sir Sydney Crookshank: I can assure Honourable Members who have just spoken that Government would be very careful indeed to make inquiry into every possible method of wireless transmission, whether of the kind to which I gave an answer some days back, or otherwise.

Rao Bahadur T. Rangachariar: May I ask in what form the Government aid is going to be given to this enterprise, whether it is to be in the shape of guarantee or in the shape of shares in the capital? Have they decided?

Colonel Sir Sydney Crookshank: Sir, there are several alternatives in this particular direction; but we have not got as far as going into the details of the exact proposals of any agreement which may be made, but

we would naturally be very careful to see that the interests of the Government were properly safeguarded and also that in the case of emergency or war the Government would have the full use of the Imperial Wireless stations in India.

Rao Bahadur T. Rangachariar: Will the Government when they have made up their mind inform the public as to what aid the Government is going to give in this matter, because the public are not likely to form a company without knowing beforehand what the Government proposes to do?

Colonel Sir Sydney Crookshank: Every opportunity of consulting public opinion would be taken before any agreement was entered into in a case like this.

Rao Bahadur T. Rangachariar: My point is, before concluding any agreement with any private firm or other people, will the public have an opportunity to tender on the terms proposed by Government?

Colonel Sir Sydney Crookshank: The public will be given every opportunity of tendering. There will be no intention of restricting the form of tender or the extent of it.

Rao Bahadur T. Rangachariar: Have any Indians been hitherto trained in the Government Wireless Branch?

Colonel Sir Sydney Crookshank: A number of Indians have been trained at the Wireless School at Karachi. If my memory serves me right, I think 141 operators and wireless telegraphists have passed out quite recently.

Rao Bahadur T. Rangachariar: How many officers are there and how many of these are Indians?

Mr. President: I think if the Honourable Member wants details he had better put his questions down on the paper.

Dr. H. S. Gour: Will the Government be pleased to consult this House before entering into any final contract regarding wireless transmission?

Colonel Sir Sydney Crookshank: I will make a note of the Honourable Member's wish to do so, but I do not know that it is altogether possible to do so.

Sir Deva Prasad Sarvadhikary: Having regard to the recent lessons in connection with the State management of railways, does the Government consider that mixed enterprises of the kind to which the Honourable Member has just referred is likely to be acceptable?

Colonel Sir Sydney Crookshank: As far as I can see, every advantage lies in the combined arrangements which I have outlined because Government retains the working of wireless within the Indian Empire and there will be every advantage in using private enterprise for long distance wireless.

Mr. Jamnadas Dwarkadas: May I take it, Sir, that the object of Government in giving the Imperial Wireless to a private company is that they think commercially it may prove successful which in the case of State management, I am afraid, will not prove so? Is that the reason?

Colonel Sir Sydney Crookshank: I think I may say that it is very largely so.

Mr. N. M. Joshi: Is the Government aware that they managed the Post Office and that it has given a profit of Rs. 1½ crores this year?

Mr. President: I think Honourable Members might consider now any further questions more carefully and put them down on the paper.

OUTSTANDING RESOLUTIONS OF THE ASSEMBLY.

Dr. H. S. Gour: May I put one question to the Honourable the Home Member, Sir? There is a very wide-spread feeling in this House that a very large number of Resolutions which have been admitted by you, Sir, will have fallen into arrears for want of dates for non-official business; and will the Honourable the Home Member see that some dates are set apart for working off a few of these Resolutions? Some of them are very important and which Honourable Members are anxious should be moved during the next Simla session.

The Honourable Sir Malcolm Hailey: I can only make a note of that desire. I cannot of course undertake at present to say anything about the course of business during the Simla session. I would remark, however, that the House must not expect that we should during the Simla session be able to set apart enough days for private business to have any substantial effect on reducing the number of Resolutions outstanding. Those number, to the best of my recollection, something like 260.

INDIA'S CONTRIBUTIONS TO THE GREAT WAR.

Mr. E. Burdon: With your permission, Sir, I should like to inform the Honourable Members of the Assembly that the Government have now completed and published an account of India's contribution to the Great War. The production of this Book, it will be remembered, was undertaken by Government at the request expressed more than once by Members of the Legislature. Copies of the Book will be found in the Library of this House, and copies can also be obtained from the Superintendent, Government Printing, Calcutta.

INDIAN DELEGATION FROM KENYA TO LONDON CONFERENCE.

Sir Deva Prasad Sarvadhikary: I asked a question, Sir, of which the Honourable Mr. J. Hullah has private notice. It is as follows:

"Will the Government be pleased to say whether the Secretary of State for the Colonies has acceded to the request of Indians in Kenya that their representatives should be heard at the forthcoming conference in London regarding the affairs in that Colony?"

Mr. J. Hullah: Evidently the Secretary of State for the Colonies has acceded to that request, for we have just received a telegram from the Secretary of State for India as follows:—"I have ascertained that the Indian delegation from Kenya will be treated on the same footing as the European delegation. First class travelling allowance and subsistence allowance at the rate sanctioned for Europeans is being granted to the Indians up to the same number as the European delegation, that is 3 or 4 as the case may be, if the Indians wish to send more than 2 representatives.

Sir Deva Prasad Sarvadhikary: Would that apply to the deputation sent from India?

Mr. J. Hullah: The telegram refers only to the deputation of Indians from Kenya.

REPORT OF THE N.-W. FRONTIER COMMITTEE.

Sir P. S. Sivaswamy Aiyer: May I ask the Foreign Secretary for information as to when the Report of the North-West Frontier Committee which was presided over by him will be published, and whether an opportunity will be given to the House to discuss the questions arising out of that Report?

Mr. Denys Bray: I am afraid I am not in a position to give a definite answer to this question. The Report, as the Honourable Member is aware, is still under the consideration of the Government. The Honourable Member is aware, but possibly other Members are not aware, that the Report is exceedingly voluminous and the questions it raises are very complex, and it will necessarily take some little time for Government to conclude their consideration.

Mr. W. M. Hussanally: May I know, Sir, if the Report is confidential?

Mr. Denys Bray: I may add this also that the Report in its present form is confidential, as reference has been made in parts of it to very confidential matter. Before it would be fit for general publication, that matter would have to be expunged.

Mr. Jamnadas Dwarkadas: Am I not correct in saying that the practice after the Reform Scheme came into existence has been to publish the Reports without Government first considering them. All the other Reports, for instance the Fiscal Commission Report and other reports, have been published without Government giving their consideration to them in the first instance.

The Honourable Sir Malcolm Hailey: That is not the general practice. The House will remember that we did not publish the Racial Distinctions Report until we fully considered it and indeed until we were prepared to put forward a Bill on it.

With regard to the Frontier Committee's Report, that general consideration does not arise. Mr. Bray has already explained the reason why it is not at present possible to publish that Report, namely, it contains confidential matter which must be expunged.

Mr. W. M. Hussanally: May I enquire whether this expunging will take place with or without the consent of the Members?

Rao Bahadur T. Rangachariar: I may mention that my minute on the Racial Distinctions Committee was not published in full with my consent.

Mr. President: These are not matters, strictly speaking, within the cognizance of the Assembly. Where the Assembly appoints a Committee, it has complete control over the publication of the Report. But if Government chooses to take the advice of Members of this Assembly or of other Members outside, the publication or non-publication of the Report is a matter entirely within the discretion of the Government.

NORTH BENGAL FLOOD.

Mr. K. Ahmed: With regard to the North Bengal flood, the Honourable Mr. Hindley,—I think in February last,—when I put a starred question, gave an undertaking in this Assembly and promised to lay on the table a statement.

Mr. President: Will the Honourable Member say if he is asking a question of which he has given notice?

Mr. K. Ahmed: No, Sir, I am not asking a question, but in regard to . . .

Mr. President: The Honourable Member is out of order. He has given no notice of the question, and it cannot be answered.

Mr. K. Ahmed: Sir, I am simply inquiring

Mr. President: The Honourable Member is not entitled to make even a simple inquiry without notice.

REDUCTION UNDER HEAD "OPIUM."

Babu Braja Sundar Das: Sir, I beg to ask a question of which I gave private notice. It reads as follows:

"1. (a) Will the Government be pleased to state the authority responsible for giving the understanding to the Indian Retrenchment Committee that a reduction of Rs. 19,80,000 on the estimate for 1922-23 will be made under the opium head in 1923-24?"

(b) Is it a fact that owing to this given understanding the Committee make no recommendation for any reduction under the head 'Opium'?"

(c) The Incheape Committee state that 'there will be thus a saving of approximately Rs. 20 lakhs in 1923-24'. Where is the saving in the present Budget?"

The Honourable Sir Basil Blackett: Sir, the Retrenchment Committee requested the Finance Department to supply them with advance proofs of the Demands for Grants as soon as these were ready. Copies of rough proofs were accordingly furnished and these included a rough proof of the opium demand which the Committee assumed to be final. The demand for the purchase of opium at this stage was shown as Rs. 147 lakhs and included no provision for Malwa opium. Subsequently the demand was revised and the provision increased to the present figure of Rs. 169 lakhs which includes provision for necessary payment for special cultivation in Malwa. This change was, I understand, communicated to the Committee too late to allow of alterations being carried out in their Report.

As regards the rest of the question, I think it is clear from the recommendation of the Committee that they merely assumed an automatic reduction of 20 lakhs in expenditure on the purchase of opium, which assumption, as I have already stated, was based upon incorrect data. Apart from this, they say: "In view of the importance of safeguarding this important source of revenue we recommend no further reduction". It does not appear to have been the intention of the Committee to effect any reduction in the amount which the administrative authorities considered necessary to enable them to finance their opium operation. The greater part of this opium is required for sale to foreign Governments under contract. Any reduction of the provision in the budget would, it is estimated, result in a loss of about four times that amount of revenue as there is only a very limited reserve.

PUBLIC ACCOUNTS COMMITTEE.

Mr. President: I have to acquaint the Assembly that the following Members have been elected to serve on the Public Accounts Committee:

Mr. K. C. Neogy,
Mr. K. Ahmed,
Mr. N. M. Joshi,
Mr. Ambica Prasad Sinha,
Mr. K. G. Bagde,
Mr. Syed Nabi Hadi,
Rao Bahadur P. V. Srinivasa Rao, and
Mr. Braja Sundar Das.

AMENDMENT OF STANDING ORDERS.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I made a motion yesterday, which was accepted by the House, in regard to the appointment of a Committee to consider an amendment of the Standing Orders, the particular Standing Order being that relating to Petitions. The rules provide that the Committee shall be elected by the transferable vote. As the time is somewhat short, I have suggested to some of my friends opposite that we might together put up a combined list which, if it were accepted by the House, would avoid the necessity of electing the Committee. If I have your permission, Sir, I will read out the names to the House, and if no further names are forthcoming, no ballot will be required.

The names are:

Rao Bahadur T. Rangachariar,
Mr. N. M. Samarth,
Mr. J. P. Cotelingam,
Mr. K. G. Bagde,
Mr. Ahmed Baksh,
Colonel Nawab Muhammad Ibrahim Ali Khan, and
Sir Henry Moncrieff Smith.

Mr. President: The question is that:

"Rao Bahadur T. Rangachariar, Sir Henry Moncrieff Smith, Mr. N. M. Samarth, Mr. J. P. Cotelingam, Mr. K. G. Bagde, Mr. Ahmed Baksh, and Colonel Nawab Muhammad Ibrahim Ali Khan be elected to serve on the Select Committee on the Standing Order on Petitions."

The motion was adopted.

THE MUSSALMAN WAKF REGISTRATION BILL.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I beg to move:

"That the Report of the Select Committee on the Bill to provide for the registration of wakf estates and the proper rendering of accounts by the mutwallis of such estates in British India be taken into consideration."

[Maulvi Abul Kasem.]

Sir, in doing so, I have to offer a few words of explanation to the House. The Bill which was introduced in this House and which was referred to the Select Committee had elaborate provisions for the control and management of these waqf estates. From the opinions that we received from the Local Governments, Government officials and public bodies, it appears that there was a great difference of opinion as regards the manner and method and the constitution of these controlling authorities and some objection was taken too about the details. Therefore, Sir, the Select Committee has decided to avoid not only the details about the constitution of controlling bodies but has left control out of the Bill itself. We have in this Bill, as it is now before the House, only confined ourselves to the registration of waqf properties and to the rendering of accounts by mutwallis. As unfortunately, human memory is very short, I have to repeat what I said on a previous occasion that this registration of waqf estates was absolutely necessary in the interests of these waqf properties because it has been found, and it is admitted also, that a large number of these waqf estates has passed out of the hands of the Muhammadans, and the purchasers of these estates who have in the majority of cases bought them for good money, when they are asked to return the same, raise the plea—and it is a justifiable and reasonable plea no doubt—that they have had them for good value and without notice. So now, what is proposed is that every mutwalli will now be compelled to register in a public office the full details of the waqf property. So that, if anybody in future advances any money on the mortgage of this property, or purchases any part of that property, he will do it with his eyes open and the Muhammadan community will have every right and chance to take it away from him whenever they want to. The second matter which is dealt with in this Bill, as it now stands, is that each mutwalli has to register the waqfnamah which lays down the conditions of the waqf and will have to submit an audited account annually before any public office for the inspection of any Muhammadans interested in the waqf estate. And these are the two simple provisions about which I think I will not be far wrong when I say there is almost unanimity of opinion from our sections. Whatever objections may have been raised to the method of control were in regard to investing some Government officials with executive powers and similar measures. But these have been done away with now. The only thing is that I and the Bill want that waqf properties shall be duly registered and we may have an opportunity of knowing what is a waqf property and what is not. And secondly, that the mutwalli, who is a trustee and only a trustee, and nothing more, may be made to submit an account of his income and his expenditure, so that the Mussulman public, which is at the present moment under the Statute law entitled to sue a mutwalli if he is guilty of misappropriation, may have the necessary information and facts before him before he proceeds to take action against the mutwalli. These are the only two provisions that now remain of the old Bill, and I think the House will have no objection to consider the proposals favourably. Before I take my seat, Sir, I might inform the House that the Select Committee had the advantage, in its deliberations when it considered the provisions of the Bill, of the experience and advice of the Honourable the Law Member of the Government of India. I mention this because he is not only the Law Member of Government and the Law Adviser of Government, if I may say so, but he is a distinguished Muhammadan lawyer and he has considered the Bill very carefully and we came to a

settlement that these are the only two important clauses that ought to be retained and the rest could be dropped out; that we ought to see how the Bill works and then we might take further steps, if necessary, on a future occasion. I think, Sir, I will be lacking in my duty, if at the same time I did not acknowledge my gratitude and my thanks to Mr. Wright, Secretary in the Legislative Department, for the trouble he has taken in redrafting this Bill. The Legislative Department has very hard work to do, what with Government Bills and with having to revise and redraft the amateur efforts of legislators like myself, they have had hard work to do in connection with my Bill. I have also to acknowledge my thanks to my Honourable friend Mr. Percival for the great trouble he has taken in considering the clauses of the Bill and drafting the same, and I hope that this House will receive this motion favourably.

Mr. Mahmood Schamnad Sahib Bahadur (West Coast and Nilgiris: Muhamadan): Sir, I may be permitted to say a few words about this Bill. Sir, this is a very useful piece of legislation, because all over India there are several religious and charitable endowments created by Muhammadans, the income of some of which is very large but of most very small. Still most of them are not properly managed by the mutwallis. The income is not devoted to the objects for which the endowments are created. And, if this Bill is passed, the Muhammadan public will be under a great debt of gratitude to those who have helped to pass it. And, of course, as was said by the last speaker, the Bill as it was introduced had many objectionable features; but now as it comes out of the Select Committee, it is shorn of most of these objectionable features, although there are some impracticable provisions which I hope, if some of the amendments are carried, will be removed. For instance, as I said, many of the waqf estates are very small. Even poor Muhammadans are anxious to secure salvation for their souls by dedicating their small holdings, and the income of such dedications is necessarily small. Sometimes it will be only Rs. 15 or Rs. 10 and if the accounts of these also are to be audited and auditor's fees are to be paid, from the income of such wakfs it will be very hard and the remainder left for the expenses of the object will be very little. Clause 3 provides that every statement of account shall, before it is submitted to the Court, be audited:

"(a) in the case of a waqf the gross income of which during the year in question, after deduction of the land revenue and cesses, if any, payable to the Government, exceeds two thousands rupees, by a person who is the holder of a certificate granted by the Local Government under section 144 of the Indian Companies Act, 1913, or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout British India; or

"(b) in the case of any other waqf (i.e., whose income is less than Rs. 2,000), by any person authorised in this behalf by general or special order of the said Court."

The Bill provides later on that for such auditing of accounts of income of small estates also fees has to be paid; if fees has to be paid for such auditing, then of course the income left will be very small. Besides that, there is a penalty clause also for not getting the accounts audited. I think there is an amendment in regard to that.

Mr. President: Order, order. I must ask the Honourable gentleman to reserve his remarks on these subjects till we come to the particular clauses on which they arise.

Mr. Mahmood Schamnad Sahib Bahadur: I hope that the House will pass the necessary amendments.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I am entirely in the hands of this Assembly in moving my motion that the Bill be re-circulated for the purpose of obtaining further opinion thereon. After I gave notice of this amendment Sir, I have been approached by many Members of this Assembly, including the mover of the Bill, and I am exactly in the position which I have stated. I find, Sir, there are good points in support of it, because it is better that the consensus of opinion from the Provinces should be invited further on the Bill. As I have said, I do not like to oppose the Bill in any way. Patience is a great virtue. But if the requirement of this Bill is so urgently welcome—my friend might say “the sooner the better; make hay when the Sun shines; a bird in the hand is worth two in the bush.” Again my friend may not be returned by his constituency to this Assembly again, because there will be a lot of difficulties and obstruction put up in the way of the Bill by inviting opinion from the Provinces, and as you know, Sir, to borrow from my Honourable friend Dr. Gour, the *ipsissima verba* of the speech that he had made this morning

Mr. W. M. Hussanally (Sind: Muhammadan Rural): May I rise to a point of order, Sir? I am afraid the Honourable gentleman is blowing hot and cold at the same time. I am not aware whether he is speaking in favour of the Bill or whether he is going to speak in favour of the amendment which he has put down on the paper. I think he ought to make up his mind whether to move the motion or not.

Mr. President: I was just going to insist on it by asking him myself. Does the Honourable Member move the motion for re-circulation or not?

Mr. K. Ahmed: The result will come out, Sir. If it is the opinion of the Honourable Members of this House

Mr. President: The Honourable Member must give me a direct answer. We have got a long programme for legislation before us to-day and I want to know whether he wishes the Bill to be re-circulated. If he does, he had better move the motion.

Mr. K. Ahmed: If the Government has no objection that the Bill should be re-circulated and further opinion invited. On that point, as I have said, patience is a great virtue. The Government of India tries its utmost to give the best consideration in all matters no doubt. I was also one of the Members in the Select Committee on this Bill and also was engaged for a couple of days in giving my best consideration to it. There is a minute of dissent by my Honourable friend Khan Sahib Abdul Quadir. There are a number of amendments on the agenda. There are 10 amendments on the paper. From the gist of these amendments it appears that it is not probably advisable to go on with the Bill at present, and I, Sir, should certainly think that it is advisable in the circumstances

Mr. President: I understand the Honourable Member is advancing arguments in favour of re-circulation. I ask him now to move the motion.

Mr. K. Ahmed: I am in the hands of the Government. I am in favour of circulation if they accept it; if they do not, then I withdraw it.

Mr. President: It is not for the Government to accept or to refuse. The opinion of the Government may assist the Honourable Member, but the decision rests with the House.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I have been asked for the opinion of Government on this question and I am quite prepared to give it. It will be remembered that when the Bill originally came before us, it involved the organisation of managing committees by Government and a very considerable amount of control to be directed by Government, and I may say at once that Government was opposed to any such proposal. That feature of the Bill has however now been excluded. The only new burden which the Bill now places upon Government is the receipt of accounts. For the rest, it will merely be for the Civil Court to take action on the lines of the Act of 1920 on the motion of persons interested in these wakfs. Therefore, from the point of view of Government, the Bill remains one entirely for the community. If they desire to see this system of registration applied to their accounts and are willing that these religious institutions should be compelled to submit those accounts to audit, we on our part are willing to stand aside and allow them to get their case through the Assembly without interference on our part. At the same time, I do not think, Sir, I should be doing my duty to the House if I do not state to it a certain fact which has just come to my knowledge. The representatives of one particular community in Bombay approached me as late as a few days ago with the complaint that the circumstances relating to the religious endowments in that community would not permit of the application of the Bill to them. I had to express regret that we had no previous notice of any such objection nor had it come before the Select Committee. But I wired that day to the Bombay Government asking them to give us its advice as to the attitude we should take on this particular subject as arising from the objections—if they were real objections—of that community. I have just received a wire in which the Local Government says: “This Government is informed that Muhammadan opinion generally is adverse to the whole Bill” and suggests the publication of the Select Committee’s report before proceeding further and have promised us a fuller report on the subject. I could not, consistent with my duties to my fellow-Members on the Select Committee and to the Bombay Government have refrained from laying this fact before the House. It is possible that the Bombay Government, in wiring to us, had in view only the original Bill and not the Bill with the very much restricted scope which is now before the Assembly. But if you will permit me, though perhaps it may not be strictly cognate to this point, I would go one step further. My remarks grow out of the fact which I have just mentioned that we have had placed before us very strong objections from one section of the community. It is our intention subsequently to propose an amending clause whereby Local Governments will be able to exclude religious endowments of any one section of the Muhammadan community. I state that fact now because it might clear discussion subsequently. I feel myself strongly that it is a wise precaution, for cases might arise which are not now before us and which have not been represented to us. We might be at considerable inconvenience if we were obliged at the request of Local Government to put forward an amending Bill.

Mr. K. Ahmed: As I say

Mr. President: I cannot allow the Honourable Member to make a second speech. Is the Honourable Member going to move his motion?

Mr. K. Ahmed: I have not finished my speech

Mr. President: If the Honourable Member is going to move his motion he can move it. I am not going to allow him to make a second speech.

Mr. K. Ahmed: I have been supported by the telegram sent by the Government of Bombay to the Honourable the Home Member. That is in my favour that the Bill should be re-circulated. Furthermore, there is one difficulty that arises as will appear from the preamble of the Bill, that is, that the mutwallis should render an account. To render an account means preparing it and preparing it means some money is necessary, and I may tell you, Sir, that the majority of the Muhammadan Members who are here to-day—I have been told directly by some of them—think that to spend the money that will be required to prepare an account is certainly against the wishes of the donor, but I am ashamed myself because I was convinced by the Honourable the Home Member when we were sitting in the Committee room No. A a few days ago that this was a necessary cost,—I did agree with my Honourable friend that this was a necessary cost just to keep an account, to buy paper and stationery

Mr. President: The Honourable Member cannot go into the merits of the question just now. He must move the motion for re-circulation.

Mr. K. Ahmed: Sir,

Mr. President: Order, order. The Honourable Member, if he is moving his motion, must address his argument to prove that there has not been sufficient consideration of the measure and that therefore it is desirable to elicit further opinion thereon. I hope he will confine his remarks to that point but I am prepared to stretch the point in his favour and to regard the Honourable the Home Member's speech merely as an interruption.

Mr. K. Ahmed: I move my amendment, Sir:

"That the Bill be re-circulated for the purpose of obtaining further opinion thereon."

Mr. President: The original question was:

"That the Report of the Select Committee on the Bill to provide for the registration of waqf estates and the proper rendering of accounts by the mutwallis of such estates in British India be taken into consideration."

Since which an amendment has been moved:

"That the Bill be re-circulated for the purpose of obtaining further opinion thereon."

Khan Bahadur Maulvi Amjad Ali (Assam: Muhammadan): Sir, I never dreamt that my friend Mr. Kabeeruddin Ahmed would ever move his amendment. He knows full well that it is a notorious fact that all mutwallis have been dealing with the wakf estates with an amount of dishonesty which up till now has not been detected by any Court of justice.

Mr. President: Order, order. Is the Honourable Member addressing himself to the motion for re-circulation? He has just referred to facts which he calls notorious. If they were notorious it is obvious that they do not need to be elicited by re-circulation.

Khan Bahadur Maulvi Amjad Ali: I am addressing my speech so far as to oppose the amendment of my Honourable friend. This Bill as originally drafted was not acceptable to the country because it was a hard measure as put by my Honourable friend Maulvi Abul Kasem, but after the opinions of the Local Governments were received and a Select Committee was constituted, the Select Committee, thanks to them, have made the Bill acceptable to the country by removing all objectionable clauses. Sir, there is nothing in the opinion of the Select Committee so far as this Bill is concerned, which is objectionable, and accordingly the Select Committee has recommended the passage of the Bill. Now, if this Bill goes again to the country for further opinion, the result will be that the Honourable Member who has moved this Bill may not be here any more and perhaps this Bill may not come before the House in the next Simla session, so that the whole object is going to be frustrated by this amendment which will do no good to the community, rather it will do immense harm to the Muhammadan community. Therefore I oppose this amendment.

Mr. W. M. Hussanally: I rise also to oppose the amendment that has just been proposed by my Honourable friend Mr. Kabiruddin Ahmed. The Bill as it has emerged from the Select Committee is a perfectly harmless measure so far as the mutwallis and wakfs are concerned. There can be absolutely no objection to the mutwalli being called upon to register his wakfnamah and file his accounts of income and expenditure from time to time. So far as those two points are concerned, there is an absolute certainty that the Local Governments and the public could have no objection, and my Honourable friend Mr. Kabiruddin Ahmed has advanced no reasons whatever in support of the amendment he has proposed. The measure that is now before us is of a very urgent character from the fact that several large wakfs have been misappropriated and the matter requires speedy remedy. If the Bill is re-circulated, it will take time and the very object that we have in view will be frustrated. My Honourable friend Maulvi Abul Kasem said that the Bill as it is now presented to the House has received the full support of the Honourable the Law Member. That being the case, I think there is absolutely no reason for re-circulating the Bill for further opinion. In regard to the opinion of the Government of Bombay which has been put before us by the Honourable the Home Member, so far as we are concerned I think there will be no objection on our part to give power to the Local Governments to exclude any particular sect of the community or any particular limits within their territory, and so far as we are concerned we can leave that matter safely in the hands of Local Governments. If any particular sect of the community do not wish that this Act should apply to them, it will be open to them to approach the Local Government concerned which for good reasons may exclude them from the operation of the Bill. To that I will have no objection, but I certainly have a very strong objection to the Bill being re-circulated on the grounds that I have just mentioned. I therefore strongly oppose it.

Maulvi Abul Kasem: Before the House comes to a decision on the amendment of my Honourable friend I beg to inform the House that the original Bill contained amongst others these two conditions about registration and the rendering of accounts. They were circulated and it took just two years for the Government to ascertain opinion and in this volume of papers that have been supplied to Honourable Members they will find an expression of opinion on these two provisions as well as on others. But

[Maulvi Abul Kasem.]

before I sit down I would remind my redoubtable friend Mr. Kabir-ud-Din Ahmed of the condition of the mosque in Maldah which has gone into waste and for which Lord Curzon and the Government of India offered Rs. 50,000 for repair but the mutwalli was not prepared to add Rs. 5,000 to it. (A Voice: "Rs. 60,000.") Government was prepared to pay Rs. 60,000. In this House questions are put about the ruin of mosques, their repairs and the use of the compound of mosque buildings by Government or by non-Mussalmans. There is a real grievance about this but I must say that if the Mussalmans want the Government to protect their religious institutions and their mosques, they ought to do everything that lies in their power to protect them from misappropriation and misuse by the so-called trustees. It has been said that there will be expense which the wakf donor never contemplated. I ask, did the donor ever contemplate that these trust properties or their income should be misappropriated by the mutwallis for their own use, for their own pleasures and for their own mischief. I would remind my friend Mr. Kabeer-ud-Din Ahmed of another mosque which lies near his door between the Malda Railway station and the English bazaar, a few yards from that station where the passengers are eaten up by tigers.

Mr. K. Ahmed: If I understand the Honourable Member

Mr. President: I allowed the Honourable Member to make a speech and a half but I will not allow him to make a second speech.

Mr. K. Ahmed: I was going to say, Sir

Mr. President: Is the Honourable Member going to withdraw his amendment or not?

Mr. K. Ahmed: Otherwise there was no necessity for my standing.

Mr. President: The Honourable Member can withdraw but cannot make a speech in doing so.

Mr. K. Ahmed: Since reference has been made and

Mr. President: The question is that the Bill be circulated for obtaining further opinion thereon.

The motion was negatived.

Mr. President: The question is:

"That the Report of the Select Committee on the Bill to provide for the registration of wakf estates and the proper rendering of accounts by the mutwallis of such estates in British India be taken into consideration."

The motion was adopted.

Mr. President: We will postpone the first clause (Short title, extent and commencement) till the end.

Khan Bahadur Maulvi Amjad Ali (Assam: Muhammadan): Before I move my amendment I would invite my Honourable friends of this House to very kindly listen to my submissions. With regard to the merits of the amendments I shall move one after another in due course. The amendment that stands in my name runs as follows:

"In clause 2(c) after the words 'appointed by a Mutwalli' the words 'or by the Court' be inserted."

I shall be very brief in making my submission. The word 'mutwalli' has been defined as follows:

"Any person appointed either verbally or under any deed or instrument by which a wakf has been created, to be the mutwalli of a wakf and includes a naib mutwalli or other person appointed by a mutwalli to perform the duties of a mutwalli and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property."

Now, my submission is that in line 6 after the words 'appointed by a mutwalli' the words 'or by the Court' shall be inserted. Disputes like this, namely, that if the donor makes no provision in the deed as to who will be mutwalli after the death of the existing mutwalli, may arise among the beneficiaries. For instance, I am a donor, and also a mutwalli. Under Muhammadan law, I fail to nominate my successor at my death bed, because suddenly I become unconscious and die. There is also no provision in the deed itself as to how this vacancy is to be filled up. Is that vacancy to remain vacant or to be filled up? Who is to fill it up? There is no provision in the deed itself. Secondly, you fail to nominate your successor. At this juncture the only remedy is to approach the Kazi. That is the Muhammadan law. It may be asked now, who is the Kazi? The District Judge has been held by the Honourable High Court of Calcutta to be the Kazi. I am myself a mutwalli of a certain wakf property and I had to approach the District Judge to appoint me a mutwalli because the last mutwalli could not nominate his successor. Nor was there any provision as to who would succeed. The difficulty arose and I had to approach the District Judge with a petition and I was appointed by him. In order to cover those cases this amendment is necessary. Now, Sir, it may be contended at least by one Member of this House that this argument may be met by the last sentence "any person who is for the time being administering any wakf property." I do not think this portion will meet my argument. Any person administering a property means any person who is already a mutwalli and administering. It is a present progressive tense. For instance, if the post of mutwalli falls vacant and there is no occupant of that post, then who is administering? There is nobody administering. So, I submit to this Honourable House that my amendment may be accepted as it is an innocent one and will at the same time prevent certain disputes to which reference has already been made by me. I think that my amendment will commend itself to the House. With these words I move my amendment.

Maulvi Abul Kasem: Sir, to save the time of the House I rise to say that I have no objection to accepting this amendment if there is no technical difficulty of a drafting nature, because I admit that a mutwalli may include a person appointed by a Court as mutwalli. Of course, not being a lawyer I cannot go into the details, but I am quite prepared to accept the amendment.

The Honourable Sir Malcolm Hailey (Home Member): Sir, we have considered this point on the drafting side and find the amendment not very appropriate as it stands. It would assume that a person was appointed by the court to perform the duties of mutwalli. Now, Sir, if I am correct the case which would arise is that under section 92 of the Civil Procedure Code the Court may have appointed a trustee. It is as such trustee that he would be performing the duties of mutwalli; and on the whole we think that the purpose of the Honourable Member would be best attained

[Sir Malcolm Hailey.]

by inserting the words a little further up in the sub-clause which would then run:

" 'Mutwalli' means any person appointed either verbally or under any deed or instrument by which a waqf has been created, or by a court,"

The reason for using that particular form of words (a Court instead of the Court) is that, under section 92 of the Civil Procedure Code it would not necessarily be the District Court which had appointed a trustee. If therefore the Honourable Member still feeling that the existing concluding words of the sub-clause are not a sufficient safeguard for him, I would suggest that after the word "created" be inserted the words "or by a court."

Khan Bahadur Maulvi Amjad Ali: I have no objection, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Further amendment moved:

"That in sub-clause (c) of clause 2, line 4, after the word 'created' the words 'or by a court' be inserted."

The motion was adopted.

Mr. Mahmood Schamnad Sahib Bahadur: Sir, I move:

"That to clause 2(e) the following be added:

'and includes the mosques and the other Moslem institutions referred to in section 4 of the Religious Endowments Act, 1863, as not falling within the control of the committee appointed under the provisions of the Act.'"

Sir, before 1863 all charitable and religious institutions were managed and supervised by Government through mutwallis. After that year the Government divested itself of the burden and under the Religious Endowments Act the institutions were divided into two classes, one falling under section 3, another falling under section 4. The institutions whose mutwallis were appointed by or whose appointment were subject to the control of the Government were those falling under section 3; and all the institutions whose mutwallis were only under the supervision of Government fall under section 4. Now, only the institutions falling under section 3 were placed under the control of the committee appointed under the Act; and the latter kind of institutions, that is, those under section 4, are not under the control of any committee or any other authority; they are not liable to render any account to anybody, and so large properties belonging to such mosques are misappropriated and the incomes are not properly applied to the objects for which they were intended. I therefore want that those institutions which fall under section 4 of the Act may also be included in this Bill, that is to say, section 2, sub-section (e) may be read with the addition which I have proposed. If that is done there will be no objection; it will do a lot of good in the management of such institutions and help the cause of charitable foundations which otherwise fall into disuse. Many such institutions in my own district have been ruined; the properties have been misappropriated and sometimes alienated while the buildings are crumbling to ruin. So I hope my amendment will be accepted.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, I venture to submit to the House that the amendment moved by my Honourable friend is entirely unnecessary. From the definition of

"wakf" as embodied in this particular sub-clause it will be clear to Honourable Members that wakf means the permanent dedication by a person professing the Mussulman faith of any property for any purpose recognized by the Mussulman law as religious, pious or charitable, but does not include a certain kind of wakf mentioned in the concluding words of the sub-clause ordinarily known as "wakf-alal-aulad" or family endowment. It will thus be clear that every kind of wakf recognized by Muhammadan law, whether of a religious or charitable or any other character, falls within the purview of this Act in so far as registration and rendering of accounts is concerned. It follows therefore that wakfs which are outside the particular section of the Act of 1863, to which my Honourable friend has referred, do fall, by reason of this definition, within the purview of this Act. Where then is the necessity of amending the definition in the manner in which my Honourable friend proposes? Such an amendment cannot but create confusion. The definition as embodied in the Bill as it has emerged from the Select Committee, I submit, is all-embracing, and in consequence the amendment put forward by my Honourable friend is absolutely unnecessary.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 2, as amended, stand part of the Bill.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Before you put clause 2, Sir, to the vote, I request that I may be permitted to suggest that the definitions may be made applicable to all religious and charitable endowments. It appears to me that this Bill can be easily made applicable to all religious and charitable endowments. It will be a very useful Bill, and I, therefore, submit that this extension may be sanctioned by the House.

Mr. President: That is entirely outside the scope of the present Bill. The Honourable Member proposes to bring under this Bill religious and charitable endowments other than those of the Mussalman community, and therefore, it is entirely outside the scope of the measure.

Clause 2, as amended, was added to the Bill.

Mr. President: Clause 3.

Mr. Mahmood Schamnad Sahib Bahadur: Sir, I beg to move:

"That in clause 3 (1) (a) after the word 'property' the words 'and also of the property purchased from the income of the Waqf property' be inserted and the necessary consequential changes be made."

The income of many institutions which have got large estates are not fully utilised for the benefit of the institutions; from the surplus income other properties are purchased and they are enjoyed as the property of the mutwalli. If this Bill is not made applicable to those properties, their accounts will not be rendered. Therefore, I submit that those properties which are purchased from the income of the Wakf properties should also be included.

The Honourable Dr. Mian Sir Muhammad Shafi: I venture to submit to the House again that this amendment too is entirely unnecessary. It is obvious that the property in the hands of a mutwalli being Wakf

[Dr. Mian Sir Muhammad Shafi.]

property, its income is also Wakf and property purchased from the income of this property must necessarily be treated in law as Wakf property. The amendment, therefore, is entirely unnecessary.

Maulvi Abul Kasem: I quite appreciate, Sir, the remark which has just fallen from the Honourable the Law Member that property itself ought to include the property purchased from the income of the Wakf property, but I would just tell him, Sir, that in many cases the properties purchased from the income of these Wakf properties are not admitted to have been purchased from that, unless we can prove it. In that case to make it more clear, if we could add this definition . . . (Voices: "No, no.") Of course I leave it to the House.

The Honourable Dr. Mian Sir Muhammad Shafi: That, I submit, is a pure question of fact in each case. There will be an issue in each case whether that property has been purchased out of the income of Wakf property.

(Mr. Mahmood Schamnad Sahib Bahadur then got up.)

Mr. President: Does the Honourable Member want to withdraw his amendment?

Mr. Mahmood Schamnad Sahib Bahadur: No.

Mr. President: I will then put the amendment.

The amendment was negatived.

Clauses 3, 4 and 5 were added to the Bill.

Mr. President: The question is that clause 6 stand part of the Bill.

Maulvi Abul Kasem: There is an amendment by Maulvi Abdul Quadir, Sir.

Khan Sahib Maulvi Abdul Quadir: I beg to move, Sir:

"That in clause 6, for the words 'Every statement of accounts shall, before it is furnished to the court under section 5, be audited' substitute the following: 'Any person may, after a statement of accounts has been furnished to the court under section 5, apply to the court that such statement of accounts be audited and on such application the court shall direct that it be audited'."

Sir, I am against compulsory pre-auditing of the accounts to be submitted by the mutwallis. They can be so audited after the public interested in the proper management of the various Wakf estates are satisfied that the accounts have been fudged up and that they should get them audited for the purpose of finding out as to how and where the money has been spent; otherwise, Sir, if the House makes yearly audit incumbent on the mutwallis, there would be diversion of a considerable portion of the revenue from the charitable purposes for which the donors originally intended. This would be a regular tax on all Wakf property every year. It is quite undesirable to levy such a tax unnecessarily for all time to come. I therefore oppose the levying of such a tax and move my amendment. I submit, Sir, that if this amendment is accepted, it would have the effect of doing away with the yearly audit of the statement of accounts to be submitted by the mutwallis. Otherwise they will have to submit yearly accounts and engage the services of a trained auditor, and that would be an unnecessary charge

on all waqf properties, which is not desirable. It would be resented and the use of the revenues of the waqf would be diverted. So I oppose this and submit this amendment which I hope will be accepted.

The Honourable Sir Malcolm Hailey: As we have only just seen this amendment and as, to a certain extent, we shall be answerable for the drafting, might I in the interests of the House ask the Mover of the amendment if it exactly expresses his own intention? His proposal, if we take the wording of the amendment, is that any person, after a statement of accounts has been filed, may apply that it should be audited. Does he mean that any person, for instance myself who am not a Muhammadan, may force the Mutwalli to have his accounts audited? Or was it his intention to repeat in effect the provision which we have in the Act of 1920 which allows an interested person to apply?

Khan Sahib Maulvi Abdul Quadir: I mean an interested person.

The Honourable Sir Malcolm Hailey: If the intention is an interested person, the wording must follow that intention.

Mr. President: Does the Honourable Member desire the insertion of the word "interested" before "person"? If so, it ought to be moved as an amendment.

Khan Sahib Maulvi Abdul Quadir: Yes.

The Honourable Sir Malcolm Hailey: We can supply the Honourable Member with the wording which it will be necessary to adopt. The wording which I assume would be adopted, subject to the draftsman, is that of section 3 of Act XIV of 1920.

Mr. President: Perhaps we may postpone consideration for a moment unless the form of words is actually ready for submission to the House in the form of an amendment.

Khan Bahadur Saiyid Muhammad Ismail (Patna and Chota Nagpur cum Orissa: Muhammadan): Sir, I submit that every Muhammadan is not in sympathy with the amendment moved by Maulvi Abdul Quadir, and I would suggest that the amendment be drafted for the consideration of the House and it would then be possible to the House to consider it on its merits.

The Honourable Sir Malcolm Hailey: I would suggest that the House might discuss the matter on the substance, understanding that the word "interested" will subsequently, if the substance is approved, be substituted by a more correct form of wording.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I beg to oppose the amendment moved by my learned friend on the ground that it would turn the proposed legislation into a sort of Homeopathic pill of legislation. I submit, either have a law or have no law. There is no use having a middle course. If my Honourable and learned friends desire that there should be only a nominal registration, I personally have no objection, but the only reason I oppose this amendment is to draw the attention of the Honourable Members of the Assembly to the fact that, by accepting that amendment, the proposed law will lose all its force. Secondly, I may inform Honourable Members that I have a mind to bring forward subsequently, if possible, a Bill which might apply to Hindus, and

[Lala Girdharilal Agarwala.]

if this principle is adopted, the same principle will have to be accepted for the Hindus, and I am not prepared for that. On these grounds, Sir, with the greatest respect for Muhammadan sentiments, I strongly oppose this amendment.

Mr. W. M. Hussanally: Sir, I rise to do the same and for exactly the same reasons as those advanced by my friend Lala Girdharilal Agarwala. The matter was very fully considered in the Select Committee and we came to this unanimous conclusion. No reason has been shown by my friend Maulvi Abdul Quadir for upsetting the decision we arrived at in Select Committee, and as this Bill is likely to be applied to all communities, in the near future I think we ought to come to an understanding which will be applicable to every kind of charitable endowment.

Khan Bahadur Sayid Muhammad Ismail. Sir, I rise to oppose the amendment moved by Maulvi Abdul Quadir. As a Muhammadan interested myself in the management of a religious waqf and also of a charitable waqf property I offer my support most unhesitatingly to clause 6 of the Bill as drafted by the Select Committee. After mature consideration if the House is really anxious that Muhammadan property should be protected from mismanagement and misappropriation of its income from abuses of dishonest Mutwallis, then the only safeguards which have been proposed are embodied in the provisions of the Bill. If any amendment of clause 6 as is suggested is made, the Bill will be of absolutely no effect. Then what will remain will be the simple registration of the waqf property with a copy of the *waqfnamah* filed in the Registration office. Without compulsory provision for the auditing of the accounts there can be no check over the accounts submitted by the Mutwallis. The audit of accounts is absolutely necessary. I therefore very strongly oppose this amendment and support the provision of clause 6 of the Bill as it stands.

The Honourable Sir Malcolm Hailey: I only wish to speak for the assistance of Members of this House in the matter. I recognise that the question whether these trusts should be audited or not is largely one for the community, but I should like to point out to Members of this House that there already exists in our Legislature a provision which allows an interested person to apply for audit. That is to say section 3 of Act XIV of 1920, the words of which run that an interested person may obtain an order embodying a direction that the accounts of the trust shall be examined and audited. We already have this provision for audit in our law, so that, if the Honourable Member's intention, as embodied in his revised amendment, is carried out, it will be merely repeating an existing section of the Act of 1920.

Khan Sahib Maulvi Abdul Quadir: I submit, Sir, that it is not my intention that they should not be audited. I take objection to the fact that they should be always audited before they are submitted to the Court in which they are registered. If the accounts are to be submitted after they are audited, that would entail a charge, which, I submit, is unnecessary. This is not necessary in all cases, because we know there are only certain estates in which the revenues are misappropriated. Now, the public or any Muhammadan who is interested in waqfs knows in what estates the revenues are misappropriated, so, after the statements are submitted to the Court in which the estates are registered, he can apply . . .

Mr. President: Order, order. I allowed the Honourable Member to speak under a misapprehension. I thought the Honourable the Home Member had moved an amendment to his amendment. I must now call upon Maulvi Abul Kasem.

Maulvi Abul Kasem: Personally speaking, I have no objection to accepting this amendment, because it will practically mean that, if anybody wants to get the accounts audited, he will have to take action either under this Act or the Act of 1920. I might say that the main objection of my friend Maulvi Abdul Quadir is that there will be a recurring expenditure and a charge on the waqf property. May I submit to him and to the House that the auditing of accounts is a necessary charge on all properties. If you want to save money by avoiding audit, then I think the Government of India can save a large amount of public money by giving up their Audit Department; but that is not practicable. The object of making the mutwalli submit an audited account of income and expenditure was to ensure that the mutwalli will always take care not to submit what has been called in this House "faked" accounts of his income and expenditure, and the dread of having to face an auditor will make him keep his accounts at least in a more decent form than he would otherwise do. Unless there is this provision for the auditing of accounts, I think a mutwalli will be as free to misappropriate and misutilize trust funds as he has been in the past. Of course this expenditure need not be incurred by a small estate. Here the discretion is left to the court to certify anybody to audit the accounts and he can give this certificate to a *muharror* or a pleader who is specified. I think my friend Maulvi Abdul Quadir will be well advised to withdraw his amendment, because that will be the only possible check that this law will bring to bear upon the conduct of the mutwalli and upon his expenditure of public trusts. I may tell my friend and the House that, according to Muhammadan law, which has been much referred to, a waqf is nobody's property, it is public property and it should, I think, be willing and agreeable to pay the cost of audit.

The amendment was negatived.

Clause 6 was added to the Bill.

Khan Bahadur Maulvi Amjad Ali: Sir, in moving this amendment I would like to inform the House that the Bill as originally drafted contained a provision to enable anyone interested in a Waqf to file a suit against a Mutwalli for misbehaviour; but unfortunately the Select Committee has not thought fit to retain this clause to which I refer—No. 20 of the original Bill. That clause as it was drafted ran as follows: as Honourable Members of this House may not have the original Bill with them, I will read it out:

"20. Notwithstanding anything contained in any law for the time being in force, any person interested in any Waqf or the trusts relating thereto may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court, the Mutwalli of such Waqf or the members of Central Committee or any District Committee appointed under this Act for any misfeasance, breach of trust or neglect of duty committed by such Mutwalli, member of Committee, or local Agent in respect of the Waqf or the trusts vested in or confided to them respectively, and may in such suit pray that the plaintiff himself be appointed Mutwalli or that the Court may appoint any other person to be the Mutwalli and the Civil Court may—

(a) direct the specific performance of any act by the Mutwalli, member of Committee or local Agent,

[Khan Bahadur Maulvi Amjad Ali.]

- (b) decree, damages, and costs against such *Mutwalli*, member of Committee or local Agent, and
- (c) direct the removal of such *Mutwalli*, member of Committee or local Agent, either on grounds set forth in the plaint or on any other grounds that to the Court may appear just and proper."

The Honourable House is aware that the object which actuated my Honourable friend Maulvi Abul Kasem to take the trouble of presenting this Bill to this House was to bring the *Mutwalli* to his knees in case of misdeed, misfeasance, malfeasance, malversation or other neglect of duty in respect of any *Waqf*. *Mutwallis* often consider themselves the owners of the *Waqf*. They do not consider that they are simply the agents of the donors. The *Mutwallis* thus mismanage the property in any way they think fit. Now it is to put a check on these things that this legal measure has been devised. But I find to my greatest pain and disappointment that even if this Bill is passed in its present form, the *Mutwalli's* misbehaviour will remain where it is now. The only thing this Bill has sought to enforce is to compel the *Mutwalli* to submit to court first of all a deed of *waqf*, a schedule of the *Waqf* property, an account of income showing receipts, etc. For instance, the *mutwalli* submits his accounts, and the account submitted by him shows that he has been spending the income of the property in his own way on his own account. How can you punish him or bring him before a court for punishment for his misbehaviour? The Bill

under consideration makes no provisions for that. What is the advantage gained if this Bill is passed? For instance, I am a *mutwalli*; I am asked to submit accounts; I submit accounts; very well; I say that I have appropriated Rs. 2,000 to my own account. I am bound to submit a true statement of account and I do so, and that is all; I have submitted a true account saying that I have spent this amount. Is there any provision of law under the Bill to punish that conduct? Is there any control in this Bill? Why are you going then to pass this Bill? For no earthly reason; only for this purpose, to compel me to submit to the court of the District Judge a copy of my account. I have been dealing with this for the last 20 years. In my district I make bold to say that, ever since I have joined the Bar, I have been dealing with hundreds of cases of this character; sometimes I have opposed the appointment of a *mutwalli*, sometimes I have supported it; at last my turn came and I was appointed. However this law under debate is altogether defective. I am not prepared to agree to all the provisions. You are always saying that you are going to save the *waqf* property of a pious Mussalman who gave his property for the purpose of general charity and you are requested by this Bill, by the author of this Bill, to accept it simply for the purpose of saving the property from the hands of dishonest *mutwallis*. That is the object. Now, Sir, it struck the author of this Bill before, to put in this clause, but unfortunately I find that when the matter came before the Select Committee it was thrown out. Why? I do not understand the reason why it was thrown out; there were so many Mussalman members of the Select Committee, including the author himself; why did they agree to this proposal that this clause should be deleted from the Bill and to make the proposed Bill altogether infructuous? I submit, therefore, that such a provision should be made in this Bill.

Now, Sir, before I sit down after moving my amendment I would seek your permission to say one word for the edification of the Honourable House.

This Bill seeks to achieve something. By that something I mean that under the Muhammadan law, as Honourable Members probably know, there are three classes of *waqf*, viz., purely public, *quasi*-public and purely private. These are the three classes of *waqfs* recognised by the Muhammadan jurists. So far as the purely private *waqf* or *quasi*-public *waqf* is concerned, this Bill has nothing to do with it. It is excluded from the operation of this Bill. It only deals, as Honourable Members are aware, with public *waqf*, or in other words, with *waqfs* in which the donor has dedicated all his income for the use of the public, and has not kept even a single pice for the use of his descendants or for himself. Now, so far as the other two *waqfs* are concerned, when the donor gives a certain amount to his descendants and certain amount to charitable purposes, it is a *quasi*-*waqf*, and when he gives the entire benefit to his descendants, it is a purely private *waqf*. That *waqf* was validated by the Act of 1913 when the *Waqf* Validating Act was passed. Now, Honourable Members are concerned only with the purely public *Waqf*. Before the passing of the Civil Procedure Code of 1908, I find that the District Judge—I have already said that the District Judge is a *Kazi* under the Mahomedan law—was dealing with disputes arising out of *Waqf* properties as a *Kazi*, but by a recent provision of the law I find that the powers of the District Judge as *Kazi* have been curtailed with regard to the procedure to be followed in any suit or in any application in respect of *Waqf* property in which purely public interests are concerned. When there is a litigation, when there is an application or a suit before the District Judge in regard to a dispute arising out of a public *waqf*, I find the powers of the District Judge with regard to procedure have been curtailed by section 92 of the Civil Procedure Code. I will read the section with your permission, Sir:

"In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate to obtain a decree, removing any trustee—in this case *Mutwalli*—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section."

This being the law, this being the stringent law, would you think for a moment that, where there is a *waqf* of the nature of a purely public

[Khan Bahadur Maulvi Amjad Ali.]

character, anyone of the Muslim public will think it necessary on his part to institute a suit of this nature to the District Court? How is he interested? You know, in the first place, that in a public trust nobody is interested individually. In a public trust everyone is interested only as one of the Members of the public. Everybody's business is nobody's business. So, in this case would you think that in the case of a public waqf, as contemplated by this Bill, if the *mutwalli* is found guilty of breach of trust or any other neglect of duty, any one Mussalman in the whole of India would come forward of his own free will to pay a large sum of money from his own pocket! Why should he? He is not personally interested in the property; he will not gain anything thereby. It is in the interest of the public. The usufruct will go to the public and to no particular individual. So, not a single Muhammadan from any part of India will come forward with a suit like this because of the fact that he is not individually interested, he will not pay a single farthing out of his own pocket. People are not so liberal. This is one ground, Sir, why, when a *mutwalli* of a public trust is found guilty of misconduct, his action is not sought to be brought before the Court. This has been my experience for the last 20 years. This is one ground.

Let me point out another ground why this provision of law, that section 92, is an insuperable bar in the way of bringing a suit against a *mutwalli* in the Court. The second ground is that he has to go to the Collector or if it is a Presidency town, then he has to go to the Advocate General to obtain his sanction. This is a condition precedent to the filing of the suit, under section 92 of the Civil Procedure Code,—before instituting a suit, he must go to the Advocate General or to the Collector for permission to institute a suit. Would anyone think that any human being is so generous as to spend large sums of money, to go to the Advocate General to institute a suit simply to punish the dishonest *mutwalli*. I do think there is none. It might be contended that instead of going to the Advocate-General, one can go to the Collector for permission. Yes, one can go to the Collector for permission. But who will go to the Collector for permission? There also the same question arises, i.e., spending money. If in seeking permission a man has got to spend money, he may not go to Court at all. So, I think this provision of law stands in the way of bringing dishonest *Mutwallis* before the Court of the District Judge for punishment for his misbehaviour. This law is very stringent one whereas the Muhammadan law which is in force in this country is not so stringent. In the case of *quasi-public* waqfs, in the private waqfs, the parties interested and aggrieved by the conduct of the *Mutwalli* run to the Court of the District Judge and file petitions against him and the District Judge entertains their petitions and adjudicates upon them. There it is only a question of petition. This law under consideration does not make any provision of that kind. This Bill makes the aggrieved party take protection under section 92 of the Civil Procedure Code, which is impracticable and nobody will ever think of doing it. I therefore submit to this Honourable House that if it really desires to punish the dishonest *Mutwalli* and save the trust property, it should make some easy provision as was made by my friend, the author of this Bill. But he put it "suit", but in my amendment I have "application". If you put in "suit", who will care in this world to pay a large amount on stamps? There are properties yielding crores and lakhs. Who will care to pay the necessary amount on stamp? Nobody is personally interested, as I have already submitted to

you. You must make some provision which will make this Bill acceptable to the country and at the same time useful to the country. You have got something which is not at all useful for the purpose for which it has been brought here, namely, to bring the dishonest *Mutwalli* to book. By the present provision you have not made any provision to safeguard the interests of the property, so to say. You are simply by this provision compelling him to go to the District Judge and file an account. It may be that he has purchased some beer for a certain amount of trust money as a luxury. How are you to punish him for this conduct of his? This Bill has made no provision, and as I have already submitted that procedure is impracticable. No one having no personal interest would have recourse to protection under section 92 of the Civil Procedure Code. If you want to save Muhammadan trust property which has been vested in the *Mutwallis*, if you really wish to do it, as I feel in my heart of hearts should be done, then I hope that this House will be very pleased to accept my amendment, which runs in these words:

" Clause 7 be re-numbered as 7 (2) and the following new sub-clause (1) be inserted before sub-clause (2) in the following terms:

(1) Notwithstanding anything contained in any law for the time being in force, any person interested in any Waqf or the trust relating thereto, may, without joining as party any one interested therein, and without obtaining previous sanction under section 92 of the Civil Procedure Code of 1908, file a petition before the Court against a *Mutwalli* for any misfeasance or breach of trust committed by such *Mutwalli* or for his any other improper conduct in respect of the Waqf property of which he is the *Mutwalli* and may, *inter alia*, pray that either the applicant or any one interested in the Waqf be appointed *Mutwalli* and the Court may—

- (a) direct the removal of such *Mutwalli* and appoint any one in his place; or
- (b) direct the specific performance of any act by the *Mutwalli*; or
- (c) grant any other consequential relief which the Court may, under the circumstances of each case, deem just and proper."

This is my amendment. Before I resume my seat I may say that though the Select Committee have made the Bill acceptable to the country, unfortunately they have lost sight of this salutary provision of law for which the dishonest *Mutwallis* would never dare commit any act of breach of faith so far as the waqf properties are concerned, and if any Honourable Member of this House opposes this amendment, I think he will be doing injustice to the Muhammadan community. There should be some provision under this Bill under which the dishonesty of the *Mutwalli* can be punished by the District Judge. With these words I move my amendment before the House. The amendment is worded very carefully and I hope it will commend itself to the acceptance of the House.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, by the amendment now before the House my Honourable friend seeks to get rid of the provision embodied in section 92 of the Code of Civil Procedure whereby the previous sanction of the Advocate General or of the Collector under section 93 is necessary in order to enable a person to institute a suit for the reliefs mentioned in that section. I venture to submit to the House that the provision embodied in section 92 is a very wholesome provision and in support of that contention I cannot do better than cite from a judgment of

[Dr. Mian Sir Muhammad Shafi.]

the Calcutta High Court reported in I. L. R. 24 Cal. 418. This is what the learned Judges of the Calcutta High Court say:

"The real object of the special provisions of section 539 seems to us to be clear. Persons interested in any trust were, if they could all join, always competent to maintain a suit against any trustee for his removal for breach of trust; but where the joining of all of them was inconvenient or impracticable it was considered desirable that some of them might sue without joining the others, provided they obtained the consent of the Advocate General or of the Collector of the District; and this condition was imposed to prevent an indefinite number of reckless and harassing suits being brought against trustees by different persons interested in the trust."

A wholesome provision like this, I venture to submit, is absolutely essential in the interests of justice and to prevent frivolous suits by any one and every one who chooses to come into the court in cases of this kind. The object of Maulvi Abul Kasem's Bill is twofold. In the first place it seeks to secure registration of Mussalman waqfs and in the second place he seeks to secure the publication and audit of accounts once a year, the object being that instead of groping in the dark as is the case at present, those who are interested in the maintenance and welfare of these charitable and religious endowments may have furnished to them materials upon the basis of which, should the trustee misappropriate, they may be able to go to the court and ask for the reliefs which are mentioned in section 92 of the Civil Procedure Code. The accounts rendered under this Act by the trustees once a year will enable persons interested in the maintenance of these charitable and religious endowments to see that the trustee is administering the property in the right way and should the accounts disclose to them any ground for a reasonable relief, then they will be in a position to go to the Collector or the Advocate General and on the basis of the proof which they have obtained from the statement of account filed in the court by the trustee under this Act, to obtain the previous sanction which is necessary for the institution of these suits. To go beyond this in this particular enactment, I submit, would be entirely unnecessary as well as undesirable. Further you will see according to section 6 of the Charitable and Religious Trusts Act of 1890, if a trustee without reasonable excuse fails to comply with an order made under sub-section (5) of section 5, such trustee shall without prejudice to any other penalty or liability which he may incur under any law for the time being in force be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure, 1908, and any such suit may so far as it is based on such failure be instituted without the previous consent of the Advocate General, so that if the case comes within the purview of section 6 of the Act of 1920 no previous sanction of the Advocate General will be necessary. On all these grounds, I venture to submit that whatever may be the motive underlying the amendment which has been placed before the House, and I have not the slightest doubt that the motive is an excellent one, the amendment is both unnecessary and undesirable. If the trustee renders correct accounts, correct in the manner described by my Honourable friend, that is to say, if he marries his own son or his own daughters or his own brother out of assets in his possession belonging to the charitable or religious endowment, then I can assure my Honourable friend that that trustees will not remain Mutwalli of that endowment for long. If he imagines that by rendering correct accounts in that manner he is discharging himself of the liability and of the duties which are cast upon his shoulders by the law of wakfs as ordained by the laws of Islam, then I am afraid he will be labouring under a hallucination, and I have not the slightest doubt he will soon realize that persons interested

in the maintenance of that wakf can without any difficulty go to court and obtain his removal.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Clause 7 was added to the Bill.

Clauses 8 and 9 were added to the Bill.

Khan Bahadur Maulvi Amjad Ali: I move:

"That in clause 10 the words 'with imprisonment which may extend to three months, or' be deleted."

(Cries of "Withdraw, withdraw.")

Before crying "withdraw, withdraw" will Honourable Members be pleased to listen. My amendment relates to certain drastic measures proposed by this Bill. I want to convince the House and I won't sit down till I convince the House of the truth and the force of my argument before this Honourable House. It is provided that if a Mutwalli is remiss in submitting accounts, on the first occasion he is to be punished with fine. If he is guilty of the same thing for a second or third time, he may be punished with imprisonment for three months or with fine which may extend to a thousand rupees. Now, in the first place, the word "imprisonment" is not qualified; it may be either rigorous or simple. In most sections of the Penal Code providing imprisonment for offences provision is made for simple or rigorous imprisonment. But here power is vested in the court to punish a Mutwalli with imprisonment which may be either simple or rigorous. So on this ground it is objectionable that a Mutwalli who has failed in filing the account should undergo hard labour. Secondly, imprisonment is not necessary at all in my humble opinion. For Honourable Members know that a guardian appointed by a court to administer a minor's property who may remiss in his duties is liable only to a fine. There is no provision in that Act for punishing him with imprisonment. So, I think, this provision in the measure before us is very drastic. Fine will be quite sufficient in my opinion. The law says that he may be punished with fine which may extend to Rs. 2,000. That I think will quite meet the requirements of the case. Is not this measure a drastic one? I hope Honourable gentlemen will agree with me and throw out this provision, so that the Muhammadan people of India may accept the Bill with some amount of eagerness; otherwise when people go through the Act, they will see that a Mutwalli is liable to be punished with imprisonment in addition to fine and they will not like it. It will be difficult for donors to find Mutwallis. Who will come to do service for nothing? The Mutwalli will accept it so long as there is no risk in it. He would not get anything beyond his allowance. His children would not get anything. Who will be such a fool as to undertake this business of the Mutwalli in this way? This is a most drastic measure indeed. In the interests of the people of this country this provision should not be allowed to stand, and my submission is that such a provision is altogether uncalled for and unwelcome, and I hope that my submission will commend itself to the House. With these few words, I move my amendment.

Mr. President: The original question was that clause 10 do stand part of the Bill.

Since which an amendment has been moved:

"That the words 'with imprisonment which may extend to three months, or' be omitted."

The question is that that amendment be made.

The Assembly divided:

AYES—45.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Bhanja Deo, Raja R. N.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Bradley-Birt, Mr. F. B.
Bridge, Mr. G.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Ghulam Sarwar Khan, Chaudhuri.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jafri, Mr. S. H. K.

Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Jejeebhoy, Sir Jamsetjee.
Latthe, Mr. A. B.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Singh, Babu B. P.
Ujagar Singh, Baba Bedi.
Venkatapatriaju, Mr. B.
Vishindas, Mr. H.
Webb, Sir Montagu.

NOES—23.

Abdul Majid, Sheikh.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Aiyar, Mr. A. V. V.
Ayyangar, Mr. M. G. M.
Basu, Mr. J. N.
Das, Babu B. S.
Faiz Khan, Mr. M.
Faridoonji, Mr. R.
Gour, Dr. H. S.
Holme, Mr. H. E.
Hussanally, Mr. W. M.

Joshi, Mr. N. M.
Man Singh, Bhai.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nag, Mr. G. C.
Percival, Mr. P. E.
Shahab-ud-Din, Chaudhri.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.

The motion was adopted.

Clause 10, as amended, was added to the Bill.

Clause 11 was added to the Bill.

Mr. S. K. Barodawalla (Bombay City: Muhammadan Urban): Sir, on the assurance given by the Honourable the Law Member that he is going to provide that the Local Governments will be empowered to exempt any community that they like from the operation of this Act, I beg leave to withdraw this amendment.*

Clause 12 was added to the Bill.

Mr. President: As a matter of fact, the new clause to be moved by the Honourable the Law Member covers the point raised in the next amendment.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, I beg to move that a new clause, clause 13, be added, as follows:

"13. The Local Government may by notification in the local official Gazette exempt from the operation of this Act or of any specified provision thereof any *waqf* or *waqfs* created or administered for the benefit of any specified section of the Mussalman community."

* "At the end of clause 12 of the Bill the following be added:
'(c) apply to the Dandi Bohra (Muhammadan) community'."

The Honourable Members will, I think, see quite easily the object of this amendment. Administration of trusts is a provincial transferred subject in charge of Ministers and, therefore, it is wise that, in so far as the actual working of the two main principles embodied in the present Bill are concerned, the fullest liberty should be left to the Ministers to apply those provisions. There may be in certain provinces some sub-sections of the Moslem community who stand on an entirely different footing from the rest of the community with regard to the position as well as the administration of trusts which they may have created. It is prudent in these cases to leave it to the Local Government, should the circumstances of a given province or *waqf* so require, liberty to exclude that *waqf* or those *waqfs* from the purview of this Bill. Such a liberty of action to the Local Government is in the best interests of the community itself.

I hope, therefore, that the House will accept this amendment.

Mr. W. M. Hussanally: If the Honourable Member will permit me, I would like to add a little proviso.

"with the consent of the local Legislature."

The object I have in view is this that whereas I am not—against Bohras being excused from the operation of this Act, it is likely in the near future that this Act will be made applicable to other endowments besides Mahomedan and in that case a difficulty will arise, and that is this, that in certain cases while a particular sect may like that a particular endowment may evade the operation of this Act, the general community may not like it. Therefore if the matter is discussed in the Local Legislatures and thereafter the exemption is made it will be in the interests of everybody; and that is why I suggest that amendment.

The Honourable Dr. Mian Sir Muhammad Shafi: I suggest to my Honourable friend, Mr. Hussanally that the Minister being in the discharge of his ordinary duties responsible to the Local Legislature, is not likely to take action under this section unless he fully realises that in that action he is supported or will be supported by at least the majority of the Local Legislature. In a matter of this kind to add such a proviso as is suggested by my Honourable friend, is, I think, undesirable.

Lala Girdharilal Agarwala: Sir, I want simply to say one word. I am greatly thankful to the Honourable the Law Member for his amendment which I suppose, will cover a large number of cases, but may suggest a word to be added to that amendment—"may exempt or restrict" from the operation of this Act. The object is that there are some Waqfs belonging to the Shia Community and they would not like that persons who do not belong to their own community should take action under this Act. There are Waqfs belonging to other communities also who live in air-tight compartments and who do not like to be interfered with by persons belonging to other communities. So if Waqfs are totally exempted that will not be quite sufficient; but if the application of the Act is restricted in the way I suggest, it will meet the case. My object is that in the application of this Act, certain Waqfs may either be totally exempted from the operation of the Act or that its operation might be restricted, and that was the reason I put forward my own amendment:

"Nothing herein contained shall authorise any Mussalman to take action under this Act in regard to Waqfs of a sect to which he does not belong."

Mr. President: I see that the Honourable Member does raise a somewhat different point from that raised by the Honourable the Law Member. The Honourable the Law Member's new clause empowers the Local Government to exempt any section of the community from having the Act applied to it at all. The Honourable Member's point is different. He does not want the provisions of the Act set in motion against one sect by persons belonging to another sect, which is a different question.

Mr. K. C. Neogy: Sir, I rise to a point of order. The Honourable the Law Member not being a Member of this House, is he entitled to move an amendment?

Mr. President: The Honourable Member is quite right.

The Honourable Sir Malcolm Hailey: Sir, we seem to have fallen into error on that point. My Honourable friend, Sir Muhammad Shafi, is so well known in this House that we regard him as one of ourselves; but if you will allow the amendment to stand in my name, I shall be grateful.

Mr. President: The question is:

"That the following new clause be added to the Bill:

"13. The Local Government may by notification in the local official Gazette exempt from the operation of this Act or of any specified provision thereof any Waqf or Waqfs created or administered for the benefit of any specified section of the Mussulman community."

The motion was adopted.

Lala Girdharilal Agarwala: I beg to move that a new clause be added at the end, namely:

"13. Nothing herein contained shall authorize any Mussalman to take action under this Act in regard to waqf of a sect to which he does not belong."

Sir, I have already explained my object; the amendment which has just been carried would not exactly cover this case and it is necessary to safeguard the interests of various different classes and communities, who although they are Muhammadans, still observe differences of opinion and differences of custom to some extent and who might not like persons belonging to other sects to interfere in their affairs. It is for this reason and with this object that I beg to move my amendment.

Mr. S. K. Barodawalla: Sir, I will not take up the time of the Assembly, but I give my full support to the amendment. As has been pointed out, no community has a right to interfere with the affairs of another community and no very long speech is needed on this as we have instances in other communities also; among the Hindus also we know that one community does not like that any other community should interfere in its affairs; I think, therefore, this amendment should be accepted by this House.

Maulvi Abul Kasem: Sir, I would have been very glad to accept the amendment moved by my Honourable friend, Mr. Girdharilal Agarwala. I want to tell him that, distinguished lawyer as he is, there is nothing in the provisions of this Bill which asked any Muhammadan or anybody to interfere with anything. It is only the Mutwalli who is asked to register his waqf and to submit accounts, so there is nothing in it. If he has to move an amendment like that, he will have to move an amendment to section 192 of the Civil Procedure Code.

The Honourable Sir Malcolm Hailey: May I point out to Mr. Abul Kasem that Mr. Agarwala's amendment obviously has reference to clause 4. If he will read that clause, he will see that "any person may apply to the Court by a petition in writing for the issue of an order requiring the Mutwalli to furnish further particulars or documents. Now let us take a case in point. If it were a case of a Shia wakf, then a Sunni could not move the Court. It is a matter, I think, in which the community must decide for itself whether they wish to restrict action under clause 4 to Members of the particular sect or to a section of Mussalmans for whose benefit the endowment was intended. But I myself see some difficulty in the amendment as it stands. Let us assume again that a Sunni wakf has left money for purely charitable purposes or for purely education purposes. Will the Court be able to decide whether that wakf is, in the words of the amendment, a waqf of a particular sect? Does the particular sect of the donor determine the nature of the endowment if the endowment is for purely general purposes? I can quite understand that if the endowment was for the purposes of Shia education or charity to Sunnis or to Khojahs, then the amendment might apply. I suggest that if the Court is to be able to decide exactly what is meant by a waqf of a particular sect, then some better definition than that will be required than is given in the amendment.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, should an endowment or a wakf be purely for the religious purposes of a particular sect, it is obvious that any member of another sect would not be a person having an interest in the maintenance of that wakf. Should, however, the wakf be for a general charitable or pious purpose, then every Muhammadan would have an interest in the maintenance of such a wakf. Therefore, whether in a particular case a particular person applying for relief is a person having an interest in the maintenance of the wakf, is a question which will depend upon the circumstances of each case, and it would, therefore, I submit be unwise, if I may venture to say so, to enact a provision of this kind.

The Honourable Sir Malcolm Hailey: Might I make one additional remark, Sir, that, if the amendment is carried in its present form, it will, as the House will see from clause 4, allow a Hindu to apply to the Court but not a Muhammadan of a different sect.

Mr. President: The question is that the new clause be added.

The motion was negatived.

The Honourable Sir Malcolm Hailey: Might I suggest a purely formal change which has just been brought to our notice; it may save trouble hereafter. We proposed the addition of the words "by a Court" in sub-clause (c) of clause 2. We think that the words should be "a Court of competent jurisdiction" in order to fall into line with the language used later on in the Bill.

Mr. President: On the motion that the Bill be passed that amendment can be made.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

Maulvi Abul Kasem: I now move, Sir, that the Bill, as amended, be passed.

The Honourable Sir Malcolm Hailey: I now make the motion I referred to:

"That in clause 2, sub-clause (c), for the words 'or by a Court' the words 'or by a Court of competent jurisdiction' be substituted."

Mr. President: The question is:

"That in line 4 of sub-clause (c) of clause 2, after the words 'or by a Court' the words 'of competent jurisdiction' be added."

The motion was adopted.

Mr. President: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

The Assembly then adjourned for Lunch till Fifteen Minutes Past Three of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes Past Three of the Clock. Mr. President was in the Chair.

THE SPECIAL MARRIAGE BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I have already presented the Report of the Select Committee to amend Act III of 1872, and I now move that the Bill be taken into consideration. Honourable Members will see that the Bill as it was originally introduced by me in this House was a purely Civil Marriage Bill, that is to say, it was a marriage Bill in which two persons, subject only to the law of consanguinity which I need not advert to now, were free to marry under the Act as I proposed to modify it. Since then, the Select Committee have made certain changes restricting the scope of the Bill, and I should like Honourable Members to realise the changes made and its effect upon the Bill as introduced in this House and committed to the Select Committee. As I have said, the Bill, the principle of which was accepted by this House, was a purely Civil Marriage Bill. It included all classes and excluded no community. When it went before the Select Committee Members of that Committee thought that we must go along the line of least resistance and exclude from the provisions of our Bill classes which did not want to come within its scope. As such we have excluded Muhammadans, Parsees and others and have restricted the operation of the Bill to four designated classes of persons, namely, Hindus, Sikhs, Jains and Buddhists. We have also out of deference to the opinions received set out certain rules regarding succession and also inserted other provisions relating to adoption and management and succession to religious endowments. I should like briefly to justify the changes made by the Select Committee and point out to the House why it is now an acceptable measure. Some of my friends who voted for the Bill upon its second reading when it was referred to the Select Committee feel dissatisfied that the measure has been truncated and deprived of all the provisions which they regard as essential. I should

like to explain to them that the measure which I ask the Honourable Members of this House to take into consideration has in no way abridged or curtailed the pre-existing rights which existed under the original Act III of 1872. Those who object to the added provisions are still free to contract marriages under the original Act. They may entirely ignore the provisions of the added sections. But, as I have said on the last occasion when I had the honour of speaking on this Bill, one objection which persons who are required to sign a declaration under that Act raised was that they could not conscientiously sign a declaration with a mental reservation and that it was not right that the law should compel them to sign it. I shall very briefly point out the reasons—the historical reasons—which culminated in the framing of that form which constitutes a declaration under the Act. As far back as 1832 a Royal Commission was appointed by an Act of Parliament for the purpose of revising and codifying certain important branches of Indian law. That Royal Commission sat and framed what is now known as the *lex loci* Act, the official designation of which is the Removal of Caste Disabilities Act. That Act was enacted as Act XXI of 1850. The underlying principle of that Act was that no person shall suffer any penalty by the mere fact of his renouncing a caste or religion. Later on, in 1856 the Legislature passed what is known as the Hindu Widows' Re-marriage Act. That legalised the re-marriage of widows. In 1868 that great jurist and lawyer Sir Henry Maine, the then Law Member of the Viceregal Council, pointed out in the late Imperial Legislative Council that it was the bounden duty of the Sovereign to provide for the marriage of all his subjects and if they wished to marry, no impediment by caste, creed or otherwise should stand in the way. If the State does not enact a Civil Marriage Law the consequence is that it leads to promiscuous intercourse and concubinage. He therefore placed before the Legislative Council a Civil Marriage Bill. But before that Bill could become law his term of office ended and he was succeeded by another jurist, Sir James Stephen and he again circulated the Bill, collected all the opinions and made the following summary of the cases to which he adverted. This is what he said:

"The cases which I have quoted appear to me to establish in the broadest way that on the most general principles it is just, equitable, and according to good conscience that all men should have a right to marry although the law to which they are subject may prescribe the manner in which their right is to be exercised. In India, as we all agree, there is no fundamental common law other than the law of justice, equity and good conscience upon this subject. If a man is not a Hindu, nor a Muhammadan, nor a Parsi, nor a Christian, nor a Jaina, no form is prescribed for him by law. Does it follow that he cannot marry at all? Certainly not. What follows is that his right must be determined by the general maxim that contracts for a lawful object and made on good consideration are valid and must be performed, and I have yet to learn that marriage is in a general sense, unlawful or immoral or a promise to perform conjugal duties by the wife or the husband is not a good consideration for the promise to perform reciprocal duties by the husband or the wife."

He then said that we must have a Civil Marriage law. Then the question arose whether there was a large public opinion to support the enactment of such a marriage law. The Brahmos of Bengal who had moved the Imperial Legislative Council to enact a law for themselves were of opinion that they were perfectly prepared to declare themselves as non-Hindus and therefore they accepted the form which was then prescribed and Act III of 1872 became an Act of the Imperial Legislature. A very large number of marriages have been contracted under the Act of 1872 but in a recent case their Lordships of the Privy Council laid down that both Brahmos and Sikhs as well as Jains were Hindus and the decision of Sir James Stephen, who had in 1872 taken for granted that if the Brahmo said he was not a

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Hindu there was an end of the matter, was upset by the decision of their Lordships of the Privy Council. Well, Sir, that was the state of the law till the judgment of the Privy Council was given. About 13 years ago the Honourable Mr. Bhupendra Nath Basu, now a Member of the Secretary of State's Council, revived this piece of legislation which Sir Henry Maine had placed before the Legislative Council and it was considered but afterwards it failed to become law. Later on Mr. Patel wanted to introduce and did introduce a more restrictive measure legalising the marriages between the Hindus of different castes and it was referred to a Select Committee, but after it emerged from the Select Committee, it was considered that as the reforms were about to be announced and the constitution of the Imperial Legislative Council revised, it would be better if this measure was reintroduced in the popular Chamber. Well, Sir, taking the cue from the deliberations of that Council, I took the earliest opportunity of reintroducing a measure which has been referred to the Select Committee and which emerges from that body with a unanimous report. This is, Sir, shortly the history of marriage law in this country. After it came back from the Select Committee I have been besieged with inquiries by my friends of both complexions, reformers and orthodox and I shall now briefly explain the reasons which have led the Select Committee to recommend for enactment this measure in the form in which it is presented to this House. I shall first deal with the objections of the reformers. They say "What we wanted you to do is to enact a general civil marriage law. What you have done is to decapitate the measure the principle of which we accepted and it has come out of the Select Committee in an extremely crippled, restricted and circumscribed form. If we are to fight for civil marriage law, let our fight be continued but we are not prepared to accept this half-way house. To them I say, Sir, that the Select Committee have very carefully considered this objection of the reformers and they came to the conclusion that it is much better in a case of this kind to take along with them public opinion and it is better that we should have a narrow and restricted measure than to work for a Civil Marriage law. Then, Sir, to them I say that if the Bill is not acceptable they are not better off and no worse off than they were under Act III of 1872. The additional sections which are awaiting your judgment are sections which are purely permissive and they entitle every man, be he a Hindu, Jaina, Sikh or Buddhist, to ignore the provisions of those sections and resort to the pre-existing law. It binds nobody; it obliges no one; it is a purely permissive measure and it is made amply clear that it is so. Therefore, I submit that if anybody has any objection on the ground that the measure now before the House is a narrow and a more restricted one, he has only to say to himself, "I shall ignore it; I am in no way prejudiced by it and therefore I should not object to it." Then, Sir, it has been said that this measure creates a paradox. Under Act III of 1872, a Hindu contracting a marriage by subscribing to a declaration that he does not profess the Hindu religion still remains subject to Hindu law regarding succession and the enjoyment of his property; but by making a declaration under this part of the Act that he is a Hindu he will be deprived of his personal law and he will be subjected to the restrictions now embodied in the various sections of my Bill. My answer is that, here again it is a matter of opinion. If you wish to make a declaration under the first part, by all means do so, and you will continue to enjoy all the rights and privileges which are given to you under that part of the Act. But if, on the other hand, you have

conscientious scruples in the making of a declaration under that part of the Act, then you declare under the second part and place yourself under the disabilities created by that part. You are in no way prejudiced. Your position has been improved to the extent that you are not bound to make a declaration which you cannot conscientiously subscribe to, for you are given the option of subscribing either to one declaration or the other.

Then one of my esteemed friends asked me, what about collateral succession. Well, Sir, the Members of the Select Committee have anxiously considered this question and they came to the conclusion that regarding collateral succession a person who contracts marriage under this part of the Act should not be placed in a position of greater disability than a person who comes under the *lex loci* Act; in other words, that a person who contracts a marriage should not be put in a worse position than a convert; and therefore whatever may be the law relating to converts and to persons subject to the Act or coming under the Act of 1850 that shall be the law which will apply to a person who contracts marriage under this part of the Act. So that, Sir, so far as that question is concerned, it has been settled by the Select Committee in the manner I have indicated regarding succession. Regarding succession and the enjoyment of religious rights I have to say a few words. Regarding succession the Members of the Committee were divided, as is mentioned in the report of the Select Committee. The reason why the majority of them agreed that succession should be regulated by the Indian Succession Act, rather than under the normal Hindu Law was that under the Indian Succession Act, daughters and wives acquire a certain vested right of which they are deprived under the Hindu Law. The special disabilities created by Hindu Law against the succession of females would be removed if the general Law of Succession as embodied in the Succession Act is made applicable to persons who marry under that part of the Act. Here, again, I wish to remind the Honourable Members of this House that they are at liberty to marry under either the first part or the second part, and if they wish to come under the Indian Succession Act, then and then only they need marry under that part.

Then, Sir, it has been said "What about religious endowments and their management?" Well, Sir, the mere fact that inter-caste marriages and marriages between Hindus and the followers of allied faiths would be possible under this Act makes it impossible that persons who contract marriages under this Act should continue to enjoy as of right the right of management of religious trusts; and, therefore, the Select Committee have made that provision.

Now, Sir, as regards the law of adoption. So far as the law of adoption is concerned, two questions arise, one that the father of such married person may adopt a son to himself and, secondly, that he may wish to make an adoption. As regards the father's right to adoption, if he chooses and if he finds that the son has gone out of the family by contracting a marriage which he disapproves of, he is entitled to make an adoption. Honourable Members will know with the larger powers of testamentary disposition which are coming into force in this country, the law of adoption is now receding into the background. Every Hindu possessing his self-acquired property is entitled to bequeath it to anybody he likes; and so far as the person who marries under this part of the Act is concerned, he, having elected to be bound by the provisions of that part of the Act, to which I refer, has been deprived of the right of adoption. I do not say that

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these provisions are all justifiable, but what I do say is that these are the provisions which have been inserted in the Bill on a compromise made with my orthodox friends. The Honourable Sir Sivaswamy Aiyer on the last occasion when he enlightened the House with his views said that the time had come for a measure of this character, but he demanded that certain restrictions should be embodied in the Bill so as to make it clear upon the points to which I have adverted. I have, Sir, carried out his wishes, and I hope that after the restrictions that have been inserted, my friends, orthodox friends, Rao Bahadur Rangachariar and Sir Sivaswamy Aiyer, will accord to my Bill the whole-hearted support which it now deserves. There remains, Sir, the question of Muhammadans. No one was more grieved than I was when the Select Committee deleted the Muhammadans from the provisions of this Bill. But, I felt, Sir, that if we are to carry our Muhammadan fellow-subjects with us, we could not force this measure down their unwilling throats. And as the majority of them were not yet prepared for this piece of legislation, we thought it wise and right that we should exclude them. We have been told, Sir, by some of my over-cautious Muhammadan friends, "you have excluded the Muhammadans to-day, but some person might include them to-morrow, and so the Muhammadans will come in for the disabilities of this part of the Act." But my friends have merely to read my Bill to see how utterly impossible it will be for the Muhammadans to come under this part of the Bill. They have no adoptions; they have no shibais, their law of succession is different, and the Bill expressly mentions that it applies only to Hindus, Jains, Sikhs and Buddhists, and I therefore say, Sir, that if some enterprising spirit were to bring in an amending Bill, what is there to prevent him from introducing an independent measure. I submit therefore there is nothing in this objection. The fear of any Muhammadan reformer bringing in a measure hereafter is a standing fear, and is certainly not aggravated by the introduction of my Bill. These are all the objections which have been addressed to me and I have striven, very briefly, to reply to them. I commend, Sir, my proposition to the acceptance of the House.

Rai Bahadur Pandit J. L. Bhargava (Ambala Division: Non-Muhammadan): Sir, I move:

"That the Bill as reported by the Select Committee be recirculated for the purpose of obtaining further opinion thereon."

At this stage I consider it quite unnecessary to enter into the merits of the principle of the Bill, or the history of Act III of 1872, or the subsequent attempts that were made to modify or to extend it. In this connection it will suffice to say that the Bill, though permissive in its nature, is of a highly controversial character, and all the motions that have been made by the Honourable Mover of this Bill have met with strong opposition in this House. The Bill was opposed when it was introduced. When the motion for referring it to Select Committee was made in January 1922 that motion was negatived by this House after a very lengthy and full discussion; and when it was referred to a Select Committee in September last, it was only by a bare majority of one vote. I am also not unaware of the fact that the Bill in its original form was circulated for opinion, and the opinions that were obtained on it were before the Select Committee; but the Bill as it is presented in its amended form is so much modified and

altered that the members of the Select Committee themselves have considered it necessary to recast it, and the object of my motion is to circulate the Bill as it has emerged from the Select Committee for opinion of the persons who are affected thereby. It has been pointed out by the Member in charge of the Bill that the scope of the Bill has been restricted, and there is no doubt that the Christian, Muhammadan, Jewish and Parsee communities have been excluded from the scope of the Bill, but that is no reason why these communities should not consider and see whether this Bill is good for the communities which will be affected by it. The communities which remain are the Hindu, Sikh, Jaina and Buddhist communities. These communities will remain affected and the exclusion of other communities will not affect them in the least so far as the main principle of the Bill is concerned.

Sir, as has been pointed out by the Honourable Member in charge of the Bill, certain matters have been introduced by the Select Committee. One of them is that marriage according to this Act will have the effect of separating the person marrying from the joint family of which he is a Member. The other is that in matters of succession the party marrying under this Bill will be governed by the Indian Succession Act, and there is also a provision that the person marrying under this Bill shall have no right to adopt. These are matters of vital importance and of great significance. It is stated in the Report of the Select Committee that "all reasonable and legitimate objections urged against the original Bill in the opinions received on it have been sufficiently met." The question is whether these objections have been sufficiently met or not, and whether the Select Committee had the opinions of those communities whom the Bill will affect on the questions which have been introduced into the present Bill before them. It might be said that these opinions had reference to these questions and it is reference to these questions that has led the Select Committee to introduce these matters. No doubt there is a passing reference incidentally made in some of the opinions about these questions, but the reference is simply to the effect that these questions will arise. There is no definite and considered opinion upon all these matters and it is therefore necessary, before this House is in a position to pass this Bill or to consider the motion that has been made before it, that the opinions of all those persons who will be affected on these points which have been introduced by the Select Committee, and upon which they have had no opportunity of expressing their opinion, should be before this House. And the fact that on a very important question the Members of the Select Committee themselves were not agreed is a strong argument that the opinions of the representatives of those persons who will be affected by the Act should be obtained. Looking to the nature of the amendments that have been made in the Bill and to the nature of the changes that have been introduced, it is highly desirable that the Bill should be recirculated for further opinion.

With these remarks, Sir, I move my amendment.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, it is a cruel irony of fate that I find myself supporting my Honourable friend, Mr. Bhargava, on this point. The House will see that I had given notice of the same amendment but with a different object. My Honourable friend wishes somehow to kill this Bill, I wish that the Bill should be improved; but, according to the rules, both of us had to give notice of the same motion. I do not wish, Sir, to make a

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secret of my own views and convictions on this question. I am one of those who are thoroughly, completely, dissatisfied with the Bill as it has emerged out of the Select Committee. Without meaning any offence, I think that its opponents on the Committee got the better of my Honourable friend the Mover of this Bill and introduced clauses into this Bill which have made it practically ineffectual. Sir, when this Bill was circulated for opinion the House will remember that there was a very short Bill which only sought to take out certain words from the Special Marriage Act of 1872. The opinions that were given by the various High Courts and by various public bodies related to the Bill as it stood then, but since this Bill has been modified in the Select Committee in very important details and as it is a measure of a far-reaching character I do think that it is fair to the public and fair to us that we should know what they think about the changes thus introduced. My friend has airily brushed aside all these objections. He says, "Oh, well, if you do not agree with this Bill, then you take advantage of Act III of 1872; but if you do agree with it, then come and marry under this Act." Now I am afraid my Honourable friend does not realise the position which I and those who think like me occupy. I am with him whole-heartedly—I might almost say, enthusiastically, on the question of reform in this matter; but I look at the whole question from the standpoint of a Hindu. What I say is this. A Hindu cannot go and get married under Act III of 1872. He cannot go before the constituted authority and say "Well, I do not profess Hinduism." That is a lie. What is the alternative that he has? He comes here, the same man, and says "All right, I shall marry under this beneficent measure which has been given to us by Dr. Gour." And what does he find? He finds that he practically ceases to be a Hindu.

(An Honourable Member: "How?")

Munshi Iswar Saran : Quite right—how? That is a very pertinent question and a very relevant question of my Honourable friend. Now if my Honourable friend will refer to any book on Hindu law or if he will take care to consider all those fundamental principles on which Hindu society is based, he will find that a very great deal of importance is attached to adoption, to succession and to other matters like these. What do you find here? I am a Hindu. Let the House remember that it can only form an accurate idea of my position if it does not forget that I am a Hindu. I have practically all those feelings, all those convictions, all those emotions which most Hindus have; but I feel that on this question there has grown up a custom which places an unnecessary restriction on the liberty of our action. But look at the difficulties created for us. Suppose I am a Brahmin and I marry in a Kshatriya family under Dr. Gour's Bill and I find that I have not got any issue and I believe in *Pinda dan* and the spiritual benefit that a son can confer on me, what do I find? I cannot adopt. I say, it gives a rude shock to my notions on this particular subject. I do not wish to be governed by the Indian Succession Act; I wish to be governed by the Hindu law. You say "Either you go and tell a lie before the sub-registrar or you consent to this." I say I will not accept this position; because you rob me of my right to be governed by the Hindu law and in its place you give me the Indian Succession Act which has been introduced into this country for the regulation of inheritance amongst non-Hindus. Then my friend says "Well, here is the Caste Disabilities Act." Sir, by my marrying under this Bill you deprive

me of my right to live with my brother, you deprive me of my right to adopt; you deprive me of my right to be governed by my own personal law and you say that this is a measure which is going to be used by anybody. It may be used; it may be used by those who are not Hindus, but Hindus of that class would much rather go and marry under Act III of 1872 than come and marry under the present Bill. These are important far-reaching changes which have been introduced by the Select Committee into this measure. I do not wish to speak at length at this stage, and I say that it is necessary, it is advisable, nay, it is imperative that you should collect the opinions of those who are entitled to speak upon it. My Honourable friend says public opinion will be satisfied. If the motion of my Honourable friend is rejected and if this Bill comes to be considered you will form a measure of public opinion by the voting that will take place. The fact of the matter is this. Let me say quite frankly—I am keener than Dr. Gour for this reform, but I do not wish to conceal it from myself that the vast majority of our people do not like it. This being so, some people say "Why do you then introduce it?" My answer to that is this: it is a permissive measure, it does not force you to marry under this measure if you do not care; there is a large and growing body of Hindu dissenters and it is for their protection, for the protection of a minority—call them a microscopic minority if you like, but still a minority—that this Bill has been brought forward. You say "Remove this restriction; remove this bar; let us be free to marry according to our choice." The law has imposed the restriction that if I marry against the custom of the locality or of the family, then the marriage is not a marriage in the eye of the law, the wife is not a wife in the eye of the law; and the children are not legitimate in the eye of the law. I cannot by any means get over this difficulty created by the law and it is therefore to the Legislature that I come for redress. If the House will permit me I wish to refer to a case which was decided by the Allahabad High Court. There was a case of marriage between a Brahmin man and a Kshatriya woman; it was argued that this marriage was contracted according to the custom prevalent in Nepal and the parties were Nepalese; the High Court did not sustain the plea put forward by the widow about the validity of her marriage. Now, it is against this position that we complain; we say that the law has created this difficulty for us, and it is the law alone which can remove this difficulty. But I say, if you want to remove this difficulty, remove it in a way that honest and genuine Hindus with Hindu ideas may be able to take advantage of this Act and I pray you, do not give us an Act which is not worth having. But, Sir, be that as it may, I do not wish to speak as to the various provisions that are contained in this Bill. I only wish the House to consider this question whether it is prepared to take up this Bill at the present moment in spite of these important changes that have been introduced or whether it thinks it advisable to send it round for public opinion. I support the motion of Mr. Bhargava and I am distinctly of opinion that the Bill should be sent round so that Judges and others may be able to express their views on it.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, I stand to support this amendment. I do not like to traverse the grounds so ably put forward by my Honourable friend, Munshi Iswar Saran, but I want to support this amendment only on one ground. My Honourable friend, Dr. Gour, has kindly issued a pamphlet regarding this Bill. I have carefully gone through that pamphlet many a time, and if

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I could rightly understand that pamphlet, I thought that the Honourable Dr. Gour was of opinion that this Bill would be of great political advantage for the Hindus. I am sorry I cannot agree with him in this view, but I do not like to labour that point at present. What I want to say at present is this, that if there was any political advantage in that Bill, that has been lost by excluding the other communities, and if this Bill as it is put now is pressed and passed into law, it will do a lot of harm without any good which it is supposed by Dr. Gour to do. I trust that this House will carefully consider this measure and vote for postponement of the matter at present.

Mr. Jamnadas Dwarkadas (Bombay City : Non-Muhammadian Urban): I rise, Sir, to support the motion for taking the Bill into consideration introduced by Dr. Gour. We have on the other hand a motion for circulating the Bill for inviting public opinion thereon by my friend, Mr. Bhargava. Now, Sir, we are accustomed in this House to opposition to measures of this character by those who avowedly belong to the orthodox view, and I do not for a moment object to the view put forward by my friend, Mr. Bhargava. But I must confess to a sense of surprise and amazement at the support that he has been getting, and a powerful support too, from my Honourable friend, Munshi Iswar Saran, because if I correctly interpreted the views of my friend, Munshi Iswar Saran, he never belonged to that section of Hindus which take a pride in calling themselves conservatives or orthodox. Now, Sir, what is the attitude taken up by Munshi Iswar Saran? Why does he object to the Bill? He says there is not much difference between the Act of 1872, and the Act which will come in force if you pass this Bill into law. Now, Sir, can that objection stand? Those of the Honourable Members who were present in Simla when Dr. Gour introduced this measure, will remember that my sole reason for supporting it was that it secured to the individual the liberty of conscience which the Act of 1872 as it stood denied to him. I want to ask Honourable Members a serious question, whether if you pass the present Bill into law, it does or does not ensure that liberty of conscience that we want, it does or does not ensure that liberty of conscience that we wanted. (Mr. B. N. Misra : "No, it doesn't.") It does. What will be the effect of this Bill? My Honourable friend, Mr. Biswa Nath Misra, ought to know that it does secure that liberty of conscience which we want, and I will prove it to him in a minute if he will have the patience to hear me. What was our objection to the Act as it stood? Our objection was that, if a man belonging to one caste of Hindus married a girl from another caste, also of Hindus, both of them had to go and declare on oath that neither of them was a Hindu. That is, in order to secure the marriage they had to tell a lie on that solemn occasion and renounce their faith altogether. Now, the moment this Bill becomes law, if a boy of one caste of Hindus wants to marry a girl of another caste of Hindus, neither of them will be called upon to say "We are not Hindus and therefore we shall take advantage of this Act and get married." Both of them can retain their faith, both of them can be Hindus and yet the law will recognise their marriage as legal. Now, what are the objections which my Honourable friend, Munshi Iswar Saran, urged? He said: "Yes, it might secure to them this liberty of conscience, they may not have to renounce their faith, but in the eyes of the law they will not retain the power to be Hindus. They will not be able to make the Hindu law applicable to them in all instances as it would be

applicable in the case of ordinary Hindus." Now, I want to point out to any Honourable friend, Munshi Iswar Saran, that we are faced with a great difficulty in getting this measure through. There is an opposition from the orthodox community. I do not for a moment admit that that opposition is from a majority of Hindus. I do feel that at any rate at the present moment there are a majority of my community of Hindus who are prepared to confer on their fellowmen the liberty of conscience which has been so far denied to them. So that, so far as that argument is concerned it does not appeal to me that Hindus are not yet prepared to grant to their fellowmen the liberty of conscience that is wanted. But I want to point to my Honourable friend, Munshi Iswar Saran, the difference between these two things. First the highest thing that a man values, namely, liberty of conscience, which this Bill secures for him. Secondly, the objection which he has pointed out refers to the application of that law in those instances which gives him all the worldly rights which a man's being a Hindu entitles him to. Now, assuming for the moment that for the sake of compromise we have in the Select Committee not been able to give to such Hindus as will take advantage of this Act when it becomes law, that we have not been able to confer on them all the rights which ordinary Hindus enjoy on account of the worldly rights, after all what is that loss compared to the great and, higher gain that is a man's property if liberty of conscience is secured to him. To me it seems to be a very futile objection to urge for the purpose of defeating this measure. I wish, Sir, that I could persuade Members of this House not to delay for a moment, not to make a moment's delay in doing justice to those who have for long claimed and justifiably claimed at our hands the liberty of conscience. Not to allow this measure to go through at the present moment is to risk this measure being thrown out, is to risk inviting perpetual blame on the community that, while we are claiming and rightly claiming freedom from other quarters, we are not prepared to give to our fellowmen the liberty of conscience which as human beings it is their right to demand. I feel, Sir, that it would be a great mistake if this Bill was not taken into consideration. I feel that it would be a great mistake if this Bill was sent back to the people for eliciting their opinion thereon. Where is the necessity of sending this Bill again to the people? Has not this question been before the country now at least for the last 12 years? Was it not in 1911 that Mr. Bhupendra Nath Basu first introduced a measure of this character? Was it not again for years together that Mr. Patel's name was associated with a Bill entirely of this character? This subject has been before the people for a long time and now, after 12 years of agitation on this question, when we are on the verge of seeing this Bill through in this House, when we are on the verge of doing justice—bare justice—to our fellowmen who belong to our community, to come forward and put this argument before us that it should be re-circulated is, I believe, not in accordance with our claim for doing justice to all as representatives of the people. Another thing. When Dr. Gour first introduced the measure, it was in a very wide form. It allowed a Hindu not only to enter into inter-caste marriages but it even gave him the right of going outside his communities and it was made applicable to all communities in India. Now, I personally would have welcomed that reform. But if the House is not prepared for it, if all the communities have some objections to urge against a wide and sweeping measure of that kind, I will respect their feelings and I think the Select Committee has done wisely in respecting the feeling of those communities, with the result that the scope of this Bill is very much narrowed down, and with the Bill in its present form, even that pillar

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of orthodoxy, my Honourable friend, Mr. Rangachariar, has nothing to say against it.

Munshi Iswar Saran: That is the danger.

Mr. Jamnadas Dwarkadas: Honourable Members will see that he has himself appended his signature to the Bill as the Chairman of the Select Committee to which this Bill was referred, and it appears to me absolutely futile that effort should be made at this stage to throw out the measure on grounds which the House need not seriously consider. I strongly appeal to the House, Sir, not to accept my friend, Mr. Jawahar Lal Bhargava's amendment but to pass my friend Dr. Gour's motion.

Mr. J. N. Basu (Burma: Non-European): Sir, it is rather a big thing to find oneself within the focal distance of the President's eye. The problem is to find the *loci* of the President's focus within this Assembly and being a new comer, the problem seems to be insoluble to me. I leave it to my veteran friends to solve and if they fail, they may present it to the University examinees in the question papers. However, Sir, I will not detain the House long, for I had almost taken a vow not to open my lips; but when I glanced through the Bill I found that there was a sub-conscious conspiracy on the part of the Select Committee to compel me to speak, although I candidly admit that I share the common weakness of this House in having an itchy tongue. Now to the Bill. Most of the speakers have all along dwelt on the Hindu aspect of the question. I have followed closely my Honourable friend, Dr. Gour; to find out whether he would make any reference to Burma or the Burmese Buddhists in Burma. I fail to find any reference to that. My province has been included in this Bill only for one reason and that I find from the Statement of Objects and Reasons. The reason is given in paragraph 2:

"Some of us are doubtful whether Buddhists should be included, but the majority are of opinion that they should be included, as Indian Buddhists, equally with Sikhs and Jainas, have been held by the Courts to be Hindus for purposes of succession, marriage, and other matters."

Now, as Indian Buddhists have been declared to be Hindus for certain purposes, *a fortiori* Burmese Buddhists can also be included as Hindus. That is the line of reasoning I understand adopted in this. Well, Sir, you can easily see that Burmese Buddhists are quite different in their law of succession, inheritance, marriage, adoption and so forth. There are also Chinese Buddhists in Burma. The Burmese Buddhist law is quite peculiar to themselves. Their law of succession is not at all anything like the Hindu law. They have no will at all, and their ideas of adoption are not at all similar to the law of adoption in India. There is no libation of water or *pinda* offered to the soul of Burmese Buddhists. They do not believe in souls. They are concerned more with the care that should be taken by the adopted children for the living parents and they have recourse to adoption during their lives. Now, they can adopt many children, even the fathers of children and adoption is open to both the parents. Now, that law is going to be affected by one of the sections of this Bill. (**Dr. H. S. Gour:** "How?") You deny that right of adoption to certain persons. (**Dr. H. S. Gour:** "I do not deny the right of marrying under the Burmese law.") You deny the right of adoption to certain persons if there is a marriage under this law. (**Dr. H. S. Gour:** "You can ignore it.") Then, Sir, their law of succession is quite different. I do not see how that law

can be restricted in this way. There are Burmese Buddhists and Chinese Buddhists who stoutly repudiate to be dictated to or be governed by any law other than their own. Their opinion has not been elicited on these vital matters. And apart from the merits of the question, apart from the merits of the Bill which I heartily approve, I certainly take my stand on this point that the Chinese Buddhists' opinion, the Burmese Buddhists' opinion have not been elicited on these matters. I for one cannot undertake the risk of voting in favour of this Bill unless I know the views of my constituency. Have they been given an opportunity of ventilating their views? I submit, Sir, not. On the Bill as it has emerged from the Select Committee at present their opinion I submit has never been elicited. Burma has been treated in this way all along by the Government of India. What prevented, I submit, the Government of India or this Honourable House from having at least one Member of Burma on the Select Committee? If in matters affecting Burmese Buddhists and Chinese Buddhists their interests are very studiously neglected by this House,—I must say candidly,—and by the Government of India all along, I submit that the Burmese Members feel—I mean thereby the Members who represent Burma—that they are ignored. Their presence would have been helpful to the Select Committee in matters like these and would have saved them from the pitfalls of hasty legislation. My point therefore is simply this—that this Bill should be republished for eliciting the opinions of the Burmese Buddhists. It is contended by my Honourable friend, Mr. Jamnadas, that this Bill should be wholeheartedly supported. All the remarks that he has made do not affect Burma at all. I shall be happy if Dr. Gour leaves Burma completely out of the jurisdiction of the Bill. None of the Members of the Select Committee happen to have considered the Burmese point of view. They seem to have taken it for granted and have fallen into the fallacy that because Indian Buddhists are Hindus for certain purposes, therefore the Burmese Buddhists are also Hindus. Now there are ordinary Hindus and Privy Council Hindus. But there are no Privy Council Buddhists in Burma yet. They are all ordinary Buddhists. I must also refer to another aspect of this matter. I must again protest that the treatment meted out to Burma as the milch cow of British India, as British India is the milch cow of the British Empire. I therefore move that this Bill be re-circulated. I shall then be in a position to support wholeheartedly the principle of the Bill.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): I had no intention of taking part in this debate. I felt that I should be satisfied with exercising my right to vote but as Mr. Jamnadas emphasised the liberty of conscience and the opinion of the majority, I think I must give him some reply. As far as the majority question is concerned, I ask Mr. Jamnadas whether he has approached his own community on this question and ascertained their views, whether there is a majority or a hopeless minority in his favour; and if the question is put to masses of Hindus I have no doubt that not more than two or three per cent. will come to his side. In order to prove my contention I may tell the House that opposition meetings have been held all over India and there is not a single meeting in support. There has been opposition all over and there have been petitions also. Therefore that feeling is there. Of course, there is no objection for any Hindu to marry in any fashion he likes. There is that liberty of conscience, but that liberty under the present Bill before us does not meet the actual requirements of the case. It is patch work simply, because these people think that if they

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carry this now they can go further later on; but when we take the trouble of legislating, let us not be satisfied with half measures, but let us give full measures, which they dare not do.

Bhai Man Singh (East Punjab: Sikh): Sir, I oppose the motion that the Bill be taken into consideration and support the amendment that the Bill be circulated for opinion on quite a different ground. I think the Select Committee has gone far beyond the mandate that was given to it by the House. The House when it made over the Bill to the Select Committee was simply concerned with one point, namely, whether marriages between men and women of different castes or different religions should be allowed under the Act or not; there was already an existing law regulating such marriages with the condition that the parties had to state that they do not belong to the Muhammadan or Hindu religion and the question was that this declaration should be dispensed with. The Select Committee has assumed to itself powers that were never given to them and has brought before us a Bill which we could never dream of. They now come to us with the proposition that if a Hindu marries a Hindu girl of another caste he shall not adopt; if he marries a girl of another caste he shall be deemed to have separated from his family; a Hindu who marries a Hindu girl of another caste or a Jaina girl shall not be allowed to follow the rules of succession according to Hindu law but shall have to follow the rules of Indian Succession Act, which, so far as I understand, is very much akin to English or Christian law in this respect. Sir, I was never prepared to give those powers to the Select Committee to enable them to spin out a huge system of succession, adoption and joint Hindu family law for us. There is a very good precedent against this sort of thing in another measure which was called the Cantonment House-Accommodation Bill. That Bill was referred to a Joint Committee and the Committee found that it was necessary to make many drastic changes in the Bill, but the Joint Committee, being true to the mandate which had been given to them, did not think themselves capable of going beyond the limits under which they thought the Bill had been referred to them and they reported to the House that as they wanted to make certain drastic changes they would like the Bill to be re-submitted to them. I really wonder how the Select Committee on this Bill has assumed to themselves powers which were never given to them, and it is on this ground of principle, Sir, that I would strongly oppose their report being taken into consideration on the floor of the House. They have not stuck to the principle of the Bill only, they have gone far beyond our mandate; and if the principle is once conceded that a Select Committee can change the whole fabric of a Bill and give us quite a new law on the subject, I think it will be a very bad precedent from the point of view of the principles of legislation. I therefore, Sir, strongly oppose the Bill being taken into consideration.

I should like to draw the attention of the House to another anomaly in the Bill as it has emerged from the Select Committee. So far as I understand, a gentleman who marries another Hindu girl after declaring that he does not belong to the Hindu, Muhammadan or Jaina religion, has to follow the ordinary rules of succession. At least the present Special Marriage Act does not lay down that he shall follow the law laid down in the Succession Act. But a Hindu who is not prepared to say that he is not a Hindu who marries under the provisions of this amended form of marriage is told by the law 'No, my dear Sir, though you are a Hindu,

though you are not prepared to say that you are not a Hindu, you shall not be allowed to follow the Hindu Law of Succession.' I do not find anything special in the latter case that makes it necessary that he should be forced by this measure to follow a different law of succession from what is followed by the rest of the society. I think if Dr. Gour presses that this Bill should be passed in its present form, as it has emerged from the Select Committee, in my humble opinion, he will be doing a distinct disservice to the cause of reform, because those who marry under this Bill would practically become outcasts. Again they shall lose the power of adoption. That is a privilege which perhaps every Hindu, at least a Hindu who is not prepared to say that he is not a Hindu, cherishes to his heart; and is it not downright tyranny to force him not to have the power of adoption? I am sorry my Honourable friend, Mr. Jannadas Dwarkadas, is not present in the House. He claimed the liberty of conscience. I too claim the same thing, but I ask why we should snatch away the right of adoption from a person who is liberal enough to marry a girl of another caste. Why should you snatch away the rights of succession to him under the Hindu Law who is liberal enough to marry a girl of another caste? In the end I should like to make my own position clear. Let it not be understood that I am at all against inter-caste marriages. My religion very freely allows inter-caste marriages. In fact the Sikh religion observes no castes at all. Again, I know that marriages between Hindus and Sikhs are at present prevalent and inter-caste marriages amongst the Sikhs are valid according to the Anand Marriage Act and their marriages with Hindu girls are also valid according to the present law. I would at the same time very much wish that inter-caste marriages be as much more prevalent as possible, but I strongly oppose the Bill as it has emerged from the Select Committee, and I strongly oppose the motion for taking it into consideration for the Select Committee have gone so much beyond the mandate of the House and the Bill creates so many difficulties in the way of persons marrying under it.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I would not have risen, if I did not think that I might draw the attention of the Honourable Members to a few points of some complexity to which attention has not hitherto been drawn; and that I propose to do by a reference to some of the features of the present Bill. It seems to me, Sir, on a careful perusal of the Bill, that it creates an anomaly of a character which it is impossible to obliterate by means of amendments. The first point I take up is that the Bill provides that succession to the property of a person marrying under the Act or to that of the issue of persons marrying under it will be governed by the Indian Succession Act. Now, Sir, there are certain sections of the Indian Succession Act which say that it does not apply to Hindus, etc., e.g., section 331 of the Act. (Mr. K. Ahmed: "Amend and get rid of them.") You have got therefore to reconcile this inconsistency in the first place. You have to do many other things, besides. You have got to get rid of the Hindu Wills Act, also, if you have to submit to the Indian Succession Act entirely, all cases arising out of the present Bill. The law on the subject, it seems, will have to be harmonised. Then, suppose, Sir, a person marries under this Bill and thereby separates himself and his wife from the joint family. Under the Bill he is not then entitled to adopt a son to himself; and succession to the property of a son who has been adopted under the Hindu Law, but who marries under the Bill, will also be governed by the Indian Succession Act. Now, it may be, that there is a collateral

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or a lineal ascendant, who is to succeed to the man who marries under the Bill. The law by which that collateral or ancestor is governed, it may be presumed, is Hindu Law and, yet he will succeed to that man's or his adopted son's property under the Indian Succession Act. Reversing the situation, these persons will succeed to the property of their collaterals or ancestors under the Hindu Law. If it be the case of sons who are to succeed to a person marrying under the Bill, of course the proposed new law clearly provides that it will be the Indian Succession Act that will govern the succession, but in the other case where collateral or lineal succession to the property of an orthodox Hindu is open to the man, marrying under the Bill or his issue, the succession will be governed by Hindu law in spite of the Bill. Then, Sir, I am here reminded of a case of two brothers marrying, one according to this proposed law, and then dying without any issue, but leaving his mother, widow and brother; what then will happen? According to the Indian Succession Act we find that unlike the provisions of the Hindu Law, a division of the estate takes place; that a certain share goes to the widow and the remainder to the children or the children's children or to the kindred, as the case may be, but in lineal succession direct succession stops, with children's children, and does not go further down as in Hindu Law. The proposed law when it comes to be practically applied to such and similar cases will be found sometimes to militate against the principle of both the Mitakshara and the Bengal school of the Hindu law of succession. And if with reference to the same person two different sets of laws under two different conditions are found to be applicable at the same time, I submit to this House, that the greatest confusion will arise in the practical application of the law. The question of succession is not the only question with which we are concerned. We are concerned also with wills. If a man is to be governed by the Hindu Wills Act, then, there are only certain sections of the Indian Succession Act which must be used in interpreting the wills of Hindus but not others. He is also governed by the provisions of the Probate and Administration Act, in this connection, and not by the Indian Succession Act. It must be remembered that there are again certain sections which are applicable under the Indian Succession Act, which are a counterpart of the English law on the subject and they are not applicable to Hindus. Those questions will also have to be disentangled and faced in applying the provisions of the Bill. Sir, these are matters, no doubt, of detail, but the whole question, if it is to be solved at all, will have to be solved by reference to these matters of detail, and by not shutting our eyes to the practical difficulties of the situation. Again, Sir, we have here in this Bill, forbidden adoption, but if we take into account Hindu wills, we shall find that under the Hindu Wills Act, in interpreting the will of a Hindu, it has been laid down that the word 'son' should include an adopted son and a daughter-in-law should include the wife of an adopted son. I could multiply instances of this nature to some extent, but I do not propose to do so. All these difficulties would, however, vanish if a separate and well-defined class was created by the Bill, say "Hindu Dissenters," or something of that sort, but as it is the word "Hindu" without any qualification has been retained in the Bill and the word "Hindu" as it has been authoritatively interpreted means one who professes any form of the Brahmanical religion.

Dr. H. S. Gour: Where is it laid down? Where does a Hindu mean a Sikh or Jaina?

Mr. J. N. Mukherjee: The latter is not the point. I think I am correct in what I have stated. The House has been often told by Dr. Gour that the Privy Council has held that a Brahmo is a Hindu. It is not so. What has been held by the Privy Council is that although a man adopts European habits of life, if he is born a Hindu the birth mark of Hindu sticks to him until there is a formal act of renunciation by him. That is what has been held by the Privy Council in Sardar Dyal Singh's case, and not what my Honourable friend has stated to the House more than once.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sardar Dyal Singh's case?

Mr. J. N. Mukherjee: Yes. And the House has been told that the Privy Council has decided that Brahmos are Hindu dissenters governed by Hindu Law. This has never been the decision. We have the highest respect for the Privy Council, and I cannot think that they have ever decided anything of that kind. The fine gradations between one defined community and another will always exist, and the line of separation between the larger communities has always to be drawn somewhere, and in the practical application of the law to communities questions of detail will always crop up, which will have to be solved from time to time, by reference to the general principles laid down in the law. I may say that I have paid some attention to the subject, and with all humility, I would ask the House to take it, that I could quote authority for my statement of the law. At page 551 of this book (Henderson's Law of Succession) the House will find it stated that the word "Hindu" mentioned in section 381 of the Indian Succession Act is meant to denote persons professing any form of the Brahmanical religion.

At a time, Sir, when others thought that all complicated questions connected with the original Bill of Dr. Gour's would be satisfactorily solved by the Select Committee, I confess I had my doubts as to such a possible achievement; and, when the Bill emerged from the Select Committee, I found that confusion with reference to matters of law had been worse confounded. All this confusion must have emanated from an anxiety to minister to the desire of a small class of people to appear to be something or to profess to be something, which is not the reality. Well, it is always very difficult to reconcile two different systems of law in one enactment and the difficulty of the situation in the present instance was considered for some seven or eight years by those eminent men who were at the helm of affairs at the time, the Law Members in and before the seventies, and after all the various suggestions for a non-sacramental general marriage law for India were placed before them, they ultimately came to the conclusion that unless persons who belonged to the Hindu, Mussalman, Jaina, Christian, Sikh or Buddhist communities were excluded from its operation, any General Act of the nature of the present Civil Marriage Act, was not possible. Such a General Act, they decided, could not be made applicable to these communities as they had special marriage and succession laws of their own. That was the line of least resistance in fact, the only line possible which was followed by the Legislature in those days. Now we hope to achieve the impossible, or the impracticable. Sir, take the case of a man who marries under the provisions of the Bill and his wife then dies. He continues to be a Hindu, and then he marries a second wife in the Hindu form. He has sons by both wives. Now, what will

[Mr. J. N. Mukherjee.]

be the law of succession applicable to the widow and the children? The law of succession in the case of one class of children will be under the Indian Succession Act and in the case of the other class of children, that under the Hindu law. How will they claim their right of succession to their common father and how in each case will the succession be governed?

Sir, I need not detain the House with details of this character, but I should like to draw its attention to one more point, namely, to the case of impartible estates. Sir, suppose a man, who is the possessor of an impartible estate or zamindari, marries under the provisions of the Bill, and dies leaving sons and daughters. What happens? If the Indian Succession Act is to apply to the case, the estate has to be divided. A portion would go to the widow if she survives the husband, one-third in the circumstances, it would be one-half in other circumstances, i.e., if there were no children or lineal descendants but certain other relatives. Now, I ask, again, what will be the law applicable to the succession in such a case? It is very easy for those who are impatient for reforms and things of that kind, to clamour for reformed laws without waiting to examine them, immediately the law is formulated, or even before it is formulated. I do not address myself to that class of impatient reformers, but to those who would calmly think over and consider the situation. Of course, we must admit, that the Honourable Mover of this Bill has behaved like a skilful general, like a Napoleon or a Von Moltke. He believed in the art of defeating the enemy by divisions, and therefore, he thought it proper to exclude from the operation of his Bill, the Muhammadan and other communities who, he thought, might by that means be brought over to his side on his march to victory. Well, I can admire his generalship—his strategy,—but I cannot admire his legislative capacity. He thinks his Bill is good for the class of people who wish to have the benefit of his reforms whatever his Bill for reforms may be, his Bill to amend the Civil Marriage Act, and to amend it practically out of existence, if not to do worse.

Sir, if there is already on the Statute Book a general Act like the present Civil Marriage Act, and if the liberty of conscience which is proclaimed in this House in season and out of season is not in the slightest degree limited or restricted in the case of any marriage performed under that Act, by anything contained in that Act, I submit, Sir, that when there is absolutely no interference with the free exercise of a man's choice, or of his conscience,—in any manner whatsoever, there is hardly any occasion for introducing monstrosities, into our legislative system if I may so characterise a measure of the character proposed by the Bill. Nothing is gained by the process. A new Bill may be framed if anybody thinks that such a Bill ought to be framed for the benefit of mankind, but let it be framed after taking notice of all the difficulties, or, at least, of the fundamental difficulties which exist in connection with legislation of the character proposed by the Honourable Mover. It is very easy to hastily adopt anything that may smell of reform and things like that; but it is quite another thing to legislate for all. One must not consider himself merely as a separated individual airing his own opinion, in such circumstances, but when he is supposed to legislate for everybody within the reach of his authority, he must place himself in that position of trust and take note of and realize all the difficulties of the situation. We have had already instances of incongruities arising out of the Bill placed before

the House, and are they going to be completely ignored? And again, what do I find in the personnel of the Select Committee? No one, I find, from Bengal, or Bihar and Orissa, Assam or the United Provinces likely to be affected by the Bill, was on the Select Committee,—only Bombay, Madras and the Central Provinces, were represented on that Committee. Sir, the world has been going on as before all this time. Then, why when the whole of the original Bill has been changed, lock, stock and barrel,—when practically nothing remains of its identity, there should be such hurry about it? It took my breath away when I found that even under such circumstances, the Committee did not think that the Bill should be re-circulated. It is said that the opinions urged against the original Bill have been sufficiently met by the revised Bill, and its sponsors cannot therefore agree to its re-publication. They fail, however, to consider that new principles have been enunciated in the amended Bill, a new process of hybridisation has been started which did not exist before, and the country is perhaps gazing with wonder and curiosity upon a new legislation of the kind, formulated by the Bill. Here is a patchwork on the fabric of our Statute Book, and nobody knows as yet, how it will succeed in working itself harmoniously into the existing texture. These, Sir, I venture to think, are weighty considerations which have to be taken into account. This amended Bill was never circulated with a view to obtain opinion thereon. The important questions of principle involved in the amended Bill, the deviations from the scheme of the original Bill, were never placed before the country, and opinion was never obtained thereon. I submit, Sir, there never was a better case for re-circulation than in the case of the present Bill. I beg to support the motion for re-circulation.

Mr. S. O. Shahani: (Sind Jagirdars and Zamindars: Landholders): Sir, I beg to oppose the amendment that has been proposed, namely, that the Bill be re-circulated for opinion. I fail to understand what further opinion would be forthcoming on the Bill if it were re-circulated. The scope of the Bill has been restricted and I suppose it is the intention of some of those who have supported this amendment to have it ascertained if those who are for more thorough going reform would oppose the Bill on account of its restrictive character. That then would not be, I take it, the intention of those who are supporting the amendment. According to me no useful purpose will be served by once again referring it to Local Governments and to local bodies for their opinion. As we know, something is better than nothing. It is to me ludicrous that Sikhs should be distinguished from Hindus. In our Province Sikhs marry freely from among the Hindus, and the Hindus marry freely from among the Sikhs. But in Gujrat and Kathiawar, for instance, a Bunnia cannot marry from a Sikh family and a Sikh cannot take to wife a Bunnia girl; and if this Bill can in places like Gujrat afford some relief, I do not understand why we should not welcome it. Why should spouses be compelled anywhere to forswear themselves before marriage by declaring that they belong to no religion. It is very desirable that we should for homogeneity go in for inter-marriage. I am on that account very sorry that the scope of the Bill has been restricted. I was hoping to see that permission would be granted to Muhammadans to intermarry with Hindus and *vice versa* in these days of advancing social progress. I am greatly disappointed. I must confess that Muhammadans, Parsis and Christians have been excluded; but as I have said, something is better than nothing, and we should therefore whole-heartedly go in for the measure under consideration, which will, I hope, be passed by the House.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, as a Jaina, on behalf of my community I most strongly support the amendment which has been moved by Mr. Bhargava. Before I proceed any further, Sir, I am bound to say that I am a little surprised at the attitude which my Honourable friend, Mr. Shahani, has taken up in this matter. Of all persons in the world I expected that he would repudiate most the idea of a man being false to himself. As I take it, under this Bill you make a declaration that you are a Hindu or a Jaina or a Buddhist or a Sikh, and yet by the very provisions of the Act you put yourself beyond the pale of Hinduism and beyond the pale of the social and religious laws of the Jainas and Sikhs. For instance, a most cherished principle either among Jainas or among Buddhists or Hindus is that of adoption. This Bill takes away that. One of their most cherished principles is that marriage is a sacramental right the object of which is that the father should derive some spiritual benefit from his having sons. The Hindu joint family which is the unit of Hindu society and not the individual as in European countries, that Hindu family will be broken up because of this Bill. Their cherished laws of succession which have been handed down for generations for so many centuries will be absolutely demolished by a stroke of the pen of Dr. Gour. Now, Sir, when he does all those things, I wonder whether there is any Hinduism left; yet he wants to go before the world and he wants to be a Hindu. (Dr. Gour here interrupted the speaker.) Please do not disturb me because I am sitting near you, therefore, it does not mean that I should be disturbed like this. The man is pledged to stultify himself. It is said by Dr. Gour "Oh, under the Act of 1872 a Hindu in reality, in order to contract a marriage, has to make a declaration that he is not a Hindu. He was false to himself." But under the present law, I say, a man wants to be a Hindu and yet not a Hindu. How is he going to reconcile that position? Therefore, I submit under this Bill the position is worse than under the former Bill. Well, Sir, the observations made by my Honourable friend from Burma in regard to Buddhists apply with equal force to Jainas in this country, and I have their authority to state in this Council as emphatically as I possibly can, that they too oppose this measure tooth and nail. Sir, my learned friend, skilful lawyer that he is, in order to placate his Muhammadan colleagues in this Assembly and Members of other communities, has exempted them from the operation of this Act, thereby thinking to win them over to his side. Now he wants to concentrate his affections on the Hindu and Jaina communities and I always turns up. But this time it has come to us in its most ugly form, I say, it is neither fish, flesh nor red-herring. At first, it pretended to be something, but now it is mutilated in such a way and has introduced changes of such far-reaching character that its re-submission to the public is inevitable. How are the people to know the Bill in its present form? The Select Committee's Report was put into our hands only two days ago and Dr. Gour introduced it only last week. The public had no opportunity of considering the measure as to how far they can agree with it and how far they cannot. Under these circumstances, I defer going into the merits of the question any further, and I would strongly support the proposition that the Bill be re-circulated for public opinion.

(Voices from several parts of the House "The question be now put.")

The motion that the question be put was adopted.

Dr. H. S. Gour: Sir, I shall very briefly reply

Dr. Nand Lal: I thought the order of the Chair was that the question be now put.

Dr. H. S. Gour: I shall not take up the time of the House a minute longer than is absolutely necessary. Nine Honourable Members have spoken on this subject, five are in favour of the principle of the Bill and four are for circulation, but their social complexion I was not able to clearly discern. Now, Sir, I ask one question. Suppose this Bill goes back to the country for eliciting public opinion. What public opinions are likely to enlighten this House? Surely this House is the forum of public opinion and we are the representatives of the public opinion in the country, and all that could be said of the pros and cons has already been said by the protagonists of the measure and its opponents. A very large number of members complain that if this provision is passed into law, it would deprive the Hindus of certain valued rights and thus place them in a much worse position than they are at present. That was an argument which I met at the outset of my speech. Did I not point out to the House that the measure is a purely permissive measure and it makes absolutely no advance upon the existing law unless you wish to take advantage of the special provisions which have been inserted. You may turn an absolutely deaf ear and a blind eye to these provisions. Treat them as if they were non-existent. How are you damaged by its provisions? That, I submit, is a short question and a short answer to my friend Mr. Basu who says "what about the Burmese Buddhists?" Burmese Buddhists have to tear up their copy of the Statute there if they do not wish to abide themselves by its provisions. If you wish to come under the provisions of this measure, you are subject to certain disabilities and entitled to certain rights. You contract the marriage with your eyes open, and after that you have no right to complain. If you do not wish to take advantage of the provisions of this Bill, you are at liberty to ignore it. Well, that is my answer to a very large number of friends who have spoken and emphasised upon the disabilities which this Bill casts upon those contracting marriages under my Bill. I have already said, Sir, that they need not marry under this Bill; they can continue to make false declarations of which they complain under Act III of 1872. It remains unaffected by the supplementary provisions which this Bill seeks to add to Act III of 1872. Then, Sir, it has been 5 P.M. said public opinion has not been consulted. Now, I wish to ask the Honourable Members whether public opinion has not been consulted. (An Honourable Member: "No.") I think those who cry "No!" must have for the time being forgotten that elementary axiom with which we start the study of Euclid, namely, that the greater includes the less. When on the larger measure public opinion was consulted, on this narrower and more restricted measure public opinion need not have been consulted and all the objections of which we know and which have been presented to us, not during the last 10 or 12 years but during the last 50 years, have been considered and given effect to, so far as it was necessary, in the Select Committee. I submit those who oppose this measure, those who want that we must once more go to the country for the purpose of eliciting public opinion, are trailing a red-herring. If they are honestly opposed to the Bill, let them move a motion that the Bill itself be rejected. Let them not, I submit, deliver a flank attack on the measure. And those of my friends who profess to be supporters of the measure and yet desire to widen its scope, I warn them that no public opinion, no delay is likely to widen the scope of the Bill because the more you widen it the more opposition it is likely to receive from the orthodox section of the community.

[Dr. H. S. Gour.]

I make no secret of the fact that the Bill is a compromise and you cannot justify all the provisions of a compromise. You must take it as a whole or not at all. That is my answer to my friends who say I have gone too far. That is my answer to my friends who say I have not gone far enough. I say, Sir, I have taken a middle course and that middle course I ask this House to endorse by their vote.

Mr. President: The original question was:

"That the Report of the Select Committee on the Bill further to amend the Special Marriage Act, 1872, be taken into consideration."

Since which an amendment has been moved:

"That the Bill as reported by the Select Committee be re-circulated for the purpose of obtaining further opinion thereon."

The question I have to put is that the Bill be re-circulated.

The Assembly divided.

AYES—31.

Achariyar, Rao Bahadur P. T.
Srinivasa.
Agarwala, Lala Girdharilal.
Amjad Ali, Maulvi.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pardit J. L.
Bishambhar Nath, Mr.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Man Singh, Bhai.

Misra, Mr. B. N.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.

NOES—42.

Abdul Majid, Sheikh.
Abdul Rahman, Munshi.
Abul Kasem, Maulvi.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Aiyer, Sir P. S. Sivaswamy.
Allen, Mr. B. C.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Bradley-Birt, Mr. F. B.
Bridge, Mr. G.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faiz Khan, Mr. M.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Haigh, Mr. P. B.

Holme, Mr. H. E.
Jatri, Mr. S. H. K.
Jamall, Mr. A. O.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Lindsay, Mr. Darcy.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Nag, Mr. G. C.
Percival, Mr. P. E.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sams, Mr. H. A.
Sarfraz Hussain Khan, Mr.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Mr. President: Clause 2.

Mr. J. N. Basu: The clause includes Buddhists. It says:

"The following words shall be inserted, namely:
'and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion'."

From the Statement of Objects and Reasons, the Select Committee mean apparently the Indian Buddhists. Reference is not made to Burmese Buddhists or Chinese Buddhists in Burma. As their wishes have not been consulted,—I have said that their personal law is different and this Bill affects seriously the Burmese Buddhists and Chinese Buddhists. Therefore, I submit that the word 'Buddhists' may be deleted, or at least that Burmese Buddhists and Chinese Buddhists may be excluded from the operation of this Bill. I move therefore my amendment.*

Mr. President: Amendment moved in clause 2:

"Omit the word 'Buddhist'."

The amendment was negatived.

Clauses 2 to 4 were added to the Bill.

Mr. President: The question is that clause 5 stand part of the Bill.

Dr. Nand Lal: I rise to a point of order. We have not had a sufficient debate so far as opposition to this motion is concerned.

Mr. President: I do not catch the Honourable Member's point of order.

Clause 5 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble to the Bill were added.

Dr. H. S. Gour: I move that the Bill be passed.

Dr. Nand Lal: So far as I know, no measure of this character has excited so much criticism and hostility as this Bill has done. You know this is a private Bill and a private Bill can be passed only when the community which is concerned with it approves of it. There is no approval of that kind here. In any case, no need or necessity for this Bill is shown in the form of a Resolution or expression of opinion at the bar of the public. But on the contrary, the whole orthodox Hindu community is against it. (*Cries of "No, no."*) (*Cries of "Yes, yes."*) Barring Mr. Jamnadas Dwarkadas's community whom he represents, as he says (*Cries of "No, no."*) The other day in Delhi there was a big meeting and in that meeting Resolutions were passed unanimously and, if I mistake not, a copy of those Resolutions was sent to the Government of India and to us, the representatives of the people of this country. If I were to give my individual opinion, perhaps I may not have opposed the motion, but I am here to represent the views of the public and echo their voice. Therefore, I feel constrained to oppose this Bill. Marriage with the Hindus is a sacrament. It is not a contractual tie. They look upon this measure as an encroachment upon and a dreadful violation of the sanctity of their personal law. They cannot tolerate this sort of measure which may violate the sacred canons and principles which are involved in the sacred Hindu Shastras, which are the outcome of the brain and intelligence of the great Jurists Manu and other Hindu Law-givers. A good many novel expressions have been used on the floor of this House. Mr. Jamnadas Dwarkadas has coined and so often

* "Omit the word 'Buddhist'."

[Dr. Nand Lal.]

repeated the phrase "liberty of conscience". In the first place the phrase is inapplicable here. I remember an anecdote—A thief, who had committed a theft. When asked why he stooped to this crime, he said "It is according to the liberty of my conscience. Because I wanted to relieve the big *sowkar* (rich man) of his excessive wealth—a burden of anxieties. I have acted up to my conscience." Mr. Jamnadas Dwarkadas, do you seriously take it as liberty of conscience, when a man falls a victim to passions and vicious impulses?

Mr. President: I think the Honourable Member had better address the Chair.

Dr. Nand Lal: Sir, is it liberty of conscience if a man violates the canons and the sanctity of one's personal law? I think no Member in this House, who has got respect for his own religion and faith, will come forward and say that an infringement of personal law can be taken synonymous with or equal to the liberty of so-called conscience. I may say, the word "Conscience" is a relative term. Conscience among robbers is to rob others. Conscience among honest people may be to act up to a certain standard of honesty. But really the question of the liberty of conscience has got no force whatsoever here. Will any orthodox Hindu have the courage of saying that this Bill is an improvement? To my mind, so far as the useful institution of adoption is concerned, it seems to be violated, it seems to be mutilated. I think, Sir, that when a law is to be made, the first thing which should be given prominence by every legislator is the view of the people whom that law is going to govern.

(At this stage Mr. Deputy President took the Chair.)

How can you thrust a law on any community when the whole community is opposed to it? Has the author of this measure any sort of support from any quarter? Not at all. There has been opposition after opposition. Take the United Provinces (I say this subject to correction). Take the Punjab. Take Delhi. And what is this Bill after all? I submit, an unnecessary burden on our Statute Book. The Muhammadans are very lucky, very intelligent. They are out of the clutches of this. I should give them great credit for their wisdom, for the sincerity which they have evinced on this occasion, in paying due regard to the sacred principles of their Muhammadan law. They in the last debate on this measure said—"No, we are not going to countenance a measure of this character. We are Muhammadans. We have got better character and calibre." It is the Hindus who have shown their weakness, who have shown, I may be allowed to say, that they have not so much respect for their religion, and for their sacred and wholesome canons. This is a direct violation of the sanctity of orthodox principles. And, Sir, the Mover said in this House that "after all I have met the various objections that were raised by the Members of the Select Committee." In other words, he admits that the Bill as it stood originally has been mutilated. What is then the object he has in view? Simply to show that he is the author of a certain Bill. On the one hand he says that the stringency of the law, as embodied in the original Bill, has been removed; on the other hand he still holds very vehemently and urges that this Bill, as it has been recommended by the Select Committee, may be accepted. I do not find any consistency in that at all. There should be some good object in passing a measure, which,

to a certain extent, directly contravenes the views of the people. The other day, on the floor of this House, a number of speeches were made, when we were discussing the question of salt, to the effect that it was the voice of the people, the opinion of the people of this country against the proposed increase in duty, and, therefore, we felt constrained to oppose it. Can any one here, especially the Hindus, say with any show of force that there is public opinion in support of this measure? Not at all. Can any gentleman, who is an advocate of this measure, place on the table any appreciable and sufficient expression of opinion, favouring this Bill? If I were the author of a private measure I would place my cards on the table and I would have said, "here is the necessity for this measure, here you can see I have been pressed to put forward this measure before the House." There is no support, no moral support even, no support backed up by the opinion of the orthodox people at any rate, and, yet, this measure is being passed, a measure which is diametrically opposed to the sacred views of the orthodox Hindus in this country. And I am sorry to say that after all the whole Assembly will be considered responsible for passing this measure, which is uncalled for and which is wicked and vicious altogether. What good will be done, Sir? The object, as I have submitted before to the House with which this Bill brought forward, most probably was that to a certain extent it may bring about the political unity of different classes of various religious in this country. Now the Muhammadan community does not come within the purview of this Bill; where is the political object? That argument loses force at once. The natural result of this measure will be that this Assembly will be criticised, and very rightly criticised, especially, by the orthodox Hindu community.

Another argument which has been advanced by the Honourable author of this measure is that the Honourable Mr. Rangachariar has subscribed to it and some other gentlemen have subscribed to it who are strong advocates of orthodoxy—these gentlemen have yielded. Well, they may have yielded for reasons best known to themselves. But I would submit before this House that after all you cannot ignore the feelings of the largest majority of the other orthodox people. They are, in fact, in the large majority and if you are going to set their sacred views at naught, there will then, I am afraid, be discontent and unfortunately the Government of India will, to a certain extent, be wrongly held responsible, by some ill informed critics, though it is the work of one or only some of us. I may say at once here, that our Government is not responsible for this measure at all. With these few remarks I strongly oppose this motion and I submit that this Bill be not passed at all.

Bhai Man Singh: I had given notice of these amendments. I do not know what has happened to them. At least I was in the Hall and I did not hear my names being called. I should like to know whether they have been ruled out of order.

Mr. Deputy President: I am afraid I am not in a position to help the Honourable Member. It was his duty to be here and protect his own rights.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan): Sir, I am very proud indeed to have a neighbour so staunch, so eloquent in defence of orthodoxy, in defence of Hindu sentiments and feelings. Sir, it reminded me of our habit, when I saw my Honourable friend, on his feet, of being afraid of dead cobras. When we see a cobra on the road, dead

[Rao Bahadur T. Rangachariar.]

or alive, we always get afraid. That is the feeling which came upon me when I heard my Honourable friend, Dr. Nand Lal, haranguing against this proposed measure. Sir, I have been accused of unholy alliance in having concerted with Dr. Gour. Sir, there is an unholy alliance over this Bill. It is a Civil Marriage Bill and a Civil Death Bill. We have conceded by the proposed measure all that can reasonably be conceded to orthodoxy of the most rigorous type. What is it that man wants? He wants a son who will perform his *shraddhas* and what else can be a greater loss to him than the loss of a son. Here, by this measure if a son is so dead to his parent's sentiments that he feels so strong on such a point that he would marry in the way he likes, you give him liberty and at the same time you liberate the parents from possessing such a son; and therefore Dr. Gour was perfectly right; when he advocated liberty of action on the part of one, he freely conceded liberty of action on the part of the others also whose happiness is involved by the liberty of action of this individual; so that, Sir, the compromise effected in this case concedes rights to individuals, concedes also liberty of action to others. My Honourable friends complained, who are whole-hoggers in this reform like my friend Munshi Iswar Saran, "Why not retain for him all the personal law of the Hindu, why do you allow him to marry and deprive him of the personal law of succession, adoption and all that?" Let us think about it a little. Who are the people who are likely to marry under these special provisions? Persons who are grown up and, who are so imbued with love, and decide to act, that is to say, sentiments of love come into play in this case, and drive them to this course because it is a marriage which will take place after the man or woman has begun to be capable of thinking for himself or herself. So it is a marriage of love, which we all respect. In such cases if you allow personal law to come into play, what will happen? According to the personal law of the Hindus, the sons take everything to the detriment of the daughters. The sons take everything to the exclusion of the widow. Therefore, in a case like this, what is the injustice in allowing a different Law of Succession to prevail? The man marries a woman and she contracts this alliance and both of them, as society now stands, will be put out of it, by contracting such an alliance. Therefore the woman stands to gain by the provision we have made, and the man stands to gain by the provision we have made in that the sons will not exclude the parent from inheritance. That is a great advantage. The daughters of this marriage will get a share in the estate of the parent. So that there was every advantage in applying this Indian Succession Act to alliances of this sort. If people are willing to resort to this course, why should we prevent them from resorting to it? Is Hinduism going to be affected by this? Your home is safe; your joint families are safe; your religious trusts are safe; your charity is safe; where is the danger to society? I fear, and that fear is not unaccompanied with a feeling of joy also, that very few people will really resort to this form of marriage, and if they do, they are not worthy of keeping in society—I mean from the point of view of the people who oppose it. If people are prepared to leave our society and contract this form of alliance with their eyes open that the personal law of the Hindus will not apply to them, then why should the family care for such people? Therefore I do not see why any reasonable objection should be taken to this measure. Sir, orthodoxy is not blind to world forces; I wish to emphasize that proposition by my attitude to this Bill as recast.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I do not wish to make a long speech on this occasion, but I thought it was my duty not to allow this occasion to pass without saying one word in appreciation of the services rendered by my Honourable friend, Dr. Gour. Sir, as my friend, Mr. Jamnadas Dwarkadas has said, this is a matter of the freedom of conscience for the progressive section of the Hindu community, and if there had been a fight, it was a fight for this principle. There are a large number of Hindus who, when they marry, have to renounce their religion, and this Bill only helps them to retain their religion and marry among themselves. This Bill has done nothing more than this. Sir, while we pressed forward this reform we were not oblivious of the rights of the orthodox section of the Hindu community. If we wanted our freedom of conscience to be preserved, we were anxious to recognise the right of the orthodox section for their freedom of conscience, and with that object in view, we made every concession that was required to be made, and the fact that my Honourable friend, Mr. Rangachariar is in favour of this Bill ought to satisfy any orthodox member of this Assembly. (*Honourable Members:* "No, no.") Sir, I do not wish to argue this point in order to satisfy those Members of this Assembly who are not yet satisfied. I hope time will change their attitude if nothing else will. Sir, on behalf of the progressive section of the Hindu community I therefore offer a hearty vote of thanks to my Honourable friend, Dr. Gour.

Sir P. S. Sivaswamy Aiyer (Tanjore *cum* Trichinopoly: Non-Muhamadan Rural): Sir, I wish to say a few words in support of the proposition which has been moved by my Honourable friend, Dr. Gour. In the first place I think we ought to congratulate him upon the persistency with which he has piloted this measure in the face of very considerable opposition, and congratulate him upon the success which has so far attended his efforts, and will, I believe, crown his efforts this evening. The fact that the Bill as it has emerged from the Select Committee has exposed Dr. Gour to a fire from all sides is, I think, some proof of the earnest attempt which has been made by the Select Committee to meet all reasonable objections. He has been exposed to criticism from those gentlemen who think that this Bill ought never to have been launched. He has been exposed to criticism from gentlemen who think that it has not gone far enough to meet the views of the social reformers. On a former occasion when Dr. Gour sought to introduce this Bill, I put forward the necessity for providing safeguards in the interests of those members of the orthodox community who might entertain a reasonable objection to being put to any hardship or inconvenience by such marriages being contracted by members of their families. The objections which I put forward on the last occasion have been met, the safeguards which I desired have been provided. I do not think that it can be reasonably suggested that the orthodox relations of a person who wishes to contract a marriage in this form are likely to be put to any hardship at all by reason of the provisions of this Bill. Now, if the question merely were what is the sentiment of the community at large which is likely to be effected by this measure, I must admit that that sentiment will be almost entirely against Dr. Gour's legislation. If I vote in favour of this legislation, it is not because I flatter myself or flatter my conscience that it is in accordance with the sentiments of the orthodox Hindu community at large, but it is because I think that a higher consideration comes into play, namely, the liberty of the conscience of the individual.

(At this stage Mr. President resumed the Chair.)

[Sir P. S. Sivaswamy Aiyer.]

No community has any right to dictate to any individual that he shall be obliged to make a declaration against his conscience if he wishes to take a particular line of action in regard to one of the most solemn relationships of life. It is because I felt that the cause of liberty of conscience was sacred and must override other considerations that I have supported the introduction of this Bill. On the one hand it grants that liberty of conscience, which all civilised Governments must recognise and which the Government of India has always recognised in its past legislation. It is that principle which has underlain the Freedom of Religion Act and many other measures affecting Hindu society. Much of the opposition to this Bill is due to the fact that people do not sufficiently realise the changes which have already been brought about by the Freedom of Religion Act. It is because people think that the Freedom of Religion Act has made no encroachment upon Hindu usages that they think that Dr. Gour's Bill makes a novel and unprecedented attack upon Hindu usages. Now I think the principle of individual liberty requires that we should grant to the individual the right to contract a marriage without being put to the necessity of making a false declaration. On the other hand, I do not think that this principle of individual liberty gives any right to a person to cause any serious inconvenience to the members of the family from which he separates by his conduct. The attitude of some of those gentlemen who criticised Dr. Gour's Bill as amended by the Select Committee is that while departing from actual Hindu usages and customs, they should have all the privileges conferred upon Hindus—without any of the responsibilities or duties forming part of such customs. That, I think, is a proposition which is not demanded by the exigencies of the principle of individual liberty. You have no right, if you depart from social usages to inflict your company upon those relations who wish to remain in the orthodox fold and from whose ways you have parted. Nor have you any right to thrust upon your orthodox relations heirs to their property whom according to the existing usages they would not be bound to recognise. These would be objections founded not merely on sentimental but on reasonable grounds, and the Bill as amended by the Select Committee has provided for all these reasonable objections. It is because I think the Bill has met all possible reasonable objections which may be urged in orthodox circles, and on the other hand, it recognises that principle of individual liberty which has been in the past acted upon by the Government in legislation of this kind, that I vote in favour of the motion.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, although it is not an illegal practice, still I think it is rather a novel practice and I do not remember its having been followed at any time previously, that after a Bill has been passed, clause by clause, when the Mover moves for its passing, there is opposition raised. But there was one particular occasion for that in the present instances. That is, that Dr. Nand Lal has been honestly feeling very strongly on this question, and as he did not get any opportunity in the course of the debate to speak, I am glad he has ventilated his grievances sufficiently and of those whom he considers he represents here.

But some remarks have fallen from some other Honourable Members in the course of the debate which require to be answered. Now, great play has been made with the fact that the Hindu marriage is a great sacrament and not a civil contract. Well, what follows? Supposing this Bill is

passed, is this sacramental nature of Hindu marriage going to be changed? So far as this sacramental nature of marriage as recognised in Hindu law, is concerned, certainly not. Then again those people who are great sticklers for every particular form of Hindu law forget that thousands and thousands of years have elapsed since the great Manu laid down his laws, and forget in how many directions we have undergone changes, revolutionary changes, in the Hindu law. Mr. Pyari Lal was very keen on the fact that we are violating the principles of Hindu law, that we are offending against Hindu law because this form of marriage was not recognised by the Hindu law. Is that so? Is there any passage in the law laid down by Manu which would go against a marriage of this kind? I think this point need not be laboured at great length. The very dresses that you are wearing, the very atmosphere that you are breathing, the very food that we are eating in many cases is not strictly orthodox as it existed in the days of Manu. Without naming names, but only looking in that direction, I can point out people who have opposed Dr. Gour's Bill and ask them whether they really adhere to all the rules of clothing and diet and other things that prevailed amongst Hindus. Certainly not. I think we shall be false to our education, we shall not be true to the civilization which we have inherited if we did not adapt ourselves to the changing circumstances. Therefore all those sentimental objections that have been raised to the Bill, according to me, are of no value whatever. Now, Sir, this Bill recognises a very great principle. What does it recognise? Briefly summed up, it is to put it in a nutshell, contained in a proverb which prevails both in Hindustani and other vernaculars, namely: *Mian bibi rasi to kya kerega qazi*. "If husband and wife are agreed, then why is it the business of anybody else to interfere?" Therefore, I say that those people who are opposing this Bill are doing great violence to this great principle of freedom which has been recognised in all countries. Why, an Englishman can marry an Irishwoman or a Frenchwoman; but a Brahmin cannot marry a Kshatriya, nor a Vaisya. Why should that be so? Mr. Jamnadas Dwarkadas tells me—his knowledge of Hindu law is better than mine—that in old days it was allowed.

However, there was one remark in this connection which must not be allowed to go unchallenged. Mr. Rangachariar has found himself in a dual position. Having been a member of the Select Committee and having attempted his best to truncate the Bill to the utmost possible limits—for which I am very sorry and I share the disappointment of Mr. Shahani,—he has signed the report of the Select Committee and by doing so has roused the ire of those of his orthodox colleagues who had seen him valiantly and with great pleasure fighting the battles of orthodoxy before the Bill went to the Select Committee. Now, Sir, finding this inconsistency of the dual position, when he was attacked here, he managed to reconcile his irreconcilable position by making a sneering attack upon those who will take advantage of this Act and marry according to its principle; and the remarks that he made—with due submission and with all the respect that is always due to him—were rather unwarranted. He said that these marriages will be love marriages and therefore he did not oppose them. But a man who takes advantage of the Act and marries under it will be like an outcaste; he should be driven out of society. That is to say, he is against this Act being taken advantage of. Now, Sir, I ask him to reflect as to what was the original object of the author of this Bill as well as of his predecessors to have brought about this Bill? Cases which Mr. Rangachariar condemns will be, I say, only one in a million. The

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[Mr. Harchandrai Vishindas.]

cases for which Dr. Gour, Mr. Patel and Mr. Basu were striving to provide for are cases of inter-caste marriages which are at present prohibited. According to a ruling that was quoted by Munshi Iswar Saran, the Allahabad High Court ruled that a marriage between a Brahmin and a Kshatriya was null and void, and I say, Sir, with all confidence that in 99 cases out of 100, advantage of this Act will be taken by men with the consent of their parents. When there is a Brahmin and a Kshatriya family who are very friendly to each other, when the Brahmin father wishes his Brahmin son to be married to his friend Kshatriya's daughter, then alone these marriages will be contracted, and does Mr. Rangachariar dare say that that man becomes an outcaste and unworthy of society? Certainly not. There may be very rare instances of such a nature as are contemplated by Mr. Rangachariar, but I think the original object of the authors of this Bill has always been to provide for those hard cases, those cases which are an outrage to society, where man and woman come under the pale of different societies, under different labels, and are prevented from marrying each other on account of the existence of such a horrid law. If they come together, if both love together, is it not a much better marriage than when two people are forcibly brought together? Do the latter class of marriages prove happy marriages? If this Bill has for its object the provision for all kinds of marriages, it is a Bill that we should heartily welcome, and let me add my congratulations to those that have been very rightly heaped upon Dr. Gour by Mr. Joshi and Sir Sivaswamy Aiyer by saying that where the great Basu failed, and where Mr. Patel failed, Dr. Gour has succeeded, and it is another feather in his cap and a crown of glory.

(Cries of 'The question be now put' from different parts of the House.)

The motion that the question be put was adopted.

Mr. President: The question is:

"That the Bill further to amend the Special Marriage Act, 1872, as amended, be passed."

The Assembly divided:

AYES—37.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Ahmed, Mr. K.
Aiyar, Mr. A. V. V.
Aiyer, Sir P. S. Sivaswamy.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barodawalla, Mr. S. K.
Bridge, Mr. G.
Chaudhuri, Mr. J.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Haigh, Mr. P. B.
Holme, Mr. H. F.
Jamall, Mr. A. O.

Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Latthe, Mr. A. B.
Lindsay, Mr. Darcy.
Man Singh, Bhai.
Misra, Mr. B. N.
Mudaliar, Mr. S.
Muhammad Ismail, Mr. S.
Nag, Mr. G. C.
Percival, Mr. P. E.
Rangachariar, Mr. T.
Schamnad, Mr. Mahmood.
Shahani, Mr. S. C.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

NOES—27.

Achariyar, Rao Bahadur P. T.
Srinivasa.
Agarwala, Lala Girdharilal.
Amjad Ali, Maulvi.
Asjad-ul-lah, Maulvi Miyan.
Ayyangar, Mr. M. G. M.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Bishambhar Nath, Mr.
Jafri, Mr. S. H. K.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.

Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 24th March, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 24th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

NUMBER OF MEMBERS OF LEGISLATURES.

617. ***Mr. Mohammad Ahsan Khan:** (a) Will the Government be pleased to give the number of Members of:

- (i) Council of State;
- (ii) Legislative Assembly;
- (iii) Madras Legislative Council;
- (iv) Bombay Legislative Council;
- (v) Bengal Legislative Council;
- (vi) United Provinces Legislative Council;
- (vii) Punjab Legislative Council;
- (viii) Bihar and Orissa Legislative Council;
- (ix) Central Provinces Legislative Council; and
- (x) Assam Legislative Council

who became the recipients of Indian titles during the years 1921, 1922 and up to 1st January, 1923?

(b) Is it a fact or not that the United Provinces Legislative Council gives a greater number than any other Council?

Mr. Denys Bray: The information asked for is not available. It could only be obtained by a reference to Local Governments but the expenditure of time and labour in making these inquiries would be incommensurate with the value of the results to be obtained.

Mr. S. O. Shahani: Will Government be pleased to state if the Members of Council referred to in the question have been the recipients of titles for services rendered inside or outside the Councils or both inside and outside?

Mr. Denys Bray: The question sounds so complicated to my ears that I must ask for notice.

ASSISTANTS TO DIRECTOR GENERAL, POST OFFICE.

618. ***Mr. K. O. Neogy:** (a) Is it a fact that the Director General of Post offices had one Deputy Director General and one Personal Assistant, associated with him in his office at Simla and Delhi, prior to the creation of a Deputy Postmaster General's appointment for Sind and Baluchistan, last year?

(b) Is it a fact that the post of Personal Assistant to the Director General was abolished on the creation of the Deputy Postmaster Generalship for Sind and Baluchistan?

(c) Is it a fact that an appointment of Assistant Director General has recently been transferred from the main office in Calcutta to Delhi, although the section of which he held charge is in Calcutta; and has not this practically resulted in the substitution of the post of Personal Assistant by a higher appointment in the office of the Director General?

Colonel Sir Sydney Crookshank: (a) and (b). Up to March, 1922, the Director General had at Simla and Delhi one Deputy Director General of the Post Office and one Personal Assistant. The appointment of the latter was abolished from the 1st April, 1922, but its abolition was in no way connected with the creation of an appointment of Deputy Postmaster General for Sind and Baluchistan.

(c) The Assistant Director General in charge of the Establishment Branch has been transferred to the Simla Delhi office as a matter of administrative convenience. Establishment cases which require special care in preparation are dealt with by the Deputy Director General who is stationed in Simla and Delhi and it is convenient for him to have the Assistant Director General who works up these cases close at hand rather than in Calcutta. This arrangement has not resulted in the replacement of the post of Personal Assistant by a higher appointment.

RECOMMENDATIONS OF ARMS RULES COMMITTEE.

619. ***Baba Ujagar Singh Bedi:** Will Government be able to give the information to this House in this Session regarding my question No. 367?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the statement I made in the House on the 22nd February. A letter is under issue to Local Governments on certain questions of detail and we are asking for very early replies.

BABU WISAKHA RAM, REGISTRATION CLERK.

620. ***Dr. Nand Lal:** (a) Will the Government be pleased to state if Babu Wisakha Ram, Registration clerk, Post Office Multan City, was tried, under section 52, Act- 6, 1898, in May, 1922, for the theft of an insured bundle containing two insured articles for Rs. 1,200 each?

(b) Was he discharged by the City Magistrate who tried him?

(c) Has Babu Wisakha Ram been re-instated after his discharge?

(d) Did he receive the pay of the period of suspension and the expenses incurred in his defence.

(e) Has he submitted any representation to the Postmaster General, Punjab?

(f) If answer to the above is in the affirmative, will the Government be pleased to lay a copy of it (representation) on the table of this House, and state as to what response was given?

(g) What are the expenses that the Government incurred in the case against said Wisakha Ram?

Colonel Sir Sydney Crookshank: (a), (b) and (c). Yes.

(d) Babu Wisakha Ram will get full pay for the period of his suspension when the case is finally settled on receipt of the decision of the Court on the Civil Suit filed by the sender of the article. His application for expenses incurred in his defence has not yet been received by the Postmaster General, Punjab and North-West Frontier.

(e) No.

(f) In view of what has just been stated, these questions do not arise.

(g) The required information is not available.

CONVICTIONS UNDER FRONTIER CRIMES REGULATION.

621. ***Dr. Nand Lal:** Will the Government be pleased to state as to (a) how many men have been bound over under section 40 of the Frontier Crimes Regulation with effect from January, 1920, to May, 1922;

(b) how many of them are still in jail on account of their not having given security;

(c) in what jails they are confined?

The Honourable Sir Malcolm Hailey: The information is being collected and will be supplied when available.

CONVICTION OF PANDIT AMIR CHAND BAMBWAL AND HAKIM ABDUL JALIL.

622. ***Dr. Nand Lal:** (1) Is Government of India aware that Pandit Amir Chand Bambwal and Hakim Abdul Jalil, of Peshawar City, were under section 40, of Frontier Crimes Regulation, bound over to furnish security of Rs. 10,000 each for the period of three years?

(2) If the answer to question No. 1 be in affirmative, will they be pleased to lay on table the copy of that order?

(3) Is Government of India aware that they have failed to furnish security and are undergoing rigorous imprisonment?

(4) If so, will the Government be pleased to state as to what jail they are confined in?

(5) Will the Government of India be pleased to state as to whether it is a fact that the aforesaid Pandit Amir Chand and Hakim Abdul Jalil, were bound over because they were agitating for the amalgamation of the North-West Frontier Province with the Punjab?

(6) If the answer to question No. 5 be in negative, will the Government be pleased to state the cause of and ground on which they were so bound over?

(7) Will the Government of India be pleased to state as to why so excessive security, for rupees ten thousand each and for so long a period of three years was demanded?

(8) Will the Government of India be pleased to state that the aforesaid Pandit Amir Chand or Hakim Abdul Jalil had asked for a copy of the documents alluded to in the aforesaid order, dated the 22nd February, 1921, and it was refused?

(9) Is it true that they (the aforesaid Pandit Amir Chand and Hakim Abdul Jalil) applied within time to give evidence personally or in writing before the North-West Frontier Committee, and they either were not allowed to do so or no answer was given to them?

The Honourable Sir Malcolm Hailey: The information is being collected and will be supplied when available.

NORTH-WEST FRONTIER PROVINCE JUDICIARY.

623. ***Dr. Nand Lal:** (1) Is Government of India aware that a large section of the people of North-West Frontier Province are very anxious that it or at least its judiciary may be amalgamated with the Punjab?

(2) If answer to this be in affirmative, will the Government of India be pleased to say when are they going to appreciate people's wishes and order the aforesaid amalgamation?

Mr. Denys Bray: Government are not aware that the section who desire amalgamation in any form is large relatively to the size of the section who oppose it. As the Honourable Member is aware the whole question is now under the consideration of Government.

WORKING OF INCOME-TAX DEPARTMENT.

624. ***Dr. Nand Lal:** (1) Is Government of India aware that there is a great discontent and dissatisfaction owing to the ill-treatment of the Income-tax Department with Assesseees in the Punjab?

(2) Is the Government of India aware that some questions, in connection with the aforesaid treatment of the income-tax Department were submitted in the Punjab Provincial Council by a certain Member of that Council and were not allowed to be asked, because the income-tax was a Central subject?

(3) Is Government of India aware that in the Punjab, in some cases the income-tax returns duly verified and signed by the assesseees were wrongly disbelieved and assesseees were unduly put to hardship?

(4) Is Government of India aware that in the Punjab in some cases, the income-tax assessors summon a large number of busy and respectable assesseees on a certain day for the examination of their accounts and they or their Munims have, in some cases, to come again and again and in some cases they are unduly detained and put to a great hardship?

(5) Is Government of India aware that, in the Punjab, there were a number of complaints, against certain income-tax assessors and officers, to the Local Government?

(6) If answer to question No. 5 be in affirmative, will the Government of India be pleased to state as to what action was taken on those complaints?

The Honourable Sir Basil Blackett: The replies to parts (1), (3) and (4) are in the negative, and the reply to part (2) is in the affirmative.

(5) and (6). One complaint against an income-tax assessment from a firm in Amritsar was received by the Punjab Government and forwarded to the Government of India. The Board of Inland Revenue have asked the complainant to address the Commissioner of Income-tax in the Punjab in the first instance.

RECRUITMENT OF TELEGRAPH SIGNALLERS.

625. ***Dr. Nand Lal:** Will Government be pleased to say:

(1) Whether recruitment of signallers to the Indian Telegraph Department has been entirely stopped, if so, when?

(2) If the answer is in the affirmative, will Government be pleased to say whether it is a fact that Eurasian boys of the 4th and 5th Standards from the Lovedale School at Ooty are still regularly recruited annually without any entrance examination?

(3) Are Government aware that there is an intense feeling among the Indian community on account of the frequent transfers of signallers from one corner of India to another, say from Madras to Lahore, Karachi to Calcutta, Lahore to Rangoon and so forth? If so, will Government be pleased to state the object of such frequent transfers causing extreme inconvenience to the transferees and financial loss to the tax-payer consequent on the payment of heavy travelling allowances?

(4) Is it a fact that in recruiting men for the General Scale, Eurasian and Anglo-Indian boys who have not studied even up to the 4th or 5th standard are freely admitted, while in the case of Indians, the minimum educational qualification insisted upon is the B. A. degree before they are selected for the General scale, and even then there is a considerable disparity in the salaries and allowances paid to the two classes of employees?

Colonel Sir Sydney Crookshank: (1) and (2). No. The recruitment in departmental training classes only, with the exception of certain vacancies already promised, has been stopped since the 22nd August, 1922. The telegraph training classes attached to approved educational institutions are still open.

(3) Government are not aware of the existence of any such feeling. Transfers are ordered in the interests of the public service and considerations of economy are not ignored. One of the conditions of the General Service for the signalling staff, which enjoys a higher rate of pay, is liability for transfer anywhere in India or Burma. Signallers who object to this condition may join the local or station service.

(4) The reply is in the negative. In April, 1920, 12 vacancies for probationers for the General Service were offered, as a temporary measure, to Indian graduates; whereas Anglo-Indians, who were recruited at the same time for vacancies in the same service were of lower educational qualifications, but none of them had passed anything less than the 7th standard. It is not the case that this differentiation in educational qualifications has been a regular practice.

Mr. S. C. Shahani: Will Government be pleased to state if, specially for Sind, they will be prepared to recruit for the Indian Telegraph Department annually students from the only first grade College in Sind—the D. J. Sind College—with or without an entrance test?

Mr. H. A. Sams: I shall be glad to consider the question.

Mr. S. O. Shahani: Are Government prepared to state that hereafter in the Indian Telegraph Department transfers from one corner of India to another will be discouraged?

Mr. H. A. Sams: These transfers are never made without necessity.

INDIAN TROOPS IN IRAQ, PALESTINE, ETC.

626. ***Mr. W. M. Hussanally:** (a) What Indian troops are at present serving in Iraq, Palestine, the Persian Gulf or the Persian Frontier?

(b) How long have they been so employed?

(c) When is it proposed to return them to India?

(d) What is the nature of their employment?

Mr. E. Burdon: (a) It would not be in the public interest to give the information asked for regarding the troops serving in Iraq and Palestine. There are one battalion and two companies of infantry serving in the Persian Gulf and on the Persian frontier respectively.

(b) There have been changes of composition from time to time in accordance with the ordinary system of reliefs and from other causes. Subject to this qualification, Indian troops have been employed in the localities referred to since the war.

(c) There is no immediate intention of withdrawing the troops employed in the Persian Gulf and on the Persian frontier. It would not be in the public interest to give the information asked for so far as the troops employed in Iraq and Palestine are concerned.

(d) The employment of troops in Iraq and Palestine is in pursuance of the Resolution adopted by this House on the 28th March, 1921. The troops in the Persian Gulf and on the Persian frontier are employed for the protection of British and Indian interests on the Persian Gulf littoral and in Western Baluchistan.

Mr. K. Ahmed: Will Government say what prospect or advantage there is for India in sending out troops to Iraq, Palestine, Persian Gulf and the Persian frontier?

Dr. H. S. Gour: Before that question is answered, Sir, may I ask the Honourable Member to say as to who pays for these troops?

Mr. E. Burdon: The troops in Iraq and Palestine are paid for entirely by His Majesty's Government. The Persian Gulf charges are divisible, as my Honourable friend can see from the Army Estimates, between His Majesty's Government and Indian revenues.

Mr. T. V. Seshagiri Ayyar: Does it include the transport charges from India to these places? Is it paid by India or by England?

Mr. E. Burdon: As far as Iraq and Palestine are concerned, every item of extra expenditure is borne by His Majesty's Government, including pensions and including mustering out charges and disbanding charges when the troops are returned.

Mr. K. Ahmed: May I repeat my question, therefore, Sir? What prospect India has or what advantage do we get by sending out Indian troops to the Frontier of Iraq and Palestine and Persian Gulf and the Persian Frontier? Is there any prospect of getting anything by spending so much from the revenue of India?

Mr. President: The question of advantage is a matter of opinion.

Mr. K. Ahmed: No, Sir; it is a matter of settled fact that we must pay. I want to know if there is a prospect of getting any advantage out of it; otherwise what is the use of sending our army to those places?

Mr. E. Burdon: I have already explained, Sir, that the troops in Iraq and Palestine are employed there in pursuance of a Resolution adopted by this Assembly.

Dr. H. S. Gour: Was it not, Sir, the Resolution of this Assembly that by service overseas these troops acquire a wider experience of actual warfare which strengthens the Indian Army?

Mr. E. Burdon: My Honourable friend is correct; that is one of the reasons.

RETAIL SALE OF POSTAGE STAMPS.

627. ***Mr. W. M. Hussanally:** (1) When was the system of the departmental retail sale of postage stamps introduced in supersession of the system of selling them on commission to stamp vendors?

(2) What were the reasons for the change and what are the advantages of the departmental sale?

(3) (a) What is the total cost to the post office per year of selling stamps departmentally to the public?

(b) What would be the cost if the old system of sale on commission were reverted to?

(4) (a) Is it a fact that at the time of the introduction of the present system the public strongly protested against the change in the press?

(b) Were any protests received by the Government; if so, from whom?

(5) (a) Are Government aware that the public are put to great inconvenience in purchasing stamps from the Post Office?

(b) Are Government aware that on the Post Office holidays and Sundays no stamps are sold and the inconvenience is greater?

(c) Is it a fact that this inconvenience leads to loss of revenue?

(6) (a) Do Government propose to arrange that stamps be sold to the public at every post office on holidays and Sundays?

(b) If not, do they propose to revert to the old practice of sale to stamp vendors on commission?

Colonel Sir Sydney Crookshank: (1) 1st April, 1907.

(2) Prior to the 1st April, 1907, there were two classes of postage stamp vendors, namely, postmaster, and licensed vendors. So far as postmasters were concerned, it was as much their duty to sell postage stamps as to perform any other postal work, and there was no reason why they should be given special remuneration for doing this duty. It was considered that if the discount was to be withdrawn from post office officials, it could not be allowed to licensed vendors. With the large and rapidly increasing number of post offices, not only in towns but in rural tracts as well, and with postmen and village postmen selling postage stamps at the doors of the public

everywhere, there was little need for any person to have recourse to a licensed vendor in order to obtain postage stamps. In the circumstances, it was considered that no inconvenience to the public would be occasioned by the withdrawal of the discount allowed on these stamps, nor would the sale of postage stamps be checked in any way.

(3) (a). It is regretted that the required information is not available.

(b) About 10 lakhs.

(4) (a). No such protest is on record.

(b) Yes; from the Indian Merchants' Chamber and Bureau.

(5) (a). No.

(b) Government are aware that on Post Office holidays and Sundays no stamps are sold by the Post Office except at certain important towns; but they do not consider that this causes any real inconvenience. The public, knowing that the Post Office is closed, presumably provide themselves with stamps beforehand.

(c) Government do not consider that any loss of revenue is involved.

(6) (a). No.

(b) No, the old system cannot be reverted to for financial and administrative reasons.

Mr. S. C. Shahani: Are Government aware that the public would be put to great inconvenience if they have to purchase stamps only from the stamp vendors?

Mr. H. A. Sams: Sir, I do not think the public are put to any inconvenience at all. This question of Mr. Hussanally has been brought up after the lapse of nearly 18 years. Since then it has not been found that the public has suffered any inconvenience whatsoever from the introduction of the new system in 1907.

Dr. H. S. Gour: Is the Honourable Member aware that stamps are sold by grocers and public-house keepers in England?

Mr. H. A. Sams: Yes, I am aware that this is the case so far as grocers are concerned; about public-houses I do not know. As far as I know grocers do not get any fee for doing so; they do it to suit their customers.

Mr. S. C. Shahani: Will Government be pleased to state if they will think it suitable to combine the two practices, the old practice of sales to stamp vendors on commission and the new practice of the departmental sales of postage stamps?

Mr. H. A. Sams: No, Sir, I do not think it will be any convenience to the public.

COTTON COMMITTEE.

628. ***Mr. J. N. Basu:** Will the Government be pleased to state whether it is intended to appoint a representative of cotton-growers in Burma, on the Committee to be formed under clause (4) of the Bill for the creation of a fund for improvement and development of cotton-growing in India, passed on 24th February, 1928, in the Assembly?

Mr. J. Hullah: The Committee provided in the Bill which has now become an Act is a large one and the Government of India do not at present propose to add to its membership. The Act provides that a representative of the Department of Agriculture in Burma shall be a Member.

COMMISSIONERS OF FEUDATORY STATES.

629. ***Babu Braja Sundar Dass:** (a) Will the Government be pleased to state if there have been two Commissioners and Superintendents of Feudatory States in the Geographical Orissa Division in the place of one?

(b) Was the appointment sanctioned by the Government of India?

Mr. Denys Bray: (a) Formerly the Commissioner of a neighbouring division of Bihar and Orissa held political charge of the Orissa Feudatory States assisted by a Political Agent and an Assistant Political Agent. Since the 1st April, 1922, the Commissioner has ceased to carry out any political duties, the status of the Political Agent has been raised and he is styled Political Agent and Commissioner, Orissa Feudatory States.

(b) The appointment was sanctioned by the Secretary of State for India.

POLITICAL AGENT OF FEUDATORY STATES, ORISSA.

630. ***Babu Braja Sundar Dass:** (a) Will the Government be pleased to state if the Political Agent of the Feudatory States of Orissa is a public servant of the British Government paid by the Government of Bihar and Orissa or by the Government of India?

(b) Are the Members of the Indian and Provincial Legislatures competent to ask questions regarding his actions in his official capacity?

Mr. Denys Bray: (a) He is a Government servant paid by the Government of India.

(b) Attention is invited to rule 8 (1) (ii) of the Indian Legislative Rules.

DESIGNATION OF LEGISLATIVE ASSEMBLY AS "LOWER HOUSE."

631. ***Lala Girdharilal Agarwala:** Have the Government decided to style the Legislative Assembly as the 'Lower House' officially? If not, do the Government propose to delete the words 'Lower House' printed in the Council of State Debates for Legislative Assembly (*Vide* Volume 3, No. 28, page 969 of the Council of State Debates)?

Sir Henry Moncreiff Smith: The answer to both parts of the Honourable Member's question is in the negative.

Mr. S. C. Shahani: Is the so-called Lower House constitutionally the Upper House in the control of the public purse?

Sir Henry Moncreiff Smith: That is a matter of opinion.

Maulvi Abul Kasem: Sir, with your permission I would ask a question of which I have given private notice to the Honourable the Home Member?

Mr. President: I thought the Honourable Member was going to ask a supplementary question.

Mr. S. O. Shahani: Is the so-called Upper House constitutionally competent to revise the decisions of the Lower House relating to the public purse?

Sir Henry Moncrieff Smith: That also, Sir, is a matter of opinion.

Dr. H. S. Gour: Sir, is it a matter of opinion, or is it part of the constitution?

Mr. K. Ahmed: Is red distinguished from black in the opinion of the Government of India?

GOLD STANDARD RESERVE.

Sir Montagu Webb: Sir, I desire your permission to ask the Honourable the Finance Member a question of which I have given him private notice. Will Government be pleased to state:

(i) the present amount of the Gold Standard Reserve, and

(ii) what portion of this amount is made up of interest as distinct from profits on coinage?

The Honourable Sir Basil Blackett: (i) The balance of the Gold Standard Reserve on the 31st December, 1922—the latest date up to which detailed figures are available—was £40,142,620.

(ii) The profits on coinage from 1900 onwards amounted to £28,578,606. There was a net profit on investments of £14,801,740. On the other hand, a sum of £1,123,655 was devoted to capital outlays on railways in 1907, and £2,109,071 was devoted to the reduction of created securities in the Paper Currency Reserve in the last two years.

Sir Montagu Webb: Do I understand, Sir, that there is no interest in that amount at all?

The Honourable Sir Basil Blackett: Interest is included in the figure of fourteen millions and odd on net profits in these figures.

Sir Montagu Webb: May I ask if the Honourable the Finance Member will take into consideration the expediency of using some portion of the interest of fourteen millions as revenue during the coming year?

The Honourable Sir Basil Blackett: 150 lakhs is included in the estimates of our revenue of the year or rather for the year 1923-24 representing the interest on the forty million in the Gold Standard Reserve.

Mr. B. S. Kamat: What is the rate of interests which the Gold Standard Reserve is earning in England?

The Honourable Sir Basil Blackett: That depends on the money market in England from time to time. The figure for next year is calculated at the rate of 2½ per cent.

Mr. B. S. Kamat: Is it not possible to earn a better rate for all this money there?

The Honourable Sir Basil Blackett: The difficulty of course is, if you are going to keep the money so as to be readily available and in a form in which it may be turned into cash at short notice, under the conditions under which the Gold Standard Reserve is invested, it is impossible to earn anything better than the short money rate of interest, which, as the Honourable Member is aware, is not very much above 2 per cent. in London at present.

Mr. T. V. Seshagiri Ayyar: Is it not a fact that last year more than a year's interest was used for the purpose of meeting the deficit?

The Honourable Sir Basil Blackett: Last year no part of the interest was used towards meeting the deficit.

Mr. T. V. Seshagiri Ayyar: Was it done at any time before?

The Honourable Sir Basil Blackett: The Budget for 1923-24 is the first Budget in which any credit to revenue is taken for interest on Gold Standard Reserve.

Dr. H. S. Gour: Is not the rate of interest for short term loans in India higher than the corresponding rate in England?

The Honourable Sir Basil Blackett: Certainly it is. If the Honourable Member's point is that it would be desirable if we could earn the short money rate in India rather than in England, it is obviously a higher one, but then the Gold Standard would cease to be a support for exchange.

Rao Bahadur T. Rangachariar: Is it necessary to keep the full amount on short terms? Won't it be possible to keep part of it as long term and another part as short term?

Dr. H. S. Gour: Before that question is answered, I should like to ask, if it is not possible to transfer a portion of the Gold Standard Reserve in India and utilise it here at better rates of interest, so that it may serve the same purpose?

The Honourable Sir Basil Blackett: The transfer of the Gold Standard Reserve from England to India would have a very serious effect on Exchange unless it were brought here in the form of gold bullion. In that case it would earn no interest whatever.

Rao Bahadur T. Rangachariar: You have not answered my question.

The Honourable Sir Basil Blackett: With regard to Mr. Rangachariar's question, the question of the best use of the Gold Standard Reserve is intimately bound up with the question of the future of our exchange policy. I think it is possible that when the question of our exchange policy has been gone into a little further, it might be found that something better than 2½ per cent. could be earned on some part of the Gold Standard Reserve.

Sir Deva Prasad Sarvadhikary: Can the Government give us any idea as to what has been the longest period of these short loans?

The Honourable Sir Basil Blackett: I think the rule is that no investment must be made out of the funds of the Gold Standard Reserve, the maturity of which is more than a year ahead.

Sir Deva Prasad Sarvadhikary: And that is the shortest period of the loan?

The Honourable Sir Basil Blackett: Yes.

Sir Montagu Webb: If the Honourable Member is going to utilise over a crore and a half of interest for revenue during the forthcoming year, is there any reason, in principle, why the interest of the current year should not be similarly used?

The Honourable Sir Basil Blackett: The interest during the current year has already been devoted to writing down all created securities, and so it is no longer available.

OLD MOSQUES IN AND AROUND DELHI.

Maulvi Abul Kasem: Sir, I asked a question of which I gave private notice to the Honourable the Home Member. Will the Government be pleased to state if they have taken any steps to repair the old mosques in and around Delhi, if so, how much have they spent on the mosques which they have repaired and are they open to Moslem public?

The Honourable Sir Malcolm Hailey: I am very glad, Sir, to be able to give this information, because I think that from a number of questions which we have received on the subject an attempt has been made to create an impression that we are devoting our energies in the neighbourhood of Delhi demolishing mosques and tombs. Now we have on the contrary spent a great deal of money in the conservation and repair of Muhammadan mosques and tombs, of historic and archaeological interest, and I think perhaps the House will bear with me if I give some full details of it. In the twelve years 1911 to 1922-23, we spent:

	Rs.
On the Kutab mosques and grounds	
On repairs to the Kadam Shariff in 1921-22	1,38,075
On the Khirki Mosque in 1911 to 1923	8,559
On Sher Shah's Mosque in Purana Killa in 1912-22	6,355
On the Jama Masjid in Ferozshah Kotla in 1914-22	4,154
On the Wazirabad Mosque in 1913-16	3,029
On Moth ki Masjid in 1911-13	2,751
On Shah Abdul Nabi's Mosque on the Delhi Muttra Road in 1917-18	1,720
On the Chauraj Mosque on the Ridge in 1913-23	978
	804

We have spent minor sums on the Begumpur Mosque, the Mahrauli wall mosque, Jhunan Shah's mosque at Nizamuddin, the Maulana Jamali Kamali tomb and mosque, and Shah Alam's mosque amounting in all to Rs. 1,550. This gives a total expenditure on special works on mosques in the twelve years of Rs. 1,65,877. This does not include the annual recurring repairs which cannot be separated from the total Public Works Department expenditure on repairs.

In addition to this, Sir, we were instrumental in obtaining from His Exalted Highness the Nizam a sum of Rs. 11,000 for expenditure on the Nizamuddin buildings. Then let me take tombs.

	Rs.
On Humayun's tomb in 1911-13 to 1922-23	
Ghayazuddin Tughlak's Tomb in 1913-23	60,412
Safdar Jang's Tomb in 1914-15 and 1921-22	5,503
Nizamuddin's Tomb in 1912 to 1920	3,978
Darya Khan's Tomb in 1919-20	3,316
Sikander Lodi's Tomb in 1912 to 1916	2,124
Isa Khan's Tomb in 1911 to 1916	1,753
Adham Khan's Tomb in 1918-19	1,535
	1,526

Smaller sums spent on Razya Begum's tomb, the Pir Ghaib, and Farid Murtaza Khan's tomb amounted to Rs. 631. Including an expenditure of Rs. 1,17,651 in the nine years 1914-15 to 1922-23 on the maintenance of the gardens attached to the Humayun, Isa Khan and Safdar Jang tombs, the total expenditure comes to Rs. 1,98,129. As in the case of the mosques this does not include the ordinary annual repairs expenditure. We have, I may add, been in the receipt of comments based on the belief that we had spent considerable sums of money on Hindu temples and Sikh shrines and had spent nothing on Muhammadan monuments and mosques. But this is incorrect; we have spent nothing on the former objects in the New Delhi area. We are, it is true, repairing the wall round the Rikabgunj Quidwara, but that is part of the ordinary lay out of the New City.

Rao Bahadur T. Rangachariar: Has Government spent nothing on Hindu temples, or Sikh shrines or Jain temples?

The Honourable Sir Malcolm Hailey: No, Sir. We have spent a certain amount of money on the gardens round two of the Sikh shrines in the new City, but on the shrines themselves we have I think spent nothing.

Rao Bahadur T. Rangachariar: Why is this, Sir?

The Honourable Sir Malcolm Hailey: Mainly because, Sir, they have not the same archaeological interest and the Sikh shrines did not ask for assistance. Our motives were to preserve monuments of archaeological and historical interest. I have quoted the above facts simply to refute the statement that we have shown no care to preserve Muhammadan tombs or mosques.

Maulvi Abul Kasem: Sir, may I ask, in connection with all these mosques and tombs which are now under the control of Government and which the Government is not repairing or putting under repair, are they prepared to hand them over to the Muhammadans if they ask for it?

The Honourable Sir Malcolm Hailey: I assume that the Honourable Member refers to buildings within the new City area. He suggests that the proper course is for us to hand these over to the Muhammadan community. Now, I might say in the first place as a general rule there is no body or authority to whom these could be handed over. They are our property and I consider that our obligations towards them end when we see that those buildings which have historical or archaeological interest or which are required for present religious use are not allowed to fall into further decay.

Mr. W. M. Hussanally: Sir, is it a fact that any of the smaller mosques in or round about Pahargunge or within the new Imperial Delhi City have been demolished by Government after they began building the new City?

The Honourable Sir Malcolm Hailey: I have given all the information I can to the House in regard to the charges that have been levelled against us for demolishing these mosques. I believe that it is the case—it happened indeed in my own time—that a mosque to which some local importance was attached, although it was a very small one, was demolished, but we rebuilt it. The charge of demolishing mosques has been denied by the local authorities, and, as one inquiry after another comes up as to whether such and such mosques have been demolished, I invariably make further inquiries and give an answer on the subject. I think I may say that to my knowledge at all events, with the single exception that I have now given, no mosque has been demolished.

Mr. W. M. Hussanally: Is it a fact that recently, within the last few days, a compound wall of a small mosque in Asoka Road was demolished by the Public Works Department?

The Honourable Sir Malcolm Halley: If the Honourable Member will furnish me with further details on the subject, I will make further inquiry into the matter.

Mr. W. M. Hussanally: Would it be possible to appoint a small local committee for the purpose of investigating these complaints and settling the question of mosques within the new Imperial Delhi City area?

The Honourable Sir Malcolm Halley: I understand, Sir, that certain Members of this House have already approached the local administration on the subject. I need not point out that we have in Delhi a Chief Commissioner with the powers of a Local Government, and that suggestions of this nature should be made in the first instance to him. I believe, however, I am correct in saying that the answer given by the Chief Commissioner was that he was quite prepared to have a local committee's advice on the subject of these various buildings.

Mr. K. Ahmed: Did you not, Sir, within the four walls of this House give an undertaking and promised since the 15th of January last, that inquiries would be made and efforts would be given to them? What has happened about the circular handed over to you, Sir . . .

Mr. President: Order, order. The Honourable Member handed me no circular.

The Honourable Sir Malcolm Halley: Well, Sir, the circular was handed to me and it was handed to me, as Mr. Kabeer-ud-Din picturesquely said, within the four corners of this House. I have already replied to at least three of the points that were raised in that circular. If Mr. Kabeer-ud-Din's recollection is good, he will remember that he referred in that circular to two mosques in the Lady Hardinge College grounds, one at No. 27, Asoka Road. I have already given answer to these points. There were three or perhaps four other points mentioned, about which I have made inquiries and have not yet received the answers. As soon as I have done so, I shall place the answers at the disposal of the House. The mosques had existed for some centuries before we came here. They had for the most part fallen into disrepair some generations before this House assembled, and, if the Honourable Member has to wait another day or two before I am able to place the information in his hand, I hope he will not be impatient. But, Sir, I may also add that, as regards part of circular, I can give no answer to the Honourable Member, for it contains general allegations and appeals to Muhammadans on the subject which do not in my opinion require an answer. All I can promise to do is to take up any point in which any definite statement is made and give the best information in my power to the Honourable Member.

Mr. K. Ahmed: I take it, Sir, that Government is afraid to come forward and meet these points that are in the circular and only on a few points they will answer questions here.

The Honourable Sir Malcolm Halley: No, Sir, where definite questions are put to me by Honourable Members, Government, so far from being afraid to take up the question, are fully prepared to take up the matter both in its own interests and those of the Muhammadan community. All

I said was that I was not prepared to enter, in reply to questions or otherwise, into general allegation that all the mosques in the neighbourhood of Delhi were being demolished, because I have already proved to the House that such allegations are false.

Mr. J. Chaudhuri: Sir, are not the ruins of Hindu temples at Brindaban, Muttra, of archaeological and historical interest, and will the Honourable the Home Member . . .

Mr. President: The original question referred to Delhi. I understand the Honourable Member is now referring to Muttra.

The Honourable Sir Malcolm Halley: Sir, I may add, as it is a corollary to questions that I was asked from the other side just now, that the reason for our spending so much on Muhammadan monuments in the neighbourhood of Delhi is, of course, that the history of Delhi is mainly a Muhammadan history,—(*Rao Bahadur T. Rangachariar*: "Why not Hindu also"?) and that, although Delhi may have by tradition great connection with the Hindu Delhi of mythology (*Rao Bahadur T. Rangachariar*: "Three generations") and has an historical connection with the era which considerably preceded the Muhammadan conquests, yet there are no noteworthy remains of those periods; at all events such Hindu temples as we have in the particular area to which I am referring, namely, the New Delhi area, are not of any historical or archaeological importance.

Mr. S. C. Shahani: Are Government aware that the public will be against the Government handing over to the care of any groups of people buildings of historical and archaeological interests?

The Honourable Sir Malcolm Halley: I am of opinion myself that we are better guardians of such buildings than anybody else.

Mr. J. Chaudhuri: What has been done with regard to Hindu Rao Koti?

The Honourable Sir Malcolm Halley: Hindu Rao Koti is a hospital.

Mr. J. Chaudhuri: Is it not a Mahratta building?

Mr. President: Order, order.

UNSTARRED QUESTIONS AND ANSWERS.

RAILWAY SLEEPERS.

252. Dr. H. S. Gour: (1) With reference to the reply given by Government, to my question on the difference in price between the sleepers tendered for, on the 9th instant, will the Government be pleased to state the difference in price between the sleepers tendered for and the jarrah sleepers ordered by the Great Indian Peninsula Railway?

(2) What was the total amount spent upon the jarrah sleepers?

(3) (a) What is the life of a jarrah sleeper compared with the deodar sleeper?

(b) Is it a fact that jarrah sleepers are more perishable than deodar sleepers?

Mr. C. D. M. Hindley: (1) The price of a deodar sleeper delivered in the locality where these sleepers are required would be about Rs. 9-12-0 including freight, whereas the jarrah sleepers will cost about Rs. 8-14-0 each.

(2) A contract has been made for the supply of 1,00,000 jarrah sleepers at Rs. 8-12-3 each.

(3) (a) and (b). The life of a sleeper depends on the local conditions, such as climate, soil, etc., and in the very wet locality in which these 1,00,000 sleepers are to be used, the Agent, Great Indian Peninsula Railway, states that experience has proved the jarrah sleeper to be more satisfactory than deodar.

TRANSFERS OF POSTAL SUPERINTENDENTS.

253. Mr. K. O. Neogy: (a) Has the attention of Government been drawn to statements made in the General letter of the All-India Postal Union, dated the 7th February, 1923, relating to the transfers of Maulvi S. Ahmed and Mr. J. Newton, Superintendents of Post Offices?

(b) Is it a fact that Mr. Ahmed has been transferred from the Central Provinces to Mymensingh, and Mr. Newton from Dibrugarh to the Central Provinces?

(c) What is the amount of travelling allowance drawn by each of these officers on this occasion?

(d) Will Government be pleased to state particulars of transfers of Mr. J. Newton during the last five years, and the reasons for these transfers?

Colonel Sir Sydney Crookshank: (a) No; this matter had reference to an ordinary transfer and would not necessarily have been brought to the notice of Government.

(b) Maulvi S. Ahmed was transferred to Mymensingh, but took leave and asked for a transfer to the United Provinces, which request has already been granted on the occurrence of a vacancy in that Province. Mr. Newton was transferred from Bengal to the Central Circle.

(c) The amount of travelling allowance drawn by Mr. Newton is not known, but he will be entitled to the amount which is ordinarily admissible under the rules. Mr. Ahmed received his order of transfer to the United Provinces while at Delhi from which place he will get the travelling allowance ordinarily admissible when he joins his appointment.

(d) In September, 1919, Mr. Newton was transferred from the Bengal and Assam to the Bihar and Orissa Circle in the interests of the public service. In March, 1922, his re-transfer to the Bengal and Assam Circle was ordered as a result of the abolition of the post of the Reserve Superintendent in Bihar and Orissa. The Reserve Superintendent happened to be a Bihari and it was desirable to retain him in Bihar and transfer another Superintendent. In October last he was ordered to change places with Mr. Ahmed of the Central Circle whose transfer from that Circle was necessary in the interests of the public service.

CANTONMENT MAGISTRATES AS SUB-DIVISIONAL MAGISTRATES.

254. Mr. Mohammad Yamin Khan: Does the Government propose to appoint the Cantonment Magistrates as Sub-Divisional Magistrates under the District Magistrates?

DUTIES OF CANTONMENT MAGISTRATES.

255. Mr. Mohammad Yamin Khan: Do the Government propose to give option to the Cantonment Magistrates either to accept Magisterial post under the District Magistrate or executive career as Secretary to the Cantonment Committee?

Mr. E. Burdon: I propose to answer questions Nos. 254 and 255 together. Before this Session ends, Government propose to initiate legislation which, if carried out, will, amongst other things, have the effect of depriving Cantonment Magistrates of their judicial functions. The measures which it may be necessary to adopt in order to safeguard the legitimate interests of existing Cantonment Magistrates, if their conditions of service are affected in the manner which I have indicated, have not yet been finally considered by Government; and Government are accordingly not in a position to make any statement in regard to the suggestions of the Honourable Member.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, the following Message has been received from the Secretary of the Council of State:

"I am directed to inform you that the Bill to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the duty leviable on certain articles under the Indian Tariff Act, 1894, to fix maximum rates of postage under the Indian Post Office Act, 1898, to amend the Indian Paper Currency Act, 1923, and to fix rates of income-tax, which was passed by the Legislative Assembly at its meeting of the 20th March, 1923, was passed by the Council of State on the 23rd March, 1923, with the amendments indicated in the attached statement. The Council of State request the concurrence of the Legislative Assembly in the amendments."

The statement of amendments attached is as follows:

"1. In sub-clause (1) of clause 2 of the Bill, after the words 'construed as if' the words 'with effect from the first day of March, 1923' were inserted, and for the words 'one rupee and four annas' the words 'two rupees and eight annas' were substituted.

2. At the beginning of sub-clause (2) of clause 2 of the Bill, the following words were inserted, namely:

'With effect from the first day of March, 1923.'

3. Sub-clause (3) of clause 2 of the Bill was omitted.

4. To clause 3 of the Bill the following new sub-clause was added, namely:

'(3) The amendments made in the Indian Tariff Act, 1894, by this section shall have effect from the first day of March, 1923.'

COMMUNICATION FROM HIS EXCELLENCY THE GOVERNOR GENERAL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, in pursuance of the rule of practice laid down as No. 137 on page 45 of the Manual of Business and Procedure, I hereby beg to hand you a communication from the Governor General.

Mr. President: The following Message has been received from His Excellency the Viceroy:

"In pursuance of the provisions of sub-section (1) of section 67B of the Government of India Act, I, Rufus Daniel, Earl of Reading, do recommend to the Legislative Assembly that it do pass the Bill to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the duty leviable on certain articles under the Indian Tariff Act, 1894, to fix maximum rates of postage under the Indian Post Office Act, 1898, to amend the Indian Paper Currency Act, 1923, and to fix rates of income-tax in the form in which it was passed by the Council of State.

(Sd.) **READING,**
Viceroy and Governor General."

Rao Bahadur T. Rangachariar: (Madras City: Non-Muhammadan Urban): Sir, arising out of that Message, might I draw your attention to section 67B under which this Message has been sent to us? Are we to pass the Bill again, Sir? We have already passed the Bill, Sir. I thought it only remained for us to agree or disagree with the amendments made by the Council of State. I see the recommendation is to pass the Bill. Is there any further procedure of passing the Bill in this House?

Mr. President: A motion will have to be made in relation to the Bill, on the day on which it is set down for consideration, by Government.

RESOLUTION RE RAILWAY CONCESSIONS AND REDUCTION IN FARES.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I beg to move:

"That this Assembly recommends to the Governor General in Council that in all State Railways return tickets for the 1st, 2nd and inter class passengers be issued at a fare and a third during the Puja, Christmas and Easter holidays and fares for the third class passengers be reduced by one-fourth immediately."

Sir, this House is aware that it is a recognised principle of Railway economies that passenger traffic is a great contributor to the total revenues of the Railways and that the passenger traffic consists mainly of third class passengers. The importance of the third class passengers, Sir, is so great in the balancing of the Railway Budget that it has been suggested that the Railways would make a lot more profit by paying a premium to every first and second class passenger to induce him not to travel in order that the accommodation thus rendered available might be occupied more profitably by the third class passengers. In the interest of equality, particularly in these days of rampant democracy, I propose to include in the benefits to be derived by the passing of my Resolution the richer classes as well, because it is not equitable that a man should be penalised for no other reason than that he has more money in his pocket than his fellows. My Resolution, moreover, Sir, is as much in the interests of the Railways themselves as in that of the classes and the masses, for whom the facilities are provided by the Railways. It is well known that increased passenger fares tend to reduce the revenues of Railways from this particular source of income. As a matter of fact, Sir, the principle was so well understood by the authorities that Railway concessions in fares had long been in existence in this country and it was only during the unfortunate years of

the last great war that these long-enjoyed concessions were ended, not because by that measure the Railway authorities hoped to increase their revenues, but because the war conditions made it impossible for them to cope with the large traffic that the concession rates usually promote. Now that the war conditions have ended, I beg to suggest in their own interests that the Railway authorities ought to grant concession rates for all classes of passengers, because thereby not only will they benefit the public but themselves as well.

I need hardly spend more than a few minutes, Sir, upon the social and the commercial sides of the question. People travel, Sir, for a variety of reasons; some for business, some in search of employment, some for pleasure or pastime, some for marriages, some for funeral ceremonies and so on. Besides, there is a large portion of the public that travels either in search of work or in execution of the work they have obtained. Fairs and festivities also draw a large number of people. We have an example of it in the fair held at Meerut close by, at Ajmer, at Bindhachal and other places. The social side of the railway question is as important as any other aspect and it is highly desirable that the concessions which had been long enjoyed by the people of this country should be restored to them. Again, Sir, the educational aspect of the question is a very important one, but it is not necessary for me to lecture to the Honourable Members of this House upon the broadening effects of travel as almost all of them more or less must have at one time or other written their school essay on the subject. It is known everywhere that labour in India is cheaper than in any other country in the world, and in comparison to those countries the Indian labour has got very little asset, very little saving to pay the rate, I mean the increased rate of railway fare in order to travel in this country, considering his income is so small,—it is, I believe, one-sixth, or some say it is less than one-sixth.

Mr. President: Order, order. The Honourable Member seems to have composed his speech for a different Resolution altogether. I must draw his attention, lest other Members should fall into the error of following him, to the fact that his Resolution is confined to concessions during certain holidays and to the reduction of the 3rd class passenger fares. He must confine his remarks strictly to that.

Mr. K. Ahmed: If you follow me patiently, Sir, you will find that I am not very far away. It touches third class passengers, and I shall deal with the first and second classes along with the third class when I come to give the statistics. So I have a perfect right so far as the Resolution is worded. The language also will not take me far away.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): I beg to rise to a point of order. Are not tickets being issued at concession rates during holidays now?

Mr. K. Ahmed: That is not a point of order. It will be for the Honourable Member to enlighten the House when I have finished if he has got any additional information. In Japan the third class fare is 5 and one-fifth pice for the first 50 miles gradually reduced to 4 pice. Second class is double third class, and first class treble third class. 20 to 50 per cent. of the third class fare is reduced in the case of schools and colleges. 50 passengers or more travelling together get a reduction of from 10 to 60 per cent. 3rd class passengers here render possible a larger profit to the railways than the 1st and 2nd class passengers. I shall give the

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statistics later on. In the 1886-87 account of the East Indian Railway we find the receipt from 1st class was 17.17 pice whereas the haulage was 11.77. Therefore at that time there was a profit of 5.40. Of course, now there is no profit. Honourable Members will remember that on the 1st March 1922, the Honourable the Finance Member stated that there was a lot of deficit, several crores. This year also you have heard that there is a large amount of loss of revenue from the railways. I shall bring out that point also later. The income from second class was 21.08 and the cost was 11.77. Therefore there was a profit at that time of 9.20. In the 3rd class we had 56.05 income and haulage was 11.17. Therefore the profit was 44.88. I now come to the statistics relating to the Oudh and Rohilkhand Railway. First class income was 18.20 and the haulage was 14.89. Therefore there was a loss of 1.69. With regard to the second class, income was 12.60 and haulage was 14.89, thereby giving a minus balance of 2.29. So, the first and second class did not fetch any income at all. Now, with regard to the third class it was 66.27 against a haulage of 14.89. Therefore there was a substantial profit of 51.38. That is the income from the third class passengers and that is how the railways get their revenue and how the salaries of high officers are paid as lump sum out of the income of the poor third class passengers who are looked down upon as is evident from the debate in the Assembly last year and this year, especially from the speech of Mr. Joshi. Then, I shall come to the Administration Report of the Indian Railways for the year 1921-22, Volume I, page 15. The number of passengers carried (in thousands) of third class was 490,783 and the amount of money that was earned in that year from third class passenger fares was about 28.5 crores of rupees. The Report says:

"In respect of the last year it will be noticed that the numbers of passengers by first, second, and intermediate classes have declined compared with 1920-21, while the third class shows a small increase. In spite of the fall in numbers the earnings from the first two classes have risen, while the yield from the intermediate and third classes has fallen compared with 1920-21. This latter result which is very significant is due to decreased load. Economic factors have in fact forced the third class passengers in India to forego indulgence in long journeys in the same way as has happened elsewhere in the world, and have checked the rapid increase in the numbers travelling which is evidenced in the figures of previous years. Decreased third class travelling is also to some extent attributable to the fact that insufficiency of stock has forced many railway administrations to refuse to make special arrangements for *melās* which in the ordinary course of events attract large numbers of passengers."

Now, Sir, last year in explaining the budget of 1922-23 the Honourable the Finance Member, Sir Malcolm Hailey, said "There can, 12 Noon. I imagine, be no room for diversity of opinion, namely, that the railways must pay their own way. The estimates which I have given already take account of a substantial increase in goods rates"

Mr. President: The Honourable Member must address himself to the subject of his own Resolution, which is concessions during certain holidays.

Mr. K. Ahmed: Last year when the Finance Member introduced the Budget he said that he wanted 6 crores of rupees to be raised by increasing railway fares to the extent of 25 per cent. and, Sir, this year on the 1st of March you have heard that in spite of that increase the railways did not get the income which the Finance Member anticipated. That is the reason why I am making this argument, that the way of thinking of the Railway Department and of the Finance Member was no good and that it was futile for him any longer to think that by increasing the rate of fares he will get a higher income.

Khan Bahadur Saiyid Muhammad Ismail (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Is a quorum present in the House?

Mr. President: As a quorum has been demanded, the division bell will ring for two minutes.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Is it in order for Honourable Members to lure away others as is done?

Mr. President: The quorum is present.

Mr. K. Ahmed: What has been the result of the enhancement of passenger fares. The Honourable the Finance Member in his budget speech only on the 1st of March, said that the receipt from passengers has been disappointing and that there has been an appreciable falling off in the passenger traffic.

Mr. President: I have pointed out four times to the Honourable Member that he is not addressing himself to the terms of his Resolution.

Mr. K. Ahmed: I therefore say, Sir, that following the precedent set by some company managed railways that have already introduced the concession rates, for instance the Bengal Nagpur Railway, and other lines, the proposal in my Resolution should be accepted, not merely in the interests of the travelling public but also in the interests of the Indian railways and the financial interests of the Government of India itself because, Sir, the Government of India at the present juncture is in a hopeless financial condition and more revenues will be, in my opinion, very welcome indeed. With these few words, I strongly and emphatically move my Resolution which is:

"This Assembly recommends to the Governor General in Council that in all State Railways return tickets for the 1st, 2nd and inter class passengers be issued at a fare and a third during the Puja, Christmas and Easter holidays and fares for the third class passengers be reduced by one-fourth immediately."

I commend my Resolution to the acceptance of the House.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): I am not in a position to support the Resolution moved by my Honourable friend, but so far as I am able to support it, I have set out in my own amendment and I therefore move it:

That the following be substituted for the original Resolution:

"This Assembly recommends to the Governor General in Council to take such steps as may be necessary to ensure the resumption of return tickets on Railways and the reduction of third class fare for passengers."

The two points involved in my amendment are the resumption of return tickets on railways and the reduction of third class passenger fares. I need not dilate on the first point because I have no reason to doubt that Government will be in a position to give us a reassuring reply. As Honourable Members are aware, return tickets were issued before the war on almost all the railways, but owing to the shortage of the rolling stock the return tickets were discontinued and I understand return tickets have been resumed in several railways, but I think they have not been generally resumed. I happen to know that there is no resumption of return tickets on the Great Indian Peninsula Railway. All I want is that Government should do what all countries, including England, have done to restore the conditions of normal traffic.

[Dr. H. S. Gour.]

As regards my second point, the reduction of third class fares, I think, Sir, I am voicing the general complaint of the public that the third class fare has increased of late to such an extent that it has a marked effect upon traffic of that class. I therefore request Government to see whether third class fares cannot be reduced. With these words, Sir, I commend my amendment to the vote of the House.

Mr. K. Ahmed: I accept the amendment, Sir.

Mr. President: I have some difficulty here. The Honourable Member who moved the Resolution explicitly confined himself to State Railways and the issue of concession tickets; but I am not very certain of the bearing of the last 8 or 10 words of his Resolution. If the Government wishes to reply to the point raised by Dr. Gour I am prepared to overlook the point of order.

Mr. C. D. M. Hindley (Chief Commissioner, Railways): I do not think, Sir, I need take up the time of the House very long over this question. It is purely a practical question, a business question, and we have, as the House is aware, been urged very strongly for the last year or two and again very recently by the Retrenchment Committee to deal with railway business on commercial lines. Now, Sir, the House itself has I think absorbed that idea very rapidly as the result of perusing the Retrenchment Committee's report and Honourable Members of this House have been very insistent upon our carrying out such measures as will ensure the railways earning a profit. It really seems to me very inconsistent that one week some Members of this House wish to reduce working expenses of railways by 4 crores in order to show a profit and in the following week other Members come forward with a proposition which, taken literally, would reduce the revenues of railways by $7\frac{1}{2}$ crores. If the House is looking for commercial management and for a satisfactory return on the capital invested in railways, it cannot expect to get these results by making arbitrary reductions in earnings such as the Mover of this Resolution demands. The matter of making rates for railways is a very complicated and difficult one, but there are certain essential principles which must be observed in fixing rates. In the first place, these rates must be such as to pay for the working cost of carrying the traffic. That is the lower limit. The upper limit should be fixed in such a way as to produce the maximum revenue without causing a shrinkage of traffic. Those are the two limits, and as the House is aware, we leave the actual rates to the local administrations to settle. It is only by judging local conditions and watching the traffic that appropriate rates can be fixed for different kinds of traffic. These remarks apply equally to the question of reducing or otherwise altering third class passenger fares and to the so-called administration which finds that it can increase its revenue by reducing fares, either partially for special occasions or wholly for all third class passengers, will do so at once. There is no question about that. It is purely a matter of business and it is a matter which is being watched most carefully by all Agents. Having regard to the fact that the only scientific way of fixing rates is to fix them with regard to traffic in different parts of the country it is necessary for the Government to confine itself to fixing maxima and minima rates, as the House is well aware; and Government do not interfere in these matters of fixing actual rates. The maximum rate for

third class passengers stood at 3 pies per mile from the year 1887 until it was raised in April, 1917, to 4 pies for mail and fast passengers, the old rate remaining in force for slow trains. And Honourable Members will be aware that practically through the whole of the war years the railways of India were almost alone amongst all the railways in the world in not increasing fares appropriately to meet increased costs. It was only as the result of the two years following the war, when we were faced with enormous increases of wages and materials, that it became absolutely essential to raise the fares again last year. In Great Britain, for instance, the fares were raised early in the war by 50 per cent. and again subsequently raised to a point which brought them up to 75 per cent. above the pre-war level. They have been recently slightly reduced but they still stand somewhere about 50 per cent. over pre-war rates.

With regard to the Honourable Mover's remarks about the falling off in numbers of passengers, the figures for the complete year are not yet available; but Honourable Members have been given the figures for the first 9 months of the year, that is, to the end of December, in the memorandum which was issued with the budget. I think perhaps these were the figures to which the Honourable Mover referred. If Honourable Members will bear with me a moment I will remind them that during the nine months the total number of third class passengers carried fell from 358½ millions in 1921-22 to 357·9 millions in 1922-23, a total reduction of about 650,000 passengers out of 358 millions, or rather less than 2 per cent. At the same time the increase in earnings was over 2 crores in the 9 months. It will therefore be seen that the increase in fares has brought in increased revenue without any very serious reduction in the number of passengers who travel. During those 9 months the earnings from third class passengers amounted to 22·37 crores, and on the same average it may be expected that the total earnings of the year will amount to 30 crores of rupees from third class passengers. Now, taking the Honourable Mover's Resolution literally, that third class fares should be reduced by one-fourth, during the coming year we should have to expect a drop of $7\frac{1}{2}$ crores in earnings on third class passengers. I do not think, Sir, it is necessary for me to labour that argument any further. It is perfectly obvious that the railways, if they are to be worked at a profit, could not stand a reduction of revenue of that kind.

In regard to the concessions, the question of cheap return tickets at certain holiday and festival times during the year, and the larger question which Dr. Gour has mentioned regarding the resumption of return tickets, this is also a matter of business. They are not concessions doled out to the public for being good. They are purely a matter of business and they are so regarded by every railway administration in the world. They are purely a matter of business and they are so regarded by every Railway Administration in the world. If a Railway can increase its traffic and increase its earnings by offering cheap fares at certain periods of the year or over certain distances or for certain occasions, it will do so; but they cannot be regarded by the public as rights or even as concessions which the railways should hand out as the result of exceptional prosperity or anything of that sort. It is a matter of business. If a railway can earn more traffic and has the carrying capacity to increase its traffic, it will undoubtedly see the business side of it and give these cheaper fares, cheaper rates and cheaper return tickets or concessions of that kind at holiday times. But as every Honourable Member is aware, the railways are not in a position at the present time to cater for a very large increase of traffic. We

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still have to some extent, not perhaps overcrowding but distinctly, crowding—complaints about overcrowding have, I am glad to say, dropped for some time, but there is no question about the practical impossibility of attempting to attract much traffic by offering cheap terms when we cannot carry the traffic which would in that case offer. The amendment which Dr. Gour has proposed, I understand, reads thus: "This Assembly recommends to the Governor General in Council to take such steps as may be necessary to ensure the resumption of return tickets on railways and the reduction of third class fares for passengers." I do not think, Sir, that I can accept that amendment as it stands, because it requires the Government to take steps to ensure the resumption of return tickets. Now, Sir, as I have pointed out, this is a pure matter of business. Railways are being compelled by public opinion and by their own good sense to work on business lines, and it would be impossible for Government to force an early resumption of return tickets or a reduction of third class fares unless it could be shown that that was a sound business proposition. I would suggest that the following might perhaps take the place of the Honourable Mover's Resolution if this meets the views of the House, and as I believe the House wishes to express an opinion on this subject, I would suggest an amendment in this form:

"This Assembly recommends to the Governor General in Council that the effect of the last increase in third class passenger fares be carefully watched, and that Railway Administrations be advised to reduce them if experience shows that they are greater than the traffic can bear."

That, Sir, is the amendment which I propose.

Mr. President: I informed the Assembly before I called upon the Chief Commissioner of Railways, that I was prepared to overlook on this occasion the point of order which would otherwise arise regarding the character of Dr. Gour's amendment which I have not accepted. I should be creating an awkward precedent if on this occasion

Dr. H. S. Gour: It is not objected to by the Government, Sir, and we are prepared to accept the Government amendment in supersession of both the Resolution as well as my amendment

Mr. President: Then some day on a Resolution of much greater importance the Honourable Member will attempt to trip the Chair up with the proceedings of this day. I must treat this merely as an undertaking by Government and not as an amendment,—and then I think I must put the original Resolution to the vote unless of course it is withdrawn.

The Honourable Mr. C. A. Innes: Perhaps the Honourable Mover will withdraw his Resolution on the understanding that we give the assurance which is contained in the draft amendment which has been handed in to you, Sir?

Mr. K. Ahmed: I have not followed the amendment, Sir. I do not know the amendment, Sir.

Mr. President: It is not an amendment, it is an undertaking given by Government.

Mr. K. Ahmed: What is the undertaking, Sir?

Mr. President: The form in which it is given is this:

"That the effect of the last increase in third-class passenger fares be carefully watched, and that Railway Administrations be advised to reduce them if experience shows that they are greater than the traffic can bear."

Mr. K. Ahmed: I accept the amendment. I beg to withdraw. The Resolution was, by leave of the Assembly, withdrawn.

RESOLUTION RE STOPPAGE OF RECRUITMENT FOR SERVICES OUTSIDE INDIA.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Rural): Sir, the Resolution which stands in my name runs as follows:

"This Assembly recommends to the Governor General in Council that with a view to effect substantial reduction in expenditure under service heads, necessary steps be taken for stopping further recruitment for services, outside India, excepting the employment of Foreign experts on special terms when necessity arises."

This is an important Resolution, Sir, and to adopt the phrase of the Honourable Mr. Innes, if I am honest to myself and to my country, if my candid criticisms may not be agreeable I only request the indulgence of the House that they should be taken in the spirit in which they are offered. A Resolution was moved by the Honourable Mr. Jamnadas Dwarkadas on this subject on the 11th February, 1922, to this effect:

"That having regard to the Declaration of August 1917 the recruitment for all-India services excepting those of a technical character shall be made as far as possible in India and provide educational facilities for Indians to enter technical services in large numbers."

An amendment was moved and subsequently adopted by the House which ran as follows:

"That inquiries should without delay be inaugurated as to the measures possible to give further effect to the Declaration of August 20, 1917, in the direction of increased recruitment of Indians for the all-India services."

But so far as I am aware, I do not know whether any inquiries were inaugurated; nothing was done to our knowledge. But, my Resolution, Sir, is quasi-economic rather than wholly political. Lord Inchcape's Committee made it abundantly clear that the country cannot afford to spend money on the present scale, and that in spite of post-war new taxation estimated to yield 49 crores annually being enforced, and the tax-paying capacity being limited, substantial retrenchment of expenditure is inevitable. Though grateful to the Committee for what they have said, we must say that theirs is not the last word on the subject. On the eve of their recommendations, the already heavily burdened people are now threatened with additional taxation, especially the poverty-stricken masses. My object is to suggest measures in this Resolution to reduce the heavy burden and emancipate the nation. We have heard their words and empty promises in abundance, which have not availed us much. I propose in my Resolution a drastic change of policy, nothing short of which can satisfy public opinion. The British policy of seeking primarily the advantages of the mother country must be entirely reversed, and the paramount motive of the good of India alone should guide every action of the Government of India. It should seek first, last and only the good of the country, unswerved by any other considerations. Queen Victoria of

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blessed memory, in the memorable words of her Proclamation on assuming the charge of direct rule of our land, said:

"In their prosperity shall be our strength, in their contentment our security and in their gratitude our best reward."

And may God grant to us and those in authority under us, strength to carry out these our wishes for the good of our people. The disability of Indians in the matter of appointments was removed as far back as 1833, and the Government of India were instructed in 1834 to admit Indians to places of trust as freely and as extensively as their individual aptitudes justified. Queen Victoria stated further in her Proclamation that Indians should be freely and impartially admitted to offices in her service. Their Majesties King Edward and King George echoed the same sentiment. After seven decades of these declarations what do we find? We find 18 per cent. of Indians employed in the Indian Civil Service, 5 per cent. in the Police, 14 per cent. in the Forest, 26 per cent. in Agriculture, 38 per cent. in Educational, 38 per cent. in Engineering, 11 per cent. in Medical, and 23 per cent. in Customs. Are we to take it that Indians have been impartially and freely admitted to appointment during all these 70 years? I am aware that this Assembly or even the Government of India has no control over the recruitment of all-India services, unlike the self-governing colonies. Sir William Vincent told us that from 1897 to 1916 recruitment to the Civil Service was 66 Indians out of 960. From 1917 to 1921, it was 59 Indians against 126 Europeans, and in 1921 87 Indians and 38 Europeans. In the Medical Service the proportion was 48 Indians and 112 Europeans before, and after 1917-1921, it was 78 Indians and 48 Europeans. We must be thankful for little mercies. The only point of view that is reasonable according to my humble submission, is that the importation of officials from outside India should be limited to clear cases of necessity. The question is not how many or how few Indians should be employed, but how many it is indispensable to recruit from abroad for want of men in India. If the question is not approached in that spirit, self-government as the goal is mere camouflage and economical administration is impossible. The suggestion that in the Civil Service there should be 33 per cent. of Indians rising by $1\frac{1}{2}$ per cent. every year till the maximum of 48 per cent. is reached in 10 years, in Education 50 per cent., in the Indian Police 33 per cent., Engineers 75 per cent., State Railways 50 per cent., Telegraphs 50 per cent. and so on is based on wrong and untenable grounds. I do not understand the necessity for recruiting not only to the Indian Civil Service, but also the Indian Medical Service, the Military, Military Finance (I do not know if the figures are to be scanned differently), Education, Police, Public Works, including Railway Engineering, Telegraphs, Agriculture, Forest, Survey, Mines, Mint and Assay. They account for 3,426 officers drawing average pay of Rs. 800 to Rs. 1,600, of whom the Indian Civil Service average 1,350. There were only 269 Indians, of whom 69 were promoted from the Provinces by 1913. My suggestion is that the public services of India and all these branches of all-India services should be recruited in the country itself. If the assumed British responsibility for the good Government of India necessarily implies the perpetuation of British officers, then it is high time that we should ask for responsible government, with its concomitant power of control over recruitment. Fixing any proportion for recruitment is postponing the date for conferring self-government indefinitely. This Assembly should definitely pronounce their opinion that when qualified Indians are available, recourse

should not be had to recruitment elsewhere except in India, both on economic and political grounds. The standard of qualifications required should be fixed high for the superior services so as to secure efficient men from all communities without showing undue favour to any one community or another, to the prejudice of others. The salary should be fixed according to the qualifications and demands made of the candidates and the financial resources of the country, and the market value of the services. Naturally experts recruited abroad should be paid higher salaries according to the competitive value. In the military, as was pointed out by Lord Incheape, since 1913-14 the pay and allowances of British officers alone was increased from Rs. 4½ crores to Rs. 8½ crores. British other ranks from 3.6 crores to 10.39 crores. In Military Works 225 draw 27½ lakhs, and in Civil Services, 2,890 was increased to 3,242 with salaries and allowances 172 lakhs raised to 259 lakhs; clerical establishment from 231 to 533 lakhs; Industrial and Technical, 68,094 from 193 to 402 lakhs; temporary staff 172 officers draw 16 lakhs. Railway traffic expenses increased from 488 to 964 on account of staff. State Railways employ 425 Europeans and Anglo-Indians drawing a monthly salary of Rs. 1,35,000, and 164 Indians drawing Rs. 40,000. State Railways worked by Companies unfortunately employed 1,143 Europeans drawing Rs. 8,92,000 against 42 Indians drawing Rs. 16,000. I may mention, Sir, when we compare the pre-war wages of our railway officials in India with those of officials employed in Europe, it looks as if we are paying extravagant salaries. Danish State railways paid only Rs. 73 to Rs. 900 per mensem; Swedish railways pay Rs. 63 to Rs. 1,387 per mensem; Norwegian railways pay Rs. 55 to 450 rupees . . .

Mr. President: Order, order. I do not understand how that is in order on this Resolution.

Mr. B. Venkatapatiraju: I may mention, Sir, that the Government of India has complete control over the appointments made on State railways, whether managed by the State or by Companies, because all appointments have to be confirmed by the Government of India, and therefore I believe I am in order.

Mr. President: Questions of pay do not arise here. The Honourable Member is moving a Resolution to stop recruitment outside India for services under the control of Government, except in cases where experts are required. He must address himself to the substance of the question, which is the stoppage of recruitment in England.

Mr. B. Venkatapatiraju: Most of these railway employees are imported from abroad . . .

The Honourable Sir Malcolm Hailey (Home Member): Might I further make a request? I think we might know exactly what case we have to argue. Is the Honourable Member referring only to the civil service or the military services? As he proceeded to quote a large number of facts about military services, he has left a doubt in my mind as to the exact proposition I have to answer.

Mr. B. Venkatapatiraju: I am referring to all services under the control of the Government of India, where they have to employ men, and whether Indians or from abroad. If they have no control over them, I have no business to bring it to the notice of this Assembly at this stage.

The Honourable Sir Malcolm Hailey: Then may I inquire whether the Honourable Member wishes to argue the case of the Indian Army also?

Mr. B. Venkatapatiraju: I am mentioning all officers that are imported with reference to whom the Government of India or the Secretary of State has control, because I want steps taken by the Government of India in order to see that further recruitment from abroad for the services is stopped.

The Honourable Sir Malcolm Hailey: I cannot demand that the Honourable Member should tell me what points he intends to raise. I merely ask as a matter of courtesy if he would inform me whether his proposition includes Indian Army officers or only others. I do not see that there would be any difficulty in mentioning it.

Mr. B. Venkatapatiraju: I was not able to catch the Honourable Sir Malcolm Hailey. I was only mentioning those services which have been employed by the Government of India. If the Army officers are to be placed on a different footing, I do not mind leaving them aside. I am only mentioning those matters in which the Government of India can join with us in asking the Secretary of State or the British Parliament to stop recruitment in England. Therefore, for the convenience of the Honourable Sir Malcolm Hailey, I will not refer to military officers. I will only refer to those branches of the service which are employed in India under the control of the Government of India.

The Honourable Sir Malcolm Hailey: The Civil Services?

Mr. B. Venkatapatiraju: Yes. I may mention, Sir, that the Railway Board in their Administration Report for 1921-22 state that in the superior posts the number of Indians was increased from 85 in 1916 to 212 in 1922. The Railways employ a staff of 6,858 Europeans, 11,831 Anglo-Indians and 735,789 Indians, in lower grades where others are not available for those salaries. The Railway Board states that no definite arrangements have so far been attempted to meet the needs of indigenous Railway recruitment. Both the Public Services Commission and the Industrial Commission recommended that there should be secured for all normal requirements properly trained Indians and that every educational facility should be offered. Why was this neglected? Is it because they think that the country need not provide such services? I am rather doubtful why the Honourable Mr. Hindley should state on the floor of this House, when he was asked about it, that the Government policy is not to interfere. I may mention that State Railways, although they are managed by Companies, are subject to the controlling authority of Government and State Railways are the property of Government, and all appointments made by the railways are subject to the confirmation of the Government of India. As long ago as 1879 the Secretary of State impressed on the Government of India the expediency of employing Indians in posts of importance. I might quote the authority of Mr. T. W. Tutwiller, the General Manager of the Tata Iron and Steel Works, who states that "Indians are very intelligent and quick to learn, more amenable to discipline than the foreigner, less costly, and work has not suffered either in quantity or quality." If we say there were difficulties in technical branches. I ask, was there any difficulty in administrative branches? Mr. Houldcroft, late Carriage and Wagon Superintendent, Bombay, Baroda and Central India Railway, expressed the same view. The Industrial Commission were forcibly struck, when visiting large Railway workshops throughout India, with the complete absence of Indians from the ranks of foremen and chargemen. What was the policy underlying the Government neglecting to secure recognition of the claims of Indians and thus economising expenditure, if they

had not adopted a step-motherly attitude? Sir Michael Sadler, than whom we cannot find a greater friend of India, and for whom the Government also has some respect, stated before the Students' Committee of Lord Lytton, with special reference to educational policy, "the bold road towards the recognition of Indian independence is the safest one which the British nation can follow in its relation with India. Under present conditions it seems more likely that this road will lead to voluntary and close alliance than to disruption. Frank acceptance of this aim would remove all animosities." He urges, therefore, that in education and therefore in what our educational ideas pre-suppose, we should be prepared to give India, if she deliberately asks for it, what we consider best for ourselves. It is proposed in my Resolution that recruiting should generally be confined to India. This does not at all mean that the privileges and rights which the persons already appointed possess have to be disturbed. Mr. Fisher admitted that this, the poorest country, has the costliest administration. The Honourable Mr. Reddi has pointed out in his budget speech of 1922 that Lord Hardinge has admitted that the Government is under an obligation to give the greatest service for the lowest possible cost. He quoted the comparative figures to show the extravagant salaries paid in India. The Prime Minister of Canada does not get more than Rs. 3,000 per mensem; other heads of departments, Ministers, Rs. 1,750 per mensem; Deputy Ministers Rs. 760 to Rs. 1,500 per mensem. In Australia the Prime Minister gets Rs. 2,625 per mensem, Ministers Rs. 2,062, Secretaries Rs. 875 to Rs. 1,875 per mensem. In New Zealand similar salaries are paid to these officials. I will not weary you with other figures, but I would ask the Honourable the Home Member to compare the salaries paid in India with the salaries paid in other parts of the world, by richer countries, by countries where there is no deficit year after year, either pre-war or post-war. In those countries I may mention for the information of the Honourable the Home Member, who already is aware of it, that the wages of unskilled labourers range from Rs. 5 to 10 a day, while our labourers get four annas to twelve annas on the average. Such being the difference between one country and another, should we be prepared to pay higher salaries, and it is plain that even these higher salaries are not enough to secure proper recruitment in other countries. Why should you not utilise indigenous talent? You may say efficiency would suffer but I doubt whether the Ministers in the Provinces and the Executive Members here are unable to discharge their duties efficiently. Is it not nobler for individuals as well as for nations to struggle towards excellence with its natural force and vitality however imperfectly than to work efficiently under expert guidance from without in all matters? Do you think artificial limbs better than natural ones? We call a people free when they have some voice in the Government, and in the appointment of recruits for the services. When India was rich, Sir, we found nation after nation came here to secure those riches by one means or another, and when India is so poor we find people are coming here from one colony or another to exploit cheap Indian labour. Should we continue this sort of administration which would bring poverty to such a pitch as to compel us to send our countrymen for a pittance of 6 annas or 8 annas a day to other lands than our own? Is my suggestion at all a really strange one? Has not the Government of India itself issued a circular called the 'O'Donnell Circular' postulating the possibility of stopping further recruitment abroad? Even if it is stopped from now, it will take 25 years more to complete Indianisation of the services. More pertinent, is it not a fact that you are afraid to part with administration on account of British Service and trade interests?

[Mr. B. Venkatapatiraju.]

If we want the British character of the administration, does it mean uprightness, just treatment and progressive amelioration of the people and has Britain the monopoly of all rare virtues?

Don't you think that if Indians have the controlling voice India would be better in more respects than one because they can enter into the feelings and spirit of the people and understand their difficulties better than is being done now? We are always told that the country is so prosperous. Is it not a fact, Sir, that if you dive deep enough into the matter, you see that there is only a thin crust of prosperity above ground covering immense layers of squalor, misery and suffering? Have you ever passed through any village in any province and noticed if they have got decent homes or clothing or even sufficient food? Are you afraid of Lord Sydenham's attack on that O'Donnell Circular, characterised by him as which I think is quite absurd, as lacking in statesmanship and discretion on the part of the Government of India in offering to employ Indians for the Indian services? Are we not grateful to the Government of India for issuing that circular? When we heard of that circular we eagerly waited to see the phase of pressing reforms to the issue of self-governing India. We have also heard of Indianisation of the Indian Army instead of the miserly concession of gradually Indianising eight units to be completed in 26 years. It is a pity that in Parliament some gentlemen should have objected to Englishmen serving under an Indian. Is it such a strange thing? Persons who are prepared to eat the salt of India, are they not prepared to serve under Indians, and are they not doing it now? Why should there be this racial claim of superiority? We were told Lord Reading—to his lasting glory it must be said—went a step further and sent a despatch setting up a gradual scheme of appointment of Indian officers to mature in 30 years. This was published in the papers, which also reported that the Cabinet had considered and rejected it. Is it not a serious denial of the spirit of the Reforms? Sir William Vincent said very truly that without an Indian Army the Indians cannot have self-Government. Then when are we going to get self-Government if you do not do one thing or the other? When are we to expect the transfer of ultimate authority from the British Parliament to an Indian Legislature, and from the British electorate to an Indian electorate? Are we to pass our days under the certificated system of Government even with regard to the services? The Secretary of State sanctions scales of pay and allowances and appoints men as he pleases and the amount wanted will be put as non-votable items and we have to sit here wringing our hands. Is it not necessary for us, as Captain Sassoon boldly pointed out, that we should serve our country better outside than inside the Legislature and to be sure, as Mr. Lloyd George seemed to be sure, that the position of the Indian Civil Service will in future remain unchanged and their decreasing number will still remain the still frame of the whole structure of Indian Government? If the policy announced is carried out, it will spell disaster both to England and India. Are Indians so dead to all the feelings of liberty as voluntarily to submit to be slaves for ever? I do not believe that our quondam trustees, the British Parliament and the British electorate, are so neglectful of their duty as to believe that the beneficiaries, Indians, can so easily be duped to lose their birth-right as British citizens. But we must tell our justice loving Viceroy that we prefer liberty before the easy yoke of servile pomp. When the birth-right of British citizenship is denied to us, no station, no rank, no authority, no power can safely disregard the

unmistakable declarations that have been made from time to time that we should be masters in our own homes. When we are claiming this privilege for ourselves, we are claiming it for the Government of India who have no control at all in the matter of recruitment. May I invite your attention, Sir, for a moment to the Civil Service in the Colonies? An English Civil Servant employed in a colony holds his post there at pleasure, but by practice he holds it during good behaviour. There would be a Civil Service Commission (unlike our Staff Selection Board) to hold examinations and decide the fitness of candidates for the posts. They are also to give certificates for increases of salary, for promotion and improvement of status. For instance, Canadian Civil Service Legislation includes no provision for pensioning officers but provides a superannuation fund based on contribution of 3 per cent. on the officer's salary and grant from Government. Unlike the Imperial Service it has not the compensation of a pension at its close and is not redeemed by social consideration and marks of Royal favour. In the colonies, civil servants are servants, not masters as in India. They are a comparatively poorly paid service as the salary does not exceed the wage of unskilled labourers by more than five or six times. I may mention, Sir, that the Inchcape Committee say that the number in military service was increased by 3 per cent. and in civil services by 9.9 per cent. while the increase in pay and allowances is 101.3 per cent. from 20 crores to 40 crores. But the Committee point out that in 1920 when the cost of living was at its highest the rate of pay was increased by about 100 per cent. without any stipulation as in England to reduce the pay when the cost of living came down. They also speak of the reduction of travelling allowances.

Leaving alone all those cases of those who are already employed, may I not appeal to the Government of India, that they should strengthen the hands of the Assembly by carrying out our wishes that in order to reduce our expenditure it is far better wherever possible and wherever available qualified Indians should be employed in India, and only in extreme cases we must go to other places. By experts I mean persons who have specialised in any branch of knowledge. How is this necessary in India when no colony has suffered by not employing men from abroad? In America none other than an American will be employed permanently in their service and in colonies only persons born in that colony are employed. Only in exceptional cases, which are very few, others are employed. Is it because the Government do not find sufficient Indian talent or capacity to run this administrative machinery? Therefore, I earnestly appeal to the House that in order to secure contentment and happiness and to reduce the unnecessary expenditure and abolish deficits and the consequent necessity of taxing the poor, I appeal once more to recruit in India before I sit down. This is the first step in the direction of granting self-Government and if you do not take this step, I am afraid that by fixing any proportion you are postponing the grant of self-Government indefinitely, which the country cannot brook for any longer time. Therefore, I move my Resolution.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, I rise to support this Resolution very strongly. The first term of the first instalment of Swaraj is almost over, and let us see what this Swaraj means to the country. We have taxed our poor countrymen to the extent of not less than 28 crores of rupees. And notwithstanding the reductions made under the recommendations of the Retrenchment Committee we are again this year going to force a taxation of about 4 crores on

[Rai Sahib Lakshmi Narayan Lal.]

the poor man's salt. The poor masses were all along expecting in their heart of hearts that after the recommendations of the Retrenchment Committee, there shall be some relaxation in the unpopular taxes

Mr. President: The Honourable Member cannot discuss questions arising out of the Finance Bill on this Resolution.

Rai Sahib Lakshmi Narayan Lal: The financial crisis, Sir, is sure to continue in the country unless some change of policy is adopted by the Government like the one covered by the Resolution under discussion. The whole difficulty is that this poor country is being governed on a standard which is really more costly than it can afford, and unless there is some change of policy in the administration, neither the financial crisis will improve, nor will there be any money to relax the unpopular taxes or for developing the resources of the country which the Honourable the Finance Member kindly referred to in his Budget speech and for which the country is very thankful to him. But where is the money to spend for the development of the resources of the country? Where is the money to relax the unpopular taxes? Where is the money to remove the financial crisis of the country? Money is badly needed for these three purposes, and unless some change of policy is adopted by the Government, the financial crisis will continue and with it will also continue the discontent in the country which means more expenditure. Sir, I support this Resolution.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, if I could rightly follow the scope of this Resolution, it is this, that India will make recruitment for our services and that England may not take the trouble of making these recruitments in that country, and the reason which has been suggested in the terms of this Resolution is this, that if this policy is adopted, if this recommendation is accepted by this House, then there will be a reduction in expenditure, and India will become a rich country. Unless and until the present policy is changed and the recommendation embodied in this Resolution is accepted, India will remain as poor as she is now. The genesis of the question has been given by the Honourable Mover. He has made reference to the declarations of Queen Victoria of blessed memory, he has made reference to various other Acts which gave us certain rights; he has made reference to certain statistics which prove to the hilt that the salaries which are being given in India to Government officers and other officials are much higher than those in other countries. And this is a fact which cannot be denied, and if I can think aright, it is one of the chief causes of the present poverty of India. The machinery which is set, I mean the official machinery, is so expensive, that India cannot afford to pay such heavy salaries. I adopt some of his arguments and substantially hold with him that our present pay scale is very high. He has made reference to a number of other points which I need not repeat. But shall offer a few remarks which are pertinent to the question suggested by this Resolution, Sir, the present question, before this Assembly, so far as this Resolution goes, is not what proportion of a certain nationality, European or non-European, should be recruited; the question is that, if recruitment is to be effected with a view to bringing officers or employees for the services in India, then India herself will be the fittest country to decide, and England should not take that trouble. I think there could be no two opinions about this. Our Government of India is the best Government to see what sort of

officer is really capable of doing a particular branch of service in India. The Government of India is fully cognisant of the merits and capabilities of the people living in this country and therefore that Government, it cannot be denied, is the best suited to do this work of enlistment or recruitment. Therefore, on this ground, the Resolution deserves the general support of the whole House. The other ground is that, if enlistment or recruitment is effected in England, naturally we shall have to pay travelling allowance and oversea allowances and the people who are going to be recruited there, who are going to be employed in England, naturally will lay claim to higher salaries. I am not here to discuss the comparative merits and abilities of the candidates. I would concede at once that some of the people who come from England are really capable men, very able men, whose merits are of a very high order, no doubt, but here economically we have got to see that, if those officers themselves come to India in order to seek for appointment, then we shall not have to pay so much as they would claim when they are in their own country or their own homes. If I shall try to secure appointment, I shall make a competition. Then my employer will dictate terms. But, if the same employer makes a requisition to a province or a country that he wants so many men to have a certain administration carried on, then the candidates will demand inflated salaries. This is a question of common sense. So, therefore, India suggests to England that this method, which "I propose" and which this Resolution is proposing, will be better, will be less expensive. We shall be able to get men of equal capabilities on less salaries if recruitment is effected here in India. These men may come to India. There is no question of nationality, if I can rightly understand the terms of this Resolution under debate now.

The other ground which I find in favour of this Resolution is this, that, if some candidates are really in need of service and the posts are to be filled up, then the employer, who has got to see that those appointments are conferred on the ablest candidates, will naturally hold competitive examinations and go by merit and merit alone. And, when this policy is adopted, it will become known to every body in India and in England, and very efficient men will come here, we shall hold examinations—competitive examination will be held by the Government of India—and we shall choose the best men. So, therefore, the efficiency of the services will also be increased. These are the grounds, in brief, which I place before this Assembly. I hope this Assembly will appreciate them. I have got an amendment of a similar nature and character. It suggests some verbal changes simply. I do not agree with the phraseology of the Resolution which has been moved by my learned friend and so I propose some changes. The changes which I propose, Sir, are, as submitted above, of a very verbal character. They are

Mr. President: I propose to take the amendment of greater substance and, then, if it is not carried, we can deal with the verbal changes of the Honourable Member.

Dr. Nand Lal: Very well, Sir. With these few remarks I support this Resolution.

The Honourable Sir Malcolm Hailey: I think that most Members of this House will agree with me in regretting that this motion has come on at this moment at a time when the minds of most of us are directed to another problem of an anxious nature. It has another disadvantage. For,

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[24TH MARCH 1928.]

[Sir Malcolm Hailey.]

at the end of a long Session, after we have discussed many other questions of the highest importance it puts before us a proposition which properly should be the subject of what we know as a full-dress debate; and to-day a full-dress debate on this subject is not psychologically possible. The House is my proof; when the Honourable Member was speaking, the House was thin; as he proceeded it got thinner, and still thinner. That was not because the House was not interested in this question. It is one of the questions on which on all sides there is always the greatest interest manifested. It was because the House obviously felt that the occasion for discussion was inopportune, not only with reference to the circumstances of this Session but for another reason. In essence, this is one of the questions which must come before the Royal Commission

Mr. T. V. Seshagiri Ayyar: Would it?

The Honourable Sir Malcolm Hailey: And the Royal Commission will be obliged to form opinions bearing on the general subjects discussed to-day; representative opinions will have to be collected, weighed and examined. It is quite clear, therefore, that it is not one of those Resolutions on which there can be that free and fruitful discussion as between Government and the Assembly which can be of value to both. Take the case as it stands. How can we in these circumstances undertake to send any recommendation to the Secretary of State on the subject? All that the Secretary of State could reply, and would certainly and reasonably reply, would be that the whole field opened by the question is about to be examined by a Royal Commission, and it would be of little value, therefore, for us to make any recommendation to him on the subject now. We had of course a long debate on one aspect of this case in Simla and in Delhi. That debate dealt with Indianisation, pure and simple. The Honourable Member who proposes this Resolution now proceeds to go much further. The exact progress of Indianisation necessary or suitable in view of the administrative changes following in the wake of the reforms is yet to be settled. But the Honourable Mover is not for that; there is no half measure for him; he would thrust aside the whole question at once. He will admit of no progressive stages of Indianisation. He would admit of no advance in the proportion of Indian recruitment, gradual, speedy, or otherwise. He would at once lay down a rule that except in the case of technical services there should be no recruitment at all in Europe. He does not merely mean, as Dr. Nand Lal thought,—that the Government of India should take the recruitment into its own hands instead of allowing the recruitment to be made at Home. That is not his meaning at all. His meaning obviously is, and he expressed it in so many words, that we should cease at once to attempt any process of gradual Indianisation as defined by any progressive rule of proportion,—and that we should forthwith, barring the exception of a few technical appointments, recruit Indians purely and simply. That is a proposition which goes a great deal further than anything which was advanced in the course of our previous discussions. He admits that his proposition is drastic, and demands an entire change of policy. I am impelled to ask, what support has he behind him when he puts forward this proposition? I do not want to examine his arguments, because, his arguments hardly deserve examination; they hardly deserve indeed the name of arguments. I do him I think little injustice if I say that all he had to produce before us to-day was a series of jottings and cuttings from a common place book, strung together without system or connection.

He began by referring to the declaration of 1833. He glanced at irregular intervals at the history of our services during seventy years. He indulged us with a variety of irrelevant information regarding topics so wide apart as position of the civil servants in the colonies, and the pay of the Prime Minister of Norway. But I would stop there. I will not trouble the House with what he said; the House has been troubled enough with it already. What he did not say was more important. He never once adduced himself to the definite question whether he had behind him any considered body of opinion in demanding that all European recruitment should immediately cease. I ask him where is his support for that proposition. (Mr. B. Venkatapatiraju: "O'Donnell's Circular.") I have yet to learn that that circular was supposed to represent public opinion. His proposition has never received any support in this Assembly. It has not, as far as I am aware, received support from the Legislative Councils of the Provinces. I am aware that in Madras there was a proposition that the pay of the services should be reduced at once and that of European recruits re-assessed on a new basis. There was no proposition that the recruitment of Europeans should immediately cease. There was a proposition much like his put forward the other day in the Bengal Council; and it was voted down. I ask what province demands this. Begin at the North. Does the North-West Frontier Province demand it? Does the Punjab demand it? The Punjab which is at present racked with one of those recurring spasms of communal differences which we all regret so deeply in the interests of the Punjab itself. Is the United Provinces demanding it? The United Provinces where at the moment the chief topic which agitates people's minds seems to be the legitimacy of the wholesale conversion of Muhammadans back to Hinduism—is the United Provinces demanding it? I have shown the feeling in Bengal; can he quote any legitimate support from Bombay or Madras or Burma? But let me have this, and come to a second point. He has put it forward as an economic proposition. Now let me ask him what Provincial Retrenchment Committees have asked for this? I can quote him an instance to the contrary. The Bengal Retrenchment Committee which reviewed the whole range of their expenditure did not ask for it. I am therefore justified in saying that in this demand for the complete and immediate cessation of European recruitment the Honourable Member cannot quote to us the valid authority which lies behind his proposition. Let us be a little more precise in our own minds as regards the exact economic effect: I could have wished that for my own information and that of the House the Honourable Member instead of giving us a series of extracts from his commonplace book could have proved to us the exact value to our central finances of the proposal which he advocates. He talked of our immense central deficits; he did not tell us what effect he expected his proposal, if carried, would have on the position. I admit at once that if the whole of the services of India could be Indianised on a proper Indian basis of pay, and the amendment put forward by Dr. Gour is at last constructive on this point, there would be a saving in the charge of the services. But while the Mover proposes that we should immediately stop European recruitment, he does not propose to take the initial step which would secure us the financial advantage of doing so. He does not apparently propose that we should immediately place all-India services on an Indian pay. He may assume it; but if so that only gives me another point; for that is a process which must be considered and considered in detail by the Royal Commission—another reason why I say that this proposition at this moment lacks reality. But when he talks of the effect on our central finances, it is of little use to quote to us the figures of

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employment of European officers throughout India. If he is to make any serious inroads on our deficit by the proposals that he has put forward, he will have to do it within the expenditure of the Central Government itself. He will find it difficult. Some of our purely central service such as Audit and Accounts, or Posts and Telegraphs, or Customs are very largely Indianised at present, he would not effect much by stopping European recruitment there; and to stop European recruitment would of course have practically no effect on the cost of our Secretariats, until the whole of the pay were reorganized on an Indian basis, and even then the saving would not be anything which would have an effect on the budget. In most of his remarks, however, he is obviously referring to our recruitment of the all-India services, which of course are paid for by the provinces. All this talk of reducing our deficits by stopping the recruitment of Europeans is really quite beside the point and to pursue the discussion on these lines would be fruitless.

Well, Sir, that is how the case stands from my point of view. I need not say that as far as I am concerned this is not a question on which one can compromise or a proposition which one can accept. I am not here going into the grounds why we maintain that a proportion, whatever that proportion may be, of Europeans is necessary in the services of this country. I am not going into the long history of what the European services have done for this country in the past. I am not going to fight again the battles which we had when the Public Services Commission reported. I am not going to fight again the contest which we waged when Mr. Jamnadas's Resolution was put forward. It seems to me that little is to be gained by doing this now. I put it to the House that discussion at this moment is of little use in view of the fact that the whole of these questions will now be gone into in an orderly manner by the Royal Commission—and when I say gone into in an orderly manner, I mean to say that they will have to take regard not only of one aspect of the question as the Honourable Member has done, but of every aspect, namely, how far the all-India Services can with profit be provincialised: how far it is possible to re-organize pay generally on a purely Indian basis: whether in doing so we should also re-organize our leave and other service conditions on an Indian basis: and what additional pay, if any,—I won't say "if any" because everybody allows that additional pay is necessary for Europeans—what additional pay, leave or pension should be given to Europeans who are brought out here either on the Honourable Member's system or on any other—those are the questions they will have to consider; and over and above all they will have to consider what proportion of Indians and Europeans will still be required in this country. That the House should now be asked to vote on a proposition which puts the whole of these questions on one side and merely assumes, assumes without proof and as far as I can make out without support, that it is advisable that from henceforth there should be no European recruitment at all except for certain technical posts—that the House should be asked to answer that proposition at present seems to me unreasonable. I say that the House would be well advised to adjourn this debate; it would be well advised to wait until the Royal Commission sits and to allow public bodies to place their views before it. But in making that proposition I wish to make it also perfectly clear that in no circumstances can Government itself accept the proposition as it now stands. I wish to move, Sir, that the debate be adjourned.

Mr. President: The question is that the debate be now adjourned.

Mr. B. Venkatapatiraju: Before it is adjourned, may I have the right of replying to Sir Malcolm Hailey?

Mr. President: The question is that the debate be now adjourned.

Mr. B. Venkatapatiraju: Sir, I am thankful to the Honourable Sir Malcolm Hailey for stating that at the fag end of the Session he does not want to deal with it as a full-dress debate

The Honourable Sir Malcolm Hailey: Sir, I stated that the House obviously did not wish to deal with it,—and if the Honourable Member wishes any proof of that, I refer to the state of the House when he was speaking.

Mr. B. Venkatapatiraju: There are some people, Sir, who bury their heads in hand and do not see anything. Does the Honourable the Leader of the House mean to say that he has convinced the people in this House or outside that there is no demand at any time? Has he not referred to the 1887 Commission, has he not referred to the 1912 Commission,—and what were the views expressed before them, what was the recommendation made by Mr. Justice Abdur Rahim?

The Honourable Sir Malcolm Hailey: Certainly not the same as yours.

Mr. B. Venkatapatiraju: At that time they had not considered whether Self-government was within the reach of the people. The recruitment question comes only when we are thinking of Self-government. The Honourable the Leader of the House gave absolutely no reply as to why during all this period of 70 years, recruitment of Indians was neglected when statesman after statesman, His Majesty after His Majesty, proclaimed and gave pledges to the people that they would be freely and impartially admitted, is there any reply from the Leader of the House on the point whether you are impartially and freely admitting the people of this country? That requires an answer,—not whether

Mr. President: The Honourable Member must address himself to the question that the debate be now adjourned.

Mr. B. Venkatapatiraju: Now the only point that was raised in favour of adjourning this debate was on account of the pending arrival of the Royal Commission which this House on more than one occasion never wanted. I ask, Sir, if the Royal Commission would consider, according to the Leader of the House, whether recruitment outside India should be stopped, if I understand from the Leader of the House that they will consider not only what services should be provincialized, whether there is any necessity for recruitment outside, and, if so, to what extent, if that point is to be considered by that Commission, Sir, I do not at all stand in the way of having the debate adjourned, because it serves no useful purpose at this time when the Royal Commission will consider those points.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, though we are met in an atmosphere of great depression, I should like very briefly to state what advantage would be gained if we went on with the discussion of this motion and did not accede to the proposal of the Honourable the Home Member for the adjournment of the debate. The main part of his argument was that a Royal Commission on Public Services had already been appointed, and, therefore, that Commission will go into the

[Dr. H. S. Gour.]

whole question, to which my friend, Mr. Venkatapatiraju, replies that we did not want the Royal Commission. But that is no answer. A Royal Commission has been appointed, but because a Royal Commission has been appointed, therefore it is necessary that this Resolution and its amendment should be put to the vote, because when the Royal Commission comes, the Royal Commissioners will have the view of this House before them, of which they would be deprived if this debate is adjourned. Judging from the reports which come to us from the English press and in Reuter's telegrams, there is an anxiety on the part of the Home Government to send out this Royal Commission almost immediately. At any rate, Sir, even if it comes later in the autumn or early in the winter, this House will not be then sitting, and the Royal Commission, therefore, will not have the collected views of this House, and it is therefore necessary that we should decide as to what is the view of this House regarding the future of all-India services. The second point made by the Honourable the Home Member, which I take in connection with his motion for adjournment, was that this question is of such paramount importance that it requires a full-dress debate. That is perfectly true, but unfortunately we cannot put in all the Resolutions for a full-dress debate. A very large number of important questions are awaiting their fate and the fortunes of the ballot box. Consequently, I submit that when the Honourable the Home Member promises no date on which there can be a full-dress debate, we are I think justified in utilising the half day that has been given to us for discussing this very important motion. The third argument used by the Honourable the Home Member was what Provinces want, or are in sympathy with the Honourable the Mover's Resolution. Very shrewdly he omitted to mention the Central Provinces. I think Honourable Members will know the reason why. Only recently the Central Provinces Council, not by a majority, with the officials and the Civilians dissenting, but unanimously, with the concurrence of the Civilians present in the House, passed a Resolution for the stoppage of all over-seas recruitment

The Honourable Sir Malcolm Halley: Not quite unanimously.

Dr. H. S. Gour: There was only one Member belonging to the depressed classes, who never understood the proceedings and therefore he did not vote for the motion. With his exception, every one, official and non-official, Government Members and Non-Official Members, voted in favour of that Resolution

The Honourable Sir Malcolm Halley: Do you really represent that all the Government Members voted in favour of it?

Dr. H. S. Gour: I ask the Honourable the Home Member to correct me. The statement I make is, with the exception of one Mahar representative, the whole House unanimously voted and supported the Resolution, and Mr. Mitchell, who spoke on behalf of the Government, supported the Resolution on the ground of economy. And it is because I am encouraged by the attitude of my own Government and the very good reasons given by the exponent of the official view, that I have tabled my own amendment, namely, that a reduced pay must be fixed for all posts in India, and as far as possible the Indian services should be Indianised subject to the limitation with which my amendment closes. I am at present speaking on the subject of adjournment, and therefore I submit, that nothing would be

gained, and this opportunity lost, and the Royal Commissioners deprived of our views as expressed in this Assembly, if we acceded to the Honourable the Home Member's request for an adjournment.

Sir Campbell Rhodes (Bengal: European): I move, Sir, that the question be put.

Mr. President: The question is that the question be put.
The motion was adopted.

Mr. President: The question is that this debate be adjourned.
The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 26th March, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 26th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

DOUBLE STORIED QUARTERS IN RAISINA.

682. *Maulvi Miyan Asjad-ul-lah: 1. Is it a fact that double storied quarters for single clerks are under construction at Raisina behind Taylor Square in close proximity to the single storied family quarters already built for and occupied by married men.

2. Are the Government aware that the residence of single men (especially) in double storied quarters in such close proximity to (single storied) family quarters is considered objectionable by all sections of Indian clerks, the overwhelming majority of whom observe strict *parda* system.

3. If the reply to 1 and 2 above be in the affirmative, will Government please say whether they propose to stop further progress of the building of the single quarters at once? If not, why not?

Colonel Sir Sydney Crookshank: 1. Yes.

2. It is understood that the existence of single quarters in the immediate neighbourhood of family quarters is considered objectionable only in cases where the latter can be overlooked by the occupants of the former.

3. Government are informed that this is only possible in a very few cases and then only to a negligible extent, far less in fact than in the vast majority of houses in Delhi city and elsewhere. In these circumstances, Government see no reason to stop further progress in connection with the construction of the quarters in question, but steps are being taken to prevent all overlooking by increasing the height of the screen walls where it is necessary or possible to do so.

STOPPAGE OF TONGAS OUTSIDE DELHI STATION.

683. *Maulvi Miyan Asjad-ul-lah: 1. Is the Government aware (a) that tongas and other vehicles carrying outgoing Inter and Third Class Passengers are not allowed to stop in front of any gate of the Delhi Railway Station (Main) and that such passengers including respectable ladies and children have to alight on the Queen's Garden side of the road which they have to cross on foot;

(b) that this causes extreme hardship and inconvenience to the passengers;

(c) that taking advantages of the helpless position of passengers Railway porters demand and in fact extort exorbitant charges for carrying luggages to the station?

2. Will the Government state when, by whom and under what provision of the Railway or Municipal law this practice was introduced?

3. Will the Government take steps to remedy this real grievance of the passengers as soon as possible?

Mr. O. D. M. Hindley: Government have no information on the subject but inquiries are being made.

DEFICIT ON GREAT INDIAN PENINSULA RAILWAY.

634. ***Mr. K. O. Neogy:** Is it not a fact that the Great Indian Peninsula Railway has been working at a deficit for the last two years?

Mr. O. D. M. Hindley: During the last two years the net earnings of the Great Indian Peninsula Railway were not sufficient to meet the interest and annuity charges.

TRANSPORTATION SCHEME ON GREAT INDIAN PENINSULA RAILWAY.

635. ***Mr. K. O. Neogy:** (1) (a) Has the Transportation Scheme been introduced with the object of economising expenditure in the Great Indian Peninsula Railway?

(b) If so, will Government state the extent of economy up to the present and the particular classes in which reduction has been effected, i.e., the official, subordinate and menial classes?

(c) How many of official grade appointments have been abolished?

(d) How many subordinate or menial posts have been abolished, and how many Europeans, Anglo-Indians and Indians respectively have been prejudicially affected by the retrenchment?

(2) How many official (superior) appointments have been created under the Transportation Scheme and to what extent has that scheme brought about an enhancement of the salaries of each?

(3) Is it a fact that the Loco. Superintendent and General Traffic Manager of the Great Indian Peninsula Railway while being relieved of all their staff responsibility under the said scheme continue to enjoy their old rates of pay?

(4) Will Government be pleased to state the total expenditure in salaries of officers under the Transportation Scheme, as compared with their salaries previously?

(5) Will Government state the cost to the Great Indian Peninsula Railway in organising this scheme, i.e., in opening new offices, changing stationery, etc., for the different Departments?

Mr. O. D. M. Hindley: 1. (a) Yes.

1. (b) to (d) and 2 to 5. As the changes to which these questions relate have not yet been completely carried out, it is not possible to give a reply. It is however anticipated that the result when complete will be a great gain both in economy and efficiency.

Lieut.-Colonel H. A. J. Gidney: Is it a fact that not one single official's appointment has been abolished?

Mr. O. D. M. Hindley: I am not in a position to answer that question categorically. I should like to have notice of it.

RETIREMENTS ON GREAT INDIAN PENINSULA RAILWAY.

636. ***Mr. K. O. Neogy:** (a) How many of the subordinate staff over 55 years of age have been required to retire on the Great Indian Peninsula Railway?

(b) Is it a fact that a very different rule is followed in regard to officers of the same age?

Mr. O. D. M. Hindley: (a) The matter is within the discretion of the Agent and Government do not propose to call for the information asked for by the Honourable Member.

(b) Government have no information.

Lieut.-Colonel H. A. J. Gidney: Is it a fact that, although there are officers at present on the railway over the 55 years limit, not a single one of them has been retired?

Mr. O. D. M. Hindley: I did not quite understand the question. Will the Honourable Member repeat it?

Lieut.-Colonel H. A. J. Gidney: Is it a fact that the rule dispensing with the services of subordinates over 55 years of age has been put into operation, but it has not been applied in the case of officers?

Mr. O. D. M. Hindley: I cannot say whether it is a fact or not. In any case it is a matter within the discretion of Agent.

Lieut.-Colonel H. A. J. Gidney: Has the Honourable Member's attention been drawn to the Resolution passed at a mass meeting held in Bombay on the 12th instant?

Mr. O. D. M. Hindley: Yes, Sir.

Lieut.-Colonel H. A. J. Gidney: Have Government made up their minds as to what action they intend taking in this matter?

Mr. O. D. M. Hindley: Government do not propose to take any action, Sir.

TRANSFER OF A CASE FROM NORTH-WEST FRONTIER PROVINCE COURT.

637. ***Dr. Nand Lal:** (1) Is it a fact that an application from Muhammad Akbar and others for the transfer of a case from the Court of the Judicial Commissioner, North-West Frontier Province, to any High Court in India was forwarded to the Government of India for orders under Section 527, Criminal Procedure Code?

(2) Was the application of Mohammad Akbar and others placed before His Excellency the Viceroy and Governor General of India and will the Government be pleased to lay on the table the correspondence on the subject between the Judicial Commissioner, the Chief Commissioner, North-West Frontier Province, and the Government of India?

The Honourable Sir Malcolm Hailey: (1) Yes.

(2) Orders issued under section 527 of the Code of Criminal Procedure are orders of the Governor General in Council. The Government of India think that no useful purpose would be served by laying on the table copies of the correspondence in question.

JUDGES IN PATNA HIGH COURT.

688. *Mr. B. N. Misra: (1) Is the Government aware that two Additional Judges have been appointed to the High Court of Patna?

(2) Is the Government aware that no Oriya has ever been appointed as a High Court Judge ever since the creation of the High Courts at Calcutta, Madras and Patna?

(3) Is the Government aware of the strong feeling of dissatisfaction amongst the Oriyas for the constant neglect of their claims by the several Governments of (a) Bihar and Orissa, (b) Madras, (c) Bengal and (d) the Central Provinces for high appointments, such as High Court Judgeships, Members of the Executive Councils in the several Provinces referred to above?

(4) Do the Government propose to take steps that the claims of the Oriyas are not overlooked in future?

The Honourable Sir Malcolm Hailey: (1) Yes.

(2) Government have no definite information.

(3) and (4) The Honourable Member is referred to the answer given on the 6th instant to question No. 471, asked by Khan Bahadur Saiyid Muhammad Ismail.

Dr. Nand Lal: Are the Government of India aware that some of the Local Governments sometimes slavishly depend on the recommendations of the High Courts in filling up the appointments of High Court Judges?

The Honourable Sir Malcolm Hailey: Does the Honourable Member suggest that it is the Local Governments who fill up these appointments?

Dr. Nand Lal: They slavishly depend on the recommendations of some of the High Courts in filling up the appointments without scrutiny or without examination for themselves.

The Honourable Sir Malcolm Hailey: From all that I have heard in this House I should not have thought that Government would be accused of anything unreasonable if they followed the opinions of the High Courts.

Mr. B. N. Misra: Has the attention of the Government been drawn to the representations made by the Oriya District Association and the Oriya Samaj, Ganjam, to His Excellency Lord Pentland and to His Excellency Lord Willingdon, and to the representations made by the Oriya Peoples' Association and other Associations to the Honourable Sir Charles Bayley and to the Honourable Sir E. Gait at Cuttack and Puri?

The Honourable Sir Malcolm Hailey: I think we have seen those representations.

PAY OF ACCOUNTS CLERKS, BURMA.

689. *Mr. J. N. Basu: 1. (a) Is the Government aware that two memorials were submitted by the Civil Accounts office clerks of Burma, in October 1922, one to the Viceroy and another to the Auditor-General, Delhi, with regard to their pay?

(b) If so, what steps have been, or are contemplated to be, taken on the grievances mentioned therein?

2. Do the Government propose to classify such clerks into Upper and Lower Divisions on the lines adopted by the Government of Burma? If not, what are the reasons?

3. (a) Do the Government of India propose to keep the pay of their own clerks below that sanctioned by the Government of Burma for their local clerks working in the same office?

(b) Do the Government intend to revise the scale of substantive pay of these clerks soon? If so, when? If not, why not?

The Honourable Sir Basil Blackett: A duplicate copy of the memorial has been received by the Government of India, but they have not yet received any recommendation from the Auditor General on the questions raised.

OFFICERS IN FEUDATORY STATES, BIHAR AND ORISSA.

640. *Rai Bahadur Lachmi Prasad Sinha: (a) Is it a fact that all the officers deputed on special rates of pay to Feudatory States of Bihar and Orissa are Europeans?

(b) If so, will the Government be pleased to state the reasons for keeping such appointments reserved exclusively for Europeans?

Mr. Denys Bray: (a) No, Sir.

(b) Does not arise.

Mr. K. Ahmed: How many Indian officers are deputed on special rates of pay to these Feudatory States of Bihar and Orissa who are not Europeans?

Mr. Denys Bray: I am afraid I have not got such detailed information at my finger tips. I must ask for notice of the question.

Mr. K. Ahmed: Do I take it that as the first question was answered without reasons for keeping Europeans excluding reserved for such appointments, it necessarily follows that the authority was not consulted before the answer of the (a) portion read out?

Mr. Denys Bray: I had the information at my finger tips when the answer was prepared; I have not now.

Mr. K. Ahmed: May I ask the Honourable Member to refresh his memory?

The Honourable Sir Malcolm Hailey: May I ask the Honourable Member to remember that he is not cross-examining a witness in Court?

Mr. K. Ahmed: I am sorry, Sir. I was not cross-examining but putting supplementary questions.

UNSTARRED QUESTIONS AND ANSWERS.

INDIANS AS SECRETARIES, DEPUTY SECRETARIES, ETC.

256. **Lala Girdharilal Agarwala:** Have the Government decided or do they propose to direct that henceforward Indians may in future be appointed in larger numbers than heretofore as Secretaries, Deputy Secretaries, and Under Secretaries to the different Departments?

The Honourable Sir Malcolm Halley: Government cannot bind themselves to any ratio between European and Indian officers in these Secretariat appointments, but they intend to do their best to obtain Indian officers in increasing numbers from the provincial Secretariats.

EXEMPTION FROM ARMS ACT.

257. **Lala Girdharilal Agarwala:** What class of persons do the Government propose to exempt from the operation of the Arms Act for life?

The Honourable Sir Malcolm Halley: The matter is under consideration.

THE INDIAN FINANCE BILL.

The Honourable Sir Basil Blackett (Finance Member): Sir, I beg to move:

"That the amendments made by the Council of State in the Bill to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the duty leviable on certain articles under the Indian Tariff Act, 1894, to fix maximum rates of postage under the Indian Post Office Act, 1898, to amend the Indian Paper Currency Act, 1923, and to fix rates of income-tax, be taken into consideration."

This motion, Sir, raises serious issues, not all of them of a financial nature. I do not propose in the few remarks that I shall make now to deal with any but the financial question; but I do wish to draw the attention of the House to the fact that a serious financial decision has to be taken. From the financial standpoint the question before us is whether the deficit of 369 lakhs for 1923-24 is to be left uncovered or whether it is to be covered by an enhancement of the duty on salt. Sir, I wish it were possible to recapture for a moment the atmosphere of the time when the Budget was introduced and the general discussion was taking place. When I introduced the Budget on March the 1st I drew attention to the serious consequences of five years of continuous deficits and to the urgent need for balancing our Budget in 1923-24. The House from the first showed some dislike to the salt tax but I think we were unanimous in holding that somehow or other the deficit must be covered. That unanimity has been decreasing, I am afraid, since. I have seen it stated—not I think in a responsible quarter—that the Government are making a fetish of balancing the Budget. Well, Sir, the last time I heard that statement made was in defence of the absence of balance in the Austrian Budget; and I have heard that defence made for all the unbalanced Budgets in Europe. I was reading yesterday the columns of a newspaper, the editorial part of which has been thundering in truly Olympian fashion against the Government and against the salt tax; but I was not reading the editorial portion—I was reading the financial columns, and this is what the financial Editor said:

"The business community thoroughly sympathises with the Government in its effort to create a balanced Budget and the opinion is gathering strength that the opposition to the salt tax is mainly political and sentimental and that economically the duty is sound. The country's financial salvation depends on a balanced Budget and the Government's rate of borrowing in the next official year also depends a great deal on it, as a deficit Budget will again create doubt and distrust in the minds of the investing public."

Now, Sir, which is the best guide for the Government and for this House in considering a financial question—the leader writer or the financial editor? Sir, when I introduced the Budget I appealed to this House for

united action to bring to an end the era of deficits and to put India back into the position which she has normally enjoyed of having a balanced Budget. The need for a balanced Budget is not less but more since that day, simply because we have expressed our determination to balance the Budget and expressed our conviction that it is necessary. If we fail to do so now we are failing to live up to our convictions. That cannot but have a detrimental effect. Sir, I venture to appeal once again for united action. I lay stress on united action. Some, at any rate, of the advantages of a balanced Budget will not be secured if our action is not united, and all the satisfaction and pleasure that this House and the Government could feel in balancing the Budget will be lost if the effort is not united.

The motion was adopted.

Mr. President: Amendment made by the Council of State:

"In sub-clause (1) of clause 2 of the Bill, after the words 'construed as if' the words 'with effect from the 1st day of March, 1923' were inserted, and for the words 'one rupee and four annas' the words 'two rupees and eight annas' were substituted."

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I rise to oppose the amendment made by the Council of State in the Finance Bill. The amendment, if carried, would restore the original proposal made by the Government in introducing the Budget of enhancing the salt duty that is levied in this country to the extent of Rs. 1-4. As you are aware, Sir, this House by an overwhelming majority while discussing the Finance Bill voted against this increase and carried by a large majority the amendment moved by my Honourable friend, Mr. Rangachariar, that the duty should remain at its original level. Subsequently, the Bill went to the Upper House (*Rao Bahadur T. Rangachariar*: "The other House"), to the other House, I am sorry, and it went with a recommendation from His Excellency the Governor General. The other House, as was expected of it, without meaning any disrespect to the personnel of it, has supported the proposal made by Government. I want to tell Government very frankly that the Government would be making a great mistake if it took it for granted that the opinion expressed by the other House is the view that is held by the majority of my countrymen. I repeated that I have to say nothing personal against the Honourable Members of the Council of State; they are men of wealth, they are men possessing large estates, men who are rich and prosperous . . .

Mr. President: I think the Honourable Member had better leave the other House alone.

Mr. Jamnadas Dwarkadas: I shall bow to your ruling, Sir. But I can assure you that I have no intention to run down the Members of that House. All that I meant to point out was that the Government would be making a sad mistake if, relying on the opinion of the other House, they took it for granted that the opinion expressed there was the opinion of the country and allowed themselves to persist in putting forward their proposal for the enhancement of the salt duty. Well, Sir, this House had rejected it when the Bill was being discussed before and I am sure that even those Honourable Members who were on that occasion neutral or who voted in favour of the Government proposal will, if for nothing else, for the purpose of maintaining the dignity and self-respect of this House as the only representative of public opinion, will

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reconsider their decision and vote against the enhancement of the salt tax. My Honourable friend Sir Basil Blackett in moving the consideration of the Finance Bill has laid stress on the financial necessity of passing this enhancement. My Honourable friend has taken the safe course of avoiding altogether a reference to the political consequences of passing a measure of this character. But surely my Honourable friend cannot but be aware that you cannot divide the financial aspect and the political aspect and the other aspects of the question into water-tight compartments. Each aspect has a bearing on the other and if for the sheer necessity of satisfying your financial point of view you are going against the expressed wishes of the country to enhance the duty on salt, the political situation that is likely to arise then is sure to bear considerably on the financial aspect. All the financial considerations and calculations made by the Honourable Finance Member and the Government are likely to be upset by the political consequences that will accrue as a result of your obstinacy. Let me make myself clear. You are keen on balancing the budget. For the purpose of covering a deficit of 369 lakhs you want to force down the unwilling throat of this country an enhanced duty of Rs. 2-8 on salt. The result of it will be that you will have political disturbances. In the past you had measures carried in the teeth of the opposition of the people, when you had a majority in the old Imperial Legislative Council. The political consequences were such as threw the whole country into a state of chaos, from which this Assembly has helped you gradually to emerge; but even those measures did not affect every human being that lives in this country. So far as the enhancement of the salt tax is concerned, I repeat what I have frequently said in this House, that in the shape of this enhanced salt duty you are sending to every village home in India a messenger of revolution; every home, every person in this country is likely to be affected; every one who is already bitter against the Government or even those who are not yet embittered against Government will have reason to believe that in spite of the expressed opinion of all our countrymen, the Government, in spite of the opposition of the majority of this popular House, have persisted in forcing down the unwilling throat of the country an enhanced salt duty. What will be the result? There will be political disturbances everywhere. And is it not the experience, has it not been the experience of the Government, I ask, that whenever there are political disturbances in the country, they affect trade, they affect the prosperity of the country, they affect the ordinary avocations of the people in the country, and the result is that all your estimates with regard to revenue are frustrated? You will get much less revenue than you expect in this budget. So that, even from the financial point of view you are keen on balancing the budget by covering this small deficit of 369 lakhs, although that may seem to be a gain on paper it will never be in reality a balanced budget because you are likely to lose far more than 369 lakhs by the situation that will come into existence as the result of your obstinacy. I hope Government even at this late stage will be guided by wisdom, by the experience that they have had in the past. Many people in this country had no faith in the reforms, especially because of the extraordinary powers that are vested in the Governor General. We were loath to believe that these extraordinary powers would ever be used on an occasion like this, for ordinary purposes, when there cannot be the slightest justification for the Governor General to use his extraordinary powers. We shall have to hang down our heads in shame when we go to our countrymen and tell

them that in spite of the promises that we had made, that we were going to use all the powers that were vested in us by means of the Reforms, in spite of the fact that we had claimed that our powers were very wide and that the extraordinary powers would remain on paper and never be brought into use by the Governor General, we have now come to you with an admission that extraordinary powers are being used for ordinary purposes, on occasions on which no sane Government, let me say, could think of using extraordinary powers. We have to admit to them, whether we like it or not, that there is hollowness in the reforms given to us and that we should all agitate, by all means constitutionally, but agitate violently in order to secure full self-Government at the earliest date possible in this country. (Hear, hear.) Sir, I do not want to pursue the point. I do not know whether the Government is alive to the danger of forcing this measure on the country. I am not blind to the difficulties with which the Government is faced. I realise that on the top of the retrenchment that the Government have undoubtedly effected, it would be rather hard if they did not balance the budget, but the question does remain, are you likely to balance the Budget or are you merely going to secure the balance of the budget on the paper? On the one hand, you have the whole of this country standing like one man opposing the enhancement of the salt duty. You say that you must balance the budget and therefore you must have the salt tax. The country says 'No'. We recognise the need of balancing the budget, but we refuse to allow you even to balance the budget by the enhancement of the salt tax which will bring about a very difficult situation both for you and for us.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Who is right?

Mr. Jamnadas Dwarkadas: Who is right? On the other hand, you have pressure exercised on you from Whitehall that the budget must be balanced. You have also the opinion of the whole country against the enhancement of the salt tax. If you do not accept the opinion from Whitehall you will not be able to secure the balancing of the budget. As I said, from a financial point of view, you may flatter yourselves that you have secured the balancing of the budget on paper, but you are not going in reality to secure the balancing of the budget. You have Whitehall pressing you to balance the Budget.

The Honourable Sir Malcolm Hailey (Home Member): Is the Honourable Member speaking by the book when he says that?

Mr. Jamnadas Dwarkadas: I should be very glad if my Honourable friend is in a position to contradict what I am saying. But that is the general impression not only in this House but throughout the country? Well, Sir, if the Honourable the Home Member does not like me to refer to Whitehall, I shall not refer to it, but there is the public opinion in England, in Great Britain, on which our credit unfortunately depends. It is said that public opinion there demands the balancing of the Budget. We know what public opinion in England about India is; it is confined to the four corners of Whitehall. Well, you have here a choice. You have the whole people asking you not to enhance the salt duty; on the other hand, you have a few,—and after all, many are not interested in Indian problems in England,—you have a few asking you to balance the budget. You know that you cannot secure the real balancing except on paper. The Assembly which has stood by you at most critical moments in the history of this country has also expressed its opinion that you should not enhance the salt duty. You have a

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choice. You may yield to the wishes of the Assembly, you may respect the wishes of the Assembly, and you will respect public opinion in this country. You will evade the trouble that threatens again to place this country in a state of disorder. You will secure permanently the friendship of the Members of this Assembly who have stood by you at most critical moments in the history of this country. If ingratitude is not one of your weakness, I say that it is necessary that at this most critical moment, that you should stand by this Assembly, in spite of your pet theories. You will be respecting the wishes of the country as expressed in this Assembly. There is a choice before you. You may respect the opinion of this country and avoid all trouble and prove once and for all that you are going to respect the constitution, that you stand for reforms, that you stand for progress, nay that you respect the statement made by the late Viceroy Lord Chelmsford here that autocracy is for all time abandoned. Further, you will respect the message sent through His Royal Highness the Duke of Connaught to us by His Majesty the King Emperor himself that these reforms will establish the beginnings of Swaraj.

Mr. President: I cannot allow the Honourable Member to bring in the name of the Crown in this debate.

Mr. Jamnadas Dwarkadas: I bow to your ruling, Sir. You will respect all the statements that statesmen and high personages at most critical moments have made, statements which have gone a great way in soothing the feelings of this country. You can prove them. There is an opportunity for you to prove that you stand by the progress of this country, that you do not believe in autocracy any longer, and that you want to lead this country to the goal of responsible Government; while by not respecting the wishes of this Assembly by flouting public opinion on an occasion like this, not only will you be undoing every good that the reformed Legislatures have undoubtedly done, but you will be sowing seeds of suspicion in this country which will bring into existence again a great political movement, creating disturbances, disorder and chaos everywhere in the country. It is neither good for you nor for us. Exercise your imagination. I am sorry, Sir, that in this country we have had the sad experience that the powers that be have never exercised their sense of imagination. We thought that the reformed Councils and the presence of our own countrymen in the Executive Councils were going to supply what you lacked. But it seems to me that if this demand to enhance the salt tax is persisted in, all these difficulties and all the sad experience that you had in the past and the altered circumstances after the introduction of the Reforms have been lost on you altogether. The moment the movement that used to disturb the country is on the wane, you come forward again with your might to overrule the majority in this House and force on us a measure which this country like one man detests. You will be responsible for the consequences. As friends of the Government, as friends of this country and its relations with Great Britain, as persons who have stood by you in the midst of slanders, in the midst of calumny, in the midst of opposition of all kinds from our countrymen, we appeal to you not to have recourse to a measure like this. I hope, Sir, my appeal will not fall on deaf ears.

Sir Campbell Rhodes (Bengal: European): Sir, I think, I shall voice the opinions of all in this House when I say how much I regret the constitutional episode which has unfortunately arisen over this salt tax. It has

arisen, and while on the one hand I feel that there is nothing to be lost by candour, on the other there is nothing to be gained by heat. (*Rao Bahadur T. Rangachariar*: "Don't produce it.") I will do my best, Sir, not to do so, and I don't think my reputation in this House has been such as to justify the suggestion. I am very willing, Sir, to grant to the Members on my right credit for their honesty of view. They hold these views—political views admittedly—they hold them very strongly. Personally, if I saw any chance of a compromise, which I do not, I would have sacrificed some of the views which I hold very strongly on the other side in order to meet them half-way. But I fear that that is hopeless. But Sir, I do ask them in turn to give us credit for honesty in the views we hold. In speaking about the salt tax and its pressure on the poor, it must be remembered that none of us are speaking for our constituents. (*Sir Deva Prasad Sarvadhikary*: "Nor are we.") The poor that will be affected have no voting power and, therefore, we can only find their views out by inquiry. I have spent some little time in making these inquiries from the man in the street. They tell me that salt has risen slightly during the last two months—they are not quite certain when—but during the last two months it has risen. I asked them the reason for the rise, the answer I got was that they supposed the dealer is trying to make a little extra profit. Well, I said, why don't you kick up a row? The answer I got was: It is such a small item in our expenditure; why should we? People talk about the deficit as if it was a paper transaction. I mentioned in my previous speech on this occasion that I regard the deficit as another method of putting a burden on the poor. I referred to the evils of inflation which means that a rupee buys less than previously. The Honourable the Finance Member has referred to the permanent impost, a deficit will make on the new loan which we hear from telegrams from Home will be shortly floated. The rate of interest, and the price at which that loan can be issued depend largely, I desire to warn Members, on their action to-day. Now, Sir, both sides—and I stand in a position here from which I can observe both sides—have not put any alternative proposition to the salt tax which has found general acceptance either on the one side or the other. Why is that? Not, I submit, because there has been no desire to effect a compromise. Not, I submit, because we have not the ingenuity to suggest an alternative. But simply because no alternative exists. (*An Honourable Member*: "Retrench.") Year after year, the salt tax has been proposed and defeated. We have retrenched, we have put up, before we put up for the salt tax, all other taxes to the point at which to raise them further would mean less revenue. And, when finally we come to salt, obviously because it is final, there can be no alternative. It has been suggested that this salt tax is in the nature of poll tax collected in its simplest form. I see no objection at all myself to that definition. It has been suggested that it presses equally on the rich and the poor. It is not intended at all to press on the rich. It is very much in the nature of poll tax levied on every inhabitant of the country, and as regards the rich, as we all know other forms of taxation are resorted to and I have it on the authority of my friends on the right from Bombay, that some of these taxes have reached the limit. If Members like to have something to think about during a very well earned recess, which will shortly ensue, I suggest they might seriously consider the question whether low taxation and a low standard of living do not go together and whether perhaps they have not been an evil rather than a good to the country. Well, Sir, we have found it impossible to reconcile the two positions, both honestly held, both held with great conviction, and we have, therefore, what has been called a crisis. My Honourable friend,

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Mr. Jamnadas seemed to me to hint that, if the salt tax was passed, he was prepared to lead the country in revolution. (Mr. Jamnadas Dwarkadas: "I never said so.") He did not say so, Sir, and, I expected his denial, but I beg to inform Members that this salt tax has now been in existence for a month and, if this revolution is to start, it will only start because it is started, not by people who are already and who have during the last four weeks been paying more for their salt. Well, Sir, let us admit the crisis. But let us also admit that crises are normal to a democratic Government and this must now be faced. We are all here, Sir, pledged to work the constitution as we find it—and I think I should be the last man to stand up as an advocate of this constitution—but we are all here pledged to work it. I would like to draw Honourable Members' attention, in the Manual of Business and Procedure, to clause 62-A:

"Subject to the provisions of the Act, the Indian Legislature consists of the Governor General and two Chambers, namely, the Council of State and the Legislative Assembly."

The Governor General is as much under the constitution as we are. (An Honourable Member: "Very much above it.") He cannot alter it. He is bound by its rules as much as we are. Mr. Jamnadas said that it was his duty to do all in his power under the constitution to resist this tax. I agree with him if he feels that the tax is a wrong one; but I think he must give to others the same measure of justice as he demands for himself. If the Government had not proposed an amendment in the Council of State to put the tax up to Rs. 2-8-0, they would have deprived our fellow legislators in that House an opportunity which we had, of discussing whether it should be Rs. 1-4-0 or Rs. 2-8-0. They gave them that opportunity and the Council decided in favour of Rs. 2-8-0, by a non-official majority. Had the Governor General not recommended this Bill a very much more difficult position would have arisen. Now, that we have disagreement between the two Houses, according to the ordinary Bill procedure we should have to wait six months for a Joint Sitting and, therefore, no tax, neither income-tax, the enhancement of customs duties, nor the salt tax, could have been collected, during that time. Personally and speaking entirely from my own point of view, I should have no objection. Therefore, we should have to wait for a Joint Sitting, which according to the adding of the two votes together, would have resulted in 72 votes to 62, I think, in favour of Rs. 2-8-0. To-day, I do not know, Sir, quite what we are discussing, whether we are discussing the salt tax or the constitutional issue. But I think it would be a convenience if we were to refer to it as a salted red-herring. Sir, I have mentioned that I personally would have gone half way. Last year, it will be remembered, I hope, to my credit, that I supported my friends on the right in a constitutional crisis on the subject of cotton. I took rather a definite line there, because the crisis, to my mind, was a much more serious one. That duty was open to implications—unjust implications possibly, but not unnatural implications—to which this duty is not open in spite of what Mr. Jamnadas Dwarkadas has said. There is none to gain or to lose by what we are doing to-day, but India herself. Of that there can be no question, and every man's vote, I hope, will be cast whether in the one lobby or the other to-day in the interests of India. It is, I maintain, Sir, the duty of every man to exercise his responsibility. This House must not claim a monopoly of responsibility. His Excellency the Governor General has his responsibilities and the

Council of State have theirs, and if we are to defend our rights, as I shall always be the first to do, we must admit that there are rights to others, and I think we must fairly abide by the constitution which we are endeavouring to work.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I shall not speak for more than a few minutes on this question, because, as was pointed out, the situation is a grave one and the fewer the words spoken, the better would it be for all of us. There is also one other consideration that weighs with me and that is this. I do not think that anything that I say this morning is going to convert any Member of the Government Benches, and therefore, there is not much use in speaking largely upon a question of this nature. Sir, ever since I took to politics, I have been taught that it is a sin to consent to the increase of the duty on salt. Great men who have gone before us—I would not repeat their names—have said that if we consented to an increase in the salt duty, we would be betraying the interests of the people. Sir Campbell Rhodes has just now told us that the persons who are most affected are not the persons who have votes. That is the very reason why we, who are representing the people, should do our very best that those men who have no voice, who have no votes, are saved from the tragedy which the Government is bringing upon their heads. Sir, in some other place it has been said that the battle cry of old is gone, the battle cry of the Congress is gone, and a new cry must take its place. With all respect, may I say that that cry can never go, that so long as we continue to represent the people, so long as this House claims to be a representative Assembly, that battle cry of saving the poor can never go. Other cries may be added, but the cry against salt will remain for all time to come. Sir, one other matter was mentioned in the other House and it is this. Whatever may have been the want of justification for imposing an additional duty on salt in the old days, the same want of justification does not exist to-day, because the purchasing power of the rupee is more now than it was in the old days. Sir, those that put forward this reasoning forget that almost all the articles of necessity have gone up in price. If you take the index figure of 1914 and compare it with what it is to-day, you will find that the price of almost every food-grain, of almost every necessity of life, has gone up more than 100 per cent.

Mr. E. A. Spence (Bombay: European): Why has it gone up?

Mr. T. V. Seshagiri Ayyar: And the result to-day is that you will not be able to purchase for a rupee the same quantity of things which you could have purchased some years ago. There is no doubt about it. My friend asks "Why has it gone up?" The answer to it is because Government has been piling taxes upon taxes. That is the answer to that.

The Honourable Sir Basil Blackett: It is due to the deficits.

Mr. T. V. Seshagiri Ayyar: Rs. 60 crores of deficit has certainly added to the increase in the prices.

Sir, let us look at the situation now. What is the situation? The Government never came to us with any alternative proposals. They never asked us to discuss any other form of taxation. They told us at one time that there is no unanimity as regards any other form of taxation. Do the Government really believe, and seriously believe, that in any civilised country, any Legislature, would unanimously consent to any new taxation? Can you expect that there will be no objection to a taxation? There

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will be objection, as my friend puts it, from interested quarters. Rather than face those objections, what have you done? You are now going against the entire and unanimous wish of the people of this country. You do not want to offend classes, sects and communities. But you have no compunction in setting your face against the unanimous wish of the people of this country. Is that the proper way for any Government to act? I say that you have chosen the wrong way of meeting the deficit, if you want to cover the deficit. Sir, a grave political situation has been created, and if it is said at the end, that the Reforms have not worked successfully, the fault, the sin for that would lie upon the heads of the Government and not upon the people. As Mr. Jamnadas Dwarkadas has pointed out, we have done our best to help you when you had heavy deficits. We have always come to your rescue by imposing fresh taxation. But in the case of taxing the poor, in the case of imposing a duty on salt, it is impossible for us to come to your rescue and if you find that this tax makes the Government very unpopular and makes the working of the reforms almost impossible, the fault for creating such a situation will be entirely yours and not ours. Sir, by again bringing this Bill with a recommendation, the Government have raised some new issues, issues which are going to divide the country very seriously, issues as regards the powers of revision which is possessed by another House, issues as regards the safety of the constitution as against the executive will of the Government, issues which would go to show that the Reforms do not contain sufficient safeguards to enable the people to express their sentiments and their views. These are very important issues which must necessarily arise because Government have chosen to take this extraordinary step of recommending that the Bill be passed into law. We have to do our duty. In the face of the determination which the Government have shown, there is only one thing that we can do. We must show consistency, courage and dignity. If we do not show consistency and courage, we will be betraying the trust that people have reposed in us.

Sir Montagu Webb (Bombay: European): Sir, I rise to oppose this amendment made by the Council of State in our Finance Bill which has come back to us with a "recommendation" from the Governor General. I do so, Sir, with a very heavy heart, because I can see and understand many of the difficulties which Government have to deal with. I recognise, too, the consideration ordinarily shown by Government to the opinions expressed by this House; and I do appreciate the magnificent work done by Government for the great benefit and advantage of this country. But on this occasion, Sir, in connection with this Finance Bill, some strange Nemesis seems to have intervened, with the result that we now find ourselves face to face with a situation so complicated, so fraught with danger to the continued successful development of the Reform Scheme that I feel it my duty to do all I can to put matters right before it is too late.

First of all, Sir, I want to recall just for a moment what this House has done in the past in matters of finance. When we first met here two years ago we were told by Lord Chelmsford, the late Viceroy, that the Government of India Act had "closed one era and opened another." His Royal Highness the Duke of Connaught brought us a message of hope and inspiration from the King Emperor, and the Honourable the Finance Member himself said that in this new period this House would

have to take upon itself the financial responsibility of carrying on the affairs of this country. Now, Sir, these were not mere words. The financial responsibilities were very real, for in the year that was just ending, we found ourselves with a deficit of nearly eight millions sterling. In the new budget which the Honourable the Finance Member then presented to this House we found ourselves face to face with a deficit of nearly eighteen million sterling, taking exchange at 1s. 4d. Now, what did this House do? This House courageously faced the situation and voted large increases of taxation in all directions. They put up the Customs duties, they put up the taxes on income, they assented to increases in the Railway Fares, and increases on Postage, in the hope of getting matters straight,—a truly fine record, I submit, for a young democratic Assembly. That was the first year.

Now, take the last year. When we came back to this House twelve months later we found that the anticipated deficit of eighteen millions, notwithstanding all these increases of taxation had become twenty-two millions sterling. Not only that, we were once more faced with a further anticipated deficit for 1922-23 of over twenty millions sterling; and once more this House was asked to assent again to an all round further increase of taxation. The House again most courageously faced the situation and once more voted all round increases in Customs duties, increases in Railway Fares, increases in Postal and Telegraph rates, and an advance in Taxes on Income; but they said in effect—"We will not vote any increase in Salt Duty because we think it is the duty of Government to effect retrenchment." Now, once again, I ask you, Sir,—could any young popular Assembly in the world (*Rao Bahadur T. Rangachariar*: "Except a submissive one.") have taken a wiser and a more statesmanlike course?

Government recognised the wisdom of this advice. They did not attempt to increase or double the Salt Duty. They went to the other House and said "We will accept the recommendation of the Assembly and we will endeavour to retrench."

Now, what followed? On the strength of a Resolution passed by this House I think in last June or July, a Retrenchment Committee was appointed including six of the finest business brains available, eastern and western. That Committee got to work as soon as possible. So successfully did Lord Inchcape and his colleagues swing their axe that in the course of a few weeks they succeeded in recommending retrenchments to the extent of thirteen millions sterling. That, Sir, was only I think three weeks ago. Very naturally, the Government found it extremely difficult, if not impossible, to put all these retrenchments into operation at once. But I must say that Government met the situation with the greatest vigour, with the greatest loyalty to the desires of this Assembly, and they made beyond doubt every possible retrenchment that they thought could be done. And with what result? Could the whole of the Inchcape Committee's recommendations have been carried out next year, there would be no deficit at all and all our difficulties would have vanished. But unfortunately, it being a practical impossibility to carry out the whole of these retrenchments in one year, Government had to postpone about two or three millions of them till the next year,—1924; and it is this very sum of two or three millions which they have not been able to retrench in the coming year that produces the deficit about which we have all been talking a purely temporary deficit. (*A Voice*: "No.") I put it to you that that deficit is an office-made deficit, and that that

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deficit need not have appeared at all if the Honourable the Finance Member had so desired. Assume, for example, that the Honourable the Finance Member had been of a little more optimistic turn of mind and had cared to increase his estimates of receipts from Railways, from Posts and Telegraphs and from Income-Tax (as he might very well have done, for we have got this cold weather the finest crops that India has almost ever had)—had he taken that course, well, things might have been very different. Had he even debited some of our expenditure on roads and buildings on the North-West Frontier, had he spread that over two or three years instead of putting the whole of them into current revenue (as he might well have done for we have paid for a whole war out of current revenues), the situation would have been very different. Had he assented to the proposals made to him for additional taxation, say on silver, or a temporary surtax on Customs, he could with the greatest ease have, by an enormous majority, carried them through this House, and the deficit would have disappeared. But he elected to do otherwise. Finally, if he had appropriated a sum of three or four millions from that over-swollen, inoperative Gold Standard Reserve from which he is already taking one million,—if only he had taken another 2 or 3 millions, there would have been no deficit. I ask this House if I am wrong in asserting that this deficit is simply an office-made deficit and that it has only appeared at the will of the Finance Member. And, Sir, it is with the object of covering this relatively small and merely temporary deficit of under two and a half millions, that he proposes now to raise four millions sterling by doubling the salt tax,—I say four millions sterling because the salt tax, if doubled, will surely yield six crores of rupees.

Now, Sir, I say unhesitatingly, and with all the emphasis at my command, that the doubling of the salt tax at the present moment is unnecessary financially, and is provocative politically. I have already shown, I think, that it is a mere product of the office of the Finance Department. I go further, and I would urge that rather than raise the political ferment which will be caused by the imposition of a doubled salt tax I would prefer to allow these two millions to dissolve themselves in the coming retrenchments. It may be said in some official directions 'Oh, this would spoil our credit.' Well, Sir, I deal in credit myself. I unhesitatingly deny that assertion. Speaking for myself, (and I can claim special knowledge as a practical merchant and financier, as a railway manager and ship manager), I say most unhesitatingly that India's credit at the present day is first class. Throughout the period that this country has been suffering from the most appalling series of deficits on record, we have succeeded in raising the greatest loans ever known in the history of India. Does that indicate loss of credit? And now, we are told, Sir, when India's financial and political difficulties are practically over, when we are enjoying a period of splendid crops,—now, at this moment when we are dealing with a more or less artificial and temporary deficit we are told that if we leave this small deficit to be wiped out by the retrenchments ahead, our credit will suffer. I say unhesitatingly that those who nurse this belief, are hugging a delusion.

At the present moment the position of this country is economically as strong as if not stronger than that of any other part of the British Empire. It is certainly economically stronger than that of any other country outside the British Empire in Europe, Asia or America. I go further and I say that we are in a position of quite exceptional strength. We are

one of the few countries in the world who in spite of our enormous population, can feed ourselves without the slightest difficulty, who can produce enormous surpluses of valuable commodities for sale to the rest of the world; and given only a period of political tranquillity in which the peace-loving and industrial millions of this country can get to work on their economic and social development, I say, Sir, that the credit of this country and the future of India are as assured and as sound as those of any country in the world.

Now, Sir, I used the words "given only a period of political tranquillity." It is to avoid all hazard of any disturbance of this period of political tranquillity that I am opposing the doubling of the Salt Duty. Sir, the life of this Assembly is now drawing to a close, and there must of necessity be during this year a certain amount of ferment,—of bubbling up of political activity in connection with the forthcoming General Elections. I ask—Is this the moment, when Members of this House will be seeking re-election, is this a moment when we should discredit them, when we should disarm them, when we should antagonise them just as they are going back to explain to their constituents the success of the work of this Assembly? Is this the moment to multiply noxious political activities by throwing into the political arena so dangerous a firework as a doubled Salt Duty? Is this the moment to place a weapon in the hands of ignorant and malicious people who have been persistently hostile to this Government, and who have throughout represented that this Assembly is a mere make-believe, a mere "Mock Parliament" to whose views an irresponsible and autocratic Government pay little or no heed?

Sir, I have finished. I only want to read to this House two small extracts from the records of our proceedings,—one, Sir, by His Royal Highness the Duke of Connaught when opening this Assembly. He said:

"The principle of autocracy has all been abandoned. Its retention would have been incompatible with that contentment which had been declared by Her late Majesty Queen Victoria to be the aim of British Rule. It would have been inconsistent with the legitimate demands and aspirations of the Indian people and (listen to this, Sir) it would have been inconsistent with that stage of political development which they have now attained."

Now, Sir, listen to the second extract—the words of the Honourable the Home Member spoken a few days later. He was introducing the first Budget to this House on the 1st March 1921. He was explaining what a great change had come over the country, and that in future instead of a Finance Member having it all his own way and shouldering all the financial difficulties himself, this House would have to take their share. He then said. (this was the Honourable Sir Malcolm Hailey):

"For the future this House will have to share that (financial) responsibility. If we incur expenditure, it will be under your mandate. If we impose taxation, it will be by your vote."

What is the position now? We are being asked to assent to unnecessary taxation,—unnecessary financially, provocative politically—and against the wishes of this House. What for? To fill a relatively paltry, temporary deficit of two millions which will automatically disappear a year later. Sir, when Herod promised the dancing girl anything that she might ask, and when that irresponsible young creature demanded the head of John the Baptist, Herod at once acceded to her request. Now, Sir, how different things might have been,—how different history might have

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been written if Herod had only reconsidered his promise. Now, I implore my Honourable friends of the Government Benches to reconsider this matter. No matter what promises they may have made,—no matter what policy they may have decided on,—I appeal to them to reconsider this matter at this stage, because I feel sure that if a little further consideration be given to the situation, wiser counsels will prevail. I cannot believe that the House of Commons, the "Mother of Parliaments," who has stood throughout the ages for the right of the people to control the public purse, I cannot believe that the Mother of Parliaments will cut the throat of its youngest and most promising offspring merely because it refuses to assent to financial legislation the demand for which rests on no solid and proper foundation.

Mr. Ashruff O. Jamall (Bengal: Nominated Non-Official): After the eloquent and admirable speech of my Honourable friend Sir Montagu Webb, I am afraid I will not be able to speak so well. We have talked about salt for many days and perhaps I stand to-day to address a House that is tired of talking salt. But I wish to make my position clear. I have voted already twice against this duty and I am afraid my Honourable friend the Finance Member will again not find me in the same lobby as himself to-day, not because I think that the salt duty will be a messenger of revolution, and I cannot think that it will be unbearable to the people, but I do maintain that it will be very unpopular, that it will not be liked, and above all that it is not necessary. Several of my Honourable friends here have asked the Finance Member as regards his methods of Book-keeping, with reference to charges made to revenue and capital. If I may be allowed to say, Sir Dinshaw Wacha the other day in the Upper House said that he wanted to know how this was done. He challenged the Finance Member, if I understood him right, to prove his contention. To all these demands there has been no satisfactory explanation coming forward. Therefore, Sir, I do maintain that there is no deficit, I do not think that the tax is necessary and I cannot conceive why we should be asked to give a present to posterity, why should we to-day be taxed for the benefit of our successors who will come in our place. I do admire the way in which Sir Montagu Webb has put the whole matter. I do think that the tax if levied will have some effect on the political aspect of India, and I do not agree that this amendment should be accepted.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I am glad that tension in the House has to a certain extent been relieved by our resourceful friend behind. And we recognise the soundness of some of the position indicated by Sir Campbell Rhodes. Every one has rights to his own convictions and ought to act up to them. In those circumstances I wish the suggestion made by some of our friends that we should avoid if possible speaking at all to-day, but proceed to the business of the day in a business-like fashion was acceptable. Since, however, that is not to be so, I think the position of people taking a different line has to be made quite clear. The Honourable the Finance Member has not taken pains to clear up matters, probably because he will do so later or his Colleagues who speak later on will be left to deal with what he has left unsaid. He has contented himself purely with the financial aspect of the question, as is no doubt his place to do; but there are other questions, bigger vital questions. We have been often told that it is the fear of facing our constituencies at the next election that is guiding the action of many of us.

Possibly it is so, possibly it is not. Constituencies in the broader sense are powerful, they can be if they want to be; they are not yet as powerful in some places as in others. There is a Madras constituency, for example, which sent a Member to the House, whose place we see vacant for the last few days; ever since he had the hardihood to propose a surcharge on customs and on the income-tax, his place knows him not.

Mr. R. A. Spence: Sir, his constituency did not censure him; the European Association were not his electors.

Rao Bahadur T. Rangachariar: I may also mention that Sir Gordon Fraser left on business. He would be the last man to have deserted his post.

Sir Deva Prasad Sarvadhikary: I am sincerely glad to have that correction, because that has been the impression abroad. Yet constituencies can make themselves felt and I hope they will do so in the case of every one who goes back from this House after having voted for increase in the salt tax, for they will have forfeited their right to come back, judged from the popular point of view. Apart from that, Sir, as I explained on a previous occasion, this question has practically nothing to do with the limited constituencies, because those who form them have to pay a considerable tax, judged by the standard of the resources of those who will have to pay the most if this increased taxation is agreed to. Therefore, that question does not arise. It is because it is distasteful to the people from the lowest to the highest, not even excluding those in the Upper House at least in some cases, that the representatives of the people have felt it their duty to oppose it strongly and I hope they will persist in their objection and see it prevail.

Coming to the practical side of the question, we have had our say, the Government have had their say. The story about a paltry increase of 3 annas per head and 12 annas per family a year is absolutely exploded, judged by the standard and method of living, judged by the standard of the income of the people who are most affected. That does not hold the board at all, but we have another diehard untruth. What are the facts of the case? Last year, there was solid opposition to increased salt tax, the same this year, at least I hope the result of the voting will prove that. Last year the deficit was much heavier and much more real, this year it is much less, and business men in responsible position like Sir Montagu Webb have challenged as to whether the deficit is a real deficit, in the strict and proper sense of the term or not! Last year, there was no retrenchment, no talk of retrenchment on the Government side, the very suggestion of retrenchment was resented to begin with, though, later on, the House imposed its will upon the Government and the Retrenchment Committee came. Last year, when we ventured to ask for a paltry 5 per cent. cut in the whole of the expenditure, there were prophecies that the Government could not go on, that there would be serious difficulties in the way and that administration would be impossible. No such catastrophe followed. Retrenchment came and in the judgment of many of us, in spite of the admirable work done by the Irchape Committee, the retrenchment has not gone far enough. Much has been attempted to be made of the fact that the retrenchment recommended cannot be fully given effect to this year or the next. Whose fault was it? Why was not retrenchment begun early in the year? The fault is not that of the Assembly. The Assembly made up its mind fairly clearly and early and it was not going to take further

[Sir Deva Prasad Sarvadhiary.]

risks when the next Budget came on, but no steps were taken so far as we know. This year we have had retrenchment suggested to us and there are certainly possibilities of other retrenchments. Last year there was no certificate, no restoration, in spite of all the more adverse circumstances referred to; this year it is apprehended that, if the House does not do what it has been recommended to do, restoration and the certificate procedure will come. That will not be right nor expedient, but is a matter over which we have no control. As has been pointed out, we have our powers, our rights, our privileges and our obligations under the constitution; so has the Governor General. If the Governor General's powers are exercised, I shall not view it as in what in debate parlance is being called a grave constitutional crisis. We shall have to face many of these things. We, who are pledged to support the reforms to the best of our power and ability, and shall have to face these questions oftener than we think, whatever the Government does, we cannot yet non-co-operate. But that need not bring in references to Herods and Tudors and Stuarts and Revolutions and much else that has been gratuitously mentioned. All this is now in the day's work, and, God willing, we shall succeed in doing our work and evolving a better constitution in time. It has been correctly suggested that, if this deficit is really there, having regard to its temporary character, a surcharge in some shape or another would have met and ought to have met the requirements of the case. But the cat did come out of the bag later on through the speeches of some European official and non-official Members and still later on I believe by advocates of the restoration procedure. Much later than the introduction of the measure question of provincial equilibrium and various other permanent Government obligations awaiting to be discharged and not merely the transient need of balancing the budget were brought in to support the tax. The salt tax, therefore, judged from those points of view, is not for temporary purposes. It is going to be, if it can be, a permanent addition to our taxation—though taxation has even, according to the occupants of the Benches to my left, attained the limit or nearly the limit. We are asked to vote this double increase in salt taxation, not to meet the passing exigencies of the hour, supposing they did exist, but for the purpose of equilibrating Provincial contributions and solving various other vexed questions with which the Government is faced and always will be faced. I am sure the Provinces which under the Reforms will have them from Retrenchment and their own taxation will make their minds unequivocally clear that if the Provincial contributions have to disappear on the terms of doubling salt tax permanently and on no other terms, they would much rather not have reduction on those terms.

Mr. T. E. Moir (Madras: Nominated Official): May I ask what Bengal is going to submit to, Sir?

Sir Deva Prasad Sarvadhiary: Bengal is going to submit, and I can assure the Honourable Member from Madras that Madras is also going to submit, and the United Provinces, the Punjab and everybody else is going to submit, for extra salt duty will hit the Provinces hard. If the raising of the salt tax to Rs. 2-8 and nothing else will equilibrate, there will not be the slightest difference of opinion so far as non-official Indian Members are concerned.

Sir, I shall not attempt to cover the ground that has been so admirably covered by Mr. Jamall and Sir Montagu Webb on the business side of things.

Amateur financiers are rightly nervous if they have to speak on these things "without the book," as was suggested. Business people—at least some—who know the business side of the situation, who know how our credit stands at home and abroad, assure and re-assure us that we need not feel any nervousness with regard to any of these things. Sir, there are what may be called technical difficulties that also weigh with some of us. We have been told that conventions grow, conventions can and will grow from our point of view as well as from the Government point of view. The impression so long has been that the Viceroy is entitled to recommend a Bill. Whether he can recommend any particular amendment in a Bill or not seems to me open to doubt. Then there is the question as to whether the Governor General can ask this House to pass a Bill that has already been passed. Those are aspects that will have to be carefully looked into in connection with this question. There are serious doubts in the minds of many of us as to whether the right procedure is being followed but we can only suggest and not judge. At all events, no occasion has arisen for the Governor General to recommend to this House the particular form in which an amendment has been passed by the other House. I do not mind calling it the Upper House, because if they be the Upper, we are the sole, and without the sole no "upper" can last and without the foundation, obscure and unseen though it be, no "upper" can stand. I do not mind that so long as we are what we should be and are true to ourselves and our trust and are able to justify ourselves. (*An Honourable Member:* "Use some salt.") Well, the architect of old used to avoid salt as the basis of strength. There would not, if it could be avoided, be those forces that are now attacking modern Delhi building even before they are finished. However, that is another story. Those are serious difficulties which weigh with some of us, but they are small when compared to the major issue standing out in the situation. It is not because we opposed extra salt last year; it is not because we opposed the proposal when it was first brought in this year; it is not because Government did not give us any alternative opportunities, although we offered to go a long way, to find other means for covering the supposed deficit, that we still continue to oppose it. If we happen to be wrong, if it is clearly pointed out that we have erred in our opposition—is it up to us to continue to oppose it? Decidedly no. If proper facts had been placed before us, if proper materials were forthcoming here, in the other House or in the Press to convince us that we have been in the wrong, we should be wrong in voting against enhanced salt duty. No such fact and materials—except the will of the Government—are forthcoming. We must therefore do our duty once more and oppose the change suggested by the Council of State.

The Honourable Sir Malcolm Halley: I have during the last two years had to wrestle in spirit somewhat frequently with this House, and I confess I had hoped that during this session I should be sailing on easier seas and that a time of comparative peace had come for me. But this apparently is not to be; for not only does it seem to my Honourable friends here that we are at present engaged in something of the nature of a constitutional crisis, but Mr. Jamnadas Dwarkadas has threatened us that its effects will extend far beyond the financial sphere of my friend Sir Basil Blackett and will invade my own. And so, disappointed in my hopes of personal peace, I must again join battle with my Honourable friends opposite.

[Sir Malcolm Hailey.]

Now let me if I may first try to define what is common ground between us. Sir Campbell Rhodes has with great justice pointed out that we have here a proposition which can arouse none of those suspicions which have unfortunately been involved in some of our previous discussion on Budget proposals. What we have put forward here is obviously and patently not on behalf of European trade or commerce, nor calculated indeed to support any European interest. I am aware that Mr. Jamnadas Dwarkadas, somewhat late in the day, has made a suggestion that Whitehall was pressing for the Salt tax. Whitehall has become a painful obsession to him. He sees its dark and mysterious influence everywhere. He was unable to give any ground for his suggestion; having no proof himself, he took the simpler course of inviting me to deny the imputation. I can do so honestly; the suggestion was our own. The desire to square our Budget is our own. We put forward the salt tax last year as our own proposition and we have repeated it again this year as our own proposition. The haze of suspicion that he has endeavoured to create can be cleared away as far as that aspect of the matter is concerned. Yet again it is clear that we are putting forward here a proposal which cannot be misinterpreted on the ground that we wish to place ourselves in fresh funds for any forward military policy, that we are yielding to the dictates of a forceful military section to increase the number of our combatant troops or raise our scale of equipment at the expense of an impoverished Exchequer. So much, I say, is to the good; and it must be put into the balance when the final issue is struck. And yet once more it is clear that we are not asking here for fresh funds to support the desire of civil departments to extend their useful but possibly expensive activities. We have many schemes of civil expenditure entirely beneficent in themselves, full of promise for the country, nay, essential for the progress of the country; but we are not putting forward a proposal for fresh taxation to finance them. On the contrary, we have deliberately refused to consider new expenditure on this account. So much, again, must be admitted on our account; so much I say must be put into the balance on our side. But I can go further in my analysis of our common ground. It has been admitted that our sole motive here is to re-establish our credit, and as an immediate step to that end, we ask the Legislature to pass—and we can ask it to pass for this year only—a definite increase to our taxation for this year, leaving it when the time comes again, to decide whether or not the increased sources of revenue which will be at our disposal shall be continued and utilised for fulfilling our obligations in regard to the provincial contributions. I have never heard any suggestion that our motive went beyond this; and if there is a point of difference between us it lies in the assertion that we have placed too much importance on the immediate balancing of our budget as a means of restoring our credit and that in seeking to get the Legislature to balance it by this particular method we are asking India to bear a burden disproportionate to the value of the financial gain to be derived from the mere balancing of our revenue and expenditure. I think I have stated the present issue fairly on both sides. It may have been that at an earlier stage there were some different issues on the record; it was then perhaps the case that the Assembly doubted whether a deficit really existed, whether it might not have been met by a more optimistic view of our revenues, whether it might not have been met by some adjustment of our accounts.

whether the additional revenue might not have been raised, failing the former solutions, by some different form of taxation. If I do not now discuss these issues at length it is because I regard them as spent. Can anybody in the present state of our export trade and of the troubles in Europe venture to suggest that our Finance Member should again take stock of his revenue receipts and deliberately add to them two or three crores of rupees? Such action would at this stage be impossible in itself, and in its result, disastrous to our financial credit. Equally impossible is it at this stage to suggest any such wholesale readjustment of our accounts as to cause this deficit to disappear; for I claim as I have claimed before that if there is to be a readjustment of our capital and revenue accounts it must be of our accounts throughout and not of one selected item. Finally is it feasible now to suggest that there is an alternative form of taxation? We explored that possibility together. Mr. Seshagiri Ayyar said that we did not come down and consult the House as to alternatives. Sir Montagu Webb said that if we had proposed to increase our customs and our income-tax we should have carried it by a large majority in this House. Yet he knows that this is not the case; he knows that strenuous efforts were made to find some common ground between us; he knows that one section of the House was bitterly opposed to any increase in direct taxation, and that another section was equally opposed to any increase in the customs duty. He himself was equally opposed to both proposals. We are told that if we had been firm we might perhaps have carried some of these alternatives through. What guarantee had we? We had none at all; yet I must say this on behalf of Government and I will say it with all sincerity, that there never has been a time during the course of these budget discussions when we would not have been glad to have found some common ground of understanding on this question; there never has been a time when we would not have been prepared to accept any alternative form of taxation which would have been accepted by this House at large. The difficulties occurred not with us, and did not lie in our lack of good will or determination; the difficulties occurred within the House itself. I am justified, I think, in dismissing those side considerations and can return to the case as it stands between us now and at this moment, and take up the issue as I have already described it. Is it true, as you say, that we are exaggerating the evils of an unbalanced budget? Is the balance a mere shibboleth? Is it a fetish, a punctilio of finance? Our ground is, that it is an operation necessary to the early restoration of our credit. Sir Montagu Webb says that our credit is sound, that even at the worst, when we had to face those large previous deficits we could raise large sums of money. He goes further, and tells us that even if we leave this deficit uncovered then it does not matter; two hundred million or so of unproductive debt will only be increased by two or three million more. He expressed himself in terms of the greatest optimism of the financial condition of this country and of its future prospects. That is well; optimism is all to the good so long as it does not lead you into neglect of the immediate steps required to secure the results you hope for. Sir Deva Prasad Sarvadhikary took Sir Montagu at his word. As an amateur in finance himself, he spoke with some hesitation, but fortified with the opinion of a business man, he felt that nothing was now required to establish further India's finance and credit. He spoke of that opinion almost as one might speak of the final, definite and decisive opinion of a great consulting physician.

Sir Deva Prasad Sarvadhikary: Something to go upon at all events.

The Honourable Sir Malcolm Hailey: I will show how much. These physicians like ordinary mortals have their inconsistencies. Sir Montagu Webb will forgive me—I have known him much longer than any Member of this House—I am an old friend and he will forgive me therefore if I handle him as I should not like to see others doing. I will remind him that, cheery optimist as it now suits him to profess himself, there have been times when his optimism was not so pronounced in regard to our financial condition. Let me read to him an extract from a speech which he delivered not very long ago—only in January last. He has taken the opportunity to quote what I said two years ago; I will be more considerate and will read to him what he said only two months since. He will appreciate its bearing; and if he does not I am sure that others will. "I put it to you that if any one of us here had been running a business on a 30 crores deficit every year for the last five years and somebody were to say to me 'don't worry, the position is not very grave,' I should feel inclined to tell him, 'get thee behind me Satan'" (Laughter). Sir Montagu Webb has admitted to-day that we had been running on deficits of more than 30 crores; Sir Montagu Webb has said to-day in almost exactly the same words "don't worry, the position is not very grave." Mere politeness demands that I should follow him and say "get thee behind me, Satan" (Laughter). Sir Montagu Webb cannot persuade us that we can meet the situation by taking into ourselves just a little balm of optimism. I appeal from him to other business men. I quote to the House (since we are all fond of quotations to-day), what was said by that important body of merchants who attended on a deputation on His Excellency the Viceroy only last summer. It was equally representative of European and Indian Chambers of Commerce. They stated, and with the utmost conviction, that until India could balance its budget, and make its expenditure equal to its revenue or its revenue equal to its expenditure, we should be paying more for our money, our industries would suffer and the whole course of trade in India would remain insecure and uncertain. That was their lesson; and it is that lesson which I quote against Sir Montagu Webb. With some regret I must warn the House not to accept as an infallible guide, a thinker so inconsistent that he could sign the Fiscal Commission Report in one sense, and advocate almost exactly the opposite conclusions before the Associated Chambers in Calcutta. It may seem that I am attempting only to attack the opponent's advocate. That is not so, I am pointing out to the House that it should not place too great a reliance on the confident and optimistic suggestions of Sir Montagu Webb either about our present situation or about the effect of failing budgeting for a balance.

Let me take for a minute the question of our credit as I see it, and I shall be very brief on the subject. It is not merely a question of restoring our credit in the money markets of the world; it is also a practical question of immediate importance to everyone in India. As we have always pointed out here, as long as we are in deficit, we have to come to the market for large temporary loans. We lose our control over interest rates, and that affects everybody engaged in commerce or industry in this country. I go further than this and I say that the balancing of our revenue and expenditure is necessary if we are to have security from the possible prospect of inflation. It is true that a small deficit does not mean in itself the issue of a large number of unbacked notes. That is true, but no one doubts that continued deficits do in some form or other, directly or indirectly, spell inflation. Again, distasteful as the means may be, our ultimate aim must be to bring the rupee to an internal value corresponding

more nearly to the value of the past, and thus reduce that enhancement of prices which has weighed so heavily on the people. After all the discussions and theories on exchange and currency, there is only one fact, I think, that remains clear, that if your rupee is to be worth anything in the outside world, you must first of all make it worth something in India. It is a misfortune that the remedies necessary to restore an unfavourable position are so often painful, unpopular, provocative of criticism, while the effects are slow, difficult to appreciate, and only come to hand too late to mitigate the criticism which the effort has caused. Yet that is in the nature of things, and a difficult financial situation will not yield to a cheerful bedside manner or homœopathic drops. But if the operation on which we are engaged is distasteful, have we not given our own proof of the earnestness with which we believe in its necessity? If we were engaged in satisfying a mere punctilio of finance, as some Members suggest, or a mere point of honour in regard to our budget position, should we have been prepared on our part to go so far in measures which must have been so extraordinarily distasteful to any Government? It was no small matter for the Indian Government to arrive at a determination to reduce combatant British troops in India and to succeed in persuading the Home Government to accept its necessity. Take again the frontier. I am not going into the rights or wrongs of the question, but we have had to choose on the frontier a policy which many of our advisers here told us is only the second best, and for financial reasons we have been unable to follow the advice of the many experts who would have us pursue a more thoroughgoing policy. Again we have given proofs in regard to our civil expenditure, for we have carried out reductions which as has so frequently been pointed out here, and not only on this side of the House, will leave many of the departments of the Central Government lifeless and inanimate. Do not for a minute believe that all we have done as some of our amiable critics tell us—is to lop off excrescences.

And now, Sir, with regard to the position of our opponents. They may perhaps be prepared to accept much of what I have said, and may yet nevertheless hold that we are asking them to pay too heavy a price for the benefits which we are attempting to secure, because the measure in itself will involve such grave political consequences. Is that really so? Mr. Jamnadas is the chief apostle of that theory, an apostle who has already begun to bear the fiery cross. He told us to use our imagination. Sir, I ask him not to misuse his. When he told us that the salt tax is a messenger of revolution, I must remind him that he is misquoting from a speaker in this House in 1921 who told us that each half-penny post card would be a messenger of revolution. That only shows how it is easy to be betrayed into error by the possession of a somewhat facile vocabulary. I myself have been much struck by the arguments used by Sir Campbell Rhodes that for a month people had been paying this increased tax.

Rao Bahadur T. Rangachariar: What do you expect them to do?

The Honourable Sir Malcolm Hailey: What Mr. Jamnadas obviously expects them to do is to rise in revolution on the subject. I say that he has clearly exaggerated the effect of this tax on the people. And just as he has entirely exaggerated its economic effect, he and Sir Montagu Webb have exaggerated the effects on the Reforms of our attempting to force it into law. That there is a deep-seated and long standing sentiment in India on the subject, I am the first to recognise. That there is an old

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tradition of dislike behind it I equally recognise. But, Sir, that we are by this measure wrecking the reforms I entirely refuse to believe. I do not for the moment intend to place any stress on the argument which has sometimes been used here that the objections against this proposal are based on apprehensions concerning the approaching elections. I should consider it unfortunate if I had to use such a charge when better arguments will serve my turn. Actually the point of attack has changed. It is not now the tax itself which is going to impose such hardship that we have to fear agitation or danger to the reforms; to-day the real charge is that we know that we cannot get it through this branch of the Legislature, and are preparing to use the special powers of the Government of India Act to secure our ends. That is unconstitutional, and that is the danger to Reforms. If, says Mr. Jamnadas, you cannot get this tax through your Legislature, then you should make no further effort to go on with your proposal. If you use your reserved powers you will break down the constitution because, though the law contains certain safeguards and exceptional provisions, we have always been telling the people that these are paper provisions. What authority had he for preaching that it was intended that these powers should be paper provisions? Certainly not the Parliament which framed them, or the Joint Committee which recommended them to Parliament, and I cannot remember that the Congress or other witnesses before that Committee ever suggested that the reserved powers should be kept only for show and not for use. If this measure is really essential for British India, and if it is refused by an adverse vote (and it may be only a small deciding vote) of this branch of the Legislature, then I say that the use of the reserved powers would be entirely within the terms of the constitution, as handed to us by Parliament. (Mr. T. V. Seshagiri Ayyar: "Not the letter of the law.") (Mr. Jamnadas Dwarkadas: "Refer to Mr. Montagu's speeches.") If Mr. Montagu ever said anything which will prove that the position which I am now putting before the House is an incorrect one, I should be glad to hear it. For what is this exceptional provision meant? In every country, even the most democratic, the Executive must have the final power as it has the responsibility, of carrying out measures necessary for safety or stability. As far as possible and as long as possible, we must carry the Legislature with us. In England or elsewhere we should do so by the assistance of our majority in the Legislature; in India the reservation of the Governor General's powers is meant solely for this; that in the last resort the Executive Government may be placed in the same position as a Government possessing a majority in a representative Assembly. Now, that is its meaning, and the whole question is not whether the Government has or has not the right to use such a power, or is guilty of arbitrary executive action in using such a power but whether the occasion justifies it. The true test is whether a Government with a majority would not, in spite of a certain unpopularity likely to result from the exercise of its vote, feel that the occasion justified its use. Now, I maintain that the occasion does justify it. I maintain that if we do not take the occasion now to restore our finances when we have had two good harvests, when prices are falling and people are in a position to bear the increased tax without the slightest hardship, it is impossible to conceive circumstances in which such powers can legitimately be used. I say again, that the real question is not one whether we shall be acting constitutionally or not; we simply have to judge as to the sufficiency of the occasion. And I claim that the occasion has arisen. (Honourable Members: "No, no.") And the occasion does justify the use (Honourable Mem-

bers: "No, no.") Well, Sir, that is the feeling of my Honourable friends. I am glad to have brought them back at all events to the point that it is a question merely of the merits of the occasion that there is no suggestion that the use of the powers is unconstitutional. But, they will say, even if it is constitutional, it is dangerous and undesirable, for used at this juncture it will endanger the success of your Reforms. I have no belief that this will break up the reforms. I myself am too much interested in them to view with equanimity anything which would have that result. I have equally too robust a faith in their inherent vitality to think that an incident of this kind would bring disaster. They have weathered far worse shocks than this; they will weather more still. That there would be troubles ahead of us we knew, just as we know there are anomalies involved in the Reforms scheme; but those of us who believe in it as a whole have been content to neglect those anomalies and to look beyond those troubles, in the confidence that any anomaly or any trouble can be surmounted if the spirit of the scheme is loyally preserved. It is true many in this Assembly are opposed to this tax; they are entitled to their opposition if it is genuinely on the merits, they are not entitled to charge us with breaking the spirit of the Reforms if we insist on a measure which is not initiated in order to maintain the arbitrary authority of an executive Government but genuinely designed for an object purely for the benefit of India. That the restoration of our credit, the attainment of stability, with all its implications on provincial finance and the possibility of fostering subjects committed to Ministers, is such an object, no one can seriously dispute. If it is said that this will be the death-blow to the reforms. I myself believe that it is the opportunity of the Reforms. I believe it is the opportunity for the Legislature to complete the work which it has begun, a work which has required great courage and determination on its part and which I am the first and the most willing to recognise. I believe it is not only the opportunity for the Legislature to complete that work but to show that it can revise old traditions of thought and old beliefs in the light of new requirements, that, if it has in view an object of real value for the good of India, it can be strong and independent in that view. If so, it is an opportunity for it to increase its status in the eyes of the world for that status must in the long run depend not on the unsubstantial basis of its aspirations but on the sure and solid foundation of its achievements.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, we have all heard with very great interest what has been said by Sir Montagu Webb on the subject. While I sympathise with what has been generally said by him in his capital speech, I too, like the Honourable the Home Member, must come forward to point out that the deficit does not appear to me to be merely a paper deficit, and that if retrenchments are not made much more extensively I would not feel inclined to take any very optimistic view of the deficit with which we are confronted. I am surprised that in this House the real remedy for the deficit has not been insisted on. It is being said that our credit outside the country will not suffer even if our deficit remains uncovered. Our credit is bound to suffer if our unproductive debt amounting to 226 crores, of which 100 crores are due directly to successive deficits, is to increase by 4 crores more this year. What is desirable just now is to severely revise our expenditure. Our Finance Member, who is undoubtedly a very able Minister, should realise, I respectfully submit, that our expenditure has not been reduced to its legitimate limits. It is true that the Retrenchment Committee has

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recently brought its axe to bear upon our expenditure, and this year a very large cut has been made. I quite agree that for a beginning this is a very desirable step. But I respectfully submit that undue expenditure is being incurred in most departments. I would give one or two instances. Take the Bengal-Nagpur Railway. For an Assistant Traffic Superintendent, Nagpur, a bungalow is to be built at a cost of one lakh and 18 thousands.

Mr. President: Order, order. The Honourable Member cannot discuss that now.

Mr. S. C. Shahani: Well, Sir, I merely wish to say that instead of a lakh and eighteen thousand rupees, a few thousands only might appropriately be spent on an Assistant Traffic Superintendent's bungalow. Similarly, on the formation of bunds on the Amda-Jamda Railway, the sanctioned estimates come to about 13 lakhs; still the total expenditure to end of 1923-24 is to come to 35 lakhs. Such a procedure, I maintain, ought to be sternly prevented. Secondly, in this year of deficit, we ought certainly to remove some of the newer items included in the budget. Provisions for new Railways made in the Budget might be stayed; and by doing so I am strongly of opinion that we would be able to cover our deficit. The whole of our deficit may not be covered this year; it may be done in the next year. By keeping the actual expenditure below the budget figures, we can respect public opinion, and we can go without the additional salt tax. The salt tax is in reality a great political danger. The statement that was put forth by my Honourable friend Mr. Jamnadas Dwarkadas has been poopooed. It has been said that the enhanced salt tax will have no prejudicial effects upon the country. I am sincerely very doubtful. The immediate result may not be a revolution. The discontent may come to be latent, even more latent than it is at the present day. But beware of just latent discontent. Just latent discontent ought to be avoided at all costs. I am surprised that in this House the economic evil of the salt tax has not been properly pointed out. The Honourable Sir Campbell Rhodes the other day ridiculed the economic knowledge of Dr. Gour, and what was told him in confidence was said in public, namely, that on his own authority the position that was put forward by Dr. Gour would appear to him to be a ridiculous one. I must own I have seldom admired the economic advice that has been given us by the Honourable Sir Campbell Rhodes himself. He has on the present occasion come forward to tell us, like my Honourable friend the Member for Commerce and Industry, that the wages have risen and that there is economic prosperity in the country. This would be a camouflage prosperity obtaining in the country like the camouflage surplus pointed to by Sir Montagu Webb. It has been made out that we do command a surplus when a surplus would with our best efforts be impossible for another two or three years together. It has been represented that the poor people are flourishing because their wages have risen. The wages have risen, it is to be remembered, as a consequence of a still greater rise in the cost of living; and it has also to be remembered that the material prosperity in the country is very much less now than it was before. The Honourable Mr. Innes at one time came forward to point out as absolute certain tests of increased prosperity in India that when he was Foodstuffs Commissioner in Madras in 1919, when crops had badly failed, only 5 lakhs of people were to be found on relief as against 65 lakhs of people on relief in an equally bad year, 1901. When I contemplate the actual condition of

things known to me, I feel that if there were no other causes probably the arrangements that were made in 1919 were so bad, the rations supplied were so rotten, that people preferred death to the rations that were distributed to them then. He also referred then to the increase in the revenue derived from drink. He said that in 1903 it was Rs. 7 crores and now it is over Rs. 16½ crores. Does he not forget that drink is an unhealthy luxury, and that if the people are just now showing a greater liking for this unhealthy luxury, we have got to remember that our economic condition is distinctly very much worse on that account than it was before? These are no illusions. It has been said by some very responsible men again that we earn per annum about Rs. 60 per head. This is I submit an unreliable estimate. Our average income could never be more than Rs. 30 per year and not per head but per family of four, a sum that would hardly suffice even for the maintenance of one man throughout the year. Our income is miserably low. It is again said that 12 annas per family of four per year will be the additional charge to the poor from the enhanced salt tax. That calculation appears to me to be incorrect, because we are 380 millions of people, and two-thirds of these would be the people inhabiting British India, and if our total revenue from salt duty is estimated now at about Rs. 20 crores, we see that the charge per head will be much heavier. But supposing for the sake of argument that my calculation is wrong, supposing for one moment that 12 annas per head comes to be the additional charge from increased salt duty, we have got to remember that the poor people of India cannot afford to shoulder an extra annual burden of even 12 annas. Even 12 annas will go a long way to buy them, as it was said by Sir Evelyn Baring in 1882, a *dhotie* or a *lota*, which they so much need and which will be so serviceable to them that live often on gram or *bhugras* alone. That is a phase of Indian life that was rightly referred to by the Honourable Sir Dinshaw Wacha in the other House the other day, and it might very well be revolved here to day. I again hold that the economic condition of the poor people is very unsatisfactory, and on that account this tax ought not to be tolerated. I for one am not afraid of encountering my constituency because I may not be in a position to tell them that I have not helped in the imposition of the increased salt tax. The question of questions now is, is it right to increase the salt tax or is it not right? If the Government is right, then do impose the increased duty, and I have not the slightest doubt that the people will not mind it. But my position is that the salt tax is an economically unsound tax because salt is used by the lower classes too, and not merely by the upper; and that if it is an economically unsound tax, do not go in for it. My respectful submission to our new comer, the Honourable the Finance Member, as I have said on a previous occasion, would be that he should with due care consider the expenditure which is being gone in for here in India. It is very heavy, and it must be radically reduced. Camouflage the situation as you will, the people will never be satisfied until the retrenchments are gone in for to a much greater extent than they have been gone in for now. It is being said that the Inchcape Committee have rendered a service to the country. They have merely skimmed the surface and that even the proposals from various offices that were put before them were not properly considered. I knew no contact with the Committee and I think most of the Members of this Assembly knew no contact with the Committee and the Committee had no means of knowing the actual condition of things in India. I therefore once again repeat my request, which I make with all humility, that the expenditure is unconscionable and unreasonable and if you retrench, there will be no deficit and if there is no deficit, there is no

[Mr. S. C. Shahani.]

need to risk this unconstitutionality. It has been said that the power that is given to the Governor General by law justifies his certification. Sir, this is a reserve power and the exercise of it will be extremely unpopular. Do not attempt it and do not superciliously ignore the attitude that has been put before you at the present moment.

Mr. Darcy Lindsay (Bengal: European): Sir, unlike my Honourable friend Sir Montagu Webb, I rise to strongly support the amendment made by the other House. I regret I have not his oratory to place before the House the other side of the rosy picture he portrayed, the prosperity with which India is at present blessed. I had proposed to deal with some of the points he raised and review his arguments but, I think, they have been very effectively dealt with by the Honourable the Home Member, who has pricked the somewhat gaudy air balloon he has raised and which found so much favour with the House. I hope my Honourable friend will hang his head in sorrow and follow the Honourable the Finance Member into the proper lobby. A point, Sir, was raised by my Honourable friend, Sir Deva Prasad Sarvadhikary, when he referred to Sir Montagu Webb, and Mr. Jamall and the respect he had for the opinion of businessmen in this House. I much regretted he made no reference to my Honourable friend Sir Campbell Rhodes. Does he wish the House to believe that Sir Campbell Rhodes is not a businessman, and a very able man at that? We all know that the House, whenever they can, follow Sir Campbell as against Sir Montagu.

Sir, there is one vital question at issue in this matter, and that is to what extent the tax will assist in the promised reduction of the provincial contributions. My Honourable friend, Sir Deva Prasad Sarvadhikary, briefly referred to this point, and I believe, he was quite satisfied that the provinces, if such a bait was held out to them, would strongly resist the taxation. I, on the other hand, hold a different opinion. I have heard expressions of views outside the House and by some very prominent leaders of the House that if the Honourable the Finance Member would only give us a pledge that he would devote the tax or the surpluses that he may secure from the tax to a reduction of the provincial contributions, then, the House would be entirely with him. (*Cries of "No, no."*) These were the expressions of opinion as given to me outside when my vote was being canvassed. I am not giving away any name, but that is an absolute statement of fact and to my mind is another bubble pricked in this great cry of the injury to the poor men of India by the imposition of the salt tax. The fear was expressed that as there was no definite assurance the money might be devoted to other purposes. But, I think, the Honourable Member can re-assure the House on that score for we have already been told that the 9 crores of contributions is a first charge on the coffers of the Government of India, and a debt that must be liquidated at first opportunity. It is undoubtedly the salt tax which will enable the Government to set their house in order, and quite possibly, next year, with a surplus in hand relief will come to the provinces including Madras who will get the bulk of the relief. (*A Voice: "That is another vote catching."*) This is not vote catching. This is an absolute truth. What stronger argument can we, the elected Members, have than the direct benefit reduced contribution will bring to our particular province and, therefore, India as a whole? When the question is asked, what have you done for the benefit of the province when you return to your electorate, is the reply to be "I strongly resisted the increase in the salt tax as a constitutional

crisis was involved but at the sacrifice of our provincial contribution, which will consequently have to continue for years?" Is that an argument that will appeal to the people who want to see money spent in works that will directly benefit them? What do they care about your so-called constitutional crisis as against the improvement of sanitation, education, and many other benefits that the provinces are waiting to bring about, but for want of money cannot do so? What is the cost to the people? Three annas per head. (*A Voice: "Exploded."*) It is not exploded. My Honourable friend Mr. Jamnadas Dwarkadas who in his speech carried me back to a Sunday afternoon in Hyde Park has told us that this salt tax is a messenger of revolution to every village home. I say, Sir, it is more likely to be a messenger of hope. (*Voices: "No, no."*) Sir, it was only a few days ago that my Honourable friend, Sir Basil Blackett, placed his hand on his heart to emphasise a particular point he wished to make. I wonder how many of us can place our hands on our hearts and honestly affirm that the proposed increase in the salt duty is going to be a burden to the people. Let us be honest with ourselves and admit that our reasons are political and partly pique at the will of the Assembly being set aside. Sir, I appeal to all Members of the House to support the tax under the battlecry of reduced provincial contributions. (*Cries of "No, no,"*) and I particularly appeal to the Members from Bengal to in this way give their support to the interests of other provinces who do not at the moment enjoy the remission that Bengal has received. With these few words I strongly support the amendment made by the Council of State.

(*Cries of "Let the question be now put."*)

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: The question is:

"That this Assembly do agree with the Council of State in the amendment that in sub-clause (1) of clause 2 of the Bill, after the words 'construed as if' the words 'with effect from the first day of March, 1923' be inserted and for the words 'one rupee and four annas' the words 'two rupees and eight annas' be substituted."

The Assembly divided:

AYES—47.

Abdur Rahim Khan, Mr.
Abul Kasem, Maulvi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Ahsan Khan, Mr. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Bhanja Deo, Raja R. N.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Bridge, Mr. G.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.

Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Shahab-ud-Din, Chaudhuri.
Singh, Mr. S. N.
Sinha, Babu Adit Prasad.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Willson, Mr. W. S. J.
Yamin Khan, Mr. M.
Zahiruddin Ahmed, Mr.

NOES—58.

Abdul Majid, Sheikh.
 Abdul Quadir, Maulvi.
 Abdul Rahman, Munshi.
 Agarwala, Lala Girdharilal.
 Ahmed, Mr. K.
 Ahmed Baksh, Mr.
 Aiyer, Sir P. S. Sivaswamy.
 Asjad-ullah, Maulvi Miyan.
 Ayyangar, Mr. M. G. M.
 Ayyar, Mr. T. V. Seshagiri.
 Bagde, Mr. K. G.
 Bajpai, Mr. S. P.
 Basu, Mr. J. N.
 Bhargava, Pandit J. L.
 Bishambhar Nath, Mr.
 Chaudhuri, Mr. J.
 Dalal, Sardar B. A.
 Das, Babu B. S.
 Dass, Pandit R. K.
 Ginwala, Mr. P. P.
 Gour, Dr. H. S.
 Gulab Singh, Sardar.
 Hussanally, Mr. W. M.
 Iswar Saran, Munshi.
 Jafri, Mr. S. H. K.
 Jamali, Mr. A. O.
 Jamnadas Dwarkadas, Mr.
 Jatkar, Mr. B. H. R.
 Joshi, Mr. N. M.

Kamat, Mr. B. S.
 Lakshmi Narayan Lal, Mr.
 Latthe, Mr. A. B.
 Mahadeo Prasad, Munshi.
 Misra, Mr. B. N.
 Mudaliar, Mr. S.
 Mukherjee, Mr. J. N.
 Nabi Hadi, Mr. S. M.
 Nag, Mr. G. C.
 Nand Lal, Dr.
 Neogy, Mr. K. C.
 Pyari Lal, Mr.
 Ramayya Pantulu, Mr. J.
 Ramji, Mr. Manmohandas.
 Rangachariar, Mr. F.
 Samarth, Mr. N. M.
 Sarvadhikary, Sir Deva Prasad.
 Schamnad, Mr. Mahmood.
 Shahani, Mr. S. C.
 Singh, Babu B. P.
 Sinha, Babu Ambica Prasad.
 Sinha, Babu L. P.
 Sohan Lal, Mr. Bakshi.
 Srinivasa Rao, Mr. P. V.
 Subrahmanayam, Mr. C. S.
 Tulshan, Mr. Sheopershad.
 Venkatapatiraju, Mr. B.
 Vishindas, Mr. H.
 Webb, Sir Montagu.

The motion was negatived.

Mr. Jamnadas Dwarkadas: Is it necessary to put the other amendments at all because these are consequential amendments? As the original amendment has been thrown out, I submit that these amendments do not arise.

Mr. President: That is a matter of interpretation.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): As the original amendment has been thrown out, I think the House for consistency's sake should also get rid of the other amendments, as they were consequential to the amendment which the Council of State made in the Bill. If these words stand, one might think that they were superfluous and the House may be charged with inconsistency. I think, the main question was whether the salt tax should be Rs. 1-4-0 or Rs. 2-8-0. This House has decided on Rs. 1-4-0 and, therefore, such introductory words as "with effect from the first day of March, 1923", and so on, will become unnecessary.

Mr. President: I think we had better proceed with the division.

The Honourable Sir Malcolm Hailey: I shall not ask for a division on this matter.

Mr. President: Further amendment made by the Council of State in the Indian Finance Bill:

"At the beginning of sub-clause (2) of clause 2 of the Bill, the following words were inserted, namely:

"With effect from the first day of March, 1923."

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

The motion was negatived.

Mr. President: Further amendment made by the Council of State in the said Bill:

"Sub-clause (3) of clause 2 of the Bill was omitted."

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

The motion was negatived.

Mr. President: Further amendment made by the Council of State in the said Bill:

"To clause 3 of the Bill the following new sub-clause was added, namely:

"(3) The amendments made in the Indian Tariff Act, 1894, by this section shall have effect from the first day of March, 1923."

The question I have to put is that this Assembly do agree with the Council of State in that amendment.

The motion was negatived.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, before you call on Mr. Burdon, I beg to call your attention to page 46 of the Manual and to inquire whether this House is entitled to send a message to the Governor General. The Governor General has sent us a message, to which a reply is due. My motion, Sir, is to send a reply to that message, which I trust that you will hold we are entitled to send. My object, Sir, it may be mentioned is to point out to His Excellency the Governor General that he is being advised on a wrong course altogether in the matter of certifying under clause 67B of the Government of India Act. I propose to point out that clause 67B could not apply at this stage. That is my legal point. I also propose to address His Excellency through my speech here that he should not follow the advice which is being given to him behind our backs by other people. Therefore, Sir, I want this House to emphasise its vote given on the last occasion by imploring His Excellency not to use this reserve power which the law has entrusted to him. I think, Sir, you will hold that we are entitled to send that message to His Excellency. I have handed to you, Sir, a slip of paper containing the further message which is to the effect that this House do also implore His Excellency not to exercise the power which he has got under this section. Sir, I submit it will be fitting on an important occasion like this that this House should send such a message and I am sure that His Excellency with all his liberal instincts will pay that attention which is due to this Assembly, which is the popular House. However responsible the advisers in His Excellency's Cabinet may be, we also claim to represent the people. We claim to be true friends of His Excellency the Governor General. We want His Excellency to continue in this country as Viceroy and to earn the love and respect of the people of this land. Therefore, Sir, I want this opportunity to move this proposition so that this House may send its humble message to His Excellency not to embark upon this measure upon which he is advised to embark. I hope, Sir, you will hold it in order.

Mr. President: The Honourable Member will observe that the debate this morning on the salt tax verged not merely upon what was disorderly but upon what was actually forbidden, namely, comment on the conduct either of the Crown or of the Governor General in his actions apart from the Government of which he is the head. The action which he is entitled to take under the constitution, as Governor General and not as Governor

[Mr. President.]

General in Council, is to set in motion this very procedure which begins by recommendation and ends, on this assumption, by certifying a Bill. If I were to allow the Honourable Member to move this motion, the debate must inevitably reflect upon his conduct as Governor General. I ask the Honourable Member on that ground, therefore, not to press his motion. It must be assumed that the Governor General is fully seised of all the aspects of the question, including those presented in public debate on the floor of this House, before he takes such action as is contemplated under the constitution.

Rao Bahadur T. Rangachariar: I have always great respect for and a desire to follow your ruling and advice, but there are certain legal aspects of the question, which perhaps have not been placed before His Excellency. That is one reason why I wish to move this motion.

Mr. President: If the Governor General desires legal advice over and above that which is officially available to him from the Honourable the Law Member, he no doubt will seek it where he desires to find it. The Honourable Member is a distinguished lawyer himself. I imagine the doors of Viceregal Lodge are open to him equally as to others.

THE CANTONMENTS BILL.

Mr. E. Burdon (Army Secretary): Sir, I move for leave to introduce a Bill to amend the Cantonments Act, 1910.

The purpose and scope of the Bill are clearly and simply set forth in the Statement of Objects and Reasons. Moreover, the subject with which the Bill deals must already be familiar to many Honourable Members of the Assembly and, consequently, the further observations which I will make in support of my motion will be very brief. Cantonments exist primarily for the accommodation and for the service generally of troops, and it may safely be said that, when the cantonments were first established, the needs of the troops constituted not only the primary but the sole consideration by which the system of governing cantonments had to be determined. In the course of time, however, conditions have materially changed and there are many large cantonment areas in India which contain a considerable civilian population, whose presence in the cantonments has no specific connection with the troops or with the military administration. In the cases to which I am referring the civilian part of the settlement has been created by economic causes of one kind or another. This change of conditions has led to a demand, a justifiable demand, for changes in the system under which cantonments are administered. In the past few years the question has formed the subject of a considerable amount of public discussion between, on the one hand, those sections of the public that are directly interested in cantonment affairs and the military authorities, and indeed the Government of India on the other hand. In the result, about this time last year, His Excellency the Viceroy, in receiving a deputation of the All-India Cantonments Association, gave an undertaking that Government would introduce liberal reforms into cantonment administration without at the same time doing anything to the prejudice of the discipline and comfort of the troops for whose benefit cantonments primarily exist. The fruit of these discussions and the undertaking which I have just mentioned is to be found in the Bill which I seek

leave to introduce, and it is perhaps desirable that I should take this opportunity of stating once more in definite terms the general position which Government desire to adopt in the matter. It is still held that in all cantonments the essential requirements of the troops must come first. It is vitally important, for example, that troops should live in absolutely healthy conditions, so far as it is humanly possible to achieve this end. I will give one very brief illustration of the reason why Government must take so definite a line in the matter. I remember that, when the great war broke out in 1914, a certain regiment was found to be infected with malaria through no fault of their own, but merely as a result of the insanitary state of the cantonments in which they were stationed. The regiment was consequently declared to be unfit for active service. It is easy to see what this means. It means that the expenditure which had been incurred on maintaining that particular regiment and the labour which had been spent in organising and training it failed of their effect at the very moment when the regiment was most needed. The cantonment, I am glad to say, has since been abolished. It is equally necessary to protect the troops from other forms of contamination, from possible contamination of their morals or of their discipline and morale. It is not that troops are specially susceptible to evil influences. Here in India we know very well that the contrary is the case. But the troops are too valuable to risk. That is the point.

Subject then to these essential requirements of the troops being provided for, Government recognise that in the larger cantonments it is right and indeed necessary to apply methods of administration which shall be of a progressive character and consistent with Government's general policy in other departments of the administration. In many of the smaller cantonments of India no such question of reform arises. There are many small cantonments in which the civilian population is negligible in amount and consists almost entirely of persons engaged in occupations which are directly ancillary to the maintenance of the troops. In cantonments of this character representative institutions would be out of place and would, of course, be quite unworkable, but in the larger cantonments, where the ordinary conditions of civic life largely prevail, the Government desire to apply, subject to the safeguards which I have mentioned, municipal methods of administration and to make the cantonment authority a responsible local self-government body. I am confident that the principle by which Government has been guided in framing this measure will commend itself universally to this Assembly. I move therefore for leave to introduce the Bill.

The motion was adopted.

Mr. E. Burdon: Sir, I introduce the Bill.

Sir, I move:

"That the Bill be circulated for the purpose of eliciting opinion thereon."

The motion was adopted.

Mr. President: In view of other proceedings here this afternoon, I now propose to adjourn the House till to-morrow morning Eleven O'clock.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 27th March, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 27th March, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

RESTORATION OF GRANTS.

641. ***Mr. K. O. Neogy:** Will Government be pleased to refer to my starred questions No. 40, dated the 6th September, 1922, and No. 76 of the 16th January, 1923, and to state the result of their examination of the extent of the authority of the Governor General in Council to instruct a Governor in regard to the exercise of his statutory powers for the restoration of grants rejected by the Local Legislative Council?

The Honourable Sir Malcolm Hailey: The examination of the question referred to by my predecessor is still proceeding.

Mr. K. O. Neogy: When did the process of examination begin and when is it likely to end?

The Honourable Sir Malcolm Hailey: It began, Sir, about the time that my predecessor made the statement; it will end, Sir, as soon as we have full time to give to a question so important. As the House will realise it is really quite impossible for us to take up questions of first class importance like this during the sittings of the Assembly.

Mr. K. O. Neogy: Do I take it that the Government of India did not go into this question before they actually issued instructions to the Governor of Bengal to restore certain grants which were refused by the local Council?

The Honourable Sir Malcolm Hailey: I can only say now that the question is one which needs further consideration.

CAPITAL EXPENDITURE ON RAILWAYS.

642. ***Mr. K. O. Neogy:** (a) With reference to the provision for capital expenditure for the Railways in 1923-24, will Government be pleased to state whether the Central Railway Advisory Council was consulted in regard to the different items of the expenditure proposals?

(b) What control, if any, is exercised by the Finance Department over proposals for capital expenditure on Railways?

Mr. C. D. M. Hindley: (a) The reply is in the negative.

(b) The Finance Department fix the total allotment to be made for capital expenditure on railways in each year, subject to the sanction of the Secretary of State and the vote of the Legislative Assembly, but do not

interfere in the distribution of the grant among the railways or as to the precise objects of expenditure on which the grant is spent. Their business, however, is to see that the total allotment is not exceeded without a supplementary vote, and also to scrutinise such projects as require the sanction of the Secretary of State, before that sanction is applied for.

GRANT FOR RAILWAY QUARTERS.

643. ***Mr. K. C. Neogy:** (a) With reference to the provision of Rs. 1 crore, 75 lakhs and odd made in the Railway Budget for 1923-24, for additional quarters for staff, will Government be pleased to state how much of the amount is likely to be spent for construction of quarters for European and Anglo-Indian employees, and how much for Indian employees, in the different railways?

(b) How much of the said amount is to be devoted towards construction of quarters for employees drawing a monthly salary of Rs. 50 and below?

(c) What will be the total approximate annual recovery in the shape of rent from the staff occupying these quarters; and what is estimated to be the rate of net annual return on the capital spent in the construction of these quarters after making allowance for depreciation and repairs?

Mr. C. D. M. Hindley (a), (b) and (c). The information asked for is not available.

Mr. K. C. Neogy: Do I take it that these details are never examined before provisions are made in the budget for such expenditure?

Mr. C. D. M. Hindley: The Honourable Member is not correct in making that assumption, Sir; they are examined, but they are not examined on the basis which this question indicates.

Mr. K. C. Neogy: With reference to sub-clause (c), is it a fact that no return is actually expected on the capital invested in the building of these quarters?

Mr. C. D. M. Hindley: No, Sir; it is not a fact.

DISMISSAL OF RAILWAY EMPLOYEES.

644. ***Mr. K. C. Neogy:** (a) Will Government be pleased to make a statement showing, Railway by Railway, the number of European and Anglo-Indian employees whose services have been dispensed with as a result of the "economy campaign" during the current year, referred to in paragraph 17 of the Explanatory Memorandum on the Railway Budget for 1923-24? What is the total annual saving effected thereby in each railway?

(b) Will Government be pleased to make a similar statement in respect of Indian employees whose services have been so dispensed with?

Mr. C. D. M. Hindley: The information in the detail asked for is not available. It can be collected only by special compilations by the different railways and the Government are reluctant to put Railway Administrations to this trouble.

ISSUE OF RAILWAY PASSES.

645. ***Mr. K. C. Neogy:** (a) With reference to the answer to starred question No. 446 (a) of the 5th March, 1923, to the effect that officers of the Railway Board are granted free passes over all railways in India subject to a limit of two passes per annum, will Government be pleased to state if it is a fact that the total number of passes issued to Railway Board's staff and staff of Accountant General, Railways, during the year 1922, was 277 for the First Class and 626 for the Second Class?

(b) What is the total number of officers of the Railway Board and the Accountant General, Railways, who are entitled to travel first and second class, respectively?

(c) Will Government be pleased to state why no money account is maintained of the passes and P. T. Os. issued to the said staff?

Mr. C. D. M. Hindley: (a) The rule in this connection is that one set of passes over State and Company-managed railways taken separately or combined and one set over State-managed railways only are allowed under an arrangement with the various railway administrations similar to that which exists between the administrations themselves by mutual agreement. A set of passes means passes to cover the return journey of the employee and his family and the family is allowed to travel separately. It is regretted that the expression used in the reply referred to was open to misinterpretation but it is the expression generally used in this connection. The numbers are as stated by the Honourable Member but I should explain that the rule referred to above does not apply to Gazetted Officers.

(b) 27 and 112.

(c) Government do not consider that any object would be served in expending the time and labour involved in compiling such an account.

VOTABLE ITEMS IN RAILWAY BUDGET.

646. ***M. K. Reddi Garu:** Will the Government be pleased to state whether it is the practice to place all new votable items of the Railway budget—capital as well as the revenue—before the Standing Finance Committee? If not, why not?

The Honourable Sir Basil Blackett: I would invite the attention of the Honourable Member to the statement made by the Honourable Sir Malcolm Hailey in this House on the 15th March, 1922, when a similar question was raised in the course of the discussion on the Demand for railways. As Sir Malcolm Hailey then pointed out, it is not possible to place all proposals for railway expenditure before the Standing Finance Committee. For instance, a large proportion of the expenditure on railways falls under the head of working expenses, and expenditure of that kind cannot be controlled by budget or the ordinary provisions relating to expenditure control. An undertaking was given, however, that all questions of expenditure relating to establishment would be laid before the Standing Finance Committee, and effect has been given during the year to that undertaking except in cases of lesser importance which can be disposed of by the Railway Department, under the ordinary powers delegated to them, without reference to the Finance Department.

RAILWAY EXPENDITURE ON EDUCATION.

647. *Mr. K. G. Bagde: Will the Government be pleased to state:

- (i) Whether it is a fact that the E. I., A. B., G. I. P., B., B. and C. I., M. & S. M., S. I., B. & N. W., R. & K., N. W., O. & R. and E. B. Railways spent in 1921-22 the sum of Rs. 6,21,331 or thereabouts for helping education of the children of their European and Anglo-Indian employees and the sum of Rs. 96,446 or thereabouts for helping the children of their Indian employees?
- (ii) The total number of the Europeans and Anglo-Indians and also the Indians employed by the said railways?

Mr. C. D. M. Hindley: (i) The reply is in the affirmative.

(ii) The information will be found in Appendix 23, Volume II, of the Indian Railway Administration Report for 1921-22.

RAILWAY HILL SCHOOLS.

648. *Mr. K. G. Bagde: Will the Government be pleased to state:

- (i) Whether it is a fact that schools are maintained in the hills by some of these railways for the special benefit of the children of their European and Anglo-Indian employees?
- (ii) And if so, what is the total capital expenditure incurred for such institutions up to now; and further what are the annual recurring charges borne by the railways in this behalf; and
- (iii) Under what head in the Railway Accounts are the above different items of expenditure shown?

Mr. C. D. M. Hindley: (i) There is one such Boarding School maintained in the hills, namely, the East Indian Railway Oak Grove School, Mussoorie.

(ii) At the end of 1921 the construction account of the School stood at Rs. 8,07,000. The total recurring expenditure for that year was Rs. 2,85,250 met as follows:

	Rs.
By fees	1,96,888
By interest on the endowment fund	7,000
By grant in aid from the United Provinces Government	28,000
By contributions from the various railways whose employees' children attend the school	1,13,862

(iii) The money charged to the construction account has been contributed from time to time from the East Indian Railway Fine Fund, the East Indian Railway and North-Western Railway, Capital and Revenue, and from other miscellaneous sources. The property is vested in the Secretary of State. The portion of recurring charges met by Railway is brought to account as part of the working expenses of the railway concerned in the Revenue Account, Abstract "G" Special and Miscellaneous Expenditure.

EXPENDITURE ON COUPE COMPOSITES.

649. *Rai Bahadur G. O. Nag: Are there any proposals for increasing any expenditure on Coupe composites on any other railways during the

year 1923-24? Why is the A. B. Railway going to provide coupe composites on its lines? Did this suggestion for providing such a class of carriages come from the tea planters of Assam?

Mr. C. D. M. Hindley: Government have no exact information as to the extent to which the various railway administrations are providing coupe accommodation in the ensuing year but presume that the particular case referred to is an indication that the Assam-Bengal Railway is acting on a suggestion made by the Railway Board that some compartments should be provided which can be reserved for passengers who desire to travel with their families particularly in the lower classes of accommodation. The suggestion did not come from the tea planters in Assam.

Sir Deva Prasad Sarvadhikary: May I ask a supplementary question, Sir? Has there not been a suggestion made to the Railway Board that these coupes, particularly in the lower classes, should be extended as far as possible, for the benefit of those who use these classes when travelling with their families?

Mr. C. D. M. Hindley: Yes, Sir. That suggestion was made to the Railway Board, they have acted upon it and have made a strong suggestion to that effect to the Railways. This action of the Assam-Bengal Railway is in consonance with the course which was then suggested.

EXPENDITURE ON B.-N. RAILWAY STOCK.

650. *Rai Bahadur G. O. Nag: (a) Is it a fact that on the B. N. Railway the proportion of third class passengers to total passengers per train during 1920-21 was 94 per cent. and that of first class was 1 and of second class 3?

(b) Is it true that while this railway proposes an expenditure of Rs. 2,93,000 on pure third class carriages, while a sum of Rs. 87,000 is provided by it for expenditure on touring saloons? For whose benefit are the touring saloons being provided?

Mr. C. D. M. Hindley: (a) The percentages given by the Honourable Member may be accepted as approximately correct.

(b) The provision for coaches for third class only is Rs. 11.73 lakhs and that for touring saloons is Rs. 0.87 lakhs. These touring saloons or tourist cars are required for public traffic.

ELECTRIFICATION AT LUMDING.

651. *Rai Bahadur G. O. Nag: Is it true that there is a proposal for electrification at Lumding (A. B. Railway) at a cost of about Rs. 2½ lakhs?

Mr. C. D. M. Hindley: The reply is in the affirmative.

ELECTRIFICATION OF COACHING STOCK OF A.-B. RAILWAY.

652. *Rai Bahadur G. O. Nag: Is there a proposal also for electrification of coaching stock of the A. B. Railway at a cost of 2 lakhs?

Mr. C. D. M. Hindley: There is a provision of Rs. 2 lakhs for equipping some of the coaching stock on the Assam-Bengal Railway with electric light in place of gas. This is desirable in the interest of public safety and is in accordance with the general policy on all railways.

DEPRECIATION OF FLOUR MILLS.

653. ***Bhai Man Singh:** 1. Will the Government be pleased to state on an average of how many hours a day is the rate of depreciation of flour mills, etc., fixed at 6½ per cent. on prime cost for the purposes of Income-Tax Act under rule No. 8 of the Indian Income-Tax Rules printed on pages 41—44 of the Income-Tax Manual, 1922?

2. Will the Government be pleased to state whether the mills working much more, say double than the average hours, are entitled to double depreciation under the said rule?

3. If not, is the Government prepared to reconsider the matter and make the rule more equitable by fixing depreciation rates according to the working hours?

4. Will the Government be pleased to state the considerations that led to fixing this average?

The Honourable Sir Basil Blackett: I refer the Honourable Member to the reply I gave to question No. 451 at a meeting of the Legislative Assembly on the 5th March, 1923. The Government are not prepared to alter the depreciation rates until statistics are forthcoming showing that the rates at present fixed are unsuitable.

SIKH HOLIDAYS.

654. ***Bhai Man Singh:** 1. Will the Government be pleased to state how many Sikh holidays are allowed in the Post and Telegraph offices in India or in the Punjab, Sind and United Provinces of Agra and Oudh?

2. Is the Government aware that Guru Nanak's birthday and Guru Gobind Singh's birthday are the festivals universally observed by the Sikhs and they are all declared as general holidays by the Punjab Government and the High Court, Lahore?

3. Is the Government considering the question of declaring these Sikh festivals as general holidays in the Post and Telegraph offices and under the Negotiable Instruments Act?

Colonel Sir Sydney Crookshank: (1) A reference is invited to clause 2 of the Post and Telegraph Guide which contains a list of all the holidays observed in the Department.

(2) Yes.

(3) No.

FIRMS OF ACCOUNTANTS FOR INCOME-TAX ACCOUNTS.

655. ***Bhai Man Singh:** 1. Is the Government aware that the Income Tax Commissioner, Punjab, has approved the following three firms of Accountants for the preparation of Profit and Loss statement for Income-tax purposes:

(a) Messrs. Nisson Dignesse & Co.

(b) Messrs. Basant Lall & Son.

(c) Messrs. Aiyar & Co.

2. Is the Government aware that the majority of Indian firms in the Punjab keep their accounts in Hindi or Gurmukhi?

3. Is it a fact that none of the members of the above approved Accountants' firms know Gurmukhi or Hindi nor do they undertake to audit accounts in Hindi or Gurmukhi?

4. Is the Government aware that the inability of all the approved Accountants in Punjab to audit Hindi or Gurmukhi accounts has led to great inconvenience to those firms who keep their accounts in Hindi or Gurmukhi?

5. Will the Government be pleased to state the considerations on which approval is extended to the practising firms of certified and chartered accountants?

6. Will the Government be pleased to state the consideration which led to the exclusion of Messrs. Sodhbans & Co. of Lahore, the only Sikh and the only Gurmukhi and Hindi knowing firm of certified accountants in the Punjab from the list of approved accountants?

The Honourable Sir Basil Blackett: I would refer the Honourable Member to the reply given to question No. 452 at a meeting of the Assembly on the 5th March, 1923.

EXPENDITURE ON E. I. RAILWAY STOCK.

656. ***Rai Bahadur G. C. Nag:** (a) Is it true that on the E. I. Railway a sum of over 4 lakhs has been sanctioned for "betterments" of upper class stock for 1923-24, and a sum of over 3 lakhs is provided for betterments of motor vans, whereas no expenditure is proposed under the head of "Betterments" or "Renewals"—"Sanctioned" of third class carriages?

(b) Is it a fact that out of an average of 248 passengers per train, 223 or 90 per cent. are third class passengers? Will the Government kindly ascertain from the railway concerned why no expenditure is proposed for "betterments" of third class carriages?

Mr. C. D. M. Hindley: (a) The additional upper class stock and motor vans mentioned were sanctioned as betterments during 1922-23 and have been carried forward into 1923-24.

(b) The reply to the first part of this question is in the affirmative. It is not a fact that no provision has been made for "betterments" of third class carriages for which Rs. 19 lakhs have been allotted against 1923-24.

EXPENDITURE ON S. I. RAILWAY STOCK.

657. ***Rai Bahadur G. C. Nag:** Is it a fact that S. I. Railway has got Rs. 6,67,000 sanctioned for bogie coaches of sorts under "Betterments"? How much of this is to be spent on the upper classes (1st, 2nd and tourist) coaches, and how much on third class?

Mr. C. D. M. Hindley: The answer to the first part is in the affirmative. The information asked for in the second part is not available but will be obtained and supplied to the Honourable Member.

ADMISSION TO ENGINEERING SERVICE, E. I. RAILWAY.

658. ***Rai Bahadur G. C. Nag:** (a) Has the attention of the Government been drawn to a notice, dated 12th December 1922, issued over the name of Mr. G. L. Colvin, Agent, East Indian Railway, regarding examination

for selection of Anglo-Indian, European and Indian Apprentice Inspectors and Draftsmen for employment in the Engineering Department, East Indian Railway, which stated that sons of East Indian Railway employees and boys educated at Oakgrove School would have preference among those who passed a satisfactory examination?

(b) Does the Oakgrove School admit sons and boys of the Railway employees of pure Indian descent? If the answer is in the affirmative, will Government kindly supply the number of such boys now on the roll of that school? If the answer is in the negative, will Government kindly state why the boys belonging to a particular community should have preference over boys of other communities in the Engineering Service of this particular railway?

Mr. C. D. M. Hindley: (a) and (b). Government have seen the notice from which they gather that there is no preference for a particular community. As regards Indians, sons of East Indian Railway employees will have preference. As regards Europeans and Anglo-Indians two criteria will be applied. First, that they are sons of East Indian Railway employees and secondly, that they have been educated at the railway's School at Mussoorie.

MEDICAL SERVICES ON RAILWAYS.

659. ***Rai Bahadur G. O. Nag:** (a) Are there any Indians in service in the Medical Department of the East Indian Railway? If so, how many are there?

(b) What is the total number of Medical officers, e.g., Chief Medical Officers, District Medical Officers, and Civil Surgeons in the employment of the railway classified according to nationality?

Mr. C. D. M. Hindley: The information asked for by the Honourable Member is being collected and will be sent to him in due course.

ISSUE OF RAILWAY TICKETS.

660. ***Babu Baidyanath Prasad Sinha:** (a) Is the Government aware of the fact that there is great inconvenience to third class passengers in purchasing tickets on account of the Booking Clerks issuing the tickets only a few minutes before the arrival of trains?

(b) Do the Government propose to issue instructions to the Railway authorities in this connection?

Mr. C. D. M. Hindley: (a) and (b). The Honourable Member is referred to the answers given in this Assembly to the following questions asked on the same subject:

(1) Questions Nos. 633 and 635, asked by Rai Bahadur Pandit Jawahar Lal Bhargava on the 26th September, 1921.

(2) Question No. 237, asked by Khan Sahib Maulvi Abdul Quadir on the 6th February, 1922.

INCONVENIENCES TO THIRD CLASS PASSENGERS.

661. ***Babu Baidyanath Prasad Sinha:** (a) Is the Government aware of the fact that there is great inconvenience to third class passengers on account of their not being permitted to go to the railway platforms

directly after they purchase tickets and that at many stations they have to wait long in enclosures before the gates to the platforms are opened for them?

(b) Do the Government propose to issue instructions to the Railway authorities to admit the passengers to the platforms at once when they are in possession of tickets and that they must not be kept waiting in enclosures?

Mr. C. D. M. Hindley: (a) and (b). Government are not aware that great inconvenience is caused to 3rd class passengers owing to their not being allowed on the platform as soon as they have purchased their tickets. It is not possible to lay down any hard and fast rule in this matter. It is the usual practice to admit passengers to the platform in ample time for the train, but the amount of platform space available, the density of traffic, and the safety of the passengers themselves must determine the period they may occupy the platform.

INSUFFICIENCY OF SEATING ACCOMMODATION ON RAILWAYS.

662. ***Babu Baidyanath Prasad Sinha:** (a) Is the Government aware of the fact that there is not sufficient supply of benches or other seating accommodation on first class railway station platforms and in the third class passenger waiting rooms?

(b) Do the Government propose to order the Railway authorities to make arrangements for their supply as soon as possible?

Mr. C. D. M. Hindley: (a) Government have no special information on the subject.

(b) The matter is within the competence of Railway Administrations but I may inform the Honourable Member that the question of the provision of benches or raised seating accommodation in third class waiting halls at important stations has already been brought to their notice.

OVERCROWDING IN THIRD CLASS CARRIAGES.

663. ***Babu Baidyanath Prasad Sinha:** (a) Is the Government aware of the fact that there is great overcrowding in third class compartments in through trains?

(b) Do the Government propose to order more through trains to run up and down so as to remove the inconvenience of third class passengers?

Mr. C. D. M. Hindley: (a) and (b). The Honourable Member is referred to paragraphs 85 to 88, Chapter VIII of the Administration Report, on Indian Railways, 1921-22, Volume I, copies of which are available in the Library.

RAILWAY TECHNICAL SCHOOLS.

664. ***Babu Baidyanath Prasad Sinha:** (a) Will the Government be pleased to say how many technical schools there are in connection with locomotive, carriage and wagon workshops at different railway centres where Indians are trained as mechanics and mechanical engineers?

(b) If there are not anywhere Indians receiving training as mechanics do Government propose to take any action in the matter?

Mr. C. D. M. Hindley: I would refer the Honourable Member to paragraph 34, Volume I, of the Administration Report on Indian Railways, 1921-22

LOCAL ADVISORY COUNCILS.

665. ***Babu Baidyanath Prasad Sinha:** (a) Will the Government be pleased to say when the Local Advisory Councils recommended by Acworth Committee will be established?

(b) Will the Government be pleased to define their functions and to publish the scheme for public criticism before it is finally adopted?

Mr. C. D. M. Hindley: The Honourable Member is referred to the reply given to starred question No. 376 on 19th February, 1923. Since that reply was given, the Oudh and Rohilkhand Railway Administration has established a Local Advisory Committee.

FUNCTIONS OF DIRECTOR GENERAL, INDIAN MEDICAL SERVICE.

666. ***Mr. K. C. Neogy:** (a) What is the relation of the Director General, Indian Medical Service, to the Indian Medical Service as a service, i.e., is he the head of both the civil and the military sides or of the civil side only?

(b) If he is head of the military side also, in what respect does he function as regards appointment, transfer and promotion of Indian Medical Service officers?

Mr. E. Burdon: (a) The Director General, Indian Medical Service, is the head of the entire Indian Medical Service, both military and civil.

(b) Officers of the Indian Medical Service in military employ are under the immediate orders of the Adjutant-General in India so far as questions of appointment and transfer are concerned. All promotions are made by the Government of India on the advice of the Director General, Indian Medical Service.

Lieut.-Colonel H. A. J. Gidney: Will the Honourable Member tell me whether the Director, Medical Services, has any control over this department?

Mr. E. Burdon: Not the service as a whole?

Lieut.-Colonel H. A. J. Gidney: May I know in what capacity the control is?

Mr. E. Burdon: He has the usual control over those serving under him.

INDIAN MEDICAL SERVICE OFFICERS.

667. ***Mr. K. C. Neogy:** (a) Is it a fact that there are six Indian Medical Service Major-Generals appointments out of which four are allotted to the civil side and two to the military?

(b) Is it a fact that the two Major Generals' appointments on the military side are held by officers transferred from the civil side?

(c) Is it a fact that there are 16 Indian Medical Service Colonels appointments, out of which 10 are on the military and six on the civil side? How many out of the 10 military Colonels appointments are at present held by officers transferred from civil department?

Mr. E. Burdon: (a) and (b). Yes.

(c) The answer to the first part of the question is in the affirmative. As to the second part, 3 of the 10 Colonels now employed on the military side spent a portion of their service in civil employment, and were so employed when reverted to military duty on promotion to their present rank.

PROMOTIONS IN INDIAN MEDICAL SERVICE.

668. ***Mr. K. C. Neogy:** Is it a fact that when a vacancy occurs in the administrative grade of the Indian Medical Service on the civil side it is invariably filled up by promotion of junior officers on the civil side, passing over much senior officers of the service in the military department?

Mr. E. Burdon: No. The claims of all officers, whether serving on the military or the civil side, are considered for such appointments.

Mr. Ahmed Baksh: Is it a fact, Sir, that an Indian officer holding a military appointment was recommended, by the United Provinces Government to be made Inspector General, Civil Hospitals, and his claims were overlooked because he was serving on the military side?

Mr. E. Burdon: I should like to have notice of that question.

Lala Girdharilal Agarwala: Is it Colonel Kampta Pershad of the United Provinces?

Mr. E. Burdon: I cannot tell you. I do not know.

TRANSFERS FROM MILITARY TO CIVIL IN INDIAN MEDICAL SERVICE.

669. ***Mr. K. C. Neogy:** (a) Is there a law or regulation laying down the exact time of service when an Indian Medical Service officer may be transferred from military to the civil side?

(b) Is there a law or regulation laying down that an Indian Medical Service officer may be transferred and promoted to higher grade from civil to the military side, and that similar transfer may not take place from the military to the civil side?

(c) Will the Government be pleased to state as to who is responsible for this one-sided arrangement, the Director General, Indian Medical Service, as head of the Indian Medical Service or as head of the civil side?

(d) Is it a fact that there is no Major General's appointment on the military side of the Madras cadre and if the practice referred to in question (b) is to hold good, then is it intended that military officers on that cadre should not rise above the rank of Colonel?

Mr. E. Burdon: (a) No.

(b) No.

(c) In view of the replies I have just given, this question does not arise.

(d) The Honourable Member is mistaken in assuming that there is a military cadre for Madras. In view of the answer given to part 4 (b) above, the latter part of this question does not arise.

FAILURES IN INDIAN MEDICAL SERVICE.

670. ***Mr. K. O. Neogy**: Is it a fact that the Esher Committee had attributed the failure of the Indian Medical Service in the great war to the fact of the officers being too long in the civil employ in consequence of which they deteriorate from point of view of military efficiency?

Mr. E. Burdon: The Indian Medical Service was not a failure during the Great War, and the Esher Committee did not assert that it failed. I presume that the Honourable Member is referring to the passage in which the Esher Committee endorsed a military opinion expressed to them that the Royal Army Medical Corps, owing to its superior organisation and military training in peace time, and certain other causes, had proved itself on the administrative side more efficient in the field than the Indian Medical Service. It was admitted, on the other hand, that the officers of the Indian Medical Service were quite as efficient professionally as the Royal Army Medical Corps.

Lieut.-Colonel H. A. J. Gidney: Can the Honourable Member tell the House what the recommendations are that are going to be adopted by the Esher Committee?

Mr. E. Burdon: No, Sir.

SELECTION OF POSTS IN INDIAN MEDICAL SERVICE.

671. ***Mr. K. O. Neogy**: The medical being a transferred subject, is the selection for civil administration posts made by the Provincial Government or by the Director General, Indian Medical Service?

Mr. E. Burdon: The Director General, Indian Medical Service, is not consulted about the ordinary postings of Indian Medical Service officers in civil employ. These are made by the Local Government. The Director General, Indian Medical Service, is consulted when the services of an officer outside the provincial cadre are required.

MARRIAGE ALLOWANCE IN R. A. M. C.

672. ***Lieut.-Colonel H. A. J. Gidney** (i) Is it a fact that while a marriage allowance has been sanctioned for the personnel of the R. A. M. C., a similar concession has been refused to members of the Indian Medical Department?

(ii) Is it a fact that while Indian Medical Department officers stationed at Quetta receive a free allowance of 20 pounds of coal a day, R. A. M. C. corporals in the same station get a free issue of 80 pounds a day?

(iii) What is the reason for this difference of treatment?

Mr. E. Burdon (i) The grant of marriage allowance to members of the Indian Medical Department has not, so far, been refused. The question is still under consideration, and it is hoped that a decision will shortly be arrived at.

(ii) and (iii) The Government of India have no information on the subject but are inquiring. I will inform the Honourable Member of the result in due course.

Lieut.-Colonel H. A. J. Gidney: In the list of questions which I submitted to the Legislative Department, there were two others included, Sir, and I have heard no explanation as to why they have not been answered. May I ask the Honourable Member to inform me?

The Honourable Sir Malcolm Hailey: The practice is that the Government of India as such is cognisant only of questions which are admitted under the orders of the President; these are the questions that are answered.

UNSTARRED QUESTION AND ANSWER.

IMPROVEMENTS TO STOCK ON A.-B. RAILWAY.

258. **Rai Bahadur G. O. Nag** (a) Is it true that the estimates for improving third class carriages and Coupe composites of the A. B. Railway amount respectively to Rs. 8,53,000 and Rs. 5,83,000, and during 1923-24 a proportionately larger expenditure is proposed to be incurred on the latter than on the former? Will Government ascertain from the railway concerned the reasons for this differential treatment?

(b) Is it not a fact that during 1920-21, third class passengers accounted for 96 per cent. of the total passenger traffic on this railway?

Mr. C. D. M. Hindley: (a) The amounts provided during 1923-24 against the two estimates mentioned are for completion of the work and therefore no question of differential treatment arises. Further provision has been made against 1923-24 to the extent of Rs. 6.7 lakhs for additional third class carriages and Rs. 2.2 lakhs for upper class stock.

(b) The reply is in the affirmative.

MESSAGES FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, two Messages have been received from the Secretary of the Council of State as follows:

"I am directed to inform you that the Council of State have, at their meeting of the 26th March, 1923, agreed without any amendments to the Bill for the removal of doubts regarding the right of women to be enrolled and to practise as legal practitioners, which was passed by the Legislative Assembly on the 22nd March, 1923."

The second Message is as follows:

"I am directed to inform you that the amendments made by the Legislative Assembly in the Bill to consolidate certain enactments relating to Merchant Shipping, were taken into consideration by the Council of State at its meeting of the 26th March, 1923, and that the Council has agreed to the amendments."

BILL LAID ON THE TABLE.

Secretary of the Assembly: Sir, in accordance with Rule 25 of the Indian Legislative Rules I lay on the table the Bill to provide for the forfeiture of the estates and other property of Mahendra Partab Singh and for their grant to his son, subject to certain conditions, which was passed by the Council of State on the 26th March, 1923.

AMENDMENT OF STANDING ORDERS.

Mr. President: I present the Report of the Select Committee on the amendment of the Standing Orders.

ELECTION OF MEMBERS TO PUBLICITY ADVISORY COMMITTEE.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

"That this Assembly do proceed to elect, in such manner as the President may direct, seven Members to the Advisory Committee to assist in the conduct of the publicity work of the Government of India."

As is well known to the Members of the Assembly, we have at present a nominated Advisory Committee for Publicity matters for whose services I think we and the Assembly are under a great obligation. Lately the question of the constitution of the Committee was re-examined by a sub-committee appointed, and they advised that a change should take place, namely, that seven members of the Committee should be elected by the Members of this Assembly, two by the Members of the Council of State, and six should be nominated by Government of whom three would be representatives of the press, and that Government should appoint a Chairman of the Committee. Therefore, except for the Government nominations, the bulk of the Committee would be elected instead of being, as at present, nominated. The functions of the Committee would be to advise Government in regard to its publicity work and to draw up the budget dealing with publicity work. These are the main functions. All I seek at present, is to ask the House to approve of the election of some seven of its Members to serve on this Advisory Committee, the election being held in such manner as you, Sir, may direct.

The motion was adopted.

THE EXCLUSION FROM INHERITANCE BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I beg to move:

"That the Report of the Select Committee on the Bill to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs and to remove certain doubts, be taken into consideration."

Sir, I do not propose to make any long speech on this occasion. The object of my measure is to remove the disqualification set forth in one of the texts of Manu which says that certain persons who have some defects from their birth or who suffer from certain diseases, should be excluded from inheritance. Already, as regards one portion of it, there has been legislation at the instance of the Government. So long ago as 1850, in the Act known as the Caste (Removal of Disabilities) Act, a portion of this text was legislated upon and the disqualification relating to exclusion from inheritance by having become a convert was removed. I am trying, Sir, by this Bill to remove the other disabilities which are mentioned in the subsequent portion of the same text. I explained the matter more fully on the last occasion. Therefore it is not necessary to say much. There is only one matter to

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which I should like to refer, and that is this, that there has been different interpretations upon the words in the text which says that the defect should be from birth. Whether the words "from birth" qualify all the clauses or whether it applies only to a particular class of cases is a matter upon which the Courts have taken different views. When the matter was before the Select Committee, Sir, they examined the matter very fully and their Report shows that all possible attention was given to the various contentions raised on this matter. They have made a recommendation, Sir, on one matter on which I should like to say a word. They say that the Bill should not be taken into consideration in the event of Bengal being included in the Bill. The reason is that when I originally introduced the Bill I excluded Bengal, and they say, if Bengal is to be included, there should be republication. It is for this House to say in the first place whether Bengal is to be excluded, and, if Bengal is to be excluded, then the recommendation of the Select Committee that the Bill be taken into consideration may be accepted by this House. But in the event of this House coming to the conclusion that Bengal should be included, this House will have to decide whether it is not necessary to republish the Bill and whether we may proceed to consider the Bill. As regards other matters, I made a number of speeches on previous occasions and I do not like to weary the House any further. I move, Sir, that the Bill be taken into consideration.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): With great regret, Sir, I beg to move:

"That the consideration of this matter be deferred."

Sir, this is the last day when we are going to be detained here and from the restless way in which my Honourable friend's remarks have been received in this Assembly, Honourable Members will gather that their minds are pre-occupied with the serious crisis which has arisen in the constitution to-day. Sir, we want to meet and decide as to what further course of action we should take. My object in moving this motion for postponing the consideration of this measure is that the rest of the day may be available to the Non-Official Members of this Assembly for concerting such measures as may be taken constitutionally to prevent the certification procedure which His Excellency the Governor General proposes to take. In that view I hope Honourable Members will support me in this motion. I do not think this is the time for us to spend on this child's play, legislating on this and on that when we have got serious constitutional questions at issue. Sir, these measures may wait. They have waited so long. I do not think I shall be doing any injustice to my Honourable friend—I am sorry I have to do it—I do not think I shall be doing any injustice to my Honourable friend by making this motion. On the other hand, I hope that all other Members whose motions stand on the list to-day will join with me in making this application to the House, so that we may have the rest of the short hours that we have at our disposal to decide what course of action we should take. Sir, I move the postponement of the consideration of this measure.

Mr. President: I am not sure that I can accept a dilatory motion in the circumstances, except in the form of re-circulation, which is on the paper. As the Honourable Members are aware, a dilatory motion virtually means that the Bill cannot be passed. I think it would be unfair on the part of the Chair at this stage to accept a dilatory motion of that character.

Rao Bahadur T. Rangachariar: If I put myself in order, Sir, I will propose the motion that it be re-circulated.

Mr. President: The original question was :

"That the Bill be taken into consideration."

Since which an amendment has been moved :

"That the Bill be re-circulated for the purpose of obtaining opinion thereon."

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I beg to support the motion, though not exactly on the grounds that have been put forward by Mr. Rangachariar. If Members have other duties, they must find other time for it, and if it is right for us to go on with this Bill, we should go on apart from the considerations of expediency that have been put forward. I do not know how Bengal came to be included within the purview of the Bill. It was not included in the original Bill. Bengal certainly objects to being included. I believe Assam also does so. So far as the tracts governed by the Dayabhaga School of Hindu Law are concerned, they have enough reason against the Bill. There are other reasons which may be gone into later. For the present I support the motion for re-circulation.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I beg to have a ruling from the Chair as to whether after this motion, which has just been made regarding consideration of the reasons underlying the Bill, other people who have given notice of motions that the Bill be re-circulated, will be heard or not. If that be so, Sir, and they be heard, of course we need not go into the question of consideration of principles, at this stage. As to the defects in the report of the Select Committee, I may submit to the House that there is a difference of opinion as to what class of persons should be excluded, and there are various other reasons which arise in connection with the question for re-circulation.

Mr. President: I am not quite sure that I appreciate the Honourable Member's point of order. Two questions have already been put from the Chair, one in the form of an amendment to the other. I shall again put these questions when this debate comes to an end. The House will first of all decide whether the Bill be re-circulated or not, and if not, then whether it be taken into consideration.

Mr. J. N. Mukherjee: For instance, Sir, what would be my own position? I have given notice of a motion for re-circulation. It is as those standing in the name of others. (*A Voice:* "Do you support or oppose the motion?") I support. There are other reasons besides those already given. This is my submission, and if the House is disposed to hear me on these points, I am prepared to urge them. The first point as to the report of the Select Committee, to which I invite the attention of the House, is the nature of the report itself. My Honourable friend, Mr. Rangachariar says in his note of dissent in the Select Committee's report that the meetings of the Select Committee were convened in a very irregular manner. In fact, many of the Members could not be present, and in a matter of such great importance, where for the first time a new principle is going to be enunciated, or rather no principle is going to be enunciated in violation of the principles which find favour in the Hindu Smritis in a matter of such grave importance, a systematic and well-considered opinion was not attempted to be obtained. In the second place, my submission to the House is that this Bill does not stand by itself. In this connection I may be permitted to refer the Honourable Members to certain passages in the opinions which have been circulated to us. Apart from the other questions that it was

treated throughout as a purely administrative measure and so on, the opinions of religious heads of Hindus who are primarily concerned in this matter, apart from their holding any position as Members of an Association—of a Bar Association, I mean to say, not any other Hindu Association—or any official position, were never obtained.

Mr. T. V. Seshagiri Ayyar: You are wrong. I can show you the contrary.

Mr. J. N. Mukherjee: I put a question in the Assembly and the reply to it was as follows. My question was put on the 10th March, 1923. It was:

"Will Government be pleased to state what Hindu associations, religious heads of institutions, representative Hindus of the orthodox communities, and other prominent persons and associations outside the Hindu community were consulted by them with a view to obtain their opinion on the following Bills?"

and amongst the Bills mentioned was Mr. Seshagiri Ayyar's Bill for alteration of the Hindu Law of Inheritance. The reply given was:

"The Honourable Member is no doubt aware that no motions were made in this Chamber for the circulation of these Bills for opinions. In order, however, to enable Government to come to a conclusion as to the attitude to be adopted by them towards the Bills, the Government of India circulated them inviting the opinions of Local Governments and Administrations, the High Courts, Chief Courts and Judicial Commissioner's Courts, the Bar Associations and such other authorities as the Local Governments thought fit to consult."

These are the classes of associations and persons who were consulted in this matter. Now, under cover of a private Bill, as the Honourable the President is fully aware, a matter of grave public importance is going to be introduced by the Bill for legislative treatment. Of course, a great deal of the present situation is due to our ignorance of the exact procedure that obtains in Parliament in such matters, where under cover of private Bills questions affecting the public at large are attempted to be introduced, and I shall presently draw the attention of the House to that aspect of the question. But for the present I should like to invite the attention of Honourable Members to page 13 of the printed notes which were circulated to the Members. Here is one, from Mr. V. M. Ferrers, District Judge of Canara. This is what he says, and his observations seem very pertinent to me:

"Being myself much addicted to a religion of my own, I observe with recurring surprise the readiness of some Hindus and some Muhammadans to submit their sacred law to the manipulations of a secular Legislature."

Then he goes on to say:

"In my own opinion these operations are perilous. A proposal for the reformation of an ancient faith may seem attractive and liberal; but to such a process there is no end. The theory of the Hindu Law is (I believe) similar to the theory of every other religion. The revelation once delivered by the Rishis is the very Dayspring from on high. It may be too dazzling to be clearly seen. It cannot possibly be in need of correction. When the navigator . . ."

Mr. President: Order, order. That quotation is hardly relevant to this question. The Honourable Member is supporting the motion asking for further opinion on the ground, presumably, that the Select Committee in considering the Bill was not fully seised of the issues before it. The issue is quite narrow.

Mr. J. N. Mukherjee: What I was going to submit to the Honourable Members of this House is that, I should like to point out in the first place the gravity of the present situation. As I have already submitted to the House, in matters of this kind, perhaps in another place, in the Mother of Parliaments, this procedure which has been taken would not have been allowed. We are on the brink of a great . . .

Mr. President: Order, order. The Honourable Member will see that he could repeat that speech word for word on the motion that the Bill be considered. These are arguments for considering or not considering the Bill. The issue now is whether the House and the Select Committee had sufficient materials before them to pass a judgment which this House ought to endorse or not. That is the sole issue.

Mr. J. N. Mukherjee: I can understand it, Sir, and I will address myself to that point, but it is so very difficult to detect one aspect of the question from another because they are parts of the same point. But if we have to classify the two parts of the argument, I must say that so far as recirculation of the Bill is concerned, my observations end there. Only official bodies and administrations, and Bar Associations and similar societies were consulted. Now, the second point in this connection is that the report of the Select Committee itself contains sufficient materials to enable the House to come to the conclusion that the Bill was not properly considered. Mr. Rangachariar, as a Member of the Select Committee, says:

"I have in the first place to place on record my protest against the way in which the Select Committee meetings on this important measure were convened, cancelled or held. The first meeting was convened for Wednesday the 21st February to be held after the Assembly rises for the day . . ."

Mr. President: Again the Honourable Member is entitled to put forward these arguments on a motion that the Bill be re-committed to the Select Committee. These are arguments to show that the Select Committee did not discharge its duty properly. There is a motion for re-submitting the Bill to the Select Committee and I must protect the discussion of that motion.

Mr. J. N. Mukherjee: But, Sir, if these points be taken together, that is to say, the want of full consideration, and along with that, what I have already submitted, viz., that public opinion from the religious heads and other people who can speak authoritatively on the point has not been elicited,—if these two be taken together, a good case for re-circulation would be made out. I move, Sir, that the Bill be re-circulated for obtaining opinion thereon rather support such a motion.

Mr. T. V. Seshagiri Ayyar: May I say a word? I can understand a motion that the Bill be scrapped, but the motion that this Bill be re-circulated, I think, ignores the steps that I have taken to get the opinions of as large a number of people in India as is possible. I shall tell you in a minute what I did. I was not content with the Government circulating the papers. What I did was this. I had about 2,000 copies of the Bill printed and with a copy of the Statement of Objects and Reasons I sent a copy to every religious head in this country, to every Member of the Legislature, whether it be the Central Legislature, or the Provincial Legislatures. I addressed every Bar Association throughout the length and breadth of India, I sent copies to every newspaper in India, and I addressed specially an article, to two important orthodox

papers and asked those newspapers to invite opinions from orthodox gentlemen. I have done all that is possible because I did not want to hurry this matter through. In these circumstances to say that full opinion has not been obtained and therefore the Bill ought to be re-circulated, I cannot understand. I can understand an honest motion that this Bill be not proceeded with, because the House does not want this Bill, but to say that every step has not been taken to get the opinions of as many people as are competent to give it is a thing which cannot be said in the case of my Bill.

Mr. President: The original question was:

"That the Report of the Select Committee on the Bill to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs and to remove certain doubts, be taken into consideration,"

Since which an amendment has been moved:

"That the Bill be re-circulated for the purpose of eliciting opinion thereon."

The question that I have to put is that the Bill be re-circulated.

The Assembly divided.

AYES—20

Ayyangar, Mr. M. G. M.
Bhargava, Pandit J. L.
Hussanally, Mr. W. M.
Jafri, Mr. S. H. K.
Jamnadas Dwarkadas, Mr.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.

Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Tulshan, Mr. Sheopershad.
Vishindas, Mr. H.
Webb, Sir Montagu.

NOES—37.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abul Kasem, Maulvi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Asjad-ul-Jah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhanja Deo, Raja R. N.
Bridge, Mr. G.
Dalal, Sardar B. A.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.
Gulab Singh, Sardar.

Haigh, Mr. P. B.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nag, Mr. G. C.
Percival, Mr. P. E.
Reddi, Mr. M. K.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Sinha, Babu L. P.
Townsend, Mr. C. A. H.
Venkatapattiraju, Mr. B.

The motion was negatived.

Mr. M. G. M. Ayyangar (Madura and Ramnad *cum* Tinnevely: Non-Muhammadan Rural): There is no doubt that under the existing Hindu law, a person who is from birth blind, deaf or dumb and a person who is insane either from birth or when succession opens are disqualified from getting property from inheritance or from claiming any share in the joint

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family property. The object of the Bill was to remove the grounds on which these people were excluded from inheritance or a share in joint family property because in the opinion of the author of this Bill 'that in the times that we live in, such grounds of exclusion should not be allowed to deprive a person of temporal rights and the grounds of exclusion according to him as stated in the objects and reasons of the Bill were that their present condition is due to sins in their former birth and that they are therefore not entitled to share in the patrimony.' The Honourable author of this Bill had given at an earlier date the grounds on which this exclusion is based. He stated then "If the exclusion is not based on original sin or subsequent incapacity to offer oblations and the like, the suggestion that it was due to a belief in the inability of the heir to manage temporal affairs is more plausible—very likely, the rule is an outcome of a hazy notion that the property should be preserved for the disqualified person by those who are related to him." It seems to me that it is not complimentary to the ancient jurists to say that they based the exclusion from inheritance of these unfortunate persons because of their sins in former birth and inability to offer oblations.

I wish to impress upon those who seem to be in favour of this Bill, one thing, namely, that they are not attempting to do any good to the disqualified persons but only trying to do them harm by this piece of legislation. Some of the Members of this House and some outside this House seem to me to think that the reason for the exclusion is only superstitious. It is not really so. But it is based purely on secular and business like considerations. It only prevents these persons during the continuance of the incapacity from becoming tools in the hands of designing persons because they are incapable of taking care of themselves. The reason is nothing but a desire, a sincere desire to do good to these disqualified persons. Honourable Members will see that the rules of the law which excludes these disqualified persons from inheritance or a share in the joint family property preserves the property intact for their issue or their successors and grants maintenance to them, their widows and their unmarried daughters. It is not that their share of the property is swallowed by their coparceners to the detriment of these disqualified persons and their heirs. It is not that their widows and daughters are not entitled to maintenance. All these rights are preserved intact. Only the disqualified persons are not allowed to manage their property. Thus, Sir, you see that this rule of law preserves the property intact for the benefit of his heirs or successors. It only guards against scheming people taking advantage of the helpless condition of these disqualified persons and making them lose their property. By the doing away of the present restriction and conferring absolute powers on these disqualified persons the near relations such as coparceners and others who would ordinarily have taken care of them, would naturally neglect them and become indifferent. And that will be the ultimate result of this Bill if it should be passed into law. Now I ask you, Sir, can anybody say, a rule of law which grants maintenance to these disqualified persons, their wives and daughters and which preserves the property intact for their heirs and successors—can anybody say that this is not good, that this is based on superstition and that this law should therefore not be allowed to exist in the times that we live in? It is this rule of law, Sir, that is now attempted to be changed by this measure now before the House.

The theory propounded in the 43 Madras case which seems to have influenced to a large extent the opinions of the Government of Madras and that of the Central Provinces and also that of most of the Judges of the Madras High Court—and I may here be permitted to point out that these are almost the only opinions in favour of this Bill whereas the whole body of the rest of the opinion is against this measure,—the theory propounded in the 43 Madras case by that social reformer Judge—Justice Sadasiva Aiyar that "the rule of Hindu Law preventing a person born blind from claiming an interest along with his brothers as a co-owner in ancestral property has become obsolete"—this theory the correctness of which was doubted in the later case in 44 Mad. 704 has been entirely disagreed by a still more recent Full Bench case of the same High Court reported in 45 Mad. 949. The only reason assigned by Justice Sadasiva Aiyar in support of his conclusion that the rule of law has become obsolete, namely, that a rule becomes obsolete when the reason of the rule disappears through change of circumstances and environments in the society which was governed by that rule has been criticised and stated to be not correct. His Lordship the Chief Justice Sir Walter Salis Schwabe in page 962 of 45, Madras says, "A Law does not cease to be operative because it is out of keeping with the times. A Law does not become obsolete because it is an anachronism, or because it is antiquated, or because the reason why it became originally the law would be no reason for its introduction of such a law at the present time. To hold the contrary would be an entire misunderstanding of the meaning of the legal maxim *cessat ratio cessat lex* which is relied upon in support of the contrary opinion."

I am sure that if the Madras Government and the Government of the Central Provinces had had the latest Full Bench case in 45 Madras, they would surely have modified their opinion.

Another objection I respectfully urge is this that such a measure should not be brought in the Central Legislature of the country. As observed by the Honorary Secretary of the Calcutta Vakils' Association in his letter to the Secretary to the Government of Bengal on the 20th December 1921, in connection with this Bill and the Hindu Inheritance Bill which is also on the agenda of to-day "the principle underlying both these Bills, aiming as it does, at an alteration of the Hindu Law by a process of direct legislation with the aid of a majority of votes in the Assembly, composed as it is of persons belonging to communities other than Hindus or whose sympathies with Shastric injunctions are sometimes of an attenuated character is likely to prove distasteful to the vast majority of orthodox Hindus, and this House will fail to appeal to it as an appropriate machinery for effecting such a change. A far more satisfactory course would have been the one suggested by the Government of Bombay in their letter of the 24th July 1922, namely, such measures which affect the intimate personal and sectional interests of particular communities can be more fairly and effectually debated in the provincial councils, which are more closely in contact with the phases of public opinion which are most entitled to be consulted; and the communities concerned are more fully and perhaps more effectually represented in them.

Sir, the Honourable the Mover has said in the Statement of Objects and Reasons of the Bill that public opinion had expressed itself strongly against the disability which the present scale of the Hindu Law

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imposes on them. I do not know when and how public opinion expressed itself so strongly. If Honourable Members will only go through the papers circulated in connection with this Bill, they will see that the contrary is the case.

The original Bill which was introduced wanted that no person should be excluded from inheritance or from a share in joint family property by reason only of any disease, deformity, physical or mental defect; and the Bill which has emerged from the Select Committee states that persons other than one who is and has been from birth a lunatic or idiot shall inherit and have a share in joint family property, i.e., persons who are from birth blind, deaf or dumb shall inherit and get a share in the property. The rule of Hindu Law as contained in Manu, does not make any distinction between persons born blind, deaf or dumb and a lunatic or idiot. If persons born blind, deaf or dumb are entitled to any consideration in the present day, the lunatic and the idiot also are entitled to the same consideration. I am not able to understand why the Select Committee gave this unequal treatment to these disqualified persons. The exclusion and the inclusion of the class of persons seems to be arbitrary and not guided by any principles.

In a matter of this sort which as I stated aims at the alteration of the existing laws, unless there is a demand by the whole community of Hindus, it is not safe for us to undertake legislation in this manner. This piece of legislation may, I am afraid, offend the religious susceptibilities of the vast majority of the community. Whatever may be said about sentiments in other matters, I submit that sentiment in a matter like this ought to be respected and no innovations should ever be attempted to be made which are not in accordance with sentiments.

I make bold to think that even the very few who were in favour of the original Bill may not like this mutilated Bill.

The case in 43 Madras has been overruled by the Full Bench in 45 Madras. Bengal which was excluded by the original Bill has been included by the Select Committee. So far as Madras is concerned, I do not see any opinion collected from the mofassal. I presume it is the same thing with regard to most of the other provinces.

In matters of this kind, it is better that the opinions of expert Sanskrit scholars and Pandits are also obtained. For as was said by the editor of the *Madras Law Journal*:

"One thing that the educated man is clearly to realise, if he wants to really effect any reform, is that his influence in matters religious is slender and in fact bears little relation to his position and influence in matters secular. If he imagines that he will be able by his secular influence to effect religious opinions in the country, he is suffering from a totally wrong perspective and his attempts at reform have little probability of success. Even in matters in which the religious susceptibilities have little reason to come in, it is well that the suspicion of the ordinary man is not roused, and with that view, we would have the committee investigating the matter composed not only of advanced reformers but also of men about whose orthodoxy, there is no question."

With these words, Sir, I oppose the consideration of the Bill.

Mr. President: I intended to call the Honourable Member to move his amendment to clause 2, but . . .

Rao Bahadur T. Rangachariar: I do not know, Sir, that you have yet put the motion for consideration.

Mr. President: As a matter of fact it escaped my mind and I was consulting the Secretary at the moment whether I had done so. The House is now on the motion for consideration.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, I am very sorry that I have to oppose our respected Leader, the Honourable Mr. Seshagiri Ayyar, but I do so, I think, in pursuance of the noble lessons imparted by him, always to have the courage of one's conviction. The Honourable Mr. Seshagiri Ayyar is a scholar of Hindu law and was an eminent Judge. I appeal to him to decide his own case on the collected record of the opinions from all the provinces. I am confident that, if he will carefully examine the collected opinions, he will have to decide his own case against himself. Opinions have been invited from thirteen provinces. The opinions of five of them are almost equally divided; three of them are in favour of the Bill and five of them against it. So, on the whole, the opinion of the country is against this Bill; and even those who are in favour of this Bill are only in favour of the principle of the Bill but not in favour of the Bill as it has been laid before this House. Sir, conservatism is not always bad; the wisdom of conservatism is being gradually realized by science. I may be pardoned for giving one example. The Hindus are said to be conservative in enunciating the rule that if the finger comes in contact with the tongue it becomes untouchable so long as it is not washed. The principle enunciated therein has been, now, recognized by science. I find in all railway trains, as well as in big buildings, a notice hung up saying, "Please do not spit on the floor." What is that? It is just the same principle; if your finger comes in contact with your tongue you are likely to touch other articles which may come in contact with other persons. So we should not dislike everything which is old. We should carefully examine it; not so hurriedly as is being done in the case of the Hindu Law which should be considered, in a proper body constituted for the purpose. Piecemeal legislation in a matter like Hindu Law is never advisable, many eminent persons hold that the whole of Hindu Law should be considered together by Commissioners appointed for the purpose if any legislation is at all required to be undertaken. With these few remarks, Sir, I oppose this Bill.

Rao Bahadur T. Rangachariar: Sir, I beg to oppose this motion. It is a very serious measure which my Honourable friend has tabled. It requires considerable thought on the part of the Legislature, and I do not think my Honourable friend is doing justice to his community or to the ancient Hindu Law by trying to press this motion at the far end of a Session like this when the House is thin and perhaps much tired and worried. Sir, that on such occasion like this my Honourable friend should press his motion for consideration of such an important measure, to which he says he has devoted his life, passes my comprehension. Sir, I would have expected from the Leader of a Party, as my Honourable friend is, to agree to the wishes of people who are vitally interested in a matter like this, not to snatch a victory by the votes of Muhammadans and Europeans, but to get the approval of the Hindu Members of this House to his measure. Sir, I ask the House to glance at the last Division List; can it be said that my Honourable friend is getting the support of the Hindu Members of this House for his measure, for whose benefit he is enacting a measure which is

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making an inroad into the law of inheritance. Sir, let us secure a victory after a fair fight. Sir, I ask the House, I ask my Honourable friends, both European and Muhammadan, not to lend the weight of their support to a measure like this when they find that the whole of the Hindu Members are opposed to it. It is not fair to the Hindu community. It is not right on our part to come and make the piecemeal inroad into our legislation. Sir, on the Select Committee, I did try my best to make such improvements as may be made, and I am not one of those who are wholly opposed to the measure. I am quite willing to say that some portion of the law of exclusion should be set right. But, Sir, here is a matter which requires our consideration. The Select Committee, as Honourable Members will see from my minute, met haphazardly. Most of the Hindu Members were absent, and, Sir, to say that this is a measure which ought to be forced on the consideration of the House at this juncture seems to me a travesty of justice and fair play. Sir, I ask the House to oppose this motion. He has educated public opinion on this matter. I am sure my Honourable friend will come back to this House in July and he should have this measure fully considered then. I am sure my Honourable friend will not lose anything. I ask him to accede to the wishes of the Hindu Members. If he does not, I ask the House to oppose the motion.

Sir Deva Prasad Sarvadhikary: Sir, I feel bound to oppose the motion for taking this Bill into consideration, and in doing so, I am obliged at this stage to make a statement which I was very unwilling to make earlier as the Bill was likely to be deferred. The amount of rush that has attended the consideration of this measure is to me unintelligible. Mr. Rangachariar has brought out one or two facts in connection with the Select Committee proceedings in his minute of dissent, I am bound now to add to them. The Select Committee meetings were called several times, and the meetings were not held at the time and place advertised and were held at time and places of which I had no due notice. As a Member of the Select Committee I had no opportunities of attending any of the meetings of the Select Committee—not my fault. Then, Sir, whoever was responsible for it did not think it necessary even to send the draft Report of the Select Committee to one of the Members to see whether he would sign it or annex a note of dissent to it. That is the position, and that is the explanation why my name does not appear on that Report. I do not want to apportion the blame to anyone,—it might be the office or it might be anybody else, but what was right was not done. My friend says he had nothing to do with the matter; I do not suggest he had. Anyway as the mover of the Bill, he might have seen that this was attended to.

Mr. T. V. Seshagiri Ayyar: May I offer a personal explanation, Sir. I think Sir Deva Prasad Sarvadhikary told me that his name did not appear in the Report. I asked the Joint Secretary at once why his name did not appear and why the report was not circulated to him. I want him to bear that fact in mind; I wanted to be as fair as possible.

Sir Deva Prasad Sarvadhikary: And even then it did not come to me.

Mr. T. V. Seshagiri Ayyar: I was not responsible.

Sir Deva Prasad Sarvadhikary: I do not say he is. I am stating this to the Assembly that it is voting away the rights of Hindus, rights or wrongs

whatever they may be, by what Mr. Rangachariar has stated to be the votes of Europeans, Muhammadans and non-Hindus in general. I do not deny the right of this Assembly to legislate with regard to all communities after due consideration, but this Bill has not received anything like due consideration, and it will be wrong and absolutely wrong to pass it without that consideration being vouchsafed to it.

Mr. J. N. Mukherjee: Sir, I should like to supplement what has fallen from my Honourable friend by referring to one or two points in connection with this Bill, and in connection with the fact that in a measure of this importance it has not received the consideration that it ought to have received at the hands of the Select Committee. Sir, the mischief which is invariably present when private parties wish to put forth their individual ideas and try to reach victory by means which satisfy their own desires is present in a far larger degree in a case of this kind than in the case of ordinary private Bills which are registered as such in the House of Commons; and I crave the indulgence of the House to refer to one or two passages in May's Parliamentary Practice (edition of 1920):

"In passing public Bills Parliament acts strictly in its Legislative capacity. It reiterates the measures which appear for the public good, it conducts inquiries when necessary for its own information, and enacts laws according to its own wisdom and judgment. The houses in which its deliberations are conducted are established for public convenience, and all its proceedings are independent of individual parties who may petition indeed and are sometimes heard by counsel who have no direct participation in the conduct of the business or immediate influence upon the judgment of Parliament."

Now, Sir, we are in the very beginning of Parliamentary life. We are still unfamiliar, not only we but the officials are still unfamiliar, with the detailed rules of Parliamentary procedure. Indeed, we have not yet the right of petition, and I think, that right of petition is still in the cauldron, and people have not yet come to know that there is a right of petition by which objection can be taken, whereas in Parliament it has a long history,—it dates back to a time before all this. The difference which exists in the Mother of Parliaments as regards private and public Bills has been obliterated in our Legislature. Rules and standing orders have been framed, but we find that the whole procedure is now, if I may say so, boiling in a cauldron. Therefore, Sir, it requires great care with reference to private Bills which in reality are public Bills affecting the country at large; and in a measure of this kind . . .

Mr. President: The Honourable Member is confusing two questions in using the words "private" and "public". He calls the Honourable Member's Bill "private" because it is non-official—using "private" in the technical English Parliamentary sense. In that, he is mistaken. This is, in every sense, a "public" Bill.

Mr. J. N. Mukherjee: That is what I am submitting to the House. The whole difference will at once strike the House, if the House takes into consideration the fact that when the originating source is the Government the treatment is different . . .

Mr. President: The Honourable Member is wrong: for the distinction between "public" and "private" does not arise in that case, as Private Bill Legislation in England is solely concerned with specific matters of limited application and local concern, such as the municipal boundaries and the like in contradistinction to matters—as our phrase runs—of "General Public Interest." The Honourable Member is mistaken in thinking that

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the distinction between Private Bills and Public Bills in England is the same as the distinction between Official Bills and Non-Official Bills in India. The two distinctions are quite different.

Mr. J. N. Mukherjee: Of course the classification is entirely different, and that classification unfortunately does not exist here. In England, I find in May's Parliamentary Practice that if a Bill of that character affecting classes or a locality is brought before Parliament, there is a special department which scrutinises it; counsel are heard on both sides and evidence is taken and so forth. The question of private Bills here, without using the word "private," I may submit to the House, is purely of a public character, and as such, it ought to have originated from the central authority in England. There it should have found ample consideration. The Legislative Department, I think, and the different Law Members from time to time have been considering this question of codification and how to tackle different points of Hindu Law; and if there has been any delay, the delay is due to the fact that the Government wishes to consider all aspects of the question, to ascertain public opinion and if there is a residue upon which the Government can start legislation; that is not so in the case of a private individual. A private individual conceives an idea. He thinks the idea is very good. He has the chance of handing down his name to posterity as a legislator. All these considerations actuate him, but not the Government. Therefore, I submit, Sir, the initial difficulty that meets us in the case is this: that we are landed in a decision at the fag end of the Session when we are about to rise, and a Bill of this important character is attempted to be rushed through; and the impatience is so great because it may slip through one's fingers and, therefore, whether it is good, bad or indifferent, this Bill must be passed. Then, Sir, if objection is taken as regards a Bill of this character, as the Honourable the President will support me, a Bill is removed from one class to another and made a public Bill and then evidence is taken. Where was evidence taken in this matter? You have not the slightest means of coming to know what public opinion is on the point. We are asked to legislate in the dark. But one thing I do know, that a question of great importance is going to be decided for the first time in this House and in spite of anything to the contrary, we are engaged in a House like this composed of religious bodies, in making a law that will over-ride Hindu Law, without the Hindu community as a whole being consulted in the way one would like to be consulted, not privately, not for the satisfaction of one's private desires, but from an exactly opposite point of view.

Now, Sir, let us consider the grave questions of importance that are involved in the Bill itself. There is not the slightest doubt that very little attention was paid to this Bill when it was first launched in this House, because we find that even insane persons are included as persons in respect of whom the Law of exclusion should not operate. The slightest thought would have disclosed the fact to any member taking an interest in the question that to vest an insane person, with property and right over property is something which is very difficult to understand. The rule as to him can be excluded from operation simply by supposing that it is the superstitious Hindu who enacted this and it is not in consonance with modern ideas. Let us see, Sir, whether it is consonant with modern ideas. That it is not so will appear from the fact that at least so far as the case of insane persons is concerned,

it has been placed outside the law which is in vogue, namely, that if a person is insane from birth, in respect of him the Bill should cease to have operation. But those people who are insane at the time of succession come within the operation of the Bill. Now, Sir, the Honourable the Mover of this Bill is himself a Judge and well versed in Hindu Law. He knows that it is a very controversial matter,—a controversy which arose not in respect of anything said in the Hindu Law itself, but by interpretation; and that is the way the Hindu Law has been altered or interpreted so far. To ignore authority to set at naught all authority, is a procedure, I submit, which has been for the first time placed before this House. Then, Sir, let us take the case of the leper. According to Hindu Law and according to the interpretation of the Hindu Law, lepers of a very virulent type have been excluded, that is to say, persons in respect of whom people would feel a sort of repugnance to associate with and association with whom is forbidden. Now, let us take his case. He is a person in respect of whom propagation of the species is not desirable. To make him in the first place the owner of property is to draw people into marriage, into union with him, and thereby transmit the disease. Apart from that the leper may have his intellect warped and in an unnatural condition owing to the disease itself. In such cases it is dangerous to invest him with rights over property to the detriment of the man who follows him. So is the case with deaf and dumb. Only in respect of eunuchs and persons devoid of limbs, can it be asked when they have got the mentality to enjoy why we should refuse them. I submit, Sir, that is also a point which has to be considered by the Hindu community itself. Then, Sir, if we consider such a case, a man has got his mind in order, his brains in good order and he is capable of acting in a rational manner. We can sympathise with the man if he is deprived of property, but not in the case of a man who is devoid of his senses. Therefore, in the case of a mad man, how can we say that we have deprived him of a right and that we have put him to trouble. Sir, these are questions which are of very great moment and according to the modern socialistic points of view the individual must yield to the social well-being. We all follow these principles more or less. Some people lay more emphasis on one aspect of the matter; others lay more emphasis on other aspects. But we all have to acknowledge that there is a higher consideration in these things. Simply to assert that because a man is a human being, though he has no mind, though he is born blind, and deaf and mute, and in that way has no conception of the world itself, that such a man should be vested with dominion over property is a matter which may seem to be not absolutely clear to many minds. Therefore, apart from the various questions of Hindu Law which might arise there is the danger to which I have referred, that is to say shaking the fountain head, that is the source of all authority in the Hindu law. If we once allow that and allow that the passing fancy of any individual Member of this House is sufficient for legislation to be set in motion, if the satisfaction of being able to contemplate one's offspring, as it were, be enough for the purposes of the legislator, then I submit, all stability is jeopardised so far as legislation is concerned. We are, as I submit to this House, on the brink of a precipice. We know in whose hands we are placed, and by party cliques and various other ways, we may carry certain ideas of ours through the Assembly and consider ourselves sufficiently required by our success. That I submit, Sir, ought not to be the attitude of this House with reference to questions of this kind. The Removal of Caste Disabilities Act has been very often paraded in this House, but once this is done there will be no end to its being done *ad infinitum*. I submit even there

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Government proceeded with great caution. Of course even from before the commencement of the British administration they were very careful not to interfere with the social laws and rules of the people. Even before Warren Hastings became Governor General and took an active part in the administration that was the principle that was observed, and now we openly come forward and say, "in spite of anything to the contrary in the Hindu Law, we want this according to our own personal liking." The very Mover who thought that insane persons should never be deprived of their rights, came to the opinion that insane persons, if born insane, may be kept out of the rule. Sir, it is well within the experience of the President that in the House of Lords, and by the Chairman of Ways and Means in the House of Commons a strict check is kept when Bills introduced by private individuals are concerned. They are looked upon with jealousy. There is examination, counsel is heard, and very often when objections are made, the objections are allowed and the Bill is sometimes moved from one class and placed in another class and the initiation of the matter is left in the hands of Government which is a disinterested party. There is then no private end in view but only the public view. Articles written and considered in the Madras Presidency itself go to show the dangers which lie in piecemeal legislation. The Hindu Law of Inheritance, for instance, must be taken up in its totality. It is not that I bring in a certain person from one place and put him in another place; it means a consequential denial in the whole line of succession. It has to be repeated times without number. So in the present instance in the consideration of this Bill upon the materials which are now before the House and the consideration which the Select Committee has given to it, or has not been able to give to it, these are weighty considerations against the Bill. Sir, I oppose the consideration of this Bill.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, the Honourable Mr. Rangachariar seems to have taken some objection to the participation of non-Hindu Members. I am sorry. Does he mean to say that, even if a cause be just, a non-Hindu should not take up the cause? Does he suggest that? (*Rao Bahadur T. Rangachariar*: "Yes.") Did he himself not take part in the Waqf Bill? It is simply because this is his case, that he takes objection. I hope he will excuse me for saying so. Now, why Muhammadans and other non-Hindus supported the Honourable Mover of the Bill was simply because they felt and I say that it was a just cause. I therefore, appeal to all my Hindu friends asking them to advance with the times. They should do away with meaningless customs and advance with the times. *Swaraj* is coming sooner or later; it is only a question of time. It has come from the mouth of the Sovereign of Great Britain and it is bound to come. If you remain behind at present there will be a hard struggle afterwards. Hitherto we have been simply as minors in the Court of Wards. The time will come when we will have to take care of ourselves, and we must not therefore lag behind, but take time by the forelock; and as a friend, and as an Indian, I say go forward. No doubt I do not know Hindu law, but I understand sufficiently what it means. It says:

"Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity, or physical or mental defect."

Do you mean to say that simply because a man is lame you would exclude him from inheritance? (*Mr. T. V. Seshagiri Ayyar*: "That is

the law they want.") I give credit to the Honourable Mover of the Bill for his earnest desire to remove hindrances to development and I give the Bill my whole-hearted support—paying the Honourable Mover my tribute of respect for his courage and patriotism.

Mr. T. V. Seshagiri Ayyar: Sir, may I say a word? So many things have been said about my desire to snatch a personal victory that I do not think I should take up the time of the House by replying to them. I believe I am known fairly well to Members of this House, both Europeans, Muhammadans and Hindus, and I believe they know that I am not in the habit of snatching victories, or of placing undue importance upon personal considerations. Therefore, Sir, I shall say nothing upon that part of the subject. A red herring was sought to be drawn by appealing to Europeans and Mussalmans not to vote for this measure. Now, Sir, I wish to say a word about this. I have been myself a judge and as a judge I have decided cases between Muhammadans and Muhammadans and between Europeans and Europeans, and to-day in the Privy Council a Muhammadan Judge decides questions of Hindu Law, and you will find throughout the length and breadth of this country Europeans engaged in deciding cases between Hindus and Muhammadans and between Europeans and Hindus and so on. Can there be a disqualification simply because a man happens to be a Mussalman or European; would he not give his unbiassed opinion as a juror after hearing the arguments on both sides and decide whether I am in the right or whether the Members who oppose me are in the right? That is the question which I wish to put before the House; and as was pointed out by Mr. Sarfaraz Hussain, when we had to deal with a Bill affecting a Muhammadan question we Hindus took part in the debate

Rao Bahadur T. Rangachariar: We did not go against the Muhammadan view in that matter.

Mr. T. V. Seshagiri Ayyar: What is the Muhammadan view and what is the Hindu view is a matter very difficult for me to understand. Sir, under these circumstances I hope my European friends—I shall not call them friends because it might be misunderstood—the European Members of this Assembly will not be led away by the fact that A brought in the Bill and B opposed it; I ask them to give their impartial judgment, not because I have moved, or because somebody has opposed it; I ask them to consider deeply the whole matter and the reasons given, and say whether my object in bringing forward this measure is a humane one or not, and then to give their votes.

Sir, it has been said that the Hindu law is of divine origin and therefore it is sacrilegious for any man to legislate. I do not think I sufficiently clearly placed one aspect of this question, before the House. Upon this very same text there are catalogued about half a dozen disqualifications. As regards the foremost of them, that is to say, conversion from caste, the Government, 70 years ago, brought forward a Bill; it enacted that mere conversion from one religion to another, from Hinduism to Muhammadanism or Hinduism to Christianity, shall not be a bar for inheritance. Therefore 70 years ago, by Act XXI of 1850, the Government of the day thought that this portion of the law was inhuman and one which ought not to be acceded to; and they brought in a Bill and that is the law to this day. Then, Sir, there is a Bill regarding the re-marriage of Hindu widows; that

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has been law all these years. Does anybody seriously say that this is in accordance with Hindu law? It was made law; and that law was passed because . . .

Mr. J. N. Mukherjee: May I say that there is a text of Hindu law supporting such marriages—*Parasara Samhita*?

Mr. T. V. Seshagiri Ayyar: I think my Honourable friend in his anxiety to support his view is forgetting the whole trend of Hindu law. If he had read the pamphlets upon that subject, if he had read the various writers, he will find that, though *Parasara* might support that view, a large number of other writers, among whom for example there is *Manu* whom he is so anxious to support, have declared that re-marriage should not be allowed, and still a law was passed by the Legislature; that is the law to-day; under those circumstances can it be honestly said, can it be seriously said that it is not open to bring forward measures of this kind in this Legislature? Can it be honestly said that Europeans and Muhammadans are not entitled to take part in the discussion? I hope my Honourable friends will not be led away by anything that has been said upon this matter. If I may say so, these Members are the better judges in the matter; we are biassed one way or the other; they are not; they can be expected to be impartial and after hearing the various views to give their considered judgment upon a matter of this description, they will not be in the least affected by considerations which affect us, personal considerations, party considerations and what are called orthodox considerations; but the others would on the merits of the question come to a conclusion, and I ask them to give their verdict not upon the fact that A or B proposes it or C or D opposes it, but upon the fact whether it is a good law, whether it is desirable that it should be discussed and carried through. Sir, there was one question put by Mr. Mukundaraja Ayyangar, to which I must refer. He said that this is a matter which ought to be considered in the local Council. Sir, nobody would have been happier if it were possible to have this matter disposed of in the local Council. If the Honourable the Home Member will remember, when *Malabar Act* came before this House, even at the risk of being considered irrelevant, I suggested that that portion of the India Council's Act should be removed which makes it impossible for questions of this nature being considered in the local Councils; and I said that he would be conferring a great boon if he acceded to my request. My object was this. I would have then ceased to inflict myself upon this House, I would have taken my work to a place where my character and antecedents are known, and where the insinuations which have been made in this Assembly would not have been made; seriously I would have been most happy if the Honourable the Home Member had acceded to my request to have that portion of the India Council's Act removed. He has not done it yet. Unfortunately what is the position now, Sir? Some years ago when there was a decision of the Privy Council relating to Hindu law, I had the temerity when I first became a Member of the Madras Legislative Council to introduce a Bill which would do away with the interpretation placed upon it by the Judicial Committee; that related to the gift to unborn persons, and I carried the measure through although there was some opposition. Nobody in Madras ever said anything against my character, either that I was anxious to snatch a victory or to do anything which would show that I was doing the thing only for the purpose of personal popularity. That Act was passed

there. Well, what happened after that? It was held that that Act had no application whatsoever to the presidency town because of the existence of a section in the India Council's Act. As soon as I came to Delhi, the very first thing that I had to do was to try and make that Act extend to the presidency town. That is the position. It is impossible to pass an Act of this nature in Madras because it cannot apply to the presidency towns. If this is removed, there will be no difficulty. I do not like to take the time of the House any further; I was getting a little excited in consequence of certain reflections made against me personally. I do not want to make the same kind of reflections on those who have spoken in this matter. I daresay they are actuated by the best of motives and as pillars of orthodoxy they are anxious that nothing should be done which would in the least affect orthodox principles, but they must remember these were challenged times without number in the local Councils. It has been done in various local Legislatures, and I myself was instrumental in having it challenged in Madras. Under these circumstances, I would ask my European and Muhammadan friends to give their verdict upon the merits of the case and not to be influenced by anything that has been said just now.

Mr. President: The question is that the Bill be taken into consideration.

The motion was adopted.

Mr. President: Clause 2.

Mr. M. G. M. Ayyangar: Sir, in the amendment standing against my name on the paper, there seems to be some mistake and therefore instead of the amendment as it is on the paper, if I have your permission, Sir, I would move the amendment, namely:

"That instead of the word 'and' between the words 'who is' and the words 'has been' in clause 2 of the Bill, the words 'at the time the succession opens or partition is effected or' be substituted."

Clause 2 of the Bill after the amendment I desire to make would read thus:

"Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu law other than a person who is at the time when the succession opens or partition is effected or has been from birth a lunatic, etc."

Sir, the object of this amendment is to place the disqualified heirs whether the disqualification is congenital or one supervening on the same footing; I do not see why a person whose disqualification is congenital alone should be excluded but one who is disqualified subsequently and continues to be disqualified when the succession opens or partition is effected should not be excluded. If there is reason, sentimental or otherwise, for the exclusion in the one case, I submit there is reason for the exclusion in the other case also.

The existing law, so far as insanity is concerned is clear that it need not be congenital to exclude a person. I would refer only to the recent case of the Madras High Court in 43, Madras 464 wherein our Honourable friend, Mr. Seshagiri Ayyar, when he was a Judge, says after stating that Courts here and the Judicial Committee have regarded the injunction of law relating to exclusion as a living principle. If the exclusion is not based on original sin or subsequent incapacity to offer oblations and the like, the suggestion that it was due to a belief in the inability of the heir to manage temporal affairs appears more plausible. Very likely the rule is an outcome of a hazy notion that the property should be preserved for

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the disqualified person by those who are related to him" and finally he decides that insanity need not be congenital. If that be so, I ask, Sir, why should there be this change in the law? I submit, Sir, no valid reasons have been assigned for the change that is now sought to be introduced. I therefore, Sir, move my amendment.

Mr. T. V. Seshagiri Ayyar: Sir, may I say a word? The principles of Hindu law in this point are this. There are two principles—one is incapacity to manage, and the other is that, if a man has some defects, it must be taken that he must have committed some serious sin in a previous birth and that is why he is born like that. If the House will read the text of Manu, the idea running through that text will be found to be that there has been some sin in a previous birth and as a result of that sin he has been born in a particular manner. Sir, if my learned friend's arguments are taken seriously, what would be the position? Suppose a man commits a sin late in life, which makes it impossible for him to perform certain religious ceremonies, can it seriously be contended that he must be divested of his property? It is really, Sir, for the purpose of showing that congenital defects show that their possessor has not been good or honest in his previous birth, that this disqualification text finds a place in the Smriti, I do not think any civilised person in these days would consider that such a disqualification should be allowed to exist. Supposing a man drinks or commits other sins, can you say that this man is so sinful that he should not have the property? I think the Hindu law has for some reason or other imposed disqualification only in cases where there was congenital defect. And I do not think my Honourable friend is right in saying that that safeguard should be ignored. I think it would be inconsistent with the tenor of the Bill if we were to insert the words which he wants to insert.

The motion was negatived.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I move the amendment which stands in my name:

"At the end of clause 2 add the following:

'Provided that during the continuance of any such disqualification, such person shall neither claim partition of joint family property nor transfer any property except for legal necessity.'

I am the last person who would consent to any alteration in the Hindu law, and like my Honourable Mussalman friends who would never like or recommend any alteration in their Holy Koran. At this moment I might be allowed to make one observation with regard to the remarks which fell from the mouth of my Honourable friend, Khan Bahadur Sarfaraz Hussain Khan, and also the Mover of this Bill to the effect that persons who belong to other castes, namely, Muhammadans and Christians, have a right to legislate for the Hindus. Now, I will say—they will excuse me for saying so—that we Hindus regard the practice of circumcision as barbarous. But would the Muhammadans like us to legislate on that point? Certainly not. I submit that there should be a convention in this Honourable House and elsewhere that, when a measure affects any particular caste or community, that caste or community only should decide and not others. Otherwise, what I have said just now would be the result and would create unpleasantness, both inside and outside, and I say with all the emphasis at my command that a similar unpleasantness has already been created by

my Honourable friends, Christians and Mussalmans, voting and supporting Dr. Gour's Bill. I do not want that to be repeated.

Khan Bahadur Sayid Muhammad Ismail (Patna and Chota Nagpur *cum* Orissa: Muhammadan): May I rise to a point of personal explanation, Sir? I think the Honourable Member has entirely misunderstood the attitude of some of the Muhammadan Members when we voted for Dr. Gour's Civil Marriage Bill. We did not vote because the Muhammadans were excluded from the scope of that Bill, but considering it a piece of permissive legislation, I further submit that even if the Muhammadans had been included in the scope of the Bill we would have probably adopted almost the same attitude.

Lala Girdharilal Agarwala: One of the Honourable Members has declared his own intention. I do not know how far it is assented to. However, I leave this question aside. What I submit is this, that this is our own affair. It is the affair of the Hindus and I appeal to my Honourable friends although they have got the legal right to give votes on all measures which come before this House, yet, as a matter of convention, as a matter of principle, to refrain in future from supporting any measure which might be considered by the orthodox Hindus as subversive of Hindu law in the same way in which they would themselves not like the Hindus to legislate for them on any matters which might be subversive of their own laws. With these few words, Sir, I want to move my amendment which has already been read out. One word more, Sir. Under the Hindu law, as strictly interpreted, persons who are suffering from a disqualification are entitled to maintenance. Now, it has been represented to me by some Honourable Members that we should be more pitiful and more merciful towards the disqualified persons, and it is only as a matter of concession that I have agreed to the Bill as it has come out of the Select Committee, on the condition that a provision like this is added so that the disqualified persons may have the entire profits of the property throughout his life but may not have any right to claim partition of any joint family property.

Mr. President: Amendment moved:

"That at the end of clause 2 add the following:

'Provided that during the continuance of any such disqualification, such person shall neither claim partition of joint family property nor transfer any property except for legal necessity.'

Mr. P. E. Percival (Bombay: Nominated, Official): Sir, I rise to discuss the amendment from the point of view of drafting. I do not understand how this clause is to be read with the previous one. Clause 2 runs:

"Notwithstanding any rule of Hindu Law" and so forth, "no person" except lunatics and so forth, "shall be excluded." Then my Honourable friend adds "Provided that during the continuance of such disqualification." I do not see how disqualification comes in in connection with the previous sentence. And then my friend goes on to say: "Such person shall neither claim partition, etc." It is not clear who "such person" is, and in particular, I do not see how "such disqualification" can come in and how it can be read with the previous clause 2.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Clauses 2 and 3 were added to the Bill.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I gave notice of a similar amendment to those of my friends Mr. Raju and Mr. Neogy, but on reconsideration I have amended the same for greater precision, and my amendment will read thus. Clause 1 (2) reads thus:

"It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas."

To that I move a further sub-clause (3) be added:

"(3) It shall not apply to any person governed by the Dayabhaga school of Hindu Law."

Now, this makes the object I have in view quite clear and precise. My reason for moving this amendment is that the law of coparcenery does not apply to those who are governed by the Dayabhaga school of Hindu Law and they can dispose of their property any way they like.

Mr. T. V. Seshagiri Ayyar: I accept the amendment.

The amendment was adopted.

Clause 1, as amended, was added to the Bill.

The Title and the Preamble to the Bill were added.

Mr. T. V. Seshagiri Ayyar: I move that the Bill, as amended, be passed.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): I have no business in rising to stand and speak on this motion, but I rise simply to express my regret that if we have offended in any way by our voting on the matter of circulation, I have only this to say that the question on which we did vote was that the Bill be recirculated for public opinion, and we did it not on the ground that it affected the rights of anybody or anything of the kind. If the question had been about any particular section of this Bill being passed or not, we should have refrained from voting, but the question was whether to put the whole machinery of the Legislative Assembly into action for re-circulating the Bill, and if we have offended any section of the Assembly here, we are sorry for it and we leave it to the Hindu Members of the Assembly to decide whether this Bill should be passed or not.

The motion that the Bill, as amended, be passed was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(AMENDMENT OF SECTION 4.)

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): I move:

"That the Report of the Select Committee on the Bill further to amend the Code of Criminal Procedure, 1898 (amendment of section 4), be taken into consideration."

The motion was adopted.

Clauses 1, 2, the Title and the Preamble to the Bill were added.

Maulvi Abul Kasem: I now move that the Bill, as amended, be passed.

The motion was adopted.

THE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I hope this Bill will have an easier passage in this House, than the previous one, because I find my friend Mr. Rangachariar who is very orthodox is in favour of this motion. Very orthodox people have been from the earliest days of opinion that to make the son's daughters, daughter's daughters and the man's own sister to come after seven degrees of agnate relationship is an anachronism that ought not to be tolerated any further. I move therefore:

"That the Report of the Select Committee on the Bill to amend the Hindu Law of Inheritance in certain particulars, and to remove certain doubts, be taken into consideration."

Lala Girdharilal Agarwala (Agta Division: Non-Muhammadan Rural): I oppose this motion. My submission is that this is a matter which will have very far-reaching consequences and at the far end of the session, when the House is very thin and when a large number of Honourable Members have left the station and some of them are packing their luggage and phoning to the Station Master to reserve their berths I submit that it would not be proper for us in the absence of our other Honourable colleagues to consider this motion and pass it. On these grounds I would very earnestly and respectfully appeal to my Honourable friend and colleague not to press this Bill for consideration this afternoon.

Mr. President: The question is that the Report of the Select Committee be taken into consideration.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): I cannot record a silent vote in a matter of this kind and I have a motion that the Bill be re-circulated for obtaining opinion thereon. My reasons are practically the same as I urged in connection with the other Bill of my Honourable friend, Mr. Seshagiri Ayyar, but in a matter of succession as I have already submitted to the House the whole thing ought to be considered in its totality. Honourable Members will see in the instance under consideration now the Honourable the Mover of the Bill has followed the inclination of his own mind. First of all he has gone down to the brother's grandson, that is to say, in lineal succession. His case is not based upon the ground of natural affection and as the Bill includes as it does only cases where there has been a separation and the brother is living apart, one cannot imagine how the brother's grandson should have a preferential claim to the grandson's daughter. He has stopped with son's daughter but excluded grandson's daughter. Now in a Hindu family the picture is very common of a person having the daughter of a grandson. She is brought up, she is loved and so forth, but if we are to follow the bent of our minds we exclude the grandson's daughter. Similarly other instances may be found where a brother lives in Bombay and he has no connection with his other brother. Why should his family or progeny have preference over the family of his sister, so that as Honourable Members will see, the whole question hinges upon personal likes and dislikes and the impulse of the moment. Nothing else. On the impulse of the moment we are going to alter the law of succession and under circumstances over which the Hindu public affected will have no opportunity of expressing their views. Sir, the matter stands thus. It is difficult to make a constructive proposal unless and until the whole country has been appealed to, and the opinions of men who are entitled to pronounce an opinion on the subject are in the first place obtained. Now, it is correct to say that it is impossible to obtain

[Mr. J. N. Mukherjee.]

unanimity on a subject like this, and it is owing to this fact that the question of succession was left to the customs and usages of Hindu law. Of course I for one should think that if there is a sister living with the propositus that sister should have preference over remoter relations. But he has not followed that principle. Again, Sir, let us take the case of the father's sister. The father's sister has been completely ignored. (Mr. T. V. Seshagiri Ayyar: "No.") Yes, in this Bill. At least she occupies the position which the Mitakshara law assigns to her. But the father's sister is very often the presiding person in a Hindu family; she looks after the household, and there may be considerable personal attachment between the propositus and the father's sister. So that if these questions were considered in detail it will appear that the rule of succession which has been now placed before the House depends very largely upon accident, the accident of the persons or friends who formed the Select Committee and their personal views. (Mr. T. V. Seshagiri Ayyar: "That is not fair.") Honourable Members will see that there was no discussion on the original motion to refer this Bill to Select Committee. I stood up three times when this Bill was going to be referred to Select Committee, and if Honourable Members will refer to the proceedings of the Legislative Assembly they will find that there was not a single speech made on this Bill. That is how, I submit, social legislation of such far-reaching consequences is rushed through the House and made dependent purely upon accident. I deprecate that, Sir, to the fullest extent and in matters of this kind that ought not to be the case. At any rate, if there is going to be a change in the Hindu law, I think the system which has been advocated by Government is the best, namely, a Commission, where we can have represented the heads of different sects and people who are going to be affected by the Bill. First let us get a working basis on their opinions and then start the work. As I have submitted to the House, it is impossible to arrive at unanimity in a matter of this kind; but at any rate we can build something upon the resultant public opinion if I may put it that way. Now that method has been given the go-by in the present case and the House has been driven to the position that it must accept the Bill as it stands, for it is impossible for individual Members to suggest amendments because they have not consulted the country and they do not know how any proposition put forward by them will affect the country at large. At any rate it will be seen that great difficulty exists. Here we have a small class of people excluded from inheritance who are suffering from certain disease; but here the whole law of succession is affected.

Then, Sir, another submission which I should like to make to the House is that we now have the power of making wills. The Bill applies to separated property, so that the question of power to make wills will not arise. In this respect my submission to the House is that the modern world is different from the ancient world, because now if a person desires to leave his property to a particular person he can leave it to him or her by will, especially in cases of this kind where we are not concerned with joint property. Therefore, Sir, I submit it is difficult to say—unless one is to suppose that any change sought to be brought about in the law is good for the country at large. Unless that be the position that the House wishes to occupy, I submit that the procedure which the Honourable the Law Member, Dr. Sapru, as he then was, suggested to the House in connection with the question of codification was the right one, *vis.*, that there should be a working basis like that—that would in my opinion have

been a more satisfactory manner of dealing with the subject, and therefore I submit, Sir, in the Bill as it is, considering the question piecemeal and apart from the dangers of following the Hindu law, the Muhammadan law, the Christian law, a convention might be introduced which would have the most disastrous effects, and therefore I submit that this Bill is of far greater importance than the other one. It assumes that some particular thing in Hindu law must be considered as barbarous, but that is not the only point here,—there are other weighty considerations which affect a Bill of this kind, and I therefore oppose the consideration of the Bill.

Mr. President: Did the Honourable Member move his motion?

Mr. J. N. Mukherjee: I move, Sir:

"That the Bill be re-circulated for the purpose of eliciting opinion thereon."

Mr. President: Amendment moved:

"That the Bill be re-circulated for the purpose of eliciting opinion thereon."

Mr. T. V. Seshagiri Ayyar: Sir, if my Honourable friend, Mr. Mukherjee, had posted himself in the first principles of Hindu law, if he felt anxious to do justice rather than sling mud at persons who want to make changes in Hindu law, he would find that I am advocating in this Bill principles which have long been accepted as salutary. For example, Sir, I want to bring to the notice of the Members of this House some first principles on which Hindu law is administered. As regards *bandhus*, there are three classes,—what are called one's *atma bandhus*, that is one's own descendants, and then the *pitri bandhus*, that is, the father's descendants, and then the *matri bandhus*, that is, the mother's descendants. The rule of succession is,—first of all, one's *atma bandhus* should come in; secondly, the *pitri bandhus*, or the father's descendants, and then the *matri bandhus*, or the mother's descendants; and then there is a second principle, which every Hindu lawyer knows, that the class of *bandhus* should not go beyond three degrees. That is the answer to the first of the conundrums which my friend has just now been propounding here. The grandson's daughter is more than three degrees removed, and therefore she does not come under the heading of *atma bandhus*. There can only be three degrees. Now, I take the son's daughter and the daughter's daughter, because they come within the three degrees; they must be given preference before the sister because she is the father's daughter. The sister being the father's daughter, whereas the son's daughter is one's own *atma bandhus*, the latter goes before the former. That is the principle upon which I base my order of succession, and that is the principle which commended itself to such a great lawyer as Sir V. Bashyam Ayyangar, and such an orthodox Hindu Judge as Sir T. Muthuswami Ayyar. I wanted to say this much because I do want this House to understand that I have framed the Bill on my own whim and fancy and not based it on well-known principles.

Mr. President: The original question was:

"That the Report of the Select Committee on the Bill to amend the Hindu Law of Inheritance in certain particulars, and to remove certain doubts, be taken into consideration."

Since which an amendment has been moved:

"That the Bill be re-circulated for the purpose of eliciting opinion thereon."

The question I have to put is:

"That the Bill be re-circulated for the purpose of eliciting opinion thereon."

The Assembly divided:

AYES—22.

Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ayyangar, Mr. M. G. M.
Bhargava, Pandit J. L.
Bradley-Birt, Mr. F. B.
Hussanally, Mr. W. M.
Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.

Pyari Lal, Mr.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Tulshan, Mr. Sheopershad.
Wajihuddin, Haji.
Webb, Sir Montagu.

NOES—31.

Abdul Majid, Sheikh.
Abdul Rahim Khan, Mr.
Abul Rahman, Munshi.
Achariyar, Rao Bahadur P. T.
Srinivasa.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Ghulam Sarwar Khan, Chaudhuri.

Gidney, Lieut.-Col. H. A. J.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Ikramullah Khan, Raja Mohd.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Latthe, Mr. A. B.
Man Singh, Bhai.
Mitter, Mr. K. N.
Mudaliar, Mr. S.
Percival, Mr. P. E.
Reddi, Mr. M. K.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

The motion was negatived.

Mr. President: The question is:

"That the Bill be taken into consideration."

The motion was adopted.

Mr. President: Clause 2.

Mr. M. G. M. Ayyangar (Madura and Ramnad cum Tinnevely: Non-Muhammadian Rural): Sir, I move:

"That in clause 2(c) after the word 'sister' the words 'during her lifetime' be inserted."

I have taken this amendment from the Bill which originated from the late Sir V. Bashyam Ayyangar, called "A Bill to provide for the succession of a sister and certain other relatives under the Hindu Law." In that Bill the sister's son is defined to include a son by adoption, provided such adoption was made with the consent of the sister during her life time. The safeguard that the adoption should have been made during the lifetime of the sister was provided to remove any difficulty if any dispute should arise. After the death of the sister, there may be cases in which misunderstandings arise between a man and his sister's husband. If the sister should have died without a son, it is quite possible that the sister's husband may, to spite his wife's brother and to harass him, make an adoption setting up a false consent from the deceased sister. The sister having died, it will be difficult to disprove consent. But if the adoption itself should be made during the lifetime of the sister, this difficulty will not arise. When you are making the adopted son of a sister, or rather of the sister's husband as an

heir, I submit the safeguard suggested by me that the adoption should have been made during the lifetime of the sister is absolutely necessary.

Mr. President: Amendment moved:

"In clause 2(c) after the word 'sister' the words 'during her lifetime,' be inserted."

The motion was adopted.

Mr. President: The question is that clause 2, as amended, stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 3, as amended by the Select Committee, stand part of the Bill.

The motion was adopted.

Mr. M. G. M. Ayyangar: Sir, I move that:

"To clause 4 the following new sub-clause be added:

'(c) enable more than one of several son's daughters, daughter's daughters, sister or sister's sons to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir'."

This amendment also I have got entirely from Sir V. Bashyam Ayyangar's Bill. This amendment is to provide for cases in which, according to the custom in some families, and in some zemindaris, properties descend only to a single individual. There are some zemindaris which are impartible properties under the Madras Impartible Estates Act. In the case of these zemindaris and families, it is only the eldest of the heirs that succeeds. The others have no share in the property. The Bill as it is drafted does not provide for such cases, but would allow more than one of the heirs now provided by this Bill to inherit such impartible zemindaris with the result that they may be partitioned between them. This is exactly what the Impartible Estates Act provides against. It is only to remedy this defect that my amendment desires that in the case in which by a customary or other rule of succession property descends only to a single heir, no more than one of the heirs now brought by the Bill shall succeed. This amendment also I have borrowed from the late Sir V. Bashyam Ayyangar's Bill.

Mr. T. V. Seshagiri Ayyar: May I say a word, Sir? I am not opposed to the amendment, but I think it is unnecessary to make it clearer, I would suggest that the language be different, I would make the clause read "affect any special law, and any family or local custom having the force of law." That would make it all right. In my section 4 I intended to provide for the inheritance of heirs to zemindaris. Generally as regards this class of heirs, the Privy Council have laid down that it is the family law that applies, therefore they should be excluded from the operation of the ordinary law; but if my friend wants that the provisions of the Impartible Estates Act should be saved, the proper way of doing it would be by inserting the words in clause (a)—"affect any special and/or Local law and any family or local custom having the force of law."

Mr. M. G. M. Ayyangar: My amendment would read much better than that.

Mr. T. V. Seshagiri Ayyar: I have no objection to the principle being extended, but I believe that I have provided for it in clause (a). I believe that the words I have suggested would make it all right. But I have no objection to the amendment, Sir.

The amendment was adopted.

Clause 4, as amended, was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble, as amended by the Select Committee, were added.

Mr. T. V. Seshagiri Ayyar: Sir, I move that the Bill, as amended, be passed into law.

The motion was adopted.

The Assembly then adjourned for Lunch till Twenty Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes to Three of the Clock. Mr. President was in the Chair.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. T. V. Seshagiri Ayyar, Bhai Man Singh, Sardar Gajjan Singh, Chaudhri Shahab-ud-Din, Rao Bahadur T. Rangachariar, Mr. B. Venkatapatiraju, Maulvi Abul Kasem, and myself."

Sir, my Bill is a very short one and I have spoken more than once about it in this House and I don't think I need say anything more than that it is to the effect that the privilege of appearing without a vakalatnama or power-of-attorney which is at present enjoyed by Barristers and Advocates only may be extended to Vakils.

The motion was adopted.

THE CHARITABLE AND RELIGIOUS TRUSTS (AMENDMENT) BILL.

Mr. M. G. M. Ayyangar (Madura and Ramnad cum Tinnevely: Non-Muhammadan Rural): Sir, I beg to move:

"That the Bill to amend the Charitable and Religious Trusts Act, 1920, be taken into consideration."

Honourable Members will notice that this is a very small and non-contentious measure. The object of Act XIV of 1920, the Religious and Charitable

Trusts Act, was to provide for a speedy and cheap remedy by which the assistance of the Court may be had both by the trustees and by the persons interested in the trust. The trustees may seek the assistance of the Court for advice in matters connected with the trust, and the persons interested in the trust may seek the assistance of the Court for a direction to the trustee for the rendering of the account of the trust for a period of 3 years. All these may be done under the Act by means of an application to the Court and not by the institution of a suit which means in these days enormous delay and spending of money. It is to avoid this, that the Act XIV of 1920 was passed. But that Act has got one defect, namely, that in the mofussil it gives jurisdiction only to District Courts to entertain and hear applications under the Act. It was only the other day the Honourable the Home Member and the Honourable Mr. Percival told us the large volume of work Sessions, criminal appeals and other miscellaneous work that these District and Sessions Judges have got to do. They scarcely find time to take up civil work and the result is that these applications might be pending for a long time. This was exactly the thing which the original Act wanted to remedy. Honourable Members will see that my short Bill wants that jurisdiction under the Act may also be given to subordinate courts so that such applications may have a speedy disposal at a less cost.

The motion was adopted.

Clauses 1 and 2 were added to the Bill.

The Title and Preamble were added to the Bill.

Mr. M. G. M. Ayyangar: Sir, I move that the Bill be passed.

The motion was adopted.

THE ILLEGITIMATE SONS' RIGHTS BILL.

M. K. Reddi Garu (South Arcot cum Chingleput: Non-Muhammadan Rural): Sir, I move:

"That the Bill to amend the Hindu Law of Succession be referred to a Select Committee consisting of the Honourable the Home Member, Mr. A. B. Latthe, Mr. K. C. Neogy, Mr. B. Venkatapatiraju, Mr. T. V. Seshagiri Ayyar, Munshi Iswar Saran, Maulvi Abul Kasem, Mr. N. M. Samarth, and the Mover."

Sir, the Bill has been long before the public and it has been circulated for opinion. We have received about 49 opinions of which nearly 26 are in favour of the Bill, 10 are neutral, and only 13 are against it. I introduced the Bill more as a piece of social legislation, and I leave the legal point of view to the Honourable Members who are better fitted to deal with the legal aspect of the question.

The motion was adopted.

Mr. B. C. Allen (Assam: Nominated Official): May I speak on this motion, Sir?

Mr. President: The motion has just been carried, and has carried with it the Honourable Member's right of speech.

THE LEGAL PRACTITIONERS (AMENDMENT) BILL.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I beg to move:

"That the Bill further to amend the Legal Practitioners Act, 1879, be referred to a Select Committee consisting of the Honourable the Home Member, Rao Bahadur T. Rangachariar, Mr. T. V. Seshagiri Ayyar, Mr. N. M. Samarth, Mr. A. B. Latthe, Sir D. P. Sarvadhikary, Mr. J. Chaudhuri, Mr. K. Ahmed, Mr. J. N. Mukherjee, Maulvi Abul Kasem, Dr. H. S. Gour, Munshi Iswar Saran, Mr. P. P. Ginwala, Chaudhri Shahab-ud-Din, Bhai Man Singh, Rai Sahib Lakshmi Narayan Lal, Rai Bahadur Pandit Jawahar Lal Bhargava, and the Mover."

Sir, this Bill was introduced on the 12th of September in Simla and it forms part of a wider scheme about the formation of an independent Indian Bar. These questions have been before the public for sometime, and the opinions that have been elicited are on the whole favourable to the underlying principle of my Bill. I therefore move this motion.

The motion was adopted.

THE INDIAN EVIDENCE (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Evidence Act, 1872.

The Bill will show that the amendment which I propose to make is a very short one and it is based upon a ruling of the Allahabad High Court. The Evidence Act defines primary and secondary evidence and in the definition of secondary evidence it is laid down that a person who has seen a document can be a competent witness. Now, the Allahabad High Court has ruled in the case of Ghure *versus* Chattrapal Singh, in which I had the honour to appear, that "seen" does not mean a person who has seen as one would look at a toy but a person who has seen with mind's eye. So, I want to substitute the word "read" for the word "seen."

The motion was adopted.

Lala Girdharilal Agarwala: Sir, I beg to introduce the Bill.

THE INDIAN LIMITATION (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): I move for leave to introduce a Bill further to amend the Indian Limitation Act, 1908. The Indian Limitation Act, as it stands at present with respect to section 19, is in accordance with the old English law and not in accordance with the present English law. There are other matters which are always the subject of great discussion. It is for this reason that I beg to move for leave to introduce this Bill in order to correct those errors and that the law may develop. The present doctrine in England as to the theory of acknowledgment is that an acknowledgment to be effectual must amount to a fresh promise to pay. The old theory which has been exploded forms the basis of our present law. Hence I move for leave to introduce this Bill.

The motion was adopted.

Lala Girdharilal Agarwala: I introduce the Bill.

(4046)

THE PREVENTION OF DEFERRED REBATES BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): The Bill which I seek leave to introduce is one of great importance to the development of the mercantile marine in this country. There are two principal matters mentioned in the Bill. One is as regards what is known as the deferred rebates and the second is as regards the fixing of maximum and minimum rates. As regards the deferred rebates question there is no doubt that it would hamper Indian enterprise if companies of long established reputation offer rebates in the way in which they are doing. There was a Royal Commission appointed in England in 1908 to consider this question, and although it was only by majority that the Commission came to the conclusion that the rebate system should be continued. Recently when the Imperial Shipping Committee had to deal with the subject, though they admitted the evils of the rebate system, they recommended that the shippers should be given the option of an agreement also. I may mention in this connection that the Indian shippers who gave evidence before the Imperial Shipping Committee unanimously—I am speaking of a large number of Europeans also—the Indian shippers unanimously gave evidence to the effect that the rebate system should be done away with; that is my reason for including the subject so far as the first portion of my Bill is concerned. As regards the fixing of maximum and minimum rates, a rate war went on in this country for a long time; I can give instances of one or two companies having come to grief by well-established companies charging a low rate for the time being in order to crush out the Indian enterprise; after the enterprise was thus crushed out they went back to the old rates. The Deck Passengers' Committee recommended that a minimum rate should be fixed, and that is the second subject which I have introduced into this Bill. I may say that my Bill is based largely upon similar enactments in the United States and other countries. Therefore I ask the House to give me leave to introduce the Bill.

Mr. President: The question is:

"That leave be given to introduce a Bill to provide for the prevention of deferred rebates and for the prevention of rate wars and resort to retaliatory or discriminating practices in the Coastal traffic of India."

The motion was adopted.

Mr. T. V. Seshagiri Ayyar: I introduce the Bill, Sir. I now move:

"That the Bill be circulated for the purpose of eliciting opinion thereon."

The Bill has been in the hands of Honourable Members for some time. As a matter of fact, even before they had the Bill as printed, I sent them a copy and I sent a letter to them explaining the reasons why this Bill should be introduced. I move that the Bill be circulated for the purpose of eliciting opinion thereon.

The motion was adopted.

THE INTEREST ACT (AMENDMENT) BILL.

Khan Sahib Maulvi Abdul Quadir (Central Provinces: Nominated Non-Official): Sir, the measure to introduce which I am asking leave of this Honourable House is a very simple and a modest one. It consists of two sections only and refers to the amount of interest recoverable at the date

(4047)

[Khan Sahib Maulvi Abdul Quadir.] of the suit. It provides that no creditor of a secured or unsecured loan should be entitled to recover interest in excess of the principal amount due at the date of the suit. I tried to introduce this measure last year in this House but it was a pity that it was thrown out both by the Government and by the Members of this Honourable House and I did not get permission to introduce the same. In spite of my previous failure, I am again trying to introduce it because I have got a real grievance and I am fully conscious that if this grievance is not redressed during the régime of this Honourable House, there is no chance of its being redressed at all or at any rate in the near future. This is the chief reason why I am troubling this Honourable House over again. If the House will kindly bear with me for a few minutes, I will place my grievance before it. The House will be surprised to hear that in Berar and Bombay Presidency if a Hindu creditor sues a non-Hindu debtor to recover say Rs. 1,000 as principal and Rs. 4,000 as interest, he is allowed by the Courts of Justice a decree for Rs. 5,000 in full. But if a non-Hindu creditor sues a Hindu debtor under exactly similar circumstances and conditions the Courts of Justice do not give him a decree against his Hindu debtor for a single pie more than Rs. 2,000. Now, I am not exaggerating facts. I am telling actually what is happening in these provinces every day. My friend, the Honourable Mr. Jatkari, will bear me out in every word I have uttered in this respect. The Honourable Colonel Sir Henry Stanyon and the Honourable Mr. Rustomji Faridoonji, Members of this Honourable House, are also fully aware of the anomalous state of affairs prevailing under the name of the rule of *Damdapat*. Now, I leave it to the Honourable House to judge it for themselves as to whether the grievance I am complaining of is a real one or a creation of my own imagination and whether this Honourable House should or should not redress it. The Provincial Governments cannot do anything in matters of this nature. They cannot amend Dharam Shastras and make the principle of *Damdapat* applicable to Hindus and non-Hindus of the province alike and remove the invidious distinction at present existing. Those who profess Hindu religion are with the exception of a few against such a change being effected. Consequently there is no alternative left open for this Honourable House but to amend the Interest Act as I have ventured to suggest in order to bring justice to those who are subjected to most unjust and iniquitous treatment in the above stated provinces. If the Government and the Members of this Honourable House can remove this iniquity and bring relief to the suffering non-Hindus by any other means than this, so much the better. They are welcome to do so but I am afraid they cannot. The amendment sought for by me is bound, as given in the Statement of Objects and Reasons, to result in immense good to the public in general of the whole of India but if the House thinks otherwise they may make a provision in the amending Act giving option to the Provincial Governments to apply to their respective provinces by notification in their Provincial Gazettes if they considered it beneficial. Otherwise not. The Usurious Loans Act, X of 1918, has been on the Statute Book for the last five years, but it has failed to bring relief to the non-Hindus of Berar and Bombay in this respect. Besides this, the Act gives discretion to the Judge to go through the past account books and readjustments in cases in which he thinks it necessary to do so. Thus the using of this discretion is an arbitrary thing depending upon the choice of the particular judge deciding the case. In *Damdapat* cases no question of using such a discretion arises, but in the majority of other cases they do not use such power at all, while in some cases in which it

is exercised there is no uniformity of decisions, because two different judges under exactly similar circumstances may come to two different conclusions regarding the rate and the amount of interest to be allowed to the creditor.

As a matter of fact, so far as the administration of justice in Berar is concerned it is the duty of the Government of India to see that justice is done equally to all classes of people in the province which they retain in their hands specially for administering better justice. They should not allow one section of the people to suffer at the hands of another section as is done at present. This sort of unequal justice was not meted out to the different sections of his subjects by His Exalted Highness the Nizam before the province was taken over by the Government of India for purposes of better administration.

I appeal to Government Members and to other Members of this House to kindly take a sympathetic view of what I have brought to their notice and allow permission for introducing the Bill instead of throwing it out summarily as they did last year. My Bill is altogether different in principle from the Bill of Mr. Yamin Khan.

With these words, Sir, I move for leave to introduce a Bill to amend the Interest Act, 1839.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I desire formally to oppose the motion for leave to introduce this Bill. As the Honourable Member who has brought forward this motion has reminded the House, the Bill was before the House a year ago and leave to introduce it was refused after a speech by the then Home Member. And in the course of the present Session the House has had before it a Bill one of whose provisions was very closely allied to the provision which is contained in the Bill which the Honourable Member now seeks leave to introduce. I do not think it necessary, Sir, therefore, to repeat at length all the arguments which Government have already brought forward against this principle of *Damdapat*. Government still adhere to the view that a prescription of law universally applying, what is known as the rule of *Damdapat*, is not desirable and they are not prepared therefore to accept the motion made by the Honourable Member. Government are still of opinion that a better remedy is provided in Act X of 1918—an Act to give additional powers to courts to deal in certain cases with usurious loans in money or in kind. On the other hand, Sir, I desire to make it quite clear to the House and to the Honourable Member that Government do realize the immense importance of this question and they do not want it to be supposed for a moment that they desire to close the discussion altogether without any further inquiry. Government are prepared to make a full inquiry into the working of Act No. X of 1918 and into the questions raised by the Honourable Member; but instead of supporting his Bill, to which they cannot consistently lend support, they would prefer on the conclusion of their inquiries if the necessity is made apparent, to introduce a Bill of their own. I desire, therefore, to assure the Honourable Member that Government will cause the fullest inquiry to be made into the grievances which he has alleged to exist, and I trust, Sir, that on that assurance the Honourable Member will withdraw this motion and leave it to Government to undertake such further steps in the matter as may appear necessary and advisable on the conclusion of their inquiry.

Mr. W. M. Hussanally: Then, why not allow it to be introduced and circulate it for eliciting opinion?

Khan Sahib Maulvi Abdul Quadir: In view of the assurance given by the Honourable Member, I beg to withdraw my motion.

The motion (for leave to introduce a Bill to amend the Interest Act, 1839) was, by leave of the Assembly, withdrawn.

THE GENERAL CLAUSES (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I beg to move for leave to introduce a Bill further to amend the General Clauses Act, 1897.

Sir, the present General Clauses Act, which is Act X of 1897, was passed so many years ago. The earlier Acts were Act I of 1868, and Act I of 1887. Act X of 1897 was passed as a sort of consolidating Act. Now, the present Bill deals only with a very small matter, but yet a very important matter, namely, the definition of the legal term 'sign.' In days gone by when the thumb impression system was unknown to scientists the mere mark of an illiterate person whether made by himself or by any other person was considered sufficient. In the present times we have got an elaborate system of thumb impressions which can be easily identified, and I know in cases in which I had personally had the honour of appearing, even persons have been sentenced to death on the evidence afforded by thumb impressions. But we find neither in our Law of Evidence nor in the General Clauses Act, thumb impressions find a place. The main object of my introducing this present measure is to give legality to thumb impressions. I have taken the opportunity of introducing another matter, namely, to safeguard the signatories who are illiterate or half-literate by the affixation of signature of an attesting witness to any such signature of an illiterate or half-literate person, who should certify that he personally knew the person was signing and that the person so signing understood the contents of the document which he was signing. Of course I am not wedded to the details of the Bill but that is the main idea underlying my Bill. With these few words I move the motion which is put in my name.

Mr. President: The question is that leave be given to introduce a Bill further to amend the General Clauses Act, 1897.

The motion was adopted.

Lala Girdharilal Agarwala: Sir, I introduce the Bill.

Mr. P. B. Haigh: Do I understand, Sir, that it is too late for me to speak on the subject?

Mr. President: Yes, I am afraid it is.

ATTITUDE OF GOVERNMENT RE CERTAIN BILLS INTRODUCED BY NON-OFFICIAL MEMBERS.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I hope you will allow me to make a short statement, necessitated by the unfortunate fact that I was called away from the House on very urgent business and before it. As the House knows, Members of Government are at times liable to be called away at short notice on work which will not brook delay,

and they are not, therefore, always able in consequence to discharge their duties in the Legislature. This was a case in point, and I think it only therefore proper that I should be allowed to enter a caveat on the part of Government in regard to its attitude with regard to certain of these measures. I do that in order that it may not be assumed that because we made no opposition to some of these measures that we have thereby necessarily assented to them in principle or in detail. If that were assumed, it might cause disappointment to their promoters, and it is in fairness to them that I am bound to say that if it had not been for the unfortunate accident which called me away, I should have opposed certain of these measures. That refers in particular to Lala Girdharilal Agarwala's Bill entered as No. 12 (a) on the list to amend the Code of Civil Procedure, 1908. It refers also in part at all events to No. 16 (b) Mr. Neogy's measure regarding the Legal Practitioners Act. It refers also to Lala Girdharilal Agarwala's Bill, No. 17 (c). It refers to Mr. Seshagiri Ayyar's Bill No. 23 (d). Sir, I only wish to state that when these measures come forward at a later stage, we may in some cases have to oppose them and in other cases to ask for material modifications.

Mr. T. V. Seshagiri Ayyar: May I say a word, Sir, as regards those gentlemen who have introduced Bills including myself? I do not believe that the Honourable the Leader of the House intended to say that we have hurried these Bills through. It is very unfortunate that friends on the Government Benches were unable to be present. I myself was looking to Mr. Innes being here and to say something against my Bill, and when I found that nobody spoke against it, I looked about and it was said that the Bill be carried. I think my friends understand that Government is not committed to anything in connection with these Bills and when the Bill comes up again before this Assembly, the Government could explain their position and consider the whole question afresh. We do not understand that Government have in any way committed themselves.

The Honourable Sir Malcolm Hailey: Sir, I am very much obliged to Mr. Seshagiri Ayyar for what he has said. He understands and appreciates the difficulties which sometimes occur in our work. Mr. Innes, of course, has partaken on this occasion of the same misfortune as myself.

The Assembly then adjourned till Eleven of the Clock on Monday, the 2nd July, 1923.

(a) 12. **Lala Girdharilal Agarwala** to move that the Bill further to amend the Code of Civil Procedure, 1908, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. T. V. Seshagiri Ayyar, Bhai Man Singh, Sardar Gajjan Singh, Chaudhri Shahab-ud-Din, Rao Bahadur T. Rangachariar, Mr. B. Venkatapatiraju, Maulvi Abul Kasem, and the Mover.

(b) 16. **Mr. K. C. Neogy** to move that the Bill further to amend the Legal Practitioners Act, 1879, be referred to a Select Committee consisting of the Honourable the Home Member, Rao Bahadur T. Rangachariar, Mr. T. V. Seshagiri Ayyar, Mr. N. M. Samarth, Mr. A. B. Latthe, Sir D. P. Sarvadhikary, Mr. J. Chaudhuri, Mr. K. Ahmed, Mr. J. N. Mukherjee, Mr. Abul Kasem, Dr. H. S. Gour, Munshi Iswar Saran, Mr. P. P. Gindwala, Chaudhri Shahab-ud-Din, Bhai Man Singh, Rai Sahib Lakshmi Narayan Lal, Rai Bahadur Pandit Jawahar Lal Bhargava, and the Mover.

(c) 17. **Lala Girdharilal Agarwala** to move for leave to introduce a Bill further to amend the Indian Evidence Act, 1872.

(d) 23. **Mr. T. V. Seshagiri Ayyar** to move for leave to introduce a Bill to provide for the prevention of deferred rebates and for the prevention of rate wars and resort to retaliatory or discriminating practices in the Coastal traffic of India.

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Motion to pass. 1706.

Adopted. 1707.

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Motion for leave to introduce. 4002.

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